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ELEVENTH PARLIAMENT – SECOND SESSION (2014)

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THE REPORT OF  
THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE  
BILL, 2014

PURSUANT TO ARTICLE 113 OF THE CONSTITUTION

JOINT CLERKS CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI.  
JULY 2014

Paper laid  
22/7/2014

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## 1.0 INTRODUCTION

1. The Mediation Committee on the Division of Revenue Bill, 2014 was constituted by the Speakers of the two Houses of Parliament on 24<sup>th</sup> June, 2014 pursuant to Article 112 and 113 of the Constitution and the Standing Orders of the Senate and the National Assembly comprising of the following members:-

1. The Hon. Mutava Musyimi, MP. - **Chairperson**
2. The Hon. Sen. Billow Kerrow, MP. - **Vice-Chairperson**
3. The Hon. Mary Emaase, MP
4. The Hon. Sen. Mutahi Kagwe, MP.
5. The Hon. Sen. Mutula Kilonzo Junior, MP.
6. The Hon. John Mbadi, MP.

### 1.1 The Mediation Committee's Mandate

2. The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, Standing Order 149 of the National Assembly and Standing Order 154 of the Senate which outlines the functions of the Committee as follows:-
  - i.) *To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;*
  - ii.) *To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and*
  - iii.) *To attempt to develop a version of the Bill that both Houses will pass.*

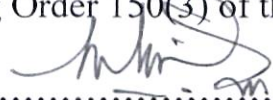
### 1.2 Committee Meetings and Methodology

3. The Committee held a total of four (4) sittings to deliberate on the Division of Revenue Bill, 2014 in accordance with the Constitution and relevant provisions of the Standing Orders of the Senate and the National Assembly.
4. During the first sitting the Committee conducted the election of the Chairperson and the Vice-Chairperson where Hon. Mutava Musyimi, MP and Sen. Billow Kerrow, MP were elected as Chairman and Vice Chairman respectively.

5. At this meeting the Committee made reference to the report of the pioneering Mediation Committee that recommended that in future, the Chair of the mediation Committee should be elected from amongst members of the House that originated the Bill.
  
6. The Committee commenced its work by developing a statement of issues of concern raised that necessitated the rejection of Bill by the National Assembly. The statements comprised of the amendments made by the Senate to the Division of Revenue Bill, 2014.
  
7. Appended to this report is a version of the Bill developed by the Committee for consideration by both Houses.

### 1.3 Acknowledgements

8. The Chairperson, on behalf of the Committee, wishes to sincerely thank the offices of the Speakers and the Clerks of the two Houses of Parliament for necessary support extended to it in the execution of its mandate.
  
9. The Chairperson also thanks all Members of the Committee for their patience, sacrifice, endurance and commitment to their assignment under tight schedules which enabled the Committee to complete the task within the stipulated period of time.
  
10. Finally, it is now my pleasant duty and privilege, on behalf of the Mediation Committee on the Division of Revenue Bill, 2014, to present and commend this report including an agreed version of the Bill to the Houses for approval pursuant to Article 113(2) of the Constitution and Standing Order 155(3) of the Senate and Standing Order 150(3) of the National Assembly.

  
**SIGNED** .....  
**HON. MUTAVA MUSYIMI, MP**  
**CHAIRPERSON,**  
**(THE MEDIATION COMMITTEE)**

**DATE:** ..... *17<sup>th</sup> July 2014* .....

## 2.0 BACKGROUND

11. The National Assembly passed the Division of Revenue Bill, 2014 on the 23<sup>rd</sup> April 2014. Following the Approval of the Division of Revenue Bill (National Assembly Bill No. 13 of 2014) with amendments by the National Assembly, ordinarily a Communication message is forwarded to the Senate on 25<sup>th</sup> April 2014 as a message seeking their concurrence.
  
12. Following the submittal of the Division on Revenue Bill (National Assembly Bill No. 13 of 2014) with amendments by the National Assembly to the Senate, the Senate deliberated on the Division of Revenue, and made further amendments. Consequently, The Senate sent a message on the Division of Revenue Bill, with amendments on 21<sup>st</sup> May, 2014 for the concurrence of this House. The two amendments were;
  - a.) To amend clause 4 of the Bill to provide for adequate funding for all level 5 hospitals through allocation to the functions from the national level of government as opposed to the County level of government. The amendment further referenced Article 187(2) as the basis for the amendment.
  - b.) An amendment to the schedule to alter the stipulation that the allocation to Counties is 43% of the most recent audited and approved revenue by the National Assembly. (in this case the 2009/10 revenue figures of Kshs. 529.3 billion) to simply read that the allocation due to Counties supersedes the minimum threshold of 15% of revenue collected by the government as stipulated under Article 203 (2).
  
13. Upon receipt of the Senate message, the Matter was referred to the Budget and Appropriations Committee to report to the House by 10<sup>th</sup> June 2014. The Budget and Appropriations Committee of the National Assembly considered and deliberated on the Senate's amended version of the Division of Revenue Bill. The Committee tabled a report on 10<sup>th</sup> June 2014. The Report recommended rejection of the two proposed amendments to the Division of Revenue Bill, 2014 by the Senate. The National Assembly adopted the Report and hence leading to the establishment of the mediation Committee.

## **2.1 Establishment of Mediation Committee**

14. The Mediation Committee was established pursuant to Article 112 (1) (a) and 113 of the Constitution which states:-

Article 112(1)- “ If one House passes an ordinary Bill concerning counties and the second House –

(a) rejects the Bill, it shall be referred to a Mediation Committee appointed under Article 113”

15. Article 113(1)-

- 1). If a Bill is referred to a mediation committee under Article 112, the Speaker of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.
- 2). If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.
- 3). If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.
- 4). If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the bill is defeated.

## **2.2 Appointment Process of Members**

16. Pursuant to Article 113 of the Constitution and Standing Order 149 of the National Assembly, the Clerk of the National Assembly wrote to the Clerk of the Senate vide letter dated 19<sup>th</sup> June, 2014 notifying him of the members appointed to represent the National Assembly in the Mediation Committee on the Division of Revenue Bill, 2014. The National Assembly nominated the following members to the Mediation Committee; Hon. Mutava Musyimi, M.P., Hon. John Mbadi, M.P. and Hon. Mary Emaase, M.P.

17. On the other hand, pursuant to the said provisions of the Constitution and Standing Order 154 of the Senate, the Clerk of the Senate vide a letter dated 23<sup>rd</sup> June, 2014 forwarded to the Clerk of the National Assembly nominating Sen. Billow Kerrow, MP, Sen. Beatrice Elachi, M.P. and Sen. (Dr) Bonnie Khalwale M.P. to represent the Senate in the Mediation Committee. The

Joint Clerks consequently convened the first sitting of the Committee which was held on Wednesday 1<sup>st</sup> July, 2014. However, due to time constraints, a second letter dated 2<sup>nd</sup> July, 2014 replacing two (2) Senators who were engaged on other parliamentary business was forwarded to the Clerk of the National Assembly. The new replacements were Sen. Mutahi Kagwe, MP and Sen. Mutula Kilonzo Jnr M.P. to replace Sen. Beatrice Elachi, M.P. and Sen. (Dr) Bonnie Khalwale M.P respectively.

### **3.0 CONSIDERATION OF THE DIVISIONS OF REVENUE BILL, 2014**

#### **3.1 Consideration by National Assembly**

18. The Division of Revenue Bill, 2014 originated in the National Assembly and was passed with amendments on 23<sup>rd</sup> April 2014. The Bill was referred to the Senate for concurrence on 25<sup>th</sup> April 2014 pursuant to the provision of the National Assembly Standing Orders 233 (4) and 142 (*Concurrence of the other House*).

#### **3.2 Consideration by the Senate**

19. The Division of Revenue Bill, 2014 was submitted to the Senate on 25<sup>th</sup> April 2014. The Bill was referred to the Senate's Standing Committee on Finance, Commerce and Budget. The Committee tabled its report with amendments on 13<sup>th</sup> May, 2014. The Senate passed the Bill with amendments on 15<sup>th</sup> May 2014. The Senate forwarded its amendments to the Division of Revenue Bill (National Assembly Bill no. 13 of 2014) on 3<sup>rd</sup> June 2014 for the Concurrence of the National Assembly.

#### **3.3 Consideration by the National Assembly of the Bill from the Senate**

20. The National Assembly considered and discussed the Senate's amended version of the Division of Revenue Bill, 2014. The Report recommended rejection of the two proposed amendments to the Division of Revenue Bill, 2014 by the Senate. The National Assembly adopted the Report and hence leading to the establishment of the mediation Committee.

### 3.4 Consideration by the Mediation Committee

21. The bone of contention raised by the National Assembly bordered on Senate's two amendments to the Bill;

- i. *Amendment to clause 4 of the Bill to provide for adequate funding for all level 5 hospitals through allocation to the functions from the national level of government as opposed to the County level of government. The amendment further referenced Article 187(2) as the basis for the amendment.*
- ii. *An amendment to the schedule to alter the stipulation that the allocation to Counties is 43% of the most recent audited and approved revenue by the National Assembly (in this case the 2009/10 revenue figures of Kshs. 529.3 billion) to simply read that the allocation due to Counties supersedes the minimum threshold of 15% of revenue collected by the government as stipulated under Article 203 (2).*

22. The Committee identified the following amendments made by the Senate that necessitated rejection of the Bill by the National Assembly as follows:-

**i. Amendments to the Schedule of the Bill.**

- The Senate had deleted the third column of the schedule representing the percentage allocations and represented it in form of notes under the schedule in a bid to bring better clarity in the representation of the amounts and percentages shareable to the County Governments of the total shareable revenue.
- The Committee noted that the removal of 43%, as a representation of percentage of Kshs 529.3 billion being the national revenue for the year 2009/2010 in line with Article 203(2) of the Constitution in the notes under the schedule was one of the reasons why the amendment was rejected by the National Assembly.
- The Committee deliberated and agreed to reinstate the third column of the schedule, but provide better explanation at the footnote to read as follows:

#### Note

<sup>1</sup> *For completion of centers of excellence under the Economic Stimulus Package in all 290 constituencies (5 million per constituency)*

<sup>2</sup> *Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.*

**ii. Amendment on the Article 4 of the Division of Revenue Bill, 2014.**

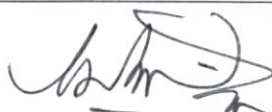


- The Committee was informed that the 226.66 was a product of several negotiations and compromises by stakeholders. In addition, the resolution to provide for the amount as the sharable revenue to counties was to facilitate the counties to prioritize their budgetary allocations without interference.
- The Committee heard that the Senate had proposed an amendment to Article 4 of the Division of Revenue Bill, 2014 to provide for the National Government to fund Level 5 hospitals. The Committee noted the fears of the Senate that Level 5 hospitals risked closure if not well funded.
- The argument was that counties with Level 5 hospitals would be unfairly disadvantaged as they would be forced to put in an extra amount of their equitable share to run the level 5 health facilities which provide services to other nearby counties.
- It was noted that the amount counties have, may not be sufficient for running level 5 hospitals and those with Level 5 hospitals had made a specific request for a slight increase in additional revenue to support the running of Level 5 hospitals.
- It was also noted that there was an urgent need to conduct costing of the Level 5 Hospitals function to determine the amount of resources sufficient to run this function.
- Concerns were raised by the Committee on utilization of funds by counties and the accusations that counties were misusing money on issues that were not of priority. The Committee heard that the Senate was engaged in active consultations with the counties on all budgetary concerns.

- The Senate Committee on Finance, Commerce and Budget was working on mechanisms to set up a framework for county government's ceilings on expenditures. This would enhance accountability and expenditure decisions by county governments. The County Assemblies were also working on building capacity for oversight.

#### **4.0 THE COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS**

23. The Mediation Committee observed that indeed there is urgent need to unlock the matter and cause the County Allocation of Revenue Bill, 2014 to proceed.
24. The Committee observed that Level 5 hospitals are not provided for explicitly in the Constitution and hence the need to find a mechanism of dealing with the matter in the future to enable level 5 hospitals' ability to function appropriately.
25. The Committee observed that there is urgent need for the Health Committees of the two Houses of Parliament to work together in consultation with other stakeholders to address issues of Level 5 Hospitals and carry out the actual costing of running each of the Level 5 Hospitals.
26. The Mediation Committee considered the above issues raised in the National Assembly and consequently developed the annexed version of the Bill (Appendix 1) which addresses the noted concerns. All matters were agreed on by consensus and therefore the report was unanimously adopted by the Members of the Committee.
27. The Mediation Committee therefore recommends that;
  - i.) **The national government allocates Kshs 1.87 billion conditional allocation for financing all Level 5 Hospitals as currently listed.**
  - ii.) **The two Houses of Parliament to approve this report and its appendix thereof.**

This report was unanimously adopted by the following members:-

NO.	NAME	SIGNATURE
1.	The Hon. Mutava Musimi, MP. -Chairperson	
2.	The Hon. Sen. Billow Kerrow, MP. -Vice-Chairperson	
3.	The Hon. Mary Emaase, MP	
4.	The Hon. Sen. Mutahi Kagwe, MP.	
5.	The Hon. Sen. Mutula Kilonzo Junior, MP.	
6.	The Hon. John Mbadi, MP.	

----- End -----

**MINUTES OF THE 3<sup>RD</sup> SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014 HELD IN THE MAIN BOARDROOM, ON THE GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON TUESDAY, 15<sup>TH</sup> JULY, 2014 AT 12.00 PM.**

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**Present**

1. Hon. Mutava Musyimi - **Chairman**
2. Sen. Billow Kerrow - **Vice Chairman**
3. Sen. Mutahi Kagwe
4. Sen. Mutula Kilonzo (Jnr)
5. Hon. Mary Emasse

**Absent with Apology**

Hon. John Mbadi

**IN ATTENDANCE**

**Parliamentary Staff**

1. Mr. Njenga Njuguna – Director, Committee Services, Senate
2. Mr. Dennis Abisai – Principal Legal Officer, Senate
3. Mr. Fredrick Muthengi - Principal Fiscal Analyst, National Assembly
4. Ms. Emmy Chepkwony – Senior Clerk Assistant, Senate

**Min. No. 10/2014: Preliminaries**

The Committee meeting commenced at 12.10 p.m. Prayers were said by Hon. Mutava Musyimi, M.P.

**Min. No. 11/2014: Adoption of the Agenda**

The agenda was adopted by the Committee having been proposed by Sen. Mutula Kilonzo (Jnr), M.P and seconded by Hon. Mary Emaase, M.P

**Min. No. 12/2014: Confirmation of the Minutes of the previous sitting**

The minutes of the following sittings were confirmed as a true record of the sittings proceedings and signed by the Chairman:

- i. Minute of the 1<sup>st</sup> sitting held on Wednesday 1<sup>st</sup> July, 2014 after being proposed by Sen. Billow Kerrow, M.P and seconded by Sen. Hon. Mary Emasse, M.P.
- ii. Minute of the 8<sup>th</sup> July, 2014 sitting held on Wednesday 1<sup>st</sup> July, 2014 after being proposed by Sen. Billow Kerrow, M.P and seconded by Sen. Hon. Mary Emasse, M.P.

**Min. No. 13/2014: Consideration of the Bill referred to the Committee**

The Committee considered the Bill and agreed to the following to provide the following provision to unlock the contentious issues on the Division of Revenue Bill, 2014.

**i. The presentation of the changes the Senate had made to the schedule of the Bill.**

- The Committee reviewed the proposed schedule and recommended that the third schedule representing percentages and the provisions of Article 203(2) of the Constitution be reinstated on the Schedule and the note on the schedule is adopted to read as follows:

**Note**

<sup>1</sup> *For completion of centers of excellence under the Economic Stimulus Package in all 290 constituencies (5 million per constituency)*

<sup>2</sup> *Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.*

**ii. Amendment on the Article 4 of the Division of Revenue Bill, 2014.**

Amendments were proposed to provide for level 5 Hospitals through a contribution of 1.87 billion from the allocation to National Government. It was recommended that counties with Level 5 Hospitals budget for the respective hospitals from the amount allocated to them. It was further agreed that if the resources will not be

sufficient to run this hospitals the affected counties will raise up the matter with the National Government under the provisions of Article 187 of the Constitution.

The Committee noted that it would be very important for a decision to be made to determine if Level 5 Hospitals in the country are under the National Government or is been devolved to County Government. This will facilitated a better decision on the funding of the Hospitals in going forward.

The Committed noted the report of the National Assembly Health Committee on the recommendation that Level 5 Hospitals should be the function the National Government. It was recommended that the Health Committees from both Houses convene a forum with all the stakeholders to arrive at a conclusive decision on the matter with a view to advising on the costing and future funding of the function and a decision as to whether this is a concurrent function.

**Min. No.14/2014: Adjournment**

There being no other business to consider and the time being fifty minutes past Twelve O'clock, the Chairperson adjourned the meeting.



**SIGNED:** .....  
**CHAIRPERSON- HON. MUTAVA MUSYMI, M.P**

**DATE:** ..... 16<sup>th</sup> Feb 2014 .....

**MINUTES OF THE 4<sup>TH</sup> SITTING OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2014 HELD IN THE MAIN BOARDROOM, ON THE GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS, ON TUESDAY, 15<sup>TH</sup> JULY, 2014 AT 2.00 PM.**

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**Present**

1. Hon. Mutava Musyimi - **Chairman**
2. Sen. Billow Kerrow - **Vice Chairman**
3. Sen. Mutahi Kagwe
4. Sen. Mutula Kilonzo (Jnr)
5. Hon. Mary Emaase

**Absent with Apology**

Hon. John Mbadi

**IN ATTENDANCE**

**Parliamentary Staff**

1. Mr. Njenga Njuguna – Director, Committee Services, Senate
2. Mr. Dennis Abisai – Principal Legal Officer, Senate
3. Mr. Fredrick Muthengi - Principal Fiscal Analyst, National Assembly
4. Ms. Emmy Chepkwony – Senior Clerk Assistant, Senate

**Min. No. 15/2014: Preliminaries**

The Committee meeting commenced at 2.10 p.m. Prayers were said by Hon. Mutava Musyimi, M.P.

**Min. No. 16/2014: Adoption of the Agenda**

The agenda was adopted by the Committee having been proposed by Sen. Mutula Kilonzo (Jnr), M.P and seconded by Hon. Mary Emaase, M.P

**Min. No. 17/2014: Confirmation of the Minutes of the previous sitting**

The minutes of the following sittings were confirmed as a true record of the sittings proceedings and signed by the Chairman:

- i. Minute of the 3<sup>rd</sup> sitting held on Tuesday 15<sup>th</sup> July, 2014 at 12.00pm after being proposed by Sen. Billow Kerrow, M.P and seconded by Hon. Mary Emasse, M.P.
- ii. Minute of the 4<sup>th</sup> sitting held on Tuesday 15<sup>th</sup> July, 2014 at 2.00 pm after being proposed by Sen. Mutahi Kagwe, M.P and seconded by Hon. Mary Emasse, MP.

**Min. No. 13/2014: Consideration of the Bill referred to the Committee**

The Committee considered the Bill and adopted the following provision to unlock the contentious issues on the Division of Revenue Bill, 2014.

- i. The presentation of the changes the Senate had made to the schedule of the Bill.**
  - The Committee reviewed the proposed schedule and recommended that the third schedule representing percentages and the provisions of Article 203(2) of the Constitution be reinstated on the Schedule and a note on the schedule is amended and adopted to read as follows:

**SCHEDULE**

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR FINANCIAL YEAR 2014/15**

Type / Level of allocation	Amount in Kshs. billions	Article 203(2) (Minimum threshold-15%)
<b>Total Shareable Revenue</b>	<b>1,026.31</b>	
<b>A. National Allocation</b>	<b>799.65</b>	

<i>of which;</i>		
Conditional allocation for Economic Stimulus Package <sup>1</sup>	1.45	
Conditional allocation for Level 5 Hospitals	1.87	
Equalization Fund	3.4	
<b>B. County Allocation <sup>2</sup></b>	<b>226.66</b>	<b>43%</b>

**Note**

<sup>1</sup> For completion of centers of excellence under the Economic Stimulus Package in all 290 constituencies (5 million per constituency)

<sup>2</sup> Based on 2009/10 audited revenues approved by the National Assembly, the County Allocation of Kshs. 226.66 billion represents 43% of Kshs. 529.3 billion audited revenue approved by the National Assembly in accordance with Article 203(3) of the Constitution.

**ii. Amendment on the Article 4 of the Division of Revenue Bill, 2014.**

Amendments were proposed to provide for level 5 Hospitals through a contribution of 1.87 billion from the allocation to National Government. It was recommended that counties with Level 5 Hospitals budget for the respective hospitals from the amount allocated to them. It was further agreed that if the resources will not be sufficient to run this hospitals the affected counties will raise up the matter with the National Government under the provisions of Article 187(2) of the Constitution.