



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT (SECOND SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR

**ON REFERENCE OF THE DIVISION OF REVENUE BILL, 2014 TO
MEDIATION COMMITTEE**

Honourable Members,

You will recall that yesterday the 18th of June, 2014, the House adopted the Report of the Budget and Appropriations Committee on the Division of Revenue Bill, 2014 and consequently rejected the amendments of the Senate on the Division of Revenue Bill, 2014. As you all know, Article 112 (2) (b) of the Constitution, requires that if, after the National Assembly being the originating House reconsiders a Bill referred back to it by the Senate and rejects the Bill as amended by the Senate, the Bill shall be referred to a Mediation Committee appointed under Article 113.

Hon. Members, the Resolution of the House yesterday, adopted the Report of the Budget and Appropriations Committee and also rejected the Senate's amendments to the Division of Revenue Bill, 2014, implying that the Speakers of the two Houses must now form a Mediation Committee in the manner contemplated by Article 112 of the Constitution and Standing Order 149. In this regard, having consulted the Leader of the Majority Party and the Leader of the Minority Party, and in accordance with Article 113(1) of the Constitution, I have appointed the following Members to be Members of the Mediation Committee on the Bill, on the part of the National Assembly-

1. The Hon. Mutava Musyimi, MP, Chairperson Budget and Appropriations Committee
2. The Hon. Mary Emaase, MP, Vice Chairperson Budget and Appropriations Committee
3. The Hon. John Mbadi, MP, Member, Budget and Appropriations Committee

Honourable Members,

It is indeed with a heavy heart that I wish to remind the House of the provisions of Article 113(4) of the Constitution which provides that 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. The possibility therefore exists on the Division of Revenue Bill, 2014 being lost and thus throwing the budget process for the counties into disarray. It is important to emphasize that if the Division of Revenue Bill is lost, the biggest casualties will be the County Governments as Article 224 of the Constitution requires enactment of the Division of Revenue Bill before they can commence any budgetary action. The said Article provides as follows-

224. On the basis of the Division of Revenue Bill passed by Parliament under Article 218, each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament.

It is also important to emphasize that the loss of the Division of Revenue Bill does not affect the budgetary process of the National Government which continues in the manner contemplated under Article 221 of the Constitution. Allow me to restate certain provisions of this Article which are as follows-

221. (1) At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.

(2) The estimates mentioned in clause (1) shall—

(a) include estimates for expenditure from the Equalization Fund; and

(b) be in the form, and according to the procedure, prescribed by an Act of Parliament.

(3) The National Assembly shall consider the estimates submitted under clause (1) together with the estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary under Articles 127 and 173 respectively.

(6) When the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to

authorise the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.

(7) The Appropriation Bill mentioned in clause (6) shall not include expenditures that are charged on the Consolidated Fund by this Constitution or an Act of Parliament.

It is therefore clear that, unlike the County Governments which are tied to the enactment of the Division of Revenue Bill by Article 224, Article 221 does not tie the national government to the enactment of the Division of Revenue Bill. Indeed, the House has already approved the estimates of National Government expenditure and the estimates of expenditure for the Judiciary and Parliament as contemplated under Article 221(6) and will soon be considering the Appropriation Bill as required by the Constitution.

Honourable Members,

You will recollect that the reason why the Division of Revenue Bill is being referred to a Mediation Committee is because of the amendment made to the Bill by the Senate which as reported by the Budget and Appropriations Committee was an unconstitutional amendment as there was no agreement between the national and county government as relates to the financing of level 5 hospitals as required by Article 187(1) of the Constitution. Level 5 hospitals still remain under the jurisdiction of the county government as no legal arrangements have been made for the transfer of this function as contemplated by the Senate amendment.

Honourable Members,

Last year I delivered several communications in which I stated my finding that a reading of Articles 93(2) and 95(4) of the Constitution relate to Article 218(1)(a) of the Constitution and therefore, the allocation of national revenue between the levels of government is a function of the National Assembly. In addition, a reading of Article 93(2), 96(3) of the Constitution relates to 218(1) (b) of the Constitution therefore, the Senate determines the allocation of national revenue amongst counties. However, the Senate sought an advisory opinion from the Supreme Court on this matter and the substance of the Supreme Court opinion is well within the knowledge of the House. It is my hope that the fears that informed my previous findings on this matter will not come to pass as this may pose great disruptions to the budgetary process as envisaged in the Constitution.

Honourable Members,

Listening to the debate on the motion yesterday, it became apparent that prior consultations had taken place at various forums on the Division of Revenue Bill, 2014 and the agreements reached at these consultations informed the content of the Bill as originally published, amended and passed by the National Assembly. It is my hope that the Mediation Committee will build up on this consensus at the earliest possible opportunity so as to put the budgetary process for the county governments into focus.

Thank you!

THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

19th June, 2014