



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

SPECIAL SITTING

MONDAY, JUNE 15, 2015 AT 2.30 P.M.

1. The Senate assembled at thirty minutes Two O'clock.
2. The Proceedings were opened with Prayer.
3. **MOTION – ESTABLISHMENT OF A SELECT COMMITTEE TO INQUIRE INTO THE MATTER OF REALLOCATION BY NATIONAL ASSEMBLY OF VARIOUS MONIES INTENDED FOR KEY CONSTITUTIONAL ORGANS AND INSTITUTIONS IN THE BUDGET ESTIMATES FOR THE FINANCIAL YEAR 2015/2016**

Motion made and Question proposed;

WHEREAS on 27th May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015;

AND WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs. 3.3025 billion, as follows-

- (a) Shareable Revenue – Kshs. 1.767 billion; and
- (b) Allocation for Level 5 Hospitals – Kshs. 1.536 billion;

AND FURTHER WHEREAS at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial (No. 045) MONDAY, JUNE 15, 2015 (582)

Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

- (a) Capital Allocations for the Judiciary – a reduction of Kshs. 800 million;
- (b) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs. 200 million;
- (c) Allocations for the Integrated Financial Management System – a reduction of 325 million; and
- (d) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs. 1 billion;

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (Hansard) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the Courts, reference was made to the decision of the Courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the Court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

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FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution.

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include *"patriotism"*, *"the rule of law"* and *"good governance"*;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that *"promotes its purposes"*, *"advances the rule of law"*, *"permits the development of the law"* and *"contributes to good governance"*;

NOW THEREFORE THE SENATE-

REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their Governments and to exercise oversight over the national government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate's constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

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REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution;

AND RESOLVES to establish a select Committee to inquire into these matters within three months and to recommend to the Senate such constitutional, legal or institutional changes that it may consider to be appropriate.

(Sen. Kipchumba Murkomen on behalf of the Senate Majority Leader)

Debate interrupted on 15.6.2015 at 1.00 p.m. resumed;

Mover replied.

Before the Question was put, and pursuant to Standing Order No. 72 (1), the Temporary Speaker (Sen. Ongoro) informed the Senate that the Motion did not affect Counties.

Question put and agreed to

RESOLVED ACCORDINGLY -

WHEREAS on 27th May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was

subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015;

AND WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs. 3.3025 billion, as follows-

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(c) Shareable Revenue – Kshs. 1.767 billion; and

(d) Allocation for Level 5 Hospitals – Kshs. 1.536 billion;

AND FURTHER WHEREAS at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

(e) Capital Allocations for the Judiciary – a reduction of Kshs. 800 million;

(f) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs. 200 million;

(g) Allocations for the Integrated Financial Management System – a reduction of 325 million; and

(h) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs. 1 billion;

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (Hansard) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the Courts, reference was made to the decision of the Courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the Court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly

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and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution.

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include *"patriotism"*, *"the rule of law"* and *"good governance"*;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that *"promotes its purposes"*, *"advances the rule of law"*, *"permits the development of the law"* and *"contributes to good governance"*;

NOW THEREFORE THE SENATE-

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FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their Governments

and to exercise oversight over the national government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine,

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subvert or repudiate the Senate's constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution;

AND RESOLVES to establish a select Committee to inquire into these matters within three months and to recommend to the Senate such constitutional, legal or institutional changes that it may consider to be appropriate.

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Ongoro) adjourned the Senate without question put pursuant to the Standing Orders.

4. SENATE ROSE - at thirty minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, June 16, 2015 at 2.30 p.m.*

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