

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

PAPERS LAID	
DATE	7/09/2021
TABLED BY	Sen. Kibiru
COMMITTEE	Finance and Budget
CLERK AT THE TABLE	A.M

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET
ON
ON THE COUNTY GOVERNMENTS CASH DISBURSEMENT SCHEDULE
FOR FINANCIAL YEAR 2021/2022

Hon. Speaker

Recommended for approval
for tabling.

Eg 18/08/21

CLERK CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

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PREFACE

Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution in regards to roles of the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The end results of these processes are reports to the House in plenary.

The Senate Standing Committee on Finance and Budget is established under section 8(1) of the Public Finance Management Act, 2012 and standing order 218(3) of the Standing Orders of the Senate and is mandated to -

- a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –*
 - i) *the Budget Policy Statement presented to the Senate;*
 - ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
 - iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*

- b) *To consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy; and*

- c) *To pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

Membership of the Committee

The Standing Committee on Finance and Budget was constituted by the House on Thursday, 14th December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24th June, 2020, during the Fourth Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

1. Sen. Charles Kibiru, MP - Chairperson
2. Sen. (Dr.) Ochillo Ayacko, EGH, MP, - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Kimani Wamatangi, MP - Member
5. Sen. Mutula Kilonzo Junior, CBS, MP - Member
6. Sen. Aaron Cheruiyot, MP - Member
7. Sen. Rose Nyamunga, CBS, MP - Member
8. Sen. CPA Farhiya Haji, MGH, MP - Member
9. Sen. Milicent Omanga, MP - Member

Executive Summary

- 1) County Governments Cash Disbursement Schedule is submitted to the Senate by the National Treasury pursuant to Section 17 of the Public Financial Management Act, 2012. The purpose of schedule is for ensuring timely monthly transfers of funds from Consolidated Fund to respective County Revenue Fund.
- 2) The Schedule therefore serves as a guide and facilitates a predictable flow of funds to the county governments and thus enables counties to undertake critical functions in delivery of services to the citizens.
- 3) The schedule facilitates implementation of Article 219 of the Constitution which expressly provides that county's share of revenue raised by the National Government shall be transferred to the county governments without undue delay and without deduction, except when the transfer has been stopped under Article 225 (stoppage of transfer for material breaches).
- 4) Following the enactment of the County Allocation of Revenue Act, 2021 containing the approved allocations for each County, the Cash Disbursement Schedule for the Financial Year 2021/22 was submitted to the Senate by the National Treasury and tabled in the Senate on 5th August, 2021.
- 5) Upon tabling, the Cash Disbursement Schedule was committed to the Standing Committee on Finance and Budget pursuant to standing orders 183(2) of the Senate Standing Orders for consideration and subsequent reporting back to the House.
- 6) The Committee considered the Cash Disbursement Schedule at sitting held on 11th and 12th August, 2021.
- 7) The Committee observed that-
 - a) The County Governments Cash Disbursement Schedule was being considered for approval in August 2021 but it indicates there are disbursements which were to be done by 15th July and 15th August 2021.

-
- b) The Schedule only contained allocation of equitable share, which was a departure from the tradition, this was occasioned by the ruling in High Court Petition No. 252 of 2016 that conditional grants cannot be contained in the Division of Revenue Act and consequently should not be reflected in the County Allocation of Revenue Act.
 - c) Despite approving a cash disbursement schedule, the National Treasury does not comply with the schedule and the disbursements of county equitable share is delayed which hinders service delivery and result in accumulation of pending Bills.
 - d) The monthly exchequer releases published in the Kenya Gazette by the National Treasury does not provide for a breakdown on the disbursements to counties in the form of equitable share and conditional grants making it difficult to track the equitable share disbursements to counties.

2. The Committee recommends that-

- a) The County Governments Cash disbursement Schedule be approved as tabled on 5th August, 2021.
- b) The National Treasury should transfer KSh. 62,900,000,000, the total funds meant for the first two months of the financial year 2021/2022 within seven days upon approval of the Cash Disbursement Schedule.
- c) The National Treasury should provide for a breakdown on the exchequer releases to counties in the form of equitable share and conditional grants when publishing in the Kenya Gazette for ease of oversight.

Acknowledgements

The Committee acknowledges the National Treasury for their submissions of the County Governments' Cash Disbursement Schedule which is a critical requirement in the execution of the county governments budget.

The Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate.

Appreciation also goes to all Members of the Committee for their patience, sacrifice and commitment to complete the assigned task within the stipulated time.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on the County Governments Cash Disbursement Schedule for the FY 2021/2022.

SIGNATURE:.....

SEN. CHARLES KIBIRU, MP.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

DATE: ...16th August, 2021.....

1.0 Cash Disbursement Schedule for Financial year 2021/22

I. Overview

- 1) Article 218 of the Constitution provides for the annual enactment of the Division of Revenue Act and the County Allocation of Revenue Act. Subsequently, Section 17 (6) and (7) of the PFM Act provides that the National Treasury shall, at the beginning of every month, and in any event not later than the 15th day from the commencement of the month, disburse monies to county governments for the expenditure of the following month on the basis of a disbursement schedule prepared by the National Treasury in consultation with the Intergovernmental Budget and Economic Council (IBEC), with the approval of the Senate, and published it in the Gazette, as approved, not later than the 30th May in every year.
- 2) County Cash Disbursement Schedule is a key Senate Resolution as it operationalizes the release and transfer of approved allocation as per the Annual County Allocation of Revenue Act. The preparation of the Schedule is informed by the basis of National Treasury estimate on revenue collection and overall cash flow needs for implementing programmed activities, projects and policies. Its' primary role is to facilitate releases to counties without delays.
- 3) The National Treasury submitted the county governments' cash disbursement schedule for FY 2021/22 equitable share for approval by the Senate. According to the Senate Standing order 183, the cash disbursement schedule for the County governments shall be submitted not later than fifteen days following the enactment of the County Allocation of Revenue Bill. However, County Allocation of Revenue Act, 2021, was assented to on 29th June, 2021 while the cash disbursement schedule was submitted to the Senate on 5th August, 2021.
- 4) The allocations in the schedule are in line with the allocations (Kshs. 370 billion) provided for in the County Allocation of Revenue Act, 2021 for distribution among the 47 County governments using the third basis formula approved by the Senate in September, 2020.

II. Analysis of the Cash Disbursement Schedule

- 5) The PFM section 17 (6) provides that the National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to county governments for the expenditure of the following month.
- 6) For the FY 2020/21, the Senate resolved that due to the delay in passing of the cash disbursement schedule in October 2020, the National Treasury shall transfer to the counties the total disbursement due for the first quarter of financial year 2020/2021 within seven days of the approval of the 2020/21 disbursement Schedule, however as at end of the first half of the financial year, the National Treasury had only released Kshs. 123.96 billion which included arrears of Kshs. 29.72 billion which was for the FY 2019/20. This was against the Kshs. 156.68 billion approved in the cash disbursement schedule for the FY 2020/21.
- 7) By the end of the FY 2020/21, the disbursements to counties stood at Kshs. 289.6 billion against total equitable share of Kshs. 316.5 billion leaving an outstanding balance of Kshs. 26.9 billion. The delay in disbursements of funds to counties contravenes Article 219 of the constitution which provides that equitable share to counties should be transferred to the counties without undue delay and without deduction.
- 8) The delays in the disbursement of funds to counties affects the operations and delivery of services at the county level and results in the accumulation of pending bills.

III. First Schedule on Equitable Share disbursement to County Governments for FY 2021/22

- 9) Previously, the National Treasury submitted three county governments cash disbursement schedules for approval by the senate. The schedules provided disbursements as follows:
 - a) Schedule 1 on disbursement of the Equitable Share allocation;
 - b) Schedule 2 on disbursement of the Conditional Allocations from the nationally raised revenue; and

c) Schedule 3 on disbursement of the Conditional Allocations financed by proceeds of loans and grants from the Development Partners.

- 10) The high court however, in its ruling on Petition No.252 of 2016, stated that conditional or non-conditional additional allocations are not an item to be provided for under the Division of Revenue Act and they can be issued to the county level of government under the auspices of Article 190 of the constitution or through an agreement between the two levels of government that respects the institutional and functional integrity of the either level of government.
- 11) Consequently, the conditional grants could not be provided for under the county Allocation of Revenue Act as well as the cash disbursement schedule which is informed by the CARA.
- 12) The National Treasury has therefore provided one disbursement schedule which disburses the equitable shareable revenue of Kshs. 370 billion to all the counties from July 2021 to June 2022. This Schedule outlines the allocation to each county government which is divided into monthly disbursements and is arrived at by using different rates.
- 13) The disbursements will be made from the Consolidated Fund to the County Revenue Funds on the 15th of every month, based on the performance of revenue raised nationally.

2.0 Committee Observations

The Committee observed that-

- a) The County Governments Cash Disbursement Schedule was being considered for approval in August 2021 but it indicates there are disbursements which were to be done by 15th July and 15th August 2021.
- b) The Schedule only contained allocation of equitable share, which was a departure from the tradition, this was occasioned by the ruling in High Court Petition No. 252 of 2016 that conditional grants cannot be contained in the Division of Revenue Act and consequently should not be reflected in the County Allocation of Revenue Act.
- c) Despite approving a cash disbursement schedule, the National Treasury does not comply with the schedule and the disbursements of county equitable share is delayed which hinders service delivery and result in accumulation of pending Bills.
- d) The monthly exchequer releases published in the Kenya Gazette by the National Treasury does not provide for a breakdown on the disbursements to counties in the form of equitable share and conditional grants making it difficult to track the equitable share disbursements to counties.

3.0 Committee Recommendations

The Committee recommends that-

- a) The County Governments Cash disbursement Schedule be approved as tabled on 5th August, 2021.
- b) The National Treasury should transfer funds to the counties without undue delay and without deduction as per Article 219 of the Constitution and submit quarterly reports on the transfers to the Senate.
- c) The National Treasury should transfer KSh. 62,900,000,000, the total funds meant for the first two months of the financial year 2021/2022 within seven days upon approval of the Cash Disbursement Schedule.

Appendices

Minutes

MINUTES OF THE 240TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET HELD ON WEDNESDAY, 11TH AUGUST, 2021 AT 2.00 P.M. IN BARAZA 1 CONFERENCE ROOM AT SAROVA WHITESANDS BEACH RESORT-MOMBASA,

PRESENT

- | | |
|--|---------------|
| 1. Sen. Charles Kibiru, MP | - Chairperson |
| 2. Sen. Moses Wetang'ula Masika, EGH, MP | - Member |
| 3. Sen. CPA Farhiya Haji, MBS, MP | - Member |
| 4. Sen. Rose Nyamunga, MGH, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------------|
| 5. Sen. Kimani Wamatangi, MP | - Member |
| 6. Sen. Aaron Cheruiyot, MP | - Member |
| 7. Sen. Millicent Omanga, MP | - Member |
| 8. Sen. (Dr.) Ochillo-Ayacko, EGH, MP | - Vice- Chairperson |
| 9. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|---------------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - Clerk Assistant |
| 3. Mr. William Wambiru | - Fiscal Analyst |
| 4. Mr. Chacha Machage | - Fiscal Analyst |
| 5. Ms. Yunis Amram | - Fiscal Analyst |
| 6. Ms. Sharon Rotino | - Research Officer |
| 7. Mr. Ian Otieno | - Audio Officer |
| 8. Mr. Daniel Kirwa | - Serjeant-at-arms |
| 9. Ms. Brendah Michira | - Legal Pupil |
| 10. Mr. Frank Mutulu | - Media Relations Officer |

MIN. NO. 2040/08/2021: PRELIMINARIES

The Chairperson called the meeting to order at 2.09 p.m. and thereafter followed by a word of prayer.

MIN. NO.2041/08/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Rose Nyamunga, CBS, MP and seconded by Sen. CPA Farhiya Haji, MBS, MP.

MIN. NO.2042/08/2021: DRAFT REPORT ON STATUS OF PUBLIC DEBT IN KENYA

The Committee considered the draft report on the status of public debt in Kenya. It was noted that only one stakeholder had made submissions, the National Treasury. It was thus

resolved that other stakeholder be invited to submit their views on the matter. The identified stakeholders to be invited to make submissions were-

- i. Controller of Budget (CoB) on disbursement of resource and debt servicing impact;
- ii. Central Bank of Kenya on stock of debt, IFMIS management and total debt stock for Kenya;
- iii. Commission on Revenue Allocation (CRA) on the impact of debt on available resources for sharing between the two levels of government;
- iv. Auditor-General to get clarity on any audit issues arising from debt management and debt utilization.

The Committee resolved to invite these stakeholders for an online meeting to deliberate on the issues identified above.

It was also resolve that the report should capture the following-

- i. Kenya status of fiscal deficit.
- ii. Failure to meet fiscal consolidation targets.
- iii. Debt servicing measures focussing on solvency and liquidity issues.
- iv. Corruption, resource wastage and leakage loopholes that needs to be dealt with.
- v. Debt servicing initiatives.
- vi. Debt service suspension initiative, National Treasury engages bilateral creditors from G-7 but does not include engagement with commercial debt creditors.
- vii. Debt service suspension transfers debt liability into medium term. This is not Consistent with provisions of equitable sharing of debt between current and future generations.
- viii. Amendment of debt ceiling from a ratio to a numerical number.
- ix. Debt Sustainability indicators.
- x. Need for increased accountability threshold by The National Treasury on debt management.
- xi. Pending bills dues owed to suppliers and businesses even though do not form part of debt stock.
- xii. Benefits/ returns from some projects needs to be assessed and Commercial debts should be directed towards high return projects.
- xiii. There should be continuous assessment of the projects and public participation on projects to establish their viability.

MIN. NO.2043/08/2021: CONSIDERATION OF THE COUNTY GOVERNMENTS' CASH DISBURSEMENT SCHEDULE FOR FINANCIAL YEAR 2021/22

The Committee considered the County Governments Cash Disbursement Schedule for Financial Year 2021/22 and noted as follows-

- 1) The Cash disbursement schedule was being considered and approved in August 2021, while the schedule shows that there are disbursements which were to be done by 15th of July and August 2021.
- 2) The National Treasury rarely complies with the schedule and the disbursement of county equitable share has fallen short of the approved allocations.
- 3) According to the PFM Act section 17 (7) the cash disbursement schedule should be approved by the Senate, and published in the Gazette not later than the 30th May in every year, however, this has not been complied with since in most cases the Division of revenue Bill and or the County Allocation of Revenue Bill are yet to be approved by this date.
- 4) The disbursement schedule contained was only on equitable share. This was a departure from the tradition where a schedule would contain expected releases for conditional grants. This was occasioned by the High Court ruling on petition no. 252 of 2016 which provided that Conditional and non-conditional allocations should not be part of the Division of Revenue Bill. Consequently, the conditional grant cannot be allocated in the CARB.
- 5) The noted the need to compel the National Treasury through the report to release all the disbursement earmarked for July and August.

MIN. NO.2044/08/2021: ADJOURNMENT

The meeting was adjourned at 3.56 p.m. until Wednesday, 12th August, 2021 at 10.00 a.m.

SIGNATURE: _____

(CHAIRPERSON: SEN. CHARLES KIBIRU, MP.)

DATE: 16th August, 2021

SIGNATURE: _____



MINUTES OF THE 242ND MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 12TH AUGUST, 2021 AT 2.00 P.M. IN BARAZA 1 CONFERENCE ROOM AT SAROVA WHITESANDS BEACH RESORT-MOMBASA,

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Charles Kiburu, MP | - Chairperson |
| 2. Sen. Moses Wetang'ula Masika, EGH, MP | - Member |
| 3. Sen. CPA Farhiya Haji, MBS, MP | - Member |
| 4. Sen. Rose Nyamunga, CBS, MP | - Member |
| 5. Sen. Mutula Kilonzo Junior, CBS, MP | - Member (Virtual) |
| 6. Sen. Aaron Cheruiyot, MP | - Member (Virtual) |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|---------------------|
| 7. Sen. Kimani Wamatangi, MP | - Member |
| 8. Sen. Millicent Omanga, MP | - Member |
| 9. Sen. (Dr.) Ochillo-Ayacko, EGH, MP | - Vice- Chairperson |

SECRETARIAT

- | | |
|----------------------------|---------------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - Clerk Assistant |
| 3. Mr. William Wambiru | - Fiscal Analyst |
| 4. Mr. Chacha Machage | - Fiscal Analyst |
| 5. Ms. Yunis Amram | - Fiscal Analyst |
| 6. Ms. Josphine Kusinyi | - Legal Counsel |
| 7. Ms. Sharon Rotino | - Research Officer |
| 8. Mr. Ian Otieno | - Audio Officer |
| 9. Mr. Daniel Kirwa | - Serjeant-at-arms |
| 10. Ms. Brendah Michira | - Legal Pupil |
| 11. Mr. Frank Mutulu | - Media Relations Officer |

MIN. NO. 2049/08/2021:

PRELIMINARIES

The Chairperson called the meeting to order at 2.15 p.m. and thereafter followed by a word of prayer.

MIN. NO. 2050/08/2021:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Rose Nyamunga, CBS, MP and seconded by Sen. CPA Farhiya Haji, MBS, MP.

**MIN. NO. 2051/08/2021: CONSIDERATION AND ADOPTION OF THE REPORT
ON THE COUNTY GOVERNMENT DISBURSEMENT
SCHEDULE FOR FINANCIAL YEAR 2021/2022**

The Committee considered the report on the county government disbursement schedule for the Financial Year 2021/2022.

The Committee made the following observations-

- a) The County Governments Cash Disbursement Schedule was being considered for approval in August 2021 but it indicates there are disbursements which were to be done by 15th July and 15th August 2021.
- b) The Schedule only contained allocation of equitable share, which was a departure from the tradition, this was occasioned by the ruling in High Court Petition No. 252 of 2016 that conditional grants cannot be contained in the Division of Revenue Act and consequently should not be reflected in the County Allocation of Revenue Act.
- c) Despite approving a cash disbursement schedule, the National Treasury did not comply with the schedule in the previous Financial year and delay in disbursement of county equitable share hinders effective service delivery and eventually results in accumulation of pending Bills.
- d) The monthly exchequer releases published in the Kenya Gazette by the National Treasury does not provide a breakdown on the disbursements to counties in the form of equitable share and conditional grants making it difficult to track the equitable share disbursements to counties.

The Committee unanimously adopted the report on cash disbursement schedule for Financial Year 2021/2022 after being proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Rose Nyamunga, CBS, MP with the following recommendations-

- a) That the Senate approves the County Governments Cash disbursement as tabled on 5th August, 2021.
- b) The National Treasury should transfer KShs 62,900,000,000, the total disbursement for the first two months of the financial year 2021/2022 within seven days upon approval of the Cash Disbursement Schedule.

- c) The National Treasury should transfer funds to the counties without undue delay and without deduction as per Article 219 of the Constitution and submit quarterly reports on the transfers to the Senate.

MIN. NO.2052/08/2021: ADJOURNMENT

There being no other business, the Committee adjourned at 3.30 p.m. until 13th August, 2021 at 10.00 a.m.

SIGNATURE:  _____

(CHAIRPERSON: SEN. CHARLES KIBIRU, MP.)

DATE: 16th August, 2021

