


*Approved
SNA
20/2/24*

**REPUBLIC OF KENYA
PARLIAMENT OF KENYA**

THIRTEENTH PARLIAMENT – THIRD SESSION -2024

**REPORT OF THE MEDIATION COMMITTEE ON THE COUNTY
GOVERNMENTS ADDITIONAL ALLOCATIONS BILL, 2023 (NATIONAL
ASSEMBLY BILL NO.23 OF 2023)**

**Joint Clerks Chambers
Parliament Buildings
NAIROBI**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 20 FEB 2024	DAY: TUESDAY
TABLED BY:	Hon. Ndindi Nyoro, CBS, MP CO-Chairperson, Mediation Comm
CLERK-AT THE-TABLE:	Inzofu Mwale.

February, 2024



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1.0 Introduction

1.1 Establishment of the Committee

1. The Mediation Committee on the County Government Additional Allocation (National Assembly Bill No. 23 of 2023) was constituted by the Speaker of the National Assembly and Speaker of the Senate on November 29, 2023, and 28th October 2023, respectively, pursuant to standing order 149 of the National Assembly Standing Orders and standing order 166 of the Senate Standing Orders.

The Committee membership was constituted as follows-

NO	NAME	DESIGNATION
1	Hon. Ndindi Nyoro, CBS, MP	Co-Chairperson
2	Sen. (Dr.) Boni Khalwale, CBS, MP	Co-Chairperson
3	Hon. GK Kariuki, MP	Member
4	Hon. Mary Emaase, MP	Member
5	Sen. Shakila Abdallah Mohamed, MP	Member
6	Hon. Anthony Oluoch, MP	Member
7	Sen. Veronica Waheti Maina, MP	Member
8	Hon. Catherine Omanyo, MP	Member
9	Sen. Esther Anyieni Okenyuri, MP	Member
10	Hon. Joshua Kimilu, MP	Member
11	Sen. Lenku Ole Kanar Seki, MP	Member
12	Sen. Eddy Gicheru Oketch, MP	Member
13	Hon. Kipchumba Toroitich, MP	Member
14	Sen. Betty Batuli Montet, MP	Member

1.2 Mandate of the Mediation Committee

2. The mandate of the Mediation Committee was as set out in Articles 112 and 113 of the Constitution of Kenya, standing order 149 of the National Assembly Standing Orders and standing order 166 of the Senate Standing Orders. The scope of the committee's mandate is outlined 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.*

3. The Committee was established to develop an agreed version of the County Governments Additional Allocations Bill (National Assembly Bill No. 23 of 2023). The version was then presented to both Houses for approval pursuant to Standing Order 149(6) of the Standing Orders of the National Assembly and standing order 161 (1) of the Standing Orders of the Senate.

1.3 Committee Meetings and Methodology

4. The Committee held a total of two (2) sittings to deliberate on the Bill in accordance with the Constitution and relevant provisions of the Standing Orders of the Senate and the National Assembly.
5. During the first sitting, the Committee appointed Sen. (Dr.) Boni Khalwale, CBS, MP and Hon. Ndindi Nyoro, CBS, MP as the co-chairs of the Committee pursuant to Standing Order 166 (4) of Standing Orders of the Senate and Standing Order 149(4) of Standing Orders of the National Assembly. However, during the first meeting Hon. Ndindi Nyoro, CBS, MP was absent with an apology and it was resolved that Hon. GK Kariuki, MP, will be co-Chair on his behalf.


6. During its deliberations, the Committee received submissions from the National Treasury and Planning. This report includes a version of the Bill developed by the Committee for consideration by both Houses.

1.4 Acknowledgements

7. The Mediation Committee appreciates the offices of the Speakers and the Clerks of both Houses of Parliament for the support extended in the execution of its mandate. In particular, the Co-Chairpersons extend their appreciation to all Members of the Committee for their patience, sacrifice, endurance, and commitment to completing the assignment under a tight schedule.

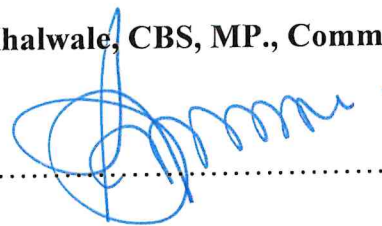
8. Finally, it is now my pleasant duty and privilege, on behalf of the Mediation Committee, to table the Report on the County Governments Additional Allocations (National Assembly Bill No. 23 of 2023) and to recommend the adoption of the agreed version of the Bill to the Houses, pursuant to Article 113(2) of the Constitution and Standing Order 167(3) of the Standing Orders of the Senate, and standing order 150(3) of the Standing Order of the National Assembly.

Hon. Ndindi Nyoro, CBS, MP., Committee Co-Chairperson

SIGNED 

DATE: 20/02/2024



Sen. (Dr.) Boni Khalwale, CBS, MP., Committee Co-Chairperson

SIGNED 

DATE: 20.02.2024

1.5 Adoption of the Committee Report

9. Pursuant to Standing Order 223(2) of the Senate Standing Orders and Standing Order 199(4) of the National Assembly Standing Orders, the Mediation Committee adopted the report on the County Governments Additional Allocations Bill (National Assembly Bill No. 23 of 2023). The Members of the Committee hereby affix their signatures to this Report to affirm adoption the Report –

NO	NAME	DESIGNATION	SIGNATURE
1)	Hon. Ndindi Nyoro, CBS, MP	Co-Chairperson	
2)	Sen. (Dr.) Boni Khalwale, CBS, MP	Co-Chairperson	
3)	Hon. GK Kariuki, MP	Member	
4)	Hon. Kipchumba Toroitich, MP	Member
5)	Hon. Anthony Oluoch, MP	Member	
6)	Hon. Joshua Kimilu, MP	Member
7)	Hon. Catherine Omayo, MP <i>Omanyo</i>	Member	
8)	Hon. Kirwa Abraham Kipsang, MP	Member
9)	Sen. Esther Anyieni Okenyuri, MP	Member
10)	Sen. Veronica Waheti Maina, MP	Member	
11)	Sen. Lenku Ole Kanar Seki, MP	Member
12)	Sen. Eddy Gicheru Oketch, MP	Member	
13)	Sen. Shakila Abdallah Mohamed, MP	Member
14)	Sen. Betty Batuli Montet, MP	Member	
15)	<i>Hon. Mary Enaase mp</i>	<i>Member</i>	

2.0 Background

10. The County Government Additional Allocation Bill (National Assembly Bill No. 23 of 2023) was published on 24th May, 2023. The overall objective of the Bill is to provide additional allocations to counties from the National Government's share of revenue pursuant to Article 190 and Article 202(2) of the Constitution.
11. The County Governments Additional Allocations Bill, (National Assembly Bill No. 23 of 2023) was considered and passed by the National Assembly on June 27, 2023. Consequently, in accordance with Article 110(4) of the Constitution and the provisions of Standing Order 142 of the National Assembly Standing Orders, the Bill was referred to the Senate for concurrence.
12. The Senate reviewed the Bill and passed it with various amendments that were communicated back to the National Assembly on October 26, 2023. The National Assembly considered the Senate amendments to the Bill and rejected them. In this regard, the Bill was committed to a Mediation Committee established in accordance with Article 113 of the Constitution.
13. The County Government Additional Allocations Bill for the Financial Year 2023/2024 comprises the following:
 - (a) Allocations to counties from the national government's share of revenue;
 - (b) unconditional allocations to County Governments from Court fines and Mineral Royalties;
 - (c) Conditional allocations from proceeds of loans and grants from development partners; and
 - (d) the National Government's expenditures on devolved functions to be converted to Additional Conditional Grants to the County Governments.

3.0 The Bill as approved by the National Assembly

14. The National Assembly considered and approved the County Governments Additional Allocations Bill (National Assembly Bill No. 23, of 2023) with a total of Kshs. **56,180,983,514** as the additional allocations to counties for FY 2023/24. This allocation was divided into four schedules as follows:

A. First Schedule: additional allocations from the national government's share of revenue amounting to Kshs. **15,816,000,000**.

	Project description	Allocation Kshs.
1	Supplement for County Headquarters Construction	454,000,000
2	Leasing of Medical Equipment	5,862,000,000
3	Aggregated Industrial Parks Programme for 18 counties -each Ksh.250 million.	4,500,000,000
4	Fertilizer Subsidy Program	5,000,000,000
	Total	15,816,000,000

B. Second Schedule: unconditional allocations to county governments from Court fines and Mineral Royalties of **Kshs.3,043,584,126**.

SN	Allocation descriptions	Allocation amount Kshs.
5	Court Fines	108,660,979
6	Mineral Royalties	2,934,923,147
	Total	3,043,584,126

C. Third Schedule: conditional allocations from proceeds of loans and grants from development partners amounting to **Kshs.33,192,137,406**

SN	Donor project name	Amount (Kshs.)
7	IDA (World Bank) credit (National Agricultural and Rural Inclusive Growth Project (NARIGP)	3,150,000,000

SN	Donor project name	Amount (Kshs.)
8	IDA (World Bank) credit National Agricultural Value Chain Development Project (NAVCDP)	8,250,000,000
9	IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	2,160,000,000
10	IDA (World Bank) credit: Water & Sanitation Development Project	5,350,000,000
11	DANIDA Grant - Primary Health Care in Devolved Context	577,500,000
12	IDA (World Bank) Credit (Financing Locally- Led Climate Action (FLLoCA) Program, County Climate Institutional Support (CCIS) Grant	517,000,000
13	Sweden- Agricultural Sector Development Support Programme (ASDSP) II	72,797,253
14	German Development Bank (KfW)- Drought Resilience Programme in Northern Kenya (DRPNK)	765,000,000
15	World Bank - Emergency Locust Response Project (ELRP)	2,302,630,288
16	World bank - Kenya Informal Settlement Improvement Project (KISIP II)	3,269,530,746
17	Kenya Livestock Commercialization Project (KELCLOP)	344,300,000
18	Aquaculture Business Development Project (ABDP)	245,879,120
19	IDA (World Bank) Credit (Financing Locally- Led Climate Action (FLLoCA) Program, County Climate Resilience Investment (CCRI)Grant	6,187,500,000
	Total	33,192,137,407

D. Fourth Schedule: National government expenditures on devolved functions converted to additional conditional grants, totalling **Kshs.4,129,261,981**

SN	Project Name	Amount (Kshs.)
20	Livestock Value Chain Support Project	1,642,868,400
21	De-Risking and Value Enhancement	2,165,507,080
22	Kenya Marine Fisheries and Socio-Economic Development (KEMFSED) project	320,886,501
	Total	4,129,261,981

4.0 Amendments by the Senate

15. The Senate considered the County Governments Additional Allocations Bill, (National Assembly Bill No. 23 of 2023) as approved by the National Assembly and passed it with the following **amendments**.

- a. Insertion of a new paragraph (e) under Clause 5(5) to provide for **conditional allocations for the transfer of library services**. Consequently, the First Schedule was amended to include column F–, which sets out the allocation of **Kshs. 424.6 million** for the transfer of library services.
 - i. In the 2023 Budget Policy Statement (BPS), the government proposed that the attendant payroll of approximately Ksh.425 million be disbursed to County Governments to meet the costs of the transfer of the library service function to county governments. These funds were included in the county governments share of nationally raised revenue as provided for in the Division of Revenue Act 2023. Consequently, during the passage of the County Allocation of Revenue Bill, 2023 these funds were shared among all 47 counties using the Third Basis criteria.
 - ii. It is notable that library staff working in 33 counties have since been transferred to the respective county governments at the beginning of the Financial Year 2023/24. As such, the payroll cost is expected to be met by particular county governments.
- b. Insertion of a new paragraph (n) in sub-clause (6) immediately after paragraph (m) to include **conditional allocations financed by a grant from the German Development Bank (KfW) to finance the Locally-Led Climate Action Program (FLLoCA) (County Climate Resilience Grant)**. Subsequently, the Third Schedule was amended to include column P setting out an allocation of Kshs.1.2 billion to sixteen counties.

- i. The Germany Development Bank (KfW) Loan for Financing Locally Led Climate Action (FLLoCA) Program County Climate Change Resilience Grant - CCRIG) of Kshs.1.2 billion was proposed by the National Treasury during its engagement with the Senate Standing Committee on Finance and Budget.
 - ii. The Beneficiary sixteen (16) Counties include Trans-Nzoia, Uasin-Gishu, Elgeyo-Marakwet, Nandi, Kericho, Bomet, Kakamega, Vihiga, Bungoma, Busia, Siaya, Kisumu, Homa Bay, Migori, Kisii and Nyamira. The criteria for allocation of Kshs.1.2 billion shall be set out in section 5(6)(n) of the County Government Additional Allocations Act, 2023.
- c. Amendment to clause 5, sub clause (9) of the Bill to ensure that all additional allocations are disbursed by the National Treasury directly to the respective County Revenue Funds rather than through the respective MDAs. The other amendments were minimal changes to the text of the Bill meant to clarify the wording and flow of the Bill and as such, were not contested.

5.0 Consideration of Senate Amendments by the National Assembly.

16. Following the amendments by the Senate, the Bill was then referred back to the National Assembly for concurrence on the schedule of Amendments, pursuant to Article 112(1) (b) of the Constitution and Standing Orders 46(1) and 164(c) of the Senate Standing Orders.
17. The National Assembly considered the Senate amendments to the County Governments Additional Allocations Bill (National Assembly Bill No.23 of 2023) on 23rd November 2023, pursuant to Standing Orders 145, 146, and 147 of the National Assembly Standing Orders and rejected the Bill as amended by the Senate. Rejection of the Bill was primarily due to the following concerns-
- i. **Allocation of an additional Ksh. 424.6 million for the transfer of library services.** Given the tight fiscal space and that this item does not have a financing provision in the budget for FY 2023/24, there was concern about how this allocation would be funded.

- ii. **Amendment to clause 5, sub clause (9) of the Bill to ensure that all additional allocations are disbursed by the National Treasury directly to the counties.** The concern is with regard to the conditional allocations that are typically disbursed through the implementing agencies/MDAs subject to the fulfilment of stipulated conditions. Channelling these funds directly to County Governments will adversely affect National Government oversight of these funds.

6.0 Other Emerging Concerns

18. The Supplementary Estimates I for FY 2023/2024 implemented some changes in the budget outlay of the National Government that have substantially altered the resources to be disbursed to counties as additional allocations. The affected items included the following:

- i. **Conditional allocation towards the Leasing of Medical Equipment:** This was revised to zero from the initial allocation of Kshs.5.862 billion.
- ii. **Conditional allocation for Aggregated Industrial parks:** This was reduced by Kshs.200 million, from Kshs. 4.7 billion to Kshs. 4.5 billion.
- iii. **Conditional allocation from the proceeds of loans and grants from development partners:** Downward and upward revisions in the Supplementary Estimates of individual donor projects. (*Annex 1 details the changes*)

19. The total proposed allocation for Financing Locally led Climate Action (FLLoCA)-County Climate Resilience Grant (CCRI), as submitted by the National Treasury, amounts to Ksh.9.29 billion. However, the approved amount in the supplementary estimates I for FY 2023/24 is Ksh.4.89 billion. This implies that the amounts allocated to FLLoCA are not fully reflected in the approved Supplementary Estimates.

20. In their submission to the National Assembly, giving their views on the Senate amendments, the National Treasury gave some proposals to the National Assembly, which may require further interrogation. These are as follows:

- i. **Unconditional allocations for Mineral Royalties:** The National Treasury observed that these amounts are not captured in the FY 2023/24 Supplementary estimates for the National Treasury and the State Department for Mining, and should therefore not be transferred to the beneficiary Counties in the FY 2023/24. Further, the framework for disbursement of these funds was not in place.
- ii. On the Senate Amendments to the Bill, the National Treasury proposed that Clause 4 of the Bill be amended in sub-clause (1) by inserting the words “additional allocations in the form of” immediately before the words “loans and grants” in paragraph (c). The rationale is that the phrase “in the form of” has been omitted in the Senate amendments.

5.0 Observations and Resolutions by the Mediation Committee

21. In its sitting held on Wednesday, 14th February 2024, the Committee considered the contentious issues as follows-

i. Insertion of paragraph (e) under clause 5(5) to provide for conditional allocations for the library services of Kshs. 425 million.

The Committee observed that the 424.6 million was shared as equitable share among all 47 Counties, 21 of the 33 counties with the library function had a shortfall amounting to **Ksh.162.85** million. The Committee agreed that this amount be included in the Bill and subsequently be factored in the Supplementary II budget of FY 2023/24 to offset the shortfall.

Committee Resolution:

The Committee resolved to amend the Bill to include an additional allocation for conditional allocations for library services to cover the shortfall amounting to **Kshs. 162.85 million.**

ii. Deletion of Clauses and Columns on Mineral Royalties Allocations.

The Committee noted that the Mineral Royalties are an unconditional allocation and, thus, an entitlement to the Beneficiary Counties under Section 183(5)(b) of the Mining Act 2016.

Committee Resolution:

The Committee rejected the deletion of clauses and columns that contain the Mineral Royalties allocation and agreed that they should be reinstated in the bill.

iii. Deletion of clauses and Columns on Leasing of Medical Equipment (MES)

The Committee observed that there are challenges in implementing this project, such as a lack of specialized personnel and the necessary infrastructure to absorb the equipment in some counties. Therefore, there was a need to delete clauses and

columns that contain conditional grants for leasing of medical equipment (MES) amounting to Kshs. 5.862 billion

Committee Resolution:

The Committee accepted the deletion of clauses and columns that contain conditional grants for leasing of medical equipment (MES).

iv. Variations in Loans and Grants from Development Partners.

The Committee sought further clarification from the National Treasury on the current status of loans and grants from development partners especially the allocation under FLLoCA whereby the amounts allocated are not fully reflected in the approved Supplementary Estimates I of FY 2023/24. The National Treasury committed to increasing the budget allocation for FLLoCA from the Kshs. 4.9 billion, as contained in Supplementary Estimates I to Kshs. 9.3 billion during Supplementary Estimate II. This will enable transfer to counties of a total of Kshs. 7.9 billion under the programme. The balance is for administration purposes within the state department.

Committee Resolution

The Committee resolved that the Bill be amended to reflect the additional resources broken down as follows-

- a) FLLoCA (CCIS component in column F of the Third schedule)- Kshs. 517 million;
- b) FLLoCA (CCRI component in the column M of the Third Schedule)- Kshs. 6.2 billion; and
- c) FLLoCA (KfW component in column N of the Third Schedule)- Kshs. 1.2 billion.

v. Amendment on Clause 5(9) to provide for the direct disbursement of all Additional Allocations to Counties by National Treasury rather than through the implementing MDAs.

The Committee noted that some of the additional allocations cannot be disbursed directly, as there are conditions that must be met for disbursement to be made. The

implementing MDAs are best suited to ensure that such conditionalities are met before disbursements are made. The National Treasury can only directly disburse unconditional allocations.

Committee Resolution:

The Committee resolved that all additional allocations to county governments, except the unconditional allocations from Court fines and fees under clause 5(2) of the Bill, shall be transferred to the respective County Revenue Fund Accounts by the implementing Ministries, Departments and Agencies (MDAs). The National Treasury shall disburse allocations from court fines and fees directly to the counties.

vi. In accordance with Sections 191A–191E of the PFMA, 2012.

The Committee observed the National Treasury and the Council of Governors had severally requested for exception from the requirements of section 191A -191E of the PFM Act, 2012 on the Intergovernmental Agreements. The Committee noted that there were efforts to finalize the model agreements but more time would be required to complete the process. In this regard, the Committee agreed to suspend this requirement for FY 2023-24 and FY 2024-25 to allow both levels of government time to finalize the model agreements.

Committee Resolution:

The Committee resolved to extend the moratorium on the requirements for FY 2023/2024 and FY 2024/2025. This will allow the National Treasury and respective County Governments adequate time to finalize the model agreements.

vii. Agreed Schedules to the Bill

The Committee adopted the revised first, second, third and fourth schedules annexed to the report to be the basis for the mediated version of the Bill.

6.0 Annexes

1: Minutes

2: Agreed Schedules to the Bill

3: Agreed Version of the Bill

4: Submission from the National Treasury

