

## **Is Devolution Under Siege?**

In the recent past, the country has witnessed muddle in the division of revenue and the roles of the various constitutional offices such as the Commission on Revenue Allocation, the Intergovernmental Budgetary and Economic Council, the Senate and the National Assembly in the budgeting process. This stalemate has come about due to inability of the two houses of parliament to reach a consensus on the division of revenue bill and specifically the county equitable share of revenue. If this situation persists, it is likely to paralyze the operations of the counties and hence undermine devolution in totality.

The Commission on Revenue Allocation whose principal function is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government, suggested that counties receive Ksh 335 Billion as equitable share in the Financial Year 2019/20. However, the Cabinet Secretary National Treasury, through the Budget Policy Statement tabled before parliament a conflicting figure of KSHS. 310 Billion as county equitable share which was later approved and adopted by the National Assembly. This subsequently informed the Division of Revenue Bill, the County Allocation of Revenue Bill, as well as the Appropriation Bill. This has brought a bone of contention between the Senate who represent and serve to protect the interests of the counties and their governments, and the National Assembly which determines the allocation of national revenue between the levels of government.

There seems to be no end in sight for the conflict as the two houses of Parliament have tabled two different Division of Revenue Bills. The Bill originating from the Senate proposes an amount of KES 335.67 Billion while the one from the National Assembly proposes an amount of KES 316.5 Billion as equitable share to the counties. This issue has further been made worse by the enactment of the Appropriation Bill 2019 which contained the initial figure of KES 310 Billion.

**What is the legality of the Appropriation Act 2019?** The entire budget process is anchored on the Division of Revenue as it sets out the funds allocated to each level of government. Hence, for the Appropriations Bill 2019 to have been enacted there should have been consensus on the Division of Revenue Bill 2019.

According to section 42 of the Public Finance Management Act 2012 parliament should have considered the Bills not later than thirty days after the Bills were introduced with a view to approving them, with or without amendments. This conversation should have happened before the National Treasury tabled its Budget Estimates.

**Are the recommendations given by the CRA on division of revenue binding?** According to Article 216(1) of the Constitution of Kenya, the principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government between the two levels of government and among the counties. Over the years, their recommendations have never been adopted and no proper justifications are given. This is undermining their mandate as provided for in the law of the land.

**Can the National Government withdraw funds from the Consolidated Fund for its operations?**

The enactment of the Appropriations Bill legally allows the authorization of the withdrawal of funds from the Consolidated Fund. However, the enactment of the Appropriations Bill without a consensus on the Division of Revenue Bill puts its legality into question.

**What is the role of the Senate in the budget making process and specifically on the Division of**

**Revenue?** Article 96(2) of the Constitution of Kenya provides for: The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113. On the other hand, Article 95(4) Constitution of Kenya provides that: The National Assembly - determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve. This brings confusion and therefore, the recommendations by the CRA should prevail since they are not biased.

**What is the way forward in a situation whereby the mediation committee fails to agree consistently on the Bill?** If we followed all the laws governing public finance, we would not find ourselves in such a stalemate.

While the delay in the enactment of the Division of Revenue Bill is a major blow on devolution in Kenya, it is not the only challenge that it faces. Other challenges include: Delay in the disbursement of funds, misappropriation of funds at the county level, differences between the county executive and the county assemblies, nepotism, among many others. To address these challenges, there is need to adhere to the laws that govern public finance.

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