

REPUBLIC OF KENYA



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PARLIAMENT

THE SENATE

ELEVENTH PARLIAMENT - FOURTH SESSION

**REPORT OF THE SENATE STANDING COMMITTEE ON FINANCE,
COMMERCE & BUDGET**

ON

**THE PETITION BY HON. TEDDY MWAMBIRE, DEPUTY SPEAKER OF
KILIFI COUNTY ASSEMBLY, CONCERNING TIMELINES FOR
DISBURSEMENT OF FUNDS BY THE NATIONAL TREASURY TO COUNTY
GOVERNMENTS**

Approved
~~*[Signature]*~~
Speaker
**PARLIAMENT BUILDINGS
NAIROBI**

[Signature] **APRIL 2016**

5. *Examine the Budget, including the Division of Revenue Bill; and*
6. *Examine and 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, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.*

Mr. Speaker Sir,

The Committee on Finance, Commerce and Budget was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MBS, MP. -Chairperson
2. The Hon. Sen. Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.
5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. (Dr.) Boni Khalwale, MBS, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. (Dr.) Zipporah Kittony, MBS, OGW, MP.
10. The Hon. Sen. Aaron Kipkirui Cheruiyot, MP.
11. The Hon. Sen. Catherine Mukite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP.

Committee General Recommendations

The committee having considered the matters in the petition recommends that;

- 1. Whereas the money to county governments is disbursed monthly, the National Treasury must recommend to each county the proposed county allocation for each quarter.**
- 2. The National Treasury indicates that the sum assigned for the respective quarter will be disbursed on a monthly basis.**

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and commitment in the consideration of this matter. Further, the Committee thanks the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the secretariat to the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

On behalf of the committee, and pursuant to standing order 203(6), It is therefore my pleasant and honourable duty to present and lay on the table of the house the report of the Finance, Commerce and Budget Committee regarding the Petition by Hon. Teddy Mwambire, concerning timelines for disbursement of funds by the National Treasury to county governments.



SIGNED: THE HON. SENATOR BILLOW KERROW, MP

CHAIRMAN, FINANCE, COMMERCE AND BUDGET COMMITTEE

DATE:

III. BRIEF ON THE PETITION AND PRAYERS

The Petitioner alleges that the National Treasury has contravened the provisions of section 17(6) of the Public Finance Management Act by indicating in various correspondences with other government departments 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”*.

The Petitioner prays that the Senate-

- (a) investigates, through the relevant committee, the issues raised in the petition concerning the National Treasury transfer of funds to county governments contrary to section 17(6) of the Public Finance Management Act;
- (b) makes appropriate recommendations including legislative interventions as may be necessary to address the issues raised.

3.1 Committee’s Proceedings

The Committee reviewed the petition from and held a deliberative meeting where it considered the following relevant provisions of law relevant to the petition –

1. Section 17(6) of the Public Finance Management Act provides that *“the National Treasury shall, at the beginning of every quarter, and in any event not later than the fifteenth day from the commencement of the quarter, disburse monies to county governments”*.

IV. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Committee Observations

The Committee after reviewing the petition observed as follows -

1. Section 17(6) and (7) of the Public Finance Management Act provides that monies due to counties shall be disbursed on a quarterly basis and no later than the fifteenth day from the commencement of the respective quarter;
2. Section 17 as read together with the relevant provisions of the County Allocation of Revenue Act provides that the cabinet secretary shall disburse monies due to the counties in accordance to a schedule approved by the Senate; and
3. That the Senate adopted a payment schedule providing for the disbursement of monies to the county on a monthly basis.

V. COMMITTEE RECOMMENDATIONS

The committee having considered the matters in the petition recommends that;

- 1. Whereas the money to county governments is disbursed monthly, the National Treasury must recommend to each county the proposed county allocation for each quarter.**

- 2. The National Treasury indicates that the sum assigned for the respective quarter will be disbursed on a monthly basis.**

ANNEXES

- i. **Annex 1:** Petition Concerning Timelines for Disbursement of Funds
by the National Treasury to County Governments
- ii. **Annex 2:** Minutes

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Mr. Chairman

INTRODUCTION

The Office of the Director of Public Prosecutions (hereinafter ODPP) is Kenya's National Prosecuting Authority. The ODPP is established under Article 157 of the Constitution of Kenya 2010. The mandate of the ODPP is to institute and implement prosecution of criminal matters and all other aspects incidental thereto. In addition, the ODPP shall have the power to direct the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector General shall comply with any such direction.

In exercising prosecutorial authority, the ODPP shall have due regard to public interest, access to administration of justice and the need for a well-functioning system of the legal process. In doing so, the ODPP strives to provide quality, prompt and timely services in a manner that is professional, efficient and fair.

PROSECUTION FUNCTION

The ODPP prosecution function is derived from Article 157 of the Constitution of Kenya 2010 and includes:

- a) Direct the Inspector General of the National Police Service or any other investigative body to investigate any information or allegation of criminal conduct;
- b) Institute, take over and continue or discontinue, with the leave of court, criminal proceedings against any person, before any court, other than a court martial, in respect of any offence alleged to have been committed.

Pursuant to Article 157, Section 5 of the ODPP Act further outlines the powers and functions of the ODPP to include the following key roles among others:

- Providing legal advice to law enforcement agencies, government ministries and departments on all criminal law matters;
- Drafting and reviewing charges;
- Conducting legal research;
- Presenting pleadings and court documentation;
- Holding pre-trial conferences with witnesses and victims of crimes;
- Determining alternative mechanisms for resolution of criminal cases.

ODPP PROSECUTING STRATEGIES

The ODPP has developed and implemented a number of strategies aimed at increasing its effectiveness in the prosecution of cases. These strategies are aimed at ensuring that the ODPP is able to prosecute cases that are in the public interest and that these adopted strategies are of strategic importance to the Department and that they are in line with the ODPP's overall objectives.

The most relevant of the strategies adopted by the office include the following:

- **Prosecution of Guided Investigations**, where the investigative agencies work hand in hand with prosecutors from the onset of the investigations and during trial to enhance success of the cases. In the main, the office focuses on Corruption cases, Exemplary cases, Terrorism, smuggling, and drug trafficking.
- **Focus on high impact cases**, where the office focuses on public interest and on cases of high impact on the country's economy and its stability, as well as on a risk based approach to cases. This entails making the decision to prosecute carefully. Only cases that meet the evidential test are taken to court for prosecution.
- **ODPP complaints desk and hotline number**. The officers at the desk are tasked to receive complaints from members of the public and ensure that the same are addressed.

RESPONSE TO YOUR LETTER DATED 25th FEBRUARY 2020

Mr. Chairman

The Director of the Republic's Commission of Enquiry into Corruption and the ODPP in an effort to address the challenge of extrajudicial killings and enforced disappearances.

It is to emphasize that the ODPP is keen on the prosecution of all cases involving breaches of the Bill of Rights as enshrined in the Constitution of Kenya 2010.

The public outcry on police excesses calls for prompt action to address the issue swiftly. On the part of the ODPP, a multi-agency approach of working has been adopted. The approach entails working in collaboration and adoption of complementary strategies between IPOA, DCI, NPS, and ODPP.

Below is an outline of the actions undertaken.

1. ESTABLISHMENT OF THE CIVIL RIGHTS DIVISION

The objective of the Division is to enhance the promotion of human rights and address issues that relate to inhibition of action by law enforcers in respect of the protection of the rights of the people living in Kenya. The Division is also mandated to handle attacks consisting of racial and ethnic hatreds which are sufficiently remedied, whether through prosecution or through recommendation of administrative actions by the National Police Service. Through the department the office works with the civil society to conduct:

- (a) Outreach programs involving law enforcers.
- (b) Conduct sensitization on human rights and laws to the public, and
- (c) Engage in community meetings with local leaders.

The department is in the process of establishing a Disparity Task Force on Police and Human Rights.

The Department has a Unit that is mandated to collect data in regard to human rights abuses/complaints from the public regarding allegations of police violations.

2. COLLABORATION WITH IPOA

The ODPP is working closely with IPOA in an effort to curb the challenge of civilian killings by law enforcement officers. Towards this end, the office has:

(a) Signed a Memorandum of Understanding with IPOA

The objective of the MOU is to create rules of engagement on matters of mutual concern and furtherance of each other's mandates of the institutions.

(b) Developed Standard Operating Procedures with IPOA

The standard operating procedures are meant to guide the investigators and prosecution matters relating to IPOA. This will enhance efficiency and build inter-agency working relationships dealing with the above matters.

(c) Establishment of an IPOA Desk

The ODPP has established a special desk. Officers at the desk are expected to follow up on all cases that come to the attention of the ODPP on police excess. The ODPP officers act as contact persons between the two institutions.