# REPUBLIC OF KENYA

**THE NATIONAL TREASURY AND PLANNING**

# Division of Revenue Bill, 2021

**A Legislative Proposal for submission to Parliament**

**THE DIVISON OF REVENUE BILL, 2021**

**ARRANGEMENT OF CLAUSES**

*Clause*

**A Bill for**

**AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in 2021/22 financial year, and for connected purposes.**

**ENACTED** by Parliament of Kenya, as follows—

| | |
|---|---|
| | **PART I— PRELIMINARY** |
| | |
| Short title. | **1.** This Act may be cited as the Division of Revenue Act, 2021. |
| | |
| Interpretation. | **2.** In this Act, unless the context otherwise requires— |
| | |
| | "Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance; |
| | |
| No. 16 of 2011. | "revenue" has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act, 2011; and includes Roads Maintenance Levy Fund allocation under this Act. |
| Object and purpose of the Act. | **3.** The object and purpose of this Act is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2021/22 in accordance with Article 203 (2) of the Constitution. |
| | |
| Allocations to national and county governments. | **4.** Revenue raised by the national government in respect of the financial year 2021/22 shall be divided among the national and county governments as set out in the Schedule to this Act. |
| | |
| Variation in revenue. | **5.** (1) If the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government, to the extent of the threshold prescribed in Regulations by the Cabinet Secretary. |
| | |
| | (2) If the actual revenue raised nationally in the financial year exceeds the projected revenues set out in the Schedule, the excess revenue shall accrue to the national government, and may be used to reduce borrowing or pay debts. |

## SCHEDULE (s.4)

**Allocation of revenue raised nationally between the national and county governments for the financial year 2021/22.**

| Type/level of allocation | Amount in Ksh. | Percentage (%) of 2016/17 audited and approved Revenue i.e. Ksh.1,357,698 Million |
|---|---|---|
| **A. Total Sharable Revenue** | **1,775,624,173,860** | |
| **B. National Government** | **1,398,798,856,427** | |
| **Of which:** | | |
| *1. Leasing of Medical Equipment* | 7,205,000,000 | |
| *2. Supplement for construction of county headquarters* | 332,000,000 | |
| **C. Equalization Fund** | **6,825,317,433** | **0.50%** |
| | | |
| **D. County equitable share** | **370,000,000,000** | **27.3%** |
| | | |
| **Memo items** | | |
| **1. County equitable share** | ***370,000,000,000*** | |
| ***2. Additional conditional allocations (National Government share of Revenue) of which;*** | ***7,537,000,000*** | |
| *2.1. Leasing of Medical Equipment* | 7,205,000,000 | |
| *2.2 Supplement for construction of county headquarters* | 332,000,000 | |
| ***3. Conditional allocations (Loans & grants) of which:*** | ***32,343,890,512*** | |
| *3.1 IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)* | 4,600,000,000 | |
| *3.2 IDA-Transforming Health Systems for Universal Care Project* | 2,234,664,075 | |
| *3.3 DANIDA Grant-Primary Health Care in Devolved Context* | 701,250,000 | |
| *3.4 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)* | 6,394,997,407 | |
| *3.5 EU-Instruments for Devolution Advice and Support (IDEAS)* | 230,730,934 | |
| *3.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)* | 7,838,338,490 | |
| *3.7 World Bank- Kenya Informal Settlement Improvement Project II (KISIP II)* | 2,800,000,000 | |
| *3.8 IDA- Water and Sanitation Development Project (WSDP)* | 5,000,000,000 | |
| *3.9 Sweden Agriculture Sector Development Programme II (ASDP II)* | 1,300,042,902 | |
| *4.0 Drought Resilience Programme in Northern Kenya* | 370,000,000 | |
| *4.1 Emergency Locust Response Project (ELRP)* | 800,000,000 | |
| *4.2 UNFPA- 9th Country Programme Implementation* | 73,866,704 | |
| **Total County Allocations= (1+2+3)** | **409,880,890,512** | |

**MEMORANDUM OF OBJECTS AND REASON**

The principal object of this Bill is to provide for the equitable division of revenue raised nationally among the national and county levels of government as required by Article 218 of the Constitution in order to facilitate the proper functioning of county governments and to ensure continuity of county services.

**Clauses 1 and 2** of the Bill provide for the short title of the Bill and the interpretation of terms used in the Bill.

**Clause 3** of the Bill contains the provisions on the objects and purpose of the Bill.

**Clause 4** of the Bill prescribes the allocations for the National Government and the county governments from the revenue raised nationally for the financial year 2021/22.

**Clause 5** of the Bill deals with mechanisms for adjusting for variations in revenues emanating from revenue performance during the financial year in which this Bill relates to.

Dated the 8th February, 2021

**Hon (Amb). Ukur Yatani, EGH**
*Cabinet Secretary for*
*The National Treasury and Planning*

**APPENDIX**

**EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL (DoRB), 2021**

**Background**

1. This memorandum has been prepared as an attachment to the Division of Revenue Bill (DoRB), 2021 in fulfilment of the requirements of Article 218(2) of the Constitution and Section 191 of the Public Finance Management Act, 2012.

2. Article 218(2) of the Constitution requires that the Bill be submitted to Parliament every year together with a memorandum explaining:

(a) the proposed revenue allocation set out in the Bill;

(b) the extent to which the Bill has taken into account the provisions of Article 203 (1) of the Constitution; and

(c) any significant deviations from the recommendations of the Commission on Revenue Allocation (CRA).

3. In addition to the above requirements, Section 191 of the Public Finance Management Act, 2012 requires that the Bill be submitted to Parliament together with the Medium Term Budget Policy Statement accompanied by a memorandum which explains:

(a) the extent, if any, of deviation from the recommendations of the Intergovernmental Budget and Economic Council; and

(b) any assumptions and formulae used in arriving at the respective allocations proposed in the Bill.

4. The memorandum is also prepared based on the approved Third Basis for Revenue Allocation among county governments pursuant to Article 217 of the Constitution. In September 2020, Parliament approved the third basis for allocation of the share of national revenue among the County Governments on condition that the formula's implementation would be preceded by a Ksh.53.5 billion increase in the Counties' equitable revenue share.

**Explanation of the Allocations to the National and County Governments as Proposed in the Bill**

5. The Division of Revenue Bill (DoRB), 2021 proposes to allocate to County Governments Ksh.409.88 billion in the financial year (FY) 2021/22, which relative to the financial year 2020/21 allocation, reflects an increase of Ksh.53.5 billion or 16.9 %. This allocation comprises; equitable share of Ksh.370 billion; additional conditional allocations from the share of National Government revenue amounting to Ksh.7.53 billion; and additional conditional allocations from proceeds of loans and grants by development partners amounting to Ksh.32.34 billion.

***County Governments' Equitable Share***

6. The bill proposes to allocate County Governments' an equitable share of revenue raised nationally for the financial year 2021/22 of Ksh.370 billion. This is premised on Parliament having approved the third basis for allocation of the share of national revenue among the County Governments in September, 2020 on condition that the formula's implementation would be preceded by a Ksh.53.5 billion increase in the Counties' equitable revenue share.

7. The proposed County Governments' equitable share of revenue raised nationally for the financial year 2021/22 is arrived at by growing the County Governments' equitable share for 2020/21 of Ksh. 316.5 billion by Ksh. 36.1 billion or 11.4 %. This growth derived from anticipated improvement in revenues raised nationally in FY 2021/22 when the effects of Covid-19 pandemic are expected to ease. This increase is expected to facilitate post covid-19 economic recovery at the counties as well as ensure sustained service delivery by the devolved governments.

8. Additionally, the National Treasury has proposed to convert some of the ongoing additional conditional allocations to county governments, without any ongoing contractual obligations, amounting to Ksh.17.4 billion equitable share in FY 2021/22. The four conditional allocations are: The Road Maintenance Levy Fund (RMLF); the grant to level-5 hospitals; the compensation for user fees foregone; and the rehabilitation of village polytechnics grants. If approved by Parliament, this will guarantee County Governments an equitable revenue share allocation of Ksh.370 billion in FY 2021/22.

9. Conversion of the four conditional allocations to Counties' equitable revenue share as proposed above has several advantages. Firstly, it will afford the Counties more autonomy to budget and prioritize allocation of resources. Secondly, it will achieve a more consolidated approach to funding of devolved functions, while also enabling better tracking of performance and attribution of outcomes. Thirdly, it will help to address a number of challenges which are currently

being experienced including suboptimal absorption of conditional allocations (which arises due primarily to difficulties faced by many Counties in adhering to the underlying conditions); and failure by Counties to allocate sufficient resources in areas receiving supplemental funding by the National Government through conditional allocations.

10. Moreover, the fact that the approved third basis for allocation of the share of national revenue among the County Governments is now effectively linked to devolved functions (specifically with weighted parameters for health, roads and agriculture) means that it is now possible to achieve policy objectives of some conditional grants directly through the equitable share. In health and agriculture, for instance, the new parameters to be used in distributing the equitable revenue share among Counties closely resemble those currently being used to distribute sectoral conditional allocations. In addition, the approved revenue distribution criteria contain a parameter, 'population' with a weight of 18% which is specifically designed to reflect costs of 'other County Services' including village polytechnics.

11. Currently, besides the composite of equal share, the allocation criteria for the rehabilitation of village polytechnics conditional grant is also based on total trainee enrolment in the respective county governments, which is similar to the use of population parameter in the Third Basis for Revenue Sharing among Counties. This means that village polytechnics being a devolved function, and also a composite of the population parameter of the formula should be directly financed from each County's equitable share of revenue.

12. After making the above adjustment, County Governments' equitable share of revenue in the financial year 2021/22 is estimated to be Ksh. 370 billion **(see Table 1).**

**Table 1: Equitable Revenue Share Allocation to County Governments FY 2021/22**

| S/N | Budget Item | Amount in Ksh. Million |
|---|---|---|
| A | **County Equitable Revenue Share for FY 2020/21 (Base)** | **316,500** |
| | | |
| | ***Add:*** | |
| B | **Adjustment based on fiscal framework (Revenue Growth to county governments in FY 2021/22)** | **36,103** |
| | | |
| | ***Add:*** | |
| C | ***Converted Conditional allocations (previously financed from National Governments share of Equitable Revenue) to County Equitable share...of which: -*** | **17,397** |
| | *a. User Fee* | 900 |
| | *b. Level 5* | 4,727 |
| | *c. Road Maintenance Levy Fund* | 9,770 |
| | *d. Village Polytechnics* | 2,000 |
| D | **Equitable Revenue Share allocation for FY 2021/22; D=A+B+C** | **370,000** |

***Source of data: National Treasury***

13. The above proposed Equitable Share for FY 2021/22 of Ksh.370 billion is equivalent to 27.3 percent of the last audited accounts (Ksh.1,358 billion for FY 2016/17) and as approved by

Parliament. The proposed allocation meets the requirement of Article 203(2) of the Constitution that equitable share allocation to counties should not be less than 15 per cent of the last audited revenue raised nationally, as approved by the National Assembly.

***Additional Conditional Allocations to County Governments***

14. Article 202(2) of the Constitution provides for additional allocation to County Governments from the National Government's share of revenue, either conditionally or unconditionally. Pursuant to this Article, the National Government proposes to allocate the following additional conditional allocations to support specific national policy objectives to be implemented by County Governments:

- **Additional Conditional Allocation to facilitate the leasing of medical equipment of Ksh.7.205 billion.** This grant which is in its seventh year of implementation, is proposed to increase from Ksh.6.205 billion in FY 2020/21 to Ksh.7.205 billion in FY 2021/22 and is intended to facilitate the payment of lease amounts in respect of modern specialised medical equipment in at least two health facilities in each County Government over the medium term. This will facilitate easy access to specialised health care services and significantly reduce the distance that Kenyans travel in search of such services today.

- **Additional Conditional allocation to supplement County allocation for the construction of County headquarters of Ksh.332 Million in five counties:** This conditional allocation is intended to supplement financing for construction of headquarters by five County Governments that did not inherit adequate offices. The five counties are Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. This marks the fourth year of its implementation whereby the National Government contributes 70 percent of the budget while County Governments contributes 30 percent of the total cost of the projects. This allocation is expected to increase from Ksh.300 million allocated in FY 2020/21 to a proposed allocation of Ksh.332 million in FY 2021/22. This increase is attributed to the increased absorption of the funds and advanced stages in development of the County headquarters.

- **Transforming Health Systems for Universal Care Project conditional allocation of Ksh.2.2 billion (World Bank credit):** - This conditional allocation through the Ministry of Health is meant to improve delivery, utilization and quality of primary health care services with focus on reproductive, maternal, new-born, child and adolescent health (RMNCAH) at the county level. This additional conditional allocation is proposed to decrease from Ksh.4.3 billion in FY 2020/21 to Ksh.2.2 billion in the financial year 2021/22. This is attributed to the structure of project implementation and financing as contained in the Project Appraisal Document and the financing agreement. According to the financing agreement and previous allocations, FY 2021/22 marks the final year of its implementation and the proposed allocation is the final tranche for disbursement to county governments. This conditional allocation will further complement the National Government efforts on attainment of the Universal Health Coverage policy initiative.

- **DANIDA Grant-Primary Health Care in Devolved Context program of ksh.701 million:** The project is a successor of the DANIDA - Universal Healthcare for Devolved System Program which was restructured in December, 2020 of FY 2020/21. The program has been re-structured through an addendum to financing agreement which now provides that donor allocations to the programme shall be on a reducing balance of 25 % each financial year beginning FY 2021/22 for three financial years, with the county governments expected to co-finance the difference in each financial year. However, the restructured project will rely on the existing project development objective (PDO) whose main objective is "to improve utilization and quality of primary health care services with a focus on reproductive, maternal, new-born, child, and adolescent health services. The Project will achieve this objective by: (a) improving access to and demand for quality Primary Health Care (PHC) services; (b) strengthening institutional capacity in selected key areas to improve utilization and quality of PHC services; and (c) supporting cross-county and intergovernmental collaboration in the devolved Kenyan health system.

  In this regard, conditional allocation to this programme is proposed to decline from an allocation of Ksh. 900 million in FY 2020/21 to an allocation of Ksh.701 million in FY 2021/22, or by 25 %, a decline which should be co-financed by the respective county governments. This is attributed to provisions of the addendum to financing agreement which envisages gradual decrease of the amounts allocated to the project in each financial year, for sustainability before the donor exits after the three financial years.

- **National Agricultural and Rural Inclusive Growth Project; NARIGP of Ksh. 6.4 billion (World Bank credit):** - NARIGP's project development objective (PDO) is "to increase agricultural productivity and profitability of targeted rural communities in selected Counties, and in the event of an Eligible Crisis or Emergency, to provide immediate and effective response." The project will contribute to GoK's high-level objective, which aims at transforming smallholder subsistence agriculture into an innovative, commercially oriented, and modern sector by: (i) increasing the productivity, commercialization, and competitiveness of selected agricultural commodities; and (ii) developing and managing key factors of production, particularly land, water, and rural finance.

NARIGP is being implemented in 21 selected counties with a total of 140 sub counties. Each subcounty has at least three (maximum of five) participating wards. Within these sub counties, the project will cover about 420 out of the existing 696 wards, which is equivalent to 60 percent coverage. The selection of targeted counties was guided by the following underlying principles: (i) regional balance, to ensure equitable sharing of project benefits across the country; (ii) clustering, to reduce the operation and maintenance (O&M) costs of project implementation; (iii) security, to guarantee an enabling operating environment for supervision and monitoring of project activities; and (iv) data and facts, to ensure that selection is based on available socioeconomic data (such as production potential, population density, poverty rates, undernutrition levels, and vulnerabilities).

This additional conditional allocation, which is in its third year of implementation, is proposed to be allocated Ksh. 6.4 in the financial year 2021/22, up from an allocation of Ksh. 4.3 billion in FY 2020/21.

- **World Bank- Kenya Informal Settlement Improvement Project II (KISIP II) additional conditional allocation of Ksh.2.8 billion:** -The Proposed Development Objective(s) of this project is to improve access to basic services and tenure security of residents in participating urban informal settlements and strengthen institutional capacity for slum upgrading in Kenya. The primary beneficiaries of KISIP will be the residents of the participating informal settlements. They will have better access to basic infrastructure and services across a range of sub-sectors, including local roads, water and sanitation, storm water drainage (and reduction of flooding), waste management (increased collection), and street lighting. They will also have improved tenure security provided through titling. In addition, residents will indirectly benefit from the institutional development activities aimed to strengthen the capacity of the county to implement slum upgrading interventions. This additional conditional allocation, which is in its first year of implementation, is proposed to be allocated Ksh. 2.8 billion in FY 2021/22.

- **EU-Instruments for Devolution Advice and Support (IDEAS) grant of Ksh. 230.7million:** This grant, which is in its fifth year of implementation, is proposed to be allocated Ksh. 230.7 million in the financial year 2021/22. The grant is meant to support national and county government's capacities for the management of the devolution process and the responsible transfer and use of resources for the achievement of local economic development at the county level. This additional conditional allocation has increased slightly from an allocation of Ksh.216 million in FY 220/21 to the proposed allocation of Ksh.230.7 million in FY 2021/22.

- **IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP) of Ksh.7.1 billion:** The project development objective (PDO) of this project is "to increase agricultural productivity and build resilience to climate change risks in the targeted smallholder farming and pastoral communities in Kenya, and in the event of an Eligible Crisis or Emergency, to provide immediate and effective response. KCSAP, which is in its fourth year of implementation, focuses on increasing agricultural productivity and enhancing resilience to impacts of climate change; reductions in Greenhouse Gas (GHG) emissions will be a co-benefit.

  The direct beneficiaries of the project are estimated at about 521,500 households of smallholder farmers, agro-pastoralists, and pastoralists. Approximately 163,350 households organized in about 4,950 Common Interest Groups (CIGs) and 18,150 households in 1,100 Vulnerable and Marginalized Groups (VMGs) will benefit from community Climate-Smart Agriculture (CSA) micro projects. These beneficiaries will come from 24 participating counties, selected using the agreed criteria, in which top priority is assigned to counties with higher: (i) vulnerability to climate change and extreme weather events (ASAL counties being the most adversely impacted by droughts); (ii) volatility in agricultural production and presence of fragile ecosystems (natural resources are highly degraded in ASALs); and (iii) poverty indices (poverty incidence and poverty rates— ASALs have the highest poverty rates).

  The allocations to this programme increased significantly from an allocation of Ksh.3.6 billion in the financial year 2020/21to the proposed allocation of Ksh. 7.1 billion in financial year 2021/22. This increase can be attributed to increase in the number of mobilized beneficiary groups from which projects to be funded have been identified and approved by the National Steering Committee. This programme which targets both the Vulnerable & Marginalized and Common Interest groups; is bound to build equity and equality among the marginalised persons in the society such as the disabled, women and youths through the empowerment projects.

- **IDA – Water and Sanitation Development Project (WSDP)- World Bank Credit of Ksh.5 billion:** The Project Development Objective (PDO) of this program, financed by this additional conditional allocation, is to improve water supply and sanitation services in six select counties located in the coastal and north eastern regions of Kenya. This is achieved by investing in water supply and sanitation infrastructure in urban centres in these counties. The project will also improve services by strengthening institutional capacity in areas, such as, reducing Non-Revenue Water (NRW), improving billing and revenue collection systems, and developing medium-term business plans. In addition, the WSDP will establish a results-based financing mechanism at the national level to provide incentives to the Water Services Providers (WSPs) to accelerate access to water supply and sanitation services and improve operational and financial performance.

The conditional allocation for the project, which is in its Fourth year of implementation, is expected to increase from an allocation of Ksh.3.4 billion in financial year 2020/21 to the proposed allocation of Ksh.5 billion in the financial year 2021/22. This significant increase in allocation to the project, is attributed to finalisation of preparatory activities and the project implementation being at advanced stages in the six counties.

- **Agricultural Sector Development Support Programme (ASDSP) II - Ksh.1.3 billion-** ASDSP II, which is in its fourth year of implementation, is part of the implementation strategy of the Agricultural Policy (AP) for the national and county governments. In line with the AP, the overall goal of ASDSP II is to contribute to "transformation of crop, livestock and fishery production into commercially oriented enterprises that ensure sustainable food and nutrition security". The Programme Purpose is "to Develop Sustainable Priority Value Chains (PVCs) for improved income, food and nutrition security", which will contribute to achievement of the "BIG FOUR" agenda of the Government on food security. This additional conditional allocation has significantly increased from an allocation of Ksh.652 million in FY 2020/21 to the proposed allocation of Ksh.1.3 billion in the FY 2021/22. This is attributed to a balance carried forward of Ksh.725 million for disbursement to county governments that had previously not met conditions set, which they have since then fulfilled.
- **Drought Resilience Programme in Northern Kenya (DRPNK) - Ksh.370 million -** This is a project financed by proceeds of a loan and grant from the German Development Bank in Turkana and Marsabit counties. The programme objective is *"to* ensure that *Drought resilience and climate change adaptive capacities of the pastoral and agro-pastoral production systems and livelihoods in selected areas of Turkana and Marsabit County are strengthened on a sustainable basis by expanding and rehabilitating relevant infrastructure."* The expected projects outputs are to ensure: - access to water is improved for humans and livestock; fodder basis is improved; access to market infrastructure is improved; and rural transportation is improved in the two counties.

This programme is in its third year of implementation and the additional conditional allocation towards its financing has increased significantly from an allocation of Ksh.100 million in FY 2020/21 to the proposed allocation of Ksh.370 million in FY 2021/22. The increase can be attributed to the successful procurement of the project consultant who will support the identification and implementation of projects in the two beneficiary counties.

- **Kenya Devolution Support Program (KDSP) Performance ("level 2") Grant amounting to Ksh. 4.6 billion.** The KDSP "Level 2", financed by a World Bank credit, is a performance grant which will be utilized by beneficiary counties toward physical investments articulated in their respective County Integrated Development Plans (CIDPs). As such, this grant is intended to incentivize county governments that achieve good results in the following key areas:
    a) Strengthening Public Financial Management (PFM) systems;
    b) Strengthening County Human Resource Management;
    c) Improving County Planning and Monitoring & Evaluation systems;
    d) Civic Education and Public Participation; and,
    e) Strengthening Intergovernmental relations.

Performance of counties in the above areas is to be assessed by an independent firm to be recruited through a competitive process. The budget allocation for this grant, is balance carried forward of Ksh.4.6 billion in financial year 2019/20, not disbursed to respective county governments, to cater for counties that met the performance score after the fourth Annual Capacity and Performance Assessment (ACPA) carried out by the State Department for Devolution. This assessment determined that 38 county governments were eligible for allocation of the respective amounts they qualified for. This outcome was endorsed by the KDSP Technical Committee.

Although the allocations were in County Allocation of Revenue Act, 2019/20, due to Covid-19 Pandemic it became necessary to create fiscal space to fund priority interventions/programmes to mitigate effects of Covid-19 pandemic. Government also entered into negotiations with development partners with a view to restructure some donor funded programmes to realign resources towards interventions targeted at Covid-19 pandemic. This realignment targeted donor funded programmes, including those implemented by the counties through additional conditional allocations, such as the allocation to the KDSP Level 2 grant which had zero absorption rate then. This was meant to create fiscal space in the fiscal framework for FY 2019/20 in order to accommodate high priority expenditures towards addressing the Covid-19 pandemic.

Consequently, the Budget allocation to the Kenya Devolution Support Programme (KDSP) Level 2 was revised to nil in the approved Supplementary II budget estimates alongside other conditional allocations which had dismal absorption rates. In this regard, there being no budgetary provision for KDSP Level 2 conditional allocation in the approved Supplementary II budget estimates, no funds could be transferred to county governments in respect of the allocation in FY 2019/20.

It is therefore proposed that the balances carried forward of Ksh.4.6 billion be allocated to KDSP Level 2 in FY 2021/22.

- **Emergency Locust Response Project (ELRP): - A World Bank Credit of Ksh. 800 Million:** - The Project Development Objective (PDO) of this program, financed by this additional conditional allocation, is to prevent and respond to the threat to livelihoods posed by the Desert Locust outbreak and to strengthen Kenya's system for preparedness. Citizen engagement will be monitored by tracking awareness raising communication campaigns conducted and grievances registered and resolved by the program.

  Among the four components of the programme, the following two main components will be key at the counties: - **a)** ***Component 1: Surveillance and Control Measures:*** - The objective of activities under this component is to limit the growth of existing climate-change-induced Desert Locust populations and curb their spread, while mitigating the risks associated with control measures and their impacts on human health and the environment. Activities to be supported would be continuous surveillance and monitoring, spraying of hopper bands and adult swarms, and delivery of training and capacity building to field teams to ensure that operations are carried out in a safe and effective manner; and ***b) Component 2: Livelihoods Protection and Rehabilitation:***- Beyond the immediate control measures deployed to curtail the proliferation and spread of the locusts, the next priority and the objective of Component 2 would be to help protect the poor and vulnerable in locust affected areas from human capital and asset loss, enhance their access to food, and restore livelihoods that have been damaged or destroyed by swarms.

  Component 2 will be implemented in specific wards that are most impacted in the 12 of the most severely impacted counties in the country. The primary project beneficiaries will be affected farmers, pastoralists and households that have been affected by the locust upsurge and are food insecure. Vulnerable and marginalized households and female headed households will be prioritized in the targeting process. This programme is proposed to be allocated Ksh.800 million in FY 2021/22.

- **UNFPA - 9th Country Programme Implementation: - Ksh.73.9 Million:** - The 9th country programme responds to national priorities as articulated in the third Kenya Medium-term Plan (2018-2022), including the President's 'Big Four' Agenda, the 2030 Agenda for Sustainable Development, the Africa Union Agenda 2063, the Kenya United Nations Development Assistance Framework 2018-2022.
  The programme will support advocacy for policy implementation at the national level and will mobilize resources for capacity building and service delivery interventions in 12 counties, selected based on key performance indicators: Homabay, Kilifi, Narok, Kitui, Nairobi (the Kibera informal settlement), Turkana (as a 'delivering as one' county), Mandera, Migori, Marsabit, Wajir, Isiolo and Lamu (under the Joint Programme on Reproductive Maternal, Newborn, Child and Adolescent Health). In addition, the UNFPA-UNICEF Joint Programme on Female Genital Mutilation will be implemented in Baringo, West Pokot, Elegyo-Marakwet, Narok, Marsabit and Samburu counties.

  The programme has focuses on three outcomes namely: - ***a) UNDAF Outcome*** 1: By 2022, people in Kenya have increased and equitable access to and utilize high-quality health, including sexual, reproductive, maternal, new-born, child and adolescent health in emergency and non-emergency settings; ***b) UNDAF Outcome 2***: By 2022, marginalized and vulnerable people, especially women and children, have increased access to and utilize social protection, and services for prevention and response to gender-based violence and violence against children; and c) ***UNDAF Outcome 3***: By 2022, management of population programmes and access to high-quality, affordable and adequate housing is improved in socially and environmentally sustainable settlements, with particular focus on vulnerable groups. It is proposed that the programme be allocated Ksh.73.9 million in FY 2021/22. This programme, whose major component is reproductive health, will be implemented through Ministry of Health.

**Evaluation of the Bill against Article 203 (1) of the Constitution**

15. Article 218(2) of the Constitution requires division of revenue between the two levels of government and across County Governments to take into account the criteria set out in Article 203(1) of the Constitution. The criteria include factors such as: national interest, public debt and other national obligations and needs of the disadvantaged groups and areas, among others.

Table 2 provides an assessment of the extent to which the requirements of Article 203 (1) have been incorporated in estimating the division of revenue between the national and county levels of Government in the financial year 2021/22.

**Table 2: Evaluation of the Bill against Article 203 (1) of the Constitution**

| | ITEM DESCRIPTION *(Kshs. Millions)* | FY2017/18 | FY2018/19 | FY2019/20 | FY2020/21 | FY2021/22 |
|---|---|---|---|---|---|---|
| | **ORDINARY REVENUE (EXCLUDING AIA)** | **1,365,063** | **1,499,757** | **1,573,418** | **1,574,009** | **1,775,624** |
| A | **National Interest** [Article 203 (1)(a)] | **82,696** | **84,186** | **94,168** | **86,753** | **83,197** |
| | *Enhancement of security operations (police vehicles, helicopters, defence etc.)* | 20,556 | 27,800 | 27,974 | 24,816 | 22,261 |
| | *National irrigation & fertilizer clearance* | 8,880 | 11,775 | 11,103 | 11,375 | 11,199 |
| | *Youth empowerment* | 18,544 | 7,442 | 16,226 | 16,127 | 14,548 |
| | *National social safety net - (for older persons, OVC, child welfare, presidential bursary, severe disability)* | 17,305 | 26,812 | 26,362 | 28,832 | 29,286 |
| | *Primary school digital literacy program* | 13,408 | 6,333 | 8,400 | 1,500 | 1,800 |
| | *School examination fees (KSCE & KCPE)* | 4,003 | 4,024 | 4,103 | 4,103 | 4,103 |
| B | **Public debt (Art. 203 [1][b])** | **462,243** | **641,514** | **538,802** | **829,906** | **1,174,013** |
| C | **Other National obligations** (Art. 203 [1][b]) | **359,077** | **391,878** | **442,627** | **477,045** | **514,018** |
| | *Pensions, constitutional salaries & other* | 68,702 | 90,573 | 109,526 | 124,451 | 136,978 |
| | *Constitutional commissions (Art. 248(2)) i.e., CRA, SRC, NLC, NPSC, IEBC, TSC* | 224,623 | 233,619 | 261,387 | 281,099 | 299,333 |
| | *Independent offices (Art. 248(3)) - i.e., AG & CoB* | 5,177 | 6,412 | 6,336 | 6,295 | 6,499 |
| | *Parliament* | 30,915 | 34,490 | 36,240 | 36,222 | 37,883 |
| | *Other constitutional institutions- State Law Office and DPP* | 6,498 | 7,602 | 8,765 | 8,154 | 8,371 |
| | *Other statutory bodies (e.g., EACC, RPP, WPA, CAJ, IPOA, NGEC)* | 5,484 | 5,724 | 5,937 | 6,674 | 7,036 |
| | *Judiciary* | 17,678 | 13,458 | 14,437 | 14,150 | 17,918 |
| D | **Emergencies** [Art. 203 (1)(k)] | **9,294** | **6,419** | **6,418** | **5,000** | **5,000** |
| | *Contingencies* | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 |
| | *Strategic grain reserve* | 4,294 | 1,419 | 1,418 | 0 | 0 |
| | **Equalization Fund** [Art. 203 (1) (g) and (h)] | **7,727** | **4,700** | **5,765** | 6,532 | **6,825** |
| E | **BALANCE TO BE SHARED BY THE 2 LEVELS OF GOVERNMENT** | **444,026** | **371,060** | **485,638** | 168,773 | **-7,429** |
| F | **County Government allocation from revenue raised nationally of which; -** | **314,205** | **322,193** | **324,160** | 330,231 | **377,537** |
| | *a) Equitable Share of Revenue* | 302,000 | 304,962 | 310,000 | 316,500 | 370,000 |
| | *b) Additional conditional allocations financed from revenues raised nationally* | 12,205 | 17,231 | 14,160 | 13,731 | 7,537 |
| G | **Balance left for the National Government of which: -** | **129,821** | **48,867** | **161,478** | **-161,458** | **-384,966** |
| | *Other statutory allocations/earmarked funds (e.g., NG-CDF, Affirmative Action)* | *39,512* | *35,361* | *40,879* | *41,311* | *43,845* |
| H | **Net Balance** | **90,309** | **13,506** | **120,599** | **-202,769** | **-428,810** |

*Source: National Treasury and Planning*

16. **National Interests:** These are expenditures which relate to projects and programmes that:

- are critical to the achievement of country's economic development objectives;

- potentially will have significant impact on social well-being of citizens;
- are anchored in the Vision 2030 and the Medium-Term Plan III (2017 – 2022);
- have significant resource investment requirements; and
- have been specified in the 2021 Budget Policy Statement.

These national interests include: activities aimed at enhancing security operations; national irrigation and fertilizer subsidy initiatives; Youth Empowerment; provision of national social safety net for vulnerable groups and primary school digital literacy program, and school examination fees subsidy. Revenue allocation for these programs is expected to decrease slightly from Ksh.86.8 billion in 2020/21 to Ksh.83.2 billion in 2021/22.

17. **Public Debt:** The Bill has fully provided for all public debt related costs. These comprise of the annual debt redemption cost as well as the interest payment for both domestic and external debt. In financial year 2021/22, the revenue allocation for payment of public debt related costs is expected to increase significantly to Ksh.1,174 billion from Ksh.829.9 billion allocated in financial year 2020/21.

18. **Other National Obligations:** as provided for under Article 203(1) (b) of the Constitution, the Bill has also taken into account the cost of other national obligations, such as, mandatory pension contributions and/or payments, financing for constitutional offices, including Parliament as well as expenses relating to other statutory bodies. These are estimated to cost Ksh.514 billion in financial year 2021/22 up from Ksh.477 billion in financial year 2020/21.

19. **Fiscal Capacity and Efficiency of County Governments:** Fiscal capacity for county governments refers to the potential revenues that can be generated from the tax bases assigned to the counties when a standard average level of effort is applied. In its recommendations to Parliament on the Third Basis for Sharing Revenue Among County Governments, the Commission on Revenue Allocation (CRA) included a 'fiscal effort' parameter with a 2% weight intended to incentivize OSR collection by the Counties. This is consistent with the approach in other jurisdictions, where the formula for horizontal revenue distribution among subnational governments typically incorporates measures of fiscal capacity alongside those of expenditure need. CRA's fiscal effort parameter was defined in terms of each County Government's actual revenue collection relative to the County's Gross County Product (GCP) as computed by the Kenya National Bureau of Statistics (KNBS).

20. In approving CRA's recommendations however, Parliament did not include the fiscal effort parameter, effectively shifting the 2% weight to other parameters. This means that during the five-year basis application, it will not be easy to motivate Counties to strengthen their local revenue

collection efforts. It is hoped that future revenue sharing formulae will reinstate the fiscal effort parameter.

21. However, it should be noted that Third Basis for sharing revenue raised nationally among county governments has two components namely: i) Allocation Ratio which relates to application of ratios used in FY 2019/20 to one-half of the equitable share allocated to county governments in FY 2019/20; and ii) the Formula which relates to application of the difference between the determined equitable share and the amount allocated using the Allocation Ratio to the parameters approved in the basis.

22. The ratios applied in FY 2019/20 apply the Second-generation formula which has a fiscal effort component of 2%. Consequently, CRA in consultations with Parliament can vary the ratios based on revenue performance of the respective governments so as to incentivize them to improve collection of OSR, which is desired objective of enforcing the fiscal capacity and efficiency of county governments Pursuant to Article 203 (1) (e) of the Constitution.

23. **County governments' ability to perform the functions assigned to them and meet other developmental needs of the county governments:** As explained above, the baseline for the equitable share allocation for the financial year 2021/22 was derived from the Division of Revenue Act, 2020.

24. It should be noted that allocations for devolved functions were based on the historical cost of those functions as determined through a consultative process that involved the line ministries and other independent commissions and offices. Moreover, should any residual function/s and attendant resources be identified, they shall be included in subsequent DoRB.

25. Further, the growth of Ksh.53.5 billion in equitable share of revenue to County Governments is an unconditional allocation which counties have the autonomy to plan, budget and implement development projects based on county priorities and account for the same. Secondly, Article 209 of the Constitution has assigned counties revenue raising powers and as such counties are expected to improve and maintain sustained collection of their Own Source Revenues (OSR). This measure coupled with with the proposed increase in equitable share to county governments by Ksh.53.5 billion in FY 2021/22 and assuming that Counties maintain their growth trajectory in OSR collections in FY 2020/21 and FY 2021/22, there should be sufficient additional resources to finance all functions assigned and transferred to them.

26. It should also be noted that, in order to balance between priority development and performance of the assigned functions, the Third Basis formula is premised on eight parameters

which relate to devolved functions assigned to county governments in Part II of the Fourth Schedule of the Constitution. Accordingly, counties will have to allocate a prescribed minimum to specific functions contained in the Third Basis.

27. Thus, the proposed vertical division of revenue proposed in the Division of Revenue Bill, 2021 therefore takes into account the cost of County Governments' developmental needs and it is expected that county governments will have the ability to perform the functions assigned and transferred to them as contemplated under Article 203(1) (f).

28. **Economic Disparities within and among counties and the need to remedy them:** Allocation of the sharable revenue (i.e., equitable share of Ksh.370 billion) among counties is based on the Third-generation formula approved by Parliament in September, 2020 pursuant to provisions of Article 217 and Section 16 of the Sixth Schedule of the Constitution. The Third Basis formula which should be applicable from FY 2020/21 to FY 2024/25 has taken into account the following parameters; (i) Population (18%); (ii) Health Index (17%); (iii) Agriculture Index (10%); (iii) Urban Index (5%); (iv) Poverty Index (14%); (v) Land Area Index (8%); (vi) Roads Index (8%), and; (vii) Basic Share index (20%). The horizontal distribution of County Governments' equitable revenue share allocation of Ksh.370 billion for FY 2021/22 shall be based on the Third Basis Formula. On the other hand, each additional conditional allocation shall be distributed based on its objectives, criteria for selecting beneficiary Counties and distribution formula. Accordingly, in FY 2021/22, the Counties will share an estimated Ksh.370 billion. It should be noted that the Third basis formula, which will be applied in FY 2021/22, takes into account disparities among counties and aims at equitable distribution of resources across counties.

29. Further, it should be noted that Ksh.6.8 billion has also been set aside for the Equalization Fund in 2021/22 which translates to 0.5 per cent of the last audited revenue accounts of governments, as approved by the National Assembly. This Fund is used to finance development programmes that aim at reducing regional disparities among beneficiary counties.

30. **Need for Economic Optimization of Each County:** Allocation of resources to County Governments was guided by the costing of the functions assigned to the County Governments. The equitable share of revenue allocated to County Governments in the financial year 2021/22 is Ksh.370 billion, an allocation which has increased by Ksh.53.5 billion from an allocation of Ksh.316.5 billion in FY 2020/21. This is an unconditional allocation which means that the County Governments can plan, budget and spend the funds independently. With the additional resources, therefore, County Governments are in a position to prioritize projects and consequently allocate resources thus optimizing their potential for economic development.

31. Secondly, conversion of the four conditional allocations to Counties' equitable revenue share as proposed above, will accord the Counties more autonomy to budget and prioritize allocation of resources, among other advantages.

32. **Stable and Predictable Allocations of County Governments' Vertical Share of Revenue:** The county governments' equitable share of revenue raised nationally has been protected from cuts that may be occasioned by shortfall in revenue raised nationally, more so in the advent of the effects of Covid-19 Pandemic. According to clause 5 of the DoRB 2021, any shortfall in revenue raised nationally is to be borne by the National Government, to the extent of the threshold prescribed in Regulations by the Cabinet Secretary.

33. **Need for Flexibility in Responding to Emergencies and Other Temporary Needs:** Included in the equitable share of revenue for the National Government is an allocation of Ksh.5 billion for the Contingencies Fund established pursuant to Article 208 of the Constitution. This Fund will be used to meet the demands arising from urgent and unforeseen needs in all Counties that suffer from calamities in the manner contemplated under Section 21 of the Public Finance Management Act, 2012. In addition, the Public Finance Management Act, 2012 and the PFM (County governments) Regulations, 2015 requires each county government to set up a County Emergency Fund. County governments are expected to set aside at least 2 % of their budget as part of their allocation for this purpose. In the FY 2021/22, county governments have been allocated Ksh.800 million conditional grants for Emergency Locust Response Project (ELRP), whose objective is to prevent and respond to the emerging threat to livelihoods posed by the Desert Locust outbreak and to strengthen Kenya's system for preparedness. The project will be implemented in specific wards that are most impacted in the 12 of the most severely impacted counties in the country.

34. It should be noted that after taking into account all the other factors contemplated under Article 203(1) of the Constitution, including the needs of county governments, there is no resources left to finance other National Government needs, such as, defense, roads, energy etc. In fact, this leaves a deficit of Ksh.385 billion, which can only be met through additional borrowing. This deficit doesn't include the requirements of Ksh.43.8 billion for "*Other statutory allocations/earmarked funds (e.g., NG-CDF, Affirmative Action)*" which if included pushes the deficit to a net of Ksh.429 billion or -24.1 % of the total sharable revenue raised nationally. This is far less than the Ksh.377.5 billion or 21.3 % allocated to county government's needs.

**Response to the Recommendations of the Commission on Revenue Allocation (CRA)**

35. The Division of Revenue Bill, 2021 proposes to allocate county governments an equitable share of Ksh.370 billion from the shareable revenue raised nationally. The CRA also recommends County Governments' equitable share of revenue of Ksh.370 billion as an unconditional allocation to be shared among county governments on the Third basis of the formula for sharing revenue approved by Parliament under Article 217 of the Constitution in September, 2020. In this case there is no differences in the amounts of proposed allocation of equitable share to county governments by both CRA and the National Treasury. The National Treasury and CRA are also in agreement to converting four additional conditional allocations previously financed from the national government share of revenue into equitable share.

36. In order to arrive at the recommendation of Ksh.370 billion allocation as equitable share to county governments in FY 2021/22, the National Treasury and CRA applied the following: -

(a) Firstly, the National Treasury proposed to adjust the base allocation of equitable share to County Governments' of Ksh.316.5 billion in FY 2020/21 by growing the equitable share by Ksh.36.1 billion or 3.2 %. This growth is derived from anticipated improvement in revenues raised nationally in FY 2021/22 when the effects of Covid-19 pandemic are expected to ease. Secondly, it recommended conversion of four conditional grants namely: - Road Maintenance Levy Fund (RMLF), the grant to level-5 hospitals, the compensation for user fees foregone and the rehabilitation of village polytechnics grants, amounting to Ksh.17.4 billion into equitable share; and

(b) Firstly, CRA proposed conversion of four conditional grants namely: - Road Maintenance Levy Fund (RMLF), the grant to level-5 hospitals, the compensation for user fees foregone and the rehabilitation of village polytechnics grants, amounting to Ksh.17.02 billion into equitable share. Secondly, CRA recommended that an additional Ksh.36.48 billion, raised from harmonization of functions in line with the Fourth Schedule and Article 187(2) of the Constitution of National Government MDAs which maybe carrying out concurrent functions or performing devolved functions, be added to county governments' equitable. These are in the functional areas of: Health; Agriculture (crop, livestock and fisheries development); Water, Irrigation, Sanitation and regional development.

37. Table 3 analyses the approaches by CRA the National Treasury in computing the proposal on the division of revenue between the national and county governments in FY 2021/22.

**Table 3: Comparison of approaches towards recommendations of the Commission on Revenue Allocation and the National Treasury on the equitable share of revenue proposed for FY 2021/22 (Figures in Ksh. Millions)**

| Expenditure Item | CRA | National Treasury | Variance |
|---|---|---|---|
| | A | B | C = (A-B) |
| 1. Equitable Revenue Share in FY 2020/21 (Base) | 316,500 | 316,500 | |
| 2. Adjustment for revenue growth in FY 2021/22 as determined in the Fiscal Framework | | 36,100 | (36,100) |
| 3. Conversion of Conditional grants to Equitable share, i.e Level-5, RMLF, User fees foregone and Village Polytechnics | 17,020 | 17,400 | (380) |
| 4. Harmonisation of functions in line with the Fourth Schedule of the Constitution and Article 187(2) | 36,480 | | 36,480 |
| **TOTAL EQUITABLE SHARE OF REVENUE = (1+2+3+4)** | **370,000** | **370,000** | **0** |

Source: National Treasury and Planning

38. Although, there are no differences on the proposed amount of equitable share raised nationally between the national and county governments, there are differences occasioned by consideration for additional conditional allocations financed from National government share of revenue amounting to Ksh.7.5 billion; - Whereas CRA has not made any additional proposals to fund Counties, the National Treasury has proposed Ksh.7.5 billion to be financed from the National Government share of revenue.

39. Finally, the National Treasury has proposed an allocation amounting to Ksh.32.3 billion as additional conditional allocations from proceeds of loans and grants by various development partners to finance respective programs and projects in the financial year 2021/22.

**Conclusion**

40. The proposals contained in the Bill take into account the fiscal framework set out in the BPS for 2021/22 and are intended to ensure fiscal sustainability specifically against the backdrop of escalating expenditure pressure on the fiscal framework occasioned by increase in Consolidated Fund Services (CFS) and the persistent under performance of the ordinary revenue.

41. The National Treasury has also taken into account the approved Third Basis for Revenue Allocation among county governments pursuant to Article 217 of the Constitution, whose implementation would be preceded by a Ksh.53.5 billion increase in the Counties' equitable revenue share. It is expected with successful implementation of the Third Basis formula form FY 2021/22 to 2024/25, county governments will now be able to plan, budget and spend in accordance with areas of need as envisaged in the formula as well as achieve their developmental needs.

42. The proposed equitable share allocated to county governments in the Division of Revenue Bill, 2021, at 27.3 per cent of the most recent audited revenue, as approved by the National Assembly, is way above the minimum threshold required under Article 203(2) of the Constitution.