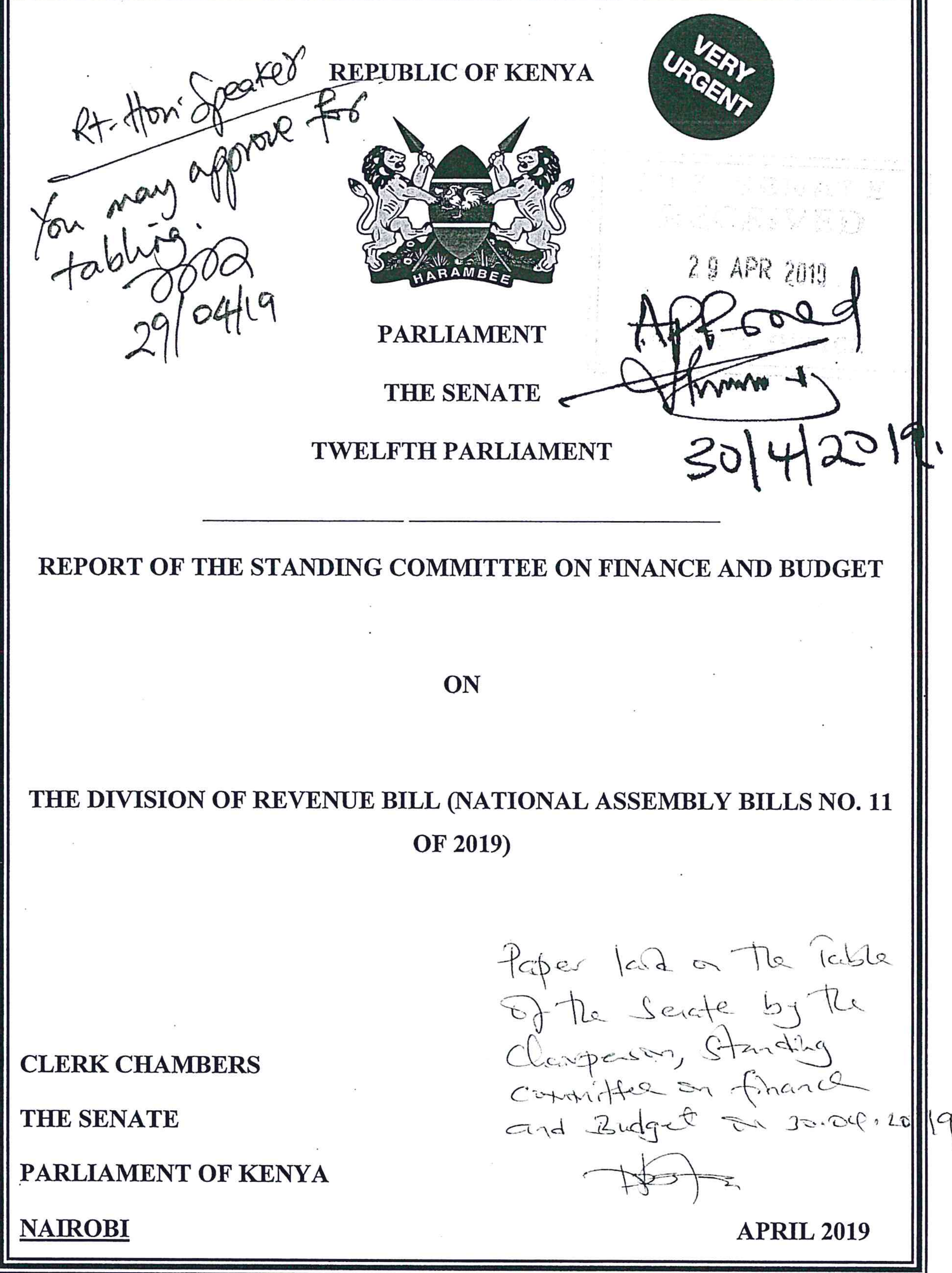

REPUBLIC OF KENYA

PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET

ON

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO. 11 OF 2019)

Paper laid on the Table of the Senate by the Chairperson, Standing Committee on Finance and Budget on 30.04.2019

CLERK CHAMBERS

THE SENATE

PARLIAMENT OF KENYA

NAIROBI

APRIL 2019

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PREFACE

Mandate and Functions of the Committee

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

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in plenary on inquiry of certain issues under the mandate of a particular committee.

The Standing Committee on Finance and Budget is established pursuant to standing order 218(3) of the Senate *Standing Order and is mandated –*

a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –*
   i) *the Budget Policy Statement presented to the Senate;*
   ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
   iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*
   iv) *to consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy; and*

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

Membership of the Committee

The Committee was constituted by the House on Thursday 14th December, 2017, during the First Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

1. Sen. (Eng) Mohamed M. Mahamud, CBS,MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Mutula Kilonzo Junior, MP - Member
5. Sen. Aaron Cheruiyot, MP - Member
6. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member
7. Sen. (Dr) Rose Nyamunga, MP - Member
8. Sen. Boniface Mutinda Kabaka, MP - Member
9. Sen. CPA Farhiya Haji, MP - Member

BACKGROUND AND EXECUTIVE SUMMARY

Article 218 of the Constitution provides for the submission of the Division of Revenue Bill and the County Allocation of Revenue Bill to Parliament, at least two months before the end of each financial year.

The BPS is the precursor to the Division of Revenue Bill, since it sets the fiscal framework underpinning the sharing of revenue between the two levels of government. The adoption of the BPS Report paves way for the publication and subsequent introduction of the Division of Revenue Bill to the House. The Division of Revenue Bill, 2019 was published and introduced in the National Assembly and passed without amendments.

The Division of Revenue Bill (National Assembly Bills No. 11 of 2019), was submitted to the Senate by the National Assembly and upon receipt the message was passed to the House.

The Division of Revenue Bill, 2019 was read a First Time in the Senate on Tuesday, 9th April, 2019, and thereafter the Bill stood committed to the Standing Committee on Finance and Budget pursuant to standing order 140 (1) of the Senate Standing Orders.

The Bill provides for the division of nationally raised revenue between the two levels of government as well as setting out specific resources to be provided to counties as conditional grants and loans, and the Equalization Fund. In addition, the Bill is accompanied by an explanatory memorandum as required in Article 218(2) of the Constitution. The memorandum sets out the explanation of revenue allocation as proposed by the Bill along with the evaluation of the Bill in relation to the criteria mentioned in Article 203(1) of the Constitution. It also provides a summary of any significant deviation from the recommendations from the Commission on Revenue Allocation with an explanation for each such deviation.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 140(5) of the Standing Orders of the Senate, the Standing Committee, in its consideration of the Bill, invited key stakeholders, including the National Treasury, Council of Governors,

Commission on Revenue Allocation, County Assembly Forum who made submissions to the Committee.

The Committee also invited other non–state actors and the general public who similarly participated and submitted their contributions. In that regard, the Committee facilitated public participation and took into account the views and recommendations of the public in its report to the Senate.

The enactment of the Division of Revenue Bill is critical in setting the stage for the preparation of the County Allocation of Revenue Bill, which will inform the preparation of respective county budget documents in a manner that is timely and enables fiscal clarity and planning.

Committee's Recommendations

The Committee recommends that the bill be approved with amendments. The amendments include-

a) Amending the Equitable Share to the County governments from Kshs 310,000,000,000 to Kshs 335,670,000,000.

Adjustments of the FY 2018/2019 by a three year average inflation rate of 6.9%

b) Deleting the proposed allocations to the Leasing of Medical Equipment Project of Kshs 6,200,000,000.

c) Amending clause 5 (1) to indicate that any shortfall on revenues raised nationally shall be borne by the national government.

Acknowledgements

The Committee acknowledges the National Treasury, Commission on Revenue Allocation, Council of Governors, Institute of Certified Public Accountants (ICPAK), International Budget Partnership (IBP) and members of the public who made insightful contributions and recommendations to the Bill. Further, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate.

Appreciations to all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on the Division of Revenue Bill (National Assembly Bills No. 11 of 2019).

SIGNED:

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SEN. (ENG) MOHAMED M. MAHAMUD, CBS, M.P.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

Date: 29/4/19

Pursuant to standing order 213 (2) of the Senate Standing Orders, the Senate Standing Committee on Finance and Budget Committee adopted the report on Division of Revenue Bill, (National Assembly Bills No. 11 of 2019). The Members of the Committee hereby affix their signatures to this Report to affirm the support for the Report –

Sen. (Eng) Mohamed M. Mahamud, CBS, MP	-Chairperson	________
Sen. (Dr) Isaac Mwaura, CBS, MP	-Vice Chairperson	________
Sen. Wetang'ula Moses Masika, EGH, MP	- Member	________
Sen. MutulaKilonzo Junior, MP	- Member	________
Sen. Aaron Cheruiyot, MP	- Member	________
Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP	- Member	________
Sen. (Dr) Rose Nyamunga, MP	- Member	________
Sen. CPA Farhiya Haji, MP	- Member	________
Sen. Boniface Mutinda Kabaka, MP	- Member	________

CHAPTER ONE

1.0 VERTICAL ALLOCATION OF REVENUE FOR FINANCIAL YEAR 2019/20

1.1 HIGHLIGHTS OF THE DIVISION OF REVENUE BILL, 2019

1. The 2010 Constitution established two levels of government that are distinct and interdependent. This set two levels of governance in relation to political representation at the lower level through County Assemblies and the national political representation through bicameral Parliament comprising of the National Assembly and the Senate. It also sets the financial devolution at the two levels of governments at the county level and national level.

2. Article 203 and 218 of the Constitution provides for equitable sharing of revenue raised nationally between the national and county governments. The Division of Revenue Bill, 2019 provides for the allocation for financial year 2019/20. It details the proposed sharable revenue, national government share of revenue, county equitable share of revenue, conditional grants and the Equalization fund.

3. The Budget Policy Statement (BPS) being a precursor to the Annual Division of Revenue Bill sets the fiscal framework in relation to equitable revenue sharing between the two levels of government.

4. The Annual Division of Revenue Bill is prepared in accordance with Article 202 of the Constitution, which expressly makes it mandatory for the nationally raised revenue to be shared equitably between the national and county governments. The equitable share of the revenue raised nationally that is allocated to county governments is guaranteed to be not less than 15 percent of the revenue collected by the national government and is further calculated on the basis of the most recent audited accounts of revenue received and approved by the National Assembly.

5. Further to ensure that county governments are not starved of funds to carry out functions and powers assigned to them under Schedule 4 of the Constitution, Article 202 guarantees that national government makes fiscal transfers to the counties of at least 15% of the nationally raised revenue every financial year. The basis for FY 2019/20 is the latest audited revenue and approved by Parliament for FY 2014/15 of Kshs. 1,038.04 Billion.

6. The National Assembly approved the Division of Revenue Bill, 2019 recommending an equitable share of revenue of Kshs 310.0 billion to the county governments and Kshs. 1,561.42 billion to the national government.

7. The Division of Revenue Bill (DORB), 2019 consists of the following;
    a. Total shareable revenue between the National Government and county governments for FY 2019/20 is projected at Ksh. 1.877 Trillion of which:
        - The National Government share - Ksh. 1.561 Trillion
        - Equitable Share- Ksh. 310 Billion which is 30% of the most recent audited revenue approved by Parliament (*Financial year 2014/15).*
        - The Equalization Fund- Ksh. 5.76 Billion which is 0.6% of the most recent audited revenue approved by Parliament.

    b. Conditional allocation- Ksh. 61.599 Billion of which:
        - Additional conditional allocations from National Government Share of revenue)- Ksh. 13.911 Billion
        - Allocation from the Fuel Levy Fund (15%)- Ksh. 8.984 Billion
        - Allocations as loans and grants- Ksh. 38.704 Billion

8. The total allocation to the county governments for FY 2019/20 is Ksh. 371.600 Billion.

1.2 EQUITABLE SHARE TO COUNTY GOVERNMENTS FOR FY 2019/20

9. A review of the DORB 2019 and other attendant documents indicates that the following was considered in coming up with the equitable share –
    - The baseline of Ksh. 304.96 Billion was used. This is after the alleged reduction/ revised equitable share to county governments for FY 2018/19. The Division of Revenue Act (DORA), 2018 allocated Ksh. 314 Billion.
    - The baseline of Ksh. 304.96 Billion is grown by an adjustment by adding Ksh. 5.04 Billion.
    - The equitable share for FY 2019/20 becomes Ksh. 310 Billion.

1.3 CONDITIONAL ALLOCATIONS TO COUNTY GOVERNMENTS FOR FY 2019/20

a) Additional conditional allocations (National Government Share of Revenue)

10. In accordance with Article 202(2) of the Constitution, the national government may allocate additional conditional allocations to the county governments from the national government share of revenue raised nationally, whose main object is intended to finance national strategic interventions to be implemented by the county governments. During the current FY 2019/20 the total additional conditional allocations from the revenue raised nationally, stands at Ksh. 22.9 billion. These conditional grants are transferred to county governments and included in the budgets of county governments to be approved by the respective county assemblies.

ii) ***Level 5 Hospital (Kshs. 4,326 M):*** During the financial year 2019/20 the national government proposes to allocate Ksh. 4.3 billion. The objective of the conditional grant to level 5 hospitals is to sustain service delivery in designated Level 5 hospitals mainly former Provincial General Hospitals. This is to be achieved by targeting medical and surgical subspecialties, inter-county referral services and medical training.

iii) ***Supplement for Construction of County Headquarter (Kshs. 485 M):*** The grant was introduced as part of conditional grant during financial year 2016/17 whose purpose is to support construction of offices in five (5) County Governments which, in 2013/14, did not inherit adequate facilities from defunct Local Authorities that could accommodate the new County Governments' administration both County Executive and the County Assemblies.

iv) ***Compensation for User Fees Forgone (Kshs. 900 M):*** This conditional grant was introduced during the financial year 2015/16 with the objective of compensating public dispensaries and health centers for lost revenue on abolishment of user fees. The grant has been set at Kshs. 900 million since its inception.

v) ***Road Fuel Levy Fund (Kshs. 8,984 M):*** The main objective of the Road Maintenance Fuel Levy Fund is to maintain county roads. The allocation has grown over time from Kshs 3.4 billion in 2015/16 to the proposed Kshs 8.98 billion. The allocation to this conditional grant is based on collections from the Roads Maintenance Fuel Levy Fund at 15% of total projected collections. The allocation caters for the maintenance of public roads, including the former local authority unclassified roads.

vi) ***Rehabilitation of Village Polytechnics (Kshs. 2,000 M):*** The conditional grant was introduced in FY 2017/18 with the initial allocation of Kshs 2.0 billion and has been maintained at the same amount for the subsequent years. The main objective of this targeted grant to the county governments is to improve access, quality, equity and relevance in Vocational Training, through rehabilitation of the village polytechnics.

vii) ***Leasing of Medical Equipment (Kshs. 6,200 M)*** The programme has been running since FY 2015/16 with initial allocation of Kshs 4.5 billion and grown to Kshs 9.4 billion in FY 2018/19 but has been scaled down to Kshs 6.2 billion in

FY 2019/20. It aims at supporting provision of specialized medical services in public hospitals in an effort to improve access to specialized medical services for all Kenyans, especially those living in rural areas. The objective is to equip at least two medical facilities at each county and upscale the referral system at the county level thereby easing congestion at national referral hospitals and at the same time reduce distances in seeking medical health care.

b) Conditional Allocations (Loans and Grants)

11. These are conditional allocations from development partners that amount to Ksh. 38.704 Billion for FY 2019/20. The conditional allocations are disbursed through State Departments according to the respective financing agreements and in fulfilment of the set conditions. During the FY 2019/20, the following additional conditional allocations will be channeled to counties;

i) **Kenya Devolution Support Program (KDSP) County Capacity Building ("level 1") Grant of Ksh. 1.410 billion.** This is the third year of its implementation and is a conditional grant financed by a World Bank credit to support county governments' capacity building. This grant has been reduced from an allocation of Ksh. 2.3 billion in FY 2018/19 to Ksh. 1.4 billion in FY 2019/20.

ii) **Kenya Devolution Support Program (KDSP) Performance ("level 2") Grant amounting to Ksh. 4.890 billion.** 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 PFM Reforms.

Performance is to be assessed by an independent firm to be recruited through a competitive process. The budget allocation for this grant, which is in its third year of implementation, has increased from Ksh. 4 billion in financial 2018/19 to Ksh.

4.9 billion in financial year 2019/20 to cater for increased number of counties who will have met the performance score after independent assessment.

iii) **Transforming Health Systems for Universal Care Project conditional allocation of Ksh. 2.994 billion (World Bank credit):-** This conditional allocation through the Ministry of Health is meant for continued improvement in 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 has reduced to Ksh. 2.99 billion in the financial year 2019/20 from Ksh. 3.6 billion in FY 2018/19 in accordance with the financing agreement between the donor and the National Government.

iv) **DANIDA Grant (Universal Healthcare in Devolved System Program) Kshs 986.583 million:** The purpose of the grant is improvement of access to quality of primary health care and reproductive, maternal, newborn, child and adolescent health (RMNCAH) services at the county level. It is implemented through Ministry of Health who are responsible for ensuring funds are included in the budget estimates of the ministry for the FY 2019/20 and submission of quarterly and annual financial and performance reports to the National Treasury and separate copies to each county government.

v) **National Agricultural and Rural Inclusive Growth Project (NARIGP) of Ksh. 7.232 billion (World Bank credit):** - This additional conditional allocation, which in FY 2018/19 amounted to Ksh. 1.05 billion is expected to increase to Ksh. 7.2 billion in FY 2019/20. This conditional allocation is meant to compliment efforts by counties to increase agricultural productivity and profitability of targeted rural communities in selected counties, and to provide immediate and effective response in case of crisis or emergency.

vi) **EU-Instruments for Devolution Advice and Support (IDEAS) grant of Ksh. 492.698 million:** This grant, which is in its third year of implementation, is expected to decrease from Ksh 1.04 billion in FY 2018/19 to Ksh. 492.7 million in FY 2019/20. The allocation is meant for disbursement of the 2nd tranche of the grant to facilitate implementation of projects identified in financial year 2018/19 for the achievement of Local Economic Development (LED) in the county respective contracts.

vii) **IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP) - Kshs 3.643 billion:** This conditional grant to the counties is implemented through the State Department of Agriculture. Purpose of the grant is to increase agricultural productivity and build resilience to climate change risks in targeted smallholder farming and pastoral communities.

viii) **Kenya Urban Support Program (KUSP) - Urban Development Grant (UDG) additional conditional allocation of Ksh. 11.464 billion:** - The objective of this additional conditional allocation is to establish and strengthen urban institutions to deliver improved infrastructure and services in participating counties in Kenya. It is in its second year of implementation and is meant to ensure provision of capacity building and institutional support to 47 counties. However, direct financial support will be provided to 45 counties other than the city counties of Nairobi and Mombasa, and to 59 potentially eligible urban areas within those counties.

ix) **Kenya Urban Support Project (KUSP) - Urban Infrastructure Grant Allocation (UIG) - Ksh. 396.000 million** – The main purpose of this programme is to provide support to participating County Governments for the formulation of urban development plans including the establishment and operation of urban institutional arrangements such as charters, boards, administrations and operation of Urban Institutional arrangements and for the initial preparation of urban

infrastructure investments. This grant has decreased from an allocation of Ksh. 1.854 billion in FY 2018/19 to Ksh. 396 million in FY 2019/20 because the allocation in FY 2018/19 included a balance of Ksh. 927 million carried forward from the FY 2017/18.

x) **IDA – Water and Sanitation Development Project (WSDP) World Bank Credit of Ksh. 3.50 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 will be achieved by investing in water supply and sanitation infrastructure in urban centers in these counties. This additional conditional allocation, which has been reduced slightly from Ksh. 3.8 billion in FY 2018/19 to Ksh. 3.5 billion in FY 2019/20, is meant to facilitate continued implementation of the projects started in 2018/19.

xi) **Sweden Agricultural Sector Development Support Programme (ASDSP) II- Ksh. 849.626 million:** The ASDSP II, which is in its second 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.

xii) **EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER) - Ksh. 495.000 million**: -The purpose of this additional allocation, which is in its second year of implementation, is to facilitate the implementation of the national climate change action plan and the master plan for the conservation of water catchment areas of Cherangany Hills and Mount

Elgon and includes Lake Victoria and Turkana basins. It is also addressing a number of cross-cutting issues like climate change, gender equality, good governance and human rights.

xiii) **Drought Resilience Programme in Northern Kenya (DRPNK) - Ksh. 350.000 million-** This is a new programme financed by proceeds of a loan and grant from the German Development Bank for Turkana and Marsabit counties. The programme objective is defined as follows: "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.

CHAPTER TWO

2.0 SUBMISSIONS FROM STAKEHOLDERS DURING PUBLIC HEARINGS

12. This chapter presents the deliberations of the Committee with various stakeholders. It highlights the views and recommendations of the public submitted during the public hearings held on Tuesday, 23rd April, 2019.

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
International Budget Partnership-Kenya and Institute of Certified Public Accountants of Kenya -ICPAK	**Equitable Share 2019/20-** The National Treasury and the Commission on Revenue Allocation still do not agree on what is the revenue growth factor that should be used to determine the growth of the equitable share between 2018/19 and 2019/20. This is the third year that this has happened. While CRA is proposing using a 3-year inflation average the National Treasury is quite vague on how low revenue collection has been applied to arrive at its' proposal.
	The formation and allocation to conditional grants do not seem to follow any predictable pattern and the growth in their allocations from one year to the next seems arbitrary. Based on this trend it's not clear if the allocations to some of the grants are adequate and how sustainable they are in the long term.
	Public debt repayment and pension are having an impact on how much is available to be shared between national and county government. Good policies to manage the two obligations are key to ensure there is sustainable funding to counties.
	The growth of the equitable share continues to decline- The National Treasury has recommended Kshs. 310 billion as the equitable share to be allocated to counties in 2019/20. This 1

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	percent lowers than the Kshs. 314 billion that was approved in the Division of Revenue Act 2018. However, it is 2 percent higher than the revised figure of Kshs. 304 billion in the Budget Review and Outlook Paper 2018. The **recommendation in the DORB 2019 is the lowest growth since the onset of devolution** the growth has been declining year on year. The **CRA recommendation of Kshs. 336 billion is a growth of 7 percent** which is based on actual three-year average annual inflation. There is no consistent approach in deciding the size of the growth of the equitable share from one year to the next.
	For fairness in the division of revenue, the revenue growth factor should be predictable and based on the revenue raised in the country and how it grows over time. Using inflation as opposed to revenue growth, results in substantially lower projections for counties. The average growth in ordinary revenue between 2011 and 2017 was 14 percent. Therefore, the use of inflation biases the division of revenue process toward national government; when actual revenue growth has consistently been above inflation, then the difference between the inflation rate and the revenue growth is captured entirely by the national government. This is not consistent with the principles of fairness in revenue sharing.
	Management of public debt and pension key to ensure counties have fair growth in their equitable share- Public debt is a non-discretionary obligation which has a bearing on the size of revenue that is eventually shared between the two levels of government. The same goes for pension and salaries to constitutional offices. The higher the share of ordinary revenue

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	that is taken up by these national obligations the lower the sharable revenue and allocations to counties. Therefore, **the Senate has to find ways to link public debt policy to the division of revenue process**. The same applies to pension payment which is taking a growing share of ordinary revenue as shown in the table
	Significance of Audited Financial Statements- The DORB 2019 uses the 2014/15 Audited accounts as the most recent yet the Auditor General finalized and submitted to Parliament reports up to FY 2016/17.The Division of Revenue Bill 2019 should use the most current audited accounts to determine revenue allocation. **Connection between the Budget Policy Statement and the Division of Revenue-** The BPS lays out the national priorities over the medium and they are not limited only to national government functions. The allocations in the DoRB should reflect the priorities as laid out in the approved BPS since it is debated in both Houses of Parliament.
	Conditional grants- The DORB has recommended Kshs. 22.9 billion be allocated to counties as conditional grants. However, the growth of the grants based on allocations from previous years raises questions on what the guiding policies say about the allocations. For example, the allocations to level 5 hospitals and compensation for user fees forgone remain the same as the approved amounts in 2018/19. Should there be an annual adjustment even for inflation? **Allocations to Compensation for user fees forgone may be unrealistic-** The grant has received the same allocation of Ksh

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	900 million since the start of the program in 2015/16. The distribution of the fund in 2018/19 was based on the population of each county as a share of the total country population. However, the fund is meant to be a reimbursement for the fees that counties forego by not charging patients who visit their health facilities. Therefore, a better way to know the need for services and a better way to estimate whether the grant is adequate is to look at health facility visits in Kenya. **Has the policy on leasing of medical equipment changed? -** The language in the DoRB seems to indicate that the proposed allocation of Ksh 6.2 billion is to facilitate the, "purchase and maintenance" of specialized health equipment. This seems to indicate that the policy has changed from leasing the equipment to purchase. The Senate should clarify whether this is the case. Senate needs to clarify on adequacy of personnel and necessary infrastructure for the medical equipment.
Council of Governors	**Short Falls in Revenues**- CoG rejects the proposal in section 5 of the Bill that requires the Cabinet Secretary National Treasury to set threshold for which the National government shall bear the shortfalls in the revenue. Recommends **for the retention of the national government bearing wholesomely the revenue shortfall experienced in any financial year. Section 5(2) of the Bill already awards the national government the responsibility over exceeded revenue collection. This principle should be applied across the board.** If there are shortfalls then national government bears the shortfalls and if the collection exceeds the revenue targets then the exceeded collection is accrued to the national government

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	The audited and approved accounts applied in the allocation to County Governments are based on the 2014/15 financial year which is four financial years back yet it represents only 30% of the approved accounts. If the Counties equitable share was to be equated to the projected shareable revenues of Ksh1.87 trillion, it would equate to 16.5% just barely above the minimum constitutional requirement. This is not equity at all.
	The Council therefore rejects the proposed ksh 310 billion to County **Governments based on the following:** • The proposed revenues to Counties in the 2019/20 FY is a negative reduction by -1.27% from the current approved Division of Revenue Act of Kshs. 314 billion to Kshs. 310 billion. • The ordinary revenues are projected to grow by 13% in the 2019/20 FY giving no reason for the reduction in Counties equitable share. • The Country's economy has also been projected to grow by 6.2% from the current 6.1%. There is therefore positive outlook in terms of economic growth and growth in ordinary revenues and hence there is absolutely no scientific reason for the equitable share of revenues to the counties to be reduced. • Average inflation rate over three years is averaged at 6.7% meaning that the average cost of provision of services has grown by that percentage. A reduction of Counties equitable share shall not cater for the growth in provision

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	of services. If 6.7% is applied as a growth factor then the least amount to county governments should be Ksh 335.7 billion. Ksh 21.7 being the growth factor of inflation. The CoG therefore requests **the Senate to consider compensation to Counties based on the cost of provision of services.** • The Commission on Revenue Allocation has proposed for an increment in the recurrent expenditure ceilings for County Assemblies by almost Ksh 1 billion from the current Ksh 32.7billion to proposed Ksh 33.2 billion. This allocation has not considered the proposed equitable share reduction from Ksh 314 billion to Ksh 310 billion. • The Council proposes that those proposals in the recurrent expenditure ceilings should be reduced by the same amount because County Governments do not have alternative means of revenue mobilization. • The total proposed recurrent expenditure by CRA to the County Governments is Ksh 59.9 billion with the County Assemblies recommended Ksh 33.2 billion and County Executive Ksh 26.7 billion. • Against a proposed allocation of Ksh 310 billion then there is only Ksh 250 billion shared across Counties for development. This is not adequate hence the request for the increase of Counties allocation to at least Kshs. 335.7 billion to cater for the increased cost of provision of services. **The Council also recommends for the institution of a Committee to develop a formula on the revenue growth**

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	factor to be applied over a given period of time to allow for predictability in division of revenue. Currently there is no framework to guide on this as we are left to figures produced and recommended by the National Treasury which in many instances have remained unreliable as they have been revised from time to time. **The Council therefore recommends for the equitable share to County** **Governments in the 2019/20 not to be less than Ksh 335.7 billion.**
	Health Sector- The Bill highlights that "the funds allocated to Level 5 hospitals are only transitional and may be re-allocated to fund Universal Health Coverage once it is scaled up to all 47 Counties." It however not clear what the UHC policy referred in the Bill. The Senate should help locate this policy and how the allocation towards level 5 will be transformed to UHC. The Budget Policy Statement FY 2019/20 proposes scaling up of UHC after the Pilot in the 4 Counties. The CoG recommends that following UHC pilot in the Four (4) Counties, funding for the other 43 Counties should allocated by the National Treasury through the MTEF budget process directly to all Counties. **The Senate should intervene and ensure this is fast- tracked.** The Budget Policy Statement FY 2019/20 indicates MoH plans to supply medical equipment to health facilities across the Counties. **The Council recommends that the funds should be channelled directly to County governments and captured**

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	locally through their budgets since the health facilities are under the jurisdiction of County Governments. The Managed Equipment Service (MES) experience has shown that not all Counties received all the equipment yet all the Counties are paying equal amounts annually
National Treasury and Planning	The Bill allocates county governments an equitable share of Ksh. 310 billion for the financial year 2019/2020. Compared to the revised allocation of Ksh. 304.96 billion for the financial year 2018/19, this reflects an increase of Ksh. 5.04 billion or 1.7 percent. This allocation is twice the constitutional minimum of 15 percent of the latest audited revenues of Ksh 1,038 billion for FY 2014/15. This is an unconditional allocation to be shared among County Governments in accordance with the formula for sharing revenue approved by Parliament under Article 217 of the Constitution. Since this is an unconditional allocation, County Governments are expected to plan, budget, spend and account on the funds allocated independently.
	The allocation of Ksh. 310 Billion, derived from the revised allocation of equitable share to Ksh.304.96 billion for the financial year 2018/19, was tabled and discussed at Inter-Governmental Budget and economic Council (IBEC) and therefore requests that it be supported. The equitable allocation takes into account the cost of devolved functions
	The Bill has provided for additional conditional allocation from the national government share of revenue amounting to Ksh. 22.9 billion. These conditional allocations include:-

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	• Kshs. 6.2 Billion to facilitate the leasing 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. • Kshs. 4.3 Billion for Level-5 hospitals. Hon. Members, Level-5 hospitals have continued to play a significant role in providing specialised health care services to Kenyans. These hospitals provide specialised health care services to citizens residing within and outside their host County Governments, usually for complicated cases referred from lower level health facilities. In order to compensate them for the costs incurred in rendering services to neighbouring County Governments, the National. Government proposes to allocate Ksh 4.3 billion to be transferred to County Governments as a conditional grant • Ksh. 900 Million to compensate County Health facilities for forgone user fees. It is the intention of government to sustain the Government policy of not charging user fees in public health facilities. In this regard, and in furtherance of this policy, the National Government has allocated Ksh. 900 million in the financial year 2019/20 to compensate county governments for revenue forgone by not charging user fees in the county health facilities. • Ksh. 8.98 Billion from the Road Maintenance Fuel Levy Fund to further enhance County Government's capacity to repair and maintain county roads. This allocation is

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	equivalent to 15 percent of the Road Maintenance Fuel Levy Fund. • Ksh. 2 billion for Rehabilitation of Youth Polytechnics, meant to support county governments in equipping Technical and Vocational Centres and capitation of student fees which aims at enhancing access to quality and relevant vocational skills training. • Ksh. 485 Million to supplement county allocation for the construction of county headquarters in five counties: This conditional allocation, which is in its final year of allocation, is intended to further 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.
	Besides the shareable revenue (as defined in the Commission on Revenue Allocation Act of 2011), county governments have also been allocated an additional Ksh. 38.7 billion from proceeds of loans and grants from development partners. This brings the total allocation to county governments in 2019/20 to Ksh. 371.6 Billion or 36 percent of last audited revenue and approved by Parliament.
	The memorandum appended to this Division of Revenue Bill, 2019 clearly demonstrates that in arriving at the total county allocation from the shareable revenue of Ksh. 1,877 Billion in 2019/20, the National Government has taken into account the criteria set out in Article 203(1) of the Constitution. Of the total shareable revenue in 2019/20 (Ksh. 1,877 Billion), county governments have been allocated Ksh. 310 Billion or 17.3

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	percent and the equalisation fund Ksh. 5.8 Billion or 0.3 percent. Of the balance, which is the National Government share, 62.4 percent has been allocated to national interest, public debt and other national obligations and contingencies, leaving only Ksh. 377 Billion or 20 percent for other national government needs such as infrastructure, national security (defence, police etc), foreign affairs, international trade etc. This therefore means that National Government will have to borrow to finance its needs.
	An evaluation of the Bill in relation to the criteria set out in Article 203 (1); and a summary of any significant deviation from the Commission on Revenue Allocation's recommendations, with an explanation for each such deviation in order to comply with the Constitutional requirement, a memorandum has been prepared and appended to the Bill.
Vivienne Taa	• **Use of Aged Audited Accounts as the Basis for Revenue Allocation-** Article 203 (2) of the Constitution of Kenya requires that the equitable share of revenue raised nationally allocated to the counties be no less than 15% of all revenue collected. • Article 203 (3) qualifies this by stating that the allocation should be calculated based on the most recent audited accounts approved by the National Assembly. • The DoRB 2019 states that the latest audited accounts approved by the National Assembly are those of FY2014/2015 and this is the basis for calculation of the equitable share to be allocated to the counties in FY2019/2020. In essence, the equitable share to be

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	allocated to the counties in FY2019/20 is based on revenue collected 5 years ago. • According to Kenya Revenue Authority [KRA] reports, KES 1,365,000,000 revenue was collected in FY2016/2017. Meaning, if treasury had for instance relied on this, even with the percentage of national revenue allocated to the counties remaining at 30%, the equitable share to the counties would be KES 409,500,000,000 representing an additional KES 99.5 Billion on equitable share alone. **Senate should speak boldly against continued use of aged audited accounts as the basis for equitable revenue sharing and also provide leadership in finding a sustainable solution.**
	Allocation for Leased Medical Equipment Scheme- • The leased Medical Equipment Scheme is a long-term contractual project by the national government, currently in its 5th year of implementation and aimed at supporting provision of quality healthcare services in the counties. • In February 2015, the Ministry of Health awarded leasing agreements worth KES 43 Billion to various contractors for provision of specialized medical equipment and technology to counties. • The total tender sum for this project is USD 432,482,160 paid in quarterly instalments of USD 15,445,790. As of November 2018, the total amount paid was USD 181,711,278 with a balance of USD 287,850,780 still remaining.

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	• **Despite several accountability and transparency issues raised by the counties including lack of full disclosure of the contract** details by **the Ministry of Health, they were still compelled to pay KES 95M annually for the project, with the deductions made directly from county allocations by National Treasury**. • This was later revised upwards to KES 200M, representing more than 100% variation of contract in contravention of public procurement rules and regulations. • Each county is expected to pay a flat figure of KES 200M despite not receiving uniform equipment, thereby disadvantaging counties that received less equipment. • With the exception of Intensive Care Unit [ICU] and Central Sterile Services Department [CSSD], various equipment installed under this scheme are not in use in at least 24 counties across Kenya. • Recurrent costs such as equipment maintenance and supply of consumables, reagents and spare parts were to be covered at no additional cost. **However upon project implementation, counties were informed that only a start-up kit would be provided.** **In view of the various issues surrounding the implementation of this project, the balance and remaining repayments should be shouldered by the National Government.** **The KES 6.2 Billion allocated for leasing of medical equipment should be reallocated as conditional grant to the**

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	counties for provision of healthcare services under the Foregone User Fees.
	Free Maternal Healthcare Funds Disbursed as a Reimbursement- • In 2013, the government introduced free maternal healthcare. Initially counties would receive re-imbursement to cater for this quarterly but this was later revised and put under the NHIF Linda Mama Scheme in 2016. • Registration for Linda Mama has been slow with about 268,171 registrations as at March 2018. It is estimated that the average annual registration into the scheme is 130,000. A significant number of mothers who would benefit from free maternal healthcare end up missing out due lack of awareness, especially at the grassroots level. • Mr. Benson Murage's case in February 2019 clearly illustrates the ineffectiveness of the Linda Mama Scheme. He was arrested and arraigned in court for attempting to sneak his new born child out of Kenyatta National Hospital because he couldn't afford his wife's maternity fees, yet this is a service that the government supposedly offers for free. **Considering provision of healthcare services is a largely devolved function, a better approach would be to provide the allocation for free maternal healthcare to the counties as a conditional grant. This would eliminate the need for pre-registration in order to benefit from free maternal healthcare services.**

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	Counties already receive conditional grants to run Level 5 hospitals. It makes sense to include free maternity healthcare as an additional conditional grant because under the current arrangement of the allocation being channelled through NHIF, counties are unable to forecast and plan in advance to better serve citizens. At the beginning of every financial year, counties will have a clear view of the amount of money available for free maternal healthcare services because the allocation will be included in the Division of Revenue Bill and eventually the County Allocation of Revenue Bill.
	Allocation for Rehabilitation of Youth Polytechnics- • According to the DoRB 2019, the conditional allocation for the rehabilitation of youth polytechnics is in its 3rd year of implementation through the State Department of Vocational and Technical Training. • Only KES 2 Billion has been allocated for this translating to approximately KES 42.5 M per county. The question is what is the basis of this? In terms of resources, this is really a drop in the ocean considering the youth in Kenya – persons aged 18 years to 35 years – make up 55% of the population. • With the current population of Kenya estimated to be at 40Million, this would approximately be 22 Million people.

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	• If the government is serious about empowering the youth, they should invest in them and their education, training and activities. Considering all youth and indeed citizens live and reside in counties, an additional amount should be added to the current KES 2 Billion allocated for the rehabilitation of youth polytechnics from the KES 16.2 Billion allocated for youth empowerment by the national government.
Commission on Revenue Allocation	The Division of Revenue Act (DoRA) 2018 and the County Allocation of Revenue Act, 2018 allocated Kshs. 1,367 billion and Kshs. 314 billion to the national and county governments respectively for FY 2018/19 as equitable share from the nationally raised revenue. The DoRA 2018 and CARA 2018 have not been amended to change this allocation. An allocation of an equitable share of Kshs. 305 billion to county governments in the Division of Revenue Bill 2019 has no legal basis.
	The national government projects the shareable revenue for 2019/20 at Kshs. 18877 billion. At minimum, the Commission recommends that allocations to both levels of government be adjusted by a three year average inflation rate of 6.9 percent. This will increase the county allocation by 6.9 percent from Kshs. 314 billion to Kshs. 335.7 billion and the national government allocation by 12 percent from Kshs. 1,367 to kshs. 1,541 billion. Part of the additional allocations to national government should be used to retire the public debt.
	It is the considered view of the Commission that five cities namely: Nairobi, Mombasa, Kisumu, Nakuru and Eldoret are centres of economic growth and provide unique services such as

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	provision of sewerage systems, water reticulation, solid waste disposal and storm water drainage and management to the residents. In view of this the Commission persuades the Senate to Consider the new conditional grant of Kshs. 5.0 billion to finance cities starting in FY 2019/20.
	The Commission recommendation was based on: • Prevailing budgetary provisions to both levels of government as the base. • Adjustment for inflation
The Institute for Social Accountability	**Negative impact of national debt on shareable revenue overlooked**-Kenya's public debt has reached unsustainable levels whereby from July, an equivalent of 61 per cent of the total projected tax collection of Kshs. 1.87 trillion will be spent on debt repayment, leaving only Kshs. 693,854 for recurrent and development expenditures which will lead to a collapse of government services. This implies that implementation of the Big Four Agenda is not tenable and more crucially service delivery at county level stands a risk of disruption. The Controller of Budget and Parliamentary Budget Office have both flagged this threat in their recent reports. It is noteworthy that the Constitution places upon Parliament the responsibility of ensuring that the national government adheres to constitutional and statutory principles on public finance management. **The Division of Revenue Bill as presently prepared fails to address itself to the shortcomings of the present fiscal management framework, and therefore falls short of the constitutional oversight mandates placed upon Parliament.**

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	The Division of Revenue Bill disregards Commission on Revenue Allocation recommendations on shareable revenue- Whereas the shareable revenue has been growing in nominal terms, it has been falling in real terms due to a failure to compute it based on the latest audited accounts and the conservative criteria used by the National Treasury to adjust for inflation. This is further compounded by failure to cost county functions and a minimalist application of the constitutional requirement of 15 percent. **The auditor general has tabled audit reports up to the 2017/18 FY, but these have not been approved by Parliament.** The Division of Revenue Bill can therefore be construed as offending Articles 174, 202 and 203 of the Constitution. For instance, the BPS, 2019 identifies several functions that are yet to be devolved and funded including statistics, land survey, mapping and housing, cooperatives, mechanical and transport equipment; ferries and harbours that are critical to actualization of the big 4 plans at the county level. **Recommendations:** • **Declare a national debt crisis and institute emergency measures.** • **Urgently revise the National Treasury Framework to accord with the Constitution and support actual devolution needs by adoption of the Commission on Revenue Allocation proposed allocation to shareable revenue.** • **Institute a process to generate a strategic fiscal plan for attainment of the big 4 agenda.**

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	Definition of National Interest-The lack of a clear definition and objective criteria for determining national interest has resulted in disputes between the national government and county governments. Following the court action by the Council of Governors, the matter has been in mediation since 2016 with no resolution to date. While the process drags on, the National Treasury continues to use a definition of national interests which inimical to county interests. It is therefore behoves all parties concerned to strive towards a consensus. **Parliament can contribute to the discourse by including in the division of revenue performance accountability reporting.**
	Conditional Grants-The framework for the management of conditional grants continues to be weak, and indeed does not meet the constitutional requirements for fiscal prudence and transparency. The information on loans and grants in the DORB is incomplete and does not meet the standards for the PMFA Section 48. There seems to be no clear criteria followed in the determination of the growth factor, size and distribution of conditional grants to county governments. There is no information that explains the margin of increases over the years or the factor used to explain the increase or reduction of allocations over the years. Performance information on how conditional grants are spent and whether they are reaching the targets set is not available. The national government implementation reports lack clear performance information of each of these grants. **Therefore The Division of Revenue Bill should include performance and accountability information**

STAKEHOLDER	OBSERVATIONS AND RECOMMENDATIONS
	on conditional grants to adhere with constitutional requirements.
	Public Participation-There are gaps in public engagement in the division of revenue process despite having in place enabling legal provisions in the Constitution Article 201 and PFMA Section 35. It is still a challenge on how the public should be involved in the division of revenue process, and inadequate access to timely and relevant information to enable meaningful public participation. There is a need for clear guidance on how the public should engage during the division of the revenue process. Stakeholders should play their oversight role. Parliament needs to ensure the publication and pollicisation of performance reports on how conditional grants are implemented. Therefore: • Budget committee to immediately ensure all implementation reports of national government entities are available on their websites. • The Division of Revenue Bill to provide the standards to ensure all government institutions set aside at least 2 percent of the annual budgetary allocation for public participation and civic education. • National Treasury to urgently convene stakeholders to inform national regulations on public participation.

CHAPTER THREE

3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1 OBSERVATIONS

The Committee made the following observations-

i) The Division of Revenue Bill, 2019 passed by the National Assembly proposes a reduction in the Equitable Share allocation to county governments from Ksh. 314 billion in FY 2018/19 to Ksh. 310 billion in FY 2019/20. The proposal does not take into consideration the effects of the inflation on service delivery.

ii) The Senate approved an equitable share to the county governments of Kshs. 335.67 billion during the consideration of the 2019 Budget Policy Statement (BPS).

iii) Leasing of Medical Equipment project has been source of contention between various stakeholders. Further, the provision in the DORA has been varying over the years since inception in FY 2014/15. The Senate, in its report on the 2019 BPS, recommended the suspension of allocation to the project until full disclosure of information on the total contract sum, repayment period and implementation status.

iv) The conditional allocation to counties from the Road Maintenance Fuel Levy Fund is based on 15% of the fund's total estimated amount for FY 2019/20 by the Kenya Roads Board. However, the total estimated amount for the fund for FY 2019/20 has not been provided.

v) Clause 5 proposes that the Cabinet Secretary for Finance to solely determine the threshold to which the national government may bear any shortfall on revenues raised nationally.

3.2 RECOMMENDATIONS

The Committee recommends that the bill be approved with the following amendments-

a) Amending the Equitable Share to the County governments from Kshs 310,000,000,000 to Kshs 335,670,000,000.

Adjustments of the FY 2018/2019 by a three year average inflation rate of 6.9%

b) Deleting the proposed allocations to the Leasing of Medical Equipment Project of Kshs 6,200,000,000.

c) Amending clause 5 (1) to indicate that any shortfall on revenues raised nationally shall be borne by the national government to the extent of the threshold as prescribed in the regulations by Cabinet Secretary.

d) Deleting-

   i) the information on maternal health care appearing immediately after the schedule; and

   ii) The percentage of the total county allocations appearing on the last row of the schedule.

Following the proposed amendments, the new schedule referred in Clause 4 will be as follows-

ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2019/20

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2014/15 audited and approved Revenue i.e. Ksh.1,038,035 Millions
A. National Government*	**1,535,746,497,191**	
Of which:		
1. Leasing Of Medical Equipment	-	
2. Compensation For User Fees Forgone	*900,000,000*	
3. Level 5 Hospitals	*4,326,000,000*	
4. Supplement For Construction Of County Headquarters	*485,152,184*	
5. Rehabilitation of Youth Polytechnics	*2,000,000,000*	
B. Equalization Fund	**5,760,000,000**	**0.60%**
C. County Equitable Share	**335,670,000,000**	**32%**
D. Total Shareable Revenue	**1,877,176,497,191**	
Memo items		
1. County Equitable Share	**335,670,000,000**	
2. Additional conditional allocations(National Government share of Revenue) of which;	**7,711,152,184**	
2.1. Leasing Of Medical Equipment	-	
2.2 Compensation For User Fees Forgone	*900,000,000*	
2.3 Level 5 Hospitals	*4,326,000,000*	
2.4 Supplement For Construction Of County Headquarters	*485,152,184*	
2.5 Rehabilitation of Youth Polytechnics	*2,000,000,000*	
3. Allocation from Fuel Levy Fund (15%)	**8,984,062,500**	
4. Conditional allocations (Loans & grants) of which:	***38,704,877,210***	
4.1 IDA-Kenya Devolution Support Program (KDSP) Level 1	*1,410,000,000*	

4.2 IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)	*4,890,000,000*	
4.3 IDA-Transforming Health Systems for Universal Care Project	*2,994,247,736*	
4.4 DANIDA-Universal Healthcare For Devolved System Program	*986,583,544*	
4.5 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	*7,232,719,940*	
4.6 EU-Instruments for Devolution Advice and Support (IDEAS)	*492,698,583*	
4.7 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	*3,643,298,670*	
4.8 World Bank- Kenya Urban Support Program(KUSP)- UDG	*11,464,702,500*	
4.9 World Bank- Kenya Urban Support Program(KUSP)- UIG	*396,000,000*	
4.10 IDA- Water and Sanitation Development Project (WSDP)	*3,500,000,000*	
4.1 1 Sweden Agriculture Sector Development Programme II (ASDP II)	*849,626,237*	
4.12 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)	*495,000,000*	
4.13 Drought Resilience Programme in Northern Kenya	*350,000,000*	
Total County Allocations= (1+2+3+4)	**391,070,091,894**	

Recommendations

1. In view of the various issues surrounding the implementation of this project, the balance and remaining repayments should be shouldered by the National Government.

2. The KES 6.2 Billion allocated for leasing of medical equipment should be reallocated as a conditional grant to the counties for provision of healthcare services under the Foregone User Fees.

3. Free Maternal Healthcare Funds Disbursed as a Reimbursement

1. In 2013, the government introduced free maternal healthcare. Initially counties would receive re-imbursement to cater for this quarterly but this was later revised and put under the NHIF Linda Mama Scheme in 2016.

2. Registration for Linda Mama has been slow with about **268,171 registrations** as at March 2018. It is estimated that the average annual registration into the scheme is 130,000. A significant number of mothers who would benefit from free maternal healthcare end up missing out due lack of awareness, especially at the grassroots level.

3. Mr. Benson Murage's case in February 2019 clearly illustrates the ineffectiveness of the Linda Mama Scheme. He was arrested and arraigned in court for attempting to sneak his new born child out of Kenyatta National Hospital because he couldn't afford his wife's maternity fees, yet this is a service that the government supposedly offers for free.

2. Allocation for Leased Medical Equipment Scheme

1. The leased Medical Equipment Scheme is a long-term contractual project by the national government, currently in its 5th year of implementation and aimed at supporting provision of quality healthcare services in the counties.

2. In **February 2015**, the Ministry of Health awarded **leasing agreements worth KES 43 Billion** to various contractors for provision of specialized medical equipment and technology to counties.

3. The **total tender sum** for this project is **USD 432,482,160** paid in **quarterly installments** of **USD 15,445,790**. As of **November 2018**, the total amount paid was **USD 181,711,278** with a balance of **USD 287,850,780** still remaining.

4. Despite **several accountability and transparency issues** raised by the counties including **lack of full disclosure of the contract details** by the Ministry of Health, they were still compelled to pay **KES 95M annually** for the project, with the deductions made directly from county allocations by National Treasury.

2. Allocation for Leased Medical Equipment Scheme [Cont...]

5. This was later **revised upwards to KES 200M**, representing more than 100% variation of contract in contravention of public procurement rules and regulations.

6. Each county is expected to pay a flat figure of KES 200M **despite not receiving uniform equipment**, thereby disadvantaging counties that received less equipment.

7. With the exception of **Intensive Care Unit [ICU]** and **Central Sterile Services Department [CSSD]**, various equipment installed under this scheme are **not in use** in **at least 24 counties across Kenya.**

8. Recurrent costs such as equipment maintenance and supply of consumables, reagents and spare parts were to be covered at no additional cost. However upon project implementation, counties were informed that only a start-up kit would be provided.

BRIEF ON THE DIVISION OF REVENUE BILL, 2019 FOR USE BY THE CABINET SECRETARY/ NATIONAL TREASURY & PLANNING DURING THE MEETING WITH THE SENATE STANDING COMMITTEE OF FINANCE AND BUDGET

Hon. Members, the primary objective of the Bill is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2019/2020 in fulfilment of the requirements of Article 218 of the Constitution.

Hon. Members, this Bill seeks to promote an equitable society by providing for sharing of revenue raised nationally equitably among the national and county governments in furtherance of the principal of public finance set out in Article 201 (b) (ii) of the Constitution.

Hon. Members, Article 202 (1) of the Constitution requires that revenue raised nationally be shared equitably between the national and county governments. Article 203(1) of the Constitution provides the criteria that shall be taken into account

in determining the equitable shares provided for under Article 202(1) of the Constitution. This criteria provides that the national interest, public debt provisions, the needs of the national government, the need to ensure county governments are able to perform their assigned functions, developmental and other needs of counties as well as the need to ensure stable and predictable allocations of revenue to counties.

Hon. Members, Article 203(2) of the Constitution further provides that the equitable share of the revenue raised nationally that is allocated to county governments shall **not be less than fifteen (15%) percent** of last audited revenue collected by national government as approved by Parliament.

Hon. Members, this Bill allocates county governments an equitable share of **Ksh. 310 billion** for the financial year 2019/2020. Compared to the **revised allocation of Ksh. 304.96 billion** for the financial year 2018/19, this reflects an increase of Ksh. 5.04 billion or 1.7 percent. This allocation is twice the constitutional minimum of 15 percent of the latest

audited revenues of Ksh 1,038 billion for FY 2014/15. This is an unconditional allocation to be shared among County Governments in accordance with the formula for sharing revenue approved by Parliament under Article 217 of the Constitution. Since this is an unconditional allocation, County Governments are expected to plan, budget, spend and account on the funds allocated independently.

Hon. Members, I would also like to bring to the attention of honourable members that the above allocation of Ksh. 310 Billion, derived from the revised allocation of equitable share to Ksh.304.96 billion for the financial year 2018/19, was tabled and discussed at Inter-Governmental Budget and economic Council (IBEC) and therefore requests that it be supported.

Hon. Members, I would also like to bring to the attention of honourable members that this equitable allocation takes into account the cost of devolved functions.

Hon. Members, Article 202(2) of the Constitution further provides that county governments may be given additional allocations from the national government's share of the revenue,

either conditionally or unconditionally. In this regard, this Bill has provided for additional conditional allocation from the national government share of revenue amounting to Ksh. 22.9 billion. These conditional allocations include:-

(a). **Kshs. 6.2 Billion to facilitate the leasing 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.

(b). **Kshs. 4.3 Billion for Level-5 hospitals. Hon. Members,** Level-5 hospitals have continued to play a significant role in providing specialised health care services to Kenyans. These hospitals provide specialised health care services to citizens residing within and outside their host County Governments, usually for complicated cases referred from lower level health facilities. In order to compensate them for the costs incurred in rendering services to neighbouring County Governments, the National

Government proposes to allocate Ksh 4.3 billion to be transferred to County Governments as a conditional grant.

(c). **Ksh. 900 Million to compensate County Health facilities for forgone user fees.**

Hon. Members, It is the intention of government to sustain the Government policy of not charging user fees in public health facilities. In this regard, and in furtherance of this policy, the National Government has allocated Ksh. 900 million in the financial year 2019/20 to compensate county governments for revenue forgone by not charging user fees in the county health facilities.

(d). **Ksh. 8.98 Billion from the Road Maintenance Fuel Levy Fund** to further enhance County Governments capacity to repair and maintain county roads. This allocation is equivalent to 15 percent of the Road Maintenance Fuel Levy Fund.

Ksh. 2 billion for Rehabilitation of Youth Polytechnics, meant to support county governments in equipping Technical and Vocational Centres and capitation

of student fees which aims at enhancing access to quality and relevant vocational skills training.

(f) **Ksh. 485 Million to supplement county allocation for the construction of county headquarters in five counties:** This conditional allocation, which is in its final year of allocation, is intended to further 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.

Hon. Members, it should be noted that besides the shareable revenue (as defined in the Commission on Revenue Allocation Act of 2011), county governments have also been allocated an additional Ksh. 38.7 billion from proceeds of loans and grants from development partners. This brings the total allocation to county governments in 2019/20 to Ksh. 371.6 Billion or 36 percent of last audited revenue and approved by Parliament.

Hon. Members, the memorandum appended to this Division of Revenue Bill, 2019 clearly demonstrates that in arriving at the

total county allocation from the shareable revenue of Ksh. 1,877 Billion in 2019/20, the National Government has taken into account the criteria set out in Article 203(1) of the Constitution. Of the total shareable revenue in 2019/20 (Ksh. 1,877 Billion), county governments have been allocated Ksh. 310 Billion or 17.3 percent and the equalisation fund Ksh. 5.8 Billion or 0.3 percent. Of the balance, which is the National Government share, 62.4 percent has been allocated to national interest, public debt and other national obligations and contingencies, leaving only Ksh. 377 Billion or 20 percent for other national government needs such as infrastructure, national security (defence, police etc), foreign affairs, international trade etc. This therefore means that National Government will have to borrow to finance its needs.

Hon. members, Article 218 (2) of the Constitution further provides that the Division of Revenue Bill shall be accompanied by a memorandum setting out an explanation of revenue as proposed by the Bill; an evaluation of the Bill in relation to the criteria set out in Article 203 (1); and a summary of any significant deviation from the Commission on Revenue

Allocation's recommendations, with an explanation for each such deviation. Hon. Members, in order to comply with this Constitutional requirement a memorandum has been prepared and appended to the Bill.

Hon. Members, the salient features of the Bill are as follows:

Clause 1, 2 and 3 of the Bill relate to the preliminary provisions of the Bill. These clauses provide for the short title of the Act, define words and expressions used in the Bill and state the objects and purpose of the Bill.

Clause 4 of the Bill provides for the division of revenue raised by the national government in respect of the financial year 2019/2020 among the national and county governments.

Clause 5 of the Bill provides for the mechanisms for adjusting for variations in revenue raised by the national government.

Hon. Members, the First Schedule provides for the equitable share of revenue raised nationally between the national and county governments.

Thank You.

Promoting an Equitable Society

MEMORANDA ON THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO. 11 OF 2019)

In accordance with the requirements of Article 205 of the Constitution, the Commission on Revenue Allocation has considered the provisions of the Division of Revenue Bill (National Assembly Bills No. 11 of 2019) and recommends as follows:

1. The Division of Revenue Act (DoRA) 2018 and the County Allocation of Revenue Act (CARA) 2018 allocated Kshs. 1,367 billion and Kshs. 314 billion to the national and county governments respectively for financial 2018/19 as equitable share from the nationally raised revenue. The DoRA 2018 and CARA 2018 have not been amended to change this allocation. An allocation of an equitable share of Kshs 305 billion to county governments in the Division of Revenue Bill 2019 has no legal basis.
2. The national government projects the shareable revenue for 2019/2020 at Kshs.1,877 billion. At the minimum, the Commission recommends that allocations to both levels of government be adjusted by a three-year average inflation rate of 6.9 per cent. This will increase the county allocation by 6.9 percent from Kshs. 314 billion to Kshs. 335.7 billion and the national government allocation by 12 per cent from Kshs. 1,367 to Kshs.1,541 billion. Part of the additional allocations to national government should be used to retire the public debt.
3. It is the considered view of the Commission that the five cities namely: Nairobi, Mombasa, Kisumu, Nakuru and Eldoret are centres of economic growth and provide unique services such as provision of sewerage systems, water reticulation, solid waste

disposal, and storm water drainage and management to the residents. In view of this the Commission persuades the Senate to consider the new conditional grant of Ksh. 5.0 billion to finance cities starting in the financial year 2019/20.

4. The above considerations are provided within the CRA recommendations (Table 1) submitted to Senate in December 2018. The Commission recommendation was based on the following:
    a. Prevailing budgetary provisions to both levels of government as the base
    b. Adjustment for inflation

Table 1: Summary of the CRA Recommendation Submitted to Parliament in Dec 2018

No.	Budget Item	Total (Kshs. Billion
Budget Projections based of BPS 2019		
1.	Projected total ordinary revenue	1,877.0
2.	Latest audited approved accounts (2014/15)	1,038
3.	**Principles for revenue sharing between national and county governments**	
	a) Current Level of Cost of Devolved Functions	**314.0**
	b) Provision for sustainability and Growth in Services	
	i. Adjustment for Inflation (6.9%)	21.5
4.	**Total equitable share to county governments for FY 2019/20**	**335.7**
5.	New Conditional Grant to:	
	i. Five (5) cities	**5.0**
6.	**Total equitable share to National Government**	**1,535.5**

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TISA
The Institute for Social Accountability

23rd April 2019

To:
Clerk of the Senate
P. O. Box 41842 – 00100,
Nairobi

Re: Memorandum on the Division of Revenue Bill 2019

About the Institute for Social Accountability (TISA)
TISA is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. TISA has been operational since March 2008 and is a locally registered trust. TISA has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

In response to the notice issued by the Clerk of the Senate for public hearings and receipt of memoranda on the Division of Revenue Bill (National Assembly Bill No. 11 of 2019), we hereby make submissions with respect to the Division of Revenue Bill 2019 as follows:

1. **Negative impact of national debt on shareable revenue overlooked**

Kenya's public debt has reached unsustainable levels whereby from July, an equivalent of 61 percent of the total projected tax collection of Kshs 1.87 trillion will be spent on debt repayment, leaving only Kshs 693,854/- for recurrent and development expenditure which will lead to a collapse of government services. This implies that the implementation of the Big Four Agenda is not tenable, and more crucially service delivery at county level stands a risk of disruption.

The Controller of Budget and Parliamentary Budget Office have both flagged this threat in their recent reports. It is noteworthy that the Constitution places upon Parliament the responsibility of ensuring that the national government adheres to constitutional and statutory principles on public finance management. The Division of Revenue Bill as presently prepared fails to address itself to the shortcomings of the present fiscal management framework, and therefore falls short of the constitutional oversight mandates placed upon Parliament.

2. **The Division of Revenue Bill disregards Commission on Revenue Allocation recommendations on sharable revenue**

It is noteworthy that whereas the shareable revenue has been growing in nominal terms, it has been falling in real terms due to a failure to compute it based on the latest audited accounts and the conservative criteria used by the National Treasury to adjust for inflation. This is further compounded by the failure to cost county functions and a minimalist application of the constitutional requirement of 15%. It is noteworthy that the Auditor General has tabled audit reports up to the 2017/18 financial year, but these have not been approved by Parliament.

The Division of Revenue Bill can therefore be construed as offending the following Article 202 and 203 of the Constitution as follows;

- Resources follow functions - Art 203 1 (d) financing counties developmental needs in sustainable ways that meets the (current) cost of operations in undertaking such county functions unless there are fiscal capacity gaps or material breach that may compromise service delivery;
- Equity in sharing between the two levels of government which also informs fair allocation among counties for purposes of balanced and inclusive development and mitigating against fiscal imbalances;
- Article 174 (f) principle of subsidiarity to ensure services are offered on the basis of proximity and other inherent characteristics for effective delivery and maximum impact that in this case that are mostly in favor of decentralization and devolution;
- Art 203 (1) of ensuring 'desirability of stable and predictable allocation of revenue'.

For instance the Budget Policy Statement 2019 identifies several functions that are yet to be devolved and funded including statistics, land survey, mapping and housing, cooperatives , mechanical and transport equipment; ferries and harbors that are also critical to actualization of the big 4 plans at the county level.

Recommendation:

a) Declare a national debt crisis and institute emergency measures;
b) Urgently revise the National Treasury framework to accord with the Constitution and support actual devolution needs by adoption of the Commission on Revenue Allocation proposed allocation to shareable revenue;
c) Institute a process to generate a strategic fiscal plan for attainment of the big four agenda.

3. Definition of National Interest

The lack of a clear definition and objective criteria for determining national interest has resulted in disputes between the national government and county governments. Following court action by the Council of Governors, the matter has been in mediation since 2016 with no resolution to date. While to process drags on, the national treasury continues to use a definition of national interests which is inimical to county interests. It therefore behooves all parties concerned to strive towards a consensus and we have attached an annex which seeks to contribute to the debate. Parliament can contribute to the discourse by including in the division of revenue performance accountability reporting.

Recommendation: The Division of Revenue Bill needs to report on the status of implementing or realisation of the previous year national priorities including the status of projects, financial probity and realisation of set targets.

4. Conditional Grants

The framework for the management of conditional grants continues to be weak, and indeed does not meet the constitutional requirements for fiscal prudence and transparency. It is noteworthy that the information on loans and grants in the Division of Revenue Bill is incomplete and does not meet the standards for the Public Finance Management Act section 48. For instance, there seems to be no clear

criteria followed in the determination of the growth factor, size and distribution of conditional grants to county governments. In addition, there is no information that explains the margin of increases over the years or the factor used to explain the increase or reduction of allocations over the years. Performance information on how conditional grants are spent and whether they are reaching the targets set is not available. The national government implementation reports lack clear performance information of each of these grants.

Recommendation: The Division of Revenue bill should include performance and accountability information on conditional grants to adhere with constitutional requirements. See Annex 2 for more information.

5. Public Participation

There are gaps in public engagement in the division of revenue process despite having in place enabling legal provisions in the Constitution (Article 201 (a) that requires openness and public participation in all financial matters; and the Public Finance Management Act section 35 that places a responsibility on the Cabinet Secretary to ensure public participation in the budget process, and also by way of regulations, prescribe procedures specifying how, when and where members of the public shall participate in the budget process at the national level including the preparing overall estimates in the form of the Budget Policy Statement of national government revenues and expenditures.[1] It is commendable that the Budget Policy Statement 2019 provides a brief report on submission made during the consultation process.

However, there is still a challenge on how the public should be involved in the division of revenue process, and inadequate access to timely and relevant information to enable meaningful public participation.

- There is a need for clear guidance on how the public should engage during the division of the revenue process. This includes the issues that the public should debate on to influence decisions made, the kind of information that government institution should provide to enable the citizens engage accordingly. In addition, a feedback mechanism is required informing on how submissions and inputs from the public are handled.
- Stakeholders should play their oversight role. Parliament needs to ensure the publication and publicization of performance reports on how conditional grants are implemented.

Recommendations

- **Budget committee to immediately ensure all implementation reports of national government entities are available on their websites;**
- **The Division of Revenue Bill to provide the standards to ensure all government institutions set aside at least 2% of the annual budgetary allocation for public participation and civic education.**
- **National treasury to urgently convene stakeholders to inform national regulations on public participation**

[1] Public Finance Management Act 2012, section 35(1)(c)

Annex 1

The Constitution provides for equitable sharing of revenue raised nationally between the national government and county governments taking into account the criteria under Article 203(1). Article 203(1)(a) identifies national interest as a key criteria in determining equitable share of revenue raised nationally but does not define national interest. This has resulted in a situation where national interest is being defined by the national government on a *defacto* discretionary basis and has been challenged in Court by the Council of Governors, but the case was referred to mediation.[2] In the Budget Policy Statement 2019[3], the National Treasury has stated a commitment to define national interest. It is in this context that TISA undertook a study on Kenya's division of revenue between the national and county government with a focus on the definition of national interest, design of conditional grants and meaningful public engagement and identified the following issues.

1. **Definition of National Interest**

The study found out that there is no clear definition of national interest and distinction of national interest from functions of the national government and the ruling political party manifesto. The National Treasury has been using an arbitrary definition of national interest. For instance, the Division of Revenue Bill 2013 explanatory memorandum states that the national government is exclusively responsible for the functions that serve the national interest, and allocated costs of the functions to the national government.[4] The functions included: Defence, National Intelligent Services; Parliament; Judiciary; Attorney General; Director Public Prosecutions; Police Services, Teachers Service Commission; Constitutional commissions, Independent offices and Elections. A review of the Division of Revenue Bills and Acts for the financial year 2014/2015 to 2018/2019 reveals changes in the composition of national interests from those in the Division of Revenue Bill 2013 to: Enhancement of Security Operations; National Irrigation and Fertilizer; Youth Empowerment (NYS); National Social Safety Net; Primary School Digital Programme; School Examination Fee.[5] Most of these are functions of the national government.

The National Treasury has continuously included items in the Division of Revenue Bill as national interest without giving further elaborations and explanation on why those allocations are considered national interests. A review of the trends in allocation to national interests from the financial year 2013/2014 to 2018/2019 also reveals inconsistencies in allocations. For instance, that enhancement of security operations has been included in the list of national interests since the financial year 2013/2014 to 2018/2019, but allocations have reduced drastically over the years. National irrigation and fertilizer was introduced as national interest in the financial year 2014/2015, but there have been changes in allocations over the years but no explanation given on the trade-offs made and how the decision to allocate increased amounts to the programme came about. National social safety net programme was introduced in the financial year 2014/2015 and allocations to it have been increasing over the years. Youth empowerment (NYS) was introduced in the financial year 2014/2015 and allocations to it have increased over the years despite accountability gaps in the fund. Primary school digital program was introduced in the financial year 2014/2015 and allocation to its have decreased over the years. The school examination fee subsidy programme was introduced in the financial year 2016/2017 and allocations to it has been increasing significantly in the subsequent three years.

[2] Council of Governors versus Attorney General & 5 Others [2018] eKLR http://kenyalaw.org/caselaw/cases/view/163505/

[3] Budget Policy Statement 2019, page 64 and 65 http://www.treasury.go.ke/component/jdownloads/send/203-budget-policy-statement/1348-2019-budget-policy-statement.html

[4] http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2013/Division_of_Revenue_Bill_2013.PDF

[5] Division of Revenue Bill 2018 page 120, http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2018/DivisionofRevenueBill_2018.pdf

The Division of Revenue Bill 2018 explanatory memorandum states that national interest expenditure relates to projects and programmes that are critical to the achievement of the country economic development objectives; have significant impact on social wellbeing of citizens; are anchored in Vision 2030 and Medium-Term Plan (MTP III); have significant resource investment requirement; and those specified in the Budget Policy Statement (BPS). However, a review of some of these government policy documents that should provide initial information on national interest priorities do not contain consistent information or detailed explanation or criteria on what should be considered national interest. For instance, the BPS 2018 states that expenditures should be aligned to MTP III and other strategic interventions of 'national interests' as outlined in the government economic agenda but it is not clear what 'strategic interventions of national interest' are from the list of eonomic transformational agenda.

The ruling political party manifesto has also been used to provide justification for allocations to national interests. For instance, after the general elections in 2017, the ruling party political manifesto outlining the Big Four Agenda, made it into the national government agenda. This implies that national interest could be whatever the ruling political party's manifesto has as its agenda and not necessarily what is decided upon by the two levels of government. Hence there is a danger of political promises affecting the division of revenue process.

The lack of a clear definition and objective criteria for determining national interest has resulted in disputes between the national government and county governments whereby both levels of government either want to receive (county governments) or retain (national government) the allocations made to national interest. Under the present erroneous definition of national interest, the national government is encroaching on county government functions thus withholding funds that would rightly go to county governments. According to the Commission on Revenue Allocation (CRA)[6],*"decisions on national interest priorities have financial implications on the constitutional functions of both the national and county governments."* Therefore, national interest relates to both the national government and county governments and should balance the claims of both levels of government. Thus, national interest must be distinguished from the needs of the national government. National interest should focus on broader concerns affecting both levels of government and to ensure proper functioning and realization of devolution.[7] The general principle is that finances must follow functions and the basis of revenue allocation process should be the cost of devolved functions. The division of revenue process must ensure counties have reliable sources of revenue to enable them to govern and deliver services effectively, are able to perform functions allocated to them, and take into consideration developmental and other needs of counties.

Best Practices and Recommendations

National Interest and Accountability

i. A clear definition of national interest and an objective criterion for determining allocations to national interests.

CRA[8] interprets national interest to mean agreed policies, goals, priorities, and resultant programmes that have fiscal implications and benefit the whole country. Additionally, the priorities defined in the MTP, BPS, Budget Review Outlook Paper define the national interest.

[6] Commission on Revenue Allocation, First Commissioners' End Term Report 2017, Page 27 and 28 https://www.crakenya.org/wp-content/uploads/2017/04/CRA-FIRST-COMMISSIONERS-REPORT-TECHNICAL-VERSION.pdf

[7] John Mutakha Kangu, Constitutional Law of Kenya on Devolution, page 263

[8] Commission on Revenue Allocation, First Commissioners' End Term Report 2017, Page 27 and 28 https://www.crakenya.org/wp-content/uploads/2017/04/CRA-FIRST-COMMISSIONERS-REPORT-TECHNICAL-VERSION.pdf

They determined the level of funding necessary to accomplish "national interest" annually through the process outlined in the Public Finance Management Act on preparation of budgets that incorporates intergovernmental consultation through the Intergovernmental Budget and Economic Council (IBEC) and the Summit. Although CRA has the constitutional mandate to make recommendations for equitable share of revenue raised nationally, its recommendations are not binding.

In South Africa the definition of national interest is contained in its National Development Plan (NDP) as "goals that the nation seeks to achieve which are beneficial to the whole nation". The interests listed in the NDP are further complimented by the strategic integrated projects. The MTEF outlines how resources would be allocated to the priorities. There is a clear distinction between national interest and needs of the national government. Needs of the national government implies functions which are better performed by the national government and help protect and achieve the overall national interest of the Republic. The allocations towards financing the national interests has been concurrent.

The Division of Revenue Act needs to classify national interest projects and distinguish these from the functions of the national government. The national government needs to identify the functions which are better performed by the national government to help protect and achieve the overall national interest of the Republic.

ii. Clarity on National Priorities

The Division of Revenue Act needs to clearly outline the national government priority outcomes, sectors and projects as the basis for division of revenue. The BPS's should also report on how it is increasing funding to these sectors, the attainment of key performance indicators and attainment of international commitments.

iii. Consultation between the National Treasury and the Commission on Revenue Allocation

There is a need to review the present consultative process, especially between CRA and the National Treasury, to ensure uptake of CRA recommendations. This may be achieved through consultation between the National Treasury and CRA prior to IBEC consultations. Consultations should also be guided by a clear framework based on clarity of national interest as recommended above (ii). The framework further needs to be informed by the unbundling and costing of functions framework. This should help in addressing the differences in allocations since there have been differences between the allocations suggested by the National Treasury and recommendations by CRA.

iv. Performance measurement and accountability

The Division of Revenue Act needs to report on the status of implementing or realisation of the previous year division of revenue before allocating more resource. For instance, in South Africa, the National Treasury has authority to discontinue the equitable share allocation if there is persistent and serious noncompliance with the Division of Revenue Act[9]. Further, the South Africa Constitution section 216 empowers the National Treasury to discontinue transfers to municipalities in the event of serious or continuous non-compliance with measures specified in the Constitution. Additionally, section 3 of the Division of Revenue Act 2016 South Africa states

[9] Section 38- 40 MFMA.

that if National Treasury anticipates substantial underspending or overspending on the allocation it may stop the funding or a part thereof.

v. Financial probity

The Division of Revenue Act needs to capture and respond to the recommendations of the annual audits by the Auditor-General examining performance information and compliance with all laws and regulations governing municipal financial matters.

Annex 2:

The administration of conditional grants in Kenya does not follow a clear guideline or framework within which such allocations are made. An analysis of the Division of Revenue Bills and Acts from the financial year 2013/2014 to 2018/2019 reveals that conditional grants have been changing in terms of allocations and introduction of new grants while some have remained the same with the same allocations over the years.
The number of conditional grants increased from two in 2013/14 to nine in 2018/19 financial years. However, there is no information that explains the margin of increases over the years or the factor used to explain the increase or reduction of allocations over the years. There seems to be no clear criteria followed in the determination of the growth factor, size and distribution of conditional grants to county governments.

Although the National Treasury released a framework for the management of conditional grants in June 2018, there is no explanatory information on updating of a conditional grant. There is no data available to the public on expenditure performance of conditional grant to enable them to analyze the spending of the grants allocated and comparing the allocation vis a vis the expenditure, having in mind the cost benefits of the intended grant. Additionally, performance information on how conditional grants are spent and whether they are reaching the targets set is not available. The national government implementation reports lack clear performance information of each of these grants. At the county level, the findings show that since 2015, counties have not been publishing implementation reports.

Lastly, there is a gap on the conditions attached to the grants. For example, level 5 hospital criterion is based on bed occupancy rate arrived at by daily midnight counts of in-patients. Bed occupancy rate does not translate into meeting infrastructural needs such as staff, facility, drugs and the outpatients seeking services.

Best Practices and Recommendations

i. The CRA should embark on consultations to prepare criteria for national interest and conditional grants.
ii. Categorization of conditional grants in terms of their type, nature, administration and trends in allocations

The division of revenue act needs to categories conditional grants by objective which may include one or more of the following;

i) correct vertical imbalances or inequities
ii) address horizontal inequities or imbalances (in revenue raising)
iii) ensure sub-national governments deliver on their functions
iv) correct negative externalities or spillovers
v) facilitate national government implement national policies
vi) promote flexibility of national government to carry out targeted functions

For example, conditional grants in South Africa are classified according to the following categories:

- Schedule 4 – grants to the provinces and the municipalities to *supplement* the funding of programmes or functions funded from municipal or provincial budgets.

- Schedule 5 - grants that fund *specific purposes* of national interests without requiring funding from the municipal or province own budgets
- Schedule 6 - these are *in-kind allocation* for specific purpose in nature which fund special programmes
- Part A of schedule 7 – comprise of special grants released to the provinces or municipalities as a *disaster response* in accordance to Disaster Management Act, No 57 of 2002 (South Africa DoR submission, 2013/14, pg. 61).

iii. Prudent utilization of grants and access to information.

The DORA needs to include key accountability information on conditional grants including

- clear policy goals and objectives supported by data on demographic and developmental targets, e.g. data on the number of households without access to basic services as derived from census data, proportion of the national backlog for particular basic services in each county/administrative area and proportion of the country's poor households located in individual counties.
- adequacy of funding vis a vis the fiscal gap between expenditure responsibilities and capacity to finance of the particular service, sector or project;
- statement on fiscal capacities and how inadequacies are being addressed;
- statement on functional alignment regarding to the extent to which the transfer aligns to functional mandates as provided in the constitution;

iv. Division of revenue principles for conditional grants

The DORA needs to lay explicit principles which inform conditional grants or transfers which are subject to specific conditions that may include;

i) targets use, by sector or purpose e.g. capital investment, pre-school facilities, to fund marginalized groups or areas, etc
ii) requirement for matching (i.e. matching grants) which require recipients to contribute part of costs, one shilling to one, or any other ratio
iii) requirement to meet specified targets, outputs or results e.g. access to health facilities, school enrolment
iv) one off-funding or over a period, e.g. revenue enhancement study
v) may be open ended, like the case with LATF but with requirements to achieve specified performance ratios e.g. debt, revenue etc

For example, the Fiscal Commission of South Africa proposed principles that need to be observed in the administration of conditional grants as follows:

- There must be a mandatory and systematic process for designing and planning of individual grants, effective monitoring and independent evaluation of the grants to ensure administrative accountability.
- To enhance transparency in the criteria used to allocate conditional grants, the FCC indicated that grants should be tailored to a particular problem depending on the nature and magnitude of the problem to be resolved. Further, infrastructure-specific grant scheme must have a project proposal designed to meet predetermined funding criteria which is transparent and understood by all.

- That accounting for delivery be a prerequisite for grants and that municipalities and provinces report on the delivery which would provide a basis for being awarded grants. This calls for a documented agreement between the departments responsible for the grant and the recipient government.
- Achieving results-oriented accountability through incentive-oriented grants whereby additional grants may be provided as incentives for improving performance or achievement of good results.

v. Performance evaluation

- There is a need to ensure that funds are traceable to avoid double funding and blurring of reporting;
- Another accountability measure is that national departments must report to Parliament the outcome of grants allocated for specific purpose.
- There is need for the inclusion of an implementation work plan and monitoring and evaluation mechanism in the existing framework for management of conditional grants.
- The allocation and introduction of conditional grants should be based on past performance data;

There is a need for publicly available information on the performance of each conditional grant from the national government's share of revenue to assist provide oversight on the execution of the grants at the county level. It is noteworthy that the recipients of conditional grants are required to submit reports, the Treasury should ensure that this performance information is included in DORA. Such information would include; amount of grants previously received, status of fiscal gap, how they performed in terms of spending and absorption over the years. The reports should also report on attainment of Key Performance Indicators.

APPENDIXES

(a) Minutes of the Committee sittings on the consideration of the Division of Revenue Bill (National Assembly Bill No. 11 of 2019).

(b) Submission from Public Institutions and Members of Public

MINUTES OF THE 82ND MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 23RD APRIL, 2019 AT COUNTY HALL, FIRST FLOOR, MINI CHAMBER AT 9:30 AM.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Moses Wetangula, MP - Member
4. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
5. Sen. Aaron Cheruiyot MP -Member
6. Sen. Mutula Kilonzo Junior, MP - Member
7. Sen. CPA Farhiya Haji, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr) Rose Nyamunga, MP - Member
2. Sen. Boniface Mutinda Kabaka, MP - Member

IN-ATTENDANCE **SENATE SECRETARIAT**

Mr. Christopher Gitonga - Clerk Assistant
Mr. Fredrick Muthengi - Chief Fiscal Analyst
Mr. Gorod Abdi - Fiscal Analyst
Ms Lucy Radoli - Legal Counsel
Mr. Abdikani Kalla - Audio Officer

MIN. NO. 404/04/2019: PRELIMINARIES

The Chairperson called the meeting to order at 9.40 a.m and there followed a word of prayer. The Chairperson welcomed Members that the meeting and indicated that the purpose of the meeting was consideration of the Division of Revenue Bill, 2019.

MIN.NO. 405/04/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP.

MIN.NO. 406/04/2019: CONSIDERATION OF THE DIVISION OF REVENUE BILL, 2019

The secretariat briefed the Committee on the Division of Revenue Bill (DORB), 2019 as follows-

a) The Bill is prepared in accordance with Article 202 of the Constitution, which expressly makes it mandatory for the nationally raised revenue to be shared equitably between the national and county governments.
b) The Bill was introduced and passed by the National Assembly without amendments.
c) The National Assembly approved the Division of Revenue Bill, 2019 recommending
    i) an equitable share of revenue of Kshs 310.0 billion to the county governments and Kshs. 1,561.42 billion to the national government;
    ii) conditional allocations from the nationally raised revenue of Kshs. 22.89 billion; and
    iii) conditional allocations as loans and grants from development partners of Kshs. 38.70 billion.
d) Article 202(2) of the Constitution, the national government may allocate additional conditional allocations to the county governments from the national government share of revenue raised nationally, whose main object is intended to finance national strategic interventions to be implemented by the county governments.
e) The total additional conditional allocations from the revenue raised nationally for financial year 2019/20, was Ksh. 22.9 billion which include-
    i) Level 5 Hospital
    ii) Supplement for Construction of County Headquarter
    iii) Compensation for User Fees Forgone
    iv) Road Fuel Levy Fund
    v) Rehabilitation of Village Polytechnics
    vi) Leasing of Medical Equipment
f) The county governments also benefit from proceeds from loans and grants from the development partners, which are disbursed through State Departments according to the respective financing agreements and in fulfilment of the set conditions.
g) The total additional conditional allocations from proceeds from loans and grants from the development partners for financial year 2019/20, was Ksh38.70 billion which include-
    i) Kenya Devolution Support Program (KDSP) County Capacity Building ("level 1") Grant
    ii) Kenya Devolution Support Program (KDSP) Performance ("level 2") Grant
    iii) Transforming Health Systems for Universal Care Project conditional allocation
    iv) DANIDA Grant (Universal Healthcare in Devolved System Program
    v) National Agricultural and Rural Inclusive Growth Project (NARIGP)
    vi) EU-Instruments for Devolution Advice and Support (IDEAS) grant
    vii) IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)

viii) Kenya Urban Support Program (KUSP) - Urban Development Grant (UDG) additional conditional allocation
ix) Kenya Urban Support Project (KUSP) - Urban Infrastructure Grant Allocation (UIG)
x) IDA – Water and Sanitation Development Project (WSDP) World Bank Credit
xi) Agricultural Sector Development Support Programme (ASDSP
xii) EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)
xiii) Drought Resilience Programme in Northern Kenya (DRPNK)

The Committee Observed as follows-

a) The Division of Revenue Bill, 2019 proposes a reduction in the Equitable Share allocation to county governments from Ksh. 314 billion in FY 2018/19 to Ksh. 310 billion in FY 2019/20.
b) The Senate approved an equitable share to the county governments of Kshs. 335.67 billion during the consideration of the Budget Policy Statement (BPS), 2019. This is Kshs. 25.67 billion more than the allocation of Kshs. 310 billion in the Division of Revenue Bill, 2019 as passed by the National Assembly
c) The allocations on Leasing of Medical Equipment was varying over the years since inception in FY 2014/15. Further that the Senate had resolved that the allocations should be suspended until full disclosure of the total cost, contract period and contract terms was provided.
d) The total projected revenues from the Road Maintenance Fuel Levy Fund was not disclosed yet counties were allocated 15% of the fund. This made it difficult to verify if the allocation of Kshs. 8.98 Billion is 15% of the fund's estimated amounted for FY 2019/20.

The Chair informed that there was a scheduled public hearing on the Bill after which the Committee will make the necessary recommendations on the bill.

MIN.NO. 407/04/2019: COUNTY ALLOCATION OF REVENUE BILL, 2019

The Chairperson informed the Committee that the County Allocation of Revenue Bill should be introduced to the House two months before the end of the respective financial year as provided by Article 218(1) of the Constitution.

However, the Committee noted that the Senate was in recess until 14th May, 2019. The Committee resolved-

1. to propose to the Senate Majority Leader or the Senate Minority Leader, to request the Speaker for a special sitting of the Senate on Tuesday 30th April, 2019, in accordance with standing order 30(1) of the Senate Standing Orders;

2. that the County Allocation of Revenue Bill, 2019 be published using the equitable share as approved by the House in its report on the 2019 Medium Term Budget Policy Statement;

3. that the County Allocation of Revenue Bill, 2019 be introduced in the Senate on Tuesday, 30th April, 2019;

4. that the Committee report on the Division of Revenue Bill, 2019, be tabled on Tuesday, 30th April, 2019; and

5. to request the Speaker to direct that the Division of Revenue Bill, 2019, be conclusively dispensed with by the Senate on Tuesday, 30th April, 2019.

MIN.NO. 408/04/2019: ADJOURNMENT

The meeting was adjourned at 10:35 a.m.

SIGNATURE..
(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE..........................29/4..

MINUTES OF THE 83RD MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 23RD APRIL, 2019 AT COUNTY HALL, FIRST FLOOR, MINI CHAMBER AT 10:30 AM.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Moses Wetangula, MP - Member
4. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
5. Sen. Aaron Cheruiyot MP -Member
6. Sen. Mutula Kilonzo Junior, MP - Member
7. Sen. CPA Farhiya Haji, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr) Rose Nyamunga, MP - Member
2. Sen. Boniface Mutinda Kabaka, MP - Member

IN-ATTENDANCE **SENATE SECRETARIAT**

1. Mr. Christopher Gitonga - Clerk Assistant
2. Mr. Fredrick Muthengi - Chief Fiscal Analyst
3. Mr. Gorod Abdi - Fiscal Analyst
4. Ms Lucy Radoli - Legal Counsel
5. Mr. Abdikani Kalla - Audio Officer

IN-ATTENDANCE **Representatives from various institutions and Members of the Public**

(See the attached List)

MIN. NO. 409/04/2019: PRELIMINARIES

The Chairperson called the meeting to order at 10.50 a.m and there followed a word of prayer. The Chairperson welcomed Members that the meeting and indicated that the purpose of the meeting was to listen to the views on the Division of Revenue Bill, 2019 from the Members of the Public and invited public institutions.

MIN.NO. 410/04/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. (Dr) Ali Abdullahi Ibrahim, MP.

MIN.NO. 411/04/2019: PUBLIC HEARING ON THE DIVISION OF REVENUE BILL, 2019

The Chairperson welcomed the members of the Public and the representatives from the public institutions. After introductions, the Chair informed that the Bill-

a) The Annual Division of Revenue Bill is prepared in accordance with Article 202 of the Constitution, which expressly makes it mandatory for the nationally raised revenue to be shared equitably between the national and county governments.
b) The Bill was passed by the National Assembly and referred to the Senate. After the First Reading, the Bill was committed to the Committee to facilitate the Public participation.

He thereafter, welcomed the representatives and members of the public to make their representations.

The Council of County Governors

The representatives of the Council of County Governments (COG) informed the Committee as follows-

a) The CoG rejects the proposal in Clause 5 of the Bill that requires the Cabinet Secretary National Treasury to set threshold for which the National government shall bear the shortfalls in the revenue.
b) The CoG recommends that the national government bears wholesomely any revenue shortfall experienced in any financial year.
c) The audited and approved accounts applied in the allocation to county governments is based on the 2014/15 financial year which is four financial years back yet it represents only 30% of the approved accounts.
d) There was inequity in sharing of revenues- if the Counties equitable share was to be equated to the projected shareable revenues of Ksh 1.87 trillion, it would equate to 16.5% just barely above the minimum constitutional requirement.
e) The Council proposed rejection of the proposed county equitable share of ksh 310 billion based on the following-
   i) The proposed county equitable share to Counties in the FY 2019/20 was a negative reduction by -1.27% from the current Ksh 314 billion as approved by Division of Revenue Act, 2018.
   ii) The ordinary revenues are projected to grow by 13% in the FY 2019/20. Further, the Country's economy was also projected to grow by 6.2%
   iii) Average inflation rate over three years is averaged at 6.7% thus, the average cost of provision of services hence would increase by similar percentage.
f) The county governments' equitable share should be Ksh 335.7 billion, the adjustments of Ksh 21.7 being the growth factor of inflation.

g) The CoG recommended to that the Committee should develop a formula on the revenue growth factor to be applied over a given period of time to allow for predictability in division of revenue.

h) The national government had continuously held funds for devolved functions especially the budget in the ministry of Health, ministry of Agriculture and the ministry of Water and sanitation.

i) The Council therefore recommended for the equitable share to County Governments in the 2019/20 not to be less than Ksh 335.7 billion

j) the operation of Managed Equipment Service (MES) project was not clear in terms of the contract cost, period, and implementation status. Further, the national government planned to supply medical equipment to health facilities across the Counties.

k) They recommended that the funds should be channelled directly to County governments and captured locally through their budgets since the health facilities are under the jurisdiction of County Governments.

The Institute of Certified Public Accountants of Kenya (ICPAK) and International Budget Partnership (IBP)

The representatives informed that the two institutions had planned to present a joint memorandum which was follows-

a) The growth of the equitable share continues to decline

The Bill had recommended Ksh 310 billion as the equitable share to be allocated to counties in 2019/20. This 1 percent lower than the Ksh 314 billion that was approved in the Division of Revenue Act 2018. The recommendation in the DORB 2019 is the lowest growth since the onset of devolution. There has been a trend where the growth has been declining year on year. The Commission on Revenue Allocation had recommended Ksh 336 billion which implies a growth of 7 percent which is based on actual three-year average annual inflation.

b) Management of public debt and pension was key to ensure counties have fair growth in their equitable share

Public debt is a non-discretionary obligation which had a bearing on the sharable revenue. It also applies to pension and salaries to constitutional offices. The higher the share of ordinary revenue that is taken up by these national obligations the lower the sharable revenue and allocations to counties

c) Disconnection between the Budget Policy Statement and the Division of Revenue

The BPS laid out the national priorities over the medium (including the Big 4 Agenda) and they are not limited only to national government functions. The allocations in the DoRB should have reflected the priorities as laid out in the approved BPS. It could have affected the equitable share or conditional grants.

d) Growth in allocations to conditional grants remains unpredictable

The DORB has recommended Ksh 22.9 billion be allocated to counties as conditional grants. However, the growth of the grants based on allocations from previous years raises questions on what are the guiding policies about the conditional allocations

e) Conditional grant on Leasing of Medical Equipment

The DoRB seems to indicate that the proposed allocation of Ksh 6.2 billion is to facilitate the, "purchase and maintenance" of specialized health equipment. This seems to indicate that the policy had changed from leasing the equipment to purchase. The Senate should endevour for clarification on this matter. Further, clarification on adequacy of personnel and necessary infrastructure for the leased medical equipment.

The National Treasury

The representatives informed the Committee as follows-

a) the Bill is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2019/2020
b) the Bill seeks to promote an equitable society by providing for sharing of revenue raised nationally equitably among the national and county governments in furtherance of the principal of public finance set out in the Constitution.
c) the Constitution provided that the equitable share of the revenue raised nationally that is allocated to county governments shall not be less than fifteen (15%) percent of last audited revenue collected by national government as approved by Parliament.
d) the Bill allocates county governments an equitable share of Ksh. 310 billion for the financial year 2019/2020. Compared to the revised allocation of Ksh. 304.96 billion for the financial year 2018/19, this reflects an increase of Ksh. 5.04 billion or 1.7 percent.
e) the allocation of Ksh. 310 Billion, was derived from the proposed revised allocation of equitable share to Ksh.304.96 billion for the financial year 2018/19, which was tabled and discussed at Inter-Governmental Budget and economic Council (IBEC).
f) The Bill has provided for additional conditional allocation from the national government share of revenue amounting to Ksh. 22.9 billion segregated as follows-
   i) Kshs. 6.2 Billion to facilitate the leasing of medical equipment
   ii) Kshs. 4.3 Billion for Level-5 hospitals
   iii) Ksh. 900 Million to compensate County Health facilities for forgone user fees
   iv) Ksh. 8.98 Billion from the Road Maintenance Fuel Levy Fund
   v) Ksh. 2 billion for Rehabilitation of Youth Polytechnics
   vi) Ksh. 485 Million to supplement county allocation for the construction of county headquarters in five counties
g) The Bill has provided for additional conditional allocation from proceeds of loans and grants from development partners Ksh. 38.7 billion.

h) Thus, the total allocation to county governments in FY 2019/20 was Ksh. 371.6 Billion or 36 percent of last audited revenue and approved by Parliament.
i) The projected shareable revenue in FY 2019/20 was Ksh. 1,877 Billion, the National Government had taken into account the criteria set out in Article 203(1) of the Constitution in determination of county equitable share for FY 2019/20.

Member of Public – Ms. Vivienne Taa

Ms. Vivienne Taa informed the Committee as follows-

a) The Senate's core function is that of representing county interests at the national level especially with regard to the vertical and horizontal allocation of revenue.
b) As the Senate deliberates on the Division of Revenue Bill 2019, there are a number of issues that should be revised to improve equity in national revenue sharing in FY2019/2020.
c) The DoRB 2019 states that the latest audited accounts approved by the National Assembly are those of FY2014/2015 and this is the basis for calculation of the equitable share to be allocated to the counties in FY2019/2020. In essence, the equitable share to be allocated to the counties in FY2019/20 is based on revenue collected 5 years ago. This was unacceptable.
d) The leased Medical Equipment Scheme is a long-term contractual project by the national government, currently in its 5th year of implementation and aimed at supporting provision of quality healthcare services in the counties. Several accountability and transparency issues have been raised by the counties including lack of full disclosure of the contract details by the Ministry of Health.
e) Counties are still compelled to pay annually for the project, with the deductions made directly from county allocations by National Treasury. There has been unexplained annual variations on the cost of the project ranging from KES. 95 M to to KES 200M per county noting some equipment delivered to counties were not in use. This is a contravention of public procurement rules and regulations.
f) The KES 6.2 Billion allocated for leasing of medical equipment should be reallocated as a conditional grant to the counties for provision of healthcare services under the Foregone User Fees.
g) The allocation for free maternal healthcare should be allocated to the counties as a conditional grant. This would eliminate the need for pre-registration in order to benefit from free maternal healthcare services.
h) The criteria of determination of the user fees foregone was not clear. The population has been increasing yet the allocation was constant. The allocation should be considered and adjusted proportionally.
i) The DoRB 2019, proposes KES 2 Billion as the conditional allocation for the rehabilitation of youth Polytechnics. This translates to approximately KES 42.5 M per

county. Considering the number of youths in the country, estimated at 22 Million then, the allocation may not have impact on empowering the youth

j) An additional amount should be added to the current KES 2 Billion allocated for the rehabilitation of youth polytechnics to KES 16.2 Billion allocated for youth empowerment by the national government.

Commission on Revenue Allocation (CRA)

The representatives informed the Committee as follows-

a) The Division of Revenue Act (DoRA) 2018 allocated Kshs. 1,367 billion and Kshs. 314 billion to the national and county governments respectively for FY 2018/19 as equitable share from the nationally raised revenue. The DoRA 2018 has not been amended, thus the reference of county equitable share Kshs. 305 billion in the Division of Revenue Bill 2019 has no legal basis.

b) The Commission recommended that allocations to both levels of government be adjusted by a three year average inflation rate of 6.9 percent. This will increase the county allocation by 6.9 percent from Kshs. 314 billion to Kshs. 335.7 billion and the national government allocation by 12 percent from Kshs. 1,367 to kshs. 1,541 billion. The additional allocations to national government should be used to retire the public debt.

c) New conditional grant of Kshs. 5.0 billion to finance cities starting in FY 2019/20. It is the considered view of the Commission that five cities namely: Nairobi, Mombasa, Kisumu, Nakuru and Eldoret are centres of economic growth and provide unique services such as provision of sewerage systems, water reticulation, solid waste disposal and storm water drainage and management to the residents.

d) The Commission recommendations on County equitable share is based on-
   - Prevailing budgetary provisions to both levels of government as the base.
   - Adjustment for inflation

The Institute of Social Accountability (TISA)

The representatives informed the Committee as follows-

a) Negative impact of national debt on shareable revenue overlooked- Kenya's public debt had reached unsustainable levels whereby from July, an equivalent of 61 per cent of the total projected tax collection of Kshs. 1.87 trillion will be spent on debt repayment, leaving only Kshs. 693,854 for recurrent and development expenditures.

b) The Division of Revenue Bill disregards Commission on Revenue Allocation recommendations on shareable revenue. Whereas the shareable revenue has been growing in nominal terms, it has been falling in real terms due to a failure to compute it based on the latest audited accounts and the conservative criteria used by the National

Treasury to adjust for inflation. The Division of Revenue Bill can therefore be construed as offending Articles 174, 202 and 203 of the Constitution.

c) The BPS, 2019 identifies several functions that are yet to be devolved and funded including statistics, land survey, mapping and housing, cooperatives, mechanical and transport equipment; ferries and harbours that are critical to actualization of the big 4 plans at the county level yet in the Bill they are not factored.

d) Recommendations:
   - Declare a national debt crisis and institute emergency measures.
   - Urgently revise the National Treasury Framework to accord with the Constitution and support actual devolution needs by adoption of the Commission on Revenue Allocation proposed allocation to shareable revenue.
   - Institute a process to generate a strategic fiscal plan for attainment of the big 4 agenda.

e) Definition of National Interest- the lack of a clear definition and objective criteria for determining national interest has resulted in disputes between the national government and county governments Parliament can contribute to the discourse by including in the division of revenue performance accountability reporting.

f) Conditional Grants-The framework for the management of conditional grants continues to be weak, and indeed does not meet the constitutional requirements for fiscal prudence and transparency. The Division of Revenue Bill should include performance and accountability information on conditional grants to adhere with constitutional requirements.

g) Public Participation-there are gaps in public engagement in the division of revenue process despite having in place enabling legal provisions in the Constitution Article 201 and PFMA Section 35. There is a need for clear guidance on how the public should engage during the division of the revenue process. The Division of Revenue Bill should provide the standards to ensure all government institutions set aside at least 2 percent of the annual budgetary allocation for public participation and civic education.

MIN.NO. 412/04/2019: ADJOURNMENT

There being no other business the meeting was adjourned at 1:45 pm.

SIGNATURE..

(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.........................29/4/19...

List of attendance- public Institution and Member of Public

1. Hon. Wycliffe Oparanya - Chairman, COG
2. Hon. (Prof.) Paul Chepkwony -Governor, Kericho County
3. Hon. Wycliffe Wangamati - Governor, Bungoma County
4. Hon. Mwangi Wa Iria - Governor, Muranga County
5. Hon. (Prof.) Anyang Nyong'o - Governor, Kisumu County
6. Ms. Jacqueline Mogani - CEO, COG
7. Ms. Mercy Wangui - COG
8. Mr. Victor Odanga - COG
9. Ms. Zipporah Muthama - COG
10. Ms. Mary Mugweja - CECM Finance and Development, Nyandarua
11. Ms. Christine Akinyi - TISA
12. Ms. Vivienne Taa - member of Public
13. Mr. Elvis Mash - member of Public
14. Mr. Fred Riaga - ICPAK
15. Mr. Hillary Onami - ICPAK
16. Mr. Elia Wakhisi - ICPAK
17. Ms. Jane Kiringai - Chairperson, CRA
18. Mr. George Ooko - CEO, CRA
19. Ms. Linet Oyugi - CRA
20. Ms. Jacinter Hezron - CRA
21. Hon. Nelson Gaichuihie - CAS, National Treasury
22. Mr. Albert Mwenda - National Treasury
23. Mr. Samuel Kiptorus - National Treasury
24. Mr. Fred Owegi - National Treasury

MINUTES OF THE 84TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON MONDAY, 29TH APRIL, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM AT 2:00 PM.

PRESENT

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Moses Wetangula, MP - Member
4. Sen. Aaron Cheruiyot MP -Member
5. Sen. CPA Farhiya Haji, MP - Member
6. Sen. (Dr) Rose Nyamunga, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
2. Sen. Boniface Mutinda Kabaka, MP - Member
3. Sen. Mutula Kilonzo Junior, MP - Member

IN-ATTENDANCE **SENATE SECRETARIAT**

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms Lucy Radoli - Legal Counsel
3. Mr. Stephen Nyakuti - Audio Officer

MIN. NO. 413/04/2019: PRELIMINARIES

The Chairperson called the meeting to order at 2.05 pm and there followed a word of prayer. The Chairperson welcomed Members and indicated that the purpose of the meeting was to consider the report of the Committee on the Division of Revenue Bill, 2019.

MIN.NO. 414/04/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Moses Wetangula, MP and seconded by Sen. Aaron Cheruiyot, MP.

MIN.NO. 415/04/2019: CONFIRMATION OF MINUTES

a) The minutes of the 82nd meeting held on Tuesday, 23rd April, 2019 at 9:30 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Aaron Cheruiyot, MP and seconded by Sen. Moses Wetang'ula, MP.

b) The minutes of the 83rd meeting held on Tuesday, 23rd April, 2019 at 10:30 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Aaron Cheruiyot, MP and seconded by Sen. Moses Wetang'ula, MP.

MIN.NO. 416/04/2019: CONSIDERATION AND ADOPTION OF THE REPORT ON DIVISION OF REVENUE BILL, 2019.

The Committee considered the report and made the following observations-

a. The Division of Revenue Bill, 2019 passed by the National Assembly proposes a reduction in the Equitable Share allocation to county governments from Ksh. 314 billion in FY 2018/19 to Ksh. 310 billion in FY 2019/20. The proposal does not take into consideration the effects of the inflation on service delivery.

b. The Senate approved an equitable share to the county governments of Kshs. 335.67 billion during the consideration of the 2019 Budget Policy Statement (BPS).

c. Leasing of Medical Equipment project has been source of contention between various stakeholders. Further, the provision in the DORA has been varying over the years since inception in FY 2014/15. The Senate, in its report on the 2019 BPS, recommended the suspension of allocation to the project until full disclosure of information on the total contract sum, repayment period and implementation status.

d. The conditional allocation to counties from the Road Maintenance Fuel Levy Fund is based on 15% of the fund's total estimated amount for FY 2019/20 by the Kenya Roads Board. However, the total estimated amount for the fund for FY 2019/20 has not been provided.

e. Clause 5 (1) proposes that the Cabinet Secretary for Finance to solely determine the threshold to which the national government may bear any shortfall on revenues raised nationally.

Further, the Committee resolved to propose the following amendments-

a) Amending the Equitable Share to the County governments from Kshs 310,000,000,000 to Kshs ~~335,~~670,000,000.

b) Deleting the proposed allocations to the Leasing of Medical Equipment Project of Kshs 6,200,000,000.

c) Amending clause 5 to indicate that any shortfall on revenues raised nationally shall be borne by the national government to the extent of the threshold as prescribed in the regulations by Cabinet Secretary.

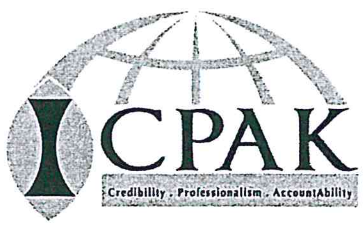
The Committee adopted the report unanimously for tabling on 30th April, 2019 during the special sitting.

MIN.NO. 417/04/2019: ADJOURNMENT

There being no other business the meeting was adjourned at 1:45 pm.

SIGNATURE..
(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....................................29/4...



JOINT MEMORANDUM TO THE SENATE ON THE DIVISION OF REVENUE 2019/20

About ICPAK

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under by the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession.

About International Budget Partnerships (IBP)

The International Budget Partnership collaborates with civil society around the world to use budget analysis and advocacy as a tool to improve effective governance and reduce poverty. The International Budget Partnership (IBP) focuses on government budgets because they are at the core of development. Budgets are the government's most powerful tool to meet the needs of its people, especially those who are poor and marginalized.

Joint ICPAK-IBP Memorandum on Division of Revenue Bill 2019

The two Institutions jointly reviewed the Bill and developed a position paper detailing proposal for your consideration as follows:

How Much Should Counties in Kenya Receive in 2019/20?

Each year Kenya's Parliament (National Assembly and the Senate) must decide how national revenue will be shared between national and county governments. This discussion is informed by recommendations from the Commission on Revenue Allocation and the National Treasury. CRA must table its recommendations in parliament by the 1st of January while National Treasury's recommendations are contained in the Budget Policy Statement (BPS) that is tabled in the National Assembly on or before the 15th of March each year. The BPS is tabled together with the Division of Revenue Bill and County Allocation of Revenue Bill. This analysis looks at the recommendations made by both agencies on the equitable share and conditional grants.

Summary

1. The National Treasury and the Commission on Revenue Allocation still do not agree on what is the revenue growth factor that should be used to determine the growth of the equitable share between 2018/19 and 2019/20. This is the third year that this has happened. While CRA is proposing using a 3-year inflation average the National Treasury is quite vague on how low revenue collection has been applied to arrive at its' proposal.

2. The formation and allocation to conditional grants do not seem to follow any predictable pattern and the growth in their allocations from one year to the next seem arbitrary. Based on

this trend it's not clear if the allocation to some of the grants are adequate and how sustainable they are in the long term.

3. Public debt repayment and pension are having an impact on how much is available to be shared between national and county government. Good policies to manage the two obligations are key to ensure there is sustainable funding to counties.

Analysis

A. Equitable Share

1. The growth of the equitable share continues to decline

The National Treasury has recommended Ksh 310 billion as the equitable share to be allocated to counties in 2019/20. This 1 percent lower than the Ksh 314 billion that was approved in the Division of Revenue Act 2018. However, it is 2 percent higher that the revised figure of Ksh 304 billion in the Budget Review and Outlook Paper 2018. The recommendation in the DORB 2019 is the lowest growth since the onset of devolution and as shown in Table 1 the growth has been declining year on year. The Commission on Revenue Allocation recommendation of Ksh 336 billion is a growth of 7 percent which is based on actual three-year average annual inflation. As shown in the table, there is no consistent approach in deciding the size of the growth of the equitable share from one year to the next.

To ensure there is fairness in the division of revenue, the revenue growth factor should be predictable and based on the revenue raised in the country and how it grows over time. Using inflation as opposed to revenue growth, results in substantially lower projections for counties. The average growth in ordinary revenue between 2011 and 2017 was 14 percent. Therefore, the use of inflation biases the division of revenue process toward national government; when actual revenue growth has consistently been above inflation, then the difference between the inflation rate and the revenue growth is captured entirely by the national government. This is not consistent with the principles of fairness in revenue sharing.

Table 1: Growth of equitable share

		Proposed Growth		Basis for Proposed Revenue Growth				Equitable Share Approved in the DoR (2019/20 is proposed)	Growth in DOR approved Amounts
	Year	CRA	National Treasury	CRA	National Treasury	Ordinary Revenue	*Growth in National Ordinary Revenue*		-
1	2015/16	10.4%	10.4%	3-Year average growth in ordinary revenue	3-Year average growth in ordinary revenue	1,152.97	*13%*	259.77	15%
2	2016/17	15.0%	7.8%	3-Year average growth in ordinary revenue	Not provided	1,306.57	*13%*	280.30	8%
3	2017/18	15.0%	6.7%	3-Year average growth in ordinary revenue	3-Year average month on month inflation	1,365.06	*4%*	302.00	8%
4	2018/19	8.5%	4.0%	3-Year average inflation	Not Clear	1,651.52	*21%*	304.96	1%
	2018/19 Proposed Revision					-		314.00	3%
	2019/20	6.9%	2.0%	3-Year average inflation	Not Clear	1,877.18	*14%*	310.00	2%

Source: DORB 2019 and DORA 2014-2018

The National Treasury's assertion that the low growth to the county equitable share is due to poor revenue collection should be evaluated against the growth in other spending priorities. This is contrary to Clause 5 of the Division of Revenue Bill 2019.

Table 2 below shows the allocations to various national priorities areas as well as allocations to counties and the national government. Budget lines such as public debt repayment is growing faster than county allocations. However, since these are non-discretionary expenditures one may argue that their allocations are mandatory and cannot be cut to increase funding to other priorities like counties. However, the amount available for sharing between national and county governments has grown by 43 percent yet the allocation to counties has only grown by 19 percent between 2015/16 and the projections for 2019/20. The national government's growth has been much higher at 74 percent as shown in Table 2. The Senate should enquire the reasoning behind the growth or decline of the other lines before we arrive at shareable revenue because this directly affects how much can realistically be allocated to counties.

Table 2: Distribution of ordinary revenue among national and county governments

	Evaluation of the Bill against Article 203 (1) of the Constitution.						Growth over years.				
	ITEM DESCRIPTION (KSh. Millions)	FY 2015/16	FY 2016/17	FY 2017/18	FY2018/19	FY2019/20	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	Growth Between 2019/20 and 2015/16
	ORDINARY REVENUE (EXCLUDING AIA)	**1,152,972**	**1,306,568**	**1,365,063**	**1,651,517**	**1,877,176**	**13.3%**	**4.5%**	**21.0%**	**13.7%**	63%
A	**National Interest [Article 203 (l)(a)]**	**79,189**	**79,685**	**82,696**	**84,186**	**94,168**	**0.6%**	**3.8%**	**1.8%**	**11.9%**	19%
	Enhancement of security operations (police vehicles, helicopters, defence etc.)	17,700	18,900	20,556	27,800	27,974	6.8%	8.8%	35.2%	0.6%	58%
	National Irrigation and fertilizer clearance	12,500	8,700	8,880	11,775	11,103	-30.4%	2.1%	32.6%	-5.7%	-11%
	Youth empowerment	17,055	18,544	18,544	7,442	16,226	8.7%	0.0%	-59.9%	118.0%	-5%
	National social safety net - (for older persons, OVC, child welfare, presidential bursary, severe disability)	14,354	16,924	17,305	26,812	26,362	17.9%	2.3%	54.9%	-1.7%	84%
	Primary school digital literacy program	17,580	13,408	13,408	6,333	8,400	-23.7%	0.0%	-52.8%	32.6%	-52%
	School examination fees (KSCE and KCPE)	-	3,209	4,003	4,024	4,103	#DIV/0!	24.7%	0.5%	2.0%	
B	**Public Debt (Art. 203 [1][b])**	**250,390**	**307,155**	**462,243**	**637,396**	**585,703**	**22.7%**	**50.5%**	**37.9%**	**-8.1%**	134%
C	**Other National Obligations (Art 203 [1][b])**	**324,583**	**371,743**	**398,589**	**427,239**	**491,269**	**14.5%**	**7.2%**	**7.2%**	**15.0%**	51%
	Pensions, Constitutional Salaries and Other	owth	60,169	68,702	90,573	109,526	#VALUE!	14.2%	31.8%	20.9%	
	Constitutional Commissions (Art. 248(2)) i.e. CRA, SRC, NI-C, NM, IEBC, TSC	189,066	208,763	224,623	233,619	261,387	10.4%	7.6%	4.0%	11.9%	38%
	Independent Offices(Art. 248(3)) - i.e. AG and CoB	4,720	4,723	5,177	6,412	6,336	0.1%	9.6%	23.9%	-1.2%	34%
	Parliament	27,277	31,480	30,915	34,490	39,501	15.4%	-1.8%	11.6%	14.5%	45%
	Other Constitutional Institutions-State Law Office and DPP	6,863	6,359	6,498	7,602	8,765	-7.3%	2.2%	17.0%	15.3%	28%
	Other statutory bodies (e.g. EACC, RPP, WPA, CAJ, IPOA, NGEC)	4,697	4,855	5,484	5,724	5,937	3.4%	13.0%	4.4%	3.7%	26%
	Judiciary	-	17,759	17,678	13,458	18,937	#DIV/0!	-0.5%	-23.9%	40.7%	
	Other Statutory AllocationslEarmarkecl Funds	37,343	37,635	39,512	35,361	40,880	0.8%	5.0%	-10.5%	15.6%	9%
D	Emergencies [Art. 203 (1)(k)]	7,245	7,245	9,294	6,419	6,418	0.0%	28.3%	-30.9%	0.0%	-11%
	Contingencies	5,000	5,000	5,000	5,000	5,000	0.0%	0.0%	0.0%	0.0%	0%
	Strategic Grain Reserve	2,245	2,245	4,294	1,419	1,418	0.0%	91.3%	-67.0%	-0.1%	-37%
	Equalization Fund [Art. 203 (1) (g) and (h)]	6,000	6,000	7,727	4,700	5,765	0.0%	28.8%	-39.2%	22.7%	-4%
E	**BALANCE TO BE SHARED BY THE 2 LEVELS OF GOVERNMENT**	485,565	534,740	404,414	491,576	693,854	10.1%	-24.4%	21.6%	41.1%	43%
F	**COUNTY GOVERNMENT ALLOCATION FROM REVENUE RAISED NATIONALLY, of which;-**	273,073	295,020	314,205	322,193	323,911	8.0%	6.5%	2.5%	0.5%	19%
	a)Equitable Share of Revenue	259,775	280,300	302,000	304,962	310,000	7.9%	7.7%	1.0%	1.7%	19%
	b)Additional conditional allocations financed from revenues raised nationally	13,298	14,720	12,205	17,231	13,911	10.7%	-17.1%	41.2%	-19.3%	5%
G	**BALANCE LEFT FOR THE NATIONAL GOVERNMENT**	212,493	239,720	90,309	169,383	369,943	12.8%	-62.3%	87.6%	118.4%	74%

Source: DoRB 2019

2. Management of public debt and pension key to ensure counties have fair growth in their equitable share

Public debt is a non-discretionary obligation which has a bearing on the size of revenue that is eventually shared between the two levels of government. The same goes for pension and salaries to constitutional offices. The higher the share of ordinary revenue that is taken up by these national obligations the lower the sharable revenue and allocations to counties. Table 3 provides a good example, as the share of public debt service to ordinary revenue has grown the share of sharable revenue has decline and so has the allocations to county government. Therefore, the Senate has to find ways to link public debt policy to the division of revenue process. The same applies to pension payment which is taking a growing share of ordinary revenue as shown in the table.

Table 3: Share of key national obligation to ordinary revenue

						Share to Ordinary Revenue				
ITEM DESCRIPTION (KSh. Millions)	FY 2015/16	FY 2016/17	FY 2017/18	FY2018/19	FY2019/20	FY 2015/16	FY 2016/17	FY 2017/18	FY2018/19	FY2019/20
ORDINARY REVENUE (EXCLUDING AIA)	1,152,972	1,306,568	1,365,063	1,651,517	1,877,176					
Public Debt	250,390	307,155	462,243	637,396	585,703	21.7%	23.5%	33.9%	38.6%	31.2%
Pensions, Constitutional Salaries and Other	54,617	60,169	68,702	90,573	109,526	4.7%	4.6%	5.0%	5.5%	5.8%
BALANCE TO BE SHARED BY THE 2 LEVELS OF GOVERNMENT	485,565	534,740	404,414	491,576	693,854	42.1%	40.9%	29.6%	29.8%	37.0%
COUNTY GOVERNMENT ALLOCATION FROM REVENUE RAISED NATIONALLY, of which;-	273,073	295,020	314,205	322,193	323,911	23.7%	22.6%	23.0%	19.5%	17.3%
a)Equitable Share of Revenue	259,775	280,300	302,000	304,962	310,000	22.5%	21.5%	22.1%	18.5%	16.5%
b)Additional conditional allocations financed from revenues raised nationally	13,298	14,720	12,205	17,231	13,911					
BALANCE LEFT FOR THE NATIONAL GOVERNMENT	212,493	239,720	90,309	169,383	369,943	18.4%	18.3%	6.6%	10.3%	19.7%

Source: DoRB 2019

3. Significance of Audited Financial Statements

Audited financial statements are important in helping private and public entities make decisions on their financial health. Policy makers, bankers, investors, revenue authorities and suppliers rely on audited statements to determine their investment priorities.

In Kenya, the Office of the Auditor General, as established by Article 229 of Constitution, plays a pivotal role in public sector audit and confirming whether or not public money has been applied lawfully and in an effective way.

This information is also essential in the vertical sharing of revenue between the National Government and County Governments.

The DORB 2019 uses the 2014/15 Audited accounts as the most recent yet the Auditor General finalized and submitted to Parliament reports up to FY 2016/17

Table 1: latest audited revenue accounts

2013/14	**2014/15**	**2015/16**
932, 034 million	1,047,908 million	1,160,727 million

Source: Auditor General reports

It's worth noting that for the past three years, Division of Revenue Act (DORA) has used the same 2013/14 audited accounts. The DORB 2019 has considered FY 2014/15 as the latest audited accounts as illustrated below.

Table 2: Division of Revenue base figures

DORA 2016	**DORA 2017**	**DORA 2018**	**DORB 2019**
935, 653 million	935, 653 million	935, 653 million	1,038, 035 million

Source: DORA 2016/7/DORB 2018

We therefore propose as follows:

- The Division of Revenue Bill 2019 should use the most current audited accounts to determine revenue allocation.
- Article 203(3) grants National Assembly the mandate to receive and approve most recent audited accounts of revenue for purposes of revenue share. However, this process has

delayed in most cases. Therefore, the National Assembly must expedite its process of considering the audited financial statements as submitted by the Auditor General.

4. Connection between the Budget Policy Statement and the Division of Revenue

The BPS lays out the national priorities over the medium and they are not limited only to national government functions. The allocations in the DoRB should reflect the priorities as laid out in the approved BPS since it is debated in both houses of parliament. For example, if the big four agenda are focused on functions that are run by counties, then the DoRB should reflect the impact that will have on county allocations. This could affect the equitable share or conditional grants.

B. Conditional grants

1. Growth in allocations to conditional grants remains unpredictable

The DORB has recommended Ksh 22.9 billion be allocated to counties as conditional grants. However, the growth of the grants based on allocations from previous years raises questions on what the guiding policies say about the allocations. For example, the allocations to level 5 hospitals and compensation for user fees forgone remain the same as the approved amounts in 2018/19. Should there be an annual adjustment even for inflation?

Table 4: Allocations to conditional grants between 2015/16 and 2019/20

					Recommendations 2019/20		
Current Conditional Grants (Billions)	**2015/16 DORA**	**2016/17 DORA**	**2017/18 DORA**	**2018/19 DORA**	**2019/20 (National Treasury)**	**2019/20 (CRA)**	**% Increase of National Treasury Grants to DORA**
Level 5 hospitals	3.60	4.00	4.20	4.33	4.33		0%
Free maternal health care	4.30	4.12	-	-	-		-
Compensation for user fees forgone	0.90	0.90	0.90	0.90	0.90		0%
Leasing of medical equipment	4.50	4.50	4.50	9.40	6.20	9.40	-34%
Road Fuel Levy Fund	3.30	4.31	11.09	8.27	8.98	8.98	9%
Development of Youth Polytechnics			2.00	2.00	2.00		0%
Supplement for construction of county headquarters			0.61	0.61	0.48		-21%
Grant to 5 Cities						5.0	
Total	*16.60*	*17.83*	*23.3*	*25.5*	*22.9*		-10%

DoRB 2019 and DoRA 2015-2018

2. Allocations to Compensation for user fees forgone may be unrealistic

The grant has received the same allocation of Ksh 900 million since the start of the program in 2015/16. The distribution of the fund in 2018/19 was based on the population of each county as a share of the total country population. The data used was based on KNBS projections in 2016. However, the fund is meant to be a reimbursement for the fees that counties forego by not charging patients who visit their health facilities. Therefore, a better way to know the need for services and a better way to estimate whether the grant is adequate is to look at health facility visits in Kenya.

Table 4 shows that the number of visits has been growing year on year between 2014 and 2016. It then dropped in 2017. KNBS explained in the Economic Survey 2018 that this drop was occasioned by the long strikes by health workers in the counties. Therefore, the cost that counties incur to treat patients visits their facilities may be growing as more people seek health services. Therefore, the allocation of Ksh 900 million may not be enough to compensate counties. However, if there is a

guiding policy, then it should be clear whether counties are required to have a matching grant to achieve the objectives of the grant and what that top up should be.

Table 4: Total national health facility visits between 2014 and 2017

	Year	Visits by Children Under 5 Years Visits	Viisits by People aged 5+ and Above	Total	Growth
1	2017*	12.54	37.75	50.29	-24%
2	2016	17.07	49.07	66.14	11%
3	2015	15.52	44.13	59.65	2%
4	2014	17.88	40.63	58.51	
		* Drop due to medical staff strikes in 2017			

Source: Statiscal Abstract 2015-2018, KNBS and DoRA 2015

3. *Has the policy on leasing of medical equipment changed?*

The language in the DoRB seems to indicate that the proposed allocation of Ksh 6.2 billion is to facilitate the, "purchase and maintenance" of specialized health equipment. This seems to indicate that the policy has changed from leasing the equipment to purchase. The Senate should clarify whether this is the case. Senate needs to clarify on adequacy of personnel and necessary infrastructure for the medical equipment.

COUNCIL OF GOVERNORS

18TH APRIL 2019

COG REVISED BRIEF ON THE DIVISION OF REVENUE 2019/20

Preamble

1. CoG rejects the proposal in section 5 of the Bill that requires the Cabinet Secretary National Treasury to set threshold for which the National government shall bear the shortfalls in the revenue.

2. CoG recommends for the retention of the national government bearing wholesomely the revenue shortfall experienced in any financial year. Section 5(2) of the Bill already awards the national government the responsibility over exceeded revenue collection. This principle should be applied across the board.

   If there are shortfalls then national government bears the shortfalls and if the collection exceeds the revenue targets then the exceeded collection is accrued to the national government.

Schedule 1

3. The audited and approved accounts applied in the allocation to county governments is based on the 2014/15 financial year which is four financial years back yet it represents only 30% of the approved accounts. If the Counties equitable share was to be equated to the projected shareable revenues of Ksh 1.87 trillion, it would equate to 16.5% just barely above the minimum constitutional requirement. This is not equity at all.

3. The Budget Policy Statement FY 2019/20 indicates MoH plans to supply medical equipment to health facilities across the Counties. (Page 124 of BPS and page 100 of the Division of revenue Bill)

4. The Council recommends that the funds should be channeled directly to County governments and captured locally through their budgets since the health facilities are under the jurisdiction of County Governments.

   The Managed Equipment Service (MES) experience has shown that not all Counties received all the equipment yet all the Counties are paying equal amounts annually.

THE DIVISION OF REVENUE BILL (DoRB) 2019

REPRESENTATIONS TO SENATE
BY
VIVIENNE TAA

INTRODUCTION

1. The current constitution places the power of revenue sharing on the Commission on Revenue Allocation (CRA) and the Senate. Both are expected to lead a more transparent and objective process on deciding how to share national revenue in Kenya.

2. The Senate's core function is that of representing county interests at the national level especially with regard to the vertical and horizontal allocation of revenue.

3. As the Senate debates the Division of Revenue Bill 2019, there are a number of issues that should be revised to improve equity in national revenue sharing in FY2019/2020

1. Use of Aged Audited Accounts as the Basis for Revenue Allocation

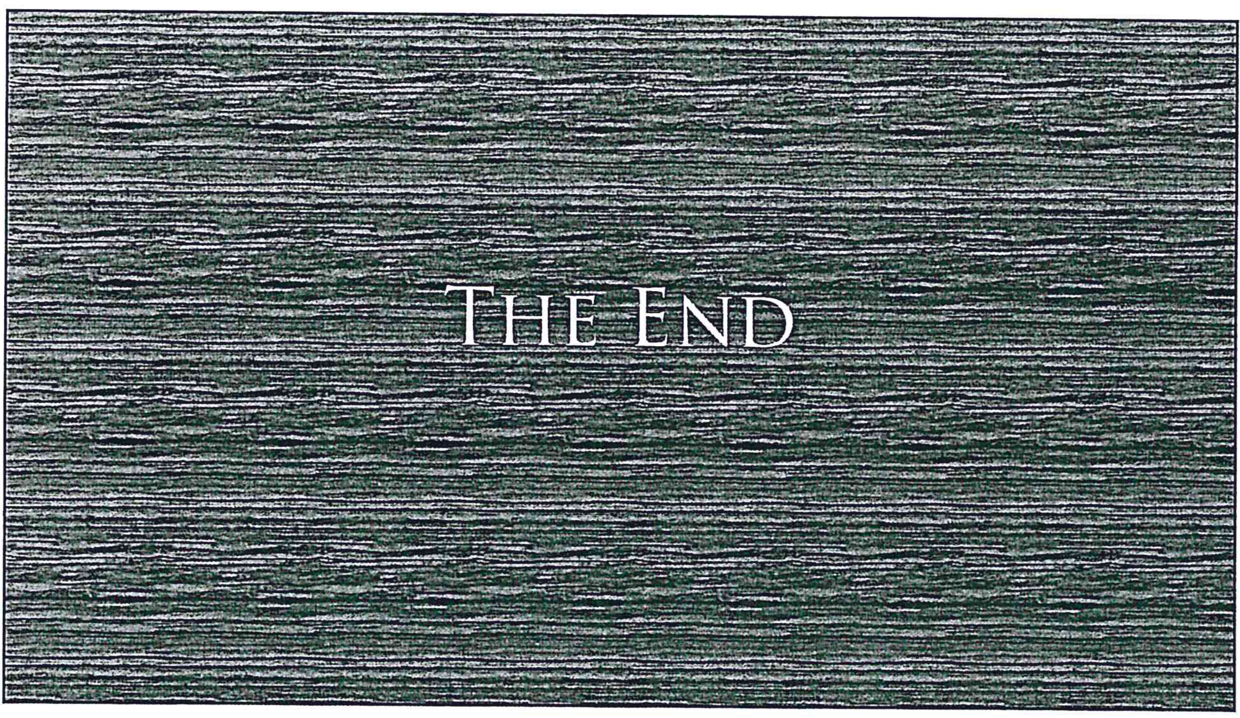
1. Article 203 (2) of the Constitution of Kenya requires that the equitable share of revenue raised nationally allocated to the counties be no less than 15% of all revenue collected. Article 203 (3) qualifies this by stating that the allocation should be calculated based on the **most recent audited accounts** approved by the National Assembly.
2. The DoRB 2019 states that the latest audited accounts approved by the National Assembly are those of **FY2014/2015** and this is the basis for calculation of the equitable share to be allocated to the counties in FY2019/2020.
3. In essence, **the equitable share to be allocated to the counties in FY2019/20 is based on revenue collected 5 years ago!**
4. This is unacceptable and should change immediately considering even publicly listed companies publish their audited accounts within 3 months from the end of every financial year. The government should set the pace in efficient reporting.

Recommendation

1. The question is, why are 5year old audited accounts used as the basis of determining revenue allocation and the equitable share that goes to the counties? Is the government saying it is unable to get and use up-to-date reports?
2. According to Kenya Revenue Authority [KRA] reports, **KES 1,365,000,000 revenue was collected in FY2016/2017**. Meaning, if treasury had for instance relied on this, even with the percentage of national revenue allocated to the counties remaining at 30%, the equitable share to the counties would be **KES 409,500,000,000** representing an additional **KES 99.5 Billion** on equitable share alone.
3. Given its mandate, Senate should speak boldly against continued use of aged audited accounts as the basis for equitable revenue sharing and also provide leadership in finding a sustainable solution. What is it doing about this?

RECOMMENDATION

1. Considering all youth and indeed citizens live and reside in counties, an additional amount should be added to the current KES 2 Billion allocated for the rehabilitation of youth polytechnics from the KES 16.2 Billion allocated for youth empowerment by the national government.



Recommendation

1. Considering provision of healthcare services is a largely devolved function, a better approach would be to provide the allocation for free maternal healthcare to the counties as a conditional grant. This would eliminate the need for pre-registration in order to benefit from free maternal healthcare services.
2. Counties already receive conditional grants to run Level 5 hospitals. It makes sense to include free maternity healthcare as an additional conditional grant because under the current arrangement of the allocation being channeled through NHIF, counties are unable to forecast and plan in advance to better serve citizens.
3. At the beginning of every financial year, counties will have a clear view of the amount of money available for free maternal healthcare services because the allocation will be included in the Division of Revenue Bill and eventually the County Allocation of Revenue Bill.

4. Allocation for Rehabilitation of Youth Polytechnics

1. According to the DoRB 2019, the conditional allocation for the rehabilitation of youth polytechnics is in its 3rd year of implementation through the State Department of Vocational and Technical Training.
2. Only KES 2 Billion has been allocated for this translating to approximately KES 42.5 M per county. The question is, what is the basis of this? In terms of resources, this is really a drop in the ocean considering the youth in Kenya - persons aged 18 years to 35 years - make up 55% of the population.
3. With the current population of Kenya estimated to be at 40Million, this would approximately be 22 Million people.
4. If the government is serious about empowering the youth, they should invest in them and their education, training and activities.