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COMMITTEE Finance

CLERK AT THE TABLE DC(EO)

REPUBLIC OF KENYA

PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET

ON

THE COUNTY ALLOCATION OF REVENUE (SENATE BILLS NO. 7 OF 2020)

CLERK CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

MAY 2020

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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 212(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. Aaron Cheruiyot, MP	- Member
5.	Sen. Mutula Kilonzo Junior, 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

The County Allocation of Revenue Bill was introduced by Sen. Mohamed M. Mahamud, MP the Chairperson the Standing Committee on Finance and Budget Committee pursuant to the provisions of standing order 182 (1) of the Senate Standing Orders. The Bill was published on 17th April, 2020 and subsequently tabled in the House for First Reading on 21st April, 2020. Thereafter committed to the Standing Committee on Finance and Budget for consideration pursuant to standing order 140(1) of the Senate Standing Orders.

The Committee invited members of public and stakeholders *inter alia* such as the National Treasury, Commission on Revenue Allocation, Council of County Governors and Institute of Certified Accountants of Kenya to submit their comments on the Bill.

The principle object of the Bill is to allocate among counties the share of national revenue that is annually allocated to the county level of government for the financial year 2020/21.

The Bill provides for the equitable allocation of revenue on the basis determined in accordance with the resolution in force under Article 217 of the Constitution. Article 96 (3) of the Constitution provides that the Senate determines the allocation of national revenue among counties.

The bill proposes an allocations of Kshs. 369.8 billion which is an aggregate of the following-

1) equitable share- **Kshs. 316.50 Billion** as set out in the First Schedule to the Bill;
2) conditional allocations from national government share of revenue- **Kshs. 23.16 Billion** as indicated on the Second Schedule; and
3) conditional allocations as loans and grants from development Partners- **Kshs. 30.20 Billion** as indicated on the Third Schedule.

Further the bill proposes budget ceilings on recurrent expenditure in financial year 2020/2021 for county executive and county assemblies as Kshs. 26,708,080,067 and Kshs. 33,247,585,464 respectively.

The Committee extensively considered the recommendations of Commission on Revenue Allocation (CRA) on the county government budget ceilings on recurrent expenditure for the financial year 2020/21 pursuant to the provisions of Section 107 (2) (a) of the PFM Act, 2012.

The Committee made the following observations on the Bill-

a) That some County Assemblies had requested for their budget ceilings on recurrent expenditure to be amended with a view to provide more funding for county assemblies' operations. However, the Committee noted that it was not viable to revise the ceilings upwards noting that equitable share growth from previous financial year was nominally zero.
b) That in accordance to Article 187(2) of the Constitution and Gazette Notice No. 1609 of 25th February 2020, some functions of the Nairobi City County (NCC) as given in schedule four of the Constitution were transferred to the National Government. The Committee notes that Clause 7 of the Bill provides a mechanism for funding such functions. However, there was need to provide for a mechanism on monitoring by Parliament on the performance of transferred functions.
c) The allocation of equitable share to county governments as proposed in the bill is based on the second revenue sharing basis since Parliament is yet to approve the third basis.
d) That proposal by County Assembly Forum (CAF) on Urban Services was progressive in facilitating service delivery in urban centres. However, the Committee noted that such allocations may only be provided in the Bill if they were initially approved in the Division of Revenue Act.

The Committee recommends that the Bill be approved with amendments on Clause 7 and Clause 10.

ACKNOWLEDGEMENTS

The Committee acknowledges all the stakeholders and members of the public who made insightful contributions and recommendations to the Bill.

In addition, 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.

This report is hereby submitted to the Senate for its consideration and adoption pursuant to standing order 213 of the Senate Standing Orders.

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 County Allocation of Revenue (Senate Bills No. 7 of 2020).

SIGNED: ....

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

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

Date: 5th May 2020

ADOPTION OF REPORT

Pursuant to standing order 213 (2) of the Senate Standing Orders the Finance and Budget Committee considered the report on the County Allocation of Revenue (Senate Bills No 7 of 2020 and adopted it as follows-

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

CHAPTER ONE

INTRODUCTION

The County Allocation of Revenue (Senate Bills No. 7 of 2020) was first published on 17th April, 2020, and read for the First Time on 21st April, 2020.

The main object of the Bill is to provide for the allocation of revenue raised nationally and conditional allocations among county governments for the financial year 2020/21 as well as the transfer of the county allocations from the Consolidated Fund to the respective County Revenue Funds.

HORIZONTAL ALLOCATION OF REVENUE FOR FINANCIAL YEAR 2020/21

1.1 Overview of the County Allocation of Revenue Bill, 2020

1. Article 218 of the Constitution provides for the allocation of equitable share of revenue raised nationally among county governments. The County Allocation of Revenue Bill (CARB) is prepared in accordance to Article 217 of the Constitution. The CARB guarantees county governments their respective share of revenue raised nationally as well as conditional allocations for better service delivery and ensure seamless operations at the counties. The annual allocation to counties is through the enactment of the County Allocation of Revenue Act based on the provisions in the Division of Revenue Act (DORA). The Division of Revenue Bill (DoRA), 2020 gives a total allocation of Kshs. 369.8billion to county governments for the financial year 2020/2021.

2. The County Allocation of Revenue Bill is a reflection of revenue as shared in the Division of Revenue Act for both equitable share and the conditional transfers. The equitable share of nationally raised revenue, the conditional transfers to the county governments from national government's share and any additional conditional allocations in the form of proceeds from loans and grants from development partners is shared as reflected in the annual DORA.

3. The County Allocation of Revenue Bill, 2020 used the 2005 household budget Survey numbers and the 2009 population census in computing the equitable share to Counties.
4. The County Allocation of Revenue Bill 2020 proposes to share the allocation of Kshs. 369.8 Billion amongst the county governments for FY 2020/21 and it contains three schedules relating to the following: -
   i) First Schedule on equitable share- **Kshs. 316.50 Billion**
   ii) Second Schedule on conditional allocations from national government share of revenue- **Kshs. 23.16 Billion**
   iii) Third Schedule on conditional allocations as loans and grants from development Partners- **Kshs. 30.20 Billion**
5. In addition, the County Allocation of Revenue Bill, 2020 provides for a fourth schedule which is in relation to county governments' budget ceilings on recurrent expenditure between the county executive and the county assemblies for the financial year 2020/21.

1.2 The 1st Schedule: - Equitable Share for County Governments in FY 2020/21

6. Article 217 of the Constitution provide that Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue (equitable share) that is annually allocated to county level of government. The second basis has been used for the proposed allocations in the Bill. The third basis is yet to be approved by Parliament. Sub-Article 217(7) provides that a basis that has been approved shall be binding until a subsequent resolution is approved.
7. The first schedule of CARB 2020 provides the equitable share for FY 2020/21 using a combined index of the six parameters as provided in the basis as approved by Parliament. Some of the counties with the highest allocation include - Nairobi (5.03%), Kilifi (3.35%), Turkana (3.33%), Kakamega (3.34%) and Mandera (3.23%). Some of the counties with the lowest allocation include- Lamu (0.87%), Tharaka- Nithi (1.22%), Elgeyo- Marakwet (1.22%), Samburu (1.26%), Isiolo (1.32%), Kirinyaga (1.35%), and Taita-Taveta (1.39 %).

8. The allocation amongst counties for FY 2020/21 varies from the FY 2019/20 despite the equitable share remaining the same (Kshs. 316.50billion) for the two financial years.

The variance is attributed mainly to deviations of the fiscal effort parameter (measure of county's effort to raise own source revenue). This means that a county, which does not increase its own source revenue collection, fails to get allocation under this parameter.

9. Some of the Counties whose allocation has reduced due to decrease in their fiscal effort index are as shown in table 1.0.

Table 1.0: Counties With Decreased Fiscal Effort Index & Equitable Share Allocations in the FY 2020/2021

	Fiscal Effort Index		Equitable share (Kshs. Millions)		Variance
County	**2019/20**	**2020/21**	**2019/20**	**2020/21**	
1. Siaya	4.32	0.61	6,080.52	5,855.25	(225.27)
2. Turkana	4.96	0.37	10,863.26	10,571.10	(292.16)
3. Kilifi	7.39	2.47	10,907.58	10,602.75	(304.83)
4. Kericho	6.03	0.81	5,764.09	5,443.80	(320.29)
5. Machakos	10.14	4.57	8,394.67	8,039.10	(355.57)
6. Samburu	7.48	0.00	4,446.69	3,987.90	(458.79)
7. Bomet	7.74	0.34	5,989.36	5,507.10	(482.26)
8. Mombasa	19.19	5.92	8,272.12	7,437.75	(834.37)
9. Lamu	15.94	2.66	3,594.04	2,753.55	(840.49)

10. Table 2 shows some of the counties with improved fiscal effort index and as a result increased equitable share allocations.

Table 2.0: Counties With Improved Fiscal Effort Index & Equitable Share Allocations in FY 2020/2021

	Fiscal Effort Index		Equitable share (Kshs. Millions)		
County	**2019/20**	**2020/21**	**2019/20**	**2020/21**	**Variance**
1. Kakamega	0.00	2.56	10,417.63	10,571.10	**153.47**
2. Murang'a	0.00	2.70	6,294.86	6,456.60	**161.74**
3. Tharaka-Nithi	0.00	3.31	3,662.78	3,861.30	**198.52**
4. Isiolo	0.00	3.35	3,964.05	4,177.80	**213.75**
5. Nakuru	0.00	3.40	9,518.74	9,748.20	**229.46**
6. Taita-Taveta	0.00	4.98	4,085.04	4,399.35	**314.31**

7. Kajiado	0.00	5.85	6,037.40	6,393.30	**355.91**
8. Kiambu	0.00	6.58	9,444.48	9,843.15	**398.67**
9. Laikipia	0.00	10.27	4,165.96	4,810.80	**644.84**
10. Narok	0.00	11.18	6,415.16	7,121.25	**706.09**

11. The indices used for the other five parameters (population, equal share, land, poverty and development factor) have remained unchanged in FY 2020/21 for each of the counties compared to allocation in the FY 2019/20.

12. According to Article 187(2) of the Constitution and Gazette Notice No. 1609 of 25th February 2020, some functions of the Nairobi City County (NCC) as given in schedule four of the Constitution were transferred to the National Government. Article 187 (2) (a) of the constitution requires that arrangements are put in place to ensure that the resources necessary to undertake or perform the functions transferred is provided. Clause 7 provides a mechanism for funding of the transferred functions.

1.3 The 2nd Schedule: Conditional Allocations to Counties from the Share of the National Government Revenue for FY 2020/21

13. The second schedule of the Bill relates to conditional allocations to county governments from the national government share of revenue raised nationally in line with Article 202(2) of the Constitution.

14. There are six conditional allocations to the county governments from the national government share of revenue to support specific national policy objectives. The Bill proposes to allocate county governments conditional allocations amounting to Kshs. 23.1billion. The six conditional allocations from the national government share are-

i) Leasing of medical equipment of Kshs. 6.205 billion-which has increased from Kshs. 6.200 billion allocated in the FY 2019/20;

ii) Level-5 hospitals of Kshs. 4.33 billion;

iii) Compensation for user fees forgone Kshs. 900 Million

iv) Rehabilitation of Youth Polytechnics Kshs. 2.00 billion;

v) Supplement for construction of county headquarters (five counties) Kshs. 300 Million –which has decreased from Kshs. 485 million allocated in the FY 2019/20; and

vi) Road Maintenance Fuel Levy Fund Kshs. 9.43billion which has increased from the allocation of Kshs. 8.98 billion in the FY 2019/20. The increase is attributable to higher projected revenues from fuel levy in the FY 2020/21.

1.4 The 3rd Schedule: Conditional Allocations to Counties from Development Partners Loans & Grants in the FY 2020/2021

15. The third schedule is with respect to conditional allocations to county governments from loans and grants from development partners during the financial year 2020/21. The disbursement criterion of these additional conditional grants varies according to the financing agreement and the government.

16. During the FY 2020/21, the total additional conditional allocations from the development partner's amount to Kshs. 30.20 Billion which is a decrease from the allocation of Kshs. 39.09 billion allocated in the FY 2019/20.

1.5 The Proposed 4th Schedule: Budget ceilings on recurrent expenditure of county executives and county assemblies for FY 2020/21

17. The proposed fourth schedule is in relation to county governments' budget ceilings on recurrent expenditure between the county executive and the county assemblies for the financial year 2020/21. The recommendations are in fulfillment of the requirement of Articles 216 (2) and (3) of the Constitution of Kenya 2010 and Section 107 (2) (a) of the PFM Act 2012. This is intended to rationalize spending across the county governments and safeguard frugality. The ceilings are the similar to the ceilings provided in FY 2019/21 and this is attributed to zero growth on equitable share from previous financial year.

CHAPTER TWO

SUBMISSIONS FROM STAKEHOLDERS AND MEMBERS OF THE PUBLIC

Pursuant to Standing Order 140 (5), the Committee invited the public to submit their views on the County Allocation of Revenue bill. The memorandum submitted are outlined herein:

<table>
<tr><th>STAKEHOLDER(S)</th><th>OBSERVATION</th><th>RECOMMENDATION</th></tr>
<tr><td>COUNCIL OF GOVERNORS (COG)</td><td>The Council submitted that the County Allocation of Revenue Bill 2020 reflected the resolution of the Intergovernmental Budget and Economic Council held on 18th February, 2020 as follows:
<table><tr><th>Type of Fund</th><th>Amount</th></tr><tr><td>Equitable Share</td><td>316,500,000,000</td></tr><tr><td>Conditional Grant from the National Government Revenue</td><td>23,164,265,664</td></tr><tr><td>Conditional Grants from Loans and Grants from Development Partners</td><td>30,204,347,508</td></tr></table></td><td></td></tr>
<tr><td rowspan="2">JOINT SUBMISSION BY THE COUNTY ASSEMBLIES FORUM (CAF) AND SOCIETY OF CLERKS AT THE TABLE (SOCATT)</td><td>Clause 5(1) according to CRA recommendations on the Basis for Equitable Sharing of Revenue Between the National Government & County Governments for FY 2020/21, there is a need to provide additional Conditional Grant to enable counties to deliver basic urban services such as garbage collection and management, water supply, sanitation, and water drainage as required by Urban Areas and Cities Act. This will address the financing gap and the growing service delivery needs of the cities</td><td>Amend to include Clause 5(g):- “conditional allocations for the development of Urban Areas as set out in Column F of the Second Schedule</td></tr>
<tr><td>Clause 7(2) required that County Assembly shall appropriate as such monies as may be required for the transferred functions which shall not be less that the amount appropriated by the Assembly in the preceding FY. This provision if left uncorrected may have the spiral effect of making County budgets, in cases where some functions have been transferred, rigid, and therefore nonresponsive to changes in revenue performance. The import of budgeting is to ensure that expenditure priorities are determined based on the prevailing scenarios at any given time without unnecessary earmarking of resources.</td><td>The Senate considers deleting the requirement for threshold on the minimum of the resources to be transferred to commensurate the functions and powers thereof</td></tr>
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	Additional Conditional Grants to Level 5 Hospitals ANNEXE 1 of the Explanatory Memorandum – allocation criteria is based on bed occupancy rate in 2018 and Referrals from outside the county. However, CAF observed that the occupancy rate used is not of 2018 but that of 2015 which has been used in previous years. CAF further notes, the CARB gives the criteria of distribution as the percentage bed occupancy in each hospital. The percentage of bed occupancy rate is misleading because percentages give different outcomes for different facilities because of their bed capacity.	While percentage occupancy is the measure used to assess demand for services on each facility, we find that it is not an adequate measure. Kindly Review the Allocation criteria since not equitable as envisioned
	Conditional Grant to Road Maintenance Fuel Levy. CAF commends the increase of the grant from KES 8.9 Billion to KES 9.4 Billion to Counties. This will increase the efficiency of Counties in repairing and maintaining County Roads thereby facilitating growth and Local Economic Development	
	Revenue with regards to mining – Division of Royalties between the National Government and the County Government. The Mining Act 2016 Section 183 (5) provides that proceeds from mining be apportioned among the national government, county government, and communities where mining operations are carried out. This section has not been implemented due to the lack of a legal framework (Regulations) to govern the division of mining revenue. This gap is a disadvantage to the Counties since the revenue from mining cannot be accessed until the necessary regulations are put into place.	The State Department of Mining works with various stakeholders to finalize the regulations of the Mining Act 2016.
	County Assembly ceilings for FY19/20 to FY20/21 has remained the same. This has therefore not taken into consideration on the projected increments, mileage and staff for nominated members and the cost of inflation	Provide Guidance on the projected increments, mileage, and staff for nominated members and the costs of inflation that are not provided for in the financial year 2020/2021.
	The Commission on Revenue Allocation's Third basis of revenue sharing. It is noted that the proposed resource allocations for the FY 2020/21 are guided by the second basis of revenue sharing, would it, therefore, mean that resource allocated for the financial year under focus is ill-	The Parliament of Kenya should approve the Third basis of revenue sharing to improve the equitable allocation of resources to Counties

	advised in line with the parameters that guided the review of the formulae. The County allocations for the FY 2020-21 should have better been premised on the third basis for revenue sharing which is supported by the latest Kenyan population census provides a more realistic benchmark for resource allocation across Counties.	
	Loans and Grants- Unspent/ Undisbursed Conditional Grants. Some County Assemblies, have unspent/un disbursed conditional grants for the FY19/20, Section 136 (1) of the Public Finance Management Act, 2012, provides that an appropriation that has not been spent at the end of the financial year for which it was appropriated shall be paid back to the County Exchequer Account.	Senate needs to assist counties on follow-up of allocations from Loans and Conditional grants that are yet to be disbursed as budgeted for in the previous financial year Budget.
INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)	Clause 9 of the bill	Amend clause 9 to remove ambiguity by striking off the following phrase: *'Despite the provisions of any other law, ~~any serious or persistent~~ non-compliance with provisions of this Act constitutes an offence under the Public Finance Management Act.*
	Clause 10 of the bill	The approval process of the third revenue sharing formula proposed by CRA be expedited and finalized to allow for responsive revenue share that meets the current needs
INTERNATIONAL BUDGET PARTERNSHIP-KENYA	It is of concern that the third-generation formula for revenue sharing among counties has not been passed. As such the second generation formula is being utilized for the fifth year in the distribution of the equitable share among counties. The third formula has great potential of addressing some of the challenges brought about by using proxy measures of service delivery needs, especially in health, agriculture and urban services.	The committee to expedite on the passage of the new mechanism.
	There is limited follow-through in the disbursement schedule for the county allocations, and this has a direct negative effect on the provision of basic services at the county level. Disbursements to National government MDAs are	• Regular cash disbursement to counties • County Cash Disbursement Schedule should be made public together with the

	proportionally higher than those to counties. That means that counties continue to struggle to keep up with their expenses and could explain the rising pending bills.	Approved CARA to help in monitoring.
	Conditional grants have continued to run with limited clarity on the criteria for their funding, targeting, and monitoring. Research by IBP has found limited information on what informs the creation of conditional grants and why some of them are for functions that could be funded through the equitable share.	-
	A closer look at the actual distribution of the conditional grant for level 5 hospitals reveals glaring concerns of disproportionate allocations. First, the bill is not clear on what data will be used as it speaks of 2018 in the allocation criteria section and 2015 in the allocations table. Secondly, occupancy rates mean very different things for each of the facilities based on a variety of factors, including bed capacity and the catchment areas. E.g. Nakuru and Meru that have a similar occupancy rate and thus are expected to receive similar amounts of Ksh. 373.8 Million. Nakuru level 5 hospital has a total of 588 beds, while Meru has a total of 306 beds. Therefore, occupancy rates of 77 percent in each does not mean an equal number of patients in each of them. As such Meru receives 1.2 million per bed for the year while Nakuru received Ksh 635 million per bed for a year. Therefore, the current criteria allocate almost twice the amount of resources per bed to Meru compared to Nakuru.	• The Bed Occupancy data used should be clear, and the Senate should be furnished with the actual data used in this distribution for confirmation. • The criteria of distribution for all the conditional grants should be relooked to ensure they are fair to all the beneficiary programs and counties
	Conditional grants are often disbursed late, their utilization is poorly monitored, and hence their effectiveness is unknown. A case in point is the funds for user fees foregone that are key resources for operation and maintenance of lower-level health facility. There is total confusion about the disbursement of these funds. Engagements between the counties and IBP-K in 2019, some counties indicated that they had not received the user forgone fees for financial year 2018/2019 even though documents from the National Treasury showed that some amounts had been disbursed. It was also not clear who is responsible for managing the disbursements between the	

	Ministry of Health and the National Treasury. More concerning is that there seems to be limited monitoring of the funds by the Parliament.	
INSTITUTE OF PUBLIC FINANCE KENYA	**Conditional Grants, the leasing of medical equipment.** In a report released by the Senate, the project has various challenges such as lack of specialized health personnel to operate the equipment, under-utilization of installed equipment and cases where some facilities received equipment that had already been provided by the county government. The Senate (Senate, February 2020) recommended to the National Treasury to stop allocations to the counties under this grant until the issues raised have been addressed. The Bill however provides for an allocation of Ksh6.205 billion towards the leasing of medical equipment.	• The Senate to give guidance to the Counties on how some of the challenges facing the Managed Equipment services can be resolved for instance hiring of specialized personnel to operate and maintain these machines as well as develop the required infrastructure in the health facilities. • Senate should take into account the principles of equity and fairness in distribution of the medical equipment as well as the medical priorities and needs of each county. This will ensure that the grant responds to the county specific needs and give value for money.
	Transparency around the allocations - Section 8 of the Bill indicates that the National Treasury and Planning shall publish a monthly report on actual transfers of all allocations to county governments. However, the information on the funds disbursed to the counties is lumped together as equitable share, conditional and unconditional grants making it hard to understand how much each County received in terms of each item.	• Senate as it approves the County Allocation of Revenue Bill, 2020 to include a provision that obligates the National Treasury to provide a breakdown of the disbursements in terms of equitable share and conditional grants. This is will help promote transparency and help in tracking how the limited resources in the Country are being distributed. • The senate to legally require county governments to provide a monthly statement of actual revenues and net issues from the county

		revenue fund. This statement would indicate how county departments are receiving money from the county revenue and would complement tracking of how counties are accumulating and offsetting expenditures.
	Disbursement Schedule - Section 17 (6) of the Public Finance Management Act provides that The National Treasury shall, at the beginning of every quarter, and in any event not later than the fifteenth day from the commencement of the quarter, disburse monies to county governments. The disbursement schedule provides the devolved units the predictability of when to expect the transfers from the National Government. The Office of the Controller of Budget (OCOB) implementation reports indicated that Counties had a cash balances of Ksh25.75 billion in FY2016/17, Ksh55.08 billion and Ksh47.15 billion from FY2017/18 and FY2018/19 respectively. This implies that development projects worth that amount were not implemented. The OCOB reports also points to the delay in disbursements of equitable share as one of the challenges hampering effective budget implementation in the Counties.	The Senate to ensure that the disbursement schedule approved by the House is adhered to by the National Treasury. This will be a way of ensuring that the counties receive the equitable share and conditional grants from the National Government on time.
JOINT SUBMISSION BY PAMOJA TRUST, SIDAREC & FOLLOW THE MONEY	**Conflicting figures on Conditional grants-** In the second schedule on the allocation of conditional grants, the total amount is Ksh.23.1 billion while the explanatory memorandum on page 108 of the Bill indicates Ksh.13.7 billion as conditional allocation from the share of national government revenue. It is therefore difficult to explain the discrepancies between the two figures.	A clarification to be made as far as this is concerned.
	Missing information of Development expenditure ceilings - The total county government recurrent expenditure ceilings are Ksh.33.2 billion and Ksh.26.7 billion for the county assemblies and executive respectively, have been indicated. However, there is no information provided for development expenditure ceilings.	This information is provided for in the final draft.

	Discrepancy in equitable share total in DORA and CARA - Notably, there is discrepancy in the equitable share total allocated by Commission on Revenue Allocation (Ksh.321.5)and what the bill proposes (Ksh.316). They observed that that could be as a result of the omission of part of Nairobi County's equitable share in the approved DORA due to transfer of some of its functions, which seem to be factored in the CARA.	
	A decline in conditional grants from developmental partners- stakeholders observed reductions in several additional conditional allocations from development partners and national government. For instance, leasing of medical equipment Ksh.0.005 billion, Construction of County headquarters by Ksh.185 million, DANIDA UHC devolved system program by Ksh.86 million among others.	There is an imminent need to seek alternative sources of funding to support counties, because an overreliance on development partners poses a risk of inability to complete or sustain projects, when they pull out or cut funding significantly.
	Unclear criteria of prioritization of beneficiaries of development projects- On the conditions and criteria provided for level 5 hospitals of bed occupancy rate, it might not fully address issues of equity and fairness in distribution of the grant.	This decision be based on the counties' health infrastructure needs, with prioritization of the most vulnerable areas
Mandera County Assembly	The location of the Headquarter (Mandera Town) is on extreme end of the County, which makes the distance of the wards extreme and expensive. Claimable Mileage by 27 MCAs whose wards are located more than 45 KM from the Assembly is **Kshs. 54,909,223**. The distance used was done by Ministry of Public Works in consultation with Assembly. The claimable mileage for nominated members as per SRC direction is estimated at **Kshs. 42,822,000.** Using the CRA formulae for Operation and maintenance of 30%, County Assembly expects an increment of **Kshs. 23,886,463** for Operation and Maintenance and **Kshs. 79,621,543** on claimable mileage thus bringing total difference of **Kshs. 103,508,006.**	Revise the county Assembly ceilings from **Kshs.** 726,834,897 to **Kshs. 830,342,903**
Commission on Revenue Allocation	For further clarification more provisions are needed under clause 7.	Amend to include the following sub-clause

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i. The approved budget for the transferred functions for financial year 2019/20 amounts to Ksh.15.95 billion out of an approved budget for 2019/20 of Kshs. 33.3 billion. The budget for the transferred functions is therefore equivalent to 50 per cent of Nairobi county approved budget for 2019/2020. The 2019/2020 Nairobi County budget of Ksh. 33.3 billion constituents of Ksh 15,949 million from equitable share, Kshs.880.9 million from conditional grants and Kshs.16,470 million from Own Sources Revenue.
<table>
<tr><th>Source</th><th>Kshs 'Millions'</th></tr>
<tr><td>Equitable share</td><td>15,949</td></tr>
<tr><td>Conditional grant</td><td>880.9</td></tr>
<tr><td>Own Source Revenue</td><td>16,470</td></tr>
<tr><td>Total</td><td>33,300</td></tr>
</table>
ii. The functions transferred to the national government should therefore be financed partly from the equitable share, conditional grants and revenues assigned to Nairobi county government under Article 209(3)
The Transfer Deed empowers national government to perform the transferred functions. In performance of the transferred functions, national government shall collect Appropriations in Aid (AinA) in provisions of Health, public works, transport and county Planning. Under the national government, by an Act of Parliament, the AinA generated by MDAs is retained by the MDAs to perform the functions.
This OSR component and the conditional grants for the transferred functions should constitute the other sources of financing the transferred functions.
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<td>
4) The monies referred to in 7(3) shall be a proportion of the Nairobi county government equitable share and shall not exceed 50 per cent of the Nairobi county equitable share allocation.
5) The 50 per cent of the monies referred to in 7(3) shall be provided for in a payment schedule published in the Gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act, 2012.
6) The CS, National Treasury shall establish a special purpose Fund unto which the 50 per cent of the monies referred to in 7(3) shall be transferred. This forms part of the money to be used to performance the transferred functions
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<td></td>
<td>Regarding Clause 11
In accordance with the provisions of Article 217, read together with the Sixth Schedule</td>
<td>The Commission submits that there is still adequate time to approve the third basis. This</td>
</tr>
</table>

	Section 16, the first and second determinants were to be used for three years each. Using the second basis to allocate revenues for 2020/21 implies that the first and second basis could have been in use for a total of 8 years against a constitutional requirement of 6 years.	will however require formation of joint committee of the two houses so that the approval is done simultaneously by the two Houses. This will ensure equity in sharing revenue among counties through the use of the most recent data relating to population, households and poverty. The Commission also notes that it is not possible to apply new data to the Second Basis for Revenue Sharing for the following reasons: i. *This will amount to a new basis given that the second basis only provided for use of new data on fiscal effort parameter only.* ii. *Application of the new data on poverty for 2015/16 and Census data for 2019 to the second basis without reviewing the basis will cause substantive reallocations across counties which would not amount to equity in revenue sharing.*

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Observations

The Committee made the following observations on the Bill-

a) That some County Assemblies had requested for their budget ceilings on recurrent expenditure to be amended with a view to provide more funding for county assemblies' operations. However, the Committee noted that it was not viable to revise the ceilings upwards noting that equitable share growth from previous financial year was nominally zero.

b) That in accordance to Article 187(2) of the Constitution and Gazette Notice No. 1609 of 25th February 2020, some functions of the Nairobi City County (NCC) as given in schedule four of the Constitution were transferred to the National Government. The Committee notes that Clause 7 of the Bill provides a mechanism for funding such functions. However, there was need to provide for a mechanism on monitoring by Parliament on the performance of transferred functions.

c) That the growth in conditional allocation, though beneficial, to counties have some inherent inequities and allocative inefficiencies risks such as-

   i) Disadvantages some counties since there is no approved and published criteria on equitable sharing of the conditional grants for enhanced access across the country e.g. the grant to level-5 hospitals is not equitably shared to enhance specialized access of specialized services across the country;

   ii) Lack of approved and published criteria on the distribution of allocations of proceeds from external loans and grants from development partners, particularly the negotiation process and selection of projects/counties which benefit.

d) The allocation of equitable share to county governments as proposed in the bill is based on the second revenue sharing basis since Parliament is yet to approve the third basis for revenue sharing.

e) That proposal by County Assembly Forum (CAF) on Urban Services was progressive in facilitating service delivery in urban centres. However, the Committee noted that such allocations may only be provided in the Bill if they were initially approved in the Division of Revenue Act.

f) Clause 10 of the Bill required amendments to provide for clarity by deleting the words 'any serious or persistent'.

Recommendations

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

a) To ensure there is effective monitoring on the performance of the transferred functions, Clause 7 be amended by inserting the following new subclauses immediately after subclause (3)-

(4) The Cabinet Secretary shall prepare a report for each quarter of the financial year in respect of the expenditure of funds transferred to the National Government pursuant to subsection (3).

(5) In preparing a report under subsection (4), the Cabinet Secretary shall ensure that the report-

(a) contains information on the financial and non-financial performance of the entity assigned to carry out the transferred functions on behalf of the National Government;

(b) is in a form determined by the Accounting Standards Board; and

(c) contains such further information as the Senate or the National Assembly may, pursuant to section 34 of the Public Finance Management Act, require.

(6) The Cabinet Secretary shall submit the report prepared under subsection (5) to the Senate, the National Assembly, the Controller of Budget, the Auditor-General and the respective county assembly.

b) For clarity purposes, clause 10 of the Bill be amended by deleting the words "any serious or persistent" appearing immediately after the words "any other law".

Annexes

1. Minutes of the Committee

2. Submissions from Stakeholders