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REPUBLIC OF KENYA

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J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 24/04/24

THIRTEENTH PARLIAMENT - THIRD SESSION

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THE SENATE

25/4/24

STANDING COMMITTEE ON FINANCE AND BUDGET

APPROVED
RT. HON. SEN
AMASON J. KINGI

REPORT ON THE DIVISION OF REVENUE BILL, 2024 (NATIONAL ASSEMBLY BILLS NO.14 OF 2024)

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NAIROBI.

April 2024

RE. Hon. Speaker,
You may refer me to the following
J.M. Spangher, Esq.
Clark of the Commonwealth, PSC.
[Address]

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LIST OF ABBREVIATIONS/ACRONYMS

BETA	-	Bottom-Up Transformation Agenda
BPS	-	Budget Policy Statement
CAF	-	County Assemblies Forum
CAF	-	County Assemblies Forum
CAIPS	-	County Aggregation and Industrial Parks
CFSP	-	County Fiscal Strategy Paper
CHPS	-	Community Health Promoters
CoG	-	Council of Governors
CoK	-	Constitution of Kenya
CRA	-	Commission on Revenue Allocation
DORA	-	Division of Revenue Act
DoRB	-	Division of Revenue Bill
FY	-	Financial Year
IBP-K	-	International Budget Partnership-Kenya Chapter
ICPAK	-	Institute of Certified Public Accountants of Kenya
IEA	-	Institute of Economic Affairs
MSMEs	-	Micro Small and Medium Enterprises
NSSF	-	National Social Security Fund
OAG	-	Office of The Auditor-General
OSR	-	Own Source Revenue
PFM	-	Public Finance Management
PWDs	-	Persons Living with Disabilities

PREFACE

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Article 124 (1) of the Constitution of Kenya provides that each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

Parliamentary committees consider policy issues, scrutinize the workings and expenditures of the National and County Governments, and examine proposals for legislation. The end result of any process in Committees is a report, which is tabled in the House for consideration.

The Senate Standing Committee on Finance and Budget is established under Section 8(1) of the Public Finance Management (PFM) Act, Cap 412A and standing order 228 of the Senate Standing Orders and is mandated to-

- a) investigate, inquire into, and report on all matters relating to coordination, control, and monitoring of the county budgets and examine -
 - (i) the Budget Policy Statement presented to the Senate;
 - (ii) the report on the budget allocated to constitutional Commissions and independent offices;
 - (iii) the Division of Revenue Bill, the County Allocation of Revenue Bill, the County Governments Additional Allocations Bill, and the cash disbursement schedules for county governments;
 - (iv) all matters related to resolutions and Bills for appropriations, the share of national revenue amongst the counties, matters concerning the national budget, including public finance and monetary policies and public debt, planning, and development policy; and
- b) 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

Following the constitution of the Standing Committees of the Senate of the Thirteenth (13th) Parliament on Thursday, 13th October, 2022, the Senate Standing Committee on Finance and Budget as currently constituted comprises the following Members-

- | | | |
|---|---|-------------------------|
| 1) Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2) Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 3) Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 4) Sen. Joyce Chepkoech Korir, MP | - | Member |
| 5) Sen. Tabitha Karanja Keroche, MGH, MP | - | Member |
| 6) Sen. Mohamed Faki Mwinyihaji, CBS, MP | - | Member |
| 7) Sen. Richard Momoima Onyonka, MP | - | Member |
| 8) Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 9) Sen. Eddy Gicheru Oketch, MP | - | Member |

CHAIRPERSON'S FOREWORD

The Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024) was published vide a Kenya Gazette Supplement No.57 of 8th March, 2024. The Bill was introduced in the National Assembly, debated and passed without amendments on Wednesday, 20th March, 2024. Consequently, in accordance with Article 110(4) of the Constitution, the Bill was referred to the Senate for consideration.

The Bill was read a First Time in the Senate on Wednesday, 27th March, 2024. Consequently, pursuant to standing order 145 of the Senate Standing Orders, the Bill was committed to the Standing Committee on Finance and Budget for consideration and facilitation of public participation.

The Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024) is prepared in line with Article 218 of the Constitution. It provides for vertical equitable sharing of revenue raised nationally between the national and county governments in the Financial Year (FY) 2024/25 in accordance with Articles 202(1) and 203 of the Constitution.

The revenue shared is calculated on the basis of the most recent audited accounts of revenue approved by the National Assembly, as stipulated in Article 203(3) of the Constitution. The most recent audited revenue approved by the National Assembly is for the FY 2020/21 and amounts to Kshs. 1,570,562,945,014.

The projected revenue collection for the FY 2024/25 is estimated at Kshs. 2,948.124 billion. Out of this, the National Governments share is Kshs.2,549.154 billion, representing 86.47 % of the total revenue, while the proposed county governments' equitable share is Kshs. 391.117 billion representing 13.3% of the total revenue. The proposed county governments' equitable share is 24.90% of the most recent audited revenue for the FY 2020/2021 approved by the National Assembly. The County equitable share is proposed to increase by 1.5% from a baseline of Kshs. 385.425 billion (allocated in FY 2023/2024) arising from an adjustment for revenue growth.

Further the Bill provides an allocation to the Equalization Fund for the FY 2024/2025 totaling to Kshs.7.8528 billion, which is 0.5% of the FY 2020/21 audited and approved revenue, as per Article 204 of the Constitution.

It is worth noting that during consideration of the 2024 Budget Policy Statement approved by the House, the Senate made some key financial recommendations with regard to the division of revenue. Notably, the Senate recommended an allocation of Kshs. 415.9522 billion as equitable share to county governments for FY 2024/25 based on the following -

- i) Adjustment of the FY 2023/2024 revenue allocation by a growth factor of 6.4%.
- ii) Further adjustment by repurposing of the scrapped MES programme allocation amounting to Kshs. 5.86 billion.

The adjustments take into account the recent additional non-discretionary financial obligations relating to housing levy deductions, enhanced contributions to the National Social Security Fund (NSSF), certain contributions to the Social Health Insurance Fund (SHIF), wage drift as well as the need for counties to provide matching allocations for the County Aggregation and Industrial Parks and the Community Health Promoters programme. Further, resources for the transferred obligation to meet the cost of medical equipment programme.

Pursuant to the provisions of Article 118 of the Constitution as read together with standing order 145(5) of the Senate Standing Orders, the Committee facilitated public participation and took into account the views and recommendations of the public in its report. An advert inviting the general public to submit memoranda on the Bill was published in two newspapers of nationwide circulation on 3rd April, 2024.

During consideration of the Bill, the Committee received submissions from the following key stakeholders –

- a) National Treasury and Economic Planning;
- b) Commission on Revenue Allocation (CRA);
- c) Council of Governors (CoG);

- d) The Institute of Certified Accountants of Kenya (ICPAK);
- e) The International Budget Partnership (IBP)-Kenya;
- f) Institute of Economic Affairs (IEA);
- g) County Assemblies Forum (CAF);
- h) KATIBA Institute;
- i) The Rift Valley Budget Hub;
- j) The Lake Region Hub; and
- k) Youth Senate Nairobi County.

Committee Observations

- a) The Bill uses a baseline of Ksh. 374.492 billion as the allocation for Financial Year 2023/24 against the actual baseline of Ksh. 385.425 billion. The Committee observes that the purported netting out of Ksh. 10.9 billion as adjustment for the Road Maintenance Levy Fund (RMLF) which will henceforth be allocated separately to counties is erroneous since the equitable share, once approved, does not include conditional allocations.
- b) The actual increment (adjustment for revenue growth) in county equitable share is Kshs. 5.692 billion as opposed to the Ksh. 16.625 billion as set out in the explanatory memorandum to the Bill. Additionally, the National Treasury has failed to satisfactorily demonstrate the criteria that the revenue growth is based on.
- c) The allocation to the Equalization Fund for FY 2024/25 is lower than the approved allocation for Financial Year 2023/24 since the basis for the proposed allocation is the audited and approved accounts of revenue for FY 2020/21 which is lower than the amount for FY 2019/20.
- d) Delayed approval of the audited and approved accounts of revenue has adversely affected revenue allocation to counties.
- e) Despite the indication that the national government continues to bear the revenue shortfalls, county governments have also borne the shortfalls in the form of delayed exchequer releases which hamper county budget implementation and service delivery.

- f) The county governments are faced with additional expenditure demands due to implementation of key national government priority programmes such as county aggregation and industrial parks, and community health promoters which are jointly funded by the national and county governments on a 50:50 matching basis. Other non-discretionary expenditure demands accrue from the new housing levy deductions, new National Social Security Fund (NSSF) contributions and new Social Health Insurance Fund (SHIF) contributions.

Recommendations

Having considered the Bill and submissions from the stakeholders, the Committee recommends that the Senate approves the Bill with the following amendments to the Schedule -

- a) The National Government share of revenue- Kshs. 2,524,318,490,857; and
- b) The county equitable share- Kshs.415,952,200,000.

This is arrived at by making adjustments to the base of Ksh. 385.425 billion to take into account non-discretionary financial obligations relating to housing levy deductions, enhanced contributions to the National Social Security Fund (NSSF), certain contributions to the Social Health Insurance Fund (SHIF), wage drift as well as the need for counties to provide matching allocations for the County Aggregation and Industrial Parks and the Community Health Promoters programme. Further, resources for the transferred obligation to meet the cost of medical equipment programme.

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Acknowledgement

I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Division of Revenue Bill, 2024 successful.

The Committee appreciates the support extended by the offices of the Speaker and the Clerk of the Senate while undertaking this important assignment.

Lastly, I thank the stakeholders who submitted written memoranda and appeared before the Committee to present their comments on the Bill.

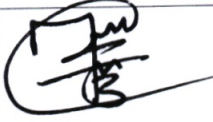

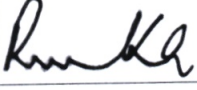
It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders to present the Report of the Standing Committee on Finance and Budget on the Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024).

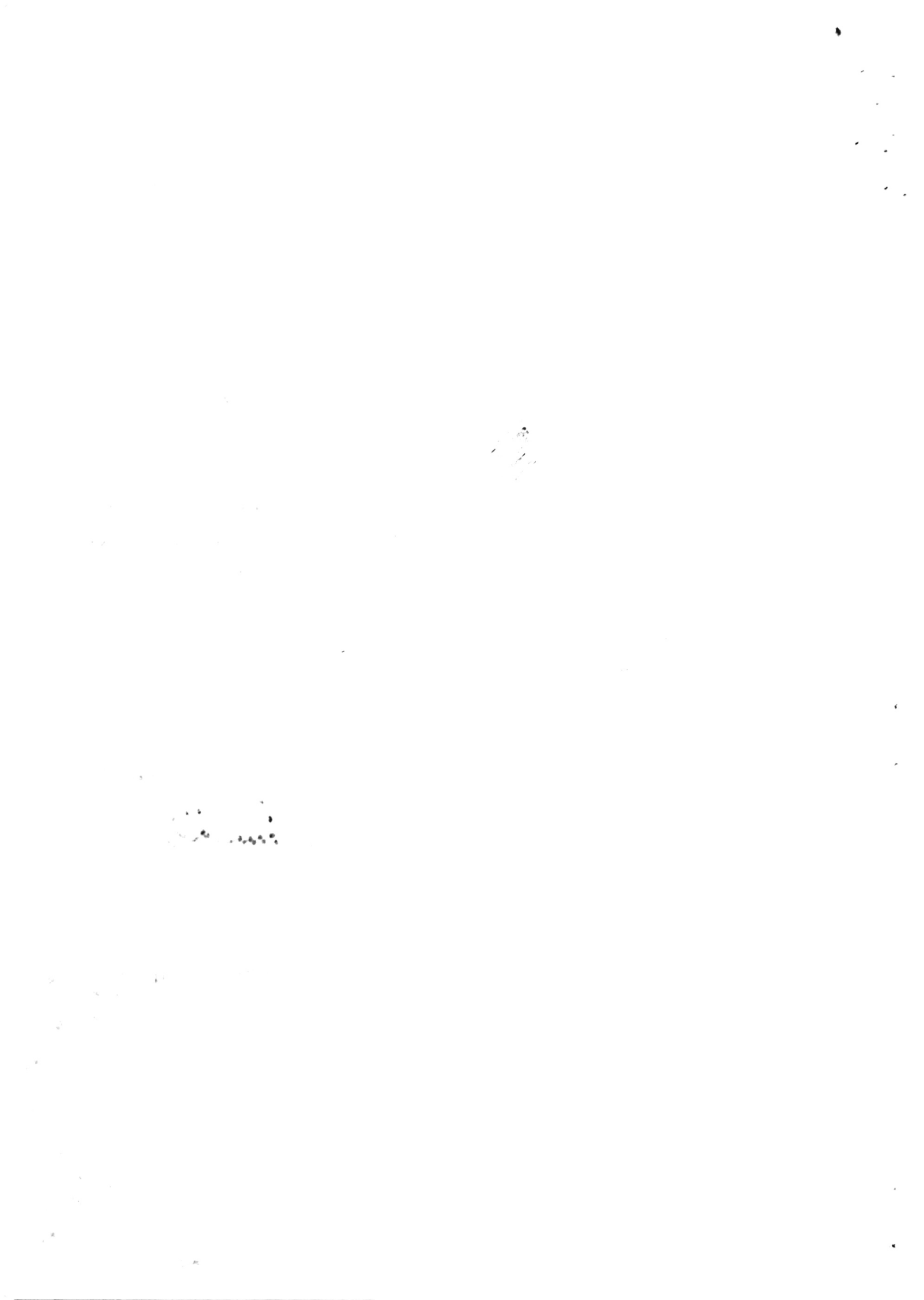
Signature..........Date.....24/04/2024.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP,
CHAIRPERSON,
STANDING COMMITTEE ON FINANCE AND BUDGET**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON
FINANCE AND BUDGET ON THE DIVISION OF REVENUE BILL,
2024 (NATIONAL ASSEMBLY BILLS NO.14 OF 2024)**

We, the undersigned Members of the Senate Standing Committee on Finance and Budget, do hereby append our signatures to adopt this Report-

	Name	Designation	Signature
1.	Sen. Capt. Ali Ibrahim Roba, EGH, MP	Chairperson	
2.	Sen. Maureen Tabitha Mutinda, MP	Vice-Chairperson	Endorsed virtually
3.	Sen. (Dr.) Boni Khalwale, CBS, MP	Member	
4.	Sen. Tabitha Karanja Keroche, MGH, MP	Member	
5.	Sen. Joyce Chepkoech Korir, MP	Member	
6.	Sen. Mohamed Faki Mwinyihaji, CBS, MP	Member	Endorsed Virtually
7.	Sen. Richard Momoima Onyonka, MP	Member	
8.	Sen. Shakila Abdalla Mohamed, MP	Member	
9.	Sen. Eddy Gicheru Oketch, MP	Member	Endorsed virtually.



CHAPTER ONE

OVERVIEW OF THE DIVISION OF REVENUE BILL, 2024

1.0 Introduction

1. The Division of Revenue Bill, 2024 (National Assembly Bill No.14 of 2024) was published on 8th March, 2024. The Bill was read a First Time in the National Assembly on Tuesday 12th March, 2024 and was committed to the Budget and Appropriations Committee for review and recommendations pursuant to standing order 127(2) of the National Assembly Standing Orders. The National Assembly considered the Bill and approved it as published. Subsequently, the Bill was referred to the Senate for concurrence pursuant to Article 110(4) of the Constitution.
2. The objective of the Bill is to provide for the vertical sharing of revenue raised nationally between the National Government and county governments for the FY 2024/25 in accordance with Articles 202(1), 203, and 218 of the Constitution.
3. Article 202(1) of the Constitution provides that revenue raised nationally shall be shared equitably among the national and county governments. Article 218 of the Constitution provides that a Division of Revenue Bill shall divide revenue raised nationally between the national and county governments. Further, Article 203(2) and (3) of the Constitution provide that county governments are entitled to at least 15 percent of the most recent audited revenue as approved by the National Assembly.
4. To this end, the enactment of the Division of Revenue Bill, 2024 is critical in setting the stage for the preparation of the County Allocation of Revenue Bill, 2024, which will inform the firming up and completion of preparation of the annual budget estimates for the forty-seven county governments.

1.1 Content of the Division of Revenue Bill for FY 2024/25

5. The projected revenue collection for the FY 2024/25 is estimated at Kshs. 2,948.124 billion. Out of this, the National Governments share is Kshs. 2,549.154 billion, representing 86.47 % of the total revenue, and the county equitable share is Ksh. 391,116,788,147.
6. The county equitable share is equivalent to 24.9 percent of the most recent audited accounts of revenue as approved by the National Assembly in accordance with

Article 203(3) of the Constitution. Notably, the most recent audited and approved revenue accounts are for the FY 2020/21 amounting to Ksh. 1,570,562,945,014.

7. The Bill indicates that the proposed county equitable share allocation of Kshs. 391.117 billion is informed by, among others, the trend in revenue performance, increased debt service expenditure, financing constraints due to limited access to domestic and international financial markets, the government's commitment to implement a fiscal consolidation plan targeting to reduce the fiscal deficit to 3.9 percent of GDP in FY 2024/25, and the fact that the National Government continues to solely bear shortfalls in revenue in any given financial year even as County Governments continue to receive their full allocation.
8. Equally, in line with Article 204 of the Constitution, the Equalization Fund is allocated Ksh. 7,852,814,725, equivalent to 0.5 percent of the most recent audited accounts of revenue approved by the National Assembly (FY 2020/2021). This Fund is used to finance development programmes that aim at reducing regional disparities among beneficiary counties.

CHAPTER TWO

SUBMISSIONS BY STAKEHOLDERS

2.0 Introduction

9. This Chapter entails submissions from various stakeholders regarding the Bill. They include the following-

- a) The National Treasury and Economic Planning;
- b) The Council of Governors (CoG);
- c) Commission on Revenue Allocation (CRA);
- d) The Institute of Economic Affairs;
- e) Katiba Institute;
- f) The Lake Region Budget Hub;
- g) The Institute of Certified Public Accountants of Kenya (ICPAK);
- h) The Youth Senate Kenya;
- i) The County Assembly Forum (CAF);
- j) The International Budget Partnership, Kenya (IBP-K); and
- k) The Rift Valley Budget Hub.

2.1 Submissions by the National Treasury and Economic Planning

10. The National Treasury submitted the following-

- a) That the definition of Cabinet Secretary be included in the Bill.
- b) The National Treasury and Planning agreed on the amount of Kshs. 1,570,562,945,014 in the Bill being the most recent audited revenue for FY 2020/21 approved by the National Assembly, in line with Article 203(2) of the Constitution.
- c) The National Treasury is in agreement with the 0.5 percent for the Equalization Fund, which amounts to Kshs. 7,852,814,725; and the National Government allocation, which amounts to Kshs. 2,549,153,902,710, with Kshs. 1,570,562,945,014 as the most recent audited and approved account for FY 2020/21.

- d) That the National Treasury is in agreement with the National Assembly on the proposed division of revenue, where the national government equitable share is Kshs. 2.549 trillion and the county equitable share is Kshs.391.117 billion.

2.2 Submissions by the Council of Governors

11. The CoG appeared before the Committee and submitted as follows-

General Comments

- a) That CoG appreciates the Senate's recommendation on the 2024 Budget Policy Statement to allocate County governments Ksh.415.9522 billion for the FY 2024/25.
- b) However, the Council noted with concern that the proposed allocation of Ksh.391.117 billion as equitable share of revenue to Counties as contained in the Division of Revenue Bill, 2024 will subject counties to major challenges in the performance of the functions assigned to them under the Fourth Schedule of the Constitution and delivery of services to citizens in the FY 2024/25 if the Bill is passed in its current form.
- c) That County governments have been subjected to additional non-discretionary expenditures that will require increased allocation in the next financial year.
- d) The Council therefore proposed a minimum allocation of Ksh.439.5 billion for FY 2024/25 as sharable revenue.
- e) CoG submitted that the adjustment of the baseline in the explanatory memorandum, specifically the deducting of the Road Maintenance Levy Fund (RMLF) and Library services funds is erroneous, noting that this has affected the calculation of the adjustment for revenue growth for the current financial year.
- f) Further, that this misleading position is being held by both the National Treasury and the Commission on Revenue Allocation and has for the last 3 FYs prejudiced the Counties entitlements to these allocations. Therefore, the Senate should address the matter with finality through the institutions involved so that it doesn't feature in the subsequent FYs' vertical sharing of Revenue.

Specific Comments

- g) The allocations to the national and county governments be amended to Ksh. 2,500,770,690,857 and Ksh. 439,500,000,000 respectively.
- h) That the projected ordinary revenue is set to grow by 15% (an absolute revenue increment of Ksh.376.9 billion) from the revenue that underpinned revenue sharing for the FY 2023/24 (Ksh.2571.2 billion). However, out of the Ksh.376.9 billion only Ksh.5.7 billion (5.6%) is being added to the Counties baseline allocation of Ksh.385.4 billion which the Council deemed disproportionate and inequitable.
- i) That the CoG's proposal of Kshs.439.5 billion is further informed by the emerging additional non-discretionary expenditures for Counties in the FY 2024/25 which include-
- i) The lapsing of the Medical Equipment Services (MES) Program - The last allocation to the MES program amounted to Ksh.5.85 billion, this being the maintenance and servicing costs. However, Counties need to acquire and install new machines as well as take up the cost of MRI and CT Scan machines costs from the next financial year from their own budgets.
 - ii) County Aggregation and Industrial Parks (CAIPs) is being implemented jointly by the National and County governments on a 50:50 matching basis. Counties are therefore required to allocate Ksh.11.75 billion from their budgets for the CAIPs.
 - iii) The Community Health Promoters (CHPs) program as well, being implemented on a matching basis of 50:50 between the two levels of government also requires an additional contribution as stipends of at least Ksh. 3,234,930,000.00 in the next financial year.
 - iv) The new National Social Security Fund will cost the Counties an additional Ksh.3B approximately.
 - v) The new Social Health Insurance Fund contributions – the new Act requires Counties to pay for indigents who are yet to be determined or their actual numbers known.
 - vi) Annual salary increments.

- vii) Recently transferred Library and Museum functions – only funds for Personnel Emoluments were transferred without the development budget.
 - viii) The cost of implementing the doctors CBA upon payment of arrears is estimated at Ksh.5.8 billion and needs to be factored.
- j) In adjusting the base of equitable share from Ksh.385.4 billion to Ksh.374.49 billion by deducting RMLF, the National Assembly erred in law and in fact thereby creating a false impression that Counties have been enjoying proceeds from the fuel levy fund. RMLF being a fund collected separate from ordinary (sharable) revenue does not form an item under Division of Revenue.

2.3 Submissions by the Commission on Revenue Allocation

12. CRA appeared before the Committee and submitted the following-

- a) The county equitable share adjustment as proposed by the National Treasury has remained low at Ksh. 15.4 billion in the FY 2023/24 and Ksh. 16.6 billion in FY 2024/25 despite significant growth in ordinary revenues during these two financial years.
- b) The allocation to county governments in DORB, 2024 of Ksh.391 billion translates to an absolute increment of Ksh. 16.6 billion from the adjusted equitable share of Ksh. 374.5 billion, equivalent to a 4.3 per cent growth in shareable revenue for the FY 2024/25 to the county governments.
- c) The allocation to the national government of Ksh. 2,549.13 billion for FY 2024/25 from an allocation of Ksh. 2,177.43 in FY 2023/24 presents an increase of Ksh 371.7 billion, translating to a growth to national government equitable share of 17.1 percent.
- d) The Commission is cognizant of other competing interests of the national government such as debt service obligations and containment of the fiscal deficit. These notwithstanding, it is necessary that both levels of governments are adequately financed to ensure that they are able to perform the functions allocated to them.

- e) The national government, as a matter of policy, has commenced implementation of the following policies that require county governments to set aside an estimated Ksh.17.88 billion:
- i) Aggregation and Industrial Parks (CAIPs) that is being implemented jointly by the National and County governments on a 50:50 matching basis. Each county is required to set aside Ksh. 250 million. This translates to resource requirement of Ksh.11.75 billion by county governments;
 - ii) The Community Health Promoters (CHIPs) is also being implemented on a matching basis of 50:50 between the two levels of government. With each health promoter required for every 50 households, county government require an additional Ksh. 3.2 billion for stipend; and
 - iii) The Housing Levy deductions requires government to contribute one and half percent of employee remuneration to the Fund. Given the aggregate county government remuneration of Ksh. 195 billion, this translates to Ksh. 2.93 billion.
- f) The provision in DORB, 2024 of Ksh.16.6 billion, as additional allocations to county governments as equitable share does not cover the additional resources required by county governments to implement national government initiated policies. It also does not provide for additional resources required by the county governments for expansion of devolved functions.
- g) The Commission in its FY 2024/25 recommendation on the sharing of revenue between the national and county governments recommended that Ksh. 2,552.09 billion and Ksh. 398.14 billion be allocated to national government and county governments respectively as equitable shares. A further Ksh. 8.73 was recommended for allocation to the Equalisation Fund. This was based on a revenue projection of Ksh. 2,958.6 billion.
- h) This translates to an additional allocation of Ksh. Ksh. 22.54 billion from the adjusted equitable share allocation to county governments of Ksh. 375.6 billion.

- i) That the proposal by the Commission was a reasonable figure to enable county governments adequately fund their functions and offer comparable services. Parliament should therefore consider and revise the DORB allocation to county governments from Ksh. 391.1 billion to Ksh.398.14 billion.
- j) Schedule (s.4) of the Division of Revenue Bill 2024 allocates Ksh. 7.87 billion to the Equalisation Fund for the FY 2024/25 based on the latest audited approved accounts amounting to Ksh. 1,573.4 billion for FY 2019/20, as per the records of the National Treasury. However, the last audited revenue raised nationally, as approved by the National Assembly is Ksh 1,673 billion.
- k) Although the National Treasury has indicated that they have raised the issue of discrepancy of Ksh. 100 billion with the Office of Auditor-General and has since responded to the National Treasury modifying the audited revenues for the FY 2019/20 to Ksh. 1,578 billion, the National Assembly has not made a resolution on the issue to amend the accounts for Financial year 2019/20.
- l) Therefore, given that the issue has not been resolved, the Commission proposed that the allocation to Equalisation Fund for FY 2024/25 be Ksh. 8.37 billion being 0.5 per cent of the last audited and approved accounts of Ksh. 1,673 billion for FY 2019/20.
- m) Paragraph 10 and 32 of the Bill notes that the Auditor-General has since modified the audited revenues for the FY 2019/20 to Ksh. 1,578,035,418,993. The Bill in Schedule (S.4) for purposes of Article 203 (2) and 204(1) uses Ksh. 1,573,418 million. In light of the Auditor General's modification of the audited accounts to Ksh. 1,578,035,418,993, it would be prudent that the Bill takes note of this change for purposes of Article 203 (2) and 204(1).
- n) Table 2, on the list of the national interest items in accordance with Article 203 (1)(a) which have been taken into consideration in estimating the division of revenue between the national and county levels of Government,

the Commission recommended that the national interest item on national irrigation and fertilizer clearance be enhanced to include support for livestock and fish production.

- o) Conversely, the national interest item should be abolished altogether since it does not provide an equitable consideration for all counties in the division of revenue.
- p) In Table 2, pg. 8, the Division of Revenue Bill 2024 proposes to reduce the allocation to pensions, constitutional salaries and others by a substantial amount of Ksh. 29.6. An explanation needs to be provided for such substantial reduction.
- q) There's need for correction in Table 2 of the Bill on item F captured the county equitable share in the FY 2023/24 as Ksh. 380,645 million rather than Ksh. 385,425 million.

2.4 Submissions by the Institute of Economic Affairs

13. The Institute of Economic Affairs submitted the following;

- a) Trends on county government Equitable share as a percentage of total shareable revenue has been declining over the last seven years contrasted by that for the national government revenue which has been increasing. Between 2017 to 2023, the average proportion of county government equitable share to total shareable revenue is 17.9%. Using this ratio and based on actual ordinary revenue for FY 2023/24, the Institute's proposed allocation to county governments equitable share translates to about Ksh. 460 billion.
- b) Since 2013, it is not clear what constitutes national interest as one of the items for evaluation of the DORB as per Article 203(1). Lack of predictability and clarity on the definition of national interest is subject to abuse. For instance, justification for addition of an item such as Presidential Bursary under National Social Safety Net is missing. A clearer definition should be provided to eliminate the ambiguousness in the definition of national interest.
- c) Review of the DORB, 2024 reveals a number of inconsistencies and discrepancies that make it difficult to interact and interpret some of the

contents of the Bill. First, the audited and approved revenues for FY 2019/20 used in DoRB, 2023, is higher compared to the figure for FY 2020/21 used in the DoRB, 2024. The explanation provided is that there was an overstatement of Ksh 100 billion which has since been adjusted to Ksh 1,578.0 billion (including AMISON Grant of Ksh 4.6 billion). This amount is still higher than the Ksh 1,570.6 figure for FY 2020/21. Past trend shows that revenues increase every year and therefore the decline raises question as to whether the correct figures have been provided.

- d) There are differences in the quantum for Road Maintenance Levy Fund (RMLF) which has been deducted from last years' equitable share. The Treasury deducted Ksh.10.9 billion while CRA deducted Ksh 9.8 billion, thus no clarity on the correct figure for the RMLF.
- e) The National Treasury should ensure uniformity in the statement of revenues since audited revenues forms the basis of assessing compliance with Article 203(2) and (3) of the Constitution which provides that the government should allocate at least 15 percent of revenues raised nationally to counties as equitable share, based on the most recent audited revenues approved by the National assembly.
- f) The National Assembly should expedite the review and approval process of the OAG reports since delays leave the National Treasury no choice but to use dated figures for the audited and approved revenue in assessment of whether they have complied with Article 203(2) and (3).
- g) There are differences in approaches in computation and classification of revenue by the National Treasury and the CRA. Treasury has applied revenue growth rate of 1.5 percent which translates to Ksh. 16.6 billion increase in the equitable share to counties. CRA on the other hand, has applied a 3.3 percent growth rate to the equitable share which translates to Ksh. 22.5 billion. The differences which stem from the different approaches used in the computation of equitable share has been witnessed over the years and hence, needs to be addressed and the figures harmonized in accordance with the Constitution.

- h) The public debt burden has risen significantly over the past few years but the redistribution of the debt burden has not been done in an equitable manner. Counties have been left to bear the debt burden by not receiving their fair share of increased revenues. Debt repayment forms part of the mandatory payments made by the government. Therefore, increase in public debt stock and its related costs has reduced total sharable revenue which has further reduced revenue allocation to counties. The National Assembly should provide adequate oversight to ensure that public debt does not rise beyond sustainable levels and that more revenue is available to counties for development and provision of services.

2.5 Submissions by Katiba Institute

14. Katiba Institute made the following submissions;

- a) The Bill falls short of complying with provisions of the Constitution including those- outlining the criteria for equitable sharing of revenue with particular attention to how it has been interpreted by the High Court in *Council of County Governors v Attorney General & 4 others; Controller of Budget (Interested Party)* [2020] eKLR, largely based on a court-led consensus between the national and county governments; establishing devolution as a national value and principle of governance and underscoring the distinctiveness of the county level of government and the need to respect the functional integrity of counties as well as those detailing the principles of public finance.
- b) Under section 2 on the definition of “Revenue”, the Bill should adopt a definition that allows for the national government to account for all revenue it raises. While the Constitution does not envisage a situation where some sources of national revenue are generally excluded from the revenue that is the subject of equitable division between the two levels of government, the definition under section 2 of the Bill excludes revenue drawn from charges for national government services under article 209(4) from constituting

nationally raised revenue that should then become the subject of vertical division.

- c) The financial year quoted (2020/21) is different from that cited under paragraph 10 of the Explanatory Memorandum (2019/2020). Further, the total revenue for the relevant year (2020/21) is quoted in the schedule as Kshs. 1,570,562,945,014 while the total revenue for the FY 2019/20 is cited as Kshs. 1,578,035,418,993. This creates a discrepancy amounting to Kshs. 7,472,473,979. This needs to be streamlined to reflect the correct year as well as the accurate total revenue for the year.
- d) That in the interest of devolution and its sustainability, the Senate needs to seriously investigate the cause underlying the three-year lag in the “most recent and approved accounts”. Where the delay is occasioned by the Auditor-General, the Senate should deliberate how to improve efficiency in the audit process. If the delay emanates from the National Assembly’s approval process, the Senate needs to engage the National Assembly on how the process can be fast-tracked.
- e) On paragraph 8 as read with paragraph 9(a) as well as the contents of paragraph 28(b) of the Explanatory Memorandum, the growth or performance of revenue referred to is not disclosed nor is the increase of Kshs.16.6 billion that accrues to counties as a result of the said growth explained with respect to how it was settled as a proportion of the total growth. There is also failure by the Bill to fully account for the difference between the CRA’s recommended increase of Kshs. 22.5 billion under paragraph 28(b) against the Kshs. 16.6 billion recommended in the Bill. The Bill needs to indicate the total revenue growth registered as well as the basis for adjustment that results in a Kshs. 16.6 billion increase rather than CRA’s Kshs. 22.5 billion in order to provide the Senate with an objective basis for deciding between these two proposals.
- f) The approach to the vertical division of revenue revealed in Table 2 of the Explanatory Memorandum offends the constitutional provision for the criteria under article 203(1) and its application as interpreted by the Court in

Council of County Governors vs Attorney General & 4 others; Controller of Budget (Interested Party). The approach to vertical division needs to be revised to ensure compliance with infringed provisions of the Constitution as elaborated by the High Court.

- g) Based on historical trends as well as the position elicited under the Budget Policy Statement (page 80), the funds allocated to expenditure items prior to the vertical revenue split (prior to the determination of what then amounts to shareable revenue) becomes the preserve of the national government. The fact that the expenditure items detailed under “National Interest” in both Table 2 and paragraph 13 include functions that are constitutionally county government functions such as irrigation and fertilizer subsidy initiatives renders the allocations unconstitutional to the extent that the funds are to be administered by the national government.
- h) It also offends the court-led consensus between the two levels of government as contained in the 2nd Mediation Report filed in court in *Council of County Governors v Attorney General & 4 others; Controller of Budget (Interested Party)* where it was agreed and the Court endorsed the position at para 101 to the effect that: *where a function has been earmarked as one being of national interest an allocation for the same ought to be allocated to government level that has been assigned the function under the fourth schedule.*
- i) Item (C) of Table 2 makes reference to an expenditure titled “Earmarked Strategic Interventions”. While it is not clear from the reading of the Bill what these refer to and how different these are from those listed under “National Interest”, a reading of the Budget Policy Statement reveals a broad list of proposed interventions that span across functions that include and overlap with county functions.
- j) The Senate needs to make recommendations for the revision of both the Bill as well as the affected provisions of the law to not only ensure the equity of the vertical revenue split but even more importantly to ensure constitutional

compliance in the vertical division of revenue that will guarantee the sustainable funding of devolved governments.

- k) While the Bill complies with the constitutional imperative to ensure that not less than 15% of revenue raised nationally is annually allocated to counties, this compliance is marginal and is contributed to by an apparent lag in having more recent audited and approved revenue accounts.
- l) The consequence is that while annual national government expenditures are based on the projected revenues for that year, the share that counties get is calculated as a percentage of revenue from, at least, three financial years ago. While this finds constitutional footing, the net effect is that in real terms counties are underfunded given that about half (for instance, about 46.7% in the 2024/25 financial year) of current anticipated revenue receipts are not factored in arriving at the percentage of revenue that is annual allocated to counties.
- m) A combination of political goodwill and liaising with the National Assembly to fast track the approval of audited accounts is, therefore, needed to ensure substantive equity in the financing of counties from revenue raised nationally.

2.6 Submissions by the Lake Region Budget Hub

15. The Lake Region Budget Hub submitted the following;

- a) Under clause 4 on the allocations for the National Government and the county governments, the Bill should include the details on all the conditional allocations from the national government and donors. The information on all the conditional grants are important for the counties to effectively plan their budgets during the preparation of the CFSPs and the budget estimates. It is important for counties to align their budgets with the Division of Revenue Bill and the County Allocation of Revenue Bills.
- b) The Division of Revenue Bill, 2024 does not present the trend in actual allocations across multiple years. The allocation information provided is only for one financial year, that is, FY 2024/25. The Bill should present a table of trends allocations to the various types of allocation for the last two previous

financial years. This information is key in informing the growth in revenue to counties and the trends in regards to the percentage share against the total sharable revenue. Where trend allocation information is missing, the division of revenue fails the test of giving the document users an opportunity to review whether the revenue sharing mechanism towards counties is growing or dwindling.

- c) The sharable revenue must reflect the most recent revenue status based on the most recent complete financial year. The use of the FY 2020/21 as the basis of sharing revenue do not only reflect the actual revenue status, but also denies counties the much needed revenues to effectively implement its projects. The Lake Region Budget Hub therefore proposed that-
 - i) The auditing entities to fast track its role in ensuring that revenues are audited periodically without delays.
 - ii) Sharable revenue to reflect the actual latest revenue of the most recently completed financial year.
- d) The Bill lacks detailed justification for the proposed allocations to the National and County Governments. While it outlines the allocations, it does not sufficiently explain the basis for these allocations, making it challenging to assess their adequacy and fairness. There is need for a detailed justification of the proposed allocations to enhance transparency and accountability in the allocation process.

2.7 Submissions by the Institute of Certified Public Accountants of Kenya

16. ICPAK made the following submissions;

- a) Based on projected revenue growth of 14.6% in FY 2024/25, the proposed equitable share increased by Kshs. 5.7 billion to Kshs. 391.117 billion. The ability of the county governments to fulfil their functions as outlined in the Fourth Schedule of the Constitution is solely dependent on adequate funding and compliance with Article 219 of the Constitution demanding that the equitable share be transferred without undue delay and without deduction.

- b) That based on the last audited accounts for 2020/21 (1,570,562,945,014), the allocation of sharable revenue to counties of Ksh. 391.1 billion shillings is about 24.90% and therefore meets the prescription of Article 203 of the Constitution, which provides that allocation to counties shall not be less than 15% of all revenues collected by Government.
- c) However, the Institute noted that the nominal amounts of equitable share have been rising yet the equitable share as a percentage of the total shareable revenue has been declining over the years. This should be in tandem with the prevailing economic circumstances in Kenya.
- d) The Institute proposed the adoption of the Standing Committee on Finance Reports recommendations on the Division of Revenue which proposed that county equitable share to be increased at a growth factor of at least 8.4% to cater for the increased cost of commodities, increased expenditure growth and increased levies such as Affordable Housing Levy, Social Health Insurance Fund, NSSF among others.
- e) According to the Controller of Budget Reports, counties incurred Kshs.195.09 billion on personnel emoluments accounting for 45.5% of the budget in the FY 2022/23. Counties being employers, they are required to contribute an equal percentage to that of employees to Housing Levy and SHIF.
- f) The increment of Kshs. 5.7 billion is just 1.48% which is way below the proposed growth factor of 8.4%. If the recommendation was to be adopted, counties would receive Kshs. 34 billion which would push the figure of sharable revenue to Kshs. 419 billion in lieu of Kshs 391.1 billion.
- g) The Budget Policy Statement 2024 indicates that the projected county government sharable revenue has increased by 5.7 billion from Kshs.385.4 billion in 2023 to Kshs. 391.117 billion in 2024. However, in terms of percentage of county government to the total sharable revenue, there has been a decline from 14.9% in 2023 to 13.2% in 2024. For the National Government, the allocation percentage to total sharable allocation has increased from 76.97% in 2023 to 86.4% in 2024. This demonstrates that the

National Government retains a higher share of fiscal resources even in sectors where functions have been devolved. The National Treasury should consider inflation rates as opposed to revenue growth rates to inform the division of revenue.

- h) Consider more allocation to critical functions such as health and agriculture in tandem with the Abuja Declaration of 15% and Maputo Declaration of 10% of the national budget respectively.
- i) The ordinary revenues have demonstrated a steady growth performance, which is an indicator of a better performing economy. However, the allocation to the counties which have the most functions remains inadequate.
- j) However, ICPAK noted that even as the stakeholders heighten calls for increased allocation of sharable revenue to counties, there exists challenges that must be addressed to achieve the desired fiscal performance in the counties. Some of these challenges as cited by the Multi-Agency Taskforce established in FY 2022/23 included the following;
 - i) Weak linkage between planning and budget formulation.
 - ii) Inability of county governments to adhere to the Public Procurement and Asset Disposal Act resulting in high outstanding pending bills.
 - iii) Low development budget absorption.
 - iv) Under-performance in own-source revenue.
 - v) Failure to use the prescribed financial systems (such as IFMIS, IPPD among others)
 - vi) Non-adherence to fiscal responsibility principles.
 - vii) Pilferage of public resources due to manual systems.
 - viii) Inadequate understanding of the Office of the Controller of Budget's role in approval of county requisitions.
 - ix) High wage bill, weaknesses in human resource management, weak oversight by County Assembly and a weakened internal audit function among others.
- k) The Taskforce proposed the following recommendations to cure the problems cited above:

- i) Review of the existing policy, legal and regulatory environment to guide planning;
 - ii) Strengthening county structures and institutions;
 - iii) Adhering to existing provisions of policies, legislations, regulations, and guidelines guiding economic planning, public finance management and expenditure control; and
 - iv) Continuous capacity building of County Government staff among others.
- l) In the DoRB 2024, the estimates of ordinary revenue vs actual revenue demonstrate that ordinary revenue collected over the years has been below target except for FY 2021/22 when the target was surpassed. Several factors contribute to the underperformance of revenue. The Auditor-General has documented unrealistic forecast and revenue leakages as some of the challenges.
- m) The focus of the government through BETA includes agriculture productivity, MSMEs, housing and settlement, healthcare, digital superhighway and creative economy. These are either county functions or concurrent functions. It is therefore important to adequately finance both levels of government if the above priorities are to be realized.
- n) ICPAK noted that the last audited accounts of 2020/21 might not be a true reflection of the total national government collection. There is need to expedite the approval of audited accounts to give a clear reflection of the total government's collection. This will increase the allocation to the counties in tandem with the prevailing economic circumstances in Kenya.
- o) Debt servicing is crowding out revenue allocation to counties for adequate development. Debt has been consistently increasing as a percentage of GDP.
- p) That under the schedule (s.4) on page 393, County equitable share of Kshs. 391,116,788,147 is equivalent to 24.90% of FY 2020/2021 audited and approved revenue of Ksh 1,570,562,945,014. However, under the explanatory memorandum to the Division of Revenue Bill 2024, Number 10 page 397, it states that County Equitable share of Ksh. 391.1 billion is

equivalent to 24.90% of actual revenue raised nationally of Ksh 1,573,418 million of FY 2019/2020 which is misleading. If the FY 2019/2020 raised revenue were to be used, equitable share would be Ksh. 391.8 billion and not Ksh. 391.1 billion. There is therefore need for reconciliation.

- q) There is a proposed allocation of Ksh.7,852,814,725 which represents 0.5% of all the revenue collected by the national government. This money is supposed to be remitted to the Equalization Fund. However, from the report of the Auditor-General for national government funds for the year ended 30th June 2021, only Ksh. 12,400,000,000 out of Ksh. 30,786,056,051 had been transferred to the Equalization Fund and therefore casting doubts whether the fund is achieving its intended objective. The government should give an undertaking on how to remit these monies and account for the unremitted ones.
- r) Disparities in the beneficiary counties will continue to widen if they do not get these monies as envisaged by the Constitution in Article 204(1).
- s) Inconsistencies and discrepancies in the Road Maintenance and Fuel Levy- It is noted that Road Maintenance Levy Fund is no longer part of the County Equitable Share. According to the DoRB 2024, this will now be disbursed as conditional grants. Initially, RMLF was an unconditional fund that enabled counties to have autonomy to plan, budget and implement development based on the county-specific priorities and needs. Making it a conditional grant will restrict counties in the budget making process and might end up implementing white elephant projects that are not priority.
- t) Revert to the original practice and make RMLF an equitable share to grant counties the autonomy to plan and implement projects that are of high priority to them.

2.8 Submissions by the Youth Senate Kenya

17. The Youth Senate Kenya submitted as follows;

- a) That interpretation of “Earmarked strategic interventions” be included. A clear interpretation of earmarked strategic interventions and the benefits that

such interventions will accrue to women, youth and PLWDs in Kenya will assist in oversight to ensure compliance with Article 203 (1) (h) that requires “the need for affirmative action in respect of disadvantaged areas and groups” as part of the criteria for determining equitable shares.

- b) Under equitable sharing of revenue, a specified time frame of disbursement of funds to the counties to be included. This will enhance equity in line with marginalization and vulnerability, and adequate period of project implementation by county governments.
- c) That, there is need for a clear definition and articulation of the source, objective and components of the AMISON fund to ease oversight of the same.
- d) A technical working group should be established to assist in the review of the Auditor-General's report in regards to the Amison Fund to enhance transparency and accountability.
- e) On the allocations to national and county governments under clause 4, amendment of Article 203 (2) of the Constitution which says 15% of the most recent audited account of revenue should be included to enhance the implementation of the PFM Act and adherence to the stipulated disbursement timelines.
- f) Under clause 5 on the mechanisms for adjusting for variations in revenue, include the following-
 - i) tracking and digitizing county revenue collection streams to ensure that county governments are able to grow their own source revenue and hit their potential revenue targets;
 - ii) strict repercussions on counties and departments that spend at source-to seal loopholes of corruption and misappropriation of funds.
 - iii) employ current audited revenue accounts in determination of allocation to both national and county governments. The 2024/2025 allocation is based on the 2020/2021 approved and audited revenue accounts. In view of the changing times, it is critical that we use current data to inform allocation.

- g) To enhance the accuracy and relevance of financial allocations to county governments, it is crucial to expedite the auditing process by the Office of the Auditor-General to ensure that the most recent audited accounts are readily available for determining equitable county shares. Additionally, there's need for legislative changes or administrative reforms that mandate the use of audited revenue data from no more than two fiscal years prior.
- h) Table 2 include the following-
- i) Women Empowerment under the description of items in section A of Table 2 and allocate appropriate monies- the addition of women empowerment and allocation of appropriate monies is in compliance with Article 203 (1) (h) that requires “the need for implementation and monitoring of affirmative action fund in respect of disadvantaged areas and groups” as part of the criteria for determining equitable shares. Further, it is in line with the Bottom -up Economic Transformative Agenda (BETA) of the Government.
 - ii) Allocate monies for the strategic grain reserve to promote food security and mitigate climate change impact. The strategic grain reserve provides a safety net for the country in emergency cases.
- i) Under paragraph 15 on other national obligations, include a clear articulation of the components and allocations that comprise earmarked strategic interventions. A clear articulation of the components and allocations that comprise earmarked strategic interventions enhances compliance with Article 201 of the Constitution (2010) that states “*there shall be openness and accountability, including public participation in financial matters*”.
- j) Paragraph 23 on Equalization Fund, decentralization of units of identification of marginalized counties to include not only counties but administrative units within counties not identified as marginalized to capture regional disparities vertically as well as horizontally across sub counties and wards.
- k) Equitable share to county governments ought to be increased in the FY 2024/25, following the inflation and cost of living adjustments brought about

by oscillating global fuel prices, war, and foreign exchange rate fluctuations that have affected Kenya in the FY 2023/24.

- l) That, going forward, the National Treasury should provide information on actual revenue receipts and projections for the coming years. This information is deemed important especially in explaining the change in allocation and how decisions have been arrived at.
- m) In the previous years, there have been differences in CRA and National Treasury recommendations as far as equitable share is concerned. There is need for further elaborate explanations on the deviations and how to mitigate the same in order to avoid division of revenue stalemate which was witnessed in the FY 2019/20 which almost left services in the counties crippled.

2.9 Submissions by County Assembly Forum

18. CAF submitted the following;

General Comments

- a) The trend of rising nominal amounts of equitable share, juxtaposed with a declining percentage of total sharable revenue over the years, raises concern about the adequacy of funding for County Governments. To ensure parity and maintain effective service delivery, the allocation to County Government Equitable Share should be approximately Kshs. 460 billion.
- b) The issue of debt servicing crowding out revenue to counties underscores the need for rigorous oversight by the Senate over public debt management. Failure to address this could significantly impact the ability of counties to fulfill their mandates and deliver essential services to citizens.
- c) Discrepancies in the county equitable share as a percentage of audited revenue between different years, as well as differences between the figures deducted by the Treasury and the CRA, highlight inconsistencies that need urgent attention. Clarity and consistency in these allocations are crucial for effective planning and budgeting at the county level.
- d) The deduction of RMI.F from last year's Equitable Share, with variations between deductions made by the National Treasury and the CRA, requires

transparent and accountable handling. The conditional allocation of these funds to counties from FY 2024/25 should be managed with clarity and fairness to ensure effective utilization for road maintenance purposes.

- e) Delays in the review and approval process of the Auditor-General's reports impede the National Treasury's ability to use updated and accurate revenue figures. The National Assembly should expedite these processes to enable timely and informed decision-making regarding the Division of Revenue Bill.
- f) Approval of the DoRB 2024 should be contingent upon the National Treasury addressing inconsistencies and discrepancies that undermine the overall transparency of the Bill. Ensuring clarity and accuracy in the allocation and utilization of funds is essential for fostering public trust and confidence in the devolved system of governance.

Specific issues of concern in the DoRB

- g) Declining Equitable Share Percentage: Despite nominal increases in equitable share amounts, the percentage of equitable share as compared to total sharable revenue has been on a downward trend over the years. This decline could potentially undermine the capacity of county governments to deliver essential services to their constituents.
- h) Debt Servicing Crowding Out County Revenue: Debt servicing obligations are increasingly encroaching upon the revenue allocated to counties, posing a significant challenge to the effective functioning of devolved governments. The excessive allocation towards debt servicing could impede the ability of county governments to address local needs and priorities.
- i) Discrepancies in County Equitable Share Percentage: Discrepancies persist in the equitable share allocated to counties as a percentage of audited revenue accounts in the Division of Revenue Allocation (DoRA) compared to previous years. These inconsistencies could lead to disparities in resource allocation among counties, potentially exacerbating inequality and hindering equitable development.

- j) CAF supports the proposal by the Council of Governors (CoG) to increase the County Governments' equitable share from the proposed Ksh. 391.117 billion to Ksh. 450 billion. This adjustment is deemed necessary due to the anticipated increase in expenditure burden for county governments in the upcoming fiscal year. Factors contributing to this increased burden include the continuation of the Medical Equipment Services (Mes) Program, financing fifty percent (50%) of County Aggregation and Industrial Parks (CAIPs), new contributions to the National Social Security Fund (NSSF), new contributions to the Social Health Insurance Fund (SHIF), and the assumption of costs for transferred Museums and Libraries. Increasing the equitable share to Ksh. 450 billion would provide county governments with the necessary financial resources to effectively deliver public services at the county levels.
- k) CAF recommended that 15% of the Roads Maintenance Levy Fund (RMLF), estimated at Ksh. 10.52 billion for the FY 2024/25, be allocated to county governments as part of their equitable share. This allocation would be specifically designated for the maintenance of county roads.
- l) Further, CAF urged Parliament to review legislation passed before 2010, such as the Road Maintenance Levy Fund Act, 1993; Kenya Roads Boards Act, 1999; and Kenya Roads Act of 2007, to align them with the devolved system of governance. Aligning these laws would enhance the effectiveness of county governments in managing and maintaining road infrastructure within their jurisdictions.
- m) CAF acknowledged the efforts by the National Treasury to support county governments in enhancing their Own Source Revenue (OSR). Activities such as the enactment of the National Rating Bill, the County Revenue Raising Process Bill, and the development of a model Tariffs and Pricing Policy for use by county governments are steps in the right direction. The National Treasury should expedite the implementation of these initiatives to empower county governments to generate revenue locally and reduce dependency on equitable share allocations.

2.10 Submissions by the International Budget Partnership, Kenya

19. IBP-K submitted as follows;

- a) To ensure a credible basis upon which the outcomes of the division of revenue process can be objectively evaluated as fair, there's need for fast-tracking of the process of unbundling of functions by supporting the process that was already started by the Intergovernmental Technical Relations Committee.
- b) That, the costing of functions should also be updated to reflect the current service delivery demands, costs and economic realities faced by counties today. As the DoRB, 2024 notes, the baseline allocations to counties are informed by the costing of expenditure for devolved functions at the onset of devolution.
- c) The recent trends in the division of revenue that show a decrease in the proportion of funds going to county governments from the shareable revenue seem to contradict the spirit of devolution and the essence of the division of revenue process itself. Therefore, to ensure that counties are able to meet evolving service delivery needs and fulfil their functions, the Senate should investigate the cause of the decline in relative funding to county governments compared to the national government. This is taking into consideration that the national share does not include the Consolidated Fund Services.
- d) The Senate should determine the specific basis upon which revenue growth factor approach should be made. Since 2015, a number of options have been emerged. This includes an option to consider inflation as a basic adjustment criterion or an average of revenue growth in past three audited years of revenue. Furthermore, an updated costing of functions fulfilled by national and county governments should be fast tracked such that we can have a basis upon which to evaluate the adequacy of the 'availability of resources' as a factor for determining the equitable share to counties.

- e) The National assembly should question the use of projected revenues in the coming financial year as a basis for the equitable share, when the revenue targets in the current financial year are yet to be met.
- f) The effort included in the Budget Policy Statement and Division of Revenue Bill, 2024 data attempt to reduce the size of the fiscal deficit and improve overall debt sustainability is commendable. However, beyond fiscal consolidation measures, the national government must seek more affordable borrowing options over the medium term given the projected resource envelope and cost of borrowing. These includes reducing the prominence of commercial and domestic debt in our debt portfolio, exploring alternative sources of financing that are lower cost e.g. Samurai and Panda bonds, and attached to specific development objectives e.g. green and blue bonds.
- g) The Division of Revenue Bill, 2024 highlights several proposals on how counties are to be supported to enhance their OSR. However, even as the national government implements the proposals, a thorough assessment should be conducted to determine the county's realistic collection capacity. This assessment should ensure the harmonization with existing national revenue collections, the proposed Integrated County Revenue Management System, and all relevant existing systems.

2.11 Submissions by the Rift Valley Budget Hub

20. The Rift Valley Budget Hub submitted the following;

- a) The fact that revenue divides are still based on out-of-date audited revenue implies that counties are getting the shorter end of the stick. The Senate should collaborate with the National assembly to ensure that the approval of audited accounts of revenue is expedited to ensure that revenue sharing is based on up to date audited revenue accounts. This will mitigate against scramble for resources and eliminate the perennial conflicts emanating from the division revenue debate.
- b) The Senate should push the IGRTC and relevant institutions to complete the process of unbundling and costing county government functions that are still

held by the national government, to pave way for transfer of commensurate resources to county governments.

- c) Delayed funds undermine the principles of devolution by impeding the ability of counties to exercise their constitutional mandate effectively. The Senate should compel the National Treasury to disburse the resources due to counties as per the disbursement schedule approved by Senate alongside the County Allocation of Revenue Act.
- d) In the ongoing national discourse on public debt sustainability, Senate should guard County Governments from bearing the brunt.
- e) The Senate should step up its oversight role towards prudent, equitable and accountable utilization of public funds both at the county and national level.

CHAPTER THREE

OBSERVATIONS AND RECOMMENDATIONS

3.1 Observations

21. The Committee, having considered the Bill and submissions from stakeholders, made the following observations. That-

- a) The Bill uses a baseline of Ksh. 374.492 billion as the allocation for Financial Year 2023/24 against the actual baseline of Ksh. 385.425 billion. The Committee observes that the purported netting out of Ksh. 10.9 billion as adjustment for the Road Maintenance Levy Fund (RMLF) which will henceforth be allocated separately to counties is erroneous since the equitable share, once approved, does not include conditional allocations.
- b) The actual increment (adjustment for revenue growth) in county equitable share is Kshs. 5.692 billion as opposed to the Ksh. 16.625 billion as set out in the explanatory memorandum to the Bill. Additionally, the National Treasury has failed to satisfactorily demonstrate the criteria that the revenue growth is based on.
- c) The allocation to the Equalization Fund for FY 2024/25 is lower than the approved allocation for Financial Year 2023/24 since the basis for the proposed allocation is the audited and approved accounts of revenue for FY 2020/21 which is lower than the amount for FY 2019/20.
- d) Delayed approval of the audited and approved accounts of revenue has adversely affected revenue allocation to counties.
- e) Despite the indication that the national government continues to bear the revenue shortfalls, county governments have also borne the shortfalls in the form of delayed exchequer releases which hamper county budget implementation and service delivery.
- f) The county governments are faced with additional expenditure demands due to implementation of key national government priority programmes such as county aggregation and industrial parks, and community health promoters which are jointly funded by the national and county governments on a 50:50 matching

basis. Other non-discretionary expenditure demands accrue from the new housing levy deductions, new National Social Security Fund (NSSF) contributions and new Social Health Insurance Fund (SHIF) contributions.

3.2 Recommendations

Having considered the Bill and submissions from the stakeholders, the Committee recommends that the Senate approves the Bill with the following amendments to the Schedule -

- a) The National Government share of revenue- Kshs. 2,524,318,490,857; and
- b) The County equitable share- Kshs.415,952,200,000.

This is arrived at by making adjustments to the base of Ksh. 385.425 billion to take into account non-discretionary financial obligations relating to housing levy deductions, enhanced contributions to the National Social Security Fund (NSSF), certain contributions to the Social Health Insurance Fund (SHIF), wage drift as well as the need for counties to provide matching allocations for the County Aggregation and Industrial Parks and the Community Health Promoters programme. Further, resources for the transferred obligation to meet the cost of medical equipment programme.

Appendixes

1. Minutes of the Committee
2. Stakeholders' submissions
3. Public Advert

24th April, 2024

**The Clerk of the Senate
Parliament Buildings
NAIROBI**

**RE: COMMITTEE STAGE AMENDMENTS TO THE DIVISION OF REVENUE
BILL, NATIONAL ASSEMBLY BILLS NO. 14 OF 2024**

NOTICE is given that Sen. Ali Ibrahim Roba, Chairperson, Committee on Finance and Budget intends to move the following amendment to the Division of Revenue Bill, National Assembly Bills No. 14 of 2024, at the Committee Stage-

SCHEDULE

THAT the Bill be amended by deleting the schedule and substituting therefor the following new schedule-

SCHEDULE

(s.4)

**ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE
NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS FOR THE 2024/25
FINANCIAL YEAR.**

Type/Level of allocation	Amount in KSh.	Percentage (%) of 2020/21 audited and approved Revenue i.e. KSh. 1,570,562,945,014
A. Total Sharable Revenue	2,948,123,505,582	
B. National Government	2,524,318,490,857	
C. Equalization Fund	7,852,814,725	0.50%
D. County equitable share	415,952,200,000	26.48%

Dated: 24th April, 2024



Ali Ibrahim Roba,
Chairperson,
Committee on Finance and Budget.



MINUTES OF HUNDRED AND TWENTY FIRST (121ST) HYBRID MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 23RD APRIL, 2024 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDING AT 9:00 A.M.

PRESENT

- | | | |
|---|---|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 3. Sen. Richard Momoima Onyonka, MP | - | Member |
| 4. Sen. Eddy Oketch Gicheru, MP | - | Member (Virtual) |
| 5. Sen. Shakila Abdalla Mohamed, MP | - | Member (Virtual) |
| 6. Sen. Mohamed Mwinyihaji Faki, CBS, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---|---|-------------------------|
| 1. Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 2. Sen. Tabitha Karanja Keroche, MGH MP | - | Member |
| 3. Sen. Joyce Chepkoech Korir, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Lucy Radoli | - | Legal Counsel |
| 4. Ms. Millicent Makina | - | Fiscal Analyst |
| 5. Mr. Kiminza Kioko | - | Fiscal Analyst |
| 6. Mr. Nandimu Baraza | - | Media Relations Officer |
| 7. Mr. Godana Mamo | - | Serjeant-At-Arms |
| 8. Mr. Constant Wamayuyi | - | Research officer |
| 9. Mr. Elijah Ichwara | - | Audio Officer |
| 10. Mr. Oliver Onyango | - | Intern |

IN-ATTEDANCE

A. COMMISSION ON REVENUE ALLOCATION

- | | | |
|-------------------------|---|------------------|
| 1. Mr. Koitamet Olekina | - | Vice-Chairperson |
| 2. Hon. Fatuma Gedi | - | Commissioner |

- | | | |
|-----------------------|---|------------------------------|
| 3. Dr. Isabel Waiyaki | - | Commissioner |
| 4. Mr. Jonas Kuko | - | Commissioner |
| 5. Mr. Lineth Oyugi | - | Director, Economic Affairs |
| 6. Ms. Angela Kariuki | - | Director, Corporate Services |

B. COUNCIL OF GOVERNORS

- | | | |
|------------------------------------|---|-------------------------------|
| 1. Hon. Anne Waiguru, EGH | - | Kirinyaga County/Chairperson |
| 2. Hon. FCPA. Ahmed Abdullahi, EGH | - | Wajir County/Vice-Chairperson |
| 3. Hon. Mutai Kahiga | - | Nyeri County |
| 4. Hon. FCPA. Fernandes Barasa | - | Kakamega County |
| 5. Hon. Muthomi Njuki | - | Tharaka Nithi County |
| 6. Hon. Andrew Mwandime | - | Taita Taveta County |
| 7. Ms. Mary Mwati | - | CEO |
| 8. Mr. Stephen Momanyi | - | Programme Officer |

MIN/SEN/SCF&B/711/2024 PRELIMINARIES

The Chairperson called the meeting to order at 9:30 a.m. This was followed by a word of prayer and a round of introduction.

MIN/SEN/SCF&B/712/2024 ADPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Richard Momoima Onyonka, MP and seconded by Sen. Shakila Abdalla Mohamed, MP as listed below-

1. Prayer;
2. Adoption of the agenda;
3. Confirmation of minutes of the 120th sitting;
4. Matters arising from the minutes of the previous sitting;
5. Meeting with stakeholders-
 - a) Commission on Revenue Allocation;
 - b) Council of Governors; and
 - c) The National Treasury and Economic Planning
 to deliberate on the Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024) (*Committee paper No.89A*);
6. Consideration of invitation to participate in a climate action workshop (*Committee paper No.90*);
7. Consideration of pending legislative business (*Committee Paper No.77*);
8. Any Other Business; and
9. Adjournment and Date of the Next Meeting.

MIN/SEN/SCF&B/713/2024 MEETING WITH STAKEHOLDERS TO CONSIDER OF DIVISION OF REVENUE BILL,

**2024 (NATIONAL ASSEMBLY BILLS NO.14 OF
2024) (COMMITTEE PAPER NO.89)**

Meeting with Commission on Revenue Allocation

Upon invitation, the Commission's Vice Chairperson informed the meeting that the Commission had considered the contents of the Bill and submitted the following comments-

- a) The Bill allocates the county governments an equitable share of Ksh.391.1 billion for the FY 2024/25. The proposed county equitable share adjustment as proposed by the National Treasury has remained low at Ksh.15.4 billion in the FY 2023/24 and Ksh.16.6 billion in FY 2024/25. This is despite significant growth in ordinary projected revenues during these two financial years, Kshs. 2571.2 billion in FY 2023/24 to 2,948.1 billion in FY 2024/25.
- b) The proposed allocation to county governments of Ksh.391 billion translates to an absolute increment of Ksh.16.6 billion from the adjusted equitable share of Ksh.374.51 billion.
- c) The proposed allocation to the national government of Ksh.2,549.13 billion for FY 2024/25 from an allocation of Ksh.2,177.43 in the FY 2023/24 translates to an increase of Ksh.371.7 billion.
- d) The national government has commenced implementation of the following policies that require county governments to set aside an estimated Ksh.17.88 billion-
 - i. Aggregation and Industrial Parks (CAIPs) implemented on a matching basis of 50:50 between the two levels of government. Each county is required to set aside Ksh.250 million translating to of Ksh.11.75 billion by county governments;
 - ii. The Community Health Promoters (CHPs) implemented on a matching basis of 50:50. County governments require an additional Kshs. 3.2 billion for stipend; and
 - iii. 1.5% Housing Levy deductions to be contributed by county government. Given the aggregate county government remuneration of Ksh.195 billion, Housing levy contributions translates to Ksh.2.93 billion.
- e) The additional allocation to county governments as equitable share does not cover the additional resources required by county governments to implement national government-initiated policies. It also does not provide for additional resources required by the county governments for expansion of devolved functions.
- f) The Commission recommended that Ksh.2,552.09 billion and Ksh.398.14 billion be allocated to national government and county governments as equitable shares in the FY 2024/2025 respectively.

Following deliberation, the Committee noted that-

- a) The Commission has continued to base the argument for county government equitable share using the adjusted equitable share baseline of Kshs.374.5 billion, which is erroneous.
- b) In the Division of Revenue Act, 2023, the county equitable share is Kshs.385.425 billion hence this should be used as baseline when allocating the county equitable share for the FY 2024/25.

The Commission acknowledged that the use of Kshs.374.5 billion as the baseline for county equitable share was erroneous and that the correct baseline is Kshs.385.425 billion.

Meeting with Council of Governors

The Council of Governors led by the Chairperson presented the following comments regarding the Division of Revenue Bill, 2024-

- a) The Council took note of the recommendation by the Senate on the 2024 BPS with proposed allocation to county governments as Kshs.415.952 billion in FY 2024/25.
- b) The proposal in the Bill of Kshs.391.117 billion is inadequate and will hamper performance and delivery of services at county level.
- c) The county governments have been recently subjected to additional non-discretionary expenditures that will require increased allocation in the FY 2024/25.
- d) The Council proposed a county equitable share of Kshs.439.5 billion in FY 2024/25.
- e) The Council noted the erroneous adjustment of the baseline in the explanatory memorandum by deducting the RMLF and funds for transfer of library services.
- f) Out of the projected ordinary revenue growth of Kshs.376.9 billion, only Kshs.5.6 billion is proposed to be allocated as revenue growth to county governments.
- g) The proposed county equitable share of Kshs.439.5 billion by Council was informed by the non-discretionary expenditures for counties in the FY 2024/25, which include-
 - i. The lapsing of the Medical Equipment Services (MES) Program allocation, where the last allocation amounted to Ksh.5.85 billion as maintenance and servicing costs. Counties need to acquire and install new machines as well as budget for the cost of MRI and CT Scan machines costs in FY 2024/25.
 - ii. County Aggregation and Industrial Parks (CAIPs) is being implemented jointly by the National and County governments on a 50:50 matching basis. Counties are therefore required to allocate Ksh.11.75 billion from their budgets for the CAIPs.
 - iii. The Community Health Promoters (CHPs) program as well, being implemented on a matching basis of 50:50 between the two levels of government also requires an additional contribution as stipends of at least Ksh.3,234,930,000.00 in the FY 2024/25.
 - iv. The new National Social Security Fund will cost the counties an additional Ksh.3 billion.

- v. The new Social Health Insurance Fund contributions – the new Act requires counties to pay for indigents who are yet to be determined or their actual numbers known.
- vi. Annual salary increments.
- vii. Recently transferred Library and Museum functions – only funds for Personnel Emoluments were transferred without the development budget.
- viii. The cost of implementing the doctors CBA upon payment of arrears is estimated at Ksh.5.8 billion and needs to be factored in the 2024/25 county budgets.
- h) In adjusting the base of equitable share from Ksh.385.4 billion to Ksh.374.5 billion by deducting RMLF, the National Assembly erred in law and thereby creating a false impression that counties have been enjoying proceeds from the fuel levy fund. RMLF being a fund collected separate from ordinary (sharable) revenue does not form an item under division of revenue.
- i) Although counties are in charge of Early Childhood Development Education teachers, the role has never been officially delegated to them or given a budget.

Following deliberation, the Committee noted that-

- a) The Kshs.374.5 billion adjusted baseline for the county share of revenue is erroneous.
- b) The financial and budgetary implications for county governments in the FY 2024/25 emanate from non-discretionary expenditures resulting from implementation of national government projects and programmes. This serves as the basis for increasing funding to county governments.
- c) The Road Maintenance Levy Fund should not be included in shareable revenue since it is distinct from ordinary revenue.
- d) Counties' revenue streams are limited. Thus, automating revenue collection through use of an Integrated County Revenue Management System (ICRMS) will help reduce losses and improve Own Source Revenue (OSR) collection. It was suggested that the Council should accept the system proposed by the taskforce on ICRMS.
- e) To guarantee that monies intended for devolved functions are transferred to counties, unbundling and costing of devolved functions must be finalized. Majority of funds are still in national ministries.
- f) It was recommended that Council should consider the financial implications before agreeing to commit to implementation of projects and programmes proposed by the national government.

MIN/SEN/SCF&B/714/2024

CONSIDERATION OF INVITATION TO PARTICIPATE IN A CLIMATE ACTION WORKSHOP

The Committee considered an invitation to attend a workshop on climate action, organized by the National Treasury and Economic Planning in conjunction with the Parliamentary Caucus on Climate Action scheduled from 25th to 30th April, 2024 in Mombasa.


The Committee resolved to attend the scheduled workshop.

MIN/SEN/SCF&B/715/2024 **ANY OTHER BUSINESS**

The Committee resolved to hold a meeting on Wednesday, 24th April, 2024 at 8:00 a.m. to consider and adopt the report on the Division of Revenue Bill, 2024 for tabling in the Senate.

MIN/SEN/SCF&B/716/2024 **ADJOURNMENT AND THE DATE OF THE NEXT MEETING**

The meeting adjourned at 12:13 p.m. Next meeting shall be held on Wednesday, 24th April, 2024.

SIGNATURE.......... DATE.....24/04/2024.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)



MINUTES OF A HUNDRED AND TWENTY- SECOND (122ND) HYBRID MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 24TH APRIL, 2024 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDING AT 8:00 A.M.

PRESENT

1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP	-	Chairperson
2. Sen. Maureen Tabitha Mutinda, MP	-	Vice-Chair (Virtual)
3. Sen. (Dr.) Boni Khalwale, CBS, MP	-	Member
4. Sen. Mohamed Mwinyihaji Faki, CBS, MP	-	Member (Virtual)
5. Sen. Richard Momoima Onyonka, MP	-	Member
6. Sen. Eddy Oketch Gicheru, MP	-	Member (Virtual)

ABSENT WITH APOLOGY

1. Sen. Tabitha Karanja Keroche, MGH MP	-	Member
2. Sen. Shakila Abdalla Mohamed, MP	-	Member (Virtual)
3. Sen. Joyce Chepkoech Korir, MP	-	Member

SECRETARIAT

1. Mr. Christopher Gitonga	-	Clerk Assistant
2. Ms. Beverlyne Chivadika	-	Clerk Assistant
3. Ms. Lucy Radoli	-	Legal Counsel
4. Ms. Millicent Makina	-	Fiscal Analyst
5. Mr. Kiminza Kioko	-	Fiscal Analyst
6. Mr. Nandemu Barasa	-	Media Relations Officer
7. Mr. Godana Mamo	-	Serjeant-At-Arms
8. Mr. Constant Wamayuyi	-	Research officer
9. Mr. Elijah Ichwara	-	Audio Officer
10. Mr. Oliver Onyango	-	Intern

MIN/SEN/SCF&B/717/2024 **PRELIMINARIES**

The Chairperson called the meeting to order at 8:30 a.m. This was followed by a word of prayer and a round of introduction.

MIN/SEN/SCF&B/718/2024 **ADPOTION OF THE AGENDA**

The agenda was adopted having being proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP, and seconded by Sen. Eddy Oketch Gicheru, MP, as listed below-

1. Prayer;
2. Adoption of the agenda;
3. Confirmation of Minutes of the 120th and 121st sittings;
4. Matters arising from the Minutes of the previous sittings;
5. Consideration and adoption of the report to deliberate on the Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024) (*Committee paper No.89B*);
6. Consideration of pending legislative business (*Committee Paper No.77*);
7. Any Other Business; and
8. Adjournment and Date of the Next Meeting.

MIN/SEN/SCF&B/719/2024 **CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS**

- a) The Minutes of the Hundred and Twentieth (120th) hybrid meeting held on Thursday, 28th March, 2024 at 9:00 a.m. were confirmed as true record of the proceedings of the Committee having been proposed by Sen. Eddy Oketch Gicheru, MP, and seconded by Sen. (Dr.) Boni Khalwale, CBS, MP.
- b) The Minutes of the Hundred and Twenty-First (121st) hybrid meeting held on Tuesday, 23rd April, 2024 at 9:00 a.m. were confirmed as true record of the proceedings of the Committee having been proposed by Sen. Richard Momoima Onyonka, MP, and seconded by Sen. Mohamed Mwinyihaji Faki, CBS, MP.

MIN/SEN/SCF&B/720/2024 **CONSIDERATION OF THE DRAFT REPORT ON THE DIVISION OF REVENUE BILL, 2024 (NATIONAL ASSEMBLY BILLS NO.14 OF 2024) (COMMITTEE PAPER NO.89B)**

The Committee considered the draft report on the Division of Revenue Bill, 2024. The report comprised of the contents of the Bill, submissions by stakeholders, Committee observations and recommendations.

MIN/SEN/SCF&B/721/2024 **ADOPTION OF THE REPORT ON THE DIVISION OF REVENUE BILL, 2024 (NATIONAL ASSEMBLY BILLS NO.14 OF 2024)**

Having considered the draft report on the Division of Revenue Bill, 2024, the Committee unanimously adopted the report having been proposed by Sen. (Dr.) Boni Khalwale, CBS, MP and seconded by Sen. Richard Momoima Onyonka, MP, with the recommendation that the Senate approves the Bill with amendments to of the Schedule to the Bill to provide that-

- a) The National Government share of revenue- Kshs. 2,524,318,490,857; and

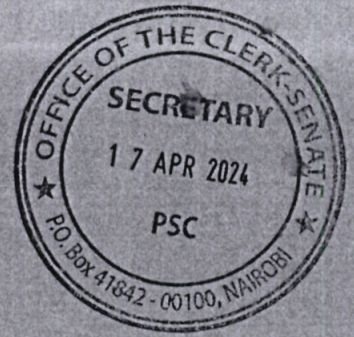
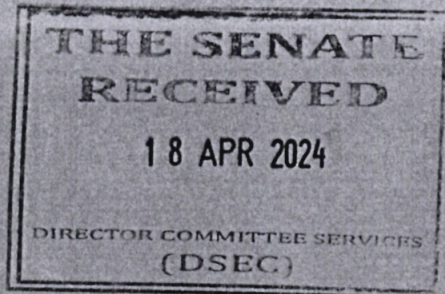
b) The County equitable share- Kshs. 415,952,200,000. This was arrived at by making adjustments to the base of Ksh. 385.425 billion to take into account non-discretionary financial obligations relating to housing levy deductions, enhanced contributions to the National Social Security Fund (NSSF), certain contributions to the Social Health Insurance Fund (SHIF), wage drift as well as the need for counties to provide matching allocations for the County Aggregation and Industrial Parks and the Community Health Promoters programme. Further, resources for the transferred obligation to meet the cost of medical equipment programme.

MIN/SEN/SCF&B/722/2024 **ADJOURNMENT AND THE DATE OF THE NEXT MEETING**

The meeting adjourned at 9:25 a.m. Next meeting shall be by notice.

SIGNATURE..... DATE.....

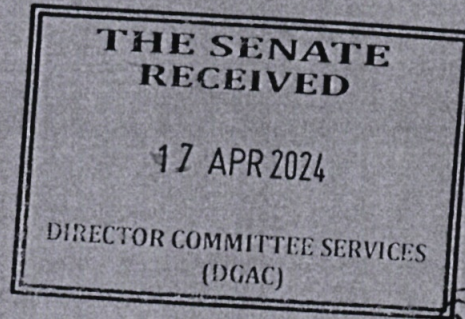
**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)**



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921
FINANCE – NAIROBI
FAX NO. 310833
Telephone: 2252299

THE NATIONAL TREASURY
P.O. BOX 30007 - 00100
NAIROBI
KENYA



When Replying Please Quote

IGFR/DOR/01/A (69)

J. M. Nyegenye, CBS
Clerk of the Senate
Clerk's Chamber
Parliament Buildings
NAIROBI.

16th April, 2024

Dear *Sir,*

DDSEC
Kindly deal
17/04/2024
(2) DDSEC (BL)
Kindly deal
18/4/2024

RE: INVITATION TO A MEETING TO SUBMIT VIEWS ON THE DIVISION OF REVENUE BILL, 2024 (NATIONAL ASSEMBLY BILLS NO.14 OF 2024)

Reference is made to your letter Ref No. SEN/DSEC/F&B/2024/37(a) dated 8th April, 2024 sharing the Published Division of Revenue Bill (DORB), 2024 (National Assembly Bills No. 14 of 2024) as read by the Standing Committee on Finance and Budget.

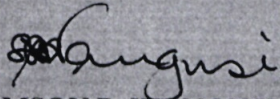
The National Treasury has reviewed the Published Bill (National Assembly Bills No. 14 of 2024) against the proposed legislative Bill submitted to Parliament on the 15th February, 2024 and observes the following:

- i. The National Assembly Bill has omitted the definition of 'Cabinet Secretary' in Clause 2 on interpretations.
- ii. In Schedule (s.4), the National Assembly Bill has used Kshs.1,570,562,945,014 as the latest audited and approved revenue, being that for FY 2020/21, while the National Treasury used Kshs.1,573,418 million in the proposed Bill as the latest audited and approved revenue account for FY 2019/20. The National Treasury concurs with this, as it is in line with Article 203(2) of the Constitution.
- iii. The National Treasury is in agreement with the 0.5 percent for the Equalization Fund, which amounts to Kshs. 7,852,814,725; and the National Government allocation, which amounts to Kshs. 2,549,153,902,710, with Kshs. 1,570,562,945,014 as the most recent audited and approved account for FY 2020/21.
- iv. Further, both National Assembly and National Treasury have proposed to allocate County Equitable Share of Kshs. 391,116,788,147 which is equivalent to 24.9 percent of the latest audited and approved account for FY 2020/21.

Mr. Gibson
Kindly deal
18/04/2024

The purpose of this letter, therefore, is to submit the above observations and request that the definition of Cabinet Secretary be included in the Bill.

Yours *Sincerely*



SAMSON P. WANGUSI, OGW

PRINCIPAL ADMINISTRATIVE SECRETARY

FOR: PRINCIPAL SECRETARY/THE NATIONAL TREASURY



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE DIVISION OF REVENUE BILL, 2024 (NATIONAL ASSEMBLY BILLS NO.14 OF 2024)

TO

THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET

FROM

THE COUNCIL OF GOVERNORS



COUNCIL OF GOVERNORS

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that legislation properly respond to the key issues, and further reflects the spirit and purpose of devolution.

Having reviewed the Division of Revenue Bill, 2024, the Council of Governors on behalf of the 47 County Governments submits the proposals highlighted herein below for consideration:

A. GENERAL COMMENTS

1. The Council appreciates the Senate's renewed commitment to supporting the County governments and devolution in general through advocating for increased allocation. We take note of the recommendation of the Senate on the 2024 Budget Policy Statement to allocate County governments **Ksh.415.9522 billion** for the FY 2024/25 of which we are thankful.
2. However, the Council notes with concern the proposed allocation of **Ksh.391.117 billion** as equitable share of revenue to Counties as contained in the Division of Revenue Bill, 2024. We wish to state that Counties will face major challenges in the performance of the functions assigned to them under the Fourth Schedule of the Constitution and delivery of services to citizens in the FY 2024/25 if the Bill is passed in its current form. In addition to the projected economic growth, the County governments have been subjected to additional non-discretionary expenditures that will require increased allocation in the next FY. **The Council therefore proposes a minimum allocation of Ksh.439.5 billion for FY 2024/25 as sharable revenue.**



COUNCIL OF GOVERNORS

3. We also note the erroneous adjustment of the baseline in the explanatory memorandum, specifically by deducting the Road Maintenance Levy Fund (RMLF) and Library services funds. This has affected the calculation of the adjustment for revenue growth for the current FY as illustrated. Indeed, this misleading position is being held by both the National Treasury and the Commission on Revenue Allocation and has for the last 3 FYs prejudiced the Counties entitlements to these allocations. **We therefore request the Senate to address the matter with finality through the institutions involved so as it doesn't feature in the subsequent FYs' vertical sharing of Revenue.**

B. SPECIFIC CONCERNS

The Council proposes the following specific amendment to the Division of Revenue Bill, 2024:

Section	Provision	CoG's Proposal	Rationale/Justification
THE SCHEDULE	Row B of the Schedule allocates Ksh.2,549,153,902,710 to the National Government and row D allocates Ksh.391,116,788,147 to the County Governments.	Rows B and D of the schedule be amended to allocate Ksh.2,500,770,690,857 to the National Government and Ksh.439,500,000,000 to the County Governments respectively. (See schedule below)	The projected ordinary revenue is set to grow by 15% (an absolute revenue increment of Ksh.376.9 billion) from the revenue that underpinned revenue sharing for the FY 2023/24 (Ksh.2571.2 billion). However, out of the Ksh.376.9 billion only Ksh.5.7 billion (5.6%) is being added to the Counties baseline allocation of Ksh.385.4 billion which the Council deems disproportionate and inequitable. The Council therefore proposes an allocation of Ksh.439.5 billion for the FY 2024/25.



COUNCIL OF GOVERNORS

			<p>Our proposal is further informed by the emerging additional non-discretionary expenditures for Counties in the FY 2024/25. They include:</p> <ol style="list-style-type: none">1. The lapsing of the Medical Equipment Services (MES) Program - The last allocation to the MES program amounted to Ksh.5.85 billion, this being the maintenance and servicing costs. However, Counties need to acquire and install new machines as well as take up the cost of MRI and CT Scan machines costs from the next FY from their own budgets.2. National government priority projects/Programs such as:<ol style="list-style-type: none">2.1 County Aggregation and Industrial Parks (CAIPs) is being implemented jointly by the National and County governments on a 50:50 matching basis. Counties are therefore required to allocate Ksh.11.75 billion from their budgets for the CAIPs.2.2 The Community Health Promoters (CHPs) program as well being implemented on a matching basis of 50:50 between the two levels of government also requires an
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COUNCIL OF GOVERNORS

			<p>additional contribution as stipends of at least Ksh. 3,234,930,000.00 in the next FY.</p> <p>2.3 The new Housing Levy deductions will further increase Counties expenditure by a minimum of approximately Ksh.4B.</p> <ol style="list-style-type: none">3. New National Social Security Fund will cost the Counties an additional Ksh.3B approximately.4. The new Social Health Insurance Fund contributions – the new Act requires Counties to pay for indigents who are yet to be determined or their actual numbers known.5. Annual salary increments6. Recently transferred Library and Museum functions – only funds for Personnel Emoluments were transferred without the development budget.7. The cost of implementing the doctors CBA upon payment of arrears is estimated at Ksh.5.8 billion and needs to be factored.
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COUNCIL OF GOVERNORS
SCHEDULE (AMENDED)

ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2024/25

Type/Level of Allocation	Amount in Kshs.	Percentage (%) of FY 2020/21 audited and approved Revenue i.e., Kshs.1,570,562,945,014
A. Total Sharable Revenue	2,948,123,505,582	
B. National Government	2,500,770,690,857	
C. Equalization Fund	7,852,814,725	0.50 %
D. County Equitable Share	439,500,000,000	27.98%

¹ In adjusting the base of equitable share from Ksh.385.4 billion to Ksh.374.49 billion by deducting RMLF, the National Assembly erred in law and in fact thereby creating a false impression that Counties have been enjoying proceeds from the fuel levy fund. RMLF being a fund collected separate from ordinary (sharable) revenue does not form an item under Division of Revenue.

Conclusion

We urge the Senate to remain steadfast in protecting the interests of the County governments even as you consider the Division of Revenue Bill, 2024. The Council assures you of our continued support and collaboration in the best interests of the Counties and the people we serve.



FINANCIAL IMPLICATIONS FOR COUNTIES ON IMPLEMENTATION OF THE DOCTORS CBA

Introduction

In 2017 the Health Sector experienced industrial unrest of the Doctors that lasted 100 days. A Return-To-Work-Formula was signed on 14th March 2017 outlining how the demands raised by the doctors shall be implemented. Key among them was the Collective Bargaining Agreement (CBA) which was executed in July 2017 with the KMPDU and deposited at the Employment and Labour Relations Court.

County Governments executed the CBA with an understanding that the National Treasury will avail the increment in the basic pay to county governments. Since 2017 to date, the deficit/ arrears of approximately 3.5B accrued by County Governments has never been settled. However, the National Government has offered to pay the Ksh.3.5B arrears in a one-off settlement.

Implications of payment of the Arrears by the National Government

Payment of arrears legitimizes the CBA entered in 2017 and therefore, Counties will be required to absorb the new salaries as negotiated and additional expenditure on statutory deductions onwards. They include: NSSF, Housing Levy, Pension and the annual basic salary increment to a tune of **approximately Ksh.5.8 billion** in the next FY as illustrated in the attached table.

EXPENDITURE ON IMPLEMENTATION OF THE 2017 DOCTORS CBA	
Item	Description
No. of Doctors	5,600
Basic Salary Increment Variance	71,157
New Basic Salary	198,267
New Gross Salary	474,267
	Annual Total Cost (Kshs.)
Salary increment cost	4,781,750,400
NSSF	72,576,000
Housing Levy	71,726,256
Pension	717,262,560
Sub-Total	5,643,315,216
Annual Statutory Increment	169,299,456
TOTAL - ANNUAL	5,812,614,672

COUNTIES MONTHLY EXPENDITURE ON HOUSING LEVY, NSSF AND FUEL (AMOUNT IN KSH)			
	COUNTY	HOUSING LEVY DEDUCTIONS	NEW NSSF DEDUCTIONS
1	Baringo	7,488,607.00	5,612,340.00
2	Bomet	6,902,563.80	5,943,060.00
3	Bungoma	6,518,996.95	3,670,560.00
4	Busia	7,799,186.91	4,564,730.00
5	Elgeyo/Marakwet	5,420,146.62	4,835,211.00
6	Embu	3,449,548.00	1,953,000.00
7	Garissa	4,424,705.76	3,012,840.00
8	Homa Bay	11,591,091.24	12,678,600.00
9	Isiolo	4,881,473.10	2,789,840.00
10	Kajiado	10,000,720.00	8,555,800.00
11	Kakamega	6,851,061.05	6,402,600.00
12	Kericho	7,539,253.00	6,368,480.00
13	Kiambu	16,301,145.00	8,987,640.00
14	Kilifi	5,521,684.25	3,848,700.00
15	Kirinyaga	5,402,289.80	3,475,600.00
16	Kisii	11,715,287.30	9,077,040.00
17	Kisumu	10,693,013.60	9,426,280.00
18	Kitui	5,311,142.47	4,695,840.00
19	Kwale	7,823,607.10	4,259,140.00
20	Laikipia	8,121,322.00	5,489,563.00
21	Lamu	4,219,438.15	2,039,250.00
22	Machakos	7,812,153.12	6,292,440.00
23	Makueni	4,560,813.00	3,122,280.00
24	Mandera	10,021,945.00	7,895,240.00
25	Marsabit	7,898,746.67	6,647,829.00
26	Meru	5,210,306.91	4,000,680.00
27	Migori	7,084,676.30	4,015,400.00
28	Mombasa	6,981,060.55	4,159,080.00
29	Murang'a	4,838,548.87	4,379,760.00
30	Nairobi City	17,461,803.00	15,697,070.00
31	Nakuru	6,882,385.67	3,573,000.00
32	Nandi	4,884,054.60	4,655,440.00
33	Narok	4,991,680.65	4,849,071.00
34	Nyamira	7,466,135.50	7,082,640.00
35	Nyandarua	2,613,474.50	1,782,720.00
36	Nyeri	8,246,500.00	5,024,980.00
37	Samburu	5,878,991.72	5,667,551.20
38	Siaya	3,498,478.64	2,330,500.75
39	Taita/Taveta	13,772,155.90	5,312,160.00
40	Tana River	4,048,482.80	3,177,213.40
41	Tharaka-Nithi	2,992,357.00	2,471,760.00
42	Trans Nzoia	3,952,133.39	3,691,577.18
43	Turkana	5,004,838.65	4,243,500.00
44	Uasin Gishu	9,293,013.60	8,426,280.00
45	Vihiga	9,293,013.60	2,200,000.00
46	Wajir	9,688,787.00	7,676,640.00
47	West Pokot	5,355,201.40	4,087,120.00
	TOTAL	337,708,021.14	250,148,046.53

COUNTIES MONTHLY EXPENDITURE ON HOUSING LEVY, NSSF AND FUEL (AMOUNT IN KSH)		
COUNTY	HOUSING LEVY DEDUCTIONS	NEW NSSF DEDUCTIONS
ANNUAL ESTIMATES (12 MONTHS TOTAL)	4,052,496,253.68	3,001,776,558.36

Conditional Grant on Payment of Community Health Promoters' (CHPs) Stipends

	County	# of CHPs Per County 7/5/2023	County Allocation Per Financial Year (KES)
1	Baringo	2,127	63,810,000.00
2	Bomet	2,469	74,070,000.00
3	Bungoma	3,580	107,400,000.00
4	Busia	2,213	66,390,000.00
5	Elgeyo Marakwet	1,240	37,200,000.00
6	Embu	2,010	60,300,000.00
7	Garissa	2,484	74,520,000.00
8	Homa Bay	2,954	88,620,000.00
9	Isiolo	721	21,630,000.00
10	Kajiado	1,669	50,070,000.00
11	Kakamega	4,250	127,500,000.00
12	Kericho	1,523	45,690,000.00
13	Kiambu	3,156	94,680,000.00
14	Kilifi	3,870	116,100,000.00
15	Kirinyaga	1,222	36,660,000.00
16	Kisii	2,940	88,200,000.00
17	Kisumu	2,998	89,940,000.00
18	Kitui	2,470	74,100,000.00
19	Kwale	1,738	52,140,000.00
20	Laikipia	841	25,230,000.00
21	Lamu	484	14,520,000.00
22	Machakos	2,775	83,250,000.00
23	Makueni	3,790	113,700,000.00
24	Mandera	618	18,540,000.00
25	Marsabit	2,003	60,090,000.00
26	Meru	3,716	111,480,000.00
27	Migori	2,946	88,380,000.00
28	Mombasa	2,387	71,610,000.00
29	Murang'a	1,535	46,050,000.00
30	Nairobi City	7,467	224,010,000.00
31	Nakuru	3,313	99,390,000.00
32	Nandi	3,222	96,660,000.00
33	Narok	1,660	49,800,000.00
34	Nyamira	1,479	44,370,000.00
35	Nyandarua	1,387	41,610,000.00
36	Nyeri	2,475	74,250,000.00
37	Samburu	1,538	46,140,000.00
38	Siaya	2,127	63,810,000.00

39	Taita Taveta	1,369	41,070,000.00
40	Tana River	963	28,890,000.00
41	Tharaka Nithi	1,265	37,950,000.00
42	Trans Nzoia	2,240	67,200,000.00
43	Turkana	2,475	74,250,000.00
44	Uasin Gishu	2,066	61,980,000.00
45	Vihiga	1,446	43,380,000.00
46	Wajir	2,027	60,810,000.00
47	West Pokot	2,583	77,490,000.00
	TOTAL	107,831	3,234,930,000.00

COUNTY AGGREGATION AND INDUSTRIAL PARKs (CAIPs) CONDITIONAL GRANT

Name of County	County Counterpart Contribution (KSHs)	National Government Allocation (KSHs)	Total Allocation
Busia	250,000,000.00	250,000,000.00	500,000,000.00
Embu	250,000,000.00	250,000,000.00	500,000,000.00
Garissa	250,000,000.00	250,000,000.00	500,000,000.00
Homabay	250,000,000.00	250,000,000.00	500,000,000.00
Kirinyaga	250,000,000.00	250,000,000.00	500,000,000.00
Meru	250,000,000.00	250,000,000.00	500,000,000.00
Mombasa	250,000,000.00	250,000,000.00	500,000,000.00
Muranga	250,000,000.00	250,000,000.00	500,000,000.00
Nakuru	250,000,000.00	250,000,000.00	500,000,000.00
Nandi	250,000,000.00	250,000,000.00	500,000,000.00
Nyamira	250,000,000.00	250,000,000.00	500,000,000.00
Siaya	250,000,000.00	250,000,000.00	500,000,000.00
Uasin Gishu	250,000,000.00	250,000,000.00	500,000,000.00
Migori	250,000,000.00	250,000,000.00	500,000,000.00
Kiambu	250,000,000.00	250,000,000.00	500,000,000.00
Baringo	250,000,000.00	250,000,000.00	500,000,000.00
Bomet	250,000,000.00	250,000,000.00	500,000,000.00
Bungoma	250,000,000.00	250,000,000.00	500,000,000.00
Elgeyo Marakwet	250,000,000.00	250,000,000.00	500,000,000.00
Isiolo	250,000,000.00	250,000,000.00	500,000,000.00
Kajiado	250,000,000.00	250,000,000.00	500,000,000.00
Kakamega	250,000,000.00	250,000,000.00	500,000,000.00
Kericho	250,000,000.00	250,000,000.00	500,000,000.00
Kilifi	250,000,000.00	250,000,000.00	500,000,000.00
Kisii	250,000,000.00	250,000,000.00	500,000,000.00
Kisumu	250,000,000.00	250,000,000.00	500,000,000.00
Kitui	250,000,000.00	250,000,000.00	500,000,000.00
Laikipia	250,000,000.00	250,000,000.00	500,000,000.00
Lamu	250,000,000.00	250,000,000.00	500,000,000.00
Machakos	250,000,000.00	250,000,000.00	500,000,000.00
Mandera	250,000,000.00	250,000,000.00	500,000,000.00
Narok	250,000,000.00	250,000,000.00	500,000,000.00
Nyandarua	250,000,000.00	250,000,000.00	500,000,000.00
Nyeri	250,000,000.00	250,000,000.00	500,000,000.00
Samburu	250,000,000.00	250,000,000.00	500,000,000.00
Taita Taveta	250,000,000.00	250,000,000.00	500,000,000.00
Tharaka Nithi	250,000,000.00	250,000,000.00	500,000,000.00
Trans Nzoia	250,000,000.00	250,000,000.00	500,000,000.00

Vihiga	250,000,000.00	250,000,000.00	500,000,000.00
Wajir	250,000,000.00	250,000,000.00	500,000,000.00
Nairobi	250,000,000.00	250,000,000.00	500,000,000.00
Makueni	250,000,000.00	250,000,000.00	500,000,000.00
Marsabit	250,000,000.00	250,000,000.00	500,000,000.00
Kwale	250,000,000.00	250,000,000.00	500,000,000.00
Tana River	250,000,000.00	250,000,000.00	500,000,000.00
West Pokot	250,000,000.00	250,000,000.00	500,000,000.00
Turkana	250,000,000.00	250,000,000.00	500,000,000.00
TOTAL	11,750,000,000	11,750,000,000	23,500,000,000.00

COUNTY	MES(p.a); Theatre, CSSD, Renal, ICU and Radiology)	CT-Scan (p.a)	MRI(p.a)	MRI & CT Scan	TOTAL COST (p.a)
Baringo County	93,325,140.40	0	0	-	93,325,140.40
Bomet County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Bungoma County	107,336,736.80	0	0	-	107,336,736.80
Busia County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Elgeyo Marakwet County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Embu County	114,761,741.96	10,810,810.81	16,000,000	26,810,810.81	141,572,552.77
Garissa County	114,761,741.96	10,810,810.81	16,000,000	26,810,810.81	141,572,552.77
Homa Bay County	93,325,140.44	0	16,000,000	16,000,000.00	109,325,140.44
Isiolo County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Kajiado County	93,325,140.40	0	0	-	93,325,140.40
Kakamega County	114,761,743.96	10,810,810.81	16,000,000	26,810,810.81	141,572,554.77
Kericho County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Kilambu County	130,062,135.56	10,810,810.81	32,000,000	42,810,810.81	172,872,946.37
Kilifi County	93,325,140.40	10,810,810.81	16,000,000	26,810,810.81	120,135,951.21
Kirinyaga County	102,939,257.56	10,810,810.81	0	10,810,810.81	113,750,068.37
Kisii County	134,459,614.76	10,810,810.81	16,000,000	26,810,810.81	161,270,425.57
Kisumu County	114,761,743.96	10,810,810.81	16,000,000	26,810,810.81	141,572,554.77
Kitui County	93,325,140.40	0	0	-	93,325,140.40
Kwale County	114,761,744.00	0	0	-	114,761,744.00
Laikipia County	93,325,140.40	0	0	-	93,325,140.40
Lamu County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Machakos County	128,989,340.00	0	16,000,000	16,000,000.00	144,989,340.00
Makueni County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Mandera County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Meru County	134,675,614.80	0	16,000,000	16,000,000.00	150,675,614.80
Migori County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Marsabit County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Mombasa County	128,989,339.96	10,810,810.81	16,000,000	26,810,810.81	155,800,150.77
Murang'a County	107,552,736.76	10,810,810.81	16,000,000	26,810,810.81	134,363,547.57
Nairobi County	93,325,140.40	0	16,000,000	16,000,000.00	109,325,140.40
Nakuru County	134,675,614.76	10,810,810.81	16,000,000	26,810,810.81	161,486,425.57
Nandi County	93,325,140.36	10,810,810.81	16,000,000	26,810,810.81	120,135,951.17
Narok County	114,761,743.96	10,810,810.81	0	10,810,810.81	125,572,554.77
Nyamira County	117,166,853.96	10,810,810.81	0	10,810,810.81	127,977,664.77
Nyandarua County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Nyeri County	114,761,743.96	10,810,810.81	16,000,000	26,810,810.81	141,572,554.77
Samburu County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Siaya County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Taita Taveta County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Tana River County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Tharaka Nithi County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
Trans Nzoia County	93,325,140.36	10,810,810.81	16,000,000	26,810,810.81	120,135,951.17
Turkana County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Uasin Gishu County	88,711,661.60	0	0	-	88,711,661.60
Vihiga County	93,325,140.36	10,810,810.81	0	10,810,810.81	104,135,951.17
Wajir County	107,552,736.76	10,810,810.81	0	10,810,810.81	118,363,547.57
West Pokot County	93,325,140.40	0	0	-	93,325,140.40
GRAND TOTAL	4,981,823,741.48	378,378,378.35	288,000,000.00	666,378,378.35	5,648,202,119.83



COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933
Email: communication@countyassembliesforum.org www.countyassembliesforum.org



CAF MEMORANDUM ON THE DIVISION OF REVENUE BILL, 2024 (SENATE NO.14 OF 2024)

TO: Mr. Jeremiah Nyengenyé
Clerk of the National Assembly, Parliament of Kenya.

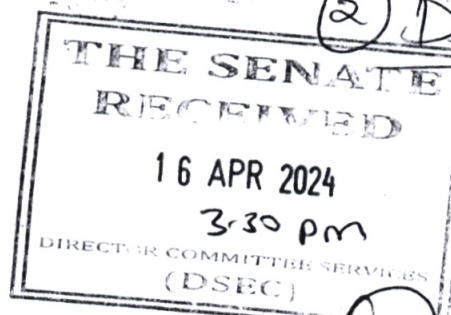
FROM: The County Assemblies Forum.

DATE: 18th April 2024.

SUBJECT: CAF Memorandum on the Division of Revenue Bill, 2024



① DLS
DSEC
Kindly deal
[Signature]
16/04/2024



② DDSEC (BL)
Kindly deal
[Signature]
16/04/2024

③ Mr. Givonja
Please deal
[Signature]
16/04/24

1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
- 2.0. As one of the pillars of the devolved government system, CAF is committed to engage in processes that provide for revenue allocations to the National and County Governments

2.1. BACKGROUND

- 2.2. The principal object of this Bill is to provide for the equitable division of revenue raised nationally among the national and county levels of government as required by Article 218 of the Constitution in order to facilitate the proper functioning of governments and to ensure continuity of service delivery to the citizens. Clauses 1 and 2 of the Bill provide for the short title of the Bill and the interpretation of terms used in the Bill, respectively. Clause 3 of the Bill contains the provisions on the objects and purpose of the Bill.
- 2.3. The Bill proposes to allocate county governments KSh. 391.1 billion for the financial year 2024/25 as an equitable share of revenue raised nationally, which is an increase from a base of KSh. 374.5 billion allocated in the financial year 2023/24.
- 2.4. In FY 2023/24, the Division of Revenue Act, 2023, allocated KSh. 385.4 billion to county governments as equitable share. This allocation included KSh. 10.9 billion being proceeds from the Road Maintenance Fuel Levy (RMFL) and KSh. 425 million for Transfer of Library Services. The allocation of KSh. 425 million was attendant resources for the personnel emoluments relating to the library services transferred from the Kenya National Library Services in FY 2022/23 to the county governments.



- 2.5. The RMFL, which was initially a conditional allocation to county governments for maintenance of county roads, was folded up to be part of county governments equitable share in FY 2021/22. However, the national and county governments coordinating Summit meeting held on 10th – 12th February, 2023 resolved that RMFL allocation to counties shall be considered in FY 2024/25 through a restructured process. Further to this, a consensus has been built those attendant resources for RMFL be transferred to county governments as conditional allocations beginning FY 2024/25.

- 2.6. Taking into account these policy developments, the equitable share base has been revised from KSh. 385.4 billion allocated to counties in FY 2023/24, by netting off KSh. 10.9 billion related to RMFL to KSh. 374.5 billion.

3.0. GENERAL COMMENTS.

- 3.1. The trend of rising nominal amounts of equitable share, juxtaposed with a declining percentage of total sharable revenue over the years, raises concerns about the adequacy of funding for County Governments. To ensure parity and maintain effective service delivery, it's recommended that the allocation to County Government Equitable Share should be approximately Ksh 460 billion.
- 3.2. The issue of debt servicing crowding out revenue to counties underscores the need for rigorous oversight by the Senate over public debt management. Failure to address this could significantly impact the ability of counties to fulfill their mandates and deliver essential services to citizens.
- 3.3. Discrepancies in the county equitable share as a percentage of audited revenue between different years, as well as differences between the figures deducted by the Treasury and the CRA, highlight inconsistencies that need urgent attention. Clarity and consistency in these allocations are crucial for effective planning and budgeting at the county level.
- 3.4. The deduction of RMFL from last year's Equitable Share, with variations between deductions made by the Treasury and the CRA, requires transparent and accountable handling. The conditional allocation of these funds to counties from FY 2024/25 should be managed with clarity and fairness to ensure effective utilization for road maintenance purposes.
- 3.5. Delays in the review and approval process of the Auditor General's reports impede the National Treasury's ability to use updated and accurate revenue figures. The National Assembly should expedite these processes to enable timely and informed decision-making regarding the Division of Revenue Bill.
- 3.6. Approval of the DORB 2024 should be contingent upon the National Treasury addressing inconsistencies and discrepancies that undermine the overall transparency of the bill. Ensuring clarity and accuracy in the allocation and utilisation of funds is essential for fostering public trust and confidence in the devolved system of governance.
- 3.7. CAF appreciates the opportunity to contribute to this Bill and based on the foregoing notes the following *(as supported with the annexed report):-*

1.0. ISSUES OF CONCERN ON THE DRAFT DIVISION OF REVENUE BILL 2024

The Draft Division of Revenue Bill 2024 raises several critical issues that warrant attention and immediate action to ensure effective governance and equitable distribution of resources to county governments. These issues are as follows:

- 4.1. Declining Equitable Share Percentage:** Despite nominal increases in equitable share amounts, the percentage of equitable share as compared to total sharable revenue has been on a downward trend over the years. This decline could potentially undermine the capacity of county governments to deliver essential services to their constituents.
- 4.2. Debt Servicing Crowding Out County Revenue:** Debt servicing obligations are increasingly encroaching upon the revenue allocated to counties, posing a significant challenge to the effective functioning of devolved governments. The excessive allocation towards debt servicing could impede the ability of county governments to address local needs and priorities.
- 4.3. Discrepancies in County Equitable Share Percentage:** Discrepancies persist in the equitable share allocated to counties as a percentage of audited revenue accounts in the Division of Revenue Allocation (DoRA) compared to previous years. These inconsistencies could lead to disparities in resource allocation among counties, potentially exacerbating inequality and hindering equitable development.
- 4.4. Issues with Road Maintenance Fuel Levy (RMFL) Allocation:** The deduction of Road Maintenance Fuel Levy from last year's Equitable Share, with differences in amounts deducted by the Treasury and the Commission on Revenue Allocation (CRA), raises concerns about transparency and consistency in revenue allocation. Additionally, variations in audited revenue figures between years further complicate the allocation process.

i. CAF POSITION ON THE DIVISION OF REVENUE ALLOCATION BILL (DoRB) FOR FY 2024/25

Based on ordinary revenue projection of Ksh 2,948.1 billion in FY 2024/25, it is proposed that Ksh 2,549.1 billion be allocated to National Government, Ksh 391.1 billion to County Governments as equitable revenue share and Ksh 7.87 billion to the Equalization Fund. The National Treasury proposes



to further allocate Ksh 3.53 billion to the Equalization Fund in FY 2024/25 as partial payment to arrears for Equalization Fund.

- 5.1. CAF supports the proposal by the Council of Governors (CoG) to increase the County Governments' equitable share from the proposed Ksh 391 billion to Ksh 450 billion. This adjustment is deemed necessary due to the anticipated increase in expenditure burden for county governments in the upcoming fiscal year. Factors contributing to this increased burden include the continuation of the Medical Equipment Services (Mes) Program, financing fifty percent (50%) of County Aggregation and Industrial Parks (CAIPs), new contributions to the National Social Security Fund (NSSF), new contributions to the Social Health Insurance Fund, and the assumption of costs for transferred Museums and Libraries. Increasing the equitable share to Ksh 450 billion would provide county governments with the necessary financial resources to effectively deliver public services at the county levels.
- 5.2. CAF recommends that 15% of the Roads Maintenance Levy Fund (RMLF), estimated at Ksh 10.52 billion for the fiscal year 2024/25, be allocated to county governments as part of their equitable share. This allocation would be specifically designated for the maintenance of county roads. Furthermore, CAF urges Parliament to review legislation passed before 2010, such as the Road Maintenance Levy Fund Act, 1993; Kenya Roads Boards Act, 1999; and Kenya Roads Act of 2007, to align them with the devolved system of governance. Aligning these laws would enhance the effectiveness of county governments in managing and maintaining road infrastructure within their jurisdictions.
- 5.3. CAF acknowledges the efforts by the National Treasury to support county governments in enhancing their Own Source Revenue (OSR). Activities such as the enactment of the National Rating Bill, the County Revenue Raising Process Bill, and the development of a model Tariffs and Pricing Policy for use by county governments are steps in the right direction. CAF encourages the National Treasury to expedite the implementation of these initiatives to empower county governments to generate revenue locally and reduce dependency on equitable share allocations.

In conclusion, CAF emphasizes the importance of equitable and sustainable resource allocation to county governments to facilitate the delivery of essential public services and promote socio-economic development at the grassroots level. The proposed adjustments and recommendations outlined in this position aim to address the pressing needs and challenges facing county governments in the fiscal year 2024/25.

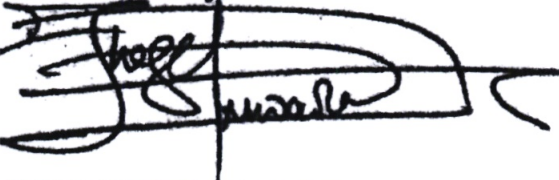
RECOMMENDATIONS

To address these issues and ensure fairness and transparency in resource allocation, several recommendations are proposed:

- 6.1. **Increase in County Government Equitable Share:** It is recommended that the allocation to County Government Equitable Share be adjusted to approximately Ksh 460 billion to maintain parity and support the delivery of devolved services effectively.
- 6.2. **Oversight on Public Debt Management:** The Senate should exercise robust oversight over public debt management to mitigate the impact of debt servicing on total shareable revenue and safeguard the interests of county governments.
- 6.3. **Expedited Review of OAG Reports:** The National Assembly should expedite the review and approval process of the Office of the Auditor General (OAG) reports to ensure timely access to accurate financial data, preventing the use of outdated figures in revenue assessment.
- 6.4. **Contingent Approval of DORB, 2024:** Approval of the Division of Revenue Bill 2024 should be contingent upon the National Treasury addressing inconsistencies and discrepancies that undermine the transparency and effectiveness of the Bill, thereby promoting accountability and good governance.

Thank you.

Yours sincerely,



HON. CHEGE MWAURA
SECRETARY GENERAL, CAF

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COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/CSO/P&S /11/VOL. IV(38)

DATE: 22 April 2024

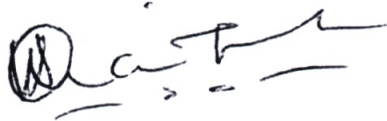
Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
2nd Floor, County House
NAIROBI.

Dear Mr. Nyegenye

INVITATION TO A MEETING TO SUBMIT VIEWS ON THE DIVISION OF REVENUE BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 14 OF 2024)

Reference is made to your letter, Ref. SEN/DSEC/F&B/2024/37(b) dated 8th April, 2024 on the above captioned matter and your invitation to attend the Committee sitting rescheduled for 23 April 2024. Attached, are the Commission views on the Division of Revenue Bill, 2024 for the Committee's consideration.

Yours Sincerely



Koitamet Ole Kina
VICE CHAIRPERSON

Att/01



Promoting an Equitable Society

The Commission has considered the contents of the Division of Revenue Bill (DORB) and submits the following comments on the Bill for consideration:

1. County equitable share allocation

Schedule (s.4) and Table 1, pg. 6 of the Division of Revenue Bill, 2024 allocates the county governments an equitable share of Ksh. 391.1 billion for the FY 2024/25. The county equitable share adjustment as proposed by the National Treasury has remained low at Ksh. 15.4 billion in the FY 2023/24 and Ksh. 16.6 billion in FY 2024/25. This is despite projected significant growth in ordinary revenues during these two financial years as shown in Table 1.

Table 1: Shareable Revenue vis-a-vis County Equitable Share for the FYs 2021/22 to 2024/25

Financial Year	Ordinary Revenue (Ksh. Billion)	Growth in Ordinary Revenue (Ksh. Billion)	County Equitable Share (Ksh. Billion)	Growth in County Equitable Share (Ksh. Billion)
2021/22	1,917.9*		370	
2022/23	2,041.1*	123.2	370	0
2023/24	2571.2 **	530.1	385.4	15.4
2024/25	2,948.1**	376.9	391.1	16.6***

*Actual

**Projected

***Based on county equitable share base of Ksh.374.5 billion

The allocation to county governments in DORB, 2024 of Ksh.391 billion translates to an absolute increment of Ksh. 16.6 billion from the adjusted equitable share of Ksh. 374.5¹

¹ The National Treasury adjusted the equitable share allocation for FY 2023/24 by Ksh.10.9 billion RMLF allocated to counties as equitable share for FY 2023/24

Revenue growth
6.42369%

billion. This is equivalent to a 4.3 per cent growth in shareable revenue for the FY 2024/25 to the county governments. The allocation to the national government of Ksh. 2,549.13 billion for Financial year 2024/25 from an allocation of Ksh. 2,177.43 in Financial year 2023/24 presents an increase of Ksh 371.7 billion to the national government. This translates to a growth to national government equitable share of 17.1 percent.

The Commission is cognisant of other competing interests of the national government such as debt service obligations and containment of the fiscal deficit. These notwithstanding, it is necessary that both levels of governments are adequately financed to ensure that they are able to perform the functions allocated to them.

The national government, as a matter of policy, has commenced implementation of the following policies that require county governments to set aside an estimated Ksh.17.88 billion:

- i. Aggregation and Industrial Parks (CAIPs) that is being implemented jointly by the National and County governments on a 50:50 matching basis. Each county is required to set aside Ksh. 250 million. This translates to resource requirement of Ksh.11.75 billion by county governments;
- ii. The Community Health Promoters (CHPs) is also being implemented on a matching basis of 50:50 between the two levels of government. With each health promoter required for every 50 households, county government require an additional Ksh. 3.2 billion for stipend; and
- iii. The Housing Levy deductions requires government to contribute one and half percent of employee remuneration to the Fund. Given the aggregate county government remuneration of Ksh. 195 billion, this translates to Ksh. 2.93 billion.

The provision in the DORB, 2024 of Ksh.16.6 billion, as additional allocations to county governments as equitable share does not cover the additional resources required by county governments to implement even the national government initiated policies. It also does not provide for additional resources required by the county governments for expansion of other devolved functions.

The Commission in its FY 2024/25 recommendation on the sharing of revenue between the national and county governments, recommended that Ksh.2,552.09 billion and Ksh. 398.14 billion be allocated to the national and county governments as equitable shares, respectively. A further Ksh. 8.73 was recommended for allocation to the Equalisation

Fund. This was based on a revenue projection of Ksh.2,958.6² billion. This translates to an additional allocation of Ksh. Ksh. 22.54 billion from the adjusted equitable share allocation to county governments of Ksh. 375.6³ billion. The proposal by the Commission was a realistic figure to enable county governments adequately fund their functions and offer comparable services. Parliament should therefore consider and revise the DORB, 2024 allocation to county governments from Ksh. 391.1 billion to Ksh.398.14 billion and the allocation to national government to ksh. 2,541.23 billion.

2. Allocation to the Equalisation Fund

Schedule (s.4) of the Division of Revenue Bill 2024 allocates Ksh. 7.87 billion to the Equalisation Fund for the FY 2024/25 based on the latest audited approved accounts amounting to Ksh. 1,573.4 billion for FY 2019/20, as per the records of the National Treasury. However, the last audited revenue raised nationally, as approved by the National Assembly is Ksh 1,673 billion. Although the National Treasury has indicated that they have raised the issue of discrepancy of Ksh. 100 billion with the Office of Auditor-General and the Office of the Auditor-General has since responded to the National Treasury modifying the audited revenues for the FY 2019/20 to Ksh. 1,578 billion, the National Assembly has not made a resolution on the issue to amend the accounts for Financial year 2019/20. Given that the issue has not been resolved, the Commission proposes that the allocation to Equalisation Fund for FY 2024/25 be Ksh. 8.37 billion being 0.5 per cent of the last audited and approved accounts of Ksh. 1,673 billion for FY 2019/20.

3. Discrepancies in the audited revenue for purpose of Article 203(2) and 204(1)

Paragraph 10 and 32 of the Bill notes that the Auditor-General has since modified the audited revenues for the FY 2019/20 to Ksh. 1,578,035,418,993. The Bill in Schedule (S.4) for purposes of Article 203 (2) and 204(1) uses Ksh. 1,573,418 million. In light of the Auditor General's modification of the audited accounts to Ksh. 1,578,035,418,993, it would be prudent that the Bill takes note of this change for purposes of Article 203 (2) and 204(1).

² The BPS submitted to Parliament has revised the revenue projection downwards by Ksh. 10.5 billion from Ksh. 2,958.6 to Ksh. 2,948.1 billion.

³ The Commission adjusted the equitable share allocation for FY 2023/24 by Ksh.9.8 billion RMLF allocated to counties as equitable share for FY 2020/21

4. Evaluation of the Bill against Article 203(1) of the Constitution

- i. Table 2, provides a list of the national interest items in accordance with Article 203 (1)(a) which have been taken into consideration in estimating the division of revenue between the national and county levels of Government in the financial year 2024/25. Paragraph 13 provides a detailed explanation of the qualifying criteria of the items stated as national interest. One of these items stated as national interest is the national irrigation and fertilizer clearance which has continued to receive significant revenue allocation between the FYs 2020/21 to 2024/25. This national interest item however only looks at the enhancement of food and nutrition security from the angle of crop production. Enhancement of food and nutrition security however also involves livestock and fish production.

It is the Commission's view that the national interest item on national irrigation and fertilizer clearance be enhanced to include support for livestock and fish production. Conversely, the national interest item should be abolished altogether since it does not provide an equitable consideration for all counties in the division of revenue.

- ii. In Table 2, pg. 8, the Division of Revenue Bill 2024 proposes to reduce the allocation to pensions, constitutional salaries and others by a substantial amount of Ksh. 29.6. An explanation needs to be provided for such substantial reduction.
- iii. The Bill has in Table 2 item F captured the county equitable share in the FY 2023/24 as Ksh.380,645 million rather than Ksh. 385,425 million. This needs to be corrected.

END



Memorandum to the Senate Standing Committee on Finance and Budget

Division of Revenue Bill, 2024 (National Assembly Bill No. 14 of 2024)

Submitted on Wednesday, April 10, 2024

Contact Person:

Dr. Abraham Rugo Muriu.

Country Manager, IBP Kenya

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Introduction

The International Budget Partnership Kenya (IBP Kenya) is a Kenyan non-profit organization working to advance transparency, accountability, participation, and equity in national and county budgeting processes. The International Budget Partnership Kenya's (IBP Kenya) work is focused on strengthening the impact of civil society advocacy and citizens on budget policies and outcomes at both levels of governance in Kenya. Through deep and sustained engagement, the IBP Kenya provides support to build expertise and skills of civil society actors and citizens involved in budget advocacy. Citizen advocacy, generation of evidence, technical assistance, learning, and networking are all integral components of IBP Kenya's work.

Kenya has had a total of eleven Division of Revenue Bills since 2013 and throughout this period, the National Executive and Parliament have engaged the public in the budget process in line with the provisions of Articles 10, 118 (1) and 201 (a) of the Constitution on public participation. To the extent that the Division of Revenue Bill 2024 enhances the ability of national and county governments to finance the services associated with the assigned functions outlined in the constitution of Kenya 2010, we make the following submissions.

Submissions:

1. Unbundling and costing of devolved functions.

The division of revenue process is premised on Kenya's devolved system of government which demands that national and county government both receive adequate resources to finance their functions, according to the Fourth Schedule of the Constitution of Kenya 2010. The idea behind decentralisation was that full devolution was to be achieved over time, with the gradual unbundling of functions from the national government to county governments.

Whilst several functions have been unbundled and devolved, a study done by Inter-Governmental Relations and Technical Committee (IGRTC) on Emerging Issues on Transfer of Functions to National and County Governments indicated that the National Government is still performing some



of the functions or certain aspects of them, despite the functions having been transferred to the county governments. This challenge is most evident in the functions of housing, libraries, museums, roads, water, and agriculture. The process is further challenged by the fact the costing of functions was last done at the onset of devolution. More than a decade later, using this costing as a basis for dividing revenue among the functions of the different levels of government is bound to lead to the violation of the constitutional ‘funds follow functions’ principle as the requirements of service delivery have changed overtime.

We hold that as long as the division of functions between national and county governments remains unclear, and the costing of these functions remains outdated, the division of revenue process itself will lack the required certainty and accuracy needed to achieve its goal of ensuring adequate financing of service delivery at both levels of government as envisioned by Kenya’s 2010 constitution.

Recommendation: To address the above highlighted submission and ensure a credible basis upon which the outcomes of the division of revenue process can be objectively evaluated as fair, we recommend that the fast-tracking of the process of unbundling of functions by supporting the process that was already started by the Intergovernmental Technical Relations Committee. The BPS 2024/25 only mentions plans for this transfer; however, it fails to provide on the progress, how this process will be fast tracked, details on how this resolves ambiguities for the functions carried out by the county, national and state-owned entities.

We further contend that the costing of functions should also be updated to reflect the current service delivery demands, costs and economic realities faced by counties today. As the DOR Bill 2024 notes, the baseline allocations to counties are informed by the costing of expenditure for devolved functions at the onset of devolution.

2. Decline in the proportion of county equitable share.

Understandably, the achievement of the goals of devolution would require the gradual decentralisation of finances i.e. more resources to county governments, as clarity emerges on the full extent of county functions. Therefore, the recent trends in the division of revenue that show a **decrease** in the proportion of funds going to county governments from the shareable revenue seem to contradict the spirit of devolution and the essence of the division of revenue process itself.

Data from previous division of revenue act between 2020 and 2023 show that while the amount given to county governments has increased, the share of that amount in the total shareable revenue has shrunk overtime. Table 1 shows that between 2020 and 2023, the absolute allocations to counties grew by 21% from KSh.316 billion to KSh.385 billion. However, the corresponding figure 1 shows that over the same period the percentage of this allocation relative to the total shareable revenue each year has fallen from 17% to 15%. Meanwhile, the percentage of the total revenue going to the national

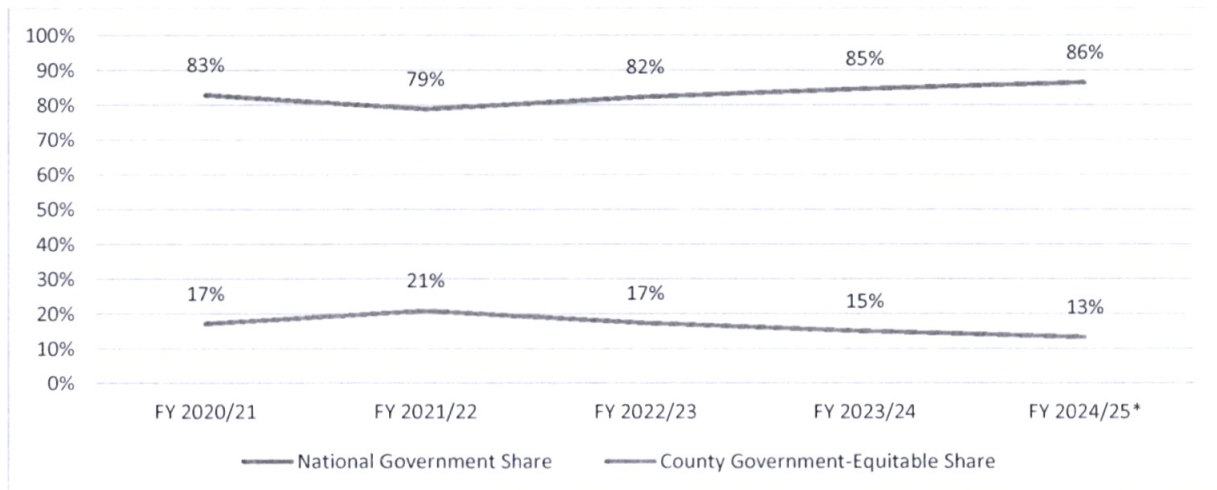
government has risen from 79% to 86% over the same period. In the current division of revenue bill of 2024, the proposed equitable share to counties will fall to 13% of overall shareable revenue.

Table 1: The declining county share of total shareable revenue FY 2020/21 – 2024/25

	Allocation (Ksh. Billion)				
	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25*
National Government Share	1,533.40	1,398.80	1,764.10	2,177.36	2,549.15
Equalization Fund	6.69	6.83	7.07	8.37	7.85
County Government-Equitable Share	316.50	370.00	370.00	385.43	391.12
Total Shareable Revenue	1,849.90	1,775.62	2,141.58	2,571.16	2,948.12

Source: Division of Revenue Acts 2020-2023 and DORB 2024

Figure 1: The decline in county proportion of shareable revenue.



Source: Division of Revenue Acts 2020 - 2023 and DORB 2024

Recommendation: To ensure that counties are able to meet evolving service delivery needs and fulfil their functions, we ask the Senate to investigate the cause of the decline in relative funding to county governments compared to the national government. This is taking into consideration that the national share does not include the Consolidated Fund Services.

3. Basis for the Division of Revenue

As the Division of Revenue Bill of 2024 highlight several bases upon which the bill is premised, in accordance with Article 203 of the COK 2010, the section below contains our submissions with regard

to some of them. These attempt to evaluate the credibility of the basis for the Division of Revenue, and the adherence of the DORB 2024 to Article 203 of the COK 2010.

a. The Growth Factor for Equitable Share

Equitable share to counties continues to be pegged on the growth of total revenue as opposed the priorities of county governments. Accordingly, the county equitable share is proposed to increase to Ksh. 391 billion in FY 2024/25 in line with the 15% increase in targeted revenue collection by national government of Ksh. 377 billion. Two challenges have emerged with this approach:

- One as shown by table 2, is the shifting basis upon which the revenue growth factor has been made overtime according to division of revenue bills and Acts from the past. This is range from the three average growth in inflation or ordinary revenue to economic growth. In the last two financial years, the revenue growth factors simply been based on the expected growth and revenue in the coming financial year, which creates a further challenge for service delivery in the context of recent in-year underperformance of revenue.
- A further challenge with the revenue growth factor approach is that the equitable share then becomes pegged on the **availability of resources** as opposed to the costing and developmental needs of counties. As a result, the ability of counties to fulfil their functions as outlined in the Fourth Schedule of the Constitution is put at risk.

Table 2: The shifting basis of the growth factor for the equitable share.

	Year	Proposed Growth		Basis for Proposed Revenue Growth	
		CRA	National Treasury	CRA	National Treasury
1	2015/16	10.40%	10.40%	3-Year average growth in ordinary revenue	3-Year average growth in ordinary revenue
2	2016/17	15.00%	7.80%	3-Year average growth in ordinary revenue	Not provided
3	2017/18	15.00%	6.70%	3-Year average growth in ordinary revenue	3-Year average month on month inflation
4	2018/19	8.50%	4.00%	3-Year average inflation	Not Clear
5	2019/20	6.90%	2.00%	3-Year average inflation	Not Clear
6	2020/21	5.70%	0.00%	The country's 3-year (2016-2018) average economic growth	Not Clear
7	2021/22	3.20%	3.20%	Not Clear	Not clear
8	2022/23	-	-	Not clear	Not clear

9	2023/24	-	-	Projected increase revenue	in	Not clear
10	2024/25	6%	4%	Projected increase revenue	in	Not clear

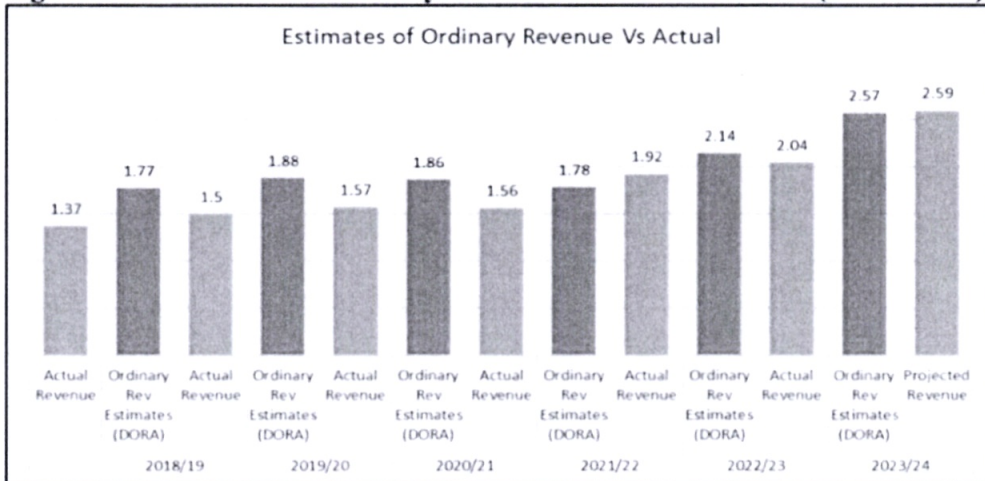
Source: Division of Revenue Bill and Acts various issues.

Recommendation: We recommended the Senate determine the specific basis upon which revenue growth factor approach should be made on. Since 2015, a number of options have been emerged. This includes an option to consider inflation as a basic adjustment criterion or an average of revenue growth in past three audited years of revenue. Furthermore, an updated costing of functions fulfilled by national and county governments should be fast tracked such that we can have a basis upon which to evaluate the adequacy of the ‘availability of resources’ as a factor for determining the equitable share to counties.

b. Trends in Performance of Revenue

The performance of national revenue has implications on the credibility of the division of revenue. Between FY 2018 and FY 2022/23, revenue has underperformed by between 15 and 4%, with exception of FY 2021/22. In the current FY between July and November 2023, the government had only raised KES 0.879 trillion against its goal of KES 0.977 trillion. While the collections to November marks an increase over the collection at the same period in the previous financial year, the underperformance is a cause for concern. It is worth noting that several factors contribute to the underperformance of revenue. The Auditor General has documented unrealistic forecast and revenue leakages as some of the challenges.

Figure 4.5: Estimates of Ordinary Revenue vs. Actual Revenue (Ksh trillion)



Source of Data: National Treasury

This throws into question the credibility of using projected revenues in the coming FY as the basis upon which to determine the growth in the equitable share. Where revenue is over-projected and eventually under-collected, the division of revenue as a mechanism through which both levels of government are able to have a predictable share of nationally collected revenue is made less credible.

Recommendation: The national assembly should question the use of projected revenues in the coming financial year as a basis for the equitable share, when the revenue targets in the current financial year are yet to be met. How will this affect the eventual division of revenues the during implementation of national and county budgets?

c. Public debt

The crowding out of the equitable share through increasing debt obligations at the national level raises concerns over the prioritization of financing national level spending over spending at the county level. At the national level, unrealistic revenue projections coupled with accelerating expenditure levels continue to stretch the budget deficit, increasing the reliance on debt financing for direct spending.

Table 3: Debt Service Versus Equitable Share

FY	Public Debt Service (Ksh. Billions)	Ordinary Revenue (Ksh Billions)	Counties Allocation (Ksh Billions)	Growth in Public Debt Service	Growth in County Allocation
2017/18	462.24	1365.06	302		
2018/19	641.51	1499.76	304.96	39%	1%
2019/20	538.8	1673.42	324.16	-16%	6%
2020/21	829.91	1574.01	330.23	54%	2%
2021/22	1174.01	1775.62	377.53	41%	14%
2022/23	930.35	2,141.58	375.65	-21%	0%
2023/24	1,250.74	2,571.16	385.43	20%	3%
Average				22%	5%

Source: Approved PBB Various Issues | Supplementary Budget FY2023/24 | Division of Revenue Act Various Issues

With limited tax revenue and growing debt obligations, public debt servicing costs increase, leaving less resources for counties in the form of the equitable share. The worrying trend here is that average growth in public debt service is more than 4 times the growth in county allocation as shown by the summary above.

Recommendation: We commend the effort included in the budget policy statement and division of revenue bill 2024 data attempt to reduce the size of the physical deficit and improve overall debt sustainability. However, long term sustainability of debt demands further mechanisms that ensure that Kenya does not repeat the trends of the last 10 years, as this has and will continue to affect the delivery of services by both national and county governments given the crowding out effect of debt servicing



on public expenditure. Beyond fiscal consolidation measures, the national government must seek more affordable borrowing options over the medium term given the projected resource envelope and cost of borrowing. This includes reducing the prominence of commercial and domestic debt in our debt portfolio, exploring alternative sources of financing that are lower cost e.g. Samurai and Panda bonds, and attached to specific development objectives e.g. green and blue bonds.

d. County Own Source Revenue (OSR) Collection

Article 209 of the Constitution allocates the main sources of revenues (taxes and others) to the national government which collects on behalf of all levels of government. Those revenue sources allocated to counties include land and property rates, entertainment taxes and other levies. One of justifications for the 2023/24 allocation to counties relates to national government solely bearing shortfalls in revenue while county governments continue to receive their full allocation. However, this does not take into account the fact that national governments have many avenues to raise revenue as compared to county governments, and that while the equitable share constitutes around 10 to 14 percent of National Government uses of funds, they continue to be the dominant source of funds for counties, ranging from around 70 to 78 percent of total sources between 2014/15 and 2019/20.

Recommendation: The BPS 2024 makes several proposals on how counties are to be supported to enhance their OSR. These are highlighted in the Division of Revenue Bill 2024. However, even as the national government implements the proposals, a thorough assessment should be conducted to determine the county's realistic collection capacity. This assessment should ensure the harmonization with existing national revenue collections, the proposed Integrated County Revenue Management System, and all relevant existing systems.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "A. Muriu". The signature is fluid and cursive, written over a horizontal line.

Dr. Abraham Rugo Muriu
Executive Director
International Budget Partnership Kenya

April 10, 2024



YOUTH SENATE NAIROBI COUNTY

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MEMORANDUM ON THE DIVISION ON REVENUE BILL 2023

Article	Title and Clause in the amendment bill	Current Provision in the Bill	Proposed Recommendations	Rationale/justification for recommendation
Article 1	Short title	The division of revenue Bill 2024	No proposal	The title is self defined
Article 2	Interpretation	Interpretation of the words used in the bill	Include the interpretation of “Ear marked strategic interventions”	A clear interpretation of earmarked strategic interventions and the benefits that such interventions will accrue to women, youth and PLWDs in Kenya will assist in oversight to ensure compliance with Article 203 (1) (h) that requires “the need for affirmative action in respect of disadvantaged areas and groups” as part of

				the criteria for determining equitable shares.
Article 3	Object and purpose of the Act	Equitable sharing of the revenue	<ol style="list-style-type: none"> 1. Article 3 part 7 to remain as per the proposal. However, Add inclusion of a specified time frame of disbursement of funds to the counties. 2. Add an articulation of AMISION components and its objective 3. Add the establishment of a technical working group to assist on review of the Auditor general's report. 	<ol style="list-style-type: none"> 1. It brings equity in line with marginalization and vulnerability and adequate period of project implementations by the county governments 2. A clear definition and articulation of the source, objective and components of the AMISION fund will ease oversight of the same. 3. To enhance transparency and accountability in regards to the Amison Fund which figures were given and later pulled out of the report.

Article 4	Allocation to county and national governments	County Allocations	<p>1. Include Amendment of Public Finance management Act article 203 part 2 which says 15% of the most recent audit account of revenue.</p>	<p>1. This is to enhance the implementation of the Public finance management Act and adhere to the stipulated disbursement timelines</p>
Article 5	Variation in revenue		<p>Add or include the following;</p> <p>1. tracking and digitizing county revenue collection streams</p> <p>2. Strict repercussions on counties and</p>	<p>1. To ensure that county governments are able to grow their own source revenue, and hit their potential revenue targets</p> <p>2. Achieve the fiscal consolidated revenue targets without leakages</p> <p>2. To seal loopholes of corruption and funds</p>

			<p>departments that spend at source</p> <p>3. Employ current audited revenue in determination of allocation to both national and county governments</p>	<p>misappropriations at the county</p> <p>3. The 2024/2025 allocation is based on the 2020/2021 approved and audited revenue accounts. In view of the changing times, it is critical that we use current data to inform allocation.</p>
Clause 5	Mechanism for adjustment variations	The trade, increased expenditure and fiscal consolidation	<p>Tracking and monitoring of the allocation trend for equitable share to counties</p> <p>Monitor expenditure</p> <p>Physical consolidation on public debt</p>	<p>Enhancing the accuracy and relevance of financial allocations to county governments, it is crucial to expedite the auditing process by the Office of the Auditor General. This will ensure that the most recent audited accounts are readily available for determining equitable county shares. Additionally, we recommend legislative changes or administrative reforms that mandate the use of audited revenue data from no more than two fiscal years prior</p>
Table 2	Evaluation of Bill against Art 203(1) of the Constitution	A. National Interest (Article 203 (1) (a))	<p>Include and/or add ;</p> <p>1. Women Empowerment under the description of items in section A of Table 2 and allocate appropriate monies.</p>	<p>The addition of women empowerment and allocation of appropriate monies is in compliance with Article 203 (1) (h) that requires “the need for implementation and</p>

				monitoring of affirmative action fund in respect of disadvantaged areas and groups” as part of the criteria for determining equitable shares. Further, it is in line with and will contribute with the Bottom-up Economic Transformative Agenda (BETA) of the Government.
	Evaluation of Bill against Art 203(1) of the Constitution	D. Emergencies (Article 203 (1) (k)	Allocate monies for the strategic grain reserve	To promote food security and mitigate climate change impacts the strategic grain reserve provides a safety net for the country in emergency cases.
Clause 15	Other national obligations	Other national obligations: As provided for under Article 203 (1) (b) of the Constitution , the Bill has also taken into account the requirements for national obligations , such as mandatory pension contributions and /or payments, financing for constitutional	Include a clear articulation of the the components and allocations that comprise Earmarked strategic interventions	A clear articulation of the components and allocations that comprise earmarked strategic interventions enhances compliance with Article 201 section a of the Constitution (2010) that states “ there shall be openness and accountability, including public participation in financial matters”.

		<p>offices, including Parliament and Judiciary as well as relating to other statutory bodies. These are estimated to cost Kshs 719,092 million in financial year 2024/25 up from 691,148 million the financial year 2023/24.</p>		
Clause 23	Equalisation Fund	<p>“... This Fund is used to finance development programmes that aim at reducing regional disparities among beneficiary COUNTIES.”</p>	<p>Decentralization of units of identification of marginalized counties to include not only counties but administrative units within counties not identified as marginalized</p>	<p>To capture regional disparities vertically as well as horizontally across sub counties and wards.</p>

ANNEX

Detailed submission and recommendations

Summary of the proposed revenue

The Bill provides a summary of the proposed revenue. According to the summary provided, total sharable revenue is Ksh. 2,948,123,505,582, national government share Ksh.2,549,153,902,710, Equalization fund Ksh.7,852,814,725 and county equitable share Ksh.391,116,788,147. Further, we note that the equalization fund meets the stipulated threshold of 0.5 % and the equitable share meets the 15% minimum allocation requirement as per article 203(2) of the Constitution of Kenya 2010.

1. Equitable share to counties

Whereas the equitable share meets the threshold, it is imperative to see the change in allocation over the years as shown in table 1 below.

Table 1: Counties Equitable share allocation from 2015/16 to 2024/25

Financial Year	DORA Allocation of equitable share in Ksh.	Audited and approved revenue accounts	equitable share as percentage of recently audited and approved accounts	Percentage difference in FY's (from year to year)	Year of audited and approved accounts
2015/16	259,714,500,000	935, 653,000,000	33%	-	2013/14
2016/17	280,300,000,000	935, 653,000,000	32.3%	-0.7%	2013/14
2017/18	302,000,000,000	935, 653,000,000	32.28%	- 0.02%	2013/14
2018/19	314,000,000,000	935, 653,000,000	33.6%	+1.32%	2013/14
2019/20	316,500,000,000	1,038, 035,000,000	30.49%	-3.11%	2014/15
2020/21	316,500,000,000	1,357,698,000,000	23.31%	-7.18%	2016/17

2021/22	316,500,000,000	1,355,800,000,000	27.3%	+3.99%	2016/18
2022/23	370,000,000,000	1,413,694,084,000	26.17%	+1.13%	2017/18
2023/24	385,425,000,000	1,673,715,000,000	23.3%	-2.87%	2019/20
2024/25	391,116,788,147	1,570,562,945,014	24.90%	-1.6%	2020/21

Source: Division of Revenue Acts /Bill 2015-2023

We acknowledge that County equitable share should be based on the recently audited and approved revenue accounts. The analysis above notes that for three consecutive financial years, 2016/17, 2017/18 and 2018/19, the DORA used 2013/14 audited accounts, the 2019/20 used the 2014/15 audited accounts and in 2020/21 and 2021/22 used 2016/17 audited accounts. Additionally, FY 2022/23, 2023/24 and 2024/25 utilized audit accounts for FY 2017/18, 2019/20 and 2020/21 respectively. According to article 203(2) of the Constitution of Kenya, the equitable share of revenue raised nationally allocated to the county government shall not be less than 15% of the revenue collected by the national government. From the analysis above, whereas the threshold of at least 15% is met, the percentage allocation seems to be oscillating. For instance, the percentage declined with 7.18 % in 2020/2021 from 30.49% to 23.31 %, increased to 27.3% in FY 21/22, and decreased to 24.9% in 2024/25.

Our concern: There is a pattern of utilizing outdated audited revenue accounts for determining county equitable shares and the fluctuating percentages of revenue allocation

We recommend: Timely audit and use of recent financial data: We advocate for the acceleration of the auditing process by the Office of the Auditor General to ensure that the most recent audited accounts are available for use in determining the county equitable shares. The Senate should push for legislative changes or administrative reforms that mandate the use of audited revenue data from no more than two fiscal years prior. Additionally, equitable share to county governments ought to be increased in FY 2024/25, following the inflation and cost of living adjustments brought about by oscillating global fuel prices, war, and foreign exchange rate fluctuations that have affected Kenya in FY 2023/24.

2. Disaggregated data on revenue

We note that division of the revenue process just like other processes of budgeting entails choices and prioritization.

We commend the National treasury for providing revenue information for 2024/25.

However, **we recommend** that further information in future be provided, such as actual revenue receipts and projections for the coming years. This information is deemed important especially in explaining the change in allocation and how decisions have been arrived at. This is a best practice that can be borrowed from South Africa's Division of Revenue Bills.

3. Compliance with CRA recommendations

We note that in the previous years there have been differences in what CRA and national treasury recommendations as far as equitable share is concerned. There is need for further elaborate explanations on the deviations and how to mitigate the same in order to avoid division of revenue stalemate which was witnessed in the 2019/20 financial year which almost left services in the counties crippled.

Submitted by: MEMBERS LIST

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MEMORANDUM

From:

The Lake Region Budget Hub

Contact Person:

Name: Francis Namuju

Lake Region Budget Hub Coordinator

Phone: 0724510595

Email: fnamuju@cedckkenya.com

To:

The Senate

Clerk's chamber Parliament Building

P.O. Box 41842- 00100,

Nairobi Kenya

SUBJECT: SUBMISSIONS TO THE SENATE ON THE DIVISION OF REVENUE BILL, 2024, (NATIONAL ASSEMBLY BILL NO. 14 OF 2024) IN ACCORDANCE WITH ARTICLE 118 OF THE CONSTITUTION OF KENYA, 2010 AND THE SENATE STANDING ORDER 145 (5).

The Lake Region Budget Hub is a platform that brings together civil society organizations consisting of highly trained budget facilitators and budget champions actively participating in budget advocacy work in counties within the Lake Region Economic Block (LREB).

The regional hub idea was mainly to bring together resource persons in the civil society group with the capacity and passion for the Public Finance Management (PFM) process to cross-learn and share innovative ideas important in improving our PFM status and enhancing service delivery. The budget facilitators and champions are drawn from Busia, Bungoma, Kakamega, Trans Nzoia, Siaya, Kisumu, Migori, Homa Bay, Kisii, Nyamira, and Kericho counties.

Background

The Division of Revenue Bill is meant to provide for the equitable division of the revenue raised nationally between the national and county governments. This is commonly referred to as vertical revenue sharing. This bill is prepared by the National Treasury, each financial year, and is submitted to parliament by the Cabinet Secretary together with the County Allocation of Revenue Bill and Budget Policy Statement. According to section 41 of the PFM Act, 2012, parliament should consider the Division of Revenue Bill with a view of approving it with or without amendments, not later than 30 days after it has been introduced. This memorandum presents the Lake Region Budget Hub CSOs inputs on the division of revenue bill 2024 touching on some of the key sections of concern.

MEMORANDUM

Key issues of concerns

This section provides some of the key areas of concern that the framers of the bill should take note of in order to strengthening the bill for the desired outcome.

Section/Key Issue	Proposal/Recommendation	Remarks															
<p>Clause 4: The allocations for the National Government and the county governments from the revenue raised Nationally for the 2024/25 financial year.</p> <p>The Division of Revenue Bill and subsequently the Act should provide a detailed summary of how revenue has been divided and the proposed allocations. This should be provided in the following summary in a table format</p> <ol style="list-style-type: none"> 1. Revenue that was raised nationally 2. Sharable revenue after allocations to public debt and pensions, 3. Equitable revenue to counties governments? 4. Allocation to the equalization fund and 5. Conditional allocations from the national government and donors. <p style="text-align: center;">SCHEDULE (s.4)</p> <p style="text-align: center;">ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS FOR THE 2024/25 FINANCIAL YEAR</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Type/level of allocation</th> <th style="text-align: center;">Amount in KSh.</th> <th style="text-align: center;">Percentage (%) of 2020/21 audited and approved Revenue i.e. KSh. 1,570,562,945,014</th> </tr> </thead> <tbody> <tr> <td>A. Total Sharable Revenue</td> <td style="text-align: right;">2,948,123,505,582</td> <td></td> </tr> <tr> <td>B. National Government</td> <td style="text-align: right;">2,549,153,902,710</td> <td></td> </tr> <tr> <td>C. Equalization Fund</td> <td style="text-align: right;">7,852,814,725</td> <td style="text-align: center;">0.50%</td> </tr> <tr> <td>D. County equitable share</td> <td style="text-align: right;">391,116,788,147</td> <td style="text-align: center;">24.90%</td> </tr> </tbody> </table> <p><i>Figure 1 PDF page 4 and document page 393</i></p> <p>The snippet above is from the DORB 2024, as noted, the bill only provided details on the first four types of allocations leaving out Conditional allocations from the national government and donors</p>	Type/level of allocation	Amount in KSh.	Percentage (%) of 2020/21 audited and approved Revenue i.e. KSh. 1,570,562,945,014	A. Total Sharable Revenue	2,948,123,505,582		B. National Government	2,549,153,902,710		C. Equalization Fund	7,852,814,725	0.50%	D. County equitable share	391,116,788,147	24.90%	<p>The bill should include the details on all the conditional allocations from the national government and donor</p>	<p>For the counties to effectively plan their budgets during the preparation of the CFSPs and the budget estimates, the information on all the conditional grants are important for the county to effectively plan their budget. It is important for counties to align their budgets with the division of revenue Bill and the County Allocation of Revenue Bills</p>
Type/level of allocation	Amount in KSh.	Percentage (%) of 2020/21 audited and approved Revenue i.e. KSh. 1,570,562,945,014															
A. Total Sharable Revenue	2,948,123,505,582																
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<p>Trends allocation across Multiple years</p> <p>The division of revenue bill 2024 does not present the trend actual allocations across multiple years. The allocation information provided is only for one financial year that is FY 2024/25.</p>	<p>The Division of Revenue of Revenue Bill should present a table of trends allocations to the various types of allocation for at least last two previous financial years. This information is key in informing the growth in revenue to counties and the trends in</p>	<p>Where trend allocation information is missing, the division of revenue fails the test of giving the document users an opportunity to review whether the revenue sharing</p>															

MEMORANDUM

	regards to the percentage share against the total sharable revenue	mechanism towards counties is growing or dwindling
<p>Sharable revenue Percentage (%) of 2020/21 audited and approved Revenue i.e. KShs. 1,570,562, 955,014</p> <p>The calculations used as the basis of revenue sharing is based on the most recent audited revenue accounts. From the DORB 2024, the most recent audited accounts is for the FY 2020/2021.</p> <p>Between the FY 2020/2021 and the FY 2024/2025 there are three financial years with two complete financial years that ended.</p>	<p>The sharable revenue must reflect the most recent revenue status based on the most recent complete financial year. The use of the FY 2020/21 as the basis of sharing revenue do not only reflect the actual revenue status but also denies counties the much needed revenues to effectively implement its project.</p> <p>Key Proposals</p> <ol style="list-style-type: none"> a) The auditing entities to fast-track its role in ensuring that revenues are audited periodically without delays. b) Sharable revenue to reflect the actual latest revenue of the most recently completed financial year 	<p>Using the financial year 2020/21 as the basis of sharing revenue to counties do not reflect the actual status of our revenue. The DORB 2024 should be updated and consider the actual status in our revenue</p>
<p>Justifications on allocation</p> <p>The Bill lacks detailed justification for the proposed allocations to the National and County Governments. While it outlines the allocations, it does not sufficiently explain the basis for these allocations, making it challenging to assess their adequacy and fairness.</p>	<p>There is need for a detailed justification of the proposed allocations to enhance transparency and accountability in the allocation process.</p>	<p>Failure in providing justification makes it impossible to tell what determined the allocations, how this was guided and whether the rationale used was sufficient to inform the allocations towards the different types of allocation</p>

Conclusion

The Division of Revenue Bill 2024 offers an opportunity for sharing revenue between the national and county government. The gaps as presented on our proposals aims at improving the level of information being provided by the bill while at the same time seek to ensure that more justification is provided for the different revenue sharing criteria.

It is our belief that the matters raised above are of pertinent to safeguard the gains of devolution and the spirit of the constitution of Kenya, 2010. We undersigned remain available for any clarification and further deliberation including a physical appearance before the Senate Standing Committee on Finance and Budget.

MEMORANDUM

Should you have any question or clarification needed, please contact the following person:

Agola Jack Benedict

Lake Region Budget Hub

Budget Facilitator

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MEMORANDUM





SUBMISSION ON THE DIVISION OF REVENUE BILL 2024

© APRIL 2024

INTRODUCTION

About the Institute of Certified Public Accountants of Kenya (ICPAK)

The Institute of Certified Public Accountants of Kenya (ICPAK) is the statutory body of Accountants established in 1978 and draws its mandate from the Accountants Act No.15 of 2008. It is also a member of the Pan African Federation of Accountants (PAFA) and the International Federation of Accountants (IFAC), the global Accountancy umbrella body.

PREAMBLE

Chapter eleven of the Constitution of Kenya 2010 establishes a two-tier government, National and County governments, and provides specific functions for each level. Article 187 (2)(a) requires that, if a function is transferred, arrangements should be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred. Further, Article 202 provides that revenue raised nationally shall be shared equitably between both levels and that; county governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally. It is against this background, that the National Treasury prepares a Division of Revenue Bill annually, while taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, as provided for by Section 12 (h) of the Public Finance Management Act, 2012. Further, Section 191 (1) of the Public Finance Management Act 2012 requires the Cabinet Secretary to submit the Bill to Parliament for review and consideration.

Kenya has had a total of eleven Division of Revenue Bills since 2013 and throughout this period, the National Executive and Parliament have engaged the public in the budget process in line with the provisions of Articles 10, 118 (1) and 201 (a) of the Constitution on public participation. ICPAK has participated in the review of the Bills and submitted proposals to guide the vertical sharing of revenue.

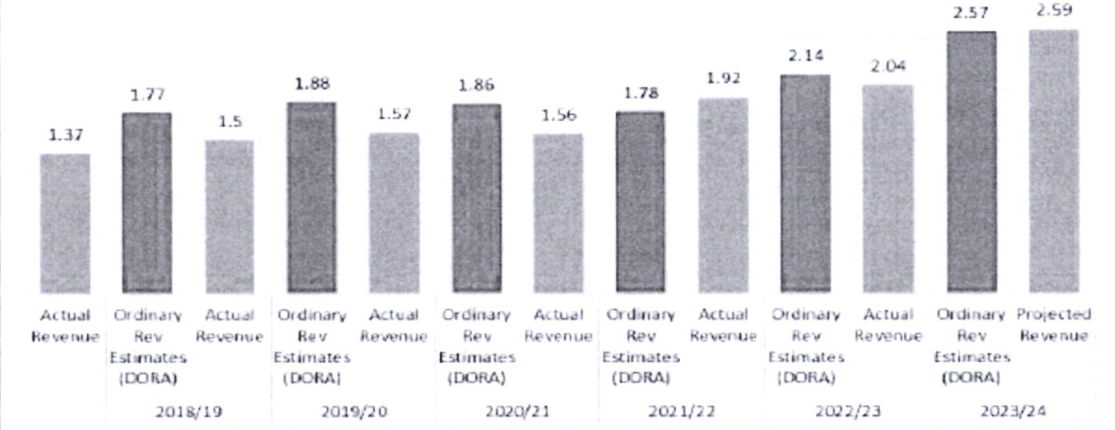
MEMORANDUM ON THE DIVISION OF REVENUE BILL 2024

#	ISSUE OF CONCERN	RECOMMENDATIO																								
1.	<p>The equitable share</p> <p>Based on projected revenue growth of 14.6% in FY 2024/25, the proposed equitable share increased by 5.7 billion to 391.117 billion. The ability of the county governments to fulfill their functions as outlined in the Fourth Schedule of the Constitution is solely dependent on adequate funding and compliance with Article 219 of COK demanding that the equitable share be transferred without undue delay and without deduction.</p> <p>The growth of total sharable revenue is as follows:</p> <table border="1" data-bbox="306 679 1592 826"> <thead> <tr> <th>FY</th> <th>2020/21</th> <th>2021/22</th> <th>2022/23</th> <th>2023/24</th> <th>2024/25</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>1,856,700</td> <td>1,775,587</td> <td>2,141,585</td> <td>2,571,159</td> <td>2,948,124</td> </tr> <tr> <td>Change -/+</td> <td>-</td> <td>-81,113</td> <td>365,998</td> <td>429,574</td> <td>376,965</td> </tr> <tr> <td>% increase</td> <td>-</td> <td>-0.04%</td> <td>20.6%</td> <td>20.05%</td> <td>14.6</td> </tr> </tbody> </table> <ul style="list-style-type: none"> ▪ The Institute also takes into cognizance that based on the last audited accounts for 2020/21 (1,570,562,945,014), the allocation of sharable revenue to counties of Ksh. 391.1 billion shillings is about 24.90% and therefore meets the prescription of Article 203 of the Constitution which provides that allocation to counties shall not be less than 15% of all revenues collected by Government. ▪ However, the Institute notes that the normal amounts of equitable share have been rising yet the equitable share as a percentage of the total shareable revenue has been declining over the years. This should be in tandem with the prevailing economic circumstances in Kenya. ▪ The Institute also proposes that should the Standing Committees recommendation of 8.4% be deemed untenable, then the county allocation should take into consideration the rate of inflation in order to enable counties to continue efficiently delivering services despite the increase in price of commodities. The current rate of inflation is 6.8%. 	FY	2020/21	2021/22	2022/23	2023/24	2024/25	Total	1,856,700	1,775,587	2,141,585	2,571,159	2,948,124	Change -/+	-	-81,113	365,998	429,574	376,965	% increase	-	-0.04%	20.6%	20.05%	14.6	<ul style="list-style-type: none"> ▪ The Institute proposes the adoption of the Standing Committee on Finance Reports recommendation s on the Division of Revenue which proposed that county equitable share to be increased at a growth factor of at least 8.4% to cater for the increased cost of commodities, increased expenditure growth and increased levies such as Affordable Housing Levy, Social Health Insurance Fund,
FY	2020/21	2021/22	2022/23	2023/24	2024/25																					
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#	ISSUE OF CONCERN	RECOMMENDATIO
		<p>NSSF among others. The increment of Kshs. 5.7 billion is just 1.48% which is way below the proposed growth factor of 8.4%. if the recommendation were to be adopted, counties would receive Kshs. 34 billion which would push the figure of sharable revenue to Kshs. 419 billion in lieu of Kshs 391.1 billion.</p>
2.	<p>Inadequate Percentage of County Equitable Share to Total Sharable Revenue The Budget Policy Statement 2024 indicates that the projected county government sharable revenue has increased by 5.7 billion from 385.4 in 2023 to 391.1 in 2024. However, in terms of percentage of county government to the total sharable revenue, there has been a decline from 14.9% in 2023 to 13.2% in 2024. For the National Government, the allocation percentage to total sharable allocation has increased from 76.97% in 2023 to 86.4% in 2024.</p>	<ul style="list-style-type: none"> ▪ The National Treasury to consider Inflation rates as opposed to revenue growth rates to inform the Division of Revenue.

#	ISSUE OF CONCERN	RECOMMENDATIO																																																
	<p>This demonstrates that the National Government retains a higher share of fiscal resources even in sectors where functions have been devolved.</p> <p>An analysis of previous Division of Revenue Acts is shown below:</p> <table border="1"> <thead> <tr> <th>Revenue Share</th> <th>DORB 2024</th> <th>DORA 2023</th> <th>DORA 2022</th> <th>DORA 2021</th> <th>DORA 2020</th> <th>DORA 2019</th> <th>DORA 2018</th> </tr> </thead> <tbody> <tr> <td>Total Sharable</td> <td>2,948.1</td> <td>2,571.2</td> <td>2,141.0</td> <td>1,775.0</td> <td>1,856.0</td> <td>1,877.0</td> <td>1,688.0</td> </tr> <tr> <td>National Government</td> <td>2,549.1</td> <td>2,177.4</td> <td>1,764.0</td> <td>1,398.0</td> <td>1,533.0</td> <td>1,554.0</td> <td>1,369.0</td> </tr> <tr> <td>County Equitable Share</td> <td>391.1</td> <td>385.4</td> <td>370.0</td> <td>370.0</td> <td>316.0</td> <td>316.0</td> <td>314.0</td> </tr> <tr> <td>% of County Government to Total Sharable revenue</td> <td>13.2</td> <td>14.9</td> <td>17.3</td> <td>20.8</td> <td>17.0</td> <td>16.8</td> <td>18.6</td> </tr> <tr> <td>% of National Government to Total Sharable Revenue</td> <td>86.4</td> <td>76.97</td> <td>82.4</td> <td>78.8</td> <td>82.6</td> <td>82.8</td> <td>81.1</td> </tr> </tbody> </table> <p>Source: Division of Revenue Acts 2017-2023 and DORB 2024</p>	Revenue Share	DORB 2024	DORA 2023	DORA 2022	DORA 2021	DORA 2020	DORA 2019	DORA 2018	Total Sharable	2,948.1	2,571.2	2,141.0	1,775.0	1,856.0	1,877.0	1,688.0	National Government	2,549.1	2,177.4	1,764.0	1,398.0	1,533.0	1,554.0	1,369.0	County Equitable Share	391.1	385.4	370.0	370.0	316.0	316.0	314.0	% of County Government to Total Sharable revenue	13.2	14.9	17.3	20.8	17.0	16.8	18.6	% of National Government to Total Sharable Revenue	86.4	76.97	82.4	78.8	82.6	82.8	81.1	<ul style="list-style-type: none"> Consider more allocation to critical functions such as health and agriculture in tandem with the Abuja Declaration of 15% and Maputo Declaration of 10% of the national budget respectively.
Revenue Share	DORB 2024	DORA 2023	DORA 2022	DORA 2021	DORA 2020	DORA 2019	DORA 2018																																											
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FY	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25																																												
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#	ISSUE OF CONCERN	RECOMMENDATIO
	<p>to achieve the desired fiscal performance in the counties. Some of these challenges as cited by the Multi-Agency Taskforce established in FY 2022/23 included the following:</p> <ol style="list-style-type: none"> 1) weak linkage between planning and budget formulation, 2) Inability of county governments to adhere to the Public Procurement Act resulting in high outstanding pending bills, 3) Low development budget absorption, 4) Under-performance in own-source revenue, 5) Failure to use the prescribed financial systems (such as IFMIS, IPPD among others), 6) Non-adherence to fiscal responsibility principles, 7) Pilferage of public resources due to manual systems, 8) Inadequate understanding of the Office of the Controller of Budget’s role in approval of county requisitions, 9) High wage bill, Weaknesses in human resource management, Weak oversight by County Assembly and a weakened internal audit function among others. <p>Through the DORB 2024, the estimates of Ordinary Revenue vs actual revenue demonstrate that Ordinary revenue collected over the years has been below target except for FY 2021/22 when the target was surpassed as indicated below:</p>	<p>environment to guide planning.</p> <ol style="list-style-type: none"> 2) Strengthenin g county structures and institutions. 3) Adhering to existing provisions of existing policies, legislations, regulations, and guidelines guiding economic planning, public finance management and expenditure control; and 4) Continuous capacity building of County Government

#	ISSUE OF CONCERN	RECOMMENDATIO																								
	<p data-bbox="660 311 1160 335" style="text-align: center;">Estimates of Ordinary Revenue Vs Actual</p>  <table border="1" data-bbox="353 375 1467 805"> <thead> <tr> <th>Year</th> <th>Actual Revenue</th> <th>Ordinary Rev Estimates (DORA)</th> </tr> </thead> <tbody> <tr> <td>2018/19</td> <td>1.37</td> <td>1.77</td> </tr> <tr> <td>2019/20</td> <td>1.5</td> <td>1.88</td> </tr> <tr> <td>2020/21</td> <td>1.57</td> <td>1.86</td> </tr> <tr> <td>2021/22</td> <td>1.56</td> <td>1.78</td> </tr> <tr> <td>2022/23</td> <td>1.92</td> <td>2.14</td> </tr> <tr> <td>2023/24</td> <td>2.04</td> <td>2.57</td> </tr> <tr> <td>2023/24</td> <td>2.59</td> <td>Projected Revenue</td> </tr> </tbody> </table> <p data-bbox="347 821 750 845"><i>Source of Data: National Treasury</i></p> <ul data-bbox="302 869 1601 1141" style="list-style-type: none"> ▪ It is worth noting that several factors contribute to the underperformance of revenue. The Auditor General has documented unrealistic forecast and revenue leakages as some of the challenges. ▪ In addition, the focus of the government through BETA includes agriculture productivity, MSMEs, housing and settlement, healthcare, digital superhighway and creative economy. These are either county functions or concurrent functions. It is therefore important to adequately finance both levels of government if the above priorities are to be realized. 	Year	Actual Revenue	Ordinary Rev Estimates (DORA)	2018/19	1.37	1.77	2019/20	1.5	1.88	2020/21	1.57	1.86	2021/22	1.56	1.78	2022/23	1.92	2.14	2023/24	2.04	2.57	2023/24	2.59	Projected Revenue	<p data-bbox="1713 295 1915 359">staff among others.</p>
Year	Actual Revenue	Ordinary Rev Estimates (DORA)																								
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2023/24	2.59	Projected Revenue																								

SUBMISSION ON THE EQUITABLE SHARE

The Budget Policy Statement 2024 indicates that the projected county government sharable revenue has increased by 5.7 billion from 385.4 in 2023 to 391.1 in 2024. Based on the last audited accounts for 2019/20 (1,673,714,000,000), the allocation of sharable revenue to counties of Ksh. 391.1 billion shillings is 23.38% which is more than 15% of all revenues collected by Government. However, the Institute observes the following:

1. Inadequate Percentage of County Equitable Share to Total Sharable Revenue

A critical look at the percentage of county government to the total sharable revenue over the years as in the table below, we note that there has been a decline from 14.9% in 2023 to 13.2% in 2024. For the National Government, the allocation percentage to total sharable allocation has increased from 76.97% in 2023 to 86.4% in 2024. This indicates that the National Government retains a higher share of fiscal resources even in sectors where functions have been devolved.

Revenue Share	BPS 2024	DORA 2023	DORA 2022	DORA 2021	DORA 2020	DORA 2019	DORA 2018
Total Sharable	2,948.1	2,571.2	2,141.0	1,775.0	1,856.0	1,877.0	1,688.0
National Government	2,549.1	2,177.4	1,764.0	1,398.0	1,533.0	1,554.0	1,369.0
County Equitable Share	391.1	385.4	370.0	370.0	316.0	316.0	314.0
% of County Government to Total Sharable revenue	13.2	14.9	17.3	20.8	17.0	16.8	18.6
% of National Government to Total Sharable Revenue	86.4	76.97	82.4	78.8	82.6	82.8	81.1

Source: Division of Revenue Acts 2017-2023 and BPS 2024

In addition, the focus of the government through BETA includes agriculture productivity, MSMEs, housing and settlement, healthcare, digital superhighway and creative economy. These are either county functions or concurrent functions. It is therefore important to adequately finance both levels of government if the above priorities are to be realized.

2. Last Audited Financials Base

The Institute notes that the last audited accounts of 2020/21 might not be a true reflection of the total national government collection. There is need to expedite the approval of audited accounts to give a clear reflection of

the total government's collection. This will increase the allocation to the counties in tandem with the prevailing economic circumstances in Kenya.

3. Factoring in Contributions to Housing Levy, SHIF and Cost of Living

According to the Controller of Budget Reports, Counties incurred Kshs.195.09 billion accounting for 45.5% of the budget on personnel emoluments in the FY 2022/23 as illustrated in the table below. Counties being employers, they are required to contribute an equal percentage to that of employees to Housing Levy and SHIF. The following is an extrapolation on the impact of this based on gross personnel emoluments figures by the Controller of budget:

s/n o.	County	Personnel Emolument	Housing (Contributions at 1.5)	Proposed SHIF (Contributions at 2.75%)
1.	Mombasa	6,903,270,841	103,549,062.62	189,839,948.13
2.	Kwale	3,289,955,432	49,349,331.48	90,473,774.38
3.	Kilifi	4,779,457,311	71,691,859.67	131,435,076.05
4.	Tana River	1,934,245,203	29,013,678.05	53,191,743.08
5.	Lamu	1,621,061,853	24,315,927.80	44,579,200.96
6.	Taita/Taveta	3,273,588,290	49,103,824.35	90,023,677.98
7.	Garissa	4,767,693,237	71,515,398.56	131,111,564.02
8.	Wajir	4,477,868,418	67,168,026.27	123,141,381.50
9.	Mandera	3,986,566,397	59,798,495.96	109,630,575.92
10.	Marsabit	3,012,922,471	45,193,837.07	82,855,367.95
11.	Isiolo	2,044,390,349	30,665,855.24	56,220,734.60
12.	Meru	5,776,965,781	86,654,486.72	158,866,558.98
13.	Tharaka-Nithi	2,845,808,754	42,687,131.31	78,259,740.74
14.	Embu	3,453,561,407	51,803,421.11	94,972,938.69
15.	Kitui	4,884,247,661	73,263,714.92	134,316,810.68
16.	Machakos	5,720,766,966	85,811,504.49	157,321,091.57
17.	Makueni	4,405,297,128	66,079,456.92	121,145,671.02
18.	Nyandarua	2,489,904,491	37,348,567.37	68,472,373.50

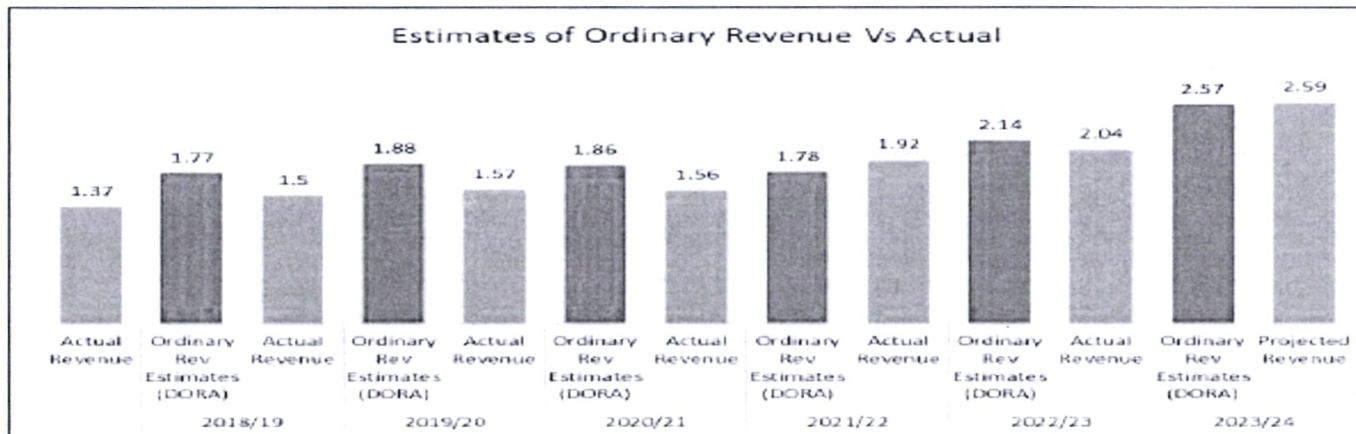
s/n o.	County	Personnel Emolument	Housing (Contributions at 1.5)	Proposed SHIF (Contributions at 2.75%)
19.	Nyeri	3,914,380,491	58,715,707.37	107,645,463.50
20.	Kirinyaga	2,906,183,515	43,592,752.73	79,920,046.66
21.	Murang'a	4,271,264,056	64,068,960.84	117,459,761.54
22.	Kiambu	7,667,891,497	115,018,372.46	210,867,016.17
23.	Turkana	4,427,369,402	66,410,541.03	121,752,658.56
24.	West Pokot	2,667,136,835	40,007,052.53	73,346,262.96
25.	Samburu	2,204,439,800	33,066,597.00	60,622,094.50
26.	Trans Nzoia	3,304,858,873	49,572,883.10	90,883,619.01
27.	Uasin Gishu	4,196,168,379	62,942,525.69	115,394,630.42
28.	Elgeyo/Marakwet	2,497,272,680	37,459,090.20	68,674,998.70
29.	Nandi	3,639,290,897	54,589,363.46	100,080,499.67
30.	Baringo	3,431,707,237	51,475,608.56	94,371,949.02
31.	Laikipia	3,648,148,509	54,722,227.64	100,324,084.00
32.	Nakuru	6,921,076,137	103,816,142.06	190,329,593.77
33.	Narok	4,607,802,622	69,117,039.33	126,714,572.11
34.	Kajiado	4,603,884,407	69,058,266.11	126,606,821.19
35.	Kericho	3,257,744,713	48,866,170.70	89,587,979.61
36.	Bomet	3,174,187,421	47,612,811.32	87,290,154.08
37.	Kakamega	6,238,655,022	93,579,825.33	171,563,013.11
38.	Vihiga	2,524,955,657	37,874,334.86	69,436,280.57
39.	Bungoma	5,385,207,688	80,778,115.32	148,093,211.42
40.	Busia	3,372,659,005	50,589,885.08	92,748,122.64
41.	Siaya	3,001,492,505	45,022,387.58	82,541,043.89
42.	Kisumu	4,853,815,255	72,807,228.83	133,479,919.51
43.	Homa Bay	4,515,876,655	67,738,149.83	124,186,608.01
44.	Migori	3,306,429,940	49,596,449.10	90,926,823.35
45.	Kisii	5,635,833,829	84,537,507.44	154,985,430.30
46.	Nyamira	3,061,065,041	45,915,975.62	84,179,288.63
47.	Nairobi City	12,186,281,786	182,794,226.79	335,122,749.12

s/n o.	County	Personnel Emolument	Housing (Contributions at 1.5)	Proposed SHIF (Contributions at 2.75%)
	Total	195,090,651,844	2,926,359,777.66	5,364,992,925.71

4. Revenue Projections, Performance and Disbursements

The ability of the county governments to fulfil their functions as outlined in the Fourth Schedule of the Constitution is solely dependent on adequate funding and compliance with Article 219 of COK demanding that the equitable share be transferred without undue delay and without deduction.

Whilst the equitable share allocates revenue based on ordinary revenue the estimates of Ordinary Revenue vs actual revenue demonstrate that Ordinary revenue collected over the years has been below target except for FY 2021/22 when the target was surpassed as indicated in the figure below:



Source of Data: National Treasury

In terms of statistics, according to the latest Controller of Budget of Reports, County governments generated a total of Kshs.10.21 billion from their own-source revenue (OSR), which was 13% of the annual target of Kshs.78.61 billion. Counties that reported the lowest collection against their annual target include Machakos, Nandi, Kericho, Kajiado, Lamu, and Kajiado at 2.6%, 4.8%, 5.2%, 5.6%, and 5.6%.

It is worth noting that several factors contribute to the underperformance of revenue:

- a) The Auditor General has documented unrealistic forecast and revenue leakages as some of the challenges.
- b) Weak linkage between planning and budget formulation,
- c) Inability of county governments to adhere to the Public Procurement Act resulting in high outstanding pending bills,
- d) Low development budget absorption,
- e) Under-performance in own-source revenue,
- f) Failure to use the prescribed financial systems (such as IFMIS, IPPD among others),
- g) Non-adherence to fiscal responsibility principles,
- h) Pilferage of public resources due to manual systems,
- i) Inadequate understanding of the Office of the Controller of Budget's role in approval of county requisitions,
- j) High wage bill,
- k) Weaknesses in human resource management,
- l) Weak oversight by County Assembly and a weakened internal audit function among others.

There is need to address these existential challenges to achieve the desired fiscal performance in the counties. Counties can capacity build all critical players and cadres of county staff on revenue administration. They can also professionalize revenue officers to ensure qualified staff handle the revenue function.

5. Public Debt

According to the Division of Revenue Bill 2024, Public Debt repayment has been increasing as follows;

FY	2020/21	2021/22	2022/23	2023/24	2024/25
Amount in Million shillings	829,906	1,174,013	930,354	1,187,784	1,352,610

SOURCE: DORB 2024

In the current financial year, the state allocated Sh1.18 trillion towards debt repayments with some Sh930.35 billion in 2022-23 financial year. Debt repayment took up Sh1.17 trillion in 2021-22 and Sh829.90 billion the year before. In financial year 2024-25, the allocation for payment of public debt related costs is expected to increase from Sh1.18 trillion in financial year 2023-24 to Sh1.35 trillion in financial year 2024-25. This trend is likely to continue as Kenya's public debt portfolio has crossed the 11 Trillion shillings mark.

Debt servicing is crowding out revenue allocation to counties for adequate development. Debt has been consistently increasing as a percentage to GDP.

RECOMMENDATION

1. The Institute proposes the adoption of the Standing Committee on Finance Reports recommendations on the Division of Revenue which proposed that county equitable share to be increased at a growth factor of at least 8.4% to cater for the increased cost of commodities, increased expenditure growth and increased levies such as Affordable Housing Levy, Social Health Insurance Fund, NSSF among others. The increment of Kshs. 5.7 billion translates to 1.48% which is way below the proposed growth factor of 8.4%. In adopting the recommendation, counties would receive Kshs. 34 billion which would push the figure of sharable revenue to Kshs. 419 billion instead of the proposed Kshs 391.1 billion.
2. Taskforce proposed the following recommendations to cure the problems cited above:
 - a) Review of the existing policy, legal and regulatory environment to guide planning.
 - b) Strengthening county structures and institutions.
 - c) Adhering to existing provisions of existing policies, legislations, regulations, and guidelines guiding economic planning, public finance management and expenditure control; and
 - d) Continuous capacity building of County Government staff among others.

DRAFT SUBMISSION ON DIVISION OF REVENUE BILL, 2024

#	PROVISION IN THE BILL	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	The schedule (s.4) on page 393	<p>County equitable share of ksh391,116,788,147 is equivalent to 24.90% of 2020/2021 Audited and approved revenue of Ksh 1,570,562,945,014.</p> <p>However, under the explanatory memorandum to the division of revenue bill 2024, Number 10 page 397, it states that County Equitable share of Ksh391.1Billion is equivalent to 24.90% of Actual revenue raised nationally of Ksh 1,573,418 million of FY 2019/2020 which is misleading. If we were to use the FY 2019/2020 raised revenue, equitable share would be Ksh391.8Billion and not Ksh391.1Billion.</p>	Reconciliation to be done	For comp and relevance.

#	PROVISION IN THE BILL	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
2.	No.23 Equalization Fund	<p>There is a proposed Ksh 7,852,814,725 which represents 0.5% of all the revenue collected by national government, this money is supposed to be remitted to the equalization fund.</p> <p>However, from the report of the Auditor general for national government funds for the year ended 30th June 2021, only ksh 12,400,000,000 out of Ksh30,786,056,051 had been transferred to the equalization fund and therefore casting doubts where the fund is achieving its intended objective.</p>	<p>The government should give an undertaking on how to remit the monies.</p> <p>The government should also account for the unremitted monies</p>	<p>Disparities in the beneficiary counties will continue to widen if they do not get these monies as envisaged by the constitution in Article 204(1)</p>
3.	Inconsistencies and discrepancies noted in the Road Maintenance and Fuel Levy	<p>It is noted that Road Maintenance and Fuel Levy is no longer part of the County Equitable Share. According to the DORB 2024, this will now be disbursed as conditional grants.</p> <p>Initially, RMFL was an unconditional fund that enabled counties to have autonomy to plan, budget and implement development based on the county-specific priorities and needs. Making it a conditional grant will restrict counties in</p>	<p>Revert to the original practice and make RMFL an equitable share to grant counties the autonomy to plan and implement projects that are of high priority to them.</p>	<p>Adoption of best practice that will enable counties to implement more impactful projects without conditionalities.</p>

#	PROVISION IN THE BILL	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
		the budget making process and might end up implementing white elephant projects that are not priority.		



**MEMORANDUM ON THE DIVISION OF REVENUE BILL 2024 PRESENTED TO
THE SENATE
BY THE RIFT VALLEY BUDGET HUB**

Submitted on 16th April, 2024.

Contact Person:

Mr. Evans Kibet.
Coordinator, Rift Valley Region Budget Hub.
Email: riftvalleybudgethub@gmail.com
Tel: +254711221294

To:

The Clerk,
Senate,
P.O. BOX 41842-00100,
Nairobi.

Email: clerk.senate@parliament.go.ke

Introduction

The Rift Valley Budget Hub brings together budget practitioners from the 10 counties of Nakuru, Baringo, Elgeyo Marakwet, West Pokot, Turkana, Marsabit, Narok, Kericho, Bomet and Nandi as a platform to build synergy in the county, regional and national level budget engagements. The hub is also a platform for peer-to-peer learning on best practices in the budget processes.

The Hub builds the budget capacity of citizens, civil society organizations and government officials to deliberate and make budget decisions that are responsive to citizens' needs. Over the last 3 years, the hub has conducted budget analyses and monitoring with focus on the water sector with the objective of contributing to improved access to adequate, clean and safe water in the Rift Valley Region

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Pursuant to the call for submissions, and in fulfillment of our mandate, the Rift Valley Budget Hub hereby presents our submission for your consideration review and enactment of the Division of Revenue Bill 2024.

1. Inadequate allocation to the counties

Article 203 (2) and (3) of the Kenyan Constitution requires that the equitable share of the revenue raised nationally that is allocated to county governments be calculated on the basis of **most recent audited accounts of revenue received, as approved by the National Assembly**.

The Ksh. 391.1 billion recommended in the Division of Revenue Bill 2024 is equal to 24.86% of the Ksh 1.57 Trillion recently audited revenue for FY 2019/2020. Based on the trend of revenue growth, this is unjust. Kenya reported preliminary ordinary revenue of over **Ksh. 2.14 Trillion** in 2022/2023, which is significantly higher than the **Ksh. 1.57 Trillion** realized FY 2019/2020. Although the revenue has grown by 36%, the projected equitable share has increased only by 24% (from 316.5 billion in the FY 2019/2020).

The fact that revenue divides are still based on **out-of-date audited** revenue implies that counties are getting the shorter end of the stick.

Our key asks

- The Senate should collaborate with the National assembly to ensure that the approval of audited accounts of revenue is expedited.
- The Senate should ensure that revenue sharing is based on up to date audited revenue accounts. This will mitigate against scramble for resources and eliminate the perennial conflicts emanating from the division revenue debate.

2. County functions still being executed by the National Government

Being closer to them, citizens look up to county governments for critical services including and not limited to county health services, water supply and agriculture. However, commensurate funds have not followed these functions making it difficult for county governments to deliver. Even worse, the national government continues to perform functions that are constitutionally allocated to county governments through the ministries, departments and agencies (MDAs). The functions of a number of state corporations largely remain unbundled to date leading to the overlap and duplication of responsibilities. According to the Intergovernmental Relations Technical Committee (IGRT) report to the Senate, several components of devolved functions amounting up to **Ksh 272.2 Billion** are still run by the national government ten years into implementation of devolution.



Our Key Asks

- We ask the Senate to push IGRTC and relevant institutions to complete the process of unbundling and costing county government functions that are still held by the national government, to pave way for transfer of commensurate resources to county governments.

3. Cash flow challenges at the county level emanating from delayed disbursements

Counties rely heavily on funds from the National Treasury to finance essential services such as healthcare, early child education, infrastructure development, and public administration. Delay in disbursement causes financial strain and cash flow problems that affect the ability of county governments to pay salaries, contractors, and suppliers, leading to arrears, reduced services, and even temporary shutdowns of essential facilities. Delayed funds undermine the principles of devolution by impeding the ability of counties to exercise their constitutional mandate effectively. It weakens the devolved governance structures and can erode public trust in the devolved system of government.

In our cashflow research¹, we note that disbursements to counties are lowest in the first two quarters and peaks during the last quarter of the financial years. In some occasions, disbursements are made very late in the financial year such that counties do not have ample time to spend before the close of the financial year. For instance, the Budget Implementation Review Report for the first half of the FY 2023/24 shows that the National Treasury as at December 2023, had disbursed Ksh. 141 Billion which is only 37% of the equitable share allocation of Ksh. 385 Billion for FY 2023/24.

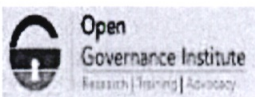
We also note with concern that debt servicing is crowding out service delivery and more so at the County level. In the current financial year, National Executive has publicly² blamed delayed disbursement to County Government on pressure of Eurobond debt payments.

Our Key Asks

- The Senate should compel the National Treasury to disburse the resources due to counties as per the disbursement schedule approved by Senate alongside the County Allocation of Revenue Act.
- In the ongoing national discourse on public debt sustainability, Senate should guard County Governments from bearing the brunt.

¹ <https://internationalbudget.org/publications/cash-flow-kenya-implications-for-national-county-spending/>

² <https://www.the-star.co.ke/news/2024-02-16-ruto-why-we-have-delayed-funds-disbursement-to-counties/>





Conclusion:

The Hub is cognizant of the state of the economy, including revenue performance and the state of public debt. Even then, majority of the functions assigned to County Governments are the lifeline of citizens. Therefore, in this year's revenue sharing deliberations and decisions, we call on Senate to diligently execute its mandate of protecting devolution.

In the same vein, the Hub urges the Senate to step up its oversight role towards prudent, equitable and accountable utilization of public funds both at the county and national level.





Constitution as an Instrument of Change

18th April 2024

The Clerk of the Senate
P.O. Box 41842-00100
Nairobi

clerk.senate@parliament.go.ke

cc: financebudgetcomm.senate@parliament.go.ke

Sent via e-mail

Re: Memorandum on the Division of Revenue Bill, 2024 [National Assembly Bills No. 14 of 2024]

Background

Katiba Institute (KI) is a research, litigation, constitutional education, and public engagement body whose principal objective is to achieve social transformation through the Kenyan Constitution. To achieve that objective, KI promotes the implementation of the Constitution, including its political, social and economic agenda, and values and principles..

Summary and General Remarks

The Bill seeks to provide for the equitable division of revenue raised nationally between the national and county governments in the 2024/25 financial year.

However, the Bill as presented falls short of complying with provisions of the Constitution including those: outlining the criteria for equitable sharing of revenue with particular attention to how this has been interpreted by the High Court in *Council of County Governors v Attorney General & 4 others; Controller of Budget (Interested Party)* [2020] eKLR, largely based on a court-led consensus between the national and county governments; establishing devolution as a national value and principle of governance and underscoring the distinctiveness of the county level of government and the need to respect the functional integrity of counties as well as those detailing the principles of public finance.

Specifically, KI has the following concerns regarding the Bill:

No.	Ref.	Comment/Observation	Recommendation
1)	Section 2 (Definition of "Revenue")	<p>The Bill proposes to continue utilizing the unconstitutional definition assigned to the term "revenue" under the Commission on Revenue Allocation (CRA) Act.</p> <p>While the Constitution does not envisage a situation where some sources of national revenue are generally excluded from the revenue that is the subject of equitable division between the two levels of government, the definition under section 2 of excludes revenue drawn from charges for national government services under article 209(4) from constituting nationally raised revenue that should then become the subject of vertical division.</p>	The Bill should adopt a definition of revenue that allows for the national government to account for all revenue it raises.
2)	Schedule as read with paragraph 10 of the Explanatory Memorandum	<p>The financial year quoted (2020/21) is different from that cited under paragraph 10 of the Explanatory Memorandum (2019/2020).</p> <p>Further, the total revenue for the relevant year (2020/21) is quoted in the schedule as 1,570,562,945,014 while the total revenue for the 2019/20 financial year is cited as 1,578,035,418,993. This creates a discrepancy amounting to 7,472,473,979.</p> <p>Additionally, in the interest of devolution and its sustainability, the Senate needs to seriously investigate the cause underlying the three-year lag in the "most recent and approved accounts". Where this is occasioned by a delay in the Auditor-General, the Senate should deliberate how to improve efficiency in the audit process. Where the delay emanates from the National Assembly's approval process, the Senate needs to engage the National Assembly on how the process can be fasttracked.</p>	<p>This needs to be streamlined to reflect the correct year as well as the accurate total revenue for the year.</p> <p>Investigate the cause for the three-year lag in audited and approved accounts</p>
3)	Paragraph 8 as read with paragraph 9(a) as well as the contents of	The growth or performance of revenue referred to is not disclosed nor is the increase of 16.6 billion that accrues to counties as a result of the said growth explained with respect to how it was	The Bill needs to indicate the total revenue growth registered as well as the basis for adjustment that results in a 16.6 billion

		<p>mentioned case in which the court stated in paras 99 & 100 that</p> <p>[among others] <i>“National Interest” cannot be the basis for setting aside revenue from the Consolidated Fund but is a criteria for the allocation of the equitable share...</i></p> <p>and</p> <p><i>The national interest is in my view just a factor to be considered before the funds are equitably allocated to each level of government. It does not constitute a separate faction that has to be allocated money.</i></p> <p>b. The consequence of the above approach is that nationally raised revenue that then becomes subject to sharing under Table 2 is significantly reduced to the disadvantage of county governments and in favour of the national government that is the custodian of the funds allocated under the selected factors.</p> <p>2. Based on historical trends as well as the position elicited under the Budget Policy Statement (page 80), the funds allocated to expenditure items prior to the vertical revenue split (prior to the determination of what then amounts to shareable revenue) becomes the preserve of the national government. The fact that the expenditure items detailed under “National Interest” in both Table 2 and paragraph 13 include functions that are constitutionally county government functions such as irrigation and fertilizer subsidy initiatives renders the allocations unconstitutional to the extent that the funds are to be administered by the national government. It also offends the</p>	
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	<p>paragraph 28(b) of the Explanatory Memorandum</p>	<p>settled on as a proportion of the total growth. This violates the constitutional principle of openness and accountability under art 201(a).</p> <p>This want for openness is further revealed in the failure by the Bill to fully account for the difference between the CRA's recommended increase of 22.5 billion under paragraph 28(b) against the 16.6 billion recommended in the Bill.</p> <p>The failure to ensure openness also impacts the meaningfulness of any public participation given that the public does not have the requisite information to inform the meaningfulness of their engagement with the Bill.</p>	<p>increase rather than CRA's 22.5 billion in order to provide the Senate with an objective basis for deciding between these two proposals.</p>
<p>4)</p>	<p>Table 2 of the Explanatory Memorandum</p>	<p>The table is a representation of how the Bill accounts for its application of the Article 203(1) constitutional criteria in the determination of the vertical equitable sharing of revenue.</p> <p>1. The approach to the vertical division of revenue revealed in the table offends the constitutional provision for the criteria under article 203(1) and its application as interpreted by the Court in <i>Council of County Governors v Attorney General & 4 others; Controller of Budget (Interested Party)</i>.</p> <p>a. What article 203(1) of the Constitution provides is a criteria with factors that should be taken into account when determining the vertical revenue split. The Bill has, under Table 2, converted some of these factors (national interest, public debt, other national obligations, emergencies) into priority expenditure items to which it has assigned funds outside the requirement for vertical sharing. In doing this, the Bill continues to unconstitutionally put the cart before the horse in a direct violation of the holding of the High Court in the above-</p>	<p>The approach to vertical division needs to be revised to ensure compliance with infringed provisions of the Constitution as elaborated by the High Court.</p>

		<p>court-led consensus between the two levels of government as contained in the 2nd Mediation Report filed in court in <i>Council of County Governors v Attorney General & 4 others; Controller of Budget (Interested Party)</i> where it was agreed and the Court endorsed the position at para 101 to the effect that:</p> <p style="text-align: center;"><i>where a function has been earmarked as one being of national interest an allocation for the same ought to be allocated to government level that has been assigned the function under the fourth schedule:</i></p> <p>3. Item (C) of Table 2 makes reference to an expenditure titled “Earmarked Strategic Interventions”. While it is not clear from the reading of the Bill what these refer to and how different these are from those listed under “National Interest”, a reading of the Budget Policy Statement reveals a broad list of proposed interventions that span across functions that include and overlap with county functions.</p> <p>Observations number (2) and (3) above offend the distinctiveness conferred on county governments under article 6(2) of the Constitution as well as the constitutional imperative under article 189(1)(a) for each level of government to respect the functions integrity of the other level of government.</p>	
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Conclusion

The Senate needs to make recommendations for the revision of both the Bill as well as the affected provisions of the law to not only ensure the equity of the vertical revenue split but even more importantly to ensure constitutional compliance in the vertical division of revenue that will guarantee the sustainable funding of devolved governments.

While the Bill complies with the constitutional imperative to ensure that not less than 15% of revenue raised nationally is annually allocated to counties, this compliance is marginal and is contributed to by an apparent lag in having more recent audited and approved revenue accounts.

The consequence is that while annual national government expenditures are based on the projected revenues for that year, the share that counties get is calculated as a percentage of revenue from, at least, three financial years ago. While this finds constitutional footing, the net effect is that in real terms counties are underfunded given that about half (for instance, about 46.7% in the 2024/25 financial year) of current anticipated revenue receipts are not factored in arriving at the percentage of revenue that is annually allocated to counties. A combination of political goodwill and liaising with the National Assembly to fast-track the approval of audited accounts is, therefore, needed to ensure substantive equity in the financing of counties from revenue raised nationally.

On behalf of Katiba Institute

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Institute of
Economic Affairs

MEMO

Institute of Economic Affairs – Kenya

Views on the Division of Revenue Bill (National Assembly Bill No. 9 of 2023)

Date: 2nd April, 2024

The Institute of Economic Affairs (IEA Kenya) is a think-tank that provides a platform for informed discussions in order to influence public policy in Kenya. We seek to promote pluralism of ideas through open, active and informed debate on public policy issues. We undertake research and conduct public education on key economic and topical issues in public affairs in Kenya and the region, and utilize the outcomes of the research for policy dialogue and to influence policy making

This memo presents the IEA-Kenya response to the Senate's call for the public to provide their input into the Division of Revenue Bill, 2024. Below is a summary of our recommendations:

- I. For parity and to ensure that delivery of devolved services is not undermined, we recommend that allocation to County Government Equitable Share to be in the neighbourhood of Ksh 460 billion.**

Trends on county government Equitable share as a percentage of total shareable revenue has been declining over the last seven years contrasted by that for the national government revenue which has been increasing. Between 2017 to 2023, the average proportion of county government equitable share to total shareable revenue is 17.9%. Using this ratio and based on actual ordinary revenue for FY 2023/24 our proposed allocation to county government equitable share translates to about Ksh 460 billion. Besides the inconsistency in the approaches used in computation of allocation of national raised revenue to either level of government often favours the national government.

- II. The Senate should call for a predictable definition of National Interest and exercise oversight over public debt management given their implication on total shareable revenue**

Since 2013, it is not clear what constitutes national interest as one of the items for evaluation of the DORB as per Article 201(1). Lack of predictability and clarity on the definition of national interest is subject to abuse. Justification for addition of an item such as Presidential Bursary under National Social Safety Net is for example, missing. Equally the Senate involvement in review of medium term debt strategy and oversight on sustainability of public debt is important given the effect of servicing cost on reducing the shareable revenue and in turn equitable share to county governments.

- III. Approval of the DORB, 2024 should be contingent on the National Treasury addressing inconsistencies and discrepancies that undermine overall transparency of the Bill**

We have cited two discrepancies in the Bill, one on the quantum of RMLF and the other the correct figure for the most recent audited and approved revenue. These two obscure meaningful interaction and interpretation of the content of this Bill by the public. Besides, these discrepancies and inconsistencies are a signal for mischief, that if unchecked will more often than not be at the disadvantage of counties.

- IV. The National Assembly should expedite the review and approval process of the OAG reports since delays leave the National Treasury no choice but to use dated figures for the audited and approved revenue in assessment of whether they have complied with Article 203(2)(3).**

County equitable share as a percentage of dated figures for audited and approved revenue usually exaggerate government's compliance to the 15% threshold. Such information is misleading to the general public and undermines accountability.

Issues on the Division of Revenue Bill, 2024

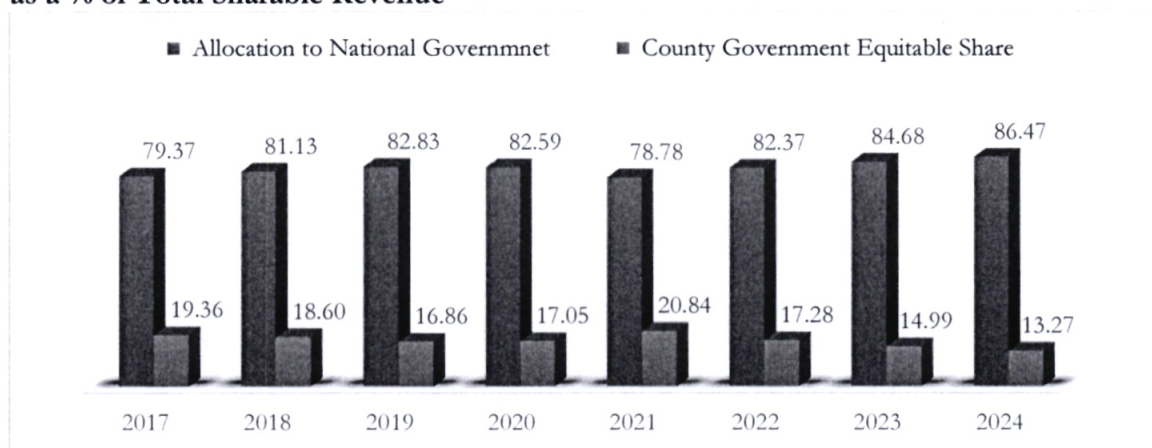
This Memo presents a number of issues that the IEA-Kenya has identified from its review and analysis of the DORB, 2024. These issues inform our recommendations to the Senate as summarised in the preceding page.

1. Declining County Government Equitable share as a percentage of total sharable revenue.

The government projects to collect revenues amounting to Ksh 2,948 billion in FY 2024/25, which represents 14 percent increase from last year's projection of Ksh 2,571.2. In the DoRB, 2024 the National government is projected to receive Ksh 2,549 billion which represents 86.5% of total projected revenues while Ksh 391.1 billion is projected to be allocated as Equitable Share to the County governments, representing 13.3% of the total projected revenues. Proposed Equitable for FY 2024/25 is expected to increase by less than two percent from last year's allocation of Ksh 385.4 billion.

Whereas the nominal amounts of equitable share have been rising, equitable share as a percentage of total sharable revenue has been declining over the years. Chart 1 shows that allocation to Equitable share to counties a percentage of total sharable revenues declined from 19.4% in 2017 to the proposed 13.3% in 2024. By contrast, allocations to the national government as a share of total sharable revenue has been rising from a rate of 79.4% to the proposed 86.5% over the same period.

Chart 1: Trends in National Government Share and County Government Equitable Share as a % of Total Sharable Revenue



Source: DoRB 2017-2024

Going by the CRA's recommendation for FY 2024/25, proposed equitable share to county government of Ksh 398.1 billion represents 13.5% of total shareable revenue. This is marginally more than National Treasury's proposal by merely less than one percentage point.

It is clear that the approaches used for the computation of revenue allocation favours the national government but is biased against the county governments. This is against the 'parity principle' which speaks about ensuring that proportional revenue allocation to either level of government should not fall or rise disproportionately. In other words, one level of government, in this case the county governments should not be punished at the expense of the other, national government, and vice versa.

2. Differences in approaches in computation and classification of revenue by the National Treasury and the CRA

Table 1 below is an illustration of differences in revenue allocation by both the National Treasury and the CRA. Both institutions have provided different revenue figures for the FY 2024/25 allocations. Treasury's figures are consistent with the figures in the approved Budget Policy Statement (BPS) 2024.

Table 1: National Treasury and CRA's Revenue growth calculation

	National Treasury			CRA		
	2023/24 (Ksh Billions)	2024/25 (Ksh Billions)	% growth	2023/24 (Ksh Billions)	2024/25 (Ksh Billions)	% growth
Total Sharable Revenue	2,571.2	2,948.1	14.7	2,571.2	2,958.6	15.1
National Government	2,177.4	2,549.2	17.1	2,177.4	2,552.1	17.2
County Equitable Share	385.4	391.1	1.5	385.4	398.1	3.3

Treasury has applied revenue growth rate of 1.5 percent which translates to Ksh 16.6 billion increase in the equitable share to counties. CRA on the other hand, has applied a 3.3 percent growth rate to the equitable share which translates to Ksh 22.5 billion. The differences which stem from the different approaches used in the computation of equitable share has been witnessed over the years and hence, needs to be addressed and the figures harmonized in accordance with the Constitution.

3. Inconsistencies and discrepancies obscure public interaction and engagement with the DORB, 2024

Review of the DORB, 2024 reveals a number of inconsistencies and discrepancies that make it difficult to interact and interpret some of the content of this Bill. This issue is not unique to the DORB, 2024 but has been recurring and may be a signal to some mischief.

The IEA-Kenya has noted that audited and approved revenues for FY 2019/20 used in DoRB, 2023, is higher compared to the figure for FY 2020/21 used in the DoRB, 2024. The explanation provided is that there was an overstatement of Ksh 100 billion which has since been adjusted to Ksh 1,578.0 billion (including AMISON Grant of Ksh 4.6 billion). This amount is still higher than the Ksh 1,570.6 figure for FY 2020/21. Past trend shows that revenues increase every year and therefore the decline raises question as to whether the correct figures have been provided.

The National Treasury should ensure uniformity in the statement of revenues since audited revenues forms the basis of assessing compliance with Article 203(2)(3) of the constitution the government should allocate at least 15 percent of revenues raised nationally to counties as equitable share, based on the most recent audited revenues approved by the National assembly.

We have also noted differences in the quantum for Road Maintenance Fuel Levy (RMFL) which has been deducted from last years' Equitable share. This allocation will be transferred to counties as conditional allocation from FY 2024/25. Treasury deducted Ksh 10.9 billion while CRA deducted Ksh 9.8 Billion. Which is the correct figure for the RMFL?

Furthermore, it is important to point out that the use of dated audited and approved revenue does not provide the true picture of the extent of the governments' compliance with article 203. As

demonstrated in table 2, the last column shows that if the audited and approved revenue figures for the prior year to the DORA year were available, the proportion of the ‘real’ equitable share is lower than what the picture is currently (column 5).

Table 2 Trends in Audited Revenue and Equitable Share

DoRA Year	County Government Equitable Share (Billions)	Year of audit	Audited Revenue accounts (Ksh Billion)	Equitable Share as a % of Audited Revenue	Prior Year of audit to the DORA Year	Prior Year of Audited Revenue accounts (Billions) to the DORA Year	Real Equitable Share as a % of Audited Revenue
2017	302.0	2013/14	935.7	32.28	2016/17	1,357.7	22.24
2018	314.0	2013/14	935.7	33.56	2017/18	1,413.7	22.21
2019	316.5	2014/15	1,038.0	30.49	2018/19	1,587.6	19.94
2020	316.5	2016/17	1,357.7	23.31	2019/20	1,731.0	18.28
2021	370.0	2016/17	1,357.7	27.25	2020/21	1,713.6	21.59
2022	370.0	2017/18	1,413.7	26.17	2021/22	2,020.2	18.24
2023	385.4	2019/20	1,673.7	23.03		-	
2024	391.1	2020/21	1,570.6	24.90		-	

Source: DoRA 2017-2024

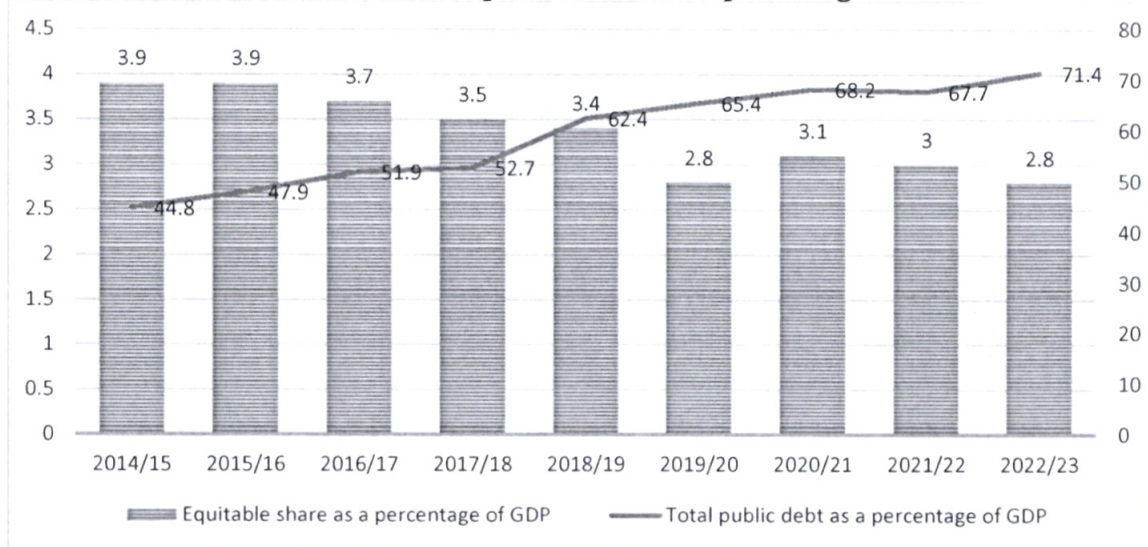
For example, in the DoRA, 2017, equitable share was calculated on the basis of the FY 2013/24 audited and approved revenues. This yielded a rate of 32.3 percent in comparison to 22.2 percent rate when audited revenue accounts for FY 2016/17 were used. Therefore, dated audited revenue accounts imply that counties are receiving a bigger percentage of equitable share compared to more recent audited accounts. This therefore, calls for national discussion of interventions towards ensuring that the process of auditing and consequently approval is aligned to the Constitutional timelines.

4. Definition of National interest and public debt and their implications on Total sharable revenue

- a) **National Interest** – The definition of what should constitute the national interest under article 203 (1)(a) has a direct bearing on the balance of funds to be shared between the two levels of government. Determination of the items to be considered as national interest has always been done in an arbitrary manner and therefore open to abuse. For instance, no reasons have been given as to why presidential bursary should be considered as an item of national interest. There is therefore a need for boundaries when determining what constitutes this to deter abuse, however, small flexibility should be allowed. **A clearer definition should be provided to eliminate the ambiguousness in the definition of national interest.**
- b) **Public debt** - We note that public debt burden has risen significantly over the past few years but the redistribution of the debt burden has not been done in an equitable manner. Counties have been left to bear the debt burden by not receiving their fair share of increased revenues. Debt repayment forms part of the mandatory payments made by the government. Therefore, increase in public debt stock and its related costs has reduced total sharable revenue which has further reduced revenue allocation to counties as shown in the chart below. Trends indicate growth in public debt between FY 2014/15 and 2022/23 from 44.8 percent to 71.4 percent.

Consequently, equitable share as percent of GDP has decline in the same period from 3.9 percent to 2.8 percent.

Chart 2: Trend of Public debt and Equitable share as a percentage of GDP



Source: National Treasury BPS

The National Assembly should provide adequate oversight to ensure prudent public debt management. This will ensure that public debt does not rise beyond sustainable levels and that more revenue is available for counties development and provision of services.

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 26th March, 2024, Wednesday, 27th March, 2024 and Thursday 28th March 2024, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Tuesday, 16th April, 2024 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Cancer Prevention and Control (Amendment) (No.2) Bill, 2022 (National Assembly Bills No.45 of 2022)	Standing Committee on Health	healthcommittee.senate@parliament.go.ke
b)	The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No.44 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
c)	The Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
d)	The Local Content Bill, 2023 (Senate Bills No.50 of 2023)	Standing Committee on Energy	energycommittee.senate@parliament.go.ke

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**