Approved,
12/04/23

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - SECOND SESSION

THE SENATE

STANDING COMMITTEE ON FINANCE AND BUDGET

REPORT ON THE DIVISION OF REVENUE BILL, 2023
(NATIONAL ASSEMBLY BILLS NO.9 OF 2023)

PAPERS LAID	
DATE	12/04/23
TABLED BY	V. Chair Finance.
COMMITTEE	Finance & Budget
CLERK AT THE TABLE	S. Njata

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

April, 2023

Contents

LIST OF ABBREVIATIONS/ACRONYMS

BPS	-	Budget Policy Statement
CFS	-	Consolidate Fund Services
CoG	-	Council of Governors
CRA	-	Commission on Revenue Allocation
DoRB	-	Division of Revenue Bill
FY	-	Financial Year
IBP-K	-	International Budget Partnership-Kenya Chapter
ICPAK	-	Institute of Certified Public Accountants of Kenya
PFM	-	Public Finance Management

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, 2012 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, MP - Member
6) Sen. Mohamed Faki Mwinyihaji, 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 (National Assembly Bills No.9 of 2023) was published vide Kenya Gazette Supplement No.32 of 20th March, 2023. The Bill was introduced in the National Assembly, debated and passed without amendments on 21st March, 2023. 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 Thursday, 23rd March, 2023. Thereafter, pursuant to standing order 145 of the Senate standing orders, the Bill was committed to the Standing Committee on Finance and Budget for consideration.

The Division of Revenue Bill, 2023 is prepared in line with Article 218 of the Constitution. It provides for vertical sharing of revenue raised nationally between the national and county levels of government in the Financial Year 2023/24 in accordance with Article 202 of the Constitution.

The revenue shared is calculated on the basis of the most recent audited accounts of revenue received and approved by the National Assembly (Article 203(3) of the Constitution). The latest audited revenue approved by the National Assembly is for the FY 2019/20 and amounts to Kshs.1,673,714 million.

The projected revenue collection for the FY 2023/24 is estimated at Kshs.2,571.2 billion. Out of this, the National Government is allocated Ksh. 2,155.3 billion, which represents 84.7% of total revenue while proposed County Governments equitable share is Ksh.385.4 billion representing 15% of the total revenue. The Equalization Fund is expected to receive Ksh.8.4 billion.

The total sharable revenue is expected to increase by Kshs.429.57 billion, equivalent to 20 percent increase from the allocation in the DoRB, 2022. However, the National Government allocation will increase by Kshs.413.27 billion (23.43 percent) while the County equitable share will increase by Kshs.15.425 billion (4.2 percent). The proposed increase in the County equitable share by 4.2 percent is due to adjustment to revenue growth by Ksh.15 billion and an allocation of Ksh.425 million towards the transfer of library functions to the 33 beneficiary counties.

Following consideration of the 2023 Budget Policy Statement approved by the House, the Senate made some key resolutions with regard to the Division of Revenue. These resolutions include-

a) The county equitable share should be set at Kshs.407 billion;
b) Library services allocation of Kshs.425 million should not be part of county equitable share and may only be disbursed to counties under the additional allocations;
c) The Road Maintenance Levy Fund (RMLF) should not be disbursed as equitable share and thus should be disbursed as part of the county additional allocations; and
d) The allocation to the Equalization Fund for FY 2023/2024 should be Kshs.8.65 billion calculated as per Article 204 (1) of the Constitution.

During consideration of the Division of Revenue, 2023, the Committee held meetings and received views from the following key stakeholders-

a) The National Treasury and Economic Planning;
b) The Council of Governors (CoG);
c) The Commission on Revenue Allocation (CRA);
d) The Institute of Certified Accountants of Kenya (ICPAK);
e) The International Budget Partnership (IBP)-Kenya; and
f) Institute of Economic Affairs.

Committee Observations

The Committee considered the Bill and made the following observations. That -

a) The proposed county equitable share has not taken into account the macroeconomic challenges especially as pertains to inflation, cost of commodities and expenditure growth. The growth factor of 4% is significantly less than the prevailing inflation rate of 9.2% as at March 2023. At the very least, allocation to counties should take into account the rate of inflation in order to enable counties to continue efficiently delivering services even as the prices of goods and services continue to increase.

b) The inclusion of Ksh. 425 million attendant resources for the pay roll relating to library services in the county equitable share is unprocedural. This is because these funds have already been earmarked for a specific purpose and cannot be distributed using the revenue sharing formula. Indeed, the resources have been carved out from the Kenya National Library Services recurrent budget and not from projected revenue. As such, all factors considered, the allocation for transfer of library services is by definition, an additional allocation to counties.

c) There is lack of consensus on the definition of revenue as applied to the equalisation fund. The Committee notes that Article 204(1) of the Constitution refers to all revenue collected and not just ordinary revenue. As such, the allocation to the equalisation fund for FY 2023/24 should be set at Ksh. 8.65 billion (0.5% of Ksh. 1.730 trillion) and not Ksh. 8.368 billion as contained in the Bill.

d) The inclusion of the Road Maintenance Levy Fund (RMLF) allocation to counties in the county equitable share has made it difficult to monitor disbursement and use of the road maintenance funds in counties. The Committee was concerned that these funds may not have been disbursed to counties.

e) The share of county government from RMLF has for the last two financial years been consolidated with the county equitable share. This compromises the purpose of the Fund as contemplated in Roads maintence Levy Fund Act.

Committee Recommendations

The Committee having considered the Bill recommends -

a) That, the Bill be approved with amendment on deletion of the Schedule and replacing with a new schedule indicating as follows-

- Equalization Fund – Ksh. 8,654,963,469 being 0.5% of all revenue (Ksh. 1.730 trillion) of the most recent audited accounts, approved by the National Assembly (FY 2019/20).
- County Equitable Share – Ksh. 407 billion (Ksh. 370 Billion at growth factor of 8.4% to cater for increased cost of commodities and increased expenditure growth. Further, an additional of Ksh. 5.86 billion which ahd been earmarked for Managed Equipment Services (MES).

b) That, Library services allocation of Kshs.425 million should be transferred to counties through the county governments additional allocations mechanism and not county equitable share.

c) That, the Road Maintenance Levy Fund (RMLF) should no longer be part of county equitable share and should be disbursed to counties under county governments additional allocation.

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, 2023 successful.

I also wish to thank the offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment.

Lastly, I wish to thank the stakeholders who submitted written memoranda and who 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, 2023.

Signature..................................**Date**.......12th APRIL 2023

SEN. MAUREEN TABITHA MUTINDA, MP
VICE-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, 2023 (NATIONAL ASSEMBLY BILLS NO.9 OF 2023)

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**	
3.	Sen. (Dr.) Boni Khalwale, CBS, MP	Member	
4.	Sen. Tabitha Karanja Keroche, MP	Member	
5.	Sen. Joyce Chepkoech Korir, MP	Member	
6.	Sen. Mohamed Faki Mwinyihaji, MP	Member	
7.	Sen. Richard Momoima Onyonka, MP	Member	
8.	Sen. Shakila Abdalla Mohamed, MP	Member	
9.	Sen. Eddy Gicheru Oketch, MP	Member	

CHAPTER ONE

THE DIVISION OF REVENUE BILL, 2023

I. Introduction

1. Article 202 of the Constitution requires that revenue raised nationally should be shared equitably between the national and county governments to facilitate service delivery and performance of all functions attached to each level of Government. To this extent, Article 218 of the Constitution provides for a Division of Revenue Bill to facilitate vertical sharing of revenue raised nationally between the national and county levels of government.
2. In this regard, the Division of Revenue Bill (DoRB) 2023 has been prepared to share revenue raised nationally between the ational Government and the county governments for the Financial Year 2023/24. In line with Article 203(3) of the constitution, the revenue shared is calculated on the basis of the most recent audited accounts of revenue received and approved by the National Assembly; in this case being FY 2019/20.

II. Equitable Share of Revenue

3. The projected revenue collection for Financial Year 2023/24 is estimated at Ksh. 2,571.2 billion. The respective allocations to the national government, county governments and the Equalisation Fund stand at Kshs. 2,177.3 billion, Kshs. 385.425 billion and Kshs. 8.36 billion respectively.
4. The proposed county equitable share for FY 2023/24 of Kshs. 385.425 billion is equivalent to 23.03% of the last approved audited revenues estimated at Kshs. 1,673.714 billion for FY 2019/20. This represents a growth of approximately 4% from the financial year 2022/23 allocation of Kshs. 370 billion. The increment in allocation for FY 2023/24 is on account of Kshs. 15 billion increase from the baseline of Kshs. 370 billion due to adjustment to revenue growth and an allocation of Kshs. 425 million towards transfer of library functions to the counties.

5. The Division of Revenue Bill, 2023 highlights the following factors as key considerations in determining the County Equitable Share for FY 2022/23:

i. The proposed equitable share of Kshs.385.425 billion in the FY 2023/24 is equivalent to 23.03% of the last audited accounts (Kshs. 1,673,714 million for FY 2019/20) and as approved by the National Assembly. The proposed allocation therefore meets the requirement of Article 203(2) of the Constitution;
ii. High level of debt financing as well as elevated debt risk;
iii. Financing constraints due to limited access to finance in the domestic and international financial markets. Notably, The National Treasury did not disburse Kshs. 29.6 billion to County Governments in the FY 2021/22 due to financial constraints
iv. The Government is also implementing a fiscal consolidation plan so as to lower the fiscal deficit and slow down debt accumulation. To reflect this fiscal tightening, the National Government recurrent ceiling growth has been restricted, declining from a growth of 10.3% in FY 2017/18 to 1.2% in FY 2023/24; and
v. The fact that the National Government continues to solely bear shortfalls in revenue in any given financial year, while County Governments receive their full allocation despite the budget cuts affecting the National Government entities.

6. Library being a devolved function as provided for under the Fourth Schedule of the Constitution, has been unbundled and attendant resources amounting to Kshs. 425 million identified and proposed to be fully transferred to County Governments. This amount of Kshs. 425 million has been included in the equitable share allocation for the 33 County Governments in a phased approach starting from FY 2023/24 at 100%, 75% for FY 2024/25 (balance of 25% to be shared as equitable) and 25% for FY 2025/26 (balance of 75% to be shared as equitable)). From the fourth FY, that is FY 2026/27, the 33 County Government's will be required to integrate the salaries of these staff into their pay roll, after which the entire Kshs. 425 million will be available for sharing as equitable share among the 47 County Governments, in line with the principle of transferring resources to devolved functions.

CHAPTER TWO

SUBMISSIONS BY STAKEHOLDERS

The Chapter entails submissions from various stakeholders regarding the Bill. The following stakeholders appeared;

1. The National Treasury and Economic Planning;
2. The Council of Governors;
3. The Commission on Revenue Allocation;
4. The Institute of Certified Public Accountants (ICPAK) and International Budget Partnership (IBP); and
5. Institute of Economic Affairs (IEA).

I. THE NATIONAL TREASURY AND ECONOMIC PLANNING

The Cabinet Secretary appeared before the Committee and submitted as follows-

7. The Division of Revenue Bill, 2023 has been prepared in fulfilment of the requirements of Article 218(2) of the Constitution and Section 191 of the Public Finance Management Act 2012. The Bill proposes to allocate an Equitable Share for FY 2023/24 of Ksh 385.425 billion which is equivalent to 24.5% of the last audited accounts as approved by Parliament. This is an increase from Ksh 370 billion allocated in the FY 2022/23.
8. Equitable revenue share allocation to County governments for FY 2023/24 there's adjustment for revenue growth of Ksh. 15 billion and transfer of library services of Ksh. 425 million which adds up to Ksh. 385.425 billionTthe Bill also provides allocations to the Equalization Fund amounting to Ksh 7,867,000,000 in the FY 2023/24.

   The items on the Division of Revenue by the National Treasury are;

   i. ITEM A: Total sharable Revenue of Ksh 2,571,159,000,000
   ii. ITEM B: The National Government share of revenue raised nationally amounting to Ksh 2,177,867,000,000 (of which 11,016,000,000 which shall be transferred to county governments as additional conditional allocations.

iii. ITEM C: Allocation of Equalization Fund

iv. ITEM D: County equitable share amounting to Ksh 385,425,000,000

9. Some of the differences between the Bill submitted by the National Treasury and that of the National assembly:

   i. The National Treasury proposed to allocate Ksh 7,867,000,000 to the Equalization fund whereas the National Assembly approved allocation of Ksh 8,368,574,000 which increases the fund by Ksh 501,574,000.

   ii. The National Treasury had proposed to allocate Ksh. 2,177,867,000,000 as National Government raised share of Revenue raised nationally while the National Assembly approved an allocation of Ksh. 2,177,365,426,000 thus reducing it by Ksh. 501,574,000

   iii. The National Treasury applied Ksh. 1,573 billion as the most recently audited and approved revenue relating to FY 2019/20 while the National Assembly applied Ksh. 1,673 billion as the most recently audited and approved revenue relating to FY 2019/20 bringing about a difference of Ksh 100 billion.

10. The differences are attributed to double counting of revenue of Ksh. 95.7 billion collected by government investments and public enterprises department of the National Treasury. Further, AMISON grant of Ksh. 4.6 billion was treated as part of ordinary revenue.

11. The National Treasury recommended the need for engagement between various stake holders to solve the issue of classification of ordinary revenue as per CRA Act which will inform the future of equitable sharing of revenue between the two levels of government.

II. THE COUNCIL OF GOVERNORS

The Chairman, COG Technical Committee on Finance and Economic Planning appeared before the Committee and submitted as follows-

General Comments

12. The Council notes with concern the proposed allocation of Ksh.385 billion as equitable share of revenue

13. The proposed allocation in the Division of Revenue Bill, 2023 has not taken into account the cost of inflation in the country that has been on the rise in the recent years.
14. The Council notes that the National Assembly has cited financing constraints and the fact that the National Treasury did not disburse Ksh.29.6 billion to Counties in the FY 2021/22 as part of rationale for the proposed county governments equitable share allocation.
15. Some of the items classified as national interests include some concurrent and some devolved functions hence there is need for rationalization of the allocations under these items. These include Youth Empowerment, Irrigation and Fertilizer Subsidy initiatives.

Specific Comments

16. The Schedule be amended to allocate Kshs.2.237 trillion to the national government and Kshs.425 billion to county governments respectively. The justification is that-
    a) The shareable revenue is projected to grow by Kshs.379 billion to Kshs.2.571 trillion in the Financial Year 2023/2024.
    b) The proposed adjustment for revenue growth ofKsh.15 billion on county governments share of revenue in the Bill is not commensurate with the projected revenue growth for FY 2023/24.
    c) Allocation of Kshs.425 billion to counties represents a 15% increase from FY 2022/23's allocation of Kshs.370 billion and is 25.42 percent of the last audited and approved accounts of FY 2019/2020 amounting to Kshs.1,673,715 million.

III. THE COMMISSION ON REVENUE ALLOCATION

The Commission on Revenue Allocation appeared before the Committee and submitted as follows-

17. **Sharable revenue between the national and county governments for the FY 2023/24**

a) The Bill allocates to the national government Kshs.2.1774 trillion and county governments Kshs.385.4 billion.

b) The allocation to national government has been increased by Kshs.362.6 billion from Kshs.1,814.8 billion allocated in the FY 2022/23 while that to county governments by Kshs.15.4 billion form Kshs.370 billion.

c) Though allocation to county governments of Kshs.385.4 billion meets requirements of Article 203(2) of at least 15%, the Commission submits that allocations do not amount to equitable sharing between the two levels of government.

d) The government priorities in the medium term includes agriculture productivity, Micro, Small and Medium Enterprises (MSMES), housing and settlement, healthcare, digital superhighway and creative economy.

e) The above are either county functions or concurrent functions. Therefore, it is important to adequately finance both levels of government if the above priorities are to be realised.

f) The Commission reiterates its recommendation submitted to Parliament in 2022 that county governments' allocation be increased from Kshs.370 to Kshs.407 billion.

18. **Transfer of Recurrent Expenditure under Library Function to Beneficiary Counties**

a) Library services are devolved under the Fourth Schedule of Constitution. There are 62 libraries in 33 counties. Three libraries namely Buru Buru, Milimani and Nakuru have been retained by national government.

b) The allocation of Kshs.424.6 million is a transfer from the national government equitable share to county governments under Article 187 of the Constitution.

19. **Allocation to Equalization Fund**

a) The most recently audited and approved accounts of all revenue for the FY 2019/20 amounts to Kshs.1,730.9 billion.

b) The Commission notes that the shareable revenue defined in Article 203(2) for purpose of sharing revenue equitably is different from total revenue defined in Article 204(1) for purpose of Equalization Fund.

c) Based on provision of Article 204(1), the allocation to Equalization Fund for FY 2023/24 is Kshs.8.7 billion and not Kshs.8.4 billion as stated in the Bill.

IV. THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK) AND INTERNATIONAL BUDGET PARTNERSHIP (IBP-Kenya)

The representatives from ICPAK and IBP appeared before the Committee and submitted a joint memorandum as follows-

20. The Growth Factor for Equitable Share
    a) Equitable share to counties continues to be pegged on the growth of total revenue as opposed the priorities of county governments.
    b) based on projected revenue growth of 17% in FY 2023/24, the proposed equitable share increased by Ksh.15.4 billion to Ksh.385.4 billion.
    c) There needs to be a more predictable factor for growth of the equitable sharing of national revenue.
    d) The growth of the equitable share should be based on functions as opposed to availability of resources and being pegged on the growth of revenue.
21. Declining/Stagnated percentage of county equitable share to total shareable revenue
    a) despite the cumulative increase in funding to county governments over the years, the counties' share of total government spending has declined
    b) the national government retains a higher share of fiscal resources even in sectors where functions have been devolved.
    c) The National Treasury to consider inflation rates as opposed to revenue growth rates to inform the Division of Revenue.
    d) 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.
22. Revenue projections -
    a) Trend indicates a steady growth in ordinary revenue with exception of FY 2020/21.

b) Additional fiscal measures should be undertaken to enhance revenue collection to actualize the economic growth as projected.

c) Needs to have more realistic revenue projections based on performance of the previous financial years.

d) Adherence to recommendations made by the Auditor General.

23. Unbundling and costing of devolved functions

a) Update the cost of functions to reflect the current service delivery demands and economic realities faced by counties today.

b) costing and transfer of devolved functions as well as resources including infrastructural and human resources, as set out in the Fourth Schedule of the Constitution.

c) Restructure and rationalize the State Corporations that perform devolved functions as well as national government administration in counties to eliminate the current duplication of functions and expenditures.

24. Public debt repayment is crowding out the amount available for division of revenue and hurting counties' allocation.

a) Public debt repayments continue to take the lion's share of ordinary revenue, expecting to account for 48.6% in 2023/24.

b) The trend shows that average growth in public debt service is more than four (4) times the growth in county allocation

c) Senate should explore deficit limits since deficits influence debt levels and have an implication on the share of ordinary revenue received by counties.

d) seek clarity on the reasons for the deviation in the borrowing strategy mix recommended by the PDMO in the MTDS of 2023 and that included in the current BPS 2023.

25. Early Childhood Development Education-There's need to provide conditional allocation to ECDE for purposes of the following:

a) Supporting ECDE infrastructural allocation across the 47 county Governments;

b) increasing capitation for ECDE teachers; and

c) Employment of skilled and qualified instructors in polytechnics.

26. Allocation to Emergency Fund

a) Concern remains around the decreasing amounts allocated to emergencies under Art. 203(1)(k).

b) How the amount that is allocated to emergencies determined.

c) Senate should call for an increase the equitable share of revenue to counties to enhance their ability to deal with emergencies independent of the national government.

27. Allocations to Independent Offices- There is need to ensure allocations are commensurate with the resource requirements of the constituent offices and bodies.

28. Public Participation

a) There needs to be clear guidelines on what constitutes effective public participation in order to ensure that all efforts to engage with the public are substantive and consequential.

b) There is no legal framework on decentralized public participation.

V. INSTITUTE OF ECONOMIC AFFAIRS

The Institute of Economic Affairs (IEA) submitted a memorandum to the Committee which had the following proposals-

29. The Institute noted that the formula for allocation of sharable revenue is biased in favour fo the national government which has led to disproportionate allocation of the equitable share to the county governments over time. IEA recommends the need for redefining the national interests' obligation to ensure that it does not take a significant share in the allocation at the expense of the counties.

30. There's need for proportionate allocation of the equitable share to counties with the national government that is counties should not be punished for the national governments commitments. IEA recommended that Ksh. 450 billion of shareable revenue to be allocated to counties so as to be fair in the distribution of revenue.

CHAPTER THREE

OBSERVATIONS AND RECOMMENDATIONS

Observations

31. The Committee, having considered the above submissions made the following observations. That -

   a) The adjustment for revenue growth of Ksh. 15 billion which has occasioned the increase of the county equitable share from Ksh. 370 billion in FY 2022/23 to Ksh. 385 billion in FY2023/24 appears to be an arbitrary figure with no clear scientific basis. Even though it is indicated as a revenue growth factor, the formula used to arrive at the amount remains unclear. This contradicts section 191(5)(d) of the Public Finance Management Act, 2012 which requires that any assumptions and formulae used in arriving at the allocation proposed in the Bill be explained in a memorandum.

   b) The proposed county equitable share has not taken into account the macroeconomic challenges especially as pertains to inflation, cost of commodities and expenditure growth. The growth factor of 4% is significantly less than the prevailing inflation rate of 9.2% as at March, 2023. At the very least, allocation to counties should take into account the rate of inflation in order to enable counties to continue efficiently delivering services even as the prices of goods and services continue to increase.

   c) The rationale of pegging revenue allocation on financing constraints rather than what was budgeted will render counties vulnerable to underfunding due to the prevailing economic challenges. Further, it introduces an element of unpredictability in revenue disbursement which contradicts Article 219 of the Constitution.

   d) The inclusion of Ksh. 425 million attendant resources for the payroll relating to library services in the county equitable share is unprocedural. This is because these funds have already been earmarked for a specific purpose and cannot be distributed using the revenue sharing formula. Indeed, the resources have been carved out from the Kenya National Library Services recurrent budget and not from projected revenue. As such, all factors

considered, the allocation for transfer of library services is by definition, an additional allocation to counties.

e) There is lack of consensus on the definition of revenue as applied to the Equalisation Fund.The Committee notes that Article 204(1) of the Constitution refers to all revenue collected and not just ordinary revenue. As such, the allocation to the equalisation fund for FY 2023/24 should be set at Ksh. 8.65 billion (0.5% of Ksh. 1.730 trillion) and not Ksh. 8.368 billion as contained in the Bill.

f) County governments transfers have routinely been below target with the national government failing to honour agreed upon cash disbursement schedules approved by the Senate. Indeed, in FY 2021/22, the National Treasury did not disburse Ksh. 29.6 billion to counties. As at March 2023, three (3) months to the end of the FY 2022/23, the total issues on account of the equitable share stood at Kshs. 183.15 billion which represents 49.5% of the total equitable share. Thus, counties have and continue to bear the brunt of revenue shortfalls which affects their budget implementation. Notably, Article 219 of the Constitution provides that a county's share of revenue shall be transferred to the county without delay and without deduction.

g) The inclusion of the Road Maintenance Levy Fund (RMLF) allocation to counties in the county equitable share has made it difficult to monitor disbursement and use of the road maintenance funds in counties. The Committee is concerned that these funds may not have been disbursed to counties. The RMLF should be excluded from the county equitable share and be disbursed through the county government additional allocation Bill in order to ensure that these funds are disbursed.

h) The latest audited revenue approved by the National Assembly is for FY 2019/20 and amounts to Kshs.1.673 trillion. This is two financial years back from the current financial year. There is need to expedite approval of the audited accounts of revenue for FY 2020/21 and FY 2021/22 in order to ensure that the most recent audited accounts relate to the preceding financial

year to uphold the spirit of the Constitution and ensure equity in the vertical sharing of revenue.

Recommendations

32. The Committee considered the Bill and submissions from stakeholders and recommends as follows-

a) That, the Bill be approved with amendment on deletion of the Schedule and replacing with a new Schedule indicating as follows-
   - Equalization Fund – Ksh. 8,654,963,469 being 0.5% of all revenue (Ksh. 1.730 trillion) of the most recent audited accounts, approved by the National Assembly (FY 2019/20)
   - County Equitable Share – Ksh. 407 billion (adjusting Ksh. 370 Billion at growth factor of 8.4% to cater for increased cost of commodities and increased expenditure growth. Further, an additional of Ksh. 5.86 billion which had been earmarked for Managed Equipment Services (MES).

b) That, Library services allocation of Kshs.425 million should be transferred to counties through the county governments additional allocations mechanism and not county equitable share.

c) That, the proceeds from Road Maintenance Levy Fund (RMLF) are earmarked for a specific purpose, that is the maintenance and repair of roads. These funds therefore cannot form part of the equitable share as they cannot lawfully be appropriated for any other purpose than as set out in section 7(4)(b) of the Roads Maintenance Levy Fund Act, 1993. Thus, the county share from this Fund should be disbursed under the County Governments Additional Allocations Bill as a conditional allocation for the maintenance and repair of roads transferred to counties.

d) That, in subsequent Division of Revenue Bills, the National Treasury should clearly elaborate the formula used in arriving at the growth factor for revenue allocation to counties. This should be included in the explanatory memorandum of the bill.

e) That, the National Treasury should strictly adhere to the cash disbursement schedule approved by the Senate to disburse funds to counties.

f) That, National Assembly should expedite approval of the audited accounts of revenue for FY 2020/21 and FY 2021/22 in order to ensure that the most recent audited accounts relate to the preceding financial year to uphold the spirit of the Constitution and ensure equity in the vertical sharing of revenue.

12th April, 2023

The Clerk of the Senate
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE DIVISION OF REVENUE BILL, NATIONAL ASSEMBLY BILLS NO. 9 OF 2023

NOTICE is given that Sen. Maureen Tabitha Mutinda, Vice-Chairperson, Committee on Finance and Budget intends to move the following amendment to the Division of Revenue Bill, National Assembly Bills No. 9 of 2023, 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 AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2023/24		
Type/level of allocation	**Amount in Kshs.**	**Percentage (%) of 2019/20 audited and approved revenue***
A. Total Sharable Revenue	**2,571,159,000,000**	
B. National Government	**2,155,504,036,531**	
C. Equalization Fund	**8,654,963,469**	**0.5%**
D. County equitable share	**407,000,000,000**	**24.3%**

* The Equalisation Fund Allocation is based on all Revenue Received in FY 2019/20 of Kshs 1,730,992,693,864 while the County Equitable share is based on Ordinary revenue as defined under Section 2 of the Commission on Revenue Allocation Act, 2011 which amounts to Ksh 1,673,714,909,446 in FY 2019/20.

Dated..2023.

12/4/2023

Maureen Tabitha Mutinda,
Vice-Chairperson,
Committee on Finance and Budget.

MINUTES OF THE TWENTY-EIGHTH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 5TH APRIL, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 9.00 A.M.

PRESENT

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

ABSENT WITH APOLOGY

7. Sen. Joyce Chepkoech Korir, MP - Member
8. Sen. Mohamed Faki Mwinyihaji, MP - Member
9. Sen. Shakila Abdalla Mohamed, MP - Member

SECRETARIAT

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Beverlyne Chivadika - Clerk Assistant
3. Ms. Lucy Makara - Deputy Director, PBO
4. Ms. Millicent Makina - Fiscal Analyst
5. Ms. Sombe Toona - Legal Counsel
6. Ms. Joan Mahinda - Researcher
7. Mr. Eugene Otieno - Media Relations Officer
8. Mr. Forman Scalon - Media Relations Officer
9. Ms. Shirley Milimu - Audio Officer

IN ATTENDANCE

THE NATIONAL TREASURY AND ECONOMIC PLANNING

1. Hon. (Prof.) Njuguna Ndung'u, CBS - Cabinet Secretary
2. Ms. Josephine Kanyi - Senior Deputy Director
3. Mr. Joshua Musyoka - Senior Economist
4. CPA. Isabel Kogei - Parliamentary Liaison Office

MIN/SEN/SCF&B/147/2023 PRELIMINARIES

The Chairperson called the meeting to order at 9: 27 a.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/148/2023 ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. Eddy Gicheru Oketch, MP, and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

1. Prayer;
2. Introductions;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 17th, 19th, 20th, 22nd, 24th, 25th and 26th sittings;
5. Matters arising from the Minutes of the previous sittings;
6. Consideration of Division of Revenue Bill, 2023 *(Committee Paper No.27)*
7. Meeting with Cabinet Secretary, National Treasury and Economic Planning to deliberate on Division of Revenue Bill, 2023.
8. Any Other Business; and
9. Date of the Next Meeting and Adjournment.

MIN/SEN/SCF&B/149/2023 CONFIRMATION OF MINUTES

The Committee confirmed the minutes of its previous meetings as listed below-

a) The Minutes of the Seventeenth Sitting held on Monday, 27th February, 2023 at 9.00 a.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. (Dr.) Boni Khalwale, CBS, MP.
b) The Minutes of the Nineteenth Sitting held on Monday, 27th February, 2023 at 5.40 p.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. Richard Momoima Onyonka, MP, and seconded by Sen. Maureen Tabitha Mutinda, MP.
c) The Minutes of the Twenty-Fourth Sitting held on Thursday, 16th March, 2023 at 10.00 a.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. (Dr.) Boni Khalwale, CBS, MP, and seconded by Sen. Richard Momoima Onyonka, MP.
d) The Minutes of the Twenty-Sixth Sitting held on Thursday, 30th March, 2023 at 9.00 a.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Richard Momoima Onyonka, MP.

Confirmation of minutes of the 20th, 22nd, and 25th sittings was deferred to the next sitting.

MIN/SEN/SCF&B/150/2023 CONSIDERATION OF A BRIEF ON DIVISION OF REVENUE BILL, 2023

The Committee considered Committee Paper No. 27 on the Division of Revenue Bill, 2023. **The committee noted the contents of the Paper.**

MIN/SEN/SCF&B/151/2023 MEETING WITH THE CABINET SECRETARY OF NATIONAL TREASURY AND ECONOMIC PLANNING TO CONSIDER DIVISION OF REVENUE BILL, 2023

Upon invitation by the Chairperson, the Cabinet Secretary of the National Treasury and Economic Planning submitted the following views on the Bill-

1. The Bill has been prepared in fulfilment of Article 218(2) of the Constitution and Section 191 of PFM Act, 2012.
2. The Bill proposes to allocate an Equitable share for FY 2023/24 of Kshs.385.425 billion, equivalent to 24.5% of last audited accounts of FY 2019/20 amounting to Kshs.1,573,418 million. The proposed allocation meets requirement of Article 203(2).

County Governments' Equitable Share

3. The Bill proposes to allocate an equitable share for FY 2023/24 of Kshs.385.425 billion, an increase from base of Kshs.370 billion in the FY 2022/23.
4. The equitable share includes Kshs.425 million as attendant resources for the payroll relating to the library services transferred from the Kenya National Library Services.
5. The rationale for the proposed county equitable revenue share allocation was-
   a) The proposed allocation of Kshs.385.425 billion is equivalent to 24.5 % of last audited accounts and meets requirement of Article 203(2).
   b) Financing constraints due to limited access to finance in domestic and international financial markets. As a result, National Treasury did not disburse Kshs.29.6 billion to county governments in the FY 2021/22.
   c) The Government is implementing fiscal consolidation plan to lower fiscal deficit and slow down debt accumulation.
   d) National government continues to solely bear shortfalls in revenue in any given FY, while county governments receive their full allocation despite budget cuts affecting national government entities.
6. The County governments' equitable share represent a growth by Kshs.15 billion from the base of Kshs.370 billion in the FY 2022/23 and Kshs.425 million for transfer of library services.
7. The Bill has provided for allocations to the Equalization Fund amounting to Kshs.7,867,000,000 in the FY 2023/24 which translates to 0.5 per cent of last audited revenue.

Allocation of revenue raised nationally between the National and County governments for the FY 2023/24 as proposed by National Treasury-

8. Items of the Division of Revenue are-
   a) Total sharable revenue- Kshs.2,571,159,000,000.
   b) National Government share- Kshs.2,177,867,000,000 (of which Kshs.11,016,000,000 shall be transferred to County Government as additional allocations pursuant to Article 202(2))
   c) Equalization Fund- Kshs.7,867,000,000 pursuant to Article 204
   d) County equitable share-Kshs.385,425,000,000

Causes of differences between the Bill submitted by the National Treasury and the Bill before the Houses

9. The National Treasury applied Kshs.1,573 billion as the most recently audited and approved revenue for FY 2019/2020 while the National Assembly applied Kshs.1,673 billion occasioning a difference of Kshs.100 billion.
10. Whereas the National Assembly correctly used Kshs.1,673 billion contained in the audit report, the audit report made some double counting and misplacement of revenues as ordinary revenue.
11. Majorly these differences are tow namely-
    a) Double counting of Khs.95.7 billion- OAG added back the revenue collected by Government Investments and Public Enterprises Department of the National Treasury which had already been factored in the consolidated financial statements of the national government.
    b) AMISOM grant of Khs.4.6 billion -Whereas grants are not part of sharable revenue, the Office of the Auditor-General added Kshs.4.6 billion received as AMISOM as part of ordinary revenue.
12. There is need for an engagement between various stakeholders including the National Treasury, office of the Auditor-General, the CRA and Parliamentary Budget Office to solve the issue of classification of ordinary revenue as per the CRA Act which will inform future equitable sharing of revenue between the two levels of Government.
13. National Treasury requests the Committee to use and apply Kshs.1,573 billion as audited and approved revenues for the FY 2019/2020.

After deliberation the Committee made the following observations-

a) The latest audited revenue approved by the National Assembly is for FY 2019/20 and amounts to Kshs.1,674 billion yet National Treasury uses Ksh.1.573 trillion.
b) The County equitable share is proposed to Kshs.385.4 billion yet the Senate's resolution in its report on the 2023 BPS proposed Kshs.407 billion.
c) The allocation of Kshs.385.4 billion has not taken into account the cost of inflation and increased cost of commodities in the country.
d) Library services allocation of Kshs.425 million should be included in the additional allocations and not county equitable share. This is because the allocation is earmarked for payment of salaries or transfer of payroll.
e) The Road Maintenance Levy Fund (RMLF) forms part of the county governments' equitable share. The RMLF should be submitted separately as part of the county additional allocations in the subsequent FY. Other beneficiaries such as KENHA, KURA and KWS do not receive the funds as equitable share.
f) The sharable revenue defined in Article 203(2) for purposes of sharing revenue equitably is different from total revenue defined in Article 204(1) for purposes of the Equalization Fund. The allocation to Equalization Fund should be Kshs.8.65 billion and not Kshs.8.4 billion as stated in the Bill.

g) MES contracts for some counties had expired. The assessment of performance has been done and review was to be done before renewal of contracts.
h) In order to increase county OSR collection to cure revenue short falls, National Treasury in collaboration with other stakeholders such as CRA prepared the following Bills which should be fast-tracked-
    i. National Rating Bill which was submitted to National Assembly Committee on Lands for consideration and approval.
    ii. Own Source Revenue Bill submitted to the National Assembly.
i) In addition, the National Treasury in conjunction with CRA have drafted a Tariffs and Pricing Policy.
j) The amount of delayed disbursement to counties for the months of January, February and March stood at Kshs.92 billion. The CS committed to transfer some funds to counties by 15th April, 2023.

The Committee **resolved** as follows -
a) To process the Division of Revenue Bill, 2023 with amendments. This will call for mediation as contemplated in Articles, 112 and 113 of the Constitution.
b) There is need for engagement between various stakeholders to consolidate and harmonise the figure of revenue used for equitable sharing of revenue between the two levels of Government.
c) The National Treasury should comply and submit to the Committee, a plan on how it intends to clear arrears from the Equalization Fund allocated in the previous fiscal years within seven (7) days.

MIN/SEN/SCF&B/152/2023 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting adjourned at 12:45 p.m. the next meeting was scheduled to be held on Thursday, 6th April, 2023 at 9:00 a.m.

SIGNATURE........................**DATE** 12/4/2023

SEN. MAUREEN TABITHA MUTINDA, MP

(VICE-CHAIRPERSON)

MINUTES OF THE TWENTY-NINTH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 6TH APRIL, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 9.00 A.M.

PRESENT

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

ABSENT WITH APOLOGY

7. Sen. Joyce Chepkoech Korir, MP - Member
8. Sen. Mohamed Faki Mwinyihaji, MP - Member
9. Sen. Shakila Abdalla Mohamed, MP - Member

SECRETARIAT

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Beverlyne Chivadika - Clerk Assistant
3. Ms. Lucy Makara - Deputy Director, PBO
4. Ms. Millicent Makina - Fiscal Analyst
5. Mr. Tonkei Sekento - Researcher
6. Mr. Nandemu Barasa - Media Relations Officer
7. Ms. Lucy Radoli - Legal Counsel
8. Ms. Shirley Milimu - Audio Officer
9. Mr. Eugene Otieno - Intern

IN ATTENDANCE

A.THE INSTITUTE OF CERTIFIED ACCOUNTANTS OF KENYA

1. Mr. Hillary Onami - Director, Public Policy

B. INTERNATIONL BUDGET PARTNERSHIP-KENYA

1. Mr. Abraham Ochieng' - Program Officer
2. Mr. Guba Houghton - Program Officer
3. Ms. Irene Nyiva - Program Officer

C.THE COMMISSION ON REVENUE ALLOCATION

1.	Mr. Koitamet Ole Kine	-	Vice-Chairperson
2.	Dr. Isabel Waiyaki	-	Commissioner
3.	Ms. Hadija Juma	-	Commissioner
4.	CPA. James Katule	-	CEO
5.	Ms. Lineth Oyugi	-	Director, Economic affairs
6.	Ms. Jecinter Hezron	-	Manager, Stakeholder Engagements
7.	Mr. Ronald Ng'eno	-	Senor Communication Officer

D.THE COUNCIL OF GOVERNORS

1.	Hon. FCPA. Fernandes Barasa	-	Governor, Kakamega County
2.	Mr. Stephen Momanyi	-	Program Officer

MIN/SEN/SCF&B/153/2023 PRELIMINARIES

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

MIN/SEN/SCF&B/154/2023 ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. (Dr.) Boni Khalwale, CBS, MP and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

1. Prayer;
2. Introductions;
3. Adoption of the Agenda;
4. Confirmation of Minutes of the 20th, 22nd, and 25th sittings;
5. Matters arising from the Minutes of the previous sittings;
6. Meeting with ICPAK, IBP-Kenya, CRA, and CoG to deliberate on Division of Revenue Bill, 2023 *(Committee Paper No.28)*
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCF&B/155/2023 MEETING WITH STAKEHOLDERS TO SUBMIT VIEWS ON THE DIVISION OF REVENUE BILL, 2023

a) Meeting with IBP-Kenya and ICPAK

Upon invitation by the Chairperson, the representatives from IBP-Kenya and ICPAK presented to the Committee a joint submission with the following proposals and recommendations on the Bill-

a. The Growth Factor for Equitable Share
   i. Equitable share to counties continues to be pegged on the growth of total revenue as opposed the priorities of county governments.

ii. based on projected revenue growth of 17% in FY 2023/24, the proposed equitable share increased by 15.4 billion to 385.4 billion.
iii. There needs to be a more predictable factor for growth of the equitable sharing of national revenue.
iv. The growth of the equitable share should be based on functions as opposed to availability of resources and being pegged on the growth of revenue.

b. Declining/Stagnated Percentage of County Equitable Share to Total Sharable Revenue
    i. despite the cumulative increase in funding to county governments over the years, the counties' share of total government spending has declined
    ii. the national government retains a higher share of fiscal resources even in sectors where functions have been devolved.
    iii. The National Treasury to consider Inflation rates as opposed to revenue growth rates to inform the Division of Revenue.
    iv. 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.

c. Revenue projections
    i. trend indicates a steady growth in ordinary revenue with exception of FY 2020/21
    ii. additional fiscal measures should be undertaken to enhance revenue collection to actualize the economic growth as projected.
    iii. needs to have more realistic revenue projections based on performance of the previous financial years.
    iv. Adherence to recommendations made by the Auditor General

d. Unbundling and costing of devolved functions
    i. Update the cost of functions to reflect the current service delivery demands and economic realities faced by counties today
    ii. costing and transfer of devolved functions as well as resources including infrastructural and human resources, as set out in schedule four of the Constitution
    iii. Restructure and rationalize the state corporations that perform devolved functions as well as national government administration in counties to eliminate the current duplication of functions and expenditures.

e. Public debt repayment is crowding out the amount available for division of revenue and hurting counties allocation.
    i. Public debt repayments continue to take the lion's share of ordinary revenue, expecting to account for 48.6% in 2023/24
    ii. The trend shows that average growth in public debt service is more than 4 times the growth in county allocation
    iii. Senate should explore deficit limits since deficits influence debt levels and have an implication on the share of ordinary revenue received by counties

iv. seek clarity on the reasons for the deviation in the borrowing strategy mix recommended by the PDMO in the MTDS of 2023 and that included in the current BPS 2023

f. Early Childhood Development Education-There's need to provide conditional allocation to ECDE for purposes of the following:
   i. Supporting ECDE infrastructural allocation across the 47 county Governments
   ii. increasing capitation for ECDE teachers
   iii. Employment of skilled and qualified instructors in polytechnics

g. Allocation to Emergency Fund
   i. Concern remains around the decreasing amounts allocated to emergencies under Art. 203 1 (k)
   ii. How is the amount that is allocated to emergencies determined?
   iii. Senate should seek clarity on the basis upon which of allocations are made to emergencies.
   iv. Senate should call for an increase the equitable share of revenue to counties to enhance their ability to deal with emergencies independent of national government.

h. Allocations to Independent Offices- There is need to ensure allocations are commensurate with the resource requirements of the constituent offices and bodies

i. Public Participation
   i. There needs to be clear guidelines on what constitutes effective public participation in order to ensure that all efforts to engage with the public are substantive and consequential.
   ii. There is no legal framework on decentralized public participation.

b) Commission on Revenue Allocation

Upon invitation by the Chairperson, the Vice-Chairperson of the Commission made the following submissions on the Division of Revenue Bill, 2023-

Sharable revenue between the national and county governments for the FY 2023/24

i. The allocation to national government has been increased by Kshs.362.6 billion from Kshs.1,814.8 billion allocated in the FY 2022/23 while that to county governments by Kshs.15.4 billion form Kshs.370 billion.

ii. Though allocation to county governments of Kshs.385.4 billion meets requirements of Article 203(2) of at least 15%, the allocations do not amount to equitable sharing between the two levels of government.

iii. The government priorities in the medium term includes agriculture productivity, Micro, Small and Medium Enterprises (MSMES), housing and settlement, healthcare, digital superhighway and creative economy.

iv. The above are either county functions or concurrent functions. Therefore, it is important to adequately finance both levels of government if the above priorities are to be realised.
v. The Commission reiterates its recommendation submitted to Parliament in 2022 that county governments' allocation be increased from Kshs.370 to Kshs.407 billion.

Transfer of Recurrent Expenditure under Library Function to Beneficiary Counties

i. Library services are devolved under the Fourth Schedule of Constitution. There are 62 libraries in 33 counties. Three libraries namely Buru Buru, Milimani and Nakuru have been retained by national government.
ii. The allocation of Kshs.424.6 million is a transfer from the national government equitable share to county governments under Article 187 of the Constitution.

Allocation to Equalization Fund

i. The most recently audited and approved accounts of all revenue for the FY 2019/20 amounts to Kshs.1,730.9 billion.
ii. The Commission notes that the sharable revenue defined in Article 203(2) for purpose of sharing revenue equitably is different from total revenue defined in Article 204(1) for purpose of Equalization Fund.
iii. Based on provision of Article 204(1), the allocation to Equalization Fund for FY 2023/24 is Kshs.8.7 billion and not Kshs.8.4 billion as stated in the Bill.

c) Council of Governors

Upon invitation by the Chairperson, the Chairperson of the CoG Technical Committee on Finance and Economic Affairs presented as follows on the Division of Revenue Bill, 2023-

General Comments

i. The Council notes with concern the proposed allocation of Ksh.385 billion as equitable share of revenue
ii. The proposed allocation in the Division of Revenue Bill, 2023 has not taken into account the cost of inflation in the Country that has been on the rise in the recent years.
iii. The Council notes that the National Assembly has cited financing constraints and the fact that the National Treasury did not disburse Ksh.29.6 billion to Counties in the FY 2021/22 as part of rationale for the proposed County Governments equitable share allocation.
iv. Some of the items classified as national interest include some concurrent and some devolved functions hence there is need for rationalization of the allocations under these items. These include Youth Empowerment, Irrigation and Fertilizer Subsidy initiatives.

Specific Comments

The Schedule be amended to allocate Kshs.2.237 trillion to the National Government and Kshs.425 billion to County Governments respectively. The justification is that-

i. The shareable revenue is projected to grow by Kshs.379 billion to Kshs.2.571 trillion in the Financial Year 2023/2024.
ii. The proposed adjustment for revenue growth ofKsh.15 billion on County Governments share of revenue in the Bill is not commensurate with the projected revenue growth for FY 2023/24.
iii. Allocation of Kshs.425 billion to counties represents a 15% increase from FY 2022/23's allocation of Kshs.370 billion and is 25.42 percent of the last audited and approved accounts of FY 2019/2020 amounting to Kshs.1,673,715 million.

From the deliberations, the Committee noted that-

i. The county equitable share includes the Road Maintenance Levy Fund (RMLF). Stakeholders are in agreement that RMLF should be submitted separately as additional allocation to counties.
ii. The proposed county equitable share by CRA of Kshs.407 represents 10% growth from the base value of Kshs.370 billion in the FY 2022/23.
iii. The allocation of Kshs.424.6 million earmarked for transfer of Library Services from national government equitable share to 33 beneficiary counties with libraries should not form part of county equitable share. The same should be a Schedule to County Governments Additional Allocations Bill.
iv. There has been delay in disbursement of funds by National Treasury to counties for the months of January, February and March.
v. The National Treasury did not disburse Ksh.29.6 billion to Counties in the FY 2021/22.
vi. The proposed allocation in the Division of Revenue Bill, 2023 has not taken into account the cost of inflation in the Country that has been on the rise over the years.
vii. Total revenue defined in Article 204(1) should be for purpose of allocating funds to Equalization Fund. The allocation to Equalization Fund should be Kshs.8.7 billion and not Kshs.8.4 billion as stated in the Bill.
viii. There is need for counties to come up with innovative ways to increase their Own Source Revenue to avoid over dependence on National Government for the equitable share.
ix. There is need to establish National Treasury as an independent office to serve both levels of government fairly.

The Committee **resolved** that the Bill be processed with the amendment to the Schedule so that the County Government equitable share is Kshs.407 billion and allocation to Equalization Fund is Kshs. 8.6 billion.

MIN/SEN/SCF&B/156/2023 **ANY OTHER BUSINESS**

a) The Committee was informed that the Liaison Committee had approved a schedule on issuance the Quarterly Statements by Committee Chairpersons pursuant to standing order 56 (1)(b) of the Senate Standing Orders and that the Committee was scheduled to issue its report on Wednesday, 12th April, 2023. The Committee resolved to consider and adopt the Quarterly Report on Wednesday, 12th April, 2023 prior to issuance in the House.

b) The Committee was apprised of the two legislative proposals referred to the Committee by the Speaker for pre-publication scrutiny. These are-
   i. Public Procurement and Asset Disposal Amendment; and
   ii. Public Finance Management Amendment.

c) Pursuant to Article 218 of the Constitution, the County Allocation of Revenue (CARB) is required to be introduced in the House not later than two months before the end of the Financial year. Thus, the Chairperson will introduce a County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of Government on the basis determined in accordance with the resolution in force under Article 217 of the Constitution.

d) The Committee, thus resolved that the County Allocation of Revenue Bill, 2023 be prepared for publication and First Reading in the Senate. The Senate will thereafter process the Bill and refer it to the National Assembly for concurrence.

MIN/SEN/SCF&B/157/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

The meeting adjourned at 1:00 p.m. The next meeting was scheduled to be held on Wednesday, 12th April, 2023 at 8:30 a.m.

SIGNATURE..................................DATE...12/4/2023..................................

SEN. MAUREEN TABITHA MUTINDA, MP

(VICE-CHAIRPERSON)

MINUTES OF THE THIRTY FIRST MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 12TH APRIL, 2023 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS FROM 1.00 P.M.

PRESENT

1. Sen. Maureen Tabitha Mutinda, MP - **Vice-Chairperson**
2. Sen. Joyce Chepkoech Korir, MP - Member
3. Sen. Mohamed Faki Mwinyihaji, MP - Member
4. Sen. (Dr.) Boni Khalwale, CBS, MP - Member
5. Sen. Shakila Abdalla Mohamed, MP - Member

ABSENT WITH APOLOGY

6. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP - Chairperson
7. Sen. Eddy Gicheru Oketch, MP - Member
8. Sen. Tabitha Karanja Keroche, MP - Member
9. Sen. Richard Momoima Onyonka, MP - Member

SECRETARIAT

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Beverlyne Chivadika - Clerk Assistant
3. Ms. Millicent Makina - Fiscal Analyst
4. Ms. Joan Mahinda - Researcher
5. Mr. Phelisters Mutune - Media Relations Officer
6. Ms. Lucy Radoli - Legal Counsel
7. Mr. Eugene Otieno - Intern

MIN/SEN/SCF&B/164/2023 PRELIMINARIES

The Chairperson called the meeting to order at 1:26 p.m. This was followed by a word of prayer.

MIN/SEN/SCF&B/165/2023 ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. (Dr.) Boni Khalwale, CBS, MP and seconded by Sen. Mohamed Faki Mwinyihaji, MP, as listed below-

1. Prayer;

2. Adoption of the Agenda;
3. Confirmation of Minutes of the 25th and 30th sittings;
4. Matters arising from the previous minutes;
5. Consideration and adoption of-
    a) Report on Equalization Fund Appropriation Bill, 2023 (Senate Bills No.3 of 2023) *(Committee Paper No.29)*
    b) Report on Division of Revenue Bill, 2023 (National Assembly Bills No.9 od 2023) *(Committee Paper No.30)*
    c) Committee's Quarterly Report *(Committee Paper No.31)*
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/SCF&B/166/2023 CONFIRMATION OF MINUTES

The Committee confirmed the minutes of its previous meetings as listed below-

a) The Minutes of the Twenty-Fifth Sitting held on Wednesday, 29th March, 2023 at 10.00 a.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.
b) The Minutes of the Thirtieth Sitting held on Wednesday, 12th April, 2023 at 8.30 a.m. were confirmed as a true record of the proceedings of the committee having been proposed by Sen. Shakila Abdalla Mohamed, MP, and seconded by Sen. Maureen Tabitha Mutinda, MP.

MIN/SEN/SCF&B/167/2023 CONSIDERATION AND ADOPTION OF THE REPORT ON EQUALIZATION FUND APPROPRIATION BILL, 2023 (SENATE BILLS NO.3 OF 2023)

The Committee considered and unanimously adopted its report on the Equalization Fund Appropriation Bill, 2023 (Senate Bills No.3 of 2023) having been proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. Joyce Chepkoech Korir, MP. With the following recommendations-

That, the Bill be approved with amendments as follows-

a) Clause 2 be amended to provide that the sum of money appropriated is Kshs. 10,330,317,433.
b) deletion of the schedule and substituting it with a new schedule whose total appropriated fund is Kshs. 10,330,317,433.

MIN/SEN/SCF&B/168/2023 CONSIDERATION AND ADOPTION OF THE REPORT ON DIVISION OF REVENUE BILL, 2023 (NATIONAL ASSEMBLY BILLS NO.9 OF 2023)

The Committee considered and unanimously adopted its report on the Division of Revenue Bill, 2023 (National Assembly Bills No.9 od 2023) having been proposed by Sen. Mohamed Faki Mwinyihaji, MP, and seconded by Sen. (Dr.) Boni Khalwale, CBS, MP. With the following recommendations-

a) That, the Bill be approved with amendment of deletion of the Schedule and replacing with a new Schedule indicating as follows-
   - Equalization Fund – Ksh. 8,654,963,469 being 0.5% of all revenue (Ksh. 1.730 trillion) of the most recent audited accounts, approved by the National Assembly (FY 2019/20)
   - County Equitable Share – Ksh. 407 billion (adjusting Ksh. 370 Billion at growth factor of 8.4% to cater for increased cost of commodities and increased expenditure growth. Further, an additional of Ksh. 5.86 billion which had been earmarked for Managed Equipment Services (MES).

b) That, Library services allocation of Kshs.425 million should be transferred to counties through the county governments additional allocations mechanism and not county equitable share.

c) That, the proceeds from Road Maintenance Levy Fund (RMLF) are earmarked for a specific purpose, that is the maintenance and repair of roads. These funds therefore cannot form part of the equitable share as they cannot lawfully be appropriated for any other purpose than as set out in section 7(4)(b) of the Roads Maintenance Levy Fund Act, 1993. Thus, the county share from this Fund should be disbursed under the County Governments Additional Allocations Bill as a conditional allocation for the maintenance and repair of roads transferred to counties.

MIN/SEN/SCF&B/169/2023 CONSIDERATION AND ADOPTION OF THE QUARTERLY STATEMENT ON THE COMMITTEE ACTIVITIES

The Committee considered its Quarterly Statement on the Committee Activities and unanimously adopted it having been proposed by Sen. Shakila Abdalla Mohamed, MP seconded by Sen. Mohamed Faki Mwinyihaji, MP.

MIN/SEN/SCF&B/170/2023 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business the meeting was adjourned at 2:15 pa.m. The next meeting was scheduled to be held on Thursday, 13th April, 2023 at 9:00 a.m.

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

SEN. MAUREEN TABITHA MUTINDA, MP

(VICE-CHAIRPERSON)

REPUBLIC OF KENYA

THE NATIONAL TREASURY & ECONOMIC PLANNING

The Proposed Division of Revenue Bill, 2023

Brief by the Cabinet Secretary, National Treasury and Economic Planning During a Meeting with the Senate Standing Committee on Finance and Budget

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Date of the meeting: April 5th, 2023

INTRODUCTION

1. This brief is informed by the invite to the Cabinet Secretary/ National Treasury and Economic Planning by the Standing Committee on Finance and Budget of the Senate to deliberate on the proposed Division of Revenue Bill, 2023(National ***Assembly Bill No. 9 of 2023).***

2. The object and purpose of this Bill, is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2023/24 in accordance with Article 203 (2) of the Constitution.

3. The Division of Revenue Bill, 2023 has been prepared in fulfilment of the requirements of Article 218(2) of the Constitution and Section 191 of the Public Finance Management Act, 2012.

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

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

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

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

5. Section 191 of the Public Finance Management Act, 2012 requires that the Bill be accompanied by a memorandum which explains:

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

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

THE PROPOSED DIVISION OF REVENUE BILL, 2023

6. The National Treasury submitted to Parliament the Division of Revenue Bill, 2023 on 14th February, 2023 pursuant to Section 191 of the Public Finance Management Act, 2012 as read with Section 25 of the Act.

7. The Bill proposes to allocate an Equitable Share for FY 2023/24 of Ksh.385.425 billion is equivalent to 24.5 per cent of the last audited accounts (Ksh. 1,573,418 million for FY 2019/20) and as approved by Parliament. The proposed allocation meets the

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

County Governments' Equitable Share

8. The bill proposes to allocate County Governments Ksh. 385.425 billion for the financial year 2023/24 as equitable share of revenue raised nationally. The equitable share allocation has been proposed to increase from a base of Kshs. 370 billion allocated in the financial year 2022/23, to an allocation of Ksh. 385 billion in FY 2023/24. The equitable share allocation in the financial year 2023/24 has also been proposed to include Ksh. 425 million as attendant resources for the pay roll relating to the library services transferred from the Kenya National Library Services. Library services is a devolved function as provided for under Second part of the Fourth Schedule of the Constitution.

9. ***The rationale for the proposed county governments' equitable revenue share allocation is:***

a) The proposed equitable share of Ksh 385.425 billion in the FY 2023/24 is equivalent to 24.5 percent of the last audited accounts (Ksh. 1,573,418 Million for FY 2019/20) and as approved by Parliament. The proposed allocation therefore meets the requirement of Article 203(2) of the Constitution;
b) High level of debt financing as well as elevated debt risk;
c) Financing constraints due to limited access to finance in the domestic and international financial markets. As a result, the National Treasury did not disburse Kshs 29.6 billion to county governments in the FY 2021/22 due to financial constraints;
d) The Government is also implementing a fiscal consolidation plan so as to lower the fiscal deficit and slow down debt accumulation. To reflect this fiscal tightening, the National Government recurrent ceiling growth has been restricted, declining from a growth of 10.3 percent in FY 2017/18 to 1.2 percent in FY 2023/24.
e) The fact that the National Government continues to solely bear shortfalls in revenue in any given financial year, while County Governments receive their full allocation despite the budget cuts affecting the National Government entities.

10. The above proposed Equitable Share for FY 2023/24 of Ksh.385.425 billion is equivalent to 24.5 per cent of the last audited accounts (Ksh. 1,573,418 Million for FY 2019/20) and as approved by Parliament. The proposed allocation meets the requirement of Article 203(2) of the Constitution that equitable share allocation to

counties should not be less than fifteen (15) per cent of the last audited revenue raised nationally, as approved by the National Assembly.

11. The County Governments' equitable share of revenue raised nationally for the financial year 2023/24 is arrived at by growing the County Governments' equitable share for 2022/23 of Ksh. 370 by a growth of Ksh. 15 billion and additional Ksh 0.425 billion as attendant resources for transferred library services (see Table 1). This growth has taken into consideration performance of revenue in the past which has not been on target.

12. **Table 1: Equitable Revenue Share Allocation to County Governments, FY 2023/24**

BUDGET ITEM	AMOUNT (KSH. MILLION)
County Equitable Revenue Share for FY2022/23	370,000
Add:	
Adjustment for Revenue Growth	15,000
Transfer of Library Services	425
Equitable Revenue Share allocation for FY 2023/24	**385,425**

Source: National Treasury

13. The Bill has also provided for allocations to the Equalization Fund amounting to Ksh. 7,867,000,000 in FY 2023/24 which translates to 0.5 per cent of the last audited revenue accounts of governments, as approved by the National Assembly. This Fund is used to finance development programmes that aim at reducing regional disparities among beneficiary counties Consequently upon determining the Equitable share of Revenue for FY 2023/24,

14. After determining the equitable share of revenue to county governments in FY 2023/24, the Division of Revenue Schedule is as per Table 2 below.

Table 2: Allocation of Revenue Raised Nationally Between the National and County Governments for the Financial Year 2023/24.

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2019/20 audited and approved Revenue i.e. Ksh.1,573,418 Million
A. Total Sharable Revenue	**2,571,159,000,000**	
B. National Government	**2,177,867,000,000**	
C. Equalization Fund	**7,867,000,000**	**0.50%**
D. County equitable share	**385,425,000,000**	**24.5%**

Source of data: National Treasury

15. From table 2 above, its clear that the items of the Division of Revenue are:

(i) **Item A:** Total Sharable Revenue of Ksh. 2,571,159,000,000;

(ii) **Item B:** National Government share of revenue raised nationally amounting to Ksh. 2,177,867,000,000 (of which Ksh. 11,016,000,000 shall be transferred to

County Governments as additional conditional allocations pursuant to Article 202(2) of the Constitution);

(iii) **Item C:** Allocation to Equalization Fund (pursuant to Article 204) amounting to Ksh. 7,867,000,000; and,

(iv) **Item D:** County equitable share amounting to Ksh. 385,425,000,000.

NATIONAL ASSEMBLY PUBLISHED DIVISION OF REVENUE BILL, 2023 (BILL NO. 9 OF 2023)

16. The published Division of Revenue Bill,2023 (Bill No. 9 of 2023) has the items as contains in Table 3 below

17. **Table 3: Allocation of Revenue Raised Nationally Between the National and County Governments for the Financial Year 2023/24.**

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2019/20 audited and approved Revenue i.e. Ksh.1,673,715 Million
A. Total Sharable Revenue	2,571,159,000,000	
B. National Government	2,177,365,426,000	
C. Equalization Fund	8,368,574,000	0.50%
D. County equitable share	385,425,000,000	23.03%

18. From table 3 above, its clear that the items of the Division of Revenue are:

(v) **Item A:** Total Sharable Revenue of Ksh. 2,571,159,000,000;

(vi) **Item B:** National Government share of revenue raised nationally amounting to Ksh. 2,177,365,426,000 (of which Ksh. 11,016,000,000 shall be transferred to County Governments as additional conditional allocations pursuant to Article 202(2) of the Constitution);

(vii) **Item C:** Allocation to Equalization Fund (pursuant to Article 204) amounting to Ksh. 8,368,574,000; and,

(viii) **Item D:** County equitable share amounting to Ksh. 385,425,000,000.

DIFFERNCES BETWEEN THE BILL SUBMITTED BY THE NATIONAL TREASURY AND THE PUBLISHED DIVISION OF REVENUE BILL, 2023 (BILL NO. 9 OF 2023)

19. Whereas there are no differences on the Total Sharable Revenue of Ksh. 2,571,159,000,000 and proposed County equitable share amounting to Ksh. 385,425,000,000, there are differences on:-

(a) **the allocation to the Equalization Fund:** - The National Treasury had proposed to allocate Ksh. 7,867,000,000 to the Equalization Fund while the National Assembly approved allocation of Ksh. 8,368,574,000 as per the published Bill thus increasing it by Ksh. 501,574,000;

(b) **National Government share of Revenue; -** The National Treasury had proposed to allocate Ksh. 2,177,867,000,000 as National Government share of Revenue raised nationally while the National Assembly approved an allocation of Ksh. 2,177,365,426,000, thus reducing it by Ksh. 501,574,000; and

(c) **Application of audited and approved Revenue:-** The National Treasury applied Ksh. 1,573 billion as the most recently audited and approved revenue relating to FY 2019/20 while the National Assembly applied Ksh. 1,673 billion as the most recently audited and approved revenue relating to FY 2019/20, occasioning a difference of Ksh. 100 billion.

CAUSES OF DIFFERENCES IN APPLICATION AUDITED AND APPROVED REVENUE

20. Commission on Revenue Allocation (CRA)Act 2012 defines revenue as "all taxes imposed by the National Government under Article 209 of the Constitution and any other revenue (including investment income) that may be authorized by an Act of Parliament, ***but excludes revenues referred to under Articles 209(4) and 206(1)(a)(b) of the Constitution;***

21. Article 206 (1) (a) and (b) provides for establishment of Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that—

(a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or

(b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ. (The A-I-A)

The two categories of revenue are excluded from the definition of revenue under CRA Act 2012.

22. Further Article 209(4) provides that the national and county governments may impose charges for the services they provide. ***This category of revenue is excluded from the definition of Revenue under CRA Act 2012.***

23. The main cause of the differences in application of audited and approved Revenue for FY 2019/20, is the Audited Report of National Government Revenue for FY 2019/20.

24. Whereas the National Assembly correctly used Ksh. 1,673 billion as contained in the audit report, **the audit report made some double counting and misplacement of revenues as ordinary revenue contrary to the definition of Revenue contained in section 2 of the Commission on Revenue Act, 2011.**

25. Majorly these differences are two namely: -

(a) **Double counting of revenue of Ksh. 95.7 billion:-** Revenue collected by Government Investments and Public Enterprises Department of the National Treasury (which is a designated Receiver of Revenue for the National Treasury) amounting to KSh 95.7 billion collected as investment income had already been factored in the consolidated financial statements of National Government as already recorded in the books of the National Treasury (which is the receiver of the GIPE revenue).However, OAG added it back while conducting the audit of the FY 2019/20 revenues of Government occasioning a double counting of the revenue; and

(b) **AMISOM Grant of Ksh. 4.6 billion:** - whereas grants are not treated as part of sharable revenue, the Office of the Auditor General added Ksh. 4.6 billion received as AMISOM grant (received by Ministry of Defense being a designated receiver of revenue) as part of ordinary Revenue.

26. In our assessment, these are the two main causes of the difference of ordinary revenue for FY 2019/20 in the audited report by the Auditor General and the National Treasury published books.

CONCLUSION

27. There is need for an engagement between various stakeholders including National Treasury, Office of the Auditor General, and Commission on Revenue Allocation and Parliamentary Budget Office to solve this issue of classification of ordinary revenue as per CRA Act which will inform future equitable sharing of revenue between the two levels of Government.

28. We request this Committee to consider and apply Ksh. 1,573 billion as the audited and approved revenues for FY 2019/20 based on our explanation and thereafter reinstate the equitable share of the National Government and allocation to the Equalization Fund as contained in the Division of Revenue Bill, 2023 proposed and submitted to Parliament by the National Treasury on 14th February, 2023.

Njuguna Ndung'u
Cabinet Secretary/National Treasury and Economic Planning

Dated: April 5th 2023

COUNCIL OF GOVERNORS

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Our Ref: COG/8/5A/ Vol.9 (86)

4th April 2023

Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament of Kenya
NAIROBI

Dear Mr. Nyegenye, CBS.

SUBMISSION OF MEMORANDUM ON THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO.9 OF 2023)

We refer to the above subject and your letter **Ref. SEN/DSEC/F&B/CORR/2023/51 (d)** dated **28th March 2023.**

Based on the principle of consultation and cooperation as envisaged in the Constitution, the Council has reviewed the Division of Revenue Bill, 2023 and would like to forward our written memorandum attached herewith for your consideration.

We appreciate your continued support.

Yours Sincerely,

Mary Mwiti
Chief Executive Officer

COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE DIVISION OF REVENUE BILL, 2023 (NATIONAL ASSEMBLY BILLS NO.9 OF 2023)

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, 2023, 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 notes with concern the proposed allocation of **Ksh.385 billion** as equitable share of revenue. We wish to state that County Governments 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 Financial Year (FY) 2023/24 if the proposed amount remains

2. As you are aware, County governments' equitable share allocation for FY 2022/23 was maintained at Ksh.370 billion despite the high inflation. The proposed allocation in the Division of Revenue Bill, 2023 has not taken into account the cost of inflation in the Country that has been on the rise in the recent years. Failure to make an adjustment for the cost of inflation renders County governments unable to efficiently deliver services due to increased prices of goods and services. We therefore call upon the Senate to consider the cost of inflation in the proposed revenue allocation to Counties.

3. There is need for economic stimulation to spur recovery, growth and stability following the slump attributed to COVID-19, supply chain disruptions due to the Russia vs Ukraine war and the resultant high cost of inflation. This requires restructuring of expenditure priorities by both levels of government hence the Council's proposal for a considerable increment.

4. The Council notes that the National Assembly has cited financing constraints and the fact that the National Treasury did not disburse **Ksh.29.6 billion** to Counties in the FY 2021/22 as part of the rationale for the proposed County Governments equitable share allocation. Pegging revenue allocation on financing constraints will deny the County Governments an equitable share of the resources and in the stable and predictable manner as envisaged in the Constitution under **Article 203 (1)(j)** among the criteria for allocation on revenue. The rationale presents an element of unpredictability and instability in revenue allocation hence Unconstitutional.

5. Some of the items classified as National Interests include some concurrent and some devolved functions hence there is need for rationalization of the allocations under these items. These include Youth Empowerment, Irrigation and Fertilizer Subsidy initiatives.

B. <u>SPECIFIC CONCERNS</u>

The Council proposes the following specific amendment to the Division of Revenue Bill, 2023:

Section	Provision	CoG's Proposal	Rationale/Justification
THE SCHEDULE	Row B of the Schedule allocates Ksh.2,177,365,426,000 to the National Government and row	Rows B and D of the schedule be amended to allocate **Ksh.2,137,365,426,000** to the National	The shareable revenue is projected to grow by **17.3 percent** from **Ksh.2.192** trillion in the financial year 2022/23 to **Ksh.2.571 trillion** in the financial year 2023/24. This is a growth by **Kshs.379 billion** from last financial year's actual ordinary revenue.

	D allocates Ksh.385,425,000,000 to the County Governments	Government and **Ksh.425,425,000,000** to the County Governments respectively. **(See schedule below)**	The proposed adjustment for revenue growth of **Ksh.15 billion** on County Governments share of revenue in the Bill is not commensurate with the projected revenue growth for FY 2023/24. Therefore, the Council proposes an adjustment for revenue growth of **Ksh.55,000,000,000** to the baseline allocation of Ksh.370,000,000,000, this being a 15% increase from FY 2022/23's allocation translating to a total allocation of **Ksh.425.425 billion as County Governments equitable share for FY 2023/24.** This represents **25.42 percent** of the most recent audited accounts of revenue received, as approved by the National Assembly i.e., revenues for FY 2019/20 amounting to **Ksh.1,673,715 million.**

COUNCIL OF GOVERNORS

SCHEDULE

ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2023/24

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of FY 2019/20 audited and approved Revenue i.e., KSH. 1,673,715 million.
A. Total Sharable Revenue	2,571,159,000,000	
B. National Government	**2,137,365,426,000**	
C. Equalization Fund	8,368,574,000	0.5 %
D. County Equitable Share	**425,425,000,000**	**25.42%**

Kenya has had a total of ten 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 and IBP Kenya have participated in the review of the Bills and submitted proposals to guide the vertical sharing of revenue.

MEMORANDUM ON THE DIVISION OF REVENUE BILL 2023

<table>
<tr><th>#</th><th>ISSUE OF CONCERN</th><th>RECOMMENDATION</th></tr>
<tr><td>1.</td><td>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, based on projected revenue growth of 17% in FY 2023/24, the proposed equitable share increased by 15.4 billion to 385.4 billion. One of the hindrances 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. Indeed, the National Treasury indicates in the BPS of 2023 that 'sharing of resources will be pegged on the financing constraints and not on the budget', essentially contravening Article 219 of COK demanding that the equitable share be transferred without undue delay and without deduction. As a result, the ability of counties to fulfill their functions as outlined in the Fourth Schedule of the Constitution is affected.

In addition, 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.

Basis for Proposed Revenue Growth</td><td>There needs to be a more predictable factor for growth of the equitable sharing of national revenue.
The growth of the equitable share should be based on functions as opposed to availability of resources and being pegged on the growth of revenue.</td></tr>
</table>

Proposed Growth	Basis for Proposed Revenue Growth	Equitable Share Approved in the DoR (2023/24 is proposed)	Growth in DOR approved Amounts	Sharable Revenue (KES Billion)	Equitable share as a % of Sharable Revenue
National	National				

	Year	CRA		CRA	Treasury		-	1,031.80	22%
1	2015/16	10.4%		3-Year average growth in ordinary revenue	3-Year average growth in ordinary revenue		15%	1,251.67	21%
2	2016/17	15.0%		3-Year average growth in ordinary revenue	Not provided		8%	1,380.20	20%
3	2017/18	15.0%		3-Year average growth in ordinary revenue	3-Year average month on month inflation		8%	1,549.41	19%
4	2018/19	8.5%		3-Year average inflation	Not Clear		4%	1,681.07	19%
5	2019/20	6.9%		3-Year average inflation	Not Clear		1%	1,877.18	17%
6	2020/21	5.7%		The country's 3-year (2016-2018) average economic growth	Not Clear		0%	1,857.00	17%
7	2021/22	3.2%	3.2%	Not Clear	Not clear		17%	1,985.20	19%
8	2022/23			Not clear	Not clear		0%	2,192.00	17%
9	2023/24			Projected increase in revenue	Not clear	385.43	4%	2,571.16	15%

2. **Declining/Stagnated Percentage of County Equitable Share to Total Sharable Revenue**

Studies have shown that despite the cumulative increase in funding to county governments over the years, the counties' share of total government spending has declined. At the same time, the national government retains a higher share of fiscal resources even in sectors where functions have been devolved.

An analysis of previous Division of Revenue Acts is shown below:

Revenue Share	DORB 2023	DORA 2022	DORA 2021	DORA 2020	DORA 2019	DORA 2018
Total Sharable	2,571.2	2,141.0	1,775.0	1,856.0	1,877.0	1,688.0
National Government	2,177.4	1,764.0	1,398.0	1,533.0	1,554.0	1,369.0
County Equitable Share	385.4	370.0	370.0	316.0	316.0	314.0
% of County Government to Total Sharable revenue	23.03	17.3	20.8	17.0	16.8	18.6
% of National Government to Total Sharable Revenue	76.97	82.4	78.8	82.6	82.8	81.1

Source: Division of Revenue Acts 2017-2022 and DORB 2023

When compared to national GDP, the equitable share to counties has been declining every year from 4.0 to 2.8 percent between 2014/15 and 2019/20.[2] The implication is that while the national government has been meeting the legal requirement of providing an equitable share of at least 15 percent of the most recently audited measure of its revenue, County Governments have been experiencing a continuing decline in the resources available to them as a share of GDP.

The National Treasury to consider Inflation rates as opposed to revenue growth rates to inform the Division of Revenue. 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.

3. **Revenue projections**

FY	2019/20	2020/21	2021/22	2022/23	2023/24

- The government needs to have

Ordinary Revenue	1,673,715	1,574,009	1,775,624	2,141,585	2,571,159

Source: DORB 2023

The above trend indicates a steady growth in ordinary revenue with exception of FY 2020/21 when it dipped. This might have been occasioned by Covid 19 pandemic which necessitated an economic downturn. Thereafter, the performance of the economy improved significantly for the subsequent financial years.

According to the BPS 2023, In nominal terms, ordinary revenue collection to December 2022 was Ksh 985.0 billion against a target of Ksh 1,028.1 billion. This performance was Ksh 43.2 billion below the target. This implies that additional fiscal measures should be undertaken to enhance revenue collection to actualize the economic growth as projected.

For the year 2020/21, actual revenue collected was KSh 1,783.8 billion which was below the set target of KSh 1,837.8 billion by 2.9%. The figure below shows a Comparison of National Government Budget Estimates with Actual Out-turns, 2018/19 – 2021/22.

	2018/19			2019/20*		
	Budget	Actual	Difference	Budget	Actual	Difference
Total Ordinary Revenue	1,794,522.17	1,704,362.53	-80,555.16	1,573,418.45	1,795,976.83	222,770.91
Recurrent Expenditure[1]	1,947,932.11	2,375,052.84	427,120.74	2,291,413.24	2,339,114.26	47,701.02
Recurrent Balance	-153,409.94	-670,690.32	-522,825.61	-717,994.79	-545,360.98	175,069.89
Development Expenditure	607,199.40	569,745.19	-37,454.21	594,943.67	608,460.56	13,516.90
External Financing (Net)[2]	479,840.96	368,947.00	-110,893.96	340,431.33	360,251.07	19,819.74
Balance for Domestic Financing (Net)	-280,768.38	-871,488.51	-596,265.36	-972,507.12	-843,379.44	270,978.21

	2020/21*			2021/22*		
	Budget	Actual	Difference	Printed Budget	Revised Budget	Difference
Total Ordinary Revenue	1,837,835.12	1,783,777.97	54,057.15	1,783,777.97	2,038,677.60	-261,068.87
Recurrent Expenditure[1]	1,783,746.54	2,706,990.35	-923,243.80	2,706,990.35	2,882,145.13	-485,745.84
Recurrent Balance	54,088.58	-923,212.38	977,300.96	-923,212.38	-843,467.53	224,676.97
Development Expenditure	10,893.00	584,838.05	-573,945.05	584,838.05	491,677.88	68,549.31
External Financing[2] (Net)	417,552.85	323,309.58	94,243.27	323,309.58	271,182.17	52,127.41
Balance for Domestic Financing (Net)	460,748.44	-1,184,740.84	1,645,489.27	-1,184,740.84	-1,063,963.24	208,255.07

more realistic revenue projections based on performance of the previous financial years.

- Adherence to recommendations made by the Auditor General

	Source: Economic Survey 2022 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.	
4.	**Unbundling and costing of devolved functions.** Paragraph 268 of the 2023 BPS gives reference to the Articles 187 and 189 of the Constitution providing for the transfer of functions and powers between levels of Government as well as cooperation between the National and County Governments. It is worth noting that the unbundling and costing of functions in line with the Fourth Schedule of the Constitution is imperative for the proper functioning of the two levels of government. To operationalize the devolved functions, Parliament enacted the Intergovernmental Relations Act (IGRA), 2012 to establish a framework for consultation and cooperation between the National and County Governments and amongst County Governments. The IGRA also provides for the mechanisms for the resolution of intergovernmental disputes pursuant to Articles 6 and 189 of the Constitution, and for connected purposes. According to the Fourth Schedule of the 2010 Constitution, it is envisaged that the national government deals with policy, regulatory and capacity building responsibilities whilst the county governments have implementation roles. 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 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. Under the DORB 2023, Library services have been finally unbundled and the Commission on Revenue Allocation has proposed a budget of Kshs.425 million to cater for the services. The costing of functions should also be updated to reflect the current service delivery demands and economic realities faced by counties today. As the DOR Bill notes the baseline allocations to counties are informed by the costing of expenditure for devolved functions at the onset of devolution... Several challenges have been cited with each of the categories of functions with regards to unbundling and costing. They include: 1. The incomplete and ineffective unbundling and consequent costing of the exclusive functions. It has been noted that the functions were transferred without being properly unbundled and cost and as a result of that, some functions were transferred without the resources necessary to ensure their implementation being allocated, thus	Update the cost of functions to reflect the current service delivery demands and economic realities faced by counties today. As the DOR Bill notes, the baseline allocations to counties are informed by the costing of expenditure for devolved functions at the onset of devolution. There is need for a succinct definition of the point at which the roles of these different levels of government intersect and resolution of any outstanding issues that may be of concern in that regard. Specifically, whether both levels of government fully understand the full extent of their responsibilities in

	violating the constitutional principle of "funds following functions." 2. Concerns have also been raised that functions that were transferred are still being undertaken at the national level. The national government is said to be still budgeting for and executing functions that, under the Constitution, are wholly county governments' functions and which, in any event, have been transferred through the necessary legal instruments. 3. state corporations, which are largely national government institutions and the regional development authorities, are still performing functions that are, by law, assigned to county governments. 4. The inequitable allocation of resources for the performance of functions between the two levels of government compromising the effective delivery of functions and services within their specific domains.	respect of concurrent functions. Also, how committed or otherwise they are to these areas of responsibility without undermining the role and space of the other level. Finalize unbundling, costing and transfer of devolved functions as well as resources including infrastructural and human resources, as set out in schedule four of the Constitution. Restructure and rationalize the state corporations that perform devolved functions as well as national government administration in counties to eliminate the current duplication of functions and expenditures. Ensure reforms in the health sector, including restructuring and decentralizing KEMSA and NHIF to align them

		to the devolved system of government and ensure mechanisms for adequate accountability of financial resources and health products and technologies.
5.	**Public debt repayment is crowding out the amount available for division of revenue and hurting counties allocation:**	• Senate should explore deficit limits, as deficit levels influence debt levels and have an implication on the share of ordinary revenue received by counties. The recommendation by the MTDS of 2023 to set deficit levels of 4% of GDP should be adopted. • Senate should also seek clarity on the reasons for the deviation in the borrowing strategy mix recommended by the PDMO in the MTDS of 2023 and that included in the current BPS 2023. This is

Public debt repayments continue to take the lion's share of ordinary revenue, expecting to account for 48.6% in 2023/24. This is especially concerning in the context of current talks to increase the debt ceiling (to 55% of GDP), which would ideally provide government with more space to borrow. In addition, public debt servicing is projected to increase by 34% in the year 2023 from Ksh. 930.35 billion to Ksh. 1250.74 billion. This is shown in the summary below.

Table 3: Growth in public debt, ordinary revenue, and county allocation for the FY 2017/18 – 2023/24

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	396.44	34%	6%
Average				**22%**	**5%**

Source: Division of Revenue Bill 2023

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. 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.	a concern that has also been raised by the National Assembly's Budget and Appropriations Committee
6.	**Early Childhood Development Education** From the figure above, Pupil enrolment in pre-primary 1 and 2 increased from 2,832.9 thousand in 2020 to 2,845.3 thousand in 2021. At the same time, the number of teachers trained under CBC reduced by 28.0% from 95,241 in 2020 to 68,599 in 2021 partly due to a new scheme of service developed by county governments which led to the phasing out of teachers who did not meet the required qualifications.	There's need to provide conditional allocation to ECDE for purposes of the following: a. Supporting ECDE infrastructural allocation across the 47 county Governments b. increasing capitation for ECDE teachers c. Employment of skilled and qualified instructors in polytechnics

	2017	2018	2019	2020	2021*
Enrolment					
Boys1	1,681,530	1,730,237			
Girls1	1,612,283	1,660,308			
TOTAL	3,293,813	3,390,545			
Boys 2 Pre-Primary 1 and 2		..	1,393,719	1,436,924	1,422,247
Girls 2 Pre-Primary 1 and 2		..	1,344,868	1,395,973	1,423,018
TOTAL			2,738,587	2,832,897	2,845,265
Trained Teachers					
Male	17,746	18,703			
Female	89,192	94,000			
Sub Total	**106,938**	**112,703**			
Trained Teachers 3					
Male	..	..	14,634	15,584	11,225
Female	..	..	77,725	79,657	57,374
Sub Total			**92,359**	**95,241**	**68,599**
Untrained Teachers					
Male	2,445	2,294	..	..	..
Female	8,893	8,158	..	..	..
Sub Total	**11,338**	**10,452**			
TOTAL	**118,276**	**123,155**	**92,359**	**95,241**	**68,599**

Enrolment in pre-primaries 1 and 2 went up by 12.4% to 2,845.3 thousand in 2021 school year from 2,832.9 thousand in 2020 school year. Total enrolment in primary schools increased by 1.1% to 10,285 thousand in 2021 school year.

The total number of schools grew by 1.4% from 88,506 in 2020 to 89,747 in 2021.Number of registered pre-primary schools increased from 46,652in 2020 to 46,671 in 2021.In the same period, the number of primary schools increased by 3.6 per cent to 32,594in 2021, mainly due to rise in the number of private primary schools at 11.9%.

Category	2017	2018	2019	2020	2021*
Schools:					
Registered Pre-Primary :					
Public	25.381	25,589	28,383	28,505	28,585
Private	16,398	16,728	18,147	18,147	18,086
Sub Total	**41,779**	**42,317**	**46,530**	**46,652**	**46,671**

Source: Economic Survey 2022

According to the Economic Survey 2022, total expenditure for the education sector is expected to reduce by 16.3% to KSh.395.5 billion in 2021/22 financial year. Recurrent expenditure for the sector is expected to decrease by 16.7% to KSh.380.6 billion in 2021/22, while Development expenditure for the sector is expected to reduce to KSh.15.0 billion during the same period.

Number of registered pre-primary schools increased from 46,652 in 2020 to 46,671 in 2021. During the review period, the number of primary schools rose by 3.6 per cent to 32,594.

7. **Allocation to Emergency Fund**

We commend the additional allocation to the Contingency fund (included in National allocation) of Ksh. 4 billion. However, concern remains around the decreasing amounts allocated to emergencies under Art. 203 1 (k) against the background of the recent COVID 19 crisis, and the current context of increasing climate disasters especially drought. We note that despite the increased risk and presence of emergencies, the allocation to Emergencies has been declining, falling by **29%** since 2019/20. How is the amount that is allocated to emergencies determined?

- Senate should **seek clarity on the basis upon which of allocations are made to emergencies under Art. 203 1 (k).**

In addition, where the equitable share of revenue is inadequate, Counties ability to deal with emergencies using County emergency Fund money, as established in the PFM act of 2012, is limited. According to section 113, counties cannot withdraw money from the fund exceeding two per cent of the total county government revenue as shown in that county government's audited financial statements for the previous financial year, except for the first year. Therefore, regardless of the amount in the fund, the lower the county revenue, the less resources it can make available to deal with emergencies.

- Senate should call for an increase the equitable share of revenue to counties to enhance their ability to deal with emergencies independent of national government

8. **Allocations to Independent Offices**

We commend the increased allocations to independent offices as outlined in the DORB 2023:

FY	Allocation to Independent Offices (Ary.248(3)- i.e, Auditor General and Controller of Budget (Ksh. Billions)

Senate should ensure that the current allocations are commensurate with the resource requirements of the constituent offices and

	D allocates Ksh.385,425,000,000 to the County Governments	Government and **Ksh.425,425,000,000** to the County Governments respectively. **(See schedule below)**	The proposed adjustment for revenue growth of **Ksh.15 billion** on County Governments share of revenue in the Bill is not commensurate with the projected revenue growth for FY 2023/24. Therefore, the Council proposes an adjustment for revenue growth of **Ksh.55,000,000,000** to the baseline allocation of Ksh.370,000,000,000, this being a 15% increase from FY 2022/23's allocation translating to a total allocation of **Ksh.425.425 billion as County Governments equitable share for FY 2023/24.** This represents **25.42 percent** of the most recent audited accounts of revenue received, as approved by the National Assembly i.e., revenues for FY 2019/20 amounting to **Ksh.1,673,715 million.**

COUNCIL OF GOVERNORS

SCHEDULE

ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2023/24

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of FY 2019/20 audited and approved Revenue i.e., KSH. 1,673,715 million.
A. Total Sharable Revenue	2,571,159,000,000	
B. National Government	2,137,365,426,000	
C. Equalization Fund	8,368,574,000	0.5 %
D. County Equitable Share	425,425,000,000	25.42%

	2023/24 8,521 It is not clear however, whether the current or previous allocations are commensurate with the resource requirements of the constituent offices and bodies. We also note a decreased allocation to parliament of 10 billion...	bodies.
9.	**Public Participation** Although Parliament has embraced public participation in the legislative process and made efforts towards facilitating public participation, public engagement in the division of revenue process is not effective but tokenistic and inconsequential in the ultimate decision-making process. There needs to be clear guidelines on what constitutes effective public participation in order to ensure that all efforts to engage with the public are substantive and consequential. Beyond this, the lack of a framework of decentralized public participation, that is, participation not only at the national level but at the county level, is further hindering inclusive public deliberations on nationwide service delivery issues.	We note that effective public participation is **not expensive.** Based on CRA recommendations on PP, it would cost roughly Kshs.5 billion to pilot public participation forums in four select counties.

Institute of
Economic Affairs

MEMO

Institute of Economic Affairs-Kenya's views on the Division of Revenue Bill (National Assembly Bill No. 9 of 2023)

Date: 10th April, 2023

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.

The IEA-Kenya in response to the Senate's call for the public to provide their input into the draft Division of Revenue Bill 2023/24. Our comments are as follows

The current approach used for the computation of the allocation of the shareable revenue is biased in favour of the national government. This has led to disproportionate allocation of the equitable share to the county governments over time.

Analysis of the five-year equitable share (as illustrated in Table 1 row (vii)) reveals a sustained decline in the proportional allocation to counties thus suggesting bias in the approach of the computation. From 2021/22 to 2023/24 the proportional allocation has decreased by 5.8 points (20.8% to 15.0%). Over the same period, the allocation to national government (which Includes National Interest, Public debt, emergencies and other obligations) have increased by 5.9% (78.8% to 84.7%). It is also observed that proportional allocation towards servicing of the public debt reduced considerably over this period by 17.5% (66.1% to 48.6%).

Table 1: Trends in historical allocation of shareable revenue between national and county governments

SECTION A	2019/20	2020/21	2021/22	2022/23	2023/24	IEA Proposal 2023/24
(i) National Government[1]	1358.0	1251.0	1398.8	1764.5	2177.4	2112.8
(ii) Equilisation fund	5.8	6.5	6.8	7.1	8.4	8.4
(iii) Equitable Share	310.0	316.5	370.0	370.0	385.4	450.0
(iv) Total Shareable Revenue	1673.7	1574.0	1775.6	2141.6	2571.2	25.2
(v) National Government	81.1%	79.5%	78.8%	82.4%	84.7%	82.2%
(vi) Equilisation fund	0.3%	0.4%	0.4%	0.3%	0.3%	0.3%
(vii) Equitable Share	18.5%	20.1%	20.8%	17.3%	15.0%	17.5%
SECTION B						
viii) Public Debt	539	830	1174	930	1251	1251
(ix) Public Debt as a share of Total Shareable Revenue	32.2%	52.7%	66.1%	43.4%	48.6%	48.6%

Source: Division of Revenue Bill 2023

[1] Includes National Interest, Public debt, emergencies and other obligations

Recommendations

i. **The approach of the computation of the equitable share should be revised** to ensure that it does not result in the disproportionate allocation at the expense of the county governments. This can be achieved redefining what constitutes the national interest obligations to ensure that it does not take a significant share in the allocation at the expense of the counties.

ii. **Maintain a proportionate allocation of the equitable share to the counties with the national government.** That is, the proportional allocation to the counties should not fall at a faster rate in relation to the national. For instance, an average rate in the proportionate allocation should be maintained to ensure fairness in the allocation. This is especially reasonable to ensure that county governments are not "punished" by bearing the burden resulting from the commitments by the national governments which, by the very nature, the county governments are not in control. This includes commitments such as public debt and national interests

iii. **We recommend that at least Ksh 450 billion be allocated to the county governments.** As illustrated in the last column of Table 1, using an average proportion allocation for the last six years of 17.5%, we recommend that at least 450 billion of the shareable revenue be allocated to the county governments in order to promote fairness in the distribution of revenue.

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Attachment/01

Promoting an Equitable Society

MEMORANDA ON THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO. 7 OF 2021)

In accordance with the requirements of Article 205 of the Constitution, the Commission on Revenue Allocation has considered the provisions of the Division of Revenue Bill (National Assembly Bills No. 9 of 2023) and makes the following observations:

1. Shareable revenue between the national and county governmnets for financial year 2023/24

i. Article 202(1) stipulates that the nationally raised revenue shall be shared equitably between the national and county governments. The shareable revenue is defined in the Constitution and Section 2 of the CRA Act, 2011 as:

"all taxes imposed by the national government under Article 209 of the Constitution and any other revenue (including investment income) that may be authorized by an Act of Parliament, but excludes revenues[1] referred to under Articles 206(1)(a)(b) and 209 (4) of the Constitution".

ii. The total shareable revenue for financial year 2023/24 as stated in the National Assembly Bills No. 9 of 2023 is Ksh. 2,571,2 billion is from the Budget Policy Statement (BPS) 2023 presented to Parliament in February 2023. This is a revised projection from the Draft BPS projection of December 2022 of Ksh. 2,556.0 billion which was used by the Commission to make its recommendation in Decemmber 2022.

iii. Section 190 (1) of the PFMA (2012) requires that the Commission submit the recommendation at least six months before the beginning of

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[1] Art. 206(1)(a)(b) refers to revenues excluded from the Consolidated Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ. Art 209(4) refers to revenues from charges for services provided by either level of government.

the financial year or at a later date agreed between the Cabinet Secretary and the Commission on Revenue Allocation.

iv. The National Assembly Bills No. 9 of 2023 allocates to the national government Ksh. 2,177.4 billion and county governments Ksh. 385.4 billion. The allocation to national government has been increased from Ksh. 1,814.8 billion allocated to national government in financial 2022/23 by Ksh. 362.6 billion and that to county government from Ksh 370 billion by 15.4 billion

v. Though the allocation to county governments of Ksh.385.4 billion meets the requirements of Article 203(2), of allocating at least 15 percent of the most recent audited accounts as approved by the National Assembly, the Commission submits that the allocations does not amount to equitable sharing of revenue between the national and county governments.

vi. The government priorities in the medium term include Agriculture Productivity; Micro, Small and Medium Enterprise (MSME) Economy; Housing and Settlement; Healthcare; and 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 these priorities are to be realised.

vii. The Commission reiterates its recommendation submitted to Parliament in December 2022 that given the projected improved performance of revenue that the equitable share allocation to national government be increased from Ksh. 1,814.8 billion to Ksh. 2,150.3 billion (revised to Ksh 2,155.1 based on the BPS adjusted revenue projection) and county governments' allocation be increased from Ksh. 370 billion to Ksh. 407 billion.

2. **Transfer of Recurrent Expenditure Under the Library Function to Beneficiary Counties**

   i. Library services are devolved under the Fourth Schedule of the Constitution. There are 62 libraries in Kenya spread in 33 Counties. Out of the 62 libraries, three namely: Buru Buru, Milimani and Nakuru have been retained by the national government for strategic importance.

   ii. The Commission recommends that Ksh. 424.6 million in recurrent expenditure due to 59 libraries be transferred to 33 beneficiary counties in the financial year 2023/24. This transfer will cease to exist once the Fourth Basis for revenue sharing among county governments is approved by Parliament. *

   iii. The allocation of Ksh. 424.6 million is a transfer from the national government equitable share to county governments. This was part of the Kenya National Library recurrent budget and is therefore not from the projected revenue increment for financial year 2023/24. This allocation is a transfer from national government to county governments under Article 187 of the constitution.

3. **Allocation to the Equalisation Fund**

   i. Article 204(1) establishes the Equalisation Fund into which one half per cent of **all the revenue collected** by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

   ii. The most recent audited and approved accounts of all revenue are for the financial year 2019/20 amounting to Ksh. 1,730.9 billion.

   iii. The Commission notes that the shareable revenue defined in Article 203(2) for purposes of sharing revenue equitably between the national and county governments is different from the total revenue defined in Article 204(1) for purposes of the Equalisation Fund.

   iv. The Commission submits that based on the provision of Article 204 (1), the allocation to the Equalisation Fund for financial year 2023/24 is therefore Ksh. 8.7 billion and not Ksh 8.4 billion as stated in the National Assembly Bills No. 9 of 2023.

In conclusion the Commission urges Parliament to ensure that the sharing of revenue between the national and county governments is equitable.