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NAIROBI, 17th July, 2019

CONTENT

Bill for Introduction into the Senate—

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THE DIVISION OF REVENUE BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

THE DIVISION OF REVENUE BILL, 2019

A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in 2019/2020 financial year, and for connected purposes

ENACTED by Parliament of Kenya, as follows —

Short title.

1. This Act may be cited as the Division of Revenue Act, 2019.

Interpretation.

2. In this Act, unless the context otherwise requires —

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance; and

No. 16 of 2011.

"revenue" has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act, 2011.

Object and purpose of the Act.

3. The object and purpose of this Act is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2019/2020 in accordance with Article 203(2) of the Constitution.

Allocations to national and county governments.

4. Revenue raised by the national government in respect of the financial year 2019/2020 shall be divided among the national and county governments as set out in the Schedule to this Act.

Variation in revenue.

5. (1) If the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the National Government.

(2) If the actual revenue raised nationally in the financial year exceeds the projected revenues set out in the Schedule, the excess revenue shall accrue to the National Government, and may be used to reduce borrowing or pay debts.

SCHEDULE (s. 4)

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

Type/Level of Allocation	*Amount in KSh..*	*Percentage (%) of 2014/15 Audited and Approved Revenue i.e. KSh.1,038,035 Millions*
A. National Government*	**1,561,416,497,191**	
Of which:		
1. Leasing of Medical Equipment	-	
2. Compensation for user fees forgone	900,000,000	
3. Level 5 hospitals	4,326,000,000	
4. Supplement for construction of county headquarters	485,152,184	
5. Rehabilitation of Youth Polytechnics	2,000,000,000	
B. Equalization Fund	**5,760,000,000**	**0.6%**
C. County equitable share	**335,670,000,000**	**32.3%**
D. Total shareable revenue	**1,877,176,497,191**	
Memo items		
1. County equitable share	**335,670,000,000**	
2. Additional conditional allocations (National Government share of Revenue) of which;	**7,711,152,184**	
2.1. Leasing of Medical Equipment	-	
2.2 Compensation for user fees forgone	900,000,000	
2.3 Level 5 hospitals	4,326,000,000	
2.4 Supplement for construction of county headquarters	485,152,184	
2.5 Rehabilitation of Youth Polytechnics	2,000,000,000	
3. Allocation from Fuel Levy Fund (15%)	**8,984,062,500**	
4. Conditional allocations (Loans and grants) of which:	**38,704,877,210**	
4.1 IDA-Kenya Devolution Support Program (KDSP) Level 1	1,410,000,000	

Type/Level of Allocation	*Amount in KSh..*	*Percentage (%) of 2014/15 Audited and Approved Revenue i.e. KSh.1,038,035 Millions*
4.2 IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)	4,890,000,000	
4.3 IDA-Transforming Health Systems for Universal Care Project	2,994,247,736	
4.4 DANIDA-Universal Healthcare For Devolved System Program	986,583,544	
4.5 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	7,232,719,940	
4.6 EU-Instruments for Devolution Advice and Support (IDEAS)	492,698,583	
4.7 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	3,643,298,670	
4.8 World Bank- Kenya Urban Support Program(KUSP)- UDG	11,464,702,500	
4.9 World Bank- Kenya Urban Support Program(KUSP)- UIG	396,000,000	
4.10 IDA- Water and Sanitation Development Project (WSDP)	3,500,000,000	
4.11 Sweden Agriculture Sector Development Programme II (ASDP II)	849,626,237	
4.12 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WATER)	495,000,000	
4.13 Drought Resilience Programme in Northern Kenya	350,000,000	
Total County Allocations= (1+2+3+4)	**391,070,091,894**	

*The National Government share includes KSh. 4,300 million which is a special grant to the National Health Insurance Fund (NHIF) for Free Maternal Health Care, to be disbursed as a reimbursement to county governments.

MEMORANDUM OF OBJECTS AND REASON

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

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

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

Clause 4 of the Bill prescribes the allocations for the National Government and the county governments from the revenue raised nationally for the financial year 2019/2020.

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

Dated the 17th July, 2019.

MOHAMED M. MAHAMUD,
Chairperson, Finance and Budget.

APPENDIX

EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL, 2019

Background

1. This memorandum has been prepared as an attachment to the Division of Revenue Bill (DoRB), 2019 in fulfilment of the requirements of Article 218(2) of the Constitution and Section 191 of the Public Finance Management Act, 2012.

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

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

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

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

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

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

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

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

4. The DoRB, 2019 proposes to allocate to county governments KSh. 391.07 billion in the financial year 2019/20. This allocation comprises of an equitable share of KSh. 335.67 billion; additional conditional allocations from the share of National government revenue amounting to KSh. 7.71 billion; KSh. 8.98 billion being 15% of Road Maintenance Levy Fund (RMLF) collections; and, conditional allocations from loans and grants amounting to KSh. 38.7 billion from development partners.

County Governments' Equitable Share

5. The county governments' equitable share of revenue raised nationally for the financial year 2019/20 is arrived at by growing the base allocation of county governments' equitable share for financial year 2018/19 of KSh. 314 billion by KSh. 21.67 billion.

6. The county governments' equitable share of revenue in the financial year 2019/20 amount to KSh. 335.67 billion (see Table 1). This allocation represents a 32.3 percent of the latest audited revenues for FY 2014/15 (i.e. KSh. 1,038 billion).

Table 1: Equitable Revenue Share Allocation to County Governments, FY 2019/20

S/N	*Budget Item*	*Amount In KSh. Million*
A	County Equitable Revenue Share for FY2018/19	314,000
	Add:	
B	Adjustment based on a 3-year average inflation of 6.9 percent	21,670
C	Equitable Revenue Share allocation for FY 2019/20; C= (A+B)	335,670

Source: National Treasury and Planning

Additional Conditional Allocations to County Governments

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

- **Additional Conditional Allocation for Level-5 Hospitals of KSh. 4.3 Billion**: Level-5 hospitals have continued to play a significant role in providing specialized health care services to Kenyans. These hospitals provide specialized health care services to citizens residing outside their host County, usually for complicated cases referred from lower level health facilities. In order to further compensate them for the costs incurred in rendering services to neighbouring Counties, the national government proposes to allocate KSh. 4.3 billion in financial year 2019/2020.

  It should be noted that, in line with the National Government policy to upscale the Universal Health Care (UHC) programme coverage to all county governments; each county government will have health facility/ies of Level-5 Hospital status. Further, most county governments have so far transformed some of their level 4 health facilities to a Level-5 Hospital status; facilities which are also serving populations outside the resident counties.

  In this regard, this additional conditional allocation is transition based, as there maybe need to re-allocate these funds towards UHC once its coverage has been up scaled to all the counties.

- **Additional Conditional Allocation of KSh. 900 Million to Compensate County Health Facilities for Forgone User Fees**: It is the intention of government to sustain the Government policy of not charging user fees in public health facilities. In this regard, and in furtherance of this policy, the National Government has allocated KSh. 900 million in the financial year 2019/20 to compensate county governments for revenue forgone by not charging user fees in the county health facilities. This additional conditional allocation is in its fifth year of implementation.

- **Additional Conditional Allocation for Rehabilitation of Youth Polytechnics of KSh. 2 Billion**: This additional conditional allocation which is in its third year of implementation through the State Department of Vocational and Technical Training, is meant to support county governments in equipping Technical and Vocational Centres and capitation of student fees. The additional conditional allocation aims at enhancing access to quality and relevant vocational skills training.

- **Additional Conditional Allocation to Supplement County Allocation for the Construction of County Headquarters of KSh. 485 Million in Five Counties:** This conditional allocation is intended to supplement financing for construction of headquarters by five county governments that did not inherit adequate offices. The five counties are; Isiolo, Lamu, Nyandarua, Tana River and Tharaka Nithi. The allocation which is part of a three year plan, beginning financial year 2017/18, to supplement the five counties construct their county headquarters will be shared equally.
- **Additional Conditional Allocation from the Road Maintenance Fuel Levy Fund of KSh. 8.98 Billion:** This conditional allocation which is in its fifth year of implementation is proposed to increase from an allocation of KSh. 8.3 billion in financial year 2018/19 to KSh. 8.98 billion in FY 2019/2020. This allocation is meant to enhance and sustain County Governments' capacity to repair and maintain county roads and is equivalent to 15 percent of the Road Maintenance Fuel Levy Fund.
- **Transforming Health Systems for Universal Care Project Conditional Allocation of KSh. 2.99 Billion (World Bank Credit):** This conditional allocation through the Ministry of Health is meant for continued improvement in delivery, utilization and quality of primary health care services with focus on reproductive, maternal, new-born, child and adolescent health (RMNCAH) at the county level. This additional conditional allocation has reduced to KSh. 2.99 billion in the financial year 2019/20 from KSh. 3.6 billion in FY 2018/19 in accordance with the financing agreement between the donor and the National Government.
- **National Agricultural and Rural Inclusive Growth Project (NARIGP) of KSh. 7.2 billion (World Bank Credit):** This additional conditional allocation, which in FY 2018/19 amounted to KSh. 1.05 billion is expected to increase to KSh. 7.2 billion in financial year 2019/20. This additional conditional allocation is meant to compliment efforts by counties to increase agricultural productivity and profitability of targeted rural communities in selected counties, and to provide immediate and effective response in case of crisis or emergency. This increase is attributed to the project design principle of phased implementation approach

whereby it includes use of readiness indicators to identify participating counties to be covered by the project each year as contained in the Project Appraisal Document (PAD). In view of this, participating counties have so far increased to maximum targeted 21 counties.

- **Kenya Urban Support Program (KUSP)-Urban Development Grant (UDG) Additional Conditional Allocation of KSh. 11.5 Billion:** The Program Development Objective (PDO) of this additional conditional allocation is to establish and strengthen urban institutions to deliver improved infrastructure and services in participating counties in Kenya. This program, which is in its second year of implementation, is meant to ensure provision of capacity building and institutional support to 47 counties; however, direct financial support will be provided to 45 counties other than the city counties of Nairobi and Mombasa, and to 59 potentially eligible urban areas within those counties.
- **Kenya Urban Support Project (KUSP)-Urban Infrastructure Grant Allocation (UIG) - KSh. 396 Million:** The main purpose of this programme , which is in its third year of implementation, is to provide support to participating county governments for the formulation of urban development plans including the establishment and operation of urban institutional arrangements such as charters, boards, administrations and operation of Urban Institutional arrangements and for the initial preparation of urban infrastructure investments. This grant will decrease from an allocation of KSh. 1,854 million in financial year 2018/19 to KSh. 396 million in financial year 2019/20 because the allocation in financial year 2018/19 included a balance of KSh. 927 million carried forward from the financial year 2017/18.
- **Kenya Devolution Support Program (KDSP) County Capacity Building ("level 1") Grant of KSh. 1.4 Billion:** This is a conditional grant, which is in its third year of implementation, financed by a World Bank credit to support county government's capacity building. This grant, which has been reduced from an allocation of KSh. 2.3 billion in financial year 2018/19 to KSh. 1.4 billion in financial year 2019/20, is intended to sustain the support to capacity building initiatives in the counties in the following areas—

  (a) strengthening Public Financial Management (PFM) systems;

  (b) strengthening County Human Resource Management;

(c) improving county planning and Monitoring & Evaluation systems;

(d) Civic Education and Public Participation; and,

(e) strengthening Intergovernmental relations.

- **Kenya Devolution Support Program (KDSP) Performance ("level 2") Grant amounting to KSh. 4.9 Billion:** KDSP "Level 2", financed by a World Bank credit, is a performance grant which will be utilized by beneficiary counties toward physical investments articulated in their respective County Integrated Development Plans (CIDPs). As such, this grant is intended to incentivize county governments that achieve good results in the following key areas—

  (a) strengthening Public Financial Management (PFM) systems;

  (b) strengthening County Human Resource Management;

  (c) improving county planning and Monitoring & Evaluation systems;

  (d) civic Education and Public Participation; and,

  (e) strengthening Intergovernmental relations.

  Performance of counties in the above areas is to be assessed by an independent firm to be recruited through a competitive process. The budget allocation for this grant, which is in its third year of implementation, has increased from KSh. 4 billion in financial 2018/19 to KSh. 4.9 billion in financial year 2019/20 to cater for increased number of counties who will have met the performance score after being assessed in accordance with section 5 (2) (j) of the County Allocation of Revenue Act, 2019.

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

- **IDA–Water and Sanitation Development Project (WSDP) World Bank Credit of KSh. 3.5 Billion:** The Project Development Objective (PDO) of this program, financed by this additional conditional allocation, is to improve water supply and sanitation services in six select counties located in the coastal and north eastern regions of Kenya. This will be achieved by investing in water supply and sanitation infrastructure in urban centers in these counties. This additional conditional allocation, which has been reduced slightly from KSh. 3.8 billion in financial 2018/19 to KSh. 3.5 billion in financial year 2019/20, is meant to facilitate continued implementation of the projects started in 2018/19.

- **Agricultural Sector Development Support Programme (ASDSP) II-KSh. 849.6 Million:** ASDSP II, which is in its second year of implementation, is part of the implementation strategy of the Agricultural Policy (AP) for the national and county governments. In line with the AP, the overall goal of ASDSP II is to contribute to "transformation of crop, livestock and fishery production into commercially oriented enterprises that ensure sustainable food and nutrition security". The Programme Purpose is "to Develop Sustainable Priority Value Chains (PVCs) for improved income, food and nutrition security", which will contribute to achievement of the "BIG FOUR" agenda of the Government.

- **EU-Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER) - KSh. 495 Million:** The purpose of this additional allocation, which is in its second year of implementation, is to facilitate the implementation of the national climate change action plan and the master plan for the conservation of water catchment areas of Cherangany Hills and Mount Elgon.

  The program is being implemented in Cherangany Hills and Mount Elgon ecosystems and includes Lake Victoria and Turkana basins. It is also addressing a number of cross-cutting issues like climate change, gender equality, good governance and human rights and will benefit the eleven counties of; Bungoma, Busia, Elgeyo Marakwet, Kakamega, Kisumu, Nandi, Siaya, Trans Nzoia, Uasin Gishu, Vihiga and West Pokot.

- **Drought Resilience Programme in Northern Kenya (DRPNK) - KSh. 350 Million:** This is a project financed by proceeds of a loan and grant from the German Development Bank in Turkana and Marsabit counties. The programme objective is defined as follows: "to ensure that Drought resilience and climate change adaptive capacities of the pastoral and agro-pastoral production systems and livelihoods in selected areas of Turkana and Marsabit County are strengthened on a sustainable basis by expanding and rehabilitating relevant infrastructure." The expected projects outputs are to ensure: access to water is improved for humans and livestock; fodder basis is improved; access to market infrastructure is improved; and rural transportation is improved in the two counties.

- **DANIDA Grant-Universal Healthcare in Devolved System Program-KSh. 986.6 Million:** The Purpose of the grant is improvement of access to quality of primary health care and Reproductive, Maternal, Newborn, Child and Adolescent Health (RMNCAH) services at the county level and implemented through Ministry of Health who are responsible for ensure funds are included in the budget estimates of the ministry for the FY 2019/20 and Submission of quarterly and annual financial and performance reports to the National Treasury and separate copies to each county governments.
- **IDA-Kenya Climate Smart Agriculture Project (KCSAP) World Bank - KSh. 3.6 Billion:** This conditional grant to the counties is also implemented through the State Department of Agriculture. Purpose of the grant is to increase agricultural productivity and build resilience to climate change risks in targeted smallholder farming and pastoral communities. It covers 24 counties. The allocation criteria are based on financing agreement between the IDA and the Government of Kenya and approved work plans.

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

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

9. Table 2 provides an assessment of the extent to which the requirements of Article 203 (1) have been incorporated in estimating the division of revenue between the national and county levels of government in the financial year 2019/20.

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

	Item Description (KSh. Millions)	*FY2015/16*	*FY2016/17*	*FY2017/18*	*FY2018/19*	*FY2019/20*
	ORDINARY REVENUE (EXCLUDING AIA)	**1,152,972**	**1,306,568**	**1,365,063**	**1,651,517**	**1,877,176**

	Item Description (KSh. Millions)	*FY2015/16*	*FY2016/17*	*FY2017/18*	*FY2018/19*	*FY2019/20*
A	**National Interest** [Article 203 (1)(a)]	**79,189**	**79,685**	**82,696**	**84,186**	**94,168**
	Enhancement of security operations (police vehicles, helicopters, defence etc.)	17,700.00	18,900	20,556	27,800	27,974
	National irrigation and fertilizer clearance	12,500.00	8,700	8,880	11,775	11,103
	Youth empowerment	17,055.00	18,544	18,544	7,442	16,226
	National social safety net - (for older persons, OVC, child welfare, presidential bursary, severe disability)	14,354.00	16,924	17,305	26,812	26,362
	Primary school digital literacy program	17,580.00	13,408	13,408	6,333	8,400
	School examination fees (KSCE and KCPE)		3,209	4,003	4,024	4,103
B	**Public Debt** (Art. 203 [1][b])	**250,390**	**307,155**	**462,243**	**637,396**	**585,703**
C	**Other National Obligations** (Art. 203 [1][b])	**324,583**	**371,743**	**398,589**	**427,239**	**491,269**
	Pensions, Constitutional Salaries and Other	54,617	60,169	68,702	90,573	109,526
	Constitutional Commissions (Art. 248(2)) i.e. CRA, SRC, NLC, NPSC, IEBC, TSC	189,066	208,763	224,623	233,619	261,387
	Independent Offices (Art. 248(3)) - i.e. AG and CoB	4,720	4,723	5,177	6,412	6,336
	Parliament	27,277	31,480	30,915	34,490	39,501
	Other Constitutional Institutions-State Law Office and DPP	6,863	6,359	6,498	7,602	8,765
	Other statutory bodies (e.g. EACC, RPP, WPA, CAJ, IPOA, NGEC)	4,697	4,855	5,484	5,724	5,937
	Judiciary		17,759	17,678	13,458	18,937
	Other Statutory Allocations/Earmarked Funds	37343	37,635	39,512	35,361	40,880

	Item Description (KSh. Millions)	*FY2015/16*	*FY2016/17*	*FY2017/18*	*FY2018/19*	*FY2019/20*
D	**Emergencies** [Art. 203 (1)(k)]	**7,245**	**7,245**	**9,294**	**6,419**	**6,418**
	Contingencies	5,000	5,000	5,000	5,000	5,000
	Strategic Grain Reserve	2,245	2,245	4,294	1,419	1,418
	Equalization Fund [Art. 203 (1) (g) and (h)]	6,000	6,000	7,727	4,700	5,765
E	**BALANCE TO BE SHARED BY THE 2 LEVELS OF GOVERNMENT**	**485,565**	**534,740**	**404,514**	**491,576**	**693,854**
F	**COUNTY GOVERNMENT ALLOCATION FROM REVENUE RAISED NATIONALLY, of which;-**	**273,073**	**295,020**	**314,205**	**331,231**	**343,381**
	a) Equitable Share of Revenue	259,775	280,300	302,000	314,000	335,670
	b) Additional conditional allocations financed from revenues raised nationally	13,298	14,720	12,205	17,231	7,711
G	**BALANCE LEFT FOR THE NATIONAL GOVERNMENT**	**212,493**	**239,720**	**90,309**	**160,345**	**350,473**

Source: National Treasury and Planning

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

(a) are critical to the achievement of country's economic development objectives;

(b) potentially will have significant impact on social well-being of citizens;

(c) are anchored in the Vision 2030 and the Medium Term Plan III (2017 – 2022);

(d) have significant resource investment requirements; and

(e) have been specified in the 2019 Budget Policy Statement.

These national interests include: activities aimed at enhancing security operations; national irrigation and fertilizer subsidy initiatives; Youth

Empowerment; provision of national social safety net for vulnerable groups and primary school digital literacy program, and school examination fees subsidy. Revenue allocation for these programs is expected to increase significantly from KSh. 84.2 billion in 2018/19 to KSh. 94.2 billion in 2019/20.

11. **Public Debt:** The Bill has fully provided for all public debt related costs. These comprise of the annual debt redemption cost as well as the interest payment for both domestic and external debt. In the financial year 2019/20, the revenue allocation for payment of public debt related costs is expected to decrease from KSh. 637.4 billion in the financial year 2018/19 to KSh. 585.7 billion.

12. **Other National Obligations:** As provided for under Article 203(1) (b) of the Constitution, the Bill has also taken into account the cost of other national obligations, such as, mandatory pension contributions and/or payments, financing for constitutional offices, including Parliament as well as expenses relating to other statutory bodies and Funds. These are estimated to cost KSh. 491.27 billion in financial year 2019/20 up from KSh. 427.2 billion in financial year 2018/19.

13. **Fiscal Capacity and Efficiency of County Governments:** Fiscal capacity for county governments refers to the potential revenues that can be generated from the tax bases assigned to the counties when a standard average level of effort is applied. The second generation formula developed by the Commission on Revenue Allocation for sharing equitable share of Revenue has provided for 2 % weight to fiscal responsibility parameter. This measure is intended to take into account variations in fiscal capacity and efficiency across counties in the sharing of revenue raised nationally.

14. **County governments' ability to perform the functions assigned to them and meet other developmental needs of the county governments:** the baseline for the equitable share allocation for the financial year 2019/20 was the equitable share allocation for financial year 2018/20 as provided in the Division of Revenue Act, 2018.

15. **Economic Disparities within and among counties and the need to remedy them:** Allocation of the sharable revenue (i.e. equitable share of KSh. 335.67 billion) among counties is based on the second generation formula approved by Parliament in June, 2016 pursuant to provisions of Article 217 and section 16 of the Sixth Schedule of the Constitution. The formula takes into account disparities among counties and aims at equitable distribution of resources across counties. The formula takes into account population (45%), land area (8%), poverty (18%), a basic equal

share (26%), fiscal responsibility (2%) and Development factor (1 %). It should also be noted that KSh. 5.76 billion has also been set aside for the Equalization Fund in 2019/20 which translates to 0.6 per cent of last audited revenue accounts of governments, as approved by the National Assembly, and is above the constitutional minimum of 0.5 percent. This Fund will be used to finance development programmes that aim to reduce regional disparities among counties.

16. **Need for Economic Optimization of Each County:** Allocation of resources to county governments was guided by the costing of the functions assigned to the county governments. The equitable share of revenue allocated to county governments in the financial year 2019/20 is KSh. 335.67 billion. This is an unconditional allocation which means that the county governments can plan, budget and spend the funds independently. With the additional resources, therefore, county governments can allocate more resources to their priority projects and thus optimize their potential for economic development.

17. **Stable and Predictable Allocations of County Governments' Vertical Share of Revenue:** The county governments' equitable share of revenue raised nationally has been protected from cuts that may be necessitated by shortfall in revenue raised nationally. According to clause 5 of the DoRB 2019, any shortfall in revenue raised nationally is to be borne by the National Government.

18. **Need for Flexibility in Responding to Emergencies and Other Temporary Needs:** Included in the equitable share of revenue for the national government is an allocation of KSh. 5 billion for the Capital of the Contingencies Fund. This Fund will be used to meet the demands arising from urgent and unforeseen needs in all Counties that suffer from calamities in the manner contemplated under Section 21 of the Public Finance Management Act, 2012. In addition, the Public Finance Management Act, 2012 and the PFM (County governments) Regulations, 2015 requires each county government to set up a County Emergency Fund. County governments are expected to set aside at least 2 % of their budget as part of their allocation for this purpose.

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

19. The Division of Revenue Bill, 2019 proposes to allocate county governments an equitable share of KSh. 335.67 billion from the shareable revenue raised nationally. This allocation is similar to the equitable share allocation proposed by CRA.

20. **Differences occasioned by additional conditional allocations financed from National Government share of revenue amounting to KSh. 12.5 billion:** CRA has proposed additional conditional allocations of KSh. 26.7 billion (excluding KSh. 8.98 billion for RMLF which is not financed from ordinary Revenue) whereas the Division of Revenue Bill, 2019 proposes KSh. 7.71 billion to be financed form National Government share of revenue. This has occasioned a difference of KSh. 18.9 million as a result of the following:

- **Free Maternal Healthcare:** CRA has proposed KSh. 4,300 million additional conditional allocation for transfer to county governments to finance free maternal healthcare. The National Treasury and Planning has not provided this allocation as a conditional transfer to county governments of KSh. 4,300 million. However, in the Schedule of this Bill, the National Government share of revenue includes KSh. 4,300 million which is a special grant to the National Health Insurance Fund (NHIF) for free Maternal health care, to be disbursed as a reimbursement to county governments.
- **Leasing of Medical Equipment:** CRA has proposed an allocation of KSh. 9,400 million for this additional conditional allocation whereas the Division of Revenue Bill, 2019 has proposed a suspension of the conditional allocation until full disclosure of information on the total contract sum, repayment period and implementation status of the project.
- **New Conditional Transfers for Financing of Five (5) Cities:** CRA has proposed an allocation of KSh. 5,000 million starting FY 2019/20 to finance five cities in Urban Areas and Cities Act, 2011, namely: Nairobi, Mombasa, Kisumu, Nakuru and Eldoret. These cities are centres of growth and provide unique and critical services to the residents.

  The Division Revenue Bill takes cognisant of the unique services such as sewerage system, water reticulation, solid waste disposal and storm water drainage and management provided by these cities.

  To support these centres of growth, the Division of Revenue Bill has in FY 2019/20 provided a KSh. 11.5 billion for Kenya Urban Support Program (KUSP) as an Urban Development Grant (UDG) financed from proceeds of a grant by the World Bank. The purpose of this grant, which will complement efforts of county governments in carrying this function, is to establish and strengthen urban institutions to deliver improved infrastructure and services in participating counties in Kenya. It should be noted that these services are part of the devolved functions and county governments should be encouraged to plan and budget for them. In light of the tight fiscal framework, the National Treasury may not be able to provide additional resources beyond what has been provided.

21. Finally, an allocation amounting to KSh. 38.7 billion has been proposed as additional conditional allocations from proceeds of loans and grants by various development partners to finance respective programs and projects in the financial year 2019/20. However, the CRA has not made such provisions in their additional conditional allocations proposal.

Conclusion

22. The proposed equitable share allocated to county governments in the Division of Revenue Bill, 2019, is at 32.3 per cent of the most recent audited revenue, as approved by the National Assembly.