SPECIAL ISSUE

Kenya Gazette Supplement No. 18 (National Assembly Bills No. 7)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2018

NAIROBI, 6th March, 2018

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Division of Revenue Bill, 2018 109

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE DIVISION OF REVENUE BILL, 2018

ARRANGEMENT OF CLAUSES

Clause

1—Short title.

2—Interpretation.

3—Object and purpose of the Act.

4—Allocations to national and county governments.

5—Variation in revenue.

SCHEDULE—EQUITABLE SHARE OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2018/19

APPENDIX—EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL, 2018

A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in the 2018/19 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, 2018.

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;

No. 16 of 2011.

"revenue" has the meaning assigned to it in section 2 of the Commission on Revenue Allocation Act, 2011; and

"state organ" has the meaning assigned to it under Article 260 of the Constitution.

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 2018/19 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 2018/19 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, to the extent of the threshold prescribed in Regulations by the Cabinet Secretary.

(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 2018/19

Type/Level of Allocation	*Amount in KSh.*	*Percentage (%) of 2013/14 audited and approved Revenue i.e. KSh. 935,653 Millions*
A. Total Shareable Revenue	**1,688,492,000,000**	
B. National Government *	**1,369,792,000,000**	
Of which:		
1. *Leasing of Medical Equipment*	*9,400,000,000*	
2. *Compensation for user fees forgone*	*900,000,000*	
3. *Level 5 hospitals*	*4,326,000,000*	
4. *Supplement for construction of county headquarters*	*605,000,000*	
5. *Rehabilitation of Youth Polytechnics*	*2,000,000,000*	
C. Equalization Fund	**4,700,000,000**	**0.5%**
D. County equitable share	**314,000,000,000**	**33.6%**
Memo items		
1. County Equitable Share	**314,000,000,000**	
2. Additional conditional allocations (National Government share of Revenue) of which;	**17,231,000,000**	
2.1 *Leasing of Medical Equipment*	*9,400,000,000*	
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*	*605,000,000*	
2.5 *Rehabilitation of Youth Polytechnics*	*2,000,000,000*	
3. Allocation from Fuel Levy Fund (15%)	**8,269,000,000**	
4. Conditional allocations (Loans and grants) of which:	**33,241,930,770**	
4.1 *IDA—Kenya Devolution Support Program (KDSP)*	*2,300,000,000*	
4.2 *IDA—Kenya Devolution Support Program (KDSP) (Level 2 Grant)*	*4,000,000,000*	
4.3 *IDA—Transforming Health Systems for Universal Care Project*	*3,636,589,847*	
4.4 *DANIDA—Universal Healthcare For Devolved System Program*	*1,012,500,000*	
4.5 *IDA—National Agriculture and Rural Inclusive Growth Project (NARIGP)*	*2,949,138,423*	

Type/Level of Allocation	*Amount in KSh.*	*Percentage (%) of 2013/14 audited and approved Revenue i.e. KSh. 935,653 Millions*
4.6 EU—Instruments for Devolution Advice and Support (IDEAS)	*1,040,000,000*	
4.7 IDA (World Bank)—Kenya Climate Smart Agriculture Project (KCSAP)	*3,039,000,000*	
4.8 World Bank—Kenya Urban Support Program(KUSP)	*11,464,702,500*	
4.9 IDA—Water and Sanitation Development Project (WSDP)	*3,800,000,000*	
Total County Allocations= (1+2+3+4)	**372,741,930,770**	**39.8%**

*The National Government share includes KSh. 4,300 million which is a special grant to the National Health Insurance Fund (NHIF) for free maternal healthcare, 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 2018/19.

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 2nd March, 2018.

KIMANI ICHUNG'WA,
Chairperson, Budget and Appropriations Committee.

APPENDIX

EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL, 2018

Background

1. This memorandum has been prepared as an attachment to the Division of Revenue Bill, 2018 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, 2018 proposes to allocate to county governments KSh. 372.7 billion in the Financial Year 2018/19, which relative to the 2017/18 allocation, reflects an increase of KSh. 33.3 billion or 9.8 per cent. This allocation comprises of an equitable share of KSh. 314 billion and additional conditional allocations from the share of National Government revenue amounting to KSh. 17.2 billion (GoK conditional allocations).

County Governments' Equitable Share

5. The county governments' equitable share of revenue raised nationally for the Financial Year 2018/19 is arrived at by growing the county governments' equitable share for 2017/18 of KSh. 302 billion by a

growth factor of 4.0 per cent. This yields an adjustment of KSh. 12 billion. This growth factor was agreed through consensus following consultations under the Intergovernmental Budget and Economic Council (IBEC). This growth factor is determined after taking into account the fiscal framework that underpins the Budget Policy Statement for FY 2018/19, which reflects a drop in fiscal deficits from 7.2 per cent of GDP in FY 2017/18 to 6 per cent in FY 2018/19, increase in debt service costs, drop in National Government ministerial expenditures and downward adjustment of revenue projections in light of shortfalls in revenue in FY 2017/18. The equitable share of revenue, thus determined, is an unconditional allocation to the county governments and therefore county governments are expected to plan, budget, spend, account and report on the funds allocated independently.

6. After making the above adjustment, county governments' equitable share of revenue in the financial year 2018/19 is estimated to be KSh. 314 billion (see Table 1). This allocation which represents a 33.6 per cent of the latest audited revenues for FY 2013/14 (i.e. KSh. 935.7 billion) is above the constitutional minimum of 15 per cent.

Table 1: Equitable Revenue Share Allocation to County Governments, FY 2018/19

Budget Item	*Amount in KSh. Million*
County Equitable Revenue Share for FY2017/18	302,000
Add:	
Adjustment based on fiscal framework (Revenue growth factor = 4.0 %)	12,000
Equitable Revenue Share allocation for FY 2018/19	**314,000**

Source: National Treasury

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 to facilitate the leasing of medical equipment of KSh. 9.4 billion:** This grant which is in its fourth year of implementation, is proposed to increase from KSh. 6.1 billion in FY 2017/18 to KSh. 9.4 billion in FY 2018/19

and is intended to facilitate the purchase of modern specialised medical equipment in at least two health facilities in each County government over the medium term. This will facilitate easy access to specialised health care services and significantly reduce the distance that Kenyans travel in search of such services today. This increase in budgetary allocation by KSh. 3.3 billion is attributed to the Jubilee government agenda to provide universal healthcare whose implementation has been extended to county governments. In addition, this may also be attributed to purchase and installation of the medical equipment in more counties leading to an increase in estimated cost of maintenance of the equipment.

- **Additional Conditional allocation for level-5 hospitals of KSh. 4.3 billion:** Level-5 hospitals have continued to play a significant role in providing specialised healthcare 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 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 2018/2019 up from KSh. 4.2 billion allocated in FY 2017/18.
- **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 2018/19 to compensate county governments for revenue forgone by not charging user fees in the county health facilities. This additional conditional allocation is in its 4th year of implementation.
- **Additional Conditional Allocation for Rehabilitation of Youth Polytechnics of KSh. 2 billion:** This additional conditional allocation which is in its second year of implementation and implemented 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. 605 Million in five counties:** This conditional allocation is intended to further supplement financing for construction of headquarters by five county governments that did not inherit adequate offices. The five counties are: Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. The allocation which is part of a

three year plan, beginning Financial Year 2016/17, to supplement the five counties construct their county headquarters will be shared equally, with each getting an allocation of KSh. 121 million in FY 2018/19. This marks the second phase of the agreement whereby the National Government will contribute 70 per cent of the budget while county governments will contribute 30 per cent. The National Government's contribution will be spread over three financial years.

- **Additional Conditional Allocation from the Road Maintenance Fuel Levy Fund of KSh. 8.3 billion:** This conditional allocation which is in its fourth year of allocation is proposed to amount to KSh. 8.3 billion in FY 2018/2019. This allocation is meant to further enhance county governments' capacity to repair and maintain county roads and is equivalent to 15 per cent of the Road Maintenance Fuel Levy Fund.
- **Transforming Health Systems for Universal Care Project conditional allocation of KSh. 3.6 billion (World Bank credit):** This conditional allocation through the Ministry of Health is expected to continue to improve 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 amounts to KSh. 3.6 billion for Financial Year 2018/19 up from KSh. 2.75 billion in FY 2017/18.
- **National Agricultural and Rural Inclusive Growth Project; NARIGP of KSh. 2.9 billion (World Bank credit):** This additional conditional allocation, which in FY 2017/18 amounted to KSh. 1.05 billion is expected to increase to KSh. 2.9 billion in Financial Year 2018/19. This additional conditional allocation is meant to further 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.
- **Kenya Urban Support Program (KUSP) 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 allocation will provide 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 Devolution Support Program (KDSP) County Capacity Building ("level 1") Grant of KSh. 2.3 billion:** This is a conditional grant, which is in its second year of implementation, financed by a World Bank credit to support county government's capacity building under the Kenya Devolution Support Program (KDSP) amounting to KSh. 2.3 billion. This grant is intended to support capacity building initiatives in the counties in the following areas:
    - Strengthening Public Financial Management (PFM) systems;
    - Strengthening County Human Resource Management;
    - Improving county planning and Monitoring and Evaluation systems;
    - Civic Education and Public Participation; and
    - Strengthening Intergovernmental relations.
- **KDSP Performance ("level 2") Grant amounting to KSh. 4 billion:** This is a conditional grant financed by a World Bank credit which is intended to incentivise county governments that achieve good results in the following key areas:
    - Strengthening Public Financial Management (PFM) systems;
    - Strengthening County Human Resource Management;
    - Improving county planning and Monitoring and Evaluation systems;
    - Civic Education and Public Participation; and,
    - 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.
- **EU-Instruments for Devolution Advice and Support (IDEAS) grant of KSh. 1.04 billion:** This grant, which is in its second year of implementation, is expected to increase from KSh. 985.8 million in Financial Year 2017/18 to KSh. 1.04 billion in Financial Year 2018/19. The grant is meant to support National and county government's capacities for the management of the devolution process and the responsible transfer and use of resources for the achievement of local economic development at the county level.

- **IDA – Water and Sanitation Development Project (WSDP) World Bank Credit of KSh. 3.8 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. The project will also improve services by strengthening institutional capacity in areas, such as, reducing Non-Revenue Water (NRW), improving billing and revenue collection systems, and developing medium-term business plans. In addition, the WSDP will establish a results-based financing mechanism at the national level to provide incentives to the Water Services Providers (WSPs) to accelerate access to water supply and sanitation services and improve operational and financial performance.

- **IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP) of KSh. 3.0 billion:** The project development objective (PDO) of this project is "to increase agricultural productivity and build resilience to climate change risks in the targeted smallholder farming and pastoral communities in Kenya, and in the event of an Eligible Crisis or Emergency, to provide immediate and effective response. "In light of this objective, the utility of Climate-Smart Agriculture CSA lies in–

  (i) its explicit integration of the triple-wins (productivity, adaptation, and mitigation) with planning, implementation, and monitoring, which are often done in isolation; and

  (ii) improving the understanding of expected outcomes of context-specific CSA investments on different beneficiaries over time. KCSAP will focus on increasing agricultural productivity and enhancing resilience to impacts of climate change; reductions in Greenhouse Gas (GHG) emissions will be a co-benefit.

- **DANIDA-Universal Healthcare for Devolved System Program of KSh. 1.0 billion:** The project development objective (PDO) of this programme is "to improve utilization and quality of primary health care services with a focus on reproductive, maternal, new-born, child, and adolescent health services". The Project will achieve this objective by–

  (a) improving access to and demand for quality (Primary Health Care) PHC services;

(b) strengthening institutional capacity in selected key areas to improve utilization and quality of PHC services; and

(c) supporting cross-county and intergovernmental collaboration in the recently devolved Kenyan health system.

- The Project will have a strong focus on results by allocating resources to each county based on their improved coverage and quality of essential PHC services that are directly linked to the PDO and other factors including equity. The Project's support to strengthen the M&E system, including the routine Health Information Systems (HIS), will improve the quality of data for monitoring progress toward the achievement of PDO.

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 2018/19.

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

	ITEM DESCRIPTION *(KSh. Millions)*	FY2014/15	FY2015/16	FY2016/17	FY2017/18	FY2018/19
	ORDINARY REVENUE (EXCLUDING AIA)	**1,031,819**	**1,152,972**	**1,305,794**	**1,486,294**	**1,688,492**
A	**National Interest** [Article 203 (1) (a)]	**73,942**	**79,189**	**79,685**	**82,696**	**94,654**
	Enhancement of security operations (police vehicles, helicopters, defence etc.)	20,150	17,700	18,900	20,556	20,556
	National irrigation and fertilizer clearance	11,626	12,500	8,700	8,880	11,458
	Youth empowerment	11,755	17,055	18,544	18,544	18,197
	National social safety net - (for older persons, OVC, child welfare, presidential bursary, severe disability)	12,831	14,354	16,924	17,305	28,407
	Primary school digital literacy program	17,580	17,580	13,408	13,408	11,933
	School examination fees (KCSE and KCPE)			3,209	4,003	4,103
B	**Public debt (Art. 203 [1][b])**	**250,971**	**250,390**	**307,155**	**453,361**	**687,573**
C	**Other national obligations** (Art. 203 [1][b])	**247,196**	**287,240**	**334,108**	**359,077**	**399,766**
	Pensions, constitutional salaries and other	37,569	54,617	60,169	68,702	91,100

	ITEM DESCRIPTION *(KSh. Millions)*	FY2014/15	FY2015/16	FY2016/17	FY2017/18	FY2018/19
	Constitutional commissions (Art. 248(2)) i.e. CRA, SRC, NLC, NPSC, IEBC, TSC	173,557	189,066	208,763	224,623	235,864
	Independent offices (Art. 248(3)) - i.e. AG and CoB	3,446	4,720	4,723	5,177	6,073
	Parliament	23,104	27,277	31,480	30,915	34,544
	Other constitutional institutions- State Law Office and DPP	6,110	6,863	6,359	6,498	8,439
	Other statutory bodies (e.g. EACC, RPP, WPA, CAJ, IPOA, NGEC)	3,410	4,697	4,855	5,484	5,963
	Judiciary			17,759	17,678	17,783
D	**Emergencies** [Art. 203 (1)(k)]	**7,700**	**7,245**	**7,245**	**9,294**	**6,281**
	Contingencies	5,000	5,000	5,000	5,000	5,000
	Strategic grain reserve	2,700	2,245	2,245	4,294	1,281
E	**Equalization Fund** [Art. 203 (1) (g) and (h)]	**3,400**	**6,000**	**6,000**	**7,727**	**4,700**
	BALANCE TO BE SHARED BY THE 2 LEVELS OF GOVERNMENT	**448,610**	**522,908**	**571,601**	**574,139**	**495,518**
	County Government allocation from revenue raised nationally	**229,928**	**273,073**	**294,021**	**314,205**	**331,231**
F	**Balance left for the National Government**	**218,682**	**249,835**	**277,580**	**259,934**	**164,287**
	Of which other statutory allocations/earmarked funds (e.g. NG-CDF, Affirmative Action)	35,243	37,343	37,635	39,512	37,227

Source: National Treasury, BPS Resolutions by the National Assembly

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

- are critical to the achievement of country's economic development objectives;
- potentially will have significant impact on social well-being of citizens;
- are anchored in the Vision 2030 and the Medium Term Plan III (2018–2022);
- have significant resource investment requirements; and
- have been specified in the 2018 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. 82.5 billion in 2017/18 to KSh. 94.2 billion in 2018/19.

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 2018/19, the revenue allocation for payment of public debt related costs is expected to increase significantly to KSh. 687.6 billion from KSh. 453.4 billion in 2017/18 Financial Year.

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. 421.3 billion in 2018/19 up from KSh. 398.6 billion in 2017/18.

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 allocating of 2 % of sharable revenue to fiscal responsibility which is the measure used for fiscal capacity and efficiency of county governments. However this measure may have some weakness because of lack of accurate data. For instance it may benefit counties that project lower revenue targets which are easy to achieve. However this challenge will be solved once the study on revenue potentials of each county government is finalized in FY 2018/19.

14. **County governments' ability to perform the functions assigned to them and meet other developmental needs of the county governments:** As explained above, the baseline for the equitable share allocation for the Financial Year 2018/19 was derived from the Division of Revenue Act, 2017.

15. It should be noted that allocations for devolved functions transferred from the national government were based on the historical cost of those functions as determined through a consultative process that involved the line ministries and other independent commissions and offices. Further it should be noted that the transition period to devolved system of government came to an end in March, 2016. However should any residual function/s and attendant resources be identified, they shall be included in subsequent DoRB.

The proposed vertical division of revenue proposed in the Division of Revenue Bill, 2018 therefore takes into account the cost of county governments' developmental needs and it is expected that county governments will have the ability to perform the functions assigned and transferred to them as contemplated under Article 203(1) (f).

16. **Economic Disparities within and among counties and the need to remedy them:** Allocation of the sharable revenue (i.e. equitable share of KSh. 314 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 by introducing a new parameter, Development factor (1%), expected to bridge the development gaps amongst 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 %). The equitable share of revenue for county governments in 2018/19 reflects an increase of 4.0 percent compared to the allocation in 2017/18. This means that there is more money in 2018/19 to help remedy economic disparities within and among counties. It should also be noted that KSh. 4.7 billion has also been set aside for the Equalization Fund in 2018/19 which translates to 0.5 per cent of last audited revenue accounts of governments and is within the constitutional minimum of 0.5 percent. This Fund will be used to finance development programmes that aim to reduce regional disparities among counties.

17. **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 was increased by 4.0 per cent from KSh. 302 billion in 2017/18 to KSh. 314 billion in 2018/19. 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.

18. **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 2018, any shortfall in revenue raised nationally is to be borne by the National Government, to the extent of the threshold prescribed in Regulations by the Cabinet Secretary.

19. **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 per cent of their budget as part of their allocation for this purpose.

20. It should be noted that after taking into account all the other factors contemplated under Article 203(1) of the Constitution, including the needs of county governments, only KSh. 143.3 billion of revenue out of the total revenue raised nationally that is left to finance other National Government needs, such as, defence, roads, energy etc.

Response to the Recommendations of the Commission on Revenue Allocation

21. The Division of Revenue Bill, 2018 proposes to allocate county governments an equitable share of KSh. 314 billion from the shareable revenue raised nationally. This is in line with the revised position of CRA to allocate to county governments KSh. 314 billion as Equitable Share in FY 2018/19. However, the Commission on Revenue Allocation has in the Financial Year 2018/19 proposed new conditional allocations amounting to KSh. 6 billion relating to cancer interventions that the National Treasury has not included in its proposal. These have resulted in a variance between the National Treasury and the CRA proposals on Vertical Division of FY 2018/19. These include;

a. **Allocation to cater for establishment of two Regional Cancer treatment centres at KSh. 5.0 billion:** CRA has proposed an additional conditional allocation of KSh. 5.0 billion for establishment of two Regional Cancer Centres, at a cost of KSh. 2.5 billion each. These centres are intended to complement the Government's program of leasing medical equipment for counties with cancer diagnostics equipment. In addition, these cancer diagnostic equipment are intended to ease pressure at Kenyatta National Hospital, Moi Teaching Referral Hospital and Nyeri Level 5 hospital for surgical, chemotherapy and Radiotherapy services.

   National Treasury appreciates this proposal which if implemented would boost chances of the country plan to achieve universal healthcare access. Such a program, however, requires careful planning to ensure that adequate human and financial resources can be availed to guarantee the sustainability and viability of such a program. Consultation with the Ministry of Health which provides policy leadership on such matters have not been concluded. It is expected that such a proposal should be discussed and agreed on at MTEF Sector hearings pursuant to provisions of Treasury Circular No. 8/2017 on administration of Intergovernmental Fiscal Transfers when introducing any new additional conditional allocations.

b. **Allocation of KSh. 1.0 billion to Ministry of Health for central procurement of drugs through KEMSA:** CRA has proposed an additional conditional allocation of KSh. 1.0 billion for a National

Cancer Drug Access Programme starting FY 2018/19. This would ensure that cancer conditions are not only properly diagnosed, but also adequately treated. The National Treasury supports the efficiencies that would come with a centralised procurement of cancer drugs at KEMSA through the Ministry of Health. This proposal should be discussed and agreed in MTEF Sector hearings.

22. On the hand, the National Treasury has proposed additional conditional allocations to be financed from the proceeds of loans and grants from Development partners amounting KSh. 33.2 billion in financial 2018/19 which CRA has not factored. These grants include Kenya Devolution Support Program (KDSP), Instruments for Devolution Advice and Support (IDEAS), DANIDA-Universal Healthcare for devolved systems, Kenya Climate Smart Agriculture (KCSAP), IDA-National Agriculture and Inclusive Rural Growth and Kenya Urban Support program.

23. **Other differences may be occasioned by:** National Treasury proposed increase in additional conditional allocation for Leasing of Medical Equipment to KSh. 9.4 billion in FY 2018/19 whereas CRA proposed an allocation of KSh. 4.5 billion. The National Treasury proposal to increase the allocation for Leasing of Medical Equipment is in line with the Jubilee government agenda to provide Universal healthcare whose implementation has been extended to county governments. In addition this may also be attributed to purchase and installation of the medical equipment in more counties leading to an increase in estimated cost of maintenance of the equipment.

Conclusion

24. In conclusion, allocation to each level of government has been informed by the costing of functions assigned to each level of government. The proposals contained in the Bill take into account the fiscal framework set out in the BPS for 2018/19 and are intended to ensure that neither a huge financing gap is created nor functions at either level of government are left unfunded or underfunded.

25. It should, however, be noted that the agreed proposed Equitable Share allocated to county governments in the Division of Revenue Bill, 2018, at 33.6 per cent of the most recent audited revenue, as approved by the National Assembly, is way above the minimum threshold required under Article 203(2) of the Constitution.

Cancer Drug Access Programme starting FY 2018/19. This would ensure that cancer conditions are not only properly diagnosed, but also adequately treated. The National Treasury supports the efficiencies that would come with a centralised procurement of cancer drugs at KEMSA through the Ministry of Health. This proposal should be discussed and agreed in MTEF Sector Meetings.

22. On the hand, the National Treasury has proposed additional conditional allocations to be financed from the proceeds of loans and grants from Development partners amounting KSh. 31.2 billion in financial 2018/19 which CRA has not factored. These grants include Kenya Devolution Support Program (KDSP), Instruments for Devolution Advice and Support (IDEAS), DANIDA-Universal Healthcare for devolved systems, Kenya Climate Smart Agriculture (KCSAP), IDA National Agriculture and Inclusive Rural Growth and Kenya Urban Support program.

23. Other differences may be occasioned by: National Treasury proposed increase in additional conditional allocation for Leasing of Medical Equipment to KSh. 9.4 billion in FY 2018/19 whereas CRA proposed an allocation of KSh. 4.5 billion. The National Treasury proposal to increase the allocation for Leasing of Medical Equipment is in line with the Jubilee government agenda to provide Universal healthcare whose implementation has been extended to county governments. In addition this may also be attributed to purchase and installation of the medical equipment in more counties leading to an increase in estimated cost of maintenance of the equipment.

Conclusion

24. In conclusion, allocation to each level of government has been informed by the costing of functions assigned to each level of government. The proposals contained in the Bill take into account the fiscal framework set out in the BPS for 2018/19 and are intended to ensure that neither a huge financing gap is created nor functions at either level of government are left unfunded or underfunded.

25. It should, however, be noted that the agreed proposed Equitable Share allocated to county governments in the Division of Revenue Bill 2018 at 45.0 per cent of the latest audited revenue, as approved by the National Assembly, is way above the minimum threshold required under Article 203(2) of the Constitution.