REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

REPORT OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

ON

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2016)

Clerk's Chambers
The Senate
Parliament Buildings
Nairobi.

April, 2016

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PREFACE

Mandate and Functions of the Committee

Mr. Speaker Sir, Article 124 of the Constitution of Kenya, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of Committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in Plenary on inquiry of certain issues under the mandate of a particular committee.

Mr. Speaker Sir, the Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:

1. *Discuss and review the estimates of County governments and make recommendations to the Senate;*

2. *Examine the Medium term Budget Policy Statement presented to the Senate;*

3. *Examine and report on the Budget allocated to constitutional commissions and independent offices;*

4. *Examine bills related to the Counties;*

5. *Examine the Budget, including the Division of Revenue Bill; and*

6. *Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.*

Membership of the Committee

Mr. Speaker Sir, the Fourth Schedule of the Senate Standing Orders provides that the Committee "shall consist of the Chairperson and not more than fifteen other members" The Committee is composed of the following Senators -

1. The Hon. Sen. Billow Kerrow, MBS, MP. -Chairperson
2. The Hon. Sen. Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.

1 4. The Hon. Sen. Moses Wetang'ula, EGH, MP.

5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.

2 7. The Hon. Sen. (Dr.) Boni Khalwale, MBS, MP.

3 8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.

9. The Hon. Sen. (Dr.) Zipporah Kittony, MBS, OGW, MP.
10. The Hon. Sen. Aaron Kipkirui Cheruiyot, MP.

4 11. The Hon. Sen. Catherine Mukite Nabwala, MP.

5 12. The Hon. Sen. Mutula Kilonzo Junior, MP.

13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.

6 15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.

7 16. The Hon. Sen. (Dr.) Agnes Zani, MP.

BACKGROUND AND EXECUTIVE SUMMARY

Mr. Speaker Sir, Article 218 of the Constitution provides that "*At least two months before the end of each financial year, there shall be introduced in Parliament a Division of Revenue Bill, which shall divide revenue raised by the national government among the national and county levels of government...*"

Mr. Speaker Sir, The Division of Revenue Bill (National Assembly Bill No. 4 of 2016), was passed by the National Assembly on Wednesday, 30th March, 2016 and by way of Message submitted the Bill to the Senate on 30th March, 2016.

The Message was communicated to the Senate on Wednesday, 30th March, 2016, pursuant to Senate Standing Order 40(4). The National Assembly therefore seeks the concurrence of the Senate to the said Bill as passed by the National Assembly.

Standing Order No. 148 of the Senate Standing Orders requires that a Bill, which originates in the National Assembly, be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No. 129.

Mr. Speaker Sir, The Division of Revenue Bill was read a First Time in the Senate on Wednesday 30th March, 2016, and thereafter the Bill stood committed to the Standing Committee on Finance, Commerce and Budget pursuant to standing order 130 (1) of the Senate standing orders.

Mr. Speaker Sir, The Bill provides for the Division of nationally raised revenue between the two levels of government as well as setting out specific resources to be provided to counties as conditional grants and loans, and the Equalization Fund. In addition, the Bill is accompanied by an explanatory memorandum as required in Article 218(2) of the Constitution setting out the explanation of revenue allocation as proposed by the Bill along with the evaluation of the Bill in relation to the criteria mentioned in Article 203(1) of the Constitution. It also, as required, provides a summary of any significant deviation from the recommendations from the Commission on Revenue Allocation with an explanation for each such deviation.

Mr. Speaker Sir, Pursuant to Article 118 (1) (b) of the Constitution and standing order 130(4) of the Senate, the Standing Committee, in its consideration of the Bill, invited key stakeholders, including the National Treasury, Council of Governors, Commission on Revenue Allocation, County Assembly Forum who provided both oral and written submissions to the Committee.

The Committee also invited other non-state actors and the general public who similarly participated and submitted their contributions amidst media presence that ensured wider coverage and dissemination. In that regard, the Committee facilitated public participation and took into account the views and recommendations of the public in its report to the Senate.

Mr. Speaker Sir, I would like to remind Honourable Senators that the enactment of the Division of Revenue Bill is critical in setting the stage for the preparation of the County Allocation of Revenue Act, which will inform the preparation of respective county budget documents in a manner that is timely and enables fiscal clarity and planning.

Mr. Speaker Sir, this report is hereby submitted to the Senate for its consideration and adoption pursuant to standing order 134 (1) as read together with standing order 160(3) which states that the Senate shall conclude its consideration of a Division of Revenue Bill not later than ten days after the Bill has been introduced.

The Committee's Observations and General Recommendations

The Committee while considering the Bill as well as the submissions from different stakeholders made the following observations:

(a) The total County Government allocation from the revenue raised nationally was enhanced from **Ksh.287.04 billion** in the FY 2015/2016 to **Ksh. 302,197,516,719** in the FY 2016/2017. The 2016/2017 proposed allocation translates to 32.3% of the approved audited revenue of **Ksh. 935,653 million** of FY 2013/2014 thereby fulfilling the constitutional requirement as per Article 203(2) of the Constitution.

(b) Based on the deliberations the Committee held with various stakeholders, the Committee observed that the resulting allocation had been subjected to various negotiations during the budget process to try and build consensus on the key contentious issues.

(c) The Committee, in accordance with Article 218(2)(c) of the Constitution, was informed by the explanatory notes accompanying the Bill, on the reasons for significant deviations made from the recommendations of the Commission on Revenue Allocation.

(d) The Committee noted that as county revenues continued to grow, it was equally important for county governments to appreciate the importance of oversight in ensuring the prudent management of fiscal resources in line with Article 201 of the Constitution. Further there needed to be a renewed focus on increasing collection of county own source revenues to complement transfers from National Government.

(e) The Committee observed that there was an urgent need to bring clarity to the administration and reporting of conditional grants as line ministries were reallocating funds meant for counties to other ministry functions. **The Committee recommends that the National Treasury should set up system where funds for conditional grants related to County functions are disbursed directly to the county revenue fund. Further, line ministries should only be left with the function of ascertaining that counties have met grant conditions and thereafter advising National Treasury to release funds.**

(f) The Committee observed that the National Treasury seemed to be experiencing challenges in the management of county issues particularly on timely fiscal transfers and reporting, as well as follow up with line ministries tasked with transfer of approved conditional funds. **The Committee recommends that it may be prudent for the National Treasury to consider establishing a dedicated unit within its structures to exclusively handle fiscal matters with a view to ensuring seamless intergovernmental fiscal administration.**

(g) The Committee observed that allocations based on National Interest under Article 203(1)(a) of the Constitution were only National Government projects. The Committee noted that national interest was however not equivalent to National Government priorities and that national interest must be determined by the two levels of Government based on agreed priorities that contribute to overall national goals. **The Committee recommends that what is classified as national interest should be defined through an intergovernmental consultation at IBEC with approval from Senate.**

(h) The Committee noted that in order to arrive at County Governments' equitable share of revenue for FY 2016/17, the baseline (i.e. equitable revenue share allocation in FY 2015/16) had been adjusted by a revenue growth factor of 7.8 percent. Based on this adjustment, County Governments' equitable share of revenue in FY 2016/17 was estimated to be Kshs. 280.3 billion. The adjustment was necessitated by Exchequer shortfalls to the tune of an estimated Kshs. 65 billion by the end of December 2015. This shortfall, the Committee noted was expected to grow to about Kshs. 80 billion by the end of the financial year 2015/16 and would be borne by the National Government as the equitable share of revenue for county governments would be transferred to them without deduction.

(i) The Committee noted that on the matter of the Roads Maintenance Levy Fund there was lack of clarity on county roads due to an on-going contestation of the definition and assignment of roads falling under the mandate of the National and County Governments. **The Committee noted that it was critical that the proposed Roads Bill clarify some of these matters as a matter of priority so as to ensure proper structure of funding in the sector.**

(j) The Committee noted that Statutory Allocations e.g. CDF and Women Affirmative Action Fund would be allocated Ksh. 36.6 Billion in FY 2016/2017. The allocation of these funds from the gross government ordinary revenue instead of national government share of revenue, the Committee noted, had the effect of reducing resources available for sharing between the national and county governments and should instead be considered only under the national government share following the vertical division.

(k) The Committee observed that the transfer of approved funds, including conditional allocations should be fast tracked in line with approved schedules. This is informed by continued inordinate delays in facilitating county transfers thereby affecting delivery of county functions and services as well as leading to an increase in pending bills. **The Committee pursuant to Article 219 of the Constitution recommends that the National Treasury should ensure counties share of revenue raised by the National Government is transferred to them without undue delay and without deduction.**

(l) The Committee observed that National Treasury further agreed to provide more resources to five counties under an agreed framework between the five counties and the National Treasury for construction of County Headquarters. It is noted that there were 5 counties that did not inherit offices that could accommodate the headquarters of the county governments. These counties include: Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. Following consultations with the counties concerned, it was agreed that the construction of county headquarters be funded at the cost of Ksh. 518 Million (Ksh. 315.5 Million for the County Executive Offices and Ksh. 202.5 Million for the County Assembly). The National Government would contribute 70 percent of the budget while county governments would contribute 30 percent. The contribution of the National Government would be spread over the next three financial years. In the financial year 2016/17, therefore, the National Treasury proposed to provide a total of Ksh. 610 million for the construction of county headquarters. (i.e. Ksh 122 Million to each of the five counties). The Committee endorsed this agreement including considering an allocation to other deserving counties in successive financial years.

(m) The Committee acknowledged the credit facility extended by the World Bank to support counties and National Government on capacity building, public financial management and civic education. However they expressed concern as to the purpose and whether the World Bank would not consider that the monies be directed towards development in the counties.

(n) The Committee observed with a lot of concern the prevailing condition of pending bills in the counties mainly arising out of poor fiscal management and budget implementation. **The Committee is of the view that county governments should ascertain and clear these pending bills as a matter of urgency to avoid a county fiscal crisis. The Committee further recommends that this matter be looked into within the intergovernmental fiscal framework, which includes CoG, CRA, National Treasury, IBEC, County Assemblies, Senate and other institutions.**

Cognizant of the guardian role of the Senate in safeguarding the interest of the counties and their governments and taking into account the efforts and involvement of the Senate in negotiating non-reduction of the county equitable share during the scrutiny and approval stage of the 2016 Budget Policy Statement (BPS), the Committee hereby proposes that this report and its recommendations be adopted by the House.

COMMITTEE RECOMMENDATION

Mr. Speaker Sir, The Committee proposes that the county equitable share of **Ksh. 280,300,000,000** and the conditional allocations of **Ksh. 21,897,516,719,** bringing the total county allocation for the FY 2016/2017 to **Ksh. 302,197,516,719** as contained in the Division of Revenue Bill (National Assembly Bill No.4 of 2016) be adopted by this House.

Acknowledgements

The Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Chairperson of the Committee also takes this opportunity to thank all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time. The Committee also appreciates the media for the coverage of its proceedings on the day of the public hearing. Further, the Committee acknowledges the non-state actors and members of the public who expressed interest in the Bill and submitted memoranda for consideration by the Committee. I further wish to thank the National Treasury, Commission on Revenue Allocation and Council of Governors who made insightful contributions and recommendations to the Bill.

Mr. Speaker Sir, It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance, Commerce and Budget, to present to the Senate, this Report of the Committee on the Division of Revenue Bill (National Assembly Bill No. 4 of 2016).

SIGNED: ....

SENATOR BILLOW KERROW, M.P.

(Chairperson, Standing Committee on Finance Commerce and Budget)

Date: 14/4/16 ....

We, Members of the Standing Committee on Finance, Commerce and Budget do hereby affix our signatures to this Report to affirm the correctness of the contents and support for the Report –

1. Sen. Billow Kerrow, MBS, MP ....

2. Sen. Peter Ole Mositet, MP ....

3. Sen. G. G. Kariuki, EGH, MP ....

4. Sen. Moses Wetang'ula, EGH, MP ....

5. Sen. Beatrice Elachi, CBS, MP ....

6. Sen. Mutahi Kagwe, EGH, MP ....

7. Sen. (Dr.) Boni Khalwale, MBS, MP ....

8. Sen. (Prof.) Peter Anyang Nyong'o, EGH, MP ....

9. Sen. (Dr.) Zipporah Kittony, MBS, OGW, MP..

10. Sen. Aaron Kipkirui Cheruiyot, MP..

11. Sen. Catherine Mukiite Nabwala, MP..

12. Sen. Mutula Kilonzo Junior, MP..

13. Sen. (Prof.) John Lonyangapuo, CBS, MP ....

14. Sen. Paul Njoroge Ben, MP..

15. Sen. (Dr.) Wilfred Machage, MGH, MP..

16. Sen. (Dr.) Agnes Zani, MP ....

1.0 INTRODUCTION

VERTICAL ALLOCATION OF REVENUE FOR FISCAL YEAR 2016/17

1. The principal object of the Division of Revenue Bill, 2016 is to provide for the equitable division of revenue raised nationally among the national and county levels of governments as required by Article 218 of the Constitution in order to facilitate the proper functioning of the county governments and to ensure on-going services are provided for. In view of that, the Bill provides that revenue raised by the national government in respect of the FY 2016/17 be divided among the national and county governments.

2. In this regard, the total estimated national revenue between the two levels of government with respect to the FY 2016/17 is **1,380.199 billion** compared to the current estimates for the current FY 2015/16 of **Ksh.1,242.700 billion**. The Bill provides for county equitable share of **kshs 280.30 billion** up from **Ksh.259.77 billion** while national government share amounts to **Kshs 1,099.89 billion.**

3. In determining the county equitable share of revenue of **Ksh. 280.300 billion** for the FY 2016/17, a basis for county budgets to plan and budget, the Division of Revenue Bill 2016 adjusts the baseline equitable share of **Ksh. 259.775 billion** with a revenue growth factor of **7.8 percent** or **kshs 20.22 billion.** In view of the conditional allocations amounting to **kshs 21.89 billion**, the total county allocation therefore amounts to **kshs 302.198 billion, translating to 32.3 %** of the audited revenues.

4. The conditional allocations include loans and grants amounting to **kshs 3.87 billion**. Further, the DoRB contains increases in

allocations towards the Fuel Levy Fund for road maintenance by **kshs 1.006 billion** and Level 5 hospitals by **kshs 400 million**. The Bill also contains a new conditional item of special purpose grant of **kshs 200 million** to the two referral hospitals in Lamu and Tana River with a view to supporting specialized medical access and capacity in responding to terrorism and other security threats.

5. Table 1 below represents the breakdown of allocations between the two levels of government and the conditional allocations to counties to be financed from national government share.

Table 1

Allocation of Revenue Raised Nationally Between National Government and County Governments for the FY 2016/17		
Type / Levels of Allocation	**Amount (Kshs)**	**Percentage of FY 2013/14 Audited Revenue (Kshs**
National Government Allocation (of which):	**1,099,899,000,000**	
❖ *Free Maternal Health Care*	*4,121,029,353*	
❖ *Leasing of Medical Equipment*	*4,500,000,000*	
❖ *Compensation for use fees forgone*	*900,000,000*	
❖ *Level-5 Hospitals*	*4,000,000,000*	
❖ *Special purpose grant supporting access to emergency medical services*	*200,000,000*	
❖ *Allocation from Fuel Levy Fund (15%)*	*4,306,807,629*	
❖ *Conditional allocations (loans and grants)*	*3,870,679,737*	
Equalisation Fund	**6,000,000,000**	**0.64%**
Total County Allocation		
County Equitable Share	280,300,000,000	
Add Conditional Allocations *(of which):*	21,897,516,719	
❖ *Free Maternal Health Care*	*4,121,029,353*	
❖ *Leasing of Medical Equipment*	*4,500,000,000*	
❖ *Compensation for use fees forgone*	*900,000,000*	
❖ *Level- 5 Hospitals*	*4,000,000,000*	
❖ *Special purpose grant supporting access to emergency medical services*	*200,000,000*	
❖ *Allocation from Fuel Levy Fund (15%)*	*4,306,807,629*	
❖ *Conditional Allocations - loans and grants*	*3,870,679,737*	
Total County Allocations	**302,197,516,719**	**32.3%**

Source: Division of Revenue Bill, 2016

2.0 SUBMISSIONS FROM STAKEHOLDERS

6. This part presents the deliberations of the Committee with various stakeholders including, National Treasury, Commission on Revenue Allocation and Council of Governors. It also highlights the views and recommendations of the public submitted during the public hearings held on Monday, 11th April, 2016 and Tuesday, 12th April, 2016.

2.1 MEETING WITH THE NATIONAL TREASURY

7. The Committee at its sitting held on Tuesday, 11th April, 2016, met and held deliberations with the National Treasury on the Division of Revenue Bill, 2016. The National Treasury made the following observations and clarifications on the Bill:

   a. In order to arrive at County Governments' equitable share of revenue for FY 2016/17, the baseline (i.e. equitable revenue share allocation in FY 2015/16) was adjusted by a revenue growth factor of 7.8 percent. Based on this adjustment, County Governments' equitable share of revenue in FY 2016/17 was estimated to be Kshs. 280.3 billion. The adjustment was necessitated by Exchequer shortfalls to the tune of an estimated Kshs. 50 billion by the end of December 2015. This shortfall was expected to grow to about Kshs. 80 billion by the end of the financial year 2015/16. Accordingly, the National Government would bear responsibility for cushioning county governments of this revenue shortfall, as the equitable share of revenue for county governments will be transferred to them without deduction. If the Kshs. 80 billion were reduced from the National Governments equitable share for FY 2016/17, it would imply disproportionate negative fiscal impact on the National Government leaving it worse off than the last financial years' equitable share. It was therefore necessary to plan with a realistic growth factor, hence the adjustment to 7.8 percent.

This allocation the Committee was advised was above the constitutional minimum of 15 percent of the latest audited revenues for FY 2013/14 (i.e. Ksh. 935.7 billion).

b. In addition to the above equitable share allocation, County Governments would in FY 2016/17, receive additional conditional allocations amounting to Kshs 21.9 billion as follows:

a) Free maternal healthcare: Ksh. 4.1 billion
b) Leasing of medical equipment: Ksh. 4.5 billion
c) Compensation for user fees foregone: Ksh. 900 million
d) Level 5 hospital grant: Ksh. 4 billion
e) Kshs 4.3 billion in the form of a conditional grant transferred from the Road Maintenance Levy Fund (RMLF)
f) Kshs 0.2 billion in the form of a Special Purpose Grant supporting strengthening of access to emergency medical services in Lamu and Tana River counties, which are vulnerable to security threats.
g) Kshs 3.9 billion from proceeds of loans and grants from Development Partners to finance devolved functions within specific counties in accordance with the signed financing agreement for each loan/grant.

County allocations under (a), (c), (d), (e), and (f) would be transferred to the respective County Revenue Funds (CRFs) while grants under (b) and (g) shall be budgeted for at the national level and managed by the National Government on behalf of county governments.

c. The National Treasury would be proposing two further amendments to the DoRB and CARB 2016 submitted to Parliament to incorporate the following changes:

a) Conditional grant to support the construction of county headquarters in 5 counties: There were 5 counties that did not inherit offices that could accommodate the headquarters of the county governments. These counties included: Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. Following consultations with the counties concerned, it was agreed that the construction of county headquarters be funded at the cost of Ksh. 518 Million (Ksh. 315.5 Million for the County Executive Offices and Ksh. 202.5 Million for the County Assembly). The National Government would contribute 70 percent of the budget while county governments would contribute 30 percent. The contribution of the National Government would be spread over the next three financial years. In the financial year 2016/17, therefore, the National Treasury proposed to provide a total of Ksh. 610 million for the construction of county headquarters. (i.e. Ksh 122 Million to each of the five counties).

b) Conditional grant amounting to Ksh 1.41 billion to be financed by a World Bank credit in support of the Kenya Devolution Support Program (KDSP). The World Bank had agreed to extend to the Government of Kenya (GoK) a total of US $200 Million over a period of five (5) years for purposes of the Kenya Devolution Support Programme (KDSP). This credit was to be disbursed on the basis of capacity building and performance levels achieved by the national and county governments and only upon confirmation that the pre-determined results had been achieved. It is expected that 80% of the funds (US$160 million) would flow to county governments as capacity and performance grants and the balance 20%(US$40 million) would go to National Government.

The approval for the credit facility had not been granted by the time of submitting the DoRB and CARB 2016 in February 2016 and therefore could not be reflected in the DoRB and CARB 2016. The World Bank Board approved the credit facility on 15th March 2016. The support would entail capacity building for devolution, anchored under the National Capacity Building Framework (NCBF). KDSP would seek to strengthen institutions and systems for devolved service delivery in the following five priority areas:

i. Strengthening public financial management (PFM) systems;
ii. Strengthening county human resource management;
iii. Improving county planning and monitoring & evaluation systems; and,
iv. Civic education and public participation.
v. Strengthening intergovernmental relations.

With the above two amendments, total allocations to county governments in FY 2016/17 would be Ksh. 304.1 Billion or 33% of the last audited revenue.

d. There would also be an additional allocation Ksh. 6 billion from the Equalization Fund to be spent in counties that are determined as marginalized.

e. Accordingly, in the FY 2016/17, counties would share an estimated Kshs 302.2 billion, which represented a 5 percent increase from projected total transfers for 2015/16, which was Kshs 287.0 billion.

f. The balance of the shareable revenue after allocating funds to the Equalization Fund and County Governments estimated at Ksh. 1,093.9 billion would be allocated to the National Government.

DEVIATION FROM CRA RECOMMENDATIONS

8. Pursuant to Article 218 (2)(c) of the Constitution, the National Treasury must provide a summary of any significant deviation from the Commission on Revenue Allocation's recommendations, with an explanation for each such deviation.

9. The National Treasury made the following observations on its deviations from the recommendations of the Commission on Revenue Allocation (CRA):

   a) **County Equitable Share of Revenue:** The CRA recommended County Governments' equitable share of revenue of Ksh. 331.8 billion. Sources of differences with the National Treasury proposal were as follows:

- *Use of different revenue growth factor:* CRA grew the county equitable share of revenue by 15.09 percent, which was the average growth rate of audited shareable revenue raised nationally over the past three years. The National Treasury on the other hand used a revenue growth factor of 7.8 percent. This growth factor took into consideration performance of revenues that had not been performing well in the recent past.

- *County equitable revenue share adjustment of Ksh. 27.8 billion for additional county roads*: In anticipation of a decision by the Transition Authority (TA) to transfer additional county roads in FY 2016/17, the CRA had proposed to gross up the county equitable share of revenue for 2016/17 by an allocation of Ksh. 27.8 billion for construction and rehabilitation of county roads. At the time when CRA recommended the transfer of an additional Ksh. 27.8

billion to County Governments, the Transition Authority (TA) had not gazetted the decision to transfer additional county roads to County Governments. The National Treasury view was that any additional resources to be transferred to County Governments in respect of county roads function should be supported by a gazette notice by the TA authorising such transfer and a determination of resources, if any, to be transferred to County Governments. Treasury further argued that as early as FY 2013/14, resources relating to roads were transferred to County Governments and therefore the county equitable revenue share proposed by the National Treasury for FY 2016/17 already includes an allocation for county roads. Therefore, there was no justification for transfer of additional resources since resources were already transferred. What had been delayed was the process of transferring the function.

- *County equitable revenue share adjustment of Ksh. 5 billion to cater for public participation*: The CRA had proposed a further adjustment of the equitable revenue share to include an allocation of Ksh.5.0 billion to cater for public participation in FY 2016/17. The National Treasury view was that whilst public participation was a constitutional requirement for both levels of government in carrying out any development agenda, each level of government was required by law to set aside funds for the same function from its resources.

b) **Existing Conditional Allocations:** The CRA had proposed to increase by a higher growth factor of 15.09 percent (to Ksh. 20 billion in FY 2016/17) all existing conditional allocations for: Level-5 Hospitals; Free Maternal Health Care; Compensation for user fees forgone; leasing of medical equipment and county roads. The National Treasury on the other hand had proposed an allocation of Ksh. 17.8 billion for FY 2016/17. These conditional allocations had been determined through the MTEF budget process following sector negotiations upon consideration of all national government priorities.

c) **Proposed new conditional allocations:** The CRA had proposed several new conditional allocations amounting to Ksh. 25.7 billion that the National Treasury had not included in the County Allocation of Revenue Bill for FY 2016/17. These include:

- *Allocation to cater for emoluments for Devolved staff of Ksh. 5.196 billion* - CRA had proposed an additional Ksh. 5.196 billion, to be shared proportionately among counties based on payroll of devolved staff. These allocations were intended to act as a short-term measure to cushion counties that inherited a relatively higher number of employees, against expenses on salaries as they awaited conclusion of the staff rationalization programme. Treasury however noted that in the costing of devolved functions, adequate provisions were made to cater for county personnel expenses. Indeed, additional allocations (Ksh. 6.3 billion) were approved by the Senate to cater for county payroll and were included in the equitable share of revenue for FY 2015/16. Treasury further emphasized that in FY 2013/14 amounts set aside to hold harmless county governments that inherited higher than average wage bills, were shared on the basis of the revenue sharing formula following an agreement among county governments. In the opinion of the National Treasury, at the current level of funding county governments had sufficient resources to cater for the cost of personnel emoluments.

- *Additional conditional allocation for construction of County headquarters of Ksh. 4.0 billion* - CRA proposed an additional conditional allocation of Ksh. 4.0 billion to be shared equally for construction of county headquarters in Tharaka Nithi, Lamu, Nyandarua, Tana River and Isiolo counties. The above named counties did not inherit offices that could accommodate the county government. Following further consultation it had been agreed that the construction of county headquarters in the 5 counties be funded at a cost of Ksh. 500 million per county (Ksh. 300 for the County Executive office and Ksh. 200 million for the County Assembly). The National Government would contribute 70 percent of the cost and the county governments would contribute 30 percent. The National Government contribution would be spread over three years. The National Treasury would therefore be proposing further amendment to the DoRB and CARB 2016 to reflect this change by replacing the Schedule in the DoRB 2016 as well as Schedule 2 of the County Allocation of Revenue Bill, 2016.

- *Additional conditional allocations for Rehabilitation of Primary and Secondary school of Ksh. 5.0 billion*- the proposed new conditional additional allocation by CRA of Ksh. 5.0 billion was meant for building of school infrastructure, a role they said has been left to parents despite the function being a national one. The view of the National Treasury was that these were National government functions and that such a conditional grant could only be initiated by the ministry responsible for primary and secondary education.
- *Conditional additional allocation for the Establishment of County Emergency Fund of Ksh. 5.2 billion*: - CRA had proposed new conditional additional allocation of Ksh. 5.2 billion as seed money towards establishment of County Emergency Funds in line with provisions of PFMA Section 110(1) to be shared proportionately among counties. The National Treasury held a contrary opinion on this proposal as the Public Finance Management Act, 2012, anticipated that all governments, both national and county, should set aside funds for the establishment of their respective Emergency Funds. More over a similar proposal had been dropped on the above legal basis by the mediation committee of Parliament when making recommendations on the Division of Revenue Bill, 2015.

- *Conditional additional allocation for the Rehabilitation of Village Polytechnics of Ksh. 6.3 billion:* - the CRA had further proposed an additional conditional allocation of Ksh. 6.3 billion from the national government share of revenue to county governments so as to build, equip and renovate village polytechnics. The CRA further argued that these village polytechnics would go a long way in serving as centres of excellence to empower youth with the requisite skills to generate employment. The National Treasury acknowledged this is a devolved function and that the village polytechnics were essential in developing skills of youth who don't transit to institutions of higher learning. However, due to limitation in resources, the National Treasury recommended that this conditional allocation be done through donor financing within the provisions of the External Resources Policy of the National Treasury. As such, it was proposed that the decision to include it in the budget for FY 2016/17 be shelved until a potential donor is identified.

Response to the Recommendations of the Intergovernmental Budget And Economic Council (IBEC)

10. The Intergovernmental Budget and Economic Council (IBEC) recommended that county equitable share of revenue for FY 2016/17 be increased by a growth factor arrived at on the basis of the principles agreed at the IBEC meeting of 11th February 2015. The implementation of this recommendation was however, not possible given that revenue collection at the national level has been below target.

11. The IBEC further resolved that county governments be allocated additional conditional grants amounting to Ksh. 1.5 billion to support the rehabilitation of village polytechnics. The National Government recognised the critical role played by village polytechnics in

contributing to economic development and increasing employment opportunities for the youth. However, given the tight financial position of Government it was not possible to provide this additional allocation to counties in FY 2016/17. The request would be considered when the financial position of Government improved. The National Government would also seek the support of development partners.

2.2 MEETING WITH THE COMMISSION ON REVENUE ALLOCATION

12. Submissions from the Commission on Revenue Allocation (CRA) were as follows:

(a) Revenue Growth Factor:

The National Assembly Bill 2016 provided for a revenue growth factor of 7.8%. This was a National Treasury growth factor whose calculation had not been explained in any document. It was neither a revenue growth factor nor was it a GDP growth factor. A revenue growth factor of 7.8 percent was too low for consideration as a basis for increasing allocations to county governments for financial year 2016/17.

The Intergovernmental Budget and Economic Council (IBEC) recommended that the CRA and the National Treasury calculate the revenue growth factor based on the IBEC minute resolution of 11th February 2015 that approved the use of a three-year average growth of both revenue and Gross Domestic Product.

The Commission recommended to the Senate that the IBEC growth factor be used. This was 10.2%: (15.09+5.3)/2. The three-year revenue and GDP growth rates were equal to 15.09% and 5.3%, respectively.

(b) County Governments' Equitable Share

The National Assembly Bill 2016 did not provide for additional allocations for all functions transferred to county governments. The Transition Authority in February 2016 gazetted more functions for transfer to county governments. This included roads, libraries, among others.

In accordance with the provisions of Article 187(2), the Commission recommended to the Senate that resources for County roads and Libraries, amounting to Ksh. 8.43 billion and Ksh. 0.319 billion, respectively be allocated to county governments as part of the equitable share for 2016/17. The ad hoc technical committee of the Summit had agreed to this in March 2016.

(c) Conditional Allocations to County Governments

In accordance with the provisions of Article 202(2), conditional allocations to county governments were from the national government's equitable share. The National Assembly Bill 2016 provided for the allocations without full adjustment for inflation.

IBEC recommended that with the exception of the allocation for the leasing of medical equipment, that the other conditional allocations be as recommended by the CRA

(d) Road Maintenance Levy Fund (RMLF)

The National Assembly Bill 2016 did not provide for additional allocations for maintenance of additional kilometers of roads transferred to county governments in February 2016 by the Transition Authority.

Kenya Road Boards Act provides that RMLF is allocated as follows: Kenya National Highways Authority (KeNHA) = 40%; Kenya Rural

Roads Authority (KeRRA) = 32% ; Kenya Urban Roads Authority (KURA) = 15%; Kenya Wildlife Service (KWS) = 1%; Kenya Roads Board (KRB) = 2%; and Emergency = 10%

The Commission acknowledged that counties were allocated 15% of RMLF in the year 2015/16 out of which 10.2% was from KERRA and 4.8% from KURA allocations respectively. However the 15 % resources transferred to the county government from the RMLF was not commensurate to the number of Kilometers transferred to county governments, amounting to 120,000kms.

Based on a criteria provided by the State Department of Infrastructure for maintenance of class C roads and class D roads under KURA and KeRRA the Commission recommended to Senate that an additional 10% of the RMLF be allocated to county governments for the maintenance of the additional road network transferred to county governments. In total, county governments should be allocated 25% of the RMLF in FY 2016/17.

(e) **Rehabilitation of Village Polytechnics**

The National Assembly Bill 2016 did not provide for allocations to county governments for rehabilitation of village polytechnics. IBEC recommended that a conditional allocation of Ksh.1.5 billion be given to county governments in 2016/17. The youth needed to be meaningfully engaged and employment of the youth should be the country's first national interest. This was important to address the twin problems of youth radicalization and insecurity. The observation by the National Assembly that village polytechnics would be considered once the financial position of the country improved amounted to double speak given that NYS and education were ranked as part of the national interest.

The Commission recommended to the Senate that Ksh. 1.5 billion be allocated to county governments as a conditional allocation to rehabilitate/ built and equip village polytechnics across the country.

2.3 MEETING WITH THE COUNCIL OF GOVERNORS

13. Submissions from the Council of Governors (CoG) were as follows:

(a) **<u>The DoRB contravenes Article 203 of the Constitution in the following aspects:</u>**

i. **Allocation of funds to the Constituency Development Fund (CDF) before determining the equitable share between the two levels of government**: CDF is a National Government Fund, which should be derived from the National Government share after the equitable share has been allocated.

ii. **Allocations based on National Interest under Article 203(1)(a) of the Constitution**: In the DoRB, the items considered under national interest were actually National Government projects- National Youth Service re-engineering and the laptops project. National interest was however not equivalent to National Government priorities. National interest must be determined by the two levels and must be based on priorities that contribute to the overall national goals, not just one level. Matters related to security, economics and youth empowerment were examples that could be factored as national interest. Issues of national interest should be defined through an intergovernmental consultation.

(b) **<u>Recommendations</u>**

i. The laptop project cannot be classified under a project of national interest and therefore cannot be a deduction from the equitable share. This money should come from the National Government share of revenue.

ii. The following functions had been devolved but should be considered as national interests: Youth Polytechnics which hardly ever receive adequate allocation yet the youth form the largest section of the population; and the Early Childhood Education (ECDE) due to its significant role in childhood development. The Council proposes that there is need for intergovernmental consultations on national interest priorities before any allocation is made on the same.

(c)Equalisation Fund:

iii. This fund has never been disbursed despite the Commission for Revenue Allocation's (CRA) proposal on how is to be shared between the identified marginalized Counties. The National Treasury allocated the Fund Kshs. 3.4 billion in the FY 2014/15, Kshs. 6 billion in the FY2015/16 and currently a proposal of Kshs. 6 billion. The 2014/15 and 2015/16 allocations have never been disbursed to the marginalised areas.

iv. Under the Constitution, the sectors that the fund is aimed at target County functions. In this regard, the Council of Governors would like the Senate to ensure that the fund is disbursed as a conditional grant to the identified fourteen (14) Counties.

(d) Emergency (Contingencies and strategic grain reserve):

v. There is a provision for Kshs. 7.245 billion towards flexibility in responding to emergencies and other temporary needs. This fund should be equally allocated to both levels of government since they both respond to emergencies. Additionally, the allocation for the Strategic Grain Reserve should also be considered as a shared responsibility since agriculture is a devolved function.

(e)Growth factor of County Governments Equitable share:

vi. The National Treasury had used a factor of 7.8% as the growth factor. It was however not clear how this was arrived at. The Council of Governors had agreed to the growth factor of 15.09% from the initial proposed growth factor of 20.44% being the actual growth rate of revenues in the past. CRA as mandated by the Constitution in Article 205 had calculated the growth factor at 15.09%.

The Council however noted that it was erroneous for the CRA to state that the Intergovernmental Budget and Economic Council (IBEC) agreed and adopted to use the GDP to determine sharable revenue. They stated that was no such agreement at IBEC and that it was a proposal from the Deputy President to apply a growth of 10.2%. The Council did not accept this proposal but rather maintained its position of using the 15.09% scientifically calculated growth rate as per the initial proposal by CRA. The Council reiterated that the growth rate of 15.09% should be based and that County Governments' allocation should not be reduced when there is a progressive positive growth of revenues.

With a revenue growth of 7.8% the County Governments equitable share of revenue reflects an allocation of 30. 0% of the nationally raised revenues, which was lower than the allocation for the 2015/16 financial year which was 33.44% against an agreed growth rate of 10.41%.

The Council therefore requested that the Senate consider a total allocation to County Governments as equitable share of 35%.

(f) Unfunded Functions:

vii. **County transport:** Additional 31,113 Kms of roads had been devolved to County Governments with no attendant resources. The inter-agency technical committee of the summit proposed that **Kshs.8.43 billion** should be devolved to follow this function. It was also agreed that that the Counties should be allocated 25% of the Road Maintenance Levy Fund.

viii. **Library services:** Fifty-nine (59) libraries were devolved with no attendant resources. The inter-agency technical committee of the summit proposed that **Kshs.319 million** should be devolved to follow this function.

ix. **Museums:** Transition Authority devolved this function without identification of attendant resources. The Council of Governors requested that the Senate allocate funds for this particular function.

(g) Legal Framework for Conditional Grants:

x. A draft document on the administration and reporting of the conditional grants had been generated but not yet adopted. The Council requested that the Senate assist in finalization of the document before the approval of the DoRB. They also noted that it was critical to differentiate between conditional grants and donor funds and that all donor funds related to County functions should be disbursed directly to the county revenue fund.

(h) National Debt:

xi. The CoG noted that the guidelines on borrowing should be implemented consultatively and that the Loans and Grants Council should be established to vet borrowing.

(i) Pensions:

xii. The National Treasury has only factored the aspect of the pensions for the National Government staff. Staff working at County Governments should also be factored in the formula of computation of the provision as they are also public servants and qualify for pension.

xiii. The Bill mentions that Ksh. 6.3 billion was transferred to County Governments in the 2015/16 financial year to cater for county payroll. This is not factual as County Governments were only allocated Ksh 1.7 Billion towards the same after the mediation process of the 2015 Division of Revenue Bill.

(j) Conclusion

xiv. The Council of Governors proposed that the allocation of the sharable revenue to Counties be **Kshs. 332 billion** being equivalent of **35%** of the most recent audited approved accounts for 2013/14 amounting to Kshs. 936 billion.

2.4 PUBLIC HEARING AND MEETING WITH NON-STATE ACTORS

14. The Committee received submissions from the International Budget Partnership (IBP), Institute of Economic Affairs, The Institute for Social Accountability (TISA), Institute of Certified Public Accountants Kenya (ICPAK), Haki Jamii, Langata Youth Network, Institute of Public Finance and Mr. Waweru Njoroge a member of the public.

15. Their submissions raised the following salient issues in as far as the Division of Revenue Bill, 2016 is concerned:

    (a) **Public Participation** The CRA proposed a conditional grant of Ksh. 5 billion for public participation (approximately 101 million per county government). However, the National Treasury and National Assembly rejected this proposal. It's important to not that only a handful of county governments have made concrete attempts at establishing public participation frameworks as envisioned in the devolution laws. It is the responsibility of both levels of government to support the exercise of citizen sovereignty through adequate financial allocations.

    County Governments are assigned function 14 *'Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.'* Unbundled this function requires an estimated Ksh. 100-150 million. There is therefore needed a conditional grant to support this central tenant of the constitution and devolved government. This conditional grant should be accompanied by conditions, which aid transparency, accountability and intra/inter-governmental relations in the application of public participation as well as in county processes.

(b)Roads Maintenance Levy Fund. There is lack of clarity on county roads. The constitution identifies two types of roads, National trunk roads and county roads. However, there is contestation of the definition and assignment of roads falling under the mandate of the National and County Governments. The DoRB should clarify the class of roads targeted by the RMLF for accountability purposes. *Decline in allocations*: Historically, maintenance of class A, B & C roads took up 40% of resources of the Road Maintenance Levy Fund.

Road Maintenance	Allocations
A, B and C roads	40%
Roads in constituencies	32%
Roads in cities and municipalities	15%
Roads in National Parks and Game Reserves	1%

Source: Kenya Roads Board

The rest of the roads including all roads in cities, municipalities and town councils are county road therefore in essence, 47% of the RMLF is what should be currently funding roads in counties. This however is not the case as currently county governments are receiving 15% of the RMLF, 32% less than what they would be receiving prior to devolution.

(c)The uncoordinated restructuring of government owned entities. State corporations (Government Owned Entities) account for a growing share of Kenya's budget. Presently, state corporations performing functions that should have been devolved receive around 78 billion Kenyan Shillings in domestic funds from the budget. If these corporations were reformed, this money would flow to counties either through conditional grant or the unconditional equitable share.

(d) **Funds Follow Functions/ Costing of Government functions**

There is lack of an agreed costing of government functions; and completion of the unbundling of functions. This makes it difficult to determine whether the allocated resources are sufficient. The CRA had factored in potential transfer of additional functions by indicating in their recommendations that the equitable share allocation may increase by Ksh. 4,732 million if devolved functions currently being performed by the Waters Services Board and the Regional Development Authorities are unbundled and transferred to the counties. Therefore any anticipated transfer of additional functions should factor in the matching resources. Parliament should refer to the CRA Report on Costing of Government Functions to determine adequacy of funding to the two levels of government.

(e) **Conditional Allocations to support own revenue enhancement.** The Bill has not addressed the subject of own source revenue generation. The First Quarter, County Budget Implementation Report by the Controller of Budget indicated that in the period July to September 2015, the County governments realized a total of Kshs.6.93 billion from local sources, representing 12.2 per cent of the annual local revenue target of Kshs.56.61 billion. This was below the target of 25 per cent in the reporting period. The National Treasury in the draft Budget Policy Statement 2016 has acknowledged this challenge. Resources should be allocated s towards building revenue enhancement capacity of the counties through measures such as investment in ICT.

(f) **Deal with Absorption Capacity Challenges.** There are huge challenges in absorption of the budget both for the national and county governments. There is need to start tying additional allocation to entities to the real fiscal responsibility issues such as absorption capacity, structural balance between recurrent and capital expenditure and compliance to PFM systems as measured by the report from both internal audit and the Auditor General.

(g) **Staff rationalization vs Public Wage.** According to the National Assembly's "Socio-economic audit of the Constitution Report", The average national government wage cost per employee in 2013 was Ksh. 442,000. This translates, indicatively to an annual wage cost of Ksh. 26.5 billion. The Report further points out that with devolution, a significant number of the national government workforce transferred to the counties. This was reflected in the increase of the wage bill of the counties by Ksh. 49.7 billion from Ksh. 21.6 billion in 2012/13 to Ksh. 71.2 billion in 2013/4.

A corresponding reduction in the wage bill of the National Government would have been expected. This is not evident. The wage bill of the National Government increased from Ksh. 274.4 billion to Ksh. 281.2 billion. Adjusted for the transferred workforce, this translates to a 25% increase in the National Government wage bill, which implies either a significant upward revision of pay, or an equally significant increase in hiring 3.

(h) **Special purpose grant supporting specialized medical access of Ksh. 200 M:** Other grants also lack justifications such as the special conditional grant that is meant for two health facilities in Tana River and Lamu Counties to help them meet demand for emergency medical services. The decision was informed by their proximity to Somalia that made them vulnerable to terror attacks. Parliament should interrogate why only these two counties were selected given that there are other border counties prone to cross border insecurity. The National Treasury should increase this allocation to cater for Mandera, Wajir and Garissa Counties.

(i) **National Interests:** There is a drop in the revenue allocation for the national interest functions from Ksh. 79.2 billion in FY 2015/16 to Ksh. 72.0 billion in 2016/17. These national interests are: enhancing security operations; subsidy initiatives in national irrigation & fertilizers; NYS re-engineering; provision of national social safety for vulnerable groups and provision of laptops to primary schools. The irrigation programme is a generally failed project and should be redesigned instead of continued allocation of more funds to it.

(j) **Public debt:** According to the National Treasury, public debt is expected to increase by Ksh. 71.4 billion from Ksh. 362.4 billion in FY 2015/16 to Ksh. 433.8 billion in FY 2016/17 due to **'shift to the less expensive debt in the international market'.** We are concerned that there is an increase in the public debt despite the National treasury claims that it is a shift to the less expensive debt in the international market. We expect the size of public debt to reduce if there is a real shift to the less expensive debt in the international market. Huge public debts have an effect of slowing down economic growth.

(k) **Other National Obligations:** The Division of Revenue Bill 2016 has taken into consideration the cost of other national obligations like mandatory pension contributions/payments, financing for the constitutional offices, including parliament as well as expenses relating to other statutory bodies and funds. The revenue allocated to this is estimated to be Ksh. 363.2 billion in FY 2016/17 up from Ksh. 341.7 billion in FY 2015/16. We recommend for the Division of Revenue Bill 2016 to cut the revenue allocated towards "other national obligations". We specifically recommend for the reduction on the number of employees in those constitutional offices so as to cut on the wage bill.

(l) The Division of Revenue Bill, 2016 proposes to allocate county governments an equitable share of Ksh. 280.3 a variation from Ksh. 331.8 billion that was proposed by the CRA. This difference is due to the use of a contrasting revenue growth factor by the two institutions. The CRA grows the county equitable share revenue by 15.09% (basing on the average growth rate of audited sharable revenue raised nationally over the past three years), whereas the National Treasury used a growth factor of 7.8%. The National Treasury indicated that it had relied on prior year figures and justified the difference with CRA based on the fact that it took actual revenue "performance" into account. It is unclear what this means since CRA used audited accounts, which already factor in actual collections (rather than targets). Parliament should demand a clear explanation for this difference in growth factors. They noted that the National Treasury had given a growth factor of 9.85 percent in the draft Budget Policy Statement (BPS) released in late January, but had provided no explanation for its shift to a lower percentage in the Division of Revenue Bill.

(m) The Statutory Allocations (earmarked funds e.g. CDF, Women Affirmative Action Fund) will be allocated Ksh. 36.6 Billion in FY 2016/2017. Sec. 4 (1) (a) of the National Government CDF Act 2015 requires that the fund consist of monies of an amount not less than 2.5 percent of all the national government's share of revenue as divided by the annual Division of Revenue Act. The proposed National Government share of revenue in FY 2016/2017 is Ksh. 204 billion. Therefore, 2.5% of 204 Billion is equal to Ksh. 5.1 Billion. The allocation of these funds from the gross government ordinary revenue instead of national government shareable revenue has the effect of reducing resources available for sharing between the national and county governments.

(n) **Monies allocated to independent Constitutional Offices e.g. Office of Auditor General & Office of Controller of Budget.** The allocation to the Independent Offices is stagnating despite the numerous calls from these offices to facilitate efficient operations. There has been a marginal increase from Ksh. 4.72 billion in FY 2015/2016 to Ksh. 4.723 in FY 2016/2017. We recommended an increased allocation towards these independent offices. The senate as the institution safeguarding the interests of the counties should ensure that the auditor general has enough resources for county audits within the constitutionally allowed timeline. The senate should note that the audit report for FY 14/15 is now three months overdue and lack of adequate resources could be one of the reasons hampering the efficiency of the Auditor General's office.

(o) The Division of Revenue Bill 2016 provides no explanation for the difference in the rate of growth of the county's equitable share and overall sharable revenue. In the Division of Revenue Bill 2016, the National Treasury had recommended Kshs. 302 billion be devolved to the counties, an increase from Kshs. 287 billion in 2015/16. Most of these funds were for the equitable share, which will increase by 8% (to Kshs. 280 billion in 2016/17, from Kshs. 260 billion in 2015/16). At the same time, sharable revenue will increase by 11% (to Kshs. 1,380 billion from Kshs. 1,243 billion in 2015/16). This means national government will take an increasing share of total revenue.

The rate of growth of the national and county shares need not be exactly the same, but any differences require explanation. No such arguments are made in the DORB, which fuels suspicion that allocations are arbitrarily arrived at or are skewed to favor one level of government.

(p) There is a need for further debate about what constitutes the "national interest" to ensure that it properly reflects the direction the country wishes to move. CRA, in the previous year, had indicated that national interest should not be equated to national government programs but should be a collective reflection of the country's priorities, regardless of which level of government carries them out. Treasury however continued to define it in terms of the current government's flagship programs. Parliament should ask hard questions about how national interest is defined each year.

(q) There is need to improve on the justifications for conditional grants (including the Level 5 grant) and how they are distributed. There is no clear basis for the size of conditional grants. It is not clear why the grant to Level 5 hospitals is pegged at 4 billion or the free maternity grant at 4.1 billion. The free maternity grant has declined from 4.3 billion last year without explanation. Even the road grant, which both Treasury and CRA had agreed should be 15% of last year's Road Levy Fund, turned out to be valued differently by the two institutions. The National Treasury claimed that 15% of the fund was equivalent to 4.3 billion whereas CRA claimed that 15% was equivalent to 4.8 billion. Due to absence of publicly available financial statements from the Kenya Roads Board to verify the actual returns in 2014/15, Parliament should interrogate further the reasons for the disagreement between Treasury and CRA over the Fund's returns.

(r) There is no clear basis for the distributional criteria used to allocate conditional grants, which is particularly egregious in the case of the Level 5 facilities. The grant is distributed based on bed occupancy rates; however using rates is never a good approach to distributing service-related grants unless the objective is extreme redistribution.

(s) **The conditional grants proposed by National Treasury have limited conditions attached to them in the documents proposing their creation**. It is important that the conditions be clearly laid out, followed by clearly defined enforcement measures should the facilities benefiting from the grant not meet the conditions. While there are some conditions mentioned in the County Allocation of Revenue Bill, it is not clear how they are enforced.

(t) **The failure to reform state corporations.** It was clear since 2010 that water service boards, regional development authorities, roads boards and other state corporations in agriculture, etc. would have to be reformed as they perform some devolved functions. Very little has happened in this regard, however. The issue of roads has been litigated in court and it is likely that other sectors will end up in court as well.

3.0 COMMITTEE OBSERVATIONS AND GENERAL RECOMMENDATIONS

16. The Committee while considering the Bill as well as the submissions from different stakeholders made the following observations:

(a) The total County Government allocation from the revenue raised nationally was enhanced from **Ksh.287.04 billion** in the FY 2015/2016 to **Ksh. 302,197,516,719** in the FY 2016/2017. The 2016/2017 proposed allocation translates to 32.3% of the approved audited revenue of **Ksh. 935,653 million** of FY 2013/2014 thereby fulfilling the constitutional requirement as per Article 203(2) of the Constitution.

(b) Based on the deliberations the Committee held with various stakeholders, the Committee observed that the resulting allocation had been subjected to various negotiations during the budget process to try and build consensus on the key contentious issues.

(c) The Committee, in accordance with Article 218(2)(c) of the Constitution, was informed by the explanatory notes accompanying the Bill, on the reasons for significant deviations made from the recommendations of the Commission on Revenue Allocation.

(d) The Committee noted that as county revenues continued to grow, it was equally important for county governments to appreciate the importance of oversight in ensuring the prudent management of fiscal resources in line with Article 201 of the Constitution. Further there needed to be a renewed focused on increasing collection of county own source revenues to complement transfers from National Government.

(e) The Committee observed that there was an urgent need to bring clarity to the administration and reporting of conditional grants as line ministries were reallocating funds meant for counties to other ministry functions. **The Committee recommends that the National Treasury should set up system where funds for conditional grants related to County functions are disbursed directly to the county revenue fund. Further, line ministries should only be left with the function of ascertaining that counties have met grant conditions and thereafter advising National Treasury to release funds.**

(f) The Committee observed that the National Treasury seemed to be experiencing challenges in the management of county issues particularly on timely fiscal transfers and reporting, as well as follow up with line ministries tasked with transfer of approved conditional funds. **The Committee recommends that it may be prudent for the National Treasury to consider establishing a dedicated unit within its structures to exclusively handle fiscal matters with a view to ensuring seamless intergovernmental fiscal administration.**

(g) The Committee observed that allocations based on National Interest under Article 203(1)(a) of the Constitution were only National Government projects. The Committee noted that national interest was however not equivalent to National Government priorities and that national interest must be determined by the two levels of Government based on agreed priorities that contribute to overall national goals. **The Committee recommends that what is classified as national interest should be defined through an intergovernmental consultation at IBEC with approval from Senate.**

(h) The Committee noted that in order to arrive at County Governments' equitable share of revenue for FY 2016/17, the baseline (i.e. equitable revenue share allocation in FY 2015/16) had been adjusted by a revenue growth factor of 7.8 percent. Similarly the Committee noted that the growth factor used by CRA and IBEC was 15.09% and 10.2% respectively, which in the Committees opinion does not the current performance of revenue. The 7.8% adjustment for growth as used in the bill provides County Governments' with an equitable share of revenue in FY 2016/17 estimated to be Kshs. 280.3 billion. The adjustment was necessitated by Exchequer shortfalls to the tune of an estimated Kshs. 65 billion by the end of December 2015. This shortfall, the Committee noted was expected to grow to about Kshs. 80 billion by the end of the financial year 2015/16 and would be borne by the National Government as the equitable share of revenue for county governments would be transferred to them without deduction.

(i) The Committee noted that on the matter of the Roads Maintenance Levy Fund there was lack of clarity on county roads due to an on-going contestation of the definition and assignment of roads falling under the mandate of the National and County Governments. **The Committee noted that it was critical that the proposed Roads Bill clarify some of these matters as a matter of priority so as to ensure proper structure of funding in the sector.**

(j) The Committee noted that Statutory Allocations e.g. CDF and Women Affirmative Action Fund would be allocated Ksh. 36.6 Billion in FY 2016/2017. The allocation of these funds from the gross government ordinary revenue instead of national government share of revenue, the Committee noted, had the effect of reducing resources available for sharing between the national and county governments and should instead be considered only under the national government share following the vertical division.

(k) The Committee observed that the transfer of approved funds, including conditional allocations should be fast tracked in line with approved schedules. This is informed by continued inordinate delays in facilitating county transfers thereby affecting delivery of county functions and services as well as leading to an increase in pending bills. **The Committee pursuant to Article 219 of the Constitution recommends that the National Treasury should ensure counties share of revenue raised by the National Government is transferred to them without undue delay and without deduction.**

(l) The Committee observed that National Treasury further agreed to provide more resources to five counties under an agreed framework between the five counties and the National Treasury for construction of County Headquarters. It is noted that there were 5 counties that did not inherit offices that could accommodate the headquarters of the county governments. These counties include: Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. Following consultations with the counties concerned, it was agreed that the construction of county headquarters be funded at the cost of Ksh. 518 Million (Ksh. 315.5 Million for the County Executive Offices and Ksh. 202.5 Million for the County Assembly). The National Government would contribute 70 percent of the budget while county governments would contribute 30 percent. The contribution of the National Government would be spread over the next three financial years. In the financial year 2016/17, therefore, the National Treasury proposed to provide a total of Ksh. 610 million for the construction of county headquarters. (i.e. Ksh 122 Million to each of the five counties). The Committee endorsed this agreement including considering an allocation to other deserving counties in successive financial years.

(m) The Committee acknowledged the credit facility extended by the World Bank to support counties and National Government on capacity building, public financial management and civic education. However they expressed concern as to the purpose and whether the World Bank would not consider that the monies be directed towards development in the counties.

(n) The Committee observed with a lot of concern the prevailing condition of pending bills in the counties mainly arising out of poor fiscal management and budget implementation. **The Committee is of the view that county governments should ascertain and clear these pending bills as a matter of urgency to avoid a county fiscal crisis. The Committee further recommends that this matter be looked into within the intergovernmental fiscal framework, which includes CoG, CRA, National Treasury, IBEC, County Assemblies, Senate and other institutions.**

COMMITTEE SPECIFIC OBSERVATIONS ON CRA RECOMMENDATIONS

The Committee members deliberated on the recommendations from the Commission on Revenue Allocation regarding the Bill and observed as follows –

1. The CRA proposals had been discussed at Inter governmental level by both IBEC and Summit, and subsequently the proposals below were arrived at:
    a. The revenue growth formula be adjusted by including the GDP growth factor to a proposed figure of 10.2%; and
    b. Kenya Shillings 1.5 billion be provided for village polytechnics.

2. An AdHoc Committee of the Summit also proposed that Ksh. 8.34 billion be provided for the county roads; a Ksh. 2.2 billion increase from the fuel levy fund, and Ksh. 319 million be provided for libraries.
3. Members observed that the village polytechnics, as well as CRA recommendations for the Ksh. 5 billion for public participation, should be borne by the counties from their shareable revenue.
4. Members recommended that the proposed additional allocations by the summit AdHoc Committee be adopted, subject to availability of Summit meeting minutes endorsing the same. If the proposals have not been approved by the Summit, no adjustments would be made.
5. The Committee recommended that the revenue growth factor proposed by the National Treasury be retained due to declining revenue collections by the Kenya Revenue Authority and rising debt obligations.

4.0 COMMITTEE RECOMMENDATION

Following the deliberations held with the National Treasury, Council of Governors and Commission on Revenue Allocation in conjunction with the submissions received during the public hearing, the Standing Committee on Finance, Commerce and Budget, as provided for by standing order 134(1) and as read together with standing order 160(3) of the Senate Standing Orders, recommends as follows:

That, this House adopts the proposed county equitable share allocation of Ksh. 280,300,000,000 and Ksh. 21,897,516,719 as additional conditional allocation, bringing the total county allocation for the FY 2016/2017 to Ksh. 302,197,516,719 as contained in the Division of Revenue Bill (National Assembly Bill No.4 of 2016).

5.0 APPENDIXES

(a) Minutes of the Committee sittings on the consideration of the Division of Revenue Bill (National Assembly Bill No. 11 of 2015).

(b) Submission by Commission on Revenue Allocation

(c) Submission by Council of Governors

(d) Submission by International Budget Partnership

(e) Submission by The Institute of Social Accountability

(f) Submission by Institute of Chartered Public Accountants

(g) Submission by HakiJamii

APPENDIX (a).

MINUTES OF THE 53RD SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, MINI CHAMBER ON TUESDAY, 12TH APRIL, 2016 AT 10.00 AM

PRESENT

1. Sen. Billow Kerrow	**-Chairperson**
2. Sen. Peter Ole Mositet	-Vice Chairperson
3. Sen. Beatrice Elachi	-Member
4. Sen. Mutahi Kagwe	-Member
5. Sen. (Dr.) Boni Khalwale	-Member
6. Sen. (Prof.) Peter Anyang' Nyong'o	-Member
7. Sen. Zipporah Kittony	-Member
8. Sen. Paul Ben Njoroge	-Member
9. Sen. Mutula Kilonzo Junior	-Member
10. Sen. Aaron Kipkirui Cheruiyot	-Member

ABSENT WITH APOLOGY

1. Sen. G.G Kariuki	-Member
2. Sen. Moses Wetang'ula	-Member
3. Sen. (Dr.) Wilfred Machage	-Member
4. Sen. (Prof.) John Lonyang'apuo	-Member
5. Sen. Catherine Mukite	-Member
6. Sen. (Dr.) Agnes Zani	-Member

IN ATTENDANCE	SENATE SECRETARIAT
1. Ms. Brenda Ogembo	-Committee Clerk
2. Mr. Victor Bett	-Committee Clerk
3. Mr. Robert Nyagah	-Parliamentary Budget Office
4. Mr. Fredrick Muthengi	-Parliamentary Budget Office
5. Mr. Gorod Abdi	-Parliamentary Budget Office
6. Ms. Lucy Radoli	-Parliamentary Budget Office
7. Ms. Fatuma Abdi	- Audio Recording
8. Mr. Boniface Mbithi	-Seargent at Arms

MIN NO. 311/2016: **PRELIMINARIES**

The chair called the meeting to order at 10.25 am followed by a word of prayer.

MIN NO. 312/2016: **ADOPTION OF THE AGENDA**

The agenda was adopted as follows;

1. Preliminaries
   (i) *Prayer*
   (ii) *Remarks by the Chairperson*
2. Adoption of the Agenda
3. Confirmation of Minutes
4. **Adoption of the Committee Report on the Division of Revenue Bill, 2016.**
5. House Keeping
6. Any Other Business
7. Date of Next Meeting
8. Adjournment

MIN NO. 313/2016: **CONFIRMATION OF MINUTES**

The Chairman led the meeting to the confirmation of Minutes of all the 4 Sittings that discussed the Division of Revenue Bill, 2016 Sittings as follows;

Minutes of the 49th sitting on 11th April, 2016 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Aaron Cheruiyot and seconded by Sen. Beatrice Elachi respectively.

Minutes of the 50th sitting on 12th April, 2016 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mutahi Kagwe and seconded by Sen. Zipporah Kittony respectively.

Minutes of the 51st sitting on 12th April, 2016 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mutahi Kagwe and seconded by Sen. Zipporah Kittony respectively.

Minutes of the 52nd sitting on 13th May, 2016 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mutahi Kagwe and Sen. Beatrice Elachi respectively.

MIN NO. 314/2016: ADOPTION OF THE COMMITTEE REPORT ON THE DIVISION OF REVENUE BILL, 2016.

The Chairperson led the Committee through the draft recommendations and adopted their report with the following recommendations -

(a) The total County Government allocation from the revenue raised nationally was enhanced from **Ksh.287.04 billion** in the FY 2015/2016 to **Ksh. 302,197,516,719** in the FY 2016/2017. The 2016/2017 proposed allocation translates to 32.3% of the approved audited revenue of **Ksh. 935,653 million** of FY 2013/2014 thereby fulfilling the constitutional requirement as per Article 203(2) of the Constitution.

(b) Based on the deliberations the Committee held with various stakeholders, the Committee observed that the resulting allocation had been subjected to various negotiations during the budget process to try and build consensus on the key contentious issues.

(c) The Committee, in accordance with Article 218(2)(c) of the Constitution, was informed by the explanatory notes accompanying the Bill, on the reasons for significant deviations made from the recommendations of the Commission on Revenue Allocation.

(d) The Committee noted that as county revenues continued to grow, it was equally important for county governments to appreciate the importance of oversight in ensuring the prudent management of fiscal resources in line with Article 201 of the Constitution. Further there needed to be a renewed focused on increasing collection of county own source revenues to complement transfers from National Government.

(e) The Committee observed that there was an urgent need to bring clarity to the administration and reporting of conditional grants as line ministries were reallocating funds meant for counties to other ministry functions. **The Committee recommends that the National Treasury should set up system where funds for conditional grants related to County functions are disbursed directly to the county revenue fund. Further, line ministries should only be left with the function of ascertaining that counties have met grant conditions and thereafter advising National Treasury to release funds.**

(f) The Committee observed that the National Treasury seemed to be experiencing challenges in the management of county issues particularly on timely fiscal transfers and reporting, as well as follow up with line ministries tasked with transfer of approved conditional funds. **The Committee recommends that it may be prudent for the National Treasury to consider establishing a dedicated unit within its structures to exclusively handle fiscal matters with a view to ensuring seamless intergovernmental fiscal administration.**

(g) The Committee observed that allocations based on National Interest under Article 203(1)(a) of the Constitution were only National Government projects. The Committee noted that national interest was however not equivalent to National Government priorities and that national interest must be determined by the two levels of Government based on agreed priorities that contribute to overall national goals. **The Committee recommends that what is classified as national interest should be defined through an intergovernmental consultation at IBEC with approval from Senate.**

(h) The Committee noted that in order to arrive at County Governments' equitable share of revenue for FY 2016/17, the baseline (i.e. equitable revenue share allocation in FY 2015/16) had been adjusted by a revenue growth factor of 7.8 percent. Similarly the Committee noted that the growth factor used by CRA and IBEC was 15.09% and 10.2% respectively, which in the Committees opinion does not the current performance of revenue. The 7.8% adjustment for growth as used in the bill provides County Governments' with an equitable share of revenue in FY 2016/17 estimated to be Kshs. 280.3 billion. The adjustment was necessitated by Exchequer shortfalls to the tune of an estimated Kshs. 65 billion by the end of December 2015. This shortfall, the Committee noted was expected to grow to about Kshs. 80 billion by the end of the financial year 2015/16 and would be borne by the National Government as the equitable share of revenue for county governments would be transferred to them without deduction.

(i) The Committee noted that on the matter of the Roads Maintenance Levy Fund there was lack of clarity on county roads due to an on-going contestation of the definition and assignment of roads falling under the mandate of the National and County Governments. **The Committee noted that it was critical that the proposed Roads Bill clarify some of these matters as a matter of priority so as to ensure proper structure of funding in the sector.**

(j) The Committee noted that Statutory Allocations e.g. CDF and Women Affirmative Action Fund would be allocated Ksh. 36.6 Billion in FY 2016/2017. The allocation of these funds from the gross government ordinary revenue instead of national government share of revenue, the Committee noted, had the effect of reducing resources available for sharing between the national and county governments and should instead be considered only under the national government share following the vertical division.

(k) The Committee observed that the transfer of approved funds, including conditional allocations should be fast tracked in line with approved schedules. This is informed by continued inordinate delays in facilitating county transfers thereby affecting delivery of county functions and services as well as leading to an increase in pending bills. **The Committee pursuant to Article 219 of the Constitution recommends that the National Treasury should ensure counties share of revenue raised by the National Government is transferred to them without undue delay and without deduction.**

(l) The Committee observed that National Treasury further agreed to provide more resources to five counties under an agreed framework between the five counties and the National Treasury for construction of County Headquarters. It is noted that there were 5 counties that did not inherit offices that could accommodate the headquarters of the county governments. These counties include: Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. Following consultations with the counties concerned, it was agreed that the construction of county headquarters be funded at the cost of Ksh. 518 Million (Ksh. 315.5 Million for the County Executive Offices and Ksh. 202.5 Million for the County Assembly). The National Government would contribute 70 percent of the budget while county governments would contribute 30 percent. The contribution of the National Government would be spread over the next three financial years. In the financial year 2016/17, therefore, the National Treasury proposed to provide a total of Ksh. 610 million for the construction of county headquarters. (i.e. Ksh 122 Million to each of the five counties). The Committee endorsed this agreement including considering an allocation to other deserving counties in successive financial years.

(m) The Committee acknowledged the credit facility extended by the World Bank to support counties and National Government on capacity building, public financial management and civic education. However they expressed concern as to the purpose and whether the World Bank would not consider that the monies be directed towards development in the counties.

(n) The Committee observed with a lot of concern the prevailing condition of pending bills in the counties mainly arising out of poor fiscal management and budget implementation. **The Committee is of the view that county governments should ascertain and clear these pending bills as a matter of urgency to avoid a county fiscal crisis. The Committee further recommends that this matter be looked into within the intergovernmental fiscal framework, which includes CoG, CRA, National Treasury, IBEC, County Assemblies, Senate and other institutions.**

The Committee members deliberated on the recommendations from the Commission on Revenue Allocation regarding the Bill and observed as follows –

1. The CRA proposals had been discussed at Inter governmental level by both IBEC and Summit, and subsequently the proposals below were arrived at:

    a. The revenue growth formula be adjusted by including the GDP growth factor to a proposed figure of 10.2%: and

    b. Kenya Shillings 1.5 billion be provided for village polytechnics.

2. An AdHoc Committee of the Summit also proposed that Ksh. 8.34 billion be provided for the county roads; a Ksh. 2.2 billion increase from the fuel levy fund, and Ksh. 319 million be provided for libraries.

3. Members observed that the village polytechnics. as well as CRA recommendations for the Ksh. 5 billion for public participation, should be borne by the counties from their shareable revenue.

4. Members recommended that the proposed additional allocations by the summit AdHoc Committee be adopted, subject to availability of Summit

meeting minutes endorsing the same. If the proposals have not been approved by the Summit, no adjustments would be made.

5. The Committee recommended that the revenue growth factor proposed by the National Treasury be retained due to declining revenue collections by the Kenya Revenue Authority and rising debt obligations.

Following the deliberations held with the National Treasury. Council of Governors and Commission on Revenue Allocation in conjunction with the submissions received during the public hearing, the Standing Committee on Finance. Commerce and Budget, as provided for by standing order 134(1) and as read together with standing order 160(3) of the Senate Standing Orders, recommended **that, the House adopts the proposed county equitable share allocation of Ksh. 280,300,000,000 and Ksh. 21,897,516,719 as additional conditional allocation, bringing the total county allocation for the FY 2016/2017 to Ksh. 302,197,516,719 as contained in the Division of Revenue Bill (National Assembly Bill No.4 of 2016).**

MIN NO. 315/2016: **DATE OF NEXT MEETING**

The date of the next meeting was to be called on notice.

MIN NO. 316/2016: **ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.25am.

SIGNED

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(CHAIRPERSON)

DATE

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MINUTES OF THE 52ND SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, MINI CHAMBER ON WEDNESDAY, 13TH APRIL, 2016 AT 10.00AM

PRESENT

1.	Sen. Billow Kerrow	**-Chairperson**
2.	Sen. Moses Wetang'ula	-Member
3.	Sen. Mutahi Kagwe	-Member
4.	Sen. (Dr.) Wilfred Machage	-Member
5.	Sen. Beatrice Elachi	-Member
6.	Sen. Catherine Mukite	-Member
7.	Sen. Paul Ben Njoroge	-Member

ABSENT WITH APOLOGY

1.	Sen. Peter Ole Mositet	-Vice Chairperson
2.	Sen. Zipporah Kittony	-Member
3.	Sen. Mutula Kilonzo Junior	-Member
4.	Sen. (Dr.) Boni Khalwale	-Member
5.	Sen. (Dr.) Agnes Zani	-Member
6.	Sen. Aaron Kipkirui Cheruiyot	-Member
7.	Sen. G.G Kariuki	-Member
8.	Sen. (Prof.) Peter Anyang' Nyong'o	-Member
9.	Sen. (Prof.) John Lonyang'apuo	-Member

	IN ATTENDANCE	**SENATE SECRETARIAT**
1.	Ms. Brenda Ogembo	-Committee Clerk
2.	Mr. Victor Bett	-Committee Clerk
3.	Mr. Robert Nyagah	-Parliamentary Budget Office
4.	Mr. Fredrick Muthengi	-Parliamentary Budget Office
5.	Mr. Gorod Abdi	-Parliamentary Budget Office
6.	Ms. Lucy Radoli	-Parliamentary Budget Office
7.	Ms. Fatuma Abdi	- Audio Recording
8.	Mr. Mbithi	-Seargent at Arms

MIN NO. 305/2016: **PRELIMINARIES**

The chair called the meeting to order at 10.25 am followed by a word of prayer.

MIN NO. 306/2016: **ADOPTION OF THE AGENDA**

The agenda was adopted as follows;

1. Preliminaries
   - *(i) Prayer*
   - *(ii) Remarks by the Chairperson*
2. Adoption of the Agenda
3. Confirmation of Minutes
4. **Consideration of Matters arising from the Division of Revenue Bill, 2016.**
5. House Keeping
6. Any Other Business
7. Date of Next Meeting
8. Adjournment

MIN NO. 307/2016: **CONFIRMATION OF MINUTES**

The Chairman informed the meeting that the confirmation of minutes will be done during the next housekeeping meeting.

MIN NO. 308/2016: **CONSIDERATION OF MATTERS ARISING FROM THE DIVISION OF REVENUE BILL, 2016.**

The Chairperson lead the Committee through the draft schedule as presented to the Committee ***(Copy attached)*** that gives comparisons of proposals in the Vill, as presented by the National Treasury, IBEC's position though it requires backing of signed minutes of the Summit and CRA's position.

The Committee went through the schedule and after extensive discussions the Committee was uncomfortable with going for mediation since the country's collections during the last Financial Year was not as was projected and therefore figures were way too low. The committee observed that, as it was presented by the National Treasury that, Exchequer shortfalls to the tune of an estimated Kshs. 50 billion by the end of December 2015 was observed.

The Committee therefore resolved to adopt the Committees report the following day (14/4/2016) in the morning meeting after the Committee gets a copy of the signed minutes, subject to its availability for it to be able to make a concise decision on the figures as contained in the table.

SCHEDULE			
Allocation of revenue raised nationally between the national ant county governments for fiscal year 2016/17			
Type/ level of allocation	Amount in Kshs.	% of FY 2013/14 audited revenue (Ksh. 935,653 millions*)	Committee Recommendation
A. **National Government Revenue Share**	1,099,899,000,000		
O/w:			
1. Free maternal healthcare.	4,121,029,353		
2. Leasing of medical equipment.	4,500,000,000		
3. Compensation for use fees foregone.	900,000,000		
4. Level 5 Hospitals.	4,000,000,000		
5. Special purpose grant supporting access to emergency medical services.	200,000,000		
6. Allocation from Fuel Levy Fund (15%).	4,306,807,629		
7. Conditional allocations (loans and grants)	3,870,679,737		
8. **Equalisation Fund**	6,000,000,000	0.64%	
B. **County Equitable Share**	280,300,000,000	30.00%	
Add Conditional Allocation	21,898,516,719		
O/w:			
1. Free maternal healthcare.	4,121,029,353		
2. Leasing of medical equipment.	4,500,000,000		
3. Compensation for use fees foregone.	900,000,000		
4. Level 5 Hospitals.	4,000,000,000		
5. Special purpose grants supporting access to emergency medical services.	200,000,000		
6. Allocation from Fuel Levy Fund (15%).	4,306,807,629		
7. Conditional allocations (loans and grants)	3.870.679.737		
Total County Allocation	302,197,516,719	32.30%	
Total Shamble Revenue	1,380,199,000,000		
* based on 201 3/14 audited revenues as approved by the National Assembly			

Other considerations	CRA	National Assembly Bill and submitted by National Treasury	IBEC
towards equitable			
1. Revenue growth factor as outstanding factor. CRA uses 15.09 percent being averages of the last three years while Treasury's allocation reflects 7.8 %. IBEC percentage is at 10.2 percent	39,200,000,000	20,225,000,000	26,484,000,000
2. County Roads. CRA submits that the amount proposed by Adhoc Technical Committee* of IBEC be considered	27,790,000,000		8,430,000,000
3. Libraries- CRA proposal that allocation towards libraries as proposed by the Adhoc technical committee of IBEC and as one of the functions devolved be considered			319,000,000
4. Public Participation	5,000,000,000		
Additional conditional			
5. CRA submits that Road Fuel Levy be at the level proposed by the Adhoc Committee of applying 25 % of the levy fund .	4,756,000,000	4,307,000,000	6,587,000,000
6. Village polytechnics			1,500,000,000

MIN NO. 309/2016: DATE OF NEXT MEETING

The date of the next meeting was to be held on 13th April, 2016 at 10.00am.

MIN NO. 310/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.55pm.

SIGNED ____________________

(CHAIRPERSON)

DATE 14/4/16

MINUTES OF THE 51ST SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, MINI CHAMBER ON TUESDAY, 12TH APRIL, 2016 AT 12.00 NOON

PRESENT

1. Sen. Billow Kerrow -**Chairperson**
2. Sen. Zipporah Kittony -Member
3. Sen. Moses Wetang'ula -Member
4. Sen. Mutahi Kagwe -Member
5. Sen. Mutula Kilonzo Junior -Member

ABSENT WITH APOLOGY

1. Sen. Peter Ole Mositet -Vice Chairperson
2. Sen. (Dr.) Wilfred Machage -Member
3. Sen. (Dr.) Boni Khalwale -Member
4. Sen. (Dr.) Agnes Zani -Member
5. Sen. Beatrice Elachi -Member
6. Sen. Aaron Kipkirui Cheruiyot -Member
7. Sen. Catherine Mukite -Member
8. Sen. Paul Ben Njoroge -Member
9. Sen. G.G Kariuki -Member
10. Sen. (Prof.) Peter Anyang' Nyong'o -Member
11. Sen. (Prof.) John Lonyang'apuo -Member

IN ATTENDANCE **THE NATIONAL TREASURY**

1. Dr. Kamau Thugge -PS, National Treasury
2. Mr. Aursent Mwenda -Ag. Head, IGFR
3. Mr. Geoffrey Malombe -Snr. Ass. Acc. Gemeral
4. Mr. Geoffrey Mwau -DG, BFEA, National Treasury
5. Mr. Fred Owegi -Advisor, National Treasury

SENATE SECRETARIAT

1. Ms. Brenda Ogembo	-Committee Clerk
2. Mr. Victor Bett	-Committee Clerk
3. Mr. Fredrick Muthengi	-Parliamentary Budget Office
4. Mr. Gorod Abdi	-Parliamentary Budget Office
5. Ms. Lucy Radoli	-Parliamentary Budget Office
6. Ms. Fatuma Abdi	- Audio Recording
7. Mr. Mbithi	-Seargent at Arms

MIN NO. 305/2016: PRELIMINARIES

The chair called the meeting to order at 10.10 am followed by a word of prayer.

MIN NO. 306/2016: ADOPTION OF THE AGENDA

The agenda was adopted as follows;

1. Preliminaries
   (i) Prayer
   (ii) Remarks by the Chairperson
2. Adoption of the Agenda
3. Confirmation of Minutes
4. **Public Hearing on the Division of Revenue Bill, (DORB), 2016.**
   - **Meeting with the Council of Governors (11 am - 12 noon)**
   - **Meeting with the National Treasury (12 noon - 1 pm)**
5. House Keeping
6. Any Other Business
7. Date of Next Meeting
8. Adjournment

MIN NO. 307/2016: CONFIRMATION OF MINUTES

The Chairman informed the meeting that the confirmation of minutes will be done during the next housekeeping meeting.

MIN NO. 308/2016: MEETING WITH THE NATIONAL TREASURY

The PS of the National Treasury, Dr. Thugge took the Committee through his presentation as follows;

1. In order to arrive at County Governments' equitable share of revenue for FY 2016/17, the baseline (i.e. equitable revenue share allocation in FY 2015/16) is adjusted by a revenue growth factor of 7.8 percent. Based on this adjustment, County Governments' equitable share of revenue in FY 2016/17 is estimated to be Kshs. 280.3 billion. The adjustment was necessitated by Exchequer shortfalls to the tune of an estimated Kshs. 50 billion by the end of December 2015. This shortfall is expected to grow to about Kshs. 80 billion by the end of the financial year 2015/16. Accordingly, the National Government will be cushioning county governments of this revenue shortfall hence the equitable share of revenue for county governments will be transferred to them without deduction. If the Kshs. 80 billion is reduced from the National Governments equitable share for FY 2016/17, it therefore implies disproportionate negative fiscal impact on the National Government leaving it worse off than the last financial years' equitable share. It is therefore necessary to plan with a realistic growth factor, hence the adjustment to 7.8 percent. This allocation is above the constitutional minimum of 15 percent of the latest audited revenues for FY 2013/14 (i.e. Ksh. 935.7 billion) and indeed it is more than double the Constitutional minimum threshold.

2. In addition to the above equitable share allocation, County Governments will in FY 2016/17, receive additional conditional allocations amounting to Kshs 21.9 billion as follows:
   a) free maternal healthcare: Ksh. 4.1 billion
   b) leasing of medical equipment: Ksh. 4.5 billion
   c) compensation for user fees foregone: Ksh. 900 million
   d) level 5 hospital grant: Ksh. 4 billion
   e) Kshs 4.3 billion in the form of a conditional grant transferred from the Road Maintenance Levy Fund (RMLF)

f) Kshs 0.2 billion in the form of a Special Purpose Grant supporting strengthening of access to emergency medical services in Lamu and Tana River counties, which are vulnerable to security threats.

g) Kshs 3.9 billion from proceeds of loans and grants from Development Partners to finance devolved functions within specific counties in accordance with the signed financing agreement for each loan/grant.

County allocations under (a), (c), (d), (e), and (f) will be transferred to the respective County Revenue Funds (CRFs) while grants under (b) and (g) shall be budgeted for at the national level and managed by the National Government on behalf of county governments.

The National Treasury will be proposing two further amendments to the DoRB and CARB 2016 submitted to Parliament to incorporate the following changes:

a) Conditional grant to support the construction of county headquarters in 5 counties: There are 5 counties that did not inherit offices that could accommodate the headquarters of the county governments. These counties include: Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. Following consultations with the counties concerned, it has been agreed that the construction of county headquarters be funded at the cost of Ksh. 518 Million (Ksh. 315.5 Million for the County Executive Offices and Ksh. 202.5 Million for the County Assembly). The National Government will contribute 70 percent of the budget while county governments will contribute 30 percent. The contribution of the National Government will be spread over next three financial years. In the financial year 2016/17, therefore, the National Treasury proposes to provide a total of Ksh. 610 million for the construction of county headquarters. (i.e. Ksh 122 Million to each of the five counties).

b) Conditional grant amounting to Ksh 1.41 billion to be financed by a World Bank credit in support of the Kenya Devolution Support Program (KDSP). The World Bank has agreed to extend to the Government of Kenya (GoK) a total of US $200 Million over a period of five (5) years for purposes of the Kenya Devolution Support Programme (KDSP). This credit is to be disbursed on the basis of capacity building and performance levels achieved by the national and county governments and only upon confirmation that the pre-determined results have been achieved. It is expected that 80% of the funds (US$160 million) will flow to County Governments as capacity and performance grants and the balance 20%(US$40 million).

The approval for the credit facility had not been granted by the time of submitting the DoRB and CARB 2016 in February 2016 and therefore could not be reflected in the DoRB and CARB 2016. The World Bank Board approved the credit facility on 15th march 2016. The support will entail capacity building for devolution, anchored under the National Capacity Building Framework (NCBF). KDSP will seek to strengthen institutions and systems for devolved service delivery in the following five priority areas:

(i) Strengthening public financial management (PFM) systems;

(ii) Strengthening County Human resource management;

(iii) Improving county planning and Monitoring & Evaluation systems; and,

(iv) Civic Education and Public Participation.

(v) Strengthening Intergovernmental relations.

The National Treasury will therefore be proposing further amendments to the DoRB 2016 as suggested above (by replacing the Schedule in the DoRB 2016) and to the CARB 2016 by replacing the Third Schedule of the Bill with the one attached to this brief.

With the above two amendments, total allocations to county governments in FY 2016/17 will be Ksh. 304.1 Billion or 33% of the last audited revenue.

3. There will also be an additional allocation Ksh. 6 billion from the Equalization Fund to be spent in counties which have been determined to be marginalized.

4. Accordingly, in 2016/17, counties will share an estimated Kshs 302.2 billion, which represents a 5 percent increase from projected total transfers for 2015/16, which is Kshs 287.0 billion.

5. The balance of the shareable revenue after allocating funds to Equalization Fund and County Governments estimated at Ksh. 1,093.9 billion will be allocated to the

National Government. (A copy of the Division of Revenue Bill, 2016, including the MEMORANDUM explaining the allocations is attached for information)

6. The equitable share of revenue and the conditional allocations are allocated among county governments on the basis of the revenue sharing formula approved by Parliament in November 2012. The formula takes into account population (45 percent), land area (8 percent), poverty (20 percent), equal share (25 percent), and fiscal responsibility (2 percent). However, a process led by the Commission on Revenue Allocation (CRA) is ongoing to develop the second generation criteria for the sharing of revenue among the counties.

Differences between the CRA and National Treasury Proposals

7. **County Equitable Share of Revenue:** The CRA recommends County Governments' equitable share of revenue of Ksh. 331.8 billion. Sources of differences with the National Treasury proposal are as follows:

- *Use of different revenue growth factor:* CRA grows the county equitable share of revenue by 15.09 percent, which is the average growth rate of audited shareable revenue raised nationally over the past three years. The National Treasury on the other hand uses a revenue growth factor of 7.9 percent. This growth factor has taken into consideration performance of revenues which have not been performing well in the recent past.

- *County equitable revenue share adjustment of Ksh. 27.8 billion for additional county roads*: In anticipation of a decision by the Transition Authority (TA) to transfer additional county roads in FY 2016/17, the CRA proposed to gross up the county equitable share of revenue for 2016/17 by an allocation of Ksh. 27.8 billion for construction and rehabilitation of county roads. It should be noted that at the time when CRA recommended the transfer of an additional Ksh. 27.8 billion to County Governments, the TA had not gazetted the decision to transfer additional county roads to County Governments. The National Treasury view is that any additional resources to be transferred to County Governments in respect of county roads function should be supported by a

- gazette notice by the TA authorising such transfer and a determination of resources, if any, to be transferred to County Governments. It should, however, be noted that as early as FY 2013/14, resources relating to roads were transferred to County Governments and therefore the county equitable revenue share proposed by the National Treasury for FY 2016/17 already includes an allocation for county roads. Therefore, there is no justification for transfer of additional resources since resources were already transferred. What had been delayed is the process of transferring the function.

- *County equitable revenue share adjustment of Ksh. 5 billion to cater for public participation*: The CRA has proposed a further adjustment of the equitable revenue share to include an allocation of Ksh.5.0 billion to cater for public participation in FY 2016/17. The National Treasury view is that whilst public participation is a constitutional requirement for both levels of government in carrying out any development agenda, each level of government is required by law to set aside funds for the same function form its resources.

8. **Existing Conditional Allocations:** The CRA has proposed to increase by a higher growth factor of 15.09 percent (to Ksh. 20 billion in FY 2016/17) all existing conditional allocations for: Level-5 Hospitals; Free Maternal Health Care; Compensation for user fees forgone; leasing of medical equipment and county roads. The National Treasury on the other hand has proposed an allocation of Ksh. 17.8 billion for FY 2016/17. These conditional allocations, as is the practice, have determined through the MTEF budget process following sector negotiations upon consideration of all national government priorities. This is the process provided for in law for determining annual budgetary allocations.

9. **Proposed new conditional allocations:** The CRA has proposed several new conditional allocations amounting to Ksh. 25.7 billion which the National Treasury has not included in the County Allocation of Revenue Bill for FY 2016/17. These include:

a. *Allocation to cater for emoluments for Devolved staff of Ksh. 5.196 billion*:- CRA has proposed an additional Ksh. 5.196 billion, to be shared proportionately among counties based on payroll of devolved staff. These allocations are intended to act as a short term stop gap measure to cushion counties that inherited a relatively higher number of employees, against expenses on salaries as they await conclusion of the staff rationalization programme. It should, however, be noted that in costing of devolved functions adequate provisions were made to cater for county personnel expenses. Indeed, additional allocations (Ksh. 6.3 billion) were approved by the Senate to cater for county payroll were included in the equitable share of revenue for FY 2015/16. It should also be remembered that in FY 2013/14 amounts set aside to hold harmless county governments that inherited higher than average wage bills, were shared on the basis of the revenue sharing formula following an agreement among county governments. In the opinion of the National Treasury, at the current level of funding county governments have sufficient resources to cater for the cost of personnel emoluments.

b. *Additional conditional allocation for construction of County headquarters of Ksh. 4.0 billion* - CRA proposes an additional conditional allocation of Ksh. 4.0 billion to be shared equally for construction of county headquarters in Tharaka Nithi, Lamu, Nyandarua, Tana River and Isiolo counties. The above named counties did not inherit offices that could accommodate the county government. Following further consultation it has been agreed that the construction of county headquarters in the 5 counties be funded at a cost of Ksh. 500 million per county (Ksh. 300 for the County Executive office and Ksh. 200 million for the County Assembly). The National Government will contribute 70 percent of the cost and the county governments will contribute 30 percent. The National Government contribution will be spread over three years. The National Treasury will therefore be proposing further amendment to the DoRB and CARB 2016 to reflect this change by replacing Schedule in the DoRB 2016 as well as Schedule 2 of the CARB 2016.

c. *Additional conditional allocations for Rehabilitation of Primary and Secondary school of Ksh. 5.0 billion*- the proposed new conditional additional allocation by CRA of Ksh. 5.0 billion is meant for building of school infrastructure, a role they say has been left to parents despite the function being a national one. The view of the National Treasury is that these are National government functions and that such a conditional grant can only be initiated by the ministry responsible for primary and secondary education.

d. *Conditional additional allocation for the Establishment of County Emergency Fund of Ksh. 5.2 billion*: - CRA has proposed new conditional additional allocation of Ksh. 5.2 billion as seed money towards establishment of County Emergency Funds in line with provisions of PFMA Section 110(1) to be shared proportionately among counties. The National Treasury holds contrary opinion on this proposal because the PFMA anticipates that all governments, both national and county, should set aside funds for the establishment of their respective Emergency Funds. More over a similar proposal was dropped on the above legal basis by the mediation committee of Parliament when making recommendations on the Division of Revenue Bill, 2015.

e. *Conditional additional allocation for the Rehabilitation of Village Polytechnics of Ksh. 6.3 billion:* - the CRA has further proposed an additional conditional allocation of Ksh. 6.3 billion from the national government share of revenue to county governments so as to build, equip and renovate village polytechnics. The CRA further argue that these village polytechnics will go a long way to serve as centres of excellence to empower youth with the requisite skills to generate employment. The National Treasury acknowledges this is a devolved function and that the Village Polytechnics are essential in developing skills of the Youth who don't transit to institutions of higher learning. However, due to limitation in resources, the National Treasury recommends that this conditional allocation be done through donor financing within the provisions of the External Resources Policy of the National Treasury. As such, it is proposed that the decision to include it in the budget for FY 2016/17 be shelved until a potential donor is identified.

10. **Response to the Recommendations of the Intergovernmental Budget and Economic Council (IBEC)**

The Intergovernmental Budget and Economic Council (IBEC) recommended that county equitable share of revenue for FY 2016/17 be increased by a growth factor arrived at on the basis of the principles agreed at the IBEC meeting of 11th February 2015. The implementation of this recommendation is, however, not possible given that revenue collection at the national level has been below target.

The IBEC further resolved that county governments be allocated additional conditional grants amounting to Ksh. 1.5 billion to support the rehabilitation of village polytechnics. The National Government recognizes the critical role played by village polytechnics in contributing to economic development and increasing employment opportunities for the youth. However, given the tight financial position of Government it is not possible to provide this additional allocation to counties in FY 2016/17. This request will be considered when the financial position of Government improves. The National Government will also seek the support of development partners.

The IBEC also recommended that the National Government considers allocating some funds for the construction of headquarters for five counties, that is, Lamu, Tharaka Nithi, Isiolo, Nyandarua, and Tana River. As explained at the IBEC meeting of 9th February 2016, this will be funded when discussions with the concerned counties are concluded and subject to availability of funds. Following further consultations, it has been agreed that constructions of county headquarters be funded in the manner proposed in paragraph 9b above.

11. It should also be noted, as demonstrated in the table below, after taking into account the criteria set out in Article 203(1) of the Constitution, only Ksh. 203.4 billion of the shareable revenue is left to finance all other national Government need. It is clear from the table below that any increase in county allocation will further reduce the allocation for national government and make it difficult for the national government to deliver critical services such as internal security, roads, energy, education etc.

Table: Evaluation of the Bill against Article 203 (1) of the Constitution (These are estimates at the time of finalizing the proposal on the Division of Revenue Bill, 2016)

	ITEM DESCRIPTION	2015/16	2016/17
		Ksh. Millions	Ksh. Millions
A	**Ordinary Revenue (excluding AIA)**	**1,249,900**	**1,380,199**
B	**National Interest [Article 203 (1)(a)]**	**79,189**	**71,954**
	1. Enhancement of Security Operations (police vehicles, helicopters, defence etc.)	17,700	18,900
	2. National Irrigation & Fertilizer Clearance	12,500	9,500
	3. NYS Re-engineering	17,055	11,620
	4. National Social safety net - (for older persons, OVC, Child Welfare, severe disability, urban food subsidy)	14,354	14,354
	5. Laptops	17,580	17,580
C	**Public Debt (Article 203 [1][b])**	**362,391**	**433,800**
D	**Other National Obligations (Article 203 [1][b])**	**341,744**	**363,162**
	1. Pensions, constitutional salaries & other	54,617	56,115
	3. Constitutional Commissions (Art. 248(2)) - i.e. CRA, CIC, SRC, NLC, NPSC, IEBC, TSC	189,066	208,763
	3. Independent Offices(Art. 248(3)) - i.e. AG & CoB	4,720	4,723
	4. Parliament	27,277	27,705
	5. Other Constitutional Institutions- AG's office and DPP	6,863	6,607
	6. Other Statutory Bodies (e.g. EACC,RPP,WPA,CAJ, IPOA, NGEC)	4,697	4,855
	7. Judiciary	17,161	17,759
	8. Other Statutory Allocations(earmarked funds e.g. Constituency Development Fund, Women Affirmative Action Fund)	37,343	36,635
E	**Emergencies [Article 203 (1)(k)]**	**7,245**	**7,245**
	1.Contingencies	5,000	5,000
	2.Strategic Grain Reserve	2,245	2,245
F	**Equalisation Fund [Article 203 (1) (g) and (h)]**	**6,000**	**6,000**
G	**Balance to be shared between the National and County Government**	**453,331**	**498,038**
H	**County Government Allocation from Revenue Raised Nationally**	**273,070**	**294,600**
I	**Balance Available for National Government Needs**	**180,261**	**203,438**

MIN NO. 309/2016: DATE OF NEXT MEETING

The date of the next meeting was to be held on 13th April, 2016 at 10.00am.

MIN NO. 310/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.55pm.

SIGNED ______________________

(CHAIRPERSON)

DATE 14/4/16

MINUTES OF THE 50TH SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, MINI CHAMBER ON TUESDAY, 12TH APRIL, 2016 AT 10.00 AM

PRESENT

1. Sen. Billow Kerrow	**-Chairperson**
2. Sen. Peter Ole Mositet	-Vice Chairperson
3. Sen. (Dr.) Wilfred Machage	-Member
4. Sen. Zipporah Kittony	-Member
5. Sen. (Dr.) Boni Khalwale	-Member
6. Sen. (Dr.) Agnes Zani	-Member
7. Sen. Moses Wetang'ula	-Member
8. Sen. Beatrice Elachi	-Member
9. Sen. Mutahi Kagwe	-Member
10. Sen. Catherine Mukite	-Member
11. Sen. Paul Ben Njoroge	-Member
12. Sen. Mutula Kilonzo Junior	-Member
13. Sen. Aaron Kipkirui Cheruiyot	-Member

ABSENT WITH APOLOGY

1. Sen. G.G Kariuki	-Member
2. Sen. (Prof.) Peter Anyang' Nyong'o	-Member
3. Sen. (Prof.) John Lonyang'apuo	-Member

IN ATTENDANCE

COUNCIL OF GOVERNORS, (COG)

1. Mr. Peter Munya	-Chairman, COG
2. Mr. Joseph Kung'u	-COG Secretariat
3. Mr. Joseph Koech	-Director, Finance & Admin COG.

MEMBERS OF THE PUBLIC

1. Mr. Njoroge Waweru	-Member of the Public
2. Mr. Fredrick Ruge	-ICPAK

3. Mr. Ezekiel Rema -Muungano wa wawili
4. Mr. Geoffrey Kerosi -Hakii Jamii
5. Mr. Raphael Muya -Prog. Officer IEA
6. Mr. John Kinuthia -Research Analyst
7. Ms. Jacky Kagume -Programme Officer
8. Mr. Edwin Kilasi -Intern, Haki Jamii
9. Mr. Daniel Orogo -Langata Youth Network
10. Mr. Daniel Ndirangu -Institute of Public Finance

SENATE SECRETARIAT

1. Ms. Brenda Ogembo -Committee Clerk
2. Mr. Victor Bett -Committee Clerk
3. Mr. Fredrick Muthengi -Parliamentary Budget Office
4. Mr. Gorod Abdi -Parliamentary Budget Office
5. Ms. Lucy Radoli -Parliamentary Budget Office
6. Ms. Fatuma Abdi - Audio Recording
7. Mr. Mbithi -Seargent at Arms

MIN NO. 298/2016: PRELIMINARIES

The chair called the meeting to order at 10.10 am followed by a word of prayer.

MIN NO. 299/2016: ADOPTION OF THE AGENDA

The agenda was adopted as follows;

1. Preliminaries
   (i) Prayer
   (ii) Remarks by the Chairperson
2. Adoption of the Agenda
3. Confirmation of Minutes
4. **Public Hearing on the Division of Revenue Bill, (DORB), 2016.**
   - **Meeting with the Council of Governors (11 am - 12 noon)**
   - **Meeting with the National Treasury (12 noon - 1 pm)**
5. House Keeping

6. Any Other Business
7. Date of Next Meeting
8. Adjournment

MIN NO. 300/2016: CONFIRMATION OF MINUTES

The Chairman informed the meeting that the confirmation of minutes will be done during the next housekeeping meeting.

MIN NO. 301/2016: MEETING WITH MEMBERS OF THE PUBLIC.

A. INTERNATIONAL BUDGET PARTNERSHIP-KENYA(IBP)

The International Budget Partnership-Kenya raised the following issues;

1. **The Division of Revenue Bill 2016 provides no explanation for the difference in the rate of growth of the county's equitable share and overall sharable revenue.**

According to their presentation, In the Division of Revenue Bill 2016, the National Treasury has recommended Kshs. 302 billion be devolved to the counties an increase from Kshs. 287 billion in 2015/16. Most of these funds are for the equitable share, which will increase by 8% (to Kshs. 280 billion in 2016/17, from Kshs. 260 billion in 2015/16). At the same time, sharable revenue will increase by 11% (to Kshs. 1,380 billion from Kshs. 1,243 billion in 2015/16). This means national government will take an increasing share of total revenue.

2. **The debate over the meaning of the "national interest" continues this year with no**

significant improvements. Last year, CRA indicated that the national interest should not be equated to national government programs. Instead, it should be a collective reflection on the country's priorities, regardless of which level of government carries them out. Civil society organizations, including IBP Kenya, agreed. Nothing has been done to revisit the issue of how to define the national interest, and Treasury continues to define it in terms of the current government's flagship programs.

3. **There is a need to improve on the justifications for conditional grants including the Level 5 grant) and how they are distributed.**

   a) **There is no clear basis for the size of conditional grants. It is not clear why the grant to Level 5 hospitals is pegged at 4 billion or the free maternity grant at 4.1 billion.**
   b) **There is also no clear basis for the distributional criteria used to allocate these grants, which is particularly egregious in the case of the Level 5 facilities.**
   c) **Other grants also lack justifications. Example being** why Tana River and Lamu Counties only were selected and given the special conditional grant meant for health facilities yet there are other border counties prone to cross border insecurity.
   d) **The conditional grants proposed by National Treasury have limited conditions attached to them in the documents proposing their creation.** It is important that the conditions be clearly laid out, followed by clearly defined enforcement measures should the facilities benefiting from the grant not meet the conditions.
4. **The failure to reform state corporations is no longer excusable four years into devolution.** It has been clear since 2010 that water service boards, regional development authorities, roads boards and other state corporations in agriculture, etc. would have to be reformed as they perform at least some devolved functions.

****(Part of submissions is attached)***

B. <u>THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA)</u>

The main issue highlighted by TISA was on Public Participation, that;

The CRA proposed a conditional grant of Kshs 5 billion for public participation (approx. 101million per county government). However this proposal was rejected by both the National Treasury and National Assembly. On the other hand, only a handful of county governments have made concrete attempts at establishing public participation frameworks as envisioned in the devolution laws. It is the responsibility of both levels of government to support the exercise of citizen sovereignty through adequate financial allocations.

County Governments are assigned function 14 Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level. Unbundled this function requires an estimated Ksh 100-150million. There is therefore need for a conditional grant to support this central tenant of the constitution and devolved government. We therefore urge Senate to reinstate the conditional grant for public participation. This grant should be accompanied by conditions which aid transparency, accountability and intra/inter-governmental relations in the application of public participation as well as in county processes. Some proposed conditions are: Counties contribute at least 10% of the proposed 101 million; Counties establish a public participation framework to administrate, monitor and report on the application of all funds on public participation; Counties ensure intra- and intergovernmental relations are addressed in the framework; Counties ensure a reciprocal role of non-state-actors is provided; Counties ensure measures for transparency, citizen monitoring and oversight and accountability are empowered through the framework; Provide a period of three years.

(Part of submissions is attached)

C. ECONOMIC AND SOCIAL RIGHTS CENTER (HAKIJAMII)

a) **Special purpose grant supporting specialized medical access of Ksh. 200 M:** The National Treasury has established a special purpose grant of Ksh. 200 M to be shared equally between two counties (Lamu and Tana River) to support strengthening of access to emergency medical services because they border Somalia and therefore vulnerable to terror attacks, security threats and humanitarian crisis

b) **National Interests:** There is a drop in the revenue allocation for the national interest functions from Ksh. 79.2 billion in FY 2015/16 to Ksh. 72.0 billion in

2016/17. These national interests are: enhancing security operations; subsidy initiatives in national irrigation & fertilizers; NYS re-engineering; provision of national social safety for vulnerable groups and provision of laptops to primary schools.

c) **Public debt:** According to the National Treasury, public debt is expected to increase by Ksh. 71.4 billion from Ksh. 362.4 billion in FY 2015/16 to Ksh. 433.8 billion in FY 2016/17 due to **'shift to the less expensive debt in the international market'.**

d) **County equitable share adjustment of Ksh. 5 billion to cater for public participation:** The CRA has proposed for further adjustment in allocation of Ksh. 5 billion to cater for public participation in 2016/17. The National Treasury's view is that each level of the government is required by law to set aside funds for public participation from its sources.

e) **Fiscal Capacity and Efficiency of County Governments:** The potential revenues that can be generated tax bases assigned to County Governments have not been fully assessed. Thus there is the inability of the national treasury to measure the county governments' fiscal capacity and efficiency.

f) **Other National Obligations:** The Division of Revenue Bill 2016 has taken into consideration the cost of other national obligations like mandatory pension contributions/payments, financing for the constitutional offices, including parliament as well as expenses relating to other statutory bodies and funds. The revenue allocated to this is estimated to be Ksh. 363.2 billion in FY 2016/17 up from Ksh. 341.7 billion in FY 2015/16.

***(Part of submissions is attached)**

MIN NO. 302/2016: MEETING WITH THE COUNCIL OF GOVERNORS (COG)

The Chairman COG after being given the floor made his presentation and recommendations as follows on behalf of the Council of Governors:

1. **The DoRB contravenes Article 203 of the Constitution in the following aspects:**

i. Allocation of funds to the Constituency Development Fund (CDF) before determining the equitable share between the two levels of government. CDF is a National Government fund which should be derived from the National Government share after the equitable share has been allocated.

ii. Recommendations that the laptop project cannot be classified under a project of national interest and therefore cannot be a deduction from the equitable share. This money should come from the National Government share of revenue.

iii. Allocations based on National Interest under Article 203(1)(a) of the Constitution.

In the DoRB, the items considered under national interest are actually National Government projects- National Youth Service re- engineering and the laptops project.

2. **Equalisation Fund:**

This fund has never been disbursed despite the Commission for Revenue Allocation's (CRA) proposal on how is to be shared between the identified marginalized Counties. The National Treasury allocated the Fund Kshs. 3.4 billion in the FY 2014/15, Kshs. 6 billion in the FY2015/16 and currently a proposal of Kshs. 6 billion. The 2014/15 and 2015/16 allocations have never been disbursed to the marginalized areas.

3. **Emergency (Contingencies and strategic grain reserve):**

There is a provision for Kshs. 7.245 billion towards flexibility in responding to emergencies and other temporary needs. This fund should be equally allocated to both levels of government since they both respond to emergencies. Additionally, the allocation for the Strategic Grain Reserve should also be considered as a shared responsibility since agriculture is a devolved function

4. **Growth factor of County Governments Equitable share:**

The National Treasury has used a factor of 7.8%. It is however not clear how this was arrived at.

a) The Council of Governors has agreed to the growth factor of 15.09% from the initial proposed growth factor of 20.44% being the actual growth rate of revenues in the past. CRA as mandated by the Constitution Article 205 calculated the growth factor at 15.09%. It is however erroneous for the CRA to state that the Intergovernmental Budget and Economic Council (IBEC) agreed and adopted to use the GDP to determine sharable revenue. There was no such agreement at IBEC. It was a proposal from the Deputy President to apply a growth of 10.2%. The Council did not accept this proposal but rather maintained its position of using the 15.09% scientifically calculated growth rate as per the initial proposal by CRA. (See attached initial proposal Appendix I). The Council reiterates that allocation should be based on the CRA formula.

b) County Governments' allocation should not be reduced when there is a progressive positive growth of revenues.

c) With a revenue growth of 7.8% the County Governments equitable share of revenue reflects an allocation of 30. 0% of the nationally raised revenues which is lower than the allocation for the 2015/16 financial year which was 33.44% against an agreed growth rate of 10.41%. The Council therefore requests the Senate to consider a total allocation to County Governments as equitable share of 35% of the total sharable revenue.

5. **Unfunded Functions:**

a) County transport.

Additional 31,113 Kms of roads have been devolved to County Governments with no attendant resources. The inter-agency technical committee of the summit proposed that **Kshs.8.43 billion** should be devolved to follow this function. (See Appendix II). It was also agreed that that the Counties should be allocated 25% of the Road Maintenance Levy Fund.

b) Library services

59 libraries were devolved with no attendant resources. The inter-agency technical committee of the summit proposed that **Kshs.319 million** should be devolved to follow this function.

c) Museums

Transition Authority devolved this function without identification of attendant resources. The Council of Governors is requesting the Senate to allocate funds for this particular function.

6. **Intergovernmental Relations Technical Committee(IGRTC):**

IGRTC being an independent body is mandated to take over the residual functions of the Transition Authority. IGRTC's budget should be independent from the Ministry of Devolution & Planning. Its budget should be housed at the Office of the Presidency, who chairs the Summit. There is need to increase the budgetary allocation for the IGRTC rather than a reduction and the assets that were being held by Transition Authority should be transferred to the Committee. There is pending work in the transition like costing of functions and audit of assets and liabilities. The Intergovernmental Relations Act should be amended to strengthen the IGRTC.

7. **Legal Framework for Conditional Grants:**

A draft document on the administration and reporting of the conditional grants has been generated but not yet adopted. The Council is requesting the Senate to assist in the finalization of the document before the approval of the DoRB. It is also worthy of note that it is critical to differentiate between conditional grants and donor funds. Where donor funds are related to County functions, they should be disbursed to the Counties, not held at the national ministries.

The National Government should set up a unit at the National Treasury to manage conditional grants. The use of National Government agencies to hold funds for County functions undermines devolution.

8. **Accountability and transparency:**

Counties are working under very difficult circumstances to improve on governance and it unfair to paint all Counties as corrupt. Counties control only 21% of the National sharable revenue while the National Government controls a stake of 79%. The fight against grant should be done through institutions and should target only those that are culpable.

9. **National Debt:**

The guidelines on borrowing should be implemented consultatively. The Loans and Grants Council should be established to vet borrowing.

10. **Pensions:**

The National Treasury has only factored the aspect of the pensions for the National Government staff. Staff working at County Governments should also be factored in the formula of computation of the provision as they are also public servants and qualify for pension as they make part of the national obligation.

The Bill mentions that Ksh. 6.3 billion was transferred to County Governments in the2015/16 financial year to cater for county payroll. This is not factual as County Governments were only allocated **Ksh 1.7 Billion** towards the same after the mediation process of the 2015 Division of Revenue Bill.

11. **Conditional allocation to county governments:**

a) The Bill has also highlighted that additional allocation to Counties are determined through the national MTEF budget process based on the weight attached to the national government policy objectives that the allocations are intended to support.

Recommendation: The Council of Governors insist that the County Governments through the Council should be involved in the MTEF process and allocation of all conditional grants.

b) The Bill indicates that "conditional allocations" for the purposes of this Act, means additional resources allocated to County Governments from revenue raised nationally. This is a contradiction to other sections of the Bill that involves other conditional allocations such as allocation from the Government of Denmark which is meant to support the delivery of health services in Counties.

Conclusion

The Council of Governors proposes that the allocation of the sharable revenue to Counties be **Kshs. 332 billion** being equivalent of **35%** of the most recent audited approved accounts for 2013/14 amounting to Kshs. 936 billion.

**(Part of submissions is attached)*

MIN NO. 303/2016: DATE OF NEXT MEETING

The date of the next meeting was to be held on 12th April, 2016 at 12.00Noon.

MIN NO. 304/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 11.55am.

SIGNED ______________________

(CHAIRPERSON)

DATE 14/4/16

MINUTES OF THE 49TH SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, GROUND FLOOR BOARDROOM ON MONDAY, 11TH APRIL, 2016 AT 9.00 AM

PRESENT

1. Sen. Billow Kerrow -**Chairperson**
2. Sen. Moses Wetang'ula -Member
3. Sen. Beatrice Elachi -Member
4. Sen. Mutahi Kagwe -Member
5. Sen. Catherine Mukite -Member
6. Sen. Paul Ben Njoroge -Member
7. Sen. Mutula Kilonzo Junior -Member
8. Sen. Aaron Kipkirui Cheruiyot -Member

ABSENT WITH APOLOGY

1. Sen. Peter Ole Mositet -Vice Chairperson
2. Sen. G.G Kariuki -Member
3. Sen. (Prof.) Peter Anyang' Nyong'o -Member
4. Sen. (Prof.) John Lonyang'apuo -Member
5. Sen. (Dr.) Wilfred Machage -Member
6. Sen. Zipporah Kittony -Member
7. Sen. (Dr.) Boni Khalwale -Member
8. Sen. (Dr.) Agnes Zani -Member

IN ATTENDANCE **COMMISSION ON REVENUE ALLOCATION**

1. Mr. Micah Cheserem -Chairman, CRA
2. Ms. Amina Ahmed -Commissioner
3. Ms. Rose Bosibori Osoro -Commissioner
4. Mr. Meshack Onyango -Commissioner
5. Ms. Lineth Oyugi -Director, R & P
6. Mr. James Katule -Director, FA

SENATE SECRETARIAT

1. Ms. Brenda Ogembo	-Committee Clerk
2. Mr. Victor Bett	-Committee Clerk
3. Mr. Robert Nyagah	-Parliamentary Budget Office
4. Mr. Fredrick Muthengi	-Parliamentary Budget Office
5. Mr. Gorod Abdi	-Parliamentary Budget Office
6. Ms. Julie Mwithiga	-Parliamentary Budget Office
7. Ms. Fatuma Abdi	- Audio Recording

MIN NO. 289/2016: PRELIMINARIES

The chair called the meeting to order at 9.27 am followed by a word of prayer.

MIN NO. 290/2016: ADOPTION OF THE AGENDA

The agenda was adopted as follows;

1. Preliminaries
   - *(i) Prayer*
   - *(ii) Remarks by the Chairperson*
2. Adoption of the Agenda
3. Confirmation of Minutes
4. **Meeting on the Division of Revenue Bill, (DORB), 2016.**
   - Briefing by the **Parliamentary Budget Office** (9 am -10 am)
   - Meeting with the **Council of Governors** (10 am -11 am)
   - Meeting with the **Commission on Revenue Allocation** (11 am -12 pm)
5. House Keeping
6. Any Other Business
7. Date of Next Meeting
8. Adjournment

MIN NO. 291/2016: CONFIRMATION OF MINUTES

The Chairman informed the meeting that the confirmation of minutes will be done during the next housekeeping meeting.

MIN.NO. 292/2016: MEETING WITH THE PARLIAMENTARY BUDGET OFFICE.

The Parliamentary Budget Office after being given the floor made the following presentation:

The stark variations between the two revenue proposals depict differences in the interpretation of revenue growths and conditional allocations. The Committee listened to the both the National Treasury and the CRA regarding their respective views on 2016/17 revenue allocation. Having considered the views of the two institutions, departmental committees and other stakeholders, the Committee itself further noted several emerging factors which may inform revenue allocation in 2016/17 and in the medium term.

1. **Need to entrench fiscal prudence and austerity in the light of weak domestic revenue collections and deteriorating debt financing conditions.** The Committee in particular noted the flagrant spending on non-essential items like non-essential travel, allowances. Equally, the Committee was concerned about inflated expenditures and contracts and corruption which continue to bleed scarce resources. Owing to weak domestic revenue performance and emerging borrowing constraints, each level of government should attempt to achieve same targeted services with minimal resources.

2. **Need to base allocations on real revenue growth**: The Committee noted variations in the revenue assumptions used to compute equitable shares, which partly explain the differences in the revenue sharing proposals (CRA 15.09% relative to EPS 7.9%). Reconciliation of these measures could help bridge the differences.

3. **Conditional Allocations should remain stable.** Strong justifications for conditional allocations and pre-negotiations could help reduce the proliferation of conditional allocations in the light of the enabling (remedial) Article 187 of the constitution. Where conditional allocations are negotiated and given, a good framework for implementation and transfer of resources need to be devised, including where necessary the transfer of functions between levels of government.

4. **Revenue Sharing (Horizontal) formula among county governments:** The Committee noted with concern that the current and proposed formula for sharing revenue among counties was biased towards counties with large population and those with high

poverty levels. The formula cannot capture the unique but deplorable needs of urban areas and slums. This, approach, it was observed that it is unlikely for it to achieve the primary goal of devolution which is to reduce inequalities in public goods and services given that some of the poorest citizens dwell in urban slums. Thus, the ideal sharing formula should 'needs-based', where "needs" can be discerned through a Human Development Index.

5. **Revenue allocations should also be informed by gross financing resources** available to each level of government. In this regard, consideration should be made with regard to "own county revenues" to inform the overall debate on revenue share determinations (counties collected about Ksh. 33 billion in 2014/15).

6. **Need to boost some conditional allocations:** The Committee noted that the amounts to free maternal health and leasing of medical equipment need to be enhanced given their impact on overall wellbeing of the population.

7. **The need to formalize the revenue sharing framework as provided in the constitution**: Article 202 and 203 are the bedrock of revenue sharing between the two levels of government. However, as the Committee noted, the framework for determination of the revenue allocation were far from adequate. For example, the Committee proposed that the basis of sharing in Article 203(1) be formalized through clear interpretation or legislation so as to determine contentious issues such the meaning of "National Interest". Similarly, the framework for conditional and unconditional allocations should also be expounded so as to make revenue sharing easier, less acrimonious, and stable.

Allocations in Kshs in million for FY 2015/16 and FY 2016/17

Level / Type of Allocation	2015/16	2016/2017
National Government	976,925.50	1,099,899.0 0
Of Which		
Free Maternal Healthcare	4,298.00	4,121.03
Leasing of Medical Equipment	4,500.00	4,500.00
Compensation for User Fess Forgone	900.00	900.00
Level Five (5) Hospitals	3,600.48	4,000.00
Special Purpose Grants supporting access to Emergency Medical Services		200.00
Add Allocation from the Fuel Levy Fund (15%)	3,300.00	4,306.81
Conditional Allocations (Loans & Grants)	10,671.21	3,870.69
Total County Conditional Allocations	27,269.69	21,898.
Equalization Fund	6,000.00	6,000.00
County Equitable Share	259,774.50	280,300.00
Total Sharable Revenue	1,242,700.0 0	1,380,199.0 0

MIN NO. 293/2016: MEETING WITH THE COMMISSION ON REVENUE ALLOCATION

The Chairman CRA after being given the floor made his presentation and recommendations as follows:

a) **Revenue Growth Factor:**

i). The National Assembly Bill 2016 provides for a revenue growth factor of 7.8%. This is a National Treasury growth factors whose calculation has not been explained in any document. It is neither a revenue growth factor nor is it a GDP growth factor. A revenue growth factor of 7.8 percent is too low for consideration as a basis for increasing allocations to county governments for financial year 2016/17.

ii). IBEC recommended that the CRA and the National Treasury calculates the revenue Growth factor based on the IBEC minute resolution of nth February 2015 that approved the use of a three year average growth of both revenue and GDP.

iii). The Commission recommends to the Senate that the IBEC growth factor be used. This is 10.2%: (15.09+5.3)72. The three year revenue and GDP growth rates are equal to 15.09% and 5.3%, respectively.

b) County Governments' Equitable Share

i). The National Assembly Bill 2016 does not provide for additional allocations for all functions transferred to county governments. The Transition Authority in February 2016 gazetted more functions for transfer to county governments. This includes roads and libraries, among others.

ii). In accordance with the provisions of Article 187(2), the Commission recommends to Senate that resources for County roads and Libraries, amounting to Ksh. 8.43 billion and Ksh. 0.319, respectively be allocated to county governments as part of the equitable share for 2016/17. This was agreed by the ad hoc technical committee of the Summit in March 2016.

c) Conditional Allocations to County Governments

i). In accordance with the provisions of Article 202(2), conditional allocations to county governments are from the national government's equitable share. The National Assembly Bill 2016 provides for the allocations without full adjustment for inflation.

ii). IBEC recommended that with the exception of the allocation for the leasing of medical equipment, the other conditional allocations be as recommended by the CRA

d) Road Maintenance Levy Fund.

i). The National Assembly Bill 2016 does not provide for additional allocations for maintenance of additional kilometers of roads transferred to county governments in February 2016 by the Transition Authority.

ii). Kenya Road Boards Act provides that RMLF is allocated as follows: KeNHA = 40%; KeRRA = 32% ; KURA = 15%; KWS = 1%; KRB - 2%; and Emergency = 10%

iii). The Commission acknowledges that counties were allocated 15% of RMLF in the year 2015-16 out of which 10.2% was from KERRA and 4.8% from KURA allocations respectively. However the 15 % resources transferred to the county government from the RMLF is not commensurate to the number of Kilometers transferred to county governments, amounting to 120,000kms.

iv). Based on a criteria provided by the State Department of Infrastructure for maintenance of class C roads and class D roads under KURA and KeRRA the Commission recommends to Senate that an additional 10% of the RMLF be allocated to county governments for the maintenance of the additional road network transferred to county governments. In total, county governments should be allocated 25% of the RMLF in financial year 2016/17.

e) Rehabilitation of Village Polytechnics

The National Assembly Bill 2016 does not provide for allocations to county governments for rehabilitation of village polytechnics.

i). IBEC recommended that a conditional allocation of Ksh.i.5 billion be given to county governments in 2016/17.

ii). The youth need to be meaningfully engaged. Employment of the youth should be the country's first national interest. This is important to address the twin problems of youth radicalization and insecurity. The observation by the National Assembly that village polytechnics will be considered once the financial position of the country improves amounts to double speak given that NYS and education are ranked as part of the national interest.

iii). The Commission recommends to the Senate that Ksh. 1.5 billion be allocated to county governments as a conditional allocation to rehabilitate/ built and equip village polytechnics across the country.

MIN NO. 294/2016: MEETING WITH THE COUNCIL OF GOVERNORS

The Council of Governors' on the last Minute informed the secretariat that they were not able to appear before the Committee, since the Chairperson, Finance Committee of the COG is not feeling well, via text message to the secretariat sent the same day. However the Secretariat was informed that the COG would be represent the Following day (12/4/2016) during the Public Hearing.

MIN NO. 295/2016: ANY OTHER BUSINESS

1. Sen. Mutula Kilonzo Jnr. was not comfortable with the Pending Bills that are continuously growing in Counties and that steps should be taken to address the issue. The Committee agreed that this should be addressed by the controller of Budget since we are heading towards an Election year debts shouldn't be forwarded to the incoming leadership of the Counties. This also applies to finding a way of introducing caps on expenditures at the County Governments;
2. The Committee was not comfortable with the happenings surrounding the issue of Chase Bank being placed under receivership and that CBK, should come out clear and explain mechanisms they have put in place to cushion other banks and that he should resist from using too much force on commercial banks. The Committee was also concerned that given the 1 Million cap on withdrawals on Commercial Banks, how did some individuals able to withdraw large amounts of monies at certain branches of Chase Bank?
3. The Committee also reviewed a letter from the Capital Markets requesting to visit the Committee and agreed to schedule the meeting on Thursday, 21st April, 2016;
4. The Committee received an invitation from the WTO for the 13th and 14th of June, 2016 in Geneva, a delegates conference and three members were nominated;
    - Sen. Moses Wetangula
    - Sen. Njoroge Ben
    - Sen. Aaron Cheruiyot

5. The Committee then resolved that the following Ministries that fall within the domain of the Committee be invited to give a status update of the happenings in their respective Ministries.

- Ministry of Tourism – Tuesday, 26th April, 2016
- Ministry of Industrialization - Thursday, 28th April, 2016

MIN NO. 296/2016: DATE OF NEXT MEETING

The date of the next meeting was to be held on 12th April, 2016 as from 9.00am.

MIN NO. 297/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.25pm.

SIGNED ______________________

(CHAIRPERSON)

DATE 14/4/16.

REPUBLIC OF KENYA

THE NATIONAL TREASURY

BRIEF FOR USE BY THE CABINET SECRETARY/NATIONAL TREASURY AT A PUBLIC HEARING ORGANISED BY THE SENATE COMMITTEE ON FINANCE, COMMERCE AND BUDGET TO DISCUSS THE DIVISION OF REVENUE BILL, 2016

ON

TUESDAY, 12TH APRIL 2016

AT

COUNTY HALL, MINI CHAMBER, PARLIAMENT BUILDING AT 9.00AM

DIVISION OF REVENUE FOR FY 2016/17

1. In order to arrive at County Governments' equitable share of revenue for FY 2016/17, the baseline (i.e. equitable revenue share allocation in FY 2015/16) is adjusted by an revenue growth factor of 7.8 percent. Based on this adjustment, County Governments' equitable share of revenue in FY 2016/17 is estimated to be Kshs. 280.3 billion. The adjustment was necessitated by Exchequer shortfalls to the tune of an estimated Kshs. 50 billion by the end of December 2015. This shortfall is expected to grow to about Kshs. 80 billion by the end of the financial year 2015/16. Accordingly, the National Government will be cushioning county governments of this revenue shortfall hence the equitable share of revenue for county governments will be transferred to them without deduction. If the Kshs. 80 billion is reduced from the National Governments equitable share for FY 2016/17, it therefore implies disproportionate negative fiscal impact on the National Government leaving it worse off than the last financial years' equitable share. It is therefore necessary to plan with a realistic growth factor, hence the adjustment to 7.8 percent. This allocation is above the constitutional minimum of 15 percent of the latest audited revenues for FY 2013/14 (i.e. Ksh. 935.7 billion) and indeed it is more than double the Constitutional minimum threshold.

2. In addition to the above equitable share allocation, County Governments will in FY 2016/17, receive additional conditional allocations amounting to Kshs 21.9 billion as follows:

   a) free maternal healthcare: Ksh. 4.1 billion
   b) leasing of medical equipment: Ksh. 4.5 billion
   c) compensation for user fees foregone: Ksh. 900 million
   d) level 5 hospital grant: Ksh. 4 billion
   e) Kshs 4.3 billion in the form of a conditional grant transferred from the Road Maintenance Levy Fund (RMLF)
   f) Kshs 0.2 billion in the form of a Special Purpose Grant supporting strengthening of access to emergency medical services in Lamu and Tana River counties, which are vulnerable to security threats.
   g) Kshs 3.9 billion from proceeds of loans and grants from Development Partners to finance devolved functions within specific counties in accordance with the signed financing agreement for each loan/grant.

County allocations under (a), (c), (d), (e), and (f) will be transferred to the respective County Revenue Funds (CRFs) while grants under (b) and (g) shall be budgeted for at the national level and managed by the National Government on behalf of county governments.

The National Treasury will be proposing two further amendments to the DoRB and CARB 2016 submitted to Parliament to incorporate the following changes:

a) Conditional grant to support the construction of county headquarters in 5 counties: There are 5 counties that did not inherit offices that could accommodate the headquarters of the county governments. These counties include: Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. Following consultations with the counties concerned, it has been agreed that the construction of county headquarters be funded at the cost of Ksh. 518 Million (Ksh. 315.5 Million for the County Executive Offices and Ksh. 202.5 Million for the County Assembly). The National Government will contribute 70 percent of the budget while county governments will contribute 30 percent. The contribution of the National Government will be spread over next three financial years. In the financial year 2016/17, therefore, the National Treasury proposes to provide a total of Ksh. 610 million for the construction of county headquarters. (i.e. Ksh 122 Million to each of the five counties).

b) Conditional grant amounting to Ksh 1.41 billion to be financed by a World Bank credit in support of the Kenya Devolution Support Program (KDSP). The World Bank has agreed to extend to the Government of Kenya (GoK) a total of US $200 Million over a period of five (5) years for purposes of the Kenya Devolution Support Programme (KDSP). This credit is to be disbursed on the basis of capacity building and performance levels achieved by the national and county governments and only upon confirmation that the pre-determined results have been achieved. It is expected that 80% of the funds (US$160 million) will flow to County Governments as capacity and performance grants and the balance 20%(US$40 million).

The approval for the credit facility had not been granted by the time of submitting the DoRB and CARB 2016 in February 2016 and therefore could not be reflected in the DoRB and CARB 2016. The World Bank Board approved the credit facility on 15th march 2016. The support will entail capacity building for devolution, anchored under the National Capacity Building Framework (NCBF). KDSP will seek to strengthen institutions and systems for devolved service delivery in the following five priority areas:

(i) Strengthening public financial management (PFM) systems;

(ii) Strengthening County Human resource management;

(iii) Improving county planning and Monitoring & Evaluation systems; and,

(iv) Civic Education and Public Participation.

(v) Strengthening Intergovernmental relations.

The National Treasury will therefore be proposing further amendments to the DoRB 2016 as suggested above (by replacing the Schedule in the DoRB 2016) and to the CARB 2016 by replacing the Third Schedule of the Bill with the one attached to this brief.

With the above two amendments, total allocations to county governments in FY 2016/17 will be Ksh. 304.1 Billion or 33% of the last audited revenue.

3. There will also be an additional allocation Ksh. 6 billion from the Equalization Fund to be spent in counties which have been determined to be marginalized.

4. Accordingly, in 2016/17, counties will share an estimated Kshs 302.2 billion, which represents a 5 percent increase from projected total transfers for 2015/16, which is Kshs 287.0 billion.

5. The balance of the shareable revenue after allocating funds to Equalization Fund and County Governments estimated at Ksh. 1,093.9 billion will be allocated to the National Government. (A copy of the Division of Revenue Bill, 2016, including the MEMORANDUM explaining the allocations is attached for information)

6. The equitable share of revenue and the conditional allocations are allocated among county governments on the basis of the revenue sharing formula approved by Parliament in November 2012. The formula takes into account population (45 percent), land area (8 percent), poverty (20 percent), equal share (25 percent), and fiscal responsibility (2 percent). However, a process led by the Commission on Revenue Allocation (CRA) is ongoing to develop the second generation criteria for the sharing of revenue among the counties.

Differences between the CRA and National Treasury Proposals

7. **County Equitable Share of Revenue:** The CRA recommends County Governments' equitable share of revenue of Ksh. 331.8 billion. Sources of differences with the National Treasury proposal are as follows:

- *Use of different revenue growth factor:* CRA grows the county equitable share of revenue by 15.09 percent, which is the average growth rate of audited shareable revenue raised nationally over the past three years. The National Treasury on the other hand uses a revenue growth factor of 7.9 percent. This growth factor has taken into consideration performance of revenues which have not been performing well in the recent past.

- *County equitable revenue share adjustment of Ksh. 27.8 billion for additional county roads:* In anticipation of a decision by the Transition Authority (TA) to transfer additional county roads in FY 2016/17, the CRA proposed to gross up the county equitable share of revenue for 2016/17 by an allocation of Ksh. 27.8 billion for construction and rehabilitation of county roads. It should be noted that at the time when CRA recommended the transfer of an additional Ksh. 27.8 billion to County Governments, the TA had not gazetted the decision to transfer additional county roads to County Governments. The National Treasury view is that any additional resources to be transferred to County Governments in respect of county roads function should be supported by a gazette notice by the TA authorising such transfer and a determination of resources, if any, to be transferred to County Governments. It should, however, be noted that as early as FY 2013/14, resources relating to roads were transferred to County Governments and therefore the county equitable revenue share proposed by the National Treasury for FY 2016/17 already includes an allocation for county roads. Therefore, there is no justification for transfer of additional resources since resources were already transferred. What had been delayed is the process of transferring the function.

- *County equitable revenue share adjustment of Ksh. 5 billion to cater for public participation*: The CRA has proposed a further adjustment of the equitable revenue share to include an allocation of Ksh.5.0 billion to cater for public participation in FY 2016/17. The National Treasury view is that whilst public participation is a constitutional requirement for both levels of government in carrying out any development agenda, each level of government is required by law to set aside funds for the same function form its resources.

8. **Existing Conditional Allocations:** The CRA has proposed to increase by a higher growth factor of 15.09 percent (to Ksh. 20 billion in FY 2016/17) all existing conditional allocations for: Level-5 Hospitals; Free Maternal Health Care; Compensation for user fees forgone; leasing of medical equipment and county roads. The National Treasury on the other hand has proposed an allocation of Ksh. 17.8 billion for FY 2016/17. These conditional allocations, as is the practice, have determined through the MTEF budget process following sector negotiations upon consideration of all national government priorities. This is the process provided for in law for determining annual budgetary allocations.

9. **Proposed new conditional allocations:** The CRA has proposed several new conditional allocations amounting to Ksh. 25.7 billion which the National Treasury has not included in the County Allocation of Revenue Bill for FY 2016/17. These include:

a. *Allocation to cater for emoluments for Devolved staff of Ksh. 5.196 billion*:- CRA has proposed an additional Ksh. 5.196 billion, to be shared proportionately among counties based on payroll of devolved staff. These allocations are intended to act as a short term stop gap measure to cushion counties that inherited a relatively higher number of employees, against expenses on salaries as they await conclusion of the staff rationalization programme. It should, however, be noted that in costing of devolved functions adequate provisions were made to cater for county personnel expenses. Indeed, additional allocations (Ksh. 6.3 billion) were approved by the Senate to cater for county payroll were included in the equitable share of revenue for FY 2015/16. It should also be remembered that in FY 2013/14 amounts set aside to hold harmless county governments that inherited higher than average wage bills, were shared on the basis of the revenue sharing formula following an agreement among county governments. In the opinion of the National Treasury, at the current level of funding county governments have sufficient resources to cater for the cost of personnel emoluments.

b. *Additional conditional allocation for construction of County headquarters of Ksh. 4.0 billion* - CRA proposes an additional conditional allocation of Ksh. 4.0 billion to be shared equally for construction of county headquarters in Tharaka Nithi, Lamu, Nyandarua, Tana River and Isiolo counties. The above named counties did not inherit offices that could accommodate the county government. Following further consultation it has been agreed that the construction of county headquarters in the 5 counties be funded at a cost of Ksh. 500 million per county (Ksh. 300 for the County Executive office and Ksh. 200 million for the County Assembly). The National Government will contribute 70 percent of the cost and the county governments will contribute 30 percent. The National Government contribution will be spread over three years. The National Treasury will therefore be proposing further amendment to the DoRB and CARB 2016 to reflect this change by replacing Schedule in the DoRB 2016 as well as Schedule 2 of the CARB 2016.

c. *Additional conditional allocations for Rehabilitation of Primary and Secondary school of Ksh. 5.0 billion*- the proposed new conditional additional allocation by CRA of Ksh. 5.0 billion is meant for building of school infrastructure, a role they say has been left to parents despite the function being a national one. The view of the National Treasury is that these are National government functions and that such a conditional grant can only be initiated by the ministry responsible for primary and secondary education.

d. *Conditional additional allocation for the Establishment of County Emergency Fund of Ksh. 5.2 billion*: - CRA has proposed new conditional additional allocation of Ksh. 5.2 billion as seed money towards establishment of County Emergency Funds in line with provisions of PFMA Section 110(1) to be shared proportionately among counties. The National Treasury holds contrary opinion on this proposal because the PFMA anticipates that all governments, both national and county, should set aside funds for the establishment of their respective Emergency Funds. More over a similar proposal was dropped on the above legal basis by the mediation committee of Parliament when making recommendations on the Division of Revenue Bill, 2015.

e. *Conditional additional allocation for the Rehabilitation of Village Polytechnics of Ksh. 6.3 billion*: - the CRA has further proposed an additional conditional allocation of Ksh. 6.3 billion from the national government share of revenue to county governments so as to build, equip and renovate village polytechnics. The CRA further argue that these village polytechnics will go a long way to serve as centres of excellence to empower youth with the requisite skills to generate employment. The National Treasury acknowledges this is a devolved function and that the Village Polytechnics are essential in developing skills of the Youth who don't transit to institutions of higher learning. However, due to limitation in resources, the National Treasury recommends that this conditional allocation be done through donor financing within the provisions of the External Resources Policy of the National Treasury. As such, it is proposed that the decision to include it in the budget for FY 2016/17 be shelved until a potential donor is identified.

10. Response to the Recommendations of the Intergovernmental Budget and Economic Council (IBEC)

The Intergovernmental Budget and Economic Council (IBEC) recommended that county equitable share of revenue for FY 2016/17 be increased by a growth factor arrived at on the basis of the principles agreed at the IBEC meeting of 11th February 2015. The implementation of this recommendation is, however, not possible given that revenue collection at the national level has been below target.

The IBEC further resolved that county governments be allocated additional conditional grants amounting to Ksh. 1.5 billion to support the rehabilitation of village polytechnics. The National Government recognises the critical role played by village polytechnics in contributing to economic development and increasing employment opportunities for the youth. However, given the tight financial position of Government it is not possible to provide this additional allocation to counties in FY 2016/17. This request will be considered when the financial position of Government improves. The National Government will also seek the support of development partners.

The IBEC also recommended that the National Government considers allocating some funds for the construction of headquarters for five counties, that is, Lamu, Tharaka Nithi, Isiolo, Nyandarua, and Tana River. As explained at the IBEC meeting of 9th February 2016, this will be funded when discussions with the concerned counties are concluded and subject to availability of funds. Following further consultations, it has been agreed that constructions of county headquarters be funded in the manner proposed in paragraph 9b above.

11. It should also be noted, as demonstrated in the table below, after taking into account the criteria set out in Article 203(1) of the Constitution, only Ksh. 203.4 billion of the shareable revenue is left to finance all other national Government need. It is clear from the table below that any increase in county allocation will further reduce the allocation for national government and make it difficult for the national government to deliver critical services such as internal security, roads, energy, education etc.

Table 2: Evaluation of the Bill against Article 203 (1) of the Constitution (These are estimates at the time of finalising the proposal on the Division of Revenue Bill, 2016)

	ITEM DESCRIPTION	2015/16	2016/17
		Ksh. Millions	Ksh. Millions
A	Ordinary Revenue (excluding AIA)	1,249,900	1,380,199
B	National Interest [Article 203 (1)(a)]	79,189	71,954
	1. Enhancement of Security Operations (police vehicles, helicopters, defence etc.)	17,700	18,900
	2. National Irrigation & Fertilizer Clearance	12,500	9,500
	3. NYS Re-engineering	17,055	11,620
	4. National Social safety net - (for older persons, OVC, Child Welfare, severe disability urban food subsidy)	14,354	14,354
	5. Laptops	17,580	17,580
C	Public Debt (Article 203 [1][b])	362,391	433,800
D	Other National Obligations (Article 203 [1][b])	341,744	363,162
	1. Pensions, constitutional salaries & other	54,617	56,115
	3. Constitutional Commissions (Art. 248(2)) - i.e. CRA, CIC, SRC, NLC, NPSC, IEBC, TSC	189,066	208,763
	2. Independent Offices (Art. 248(3)) - i.e. AG & CoB		

		4,720	4,723
	4. Parliament	27,277	27,705
	5. Other Constitutional Institutions- AG's office and DPP	6,863	6,607
	6. Other Statutory Bodies (e.g. EACC,RPP,WPA,CAJ, IPOA, NGEC)	4,697	4,855
	7. Judiciary	17,161	17,759
	8. Other Statutory Allocations(earmarked funds e.g. Constituency Development Fund, Women Affirmative Action Fund)	37,343	36,635
E	Emergencies [Article 203 (1)(k)]	7,245	7,245
	.Contingencies	5,000	5,000
	Strategic Grain Reserve	2,245	2,245
F	Equalisation Fund [Article 203 (1) (g) and (h)]	6,000	6,000
G	Balance to be shared between the National and County Government	453,331	498,038
H	County Government Allocation from Revenue Raised Nationally	273,070	294,600
I	Balance Available for National Government Needs	180,261	203,438

Table 1: Resource Mobilization and Allocation

	Billions of Shillings	
	2015/16	2016/17
I. AVAILABLE RESOURCES	**1,901.80**	**2,051.60**
1 Total Revenues	1,311.1	1,496.3
o/w: AIA	109.1	116.2
2 Net Domestic Borrowing	170.8	184.8
3 Net Foreign Financing	419.9	370.5
Grants	73.4	59.8
Loans	346.5	310.7
II. TOTAL EXPENDITURES	**1,901.8**	**2,051.6**
5 Recurrent Expenditures	989.7	1,094.2
6 Development expenditure/Net lending	647.9	672.6
7 Transfers to County Governments	264.2	284.8
III. Remaining Resources for Additional Allocations	-	-

TABLE 2: SUMMARY OF THE NATIONAL INTEREST BUDGETARY ALLOCATIONS FY 2016/17

	ITEM DESCRIPTION	2015/16	2016/17
		Ksh. Millions	Ksh. Millions
A	**Ordinary Revenue (excluding AIA)**	1,202,000	1,380,199
B	**National Interest [Article 203 (1)(a)]**	79,189	71,954
	1. Enhancement of Security Operations (police vehicles, helicopters, defence e	17,700	18,900
	2. National Irrigation & Fertilizer Clearance	12,500	9,500
	3. Youth Empowerment	17,055	11,620
	4. National Social safety net - (for older persons, OVC, Child Welfare, severe (	14,354	14,354
	5. Digital Literacy	17,580	17,580
C	**Public Debt (Article 203 [1][b])**	362,391	433,800
D	**Other National Obligations (Article 203 [1][b])**	341,744	363,162
	1. Pensions, constitutional salaries & other	54,617	56,115
	3. Constitutional Commissions (Art. 248(2)) - i.e. CRA, SRC, NLC, NPSC, IEBC, TSC	189,066	208,763
	3. Independent Offices(Art. 248(3)) - i.e. AG & CoB	4,720	4,723
	4. Parliament	27,277	27,705
	5. Other Constitutional Institutions- AG's office and DPP	6,863	6,607
	6. Other Statutory Bodies (e.g. EACC,RPP,WPA,CAJ, IPOA, NGEC)	4,697	4,855
	7. Judiciary	17,161	17,759
	8. Other Statutory Allocations(earmarked funds e.g. Constituency Development Fund, Women Affirmative Action Fund)	37,343	36,635
E	**Emergencies [Article 203 (1)(k)]**	7,245	7,245
	1.Contingencies	5,000	5,000
	2.Strategic Grain Reserve	2,245	2,245
F	**Equalisation Fund [Article 203 (1) (g) and (h)]**	6,000	6,000
G	**Balance to be shared between the National and County Government**	405,431	498,038
H	**County Government Allocation from Revenue Raised Nationally**	273,070	294,021
I	**Balance Available for National Government Needs**	132,361	204,017
	Education	154,841	155,375
	State Department of education	81,441	81,385
	State Dept Science/Technolgy	73,400	73,990
	Health	59,184	59,576
	Preventive/Promotive	15,102	15,582
	National Referral	23,470	24,308
	Other	12,244	10,960
	Remaining Sharable Revenue for Rest of Nat. Gov.	(81,664)	(10,934)

APPENDIX (b)

COMMISSION ON REVENUE ALLOCATION

Promoting an equitable society

CRA RECOMMENDATION TO THE SENATE COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.4 OF 2016)

11th April 2016

1. INTRODUCTION

Article 205 provides that:

(1) When a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and Senate

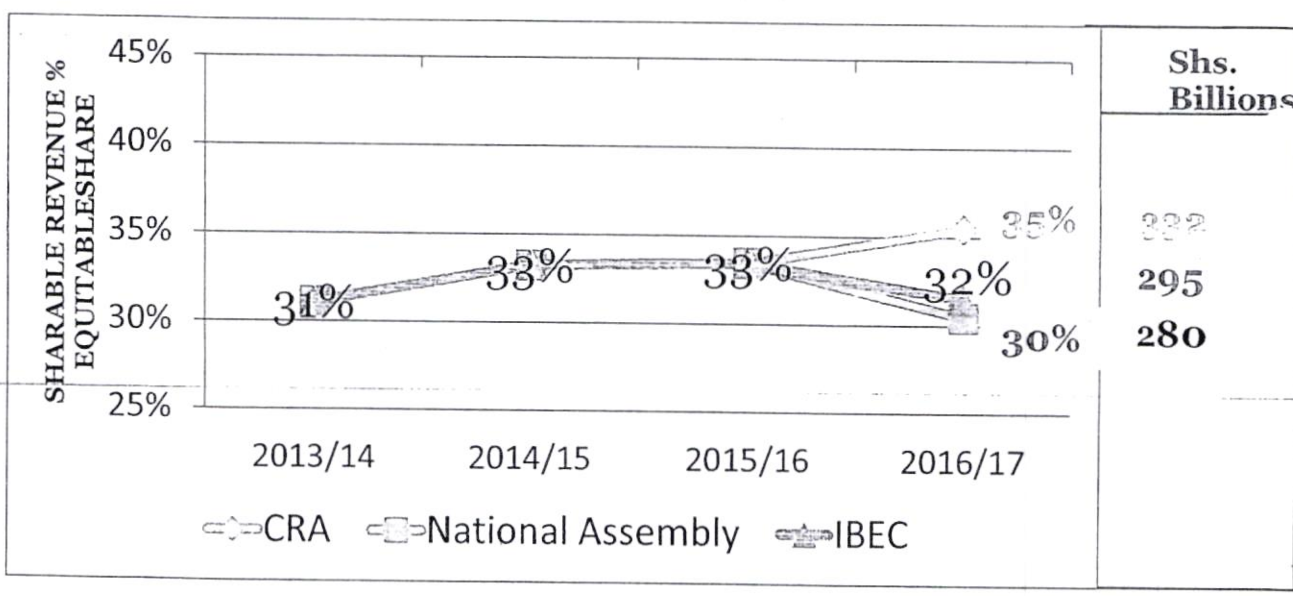
(2) Any recommendations made by the Commission on Revenue Allocation shall be tabled in Parliament before voting on the Bill.

2. BACKGROUND

Pursuant to Article 216, the Commission submitted its recommendations to Parliament that Ksh.332 billion be allocated to county governments as equitable share and Ksh.46 billion as conditional grants for financial year 2016/17. This allocation is equivalent to 35 % of shareable revenue of the most recent audited approved accounts for 2013/14 amounting to Ksh.936 billion.

Figure 1 presents the CRA and the National Assembly Bill No. 4 of 2016 recommendations on the equitable share to counties for FY 2016/17

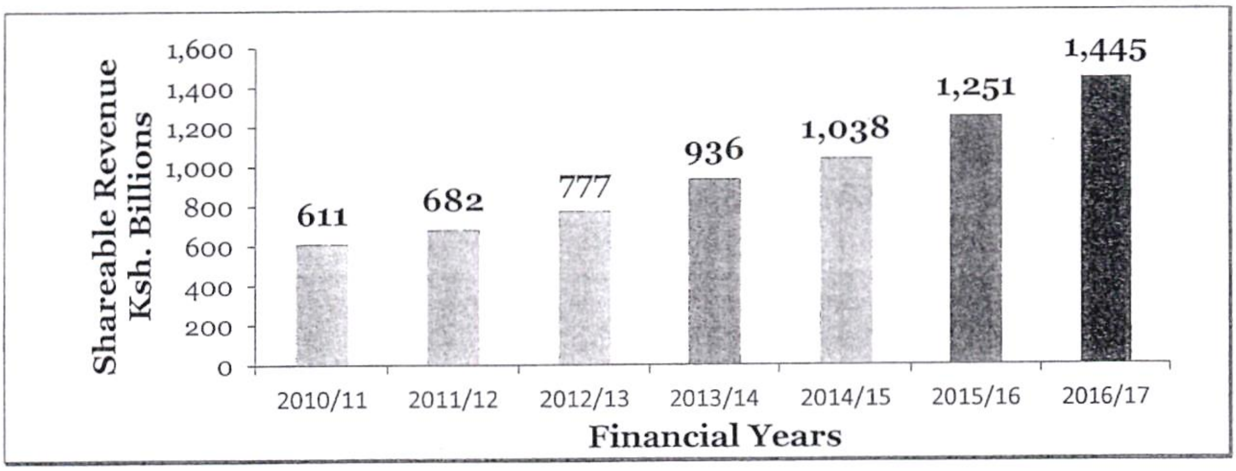
Figure 1: Comparison of Equitable Share Recommendations on the Division of Revenue for FY 2016/17



Source CRA 2016

While the CRA recommendation provides for an increase in the equitable share allocation to county governments as a proportion of the shareable revenue, the National Assembly Bill No. 4 of 2016 provides for a decrease as shown in Figure 1 above.

Figure 2: Trend of Shareable Revenue, Ksh. Billions



Source CRA 2016

Actual Shareable Revenue   Estimate   Projection

The recommendation on the equitable share to county governments for financial year 2016/17 of Ksh. 332 billion is equivalent to 23% of the projected shareable revenue for financial year 2016/17 estimated at Ksh. 1,445 billion.

Revenue Growth Factor

(i). The Commission recommendation on the revenue growth factor of 15.09% is an average of the three years shareable revenue growth rates (Table 3).

The IBEC recommendation on the revenue growth factor of 10.2% is an a three year average of both the revenue growth of 15.09% and Gross Domestic Product of 5.3% (Table 4).

The National Assembly recommendation on the revenue growth factor of 7.8% has not been explained.

Comparison between CRA, National Assembly Bill No. 4 of 2016 and IBEC Recommendations on Sharing of Revenue for 2016/17

Table 1: Equitable Share to County Governments

	ITEM	2015/16 Ksh.Mn	2016/17 Ksh. Million		
A	EQUITABLE SHARE TO COUNTIES	Actual Allocation	CRA	National Assembly Bill No. 4 2016[1]	IBEC
1	**Latest Audited Accounts**	**2012/13**	**2013/14**	**2013/14**	**2013/14**
2	Shareable Revenue: Audited Accounts	776,858	935,653	935,653	935,653
3	**Equitable Share (Baseline)**	**259,775**	**259,775**	**259,775**	**259,775**
4	**Adjust by the three year average revenue growth of 15.09 percent (National Treasury=7.8%; IBEC=10.2%)**		**39,200**	**20,225**	**26,484**
5	County Roads (Summit Ad Hoc Technical Committee)	-	27,790	0	8,430*
6	Public Participation	-	5,000	0	0
10	Libraries (Summit Ad Hoc Technical Committee)				319*
13	**Total Equitable Share to Counties**	**259,775**	**331,765**	**280,300**	**295,008**
14	**Percentage Share to Counties**	**33.44%**	**35.46%**	**29.96%**	**31.6%**

*Recommendations of the Summit Ad hoc Technical Committee, March 2016

[1] Source: National Assembly Bill No. 4 2016

Table 2: Conditional Allocations to County Governments

		2015/16	2016/17		
B	CURRENT CONDITIONAL ALLOCATIONS	Actual	CRA	National Treasury	IBEC
15	Level 5 Hospitals	3,600	4,143	4,000	4,143
16	Free Maternal Health Care	4,298	4,947	4,300	4,947
17	Compensation for user fees forgone	900	1,036	900	1,036
18	Leasing of Medical Equipment	4,500	5,179	4,500	4,500
19	Road Fuel Levy Fund (15% of Actual 2014/15): Summit Ad Hoc Technical Committee 25%	3,300	4,756	4,307	6,587*
20	**Sub Total**	**16,598**	**20,061**	**18,007**	**21,213**
C	**NEW CONDITIONAL ALLOCATIONS**				
21	Additional allocation for ECDE				
22	Personnel Emoluments for devolved staff	-	5,196	0	0
23	Construction of headquarters in five Counties	-	4,000	0	Contributory
24	Rehabilitation of schools	-	5,000	0	CDF
25	Establishment of County Emergency Funds (2% of Equitable Share: Ksh. 259,775 Million)	-	5,196	0	0
26	Rehabilitation of village polytechnics	-	6,300	0	1,500
27	**Sub Total New Conditional Allocations**	**-**	**25,691**	**0**	**1,500**
28	**Total Conditional Allocations**	**16,598**	**45,752**	**18,007**	**22,713**
D	**Total Transfer to Counties for 2016/17**	**276,373**	**377,517**	**298,304**	**317,721**

Source CRA, 2016

*Recommendations of the Summit Ad hoc Technical Committee, March 2016

Table 4: Growth in Shareable Revenues for 2016/17

	2015/16	2016/17	Growth
Total Shareable Revenue	777	936	20.5%
National Assembly Bill No. 6 2016 Recommendation			
Allocation to National Government	517	656	26.9%
Allocation to County Governments	260	280	7.7%
CRA Recommendation			
Allocation to National Government	517	604	16.8%
Allocation to County Governments	260	332	27.7
IBEC Recommendation			
Allocation to National Government	517	641	24.0%
Allocation to County Governments	260	295	13.5%

Source CRA 2016

EQUITY IN RESOURCE ALLOCATION

The growth in shareable revenue as shown in Table 4 is 20.5%. The National Assembly Bill, 2016 only provides for a growth of 7.8 % in the county governments equitable share for financial year 2016/17. This is too low and does not demonstrate equity in the sharing of resources between the two levels of government.

Revenue Growth Rates

Table 3: Three Years Average Growth in Shareable Revenue

NO.	YEAR	SHAREABLE REVENUE KSH. BILLIONS	GROWTH COMPUTATION	GROWTH %
	2011/12	682		
1.	2012/13	777	(777÷682)×100%=113.885	13.89
2.	2013/14	936	(936÷777)×100%=120.441	20.44
3.	2014/15	1,038	(1,038÷936)×100=110.942	10.94
			Total	**45.27**
			Average for three years (45.27÷3)	**15.09**

Source CRA, 2016

Gross Domestic Products Growth Rates:

Table 4: GDP Growth Rates 2012/13-2014/15

YEAR	QUARTER	QUARTERLY GROWTH RATES	ANNUAL GROWTH RATES
2012	Q3	4.5	
2012	Q4	4.7	
2013	Q1	6.0	
2013	Q2	7.0	5.6
2013	Q3	6.8	
2013	Q4	2.9	
2014	Q1	4.7	
2014	Q2	6.0	5.1
2014	Q3	5.2	
2014	Q4	5.5	
2015	Q1	5.0	
2015	Q2	5.6	5.3
3 Year Average GDP Growth Rate			5.3

Source: KNBS 2015

CRA RECOMMENDATIONS ON THE DIVISION OF REVENUE BILL, 2016 ***(NATIONAL ASSEMBLY BILL NO.4 OF 2016)***

(a.) Revenue Growth Factor:

i. The National Assembly Bill 2016 provides for a revenue growth factor of 7.8%. This is aNational Treasury growth factors whose calculation has not been explained in any document. It is neither a revenue growth factor nor is it a GDP growth factor. A revenue growth factor of 7.8 percent is too low for consideration as a basis for increasing allocations to county governments for financial year 2016/17.

ii. IBEC recommended that the CRA and the National Treasury calculates the revenue Growth factor based on the IBEC minute resolution of 11th February 2015 that approved the use of a three year average growth of both revenue and GDP.

iii. The Commission recommends to the Senate that the IBEC growth factor be used. This is 10.2%: (15.09+5.3)/2. The three year revenue and GDP growth rates are equal to 15.09% and 5.3%, respectively.

(b.) County Governments' Equitable Share

i. The National Assembly Bill 2016 does not provide for additional allocations for all functions transferred to county governments. The Transition Authority in February 2016 gazetted more functions for transfer to county governments. This includes roads and libraries, among others.

ii. In accordance with the provisions of Article 187(2), the Commission recommends to Senate that resources for County roads and Libraries, amounting to Ksh. 8.43 billion and Ksh. 0.319, respectively be allocated to county governments as part of the equitable share for 2016/17. This was agreed by the ad hoc technical committee of the Summit in March 2016.

Conditional Allocations to County Governments

i. In accordance with the provisions of Article 202(2), conditional allocations to county governments are from the national government's equitable share. The National Assembly Bill 2016 provides for the allocations without full adjustment for inflation.

ii. IBEC recommended that with the exception of the allocation for the leasing of medical equipment, the other conditional allocations be as recommended by the CRA

(c.) Road Maintenance Levy Fund.

i. The National Assembly Bill 2016 does not provide for additional allocations for maintenance of additional kilometers of roads transferred to county governments in February 2016 by the Transition Authority.

ii. Kenya Road Boards Act provides that RMLF is allocated as follows: KeNHA = 40%; KeRRA = 32% ; KURA = 15%; KWS = 1%; KRB = 2%; and Emergency = 10%

iii. The Commission acknowledges that counties were allocated 15% of RMLF in the year 2015-16 out of which 10.2% was from KERRA and 4.8% from KURA allocations respectively. However the 15 % resources transferred to the county government from the RMLF is not commensurate to the number of Kilometers transferred to county governments, amounting to 120,000kms.

iv. Based on a criteria provided by the State Department of Infrastructure for maintenance of class C roads and class D roads under KURA and KeRRA the Commission recommends to Senate that an additional 10% of the RMLF be allocated to county governments for the maintenance of the additional road network transferred to county governments. In total, county governments should be allocated 25% of the RMLF in financial year 2016/17.

(d.) Rehabilitation of Village Polytechnics

i. The National Assembly Bill 2016 does not provide for allocations to county governments for rehabilitation of village polytechnics.

ii. IBEC recommended that a conditional allocation of Ksh.1.5 billion be given to county governments in 2016/17.
iii. The youth need to be meaningfully engaged. Employment of the youth should be the country's first national interest. This is important to address the twin problems of youth radicalization and insecurity. The observation by the National Assembly that village polytechnics will be considered once the financial position of the country improves amounts to double speak given that NYS and education are ranked as part of the national interest.
iv. The Commission recommends to the Senate that Ksh. 1.5 billion be allocated to county governments as a conditional allocation to rehabilitate/ built and equip village polytechnics across the country.

APPENDIX (C).

COUNCIL OF GOVERNORS

REVIEW OF THE DIVISION OF REVENUE BILL 2016

Introduction

Article 202 of the Constitution provides that:

(1) Revenue raised nationally shall be shared equitably among the national and county governments;

(2) County governments may be given additional allocations from the national's share of the revenue, either conditionally or unconditionally.

The allocation of revenue raised (for the financial year2015/16) by the National Government between the two levels of government is guided by the Division of Revenue Bill, 2016 (DoRB). The Council of Governors has reviewed the DoRB and raises the following concerns on the same:

1. The DoRB contravenes Article 203 of the Constitution in the following aspects:

   i. Allocation of funds to the Constituency Development Fund (CDF) before determining the equitable share between the two levels of government. CDF is a National Government fund which should be derived from the National Government share after the equitable share has been allocated.

   ii. Allocations based on National Interest under Article 203(1)(a) of the Constitution.

   In the DoRB, the items considered under national interest are actually National Government projects- National Youth Service re- engineering and the laptops project. National interest is not equivalent to National Government priorities. National interest must be determined by the two levels and must be based on priorities that contribute to the overall national goals, not just one level. Matters related to security, economics and youth empowerment are examples that could be factored as national interest.

   What constitutes national interest should not be restricted to National Government functions since the County Governments also implement projects that of national interest e.g. youth polytechnics. Issues of national interest should be defined through an intergovernmental consultation.

iii. Recommendations

The laptop project cannot be classified under a project of national interest and therefore cannot be a deduction from the equitable share. This money should come from the National Government share of revenue.

The following functions have been devolved but should be considered as national interests: Youth Polytechnics which hardly ever receive adequate allocation yet the youth form the largest section of the population; and the Early Childhood Education (ECDE) due to its significant role in childhood development.

The Council proposes that there is need for intergovernmental consultations on national interest priorities before any allocation is made on the same. This is because these priorities can also be performed by County Governments through conditional grants and should therefore not be restricted to National Government functions.

2. <u>Equalisation Fund:</u>

This fund has never been disbursed despite the Commission for Revenue Allocation's (CRA) proposal on how is to be shared between the identified marginalized Counties. The National Treasury allocated the Fund Kshs. 3.4 billion in the FY 2014/15, Kshs. 6 billion in the FY2015/16 and currently a proposal of Kshs. 6 billion. The 2014/15 and 2015/16 allocations have never been disbursed to the marginalised areas.

Under the Constitution, the sectors that the fund is aimed at targeting are essentially County functions. In this regard, the Council of Governors is seeking the intervention of the Senate to ensure that the fund is disbursed as a conditional grant to the identified fourteen (14) Counties.

3. <u>Emergency (Contingencies and strategic grain reserve):</u>

There is a provision for Kshs. 7.245 billion towards flexibility in responding to emergencies and other temporary needs. This fund should be equally allocated to both levels of government since they both respond to emergencies. Additionally, the allocation for the Strategic Grain Reserve should also be considered as a shared responsibility since agriculture is a devolved function.

4. <u>Growth factor of County Governments Equitable share:</u>

The National Treasury has used a factor of 7.8%. It is however not clear how this was arrived at.

a) The Council of Governors has agreed to the growth factor of 15.09% from the initial proposed growth factor of 20.44% being the actual growth rate of revenues in the past. CRA as mandated by the Constitution Article 205 calculated the growth factor at 15.09%. It is however erroneous for the CRA to state that the Intergovernmental Budget and Economic Council (IBEC) agreed and adopted to use the GDP to determine sharable revenue. There was no such agreement at IBEC. It was a proposal from the Deputy President to apply a growth of 10.2%. The Council did not accept this proposal but rather maintained its position of using the 15.09% scientifically calculated growth rate as per the initial proposal by CRA. (See attached initial proposal Appendix I). The Council reiterates that allocation should be based on the CRA formula.

b) County Governments' allocation should not be reduced when there is a progressive positive growth of revenues.

c) With a revenue growth of 7.8% the County Governments equitable share of revenue reflects an allocation of 30. 0% of the nationally raised revenues which is lower than the allocation for the 2015/16 financial year which was 33.44% against an agreed growth rate of 10.41%. The Council therefore requests the Senate to consider a total allocation to County Governments as equitable share of 35% of the total sharable revenue.

5. Unfunded Functions:

a) County transport.
Additional 31,113 Kms of roads have been devolved to County Governments with no attendant resources. The inter-agency technical committee of the summit proposed that **Kshs.8.43 billion** should be devolved to follow this function. (See Appendix II). It was also agreed that that the Counties should be allocated 25% of the Road Maintenance Levy Fund.

b) Library services
59 libraries were devolved with no attendant resources. The inter-agency technical committee of the summit proposed that **Kshs.319 million** should be devolved to follow this function.

c) Museums
Transition Authority devolved this function without identification of attendant resources. The Council of Governors is requesting the Senate to allocate funds for this particular function.

6. Intergovernmental Relations Technical Committee(IGRTC):
IGRTC being an independent body is mandated to take over the residual functions of the Transition Authority. IGRTC's budget should be independent from the Ministry of Devolution & Planning. Its budget should be housed at the Office of the Presidency,

who chairs the Summit. There is need to increase the budgetary allocation for the IGRTC rather than a reduction and the assets that were being held by Transition Authority should be transferred to the Committee. There is pending work in the transition like costing of functions and audit of assets and liabilities. The Intergovernmental Relations Act should be amended to strengthen the IGRTC.

7. <u>Legal Framework for Conditional Grants:</u>
   A draft document on the administration and reporting of the conditional grants has been generated but not yet adopted. The Council is requesting the Senate to assist in the finalization of the document before the approval of the DoRB. It is also worthy of note that it is critical to differentiate between conditional grants and donor funds. Where donor funds are related to County functions, they should be disbursed to the Counties, not held at the national ministries.

   The National Government should set up a unit at the National Treasury to manage conditional grants. The use of National Government agencies to hold funds for County functions undermines devolution.

8. <u>Accountability and transparency:</u>
   Counties are working under very difficult circumstances to improve on governance and it unfair to paint all Counties as corrupt. Counties control only 21% of the National sharable revenue while the National Government controls a stake of 79%. The fight against grant should be done through institutions and should target only those that are culpable.

9. <u>National Debt:</u>
   The guidelines on borrowing should be implemented consultatively. The Loans and Grants Council should be established to vet borrowing.

10. <u>Pensions:</u>
    The National Treasury has only factored the aspect of the pensions for the National Government staff. Staff working at County Governments should also be factored in the formula of computation of the provision as they are also public servants and qualify for pension as they make part of the national obligation.

    The Bill mentions that Ksh. 6.3 billion was transferred to County Governments in the2015/16 financial year to cater for county payroll. This is not factual as County Governments were only allocated **Ksh 1.7 Billion** towards the same after the mediation process of the 2015 Division of Revenue Bill.

11. Conditional allocation to county governments:

a) The Bill has also highlighted that additional allocation to Counties are determined through the national MTEF budget process based on the weight attached to the national government policy objectives that the allocations are intended to support.

Recommendation: The Council of Governors insist that the County Governments through the Council should be involved in the MTEF process and allocation of all conditional grants.

b) The Bill indicates that "conditional allocations" for the purposes of this Act, means additional resources allocated to County Governments from revenue raised nationally. This is a contradiction to other sections of the Bill that involves other conditional allocations such as allocation from the Government of Denmark which is meant to support the delivery of health services in Counties.

Conclusion

The Council of Governors proposes that the allocation of the sharable revenue to Counties be Kshs. 332 billion being equivalent of 35% of the most recent audited approved accounts for 2013/14 amounting to Kshs. 936 billion.

The Senate should also review the mandate of several National Government authorities that continue to collect levies on functions that are devolved, for instance, National Construction Authority, the Water Resource Management Authority, the Water Services Regulatory Board and others.

APPENDIX (D)

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12/04/2016

MEMORANDUM

The first part of this memorandum is a summary of the key questions that we encourage Parliament to ask when considering the Division of Revenue Bill (DORB) 2016. The second part is an in depth analysis of the issues and concerns related to the DORB 2016. This memorandum will also be made available on our website at www.internationalbudget.org/kenya. For further information, please contact us at +254729937158.

PART I: Summary of Key Questions

1. **Why is there a disparity in the rate of growth of the equitable share in comparison to that of sharable revenue?** In the DORB 2016, the equitable share is set to increase by 8% while the sharable revenue will grow by 11%. The DORB, however, offers no explanation for this difference. Nor does it adequately explain why Treasury's growth rate is lower than that proposed by the Commission on Revenue Allocation. To avoid suspicions that allocations are arbitrarily arrived at or distorted to favour one level of government, the DORB should provide an explanation for the disparity.

2. **Why are allocations for laptops or the National Youth Service considered part of the "national interest," while Treasury suggests that there is not enough funding to support polytechnics?** As was the case last year, the Treasury proposes an arbitrary definition of national interest which is not properly defended in the documentation.

3. **Why is the grant to Level 5 facilities distributed in a way that favours smaller facilities at the expense of larger one?** Our analysis finds that the way this grant is distributed rewards facilities with similar bed occupancy rates, even if one facility is much larger than another. This has the effect of giving Nakuru and Meru similar amounts, yet Nakuru has nearly twice as many inpatient beds. This is not equitable, as it punishes larger facilities for no justifiable reason.

4. **More generally, what are the justifications for the number, type and distribution criteria of the conditional grants and are these consistent with principles of equity and transparency?** The number of conditional grants in the DORB has increased each year since 2013/14, but there has been inadequate debate over the basis for establishing these grants and

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the criteria for distributing them. This lack of attention to distributional criteria is leading to inequities and may undermine the purposes for which they were created.

5. **Why, four years into devolution, have we still not reformed state corporations to release funds and functions in the roads, water and regional development sectors?** While state corporations in these areas perform some regional functions and may need to be preserved in some form, there is no question that they need to be reformed and some of their functions released to counties. Why hasn't this happened and what can be done to speed up the process?

PART II: Detailed Analysis of Key Issues and Concerns in the DORB 2016

The International Budget Partnership-Kenya wishes to raise the following issues with regard to the Division of Revenue Bill (DORB) 2016 for the attention of Parliament:

1. **The Division of Revenue Bill 2016 provides no explanation for the difference in the rate of growth of the equitable share for counties and overall sharable revenue.** In the Division of Revenue Bill 2016, the National Treasury has recommended Kshs. 302 billion be devolved to the counties, an increase from Kshs. 287 billion in 2015/16. Most of these funds are for the equitable share, which will increase by 8% (from Kshs. 260 billion last year to Kshs. 280 billion this year). At the same time, sharable revenue will increase by 11% (to Kshs. 1,380 billion from Kshs. 1,243 billion in 2015/16). This means national government will take an increasing share of total revenue. Why should this be?

   The rate of growth of the national and county shares need not be exactly the same, but any differences require explanation. It is possible to argue that the share for either level should increase because the country needs to prioritize functions carried out by that level in a given year (such as security or health). Or it is possible to argue that the cost of a set of functions performed by one level or the other are growing faster and that level therefore needs a larger share.

   No such arguments are made in the DORB, which fuels suspicion that allocations are arbitrarily arrived at or are skewed to favor one level of government. Treasury justifies the share for counties on the basis of an "agreed growth factor" that lacks a clear basis and upon which no one seems to have agreed. The National Treasury has applied a revenue growth factor of 7.8 percent, which they claim is based on revenue performance in the recent past. This differs by a huge margin from the growth factor applied by the Commission on Revenue Allocation (CRA) of 15.1% in its recommendations for 2016/17. CRA uses the annual revenue growth in revenue over the last three years based on audited revenue accounts. The table below shows how CRA arrives at its figure.

	2011/12	2012/13	2013/14	2014/15	Average 3 Year Growth
Audited Revenue Accounts	682	777	936	1,038	
Growth in Shareable Revenue		13.9%	20.5%	10.9%	15.1%*

National Treasury indicates that it has also relied on prior year figures and justifies the difference with CRA based on the fact that it took actual revenue "performance" into account. It is unclear what this means since CRA used audited accounts, which already factor in actual collections (rather than targets).

Parliament should demand a clear explanation for this difference in growth factors. It is worth noting that National Treasury gave a growth factor of 9.85 percent in the draft Budget Policy Statement (BPS) released in late January, and has also provided no explanation for its shift to a lower number a few weeks later.

2. **The debate over the meaning of the "national interest" continues this year with no significant improvements.** Last year, CRA indicated that the national interest should not be equated to national government programs. Instead, it should be a collective reflection on the country's priorities, regardless of which level of government carries them out. Civil society organizations, including IBP Kenya, agreed. Nothing has been done to revisit the issue of how to define the national interest, and Treasury continues to define it in terms of the current government's flagship programs. This is an inadequate justification for the major trade-offs that must be made in any budget. Parliament should ask hard questions about how we define the national interest each year.

3 & 4. There is a need to improve on the justifications for conditional grants (including the Level 5 grant) and how they are distributed.

a. **There is no clear basis for the size of conditional grants. It is not clear why the grant to Level 5 hospitals is pegged at 4 billion or the free maternity grant at 4.1 billion.** The free maternity grant has declined from 4.3 billion last year without explanation. Even the road grant, which both Treasury and CRA agree should be 15% of last year's Road Levy Fund, turns out to be valued differently by the two institutions. The National Treasury claims that 15% of the fund is equivalent to 4.3 billion whereas CRA claims that 15% is equivalent to 4.8 billion. Since there are no publicly available financial statements from the Kenya Roads Board to verify the actual returns in 2014/15, Parliament should interrogate further the reasons for the disagreement between Treasury and CRA over the Fund's returns.

b. **There is also no clear basis for the distributional criteria used to allocate these grants, which is particularly egregious in the case of the Level 5 facilities**. The table below shows how the grant is distributed based on bed occupancy rates. But using rates is never a good approach to distributing service-related grants unless the objective is extreme redistribution. In this case, a better approach is to look not at occupancy rates but at the share of all bed occupancy in the country that occurs in a particular facility (compare column 2 and column 5 in the table below). This is a better measure of relative costs, because a county like Nakuru with twice as many beds as Meru is going to be serving nearly twice as many people with the same occupancy rate (77%). The current formula redistributes heavily from Nakuru to Meru for no obvious reason.

1	2	3	4	5	6	7	8
Facility	Occupancy (%)	Bed capacity	Occupied Bed	Share of Occupied Bed to the total	CARB County Allocation	Allocation Based on Number of Occupied Bed as a share of the Total	Difference
Machakos	79	375	296	8%	365,317,919	339,446,400	25,871,519
Embu	62	618	383	11%	286,705,202	439,028,802	(152,323,600)
Garissa	71	224	159	5%	328,323,699	182,229,723	146,093,976
Kakamega	88	449	395	11%	406,936,416	452,732,697	(45,796,281)
Meru	77	306	236	7%	356,069,364	269,975,901	86,093,463
Mombasa	80	499	399	11%	369,942,197	457,407,604	(87,465,407)
Nakuru	77	588	453	13%	356,069,364	518,777,222	(162,707,858)
Nyeri	84	323	271	8%	388,439,306	310,881,341	77,557,965
Kisumu	76	457	347	10%	351,445,087	397,962,949	(46,517,862)
Thika	85	265	225	6%	393,065,584	258,093,845	134,971,739
Kisii	86	379	326	9%	397,687,861	373,465,517	24,222,344
Total		**4,483**	**3,491**	**100%**	**4,000,001,999**	**4,000,001,999**	-

c. **Other grants also lack justifications.** The road fund is distributed according to the CRA formula for the equitable share. Using this formula to distribute the road maintenance grant sees counties with fewer roads receive more money for road maintenance. Since the Fund was created to help maintain already existing roads across the country, this is not the most logical way to distribute it. The National Treasury has also recommended the addition of one conditional grant in 2016/17. This special conditional grant is meant for two health facilities in Tana River and Lamu Counties to help them meet demand for emergency services. This decision is informed by their proximity to Somalia which has made them vulnerable to terror attacks. Parliament should interrogate why only these two counties were selected given that there are other border counties prone to cross border insecurity.

d. **The conditional grants proposed by National Treasury have limited conditions attached to them in the documents proposing their creation.** It is important that the conditions be clearly laid out, followed by clearly defined enforcement measures should the facilities benefiting from the grant not meet the conditions. While there are some conditions mentioned in the County Allocation of Revenue Bill, it is not clear how they are enforced. For example, the user fee grant requires facilities to have a "functional Health Management Committee." Who checks to ensure that this is the case and what happens if it is not? There is no evidence that such conditions are enforced or that those facilities that fall short are sanctioned (e.g., do not receive their allocations).

5. **The failure to reform state corporations is no longer excusable four years into devolution.** It has been clear since 2010 that water service boards, regional development authorities, roads boards and other state corporations in agriculture, etc. would have to be reformed as they perform at least some devolved functions. Very little has happened in this regard, however. The issue of roads has been litigated in court and it is likely that other sectors will end up in court as well. While the courts have a role to play, legal processes are not a substitute for properly planned reforms of government agencies with an eye on how best to separate functions and sequence transfers. It is unfortunate that the executive has failed to act on these reforms, but Parliament should force the executive to prepare detailed plans for state corporation restructuring.

APPENDIX (e)

The Institute for Social Accountability

(1) D/Com
Please deal
12/04/16

(2) Clerk Asst I –
F, C & Budget
Please present for consideration and deal appropriately
12/04/16

The Clerk Senate

The Parliament of Kenya

Tuesday, 12 April 2016

TISA MEMORANDUM ON THE DIVISION OF REVENUE BILL 2016

About The Institute for Social Accountability (TISA)

1. The Institute for Social Accountability (TISA) is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. TISA has established itself as a leading player in decentralised governance field and has engaged with relevant state and non-state actors in the quest to promote effective local governance in Kenya.

2. Public Participation

The CRA proposed a conditional grant of Kes 5 billion for public participation (approx 101million per county government). However this proposal was rejected by both the National Treasury and National Assembly. On the other hand, only a handful of county governments have made concrete attempts at establishing public participation frameworks as envisioned in the devolution laws. It is the responsibility of both levels of government to support the exercise of citizen sovereignty through adequate financial allocations.

County Governments are assigned function 14 *Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.* Unbundled this function requires an estimated Ksh 100-150million. (See Annex 1 and 2). There is therefore needed a conditional grant to support this central tenant of the constitution and devolved government. We therefore urge Senate to reinstate the conditional grant for public participation. This grant should be accompanied by conditions which aid transparency, accountability and intra/inter-governmental relations in the application of public participation as well as in county processes. Some proposed conditions are:

Counties contribute at least 10% of the proposed 101 million; Counties establish a public participation framework to administrate, monitor and report on the application of all funds on public participation; Counties ensure intra- and intergovernmental relations are addressed in the framework; Counties ensure a reciprocal role of non-state-actors is provided; Counties ensure measures for transparency, citizen monitoring and oversight and accountability are empowered through the framework; Provide a period of three years.

3. Roads Maintenance Levy Fund

i. *Lack of clarity on county roads:* The constitution identifies two types of roads, National trunk roads and county roads. However, there is contestation of the definition and assignment of roads falling under the mandate of the National and County Governments. The DoR should clarify the class of roads targeted by the RMLF for accountability purposes.

ii. *Decline in allocations*: Historically, maintenance of class A, B & C roads took up 40% of resources of the Road Maintenance Levy Fund.

Road Maintenance	Allocations
A, B and C roads	40%
roads in constituencies	32%
roads in cities and municipalities	15%
roads in National Parks and Game Reserves	1%

Source: Kenya Roads Board

The rest of the roads including all roads in cities, municipalities and town councils are county road therefore in essence, 47% of the RMLF is what should be is currently funding roads in counties. This however is not the case. Currently county governments are receiving 15% of the RMLF, 32% less than what they would be receiving prior to devolution.

iii. *Weak legal framework*: The Road Maintenance Levy Fund Act, 1993 and the Kenya Roads Board Act, 1999 have both undesirable and unconstitutional provisions. The composition of board members is by both the government officials and non-state actors, the president is responsible for appointing of the chairperson a clear indication of political influence. These institutional arrangements and practices undermine the road funds autonomy. Further, general oversight of the road sector is entirely by the KRB, this leaves limited room for public to query on accountability. The ongoing review of the Roads Bill 2015 should address these gaps.

iv. *Weak decentralized agency structure:* The County Governments have been working well with the national agencies. However, there is still need for structured systems for planning and implementation (Senate (2015) Report on Roads and Transport). According to the Kenya Roads Bill, 2015, each county government is establish County Roads Agency's for the management, development and maintenance of county roads. The Kenya National Highways Authority and the Kenya National Secondary Roads Authority (KeNSRA) will replace KuRA and KeRRA and absorb their assets and employees which will manage and develop national trunk roads on behalf of the national government. What support will be accorded to county governments to perform this function? Which staff will be seconded seeing that KeNSRA is absorbing historic 'county' agencies? What is the planned evolution of the agency structure?

v. *Lack of conditional grant framework:* Section 24(11) of The Public Finance Management Act, 2012 provides that 'The regulations shall provide for the establishment, management, operation or winding up of national public funds'. However, the PFM regulations in turn fail provide a comprehensive funds policy. Therefore, currently the republic of Kenya at this time has no framework for the effective management of public funds. Given the wanton proliferation of funds with poor coordination, reporting and measurability, it is difficult to monitor how far counties will deliver on maintaining and repairing roads.

4. The uncoordinated restructuring of government owned entities (Parastatals)

We laud the President's move to establish the Taskforce on Parastatal Reform in 2014, but we note that the Task Force report paid only cursory attention to devolution. Firstly in its composition - the institutions that arbitrate for devolution were excluded from the assignment. Secondly, the Taskforce report proposed the merging and dissolution of several agencies with no rationale given and inadequate attention paid to functional roles.

The shortcomings in the report manifest themselves in the *The Government Owned Entities Bill, 2014* which fails to provide a procedure for the handing over of state agencies working in sectors falling under the functions of county government. Further to this, the amendments of the various laws as proposed in the second schedule are inadequate from the perspective of county functional mandates.

In addition, state corporations (Government Owned Entities) account for a growing share of Kenya's budget. Presently, state corporations performing functions that should have been devolved receive around 78 billion Kenyan Shillings in domestic funds from the budget. If these corporations are reformed, this would flow to counties either through conditional grant or the unconditional equitable share.[1]

5. Incomplete transition activities not addressed in the DoR2016

The CIC End Term Report[2] and the Interim Report of the Working Group on Socio-Economic Audit of the Constitution of Kenya[3] both highlight the achievements as well as gaps in the transition process. The failure to complete these transitional activities has a direct bearing on the effectiveness of county governments. A 2016 report by the Transition Authority cites these as:[4] Incomplete assets audit, valuation and transfer/non-cooperation by Ministries, Lack of national policies/attempt to claw back national functions, failure to update public human resource database, failure to transfer pending functions/performed by state corporations, failure to determine costing of county functions, inadequate capacity building of the counties, delays in setting up county pensions schemes among other issues. The National Treasury and NA have rejected the CRA proposals to fund some of these transition items, it now falls to the Senate to safeguard devolution by reinstating funds to complete the transition process.

6. Dialogue over implementation process

With the exit of the CIC and TA, and given numerous outstanding, and contentious issues we call for a national dialogue on the status of implementation of devolution to prepare a roadmap for the next three years of devolution.

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[1] International Partnership Kenya - Have state corporations changed under devolution? (2015)

[2] Commission for the Implementation of the Constitution - End Term Report December 2015.

[3] Interim Report of the Working Group on Socio - Economic Audit of the Constitution of Kenya, May 2015. Commissioned by the Parliamentary Budget Committee of the National Assembly of Kenya.

[4] Daily Nation – Transition Authority Status of Transition to Devolved System of Government, February 2016 (Thursday 4th February 2016).

Annex 1 Unbundling Public Particiaption

i. **Management of Public Particiaption**
- Policy development and administration (legislation, regulations)
- Decentralization
- Establishment and administration of villages/village councils
- Management of neighborhood/residents associations
- Administration of administrative units
- Establishment and administration of County Assembly public participation framework

ii. **Planning**
- Establishment of planning units
- Ongoing stakeholder mapping and engagement

iii. **Civic Education of public**
- Content development
- Designation of civic educators
- Development of materials
- Undertaking CE
- Monitoring and reporting

iv. **Capacity development of county officers**
- Supporting public participation training activities for county officers
- Monitoring and evaluating capacity building

v. **Citizen Forums**
- Administration of citizen forums notifications, guided dialogue, reporting, feedback

vi. **Communication**
- Develop & administrate communication policy
- Undertake national statutory notifications
- County communication staff and procedures
- Notice boards, use of ICT, resource centers, use of mass media

vii. **Petition procedures to the county executive and county assembly**

viii. **Complaints and feedback mechanisms**

ix. **Reporting on public participation**

x. **Monitoring public participation**

xi Involvement of Non State Actors (round table, meetings, joint work plans)

xii Supporting Intra and Inter- governmental forums
- County elected leaders forum (91(f)
- Intergovernmental planning and coordination

xiii Public Participation in the County Budget process

Annex 2 Tentative Budget for the Implementation of Public Participation Annual (KES)

Activity	Sub-Activities	Proposed Cost Per Sub- Activity	Notes
Stakeholder mapping	Community resource persons 2 per ward	800,000	This cost will cater for 2 resource persons per ward at a cost of 10,000 per ward in the 40 wards of the County
	Production of Materials	200,000	This cost will cater for duplication/production of any materials needed during stakeholder mapping
	Development of tool	200,000	This cost will cater for a consultant to develop a stakeholder mapping tool.
Database Management	Database officer	480,000	This cost will support the database officer at a cost of 40,000 per month for 12 months.
	Purchase of Laptop	80,000	This cost will cater for the cost of purchasing of a laptop to aid in data management.
Sub-Total		**1,760,000**	
Citizen Forums convened by Ward administrator after every two months	Notification	2,400,000	This support for notices/SMS/community radio cost at a cost of 200,000 per month
	Meeting Venue/Public Address system	3,600,000	This cost will support the expenses related to venue and public address system during the citizen forums at a cost of 15000 per ward for 40 wards in 6 months.
	Refreshments	2,400,000	This cost will support refreshments during the citizen forums at a cost of 10,000 per citizen forum in 40 wards in 12 months.

	Production of Materials	2,400,000	This cost will support duplication/production of materials needed during the citizen forums at a cost of 10,000 per citizen forum in 40 wards in 6 months.
	Translation for People with Disabilities(PWDs)	2,400,000	This cost will support translation related costs such as sign language interpreters, Braille translations at a cost of 10,000 per forum in 40 wards in 6 months.
	Documentation and report writing.	360,0000	This cost will support a Monitoring and Evaluation officer who will be responsible for document at a cost of 60,000 per month.
	Administrator (Field allowance)	960,000	This cost will support field allowances for the ward administrators at a cost of 2000 per forum
Sub-Total		***14,520,000***	
Quarterly Sub County Forums	Notifications	400,000	This support for notices/SMS/community radio cost at a cost of 100,000 per month
	Venue, PA system,	40,000	This will support venue and public address system during the sub-county forum at a cost of 10,000 per quarterly forum
	Refreshments	400,000	This will support participants refreshments during the sub-county forum at a cost of 200 per person for an estimated 200 people per quarterly forum
	Production of Materials	800,000	This will support duplication of materials including reports that may will be used during the sub-county forum at a cost of 200 per person for an estimated 200 people per quarterly forum

	Translation for People with Disabilities(PWDs)	40,000	This will cater for translation related cost at a cost of 5000 for 2 people per quarterly forum
	Documentation including report writing	120,000	This cost will support a rapporteur per quarterly forum at a cost of 30,000 per forum
Sub-total		**1,800,000**	
Monthly Village Administrator Meetings	Monthly village forums	2,460,000	This cost will cater for expenses related to organizing and holding village level meetings in all the 246 villages of Kitui County at a cost of 10,000 Per village forum
Village council	Members monthly allowance	14,760,000	This cost will support allowances for the 5 village elders at a cost of 1000 for 246 villages per year.
Ward Development Committee	Members allowance	1,680,000	This cost will support allowances for the 7 members of the ward development committee at a cost of 500 per committee member in 40 wards.

Oversight Forums	Hire of venue and PA system Refreshments for participants	300,000	This cost will support 2 oversight forums per year including venue, PA and refreshments at a cost of 150,000 per forum
	Forum materials(Stationery, duplication of reports)	40,000	This cost will support all expenses related to duplication/production of any materials needed during the oversight forums
	Documentation including report writing, photography ,video	120,000	This cost will support documentation processes of results of the oversight committees forums at a cost of 60,000 per forum.
	.Translation services for PWDS	40,000	This cost will support translation related costs such as sign language interpreters during the 2 oversight forums
Incentives to promote good practice	Awards ceremony Prizes Media visibility	5,000,000	This cost will support initiatives that acknowledges good practices of public participation such as award ceremonies for best performers at the County
Sub-Total		*26,400,000*	
Sub-Total Estimated Public Participation Budget		*44,480,000*	
Monitoring Public Participation		*2,224,000*	0.5% of total public participation budget. This cost will support activities that go towards monitoring public participation initiatives to enable documentation of successes, challenges and lessons learnt in the process of documentation.
Total Estimated Public Participation Budget		*46,704,000*	
Civic Education	Generation of content (experts)	500,000	This cost will support consultancy services to develop

			content for civic education
	Publishing of Materials	2,000,000	This cost will support all expenses related to publishing of materials including editing, design, layout and printing.
	Notifications	500,000	This will support cost related to notifications e.g to citizens on civic education initiatives through community radio, SMS, placement of notices
	Civic education resource persons	2,400,000	This cost will support 80 civic education resource persons at a rate of 60,000 per year per person.
Sub-Total		***5,400,000***	
Capacity Building	*Training frontline Officers*	2,400,000	This cost will cater for training expenses for 100 officers at a cost of 3000 per officer for 6 days per year
	Training citizen committees	2,250,000	This cost will support training of 300 representatives from citizen committees at a cost of 1500 per person for 5 days annually.
	Materials (Stationery, hand outs etc)	1,000,000	This will support duplication of materials including reports that may will be used during the capacity building forums.
Sub-total		***5,650,000***	
Communication	Simplification of content	1,440,000	This cost will support two assistant officers at Ksh 60,000 each who will be responsible for data simplification.
	Use of online platforms	1,000,000	This cost will support online platforms such as website, SMS, which will be used for communication.
	Use of Mass Media	40,000,000	This cost will support mainstream media

			communication initiatives such as national newspapers, TV adverts
	Notice boards	1,000,000	This is a one off cost that the County will incur to purchase and put up notice boards in strategic areas within the County for placing important communication.
	Ward level Resource Centres	20,000,000	Establishing Ward Resource centres approximately 500,000 per ward and will include cost for purchase of e.g 2 computers, photocopier, one staff)
	Sub County level Resource Centres	1,200,000	This cost will facilitate setting up of resource centres at the sub-county level at an appropriate cost of 150,000 per sub-county
	Materials preparation	3,000,000	This cost will facilitate the development of materials such as reports, brochures as needed
	PWD considerations		TBC
	Dissemination costs	500,000	This cost will cater for dissemination costs such as courier services among others of materials and other information that the county will need to disseminate to the constituents.
	Petitions and complaints officer	820,000	This cost will cater for an officer who will be responsible for handling petitions and complaints at a 60,000 per month and purchase of a laptop at 100,000
	Documentation(preparation and dissemination of monthly	300,000	This cost will support documentation including reports preparations and

	reports/other materials)		dissemination expenses
	Social Media complaint mechanism	720,000	This cost will support an officer who will be responsible for the social media complaint mechanism at a cost of 60,000 per month.
	Online platform development and support	1,500,000	This cost will support development and maintenance of an online platform as agreed bt the county.
Sub-Total		***71,480,000***	
Non-State actors Annual Round Table Forum	Non State Actors annual Round Table Forum	500,000	This cost will facilitate an annual non-state actors round table on public participation
County Budget and Economic Support	County Budget and Economic Forum (CBEF) support	2,000,000	This cost will support activities of the CBEF including, Trainings Meetings and Field engagements.
County Leaders Forum support	County Leaders Forum	1,000,000	This cost will support at least 2meetings of the County leaders forum
The County Intergovernmental Forum	County Intergovernmental Forum	500,000	This cost will support at least four meetings of the County intergovernmental forum
Support to the County Planning and Budget process	Public participation at all budget implementation stages	9,240,000	(***see excel attached***)
Sectoral Engagement at the County level	Public Participation initiatives at the sector level	5,000,000	This cost will facilitate any public participation initiatives at the sector level at an approximate cost of 500,000 per Ministry for the 10 sectors of Kitui County.
Sub-total		***18,240,000***	
Total Annual Tentative Budget for Public Participation		***147,474,000***	

Other cost (oversight)

Project Management Committees			1000 shilling per month per member from the cost of the project

APPENDIX (f)

Zimbra

csenate@parliament.go.ke

RE: ICPAK SUBMISSION -DIVISION OF REVENUE BILL 2016

From : Elias Wakhisi <elias.wakhisi@icpak.com>

Mon, Apr 11, 2016 04:45 PM

3 attachments

Subject : RE: ICPAK SUBMISSION -DIVISION OF REVENUE BILL 2016

To : csenate@parliament.go.ke

Cc : 'CPA Patrick Ngumi' <patrick.ngumi@icpak.com>, 'CPA Fred Riaga' <fredrick.riaga@icpak.com>, 'CPA Georgina Malombe' <georgina.malombe@icpak.com>, 'Hillary Onami' <hillary.onami@icpak.com>, 'Naomi Rono' <naomi.rono@icpak.com>, ceo@icpak.com

Dear Mr. Nyegenye,

Good evening and trust this finds you well.

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants with the mandate to develop and regulate accountancy profession in Kenya. The Institute is further mandated under Sec 8 of the Accountants' Act of 2008 to advise the Cabinet Secretary for Finance on matters relating to governance and accountability in all sectors of the economy.

In light of the Public Notice requesting proposals on aforementioned Bill, the Institute has developed a position paper detailing its proposals for the Committee's consideration. Attached herein, please find a copy of the Institute's submission.

We'll deliver a hard copy 12th April 2016.

The Institute is dedicated to enhance its contribution and that of its members to the national economic growth and development. We will be glad to receive your feedback on the same and looking forward to continued collaboration.

Thank you.

Regards

ICPAK

Elias Wakhisi | Public Policy & Governance

(1) D/Com
Please deal.
12/04/16

ICPAK image001.jpg
4 KB

Forwading Letter- ICPAK Submission on Division of Revenue Bill 2016.pdf
338 KB

ICPAK Submission on the Division of Revenue Bill 2016 11-04-2016.pdf
240 KB

2 1st Clerk Asst, F, C & Budget
Please place this before the Committee to consider and deal appropriately
12/04/16

THE SENATE
RECEIVED
12 APR 2016
DIRECTOR COMMITTEE SERVICES

Institute of Certified Public Accountants of Kenya
CPA Centre, Ruaraka, Thika Road.
P.O. Box 59963 - 00200 Nairobi , Kenya
Tel: (020) 2304226/7; 8068570/1
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Drop in box no. 164 Revion Professional Plaza

ICPAK

Our Ref: ICPAK/01PP11/4/2016

11th April 2016

Mr. Jeremiah Nyegenya, CBS
Clerk of the Senate
P.O Box 41842-00100
First Floor
Main Parliament Buildings
NAIROBI

Dear Mr. Nyegenya,

RE: ICPAK SUBMISSION ON THE DIVISION OF REVENUE BILL 2016

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants with the mandate to develop and regulate accountancy profession in Kenya. The Institute is further mandated under Sec 8 of the Accountants' Act of 2008 to advise the Cabinet Secretary for Finance on matters relating to governance and accountability in all sectors of the economy.

In light of your Public Notice requesting proposals on the aforementioned Bill, the Institute has developed a position paper detailing its proposals for the Committee's consideration. Attached herein, please find a copy of the Institute's submission.

The Institute is dedicated to enhance its contribution and that of its members to the national economic growth and development. We will be glad to receive your feedback on the same and looking forward to continued collaboration.

Thank you.

Yours Sincerely

CPA Dr. Patrick Ngumi, PhD
CHIEF EXECUTIVE

ICPAK
Credibility . Professionalism . Accountability

ICPAK POSITION PAPER ON THE DIVISION OF REVENUE BILL 2016

April 2016

Background Information

Revenue allocation is an important phase in Kenya's budgeting cycle. The Constitution provides mechanisms for equitable share of revenue raised nationally, as well as intergovernmental transfers [1](Articles 202 and 203 of the Constitution). The revenue raised nationally shall be shared equitably among the two levels of government (vertical share) and among forty seven county governments (horizontal share) to enable them provide services and perform functions assigned to them as set out in the Fourth Schedule of the Constitution.

Equally, the Budget Policy Statement annually gives important information on projections in expenditure and revenue for the financial year. The Budget Policy Statement (BPS) for the FY 2016/17 indicated that the economy grew by 5.3 percent in 2014 and is projected to rise to 5.6 percent in 2015, 6.0 percent in 2016 and 6.5 percent over the medium term.

However, revenues collection has lagged behind significantly and domestic securities market grossly underperformed in the first quarter. It is indicated that by the end of December 2015, total cumulative revenue including A-I-A amounted to Ksh 575.2 billion against a target of Ksh 642.9 billion implying a shortfall of Ksh **67.7 billion.** Ordinary revenue collection was below the target by **Ksh 47.6 billion** while A-I-A collection recorded a shortfall of **Ksh 20.0 billion**. On revenue projections, the FY 2016/17 budget targets revenue collection including Appropriation-in-Aid (AIA) of Ksh 1,511.1 billion (20.8 percent of GDP) from Ksh 1,311.1 billion (20.3 percent of GDP) in FY 2015/16.

[1] Article 203(2) For every financial year, the equitable share of revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenues collected by the national government.

The BPS 2016 also summarizes budget allocation to the three arms of government as well as sharable revenues to counties as follows:

Table 1: Summary of Budget Allocation FY 2016/17

Details		2015/16	2016/17	2016/18	2018/19
1.	National Government	1, 461,054	1, 462, 801	1,586,032	1,679,788
2.	Parliament	27, 277	27, 705	35,143	35,509
3.	The Judiciary	17,161	17,786	19,018	19,584
4.	County Government	264,200	290,206	320,329	353,587
	TOTAL	**1, 769,692**	**1,798,498**	**1,960,521**	**2,088,468**
	*of which County Sharable	259,800	285,400	315,100	347,900

Source: Draft Budget Policy Statement 2016

This information provides the foundation for the preparation of the Division of Revenue and the County Allocation of Revenue Bills to share resources equitably between the two levels of governments and among the forty seven county governments respectively. This paper therefore, gives the ICPAK's perspectives on the Division of Revenue Bill 2016 with a view to giving proposals to the National Assembly.

Division of Revenue Bill 2016

The Division of Revenue Bill, 2016 is prepared in fulfillment of the requirements of Article 218 of the Constitution and section 191 of the Public Finance Management Act, 2012. The Division of Revenue Bill, 2016 proposes to allocate county governments **Ksh. 302 billion** in the financial year 2016/17, which comprises of an equitable share of Ksh. 280.3 billion and an additional conditional allocations amounting to Ksh. 21.9 billion.

The DORB 2016 further allocates Ksh. 433.8 billion for payment of debet related expenses in 2016/17, up from 362.4 billion in the 2015/16 financial year. However, its worth noting the difference between the DORB 2016 allocations and the CRA Recommendations. The CRA had proposed that Ksh. 331.7 billion be allocated to county governments as equitable share; with an additional Ksh. 45.7 billion as conditional transfers and Ksh. 5 billion for public participation.

Issue	Description/provision in the DORB 2016	Issue of Concern	ICPAK Recommendations and Justification
1. Funds Follow Functions/ Costing of Government functions	• The DORB and the BPS proposed that Ksh. 280.3 billion and Kshs. 285 billion as equitable share to the Counties respectively for FY 2016/17 • The BPS 2016 subsequently proposed that Ksh. 1.46 trillion be allocated to the National Government; Ksh. 27.7 billion to Parliament and Ksh. 17.7 billion to the Judiciary in the FY 2016/17	• There is lack of an agreed costing of government functions; and completion of the unbundling of functions. This makes it difficult to determine whether the allocated resources are sufficient. • The CRA had factored in potential transfer of additional functions by indicating in their recommendations that the equitable share allocation may increase by Ksh. 4,732 million if devolved functions currently being performed by the Waters Services Board and the Regional Development Authorities are unbundled and transferred to the counties.	• We are of the considered opinion any anticipated transfer of additional functions should factor in the matching resources. • We recommended that Parliament refers to the **CRA Report on Costing of Government Functions** to determine adequacy of funding to the two levels of government[2]. - For instance, according to the report, the total annual cost of Health service provision, excluding cost of drugs and health commodities, was estimated be KES 35 million for community level, KES 14 million for dispensary, KES 91 million for health centre, KES 530 million for county level hospital level 4), KES 1.4 billion for county referral hospital (level 5), KES 89 million for Port Health, KES 247 million for Spinal Injury Hospital, KES 1.3 billion for Mathari Mental Hospital. - At the national level, the full cost of service delivery at Moi Teaching and Referral Hospital and Kenyatta National Hospital was KES 6.7 billion and KES 14 billion, respectively. Additionally, other costs at national level totalled KES 21 billion annually

[2] See " http://www.crakenya.org/costing-of-government-functions-final-report/

<table>
<tr><td>2. Conditional Allocations to support own revenue enhancement</td><td>The Division of Revenue Bill 2016 allocates Kshs. 21.9 billion as conditional and unconditional transfers.
These can be broken down as follows: Free maternal health care Ksh. 4.1 billion; Leasing of medical equipment , Ksh. 4.5 billion; Compensation for user fees forgone at 0.9 billion; Level 5 hospitals at Kshs. 4 billion; Special purpose grant supporting access to emergency medical services at Ksh. 0.2 billion; Allocation from Fuel Levy Fund (15%) at Ksh. 4.3 billion and loans and grants at Ksh. 3.8 billion</td><td>The subject of own revenue generation has not been addressed by the Bill.

The First Quarter, County Budget Implementation Report by the Controller of Budget indicated that in the period July to September 2015, the County governments realized a total of Kshs.6.93 billion from local sources, representing 12.2 per cent of the annual local revenue target of Kshs.56.61 billion. This was below the target of 25 per cent in the reporting period

This challenge has been acknowledged by the National Treasury in the draft Budget Policy Statement 2016. It was therefore anticipated that resources will be allocated to support infrastructure and systems for county own revenue generation.</td><td>Resource should be allocated s towards building revenue enhancement capacity of the counties through measures such as investment in ICT.
- According to the Institute of Certified Public Accountants of Kenya (ICPAK) 2014 Baseline Survey on Devolution in Kenya with respect to Public Financial Management Systems, 37% of the counties sampled relied on single business permits as their core source of local revenues; 32% relied on user-fees with 31% of them relying on property rates.
- The ICPAK study found that counties were facing serious challenges on own revenue collection with some counties collecting less than what the defunct local authorities, municipal and/or county councils used to collect when combined</td></tr>
<tr><td>3. Equalization Fund</td><td>Allocation to the equalization fund has increased from Ksh. 3.4 billion in 2013/14 to the current proposed Ksh. 6 billon for the financial year 2016/17.<table><tr><th>Year</th><th>Amount(millions)</th></tr><tr><td>2013/14</td><td>3,400</td></tr><tr><td>2014/15</td><td>3400</td></tr><tr><td>2015/16</td><td>6000</td></tr><tr><td>2016/17*</td><td>6000</td></tr></table></td><td>A lot of resources are being allocated to this fund yet little has been done to assess whether the equalization fund projects are impactful or not.</td><td>An audit should be done on the utilization of the previous year's allocation. This will help inform and establish whether indeed the basic services in those areas have improved. This will gauge the impact of the equalization fund.
Review the criteria developed by the Commission for Revenue Allocation for the allocation of the equalization fund to the marginalized areas.</td></tr>
<tr><td>4. Deal with Absorption Capacity Challenges</td><td>The Controller of Budget's reports over the years have pointed out to challenges both by the National and County Governments in absorbing the development</td><td>There are huge challenges in absorption of the budget both for the national and county governments.
The Budget Policy Statement 2016 indicated that the execution of development expenditure was</td><td>There is need to start tying additional allocation to entities to the real fiscal responsibility issues such as absorption capacity, structural balance between recurrent and capital expenditure and compliance to PFM systems as measured by the</td></tr>
</table>

	budgets.	generally below target which reflects low absorption of domestically financed development by the National government MDAs.	report from both internal audit and the Auditor General.
5. **Staff rationalization vs Public Wage**	The National and County Governments agreed to undertake a joint Capacity Assessment and Rationalization Programme (CARPs)--entailed restructuring, Biometric human resource audit, determining skills and competencies, establishing optimal staffing levels for the two levels of government. Recommendations of this report will determine the compensation to employees both at the national and county levels.	Issues of public service restructuring not considered in revenue allocation. According to the National Assembly's "**Socio-economic audit of the Constitution Report**", The average national government wage cost per employee in 2013 was Ksh. 442,000. This translates, indicatively to an annual wage cost of Ksh. 26.5 billion. The Report further points out that with devolution, a significant number of the national government workforce transferred to the counties. This was reflected in the increase of the wage bill of the counties by Ksh. 49.7 billion from Ksh. 21.6 billion in 2012/13 to Ksh. 71.2 billion in 2013/4. **A corresponding reduction in the wage bill of the National Government would have been expected. This is not evident.** The wage bill of the National Government increased from Ksh. 274.4 billion to Ksh. 281.2 billion. Adjusted for the transferred workforce, this translates to a 25% increase in the National Government wage bill which implies either a significant upward revision of pay, or an equally significant increase in hiring"[3].	• The BPS 2016 should factor in measures on restructuring and rationalizing of the civil service to determine the actual compensation of employees at the two levels of government

[3] The Interim Report of the Working Group on the Socio-Economic Audit of the Constitution of Kenya, 2010