THE DIVISON OF REVENUE BILL, 2015

ARRANGEMENT OF CLAUSES

Clause

A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in 2015/16 financial year, and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

PART I— PRELIMINARY

Short title.

1. This Act may be cited as the Division of Revenue Act, 2015.

Interpretation.

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

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

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

No. 16 of 2011.

"State Organ" has the meaning assigned to it under Article 260 of the Constitution; and

"Wasteful expenditure" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012.

No. 18 of 2012.

Object and purpose of the Act

3. The object and purpose of this Act is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2015/16 in accordance with Article 203 (2) of the Constitution.

Allocations to national and county

4. Revenue raised by the national government in respect of the financial year 2015/16 shall be divided governments.

among the national and county governments as set out in the Schedule to this Act.

Variation in revenue.

5. (1) Subject to subsection (2) and (3) of this section, if the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government.

(2) If the shortfall in revenue referred to in sub-section (1) falls short of the projected revenues set out in the Schedule by more than 10 percent, the shortfall shall be apportioned between the national and county governments on a *prorata* basis.

(3) If the actual revenue raised nationally in a financial year exceeds the projected revenues set out in the Schedule by more than 10 percent, the excess revenue shall be apportioned between the national government and county governments on a *prorata* basis.

Resolution of disputes and payment of wasteful expenditure.

6. (1) Any State Organ involved in an intergovernmental dispute regarding any provision of this Act or any division of revenue matter or allocation shall, in accordance with Article 189 of the Constitution and before approaching a court to resolve such dispute, make every effort to settle the dispute with the other State Organ concerned, including exhausting all alternative mechanisms provided for resolving disputes in relevant legislation.

(2) If a court is satisfied that a State Organ, in an attempt to resolve a dispute has not exhausted all the mechanisms for alternative dispute resolutions as contemplated in section 35 of the Intergovernmental Relations Act, 2012 and refers the dispute back for the reason that the State Organ has not complied with subsection (1), the expenditure incurred by that State Organ in approaching the court shall be regarded as

No. 2 of 2012.

wasteful expenditure.

(3) The costs in respect of such wasteful expenditure referred to in subsection (2) shall, in accordance with a prescribed procedure, be recovered without delay from the person who caused the State Organ not to comply with the requirements of subsection (1).

SCHEDULE (s.4)

Allocation of revenue raised nationally between the national and county governments for the financial year 2015/16

Type/Level of Allocation	Amount in Ksh.	Percentage (%) of 2012/13 Audited Revenue(i.e. Ksh. 776.9 billion)
National Government	**991,892,000,000**	
Of which:		
Free Maternal Health Care	*4,298,000,000*	
Leasing of Medical Equipment	*4,500,000,000*	
Level-5 Hospitals	*2,064,480,000*	
Healthcare facilities compensation for forgone user fees	*900,000,000*	
Equalisation Fund	**6,000,000,000**	**0.8%**
County Equitable Share	**258,008,000,000**	**33%**
Total Shareable Revenue	**1,249,900,000,000**	
MEMO ITEMS		
County Equitable Share	258,008,000,000	
Conditional Allocations (*of which*):	25,733,685,204	
1. Free Maternal Health Care	*4,298,000,000*	
2. Leasing of Medical Equipment	*4,500,000,000*	
3. Level-5 Hospitals	*2,064,480,000*	
4. Allocation from Fuel Levy Fund (15%)	*3,300,000,000*	
5. Healthcare facilities compensation for forgone user fees	*900,000,000*	
6. Conditional Allocations - loans and grants	*10,671,205,204*	
Total County Allocations	**283,741,685,204**	**37%**

MEMORANDUM OF OBJECTS AND REASON

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

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

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

Clause 4 of the Bill prescribes the allocations for the national government and the county governments from the revenue raised nationally for the financial year 2015/16.

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

Clause 6 of the Bill contains general provisions which emphasize on alternative dispute resolution before instituting court proceedings and includes provisions on personal liability on public officers who cause a State Organ to incur costs because of referring disputes relating to division of revenue to courts prior to exhausting available alternative dispute resolution mechanism.

Dated the 13th February, 2015

Henry Rotich
Cabinet Secretary for
The National Treasury

SECRET

APPENDIX

EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL, 2015

Background

1. The Division of Revenue Bill, 2015 has been prepared in fulfilment of the requirements of Article 218(1) of the Constitution and Section 191 of the Public Finance Management Act, 2012. Further, Article 218(2) of the Constitution requires that the Bill be submitted to Parliament every year together with a memorandum explaining:

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

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

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

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

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

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

3. This memorandum has therefore been prepared as an attachment to the Division of Revenue Bill, 2015 in fulfilment of the requirements of Article 218(2) of the Constitution and Section 191 of the Public Finance Management Act, 2012.

Explanation of the Allocation of Equitable Share of Revenue Raised Nationally and Additional Conditional Allocation to the National and County Governments as Proposed in the Bill

4. The division of revenue between the two levels of government proposed in the Bill has been arrived at after taking into account the cost of functions assigned to the respective governments. The Bill proposes to allocate to County Governments Ksh. 283.7 billion in the financial year 2015/16, which relative to the 2014/15 allocation, reflects an increase of Ksh. 43.3 billion or 17 percent. This allocation comprises of an equitable share of Ksh. 258 billion and conditional allocations amounting to Ksh. 25.7 billion.

County Governments' Equitable Share

5. In estimating the County Governments' equitable share of revenue raised nationally to be allocated to counties in the financial year 2015/16, the baseline cost of devolved functions is derived from the Division of Revenue Act, 2014 and comprises of the equitable share of Ksh 226.66 billion. The equitable share of revenue is an unconditional allocation to the County Governments and therefore County Governments are expected to plan, budget, spend, account and report on the funds allocated independently. This baseline cost of devolved functions takes into account the functions gazetted for transfer by the Transition Authority vide gazette notices dated February 2013 and August 2013.

6. To this baseline the following adjustments have been made:

- Adjustment to reflect allocations held at the national level for functions gazetted for transfer to County Governments. These include:

    (1) adding an allocation for Personnel Emoluments for staff transferred to County Governments from the State Department of Livestock Development amounting to Ksh. 1,466 million; and

    (2) Adding an allocation of Ksh 935 million for village polytechnics previously under the Ministry of Education

- Adding an allocation of Ksh. 545 million for functions transferred to County Governments vide TA gazette notice of March 2014. The functions were gazetted for transfer after the Division of Revenue Act, 2014 was passed by the National Assembly and therefore related resources could not be transferred in financial year 2014/15. This allocation relate to Agricultural Training Centres/Agricultural Mechanisation Stations.

7. In order to arrive at the County Governments' equitable share of revenue for the financial year 2015/16, the adjusted baseline of the estimated cost of devolved functions (FY 2014/15) was increased by an agreed rate of growth of 10.41 percent. In addition, an allocation of Ksh. 4.5 billion was added to cater for the increase in salary and allowances awarded to State and other public officers of the county governments in the financial year 2014/15. After making the adjustment the County Governments equitable share of revenue in the financial year 2015/16 is estimated to be Ksh. 258 billion **(see Table 1).** This allocation is above the constitutional minimum of 15 percent of the latest audited revenues of Ksh776.9 billion for FY 2012/13.

Table 1: Equitable Revenue Share Allocation to County Governments, FY 2015/16

Budget Item	**Amount in Ksh. Million**
Baseline (Allocation for FY 2014/15)	226,660
Baseline Adjustments	
Add:	
1. Allocations for Personnel Emoluments for staff transferred to CGs from the State Department of Livestock Development	*1,466*
2. Allocation for village polytechnics currently under the Ministry of Education	*935*
3. Transfer of Funds relating to a county function transferred to county governments in 2014 (Agricultural Training Centres/Agricultural Mechanisation Stations) vide TA gazette notice dated March 2014	*545*
Adjusted Baseline	**229,606**
Add:	
1. Adjustment for Revenue Growth (Agreed Revenue growth factor = 10.41%)	*23,902*
2. Adjustment for increases in salaries and allowance awarded by the Salaries and Remuneration Commission(SRC) in 2014/15	*4,500*
Equitable Revenue Share allocation for FY 2015/16	**258,008**

Source: National Treasury

Additional Conditional Allocations to County Governments

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

- **Conditional Grant in support of Free Maternal Health Care of Ksh 4.298 billion.** This grant is to be transferred to County Governments on a reimbursement basis, upon confirmation that the County Government provided maternal health care services in their health facilities in accordance with agreed specifications. This grant is intended to facilitate access to free maternal health care in order to reduce the high maternal and child mortality rates in Kenya. It should, however, be noted that the Ministry of Health is currently working on modalities of replacing this arrangement of '*cash transfers*' to county health facilities with an insurance scheme that will guarantee mothers access to free maternal health care in the county health facilities.

- **Conditional Grant to facilitate the leasing of medical equipment of Ksh 4.5 billion.** This grant is intended to facilitate the purchase of modern specialised medical equipment in at least two health facilities in each County Government over the medium term. This will facilitate easy access to specialised health care services and significantly reduce the distance that Kenyans travel in search of such services today.

- **Conditional grant for level-5 hospitals of Ksh. 2.064 billion.** Level-5 hospitals continue to play a significant role in providing specialised health care services to Kenyans. These hospitals provide specialised health care services to citizens residing outside their host County, usually for complicated cases referred from lower level health facilities. In order to compensate them for the costs incurred in rendering services to neighbouring Counties, the national government proposes to allocate Ksh. 2.064 billion to be transferred to County Governments as a conditional grant.

- **Conditional Grant of Ksh. 900 million to compensate county health facilities for forgone user fees.** It is the intention of government to sustain the Government policy of not charging user fees in public health facilities. In this regard, the National Government has allocated Ksh. 900 million to compensate county governments for revenue forgone by not charging user fees in the county health facilities.

- **Conditional Grant from the Road Maintenance Fuel Levy Fund of Ksh. 3.3 billion.** In order to enhance County Governments capacity to repair and maintain county roads the National Government proposes to transfer 15 percent of the Road Maintenance Fuel Levy Fund to the County Governments[1].

- **Conditional Grant from proceeds of a grant from the Government of Denmark and a loan from the World Bank amounting to Ksh 1.4 billion.** These funds are intended to support the delivery of health services in county health facilities with a view to increase access to health care services by Kenyans and in particular the poor.

- **Conditional allocation financed by other loans and grants received from development partners** and the Government counterpart funding derived from the National Government's share all totalling Ksh 9.3 billion. These conditional allocations relate to loans and grants contracted prior to the establishment of the devolved system of government. These conditional allocations financed by proceeds of loans and grants, however, will not be transferred to County Governments in the financial year 2015/16 due to the following reasons:

    - There exists financing agreements guiding the structures and management framework of all the programmes/projects, the alteration of which would take long and delay implementation of programmes/projects;

    - Loans and grants earmarked for devolved functions are tied to on-going contracts with suppliers, the alteration of which may have legal and cost implications;

    - Some of the programmes/projects funded by loans and grants have agreed implementation structures transcending more than one County and therefore it may not be possible to place the responsibility for their management in one County Government; and

[1] This is the proportion of the Road Maintenance Fuel Levy Fund that the Roads Bill, 2014 proposes to transfer to the County Governments for the maintenance of county roads.

- The financing agreements also specify the funds flow modalities which may not be consistent with what is contemplated under the intergovernmental arrangement.

It is therefore expected that the loans and grants under the existing financing agreement will be included in the budget of the National Government. These funds will be managed by the National Government but with involvement of County Governments in the Project Steering Committees and Project Implementation Units for each programme/project. In addition, reporting arrangements as well as the conditions attached to the implementation of the programme/project will be clearly spelt out in Project Implementation Frameworks to be agreed with County Governments prior to the release of the funds and implementation of the projects.

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

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

10. **Table 2** provides an assessment of the extent to which the requirements of Article 203 (1) have been incorporated in estimating the division of revenue between the National and County levels of Government in the financial year 2015/16.

Table 2: Evaluation of Revenue Allocation in Relation to Article 203 (1) of the Constitution

	ITEM DESCRIPTION	**2014/15**	**2015/16**
		Ksh. Millions	**Ksh. Millions**
A	**Ordinary Revenue (excluding AIA)**	**1,087,116**	**1,249,900**
B	**National Interest [Article 203 (1)(a)]**	**73,942**	**72,533**
	1. Enhancement of Security Operations (police vehicles, helicopters, defence etc.)	20,150	18,067
	2. National Irrigation & Fertilizer Clearance	11,626	12,500

	3. NYS Re-engineering	11,755	11,555
	4. National Social safety net - (for older persons, OVC, Child Welfare, severe disability, urban food subsidy)	12,831	12,831
	5. Laptops	17,580	17,580
C	**Public Debt (Article 203 [1][b])**	**378,010**	**362,391**
D	**Other National Obligations (Article 203 [1][b])**	**282,439**	**304,503**
	1. Pensions, constitutional salaries & other	37,569	54,617
	3. Constitutional Commissions (Art. 248(2)) - i.e. CRA, CIC, SRC, NLC, NPSC, IEBC, TSC	173,557	179,589
	3. Independent Offices(Art. 248(3)) - i.e. AG & CoB	3,446	3,566
	4. Parliament	23,104	22,947
	5. Other Constitutional Institutions- AG's office and DPP	6,110	6,578
	6. Other Statutory Bodies (e.g. EACC,RPP,WPA,CAJ, IPOA, NGEC)	3,410	3,934
	7. Other Statutory Allocations(earmarked funds e.g. Constituency Development Fund, Uwezo Fund)	35,243	33,273
E	**Emergencies [Article 203 (1)(k)]**	**7,700**	**7,913**
	Contingencies	5,000	5,000
	Strategic Grain Reserve	2,700	2,913
F	**Equalisation Fund [Article 203 (1) (g) and (h)]**	**3,400**	**6,000**
G	**Balance to be shared between the National and County Government**	**341,625**	**496,560**
H	**County Government Allocation from Revenue Raised Nationally**	**228,530**	**273,070**
I	**Balance Available for National Government Needs**	**113,095**	**223,490**

11. **National Interests:** Table 2 above lists expenditures relating to some of the functions that fall under the category of national interest. These expenditures relate to projects and programmes that:

- are critical to the achievement of country's economic development objectives;

- potentially will have significant impact of social well-being of citizens;
- are anchored in the Vision 2030 and the Medium Term Plan II (2013 – 2017); and
- have significant resource investment requirements.

These projects and programmes of national interest have also been specified in the 2015 Budget Policy Statement.

These national interests include: activities aimed at enhancing security operations; national irrigation and fertilizer subsidy initiatives; National Youth Service re-engineering; provision of national social safety net for vulnerable groups and provision of laptops to primary school pupils. Revenue allocation for these functions is expected to drop slightly from Ksh. 73.9 billion in 2014/15 to Ksh. 72.5 billion in 2015/16.

12. **Public Debt:** The Bill has fully provided for all public debt related costs. These comprise of the annual debt redemption cost as well as the interest payment for both domestic and external debt. In 2015/16, the revenue allocation for payment of public debt related costs is expected to drop to Ksh. 362.4 billion in 2015/16, down from Ksh. 378 billion in 2014/15 financial year primarily due to the shift to less expensive debt from international markets.

13. **Other National Obligations:** As provided for under Article 203(1)(b), the Bill has also taken into account the cost of other national obligations, such as, mandatory pension contributions and/or payments, financing for constitutional offices, including Parliament as well as expenses relating to other statutory bodies and funds. These are estimated to cost Ksh. 304.5 billion in 2015/16.

14. **Fiscal Capacity and Efficiency of County Governments:** Fiscal capacity for county governments, that is, the potential revenues that can be generated from the tax bases assigned to the counties when a standard average level of effort is applied to those tax bases, has not been assessed fully. It is also still early to measure county governments' fiscal efficiency. As a result, there is no official data on county fiscal capacity and efficiency and therefore this

criterion has not been taken into account in the determination of the division of revenue between the national and county governments.

15. **County governments' ability to perform the functions assigned to them and meet other developmental needs of the county governments:** As explained above, the baseline for the equitable share allocation for the financial year 2015/16 was derived from the Division of Revenue Act, 2014. This Act takes into account the full cost of functions transferred to county government by the Transition Authority vide the gazetted notices of February, 2013 and August 2013. In computing the equitable shares proposed in this Bill, adjustments has been made to accommodate the decision of the Transition Authority to transfer additional functions vide gazette notice of March, 2014. This adjustment in effect means that the equitable share of revenue allocated to county governments in 2015/16 is based on the full costs of functions thus far transferred to county governments. It should be noted that allocations for devolved functions transferred from the national government were based on the historical cost of those functions as determined through a consultative process that involved the line ministries and other independent commissions and offices.

Indeed, it should be noted that a recent Inter-Agency Task Force constituted by the Cabinet Secretary to the National Treasury also carried out an assessment of the costing of functions with a view to identify if there were any functions of county governments that were still being held in the national government budgets. That exercise identified approximately Ksh. 2.4 billion that was still being held in the national government budget. This Bill proposes an adjustment to transfer those resources to the equitable share of county governments in 2015/16.

In addition, the Bill allocates an additional Ksh. 4.5 billion to county governments to enable them to meet the cost of increases in salaries and allowances for county government, State and public officers, awarded by the Salaries and Remuneration Commission (SRC).

It is therefore clear that the proposed vertical division of revenue proposed in the Division of Revenue Bill, 2015 takes into account the cost of county governments' developmental needs and therefore it is expected that county governments will have the ability to perform the functions assigned and transferred to them as contemplated under Article 203(1)(f).

16. **Economic Disparities within and among counties and the need to remedy them:** Allocation of the sharable revenue (i.e. equitable share of Ksh. 258 billion) among counties is based on the formula approved by Parliament which takes into account disparities among counties and aims at equitable distribution of resources. The formula takes into account population (45%), land area (8%), poverty (20%), a basic equal share (25%), and fiscal responsibility (2%). The equitable share of revenue for county governments in 2015/16 reflects an increase of 13.8 percent compared to the allocation in 2014/15. This means that there is more money in 2015/16 to help remedy economic disparities within and among counties. This formula is, however, expected to lapse in 2015 and Parliament is expected to approve the second formula for sharing revenue among county governments in 2015. It is expected that the second formula will also emphasize the need to correct for economic disparities as contemplated in the Constitution. It should also be noted that Ksh. 6.0 billion has also been set aside for the Equalization Fund in 2015/16. This Fund will be used to finance development programmes that aim to reduce regional disparities among counties.

17. **Need for Economic Optimization of Each County:** Allocation of resources to county governments was guided by the costing of the functions assigned to the county governments. The equitable share of revenue allocated to county governments was increased by 13.8 per cent from Ksh. 226.6 billion in 2014/15 to Ksh. 258 billion in 2015/16. This is an unconditional allocation which means that the county governments can plan, budget and spend the funds independently. With the additional resources, therefore, county governments can allocate more resources to their priority projects and thus optimize their potential for economic development.

18. **Stable and Predictable Allocations of County Governments' Vertical Share of Revenue:** The county governments' equitable share of revenue raised nationally has been protected from cuts that may be necessitated by shortfall in revenue raised provided such shortfalls do not exceed ten per cent of the estimated Government revenue which is considered to be significant.

19. **Need for Flexibility in Responding to Emergencies and Other Temporary Needs:** Included in the equitable share of revenue for the national government is an allocation of

Ksh. 5 billion for the Capital of the Contingencies Fund. This Fund will be used to meet the demands arising from urgent and unforeseen needs in all Counties that suffer from calamities in the manner contemplated under Section 21 of the Public Finance Management Act, 2012. In addition, the Public Finance Management Act, 2012 requires each county government to set up a County Emergency Fund. County governments are expected to set aside part of their allocation for this purpose.

20. It should be noted that after taking into account all the other factors required to be taken into account in sharing revenue between the two levels of government, including the needs of county governments, only Ksh. 223.5 billion is left to finance other National Government needs, such as, defence, roads, energy etc.

Response to the Recommendations of the Commission on Revenue Allocation

21. There are differences between the National Treasury's proposal and CRA's recommendations on the division of revenue between the national and county governments for the financial year 2015/16. The differences stem from the different approaches used in the computation of the county governments' equitable share. In determining the county governments' revenue allocation for the financial year 2015/16, the National Treasury was guided by:

- The provisions of Article 203 of the Constitution;
- The first revenue sharing criteria recommended by the CRA and approved by Parliament in line with Article 217 (7);
- Cost of running county government structures, including the decision of the Salaries and Remuneration Commission on the salaries and allowances for State and public officers of county governments; and
- Costing of the functions assigned to the county governments as well as the decisions of the Transition Authority with regard to the transfer of functions.

22. The Division of Revenue Bill, 2015 proposes to allocate county governments an equitable share of Ksh. 258 billion from the shareable revenue raised nationally. The CRA, on the other hand, recommends County Governments' equitable share of revenue of Ksh. 282.4 billion as an unconditional allocation to be shared among county governments on the basis of the formula for sharing revenue approved by Parliament under Article 217 of the Constitution. Table 3 below analyses the differences between the CRA recommendations and the National Treasury proposal on the division of revenue between the national and county governments in 2015/16.

Table 3: Comparison of Recommendations of the Commission on Revenue Allocation and the National Treasury on the Division of Revenue in 2015/16 (Figures in Ksh. Billions)

Expenditure Item	2015/16		
	CRA (A)	**National Treasury (B)**	**Variance C = (A-B)**
Baseline for Cost of Devolved Functions before adjustment	226.7	226.7	0
Add			
Adjustment for revenue growth in FY 2015/16	23.6	23.9	-0.3
Adjustment for the cost of county roads maintenance to be funded by Fuel Levy 15%. *	3.3	0	3.3
Adjustment for cost of devolved functions being performed by national government.	1.5	1.5	0 0 0
Adjustment for cost of village polytechnics currently under Ministry of Education as capitation	3.3	0.9	2.4
Adjustment for cost of functions transferred in 2014/15 i.e. cost of Agricultural Training Centres and Agricultural Training Centres and Agricultural Mechanisation Stations	0.9	0.5	0.4
County Executives & Assemblies (Salaries, Gratuity & Allowances)	12.6	4.5	8.1
Establishment of County Emergency Funds	4.4	0	4.4
Leasing of Medical Equipment	3.3	0	3.3

SECRET

Provision for ECD Infrastructure	3	0	3
Slum upgrading and housing development	0.2	0	0.2
TOTAL EQUITABLE SHARE OF REVENUE	**282.4**	**258**	**24.4**

Source: National Treasury

* The allocation of Ksh. 3.3 billion from the Road Maintenance Fuel Levy Fund to county governments is not included as part of the equitable share under the National Treasury proposal but instead is provided as a conditional allocation to county governments (see the Schedule in the Division of Revenue Bill, 2015).

23. The Commission on Revenue Allocation has proposed revenue allocation to counties of Ksh. 282.4 billion in financial year 2015/16. This is approximately 36 percent of most recent audited revenue approved by Parliament for financial year 2012/13 (Ksh. 776.9 billion). The proposal in the Bill differs from that of the CRA's due to the following reasons:

(i) The CRA provides for adjustments of salaries and allowances for county assemblies of Ksh. 6.6 billion and county executives of Ksh. 6.0 billion. These salary adjustments were based on various gazette notices issued by the Salaries and Remuneration Commission (SRC) and other guidelines issued by the Transition Authority. It is expected that going forward when salaries and other benefits of staff are adjusted periodically, each level of Government should identify areas to make savings to cater for such adjustments. In addition, the annual growth in revenues will also cushion each level of government and therefore adjustments of county governments' salaries and allowances should not be paid for from the revenue share of the national government. In a meeting of the Intergovernmental Budget and Economic Council (IBEC) it was noted that the salary awards by SRC and the Transition Authority had significant cost implication and it was therefore resolved that the county governments be allocated an additional Ksh. 4.5 billion in 2015/16 to cover the cost of increases in salaries and allowances awarded by the SRC in 2014/15.

(ii) The CRA has proposed an allocation of Ksh. 3.3 billion as part of the county governments' equitable share for leasing of medical equipment. It should be noted that this amount was part of the national governments' share of revenue in 2014/15 as determined by Parliament. Health care, however, is a devolved function and therefore there is merit in transferring such an allocation to county governments. In any case the facilities to be equipped are under the management of county governments. It should, however, be noted that this allocation relates to a national strategic intervention aimed at improving access to specialised health care services at the county government level. The ultimate objective is to equip two hospitals per county in order to decongest the referral hospitals as well as ensure each county government has a referral hospital. In light of the importance the National Government places on the need to equip health care facilities with medical equipment's, the Bill proposes to allocate a higher amount of Ksh. 4.5 billion for leasing of medical equipment in 2015/16.

(iii)The CRA proposes that 15 percent (estimated at Ksh. 3.3 billion) of Road Maintenance Fuel Levy Fund be transferred to county governments as part of the equitable share of revenue for the maintenance of county roads. It should be noted that this fund was established for purposes of financing road maintenance. Since part of the Fund was previously, (that is, prior to the promulgation of the Constitution) used to maintain some rural and urban roads, then part of the Fund should be allocated to the county governments which have taken over the maintenance of this category of roads. In order to ensure that proceeds of this Fund are applied for the maintenance of county roads, the Bill proposes that these funds be provided as conditional grants to county governments. It should also be noted that the revenue that accrue to the Fund is not part of the shareable revenue as defined in the Commission on Revenue Allocation Act, 2011.

(iv)The CRA has proposed to allocate, as part of county governments' equitable share, resources for Provision of Early Childhood Development Education (ECDE) infrastructure amounting to Ksh. 3 Billion. It should be noted that this function was transferred to county governments together with related resources. Whereas there is need to increase support for ECDE, it is important to appreciate that the national government does not have additional resources to transfer to county governments at the moment given the demands from other national development priorities. The county governments, however, should set aside resources from their allocation to finance ECDE infrastructure. In addition, county governments by enhancing their capacity to collect own revenue more efficiently could create fiscal space to facilitate the financing of ECDE initiatives

(v) The CRA proposes an allocation of Ksh. 3 billion for Village Polytechnics. This is an additional allocation being proposed by CRA. It should, however, be noted that the function was transferred together with its attendant resources in 2013. The Ministry of Education has, however, proposed the transfer of Ksh. 0.9 billion being held at the Ministry's Vote as capitation to Village Polytechnics. In light of the proposal by the Ministry of Education, the Bill proposes that the Ksh. 0.9 billion be part of the equitable share to county governments to support village polytechnics.

(vi) The CRA has proposed that additional Ksh. 0.9 billion be transferred to county governments being an allocation to functions which were gazetted for transfer in March 2014. These functions are the Agricultural Training Centre's and Agricultural Mechanization Stations. These functions were transferred after the Division of Revenue Bill, 2014 had been passed by the National Assembly. Naturally therefore the attendant resources could not be transferred in 2014/15 financial year. It should, however, be noted that the budgetary resources relating to these functions were Ksh. 0.5 billion and not Ksh. 0.9 billion. In this respect, the Bill proposes that Ksh. 0.5 billion be transferred to the county governments and be included as part of the equitable share of revenue due to the county governments in 2015/16 financial year.

(vii) The CRA has recommended money for slum upgrading and housing development of Ksh. 245 Million. This amount is part of an awarded contract by the Ministry of Lands, Housing and Urban Development which is part of counterpart funding for donor financed project and therefore it is not available for transfer, otherwise the project will stall. In light of this, the Bill does not propose the inclusion of this allocation in the county governments' equitable share of revenue but includes it as part of the conditional allocation of revenue from loans and grants from development partners.

(viii) The CRA, in its recommendation to Parliament, proposes an allocation of Ksh. 4.4 billion to facilitate the setting up County Emergency Funds for each county government in line with the provisions of Public Finance Management Act. It should be noted that in the initial costing of devolved functions, the cost of setting up county emergency funds was taken into account. Each county government is therefore expected to set up its emergency fund using funds from the equitable share of revenue.

Indeed, a number of county governments have also gone ahead and established their own emergency funds as envisaged in the Public Finance Management Act, 2012 from their own resources as envisaged in the public finance management Act, 2012.

(ix)Although the base of the county equitable share of revenue is increased by the same factor (10.41 percent) in the CRA recommendations and the Division of Revenue Bill, 2015, there is a slight variance in the adjustment for annual revenue growth of Ksh 0.3 billion. This difference arises from the difference in the base. CRA in its recommendations to Parliament uses the county governments' equitable share for 2014/15 (Ksh. 226.6 billion as the base). The Division of Revenue Bill, 2015 on the other hand makes some adjustment to the base by adding to the county governments' share of revenue that relate to transferred functions before growing the adjusted base of 229 billion with a factor of 10.41 percent.

24. In conclusion, allocation to each level of government has been informed by the costing of functions assigned to each level of government. The proposals contained in the Bill are also intended to ensure that neither a huge financing gap is created nor functions at either level of government are left unfunded or underfunded. In this regard, any additional allocation beyond the cost of functions as proposed in the CRA recommendations (e.g. allocations for provision of ECDE infrastructure, village polytechnics etc.) may be considered only if there is demonstrable evidence that the growth in shareable revenue can accommodate such increases. At the moment, the CRA does not provide such evidence and therefore such proposals should be shelved until the country's financial position improves. Any financing gaps created can only be financed through higher taxes that would push up the cost of doing business in Kenya or additional borrowing that would push interest rates up and thereby slow the growth of the economy.

25. It should, however, be noted that the National Treasury's proposed equitable share allocated to county governments in the Division of Revenue Bill, 2015, at 33 per cent of the most recent audited revenue, as approved by the National Assembly, is way above the minimum threshold required under Article 203(2) of the Constitution.