Paper laid on 28/2/2017 By Chairperson of The Standing Committee of Finance, Commerce and Budget

REPUBLIC OF KENYA

PARLIAMENT

THE SENATE

ELEVENTH PARLIAMENT – FIFTH SESSION

REPORT OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

ON

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO. 2 OF 2017)

Approved

Speaker

CLERK CHAMBERS

THE SENATE

PARLIAMENT OF KENYA

NAIROBI

28 **FEBRUARY 2017**

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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:

a) *Discuss and review the estimates of County governments and make recommendations to the Senate;*
b) *Examine the Medium term Budget Policy Statement presented to the Senate;*
c) *Examine and report on the Budget allocated to constitutional commissions and independent offices;*
d) *Examine bills related to the Counties;*
e) *Examine the Budget, including the Division of Revenue Bill; and*
f) *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 Second 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.
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.
7. The Hon. Sen. (Dr.) Boni Khalwale, MBS, MP.
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.
11. The Hon. Sen. Catherine Mukite Nabwala, MP.
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.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
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 Bills No. 2 of 2017), was submitted to the Senate by the National Assembly on Wednesday, 15th February, 2017.

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 Thursday, 16th February, 2017, 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 made submissions to the Committee.

The Committee also invited other non–state actors and the general public who similarly participated and submitted their contributions. 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 Recommendations

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 2017 Budget Policy Statement (BPS), the

Committee hereby proposes that this report and its recommendations be adopted by the House.

Mr. Speaker Sir,

The Committee observed that the County equitable share from the revenue raised nationally was enhanced from **Ksh.280.3 billion** in the FY 2016/2017 to **Ksh. 291.1 billion** in the FY 2017/2018. This is 3.9 percent increase and is far below the inflation rate which is 6.6 percent. The total sharable revenue for 2017/18 was projected at **Ksh. 1,549.4 billion** – a growth rate of 12.3 percent.

The Committee observed that the total conditional allocation amounted to Ksh 32.6 billion which comprised of the following:

- Leasing of medical equipment amounting to Ksh 4.5 billion
- Compensation for User forgone fees amounting to Ksh 900 million
- Allocation for Level 5 hospitals amounting to Ksh 4.2 billion
- Construction of 5 County Headquarters amounting to Ksh 605 million
- Rehabilitation of Youth Polytechnics amounting to Ksh 2 billion
- Allocation from fuel levy amounting to Ksh 7.9 billion
- World Bank loan for Kenya Health Support Project of Ksh 873.4 million
- Kenya Devolution Support Program (KDSP) county capacity building grant (level 1) of Ksh 1.5 billion
- Kenya Devolution Support Program (KDSP) performance grant (level 2) of Ksh 4 billion
- Conditional Allocations financed by other loans and grants received from development partners amounting to Ksh 6.2 billion

The Committee acceded to the National Treasury proposal for additional conditional allocations from loans and grants of Kshs. 5.5 billion as follows: This includes:

- Kshs. 985.8 million for Instruments for Devolution Advise and Support (IDEAS)
- Kshs. 2.8 billion for transforming health systems for universal care projects,
- Kshs. 1.1 billion for national agriculture and rural inclusive growth projects, and
- Kshs. 763 million for universal health care for devolved system program

Mr. Speaker Sir,

The Committee recommends that the county equitable share amounts to **Ksh. 314,664,970,775.6** and conditional allocation amounting to **Ksh. 38,170,179,761** bringing the total county allocation for the FY 2017/2018 to **Ksh. 352,835,150,536.60** be approved by the House.

Acknowledgements

The Committee acknowledges 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. Further, the Committee acknowledges the National Treasury, Commission on Revenue Allocation, Council of Governors and County Assembly Forum 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 Bills No. 2 of 2017).

SIGNED:

....

SENATOR BILLOW KERROW, M.P.

(Chairperson, Standing Committee on Finance Commerce and Budget)

Date: ....28/2/17..........

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. INTRODUCTION

1.1 VERTICAL ALLOCATION OF REVENUE FOR FISCAL YEAR 2017/18

1. The principal object of the Division of Revenue Bill, 2017 is to provide for the equitable division of revenue raised nationally between the national and county level 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 2017/18 be divided between the national and county governments.

2. In that regard, the total estimated national revenue between the two levels of government with respect to the FY 2017/18 is **Kshs. 1,549.4 billion** compared to the current estimates for the current FY 2016/17 of **Ksh.1,380.2 billion**. The Bill provides for county equitable share of **Kshs. 291.13 billion** up from **Ksh.280.29 billion** while national government share amounts to **Kshs 1,238.34 billion.** Moreover, the county equitable share thus far represents 31.12 percent of the 2013/14 audited revenue of **Ksh.935.653 billion**.

3. In determining the county equitable share of revenue of **Ksh. 291.1 billion** for the FY 2017/18, a basis for county budgets to plan and budget, the Division of Revenue Bill 2017 adjusts the baseline equitable share of **Ksh. 280.2 billion** for **kshs 10.9 billion.** This is 3.9 percent increment.

4. With regards to the conditional allocation of **Kshs 32.6 billion,** loans and grants amount to **Kshs 12.5 billion** and Fuel Levy Fund amounting to **Kshs 7.9 billion**. There are increases in allocations towards Fuel Levy Fund for road maintenance by **kshs 3.56 billion** and Level 5 hospitals by **kshs 200 million**.

5. In view of the conditional allocations amounting to **kshs 32.6 billion**, the total county allocation therefore amounts to **kshs 323.7 billion, translating to 34.6 percent** of the audited revenues.

6. The 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 2017/18		
Type / Levels of Allocation	**Amount (Ksh.)**	**Percentage (%) of FY 2013/14 Audited and approved revenue i.e Kshs 935,653 Million**
A. Total shareable revenue(B+C+D)	**1,549,412,000,000**	
B. National Government	**1,238,343,840,000**	
C. Equalization Fund	7,727,000,000	
D. County Government (1+2)	**303,341,160,000**	**32.42%**
1. County Equitable Share	*291,136,160,000*	31.12%
2.Conditional Allocations	*12,205,000,000*	
2.1 Leasing Of Medical Equipment	*4,500,000,000*	
2.2 Compensation for User Forgone	*900,000,000*	
2.3 Level 5 hospitals	*4,200,000,000*	
2.4 Construction of County Headquarters	*605,000,000*	
2.5 Rehabilitation of Youth Polytechnics	*2,000,000,000*	
E. Additional County Conditional Allocations (not part of sharable revenue)	**20,416,400,000**	
3. Allocation from fuel levy (15%)	7,875,000,000	
4. Conditional Allocations (loans &grants)	12,541,400,000	
F. Total County Allocations (D+E)	**323,757,560,000**	**34.60%**

Source: Division of Revenue Bill, 2017

2. SUBMISSIONS DURING PUBLIC HEARINGS

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 Wednesday, 22nd February, 2017 and Thursday, 23rd February, 2017.

2.1 MEETING WITH THE NATIONAL TREASURY

7. The Committee at its sitting held on Wednesday, 22nd February, 2017, met and held deliberations with the National Treasury on the Division of Revenue Bill, 2017. The National Treasury made the following observations and clarifications on the Bill:

a) The equitable share should increase at least with a rate which is similar to inflation rate.
b) Their proposal for equitable share was Ksh. 322 billion which was guided by the CRA recommendations.
c) If the free maternal health care was to be channeled through the NHIF then it should not be reflect in the bill as an allocation for the counties.
d) The allocations from Road Maintenance Fuel Levy Fund should increase from 15% to 25% since the levy increased from Ksh. 13 to Ksh. 18.
e) The proposal from National Assembly would inhibit the county government from conducting their operations smoothly.
f) There was an agreement between Treasury and COG that Ksh. 319 million should be allocated for Library services and Ksh. 8.4 billion for Class D roads that were transferred to the County governments.
g) Allocations for development of village polytechnics should not be a conditional grant; ECD was not provided for in a similar manner.
h) There was a tendency of the national government presumptuous that issues that are of national interest were national functions.
i) Class D roads had never been devolved; the Roads Bill, 2015 in the Senate would ensure the proper devolution of the class of roads. This would justify the increase in allocation from Fuel levy fund from 15% to 25%.
j) Intergovernmental consultation had agreed on channeling free maternal health care fund through NHIF.
k) The allocation for compensation for user fees forgone would in future increase proportionately.

l) A further proposal of Kshs. 5.5 billion for conditional allocation from loans and grants. This includes Kshs. 985.8 million from European Union for Instruments for Devolution Advise and Support (IDEAS), Kshs. 2.8 billion from IDA for transforming health systems for universal care projects, Kshs. 1.1 billion from IDA for national agriculture and rural inclusive growth projects, and Kshs. 763 million from DANIDA for universal health care for devolved system program.

2.2 MEETING WITH THE COMMISSION ON REVENUE ALLOCATION

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

a) The initial recommendation for equitable share was Ksh. 322.8 billion.
b) The Ksh. 291billion proposed by National Assembly was far below and does not factor in the impact of inflation. Secondly, the figure indicates a very minimal growth of revenue.
c) There was some agreement that increase in equitable share should reflect revenue growth rate.
d) Later, due to emerging aspects they revised their proposal to Ksh.314.428 billion. This amount takes into account the inflation rate and sharable revenue growth.

2.3 MEETING WITH THE COUNCIL OF GOVERNORS

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

a) The equitable share should increase at least with a rate which is similar to inflation rate.
b) Their proposal for equitable share was Ksh. 322 billion which was guided by the CRA recommendations forwarded to Parliament in November 2016.
c) If the free maternal health care fund was to be channeled through the NHIF then it should not be reflect in the bill as an allocation for the counties.
d) The allocations from Road Maintenance Fuel Levy Fund should increase from 15% to 25% since the levy increased from Ksh. 13 to Ksh. 18.
e) The proposal from National Assembly would inhibit the county government from conducting their operations smoothly.
f) There was an agreement between Treasury and COG that Ksh. 319 million should be allocated to county to cater for Library services and Ksh. 8.4 billion for Class D roads that were transferred to the County governments.
g) Allocations for development of village polytechnics should not be a conditional grant and ECD was not provided for in a similar manner.

2.4 SUBMISSIONS FROM THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA)

10. The Committee received submissions from the TISA that were as follows:

a) The National Treasury had proposed a growth rate of 6.7% for the equitable share to counties; amounting to Ksh. 299.1 billion;

b) In the 2017 BPS, Treasury had projected that revenue growth would be at 13%; and

c) They recommend as for the Financial Year 2017/2018 County equitable share be as recommended by the National Treasury.

3. COMMITTEE OBSERVATIONS

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

(a) The County equitable share from the revenue raised nationally was enhanced from **Ksh.280.3 billion** in the FY 2016/2017 to **Ksh. 291.1 billion** in the FY 2017/2018. This is 3.9 percent increase and is far below the inflation rate which is 6.6 percent.

(b) The total sharable revenue for 2017/18 was projected at **Ksh. 1,549.4 billion** – a growth rate of 12.3 percent.

(c) The 2017/2018 proposed allocation translates to 31.1 percent of the approved audited revenue of **Ksh. 935.6 billion** of FY 2013/2014.

(d) The National Treasury proposed the county equitable share amounting to **Ksh. 299.1 billion** while the Commission of Revenue Authority (CRA) recommended **Kshs. 314. 4 billion.**

(e) The National Treasury proposed an increment on conditional allocations by **Kshs. 5.5 billion**.

(f) The free maternal health care fund amounting to Kshs 3.4 billion would be a special grant to NHIF to be disbursed as reimbursements.

(g) Allocations for Road Maintenance Levy Fund had increased from Ksh 4.3 billion in FY 2016/2017 to Ksh 7.9 billion in FY 2017/2018. The additional allocation is due to increase in fuel levy.

(h) The fund amounting to Kshs 6.2 billion proceeds from loans and grants would not be transferred to County Governments in 2017/18 due to pre-existing conditionality. The funds will be budgeted and managed by the

National Government whereas the counties will participate through Project Steering Committees and Implementation Units. Therefore, there was no need of these funds being included in the Division of Revenue Bill.

(i) 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.

4. RECOMMENDATIONS OF THE COMMITTEE

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:

a) **The county equitable share allocation of Ksh. 314,664,970,775.6;**

b) **The conditional allocation of Ksh. 38,170,179,761 which includes additional conditional allocations from loans and grants amounting to Ksh. 5,548,779,761.**

c) **The total county allocation for the FY 2017/2018 amounting to Ksh. 352,835,150,536.60.**

5. APPENDIXES

(a) Minutes of the Committee sittings on the consideration of the Division of Revenue Bill (National Assembly Bill No. 2 of 2017).

(b) Submission by the National Treasury

(c) Submission by Commission on Revenue Allocation

(d) Submission by Council of Governors

(e) Submission by The Institute of Social Accountability

MINUTES OF THE 2ND SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, GROUND FLOOR BOARDROOM ON TUESDAY, 14TH FEBRUARY, 2017 AT 10.00 A.M.

PRESENT

1. Sen. (Prof.) Peter Anyang' Nyong'o	-Member (**A.g. Chairperson**)
2. Sen. Moses Wetang'ula	-Member
3. Sen. Zipporah Kittony	-Member
4. Sen. Aaron Kipkirui Cheruiyot	-Member

ABSENT WITH APOLOGY

1. Sen. Billow Kerrow	-Chairperson
2. Sen. Peter Ole Mositet	-Vice Chairperson
3. Sen. G.G Kariuki	-Member
4. Sen. Mutahi Kagwe	-Member
5. Sen. (Dr.) Wilfred Machage	-Member
6. Sen. (Dr.) Boni Khalwale	-Member
7. Sen. Mutula Kilonzo Junior	-Member
8. Sen. Beatrice Elachi	-Member
9. Sen. (Prof.) John Lonyang'apuo	-Member
10. Sen. Paul Ben Njoroge	-Member
11. Sen. (Dr.) Agnes Zani	-Member
12. Sen. Catherine Mukite	-Member

IN ATTENDANCE	**SENATE SECRETARIAT**
1. Mr. Boniface Lenairoshi	- Principal Clerk Assistant
2. Mr. Victor Bett	- Clerk Assistant
3. Mr. Lucy Radoli	- Legal Counsel

MIN NO. 006/2017: PRELIMINARIES

The Acting chair called the meeting to order at 10.29am. This was followed by a word of prayer.

MIN NO. 007/2017: ADOPTION OF THE AGENDA

The agenda was adopted by Sen. Zipporah Kittony and seconded by Sen. Moses Wetang'ula as follows;

1. Preliminaries
    - *Prayer*
    - *Introductions*
2. Adoption of the Agenda
3. **Confirmation of Previous Minutes;**
4. **Consideration of the CRA Recommendations on the County Executive and Assemblies Ceilings for the FY 2017/18; and**
5. **Incoming Committee Correspondences**

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

MIN NO. 008/2017: CONFIRMATION OF PREVIOUS MINUTES

The Committee discussed on the way forward since quorum wasn't sufficient to adopt all the minutes and resolved to have the matter moved forward to the next meeting.

MIN NO. 009/2017: CONSIDERATION OF THE CRA RECOMMENDATIONS ON THE COUNTY EXECUTIVE AND ASSEMBLIES CEILINGS FOR THE FY 2017/18

The Committee was taken through a brief by the Parliamentary Budget Office (*Copy Attached*) that gives a breakdown of the recommendations on the County Executive and Assemblies ceilings for the FY 2017/18 as was submitted by the CRA.

The Committee was concerned with the rationale the CRA used to arrive on the ceilings, explanation of the reductions and where have they put development expenditure in their tabulations. In this regard the Committee then resolved that since the matter needs adequate consultations on with the various stakeholders and proper light shed, the following persons be invited on Tuesday, 21st February, 2017 as from 10.00am;

a.) Commission on Revenue Allocation,
b.) Council of Governors, and
c.) County Assemblies Forum.

MIN NO. 010/2017: COMMITTEE CORRESPONDENCE

The Committee discussed the following letters;

a.) **Invitation to a Retreat to discuss the proposed further amendments to the County Allocation of Revenue Act, 2016.** (*From the PS National Treasury*)
- The Committee discussed the matter and concurred with the comments of the Speaker that the retreat can be postponed from the week of 16th to 18th February, 2017 to that of 23rd to 25th February, 2017. Further the suggestion that all Senators be invited is a matter that the Committee concurred.

b.) **Request for a courtesy call and presentation of baseline findings.** (*From the County Director OXFAM*)
- The Committee discussed the matter and resolved that the request by Oxfam to meet with the Committee is valid and that they can be given a suitable date.

c.) **Parliamentary Network on the World Bank & IMF (PN) field visit to Kenya, February 2017.** (*From the Chair of the Parliamentary Network on the World Bank and IMF*)

- The Committee discussed the matter and resolved that the delegation can meet with the Committee.

d.) **Submission of Supplementary Estimates of Revenue to and Expenditure from the Equalization Fund for Financial Year 2016/17 and list of projects approved for funding using Equalization Fund.** (*From the PS National Treasury*)

- The Committee discussed the matter and resolved that a meeting be called where the concerned Senators whose Counties are set to receive the Equalization Fund be invited and so that the Committee can discuss the matter and projects mentioned.

MIN NO. 011/2017: DATE OF NEXT MEETING

The date of the next meeting was scheduled for Tuesday, 21st February, 2017 in County Hall, Ground Floor Boardroom at 10.00am.

MIN NO. 012/2017: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.00 noon.

SIGNED ____________________

(CHAIRPERSON)

DATE 28/02/2017

MINUTES OF THE 3RD SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, GROUND FLOOR BOARDROOM ON TUESDAY, 21ST FEBRUARY, 2017 AT 10.00 A.M.

PRESENT

1. Sen. Peter Ole Mositet	-Vice Chairperson
2. Sen. Moses Wetang'ula	-Member
3. Sen. Zipporah Kittony	-Member
4. Sen. Mutahi Kagwe	-Member
5. Sen. (Dr.) Wilfred Machage	-Member

ABSENT WITH APOLOGY

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

IN ATTENDANCE	**SENATE SECRETARIAT**
1. Mr. Boniface Lenairoshi	- Principal Clerk Assistant
2. Mr. Victor Bett	- Clerk Assistant
3. Mr. Lucy Radoli	- Legal Counsel

MIN NO. 013/2017: PRELIMINARIES

The Acting chair called the meeting to order at 10.29am. This was followed by a word of prayer.

MIN NO. 014/2017: ADOPTION OF THE AGENDA

The agenda was adopted by Sen. Zipporah Kittony and seconded by Sen. Moses Wetang'ula as follows;

1. Preliminaries
    - *Prayer*
    - *Introductions*
2. Adoption of the Agenda
3. **Confirmation of Previous Minutes;**
4. **Consideration of the Division of Revenue Bill, FY 2017/18;**
    - **Presentation by Parliamentary Budget Office**
5. **Incoming Committee Correspondences**
6. Any Other Business

7. Date of Next Meeting
8. Adjournment

MIN NO. 015/2017: CONFIRMATION OF PREVIOUS MINUTES

The Committee discussed on the way forward since quorum wasn't sufficient to adopt all the minutes and resolved to have the matter moved forward to the next meeting.

MIN NO. 016/2017: Consideration of the Division of Revenue Bill, FY 2017/18

Presentation by Parliamentary Budget Office (*Copy attached*)

The Committee was taken through the brief as prepared by the PBO and was able to single out the following issues that were to be discussed with the stakeholders during the forthcoming meeting.

1. **The County Equitable Share is projected to grow at a slower pace**: The county equitable share for FY 2017/2018 is projected at Ksh 291.1 billion which is a 3.9% increase from the approved allocation for FY 2016/2017 which amounted to Ksh 280.3 billion.
• It is lower than the growth of county equitable share in previous years; In FY 2016/2017 the allocation grew by 7.9% from Ksh 259.8 billion approved in FY 2015/2016. This indicates there is no consistency in annual growth rates for county equitable share.
• It is lower than the growth of the total sharable revenue raised nationally for FY 2017/2018 which is projected at Ksh 1.549 trillion, a 12.3% increase from the approved sharable revenue for FY 2016/2017 amounting to Ksh 1.380 trillion. This indicates there is no equity in allocation of revenues between the national and county governments.
2. **Implementation of the Free Maternal Healthcare Conditional Allocation:** The DORB proposes to allocate the funds for free maternal healthcare amounting to Ksh 3.4 billion as a special grant to the National Hospital Insurance Fund (NHIF) to be disbursed as reimbursements. Have the structures for implementation of these funds been agreed upon and put in place.
3. **Conditional Allocation for Library Services:** Despite the function being devolved, it is not clear from the Division of Revenue on whether this function has been funded. The Senate in its recommendations to the Budget Policy Statement 2017 had resolved that funds be set aside for the management of library services devolved and for development of libraries in counties that there was no library.
4. **Allocations for Road Maintenance Levy Fund**: This allocation has been increased from Ksh 4.3 billion in FY 2016/2017 to Ksh 7.9 billion in FY 2017/2018. The additional allocation caters for the increase in fuel levy. It is noted at the National Government, there is always additional increment every financial year in the budget for the Kenya Roads Board due to an increase in the RMLF collections during the year. However, it is not clear whether county governments also enjoy these additional funds.

5. **Conditional Allocation from loans and grants to be implemented by National Government**: This will be funds from various development partners and National Government counterpart funding amounting to Ksh 6.2 billion. It is noted that these funds will not be transferred to County Governments in 2017/18 due to pre-existing conditionality. Thus, the funds will be budgeted and managed by the National Government whereas the counties will participate through Project Steering Committees and Implementation Units. Therefore, there is no need of these funds being included in the Division of Revenue Bill.

6. **Kenya Devolution Support Programme:** This is a grant to all 47 counties and will be implemented in two levels. The first level is to support counties strengthen PFM system, Human resource management and intergovernmental relations; improving counties Monitoring & Evaluation and civic education of public participation. The second level will be for incentivizing county governments that achieve good results in key areas under level 1. The detail of this funding proposal is still under review by the Senate.

MIN NO. 017/2017: COMMITTEE CORRESPONDENCE

The Committee resolved to discuss the pending correspondences during the forthcoming meeting

MIN NO. 018/2017: DATE OF NEXT MEETING

The date of the next meeting was scheduled for Wednesday, 23rd February, 2017 in County Hall, Ground Floor Boardroom at 10.00am.

MIN NO. 019/2017: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.00 noon.

SIGNED ______________________

(CHAIRPERSON)

DATE 28/02/2017. ______________________

MINUTES OF THE 4TH SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT MAIN PARLIAMENT BUILDING, SENATE CHAMBERS ON WEDNESDAY, 22ND FEBRUARY, 2017 AT 10.00A.M.

PRESENT

1. Sen. Billow Kerrow - Chairperson
2. Sen. Peter Ole Mositet -Vice Chairperson
3. Sen. (Prof.) Peter Anyang' Nyong'o -Member
4. Sen. Zipporah Kittony -Member
5. Sen. Beatrice Elachi -Member
6. Sen. Paul Ben Njoroge -Member
7. Sen. Aaron Kipkirui Cheruiyot -Member

ABSENT WITH APOLOGY

1. Sen. G.G Kariuki -Member
2. Sen. (Dr.) Wilfred Machage -Member
3. Sen. Moses Wetang'ula -Member
4. Sen. (Dr.) Agnes Zani -Member
5. Sen. (Dr.) Boni Khalwale -Member
6. Sen. Mutula Kilonzo Junior -Member
7. Sen. Mutahi Kagwe -Member
8. Sen. (Prof.) John Lonyang'apuo -Member
9. Sen. Catherine Mukite -Member

IN ATTENDANCE

A) STAKEHOLDERS N

1. Mr. Henry Rotich - CS, National Treasury
2. Hon. Peter Munya - Chair, Council of Governors
3. Hon. Wycliff Oparanya - Chair, COG Finance Committee
4. Mr. Kaberia Joseph - Speaker, Meru County
5. Mr. Ndegwa Wahome -Speaker, Nyandarua County
6. Mr. Nderi Ndiani - CEC Finance, Nyandarua County
7. Mr. Chris Kinyanjui - Clerk, Muranga County Assembly
8. Mr. Jenard Mwiggeh - Clerk, Nyeri County Assembly
9. Mr. Denis Mutui -Clerk, Kwale County Assembly
10. Mr. Jasper Mutuiri - Clerk, Laikipia County Assembly
11. Mr. Mboche Wanyoike - Clerk, Lamu County Assembly
12. Ms. Diana Khaemba - Finance Office, Bungoma County
13. Mr. Julius Ariwamoi - Clerk, West Pokot County Assembly

14. Mr. Dennis Panyako -Fiscal Analyst, Trans Nzoia County
15. Ms. Ms Lorna Losem - CAF
16. Ms. Lucy Akonitsa -SOCATT
17. Mr. Allan Mabuka - Clerk, Busia County Assembly
18. Ms. Meimuna Mohammed -Ag. Snr. Analyst CRA
19. Mr. Sylvester Oluk -Fiscal Analyst Siaya County Assembly
20. Mr. Mwanengo Ali
21. Mr. James Katule
22. Mr. Emmanuel Njuguna
23. Mr. Abdullahi Mohamed
24. Mr. Jilo Kidai
25. Mr. Salim Juma
26. Mr. Mohamed Hatimy
27. Mr. Sanoe Stephen
28. Mr. J.K. Arithi
29. Mr. Kamar Aidi
30. Mr. Saidi Maganga
31. Ms. Eunice Fedha
32. Mr. Kiwanuka Otieno
33. Mr. Evans Ogutu Ouma
34. Mr. Charles Lwiga
35. Mr. Vincent Kahindi
36. Ms. Linet Oyugi
37. Mr. Davis Okuthe
38. Mr. Isaac F. Olweny

B) SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Christopher Gitonga - Clerk Assistant
3. Mr. Benjamin Ngimor - Parliamentary Budget Officer
4. Ms. Lucy Radoli - Legal Counsel
5. Mr. Eugene Luteshi - Audio Officer

MIN NO.020/2017: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am. This was followed by a word of prayer. The Chairman thereafter welcomed the stakeholders to the meeting and allowed a round of introductions.

MIN NO. 021/2017: MEETING WITH KEY STAKEHOLDERS

After introductions, the Chairperson informed the stakeholders that the meeting was called to deliberate on two main issues namely:

a) The County Governments' Budget Ceilings on recurrent expenditures for County Executives and County Assemblies for the Financial Year 2017/2018; and

b) The Division of Revenue Bill (DoRB) (National Assembly Bill No. 2 of 2017).

The Chair invited the stakeholders to make presenattion first on item (a).

Presentation by the Cabinet Secretary, National Treasury

He informed the Committee that:

a) they submitted the draft DoRB to the National Assembly in November 2016.
b) The proposed equitable share was Kshs. 299.1 billion following an IBEC agreement. This was an increment (from 280.3 billion for FY 2016/2017) which factored an 6.72% increment due to inflation impact
c) The proposed conditional allocation of 13.57 billion and an extra addition of Condition grants from Fuel levy, loans and grants of Kshs. 20.4 billion.
d) In January 2017 the National Assembly published DoRB indicating that the county's equitable share is Kshs 291.1 billion, this was 3.9% adjustments to 2016/2017 County Government's equitable share.
e) The National Treasury proposal on DoRB was informed by the criteria set out in Article 203(1)
f) The difference in proposed figures by CRA and National Treasury were as a result of:
   - CRA used average growth rate (15.09%) of audited shareable revenue raised nationally over the past three years, NT use cost escalation at an average of 6.72%.
   - CRA adjustments of Kshs. 8.43 billion for construction and rehabilitation of class D roads. NT would not consider this since devolving of class D was not yet formalized.
   - NT provided Ksh.605 million to supplement financing for construction of county headquarters for 5 counties whereas CRA treated this allocation as a new grant and proposed Ksh. 1 billion. (the % counties were Isiolo, Lamu, Nyandarua, Tharaka Nithi and Tana River)
   - CRA provided proposed Ksh. 200 million for Spacial purpose Conditional grant for Medical purposes. However, this was intended to be a one-off allocation.
   - CRA also provided new conditional grant as follows:
     - Establishment of two regional cancer treatment centre Ksh. 5 billion
     - Provision of library services of Ksh. 400 million

- Rehabilitation of village polytechnics Ksh. 1.5 billion

g) Free maternity healthcare would be disbursed through NHIF.
h) Equitable share would be distributed to the county's using the 2nd generation formula.

Presentation by Commission of Revenue Allocation (CRA)

The representatives of CRA informed the Committee that:

a) The initial recommendation for equitable share was Ksh. 322.8 billion
b) the Ksh. 291billion proposed by National Assembly is far below and does not factor in the impact of inflation. Secondly the figure indicates a very minimal growth of revenue.
c) There was some agreement that increase in equitable share to reflect revenue growth rate.
d) Later, due to emerging aspects they revised their proposal Ksh.314 billion.

Presentation by Council of Governors (COG)

The representatives informed the Committee as follows:

a) The equitable share should increase at least with a rate which is similar to inflation rate.
b) Their proposal for equitable share was Ksh. 322 billion which was guided by the CRA recommendations.
c) If the free maternal health care was to be channeled through the NHIF then it should not be reflect in the bill as an allocation for the counties.
d) The allocations from Road Maintenance Fuel Levy Fund should increase from 15% to 25% since the levy increased from Ksh. 13 to Ksh. 18.
e) The proposal from National Assembly would inhibit the county government from conducting their operations smoothly.
f) There was an agreement between Treasury and COG that Ksh. 319 million should be allocated for Library services and Ksh. 8.4 billion for Class D roads that were transferred to the County governments.
g) Allocations for development of village polytechnics should not be a conditional grant; ECD was not provided for in a similar manner.
h) There was a tendency of the national government presumptuous that issues that are of national interest were national functions.

Presentation by County Assembly Forum (CAF)

CAF Chairperson informed the Committee that:

a) The issues raised by COG were their concerns.
b) The free maternal health care fund if channeled through NHIF, it implies that County Assemblies cannot appropriate the fund, thus its not an allocation for counties.

CS responses to some issues that were raised:

a) in consideration of division of revenue its was important to consider factors enumerated in Article 203 of the constitution; factors like population growth and cost of services were very critical.
b) Class D roads had never been devolved; the Roads Bill, 2015 in the Senate would ensure the proper devolution of the class of roads. This would justify the increase in allocation from Fuel levy fund from 15% to 25%.
c) IBEC had agreed on channeling free maternal health care fund through NHIF.
d) The allocation for compensation for user fees forgone would in future increase proportionately.

The Committee noted that IBEC had failed to agree on the appropriate allocation for equitable share.

The Committee thanked the participants for their presentation and promised that the Committee will determine the appropriate allocations.

MIN NO.022/2017: ADJOURNMENT

There being no other business the Chairperson adjourned the sitting at 12:45 pm.

SIGNED ______________________

(CHAIRPERSON)

DATE 28/02/2017

MINUTES OF THE 5TH SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, MINI CHAMBER PARLIAMENT BUILDINGS ON THURSDAY, 23RD FEBRUARY, 2017 AT 10.00A.M.

PRESENT

1. Sen. Peter Ole Mositet -Vice Chairperson (Chairing)
2. Sen. Moses Wetang'ula -Member
3. Sen. (Prof.) Peter Anyang' Nyong'o -Member
4. Sen. (Dr.) Wilfred Machage -Member
5. Sen. (Dr.) Agnes Zani -Member
6. Sen. Mutula Kilonzo Junior -Member

ABSENT WITH APOLOGY

1. Sen. Billow Kerrow - Chairperson
2. Sen. Zipporah Kittony -Member
3. Sen. Beatrice Elachi -Member
4. Sen. Aaron Kipkirui Cheruiyot -Member
5. Sen. Paul Ben Njoroge -Member
6. Sen. G.G Kariuki -Member
7. Sen. (Dr.) Boni Khalwale -Member
8. Sen. Mutahi Kagwe -Member
9. Sen. (Prof.) John Lonyang'apuo -Member
10. Sen. Catherine Mukite -Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Christopher Gitonga - Clerk Assistant
3. Mr. Benjamin Ngimor - Parliamentary Budget Officer
4. Ms. Lucy Radoli - Legal Counsel
5. Mr. Eugene Luteshi - Audio Officer
6. Ms. Paula Wanjiru - intern

MIN NO.023/2017: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am. This was followed by a word of prayer.

MIN NO. 024/2017: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted with amendments having been proposed by Sen. (Prof.) Peter Anyang' Nyong'o and seconded by Sen. (Dr.) Agnes Zani.

MIN NO. 025/2017: SUBMISSIONS FROM MEMBERS OF THE PUBLIC ON DIVISION OF REVENUE BILL, 2017

The Chair informed the Members that The Institute for Social Accountability had sent submission in which they indicated that:

a) National Treasury had proposed a growth rate of 6.7% for the equitable share to counties; amounting to Ksh. 299.1 billion.
b) In 2017 BPS, Treasury had projected revenue growth would be at 13%.
c) Its their recommendations that Financial Year 2017/2018 equitable share for the counties should be as recommended by the treasury.

MIN NO. 026/2017: CONSIDERATION OF THE BILL

The Committee noted that there was need to make a resolution on:

a) The county equitable share.
b) Disbursement of free maternal health care fund through NHIF.
c) Increment of allocation from fuel levy from 15% to 25%.

The Committee suggested as follows:

a) Consideration of proposing county equitable share higher than Ksh. 322 billion, noting the demands of personnel in health sector and provision of county library services.
b) Alternatives of channeling free maternal health fund through other channels other than NHIF.

MIN NO.027/2017: ADJOURNMENT

There being no other business the Chairperson adjourned the sitting at 11:20 am.

SIGNED ______________________
(CHAIRPERSON)

DATE 28/02/2017

MINUTES OF THE 6TH SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, GROUND FLOOR BOARDROOM PARLIAMENT BUILDINGS ON TUESDAY, 28TH FEBRUARY, 2017 AT 10.00A.M.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Moses Wetang'ula -Member
2. Sen. (Dr.) Wilfred Machage -Member
3. Sen. Paul Ben Njoroge -Member
4. Sen. G.G Kariuki -Member
5. Sen. (Dr.) Boni Khalwale -Member
6. Sen. Mutahi Kagwe -Member
7. Sen. Catherine Mukite -Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Boniface Lenairoshi - Principal Clerk Assistant
2. Mr. Victor Bett - Clerk Assistant
3. Mr. Christopher Gitonga - Clerk Assistant
4. Mr. Benjamin Ng'imor - Fiscal Analyst
5. Ms. Lucy Radoli - Legal Counsel
6. Mr. Eugene Luteshi - Audio Officer
7. Mr. Chelang'a Maiyo - Research Officer
8. Ms. Paula Wanjiru - Intern

MIN NO.028/2017: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am. This was followed by a word of prayer.

MIN NO. 029/2017: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Mutula Kilonzo Junior and seconded by Sen. Zipporah Kittony.

MIN NO. 026/2017: CONFIRMATION OF MINUTES

The minutes of the 2nd sitting held on Tuesday, 14th February, 2017 at 10 am in County Hall, Ground Floor Boardroom, were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Zipporah Kittony and seconded by Sen. Aaron Kipkirui Cheruiyot.

The minutes of the 3rd sitting held on Tuesday, 21st February, 2017 at 10 am in County Hall, Ground Floor Boardroom, were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Peter Ole Mositet and seconded by Sen. Zipporah Kittony.

The minutes of the 4th sitting held on Wednesday 22nd February, 2017 at 10 am in Senate Chambers, Main Parliament Building, were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Prof.) Peter Anyang' Nyong'o and seconded by Sen. Aaron Kipkirui Cheruiyot.

The minutes of the 5th sitting held on Thursday, 23rd February, 2017 at 10 am in County Hall, Ground Floor Boardroom, were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Mutula Kilonzo Junior and seconded by Sen. (Prof.) Peter Anyang' Nyong'o.

MIN NO. 030/2017: CONSIDERATION AND ADOPTION OF THE REPORT ON DIVISION OF REVENUE BILL, 2017

The Committee considered and adopted the report on the Division of Revenue bill with the following recommendations:

a) The county equitable share amounting to Ksh. 314. 6 billion.
b) Conditional allocation amounting to Ksh. 38,170,179,761 which includes additional conditional allocations from loans and grants amounting to Ksh. 5,548,779,761.

The report was proposed by Sen. Peter Ole Mositet and seconded by Sen. Mutula Kilonzo Junior.

MIN NO.031/2017: ADJOURNMENT

There being no other business the Chairperson adjourned the sitting at 11:20 am.

SIGNED ______________________________

(CHAIRPERSON)

DATE ______________________________

REPUBLIC OF KENYA

THE NATIONAL TREASURY

BRIEF ON THE NATIONAL TREASURY RECOMMENDATIONS ON THE SHARING OF REVENUE FOR THE FINANCIAL YEAR 2017/18

PRESENTED AT A MEETING OF THE SENATE COMMITTEE ON FINANCE, COMMERCE AND BUDGET

ON

22nd FEBRUARY 2016

DIVISION OF REVENUE FOR FY 2016/17

1. In November 2016, the National Treasury (NT) submitted to Parliament the Budget Policy Statement (BPS), 2017, together with the Division of Revenue Bill (DoRB), 2017. Based on this submission, County Governments' FY 2017/18 equitable revenue share allocation was estimated at Kshs. 299.1 billion. This had been arrived at by adjusting the counties' 2016/17 equitable share (i.e. KSh. 280.3 billion) by a factor of 6.72 percent, which is the average month-on-month inflation for FYs 2013/14, 2014/15 & 2015/16, as reported by the Kenya National Bureau of Statistics (KNBS). NT's justification for using inflation as an adjustment factor was intended to ensure that counties are adequately compensated for escalation in costs related to the delivery of devolved functions.

2. It should be noted that the above growth factor had also been agreed at the meeting of IBEC Finance and Budget Committee held on 11th November 2016 at the Treasury Building.

3. At the same meeting members had proposed that the remaining equitable share of revenue after growing the shares of National and County Governments by a factor of 6.72percent be equitably divided on the basis of 80:20 ratio (i.e. 80% to National Government and 20% to County Governments) after deducting: (a) Tax refunds; and (b) the cost of any new additional conditional allocations to counties. There was, however, no agreement on this proposal and it was resolved that there was need for further consultations.

4. On January 6th, 2017, the National Assembly published the DoRB which proposes that County Governments' equitable share allocation in FY 2017/18 be set at Kshs 291.1 billion. ***Table 1*** summarizes differences between the DoRB published by the National Assembly and the one submitted to Parliament by the National Treasury in November 2016. It should be noted that based on the DoRB published by the National Assembly, the proposed equitable share for County Governments in FY 2017/18 (i.e. Kshs 291.1 billion) represents an adjustment of 3.9 percent (or Kshs 10.8 billion) over the FY 2016/17 baseline of Kshs. 280.3 billion. Nevertheless, counties' equitable share allocation in the DoRB published by the National Assembly is equivalent to 31.1 percent of latest audited revenues for FY 2013/14 (i.e. Kshs 935.7 billion).

Table 1: NT's DoRB proposals vis-à-vis National Assembly's Published DoRB

Type/level of allocation *(All figures in Kshs.)*	**National Treasury**	**National Assembly**	**Varian**
A. Total shareable revenue	1,549,412,000,000	1,549,412,000,000	-
B. National Government	1,232,754,602,475	1,238,343,840,000	5,589,237,52
C. Equalization Fund	7,727,000,000	7,727,000,000	-
D. County Governments:			
1. Counties' equitable share	299,136,160,000	291,136,160,000	(8,000,000,00
2. Conditional allocations *(= 2.1+2.2+2.3+2.4+2.5+2.6)*	13,574,237,525	12,205,000,000	(1,369,237,52
2.1 Free maternal healthcare	*3,369,237,525*		*(3,369,237,52*
2.2 Leasing of medical equipment	*4,500,000,000*	*4,500,000,000*	-
2.3 Compensation for user fees forgone	*900,000,000*	*900,000,000*	-
2.4 Level 5 hospitals	*4,200,000,000*	*4,200,000,000*	-
2.5 Supplement for construction of county headquarters	*605,000,000*	*605,000,000*	-
2.6 Rehabilitation of youth polytechnics		*2,000,000,000*	*2,000,000,00*
E. Additional county conditional allocations (=3+4):	20,416,400,000	20,416,400,000	-
3. Allocation from fuel levy (15%)	7,875,000,000	7,875,000,000	-
4. Conditional allocations (loans and grants) *(=4.1+4.2+4.3+4.4+4.5+4.6)*	12,541,400,000	12,541,400,000	-
4.1 IDA-KHSSP/RBF	*873,407,500*	873,407,500	-
4.2 IDA-NUTRIP	*6,020,000,000*	6,020,000,000	-
4.3 KIDDP-Rehabilitation of youth polytechnics	*97,000,000*	97,000,000	-
4.4 KIDDP-Rehabilitation of sub-district hospitals	*51,000,000*	51,000,000	-
4.5 IDA-KDSP (Level 1 Grant)	*1,500,000,000*	1,500,000,000	-
4.6 IDA-KDSP (Level 2 Grant)	*4,000,000,000*	4,000,000,000	-
Total changes (Net)			**(3,780,000,000**

5. In addition to the above, the following four points should be noted:
   a) The free maternal healthcare conditional allocation of Kshs 3.4 billion -- which until FY 2016/17 was disbursed directly to County Governments from the Exchequer -- becomes a special grant to the National Health Insurance Fund (NHIF). The grant will be reimbursed directly to contracted health institutions through existing NHIF systems. Among other benefits, it is expected that this new arrangement will eliminate double claims by facilities (i.e. from both the free maternal care programme and NHIF, and other community based health insurance programmes) as well as "intermediaries" in the flow of funds, thereby improving efficiency.

   b) County Governments' equitable share of revenue in FY 2017/18 is to be distributed according to the revised revenue sharing (second generation) criteria. The revised criteria was recommended by the Commission on Revenue Allocation (CRA) and approved by the Senate and the National Assembly respectively, on 20th April and 22nd June, 2016. The criteria takes into account population (45 percent), basic equal share (26 percent), poverty (18 percent), land area (8 percent), fiscal responsibility (2 percent) and development factor (1 percent).

   c) The National Treasury has written to the National Assembly and the Senate proposing amendments to the DoRB, which are aimed at enhancing counties' conditional allocations shown in ***Table 1***. If passed by Parliament, the proposed amendments will ensure that the counties receive an additional Kshs 5.5 billion in FY 2017/18, through:

- a Kshs 985.8 million grant from the European Union (EU) to support the National and the County Governments' capacities in the management of devolution and accountable fiscal decentralization for local economic development;
- a Kshs 2.8 billion IDA credit to finance the Transforming Health Systems for Universal Care project;
- another IDA credit, amounting to Kshs 1.1 billion, to finance the National Agriculture and Rural Inclusive Growth project; and,
- a grant of Kshs 763 million from the Government of Denmark to supplement financing of county health facilities.

The National Treasury proposal on the FY 2017/18 Division of Revenue was also informed by the evaluation of the Bill against the criteria set out in Article 203(1) of the Constitution as required under Article 218(2)(b) of the Constitution. Considering the DoRB 2017 submitted to the National Assembly by the National Treasury, 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. 114 billion of the shareable revenue is left to finance all other National Government need. This amount is lower than what was available for National Government needs in FY 2016/17. It is therefore clear that any increase in the county allocation would have increased the budget deficit

Table 2: Evaluation of the Division of Revenue Bill, 2017 against Article 203 (1) of the Constitution

	ITEM DESCRIPTION	2016/17	2017/18
		Ksh. Millions	Ksh. Millions
A	Ordinary Revenue (excluding AIA)	1,380,199	1,549,412
B	National Interest [Article 203 (1)(a)]	79,685	81,902
C	Public Debt (Article 203 [1][b])	446,408	618,569
D	Other National Obligations (Article 203 [1][b])	371,743	408,104
E	Emergencies [Article 203 (1)(k)]	7,245	6,200
	1.Contingencies	5,000	5,000
	2.Strategic Grain Reserve	2,245	1,200
F	Equalisation Fund [Article 203 (1) (g) and (h)]	6,000	7,727
G	Balance to be shared between the National and County Government	469,118	426,911
H	County Government Allocation from Revenue Raised Nationally	294,021	312,710
I	Balance Available for National Government Needs	175,097	114,201

Response to the Recommendations of the Commission on Revenue Allocation

a) The National Treasury submission to National Assembly on Division of Revenue for FY 2017/18 proposed to allocate county governments an equitable share of Ksh. 299.1 billion. The CRA, on the other hand, recommended County Governments' equitable share of revenue of Ksh. 331.6 billion. The difference in the CRA recommendation and the National Treasury proposal emanates from the different approaches used to compute the County Governments' equitable share of revenue. These include:

- **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 an adjustment for cost escalation of 6.72 percent. This growth factor which is derived from month-on-month inflation rate for FYs 2013/14, 2014/15 & 2015/16 has taken into consideration performance of revenues by smoothing the growth trends.

- **County equitable revenue share adjustment of Ksh. 8.43 billion for additional county roads:** Following the reclassification of roads by the State Department of Infrastructure and subsequent transfer of additional county roads by the defunct Transition Authority (TA) vide Gazette Supplement No.4 of 22nd April, 2016, the CRA proposed to gross up the county equitable share of revenue for 2017/18 by an allocation of Ksh. 8.43 billion for construction and rehabilitation of county roads.

  It should be noted that the defunct Transition Authority Gazetted 90,000 Kilometres of roads of class E, F, G and non-classified roads which were transferred to county governments in the financial year 2013/ 14. The attendant resources (Ksh. 27.4 billion) were subsequently transferred to county governments through the Division of Revenue Act, 2013.

  The National Treasury also recognises that the taskforce established by the Cabinet Secretary/National Treasury to assess if there were duplication of function in the national and county governments, also recommended that Kshs. 8.43 billion held by Kenya Rural Roads Authority and the Kenya Urban Roads Authority be transferred to county governments to follow the transfer of class D roads amounting to 32,000 km.

  First, it should be noted that the report of the taskforce have not be considered and adopted by the SUMMIT and therefore it would be pre-mature to reflect such recommendations in DoRB 2017. In light of the foregoing, it is not possible to include in the DoRB 2017 the recommendation of the CRA and the taskforce. In addition, the Ministry responsible for roads has requested for further consultations on this matter.

- **County equitable revenue share adjustment of Ksh. 319 million from Kenya Libraries Services to cater for salaries and operations of devolved libraries:** The CRA has proposed a further adjustment of the equitable revenue share to include an allocation of Ksh.319 million to salaries and operations of devolved libraries in FY 2017/18. The National Treasury view is that this amounts can only be transferred to counties upon the formal adoption of the report of the taskforce (referred to above) by the SUMMIT.

b) On the existing additional conditional grants: CRA proposed a total allocation to existing additional conditional grants of Ksh. 27.1 billion against an allocation by the National Treasury of Ksh. 21.4 billion. The differences in proposed allocations of the existing additional conditional allocations to counties is as a result of ;-

- **CRA use of a growth factor of 5 percent inflation rate to increase all the existing conditional grants.** The existing conditional allocations include allocations for; Level-5 hospitals, Free Maternal Health Care, Compensation for User fee forgone, leasing of medical equipment ,county roads funding from Roads Maintenance Fuel Levy, special purpose grant for Emergency Medical services and Supplement for construction of five county headquarters. It should be noted that allocations for the various conditional additional allocations are determined through the national MTEF budget process based on the need/weight attached to the national government policy objectives that the allocations are intended to support.

- **CRA has proposed an allocation of 25 % to counties from the Roads Maintenance Levy Fund (RMLF) translating to Ksh. 13.3 billion**, whereas the National Treasury has maintained 15 % allocation from RMLF which translates to Ksh. 7.9 billion which is an increase of Ksh. 3.6 billion from the previous financial year. CRA justification for this increase is to provide funds for maintenance of the 32,000 Km of roads transferred to counties. The taskforce appointed by the Cabinet Secretary/National Treasury had also recommended that 25 percent of the annual collections in the RMLF be transferred to counties. As at the time of submitted the DoRB 2017, discussion with the Ministry of Transport and Infrastructure had not been concluded Besides, the Ministry of Transport and Infrastructure (MoTI) has argued that resource requirement for the maintenance of roads assigned to national government is much higher than for the roads assigned to county governments. The MoTI has therefore argued that there is need to have further consultations on the recommendations by the taskforce. Consensus has, however, been reached at the IBEC meeting held on 21st February 2017 to increase the grants to counties from the RMLF from 15% to 25%.

- **National Treasury has provided for Ksh. 605 million to supplement county financing for the construction of county headquarters in five counties**. The CRA has treated this allocation as a new grant and has proposed an allocation of Ksh. 1 billion in the financial year 2017/18. However, this is an existing grant which is phased out for three financial years beginning 2016/17.

  This grant is intended to supplement financing for construction of headquarters by five County Governments that did not inherit adequate office space. The five counties are Isiolo; Lamu; Nyandarua; Tana River and Tharaka Nithi. Following consultations with these counties, it was agreed that 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 offices). The National Government will contribute 70 percent of the budget while County Governments will contribute 30 percent. The National Government's contribution will be spread over three financial years. In FY 2016/17, the National Treasury allocated a total of Ksh. 605 million for the construction of county headquarters (i.e. Ksh. 122 million to each of the five counties). In FY 2017/18, the National Treasury is allocating Ksh. 605 million (i.e. Kshs 121 million per county).

- **The CRA has also provided for Ksh. 200 million special purpose conditional grant for Medical purposes**. This grant was intended to upgrade the two level 4 hopsitals in Lamu and Tana River counties to be able to adequately deal with health care demands arising from security operations. This grant was intended to be one-off allocation in the financial year 2016/17.

c) Further the Commission on Revenue Allocation has in the FY 2017/18 proposed new conditional allocations amounting to Ksh. 8.9 billion that the National Treasury has not included in the Division of Revenue Bill. These have further contributed to the variance between the National Treasury and the CRA proposals on division of revenue for FY 2017/18. These include;

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

  National Treasury appreciates this proposal which plan if implemented would boost chances of the country plan to achieve universal healthcare access. Such a program, however, requires careful planning to ensure that adequate human and financial resources can be availed to guarantee the sustainability and viability of

such a program. There is no evidence of any consultation with the Ministry of Health which provides policy leadership on such matters.

- **Additional conditional allocations for Library services of Ksh. 400 million** - the proposed new conditional additional allocation by CRA of Ksh. 400 million is meant for building and equipping 20 counties with libraries at a cost of ksh. 20 million each. This is to achieve equity given that it's only in these 20 counties that there are no libraries whereas other counties have more than one.

  Proposal for conditional grants such as this should be prepared in accordance with the framework for intergovernmental fiscal transfers as agreed. Ultimately these should be anchored in the national policy. Only then can such be considered for inclusion in the DoRB 2017.

- **Conditional additional allocation for the Rehabilitation of Village Polytechnics of Ksh. 1.5 billion:** - the CRA has further proposed an additional conditional allocation of Ksh. 1.5 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. At the time of submitting the proposals on division of revenue for FY 2017/18, National Treasury had not identified resources to support **youth polytechnic. A decision has, however been reached with the National Assembly to provide conditional grants to counties amounting to Ksh. 2 billion towards the financing of youth polytechnics.**

Mr. Henry Rotich, EGH
Cabinet Secretary/National Treasury

22nd February 2017

or comment.
, 46, who had been
se territory of Ma-
's protection, had

police," ambassador Kang Chol told reporters after talks at the foreign ministry.

—*Reuters*

line. But Kigwangalla argued homosexuality did not scientifically exist and was a social construct.

— *BBC*

REPUBLIC OF KENYA

ELEVENTH PARLIAMENT

THE SENATE

In the Matter of Consideration of the Division of Revenue Bill (National Assembly Bills No. 2 of 2017)

Article 118 of the Constitution and Standing Order 130 of the Senate Standing Orders

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

Following the submission of the Division of Revenue Bill (National Assembly Bills No. 2 of 2017), to the Senate by the National Assembly, the Bill was committed to the Standing Committee on Finance, Commerce and Budget for consideration pursuant to Standing Order 130, as read with Standing Order 160 of the Senate Standing Orders.

Pursuant to the provisions of Article 118 and standing order 130 (4), the Standing Committee on Finance, Commerce and Budget now invites interested members of the public to submit any representations that they may have on the Division of Revenue Bill, 2017. The representations may be made orally or by submission of written memoranda in the following manner:

1. Public Hearings shall be held on **Thursday, 23rd February, 2017 from 10:00 a.m. to 1.00 p.m. at the Mini Chamber, First Floor, County Hall, Parliament Buildings, Nairobi**; or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi,** hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi** or emailed to **csenate@parliament.go.ke**, to be received **on or before Thursday, 23rd February, 2017 at 5.00 p.m.**

The Division of Revenue Bill (National Assembly Bill No. 2 of 2017) may be found on the Parliament website at **http:/www.parliament.go.ke/senate.**

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE/ SECRETARY
PARLIAMENTARY SERVICE COMMISSION.

134.

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CRA

COMMISSION ON REVENUE ALLOCATION

OUR REF. CRA/CSO/P&S/11/VOL.II (02) **DATE:** 21st February 2017

(2) Mr. Gitonga / Victor PCAI - F. Gxxx Please submit this for consideration and clear appropriately 22/02/17

21 FEB 2017

(1) DDCom Kindly bring to the attention of the Committee. 22/02/17

Mr. Jeremiah M. Nyegenye
Clerk of the Senate
2nd Floor, County House
NAIROBI

Dear Mr. Nyegenye,

RE: CRA RECOMMENDATIONS ON THE DIVISION OF REVENUE BILL, 2017

The Commission on Revenue Allocation has considered the provisions of the Division of Revenue Bill, 2017 (National Assembly) which allocates county governments equitable share of Ksh.291,136 million for financial year 2017/18. Consequential to this allocation, the county governments' equitable share will increase by a paltry 3.87 per cent, from their allocation of Ksh.280,300 million in 2016/17. It is also important to note that in real terms, the allocation to county governments for 2017/18 is less than the allocation for 2016/17 taking into account the average inflation rate of 6.72 per cent.

The national government equitable share for 2017/18 has been increased by 13.7 percent from Ksh.1,099,899 to Ksh.1,250,549 million. This amounts to inequitable sharing of revenues between the national and county governments.

Further, the division of revenue Bill 2017 understates the national government equitable share by Ksh. 12,205 million, being allocations to county governments from the national government share. This allocation should first be reflected as part of the national government share before a contra-entry is made in the county government share.

In this regard, the Commission recommends as follows:

1. To ensure equity, in the sharing of revenues between the two levels of government, that a two-step approach be followed:

22 FEB 2017

THE SENATE
RECEIVED
22 FEB 2017
SENIOR DEPUTY CLERK

a. Both levels of government equitable shares for 2016/17 be adjusted first by the three year average inflation rate of 6.72 percent.

	2016/17	2017/18
i. National government	1,099,899	1,173,812
ii. County governments	280,300	299,136

b. Based on the projected shareable revenue of Ksh.1,549,412, that the balance of ksh.76,464 be shared at a ratio of 80:20 between the national and county governments. The 80:20 ratio is based on the shareable revenue between the national and county governments for Financial year 2016/17.

	2016/17	2017/18
i. National government	1,099,899 (80%)	61,171
ii. County governments	280,300(20%)	15,292

This will increase the sharable revenue allocation for national government to Ksh.1,234,983 and the county governments to Ksh.314,428 for 2017/18. For both levels of government, the revenue growth factor is equal to 12 percent.

2. That based on the recommendations of the Technical Committee of the Summit, County governments be allocated the following additional revenues in financial year 2017/18:
   a. Ksh.8,430 million from the Ministry of Roads for additional 39984 kilometers of class D roads,
   b. Ksh.319 million from Kenya Library Services for salaries of devolved staff working in 44 libraries across different counties
   c. Ksh.13,296 million being 25 percent of the Road Maintenance Levy Fund.

The delay by the Summit to adopt the recommendations of the Technical Committee as rightfully noted in the Division of Revenue Bill, 2017 is no justification to deny county governments revenues for two financial years.

Yours sincerely,

George Ooko
<u>COMMISSION SECRETARY/CEO</u>

URGENT

COUNCIL OF GOVERNORS

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(2) PCA I - F, CX Budget
Please submit for consideration and deal appropriately
27/02/17

Our Ref: COG/6/11 (57)

23rd February, 2017

DDCom
Kindly bring to the attention of the Committee.
27/02/17

J.M. Nyegenye CBS
Clerk of the Senate
Clerk's Chambers
Parliament Buildings
NAIROBI

MEMORANDUM ON THE DIVISION OF REVENUE BILL 2017

The Council of Governors respects Article 6(2) of the Constitution which provides that the two levels of government are distinct but inter-depended and shall conduct their mutual relations on the basis of consultation and cooperation.

It is on this premise that the Council of Governors officially submit it recommendations on the published National Assembly's Bill on the 2017 Division of Revenue.

Your consideration on the same will be appreciated.

23 FEB 2017

Anam

Jacqueline Mogeni
Chief Executive Officer

Copy: All Excellency Governors

Hon. Mutava Musyimi, M.P.
Chairperson, Budget & Appropriations Committee
National Assembly
NAIROBI

THE SENATE
RECEIVED
24 FEB 2017
SENIOR DEPUTY CLERK

27 FEB 2017

COUNCIL OF GOVERNORS

MEMORANDUM TO THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON THE DIVISION OF REVENUE BILL 2017

FROM

THE COUNCIL OF GOVERNORS

23RD FEBRUARY 2017

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 year 2017/18) by the National Government between the two levels of government will be guided by the Division of Revenue Bill, 2017 (DoRB). The Council of Governors has reviewed the DoRB and raises the following concerns on the same:

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

The National Treasury had used a growth factor of 6.72% as an average of month-to-month inflation for FYs 2013/14, 2014/15 and 2015/16 thereby adjusting the County Governments' equitable share to Ksh 299.1 billion.

CRA on its part had proposed an increase of 42,550 million to County Governments using a three year average revenue growth rate of 15.18% with the years considered being 2013/14; 2014/15 and 2015/16. The Commission therefore recommended an equitable share to Counties of Ksh 331.5 billion.

The National Assembly however in its published Bill has disregarded these two proposals and made a reduction to Counties Equitable share to Ksh 291.0 billion without any justification. The National Assembly has adjusted the Counties equitable share by 3.7% without any justification. Clearly 3.7% revenue adjustment is below the average inflation rate which stands at 6.72%. Whereas we did not accept the National Treasury's proposal of 6.72%, clearly a growth rate of 3.7% is unacceptable as Counties revenues will reduce in real terms.

It also to be noted that through an IBEC directive, the Intergovernmental Budget and Economic Council (IBEC) Budget Committee was tasked to come up with a scientific criteria for weighting of the growth factor of revenue for county governments during the division of revenue and came up with the following recommendations:-

The National Government's equitable share should also be subjected to the 6.72 percent adjustment factor, and that the shareable revenue remaining at the top to be equitably divided using an 80:20 ratio -- i.e. 80 percent to the National Government -- after deducting: i) refunds of VAT, excise, customs and stamp duties, etc.; and which currently stands at Ksh 15 billion, ii) the cost of any new additional conditional allocations to the counties.

The Council of Governors recommends an equitable share is Ksh 322 billion to County Governments. (See table below)

2. **Under-funded Functions:**

a) **County Roads**

The Summit which convened in February 2016 agreed to the formation of a taskforce to analyze the extent of duplication that exists between the National and county governments in their undertaking of both exclusive and concurrent functions in accordance with the Fourth Schedule of the Constitution and to identify corresponding budgetary resources which will follow the transfer of functions identified. Based on this the task force recommended the following:-

Based on the reclassification of class D roads with 31,456.4 Km being transferred to the County Governments, the taskforce recommended for the reallocation of Ksh 8,430 million from the Ministry of Roads to County governments as attendant resources to the additional kilometers.

Due the additional transferred kilometers of roads to Counties which expanded the road network in the counties, the taskforce also recommended the increment of the fuel levy fund from the current 15% of Ksh 7.9 billion to 25% which would translate to Ksh 13.1 billion. The 13.1 billion is based on the projected Ksh 55 billion worth of revenues by the Kenya Roads Board.

The Council insists that these allocations must be included in the Division of Revenue 2017.

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. The DORB however, fails to take into account this proposal, citing that the report of the taskforce has not yet been considered and adopted by the Summit. As reiterated earlier, as at 4th March 2016, all functions assigned to Counties were automatically transferred. This includes library services.

Therefore, the DORB must make allocation for library services, which is a County 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.

d) **Maternal Healthcare**

The National Assembly has proposed for the transfer of maternal healthcare allocation form the County Governments to the National Health Insurance Fund to be disbursed as reimbursements. The earmarked allocation is Ksh 3.4 billion.

The Council points out that this allocation not only has been reduced from the Ksh 4.1 billion but has been transferred to NHIF. The allocation should have been increased based on inflation rate rather than be reduced. The population has also grown with increased birth rates.

The Council recommends that the monies for this be deducted from National Government budget since this is not an extra allocation to Counties.

e. Compensation for user fees forgone

It is noted that the amounts allocated for user fees have been constant irrespective of inflation and population growth.

Council recommends that the amounts the reviewed considering population growth and inflation.

3. **National Debt:**

The guidelines on borrowing should be implemented consultatively. The Loans and Grants Council should be established to vet borrowing by both levels of government.

4. **Pensions:**

The National Treasury has only factored the aspect of the pensions for the National Government staff.

Council recommendation is that 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.

5. **Conditional allocations to County Governments:**

a) The DORB 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.

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

b) The DORB provides for conditional allocations financed by other loans and grants received from development partners and government counterpart funding. The DORB makes note that these funds cannot be transferred to County Governments in the FY 2017/18 *but will be managed by the National Government because they are tied to financing agreements which were entered into prior to the inception of County Governments.* The Council maintains that all financing agreements must be aligned to conform to the devolved system of governance and must operate within the Public Finance Management framework. Anything contrary to this would be an illegality.

The Council position is that the National Government, must, in good faith, respect the integrity and independence of County Governments and in this regard seek to modify financing agreements that touch on County functions.

6. **Establishment of two Regional Cancer Referral Centres at a cost of Ksh. 2.5 billion each**
The Council proposes for an allocation of Ksh 5 billion to go towards the construction of two regional cancer centres. There is cancer epidemic in the Country and the national referral hospitals are unable to cater for the epidemic.

This allocation should form part of the National interest conversation and allocations made on the same.

7. **Emergency (Contingencies and strategic grain reserve):**
There is a provision for Kshs. 6.2 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.

8. **The DoRB contravenes Article 203 of the Constitution in the following aspects:**
i. Allocation of funds to the National Government Constituency Development Fund (NGCDF) before determining the equitable share between the two levels of government. NGCDF is a National Government fund which should be derived from the National Government portion of the equitable share. This is what is anticipated in the National Government Constituencies Development Fund Act, No. 30 of 2015 at Section 4(1)(a):

'There is established a fund to be known as the National Government Constituencies Development Fund which shall- (a) be a national government fund consisting of monies of an amount of not less than 2.5% (two and half per centum) of all the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution'

It is therefore a blatant violation of the NGCDF Act to classify the NGCDF as part of '*national obligations*'. The fund should therefore not be excluded from the National Governments share. In any case, the term 'national obligation' should not be hastily concluded to mean '*National Government obligations*'.

ii. Allocations based on National Interest under Article 203(1)(a) of the Constitution.
In the DoRB, one of the items considered under national interest is actually a National Government project- the *primary school digital literacy program.* 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 intergovernmental consultation.

Recommendations

The *primary school digital literacy program* 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.

Table 1: Equitable Revenue Share Allocation to County Governments (Kshs Million

Item	ACTUAL 2016/17	NATIONAL TREASURY 2017/18	CoG RECOMMENDATION 2017/18
Audited Accounts	935,653.00	1,038,035.00	1,038,035.00
Shareable revenue	1,380,199.00	1,549,412.00	1,549,412.00
Baseline Allocation	**259,775.50**	**280,300.00**	**280,300.00**
Additional Functions funding	-	-	8,749.00
Adjusted Baseline	**259,775.50**	**280,300.00**	**289,049.00**
Revenue growth factor*	20,525.20	18,836.20	19,424.29
Equitable revenue share allocation	**280,300.70**	**299,136.20**	**308,473.00**
NOTE: *Revenue growth factor	7.90%	6.72%	6.72%
Total Counties equitable share of revenue		**299.00**	**308.4+14.2 = 322.6**

Table 2: Vertical Division between National and County Governments (Kshs Million)

Item	ACTUAL 2016/17	NT 2017/18	CoG RECOMMENDATION 2017/18
National Government	1,099,899.00	1,240,731.80	**1,173,812.21**
Adjusted Revenue based on the inflation rate used for County Governments= **73,913.21**			
Total allocation for the two levels of Government based on inflation of 6.72%			**1,462,861.00**
Shareable revenue balance to be shared between the two levels of Government on an agreed ratio 80:20 less tax returns of 15 billion shillings			**71,551 .00**
Total National Government's equitable share of Revenue			**1,173,869.01**
Free maternal healthcare	4,121.00	3,369.00	3,400.00
Leasing of Medical Equipment	4,500.00	4,500.00	4,500.00
Compensation for user fees forgone	900.00	900.00	900.00
Level 5 hospitals	4,000.00	4,200.00	4,200.00
Construction of County Headquarters		605.00	605.00
Total Conditional Grants to Counties from National Government share of shareable revenues		**13,574.00**	**13,605.00**
Additional allocations to Counties not arising from National Government shareable revenue			
Fuel Levy Fund		**7,900.00 based on 15% allocation**	**13,300 based on 25% allocation**
Kenya Devolution Support Programme(level 1 &2)		5,500.00	5,500.00

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Nairobi, Kenya

Monday,16 January2017

Hansard Report Indicate National Assembly Budget Committee has slashed county allocations.

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.

The Division of Revenue among the national and county levels of government is provided for in Article 218 of the constitution. Subsequently, Article 202 provides for equitable sharing of the revenue raised nationally between the national and county governments. However, there is contradiction in the division of revenue to counties for financial year 2017/18 as evidenced in the National Assembly's proposed reduction on equitable share to the counties.

In light of the above, we hereby bring to your attention the following concerns as stated in the attached memorandum prepared by the International Budget Partnership. It is our intention to engage in the process once the Senate is properly seized of the matter.

Best Wishes,

p.p [signature]

Wanjiru Gikonyo
The National Coordinator

IBP | KENYA
Open ... Transform

During National Assembly's special sitting, MPs had a special gift for counties

January 12, 2017

Last November, the Commission on Revenue Allocation released recommendations for how much counties should receive in 2017/18. CRA recommended that counties receive a 15 percent increase, based on the average revenue growth over the previous three years. This would give counties Ksh 322.8 billion in 2017/18 (before adding any conditional grants such as the free maternity grant).

In the Budget Policy Statement 2017, National Treasury recommended a growth rate of only 6.7 percent for the equitable share to counties. This was based on average monthly inflation over the last three years. Under this proposal, counties would get Ksh 299.1 billion.

Actual revenue over the past five years shows that, revenue growth has consistently been higher than inflation rates. Treasury's own Budget Policy Statement 2017 shows that total ordinary revenue is projected to grow by 13 percent next year. Any revenue raised above the inflation rate would all be retained by the national government which goes against the principles of fairness in revenue sharing.

In December, the Budget and Appropriation Committee of the National Assembly appeared to agree with us, and raised concerns with Treasury's use of inflation as the adjustment factor. The discussion on the floor of the house also raised the unfair nature of Treasury's approach.

> I wanted to talk about the division of revenue that is the vertical sharing of revenue. The Constitution mandates the National Assembly together with the Senate to debate and agree on how much should go to counties and how much should remain at the national Government level to finance the national Government activities. Article 203 of the Constitution spells out what needs to be taken into consideration while making that decision. It defeats logic if you can grow expenditure for the national Government at 13 per cent yet you are growing expenditure for the counties at 6.7 per cent. The inflation rate for the country is projected at 6.5 per cent. So, what we are telling the counties is that we are not giving them any additional money for development, but we are only taking care of the inflationary pressures for next year. Is that what we want for this country? I do not think so. Look at the kind of functions that we have devolved to the counties more particularly the road sector. As Members of Parliament especially the National Assembly, we have a responsibility. What is our responsibility? If the roads in the rural areas are impassable, no leader will be protected. The electorate does not understand who is responsible for a particular road. If we have devolved these roads to the counties especially Class D roads, we need to allocate them resources. Why can we not as a country---

However, the Hansard shows that in its report to the whole house, the committee actually reduced the share to counties further, by Ksh 8 billion to Ksh 291.1 billion. No justification for this is provided.

We recommend that the allocations to county governments for the Financial Year 2017/2018, which will form the basis of the Division of Revenue Bill, be as follows: County Government equitable share of Kshs291.1362 billion and conditional allocations for the national Government equitable share of revenue as follows: conditional allocation for leasing of medical equipment of Kshs4.7 billion, conditional allocation for compensation for user fees foregone of

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Kshs900 million, conditional allocations for Level 5 hospitals of Kshs4.2 billion, conditional allocation for construction of county headquarters of Kshs605 million and conditional allocation for rehabilitation of village polytechnics of Kshs2 billion.

The national assembly's reduced equitable share means the revenue growth will be 3.9 percent, which is far lower than the inflation rate used by treasury and Ksh 31.7 billion lower than CRA's recommendation.