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REPUBLIC OF KENYA

THE NATIONAL TREASURY

Division of Revenue Bill, 2017

<u>A Legislative Proposal for submission to Parliament</u>

THE DIVISON OF REVENUE BILL, 2017

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 2017/18 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, 2017.

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 2017/18 in accordance with Article 203 (2) of the Constitution.

Allocations to national and county governments.

4. Revenue raised by the national government in respect of the financial year 2017/18 shall be divided among the national and county governments as set out in the Schedule to this Act.

Variation in revenue.

5. (1) If the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government, to the extent of the threshold prescribed in Regulations by the Cabinet Secretary.

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

SCHEDULE (s.4)

Allocation of revenue raised nationally between the national and county governments for the financial year 2017/1/8

Type/level of allocation	**Amount in Ksh.**	**Percentage (%) of 2013/14 audited and approved Revenue i.e. Ksh. 935,653 Millions**
A. National Government	**1,232,754,602,475**	
Of which:		
1. Free maternal healthcare	*3,369,237,525*	
2. Leasing of Medical Equipment	*4,500,000,000*	
3. Compensation for user fees forgone	*900,000,000*	
4. Level 5 hospitals	*4,200,000,000*	
5. Supplement for construction of county headquarters	*605,000,000*	
6. Special Purpose Grant supporting access to emergency medical services	-	
7. Equalization Fund	**7,727,000,000**	**0.8%**
B. County equitable share	**299,136,160,000**	**32.0%**
Total shareable revenue	**1,549,412,000,000**	

Memo items

County equitable share	**299,136,160,000**	
Additional allocations:		
1. Free maternal healthcare	*3,369,237,525*	
2. Leasing of Medical Equipment	*4,500,000,000*	
3. Compensation for user	*900,000,000*	

fees forgone		
4. Level 5 hospitals	*4,200,000,000*	
5. Supplement for construction of county headquarters	*605,000,000*	
7. Allocation from Fuel Levy Fund (15%)	*7,875,000,000*	
8. Conditional allocations (Loans & grants)	*12,541,400,000*	
Total County Allocations	**333,126,797,525**	**35.6%**

MEMORANDUM OF OBJECTS AND REASON

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

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

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

Clause 4 of the Bill prescribes the allocations for the national government and the county governments from the revenue raised nationally for the financial year 2017/18.

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

Dated the 21st November, 2017

Henry Rotich, EGH
Cabinet Secretary for
The National Treasury

APPENDIX

EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL (DoRB), 2017

Background

1. This memorandum has been prepared as an attachment to the Division of Revenue Bill (DoRB), 2017 in fulfilment of the requirements of Article 218(2) of the Constitution and Section 191 of the Public Finance Management Act, 2012.

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

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

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

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

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

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

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

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

4. The DoRB, 2017 proposes to allocate to County Governments Ksh.333.1 billion in the financial year 2017/18, which relative to the 2016/17 allocation, reflects an increase of Ksh. 31. billion or 10.2 per cent. This allocation comprises of an equitable share of Ksh. 299.1 billion and additional conditional allocations from the share of national government revenue amounting to Ksh. 34 billion.

County Governments' Equitable Share

5. The County Governments' equitable share of revenue raised nationally for the financial year 2017/18 is arrived at by growing the County Governments' equitable share for 2016/17 of Ksh. 280.3 billion by a growth factor of 6.72 percent. This growth derived from month-on-month inflation rate for FYs 2013/14, 2014/15 & 2015/16. This yields an adjustment of Kshs 18.8 billion .The equitable share of revenue, thus determined, is an unconditional allocation to the County Governments and therefore County Governments are expected to plan, budget, spend, account and report on the funds allocated independently. This allocation to County Governments takes into account all the functions gazetted for transfer to County Governments by the end of transition period in March 2016 except for the unresolved transfer of 32, 000 km of class D roads.

6. After making the above adjustment, County Governments' equitable share of revenue in the financial year 2017/18 is estimated to be Ksh. 299.1 billion **(see Table 1).** This allocation which represents a 32 per cent of the latest audited revenues for FY 2013/14 (i.e. Ksh. 935.7 billion) is above the constitutional minimum of 15 percent.

Table 1: Equitable Revenue Share Allocation to County Governments, FY 2017/18

Budget Item	**Amount in Ksh. Million**
County Equitable Revenue Share for FY2016/17	280,300
Add:	
Adjustment for Revenue Growth (an adjustment for cost escalation = 6.72 % which is derived from the average of month-on-month inflation for FYs 2013/14, 2014/15 and 2015/16, as reported by the Kenya National Bureau of Statistics (KNBS).)	18,836
Equitable Revenue Share allocation for FY 2017/18	**299,136**

Source: National Treasury

Additional Conditional Allocations to County Governments

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

- **Conditional Grant in support of Free Maternal Health Care of Ksh 3.369 billion.** This grant which is in the third year of implementation has decreased from Ksh. 4.1 billion in financial year 2016/17 to Ksh.3.369 billion in financial year 2017/18. The decrease is largely because allocations previously intended for private and faith based health facilities will no longer be disbursed through county governments. The programme will be implemented through NHIF starting this FY in a phased manner and is bringing on board mission and private health facilities willing to sign contracts with

NHIF. With effect from 2017/18 FY, the benefits under the programme will be expanded to include ANC, deliveries, PNC and care for new-borns. The grant is to be transferred from the exchequer by the National Treasury to County Governments on a reimbursement basis through the respective County Revenue Fund Accounts, upon receipt of written confirmation by the Accounting Officer responsible for Health confirming that the County Government provided maternal health care services in their health facilities in accordance with agreed specifications. This grant is intended to further facilitate access to free maternal health care in order to reduce the high maternal and child mortality rates in Kenya.

- **Conditional Grant to facilitate the leasing of medical equipment of Ksh 4.5 billion.** This grant is in its third year of implementation and is intended to facilitate the leasing of modern specialised medical equipment in at least two health facilities in each County Government over the medium term. This will facilitate easy access to specialised health care services and significantly reduce the distance that Kenyans travel in search of such services today. This grant will be managed by the National Government on behalf of the County Governments, in accordance with intergovernmental agreements entered into.

- **Conditional grant for level-5 hospitals of Ksh. 4.2 billion.** Level-5 hospitals have continued 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 further allocate Ksh. 4.2 billion in financial year 2017/18 up from 4.0 billion allocated in FY 2016/2017. This grant will be transferred from the National Government exchequer account at the Central Bank of Kenya to County Governments as a conditional grant through the respective County Revenue Fund Accounts.

- **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, and in furtherance of this policy, the National Government has allocated Ksh. 900 million in the financial year 2017/18 to compensate county governments for revenue forgone by not charging user fees in the county health facilities. This grant will be transferred from the exchequer by the National Treasury to County Governments on a reimbursement basis through the respective County Revenue Fund Accounts, upon receipt of written confirmation by the Accounting Officer responsible for Health confirming that the County Government waived user fee charges in their health facilities in accordance with agreed specifications.

- **Conditional Grant to supplement county allocation for the construction of county headquarters of Ksh. 605 Million in five counties:** This conditional grant in its second year of allocation and is intended to further 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. The grant is part of a three year plan, beginning financial year 2016/17, to supplement contribution of the five counties towards construction of their county headquarters. The allocation will be shared equally, with each county getting an allocation of Ksh. 121 million in FY 2017/18. This allocation is part of the National Government contribution which translates to 70 percent of the budget. County Governments will contribute the balance, that is, 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. 121 million to each of the five counties). In FY 2017/18, the National Treasury is allocating an additional Ksh. 605 million (i.e. Kshs 121 million per county).

- **Conditional Grant from the Road Maintenance Fuel Levy Fund of Ksh. 7.9 billion.** This conditional grant which is in its third year of allocation has been increased from an allocation Ksh. 4.3 billion in the 2016/17 FY to Ksh.7.9 billion in FY 2017/2018. This translates to 83 percent increase arising from the increase in Fuel Levy. This grant is meant to further enhance County Governments' capacity to repair and maintain county roads and is equivalent to 15 percent of the Road Maintenance Fuel Levy Fund.

- **Conditional Grant from proceeds of a loan from the World Bank amounting to Ksh 873.4 million.** This Results Based Financing grant from World Bank to 21 counties is in its final year and is for the Kenya Health Sector Support Project. 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.

- **KDSP County Capacity Building ("level 1") Grant.** This is a conditional grant financed by a World Bank credit to support county capacity building under the Kenya Devolution Support Program (KDSP) amounting to Ksh. 1.5 billion. This grant is intended to support capacity building initiatives in the counties in the following areas:

    - Strengthening public financial management (PFM) systems;
    - Strengthening County Human resource management;
    - Improving county planning and Monitoring & Evaluation systems; and,
    - Civic Education and Public Participation.
    - Strengthening Intergovernmental relations.

- **KDSP Performance ("level 2") Grant amounting to Ksh. 4 billion.** This is a conditional grant financed by a World Bank credit which is intended to incentivise county governments that achieve good results in the following key areas:

    - Strengthening public financial management (PFM) systems;
    - Strengthening County Human resource management;
    - Improving county planning and Monitoring & Evaluation systems; and,
    - Civic Education and Public Participation.
    - Strengthening Intergovernmental relations.

Performance of counties in the above areas is to be assessed by an independent firm to be recruited through a competitive process. County governments will be at liberty to allocate KDSP performance grants to a wide list of priority programs.

- **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 6.1 billion. These conditional allocations have increased from a total of Ksh. 2.1 billion in the FY 2016/17 to the current Ksh.6.1 billion. These funds, however, will not be transferred to County Governments in the financial year 2017/18 but will instead be managed by the National Government because they tied to financing agreements which were entered into prior to the establishment of the county governments. Such funds are tied to on-going contracts with suppliers while the related 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

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

9. Table 2 provides an assessment of the extent to which the requirements of Article 203 (1) have been incorporated in estimating the division of revenue between the national and county levels of Government in the financial year 2016/17.

Table 2: Evaluation of the Bill 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**
	1. Enhancement of Security Operations (police vehicles, helicopters, defence etc.)	18,900	20,556
	2. National Irrigation & Fertilizer Clearance	8,700	8,880
	3. Youth Empowerment	18,544	18,544
	4. National Social safety net - (for older persons, OVC, Child Welfare, Presidential Bursary, severe disability)	16,924	17,305
	5.Primary school digital literacy program	13,408	13,408
	6. School Examination fees subsidy(KSCE & KCPE)	3,209	3,209
C	**Public Debt (Article 203 [1][b])**	**446,408**	**618,569**
D	**Other National Obligations (Article 203 [1][b])**	**371,743**	**408,104**
	1. Pensions, constitutional salaries & other	60,169	76,552
	2. Constitutional Commissions (Art. 248(2)) - i.e. CRA, SRC, NLC, NPSC, IEBC, TSC	208,763	225,294
	3. Independent Offices(Art. 248(3)) - i.e. AG & CoB	4,723	5,086
	4. Parliament	31,480	30,915
	5. Other Constitutional Institutions- State Law office and DPP	6,359	6,824
	6. Other Statutory Bodies (e.g. EACC,RPP,WPA,CAJ, IPOA, NGEC)	4,855	6,013
	7. Judiciary	17,759	17,907
	8. Other Statutory Allocations(earmarked funds e.g. National Government Constituency Development Fund, Affirmative Action)	37,635	39,512

E	**Emergencies [Article 203 (1)(k)]**	**7,245**	**6,200**
	1.Contingencies 2.Strategic Grain Reserve	5,000 2,245	5,000 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**

Source: National Treasury

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

- are critical to the achievement of country's economic development objectives;
- potentially will have significant impact on social well-being of citizens;
- are anchored in the Vision 2030 and the Medium Term Plan II (2013 – 2017); and
- have significant resource investment requirements;
- have been specified in the 2017 Budget Policy Statement.

These national interests include: activities aimed at enhancing security operations; national irrigation and fertilizer subsidy initiatives; Youth Empowerment; provision of national social safety net for vulnerable groups and primary school digital literacy program, and school examination fees subsidy. Revenue allocation for these programs is expected to increase slightly from Ksh. 79.7 billion in 2016/17 to Ksh. 81.9 billion in 2017/18.

11. **Public Debt:** The Bill has fully provided for all public debt related costs. These comprise of the annual debt redemption cost as well as the interest payment for both domestic and external debt. In 2017/18, the revenue allocation for payment of public debt

related costs is expected to increase to Ksh. 618.6 billion up from Ksh. 446.4 billion in 2016/17 financial year.

12. **Other National Obligations:** As provided for under Article 203(1) (b) of the Constitution, the Bill has also taken into account the cost of other national obligations, such as, mandatory pension contributions and/or payments, financing for constitutional offices, including Parliament as well as expenses relating to other statutory bodies and funds. These are estimated to cost Ksh. 408.1 billion in 2017/18 up from Ksh. 371.7 billion in 2016/17.

13. **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. However during the FY 2017/18 there are plans to carry out studies to establish the fiscal efforts of each of the respective counties.

14. **County governments' ability to perform the functions assigned to them and meet other developmental needs of the county governments:** As explained above, the baseline for the equitable share allocation for the financial year 2017/18 was derived from the Division of Revenue Act, 2016.

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

The proposed vertical division of revenue proposed in the Division of Revenue Bill, 2017 therefore takes into account the cost of county governments' developmental needs and it is expected that county governments will have the ability to perform the functions assigned and transferred to them as contemplated under Article 203(1) (f).

16. **Economic Disparities within and among counties and the need to remedy them:** Allocation of the sharable revenue (i.e. equitable share of Ksh. 299.1 billion) among counties is based on the second generation formula approved by Parliament in June, 2016 pursuant to provisions of Article 217 and Section 16 of the Sixth Schedule of the Constitution. The formula takes into account disparities among counties and aims at equitable distribution of resources by introducing a new parameter, Development factor (1%), expected to bridge the development disparities gaps amongst counties. The formula takes into account population (45%), land area (8%), poverty (18%), a basic equal share (26%), fiscal responsibility (2%) and Development factor (1 %). The equitable share of revenue for county governments in 2017/18 reflects an increase of 6.72 percent compared to the allocation in 2016/17. This means that there is more money in 2017/18 to help remedy economic disparities within and among counties. It should also be noted that Ksh. 7.7 billion has also been set aside for the Equalization Fund in 2017/18 which translates to 0.8 per cent of last audited revenue accounts of governments and is way above the constitutional provision of 0.5 percent. This Fund will be used to finance development programmes that aim to reduce regional disparities among counties.

17. **Need for Economic Optimization of Each County:** Allocation of resources to county governments was guided by the costing of the functions assigned to the county governments. The equitable share of revenue allocated to county governments was increased by 6.72 per cent from Ksh. 280.3 billion in 2015/16 to Ksh. 299.1 billion in 2017/18. This is an unconditional allocation which means that the county governments can plan, budget and spend the funds independently. With the additional resources, therefore, county governments can allocate more resources to their priority projects and thus optimize their potential for economic development.

18. **Stable and Predictable Allocations of County Governments' Vertical Share of Revenue:** The county governments' equitable share of revenue raised nationally has been protected from cuts that may be necessitated by shortfall in revenue raised nationally. According to the DoRB 2017, any shortfall in revenue raised nationally is to be borne by the National Government.

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

20. It should be noted that after taking into account all the other factors contemplated under Article 203(1) of the Constitution, including the needs of county governments, only Ksh. 114.2 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. The Division of Revenue Bill, 2017 proposes to allocate county governments an equitable share of Ksh. 299.1 billion from the shareable revenue raised nationally. The CRA, on the other hand, recommends County Governments' equitable share of revenue of Ksh. 331.6 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. The difference in the Commission on Revenue Allocation (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 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 Transitional 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.

- **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, that this amounts can only be transferred to counties upon the formal adoption of the report of the taskforce by the SUMMIT.

22. 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 2016/17.

Table 3: Comparison of Recommendations of the Commission on Revenue Allocation and the National Treasury on the equitable share of revenue proposed for FY 2017/18 (Figures in Ksh. Millions)

	2017/18		
Expenditure Item	**CRA (A)**	**National Treasury (B)**	**Variance C = (A-B)**
Equitable Revenue Share in FY 2016/17	280,300	280,300	-
Add			
Adjustment for revenue growth in FY 2016/17	42,550	18,836	23,750
Adjustment for County Roads	8,430	-	8,430
Adjustment for salaries and operations of devolved libraries	319	-	319
TOTAL EQUITABLE SHARE OF REVENUE	**331,599**	**299,136**	**32,499**

Source: National Treasury

23. **On the existing additional conditional grants:**: CRA proposes 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 allocations of these 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 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 from RMLF. 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 explained above the report of the taskforce has not been adopted formally and therefore it would be pre-mature to incorporate the recommendations in the DoRB 2017. 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.

- 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.

24. Further the Commission on Revenue Allocation has in the financial 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. Whereas Village Polytechnics are essential in developing skills of Youth who don't transit to institutions of higher learning, the National Treasury is of the view that this is a devolved function and that counties should finance using their own resources. However, where additional resources become available to the National Government, support for village polytechnics may be considered in future.

25. 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 left unfunded or underfunded. The proposed transfer of additional resources as recommended by the taskforce on assessment of duplication of functions should be implemented only after formal adoption of the report of the taskforce.

26. It should, however, be noted that the National Treasury's proposed equitable share allocated to county governments in the Division of Revenue Bill, 2017, at 32 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.