COMMISSION ON REVENUE ALLOCATION

Promoting an equitable society

RECOMMENDATION ON THE SHARING OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2015/16

18TH DECEMBER 2014

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COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/P&S/VOL **DATE:** 18th December 2014

- **Clerk of the Senate**
- **Clerk of the National Assembly**
- **Cabinet Secretary, National Treasury**
- **Governors, County Governments**
- **Clerks of the County Assemblies**

Dear Sir/Madam,

RE: RECOMMENDATION ON THE BASIS OF EQUITABLE SHARING OF REVENUE RAISED NATIONALLY BETWEEN NATIONAL AND COUNTY GOVERNMENTS FOR FINANCIAL YEAR 2015/16

Pursuant to Article 216 (1)(a), the Commission on Revenue Allocation is mandated to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government between the national and county governments. Article 216 (5) requires the Commission to submit its recommendations to the Senate, National Assembly, the National Executive, County Assemblies and County Executives**.**

Accordingly, the Commission hereby recommends that Ksh.282.4 billion be allocated to county governments as equitable share; and Ksh. 65.2 billion as conditional transfers for financial year 2015/16.

Yours Sincerely,

Micah Cheserem
CHAIRMAN

TABLE OF CONTENTS

Table of Figures

Table of Tables

ACRONYMS AND ABBREVIATION

BROP	Budget Review and Outlook Paper
CAJ	Commission on Administrative Justice
CASB	County Assembly Service Board
CBK	Central Bank of Kenya
CPSB	County Public Service Boards
CRA	Commission on Revenue Allocation
DPP	Director of Public Prosecution
EACC	Ethics and Anti-Corruption Commission
ECD	Early Childhood Development
GDP	Gross Domestic Product
ICT	Information Communication Technology
IEBC	Independent Electoral and Boundaries Commission
IPOA	Independent Policing Oversight Authority
JSC	Judicial Service Commission
KeNHA	Kenya National Highway Authority
KeRRA	Kenya Rural Roads Authority
KNBS	Kenya National Bureau of Standards
KNCHR	Kenya National Commission on Human Rights
KURA	Kenya Urban Roads Authority
MCA	Member of County Assembly
NIS	National Intelligence Service
NLC	National Land Commission
NPSC	National Police Service Commission
PFMA	Public Finance Management Act
PSC	Public Service Commission
RDA	Regional Development Authority
SRC	Salaries and Remuneration Commission
TSC	Teachers Service Commission
WSB	Water Services Board

EXECUTIVE SUMMARY

Article 216(1)(a) mandates the Commission to make a recommendation concerning the basis for equitable sharing of revenues raised by National Government between national and county governments. The Commission on Revenue Allocation (CRA) recommends the use of the shareable revenue of **Ksh.776.9 billion** for the financial year 2012/2013 since this is the latest audited and approved accounts for the purpose of making this recommendation.

In making the recommendation, the Commission has used the allocation to county governments for financial year 2014/15 of **Ksh. 226.7 billion** as the base. This has been increased by **Ksh. 23.6 billion** which represents a 10.41 per cent revenue growth. The growth is an average of a three year average growth of shareable revenue and economic growth for financial years 2011/12, 2012/13 and 2013/14.

Other adjustments amounting to **Ksh. 12.5 billion** are based on Transition Authority (TA) and the Salaries and Remuneration Commission (SRC) circulars which provide for:

1. Annual increment of salaries for Members of the County Assembly (MCAs),
2. Extra mileage claims for MCAs,
3. Provision for employment of administrative staff for County Assemblies,
4. Provision for insurance for MCAs and County Assembly Staff,
5. Provision for establishment of ward offices, and
6. Salary increments for County Executive Committee Members among others.

Additional resources amounting to **Ksh. 19.6 billion** has been recommended to support construction of Early Childhood Development (ECD) facilities, construction and equipping of Vocational Technical Training Institutes (Village Polytechnics) and other underfunded functions by county governments as shown in Table 10.

Accordingly, the Commission hereby recommends that a total of **Ksh.282.4 billion** be allocated to county governments as equitable share for financial year 2015/16.

The Commission further recommends that funds amounting to **Ksh.65.2 billion** for functions already transferred to county governments but retained by the national government be transferred to county governments as conditional allocations. This is subject to formulation of intergovernmental frameworks to ensure smooth operation of the functions as summarised in Table 11.

In the context of the year 2015/2016 during which this recommendation will be implemented, the projected revenues amount to **Kshs. 1,352.2 billion.** The Commission recommends that Kshs. **Ksh.282.4 billion** be allocated to county governments as equitable share, **Kshs. 65.2 billion** as conditional allocations while the balance of **Kshs. 1,004.5 billion** will be available to be utilized by the national government, to meet its obligations and perform its functions as summarized in Figure 10.

In conclusion, the Commission recommends that the national government considers reducing further the budget allocation to Ministries, Department and Agencies (MDAs) performing devolved functions such as Health, Agriculture and Roads, among others, to address duplication and wastage of resources. These ministries, at the national level, should focus on policy formulation and cede implementation of functions devolved to county governments.

1.0. SHAREABLE REVENUE

Article 202(1) stipulates that revenues raised nationally shall be shared equitably among the national and county governments. The allocation to counties is based on shareable revenues defined in the Constitution and Section 2 of the Commission on Revenue Allocation Act, 2011 as follows:

> *"all taxes imposed by the national government under Article 209 of the constitution and any other revenue (including investment income) that may be authorised by an Act of Parliament, but excludes revenues referred to under Articles 209 (4) and 206(1)(a)(b) of the Constitution".*

Table 1 presents a summary of shareable and the non-shareable revenues for financial years 2011/12 to 2013/14.

Table 1: Shareable Revenues for Financial Year 2010/11to 2013/14 (Kshs. Millions)

NO.	PARTICULARS	Financial year		
		2011/12	2012/13	2013/14
1	Opening Balance	64	1,159	496
2	Income Tax from Individuals (P.A.Y.E)	166,036	199,790	249,873
3	Income Tax from Corporations	146,427	173,296	199,717
4	V.A.T. on Domestic Goods & Services	81,496	92,772	105,888
5	V.A.T. on Imported Goods & Services	94,891	92,144	126,911
5	Excise Taxes	78,884	85,660	102,029
6	Licenses under Traffic Act	2,277	2,431	3,323
7	Customs Duties	51,712	57,650	67,555
8	Other Taxes from International Trade & Transactions	24,762	24,163	26,678
9	Stamp Duty	7,857	8,538	9,987
9	Interest Received	1,236	1,356	586
10	Profit & Dividends from CBK	-	1,500	-
11	Other Profits and Dividends	14,132	13,764	10,181
12	Rent of Land	1,627	1,789	1,588
13	Fines, Penalties & Forfeitures & Other Charges	1,079	1,465	1,443
13	Immigration Visas and Other Consular Fees	-	2,688	775

NO.	PARTICULARS	Financial year		
		2011/12	2012/13	2013/14
14	Work Permit Fees	-	4,277	1,121
15	Passport Fees	-	502	170
16	Fishing Rights	-	171	-
17	Betting Control	-	112	-
17	Registration Services	-	247	129
18	Others[1]	-	2,136	1,023
19	Miscellaneous Revenue[2]	9,662	9,245	26,180
	SUB TOTAL-SHAREARABLE REVENUE	**682,141**	**776,858**	**935,653**
20	Recurrent Recovery Over Issues 2008/09 & 2009/10	5,185	-	66
21	Development Recovery Over Issues	11,312	-	17
22	Grants from Foreign Govt. through Exchequer	7,765	5,188	6,431
23	Contribution from Govt. Emp. To S.&W.S within Govt.	46	-	-
24	Loans from Foreign Govt. through Exchequer	19,343	23,569	28,432
25	Loans to Non-financial Public Enterprises	1,584	2,035	1,148
25	Loans to Financial Institutions	26	66	119
26	Domestic lending-T/Bills	-	99,400	-
27	Domestic lending-T/Bonds	134,682	232,430	160,660
28	Civic Contingencies Fund Recoveries	-	-	-
29	Commercial Loan	51,258	-	34,648
29	Grants from International org.	-	5,826	-
30	AMISON Grants	-	-	4,695
31	Net Domestic Borrowing(CBK)	-	-	106,700
	SUB TOTAL -NON SHAREABLE	**231,201**	**368,515**	**342,917**
	TOTAL	**913,342**	**1,145,373**	**1,278,570**

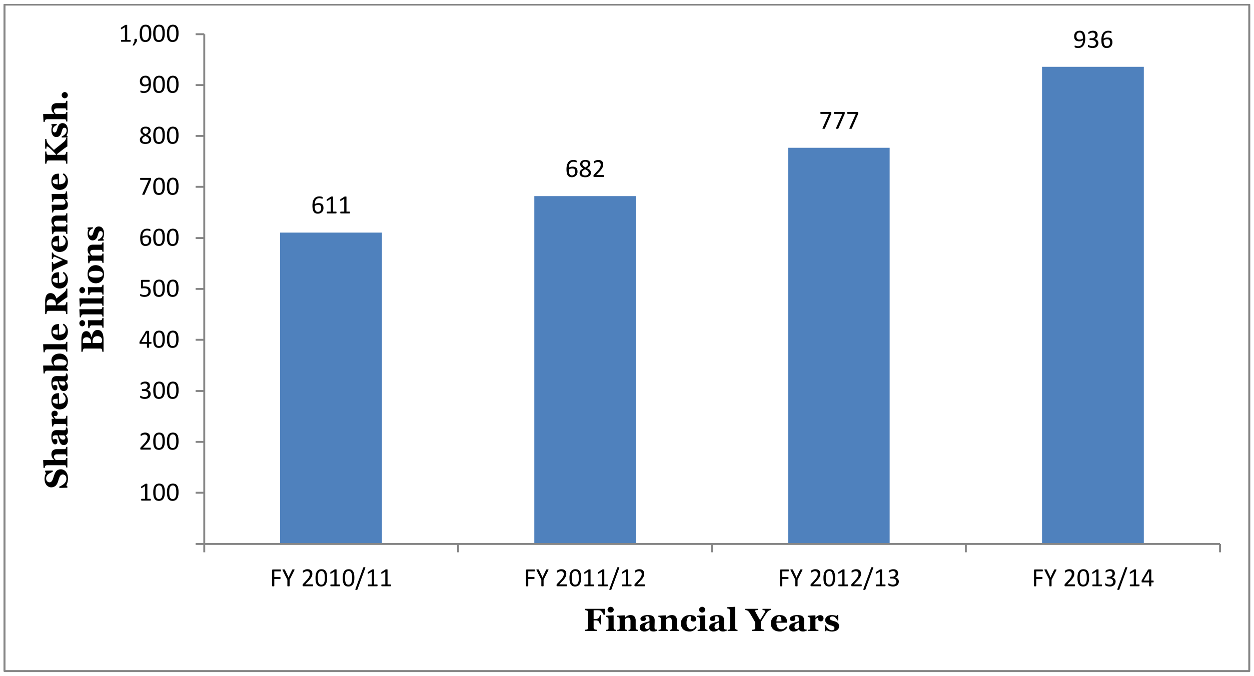
Source: Audited Exchequer Accounts, Auditor General Reports

[1] *Includes receipts from Road Maintenance Levy Fund*

[2] *Includes aviation, land, forest, mining, rent of buildings, trade licenses, fines and forfeitures, other taxes, reimbursements and other fund contributions, and miscellaneous revenue*

The shareable revenue raised nationally have increased from Ksh 611 billion in 2010/11 to Ksh. 936 billion in 2013/14 as shown in Figure 1.

Figure 1: Trend of Shareable Revenue for FY 2010/11-2013/14



Source: *Audited Exchequer Accounts, Auditor General Reports*

The growth of various revenues is presented in Table 2. Though the shareable revenues have exhibited a stable growth, increasing over time, the growth in total revenues and indeed, non-shareable revenues has fluctuated widely during the last three financial years, revealing shifts in overall financing policy of public expenditures by the national government. To smooth this volatility, the Commission recommends use of three year moving averages of both the shareable revenues and Gross Domestic Product (GDP) for calculating the growth factor to be applied on the base year.

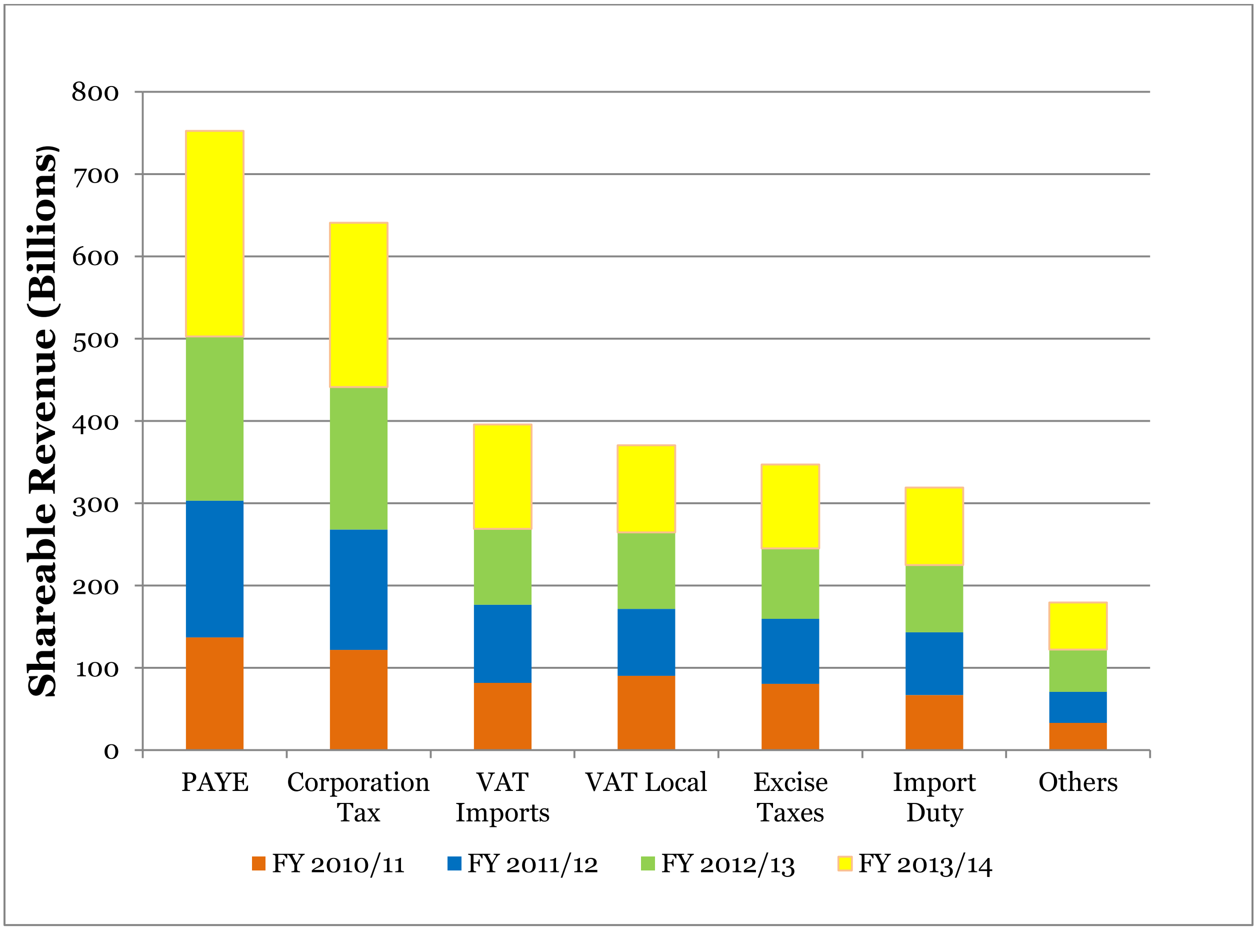
Table 2: Percentage Growth in Revenues for FY 2011/12 - 2013/14

Financial Year	2011/12	2012/13	2013/14	Average
Total Revenues	9.90	25.40	11.63	15.65
Of Which 1. **Shareable Revenue**	11.69	13.89	20.44	15.34
2. **Non-Shareable Revenue**	4.95	59.39	**-6.95**	19.13

Source: *Audited Exchequer Accounts, Auditor General Reports*

The increase in shareable revenue is because of stability in the growth of various revenue streams as shown in Figure 2.

Figure 2: Sources of Shareable Revenue for FY 2010/11 to 2013/14



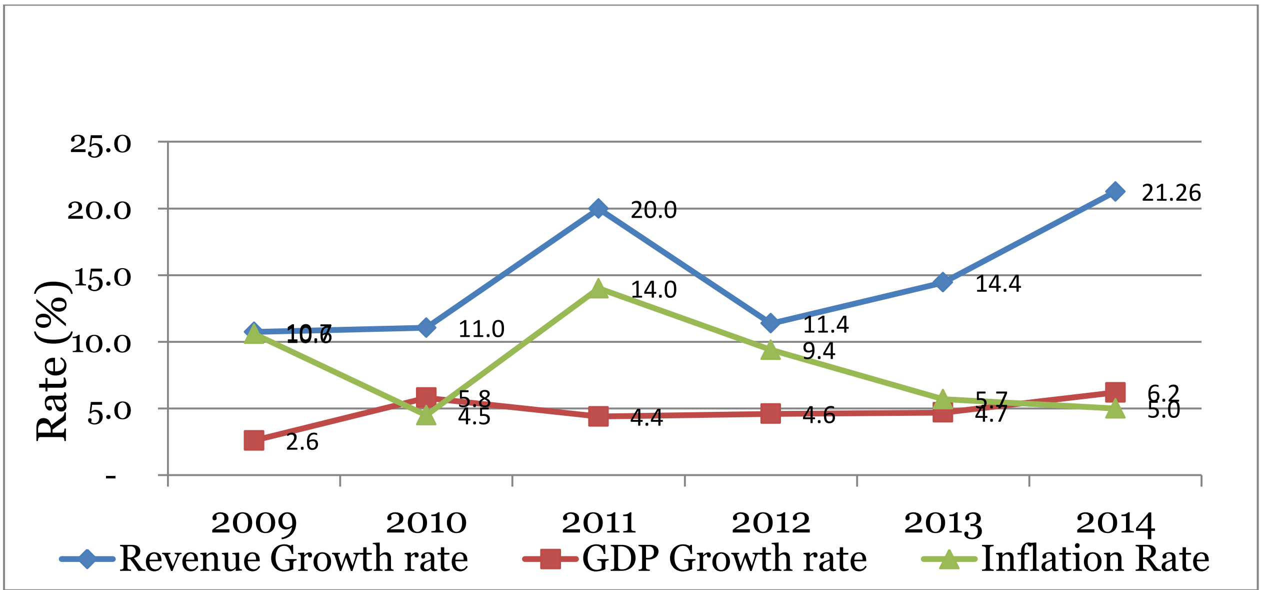
Source of Data: *Audited Exchequer Accounts, Auditor General Reports*

2.0. OVERVIEW OF RECENT ECONOMIC PERFORMANCE

Kenya's macroeconomic environment has remained fairly stable over the last five years. Economic growth has remained resilient since 2010, growing to 5.7 per cent in 2013 from 4.5 per cent in 2012. Real Gross Domestic Product (GDP) is projected to grow in 2014 by between 5.0 per cent and 5.5 per cent. The Kenya National Bureau of Statistics (KNBS) initiated the process of rebasing and revising the National Accounts Statistics in 2010. Kenya's rebased GDP per capita for 2013 is estimated at USD 1,269 compared to a previous estimate of USD 994 for the same year, representing a 27.7 per cent increase. The economy was estimated to have grown by 4.7 per cent and 4.6 per cent in 2013 and 2012 respectively, before the rebasing. This implies that Kenya can now be categorized as a middle income country as its GDP per capita is above the World Bank's benchmark of USD 1,036. Kenya's economy is now ranked as the 9th largest in Africa and the 4th largest in Sub-Saharan Africa.

The annual inflation rate eased to 5.7 per cent in 2013 from 9.4 per cent in 2012 on account of a decline in fuel inflation that outweighed the increase in food prices. The Kenya shilling exchange rate recorded mixed performance, appreciating against the Sterling pound and the Euro but depreciating against the USD. Though the Central Bank maintained the Central Bank Rate at a low level of 8.5 per cent, the response by commercial banks remained poor, with the latter's average lending rate declining slightly from 17 per cent in 2013 to 16 percent in 2014. Figure 3 reveals the impact of inflation on the performance of the economy and revenue growth.

Figure 3: GDP, Revenue and Inflation Growth Rate for 2009-2014



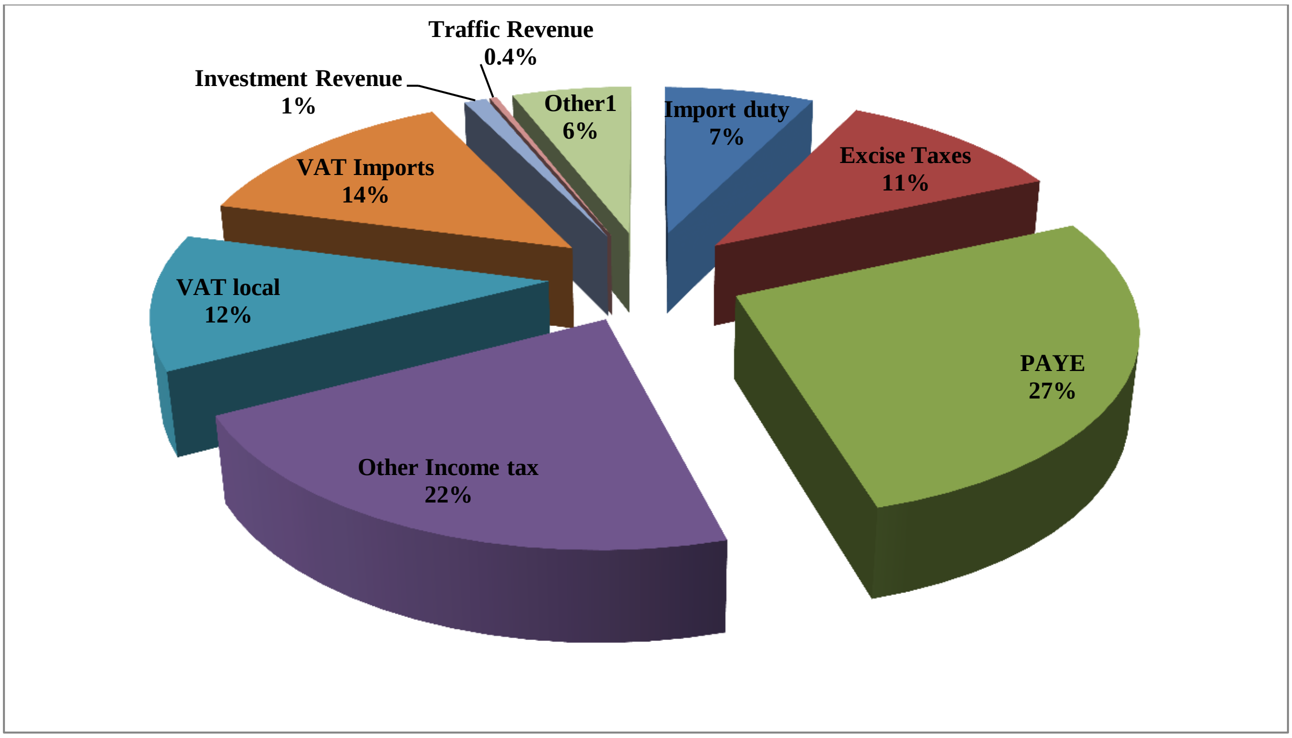
Source: Economic Survey 2014

Insecurity and high recurrent expenditures by both levels of government are the key challenges to the stability of the macroeconomic outlook. Nonetheless, going forward, the macroeconomic outlook remains favourable, with fairly stable interest rates, inflation rate and exchange rates.

2.1. Ordinary Revenue Analysis

Ordinary revenues have consistently increased over the last five years. For the year ending June 2014, total ordinary revenue collected amounted to Ksh 918.99 billion against a revised target of Ksh 917.969 billion. Ordinary revenue is catergorised as shown in Figure 4.

Figure 4: Ordinary Revenues for Financial Year 2013/14

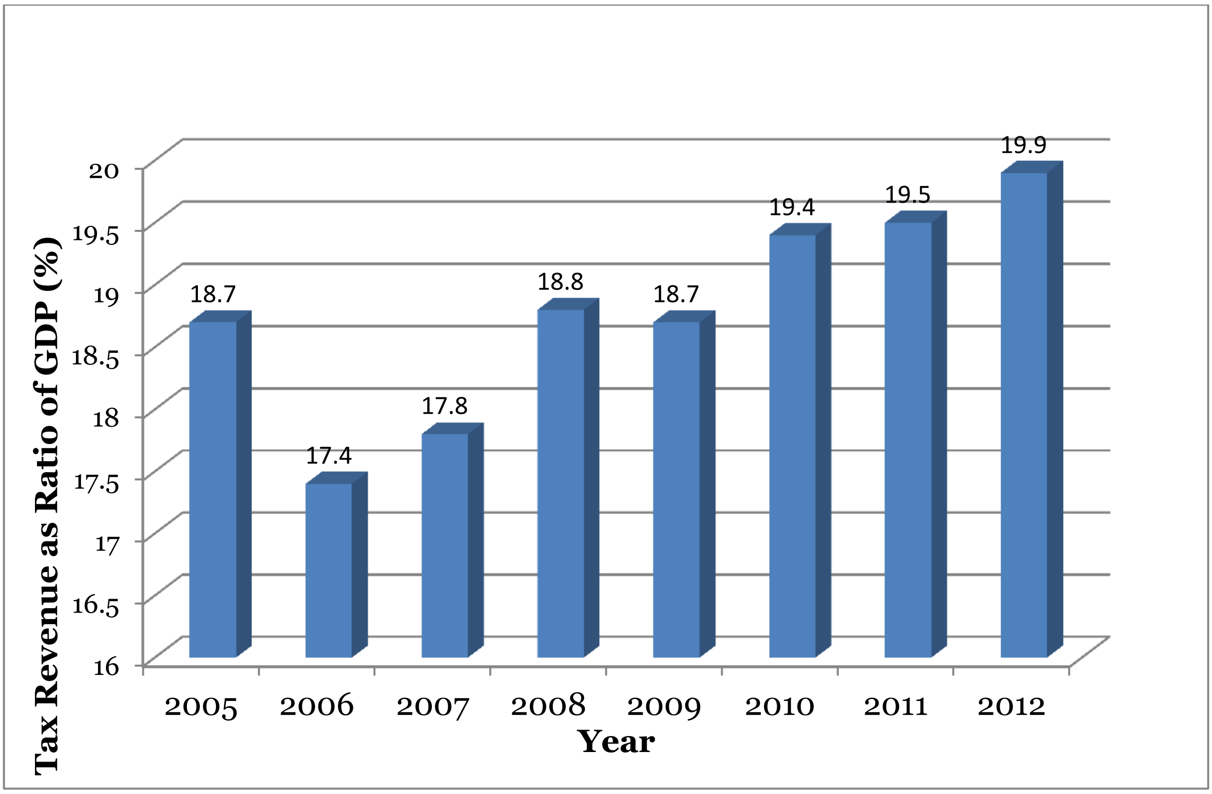


Source: *Budget Review and Outlook Paper, September* 2014

***Other*-** Includes rent on land, fines and forfeitures, other taxes, IDF fees and miscellaneous revenue.*

Tax revenues, as a percentage of GDP, have increased over time as illustrated in Figure 5.

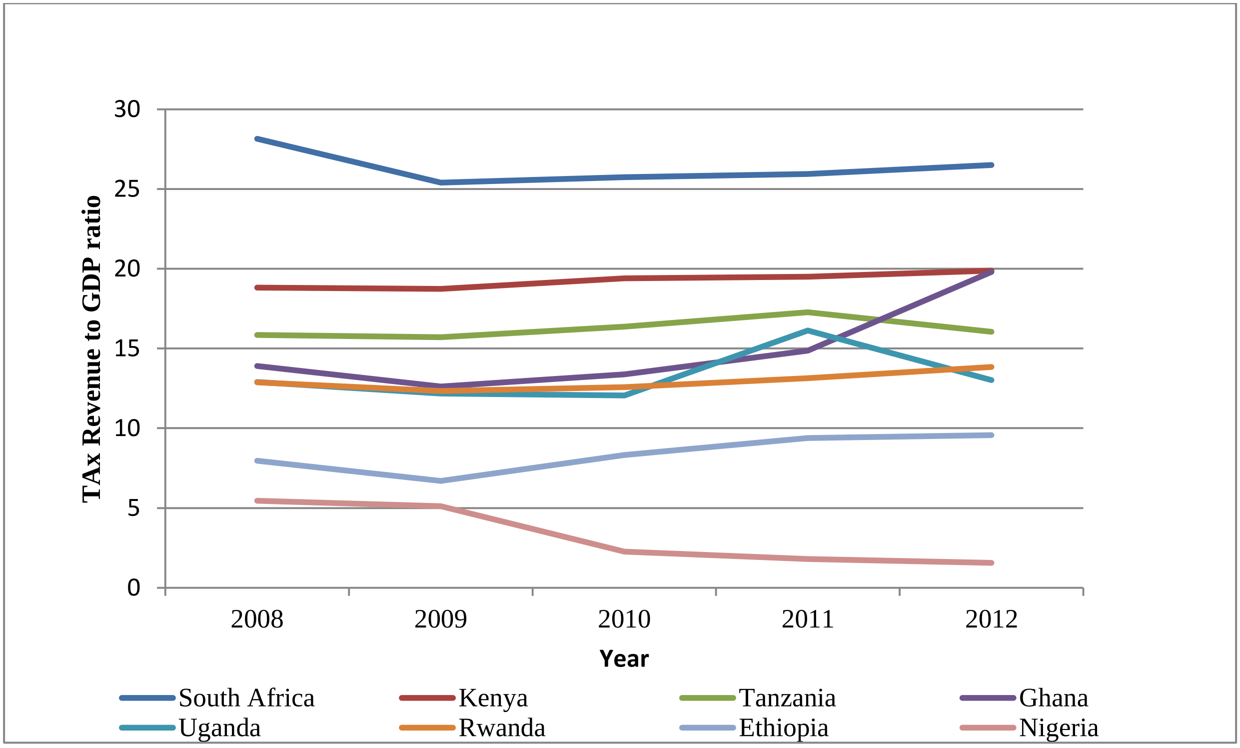
Figure 5: Tax Revenue to GDP ratio for the Years 2005 to 2013



Source: Budget Review and Outlook Paper Various Issues

Analysis of revenues as a percentage of GDP in a number of selected African countries presented in Figure 6 reveals that Kenya collected substantially higher amounts of ordinary revenues than most economies. South Africa had the highest five year average tax revenue to GDP ratio of 26 per cent followed by Kenya with 19 per cent. Kenya's tax revenue to GDP ratio of 20% in 2012 is high by regional standards, compared to Tanzania's 16% and Uganda's 13%. Nigeria has the lowest Revenue to GDP ratio of 3 per cent.

Figure 6: Tax Revenue as a Percentage of GDP for Selected African Countries



Source:World Bank Data, 2014

2.2. County Revenue Analysis

During the FY 2013/14, the total revenue realized by county governments amounted to Kshs.224 billion comprising of Kshs.193.4 billion as transfer from national shareable revenue, Kshs.26.3 billion from county government own revenue sources and Kshs.4.3 billion as balance brought forward from the financial year 2012/13. Table 3 presents a summary of county revenues and expenditures for the financial years 2012/13 and 2013/14.

Table 3: County Governments Revenue and Expenditure (Ksh. Billion)

Financial Year	Total Revenue	Actual Expenditures		Use of Funds		% of unutilized Funds
		Recurrent	Development	Recurrent	Development	
2012/13	23	13.2	1.3	57.4%	5.7%	36.9
2013/14	224	132.8	36.6	60.4%	16.7%	24.2

Source: County Budget Implementation Review Reports

2.3. Expenditure Analysis

Total expenditure and net lending in FY 2013/14, amounted to Ksh 1,300.6 billion against a target of Ksh 1,451.0 billion, representing an under-expenditure of Ksh

150.4 billion. This shortfall was attributed to lower absorption in both recurrent and development expenditures by line ministries.

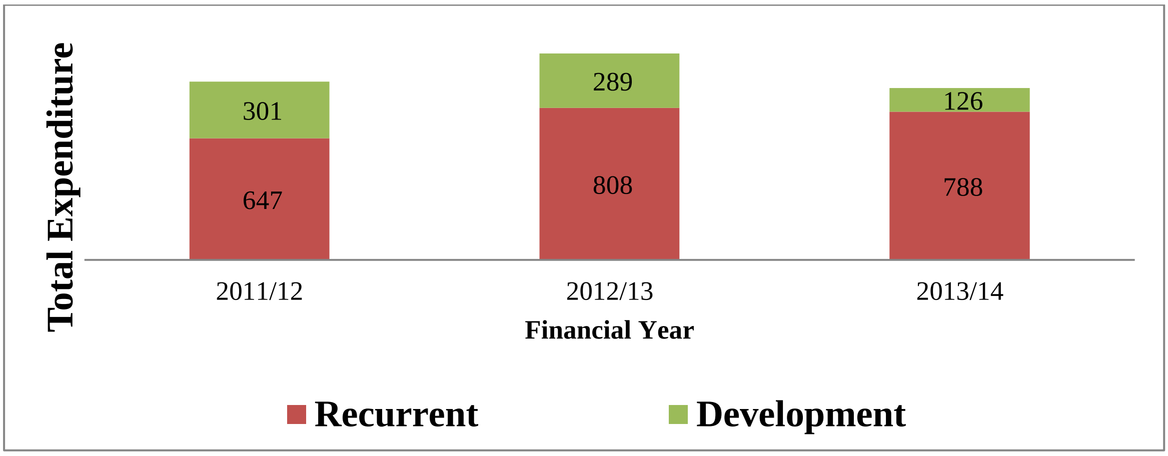
The National Government recurrent expenditure in financial year 2013/14 amounted to Ksh.787.9 billion against a target of Ksh 839.7 billion, representing an under-spending of Ksh 51.8 billion. Development expenditure amounted to Ksh 319.3 billion against a target of Ksh 412.9 billion. The underperformance in development expenditure reflects low absorption of domestically financed development by ministries, departments and agencies, which may be attributed to delays in procurement, low absorption of external funds from development partners among other factors. The decline in the development expenditures by the national government for financial year 2013/14 was partly as a result of the transfer of devolved functions to the county governments. Three year expenditures are presented in Table 4 and Figure 7

Table 4: National Government Expenditures (Ksh. Billion)

Financial Year	Total	Recurrent	Development	Development % of Total Expenditure
2011/12	948	648	301	31.8%
2012/13	1,097	808.3	289	26.3%
2013/14	914	788	126	13.8%

Source: Budget Review and Outlook Paper 2013 & 2014

Figure 7: National Government Expenditures (Ksh. Billion)



Source: *Budget Review and Outlook Papers* 2013 & 2014

County governments were established after the 3rd March 2013 general elections. With the challenges of establishing new governments, counties largely spent their resources on recurrent expenditure for the period March 2013 to June 2013, amounting to 57.4 per cent of their budgets.

Aggregate expenditure for the financial year 2013/14 by county governments amounted to Kshs.169.4 billion which comprised of Kshs.132.8 billion for recurrent expenditure and Kshs.36.6 billion for development expenditure. The total expenditure by counties was 89.5 per cent of the funds released, representing an absorption rate of 64.9 per cent of the total annual county budgets. Recurrent expenditure represented 96.5 per cent of the funds released for recurrent activities while development expenditure represented 70.8 per cent of funds released for development projects.

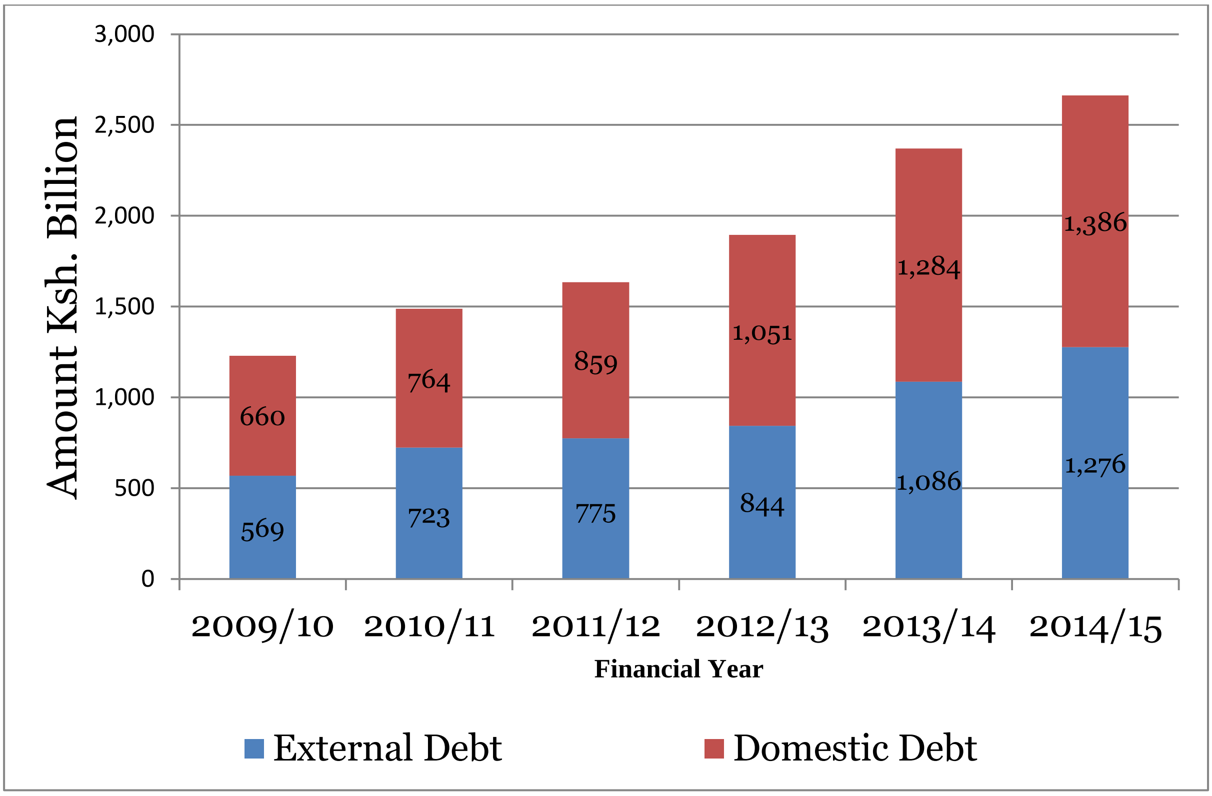
County governments face two major challenges. Firstly, their workforce is bloated and ballooning. Secondly, there are ongoing supremacy battles between the county executives and the county assemblies. These have impacted negatively on revenue collection and implementation of development projects.

It is imperative that both levels of government agree on rationalization of recurrent expenditures to curb inefficiency and wastage of public resources. Public expenditure pressures, especially recurrent expenditures, pose a significant fiscal risk. The high wage bill and operational inefficiencies will continue to limit funding for development expenditure.

2.4. The Status of Public Debt

The total gross public debt stock by end of June 2014 stood at Kshs. 2,370 billion (44.7 per cent of the GDP) comprising Kshs. 1,284 billion domestic debt and Ksh. 1,086 billion external debt. The debt stock is projected to rise to Kshs. 2,662 billion by end of the June 2015. The stock of domestic debt consists of money owed in the form of treasury bills and loans from commercial banks, non-banking financial institutions and non-residents. External borrowing comprises monies owed to bilateral and multilateral institutions, commercial banks and suppliers' credit. Figure 8 presents a summary of the debt stock over a period of seven financial years staring 2009/10.

Figure 8: Kenya's Stock of Public Debt 2009/10 to 2014/15 (Ksh. Billions)



Source: Quarterly Economic and Budgetary Reviews, Various Years

The public debt is a first charge from the consolidated account before any payment is made. As such, debt has an immediate effect on government. Therefore, it is critical that the level of total public debt relative to the national revenue be given sufficient consideration by the law makers and planners. This is because it has a dual impact: one on the amount of money available for allocation to counties and secondly, on the funding for future projections and activities in as far as future generations are concerned.

3.0. LEGAL FRAMEWORK FOR REVENUE SHARING

The Constitution of Kenya 2010 provides for a devolved system of government in which the sovereign power of the people is exercised at the national and county levels, (Article 6).

Article 202 (1) stipulates that revenues raised nationally be shared equitably between the national and county governments.

Article 202 (2) stipulates that county governments may be given additional allocations from the national government's share of revenue, either conditionally or unconditionally.

Article 203(1) stipulates the criteria to be taken into account in determining the equitable shares between national government and county governments.

Article 203(2) stipulates that for every financial year, the equitable share of revenue raised nationally that is allocated to county governments shall be no less than fifteen (15) per cent of all revenue collected by the national government.

Article 205 (1) stipulates that when a bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to National Assembly and Senate.

Article 205 (2) stipulates that any recommendations made by the Commission on Revenue Allocation shall be tabled in Parliament, and each House shall consider the recommendations before voting on the Bill.

The Commission, under Article 216 (1) (a) of the Constitution, is mandated to make recommendations concerning the basis for equitable sharing of revenue raised by the national government between national and county governments.

Article 218 stipulates 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 in accordance with the Constitution. The Bill shall be accompanied by a memorandum setting out a summary of any significant deviation from the Commission on Revenue Allocation's recommendations, with an explanation for each deviation.

Article 219 provides that a county share of revenue shall be transferred to the county without undue delay and without deduction.

4.0. APPROACH TO REVENUE SHARING

In Kenya, fiscal transfers constitute the main revenue source for all county governments. The transfers are classified into two categories: conditional and unconditional. Conditional transfers are earmarked for a specific purpose and may have prerequisites that a county government may need to meet before accessing the transfer. Unconditional transfers are discretionary in nature and county governments have a free hand on how to utilize the funds on devolved functions subject to observance of financial regulations.

For financial years 2013/14 and 2014/15, county governments were allocated Kshs. 190 billion and Kshs. 226.6 billion respectively as unconditional transfers. In addition, counties with Level Five Hospitals were given a conditional allocation of Kshs. 3.4 billion and Kshs. 1.8 billion for financial years 2013/14 and 2014/15, respectively. On average, transfers constituted 88 per cent of the total actual expenditures of county governments for financial year 2013/14.

Transfers in Kenya endeavor to achieve two critical objectives:

a) Close the vertical fiscal imbalance between national and county governments based on assigned taxes and functions as defined by Article 209 and the Fourth Schedule, respectively. The equitable allocation is based on shareable revenues defined in the Constitution and Section 2 of the Commission on Revenue Allocation Act, 2011 as:

   > *"all taxes imposed by the national government under Article 209 of the Constitution and any other revenue (including investment income) that may be authorised by an Act of Parliament, but excludes revenues referred to under Articles 209 (4) and 206(1)(a)(b) of the Constitution".*

b) Correct horizontal economic imbalances, defined by developmental needs and economic inequalities among counties. This objective is achieved through the use of a formula that allocates revenues to the forty seven counties. Further, correction of other economic disparities is achieved through the Equalization Fund defined by Article 204. Allocation to the Fund is based on a 0.5% of all revenues collected by the national government each year calculated on the basis of the most recent audited accounts as approved by the National Assembly. Though a Marginalisation Policy developed by CRA has set out criteria for the identification of 14 counties as the first beneficiaries of the Equalisation Fund, a framework for the disbursement of the funds from the Equalization Fund has not been put in place by the national government.

4.1. COSTING OF FUNCTIONS

Over the last two financial years, the Commission has used the standard costing approaches including the integrated approach to estimate the costs of devolved and national government functions. These includes the zero based budgeting approach, future cost- based approach and historical costing approaches.

The Zero Based Budgeting Approach has been used to cost the expenditure needs of county assemblies and, partly, expenditure needs of county executives directly associated with the establishment of the new devolved structures, namely, the Office of the Governor, the Deputy Governor, Public Finance Management staff and County Public Service Board. The costing of the new county structures is based on circulars and legal pronouncements / guidelines issued by Salaries and Remuneration Commission and Transition Authority.

The historical allocation approach has been used to determine the costs of functions assigned to either level of government by the Fourth Schedule of the Constitution and transferred as per the Transition to Devolved Government Act, 2012. The historical approach relies heavily on the historical spending levels of entities that previously provided the services prior to devolution. However, given that the historical expenditures were guided by a centralised planning approach leading to economic inequalities across counties, caution has been taken to ensure allocations do not mirror the past expenditure patterns. That is:

a) Users of public services do not suffer changes in the level of provision due to the devolution of competencies from national to county governments. This has been achieved through transfer of human and material resources used and required for the provision of the transferred functions from the national to county governments under the principle of *"funds follow functions"*.
b) The financial sufficiency of both levels of government is assured and unnecessary increments in public spending avoided. This involves determination of allocations for each level of government.

The county governments receive a large component of their transfer for purposes of the fiscal balance based on assigned functions. The key challenge is on how to measure the vertical fiscal balance objectively, given the economic inequalities perpetuated by the centralised planning system. To determine the transfers necessary, one must ideally estimate the difference between the revenues available to both levels of governments as a whole, and the expenditure needs of each level of government.

This is a subjective matter because expenditure needs are almost limitless. Most countries that use the vertical balance approach determine a "minimum service level", and fill the gap with transfers. In some cases, the amount of transfers is determined by a national budget constraint rather than the minimum service level requirement. Alternatively, historical spending levels are used to determine county government needs.

The Commission has used the historical spending levels to determine the amount of transfers due to county governments for devolved functions and a zero based budgeting approach to determine the financial requirements of the new structures established by the county governments. All this is guided by overall budget constraints.

5.0. FUNCTIONAL ASSIGNMENT

The Constitution establishes two levels of government that are distinct and interdependent with each other. The Fourth Schedule of the Constitution assigns functions and powers to national and county governments.

Article 186 (2) provides that a function that is conferred on both levels of government is a concurrent function whereas Article 186 (3) provides that where a function is not assigned by the Constitution or legislation to a county, it is deemed to be a function of the national government.

The Transition Authority is mandated under Section 7 of the Transition to Devolved Government Act, 2012 to facilitate and coordinate transfer of functions to county governments pursuant to Paragraph 15 of the Sixth Schedule to the Constitution.

Functional assignment is based on Article 174 which specifies the objects of devolution of government. These are:

a) To promote democratic and accountable exercise of power;
b) To foster national unity by recognizing diversity;
c) To give powers of self-governance to the people and enhance participation of the people in the exercise of the powers of the state and in making decisions affecting them;
d) To recognize the right of communities to manage their own affairs and to further their development;
e) To protect and promote the interest and rights of minorities and marginalised communities;
f) To promote social and economic development and the provision of proximate, easily accessible services;
g) To ensure equitable sharing of national and local resources throughout Kenya;
h) To facilitate the decentralization of the state organs, their functions and services, from the capital of Kenya; and
i) To enhance checks and balances and the separation of powers.

5.1. FUNCTIONS OF THE NATIONAL GOVERNMENT

In line with the objects of devolution, the Fourth Schedule assigns policy-related functions to the national government. The following functions have been assigned to the national government.

1. Foreign affairs, foreign policy and international trade.

2. The use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. Police services, including the setting of standards of recruitment, training of police and use of police services; criminal law; and correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular: road traffic; construction and operation of national trunk roads; standards for construction and maintenance of other roads by counties; railways; pipelines; marine navigation; civil aviation; space travel; postal services; telecommunications; and radio and television broadcasting.
19. National public works.
20. Housing policy.
21. General principles of land planning and the co-ordination of planning by the counties.
22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular: fishing, hunting and gathering; protection of animals and wildlife; water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and energy policy.
23. National referral and health facilities.
24. Disaster management.

25. Ancient and historical monuments of national importance.
26. National Elections.
28. Health policy
29. Agricultural policy
30. Veterinary policy
31. Energy policy including electricity and gas reticulation and energy regulation.
32. Capacity building and technical assistance to the counties.
33. Public investment.
34. National betting, casinos and other forms of gambling.
35. Tourism policy and development.

Over the last two financial years, the national government was allocated the amounts presented in Table 5 in order to perform the functions outlined above.

Table 5: Financing of National Government Functions (Ksh. Millions)

No.	Functions	Total Budget	
		Actual Expenditure 2013/14	2014/15 Budget Estimates
1	Presidency	6,792	4,307
2	Ministry of Defence	78,088	73,281
3	Ministry of Foreign Affairs and International Trade	10,703	12,454
4	The National Treasury	34,092	75,913
5	Ministry of Health	30,311	47,362
6	Ministry of Land Housing and Urban Development	14,864	21,544
7	Ministry of Information, Communications and Technology	8,278	10,212
8	Ministry of Sports Culture and Arts	4,325	3,956
9	Ministry of Labour Social Security and Services	12,530	20,097
10	Ministry of Energy & Petroleum	54,564	76,288
11	Ministry of Industrialization and Enterprises	5,688	9,728
12	Ministry of Mining	1,200	1,965
13	Office of the Attorney General and Department of Justice	2,904	4,258
14	The Judiciary	12,193	17,492
15	Ethics and Anti-Corruption Commission	1,177	1,824

No.	Functions	Total Budget	
		Actual Expenditure 2013/14	2014/15 Budget Estimates
16	National Intelligence Services	15,687	17,440
17	Office of the Director of Public Prosecutions	957	1,852
18	Commission for Implementation of the Constitution	422	306
19	Registrar Political Parties	311	467
20	Witness of Protection Agency	198	250
21	Ministry of Interior and Coordination of National Government	94,960	99,748
23	Ministry of Planning and Devolution	66,980	75,544
25	Ministry of Education, Science and Technology	98,784	142,737
27	Ministry of Transport and Infrastructure	107,211	170,393
29	Ministry of Environment, Water and Natural Resources	36,827	48,843
31	Ministry of Agriculture, Livestock and Fisheries	36,485	36,981
34	Ministry of East African Affairs, Commerce and Tourism	5,913	6,519
36	Kenya National Human Rights Commission	264	357
37	National Land Commission	583	1,698
38	Independent Electoral and Boundaries Commission	5,127	3,091
39	Parliamentary Service Commission	22,470	23,104
40	Judicial Service Commission	239	438
41	Commission on Revenue Allocation	266	285
42	Public Service Commission	871	1,050
43	Salaries and Remuneration Commission	464	441
44	Teachers Service Commission	165,619	165,614
45	National Police Service Commission	330	278
46	Auditor General	3,224	2,611
47	Controller of Budget	307	430
48	The Commission on Administrative Justice	284	374
49	National Gender and Equality Commission	224	290

No.	Functions	Total Budget	
		Actual Expenditure 2013/14	2014/15 Budget Estimates
50	Independent Police Oversight Authority	221	205
51	Public Debt Repayment	232,265	378,010
52	Pension Salaries & Allowances and Others	33,168	37,569
	Total	**1,208,370**	**1,597,606**

Source: Budget Review and Outlook Paper, September 2014

5.2. FUNCTIONS OF COUNTY GOVERNMENTS

The Fourth Schedule stipulates the functions and powers of county governments. In February 2013, the Transition Authority transferred the first batch of functions from the national government to county governments through Legal Notice no. 16. The Transition Authority in August 2013 transferred additional functions to county governments under Special Gazette Supplement No. 116. The outstanding functions will be transferred to county governments in line with Article 262 (15) of the Constitution. The following are the functions so far transferred to county governments.

1. Agriculture

(a) Crop husbandry defined as the provision of agricultural extension services or farmer advisory services; development and implementation of programmes in the agricultural sector to address food security in the county; construction of grain storage structures; enforcement of regulations and standards on quality control of inputs, produce and products from the agricultural sector; availing farm inputs such as certified seeds, fertilizer and other planting materials, such as cassava cuttings or potato vines, to farmers; development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture; promotion of market access for agricultural products; provision of infrastructure to promote agricultural production and marketing as well as agro-processing and value chains; enhancing access to affordable credit and insurance by farmers; management of agricultural training centers and agricultural mechanization stations.

(b) Animal husbandry defined as: Livestock extension services to deliver husbandry technologies to livestock farmers; farmer training courses; county abattoirs/ slaughter house services;

(c) Plant and animal disease control including carrying out, coordinating and overseeing services such as communal dipping and vaccination, and overseeing control of plant pests, diseases and noxious weeds that are specific to counties.
(d) Fisheries defined as: fisheries extension services; development and maintenance of fish landing stations and jetties; fish trade licensing and fish movement permits; zonation of aquaculture and county specific disease control.

2. County health services

(a) County health facilities and pharmacies including rehabilitation and maintenance of county health facilities including maintenance of vehicles, medical equipment and machinery; inspection and licensing of medical premises including reporting; specifications, quantification, storage, distribution, dispensing and rational use of medical commodities in the county health pharmacies;
(b) Ambulance services including emergency response and patient referral system;
(c) Promotion of primary health care including health education, health promotion and community health services;
(d) Licensing and control of undertakings that sell food to the public including food safety and control;
(e) Veterinary services: to carry out, coordinate and oversee veterinary services excluding regulation of the profession;
(f) Others, which include enforcement of waste management policies, standards and regulations.

3. Control of air pollution, noise pollution and other nuisance; and outdoor advertising.
4. Cultural activities, public entertainment and public amenities. These include betting, casinos and other forms of gambling; racing; liquor licensing; cinemas; video showing and hiring; libraries; museums; sports and cultural activities and facilities; and county parks, beaches and recreation facilities.
5. County Transport

   This is defined to include roads; public road transport on licensing of public vehicles operations; street lighting, traffic and parking. Others include county public works and services specific to storm water management systems in built up areas and firefighting services and disaster management

6. Animal control and welfare, including licensing of dogs and facilities for accommodation, care and burial of animals.
7. Trade, Development and Regulation including fair trade practice; cooperative societies including promotion, processing of application for registration, need assessment and inspection.

8. County planning and development, including statistical services; boundaries and fencing; identification of renewable energy sites for development; land survey, mapping and housing
9. Pre-primary education, village polytechnics, home craft centres, child care facilities.
10. Implementation of specific national government policies on natural resources and environmental conservation including conservation of forestry, soil and water, and protection of water springs, wells and dams.
11. County public works and services, including storm water management systems in built-up areas; and water and sanitation services.
12. Fire-fighting services and disaster management.
13. Control of drugs and pornography.
14. Ensuring and coordinating the participation of communities and locations in governance at local level and assisting communities and locations to develop administrative capacity for effective exercise of the functions and powers and participation in governance at the local level.

To undertake the functions outlined above, over the last two financial years, the county governments have been allocated the amounts presented in Table 6.

Table 6: Financing of County Government Functions (Ksh. Millions)

No.	Devolved Functions	Allocation to Counties 2013/14	Allocation to Counties 2014/15
1	Health Services	55,562	62,780
2	Planning and Development	50,904	54,091
3	Agriculture, Livestock and Fisheries	15,155	16,103
4	Culture, Public Entertainment & Public Amenities	1,364	2,849
5	Youth Affairs and Sports	3,181	3,380
6	Trade, Cooperative Development and Regulation	709	4,404
7	Roads and Transport	35,916	38,164
8	Lands, Housing and Public Works	5,523	5,868
9	Natural Resources and Environment Conservation	6,337	6,734
10	Pre-Primary Education	1,938	2,059
12	**Sub Total Devolved Functions**	**176,588**	**196,433**
14	New County Structures (County Assembly, County Executive)	13,416	30,233

No.	Devolved Functions	Allocation to Counties 2013/14	Allocation to Counties 2014/15
15	**Total Devolved Functions**	**190,005**	**226,666**
	Conditional Allocations	**3,400**	**1,800**
16	Level 5 Hospitals	3,400	1,800
	Total	**193,405**	**228,466**

Source, CRA 2014

6.0. CRITERIA FOR REVENUE SHARING

Article 203 stipulates criteria to be taken into account in determining the equitable shares among the national and county governments. These are:

(a) the national interest;
(b) any provision that must be made in respect of public debt and other national obligations;
(c) the needs of national government, determined by objective criteria;
(d) the need to ensure that county governments are able to perform functions allocated to them;
(e) the fiscal capacity and efficiency of county governments;
(f) developmental and other needs of counties;
(g) economic disparities within and among counties and the need to remedy them;
(h) the need for affirmative action in respect of disadvantaged areas and groups;
(i) the need for economic optimization of each county and to provide incentives for each county to optimize its capacity to raise revenue;
(j) the desirability of stable and predictable allocations of revenue; and
(k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

The criteria in Article 203 (1) applies partly to the basis for determining the equitable sharing of revenue raised by national government between national and county governments and partly to the basis for determining the equitable sharing of revenues among county governments.

The Commission submits that the following six of the eleven criteria of Article 203 (1) (a)(b)(c)(d)(f)(k) are pertinent in determining the vertical sharing of revenue. The remaining five, Article 203(1)(e)(g)(h)(i)(j) are more relevant to the sharing of revenues among county governments. The Commission further submits that all the six criteria relating to the vertical sharing of revenue are important and that there is no hierarchy among them. Therefore, the costs of the criteria, where applicable, should be considered collectively. The section below discusses the Commission's interpretation of Article 203(1) that is relevant to the equitable sharing of revenue between national and county governments

6.1. The National Interest

The term national interest refers to agreed policies, goals, priorities, and resultant programs which have cost-benefit implications for the whole country. Decisions on national interest priorities will therefore have financial implications on the functions of either level of government. National interest is not synonymous with national government functions. Programmes and projects necessitated by national interest considerations can be implemented through either level of government.

The list of the national interest policies and priorities that the country will undertake over a period of time should be agreed through a consultative process between both levels of governments since these programs have implications on the funding and on the functions of both levels of government. Consultations on these national interest priorities should ideally be at the Summit.

The national interest policies and priorities once agreed by both levels of government should be clearly set out in the Medium Term Expenditure Framework (MTEF), clearly outlining the policy priorities and the timelines for their implementation. They should inform the Budget Review & Outlook Paper (BROP), the Budget Policy Statement (BPS) and the County Fiscal Strategy Papers (CFSP). The consultative discussions should include an agreement on the manner in which the functions will be performed and funded. In an ideal set up, the implementation would be through inter-governmental frameworks/agreements that will provide the manner in which implementation will be effected. The options for implementation of national interest policies and priorities are by:-

(a) Either levels of government which will perform them as part of their constitutional mandate;
(b) County governments but through conditional grants from the national government from its allocated share of revenue as part of their obligation to implement national policy;
(c) Either levels of government where it is deemed the policy will be more effectively performed. The implementation should be through inter-governmental agreements that will provide the manner in which the implementation will be undertaken.

The budgetary provisions necessary to accomplish national interest should be determined through the process outlined in the Public Finance Management Act 2012, that provides for involvement of the Intergovernmental Budget and Economic Council (IEBC).

In the absence of agreed policies, goals and priorities by the Summit, the Commission submits the following as comprising the national interest:

a) Quality and accessible education and healthcare services,
b) Infrastructure development, including energy, roads and ICT,
c) Security,
d) Food security, and
e) Youth and women empowerment.

These priorities have been defined in the second Medium Term Expenditure Framework (2013-2017), and the Budget Review Outlook Paper 2014. The two policy documents were prepared by the national government through a participatory process that involves the county governments.

The equitable revenue sharing to both levels of government, and, indeed the budgets of both levels of government, should therefore, be aligned to the above priorities to spur overall development in the country.

6.2. The Public Debt and Other National Obligations Article 203(1)(b)

6.2.1. Public Debt

The term public debt is defined in Article 214 as all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government. Article 203(1) provides for consideration of public debt in the process of revenue sharing.

Debt financing and expenditure on account of borrowed money needs to be discussed through a consultative and cooperative process that involves both levels of government. This is critical because the level of debt incurred by the National Government has direct implications on:

(a) Equitable share,
(b) The borrowing component, out of the total debt ceiling, available to the national government, and
(c) The borrowing component, out of the total debt ceiling, available to county governments.

The Commission recognizes that public debt repayment should be considered before any other needs of national or county governments are considered as stipulated in Article 214 of the Constitution. As stated elsewhere, the level of public debt is a matter of great concern for both current and future generations.

6.2.2. Other National Obligations

National obligations refer to those obligations whose performance may affect the entire country. Excluded from these criteria are those obligations that arise as part of the national government's functions. The obligations that are outside the national government functions would include, for example, the funding of:

(a) The cost of shared institutions such as the Judiciary, Parliament, and constitutional commissions, and

(b) The cost of other national obligations which do not directly relate to the functions under the Fourth Schedule. These other national interests need to be fully disclosed by the national government and discussed at the Summit. In the absence of deliberations on other national obligations, the Commission considers expenditures listed in Table 7 as comprising the other national obligations

Table 7: The Public Debt and Other National Obligations (Article 203(1)(b) (Kshs. Millions)

NO.	ITEM DESCRIPTION	FINANCIAL YEAR	
		2014/15	2015/16
1.	Debt Payment	378,010	318,982
2.	Pension, and Constitutional Salaries	37,569	54,617
3.	Constitutional Commissions (Article 248(2)- KNCHR, IEBC, PSC, JSC, CRA, PSC, TSC, NPSC, NG&EC, SRC, and NLC	196,646	202,055
4.	Independent Offices (Article 248(3) (AG, CoB and Auditor General)	7,299	6,476
5.	Other Independent Bodies (EACC, Registrar of Political Parties, Witness Protection Agency, CAJ & IPOA)	3,426	3,648
6.	Shared Institutions (Presidency and Judiciary)	21,798	24,634
7.	Emergencies (Contingencies Fund, Strategic Grain Reserve	7,700	8,000
8.	Equalization Fund	3,400	6,000
	Total	655,848	624,413

Source: National Treasury, 2014

6.3. Needs of the National Government Determined by an Objective Criteria (Article 203(1)(c))

This refers to the functions of the national government as set out in the Fourth Schedule of the Constitution and relates to both recurrent and development needs. The Constitution requires that the needs of national government be determined through objective criteria. The key challenge is on how to measure the vertical fiscal balance objectively. To determine how the resources each level of government requires to perform the functions assigned, one needs to estimate the difference between the revenues available to each level of government, and the expenditure needs of each level of government. This is a subjective matter because expenditure needs are almost limitless. Most countries that use the vertical balance approach determine a "minimum service level", and share revenues between various levels of government. In some cases, the sharing is determined by a national budget constraint rather than minimum service level requirements. Alternatively, historical spending levels have been used to determine the expenditure needs of each level of government. The Kenyan financing system has used the historical spending approach to share revenues between the national and county government for the last three financial years.

The qualification of "objectivity" in the criteria is for purposes of ensuring that the national government is not the sole judge of the expenditure needed to finance their functions. Consequently there is no blank cheque on the cost of national government functions. The national government must therefore exercise prudence in financing its functions as well as its developmental needs. Table 8 presents the summary of the budget and projections of the national government for financial years 2014/15 and for 2015/16.

Table 8: Financing of National Government Functions (Ksh. Millions)

	ITEM DESCRIPTION	2014/15	2015/16
		Budget	Projected
1	DPP	1,852	2,249
2	Defense	73,281	72,858
3	NIS	17,440	17,444
4	Foreign Affairs	12,454	11,478
5	Devolution and Planning	75,544	65,253
8	Education	76,256	82,988
9	Science and Technology	66,481	73,003

	ITEM DESCRIPTION	2014/15 Budget	2015/16 Projected
10	Health Services	47,362	42,536
11	Interior	83,679	89,176
12	Lands Housing and Urban Development	21,544	22,761
13	Agriculture, Livestock and Fisheries	36,981	37,444
14	Infrastructure and Transport	170,393	151,721
15	Information, Communication and Technology	10,212	11,270
16	Energy and Petroleum	76,288	79,045
17	Industrialization and Enterprise	9,728	7,036
18	East African Affairs	1,684	1,851
19	Commerce and Tourism	4,836	6,388
20	National Treasury	75,913	68,441
21	Environment and Natural Resources	17,563	18,806
22	Water and Regional Authorities	31,279	18,788
23	Co-ordination of Government Services	16,068	16,670
25	Sports and culture	3,956	4,158
26	Mining	1,965	2,501
27	Labour and Social Security services	20,097	20,914
	Total	**952,858**	**924,778**

Source: National Treasury 2014, CRA 2014

6.4. The need to ensure that County Governments are able to perform functions allocated to them. (Article 203(1)(d)(f)

This refers to the functions of the county governments as set out in Fourth Schedule of the Constitution and relates to both recurrent and development needs.

The process of determining the cost of the functions assigned to County governments in the transition period is the work of the Transition Authority. In the absence of the determination by the Transition Authority, the Commission in determining its recommendations on division of revenue has assessed the costs of providing assigned functions by both levels of government based on an integrated approach. The approach combines the zero based budgeting with the historical spending levels. To establish the cost of the county assemblies and the governors' office, the Commission has used the zero based costing approach guided by the circulars issued by the Transition Authority and Salaries and Remuneration Commission. To establish the costs of devolved functions, the Commission has used the historical costs of the functions previously performed by the national government.

6.4.1. Under-Funded Programmes

The Commission has also determined a number of functions assigned to county governments that were grossly underfunded by the National government. These are: Early Childhood Development (ECD) and village polytechnic. Although the national government has historically spent more than 20 percent of its overall budget on education, the national government did little to invest in ECD. A budget allocation of Ksh. 2 billion that the national government had committed to ECD was shared among the 47 county governments in the financial year 2014/15. ECD plays a crucial role in shaping the educational development of a child. The Commission recommends that county governments be given an additional Ksh. 3 billion to build ECD schools.

Unemployment remains a key challenge in Kenya. This problem has been compounded with the low transition to tertiary institutions and universities. Although the government has heavily invested in the expansion of tertiary and university education, very little has been invested on village polytechnics and home craft centres. These are important institutions that need financial support to empower the youth with investment skills to generate their own employment. The Commission recommends that county governments be given additional Ksh. 3 billion to build and or renovate village polytechnics.

6.4.2. County Roads

Counties have different developmental needs. However, the need for infrastructure development is crucial in all counties because of its strong incentive to private sector investment. Although the national government has invested more than 22 per cent of the overall budget on infrastructure, the resources were skewed in favour of a few counties that happened to have fallen in what the centralised governments defined as high potential areas. For example, road networks in a number of counties are dilapidated. Other counties are realizing their very first kilometers of tarmac road in 50 years of independence with the establishment of county governments.

The Fourth Schedule assigns the construction and operation of national trunk roads to national government and county roads to county governments. As a result, all roads under the Kenya National Highways Authority (KeNHA) fall under the national government. Those under the Kenya Rural Roads Authority (KeRRA) fall under county governments. However, the national government has held onto KeRRA resources meant to fund construction and/or rehabilitation of county roads. The roads classified under the Kenya Urban Roads Authority may require re-classification. The Commission recommends that national government resources under the KeRRA and KURA amounting to Ksh. 21.2 billion and 8 billion respectively, be allocated to county governments in the financial year 2015/16. The State Department for Infrastructure should fast-track the re-classification of the roads so that it is clear which ones are national roads and which ones are county roads. This is however subject to the determination of a pending court case on classification of roads.

The Kenya Roads Board used to allocate 15 per cent of the Road Maintenance Fuel Levy Fund to the defunct local authorities. The legislation needs to be amended to enable allocation to county governments as a conditional grant for maintenance of county roads.

6.4.3. Regional Development Authorities and Water Services Boards

A number of parastatals, notably, Regional Development Authorities and the Water Services Boards perform devolved functions that cut across several counties. In the financial year 2014/15, these entities had a national government funding of Ksh. 15.05 billion. These institutions need to be restructured to align them to the devolved system of government. The national government needs to amend the legislation governing the management and functions of these entities to include county governments in their management structures. County governments need to be involved in the identification and management of activities being undertaken by these entities to avoid unnecessary overlaps and duplicity at the county level.

6.4.4. National Strategic Interventions

The national government has a number of strategic interventions put in place in the financial year 2014/15 funded by the national governments at a cost of Ksh. 16.7 billion that are devolved functions. These are:

a) **Free Maternal Health Care**. Health care is largely a devolved function. The gross budgetary allocation for fiscal year of Ksh. 4.0 billion should be transferred to county governments as conditional allocations.
b) **Leasing of Health Care Equipment.** The Ministry of Health has provided for a total budgetary allocation of Ksh. 3.3 billion in financial year 2014/15 for leasing of health care equipment without a formal framework on how county governments are to be involved in identification and management of the

programme. County governments are in charge of county health services and therefore, better placed to identify the right equipment needed in a particular county. In this regard, the Commission recommends that these funds should be transferred to county governments.

c) **Fertilizer and Seed Subsidy.** The State Department of Agriculture has a gross budgetary allocation of Ksh. 3 billion for financial year 2014/15 for purposes of setting up a National Fertilizer and Seed Subsidy Revolving Fund for purposes of ensuring food security in the country. Agriculture is a devolved function. An intergovernmental framework for management of the Fund and a mechanism for accessing the fertilizer and seeds need to be developed by the state Department of Agriculture. Drawing rights based on food production capacity should be put in place.

d) **Youth Empowerment through National Youth Service.** The national government through the National Youth Service set aside a gross budgetary allocation of Ksh. 6.3 billion for financial year 2014/15 to empower youth with relevant skills and practical experience. The project involves construction of small dams and pans. The Ministry of Devolution and Planning needs to put in place an intergovernmental framework to involve county governments in the project identification, management and financing.

Table 9 provides a summary of resources necessary to perform county government functions for financial year 2015/16.

Table 9: Financing of County Governments Functions (Ksh. Millions)

	Devolved Functions	Allocation to Counties 2014/15	CRA Recommendation 2015/16
1	Health Services	62,780	82,143
2	Planning & Development	54,091	56,796
3	Agriculture, Livestock and Fisheries	16,103	19,435
4	Culture, Public Entertainment and Public Amenities	2,849	2,992
5	Youth Affairs and Sports	3,380	6,699
6	Trade, Cooperative Development and Regulation	4,404	4,624
7	Roads &Transport	38,164	43,537
8	Lands, Housing and Public Works	5,868	6,419
9	Natural Resources and Environment Conservation	6,734	7,070
10	Pre-Primary Education	2,059	5,565
11	County Emergency Fund		4,400
12	Sub Total Devolved Functions	196,433	239,680
13	New County Structures (County Assembly, County Executive)	30,233	42,766
14	Total Devolved Functions	226,666	282,445
	Conditional Allocations	**1,800**	**65,231**
15	Level 5 Hospitals	1,800	3,600
16	Resources for Devolved function being performed by the National Government	-	61,631
17	**Total**	**228,466**	**347,676**

Source: CRA 2014

6.4.5. County Allocations for 2015/16:

The costs of county government functions have been established using the following approach:

Using the equitable share allocation to county governments for financial year 2014/15 of Kshs.227 billion as a base, the following adjustments are made to arrive at the recommended allocation for financial year 2015/16:

1. Adjustments to Kshs.227 billion by a three year shareable revenue growth factor of 10.41 per cent;
2. Adjustments to Kshs.227 billion for additional remuneration costs arising from TA and the Salaries and Remuneration Commission (SRC) circulars;
3. Additional transfers of resources to county governments for devolved functions held and performed by national government during financial year 2014/15;
4. Additional allocations to finance devolved functions that the Commission considers were under funded by the national government.

Table 10 and 11 presents a summary of the financing of county government functions for financial year 2015/16.

Table 10: Financing of County Government Functions for FY 2015/16

	Budget Item			Ksh. Millions
A	**Allocation to County Governments FY 2014/15**			**226,666**
B	**Additional Revenues for 2015/16**			
	I	**Adjustment for Revenue Growth (Using a three year average growth of revenue &GDP =10.41)**		**23,596**
	II	**Additional Costs for County Structures based on SRC and Transition Authority Circulars**		**12,533**
		1	County Assemblies (Salaries, Gratuity, Allowances)	6,576
		2	County Executive (Salaries, Gratuity, Pension, Allowances	5,957
	III	**Devolved Functions being performed by the National Government in FY 2014/15 to be transferred as Shareable Revenue**		**8,311**
		3	15% of fuel Levy for Maintenance of County Roads	3,300
		4	Personnel Emoluments, Operations and Maintenance (Livestock, Fisheries, Health Promotion, Library Services, Consumer Protection)	1,466
		5	Slum Upgrading and Housing Development	245
		6	Leasing of Medical Equipment	3,300
	VI	**Underfunded devolved functions that need additional funding from the National Government Share**		**6,000**
		7	Provision for ECD Infrastructure	3,000
		8	Village Polytechnics	3,000
	V	**Unfunded Devolved Functions**		**5,341**
		9	Agricultural Training Centres/Agricultural Mechanization Station	**941**
		10	Establishment of County Emergency Funds (2% 220 billion)	4,400
C	**Total Equitable Share**			**282,445**
D	**Total Shareable Revenue for Financial Year 2012/13**			**776,858**
E	**Equitable Share to County Government as a percentage of Shareable Revenue (2012/13)**			**36%**

Source: CRA, 2014

Table 11: Conditional Allocations**

	Budget Item	**Ksh. Millions**
1.	**Level 5 Hospitals**	**3,600**
	Devolved Functions being performed by the National Government in FY 2014/15	
2.	Free Maternal Health Care	4,031
3.	Fertilizer and Seed Subsidy	3,000
4.	Kenya Rural Roads Authority (KeRRA)	21,200
5.	Kenya Urban Roads Authority (KURA)	8,000
6.	Regional Development Authority (RDA)	4,300
7.	Water Services Boards (WSB)	14,800
8.	National Youth Service	6,300
9.	**Total Conditional Allocations**	**65,231**

Source: CRA 2014

** Resources held by the national government for devolved functions have been identified through an Inter-Agency Task Force established in September 2014 by the Cabinet Secretary Finance.

7. Flexibility in Response to Emergencies (Article 203(1)(d)(f)

The Constitution allocates to both National and County government the function of disaster management, which incorporates management of emergencies at a national or county level. Article 208 establishes the Contingencies Fund to manage urgent and unforeseen expenditure needs. The PFM Act 2012 at Section 19 provides that the monies to the Contingencies Fund shall be appropriated from the Consolidated Fund up to a maximum of Ksh. 10 billion. In line with this provision, the National government has over the last three financial years made a provision of Ksh. 5 billion to the Contingencies Fund services.

The PFM Act Section 110 (1) provides for the establishment of County Emergency Fund to manage urgent and unforeseen expenditure needs at county level. The County Emergency Fund consists of monies appropriated by County Assemblies. The PFM Act Section 113 limits the withdrawal from the County Emergency Fund to two per cent of the total audited county government revenue for the previous financial year. Based on unaudited accounts of county governments revenues for financial year 2013/14, amounting to Ksh. 220 billion, two percent translates to an Emergency Fund of 94 million for each county.

It is important that each county government establishes an Emergency Fund. However, given that the resources set aside by national government under the Contingency Fund may as well be available to a county government, should the emergency arise so, the emergency funds established by county governments should be substantially below the threshold of the national government's Contingency Fund.

7.0. RECOMMENDATION

7.1 Sharing of Revenue

Article 216(1)(a) mandates the Commission to make recommendation concerning the basis for equitable sharing of revenues raised by National Government between national and county governments.

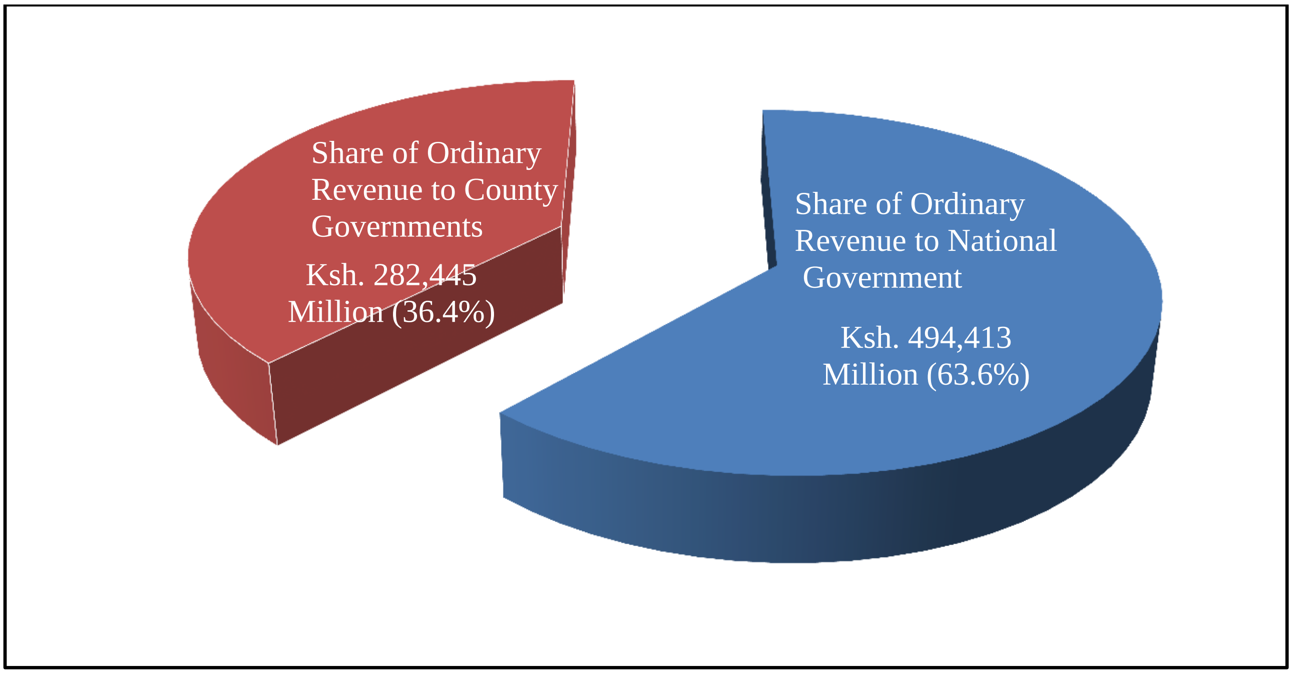
Pursuant to Article 216 (5), the Commission hereby submits its recommendation to the Senate, the National Assembly, the National Executive, County Assemblies, and County Executives that the shareable revenue raised nationally for financial year 2012/13 amounting to Ksh. 776.9 billion be shared out between the national and county governments as shown in Table 12 and Figure 9.

Table 12: Recommendation of Equitable Share of Revenue for FY2015/16 Based on the latest Audited and Approved Accounts (FY 2012/13)

	Budget Item	Ksh. Millions	Percentage
1	Share to County Government	282,445	36.4
2	Share to National Government	494,413	63.6
	Total Shareable Revenue for Financial Year 2012/13	**776,858**	**100**

Source: CRA 2014

Figure 9: Equitable Share based on Ordinary Revenue for FY 2012/13



Source: CRA 2014

7.2 Implementation of the Recommendation in 2015/16

The Constitution requires that the Commission uses the latest audited and approved accounts. The latest audited and approved accounts are for financial year 2012/2013, from which shareable revenue has been computed to be Kshs. 776.9 billion. In the context of the year 2015/2016 during which this recommendation will be implemented, the projected revenues amounts to Kshs. 1,352.2 billion as presented in Table 13.

Table 13: Fiscal Framework for Financial Year 2015/16

		Budget Items	Ksh millions
A	Total Revenue		1,352,200
B	Total Expenditure		1,896,866
	Of Which		
	1	**National Government**	**1,549,190**
		a) Public Debt and National Obligations	624,412
		b) National Functions	924,778
	2	**County Governments**	**347,676**
		a) Equitable Share	282,445
		b) Conditional Allocations	65,231
C	Financing Gap		544,666
	Of Which		
	1	Project and Programme Grants	64,700
	2	Net Foreign Financing	241,000
	3	Net Domestic Borrowing	238,966

Source: CRA and National Treasury, 2014

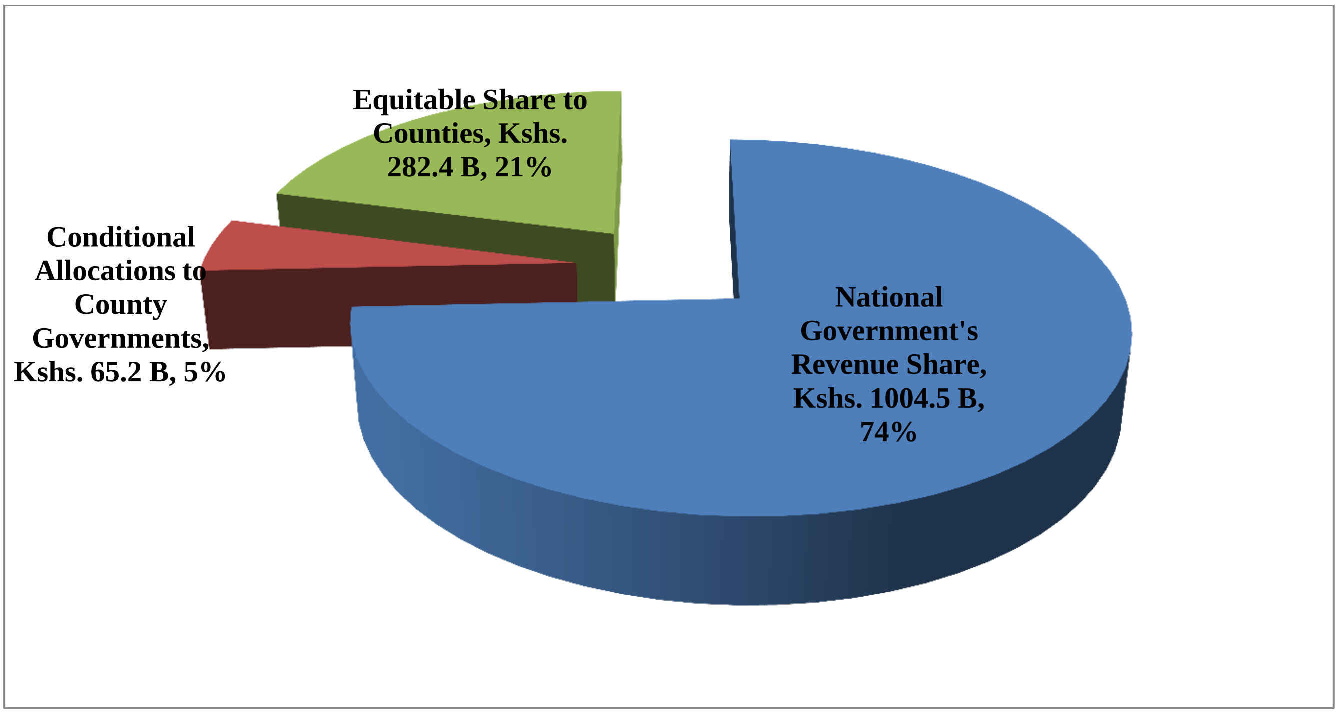
The Commission, after taking into consideration the fiscal framework shown in table 13 , hereby makes the following recommendations:-

1. **That Ksh.282.4 billion out of the shareable revenue be allocated to county governments as equitable share**
2. **That the funds retained by the national government which are meant to undertake devolved function amounting to Ksh.65.2 billion be transferred to county governments as conditional allocations subject to formulation of**

intergovernmental frameworks to ensure smooth transfer and operation of the functions.

3. **That the balance of Kshs. 1,004.5 billion will be available to be utilized by the national government, to meet its obligations and perform its functions.**

Figure 10: Projected Share of Total Revenue in 2015/16 (Kshs. Billions)



Source: CRA 2014

In conclusion, the Commission recommends that the national government considers reducing further the budget allocation to Ministries, Department and Agencies (MDAs) performing devolved functions such as Health, Agriculture and Roads, among others, to address duplication and wastage of resources. Such ministries at the national level, should focus on policy formulation and cede implementation of devolved functions to county governments.

8.0. APPENDICES

APPENDIX 1: RECURRENT COST OF NEW COUNTY EXECUTIVE STRUCTURES FOR 47 COUNTY GOVERNMENTS (KSHS.)

BUDGET Item	No.	Basic Salary	Gratuity Pension	Airtime Allow.	House Allow.	Responsibility Allow.	Commuter Allow.	Other Monthly Allow.	Total Monthly (Salary & Allow.)	Total Annual (Salary & Allowances)
Governor	47	514,800	159,588	10,000		80,000		343,200	1,107,588	624,679,632
Other support Staff for Governors	423	35,250	10,928	-	9,000	30,000	9,500	-	94,678	137,998,110
Deputy Governor	47	341,953	106,005	7,500		64,000		227,968	747,426	421,548,437
County Executive Members	453*	170,625	52,894	5,000				113,750	342,269	1,860,572,925
County Secretary	47	135,000	41,850		70,000		20,000		266,850	150,503,400
Chief Officers	453	120,270	37,284		60,000		20,000		237,554	1,291,341,913
Chief of Staff	47	120,270	37,284		60,000		20,000		237,554	133,980,287
Advisors	188	436,356	135,270	-	160,000	-	64,000	-	795,626	448,733,267
CPSB	329	693,398	113,682	16,000	-	-	40,000	-	863,080	1,132,602,078
PFM Staff										6,746,911,670
Ward Administrators	1,450	48,190			24,000		8,000	500	80,690	1,404,006,000
Sub county Administrators	290	89,748			40,000		14,000	833	144,581	503,141,880
Sub Total									6,671,279	14,856,019,599
O & M (30%of Sub Total)									2,001,384	4,456,805,880
Total									8,672,662	19,312,825,478

**No. of CECs Members as per Article 179 (3) of the Constitution of Kenya 453*

APPENDIX 2: RECURRENT COST OF COUNTY ASSEMBLY STRUCTURES FOR 47 COUNTY GOVERNMENTS (KSHS.)

ITEM	No.	Gross Salary (2015-April 2016)	Gross Salary (April 2016-June 2016)	Gratuity / Pension (2015-April 2016)	Gratuity / Pension (April 2016-June 2016)	Airtime Allowance	Sitting Allowance-Plenary	Sitting Allowance-Committee	Special Duty Allowance	Other Allowances	NSSF	Monthly Salary & Allowances	Annual Salary & Allowances
MCAs	2,227	314,593,125	337,065,152	58,514,321	63,021,852	10,895,000	141,835,200	186,035,200	47,104,000		435,800	725,173,736	8,702,084,829
Speaker	47	14,393,750	15,421,875	2,721,858	2,721,858	470,000	4,888,000	4,888,000	1,222,000		9,400	27,628,039	331,536,473
Deputy Speaker	47	9,870,000	10,575,000	1,866,417	1,866,417	235,000	4,888,000	4,888,000	1,222,000		9,400	21,933,067	263,196,804
County Assembly Staff	4,136	266,508,388		39,976,258						144,656,600	4,466,880	455,608,127	5,467,297,520
County Assembly Ward Staff	4,350	58,046,400		8,707,250						28,275,000	4,698,000	99,726,650	1,196,719,800
Sub Total		**663,411,663**	**363,062,027**	**111,786,105**	**67,610,127**	**11,600,000**	**151,611,200**	**195,811,200**	**49,548,000**	**172,931,600**	**9,619,480**	**1,330,069,619**	**15,960,835,426**
Mileage for MCAs												119,088,250	1,429,058,999
Insurance	47												470,000,000
O & M	30%											434,747,361	5,357,968,327
Total												**1,883,905,229**	**23,217,862,752**
CASB	4x47					235,000		17,296,000	940,000	3,760,000		22,231,000	266,772,000
O & M	30%												80,031,600
Total												**1,906,136,229**	**23,564,666,352**

Source: CRA 2014

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