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REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT – FOURTH SESSION
THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

SECOND REPORT ON THE STATUS OF IMPLEMENTATION OF THE
CONSTITUTION BY:

1. THE OFFICE OF THE CONTROLLER OF BUDGET;
2. THE COMMISSION ON REVENUE ALLOCATION ; AND
3. THE OFFICE OF THE AUDITOR GENERAL

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| JUNE, 2025 | |
| THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: 24 JUN 2025 | |
| DAY: Tuesday | |
| TABLED BY: | Hon. William Kamket, MP Vice-chairperson |
| CLERK-AT THE-TABLE: | MS. Anne Shibuko |

NATIONAL ASSEMBLY
RECEIVED
19 JUN 2025
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

Directorate of Audit & General Purpose Committees
National Assembly
NAIROBI

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LIST OF ABBREVIATIONS AND ACRONYMS

- 1. OCoB - Office of the Controller of Budget
- 2. CRA - Commission on Revenue Allocation
- 3. OAG - Office of the Auditor-General
- 4. PFMA - Public Finance Management Act, Cap 412A
- 5. CFSPs - County Fiscal Strategy Papers
- 6. CPA - Certified Public Accountant

CHAIRPERSON'S FOREWORD

1. This Report contains proceedings, observations and recommendations of the Constitutional Implementation Oversight Committee in its interactions of reports and oral submissions provided by the Commission on Revenue Allocation, the Office of the Controller of Budget and the Office of the Auditor-General.
2. The Constitutional Implementation Oversight Committee is established under Paragraph 4 of the Sixth Schedule of the Constitution to oversee the implementation of the Constitution.
3. Pursuant to this mandate, the Committee has so far invited five Constitutional Commissions and the two Independent Offices, with a view of understanding their operations vis-a-vis their constitutional mandate and any impediments in the performance of their role. The Commissions are: the National Police Service Commission, the Kenya National Commission on Human Rights, the National Land Commission, the National Gender and Equality Commission, the Commission on Revenue Allocation and the Independent Offices of the Controller of Budget and the Auditor-General. The Committee has also invited the Independent Policing Oversight Authority which, though not established under the Constitution, is tasked with the mandate of providing civilian oversight of the work of the police which the Committee was considering.
4. **Hon. Speaker**, in consideration of the implementation status of the Constitution, pursuant to its mandate, the Committee made the following observations:
 - (i) The underfunding of Constitutional Commissions and Independent Offices leaves these institutions unable to fully execute their mandates;
 - (ii) The lack of enforcement powers by Constitutional Commissions and Independent Offices renders many of their recommendations ineffective; and
 - (iii) The persistent culture of non-cooperation from regulated entities, actively undermines oversight functions of the Constitutional Commissions and Independent Offices.
5. The purpose of this report is, therefore, to bring to the attention of the House the achievements of the Constitutional Commissions and Independent Offices, the challenges faced by these bodies and recommendations to address the said challenges.
6. **Hon. Speaker**, I wish to express my appreciation to my fellow Honourable Members of these Committee, the Office of the Speaker, the Clerk of the National Assembly and the Secretariat for facilitating the production of this report.
7. **Hon. Speaker**, pursuant to Standing Order 199, it is my pleasant duty and privilege, on behalf of the Constitutional Implementation Oversight Committee, to lay this report on

the Table of the House and urge the House to adopt the recommendations contained therein.

**HON. ERIC KAREMBA MUCHANGI, CBS, MP.
CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE**

1 PREFACE

1.1 Mandate of the Committee

1. The Constitutional Implementation Oversight Committee is established under Paragraph 4 of the Sixth Schedule to the Constitution which provides as follows:

There shall be a select committee of the National Assembly to be known as the Constitutional Implementation Oversight Committee which shall be responsible for overseeing the implementation of this Constitution and which, among other things—

- (a) shall receive regular reports from the Commission on Implementation of the Constitution on the implementation of this Constitution including reports concerning—*
- (i) the preparation of the legislation required by this Constitution and any challenges in that regard;*
 - (ii) the process of establishing the new commissions;*
 - (iii) the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;*
 - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and*
 - (v) any impediments to the process of implementing this Constitution;*
- (b) coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and*
- (c) take appropriate action on the reports including addressing any problems in the implementation of this Constitution.*

1.2 Committee Membership

2. The Committee membership comprises of the following: -

Chairperson

Hon. Eric Karemba Muchangi, CBS, MP

Runyenjes Constituency

UDA Party

Vice-Chairperson

Hon. William Kamket, MP

Tiaty Constituency

KANU – Party

MEMBERS

Hon. Sylvanus Osoro, MP
South Mugirango Constituency
United Democratic Alliance

Hon. Kitur Benard Kibor, MP
Nandi Hills
United Democratic Alliance

Hon. Caroli Omondi, MP

Hon. Jessica Mbalu Nduku Kiko, CBS, MP

Suba South Constituency
Orange Democratic Party

Hon. George Risa Sunkuiya, MP
Kajiado West Constituency
United Democratic Alliance

Hon. Peter Oscar Nabalindo, MP
Matungu Constituency
Orange Democratic Movement

Hon. Teresia Wanjiru, MP
Nominated Member
United Democratic Alliance

Hon. John Murumba Chikati, MP
Tongaren Constituency
Ford-Kenya

Hon. Patrick Osero Kibagendi, MP
Borabu Constituency
Orange Democratic Movement

Hon. Ali Abdisat Kalif, MP
Nominated Member
United Democratic Alliance

Hon. John Mukunji Mwaniki, MP
Manyatta Constituency
United Democratic Alliance

Hon. Jackson Lentoijioni Lekumontare, MP
Samburu East
Kenya Africa National Union

Hon. Harun Mohamed Umulkher, MP
Nominated Member
Orange Democratic Movement

Kibwezi East Constituency
Wiper Democratic Movement

Hon. Njoroge Mary Wamaua, MP
Maragwa Constituency
United Democratic Alliance

Hon. Lawrence Aburi Mpuru, M.P
Tigania East Constituency
NOPEU

Hon. Hamisi Kakuta Maimai, MP
Kajiado East Constituency
Orange Democratic Movement

Hon. Geoffrey Ekesa Mulanya, MP
Nambale Constituency
Independent

Hon. Daniel Karitho Kiili, MP
Igembe Central Constituency
Jubilee Party

Hon. Mejjadonk Benjamin Gathiru, MP
Embakasi Central
United Democratic Alliance

Hon. Paul Abuor, MP
Rongo Constituency
Orange Democratic Movement

Hon. Charles Ngusya Nguna, MP
Mwingi West
Wiper Democratic Alliance

1.3 Committee Secretariat

3. The Secretariat facilitating the Committee in executing its mandate comprises of:

Mr. Oscar Namulanda
Deputy Director Committees
Lead Clerk

Ms. Hellen Masiyoi
Clerk Assistant I

Ms. Emma Essendi
Senior Legal Counsel

Ms. Lilian Kiende Mburugu
Media Relations Officer

Ms. Pauline Sifuma
Hansard Reporter

Ms. Kafuyai D Wamae
Clerk Assistant III

Mr. Alvin Ochieng
Research Officer III

Mr. Kelvin Lengasi
Audio Officer

Mr. Jillo Yeziel
Sergeant -at- Arms

2 INTRODUCTION

4. This report contains the status of implementation of the Constitution as submitted by the following three institutions between September 2024 and April 2025 as follows:
 - a) The Office of the Controller of Budget;
 - b) The Commission on Revenue Allocation; and
 - c) The Office of the Auditor-General.

THE OFFICE OF THE CONTROLLER OF BUDGET

2.1 Establishment and Mandate.

- 3 The Office of the Controller of Budget (CoB) is established under Article 228 of the Constitution of Kenya with its operational framework provided by the Controller of Budget Act, Cap. 429. The constitutional mandate of the Office includes overseeing the implementation of budgets at both national and county levels of government and authorizing withdrawals from public funds.

2.2 Background

- 4 The Controller of Budget, Dr. Margaret Nyakang'o, appeared before the Committee on 17th September 2024, at Bunge Towers to deliberate on the discharge of the mandate of the Office of Controller of Budget pursuant to Article 228 of the Constitution and any impediment faced by the Office in undertaking its role.

2.3 Submissions by the Office of Controller of Budget

2.3.1 *Budget Oversight and Implementation*

- 5 Dr. Nyakang'o reported that during the 2023/24 financial year, the Office had approved withdrawals totalling KES 1.87 trillion from the Consolidated Fund and County Revenue Funds. However, the Office had raised 247 objections to irregular withdrawal requests, preventing the illegal expenditure of KES 18.6 billion.
- 6 The Controller of Budget highlighted systemic challenges in budget implementation, noting that 63% of national government ministries and 47% of county governments failed to meet their quarterly expenditure targets, while simultaneously exceeding their recurrent expenditure ceilings by an average of 22%.

2.3.2 *Pending Bills Crisis*

- 7 Regarding the mounting pending bills, currently estimated at KES 538 billion nationally, the Office explained its limited mandate in the payment process. While the OCoB verifies and classifies pending bills as lawful obligations (having processed 12,347 such bills in FY 2023/24), the actual payment process excludes the Office once funds are released to spending entities
- 8 The Controller proposed a technological solution currently under development that would link the OCoB's requisition system directly with the Central Bank of Kenya, creating an end-to-end oversight mechanism from approval to payment.

2.3.3 Revenue Overestimation and Fiscal Planning

- 9 The Office identified chronic revenue overestimation as a root cause of pending bills, with both levels of government consistently over-projecting revenues by 35-40%. This practice leads to unsustainable expenditure commitments and accumulation of unpaid bills to suppliers.
- 10 Dr. Nyakang'o particularly criticized the unrealistic revenue projections in the Finance Bill 2024, where the public was only presented with expenditure estimates without corresponding, realistic revenue generation plans.

2.3.4 Wasteful Expenditure Patterns

- 11 The submission detailed alarming patterns of wasteful spending, including:
- 47 foreign travel expenditures by county executives totalling KES 284 million while pending bills accumulated
 - Procurement of unnecessary luxury vehicles by 23 ministries despite outstanding supplier payments
 - Renovation expenditures exceeding KES 1.2 billion in 12 counties with unpaid medical suppliers

2.3.5 Multiple Accounts and Fiscal Irregularities

- 12 The Office reported identifying 187 unauthorized bank accounts operated by 31 county governments, contrary to Public Finance Management Regulations. While the OCoB has conducted public education on this issue, the Controller noted the absence of legal mechanisms to compel compliance or sanction violations.
- 13 The Controller of Budget has been engaged to conduct special audits on these accounts to determine ownership structures, transaction patterns, and potential malfeasance.

2.3.6 Housing Levy and Special Funds

- 14 The Controller of Budget clarified that the Housing Levy falls outside the OCoB's oversight mandate due to its classification as a "levy" rather than a budgeted fund. This legal loophole prevents any independent oversight of the estimated KES 63 billion collected annually under this programme.

2.3.7 Legislative and Operational Constraints

- 15 Dr. Nyakang'o identified critical limitations in the Controller of Budget Act, Cap. 429:
- The Office is barred from reporting on economic developments and fiscal forecasts (section 9(4))
 - No enforcement powers to ensure implementation of recommendations

- Inadequate sanctions for violations of public finance management laws
- Restricted access to critical financial information from some national government entities

16 The Office has prepared proposed amendments to address these gaps, which have been submitted to the Senate for consideration.

2.4 COMMITTEE OBSERVATIONS

17 With regard to the **Office of Controller of Budget (CoB)** the Committee observed as follows:

THAT-

- (i) The CoB's oversight mandate is severely undermined by legislative limitations and lack of enforcement mechanisms;
- (ii) The pending bills crisis directly results from systemic failures in fiscal planning and revenue projection;
- (iii) The Housing Levy's exclusion from oversight creates significant accountability gaps;
- (iv) Wasteful expenditure continues unabated despite the existence of oversight institutions; and
- (v) Multiple unauthorized accounts indicate deliberate attempts to circumvent financial controls.

2.5 COMMITTEE RECOMMENDATIONS

18 Based on the Committee's findings and general observations, the Committee makes the following recommendations;

THAT;

- (i) The National Assembly amends the Controller of Budget Act to:
 - a) Grant enforcement powers to implement recommendations of the Controller of Budget;
 - b) Remove restrictions on economic reporting; and
 - c) Provide sanctions for violations;
- (ii) The National Treasury implements the ***Office of Controller of Budget-Central Bank of Kenya*** integrated payment system in order to track funds from approval to expenditure to ensure accountability;
- (iii) The Controller of Budget completes special audits on all unauthorized accounts within 120 days and submits reports to relevant investigative agencies;
- (iv) The Public Finance Management (Amendment) Bill 2024 includes provisions to bring all special funds and levies under Office of Controller of Budget for oversight; and

- (v) The Salaries and Remuneration Commission reviews compensation for Office of Controller of Budget staff to enhance institutional capacity and prevent brain drain.

THE COMMISSION ON REVENUE ALLOCATION (CRA)

2.6 Establish and Mandate

- 19 The Commission on Revenue Allocation (CRA) is established under Article 215 of the Constitution of Kenya as an independent body tasked with ensuring equitable distribution of national revenue. Its core mandate involves recommending the basis for revenue sharing between the national and county governments and among the 47 county governments.
- 20 The CRA develops evidence-based formulas that consider factors like population size, development needs, service delivery gaps, and fiscal responsibility to promote balanced regional development while maintaining national cohesion.

2.7 Submissions by the Commission on Revenue Allocation (CRA)

- 21 The Chairperson of the CRA, CPA Mary Wanyonyi, appeared before the Committee on Thursday, 19th September 2024, at Bunge Towers to deliberate on the Commission's discharge of its mandate pursuant to Article 216 of the Constitution and any impediment faced by the Commission in undertaking its role.
- 22 The Chair noted that in accordance with section 25(5) of the Public Finance Management Act, Cap. 412A the CRA provided expert recommendations on three pivotal policy documents that shape Kenya's fiscal trajectory:
 - a) ***Budget Review and Outlook Paper (BROP) 2023*** – The Commission evaluated the government's expenditure performance, revenue collection efficiency, and macroeconomic projections to ensure alignment with equitable development goals.
 - b) ***Budget Policy Statement (BPS) 2024*** – This assessment focused on fiscal policy priorities, expenditure ceilings, and revenue-raising measures, with recommendations aimed at enhancing county financial sustainability.
 - c) ***Medium-Term Debt Management Strategy (MTDS) 2024*** – The CRA analysed Kenya's borrowing framework to mitigate risks associated with public debt and ensure that county governments are not adversely affected by unsustainable national debt levels.

County Fiscal Oversight and Strengthening Fiscal Responsibility

- 23 The Commission Chair noted that the Commission had intensified its oversight role to enhance fiscal discipline at the county level. However, challenges persist, as evidenced by the fact that only 24 out of 47 counties submitted their County Fiscal Strategy Papers (CFSPs) for review, despite the legal requirement under section 117 of the PFMA, Cap. 421A. The CFSPs are crucial in assessing county governments' budget priorities,

revenue projections, and expenditure plans, and non-compliance undermines transparency.

- 24 She added that to improve fiscal governance, the CRA had been actively supporting the establishment and capacity-building of County Budget and Economic Forums (CBEFs). These forums, mandated under section 137 of the PFMA, serve as platforms for public participation in budgeting processes. While 35 counties have established CBEFs, only 13 have received full training on their roles in enhancing budget credibility and accountability. The Commission is working to accelerate the training of the remaining forums to ensure they effectively contribute to prudent financial management.
- 25 Furthermore, the CRA has developed a Fiscal Responsibility Index, a pioneering tool designed to assess and rank counties based on three key parameters:
- a) Fiscal Reporting – Transparency in financial disclosures and adherence to reporting timelines.
 - b) Fiscal Focusing and Budgeting – The extent to which counties prioritize development needs in their budgets.
 - c) Fiscal Risk Analysis and Management – Measures taken to mitigate financial vulnerabilities, such as pending bills and unsustainable debt.
- 26 The index will incentivize counties to improve their fiscal management practices by providing a standardized performance benchmark.

Constitutional Mandate Implementation

- 27 The Commission reported that it had fully discharged its obligation under Article 205 of the Constitution by conducting comprehensive reviews of all Bills containing provisions on revenue sharing or county financial matters during the reporting period. This included detailed technical analysis of the Division of Revenue Bill 2023, County Allocation of Revenue Bill 2023, and relevant Supplementary Appropriation Bills.
- 28 Pursuant to Section 25(5) of the Public Finance Management Act, Cap. 412A, the Commission submitted detailed recommendations on the Budget Review and Outlook Paper (BROP) 2023, Budget Policy Statement (BPS) 2024, and Medium-Term Debt Management Strategy (MTDS) 2024. These recommendations focused on ensuring alignment with principles of equitable development and fiscal responsibility.

Equalization Fund Management

- 29 On the Equalization Fund, the Commission reported completion of field visits to 26 marginalized counties to document service delivery gaps in water, roads, health and electricity infrastructure. These findings were to inform development of the Third Policy for Identifying Marginalized Areas - a vital tool for directing resources to Kenya's most underserved regions. These initiatives collectively advance the Commission's

constitutional agenda to promote equitable development through fair, evidence-based revenue allocation.

Fourth Basis for Revenue Sharing among counties

- 30 The Commission informed the Committee that preparatory work for the Fourth Basis for Revenue Sharing Among County Governments (FY 2025/26-2029/30) was at an advanced stage. This involved development of a new allocation formula through extensive county consultations in all 47 counties, economic modelling, and stakeholder validation workshops.
- 31 The Chairperson noted that the new formula would incorporate emerging demographic data, updated poverty indices, and refined measures of fiscal effort while maintaining continuity with the existing framework.

Revenue Optimization and Equalization Efforts

- 32 The Commission implemented targeted programmes to enhance county revenue generation, including disseminating groundbreaking research on Own Source Revenue potential and tax gaps in five pilot counties (*Taita Taveta, Uasin Gishu, West Pokot, Kakamega and Homabay*), while building capacity through specialized Tax Administration Diagnostic Assessment Tool (TADAT) training for staff. Recognizing untapped revenue streams, fact-finding missions assessed economic potential around major water bodies in *Nakuru, Kisumu, Homabay, Kilifi and Kwale counties*.

COMMITTEE OBSERVATIONS

- 33 With regard to the **Commission on Revenue Allocation (CRA)** the Committee observed as follows:

THAT-

- (i) The Commission has demonstrated strong technical capacity in executing its constitutional mandate, particularly in developing sophisticated fiscal analysis tools and conducting comprehensive county engagements.
- (ii) Persistent non-compliance by county governments, particularly in submission of fiscal documents, undermines the effectiveness of fiscal oversight mechanisms.
- (iii) The development of the Fourth Basis for Revenue Sharing is progressing well but faces significant data challenges that may affect the timeliness of completion.
- (iv) The Equalization Fund continues to face implementation challenges in effectively addressing regional disparities, necessitating stronger monitoring frameworks.
- (v) Revenue enhancement initiatives show promise but require scaling to all counties to have meaningful national impact.

- (vi) Despite constitutional provisions for equitable development (Article 174(c), 175(b)), county governments persistently misallocate shareable revenue, with recurrent expenditures consuming over 70% of county budgets while development projects remain underfunded.

COMMITTEE RECOMMENDATIONS

34 Based on the Committee's findings and general observations, the Committee makes the following recommendations;

- (i) That the National Assembly considers amendments to the Commission on Revenue Allocation Act, Cap. 428 to strengthen enforcement mechanisms for ensuring county compliance with fiscal responsibility requirements, including penalties for non-submission of mandatory reports.
- (ii) That the National Treasury increases budgetary allocation to the Commission in FY2025/26 specifically to:
 - a) Expand county capacity building programmes
 - b) Enhance data collection systems
 - c) Accelerate completion of the Fourth Basis for Revenue Sharing
- (iii) That the Commission develops and implements a comprehensive monitoring framework for Equalization Fund projects to ensure tangible results in bridging development gaps.
- (iv) A model like that of the Constituency Development Fund (CDF) needs to be adopted and used when it comes to counties shareable revenue.

THE OFFICE OF THE AUDITOR-GENERAL

2.8 Establishment and Mandate

- 5. The Office of the Auditor-General (OAG) is established under Article 229 of the Constitution of Kenya and operationalized by the Public Audit Act, Cap. 412B. Its constitutional mandate includes auditing and reporting on all public funds, resources, and accounts of national and county governments, state organs, courts, public debt, and entities funded by public resources.

2.9 Background

- 6. The Deputy Auditor General, CPA Isaac Ng'ang'a, appeared before the Committee on Thursday, 24th April, 2025 at Bunge Towers to deliberate on the Commission's discharge of its mandate pursuant to Article 229 of the Constitution and any impediment faced by the Commission in undertaking its role.

2.10 Submissions by the Office of the Auditor General (OAG)

Expansion and Performance of Audits

2. The Office of the Auditor General reported a **917% increase** in its audit scope over eight years, from 1,192 entities in FY 2016/2017 to over 12,700 entities in FY 2023/2024. This expansion includes Level 4/5 hospitals, public secondary schools, TVET institutions, municipalities, and newly created funds such as the Social Health Insurance Fund and the Primary Healthcare Fund.
3. The OAG conducts **performance audits** to assess public resource effectiveness, submitting over 50 reports to Parliament. Only two reports (2023 Flood Response, 2021 Services for Persons with Disabilities) have been debated.

Institutional Independence

4. The Office of the Auditor General noted that despite constitutional safeguards in Articles 248 and 249 of the Constitution, the OAG ranks below peers (Uganda, South Africa) in financial autonomy. It receives 0.20% of the national budget, hindering mandate delivery.
5. CPA Isaac Ng'ang'a noted that *The Public Audit (Amendment) Bill, 2024* represents a critical legislative intervention to fortify the institutional independence of the Office of the Auditor-General (OAG), a constitutional imperative under Articles 248–249. The Bill addresses three pivotal areas:
 - i). **Financial Autonomy:** The Bill seeks to guarantee the OAG a minimum annual allocation of 0.5% of national revenue, calculated from the most recent audited accounts. This provision directly responds to chronic underfunding, where the OAG currently receives only 0.20% of the national budget despite auditing 100% of public funds. By anchoring funding to a fixed percentage, the Bill mitigates arbitrary budget cuts and ensures predictable resourcing for audits, reducing reliance on discretionary allocations by the National Treasury.
 - ii). **Operational Independence:** The establishment of an OAG Fund under the Bill would empower the Office to manage its finances independently, free from bureaucratic bottlenecks. This fund would enable the OAG to allocate resources flexibly to emerging priorities such as forensic audits, climate action assessments, and cybersecurity audits without seeking ad hoc approvals. Such financial self-determination is vital to maintaining impartiality and resisting external pressures, particularly when auditing politically sensitive entities.
 - iii). **Mandate Clarity and Compliance:** The Bill clarifies the OAG's constitutional authority to audit all public funds, including those managed by private entities, in line with the High Court's interpretation in Petition No. 33 of 2019. It rectifies ambiguities in the Public Audit Act, Cap. 412B which have led to jurisdictional disputes and non-compliance by some public institutions. By codifying the OAG's expanded mandate,

the Bill reinforces its independence to investigate and report without interference, ensuring alignment with judicial precedents like the 2024 High Court ruling (HCJR No. E082 of 2023) that affirmed strict adherence to constitutional audit timelines.

6. CPA Isaac Ng'ang'a noted that the reforms collectively address systemic vulnerabilities that have historically undermined the OAG's independence. The Bill's passage would elevate Kenya's standing by institutionalizing safeguards against political and fiscal interference, ensuring the OAG can fulfill its role as the constitutionally mandated guardian of public accountability.

Audit report submissions and backlog

7. Regarding submission of audit reports to Parliament, the OAG noted that they have always complied with submission timelines with regard to reports. They however noted that there was a lot of backlog in the Parliamentary process of debating and considering the audit reports.

Corruption

8. Regarding allegations of corruption against officers who audit institutions, the OAG submitted that their office collaborates with the EACC (Ethics and Anti-corruption Commission) and DCI (Directorate of Criminal Investigation) on any incidences of corruption noting that some staff members have been interdicted as part of disciplinary measures.
9. CPA Isaac Ng'ang'a further noted that the Office had instituted mandatory transfers for officers every three years and that they had introduced a code of ethics to address challenges related to corruption and professional negligence among staff.

2.11 COMMITTEE FINDINGS AND OBSERVATIONS

- 35 Having analysed the submissions from the **Office of the Auditor General (OAG)** the Committee observed as follows:

THAT-

- 1) The Office faces systemic impediments in meeting constitutional audit deadlines under *Article 229(4)* due to conflicting statutory requirements in the *Public Finance Management Act, 2012*, which compresses audit windows from six (6) to three (3) months. This conflict, exacerbated by the *High Court ruling in HCJR No. E082 of 2023* declaring timelines mandatory, has caused chronic reporting backlogs and undermined parliamentary oversight;
- 2) Despite constitutional guarantees (*Articles 248–249*), the Office operates with diminished autonomy, evidenced by underfunding (allocated **0.20%** of the national

budget versus the internationally recommended 0.5%) and lower institutional independence rankings compared to peer institutions (Uganda and South Africa); and

- 3) Legislative interventions—particularly the expeditious passage of the *Public Audit (Amendment) Bill, 2024* is critical to guaranteeing funding to the Office of the Auditor General and establishing an Office of the Auditor General Fund to ensure operational flexibility.

2.12 RECOMMENDATIONS OF THE COMMITTEE

36 Based on the Committee’s findings and general observations, the Committee makes the following recommendations;

- i). The National Assembly amends the Public Finance Management Act, Cap. 412A to reconcile statutory deadlines with Article 229(4) of the Constitution. This amendment should require all public entities to submit financial statements within one month after the financial year-end, with clear penalties imposed on accounting officers for non-compliance. This legislative alignment is critical to eliminate reporting backlogs and restore effective Parliamentary oversight.
- ii). The National Treasury implements immediate interim measures bridging the OAG's funding gap from 0.20% to 0.50% of national revenue pending passage of the Public Audit (Amendment) Bill, 2024. Concurrently, Parliament prioritizes enactment of this Bill to constitutionally guarantee minimum funding, establish the OAG Fund for operational flexibility, and clarify jurisdictional mandates.
- iii). The Auditor-General audit and report to the Committee on three critical areas: first, the legality and economic impact of tax waivers granted under Article 210 of the Constitution; secondly, public debt management including sustainability analyses and contract transparency under Article 229(4); and thirdly, revenue collections through the E-Citizen platform with focus on system integrity and leakage risks.

SIGNED.....:..... DATE.....19/06/2025.....

HON. ERICK KAREMBA MUCHANGI, CBS, MP
CHAIRPERSON, CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE

ANNEXURES

Annex 1: Minutes of the Committee

Annex 2: Adoption List

Annex 3: Submission by the Office of the Controller of Budget on the Status of implementation of their mandate as per the Constitution and challenges faced

Annex 4: Submission by the Commission on Revenue Allocation on the Status of implementation of their mandate as per the Constitution and any challenges faced

Annex 5: Submission by the Office of the Auditor General on the Status of implementation of their mandate as per the Constitution and any challenges faced

**MINUTES OF THE TWENTY SECOND SITTING OF THE CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON TUESDAY 3RD
JUNE,2025 AT 12:00 PM AT COMMITTEE ROOM 21, FIFTH FLOOR BUNGE
TOWER.**

PRESENT

1. Hon. William Kamket, M.P.- Vice-Chairperson
2. Hon. Charles Nguna Ngusya, M.P
3. Hon. Mbalu, Jessica Nduku Kiko, M.P.
4. Hon. Paul Abuor, M.P.
5. Hon. Mejjadonk Benjamin Gathiru, M.P.
6. Hon. John Murumba Chikati, MBS, M.P.
7. Hon. Caroli Omondi, CBS, M.P.
8. Hon. Lawrence Aburi Mpuru, M.P.
9. Hon. Geoffrey Ekesa Mulanya, M.P.
10. Hon. George Risa Sunkuyia, M.P
11. Hon. Osero, Patrick Kibagendi, M.P.

ABSENT WITH APOLOGIES

1. Hon. Muchangi Karemba, CBS, M.P. -Chairperson
2. Hon. Mary Wamaua, M.P
3. Hon. Oscar Nabulindo, M.P.
4. Hon. Onyiego Silvanus Osoro, M.P.
5. Hon. Bernard Kitur, M.P.
6. Hon. Karitho, Kiili Daniel, M.P.
7. Hon. John Mukunji Gitonga, MP
8. Hon. Jackson Lekumontare, M.P.
9. Hon. Abdisirat, Khalif Ali, M.P.
10. Hon. Mwangi, Teresia Wanjiru, M.P.
11. Hon. Mohamed, Umulkher Harun, M.P.
12. Hon. Hamisi, Kakuta Maimai, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|-----------------------|---|------------------------|
| 1. Ms. Hellen Masiyoi | - | Senior Clerk Assistant |
| 2. Mr. Alvin Ochieng | - | Research Officer |
| 3. Mr. Kelvin Lengasi | - | Audio Officer |
| 4. Mr. Jillo Yeziel | - | Sergeant at arms |

MIN NO. CIOC/79/2025: PRELIMINARIES

The Vice Chairperson called the meeting to order at 12:00 p.m. and said a word of prayer. He led members in introduction and briefed them on the agenda of the meeting.

MIN NO. CIOC/80/2025: ADOPTION OF THE AGENDA

The proposed agenda was adopted having been proposed by Hon. Geoffrey Ekesa Mulanya, M.P and seconded by the Hon. Caroli Omondi, CBS, M.P.

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Adoption of the Second report on the status of the implementation of the Constitution; and
6. Any Other Business
7. Adjournment
8. Date for the next Sitting

MIN NO. CIOC/81/2025: CONFIRMATION OF MINUTES

2. Minutes of the 21st sitting were confirmed as true records having been proposed by the Hon. Paul Abuor, M.P and seconded by the Hon. Geoffrey Mulanya, M.P.

MIN NO. CIOC/82/2025: ADOPTION OF THE SECOND REPORT ON THE IMPLEMENTATION OF THE CONSTITUTION

COMMITTEE OBSERVATIONS

- 3 With regard to the Office of **Controller of Budget Office of the Controller of Budget** the Committee observed as follows:
THAT-
 - (i) The OCoB's oversight mandate is severely undermined by legislative limitations and lack of enforcement mechanisms.
 - (ii) The pending bills crisis directly results from systemic failures in fiscal planning and revenue projection.
 - (iii) The Housing Levy's exclusion from oversight creates significant accountability gaps.

- (iv) Wasteful expenditure continues unabated despite the existence of oversight institutions; and
- (v) Multiple unauthorized accounts indicate deliberate attempts to circumvent financial controls.

COMMITTEE RECOMMENDATIONS

4 Based on the Committee's findings and general observations, the Committee makes the following recommendations.

THAT.

- (i) The National Assembly amends the Controller of Budget Act to:
 - a) Grant enforcement powers to implement recommendations of the Controller of Budget.
 - b) Remove restrictions on economic reporting; and
 - c) Provide sanctions for violations.
- (ii) The National Treasury implements the Office of Controller of Budget-Central Bank of Kenya integrated payment system in order to track funds from approval to expenditure to ensure accountability.
- (iii) The Controller of Budget completes special audits on all unauthorized accounts within 120 days and submits reports to relevant investigative agencies.
- (iv) The Public Finance Management (Amendment) Bill 2024 includes provisions to bring all special funds and levies under Office of Controller of Budget for oversight; and
- (v) The Salaries and Remuneration Commission reviews compensation for Office of Controller of Budget staff to enhance institutional capacity and prevent brain drain.

5 With regards the Commission on Revenue Allocation (CRA) the Committee observed as follows:

THAT-

- (i) The Commission has demonstrated strong technical capacity in executing its constitutional mandate, particularly in developing sophisticated fiscal analysis tools and conducting comprehensive county engagements.
- (ii) Persistent non-compliance by county governments, particularly in submission of fiscal documents, undermines the effectiveness of fiscal oversight mechanisms.
- (iii) The development of the Fourth Basis for Revenue Sharing is progressing well but faces significant data challenges that may affect the timeliness of completion.
- (iv) The Equalization Fund continues to face implementation challenges in effectively addressing regional disparities, necessitating stronger monitoring frameworks.
- (v) Revenue enhancement initiatives show promise but require scaling to all counties to have meaningful national impact.
- (vi) Despite constitutional provisions for equitable development (Article 174(c), 175(b)), county governments persistently misallocate shareable revenue, with recurrent expenditures consuming over 70% of county budgets while development projects remain underfunded.

COMMITTEE OBSERVATIONS

6 With regard to the **Commission on Revenue Allocation (CRA)** the Committee observed as follows:

THAT-

- (vii) The Commission has demonstrated strong technical capacity in executing its constitutional mandate, particularly in developing sophisticated fiscal analysis tools and conducting comprehensive county engagements.
- (viii) Persistent non-compliance by county governments, particularly in submission of fiscal documents, undermines the effectiveness of fiscal oversight mechanisms.
- (ix) The development of the Fourth Basis for Revenue Sharing is progressing well but faces significant data challenges that may affect the timeliness of completion.
- (x) The Equalization Fund continues to face implementation challenges in effectively addressing regional disparities, necessitating stronger monitoring frameworks.
- (xi) Revenue enhancement initiatives show promise but require scaling to all counties to have meaningful national impact.
- (xii) Despite constitutional provisions for equitable development (Article 174(c), 175(b)), county governments persistently misallocate shareable revenue, with recurrent expenditures consuming over 70% of county budgets while development projects remain underfunded.

COMMITTEE RECOMMENDATIONS

7 Based on the Committee's findings and general observations, the Committee makes the following recommendations.

- (i) That the National Assembly considers amendments to the Commission on Revenue Allocation Act, Cap. 428 to strengthen enforcement mechanisms for ensuring county compliance with fiscal responsibility requirements, including penalties for non-submission of mandatory reports.
- (ii) That the National Treasury increases budgetary allocation to the Commission in FY2025/26 specifically to:
 - a) Expand county capacity building programmes
 - b) Enhance data collection systems
 - c) Accelerate completion of the Fourth Basis for Revenue Sharing
- (iii) That the Commission develops and implements a comprehensive monitoring framework for Equalization Fund projects to ensure tangible results in bridging development gaps.

(iv) A model like that of the Constituency Development Fund (CDF) needs to be adopted and used when it comes to counties shareable revenue.

8 Having analysed the submissions from the **Office of the Auditor General (OAG)** the Committee observed as follows:

THAT-

- 1) The Office faces systemic impediments in meeting constitutional audit deadlines under *Article 229(4)* due to conflicting statutory requirements in the *Public Finance Management Act, 2012*, which compresses audit windows from six (6) to three (3) months. This conflict, exacerbated by the *High Court ruling in HCJR No. E082 of 2023* declaring timelines mandatory, has caused chronic reporting backlogs and undermined parliamentary oversight.
- 2) Despite constitutional guarantees (*Articles 248–249*), the Office operates with diminished autonomy, evidenced by underfunding (allocated **0.20%** of the national budget versus the internationally recommended **0.5%**) and lower institutional independence rankings compared to peer institutions (Uganda and South Africa); and
- 3) Legislative interventions—particularly the expeditious passage of the *Public Audit (Amendment) Bill, 2024* is critical to guaranteeing funding to the Office of the Auditor General and establishing an Office of the Auditor General Fund to ensure operational flexibility.

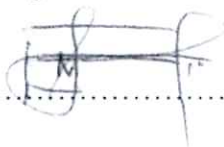
RECOMMENDATIONS OF THE COMMITTEE

- 9 Based on the Committee's findings and general observations, the Committee makes the following recommendations.
- i). The National Assembly amends the Public Finance Management Act, Cap. 412A to reconcile statutory deadlines with Article 229(4) of the Constitution. This amendment should require all public entities to submit financial statements within one month after the financial year-end, with clear penalties imposed on accounting officers for non-compliance. This legislative alignment is critical to eliminate reporting backlogs and restore effective Parliamentary oversight.
 - ii). The National Treasury implements immediate interim measures bridging the OAG's funding gap from 0.20% to 0.50% of national revenue pending passage of the Public Audit (Amendment) Bill, 2024. Concurrently, Parliament prioritizes enactment of this Bill to constitutionally guarantee minimum funding, establish the OAG Fund for operational flexibility, and clarify jurisdictional mandates.
 - iii). The Auditor-General audit and report to the Committee on three critical areas: first, the legality and economic impact of tax waivers granted under Article 210 of the Constitution; secondly, public debt management including sustainability analyses and contract transparency under Article 229(4); and thirdly, revenue collections through the E-Citizen platform with focus on system integrity and leakage risks.


MIN NO. CIOC/83/2025: ADJOURNMENT

There being no other business, the meeting was adjourned at 1:00 P.M.

The next meeting will be held on Thursday, 4th June, 2025.

Signed..........Date. 11/06/25.....

Hon. Karemba Muchangi, MP – Chairperson

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|---|--|
|  THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: 24 JUN 2025 | |
| DAY: <u>Tuesday</u> | |
| TABLED BY: | <u>Hon. William Kamuket, MP Vice - chairperson</u> |
| CLERK-AT THE-TABLE: | <u>Ms. Ann Shibusko</u> |

**MINUTES OF THE 42ND SITTING OF THE CONSTITUTIONAL IMPLEMENTATION
OVERSIGHT COMMITTEE HELD ON THURSDAY 19TH SEPTEMBER, 2024 AT 12:00PM
AT COMMITTEE ROOM 25, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS.**

PRESENT

1. Hon. William Kamket, M.P- Vice Chairperson
2. Hon. Charles Ngusya Ngunu, M.P
3. Hon. Hamisi Kakuta Maimai, M.P
4. Hon. Geoffrey Ekesa Mulanya, M.P
5. Hon. Patrick Osero Kibagendi, M.P
6. Hon. Augustine Mwafrika Kamande, M.P
7. Hon. George Risa Sunkuyia, M.P

ABSENT

1. Hon. Dr. Wamuchomba Gathoni, HSC, M.P –Chairperson
2. Hon. Silvanus Onyiego Osoro, CBS, M.P
3. Hon. Aramat Lemanken, M.P
4. Hon. Benjamin Langat Kipkirui, M.P
5. Hon. Jessica Mbalu Nduku, CBS, M.P
6. Hon. Daniel Karitho Kiili, M.P
7. Hon. Patrick Ntwiga Munene, M.P
8. Hon. Lawrence Aburi Mpuru M.P
9. Hon. Peter Oscar Nabulindo, M.P
10. Hon. Ruth Odinga, M.P
11. Hon. John Gitonga Mukunji Mwaniki, M.P
12. Hon. Jackson Lentoijoni Lekumontare, M.P
13. Hon. John Murumba Chikati, M.P
14. Hon. Ali Abdisirat Khalif, M.P
15. Hon. Betty Njeri Maina, M.P
16. Hon. Harun Mohammed Umulkher, M.P

IN ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 2. Ms. Emma Essendi | - | Legal Counsel |
| 3. Mr. Alvin Ochieng | - | Research Officer |
| 4. Ms. Merciline Kerubo | - | Audio Officer |
| 5. Ms. Pauline Sifuma | - | Hansard Reporter |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer |

COMMISSION ON REVENUE ALLOCATION

1. CPA Mary Wanyonyi - Chairperson
2. Dr. George Midiwo - Commissioner
3. CPA Rob Lenuno - Acting CEO

4. CPA Roble Nuno - Director Fiscal Affairs
5. Ms. Sheila Yieke - Director Legal Affairs

MIN NO. CIOC/183/2024: PRELIMINARIES

1. The Chairperson called the meeting to order at 12.10 PM followed by a word of prayer by the Hon. Patrick Osero Kibagendi, M.P

MIN NO. CIOC/184/2024: ADOPTION OF THE AGENDA

2. The agenda was adopted having been proposed by the Hon. Charles Ngusya Nguna, M.P and seconded by the Hon. Patrick Osero Kibagendi, M.P

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Meeting with the commission secretary, Commission on Revenue Allocation to deliberate on the commission's discharge of its mandate pursuant to Article 216 of the Constitution and any impediments faced by the office in undertaking its role.
5. Any Other Business
6. Adjournment

MIN NO. CIOC/185/2024: MEETING WITH THE CONTROLLER OF BUDGET

The chairperson, CPA Mary Wanyonyi, apprised the Committee as follows-

3. The Commission on Revenue Allocation (CRA) is a key independent constitutional commission, with a unique and unparalleled mandate in Chapter 12 of the Constitution. Established under Article 215 of the Constitution, the Commission was established as an independent institution with the Principal Function of *making recommendations concerning the basis for the equitable sharing of revenue raised by the national government; between the National and County Governments; and among the County Governments (Article 216(1)(a)(b))*.
4. To fulfil this mandate, the Commission prepared and submitted to Parliament its recommendations for sharing of revenue between the national and county governments for the financial years **2023/24**.
5. Article 205 requires that when a Bill that includes provisions dealing with the sharing of revenue or any financial matter concerning county governments is published, the Commission considers those provisions and make recommendations to the National Assembly and Senate.

Recommendations on National Government Policies

6. Section 25(5) of the PFMA 2012 requires that the National Treasury seeks and considers the Commission views on the BPS. The Commission reviewed the 2024 BPS and submitted its views to the National Treasury. During the reporting period, the Commission also made annual recommendations to Parliament on each of the following policy documents on financial matters:
 1. Budget Review and Outlook Paper (BROP), 2023

2. Budget Policy Statement (BPS), 2024
3. Medium-Term Debt Management Strategy (MTDS), 2024

Preparation of the Fourth Basis for Revenue-sharing among County Governments

7. During the FY 2023-24, the Commission commenced the preparation of the recommendation on the Fourth Basis for Revenue Sharing Among County Governments which will be used to share revenues over a period of five years (FY 2025/26 to 2029/30).

FINANCING AND FINANCIAL MANAGEMENT

8. Pursuant to Article 216(2) of the Constitution, the Commission is mandated to *make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and national legislation.*

County Governments Recurrent Expenditure Budget Ceilings Recommendation

9. Article 216 (3c) of the Constitution requires that in formulating recommendations, the Commission should encourage Fiscal Responsibility. In the period under review, Commission executed by developing County Ranking Framework and Fiscal Responsibility.

County Fiscal Strategy Paper Report

10. Section 117 of the Public Finance Act 2012, County Treasuries are required to seek the views of the Commission before submitting the County Fiscal Strategy Paper (CFSP) to the County Assemblies. Notably, only twenty-four (24) counties submitted their CFSPs to the Commission for review. Figure 1 illustrates the number of counties that submitted their CFSPs in FY 2024/25.

County Budget and Economic Forums (CBEFs) Training

11. Section 137 of the Public Finance Management Act, 2012 provides for establishment of CBEFs. The purpose of the Forum is to provide a means for consultation by the county government on preparation of county plans, the County Fiscal Strategy Paper, the Budget Review and Outlook Paper for the county and matters relating to budgeting, the economy and financial management at the county level. Enhancing the capacity of County Budget and Economic Forums (CBEFs) strengthens the capacity of county public finance institutions.
12. Thirty-five (35) county governments have established CBEFs to date. So far, Commission has trained only thirteen (13) CBEFs while twenty-two (22) CBEFs are yet to be inducted. There is buy-in by the county leadership on the involvement of the Forums in public participation during budget making process. Once trained, the Commission monitors their operations to check the CBEFs' effectiveness.

Framework for Ranking Counties

13. The Commission has developed a framework for ranking and rewarding counties on their OSR performance and adherence to fiscal responsibility principles; this is to incentivize counties and encourage Fiscal responsibility. The ranking tool has been subjected to peer review by stakeholders and will be rolled out once funds are available.

Fiscal Responsibility Index

14. The Commission has developed a Fiscal Responsibility Index where three (3) parameters were identified and subjected to key stakeholder inputs – Fiscal Reporting, Fiscal Focusing and Budgeting, and Fiscal Risk Analysis and Management. The tool will be rolled out once funds are available.
15. Ten (10) Commission staff were trained and certified on the Tax Administration Diagnostic and Assessment Tool (TADAT), a global standard tool used for assessing tax administration performance. Some of the staff have continued to support counties in the development of Revenue Enhancement Action Plans that are in line with TADAT. The Commission did not undertake any revenue assessments due to budgetary constraints.

Dissemination County OSR Potential and Tax Gap Study

16. The Commission in collaboration with the World Bank disseminated the County Own Source Revenue potential and Tax Gap study to 5 pilot counties and developed revenue enhancement action plans. The 5 pilot counties were Taita Taveta, Uasin Gishu, West Pokot, Kakamega and Homabay. The Commission also built the capacity of Five (5) County Governments on OSR enhancement strategies - Makueni, Mombasa, Kericho, Kilifi and Lamu.

Revenue Enhancement to National & County Governments from Natural Resources

17. The Commission visited Counties with large water bodies on a fact-finding mission to identify the economic opportunities and revenue potential available to both National and County Governments. A report was prepared will be disseminated to both levels of government for implementation of the Commission's recommendations. The Counties visited are Nakuru (inland), Kisumu and Homabay (Lake basin) and Kilifi & Kwale (Coastal ocean strip).

TRANSITIONAL EQUALISATION

Policy identifying marginalized areas

18. The Commission is mandated by Article 216(4) to determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of sharing of the Equalization Fund. The Equalization Fund is used to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation.
19. The Commission visited *26 counties with marginalized areas* and engaged with stakeholders in the preparation for the Third Policy identifying marginalized areas to ascertain and document the extent of deprivation in the marginalized areas and engage with the county leadership and the public on the Third Policy identifying marginalized areas. The Third Policy will be finalized in FY 2024/25.

Third Edition of the County Fact Sheets

20. The Commission developed and published the Third Edition of County Fact Sheets. The Third Edition builds on the Second Edition with the most recent data on all the variables. It also provides additional data sets on county revenue and expenditure, counties' contribution to the Gross Domestic Product, and data on dominant economic activities by county.

GENERAL ADMINISTRATION AND SUPPORT SERVICES

Financial Reporting

21. The Commission achieved the following during the reporting year 2023-24:
- i. Achieved Unqualified Audit Opinion for FY2022-23.
 - ii. Received an award as the Second Runners-up in the Financial Reporting (FiRE) competition, coordinated by ICPAK in the category of International Public Sector Accounting Standards (IPSAS) Accrual for Commissions and Independent Offices.
22. The Commission has improved staff benefits by providing Staff Car Loan and Mortgage.
23. The new Commissioners underwent an induction and training on Leadership and Corporate Governance organized by the Institute of Certified Secretaries (ICS). The Commission enhanced its fleet through the acquisition of one vehicle in the last Financial year 2023/24.
24. The Commission made notable strides in strengthening its operational framework and optimizing its work environment:
- i. Reviewed Operational Policies and Procedure manuals.
 - ii. Relocated Commission offices for a more conducive work environment: from Riverside drive to the Upper Hill, Nairobi area where many public sector offices are located.

CHALLENGES

25. Despite the Commission's critical role in ensuring equitable revenue distribution and fostering a robust system of devolved governance, current encroachments on its mandate by other government entities and the inadequacy of funding threaten its ability to fulfil this vital constitutional responsibility.

Effect of Budget Reductions on the Execution of Core Activities

26. The Commission was allocated a budget of Kshs. 516.45 million (2022/23) that was later reinstated to Kshs. 516.82 million. The revised budget was too low to execute the Commission's planned activities for the reporting period.
27. The Commission's budget was later **reinstated by Ksh. 56.41 million** following several engagements with both the National Treasury and the Finance and Planning Committee (FNPC) of the National Assembly. The Commission implemented most of its key priorities to an **absorption rate of 89%** (2022/23: 99%) of the annual revised budget. The low absorption was due to lack of exchequer releases at end of the financial year for commitments that had already been incurred.

Limited Enforcement Authority for PFMA Compliance

28. Counties widely fail to comply with Section 161 of the Public Finance Management Act (PFMA), which requires them to seek the Commission's input when developing revenue-raising measures. This issue is further compounded by the absence or inefficiency of Bill tracking systems in many counties, hindering effective monitoring. Additionally, the Commission lacks the enforcement powers needed to ensure adherence to Section 161, limiting its ability to compel counties to comply with the PFMA.

Limitations on the Commission on Revenue Allocation Act, 2013

29. The Act establishing the Commission has certain limitations that affect the Commission's ability to fully carry out its mandate. Since its inception, the Commission on Revenue Allocation Act has not been reviewed, a process that is essential for the development of the Commission Regulations. Revisiting the Act would also allow for the inclusion of important functions, such as the Equalization Fund, to enhance effective implementation. To undertake a comprehensive review, the Commission requires adequate budgetary resources.

Committee Observations

30. The Committee observed as follows: -
THAT-

- i. The framework for ranking counties is inaccurate. CRA visited 26 counties and based on how it allocates equalization fund some of the counties left out are marginalized. A comprehensive study on all the 47 counties sought to be conducted to identify marginalized counties to avoid some areas missing the equalization fund.
- ii. The criteria used to determine marginalized areas is questionable. There are constituencies such as Mwingi West and Kajiado East which do not receive the equalization fund despite the constituencies surrounding them receive the funds yet they all have the same conditions.
- iii. There exists a conflict on the road maintenance levy between the national government and county governments. When road levy fund is given to county government, the money goes into a general pool and much progress on it is not seen. The law needs to prohibit these monies from being issued through constituencies.
- iv. The CRA needs to do quarterly or annual ranking of the counties based on performance of the counties so that counties are motivated to improve their resources.
- v. There are conflicts between national and county governments whereby the County governments say that they have not received any money yet the national government claims to have released money to the counties. Some of the effects are that majority of county workers get delayed salaries.

CRA Response

The chairperson, CPA Mary Wanyonyi, apprised the Committee as follows-

31. On the issue of the equalization fund, the equalization fund has had two policies. The first policy identified counties specifically the number of counties and around 14 counties were identified. The second policy took a different approach and it looked at regions and it came up with about 1400 areas that are marginalized.
32. CRA is currently in the process of developing a third policy. The implementation of second policy has not taken place despite it being developed. The role of CRA is to develop policies and identify the areas that the funds are to be allocated to.
33. On the matter of how areas are identified, CRA intends to visit the remaining counties that had not been surveyed. The results of the survey will be used to come up with the third policy.
34. On road maintenance levy, the matter is still in court. The matter is under judicial consideration and therefore prohibited from public discussion.
35. CRA is keen on own source revenue to encourage equitable revenue allocation. Own source revenue helps to avoid the shortage of money or a pending bill. As a result of budget constraints, CRA has decided to partner with other entities such as the European Union to train counties on how to avoid pending bills. So far counties have exceeded their targets and are raising their own revenues as a result of these trainings. Counties are now seeing the importance of raising revenues to fill in the gaps on pending bills.
36. CRA had made a request to the National Assembly Committee on Finance and National Planning for Ksh. 25,500,000 however, they were not funded. They have developed the frameworks but they have not gone ahead to assist the counties to develop or implement these frameworks.
37. On the issue of pending bills, both the national and county government need to operate on a balance budget. The budget in counties comprises of exchequer releases which has not been allocated by the National Assembly. Counties set high targets and they have not been putting the strategies in the county strategy fiscal paper on how to achieve this. The solution on county pending bills is that any item that cannot be funded by own source revenue or by the funds from the national government ought to be shelved until resources are allocated.
38. There are limitations on the CRA Act and the Commission needs come up with legislative proposals allow it to have some enforceability powers towards counties that breach the Public Finance Management Act requirements that are legally binding to them.
39. The structural establishment of public finance management in the county is set in a bias. The National Treasury is the custodian of funds and it is to be impartial. The Public Finance Management Act defines the National Treasury as an agent of the national government and as a result the National Treasury is more government inclined when it releases funds. Every time it is to provide impartial decisions it remains an extension of the national government by virtue of the Public Finance Management Act.
40. The CRA Act only retaliated what was provided in the constitution. It does not give the Commission any enforceability powers. It does not expound on the constitutional mandate thus creating ambiguity and as a result the CRA lacks enforcement mechanisms in cases of noncompliance to its functions.


Way Forward

41. The Committee resolved as follows: -
THAT-

- i. The Commission to come up with a legislative proposal to amend the CRA Act to allow it to have some enforceability powers towards counties that breach the Public Finance Management Act requirements that are legally binding to them

MIN NO. CIOC/186/2024: ADJOURNMENT

42. There being no other business to transact, the meeting was adjourned at 1:00 PM.

SIGNED..........DATE.....19/11/2024.....

**HON. DR. WAMUCHOMBA GATHONI, HSC, M.P.
CHAIRPERSON**

**MINUTES OF THE 40TH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION
OVERSIGHT COMMITTEE HELD ON TUESDAY 17TH SEPTEMBER, 2024 AT 12:20PM
AT COMMITTEE ROOM 23, 5TH FLOOR, BUNGE TOWER, PARLIAMENT
BUILDINGS.**

PRESENT

1. Hon. Dr. Wamuchomba Gathoni, HSC, M.P –Chairperson
2. Hon. William Kamket, M.P- Vice Chairperson
3. Hon. George Risa Sunkuyia, M.P
4. Hon. Peter Oscar Nabulindo, M.P
5. Hon. Charles Ngusya Nguna, M.P
6. Hon. Ruth Odinga, M.P
7. Hon. Hamisi Kakuta Maimai, M.P
8. Hon. Geoffrey Ekesa Mulanya, M.P
9. Hon. Patrick Osero Kibagendi, M.P
10. Hon. John Gitonga Mukunji Mwaniki, M.P
11. Hon. Augustine Mwafrika Kamande, M.P

ABSENT

1. Hon. Silvanus Onyiego Osoro, CBS, M.P
2. Hon. Aramat Lemanken, M.P
3. Hon. Benjamin Langat Kipkirui, M.P
4. Hon. Jessica Mbalu Nduku, CBS, M.P
5. Hon. Patrick Ntwiga Munene, M.P
6. Hon. Lawrence Aburi Mpuru M.P
7. Hon. Jackson Lentoijoni Lekumontare, M.P
8. Hon. John Murumba Chikati, M.P
9. Hon. Daniel Karitho Kiili, M.P
10. Hon. Ali Abdisirat Khalif, M.P
11. Hon. Betty Njeri Maina, M.P
12. Hon. Harun Mohammed Umulkher, M.P

IN ATTENDANCE

SECRETARIAT

- | | | |
|-----------------------|---|--------------------------|
| 1. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 2. Ms. Emma Essendi | - | Legal Counsel |
| 3. Mr. Alvin Ochieng | - | Research Officer |
| 4. Ms. Purity Lesile | - | Research Officer- Intern |
| 5. Mr. Kelvin Lengasi | - | Audio Officer |
| 6. Ms. Pauline Sifuma | - | Hansard Reporter |
| 7. Ms. Lilian Mburugu | - | Media Relations Officer |

OFFICE OF THE CONTROLLER OF BUDGET

- | | |
|-------------------------------------|--|
| 1. FCPA Dr. Margaret Nyakang'o, CBS | - Controller of Budget |
| 2. Mr. Tuti Waweru | - Chief Manager Legal Services |
| 3. CPA Patrick Kamore | - Chief Fiscal Analyst National Government |
| 4. CPA Patric Kebiro | - Chief Fiscal Analyst Parliamentary Liaison |
| 5. CPA Ms. Theodora Ochichi | - Principal Fiscal Analyst |

MIN NO. CIOC/174/2024: PRELIMINARIES

1.The Chairperson called the meeting to order at 12.20 PM followed by a word of prayer by the Hon. John Gitonga Mukunji Mwaniki, M.P.

MIN NO. CIOC/175/2024: ADOPTION OF THE AGENDA

2.The agenda was adopted having been proposed by the Hon. Charles Ngusya Nguna, M.P and seconded by the Hon. Peter Oscar Nabulindo, M.P.

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Meeting with the Controller of Budget to deliberate on the independent office's discharge of its mandate pursuant to Article 228 of the Constitution and any impediments faced by the office in undertaking its role.
5. Any Other Business
6. Adjournment

MIN NO. CIOC/176/2024: MEETING WITH THE CONTROLLER OF BUDGET

3. The Controller of Budget, FCPA Dr. Margaret Nyakang'o, apprised the Committee as follows-

Legal Framework and implementation of the mandate of the Controller of Budget(CoB)

4. The CoB is guided by the Constitution, the CoB Act 2016, the PFM Act 2012, its attendant regulations and the County Government Act in undertaking its mandate. Its mandate is as follows:
 - i. Oversight
5. The Controller of Budget oversees the implementation of the budgets of both National and County governments by monitoring the use of public funds and reporting on how the funds are utilized.

- ii. Controlling
 - 6. The CoB authorizes withdrawals from public funds such as the Consolidated Fund (Article 206), the Equalization Fund (Article 204), the County Revenue Fund (Article 207) and any other public funds that require the authority of the CoB before withdrawal.
 - 7. The CoB must first be satisfied that the withdrawal is permitted by law before authorizing any withdrawal. To facilitate timely approval of exchequer requisitions, the CoB has developed Exchequer Requisition Guidelines.
- iii. Reporting
 - 8. The CoB prepares quarterly, annual and special reports. Quarterly reports are derived from Article 228(6) of the Constitution and Section 9 of the CoB Act, which provides that every four months, the CoB shall submit to each House of Parliament a report on the implementation the budgets of the national and county governments.
 - 9. Some of the reported areas include receipts into the Consolidated Fund and the County Revenue Funds, exchequer issues, budget performance, challenges in budget implementation and proposed measures to address the challenges.
- iv. Advisory
 - 10. The CoB advises parliament where the Cabinet Secretary National Treasury exercises his mandate to stop the transfer of funds to public entity.
- v. Investigations
 - 11. The CoB conducts investigations on its initiative or following a complaint made by a member of the public on budget implementation matters pursuant to Article 252(1)(a) of the Constitution.
- vi. Dispute Resolution
 - 12. In FY 2023/24, the office mediated a dispute between the Meru County Executive and the County Assembly following a complaint made by the executive alleging that the County Assembly had disregarded the County Fiscal Strategy Paper submitted to them by the County Treasury and instead, prepared their version without adhering to the timelines stipulated by law.
- vii. Enforcement of budgetary ceilings
 - 13. The ceilings include allocating at least 30 per cent of the total budget to development expenditures and ensuring that personnel emoluments expenditures do not exceed 35% of the total revenue.

viii. Monitoring and Evaluation(M&E)

14. This function involves checking progress and achievements and addressing challenges identified in the Budget Implementation Review Reports to provide mitigating measures to improve the realization of budgeted outcomes.
15. In FY2023/24, the office undertook M&E exercise in twenty-one (21) counties. The training focused on three thematic areas: management and status of pending bills; compliance with the law and policy on managing the wage bill; and the administration, management and performance of Own Source Revenue(OSR) collection. Some of the observations noted during the training include:
 - a) Non-compliance with the ceiling for the wage bill.
 - b) Lack of guidelines to streamline the recruitment of casual workers.
 - c) Use of manual systems to process salaries, particularly for employees on short term contracts and those without payroll numbers.
 - d) Failure to use historical performance as a basis for OSR projection.
 - e) Failure by some counties to verify ineligible pending bills delays budgeting and settling the bills.

ix. Public Sensitization

16. The CoB ensures that the public can access comprehensive, credible and timely information on budget implementation as per Section 39(8) of the Public Finance Management Act and Article 35 of the Constitution. The office does this by sharing statutory reports on the CoB website, distributing them in public libraries and giving media interviews to highlight the status of budget implementation.

Challenges faced in implementing the Controller of Budget's mandate

17. The CoB has faced various challenges that have curtailed the effective and efficient execution of the Office functions. These challenges include:
 - a) Legislative gaps in the Controller of Budget Act
18. Notable legal gaps emerged in the CoB Act which requires urgent legislative interventions. These are:
 - i. Section 4(1) of the CoB Act fails to recognize that a vacancy may arise in the position of CoB when the CoB leaves office after the lapse of the prescribed timeline of 8 years.

- ii. The CoB is barred from reporting on all facets of budgetary implementation such as reporting on economic developments and outlook, including revenue, grants, loan forecasts and receipts.
- iii. Section 8 of the CoB Act does not clearly outline all the planning and budgetary documents that ought to be submitted to the CoB to enable it to effectively oversee the implementation of the national and county government budget.
- iv. Voiding of payments after the approval for withdrawal of funds is issued by the CoB.
 - b) Delay in development of the CoB Regulations following annulment by Senate
 - 19. The CoB drafted Regulations in the year 2021, that were approved by the National Assembly committee on Delegated Legislation on 27th January 2022. The Senate Sessional Committee on Delegated Legislation annulled the regulations.
 - 20. The issues raised by the Senate cannot be addressed and legislated upon in Regulations. The CoB Act needs to be amended to address the concerns and other identified gaps that impede the effective execution of the Cob's function. The CoB has since developed draft Regulations incorporating the Senate's views however, due to budgetary constraints, the CoB has been unable to undertake public participation, a legal requirement under the Statutory Instruments Act.
 - c) Financial constraints
 - 21. Due to lack of resources, monitoring and evaluation cannot be undertaken entirely.
 - d) Salary structure for the CoB
 - 22. In consultation with the Directorate of Public Service Management(DPSM), the office has developed a proposed salary structure to attract and retain qualified staff. Goodwill and budgetary support are needed for the office to implement the proposed structure and ensure that it is at par with other offices of equal status.
 - e) Implementation of CoB recommendations by accounting officers
 - 23. Article 228(6) of the Constitution, as read with Section 9 of the CoB Act, requires the CoB to submit a report on budget implementation to parliament every four months. Section 68(4) of the PFM provides that the National Assembly shall adopt the Report by the CoB. After that, the relevant accounting officers shall prepare a report to the National Assembly with a copy of the CoB on measures taken to implement the CoB's recommendations.

24. This means that the recommendations by the CoB only become binding upon adoption by the National Assembly. The lack of clear timelines to adopt the report of the CoB by the National Assembly has hampered the CoB's discharge of its mandate, as the office is not in a position to track the implementation of the recommendations.

Committee Observations

25. The Committee observed as follows: -
THAT-

- i. The CoB is one of the offices that can help Kenya to get value for its money however, it is an institution set to fail from the beginning. The CoB Act has only 27 clauses yet the amount of work CoB is to do is immense.
- ii. The challenges faced by CoB are systemic and arising from the submissions, all they do is to report to the National Assembly and Senate and wait for the two houses to report on the findings by CoB. The CoB has no "teeth" or a form of enforceability of their recommendations.
- iii. The CoB ought to deal with the issue of pending bills and wasteful spending in the County and National governments.
- iv. There are many counties that have multiple accounts and the CoB needs to provide legal guidelines on how to curb these acts in counties.
- v. The Housing levy does not pass through the CoB and it is unclear how it is used and collected.
- vi. There are some Cabinet Secretaries and Principal Secretaries who reallocate budgets through memos and circulars.
- vii. There was an error of commission on lack of presenting the right revenue estimates to the public during the Finance Bill 2024. The public was only presented with the expenditure estimates yet the ways in which the money was to be raised was not disclosed to the public.
- viii. Is barred from reporting on economic developments and outlook, including revenue, grants, loan forecasts and receipts hence their constitutional mandate of reporting on all facets of budget implementation is hindered.

OCOB Response

FCPA Dr. Margaret Nyakang'o, the Controller of Budget, apprised the committee as follows:

26. In the matter of pending bills, when faced with a pending bill, the CoB checks the records and once a pending bill is classified as a lawful bill that needs to be paid, the CoB signs the requisition however, immediately the money lands in the spending account the CoB is excluded from the process and replaced by other payees.
27. The CoB approves money for expenditure but is excluded when it comes to the use of the same funds. A solution is being sought currently where the Cob requisition is to be linked to the Central Bank of Kenya(CBK) so that the moment the bill is approved it is approved all the way up to the payment stage in CBK.
28. The issue of overestimating revenues is what has resulted to majority of the pending bills. The revenues expected to be collected are exaggerate both at the County and National governments level then commitments are made based on the overestimated revenues. The result is that there is no money collected at the end of the day hence suppliers of goods and services are left with bills to claim.
29. Wasteful spending is a factor of pending bills. Rather than paying for services and goods that have been consumed, those responsible opt to go on leisure trips, spend on unnecessary furniture or vehicles rather than pay for what they have consumed.
30. In relation to the multiple accounts, there is no legal solution yet on multiple accounts however, the fact that there has been public education on this means that there is progress on this issue. The Auditor General is to visit these accounts to know who owns them, what they have been receiving and how they operate.
31. The Housing levy does not go through the CoB. The moment the term levy is used on any revenue then it means it is not under the jurisdiction of the CoB.
32. In the matter of CoB lacking enforceability powers, the CoB Act may have been tampered to remove any of the sensitive reporting however, there is an opportunity to look at the offending clauses and rectify them. Systemic challenges can be rectified through amendments to the various legislations touching on the CoB and there is currently a report to the Senate highlighting these limiting clauses.
33. CoB has no prosecutorial powers despite dealing with sensitive reports however, their reports are consequential since it is publicized. They name and shame and it has partnered with the media to expose corruption and leaders are held accountable.

34. Budget of CoB is 700million despite it serving the whole country. It pays 1billion in overdraft interest to the CBK unlike the Office of Auditor General with also serves the nation but is funded in billions.
35. The reallocation of budgets has been an area of abuse. Whatever is budgeted under CoB salary is reallocated elsewhere. There is a process through which reallocation happens and there is a form that is filled which becomes reallocation from the treasury and it becomes part of supplementary budget. Many of the reallocations done are questionable.
36. The reports done by the CoB at the end of the financial year are the main raw material for the budget review and outlook paper which is the forunner of the budget. This information is used to inform the new budget

Way Forward

37. The Committee resolved as follows: -
THAT-

- i. To invite the CoB on Thursday, 19th September at 9:00AM to deliberate more and exhaust the pending issues that the CoB has not apprised the Committee on.

MIN NO. CIOC/177/2024: ANY OTHER BUSSINESS

38. The Committee resolved to carry out its report writing retreat in either Nairobi, Kiambu or Machakos on 3rd to 6th October, 2024.

MIN NO. CIOC/178/2024: ADJOURNMENT

39. There being no any other business to transact, the meeting was adjourned at thirty minutes past two in the afternoon. The next meeting will be held on 15th August 2024.

SIGNED..........DATE.....19/11/2024.....

HON. DR. WAMUCHOMBA GATHONI, HSC, M.P.
CHAIRPERSON

**MINUTES OF THE 41ST SITTING OF THE CONSTITUTIONAL IMPLEMENTATION
OVERSIGHT COMMITTEE HELD ON THURSDAY 19TH SEPTEMBER, 2024 AT
9:00AM AT COMMITTEE ROOM 25, 5TH FLOOR, BUNGE TOWER, PARLIAMENT
BUILDINGS.**

PRESENT

1. Hon. Dr. Wamuchomba Gathoni, HSC, M.P –**Chairperson**
2. Hon. William Kamket, M.P- **Vice Chairperson**
3. Hon. Charles Ngusya Nguna, M.P
4. Hon. Hamisi Kakuta Maimai, M.P
5. Hon. Geoffrey Ekesa Mulanya, M.P
6. Hon. Patrick Osero Kibagendi, M.P
7. Hon. Daniel Karitho Kiili, M.P
8. Hon. Augustine Mwafrika Kamande, M.P

ABSENT

1. Hon. Silvanus Onyiego Ogoro, CBS, M.P
2. Hon. Aramat Lemanken, M.P
3. Hon. Benjamin Langat Kipkirui, M.P
4. Hon. Jessica Mbalu Nduku, CBS, M.P
5. Hon. Patrick Ntwiga Munene, M.P
6. Hon. Lawrence Aburi Mpuru M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. Peter Oscar Nabulindo, M.P
9. Hon. Ruth Odinga, M.P
10. Hon. John Gitonga Mukunji Mwaniki, M.P
11. Hon. Jackson Lentoijoni Lekumontare, M.P
12. Hon. John Murumba Chikati, M.P
13. Hon. Ali Abdisirat Khalif, M.P
14. Hon. Betty Njeri Maina, M.P
15. Hon. Harun Mohammed Umulkher, M.P

IN ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 2. Ms. Emma Essendi | - | Legal Counsel |
| 3. Mr. Alvin Ochieng | - | Research Officer |
| 4. Ms. Merciline Kerubo | - | Audio Officer |
| 5. Ms. Pauline Sifuma | - | Hansard Reporter |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer |

OFFICE OF THE CONTROLLER OF BUDGET

- | | |
|-------------------------------------|--|
| 1. FCPA Dr. Margaret Nyakang'o, CBS | - Controller of Budget |
| 2. Ms. Jacinta Masila | - Director Corporate Services |
| 3. Ms. Emily Mukami | - Manager Legal Services |
| 4. CPA Patrick Kamore | - Chief Fiscal Analyst National Government |
| 5. CPA Patric Kebiro | - Chief Fiscal Analyst Parliamentary Liaison |
| 6. CPA Ms. Theodora Ochichi | - Principal Fiscal Analyst |

MIN NO. CIOC/179/2024: PRELIMINARIES

1. The Chairperson called the meeting to order at 9.10 AM followed by a word of prayer by the Hon. Hamisi Kakuta Maimai, M.P

MIN NO. CIOC/180/2024: ADOPTION OF THE AGENDA

2. The agenda was adopted having been proposed by the Hon. Charles Ngusya Nguna, M.P and seconded by the Hon. Patrick Osero Kibagendi, M.P

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Meeting with the Controller of Budget to deliberate on the independent office's discharge of its mandate pursuant to Article 228 of the Constitution and any impediments faced by the office in undertaking its role.
5. Any Other Business
6. Adjournment

MIN NO. CIOC/181/2024: MEETING WITH THE CONTROLLER OF BUDGET

The Controller of Budget, FCPA Dr. Margaret Nyakang'o, apprised the Committee as follows concerning the challenges that her office is facing-

3. One of the key areas that has been hindering the efficient implementation of the CoB mandate has been the poor budget provisions. There was a running strategic plan however, from Financial Year 2022/2023 the CoB embarked on reviewing their mandate and an implementation matrix was prepared.
4. The matrix aided in forming the workplans that have been used to fulfill the mandate of CoB. It displays the areas that have been affected by the budget cuts. The work plan in itself is underfunded thus limiting the work of the CoB.

5. The total budget of the CoB is about Ksh. 700,000,000(Seven Hundred Million) with about Ksh. 435,000,000 for salaries and over Ksh. 200,000,000 left to undertake all other activities of the office. This creates constraint and basics such as printing cannot be done.

Committee Observations

7. The Committee observed as follows: -
THAT-

- i. The CoB ought to raise the issue on legislative gaps on the CoB Act to parliament to ensure that these gaps are rectified through amendments to the Act.
- ii. Legislative proposals are needed to protect the funds of the CoB from any form of reallocation. The
- iii. The CoB does not have access to anything that is classified as a levy. This includes the housing levy, road levy and fuel levy.
- iv. The only document tabled in preparation for the finance bill 2024 was the estimates of expenditures. Estimates of revenues were not presented before the National Assembly. Every financial year there has been no estimates of revenues as per Article 221 of the Constitution.
- v. The budgets allocated to each of the independent commissions and independent offices have been hugely cut with some loosing excess amounts of money. Out of the 18 commissions and independent offices, only 3 had a positive rise in their budgets allocations. These are the Commission on Administrative Justice, the Judicial Service Commission, the Teachers Service Commission and the Parliamentary Service Commission. These huge budget cuts have resulted to major operational work being halted.
- vi. The CoB authorizes any withdrawals in the consolidated fund however, pensioners have not been paid the money allocated to them in the year 2023.

OCOB Response

FCPA Dr. Margaret Nyakang'o, the Controller of Budget, apprised the committee as follows:

8. The total work plan for the FY2024/2025 is Ksh. 1,662,870,443. There are various things that CoB wants to do in line with its work plan but due to non-funding it cannot do these activities. The challenges experienced are such as the lack of toners and printing papers.

9. Public participation is needed before CoB presents its legislative proposal. This involves resources to enable public participation with an estimate of Ksh. 20,000,000 being the required budget for the public participation. The office does not have this money. This means that the proposals are stuck and cannot advance to the next stage of public participation. The funding to do public participation is one of the main challenges hindering the legislative proposal by CoB from coming to parliament.
10. On the issue of levies, there ought to be a timeline in which money set aside is a levy. CoB cannot answer on who decides what money should be in form of a levy. Unless the money goes into a consolidated fund then the cob cannot access it.
11. On pending bills, once the approval for payment is given from CoB office, she has no control on who gets paid. It is the accounting officer at the county who determines who is to be paid. There is need for a legislation to link approvals from CoB office with the actual payments to curb the issue of pending bills.
12. To protect the funds of CoB, there is need for constitutional commissions and independent offices to budget as an independent sector. They are made part of the mainstream sector where they are expected to fight for funding for allocation just like any other Ministries, Departments and Agencies yet when there are reductions to be made, constitutional commissions and independent offices are the first ones to be deducted.
13. The Public Finance Management Act requires that 30% of the total revenues go back to developments. The national and county government are offenders when it comes to applying the 30% of total revenues in terms of recurrent expenditures. Only 25% was achieved at national government and 24% by county governments. The country has been spending less on developments and unless more is put for developments then the country is going to keep deteriorating.
14. Article 221 of the Constitution provides that revenues and expenditures are presented to the National Assembly. Section 9(4) of CoB Act needs to be amended to allow CoB to report on all facets of budgeting. When reporting on receipts, CoB has to do it discreetly to make sure that it relates to the expenditure and not the receipts alone. This is part of the legislative proposal on amendments of CoB Act.
15. The budget making process done through the years has been unconstitutional because the revenue and expenditure part have not been presented before parliament at the same

time. The Cabinet Secretary for the National Treasury & Economic Planning has only been presenting the expenditures.

16. CoB mandate is to report on budget implementation. CoB asks spending entities to report on how they have used the money, CoB does not come up with any policies for these entities.
17. Pensions were underfunded to an extent where the budget set to pay pensioners was not funded. The figures were there but the cash never came in. Treasury only requisitions when there is money thus there must be money in the consolidated fund for them to pay pensioners. There was a shortfall of 23.7 billion. The issue of public debt has also impacted the deficit in pension payments.

Way Forward

18. The Committee resolved as follows: -
THAT-

- i. The Committee to liaise and direct the budget and Appropriations Committee to allocate money in supplementary budget to CoB so that public participation on the various legislative proposals by CoB are carried out.
- ii. The Committee holds a retreat with all the independent commissions to deliberate on how they can get funding for themselves.
- iii. Under the National Assembly Standing Orders, each constitutional commission and independent office is placed under a departmental committee which is aligned to specific ministries, amendment to the Standing Orders is needed to fill the lacuna that exists where the constitution creates independent commission but it does not create funding for them thus the commissions are not independent.

MIN NO. CIOC/182/2024: ADJOURNMENT

19. There being no other business to transact, the meeting was adjourned at 11:00 AM.

SIGNED..........DATE.....19/11/2024.....

HON. DR. WAMUCHOMBA GATHONI, HSC, M.P.

CHAIRPERSON

MINUTES OF THE 42ND SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY 19TH SEPTEMBER, 2024 AT 12:00PM AT COMMITTEE ROOM 25, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS.

PRESENT

1. Hon. William Kamket, M.P- Vice Chairperson
2. Hon. Charles Ngusya Nguna, M.P
3. Hon. Hamisi Kakuta Maimai, M.P
4. Hon. Geoffrey Ekesa Mulanya, M.P
5. Hon. Patrick Osero Kibagendi, M.P
6. Hon. Augustine Mwafrika Kamande, M.P
7. Hon. George Risa Sunkuyia, M.P

ABSENT

1. Hon. Dr. Wamuchomba Gathoni, HSC, M.P –Chairperson
2. Hon. Silvanus Onyiego Oso, CBS, M.P
3. Hon. Aramat Lemanken, M.P
4. Hon. Benjamin Langat Kipkirui, M.P
5. Hon. Jessica Mbalu Nduku, CBS, M.P
6. Hon. Daniel Karitho Kiili, M.P
7. Hon. Patrick Ntwiga Munene, M.P
8. Hon. Lawrence Aburi Mpuru M.P
9. Hon. Peter Oscar Nabulindo, M.P
10. Hon. Ruth Odinga, M.P
11. Hon. John Gitonga Mukunji Mwaniki, M.P
12. Hon. Jackson Lentoijoni Lekumontare, M.P
13. Hon. John Murumba Chikati, M.P
14. Hon. Ali Abdisirat Khalif, M.P
15. Hon. Betty Njeri Maina, M.P
16. Hon. Harun Mohammed Umulkher, M.P

IN ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 2. Ms. Emma Essendi | - | Legal Counsel |
| 3. Mr. Alvin Ochieng | - | Research Officer |
| 4. Ms. Merciline Kerubo | - | Audio Officer |
| 5. Ms. Pauline Sifuma | - | Hansard Reporter |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer |

COMMISSION ON REVENUE ALLOCATION

- | | |
|----------------------|----------------|
| 1. CPA Mary Wanyonyi | - Chairperson |
| 2. Dr. George Midiwo | - Commissioner |
| 3. CPA Rob Lenuno | - Acting CEO |

4. CPA Roble Nuno - Director Fiscal Affairs
5. Ms. Sheila Yieke - Director Legal Affairs

MIN NO. CIOC/183/2024: PRELIMINARIES

1. The Chairperson called the meeting to order at 12.10 PM followed by a word of prayer by the Hon. Patrick Osero Kibagendi, M.P

MIN NO. CIOC/184/2024: ADOPTION OF THE AGENDA

2. The agenda was adopted having been proposed by the Hon. Charles Ngusya Nguna, M.P and seconded by the Hon. Patrick Osero Kibagendi, M.P

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Meeting with the commission secretary, Commission on Revenue Allocation to deliberate on the commission's discharge of its mandate pursuant to Article 216 of the Constitution and any impediments faced by the office in undertaking its role.
5. Any Other Business
6. Adjournment

MIN NO. CIOC/185/2024: MEETING WITH THE CONTROLLER OF BUDGET

The chairperson, CPA Mary Wanyonyi, apprised the Committee as follows-

3. The Commission on Revenue Allocation (CRA) is a key independent constitutional commission, with a unique and unparalleled mandate in Chapter 12 of the Constitution. Established under Article 215 of the Constitution, the Commission was established as an independent institution with the Principal Function of *making recommendations concerning the basis for the equitable sharing of revenue raised by the national government; between the National and County Governments; and among the County Governments (Article 216(1)(a)(b))*.
4. To fulfil this mandate, the Commission prepared and submitted to Parliament its recommendations for sharing of revenue between the national and county governments for the financial years **2023/24**.
5. Article 205 requires that when a Bill that includes provisions dealing with the sharing of revenue or any financial matter concerning county governments is published, the Commission considers those provisions and make recommendations to the National Assembly and Senate.

Recommendations on National Government Policies

6. Section 25(5) of the PFMA 2012 requires that the National Treasury seeks and considers the Commission views on the BPS. The Commission reviewed the 2024 BPS and submitted its views to the National Treasury. During the reporting period, the Commission also made annual recommendations to Parliament on each of the following policy documents on financial matters:
 1. Budget Review and Outlook Paper (BRON), 2023

2. Budget Policy Statement (BPS), 2024
3. Medium-Term Debt Management Strategy (MTDS), 2024

Preparation of the Fourth Basis for Revenue-sharing among County Governments

7. During the FY 2023-24, the Commission commenced the preparation of the recommendation on the Fourth Basis for Revenue Sharing Among County Governments which will be used to share revenues over a period of five years (FY 2025/26 to 2029/30).

FINANCING AND FINANCIAL MANAGEMENT

8. Pursuant to Article 216(2) of the Constitution, the Commission is mandated to *make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and national legislation.*

County Governments Recurrent Expenditure Budget Ceilings Recommendation

9. Article 216 (3c) of the Constitution requires that in formulating recommendations, the Commission should encourage Fiscal Responsibility. In the period under review, Commission executed by developing County Ranking Framework and Fiscal Responsibility.

County Fiscal Strategy Paper Report

10. Section 117 of the Public Finance Act 2012, County Treasuries are required to seek the views of the Commission before submitting the County Fiscal Strategy Paper (CFSP) to the County Assemblies. Notably, only twenty-four (24) counties submitted their CFSPs to the Commission for review. Figure 1 illustrates the number of counties that submitted their CFSPs in FY 2024/25.

County Budget and Economic Forums (CBEFs) Training

11. Section 137 of the Public Finance Management Act, 2012 provides for establishment of CBEFs. The purpose of the Forum is to provide a means for consultation by the county government on preparation of county plans, the County Fiscal Strategy Paper, the Budget Review and Outlook Paper for the county and matters relating to budgeting, the economy and financial management at the county level. Enhancing the capacity of County Budget and Economic Forums (CBEFs) strengthens the capacity of county public finance institutions.
12. Thirty-five (35) county governments have established CBEFs to date. So far, Commission has trained only thirteen (13) CBEFs while twenty-two (22) CBEFs are yet to be inducted. There is buy-in by the county leadership on the involvement of the Forums in public participation during budget making process. Once trained, the Commission monitors their operations to check the CBEFs' effectiveness.

Framework for Ranking Counties

13. The Commission has developed a framework for ranking and rewarding counties on their OSR performance and adherence to fiscal responsibility principles; this is to incentivize counties and encourage Fiscal responsibility. The ranking tool has been subjected to peer review by stakeholders and will be rolled out once funds are available.

Fiscal Responsibility Index

14. The Commission has developed a Fiscal Responsibility Index where three (3) parameters were identified and subjected to key stakeholder inputs – Fiscal Reporting, Fiscal Focusing and Budgeting, and Fiscal Risk Analysis and Management. The tool will be rolled out once funds are available.
15. Ten (10) Commission staff were trained and certified on the Tax Administration Diagnostic and Assessment Tool (TADAT), a global standard tool used for assessing tax administration performance. Some of the staff have continued to support counties in the development of Revenue Enhancement Action Plans that are in line with TADAT. The Commission did not undertake any revenue assessments due to budgetary constraints.

Dissemination County OSR Potential and Tax Gap Study

16. The Commission in collaboration with the World Bank disseminated the County Own Source Revenue potential and Tax Gap study to 5 pilot counties and developed revenue enhancement action plans. The 5 pilot counties were Taita Taveta, Uasin Gishu, West Pokot, Kakamega and Homabay. The Commission also built the capacity of Five (5) County Governments on OSR enhancement strategies - Makueni, Mombasa, Kericho, Kilifi and Lamu.

Revenue Enhancement to National & County Governments from Natural Resources

17. The Commission visited Counties with large water bodies on a fact-finding mission to identify the economic opportunities and revenue potential available to both National and County Governments. A report was prepared will be disseminated to both levels of government for implementation of the Commission's recommendations. The Counties visited are Nakuru (inland), Kisumu and Homabay (Lake basin) and Kilifi & Kwale (Coastal ocean strip).

TRANSITIONAL EQUALISATION

Policy identifying marginalized areas

18. The Commission is mandated by Article 216(4) to determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of sharing of the Equalization Fund. The Equalization Fund is used to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation.
19. The Commission visited *26 counties with marginalized areas* and engaged with stakeholders in the preparation for the Third Policy identifying marginalized areas to ascertain and document the extent of deprivation in the marginalized areas and engage with the county leadership and the public on the Third Policy identifying marginalized areas. The Third Policy will be finalized in FY 2024/25.

Third Edition of the County Fact Sheets

20. The Commission developed and published the Third Edition of County Fact Sheets. The Third Edition builds on the Second Edition with the most recent data on all the variables. It also provides additional data sets on county revenue and expenditure, counties' contribution to the Gross Domestic Product, and data on dominant economic activities by county.

GENERAL ADMINISTRATION AND SUPPORT SERVICES

Financial Reporting

21. The Commission achieved the following during the reporting year 2023-24:
- i. Achieved Unqualified Audit Opinion for FY2022-23.
 - ii. Received an award as the Second Runners-up in the Financial Reporting (FiRE) competition, coordinated by ICPAK in the category of International Public Sector Accounting Standards (IPSAS) Accrual for Commissions and Independent Offices.
22. The Commission has improved staff benefits by providing Staff Car Loan and Mortgage.
23. The new Commissioners underwent an induction and training on Leadership and Corporate Governance organized by the Institute of Certified Secretaries (ICS). The Commission enhanced its fleet through the acquisition of one vehicle in the last Financial year 2023/24.
24. The Commission made notable strides in strengthening its operational framework and optimizing its work environment:
- i. Reviewed Operational Policies and Procedure manuals.
 - ii. Relocated Commission offices for a more conducive work environment: from Riverside drive to the Upper Hill, Nairobi area where many public sector offices are located.

CHALLENGES

25. Despite the Commission's critical role in ensuring equitable revenue distribution and fostering a robust system of devolved governance, current encroachments on its mandate by other government entities and the inadequacy of funding threaten its ability to fulfil this vital constitutional responsibility.

Effect of Budget Reductions on the Execution of Core Activities

26. The Commission was allocated a budget of Kshs. 516.45 million (2022/23) that was later reinstated to Kshs. 516.82 million. The revised budget was too low to execute the Commission's planned activities for the reporting period.
27. The Commission's budget was later **reinstated by Ksh. 56.41 million** following several engagements with both the National Treasury and the Finance and Planning Committee (FNPC) of the National Assembly. The Commission implemented most of its key priorities to an **absorption rate of 89%** (2022/23: 99%) of the annual revised budget. The low absorption was due to lack of exchequer releases at end of the financial year for commitments that had already been incurred.

Limited Enforcement Authority for PFMA Compliance

28. Counties widely fail to comply with Section 161 of the Public Finance Management Act (PFMA), which requires them to seek the Commission's input when developing revenue-raising measures. This issue is further compounded by the absence or inefficiency of Bill tracking systems in many counties, hindering effective monitoring. Additionally, the Commission lacks the enforcement powers needed to ensure adherence to Section 161, limiting its ability to compel counties to comply with the PFMA.

Limitations on the Commission on Revenue Allocation Act, 2013

29. The Act establishing the Commission has certain limitations that affect the Commission's ability to fully carry out its mandate. Since its inception, the Commission on Revenue Allocation Act has not been reviewed, a process that is essential for the development of the Commission Regulations. Revisiting the Act would also allow for the inclusion of important functions, such as the Equalization Fund, to enhance effective implementation. To undertake a comprehensive review, the Commission requires adequate budgetary resources.

Committee Observations

30. The Committee observed as follows: -
THAT-

- i. The framework for ranking counties is inaccurate. CRA visited 26 counties and based on how it allocates equalization fund some of the counties left out are marginalized. A comprehensive study on all the 47 counties sought to be conducted to identify marginalized counties to avoid some areas missing the equalization fund.
- ii. The criteria used to determine marginalized areas is questionable. There are constituencies such as Mwingi West and Kajiado East which do not receive the equalization fund despite the constituencies surrounding them receive the funds yet they all have the same conditions.
- iii. There exists a conflict on the road maintenance levy between the national government and county governments. When road levy fund is given to county government, the money goes into a general pool and much progress on it is not seen. The law needs to prohibit these monies from being issued through constituencies.
- iv. The CRA needs to do quarterly or annual ranking of the counties based on performance of the counties so that counties are motivated to improve their resources.
- v. There are conflicts between national and county governments whereby the County governments say that they have not received any money yet the national government claims to have released money to the counties. Some of the effects are that majority of county workers get delayed salaries.

CRA Response

The chairperson, CPA Mary Wanyonyi, apprised the Committee as follows-

31. On the issue of the equalization fund, the equalization fund has had two policies. The first policy identified counties specifically the number of counties and around 14 counties were identified. The second policy took a different approach and it looked at regions and it came up with about 1400 areas that are marginalized.
32. CRA is currently in the process of developing a third policy. The implementation of second policy has not taken place despite it being developed. The role of CRA is to develop policies and identify the areas that the funds are to be allocated to.
33. On the matter of how areas are identified, CRA intends to visit the remaining counties that had not been surveyed. The results of the survey will be used to come up with the third policy.
34. On road maintenance levy, the matter is still in court. The matter is under judicial consideration and therefore prohibited from public discussion.
35. CRA is keen on own source revenue to encourage equitable revenue allocation. Own source revenue helps to avoid the shortage of money or a pending bill. As a result of budget constraints, CRA has decided to partner with other entities such as the European Union to train counties on how to avoid pending bills. So far counties have exceeded their targets and are raising their own revenues as a result of these trainings. Counties are now seeing the importance of raising revenues to fill in the gaps on pending bills.
36. CRA had made a request to the National Assembly Committee on Finance and National Planning for Ksh. 25,500,000 however, they were not funded. They have developed the frameworks but they have not gone ahead to assist the counties to develop or implement these frameworks.
37. On the issue of pending bills, both the national and county government need to operate on a balance budget. The budget in counties comprises of exchequer releases which has not been allocated by the National Assembly. Counties set high targets and they have not been putting the strategies in the county strategy fiscal paper on how to achieve this. The solution on county pending bills is that any item that cannot be funded by own source revenue or by the funds from the national government ought to be shelved until resources are allocated.
38. There are limitations on the CRA Act and the Commission needs come up with legislative proposals allow it to have some enforceability powers towards counties that breach the Public Finance Management Act requirements that are legally binding to them.
39. The structural establishment of public finance management in the county is set in a bias. The National Treasury is the custodian of funds and it is to be impartial. The Public Finance Management Act defines the National Treasury as an agent of the national government and as a result the National Treasury is more government inclined when it releases funds. Every time it is to provide impartial decisions it remains an extension of the national government by virtue of the Public Finance Management Act.
40. The CRA Act only retaliated what was provided in the constitution. It does not give the Commission any enforceability powers. It does not expound on the constitutional mandate thus creating ambiguity and as a result the CRA lacks enforcement mechanisms in cases of noncompliance to its functions.

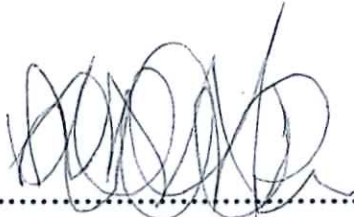
Way Forward

41. The Committee resolved as follows: -
THAT-

- i. The Commission to come up with a legislative proposal to amend the CRA Act to allow it to have some enforceability powers towards counties that breach the Public Finance Management Act requirements that are legally binding to them

MIN NO. CIOC/186/2024: ADJOURNMENT

42. There being no other business to transact, the meeting was adjourned at 1:00 PM.

SIGNED..........DATE.....19/11/2024.....

**HON. DR. WAMUCHOMBA GATHONI, HSC, M.P.
CHAIRPERSON**

MINUTES OF THE THIRTEENTH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON THURSDAY 24TH APRIL, 2025 AT 12:00 PM AT COMMITTEE ROOM, 21 FIFTH FLOOR BUNGE TOWER

PRESENT

1. Hon. William Kamket, M.P.- Vice-Chairperson
2. Hon. George Risa Sunkuyia, M.P
3. Hon. Mejjadonk Benjamin Gathiru, M.P.
4. Hon. Charles Nguna Ngusya, M.P.
5. Hon. Paul Abuor, M.P.
6. Hon. Oscar Nabulindo, M.P.
7. Hon. Caroli Omondi, CBS, M.P.
8. Hon. Geoffrey Ekesa Mulanya, M.P.
9. Hon. John Mukunji Gitonga, MP
10. Hon. Hamisi, Kakuta Maimai, M.P.

ABSENT WITH APOLOGIES

1. Hon. Muchangi Karemba, CBS, M.P. -Chairperson
2. Hon. Onyiego Silvanus Osoro, M.P.
3. Hon. Mbalu, Jessica Nduku Kiko, M.P.
4. Hon. Lawrence Aburi Mpuru, M.P.
5. Hon. Mary Wamaua, M.P
6. Hon. John Murumba Chikati, MBS, M.P.
7. Hon. Bernard Kitur, M.P.
8. Hon. Osero, Patrick Kibagendi, M.P.
9. Hon. Karitho, Kiili Daniel, M.P.
10. Hon. Jackson Lekumontare, M.P.
11. Hon. Abdisirat, Khalif Ali, M.P.
12. Hon. Mwangi, Teresia Wanjiru, M.P.
13. Hon. Mohamed, Umulkher Harun, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Hellen Kina – Senior Clerk Assistant
2. Ms. Emma Esendi -Senior Legal Counsel
3. Mr. Kelvin Lengasi - Audio Officer
4. Mr. Alvin Ochieng -Research Officer
5. Ms. Lilian Mburugu - Media relations Officer
6. Mr. Jillo Yeziel - Sergeant-at- Arms

AUDITOR GENERAL'S OFFICE

1. CPA Isaac Nga'ng'a- Deputy Auditor General
2. Mr. Enock Mugaka – Director Audit & Quality Assurance
3. Ms. Lilian Nyambura – Head of Legal Services
4. Mr. Paul Kagwanja – Parliamentary Liaison Officer

MIN NO. CIOC/47/2025: PRELIMINARIES

1. The Chairperson called the meeting to order at 12.15 noon with a word of prayer, followed by a round of introductions.

MIN NO. CIOC/48/2025: ADOPTION OF THE AGENDA

2. The proposed agenda was adopted having been proposed by Hon. William Kamket, M.P and seconded by the Hon. Paul Abuor, M.P.

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Meeting with the Auditor General, on the Status Report on the Extent of the office's Discharge of its Mandate Pursuant to Article 229 of the Constitution
5. Any Other Business
6. Adjournment
7. Date for the next Sitting

3. MIN NO. CIOC/49/2025: SUBMISSION ON THE STATUS REPORT ON THE EXTENT OF THE OFFICE'S DISCHARGE OF ITS MANDATE PURSUANT TO

ARTICLE 229 OF THE CONSTITUTION

The appeared before the Committee and submitted as follows:

I. Mandate and Legal Framework

The Office's mandate extends beyond Article 229 of the Kenyan Constitution, empowered by Article 252(1)(d) and the Public Audit Act, 2015.

Responsible for auditing all government and state organ accounts, including courts, funds, institutions, and projects funded by public resources.

Judicial rulings affirm the Office's authority to audit public funds received by private entities and all state or public entities.

II. . Audit Scope and Growth

Conducts financial audits to ensure the accuracy of financial statements.

The audit universe expanded from 1,192 entities in 2016/17 to over 12,700 in 2023/24, a 917% increase over eight years.

Onboarded entities include hospitals, schools, funds, municipalities, and other entities created by new legislation.

Anticipated growth as new laws establish additional entities, such as health authorities and self-accounting schools.

III. Challenges in Audit Implementation

Tight timelines imposed by the Public Finance Management Act, 2012, restrict the period for audit and reporting from six to three months.

Court rulings have declared these timelines mandatory, necessitating restructuring of audit plans.

The Office proposed amendments to reduce reporting timelines from three to one month post-fiscal year, with ongoing legislative efforts.

IV. Compliance and Performance Audits

Conducts compliance and value-for-money/performance audits to assess lawful and effective use of public funds.

Over 50 performance audits submitted; only a few have been deliberated by Parliament.

Advocates for prioritizing performance audits to improve public resource management and reduce wastage.

V. Audit Reports Submission and Backlogs

No issues with the submission of audit reports to Parliament.

Noted backlog in the parliamentary process for debating and considering audit reports, which hampers oversight.

Commends efforts by parliamentary committees to address these backlogs.

VI. Institutional Independence

The Office is constitutionally independent but faces operational limitations, notably in financial autonomy.

Ranked as a “substantially independent” institution (Group C) globally, but less autonomous compared to Uganda and South Africa.

The lower ranking is primarily due to limited financial independence, affecting full operational autonomy.

VII. Conclusion:

The Office of the Auditor-General has made significant progress in fulfilling its constitutional mandate. Challenges remain, particularly regarding timelines and independence, which require legislative and structural reforms to enhance efficiency and autonomy.

MIN NO. CIOC/50/2025: ENGAGEMENT BETWEEN THE COMMITTEE AND THE OFFICE OF THE AUDITOR GENERAL'S OFFICE

VIII. Establishment of Regions

During discussions about the new regions, it was reported that there are a total of 15 regional offices. Each office oversees four new regions, with each region auditing three counties.

IX. Engagement with Media on the Auditor Reports

The meeting was informed that the Office of the Auditor General has received funding from FDB for institutional support. This funding has been allocated towards training media personnel on reporting the Auditor General's reports. Additionally, the office has scheduled four media engagements for April 2025. The annual report submitted by the Auditor General's Office to Parliament indicates an accuracy rate of 92% in monitoring mainstream media. Furthermore, the office is developing tools to monitor the accuracy of social media platforms.

X. Delivery of Cheques to Schools

When asked why the Office of the Auditor General recommended that cheques be delivered to schools via the post office, and why no specific time frame was provided for submitting receipts, the delay between cheque delivery and receipt submission was highlighted as a concern. This delay can inconvenience students and raise audit queries. Additionally, it was noted that many post offices are located far from the schools, which could further complicate the process.

The meeting was informed that the office will review the concerns raised and clarify the reasoning behind the original recommendation.

XI. Accountability

Regarding accountability, the meeting was informed that the process begins with the release of bursary cheques. Members of Parliament are required to acknowledge the release of cheques worth a specified amount of money.

Previously, auditing was conducted in May, with reports released in December. However, a ruling by the High Court mandated that all reports must now be

released by December 31st, resulting in a tighter timeline and potential delays in response.

The office has clarified that any issues raised are now attributed directly to the office responsible for the initial process, rather than the office implementing the program.

XII. Performance of the Auditor General's Office

Regarding how the Office of the Auditor General assesses its performance in ensuring proper utilization of public funds, the meeting was informed that the office regularly engages with oversight committees of the National Assembly, Parliament leadership, County Assemblies, and other stakeholders.

The office also utilizes the Institution Capacity Building Framework (ICBF), a tool designed to evaluate performance and institutional capacity. Additionally, the office allows institutions 14 days to respond to issues raised and sends draft reports to these institutions for their feedback. Some issues are addressed at this stage before finalization.

XIII. Key points discussed include:

1. **Misuse of Funds:** The office maintains its independence through established practices and procedures.
2. **Malice in Reports:** The office considers feedback concerning allegations of malice.
3. **Tax Waivers (Art 210, Sub-Art 2a & b):** The office committed to communicate its findings to the committee within one week.
4. **Public Debt Audit (Art 229, Sub-article 4g):** The office will submit a report on Kenya's debt by mid-first quarter of the new financial year.
5. **E-Citizen Platform:** A report on the contractual framework, collections, and performance has been submitted to Parliament.
6. **Legislative Proposals:** The office will propose legislative measures to enforce compliance with audit recommendations and sanctions for accounting officers.

XIV. Consideration of the Division of Revenue Reports

Regarding how the latest audited reports can be used to ensure that counties are not undermined, the meeting was informed that all previous years are considered during deliberations. The office has engaged with the Senate and has covered most counties, during which the Senate reviewed the reports and produced a comprehensive report within the legal timeframe.

It is recommended that Parliament maintains this pace and continues to give due consideration to the reports to promote effective oversight and resource allocation.

XV. Corruption by Officers Who Audit Institutions


Regarding the issue of corruption within the auditing offices, it was asked where such issues are typically situated—internally or elsewhere. It was stated that there is an allegation that accounting officers have a dedicated budget for auditors. The office reviews assignments at the level of individual responsibilities to ensure accountability.

The office collaborates fully with EACC (Ethics and Anti-Corruption Commission) and DCI (Directorate of Criminal Investigations). Some staff members have been interdicted as part of disciplinary measures. Additionally, the office has instituted mandatory transfers every three years and has introduced a code of ethics to address challenges related to corruption and professional negligence among staff.

MIN NO. CIOC/51/2025: ADJOURNMENT

There being no other business, the meeting was adjourned at 1:45 P.M.

The next meeting will be held by notice.

Signed..........Date.....29/05/25.....

Hon. Karemba Muchangi, MP – Chairperson



**KENYA NATIONAL ASSEMBLY
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE**

**THE NATIONAL ASSEMBLY
13TH PARLIAMENT – FOURTH SESSION (2025)
ADOPTION OF THE SECOND REPORT ON THE STATUS OF IMPLEMENTATION OF THE
CONSTITUTION**

We, the undersigned, hereby affix our signatures to this Report to affirm our approval

| NO. | NAME | SIGNATURE |
|-----|--|-----------|
| 1. | Hon. Muchangi Karemba, CBS, M.P. - Chairperson | |
| 2. | Hon. William Kamket, M.P. - Vice Chairperson | |
| 3. | Hon. Jessica Mbalu, CBS, M.P. | |
| 4. | Hon. Silvanus Osoro, M.P. | |
| 5. | Hon. Lawrence Aburi Mpuru, M.P. | |
| 6. | Hon. Mejjadonk Benjamin Gathiru, M.P. | |
| 7. | Hon. George Risa Sunkuyia, M.P. | |
| 8. | Hon. Mary Wamaua, M.P. | |
| 9. | Hon. Jackson Lekumontare, M.P. | |
| 10. | Hon. Charles Nguna Ngusya, M.P. | |
| 11. | Hon. Paul Abuor, M.P. | |
| 12. | Hon. Oscar Nabulindo, M.P. | |
| 13. | Hon. John Murumba Chikati, MBS, M.P. | |
| 14. | Hon. Caroli Omondi, CBS, M.P. | |
| 15. | Hon. Bernard Kitur, M.P. | |

| | | |
|-----|-------------------------------------|--|
| 16. | Hon. Geoffrey Ekesa Mulanya, M.P. |  |
| 17. | Hon. Abdisirat, Khalif Ali, M.P. |  |
| 18. | Hon. Mwangi, Teresia Wanjiru, M.P. |  |
| 19. | Hon. Osero, Patrick Kibagendi, M.P. |  |
| 20. | Hon. Karitho, Kiili Daniel, M.P. |  |
| 21. | Hon. Mohamed, Umulkher Harun | |
| 22. | Hon. John Mukunji Gitonga, MP | |
| 23. | Hon. Hamisi, Kakuta Maimai, M.P. | |

OFFICE OF THE CONTROLLER OF BUDGET



REPUBLIC OF KENYA

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MEETING WITH THE NATIONAL ASSEMBLY CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE ON THE EXTENT OF IMPLEMENTATION OF THE CONTROLLER OF BUDGET'S MANDATE

By a letter dated 15th August 2024, the Constitutional Implementation Oversight Committee of the National Assembly seeks a meeting to discuss the extent of the discharge of the Controller of Budget's mandate as well as any impediments to the process of implementing the Constitution.

Background

There is wide recognition internationally that certain functions necessary to enhance democracy in a country can best be carried out by a state body that is independent of the formal government.

In Kenya, the clamour to decentralise power from an all-imperial presidency led to establishing constitutional commissions and independent offices (CCIOs). The Promulgation of the Constitution in 2010 ushered in a new era of optimism for Kenyans. The Constitution established a comprehensive framework for governance, enshrining principles of democracy, accountability, and the rule of law. The Constitution created several constitutional commissions and independent offices besides the Executive Legislature and Judiciary. These independent institutions safeguard constitutional principles, promote human rights, and ensure good governance.

Constitutional commissions and independent bodies perform key advisory and oversight roles to the government through their various mandates, as stipulated in Article 249. As Justice Jactone Ojwang once observed, the Constitution cannot propel itself and must be aided and assisted by multiple institutions provided for by the Constitution.

Legal Framework

Against this background, the Office of the Controller of Budget is established under *Article 228* of the Constitution to oversee the implementation of the budgets of the National and County governments by authorising withdrawals from public funds and to report on the implementation of budgets to Parliament every four months. Further, *Article 228(5)* of the Constitution requires the Controller of Budget not to approve withdrawals from public funds unless satisfied that the withdrawals are authorised by law. The mandate of the Controller of Budget office is further amplified under the **Controller of Budget (CoB) Act, 2016**.

The CoB is guided by the Constitution, the CoB Act 2016, the PFM Act 2012, its attendant regulations, and the County Government Act in undertaking the mandate. Specifically, the CoB's mandate is enumerated below.

(i) Oversight

The Controller of Budget oversees the implementation of the budgets of both National and County governments by monitoring the use of public funds and reporting to Parliament on how the funds are utilised.

(ii) Controlling

This involves authorising withdrawals from public funds such as the Consolidated Fund (*Article 206*), the Equalization Fund (*Article 204*), the County Revenue Fund (*Article 207*), and any other public fund that requires the authority of the CoB before withdrawal. According to *Article 228(5)* of the Constitution, the Controller of Budget must first be satisfied that the withdrawal is permitted by law before authorising any withdrawal.

To facilitate timely approval of exchequer requisitions, the CoB has developed Exchequer Requisition Guidelines. These guidelines outline the documents required when requisitioning for fund withdrawals. Thus, by standardising the exchequer process, the stakeholders understand the approval process and the specific requirements for each withdrawal.

Over the Medium-Term Expenditure Framework (MTEF) period, the CoB approved a total of Kshs.10.30 trillion from the Consolidated Fund, as summarised below:

Summary of Cumulative Amounts Approved for Withdrawal for the MTEF Period (Kshs. Billion)

| Name of the Fund/Vote | FY2021/22 Ksh Billion | FY 2022/23 Ksh Billion | FY2023/24 Ksh Billion |
|----------------------------------|--------------------------|---------------------------|--------------------------|
| Total Approvals | 3,147.55 | 3,274.34 | 3,873.13 |
| MDAs -Development | 341.01 | 306.53 | 314.13 |
| MDAs - Recurrent | 1,205.91 | 1,202.83 | 1,318.64 |
| Consolidated Fund Services | 1,191.07 | 1,313.59 | 1,766.36 |
| County Governments Revenue Funds | 409.44 | 430.48 | 451.21 |
| Equalisation Fund | 0.12 | 0.67 | 0.37 |
| Judiciary Fund | - | 20.24 | 21.56 |

Source: National Treasury and OCoB

In the financial year 2023/24, under Article 206, 489 requisitions were submitted to the CoB to withdraw funds from the Consolidated Fund. All these requisitions were processed, and approval for withdrawal was granted. A total of Kshs. 3.87 trillion was approved from the Consolidated Fund, with Kshs. 314.13 billion allocated for ministerial development activities, Kshs. 1.32 trillion for ministerial recurrent expenses, Kshs. 1.77 trillion for Consolidated Fund Services, and Kshs. 451.21 billion for County Governments.

In the financial year 2023/24, under Article 207, ten (10) requisitions were submitted to the CoB to withdraw funds from the Equalisation Fund. The amount comprised Kshs.207.5 million for the Equalization Fund Secretariat's recurrent expenses and Kshs. 156.14 million for development expenditures. The development expenditure went towards payment of pending bills under the Ministry of Water and Sanitation based on the first policy criteria for identifying marginalised counties.

In FY 2023/2024, under Article 173, one hundred (100) requisitions were submitted to the Controller of Budget to approve the withdrawal of funds from the Judiciary Fund. The withdrawals from the Judiciary Fund to the Judiciary Operational Accounts were approved in the amount of Kshs.21.56 billion, comprising Kshs.927.48 million for development activities and Kshs.20.71 billion for recurrent activities, representing 66 per cent and 99 per cent of the development and recurrent estimates, respectively.

During FY 2023/24, *under Article 207*, County Governments submitted to the Office of Controller of Budget 8,636 exchequer requisitions for authorisation in the amount of Kshs.456.37 billion. This comprised of Kshs.113.01 billion (24.8 per cent) for development expenditure and Kshs.343.36 billion (75.2 per cent) for recurrent expenditure. Out of the total, 8,470 requisitions amounting to Kshs.451.21 billion were approved during the period, representing 98.9 per cent of the submitted withdrawal requests. Other requisitions were declined due to various reasons such as non-deduction of applicable withholding taxes and PAYE, administration costs for the county-established Funds exceeding the three per cent threshold required by PFM Regulations, non-adherence to the pending bill payment plans, submission of incomplete documentation and non-compliance of legislation establishing public funds within the provisions of the Public Finance Management Act and Regulations.

(iii) Reporting

The Controller of Budget prepares quarterly, annual and special reports. Quarterly reports are derived from *Article 228(6)* of the Constitution and Section 9 of the Controller of Budget Act, which provides that every four months, the Controller of Budget shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments. Some of the reported areas include receipts into the Consolidated Fund and the County Revenue Funds, exchequer issues, budget performance, challenges in budget implementation and proposed measures to address the challenges.

Regarding annual reports, *Article 254* of the Constitution provides that each Commission and Independent Office shall submit a report to the President and Parliament at the end of a financial year.

Further, Special reports are submitted on a need basis and include a report to Parliament on stoppage of funds under *Article 225(7)* of the Constitution giving reasons why the stoppage should be upheld or withdrawn; a report pursuant to an investigation carried out under *Article 251(1)(a)* of the Constitution; a report under *Article 254(2)* upon a request by the President, National Assembly or Senate and a report as may be requested by a Governor or County Assembly as provided for under section 10(d) of the Controller of Budget Act.

(iv) Advisory

The Controller of Budget provides various advisories to Parliament and County governments on measures to improve budget implementation. Further, the CoB advises Parliament, where the Cabinet Secretary National Treasury exercises his mandate to stop the transfer of funds to a State organ or public entity. Some of the advisories issued in FY 2023/24 include guidance on the interpretation of *Article 223* of the Constitution, the extent of borrowing by county governments, management and utilisation of unspent funds by a County Assembly, requirements for authorisation of expenditure under vote on account and the legal requirements and considerations for implementation of the County Governments Additional Allocations Act.

(v) Investigations

The CoB conducts investigations on its initiative or following a complaint made by a member of the public on budget implementation matters pursuant to Article 252(1)(a) of the Constitution. In FY 2023/24, the Office investigated Mandera and Kisii counties. The investigations arose following reports of budget alteration and misreporting by the respective county governments.

(vi) Dispute Resolution

The Office undertakes alternative dispute resolution through conciliation, mediation, and negotiation to resolve conflicts and issues relating to budget implementation between the national and county governments. In FY 2023/24, the office mediated a dispute between the Meru County Executive and the County Assembly following a complaint made by the executive alleging that the County Assembly had disregarded the County Fiscal Strategy Paper submitted to them by the County Treasury and instead, prepared their version without adhering to the timelines stipulated by law.

(vii) Enforcement of budgetary ceilings

In line with *section 5(d)* of the COB Act, the Controller of Budget enforces the budgetary ceilings on National and County governments' expenditures as set by Parliament and other relevant institutions. The ceilings include allocating at least 30 per cent of the total budget to development expenditures and ensuring that personnel emoluments expenditures do not exceed 35% of the total revenue.

(viii) Monitoring and Evaluation

Section 5(b) of the COB Act provides that the Controller of Budget shall ensure prudent and efficient use of public funds by monitoring, evaluating, reporting and making recommendations to the National County governments on measures to improve budget implementation. This function involves checking progress and achievements and addressing challenges identified in the Budget Implementation Review Reports to provide mitigating measures to improve the realisation of budgeted outcomes.

The office undertakes M&E on various thematic areas and recommends compliance with the law and improvement, thus ensuring smooth implementation. In FY 2022/23, the office undertook an M&E exercise in thirty (30) counties focusing on thematic areas such as compliance with Programme-Based Budgeting, compliance with laws relating to the establishment, operations and reporting of public funds established by the county governments and compliance with budgetary ceilings. Some of the observations made during the exercise were:

- (a) There were discrepancies between the budget implementation reports and the approved Programme-Based Budgeting.
- (b) Funds were being spent outside the budget framework.
- (c) Non-compliance with various government circulars, such as the recommended budget ceilings on the construction of non-core county infrastructure.
- (d) Use of commercial banks to operate Fund accounts contrary to Regulation 82(1)(b) of the PFM (County Government) Regulations, which requires bank accounts to be maintained at the Central Bank of Kenya.

In FY 2023/24, the office undertook an M&E exercise in twenty-one (21) counties. The training focused on three thematic areas: management and status of pending bills; compliance with the law and policy on managing the wage bill; and the administration, management and performance of Own Source Revenue (OSR) collection. An assessment was also done on the progress made by the county governments in addressing the issues raised during the previous monitoring exercise undertaken in FY 2022/23. Some of the observations noted during the training include:

- (a) Non-compliance with the ceiling for the wage bill.
- (b) Lack of guidelines to streamline recruitment of casual workers.
- (c) Use manual systems to process salaries, particularly for employees on short-term contracts and those without payroll numbers.

(d) Failure to use historical performance as a basis for Own Source Revenue projection.

(e) Failure by some counties to verify ineligible pending bills delays budgeting and settling the bills.

(ix) Public Sensitization

Section 39(8) of the Public Finance Management Act requires the Controller of Budget to provide information to the public on budget implementation at both levels of government. This is in line with *Article 35* of the Constitution, which gives the public the right to access any information held by the State. In doing so, the Office ensures that the public can access comprehensive, credible and timely information on budget implementation. The office undertakes this role by sharing statutory reports on the CoB website, distributing them in public libraries, and giving media interviews to highlight the status of budget implementation. The office is rolling out simplified versions of budget implementation reports to communicate with the public effectively.

Challenges faced in implementing the Controller of Budget's mandate

In executing the above mandates, the CoB has faced various challenges that have curtailed the effective and efficient execution of the Office functions. These challenges include:

(a) Legislative gaps in the Controller of Budget Act

In executing the mandate of the Controller of Budget, notable legal gaps have emerged in the Controller of Budget Act, which requires urgent legislative interventions. The proposed amendments to the COB Act include:

- (i) Section 4(1) of the COB Act fails to recognise that a vacancy may arise in the position of the Controller of Budget when the COB leaves office after the lapse of the prescribed timeline of 8 years. The Court identified this lacuna in the case of *Okiya Omtatah Okiiti v National Executive of the Republic of Kenya & 5 others; Katiba Institute (KI) & 3 Others (Interested Parties)[2020]eKLR* which recommended its amendment.
- (ii) *Section 9(4)* of the Act should be amended to allow the CoB to report on all facets of budget implementation as envisaged in the Constitution. Under the existing provisions, the CoB is barred from reporting on economic developments and outlook, including revenue, grants, loan forecasts, and receipts.

- (iii) *Section 8* of the COB Act does not comprehensively indicate all the planning and budgetary documents that ought to be submitted to the CoB to enable it to effectively oversee the implementation of the national and county government budget.
- (iv) A provision that prohibits the voiding of payments after the approval for withdrawal of funds is issued by the CoB is included. To this end, responsibility should be placed on an accounting officer who should ensure that the funds authorised for withdrawal by the Controller of Budget are aligned with the Schedule of payments supporting the request. This will ensure that payments mirror the approval, thus avoiding pending bills and misdirection of funds.

(b) Delay in the Development of the COB Regulations following annulment by Senate

The CoB drafted Regulations in the year 2021, and they were approved by the National Assembly Committee on Delegated Legislation on 27th January 2022. However, on 6th May 2022, the Senate Sessional Committee on Delegated Legislation annulled them. The reasons advanced by the Senate for the annulment were that the Regulations had not fully captured the comments of the National Treasury received after publication of the Regulations; the penalties proposed in the Regulations were not deterrent; the challenges currently being experienced, such as pending bills were not addressed; and investigative powers contained in Part IV of the draft Regulations were likely to overlap with investigative powers of other government agencies such as Ethics and Anti-Corruption Commission.

Notably, the issues raised by the Senate cannot be addressed and legislated upon in Regulations. The COB Act needs to be amended to address those concerns and other identified gaps that impede the effective execution of the CoB's functions.

The CoB has since developed the draft Regulations incorporating the Senate's views. However, due to budgetary constraints, the CoB has been unable to undertake public participation, a legal requirement under the Statutory Instruments Act.

(c) Financial Constraints

Inadequate financial resources have impeded the efforts to amend the COB Act and review the draft Regulations. The proposed amendments and the reviewed Regulations await public participation and require a budget of about 20 million.

Due to the lack of resources, monitoring and evaluation cannot be undertaken entirely.

(d) Salary Structure for the OCoB

In consultation with the Directorate of Public Service Management (DPSM), the office has developed a proposed salary structure to attract and retain qualified staff. Goodwill and budgetary support are needed for the office to implement the proposed structure and ensure that it is at par with other offices of equal status.

(e) Implementation of the COB Recommendations by Accounting officers

Article 228(6) of the Constitution, as read with section 9 of the COB Act, requires the CoB to submit a report on budget implementation to Parliament every four months. *Section 68(4)* of the PFM Act provides that the National Assembly shall adopt the Report by the CoB. After that, the relevant accounting officers shall prepare a report to the National Assembly with a copy of the CoB on the measures taken to implement the CoB's recommendations. This means that the recommendations of the CoB only become binding upon adoption by the National Assembly. The lack of clear timelines to adopt the report of the CoB by the National Assembly has hampered the CoB's discharge of its mandate, as the office is not in a position to track the implementation of the recommendations.



FCPA Dr Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET



COMMISSION ON REVENUE ALLOCATION

**REPORT ON THE COMMISSION'S
DISCHARGE OF ITS FUNCTIONS IN LINE
WITH ARTICLE 216 OF THE CONSTITUTION**

Date: 19th September 2024

1.0 INTRODUCTION

1.1 Background

1.1.1 Commission's Core Mandate

The Commission on Revenue Allocation (Commission) is a key independent constitutional commission, with a unique and unparalleled mandate in Chapter 12 of the Constitution. Established under Article 215 of the Constitution, the Commission was established as an independent institution with the Principal Function of *making recommendations concerning the basis for the equitable sharing of revenue raised by the national government; between the National and County Governments; and among the County Governments (Article 216(1)(a)(b)).*

Further, the Commission is responsible for upholding and protecting the Principles of Public Finance outlined in Article 201 of the Constitution, ensuring a sound legal and policy framework for fiscal decentralization. The Commission is the pioneer institution in spearheading and regulating fiscal decentralization in Kenya; this role is not only essential for fostering balanced development across the nation but also strengthening the foundations of Kenya's devolved system of governance.

The Commission, under Article 216(2) of the Constitution, is also required to make recommendations on other matters concerning the financing of, and financial management by county governments.

In formulating recommendations, the Commission is mandated under Article 216(3) to promote and give effect to the criteria mentioned in Article 203 (1); when appropriate, to define *and enhance the revenue sources* of the national and county governments, and to *encourage fiscal responsibility.*

The Commission is also required to determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of Article 204 (2). The Commission shall submit its recommendations to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives. In Article 205, CRA is required to make recommendations on all Bills touching of financing of counties that shape the legislative framework for fiscal decentralization in Kenya.

1.1.2 The Importance of Independent Expertise

The Committee of Experts (CoE) that framed the Constitution recognized the intricate technicalities involved in managing financial resources in a devolved system, underscoring the necessity of an independent body like the Commission to guide and inform these complex processes.

The financial management of a devolved government system involves *technical complexities* that require specialized understanding of the national economy. The division of revenue, assessment of county taxing powers and evaluation of conditions for county borrowing are areas demanding skilled and professional analysis.

While Parliament holds the ultimate decision-making power, it relies on the Commission's independent, expert advice to ensure that decisions are informed, non-partisan and guided by the principles of *equity* and *fiscal responsibility*. The Commission's role, therefore, is to strengthen Parliament's debates, fostering a more informed legislative process.

1.1.3 Safeguarding Constitutional Principles

Commission serves as a *safeguard for the constitutionally mandated criteria for revenue sharing*. The Constitution establishes a set of criteria that must be considered in determining the way revenue is shared among the two levels of government. The Commission is obliged to apply these criteria in its recommendations and how it was derived.

In the event Parliament deviates from CRA's recommendations, it is required to provide clear justifications for the deviation. This enhances transparency and ensures adherence to constitutional principles, thereby safeguarding equitable sharing of revenues across counties.

The Commission offers an *impartial, long-term perspective* in revenue sharing. As an independent body, it takes a broader view, balancing the competing needs of national and county governments while *upholding equity* and *national interest*. This independence ensures that revenue allocation is guided by long-term development needs and economic stability of the country.

The Commission's role in ensuring *fiscal responsibility* is instrumental in enhancing *accountability in public financial management* for the county governments. Its recommendations are rooted in transparent and sound principles that are open to public scrutiny, fostering a system that is both fair and efficient.

1.1.4 Purpose of this Report

This report aims to provide Parliament with a comprehensive overview of the Commission's discharge of its mandate as outlined in Article 216 of the Constitution, while also highlighting the challenges encountered.

The following sections highlight our achievements in the financial year ending 30th June 2024, demonstrating our efforts in executing our mandate in four sub-programmes.

2.0 EQUITABLE SHARING OF REVENUE

2.1 Annual recommendations on the sharing of revenue between the national and county governments

The Commission is mandated by Article 216(1) (a) to recommend the basis for the equitable sharing of nationally raised revenue between the national and county governments. Further, Section 190 of the Public Finance Management Act (PFMA) 2012 requires the Commission to submit its recommendations at least six months before the beginning of the next financial year to The Senate, National Assembly, the national executive, county assemblies and county executives.

To fulfil this mandate, the Commission prepared and submitted to Parliament its recommendations for sharing of revenue between the national and county governments for the financial years **2023/24**.

2.2 Recommendations on Bills that Deal with the Sharing of Revenue

Article 205 requires that when a Bill that includes provisions dealing with the sharing of revenue or any financial matter concerning county governments is published, the Commission considers those provisions and make recommendations to the National Assembly and Senate.

In fulfilment of the requirements of Article 205, the Commission considered each of the following annual bills and submitted its recommendations to Parliament:

1. Division of Revenue Bill (DoRB), 2023
2. County Allocation of Revenue Bill (CARB), 2023
3. County Governments Additional Allocations Bill (CGAAB) for 2023

2.3 Recommendations on National Government Policies

Section 25(5) of the PFMA 2012 requires that the National Treasury seeks and considers the Commission views on the BPS. The Commission reviewed the 2024 BPS and submitted its views to the National Treasury. During the reporting period, the Commission also made annual recommendations to Parliament on each of the following policy documents on financial matters:

1. Budget Review and Outlook Paper (BROP), 2023
2. Budget Policy Statement (BPS), 2024
3. Medium-Term Debt Management Strategy (MTDS), 2024

2.4 Preparation of the Fourth Basis for Revenue-sharing among County Governments

The Commission is mandated by Article 216(1) (b) to make recommendations on the basis for the equitable sharing of revenue among county governments. Article 217 provides that *once every five years, the Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.*

During the FY 2023-24, the Commission commenced the preparation of the recommendation on the Fourth Basis for Revenue Sharing Among County Governments which will be used to share revenues over a period of five years (FY 2025/26 to 2029/30).

Initial activities were undertaken towards the *Preparation of the Fourth Basis* include:

1. Consultations with organizations/institutions on the Third Basis.
2. Consultations with the national government representatives from six sectors and subsectors (Health, Agriculture, Livestock and Fisheries, Roads, Water, Education and Urban services) to understand the data requirements and possible parameters.
3. Consultation with regional economic blocs:
 - a. Frontier Counties Development Council (FCDC)
 - b. South Eastern Kenya Economic Bloc (SEKEB)
 - c. Central Regional Bloc (CEREB)
 - d. Jumuia ya Kaunti za Pwani (JYP)
 - e. MAA Economic Bloc
 - f. Lake Region Economic Bloc (LREB)
 - g. North Rift Economic Bloc (NOREB)

Data collection from 24 counties based on the assessment of the impact of devolution on service provision was conducted. The Commission has planned to assess the impact of devolution on service provision in the remaining 23 counties in FY 2024/25.

3.0 FINANCING AND FINANCIAL MANAGEMENT

Pursuant to Article 216(2) of the Constitution, the Commission is mandated to *make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and national legislation.*

To ensure prudent Public Financial Management, the Commission makes recommendations on County Government's recurrent budget expenditure ceilings annually. Other activities undertaken during the year are preparation of the County Fiscal Strategy Paper Report, County Budget and Economic Forums (CBEFs) training.

3.1 County Governments Recurrent Expenditure Budget Ceilings Recommendation

Article 216 (3c) of the Constitution requires that in formulating recommendations, the Commission should encourage Fiscal Responsibility. In the period under review, Commission executed by developing County Ranking Framework and Fiscal Responsibility.

The County Governments' Recurrent Expenditure Budget Ceilings Recommendation was also developed and submitted to the Senate as required by the law. The Commission's proposed recommendation for the County Recurrent Expenditure Budget Ceilings for 2024/25 is **Kshs. 73,953,000,349.00** comprising of **Kshs. 40,196,186,161.00** for County Assemblies and Kshs. 33,756,814,188.00 for County Executives. The budget ceiling recommendation for F+Y 2024-25 has not yet been adopted by the Senate.

3.2 County Fiscal Strategy Paper Report

Section 117 of the Public Finance Act 2012, County Treasuries are required to seek the views of the Commission before submitting the County Fiscal Strategy Paper (CFSP) to the County Assemblies. Notably, only twenty-four (24) counties submitted their CFSPs to the Commission for review. Figure 1 illustrates the number of counties that submitted their CFSPs in FY 2024/25.

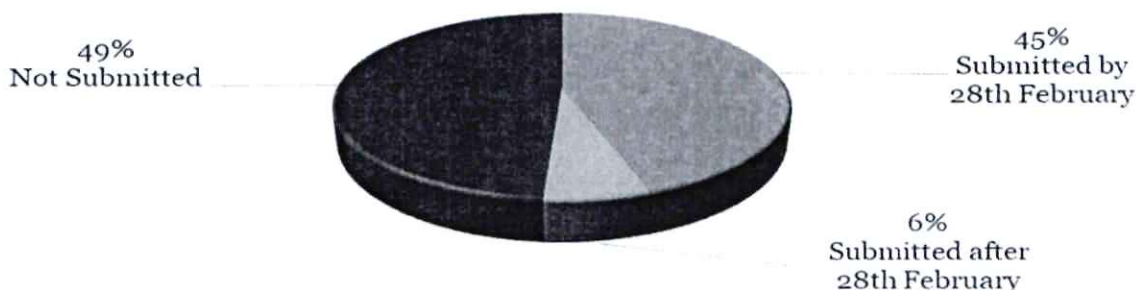


Figure 1: number of counties that submitted their CFSPs in FY 2024/25

Forty-nine percent of county treasuries failed to submit their County Fiscal Strategy Papers (CFSP) by the statutory deadline of February 28th, while an additional 6 percent submitted them after the deadline. This constitutes a breach of the Public Finance Management Act of 2012. However, the Act does not specify enforcement measures for such non-compliance.

3.3 County Budget and Economic Forums (CBEFs) Training

Section 137 of the Public Finance Management Act, 2012 provides for establishment of CBEFs. The purpose of the Forum is to provide a means for consultation by the county government on preparation of county plans, the County Fiscal Strategy Paper, the Budget Review and Outlook Paper for the county and matters relating to budgeting, the economy and financial management at the county level. Enhancing the capacity of County Budget and Economic Forums (CBEFs) strengthens the capacity of county public finance institutions.

Thirty-five (35) county governments have established CBEFs to date. So far, Commission has trained only thirteen (13) CBEFs while twenty-two (22) CBEFs are yet to be inducted. There is buy-in by the county leadership on the involvement of the Forums in public participation during budget making process. Once trained, the Commission monitors their operations to check the CBEFs' effectiveness.

The Table below shows the summary status of the CBEF establishment, training and monitoring by Commission.

| TRAINED | | | | |
|--------------------|-------|--|---|-----------|
| | | YES | NO | Total |
| ESTABLISHED | Yes | 13 Monitoring | 22 Training | 35 |
| | NO | 0 <i>Follow up for establishment</i> | 12 <i>Establish and train</i> | 12 |
| | Total | | | 47 |

3.4 Framework for Ranking Counties

The Commission has developed a framework for ranking and rewarding counties on their OSR performance and adherence to fiscal responsibility principles; this is to incentivize counties and encourage Fiscal responsibility. The ranking tool has been subjected to peer review by stakeholders and will be rolled out once funds are available.

3.5 Fiscal Responsibility Index

The Commission has developed a Fiscal Responsibility Index where three (3) parameters were identified and subjected to key stakeholder inputs – Fiscal Reporting, Fiscal Focusing and Budgeting, and Fiscal Risk Analysis and Management. The tool will be rolled out once funds are available.

3.6 County Revenue Administration Assessment Activity

Ten (10) Commission staff were trained and certified on the Tax Administration Diagnostic and Assessment Tool (TADAT), a global standard tool used for assessing tax administration performance. Some of the staff have continued to support counties in the development of Revenue Enhancement Action Plans that are in line with TADAT. The Commission did not undertake any revenue assessments due to budgetary constraints.

3.7 Dissemination County OSR Potential and Tax Gap Study

The Commission in collaboration with the World Bank disseminated the County Own Source Revenue potential and Tax Gap study to 5 pilot counties and developed revenue enhancement action plans. The 5 pilot counties were Taita Taveta, Uasin Gishu, West Pokot, Kakamega and Homabay. The Commission also built the capacity of Five (5) County Governments on OSR enhancement strategies - Makueni, Mombasa, Kericho, Kilifi and Lamu.

3.8 Revenue Enhancement to National & County Governments from Natural Resources

The Commission visited Counties with large water bodies on a fact-finding mission to identify the economic opportunities and revenue potential available to both National and County Governments. A report was prepared will be disseminated to both levels of government for implementation of the Commission's recommendations. The Counties visited are Nakuru (inland), Kisumu and Homabay (Lake basin) and Kilifi & Kwale (Coastal ocean strip).

4.0 TRANSITIONAL EQUALISATION

4.1 Policy identifying marginalized areas

The Commission is mandated by Article 216(4) to determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of sharing of the Equalization Fund. The Equalization Fund is used to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation.

The Commission visited *26 counties with marginalised areas* and engaged with stakeholders in the preparation for the Third Policy identifying marginalised areas to ascertain and document the extent of deprivation in the marginalised areas and engage with the county leadership and the public on the Third Policy identifying marginalised areas. The Third Policy will be finalized in FY 2024/25.

4.2 Third Edition of the County Fact Sheets

The Commission developed and published the Third Edition of County Fact Sheets. The Third Edition builds on the Second Edition with the most recent data on all the variables. It also provides additional data sets on county revenue and expenditure, counties' contribution to the Gross Domestic Product, and data on dominant economic activities by county.

5.0 GENERAL ADMINISTRATION AND SUPPORT SERVICES

5.1 Financial Reporting

The Commission achieved the following during the reporting year 2023-24:

- i. Achieved Unqualified Audit Opinion for FY2022-23.
- ii. Received an award as the Second Runners-up in the Financial Reporting (FiRE) competition, coordinated by ICPAK in the category of International Public Sector Accounting Standards (IPSAS) Accrual for Commissions and Independent Offices.

5.2 Staff Benefits

The Commission has improved staff benefits by providing Staff Car Loan and Mortgage.

5.3 HR Training

The new Commissioners underwent an induction and training on Leadership and Corporate Governance organized by the Institute of Certified Secretaries (ICS).

5.4 Fleet acquisition

The Commission enhanced its fleet through the acquisition of one vehicle in the last Financial year 2023/24.

5.5 Enhancing Processes and Work Environment

The Commission made notable strides in strengthening its operational framework and optimizing its work environment:

- i. Reviewed Operational Policies and Procedure manuals.
- ii. Relocated Commission offices for a more conducive work environment: from Riverside drive to the Upper Hill, Nairobi area where many public sector offices are located.

5.6 Legal Affairs and Legislative Progress

5.6.1 Review of Revenue and Finance Bills

Article 205 of the Constitution mandates the Commission to provide recommendations on any Bill concerning revenue sharing or financial matters related to county

governments. By advising on financing and financial management, the Commission promotes responsible fiscal practices. To date, it has reviewed over 100 county finance and revenue Bills.

In this capacity, the Commission has also reviewed the following Bills submitted to Parliament:

A. Parliament Bills

1. Commission on Revenue Allocation (Amendment) Bill, 2023
2. Public Finance Management (Amendment) Bill, 2023 (debt)
3. County Governments Revenue Raising Process Bill, 2023
4. The County Governments Additional Allocations Bill, 2023
5. Equalisation Fund Appropriation Bill, 2023
6. Facilities Improvement Financing Bill
7. Public Finance Management (Amendment) Bill, 2023 Senate Bills No. 40
8. County Public Finance Laws (Amendment) Act, 2023
9. Houses of Parliament (Bicameral Relations) Bill, 2023
10. The National Lottery Bill, 2023
11. Gambling Control Bill, 2023
12. County Statistics Bill, 2024
13. Intergovernmental Relations (Amendment) Bill, 2024
14. The Wildlife Conservation and Management (Amendment) Bill, 2023
15. The Finance Bill, 2024
16. The County Civic Education Bill, 2024
17. Division of Revenue Bill, 2024

Article 205 has been subject of court litigation e.g. in **Constitutional Petition No. E473 of 2023 (Joseph Enock Aura Versus Cabinet Secretary of Health & Others)** which matter was generally challenging the constitutionality of three legislations namely the Social Health Insurance Fund Act, the Primary Health Care Act and the Digital Health Act, all enacted in 2023. In the judgement, the Court made it obligatory for either House of Parliament to consult the Commission on Bills falling under Article 205.

B. County Bills

Section 161 of the PFM Act also mandates county governments to seek the Commission's views before imposing any revenue raising measures. Pursuant to this function, the Commission reviewed and submitted recommendations on the Mombasa County Solid Waste Management and Pollution Control Bill, 2023.

C. Policies

The Commission spearheaded the development and launch of a ground-breaking Model Tariffs and Pricing Policy for County Governments, the first of its kind in the region. This initiative aligns with the National Policy for Enhancement of County Governments' Own Source Revenue, aiming to assist counties in complying with Section 120 of the County Governments Act. The Commission has begun disseminating the Model Policy, with the first forum successfully conducted for Kiambu, Makueni, Nairobi, Machakos, Mombasa and Meru counties.

5.6.2 Progress on Court Cases

The Commission has been actively involved in several ongoing court cases, each presenting unique legal challenges and implications for its mandate. Below is the progress on these key cases:

- i. *Case challenging the Housing Levy*: This matter is currently ongoing. The matter is, among other issues, challenging involvement of the Commission in view of its mandate under Article 205 of the Constitution.
- ii. *In the case concerning the Road Maintenance Levy Fund (RMLF)*: The Council of Governors (CoG) initially filed a petition demanding allocation of the RMLF funds. Although the CoG withdrew this petition after assurances that the fund would be included in the Division of Revenue Bill, they reinstated their legal challenge when this inclusion did not occur. The Commission has since sought the Attorney General's opinion to guide its stance on this evolving matter.
- iii. *SRC Case, Kakamega*: The Kakamega MCAs enacted a law granting themselves a pension, contravening the Salaries and Remuneration Commission (SRC) directive. The Commission supports the SRC's position, and the case is awaiting a date for judgment.
- iv. *Kisii High Court case challenging Finance Bill*: This matter is yet to be scheduled for a hearing, with the Attorney General representing the Commission in court.

5.7 Internal Audit

The objective of the function is to provide independent, objective assurance and advisory services designed to add value and improve the Commission's operations by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management and control processes.

The Commission conducted six (6) audit engagements and quarterly monitoring of implementation of audit recommendation. The audit engagements included: Commission

financial statements for FY 2022/2023 for the Main Account, Mortgage and Car loan Funds and Fleet Management, Financial Management and Contract Management.

The Audit, Corporate Governance and Risk Management Committee held four meetings to consider the quarterly internal audit reports and discuss other matters presented to it. The purpose of the Committee is to support the Commission in fulfilling its oversight role to ensure effectiveness and efficiency in operations and the effectiveness of the governance, risk management and control processes. The Commission has considered the internal audit reports and is in the process of implementing the recommendations.

5.8 Public Outreach and Communications

The Commission successfully conducted a series of consultative forums, engaging members of both houses of Parliament, county governors, and members of county assemblies.

In addition, the Commission participated in prominent outreach events such as the Devolution Conference 2023, actively involving the wider public and the mass media. These initiatives generated over 90 media coverage pieces, significantly enhancing the Commission's visibility and public engagement. The Commission reached more than 700 key stakeholders surpassing its target of 600.

6 CHALLENGES

Despite the Commission's critical role in ensuring equitable revenue distribution and fostering a robust system of devolved governance, current encroachments on its mandate by other government entities and the inadequacy of funding threaten its ability to fulfil this vital constitutional responsibility.

6.1 Effect of Budget Reductions on the Execution of Core Activities

The Commission was allocated a budget of Kshs. 516.45 million (2022/23) that was later reinstated to Kshs. 516.82 million. The revised budget was too low to execute the Commission's planned activities for the reporting period.

The Commission's budget was later **reinstated by Ksh. 56.41 million** following several engagements with both the National Treasury and the Finance and Planning Committee (FNPC) of the National Assembly.

The Commission implemented most of its key priorities to an **absorption rate of 89%** (2022/23: 99%) of the annual revised budget. The low absorption was due to lack of exchequer releases at end of the financial year for commitments that had already been incurred.

At the close of the financial year, the Commission accumulated pending bills worth Ksh. 41.96 million (2022/23: Ksh. 7.79 million).

Budget constraints have significantly impacted PFMR funding for the Commission's activities, with only Kshs. 3 million allocated for disseminating the Model Tariffs and Pricing Policy and the OSR tax gap study report, compared to the initially requested Kshs. 15 million.

This experience highlights the necessity of prioritizing critical activities to ensure the most impactful use of limited resources. The Commission requests adequate funding and ensuring that essential initiatives are not compromised, some of which aim to ease the County Governments' reliance on the Exchequer support.

6.2 Limited Enforcement Authority for PFMA Compliance

Counties widely fail to comply with Section 161 of the Public Finance Management Act (PFMA), which requires them to seek the Commission's input when developing revenue-raising measures. This issue is further compounded by the absence or inefficiency of Bill tracking systems in many counties, hindering effective monitoring. Additionally, the Commission lacks the enforcement powers needed to ensure adherence to Section 161, limiting its ability to compel counties to comply with the PFMA.

6.3 Limitations on the Commission on Revenue Allocation Act, 2013

The Act establishing the Commission has certain limitations that affect the Commission's ability to fully carry out its mandate. Since its inception, the Commission on Revenue Allocation Act has not been reviewed, a process that is essential for the development of the Commission Regulations. Revisiting the Act would also allow for the inclusion of important functions, such as the Equalisation Fund, to enhance effective implementation. To undertake a comprehensive review, the Commission requires adequate budgetary resources.



Enhancing Accountability

**REPORT TO THE NATIONAL ASSEMBLY CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE ON THE EXTENT OF
THE OFFICE'S DISCHARGE OF ITS MANDATE PURSUANT TO
ARTICLE 229 OF THE CONSTITUTION**



REPUBLIC OF KENYA



KENYA LAW



24 April, 2025

The Chairperson – The Constitutional Implementation Oversight Committee, Hon. Karemba, Eric Muchangi.N., MP

Honorable Members of the Committee

A. Appreciation Note

1. I thank the National Assembly Constitutional Implementation Oversight Committee for giving me this opportunity to share the extent of our discharge of our mandate pursuant to Article 229 of the Constitution. I also thank Parliament for supporting the independence of the Office through budgetary allocation and deliberating on our audit reports.
2. Indeed, this invitation resonates with what our auditing standards expect of us. We are expected to report on any matters that may affect our ability to perform our work in accordance with our mandates and/or the legislative framework. We are also expected to make public our mandate, responsibilities, mission and strategy.

B. Discharge of Our Mandate

**Honourable Chair
Honourable Members**

3. The Committee has requested that I indicate the extent to which my Office has discharged its mandate. We have an expansive mandate which goes beyond Article 229 of the Constitution of Kenya. Indeed, Article 252(1)(d) empowers the Auditor-General to perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the Constitution. Consequently, the **Public Audit Act, 2015** also provides additional roles, mandates and functions of the Auditor-General. I highlight the following areas of our roles and mandate:

(i) Article 226(3) and Article 229(4) and (5) of the Constitution

4. Article 226 (3) of the Constitution of Kenya mandates the Office to audit all the accounts of all governments and State organs. This is further clarified in Article 229(4) of the Constitution which mandates the Office to audit the accounts of the **National and County Governments, the Parliament and County Assemblies, all Funds and**

Authorities of National and County Governments, accounts of all Courts, Public debt and all institutions, programmes or projects funded by public funds. The Courts have further interpreted and re-affirmed this mandate. The High Court judgement of 26 January 2022 in **Petition No. 33 of 2019** declared that the Auditor-General should also audit public funds received by any private entity. Further, The Court in High Court Constitutional **Petition No. E003 of 2023**, in nullifying the appointment and report of a Taskforce established to undertake Pending Bills and Human Resource Audit, held that, according to the Constitution and the law, all audits of a State organ or public entity shall be audited by the Auditor-General.

5. We fulfil this mandate by conducting financial audits which provide assurance on whether the financial statements reflect the true and accurate picture of the operations and state of affairs of a public sector entity. Our **audit universe** for the financial audits **has been expanding** over the years due to the expansion of government programs and growth in the national budget, and formation of additional entities to ensure sustainable development and delivery of continuous and quality services to the citizens. For instance, the universe has grown from **1,192** public sector entities in the financial year **2016/2017** to over **12,700 entities** under the current audit cycle for the financial year **2023/2024**, a **917%** increase over the last **eight (8) years**.

6. In these eight years, we have onboarded Level 4 and Level 5 Hospitals, Public Secondary Schools, TVETS, County Equalization Funds, and Municipalities, among others, as part of our audit universe. However, the audit universe is expected to grow further as legislative frameworks create additional entities. For instance, the new healthcare laws have created the Social Health Authority, Primary Healthcare Fund, Social Health Insurance Fund and Emergency Chronic and Critical Illness Fund. Level 2 and Level 3 Hospitals will also be onboarded as part of the reporting requirements for the Facilities Improvement Fund. Similarly, the Government plans to make Public Primary Schools self-accounting which is likely to triple our audit universe.

Honourable Chair

Honourable Members

7. In discharging our mandate under Article 229(4) of the Constitution, we have encountered a challenge due to tight timelines to audit and report imposed by some provisions in the Public Finance Management Act, 2012. The provisions give public entities three (3) months after the end of the financial year to present their financial statements for audit. This reduces the duration for audit and reporting from six (6) months given by Article 229(4) of Constitution to three (3) months. This has been adversely affecting the timelines for reporting, leading to backlogs and affecting the efficiency and effectiveness of oversight by Parliament and the County Assemblies. In addition, the High Court in **HCJR No. E082 of 2023**, issued a judgement on 1 October 2024, and made a declaration that Constitutional and statutory timelines are **MANDATORY** and must be complied with. This further aggravates the situation and has called on the Office to review its audit plans and restructure the audit process to ensure compliance with the constitutional timeline.

8. During the 12th Parliament, we submitted our proposed amendments to the Public Finance Management Act, 2012 to reduce the timelines for submission of financial statements from **within three months to within one month** after the end of the financial year. The Departmental Committee on Finance and National Planning of the National Assembly published the Public Finance Management (Amendment) (No.3) Bill (National Assembly Bill No. 39 of 2020) on 20 November, 2020 and held public consultations on the Bill. The Bill went through the First Reading on 25 March, 2021 but unfortunately, the Bill lapsed. The Bill was re-introduced as the Public Finance Management (Amendment Bill) (National Assembly Bill No. 2 of 2024) in the 13th Parliament, and we presented our submissions on the same to the Departmental Committee on Finance and National Planning on 25 September, 2024. It is my hope that the submissions to the Bill if adopted shall remedy the problem and this Committee shall support the initiative.

(ii) Article 229(6) of the Constitution

Honourable Chair

Honourable Members

9. Article 229(6) further mandates the Auditor-General to confirm whether or not public money has been applied lawfully and in an effective way. We fulfil this by conducting Compliance and Value-For-Money/ Performance Audits. The Compliance Audits are performed together with the Financial Audits.
10. Performance Audits address the effectiveness requirement of the Constitution. They help us monitor and evaluate the outcome and impact of the management and use of public resources besides providing valuable information on whether the country is achieving its development priorities and service delivery objectives.
11. We have submitted more than fifty (50) Performance Audits to Parliament touching on various sectors. However, Parliament has only deliberated on two (2) reports; Response to Floods in Kenya of 2023 and Provision of Services to Persons with Disabilities of 2021. Some of the reports have given recommendations, which if implemented, would have mitigated against some of the current issues we are experiencing as a country. I have on several occasions pleaded with the Watchdog Committees to give priority to Performance Audit Reports, as they give more insight into the challenges facing public sector entities. If these challenges are addressed, then we will reduce instances of wastage of public resources.

(iii) Article 229(7) of the Constitution

Honourable Chair

Honourable Members

12. Article 229(7) requires the Auditor-General to submit audit reports to Parliament or the relevant County Assembly. We do not have challenges in the submission of audit reports.
13. Further, Article 229(8) requires that, **within three months after receiving an audit report**, Parliament or the relevant County Assembly debate and consider the report and take appropriate action. However, we note that there are backlogs in both Parliament and County Assemblies with regard to the debating and consideration of

the audit reports. For instance, the National Assembly Public Accounts Committee is currently considering the audit reports for the financial year 2022/2023 while the Office submitted the audit reports for the financial year 2023/2024 by end of December, 2024. We laud the National Assembly for creating additional oversight committees to address the audit reports backlog for State Corporations and Devolved Funds.

(iv) Articles 248 and 249 of the Constitution

Honourable Chair

Honourable Members

13. Article 248(3) and Article 249(1) of the Constitution establishes the Office of the Auditor-General as an independent Constitutional Office. Further, Article 249(3) of the Constitution requires Parliament to allocate adequate funds to enable each Commission and Independent Office to perform its functions.
14. However, the Office does not enjoy full independence as envisaged by the Constitution. Indeed, the **Supreme Audit Institutions Independence Index: 2021 Global Synthesis Report by the World Bank** ranked the Office of the Auditor-General of the Republic of Kenya as part of **Group C Supreme Audit Institutions** with substantial level of independence, meaning we are on our way to being independent. We are, however, ranked lower in comparison with the audit offices of the Republic of Uganda and the Republic of South Africa, which are ranked as having a very high level of independence and fully exercise their independence.
15. Our lower ranking is attributed to lack of financial autonomy, where we do not have recourse in the event of inadequate budgetary allocations. We are, however, confident that due to the gains realized and the opportunities given in the last three years by Parliament to present our budget, if we were to be rated today, our ranking would improve to Group B level.

16. The OAG, despite being responsible for auditing and reporting on the entire national budgets, only receives an average of 0.20% of the national budget. In addition, we have continuously been **underfunded** over the years despite our **enhanced mandate** and **increased number of public sector entities** resulting in inability to fulfil our mandate in a timely manner as envisaged by the Constitution.
17. We seek this Committee's support in implementing the recommendations by the National Assembly, in its consideration of the report of the Budget and Appropriations Committee on the Budget Policy Statement for FY 2023/2024 of 15 March 2023, that, The National Treasury should facilitate the Office of the Auditor-General to have a **Single Line Budget** to enhance our efficiency in responding to emerging audit needs.
18. In addition, we request you to support the **Public Audit (Amendment Bill), 2024** which has been tabled in Parliament and especially the recommendations of the Public Accounts Committee adopted by The National Assembly on 9 June, 2022, that the annual budget allocation to the Office of the Auditor-General should not be less than one half per cent (0.5%) of all the revenue collected by the national government each year calculated based on the most recent audited accounts of revenue received. The Bill has since gone through the First and Second Readings at the National Assembly and was on 11 March 2025, passed with amendments, and has since been referred to the Senate for consideration. This Bill seeks to enhance the operational independence and autonomy of the Office. This includes managing our oversight operations through the establishment of the **OAG Fund** as recommended by the National Assembly.
19. The **Public Audit (Amendment) Bill, 2024** is also crucial in fortifying the independence of the Office of the Auditor-General by curing the sections that were declared unconstitutional and also stating with clarity the mandate of the Office where there has been ambiguity.

(v) **Articles 252 and 254 of the Constitution**

Honourable Chair

Honourable Members

20. Article 252 (2) of the Constitution empowers the Auditor-General to:

- Conduct investigations on own initiative or complaint by a member of the public and to summon witnesses for purposes of such investigations.
- Carry out conciliation, mediation and negotiation

21. In addition, Article 254(2) also empowers the Auditor-General to submit, at any time, a report on a particular issue to the President, the National Assembly or the Senate. These mandates are further amplified in Sections 34, 37 and 49 of the **Public Audit Act, 2015**, which empower the Auditor-General to conduct periodic forensic and special audits to address fraud and corrupt practices.

*Investigative
Audit* 22. My Office, from time to time, has been receiving requests to undertake other **Special, Forensic and Investigative Audits** from **Parliament, County Assemblies** and other stakeholders. During the last six years, Parliamentary Committees have requested the OAG to conduct **seventy-two (72) special audits**, some of which have been addressed through Annual Statutory Audits and Performance Audits. The Office recently completed two such special audit requests: **Audit of Expenditure Under Article 223 of the Constitution** and **Disbursement of Capitation to Private Universities**.

23. As an Office, we have subjected ourselves to external scrutiny as required by Article 226(4) of the Constitution. We thank the National Assembly for appointing the external auditors for the Office. We are now current as our external auditor has submitted to Parliament the audited financial statements for the Office for the financial year 2023/2024. We have also submitted and published our Annual Performance Reports as required by Article 254(1) and (3) of the Constitution.

(vi) Emerging Audit Areas

Honourable Chair

Honourable Members

24. The audit environment has considerably changed over the last ten (10) years. As such, our Office has been engaging in new frontiers beyond the traditional audits. For instance, in 2014, the National Assembly requested the Office to lead a Working Group to carry out a Socio-Economic Audit of the Constitution of Kenya 2010. This was a new area for us. I thank the National Assembly for this opportunity.
25. In 2021, the World Bank and the then State Department for Housing and Urban Development requested my Office to undertake an Annual Performance Assessment of the Kenya Urban Support Programme. As a result of the successful completion of the assignment, the National Treasury, in 2022, requested us to undertake a Annual Performance Assessment of the Financing Locally-Led Climate Action (FLLoCA) Programme in forty-five (45) counties for the financial year 2022/2023 (Nairobi and Mombasa County are not in this program).
26. The National Treasury has again requested us to undertake a new assessment in 2024. We have also been requested by the World Bank to be the independent verification expert for the Kenya Green and Resilient Expansion of Energy (GREEN) Project being implemented by the Kenya Power and Lighting Company.
27. In 2019, we rolled out the Citizen Accountability Audits (CAA). This is a strategic initiative to provide mechanisms, opportunities and tools for citizens to participate, to be engaged and to be involved in the audit process as required by Articles 10(2)(a) and 232(1)(d) of the Constitution. CAA provides an opportunity for the eyes and voices of citizens on how government resources are being spent and to what extent the resources are impacting their lives. We have so far carried out and submitted to Parliament three (3) CAA audits:

- a. Public Participation in the County Budget Making Process in eighteen (18) Counties for the Financial Year 2021/2022
- b. Citizen Participation and Effectiveness of the Global Fund in Kenya
- c. Citizen Participation and Effectiveness of National Agricultural Rural Inclusion Growth Project (NARGIP) under the Ministry of Agriculture

28. Therefore, as an audit institution, we have been constantly and consistently evaluating the changing and emerging risks in the audit environment and responded to these in our audits. This has also required us to re-organize our structure. As a result of these emerging areas, I have created new Directorates to address these issues. They include:

- a. System Assurance and Data Science to address emerging information and technology areas such as Cyber Security, Artificial Intelligence and Data Analytics
- b. Citizen Accountability Audit
- c. Environment and Climate Change Audit
- d. Public-Private Partnership Audit
- e. Information and Knowledge Management

29. We restructured the Office by further decentralizing our audit services through establishing six (6) additional Regional Offices in Machakos, Homa Bay, Kericho, Kilifi, Isiolo and Nairobi (other than Headquarters) and constructing four (4) Regional Offices in Garissa, Kakamega, Eldoret and Embu. We now have fifteen (15) Regional Offices. This is to ensure higher efficiency and to expand the scope and depth of audit for greater accountability, quality and timely reporting. We still have to continue with decentralization.

(vii) Implementation of Audit Recommendations

Honourable Chair

Honourable Members

29. Sections 68(2)(l) and (m), and 149(2)(l) of the Public Finance Management Act, 2012 and Section 31(1)(a) and 53 of the Public Audit Act, 2015 require Accounting Officers

to implement Audit and Parliamentary recommendations. However, the Accounting Officers have not been implementing the recommendations which would have mitigated against some of the current issues we are experiencing as a country. We have noted that Accounting Officers do not implement audit recommendations because there lacks an effective mechanism for follow-up on implementation of audit recommendations and lack of consequences or requisite sanctions for non-adherence. This has led to fiscal indiscipline, including misallocations, wastage of resources, lack of value for money in the implementation of projects, theft and corruption.

30. As an Office, we have developed an internal Framework for Tracking, Follow-Up, and Reporting on Implementation Of Audit Recommendations. This framework recognizes Parliament as one of the key partners in undertaking the follow-up of audit recommendations

31. We also submitted our recommendations, through The National Assembly Departmental Committee on Finance and National Planning, to Parliament to review the **Public Finance Management Act, 2012**, to make implementation of audit recommendations mandatory to all public entities and introduce and enforce sanctions to those who fail to comply. The Bill, again, was not approved as Parliament was dissolved.

C. Conclusion


Honorable Chair

Honorable Members

48. A strong and independent Office of the Auditor-General is able to continuously support Parliament in its oversight role over the appropriated funds and ensure value for money and service delivery is achieved **for the people you represent**. This, however, is only possible if the Office is adequately resourced, allowed to determine the audit scope and timelines and our recommendations implemented by the Accounting Officers.

49. I once again, I thank Parliament and this Committee for your continued support and for according me the opportunity to make my contributions and share my insights on status of implementation of my mandate, which I believe will assist in forging a way forward in addressing the identified challenges.

I thank you.


FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

24 April, 2025



Enhancing Accountability

**REPORT TO THE NATIONAL ASSEMBLY CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE ON EXTENT OF THE
OFFICE'S DISCHARGE OF ITS MANDATE PURSUANT TO
ARTICLE 229 OF THE CONSTITUTION**



REPUBLIC OF KENYA



KENYA LAW

AN OFFICIAL PUBLICATION OF THE OFFICE OF THE AUDITOR-GENERAL



11 SEPTEMBER, 2024

The Chairperson – The Constitutional Implementation Oversight Committee, Hon. Gathoni Wamuchomba, MP

Honorable Members of the Committee

A. Appreciation Note

1. I thank the National Assembly Constitutional Implementation Oversight Committee for giving me this opportunity to share the extent of our discharge of our mandate pursuant to Article 229 of the Constitution. I also thank Parliament for supporting the independence of the Office through budgetary allocation and deliberating on our audit reports.
2. Indeed, this invitation resonates with what our auditing standards expect of us. We are expected to report on any matters that may affect our ability to perform our work in accordance with our mandates and/or the legislative framework. We are also expected to make public our mandate, responsibilities, mission and strategy.

B. Discharge of Our Mandate

Honourable Chair

Honourable Members

3. The Committee has requested that I indicate the extent to which my Office has discharged its mandate. We have an expansive mandate which goes beyond Article 229 of the Constitution of Kenya. Indeed, Article 252(1)(d) empowers the Auditor-General to perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the Constitution. Consequently, the Public Audit Act, 2015 also provides additional roles, mandates and functions of the Auditor-General. I highlight the following areas of our roles and mandate:

(i) Article 226(3) and Article 229(4) and (5) of the Constitution

4. Article 226 (3) of the Constitution of Kenya mandates the Office to audit all the accounts of all governments and State organs. This is further clarified in Article 229(4) of the Constitution which mandates the Office to audit the accounts of the **National and County Governments, the Parliament and County Assemblies, all Funds and**

Authorities of National and County Governments, accounts of all Courts, Public debt and all institutions, programmes or projects funded by public funds. The Courts have further interpreted and re-affirmed this mandate. The High Court ruling of 26 January 2022 in Petition No. 33 of 2019 declared that the Auditor-General should also audit public funds that are received by any private entity. Further, The Court in High Court Constitutional Petition No. E003 of 2023 , in nullifying the appointment and report of a Taskforce established to undertake pending bills and human resource audit, held that according to the Constitution and the law, all audits of a State organ or public entity shall be audited by the Auditor-General.

5. We fulfil this mandate by conducting financial audits which provide assurance on whether the financial statements reflect the true and accurate picture of the operations and state of affairs of a public sector entity. Our **audit universe** for the financial audits **has been expanding** over the years due to the expansion of government programs and growth in the national budget and formation of additional entities to ensure sustainable development and delivery of continuous and quality services to the citizens. For instance, the universe has grown from **1,192** public sector entities in the financial year **2016/2017** to over **12,800 entities** under the current audit cycle for the financial year **2023/2024**, a **917%** increase over the last **eight (8) years**.
6. In these eight years, we have onboarded Level 4 and Level 5 Hospitals, public secondary schools, TVETS, County Equalization Funds, and municipalities among others as part of our audit universe. However, the audit universe is expected to grow further as legislative frameworks create additional entities. For instance, the new healthcare laws have created the Social Health Authority, Primary Healthcare Fund, Social Health Insurance Fund and Emergency Chronic and Critical Illness Fund. Level 2 and Level 3 hospitals will also be onboarded as part of the reporting requirements for the Facilities Improvement Fund. Similarly, the Government plans to make public primary schools self-accounting which is likely to triple our audit universe.

7. Further, in discharging our mandate under Article 229(4) of the Constitution, we have encountered a challenge due to tight timelines to audit and report imposed by some provisions in the Public Finance Management Act, 2012. The provisions give public entities three (3) months after the end of the financial year to present their financial statements for audit. This reduces the duration for audit and reporting from six (6) months given by Article 229(4) of Constitution to three (3) months. This has been adversely affecting the timelines for reporting, leading to backlogs and affecting the efficiency and effectiveness for oversight by Parliament and the County Assemblies.
8. We had proposed amendments to the Public Finance Management Act, 2012 to reduce the timelines for submission of financial statements from within three months to within one month after the end of the financial year. The Departmental Committee on Finance and National Planning of the National Assembly published the Bill on 20 November, 2020 and held public consultations on the Bill. The Bill went through the First Reading on 25 March, 2021. We hope the Bill will be re-introduced in Parliament to remedy the problem and this Committee shall support the initiative.

(ii) Article 229(6) of the Constitution

9. Article 229(6) further mandates the Auditor-General to confirm whether or not public money has been applied lawfully and in an effective way. We fulfil this by conducting compliance and value-for-money/ performance audits. The compliance audits are performed together with the financial audits.
10. Performance audits address the effectiveness requirement of the Constitution. They help us monitor and evaluate the outcome and impact of the management and use of public resources besides, providing valuable information on whether the country is achieving its development priorities and service delivery objectives.
11. We have submitted more than fifty (50) performance audits to Parliament touching on various sectors. However, Parliament has only deliberated on two (2) reports; Response to Floods in Kenya of 2023 and Provision of Services to Persons with Disabilities of 2021. Some of the reports have given recommendations which if

implemented would have mitigated against some of the current issues we are experiencing as a country. I have on several occasions pleaded with the Watchdog Committees to give priority to performance audit reports as they give more insight into the challenges facing public sector entities. If these challenges are addressed, then we will reduce instances of wastage of public resources.

(iii) Article 229(7) of the Constitution

12. Article 229(7) requires the Auditor-General to submit audit reports to Parliament or the relevant county assembly. We do not have challenges in submission of audit reports.
13. Article 229(8) requires Parliament or the county assembly to debate and consider the report and take appropriate action.

(iv) Article 248 and 249 of the Constitution

13. Article 248(3) and Article 249(1) of the Constitution establishes the Office of the Auditor-General as an independent Constitutional Office. Further, Article 249(3) of the Constitution requires Parliament to allocate adequate funds to enable each Commission and Independent Office to perform its functions.
14. However, the OAG, does not enjoy full independence as envisaged by the Constitution. Indeed, the **Supreme Audit Institutions Independence Index: 2021 Global Synthesis Report by the World Bank** ranked the Office of the Auditor-General of the Republic of Kenya as part of Group C Supreme Audit Institutions with substantial level of independence meaning we are on our way to being independent. We are, however, ranked lower in comparison with the audit offices of the Republic of Uganda and the Republic of South Africa, which are ranked as having a very high level of independence and fully exercise their independence.
15. Our lower ranking is attributed to lack of financial autonomy, where we do not have recourse in the event of inadequate budgetary allocations. We are, however, confident that due to the gains realized and the opportunities given in the last three years by

Parliament to present our budget, if we were to be rated today, our ranking would improve to Group B level.

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17. We seek this Committee's support in implementing the recommendations by the National Assembly, in its consideration of the report of the Budget and Appropriations Committee on the Budget Policy Statement for FY 2023/2024 of 15 March 2023, that, The National Treasury should facilitate the Office of the Auditor General to have a single line budget to enhance our efficiency in responding to emerging audit needs.
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23. As an Office, we have subjected ourselves to external scrutiny as required by Article 226(4) of the Constitution. We thank the National Assembly for appointing the external auditors for the Office. We have also submitted and published our annual performance reports as required by Article 254(1) and (3) of the Constitution.

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Honourable Chair
Honourable Members

24. The audit environment has considerably changed over the last ten (10) years. As such, our Office has been engaging in new frontiers beyond the traditional audits. For instance, in 2014, the National Assembly requested the Office to lead a Working Group to carry out a Socio-Economic Audit of the Constitution of Kenya 2010. This was a new area for us. I thank the National Assembly for this opportunity.

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(vii) Implementation of Audit Recommendations

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I thank you.

FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

12 September, 2024