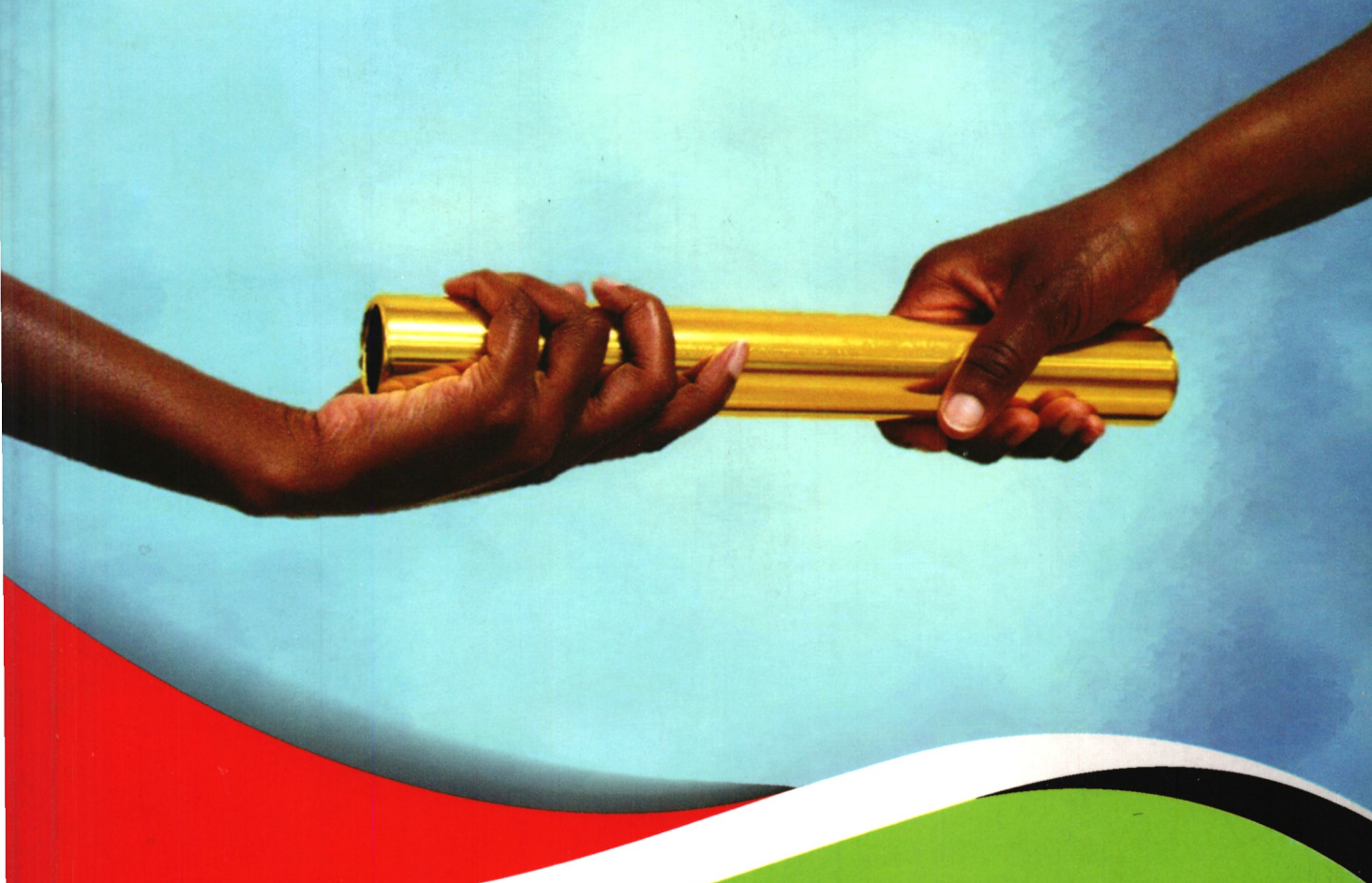




COMMISSION ON REVENUE ALLOCATION
Promoting an Equitable Society

FIRST COMMISSIONER'S END TERM REPORT



DECEMBER 2016



COMMISSION ON
REVENUE ALLOCATION

Promoting an Equitable Society

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(January 2011 - December 2016)

TABLE OF CONTENT



LIST OF TABLES.....	v
ACRONYMS.....	vi
FOREWORD	vii
ACKNOWLEDGEMENT	ix
THE EXECUTIVE SUMMARY.....	x

CHAPTER ONE: COMMISSION ON REVENUE ALLOCATION 1

1.1 Rationale for Establishment of the Commission.....	1
1.2 Vision, Mission and Core Values.....	3
1.3 Mandate of the Commission	3
1.4 Composition and Organisational Structure of the Commission	4
1.5 CRA Strategic Objectives.....	13

CHAPTER TWO: PRINCIPLES OF PUBLIC FINANCE..... 15

2.1 Constitutional and Legislative Provisions	15
2.2 Objects of Devolution.....	16
2.3 Public Participation.....	16
2.4 Best Practices/International Experiences	17
2.5 Challenges Experienced	16
2.6 Lessons Learnt.....	18
2.7 Way Forward	19

CHAPTER THREE: THE BASIS FOR EQUITABLE SHARING OF REVENUE BETWEEN NATIONAL AND COUNTY GOVERNMENTS..... 20

3.1 Introduction	20
3.2 Legal Framework for Revenue Sharing	20
3.3 Design of Kenyan's Transfer System.....	21
3.4 Provisions of Article 203 on Sharing Revenue	22
3.5 Basis for Sharing of Revenue between National and County Governments.....	26
3.6 Challenges Experienced	28
3.7 Lessons Learnt.....	29
3.8 Way Forward	30

CHAPTER FOUR: THE BASIS FOR EQUITABLE SHARING OF REVENUE AMONG COUNTY GOVERNMENTS 31

4.1 Introduction	31
4.2 Application of Article 203	31
4.3 Achievements and Experiences of the Commission in Designing the First and Second Basis for Revenue Sharing.....	33
4.4 Challenges Experienced	35

4.5	Lessons Learnt.....	35
4.6	Way Forward	35
CHAPTER FIVE: FINANCIAL MANAGEMENT AND FISCAL RESPONSIBILITY IN COUNTIES		36
5.1	Introduction	36
5.2	Legal Provisions on Financial Management.....	36
5.3	Public Finance Management Responsibilities of CRA	37
5.4	Achievements and Experiences of the Commission on Financial Management ..	38
5.5	Challenges Experienced	41
5.6	Way forward	41
CHAPTER SIX: REVENUE ENHANCEMENT IN COUNTIES		42
6.1	Introduction	42
6.2	Assignment of Revenue Sources	43
6.3	Revenue of Counties.....	43
6.4	Revenue Automation in Counties	44
6.5	Challenges Experienced	45
6.6	Lessons Learnt.....	46
6.7	Way Forward	46
CHAPTER SEVEN: POLICY IDENTIFYING MARGINALISED COUNTIES		47
7.1	Introduction	47
7.2	Policy Contextualisation of Kenya’s Marginalisation	48
7.3	Equalisation Fund	49
7.4	The Marginalisation Policy	49
7.5	Marginalised Counties and the Criteria for Revenue Sharing.....	50
7.6	Challenges Experienced	50
7.7	Lessons Learnt.....	51
7.8	Way Forward	52
CHAPTER EIGHT: NATURAL RESOURCE MANAGEMENT.....		53
8.1	Introduction	53
8.2	Policy on Natural Resources	53
8.3	Legislations on Natural Resources.....	53
8.4	Challenges Experienced	54
8.5	Way forward	55
CHAPTER NINE: MILESTONES OF THE FIRST COMMISSIONNERS.....		56
CHAPTER TEN: RECOMMENDATIONS TO FUTURE COMMISSIONERS		57
ANNEX 1: CRA SECRETARIAT STAFF.....		59

LIST OF TABLES

Table 1: The First Commissioners' Profiles	5
Table 2: Summary on Recommendations on Equitable Share	27
Table 3: Summary of Approved Conditional Grants to Counties	27
Table 4: Parameters & Weights for First and Second Revenue Sharing Bases	34

ACRONYMS

ADP	Annual Development Plan
CBEF	County Budget Economic Forum
CB-ROP	County Budget Review and Outlook Paper
CEC	County Executive Committee
CFSP	County Fiscal Strategy Paper
CIDP	County Integrated Development Plans
COG	Council of Governors
DANIDA	Danish International Development Agency
EU	European Union
FAO	Food and Agriculture Organisation
GIS	Geographic Information System
HCDA	Horticultural Crops Development Authority
IBEC	Intergovernmental Budget and Economic Council
IBP	International Budget Partnership
IFMIS	Integrated Financial Management Information System
KAM	Kenya Association of Manufacturers
KASNEB	Kenya Accountants and Secretaries National Examinations Board
KNBS	Kenya National Bureau of Statistics
LGU	Local Government Units
MCA	Member of County Assembly
MDA	Ministries, Departments and Authorities
OCOB	Office of the Controller of Budget
PFMA	Public Finance Management Act
UNDP	United Nations Development Programmes
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
WFP	World Food Program

FOREWORD

I am honoured to have served as the first Chairman of the Commission on Revenue Allocation (CRA). The Commissioners, in conjunction with the Secretariat, are grateful to have been given the opportunity to serve the country. During our tenure, covering January 2011 to December 2016, we demonstrated our support for the successful implementation of devolution, thus contributing to the attainment of our motto of “*Promoting an Equitable Society*”.

Over the years, appreciation and understanding of the role of the Commission and its relevance by various stakeholders grew and the initial resistance that was experienced against the work of the Commission was overcome.

The principal function of the Commission is to make recommendations concerning the basis for equitable sharing of revenue raised by national government, between national and county governments and among county governments.

Some of our achievements include development of the first formula for the equitable sharing of revenue among county governments. The Commission has developed a second formula, which was approved by the Senate in April 2016, with the National Assembly approving it on 22nd June 2016. Allocated resources have contributed to development in all counties, especially in the formerly marginalised parts of the country. The greatest impact has been realized in the functions of health, agriculture, water, and early childhood education, among others. Other achievements are ensuring that wastage in counties is curbed, especially with the introduction of budget ceilings on recurrent expenditures. The Commission also championed automation of revenue management in order to seal revenue leakages, ensuring that resources are set aside for development.

As we come to the end of our tenure, we want to strongly recommend the need for austerity measures to curb wastage at all levels of government, as well as undertaking staff rationalisation programmes in order to reduce the wage bill. Further, representation needs to be reviewed, as the number of the Members of Parliament is huge. This is a burden to the wage bill. The requirement to nominate women so as to meet the gender rule has also increased the wage bill. These issues need to be addressed so as to ensure there are adequate funds to offer quality services to the public.

We recommend that in future, the law should be amended so that the formula for sharing revenue recommended by the Commission is used unless two-thirds of the Senate and or the National Assembly reject it. Furthermore, the Commission recommendation on revenue sharing should also be binding unless two thirds of Senate and National Assembly members vote to amend it.

The Constitution recognises the right of communities to manage their own affairs and

enhance the participation of the people in making decisions on matters affecting them. CRA calls upon counties to prepare their own budgets and allocate funds to expenses, based on priority.

Supremacy wars between senators and governors should also be addressed. We encourage the President to use his office to bring about dialogue between governors, senators and members of county assemblies to address their differences.

In addition, there is need for timely disbursement of funds from the National Treasury to the counties, to avoid such disruptions as staff strikes, stalled development projects, delayed payment to suppliers and counties running on expensive bank overdrafts. The capacity level of members of county assemblies needs to be enhanced. More educated women also need to be elected. These measures will improve the quality of elected MCA's and hence enhanced decision-making.

The first Commissioners did their best in crusading for the equitable sharing of revenues between the national and county governments, and among county governments in order to realize effective implementation of devolution. We wish the next Commissioners every success and trust that they will drive CRA to even greater heights.



Micah Cheserem
CHAIRMAN

ACKNOWLEDGEMENTS

I am pleased to present to you the first Commissioners' end term report. This report marks the sixth year of the Commission implementing its mandate and highlights the programmes and activities that we effected, successes we attained and the challenges we faced. It provides recommendations for consideration by the second cluster of Commissioners, who will be appointed to serve for the next six years from 2017.

With the establishment of the Commission in 2011, we embarked on getting offices and recruiting staff. The calibre of members of staff that were recruited was exceptionally high. Over the past six years, under the leadership of the Commissioners, the Secretariat has contributed greatly to the attainment of the mandate of the Commission as relates to equitable sharing of revenue, the marginalisation policy, financial management, and revenue enhancement.

The Commission wishes to acknowledge the support it received from other Constitutional Commissions and Independent Offices, national and county governments, development partners, civil society and professional bodies, among others. This support has been instrumental to the Commission's achievements this far. I extend my appreciation to the Secretariat staff, whose determination and industry, under the guidance of Commissioners, has led to the many achievements this far.

We are enthusiastic about the milestones that we have accomplished and we look forward to realizing even more, in view of the lessons learnt. I wish to reiterate the commitment of the Secretariat to delivering on the implementation of devolution, through the equitable sharing of revenue between national and county governments and among county governments.



George Ooko
COMMISSION SECRETARY/CEO

THE EXECUTIVE SUMMARY

The Commission on Revenue Allocation is established by Article 215 of the Constitution of Kenya. Articles 110 and 112 bestow upon Parliament a decisive role in both the determination of the division of revenue raised nationally between the national and county governments and in the division of the share allocated to counties among the counties.

The Commission is composed of eight Commissioners. The Commissioners are nominated for a term of six years, non-renewable. The Commission undertakes its operations through a governance structure comprising six Committees and a Secretariat organized in six directorates

The Constitution lays the fundamentals for prudent financial management in the public sector. More importantly, the Commission is required to ensure an equitable society, guided by the principles of public finance as outlined in Article 201 of the Constitution. In fulfilling this mandate, the Commission has performed its duties in a consultative process involving both national and county level stakeholders.

The principal function of the Commission, as stipulated in Article 216(1), is to make recommendations concerning the basis for the equitable sharing of revenue raised nationally between the national and county governments and among county governments.

Annually, the Commission has developed recommendations on the basis for revenue sharing between national and county governments. Based on Article 202 (2), which provides for additional revenue to county governments from the national government's share of revenue, the Commission made recommendations of conditional allocations to county governments.

To share revenues among the county governments, the Commission developed two recommendations in line with the provisions of Article 217(2), read together with the Sixth Schedule Section 16, that requires the First and Second Basis for revenue sharing among county government to be done in three-year intervals. The first basis was used to share revenues among counties from financial years 2012/13 to 2016/17. The second basis, approved in June 2016 will be used to share revenues starting with financial year 2017/18. In developing the recommendations the Commission was guided by Article 203.

In line with the provisions of Article 216(2,3) the Commission made recommendations on other matters concerning the financing of, and financial management by county governments, and to encourage fiscal responsibility. In implementing these provisions and other laws, the Commission has on a regular basis provided advisories to county

governments on matters of financial managements. The Commission has conducted various capacity building programs to counties. To ensure prudence in use of public resources, the Commission made recommendations, providing ceilings of recurrent expenditures of county governments.

To enhance county revenues in line with the provisions of Article 216, the Commission held wide consultations with counties on how to optimise capacity to generate more revenues, track expenditure and seal leakages. In this regard, the Commission provided technical assistance to counties to automate revenues by developing and disseminating guidelines and standards.

Following decades of centralised planning, a number of areas in Kenya were marginalised. In accordance with the provisions of Article 216(4) and Article 204, the Commission determined and published the first policy identifying 14 marginalised counties and defined a criteria by which to share revenues from the Equalisation Fund among the marginalised counties.

In the course of executing the Commission mandate on equity, the Commission appreciated the crucial role natural resources across counties will play. To this end, the Commission has provided technical advice and overseen the implementation of strategies for effective natural resource exploitation for revenue enhancement. For the past four years the Commission championed for natural resource policy, legislation, capacity building and benefit sharing.

1.1 Rationale for Establishment of the Commission

The Commission is established by Article 215 of the Constitution of Kenya. Articles 110 and 112 bestow upon Parliament a decisive role in both the determination of the division of revenue raised nationally between the national and county level of governments and in the division of the share allocated to counties among the counties. Article 216 mandates the Commission to play a special role in the process of division of revenue between the national and county governments and among county governments. The Commission was established to provide an objective framework for implementing Article 216 through the following:

1.1.1 To Undertake Technical Analysis

Financial management in a system of devolved government is both technical and complex. For instance, the division of revenue, the assessment of the impact of granting various taxing powers to counties, and the assessment of the conditions under which counties should be able to borrow require a specialised understanding of the national economy. It is appropriate that Parliament should make the final decisions on these matters, but its political decisions need to be informed by independent, skilled and professional analyses of the problems. The Commission does not supplant Parliament. Its technical advice is meant to strengthen debate in Parliament and enable Parliament to make informed decisions. In addition, because the Commission is an independent body, its advice is neutral.

The analysis of the needs and recommendations provided by the Commission also enables county governments to engage constructively in the processes that concern their finances. In the absence of the Commission, most of these governments would be totally dependent on information and ideas generated by the national government, which is an interested party and likely to be partial.

1.1.2. To Protect the Criteria for Revenue Sharing

The Constitution establishes a set of criteria that must be taken into account in determining the way revenue is shared between the two levels of government, as well as among the 47 county governments. The Commission is obliged to apply these criteria in its recommendations. Its recommendations also provide an explanation of how the Commission has taken the criteria into account. If National Treasury deviates from the recommendations of the Commission, it is required to provide a memorandum explaining how its revision of the proposals nonetheless complies with the criteria in the Constitution.

1.1.3. Provide Independent, Impartial, Long-Term Advice

Decision-making by politicians is often informed by the immediate political concerns that

they face. This can lead to decisions that do not take a long term perspective. Moreover, each politician has a particular constituency to serve and the interests of different constituencies will not always coincide. The recommendation of the Commission informs the debate from a broader perspective. As an independent, specialist body is able to take a longer term view and to accommodate the sometimes competing needs of the national government and different county governments without abandoning the overall goals of equity and the national interests.

1.1.4. To Link County Governments to National Decision Making on their Finances

Many decisions concerning the finances of county governments are taken by Parliament. Although there is a member of Senate representing each county, these members of Senate are directly elected and do not necessarily have any link to the county government. Some even come from a party different from the one governing the county. This means that there is no link between a particular county government and decision-making in Parliament on matters that concern it directly. In the context of county government finances, the Commission contributes towards closing this gap. The Commission does engage with county governments, seek to understand their needs and concerns, and factor these into recommendations.

1.1.5. Accountability

The Commission enhances accountability in financial management, particularly through recommendations concerning the use of the Equalisation Fund and on the division of revenue. For instance, although revenue sharing among the counties necessarily involves budgetary decisions, it is also important that these decisions are based on transparent and understood principles with long-term consequences taken into account. A system that is based on sound principles and open to public scrutiny will be both fairer and more efficient.

The rationale for the formation of the Commission was to address the issues of fairness or equity in allocation of resources between the national and county government and among the county governments. It is important to take cognisance of the fact that, local taxes are obvious sources of finance for devolved governments. However, because all counties are not equally endowed with resources from which revenue can be generated then provisions for the equitable disbursement of nationally raised revenue to counties was necessary.

The Constitution empowers the Commission to give technical advice to Parliament to enable it make informed decisions regarding division of revenue, county borrowing, and taxation powers of county governments, among others. Secondly, the Commission develops and protects the criteria for revenue sharing. The Commission in implementing its mandate takes a long-term view and accommodates competing needs of the national government and different county governments without abandoning the overall goals of

equity and the national interests. Further the Commission links the county governments to national decision making on their finance and enhance accountability in financial management.

1.2 Vision, Mission and Core Values

1.2.1 Vision

A trusted and effective advisor on equitable distribution of resources for rapid and balanced economic growth.

1.2.2 Mission

To make expert recommendations on equitable sharing of revenue, financing of, and financial management for both national and county governments.

1.2.3 Core Values

To achieve its Vision and Mission the Commission is committed to the following values:

- (i) **Equity:** The Commission is guided by the spirit of fairness, inclusion and respect.
- (ii) **Teamwork:** The Commission always encourage participation of all members of staff in its operations. It believes in people working together to achieve organisational results.
- (iii) **Excellence:** The Commission maintains quality control and strive for the highest standards in all aspects of its work.
- (iv) **Transparency:** All service delivery and operations of the Commission includes citizens' participation.
- (v) **Employee satisfaction:** The Commission strives to attract and retain staff with high morale, discipline and performance.
- (vi) **Integrity:** The Commission staff are required to abide and uphold Chapter Six of the Constitution.

1.3 Mandate of the Commission

The Commission derives its mandate from Articles 216, 204, 205 and Schedule 6 of the Constitution of Kenya. The Commission's mandate is further enabled through the Commission on Revenue Allocation Act, 2011.

1.3.1 Principal Mandate

The primary mandate of the Commission is articulated in Article 216 as follows:

- (i) To make recommendations concerning the basis for the equitable sharing of revenue raised by the national government, between the national and county governments;
- (ii) To make recommendations concerning the basis for the equitable sharing of revenue raised by the national government, among county governments;
- (iii) To make recommendations concerning the financing of, and financial management by county governments
- (iv) To define and enhance the revenue sources of the national and county governments;

- (v) To encourage fiscal responsibility by the national and county governments.
- (vi) 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);
- (vii) Article 205 mandates the Commission to consider and make recommendations to the National Assembly and Senate on any published Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments.

1.3.2 Subsidiary Mandate

The secondary mandate of the Commission is articulated in the Constitution and other legislation as follows:

- (i) The Public Finance Management Act (PFMA) 2012, Section 107(2A) mandates the Commission to recommend to Senate the budgetary ceilings on the recurrent expenditures of each county government;
- (ii) The PFMA, 2012 Section 117 (5), mandates the Commission to provide input into the County Fiscal Strategy Paper prepared by the County Treasury;
- (iii) The PFMA, 2012 Section 24(10)(b), mandates the Commission to receive in each financial year, financial statements from each of the Administrator of a National Public Fund;
- (iv) The PFMA, 2012 Section 25(5)(a), mandates the Commission to provide input in the Budget Policy Statement prepared by the National Treasury;
- (v) The PFMA, 2012 Section 161, mandates the Commission to provide input to county governments on tax imposition or revenue raising measures;
- (vi) The PFMA, 2012 Section 173, mandates the Commission to provide recommendations to county governments on their objective criteria for allocating funds to the urban areas or cities.

1.4 Composition and Organisational Structure of the Commission

1.4.1. The Commission

The Commission has nine Commissioners. The first Commissioners were appointed through a competitive process, in compliance with the Constitution and gazetted through Gazette Notice Number 16955 of 30th December 2010. The Commissioners took the oath of office on 11th January 2011.

As provided for in Article 215, the Commission comprises of the following nine persons appointed by the President:

- (i) A Chairperson, nominated by the President and approved by the National Assembly;
- (ii) Two persons nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly.
- (iii) Five persons nominated by the political parties represented in the Senate according to their proportion of members in the Senate.
- (iv) The Principal Secretary in the Ministry responsible for Finance.

The following are the first nine Commissioners of the Commission:

Table 1: The First Commissioners' Profiles



Micah Cheserem
Chairman

Mr. Micah Cheserem attended Strathmore College of Accountancy and is a qualified Accountant. He was awarded the Fellowship of Chartered Certified Accountants of London in 1974.

Between 1970 and 1993, he worked for several private sector companies, including Lonrho E. A., B.A.T. Kenya, Fluorspar Kenya and, for many years, Unilever where he worked in Kenya, Australia and Malawi.

In 1993, when Kenya faced a very serious monetary and economic crisis, he was appointed the Governor, Central Bank of Kenya, a position he held for eight years. He is credited with achieving monetary stability and taming the then run-away inflation. He had previously held the position of a Non-executive Director of the Central Bank from 1984 to 1991. In 2009, he was appointed as the Chairman, Capital Markets Authority.



Fatuma Abdulkadir
Vice Chairperson

Ms. Fatuma Abdulkadir holds a Master's degree in Business Administration and a Bachelor of Education degree. She has been the National Project Coordinator in Arid Lands Resource Management Project. She has wide experience in development and implementation of government policies in Arid and Semi – Arid regions.

She has also facilitated the implementation of programmes funded by development partners, such as the EU, UNDP, WFP, FAO, UNICEF and OXFAM. She is the immediate former chair of the Kenya Food Security Meeting, which coordinates humanitarian interventions of all actors – including government donors and NGOs in the food security sector.



Prof. Wafula Masai
Commissioner

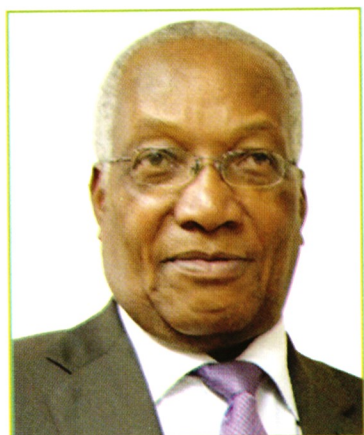
Prof. Wafula Masai is a holder of a Doctorate in Economic Analysis and Planning, a Master of Arts degree in Development Economics and a Bachelor of Arts in Economics. For about thirty years, he has served as a Lecturer and Associate Professor of Economics, Chairman of Economics Department (University of Nairobi), Programmes Director at the African Centre for Economic Growth and as an economic policy consultant for many international agencies, and Kenyan public, private and civil society organisations.



Amina Ahmed
Commissioner

Ms. Amina Ahmed holds Bachelor of Arts degree in Economics and French from the University of Nairobi. She holds a certificate on Fiscal Decentralisation and Local Governance from Georgia State University - Andrew Young School of Policy Studies. In addition she has certificates from World Bank Institute on Policy Development.

Previously, she held the position of chairperson of the Kenyatta International Conference Centre and was a member of the Executive Committee of the One Shilling Foundation. She worked at the Kenya Commercial Bank for twenty-two years as Regional Manager, Coast Region. She has wide experience in Public and Commercial Finance.



Prof. Joseph Kimura
Commissioner

Prof. Joseph Kimura holds a PhD in Accounting, MBA in Accounting and Finance and a Bachelor of Commerce degree in Accounting. He is a Certified Public Accountant. He holds the rank of Fellow of the Institute of Certified Public Accountants of Kenya and is a founder member of the Association of Financial Analysts of East Africa.

Prof Kimura has held many positions, both in the public and private sectors, including at the University of Nairobi, USIU, KASNEB and the Higher Education Loans Board, among others.



Rose Osoro
Commissioner

Mrs Rose Osoro holds a Master's degree in Business Administration from the University of Nairobi and a Bachelor of Arts from Kenyatta University. She is a Certified Public Accountant (CPA-K) and Certified Secretary (CS-Finalist).

She has extensive work experience in public finance, with emphasis on budgeting and financial allocation – with training from Andrew Young School of Policy Studies and Duke University. She is a Member of Institute of Certified Public Accountants of Kenya (ICPAK) and Kenya Institute of Management. She previously held positions at the Kenya Forestry Research Institute



Prof. Raphael Munavu
Commissioner

Prof. Raphael Munavu holds a Ph.D. (Chemistry), an M.Sc. (Chemistry) and a BA (Chemistry). He has held the following senior academic and administrative positions in local universities: Vice Chancellor, Moi University (1998-2002); DVC (Admin. & Finance) University of Nairobi (1994-1998); DVC (Admin. & Finance), Egerton University (1992-1994); and Principal, Laikipia College (1990-1992). He was also Chairman of the Kenya National Examinations Council (KNEC, 2002-2008), and Chairman of the South Eastern University College (SEUCO, 2008-2013). He is the current Chancellor of Laikipia University (2013-present).

Professor Munavu has wide research and teaching experience, and is a Fellow of both the Kenya National Academy of Sciences (KNAS) and the African Academy of Sciences (AAS).



Meshack Onyango
Commissioner

Mr. Meshack Onyango holds a Master of Science Degree in International Banking and Finance from Herriot – Watt University, Scotland and a Bachelor of Commerce degree from the University of Nairobi and diploma in Money and Capital Markets Development from New York Institute of Finance. He is a financial sector and a payments system development expert.

Previously, Mr. Onyango worked with the Central Bank of Kenya and has undertaken various consultancy assignments with varied donor agencies and has been a board member at the Capital Markets Authority. He is also a member of the Kenya Institute of Directors.



Dr. Kamau Thugge
PS Treasury/ Commissioner

Dr. Thugge holds a Bachelors of Arts (Economics) from Colorado College, USA, Master in Economics from Johns Hopkins University, USA and a Doctor of Philosophy (PhD) in Economics from Johns Hopkins University, USA

Dr. Kamau Thugge is currently the Principal Secretary at the National Treasury. He has previously worked in the Ministry of Finance as Head of Fiscal and Monetary Affairs Department, Economic Secretary and as Senior Economic Advisor. Before joining the Ministry of Finance he worked with the International Monetary Fund (IMF) both in the policy making Departments and non-policy making Departments as Economist/Senior Economist and Deputy Division Chief.

Source CRA, 2016

The PS is an ex-officio member of the Commission. The rest of the Commissioners were appointed for a non-renewable six-year term as full time members of the Commission. The Commissioners are responsible for implementation of the Commission's Constitutional mandates.

1.4.2 Commission Committees

The Commission undertakes its operations through a governance structure comprising six Committees:

1.4.2.1. Technical Committee

The purpose of the Technical Committee is to advise the Commission on economic and financial matters touching on the Commission mandate. The committee coordinates the work of the Technical divisions in the Commission that focuses on equitable sharing of revenue between the national and county governments, and among county governments; financing of and financial management of county government, revenue enhancement of both the national and county governments; and identification of marginalised areas. The details of the activities of the technical committee are presented in Chapters three, four, five, six and seven.

1.4.2.2. Human Resources & Communications Committee

The purpose of the Human Resources and Communication Committee is to help the Commission to fulfil its oversight responsibilities. This is achieved through preparation and review of the human resources and communication strategies of the Commission; establishment and review of the overall remuneration policy for all employees of the Commission; review and monitoring of the sponsor function of the Commission with respect to the employee pension or welfare benefit scheme; and ensuring that the

Commission adheres to the requirements under relevant legislations and practices governing human resources strategy. The committee undertook the following:

- (i) **Preparation of the Organogram for the Commission:** At inception the HRCC approved an organogram that spells out the management structure of the organisation and defines reporting guidelines for the various cadres and staff;
- (ii) **Recruitment and selection of Commission staff:** The Commission has a workforce of 55 employees and all the recruitment processes are approved by the Committee before implementation. The list of the staff is shown in Annex 1;
- (iii) **Human Resources Manual for the Commission:** The Commission developed and approved HR manual to guide employees and management in decision making on various staff matters;
- (iv) **Employee Remuneration:** The Committee approved the remuneration strategy that defines the salary structure and pay levels for various categories of staff in the Commission. This includes allowances as guided by the Salaries & Remuneration Commission;
- (v) **Training and development plans:** The Committee approves training Plans for Commission staff in phases and currently the third phase is set for approval and implementation. This is done on half yearly basis following training needs analysis report carried out at the beginning of each financial year;
- (vi) **Creation of Pension Scheme:** The Committee approved the establishment of the CRA Retirement Benefits Scheme whose membership is drawn from staff. The total fund value is KShs. 50 million as at December 2016.

1.4.2.3. Finance and Planning Committee

The purpose of the Finance and Planning Committee is to help the Commission to fulfil its oversight responsibilities, establishing, reviewing finance and planning strategies; establish, review budgeting and budgetary control policies; develop, implement financial policies and procedures in line with international standards and best practices; and set up systems of internal controls, management and financial reporting. The committee undertook the following:

- (i) **Finance Policies and Procedures Manual:** The Committee approved policies which gave direction in conducting the Commission's business efficiently and safeguarding its assets. Additionally, the policies provided a framework within which the financial affairs of the Commission are managed;
- (ii) **Operational systems:** The Committee approved the development of operational systems in line with the government procedures and the PFM Act 2012. Further, the Commission has automated its functions hence increasing the level of accuracy in carrying out its different functions;
- (iii) **Unqualified audit reports:** The Commission has managed to maintain clean bill of health since inception. The Commission maintained adequate financial management arrangements; proper accounting records, internal controls, and ensured that they were free from material misstatements.

- (iv) Annual Budget implementation:** The committee endeavours to ensure that the Commission operates within its financial limits and requirements. Further, the absorption rate of the Commission has gradually increased over the years from a low of 80 percent, to 95 percent to 97 percent for financial years 2012/13, 2013/14 and 2014/15, respectively.

1.4.2.4. Procurement & Oversight Committee

The Procurement Oversight Committee ensured that procurement procedures established under the Public Procurement and Disposal Act, 2005 and Regulations were complied with and that procurement was done within the approved budget of the Commission. This was realised through establishment of the procurement committee and preparation of annual Procurement Plans. The Procurement and Oversight Committee ensured the following:

- (i) Annual procurement plan:** The Commission prepares annually a procurement plan which outlines the what, which, when and how purchases are to be conducted. This plan considers what is to be procured (Goods, Works or Services), which method of procurement to be used based on regulated thresholds, and when and how the processing steps will be conducted;
- (ii) Standing list of prequalified suppliers:** The Commission has established standing lists of qualified suppliers who are invited to submit tenders and/ or quotations for supply of goods and provision of services to the Commission to enable it achieve its mandate;
- (iii) Procurement policy and procedures manual:** The Public Procurement policy and procedures manual was developed and approved in order to guide employees and management in decision making in accordance with the Public Procurement and Disposal Act and Regulations;
- (iv) Procurement management unit:** The Committee ensured that a procurement management unit is established within the Commission and staffed with qualified professionals with qualification recognized in Kenya as required by law;
- (v) Compliance with Procurement Act and Regulations:** The Committee ensures that all procurement activities are undertaken according to the guidelines outlined in the Public Procurement and Disposal Act and subsequent regulations.

1.4.2.5. ICT Committee

The ICT committee advises the Commission in fulfilling its oversight responsibilities for implementation of ICT infrastructure within the Commission and County government; reviews the Commissions ICT governance and ICT policies, and makes appropriate recommendations to the Commission accordingly. The following ICT solutions have been implemented to support and facilitate the delivery of the Commission mandate:

- (i) ICT Policies:** The Commission has developed and implemented ICT policies and procedures to significantly enhance productivity and reduce resource use through telecommuting, virtual mobility and better design and operations. These policies are continuously updated to be in line with technology advancements;

- (ii) Implementation and maintenance of ICT Systems:** The Commission's ICT systems have been deployed as per industry best practices. These include:
- a. Enterprise Resource Planning (ERP) System:** The Commission analysed its business processes that are not captured in the core Government financial system and acquired an ERP system that automates processes in human resources, procurement and finance sections. It has greatly improved efficiency in delivery of services. Some of the modules deployed are employee self-service for requesting and accessing internal services and online recruitment.
 - b. Resource Centre Automation:** Being an institution that relies heavily on research, the Commission has set up a resource centre and has implemented an open source solution (KOHA Library Management system) to manage the centre. The solution is a web based system that allows accessibility both to Commission staff and the public through the internet;
 - c. IFMIS and G-Pay Adoption:** The Commission has fully adopted the National Government Financial Management Information System (IFMIS) and Internet Banking. This has fostered compliance to best practices for financial management in the Commission thereby minimizing hardware requirements;
 - d. Security:** The Commission systems and network architecture is designed and deployed with firewall protection configured to monitor external and internal traffic, blocking potential threats. The Commission has implemented a CCTV and Access control system covering the office premise to enhance security.

(iii) Going Green

The Commission is cognisant of the fact that ICT is an enabler for business processes and as part of the green policy, physical servers footprints have been minimized considerably by adopting virtualisation technology on all deployments. This has enabled the Commission save millions of shillings in acquisition of hardware and associated software without losing on computing resources.

1.4.2.6. Audit Committee

The Audit Committee advises the Commission on oversight responsibilities for financial reporting processes, the system of internal control relating to the Commission's financial performance, the audit process and the Commission's process for monitoring compliance with laws and regulations and the Commission's code of conduct; implementing and supervising the Commission's risk management framework; reviews the Commission's guidelines on corporate governance and makes appropriate recommendations to the Commission appropriately. The Audit committee implemented the following:

- (i) Audit Charters:** The Commission has put in place an audit Committee Charter and ensured that all other Committees had charters as well defining their roles and responsibilities;

- (ii) **Quarterly Audit Reports:** The Committee developed quarterly reports which had recommendations which have contributed to the improvement of the Commission's internal control system resulting in an unqualified Audit reports since the Commission's inception;
- (iii) **Corporate Governance Training:** Recommended training on principles of corporate governance by the Institute of Directors for all Commissioners and senior management.

1.4.3 The Secretariat

The Commission is served by a technical Secretariat headed by a Chief Executive Officer, who is also the Commission Secretary. The CEO undertakes the following roles:

- (i) Oversees the day to day financial and administrative management of the Commission;
- (ii) Provides the requisite leadership in ensuring the implementation of the Commission's vision and mission and the Strategic Plan; and
- (iii) Oversees the preparation of the Commission's annual plans, estimates and reports.

The following two offices directly fall under the office of CEO:

(i) **Communications**

This function manages internal and external communications. Other functions include managing feedback, media/public relations, updating the website, building, and maintaining the organisation's brand.

(ii) **Internal Audit**

The internal audit encompasses the examination and evaluation of the adequacy and effectiveness of the organisation's governance, risk management and internal controls with a view to ensuring that the Commission achieves its stated goals and objectives. It monitors risks and risk management. It also sees to it that important financial, managerial and operating information is accurate, reliable and timely; employees' actions are in compliance with policies, standards, procedures and applicable laws and regulations; resources are acquired economically, used efficiently, and adequately protected.

The Secretariat comprises the following six directorates:

1.4.3.1. Research & Policy Directorate

The functions of the Research and Policy directorate include: conducting research and policy analysis on the Commission's mandates; modelling revenue sharing and allocations between the national and county governments and among county governments; Preparing and reviewing the policy on marginalisation; providing policy guidance on various issues pertinent to the Commission's mandate; engaging other stakeholders within and outside the government to improve on data collection and management; and putting in place systems for research and policy.

1.4.3.2. Fiscal Affairs Directorate

The function of this directorate is to position the counties for the effective roll out of devolved government, build the Commission's knowledge base on counties, clarify and cost functions at the two levels of government, support the development of devolution structures, systems and role clarification, define and enhance revenue sources.

1.4.3.3. Legal Affairs Directorate

This directorate provides advisory services on any legislation that touches on the mandate of the Commission, as relates to the national and county governments. Through stakeholder consultations, the directorate ensures significant and high quality development of legislation.

1.4.3.4. Natural Resources Management Directorate

The Natural Resources Management (NRM) directorate is tasked with natural resource policy formulation and reforms, exploitation and effective revenue enhancement and ensuring sustainable natural resource management for stable economic development. The directorate provides technical advice and oversees implementation of strategies on effective natural resource exploitation and revenue enhancement. This is geared towards promoting local capacities in sustainable natural resources management, fiscal planning and, recommending and advising the natural resource policy, reforms, management and the resultant profit sharing at National and County level.

1.4.3.5. Corporate Services Directorate

The functions of this directorate are Human Resource Management and general administration. This involves setting up of the organisational structures, manpower planning and development, reward management, employee relations, developing skills inventory, Training and capacity building, welfare, Selection and recruitment among other roles; Finance and accounting which entails financial management, implementation of internal controls and financial reporting; and Procurement and stores Management entails purchasing, tender awards, evaluation, advisory and leadership on supply chain matters in the Commission.

1.4.3.6. ICT Directorate

The function of the ICT directorate is to set up and maintain ICT support structures within the Commission and to advise the Commission on the current trends and best practices within the ICT industry. The directorate has also supported a number of counties in automation of own source revenues.

1.5. CRA Strategic Objectives

The first Commission prepared the Commission's first Strategic Plan for the period 2010 – 2014. The plan articulated the following strategic objectives:

- (i) To develop and review principles, criteria and policies for fiscal decentralisation;
- (ii) To develop and review policies and principles for equitable revenue sharing;
- (iii) To develop the Policy on Marginalisation in Kenya;

- (iv) To develop principles for sharing of revenue from the Equalisation Fund;
- (v) To develop a legislative and institutional framework for fiscal decentralisation;
- (vi) To develop knowledge, systems and structures to support counties for the effective roll out of devolved governments;
- (vii) To develop and implement an oversight framework for prudent financial management at both levels of government;
- (viii) To support intergovernmental relations in financial management;
- (ix) To develop innovative approaches for revenue enhancement;
- (x) To develop structures for increased efficiency and operational effectiveness;
- (xi) To attract, develop and retain competent staff;
- (xii) To develop and implement service delivery systems and infrastructure, policies and procedures;
- (xiii) To develop and implement appropriate ICT solutions;
- (xiv) To set up and maintain a resource centre;
- (xv) To develop and maintain a positive corporate image.

The implementation of the CRA strategic objectives, the lessons learned and the challenges experienced are discussed in subsequent chapters of this report.

2.1. Constitutional and Legislative Provisions

The Constitution provides the legal foundation on which public finance management is built. In undertaking its mandate, the Commission is guided by the Constitutional and Legislative provisions that broadly require the Commission to promote an equitable society. Article 201 outlines the principles that guide all aspects of public finance in Kenya. These are:

- (a) Openness and accountability, including public participation in financial matters;
- (b) Promotion of an equitable society, and in particular:
 - i. Sharing of the burden of taxation fairly;
 - ii. Sharing of revenue raised nationally equitably among national and county governments; and
 - iii. Promotion of equitable development of the country, including by making special provision for marginalized groups and areas;
- (c) Equitable sharing of burdens and benefits of the use of resources and public borrowing between present and future generations;
- (d) Prudent and responsive use of public money; and
- (e) Responsive financial management with clear fiscal reporting.

The Commission has prepared its recommendations through participatory processes that involved both national and county level stakeholders. The Commission recommendations on the sharing of revenue between the national and county governments continue to promote equity between the two levels of government by ensuring that revenues for functions assigned to either level of government are appropriately assigned. On functions such as health, infrastructure and youth empowerment that were grossly underfunded, the Commission recommended for additional conditional financing from the national government's equitable share.

To ensure that taxation and other revenue-raising powers of counties were exercised in a way that did not prejudice national economic policies, economic activities across county boundaries or the mobility of goods, services, capital or labour, the Commission partnered with the private sector (Kenya Association of Manufacturers and the Strathmore University) to train counties on budgeting and revenue administration. The Commission also advised counties to prioritise broadening the tax base, as opposed to instituting new taxes or raising the existing tax rate. Further, to promote openness and accountability, and a responsive financial management system, the Commission championed and assisted willing counties to automate their revenues.

To promote equity in sharing of resources among the county governments, the Commission considered in both the first and second basis for sharing revenues among counties, the needs of each county government by taking into account the population of each county, the size of the county, the severity of poverty in each county, and economic inequalities and developmental needs of different counties.

During the transition period, the Commission also championed preparation of balanced budgets and reduction of recurrent costs through issuance of ceilings on recurrent costs so as to promote fast development in counties. To address marginalised groups and areas, the Commission prepared a policy on marginalisation, which identified marginalised counties. The Commission further developed an allocation criterion for the sharing of resources among the 14 marginalised counties from the Equalisation Fund.

2.2. Objects of Devolution

The Constitution of Kenya 2010 has devolved many administrative, fiscal and political powers to the 47 county governments. The powers granted in Chapter 11 of the Constitution enables counties to govern themselves, including raising revenue, making laws and electing local leaders. These powers, however, should observe specific principles and objectives outlined in the Constitution. Article 174 succinctly outlines the objectives of devolution as:

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

2.3. Public Participation

Article 10(2) (a) of the Constitution, takes cognisance of the public participation as an important principle of governance in Kenya. Further, section 91 of the County Government Act, 2012 requires the establishment of modalities and platforms for citizen participation. The ultimate aim of devolution is to “enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them” as provided for in Article 174(c). Additionally, Article 184(1)(c) requires that a national

legislation be enacted to provide for mechanisms for participation by residents in the governance of urban areas and cities.

The Commission has endeavoured to apply the principle of public participation in all its policies. As a result, the public has been able to shape and enrich all the policies of the Commission. This has ensured transparency, accountability and ownership of the Commission's policies. In ensuring that there is public participation, the Commission has applied a variety of approaches including but not limited to:

- (i) Holding town hall meetings;
- (ii) Holding retreats with subject matter experts and stakeholders;
- (iii) Receiving memoranda from members of the public;
- (iv) Use of Social media platforms like Twitter and Facebook.

In a quest to ensure that the county governments institute the Constitutional provision of public participation in their activities, the Commission partnered with the Kenya Association of Manufacturers in 2014 to provide legal drafters to assist counties in the preparation of county public participation bills, among other bills.

2.4. Best Practices/International Experiences

The Commission in making recommendations on financing of, and financial management of county governments has benchmarked with both developed and developing countries. The following five principles reflect good practice in PFM work:

- (i) PFM work should facilitate and encourage leadership in setting/managing the PFM reform strategy and action plan;
- (ii) PFM diagnostic work should be conducted in an integrated and coordinated manner, drawing upon the distinct competencies of the PFM team and other stakeholders, with the timing and scope determined largely by need;
- (iii) PFM work should be weighted toward supporting PFM reform implementation reforms and capacity building rather than detailed diagnostic analysis, should add value to Government budget and reform processes, and should be aligned with Government decision-making cycles;
- (iv) PFM reform work should be framed within a multi-year horizon, sequenced around agreed priorities, and built upon a coordinated donor approach;
- (v) PFM work should be linked to a robust monitoring and evaluation framework that clearly articulates the gains in PFM system performance that are sought or achieved.

Guided by these best practices, the Commission held discussions with the Council of Governors (COG) with the aim of strengthening the council's Secretariat. CRA is committed to assisting the COG Secretariat to establish a Best Practices Department, similar to the Centre for Best Practices in the National Governors Association in the USA.

From the Commission's point of view, the establishment of this department will enable the COG to build among the devolved units a culture that focuses on continuously improving performance by learning for the best performers among themselves. The work of the Best Practices Department would entail supporting the devolution process by developing policies, guidelines and innovative solutions to address the challenges facing county governments. Specifically, the department would document and share best practices, with lessons from within and outside the country. Overall, the department would support the COG Secretariat in monitoring, reviewing and evaluating:

- (i) Implementation and effectiveness of policy, guidelines and solutions; (ii) Progress towards set targets;
- (iii) Implementation and effectiveness of improvement strategies aimed at achieving universal best practice levels.

2.5. Challenges Experienced

The clamour for devolution was informed by regional inequalities, developmental needs and the lack of transparency and accountability in the centralised planning system of governance. However, in spite of the provisions of the Constitution and other legislations, neither the national nor the county governments has been able to adhere adequately to the principles of public finance. The following challenges are eminent at the national and county level;

- (i) Imprudent and irresponsible use of public money;
- (ii) Poor fiscal reporting;
- (iii) Inadequate /ineffective public participation;
- (iv) Inadequate checks and balances; and
- (v) Re-centralisation at the County level.

2.6. Lessons Learnt

As a stakeholder and player in the process of over-sighting PFM reforms in Kenya, the Commission has learnt invaluable lessons:

- (i) The Commission has learned that the process of reforming PFM in the country needs to be all inclusive and participatory;
- (ii) In light of the new Constitution and the laws it has brought forth, there is need for a paradigm change in all matters to do with PFM. The status quo and culture of the past has to be overhauled with the aim of injecting new procedures, processes and input in the PFM system;
- (iii) The public sector, both at the national and county level is rife with inefficiencies, negative bureaucracy, inadequate capacity and a marked absence of internal controls. More checks need to be put in place to safeguard public resources;
- (iv) Public sector and PFM reform needs political will. How well the political leadership is able to fuel, maintain and sustain the momentum for reform is a key factor in public finance management.

2.7 Way Forward

- (i) Reforms, especially those dealing with the management of public funds, have been considered as a threat by those who desire a continuation of the status quo. This results in resistance to change and low yields from the instituted measures. To mitigate this, there is need to manage the process strategically and with requisite flexibility but with a firm resolve to stay the course.
- (ii) It is recommended that national and county government institutions create PFM partnerships with all stakeholders to support and sustain the reform process. Forging partnerships with more developed counterparts will also facilitate skills transfer from high capacity to low capacity areas.
- (iii) Integration of ICT is important to modern public sector reforms.
- (iv) PFM is a “live technology” that is in need of constant review and renewal to keep the process current and productive.

3.1. Introduction

The principle function of the Commission as stipulated in Article 216(1) is to make recommendations concerning the basis for the equitable sharing of revenue raised nationally by the national government, between the national and county governments.

Over the last three years, the equitable share transfers to county governments finances over 87.5% of the counties total expenditures. The transfers to county governments are designed to create incentives and accountability mechanisms that affect fiscal management, efficiency, and equity of public service provision and government accountability to citizens.

3.2. Legal Framework for Revenue Sharing

In determining the basis for equitable sharing of revenue between national and county governments, the Commission is guided by the following Constitutional provision:

- (i) Article 1(4) of the Constitution, which provides that the sovereign power of the people is exercised at the national level and the county level;
- (ii) Article 6, which provides for a devolved system of government in which the sovereign power of the people is exercised at the national and county levels;
- (iii) Article 202 (1) which stipulates that revenues raised nationally be shared equitably among the national and county governments;
- (iv) Article 202 (2) which stipulates that county governments may be given additional allocations from the national government's share of revenue, either conditionally or unconditionally;
- (v) Article 203(1) which stipulates the criteria to be taken into account in determining the equitable shares between the national government and the county governments;
- (vi) Article 203(2) which stipulates that for every financial year, the equitable share of revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.
- (vii) Article 205 (1) which stipulates that when a bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate.
- (viii) Article 205(2) which stipulates that any recommendations made by the Commission on Revenue Allocation shall be tabled in Parliament, and each House shall consider the recommendations before voting on the Bill.

- (ix) Article 219 which provides that a county share of revenue be transferred to the county without undue delay and without deduction, except as provided for in Article 225 (3) and (4).

3.3. The Design of Kenya's Transfer System

The design of Kenya's fiscal transfer system is broadly aimed at ensuring equity in the sharing of revenues between the national and county governments. This is based on the provisions of the Fourth Schedule, and guided by the provisions of Article 187 (2) of the Constitution which provides that, if a function is transferred from a government at one level to a government at the other level then arrangements shall be put in place to ensure that the resources necessary for the performance of the function are transferred in line with the principle of *'funds follow functions'*.

3.3.1 Bench Marking and International Experience

In determining the basis for revenue sharing between the national and county governments, in addition to the provisions of the Constitution and other legislative provisions, the Commission was guided by a rich international experience on intergovernmental transfers. The Commissioners visited India, South Africa, Ethiopia and Ghana to benchmark. Borrowing from most of these countries that use the vertical balance approach, the Commission was guided by the minimum service level requirement of counties and the national government, the central budget constraint and historical spending levels in making its recommendations on equity shares between the national and county governments.

3.3.1.1. South Africa

In the case of South Africa, the Constitution establishes a unitary state with a three-tier system of government, consisting of the national, provincial and local. The Financial Fiscal Commission (FFC) is responsible for both vertical and horizontal revenue sharing. The vertical revenue sharing uses the minimum standards for service provision criteria for basic services largely consisting of education, health, housing, and electricity, among others. However, the vertical share is determined through a political process informed by what the subnational governments want and what the central government thinks it can afford for the devolved functions.

3.3.1.2. Brazil

Brazil, similarly, has three levels of government namely federal government, 26 states and a federal District (Brasilia), and 4,300 Municipalities. Brazil's 1988 Constitution outlines specific allocation of revenues. It assigns specific tax bases to each level of government and creates a system of tax sharing that substantially redistributes revenue among levels of government and among regions. The Constitution requires states to transfer 25 percent of the proceeds of its value-added tax to municipalities within the territory. Further the Constitution requires the Federal Government to transfer 21.5 percent of its revenues from its tax receipts to the states.

3.3.1.3. The Philippines

Fiscal decentralisation in The Philippines is based on the Local Government Code Republic Acts enacted in 1991 (LGU). The devolution establishes four levels of governments namely: provinces, cities, municipalities and the village-level barangays. The devolved functions include health, environmental management, agriculture, infrastructure, tourism, public works, and social services. The LGUs sets out the criteria for sharing of revenues which is currently set at 40 per cent of the gross collection derived by the national government from the third preceding fiscal year to the devolved structures.

3.4. Provisions of Article 203 on Sharing Revenue

In developing the recommendations for revenue sharing between national and county governments, the Commission took into account the criteria in Article 203 (1). The Commission acknowledges that the criteria are important and that there is no hierarchy in the provisions of the Article 203, and therefore, the costs of the criteria, where applicable, was considered collectively. The section below discusses the Commission's interpretation of Article 203(1).

3.4.1. The National Interest

The Commission interpreted the national interest to mean agreed policies, goals, priorities, and resultant programmes which have fiscal implications and benefit the whole country. Decisions on national interest priorities were considered to have financial implications on the functions of either the national or the county governments, to the extent, it directly or indirectly referred to the functions assigned to either level of government in the Fourth Schedule.

The priorities defined in the Second Medium Term Plan (2013-2017), the Budget Review Outlook Papers and the Budget Policy Statements, over the same period define the national interest. These priorities are anchored on the Kenya's Vision 2030, which is implemented through five year plans prepared by both the national and county governments.

The level of funding necessary to accomplish "national interest" was determined annually through the process outlined in the Public Finance Management Act on preparation of budgets which incorporates Intergovernmental consultation through the Intergovernmental Budget and Economic Council (IBEC) and the Summit.

3.4.2. Public Debt

The term "public debt" is defined in Article 214 as "all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government." The public debt is considered under Article 203(1) because the obligation to pay is a first charge of the Consolidated Fund Services (CFS). In effect, the level of indebtedness that the country will go into and the application of the funds borrowed is an issue that needs to be discussed by both levels of government. This is critical because the level of debt incurred by the national government has direct implications on equitable

shares to either level of government, and the borrowing component, out of the total debt ceiling, available to both levels of governments.

The national government has over time, accumulated huge debts. The debt ceiling and the borrowing “reserved” for County governments is matter that was extensively discussed under Inter-governmental Budget and Economic Council (IBEC), though not exhaustively resolved. A framework to enable county government to borrow is yet to be approved. The Commission advocated for full disclosure on the expenditure of funds obtained through borrowing to ensure that the funds are optimally and equitably utilised.

3.4.3. Other National Obligations

The other national obligations refer to those obligations that the national government is obliged to perform and which, on implementation, affect the entire country. Excluded from these criteria are those obligations that arise as part of the national government's functions. The obligations that are outside the national government functions considered by the Commission in determining the equitable shares to either level of government are funding requirements of shared institutions that include the Judiciary, Parliament, and Constitutional Commissions and Independent Offices.

3.4.4. Needs of the National Government

The needs of national government determined by objective criteria refer to both recurrent and development expenditure needs of national governments based on functions assigned to national government by the Fourth Schedule. The Constitutional requirement that the needs of the national government be determined through objective criteria is intended to avoid the national government being the judge of the expenditures needed to finance their functions. Given that needs of national governments are always more than available resources in any financial years, the Commission recommended that the national government exercise fiscal prudence in determining financial needs.

3.4.5. Needs of Counties Governments

The Fourth Schedule assigns functions to county governments. Prior to enactment of the Constitution in 2010 and elections in 2013, these functions were either performed by the national government ministries, departments and agencies or the Local Authorities.

The Sixth Schedule on Transitional and Consequential Provisions Section 15 provided that, through legislation, Parliament was to make provisions for a phased transfer of county functions, over a period not exceeding three years from the date of the first election. The phased transfer of functions to county governments was meant to allow national government to build capacity at the county level to ensure optimal service delivery.

In line with the provisions of the Sixth Schedule, the Transition to devolved Government Act 2012, Section 4 established the Transition Authority (TA). The TA facilitated and coordinated the transfer of functions to county governments, among other functions.

In accordance with the provisions of Article 187 (2), the human and financial resources from the defunct Local Authorities and the national government MDAs were transferred to county governments based on historical budgetary provisions. The forgoing notwithstanding, it is important to note that under the centralised planning system, the national government has over the years under-budgeted for most of the functions that were assigned to county governments and the defunct local authorities staff lacked the requisite skills to execute devolved function. In effect, although most county governments have bloated staff, counties have to contend with skills mismatch, until the national government accomplishes the staff rationalisation programme.

Revenue allocated to county governments has increased gradually. However, this revenue fall substantially below thresholds recommended by the Commission, greatly undermining the ability of the counties to effectively deliver on functions assigned to them creating vertical imbalances. Over the last six financial years, the expenditure responsibilities of county governments have not matched with their ability to raise revenue. This imbalance has overburdened counties with regard to the devolved functions and the money to spend. Going forward, budget shares of county governments should match the amount of functions assigned.

3.4.6. Fiscal Capacity and Efficiency of County Governments

Fiscal capacity for county governments is a measure of a county governments' potential to generate revenues from the tax bases assigned to the counties when a standard average level of effort is applied to those tax bases.

Article 209 (3) assigns county governments powers to impose property taxes, entertainment taxes and any other tax that is authorised by an Act of Parliament, and charges for services provided. Parliament has not authorised any other new tax to county governments. On average, county governments are financing a paltry 12.5 per cent of their budget from the assigned revenue sources. Though no study has been done on the revenue potential of county governments, the fact that on average counties are only financing a small percentage of their county budgets attests to the low fiscal capacity potential of county governments.

The fiscal capacity of county governments, based on the current assigned tax collection power can be slightly enhanced. The Commission, with financial and technical support from the national government and development partners, has undertaken training on revenue mobilisation and automation. However, only a few counties have initiated revenue automation processes due to resource constraints. Further, a number of counties are in the process of compiling their property registers, and for counties that have registers, they need to be reviewed.

3.4.7. Developmental Needs: Economic Disparities and the Need for Affirmative Action in Respect of Disadvantaged areas and Groups

Article 216 requires the Commission to share revenue equitably between national and county governments, and among county governments. Whilst the Commission takes into account functional assignments in determining the recommendation on sharing of revenue between the national and county governments, it considers population, land area, poverty levels, and access to essential amenities like roads, water and electricity in each county to determine the equitable shares among county governments.

Article 202(2) stipulates that county governments may be given additional allocations from the national government's share of revenue, either conditionally or unconditionally. Based on this provision, the Commission recommended for additional conditional resources to remedy economic disparities within and among counties.

The Constitution acknowledges existence of disadvantaged areas and groups. Based on the provisions of Article 204 (2), the Commission considered economic disparities as measured by differences in access to water, roads, health care, education and electricity in defining marginalised counties for purposes of sharing of resources from the Equalisation Fund.

3.4.8. Need for Economic Optimisation of each County

County governments are independent governments (Article 6(2)) with planning and budgeting discretion. Allocation of revenues to county governments based on the costs of assigned functions are budgeted for and spent by the county governments based on policy objectives and priorities designed at the county level. The equitable transfer to counties has increased over time from KShs. 190 billion in financial year 2013/14 to KShs. 280 billion in 2016/17. Given the Constitutional discretion of county governments to plan, budget and spend the funds, county governments can allocate resources to their priority projects thereby optimizing their potential for economic development.

To incentivise counties to optimise capacity to raise revenues, the Commission in the first basis for sharing of revenues among counties provided counties with equal resources to redesign their revenue and financial management systems and processes. To reward effort, the Commission in the second basis for sharing of revenues has defined a fiscal index measured by a county's increase in revenue per capita from year to year.

3.4.9. Stable and Predictable Allocations to County Governments

The Division of Revenue Act (DORA) cushions the county governments' equitable share from any volatility of revenue raised nationally. In effect, once the equitable share of revenues between the national and county governments is approved by Parliament counties are guaranteed their share. Any shortfall in revenue raised nationally is borne by the National Government. Further, the Commission in determining equitable share revenues due to either level of government considers actual growth of revenues raised nationally. To ensure stability and predictability, the Commission considers three year moving average of revenue growth.

3.4.10. Flexibility in Response to Emergencies

The Constitution allocates to both national and county government the function of disaster management, which incorporates the management of emergencies at a national or county level. Indeed the Constitution requires the setting up of a Contingency Fund to manage unforeseen and urgent expenditure, which would include disaster management. The Contingency Fund has already been set up under the PFM Act.

The County governments are also required to establish an emergency fund to manage urgent and unforeseen need for expenditure for which there is no specific legislative authority, and deal with emergencies that may affect Counties but not rise to the threshold of national emergencies.

The Contingencies Fund is set at KShs. 10 billion shillings by the PFMA, 2012 Section 20. The PFMA, 2012 Section 110 provides for establish of an emergency fund by each county government for purposes of urgent and unforeseen need for expenditure for which there is no specific legislative authority. The allocation to the Fund in each county government is limited to two per cent of a county government's audited financial statements for the previous financial year. Proportionate reserves for County governments vary from county to county depending on their level of total revenue. Both levels of government have planning and budgeting discretion and therefore flexibility to respond to emergencies.

3.5. Basis for Sharing of Revenue between National and County Governments

The Commission, guided by Articles 187(2) and 202(1) and 203, as well as the practice in other countries that have implemented intergovernmental fiscal transfers, determined, using a historical costing approach, the equitable shares to national and county governments. This approach involved determination of costs of assigned functions, based on historical budgetary provisions by the various MDAs that used to perform the function prior to the 2013 elections.

3.5.1. Equitable Shares to County Governments

Table 2 presents a summary of the CRA recommendations on equitable allocations to county governments and the parliamentary approvals for the last six financial years. In all instances, as depicted in *Table 2*, both the Commission's recommendations and the amount approved by Parliament met the requirements of Article 203(2), which provide that for every financial year, the equitable share of revenue raised nationally that is allocated to county governments will not be less than fifteen per cent of all revenues collected by the national government.

Table 2: Summary on Recommendations on Equitable Share (KShs. Billions)

FINANCIAL YEAR	RECOMMENDATION BY CRA		APPROVED BY PARLIAMENT	
	AMOUNT	% BASED ON ARTICLE 203(2) ¹	AMOUNT	% BASED ON ARTICLE 203(2)
2012/13 ²	203	-	9.8	-
2013/14	231	40	190	33
2014/15	279	53	227	43
2015/16	282	36	260	33
2016/17	332	36	280	30
2017/18	332	32		

Source CRA, 2016

The variation between the Commission's recommendations on equitable revenue share to county governments and approved revenues by Parliament is largely on account of differences in approach to calculation on the revenue growth factor. Whereas the Commission recommended the use of a three-year average revenue growth factor, the National Treasury recommended the use of Gross Domestic Product (GDP) growth as a basis for adjusting the equitable revenue share to county governments. Consultations are still on-going on a scientific index with which to annually adjust the equitable revenue share due to either level of government.

3.5.2. Conditional Allocations to County Governments

Article 202(2) provides that in addition to the equitable share, county governments may be given additional allocations from the national governments share of revenue, either conditionally or unconditionally. Conditional allocations are tied to implementation of specific national policies with specific objectives. Table 3 presents conditional allocations for the financial years 2013/14 -2016/17.

Table 3: Summary of Approved Conditional Grants to Counties

Conditional Grant	Amount (KShs. Billions)			
	2013/14	2014/15	2015/16	2016/17
Level 5 Hospitals	3.4	1.8	3.6	4.0
Free Maternal Health Care	-	-	4.2	4.1
Compensation for User fees forgone	-	-	0.98	0.9
Leasing of Medical equipment	-	-	4.5	4.5
Road Levy Fund	-	-	3.3	4.3
Special Purpose Grant	-	-	-	0.2
Danida	-	-	0.8	0.4
World Bank Loan	-	-	0.508	1.3
Other loans and grants	16.5	13.8	9.3	2.1
Total	19.9	15.6	31.28	21.8

Source: County Allocation of Revenue Act, Various

¹ Percentage allocation is based on audited approved account by the National Assembly

² This allocation to county governments only covered the period March 2013 to June 2013.

With the exception of the Roads Levy Fund which is based on the provisions of the Roads Act 2012 for maintenance of roads, and the allocations to level 5 hospitals which was negotiated between the two levels of government, all the other conditional allocations and their financing levels to county governments have largely been determined by the national government in its effort to implement a specific policy initiatives.

While the Commission appreciates the necessity of additional allocation of resources to the county governments, the fact that these resources are in form of conditional transfers compromises the fiscal autonomy of county governments. A measure of autonomy for decentralised structures on the expenditure and revenue side is crucial for realizing the efficiency gains of decentralised governments and supporting macroeconomic stability. County governments need discretion in setting the level and the composition of its budget.

To efficiently execute budgets, county governments require budget flexibility to decide – within limits – expenditure priorities and the choice of both the output mix and techniques of production. On the revenue side, county governments require adequate revenues to finance locally provided services at the margin. Sustainable autonomy and economic efficiency however, also requires a reduction of vertical imbalances and some equalisation of opportunity to allow the devolved structures to perform their assigned functions. The fact that county governments are on aggregate able to finance a paltry 12.5 percent of the budget requirement over the last six years compromises their fiscal autonomy, and hence, provision of services and goods.

3.6. Challenges Experienced

The Commission, in making recommendation on the equitable sharing of revenues between the national and county governments, experienced the following challenges:

- (i) Lack of comprehensive credible budget data to determine the cost of functions assigned to either level of government;
- (ii) Subjectivity in the measure of vertical fiscal balance to determine how much revenue to transfer to either level of government. The Commission relied heavily on historical budgets that may not have been fully disclosed by the respective MDAs that were hitherto performing the functions that were devolved;
- (iii) Lack of reliable data at the county level on county revenue potentials against which the counties could make reasonable own source revenue projections that could guide the fiscal expenditure deficits;
- (iv) Failure by the national government to adequately provide for concurrent functions, especially health and roads. The Transition Authority devolved these functions to counties without providing for adequate resources needed to objectively perform the functions at the county level. Other functions that were under-budgeted for include: provision for early childhood education, home craft centres, vocational training institutions, and operationalisation of governance structures to the village level;

- (v) Lack of a framework for the management of conditional grants. The national government did not put in place an intergovernmental framework for smooth transfer and accountability of conditional grants, resulting in delays, and stoppage of release of transfers to some counties.

3.7. Lessons Learnt

Despite all the challenges experienced, the Commission learnt that resource sharing is as much a political process as it is a technical process. The principle of “give and take,” resulting in a *win win* situation, works better than when either level of government takes a hard stand. This is because resources will always be scarce and priorities between the national and county government are not always in synchrony. More specifically these are some of the lessons that can be drawn from the six year experiences:-

- (i) Keep it simple. In the design of fiscal transfers, rough justice may be better than unattainable full justice, if it achieves wider acceptability and sustainability of the economy;
- (ii) The conditional grants need to have specific objectives to achieve desired results. Otherwise, conditional grants if not checked, will interfere with the planning and budgeting discretion of county governments and may result in micromanaging of counties by the national government;
- (iii) The equitable shares constitute core funding to either level of governments. Critical assessment on the usage of these funds is critical to ensure stability and predictability of the macroeconomic environment of the country;
- (iv) Managing the public's expectation on revenue sharing is important and the recommendations need to take the expectations into considerations to avoid unwarranted turmoil;
- (v) The biggest challenge of devolved governments is high administrative costs during transition. Recurrent costs need to be managed through a phased approach to ensure service delivery is not constrained;
- (vi) County governments have huge potential to raise substantial resources from the revenues assigned to them. However, this requires huge investments in terms of attracting and retention of requisite technical skills and, equipment and systems;
- (vii) There is need to continuously develop the human resource capacities for county governments to enhance performance;
- (viii) The need for civic education in all recommendations made by the Commission and other policy documents to enhance social accountability;
- (ix) There is a need to develop a monitoring and evaluation tool to continuously monitor implementation of the county plans and budgets.
- (x) Need for a credible criteria for sharing conditional grants among counties

3.8. Way Forward

To address some of the highlighted challenges, the following are some of the recommendations that the Commission can make regarding the vertical revenue sharing:

- (i) The Commission needs to conduct civic education on the principles of revenue sharing and basis for its recommendations from time to time;
- (ii) Revenue sharing is a political process as much as it is a technical process. It is important to build good technical working relationships with all the institutions/stakeholders that have a mandate on revenue sharing.

THE BASIS FOR EQUITABLE SHARING OF REVENUE AMONG COUNTY GOVERNMENTS

4.1. Introduction

Article 216(1) of the Constitution of Kenya mandates the Commission to determine and recommend a basis for equitable sharing of revenues among the county governments. Article 217(1) mandates the Senate to determine, after every five years, the basis for allocating among the counties the share of national revenue that is annually allocated to the county governments. Notwithstanding the provisions of Article 217(1), the Sixth Schedule (16) stipulates that “the first and second determinations of the basis of division of revenue among the counties shall be made at three year intervals, rather than every five years as provided in that Article.”

In determining the first and second basis for the equitable sharing of revenues among county governments, the Commission was guided by the same legal provisions highlighted in Chapter 3 of this report. In addition, the Commission took into account the provisions of Article 203 (1), that relate to the sharing of revenues among county governments as articulated below.

4.2. Application of Article 203

Ability of county governments to perform functions allocated to them [Article 203 (1) (d)]:

The Fourth Schedule assigns functions to the county governments. In accordance with the provisions of Article 187(2)(a), the revenue due to county governments were transferred with the functions assigned, based on the historical costs of functions as reflected in the national government budget estimate books prior to devolution. In financial 2013/2014, through a consultative process county governments were allocated Ksh. 190 billion. This allocation has increased over time to KShs. 280 billion for financial year 2016/17.

The Commission determined the first basis for revenue sharing among county governments based on five parameters, namely; population, poverty, land area, fiscal responsibility and basic equal share. The First basis, approved by the Tenth Parliament in November 2012 was used for sharing revenues among counties for financial years 2013/14; 2014/15; 2015/2016 and 2016/17.

The second basis for revenue sharing approved by the Eleventh Parliament approved in June 2016 is based on six parameters, namely; population, poverty, land area, fiscal effort, development index and basic equal share. The second basis will be used for financial years 2017/18 and 2018/19. The parameters used in the sharing criteria are meant to ensure that each county receives adequate revenues not only to perform functions allocated to them, but also to improve service delivery.

Fiscal capacity and efficiency of county governments and the need to incentivise counties to optimise capacity to raise revenue [Article 203 (1) (e) and (i)]:

Counties are endowed differently in terms of human, financial, man-made and natural resources. The first basis gave a two percent revenue allocation equally to all counties to enable each county put in place financial management systems and processes to address efficiency. In the second basis, the Commission defined a fiscal effort index based on county revenue increment per capita. The fiscal effort index allocates more revenues to those counties that have put in more effort to optimise their capacity to raise revenue.

Developmental needs and Economic disparities within and among counties and the need to remedy them through affirmative action [Article 203 (1) (f) (g) and (h)]:

The first and second bases for revenue sharing promote a fair revenue allocation system. By incorporating county poverty levels, land area and access to essential services, the Commission ensured that counties with low tax capacity and greater fiscal needs are allocated adequate resources. These three parameters are basically incorporated in the sharing criteria to redistribute revenues across the 47 county governments. The land area parameter ensures that large counties that incur high administrative costs in providing a comparable service are given more resources. The poverty gap allocates more revenues to the disadvantaged counties which exhibit higher levels of deprivation. The development factor provides more resources to counties to improve access to water, electricity connectivity, and road coverage.

Desirability of stable and predictable allocations of revenue [Article 203 (1) (j)]:

The Constitution in Article 217 (1) read together with the Sixth Schedule Section (16) builds stability and predictability in revenue sharing. With the exception of the first and second bases for revenue sharing that have been determined at three year intervals, subsequent recommendations will be done in five year intervals to promote multi-year planning and overall budget certainty. In effect, the revenue sharing criteria once approved guarantee stable and predictable allocations of revenues to all county governments.

The need for flexibility in responding to emergencies and other temporary needs [Article 203 (1) (k)]:

The basis for sharing revenues among county governments allocates a lump-sum amount to various counties. The county governments, informed by their development priorities and objectives, plan and spend resources thereby preserving budget autonomy at the county level. The counties also collect revenues from sources assigned to them by the Constitution in Article 209 (3). The PFMA Section 110 provides that county government may establish an emergency fund not exceeding two percent of their total revenues. County governments have discretion of planning and budgeting. From the equitable to

transfer and own revenues, county governments have increased flexibility and spending discretion including flexibility in responding to emergencies and other temporary needs.

4.3. Achievements and Experiences of the Commission in Designing the First and Second Basis for Revenue Sharing

The Commission developed the first and the second bases for revenue sharing among county governments. The first and second bases were envisaged in the Constitution, to be used for three years each and, thereafter, the bases would be reviewed after every five years, Article 217(1). In developing the bases, the Commission undertook benchmarking visits to countries that had designed revenue sharing mechanisms among tiers of sub-national governments.

4.3.1 Bench Marking and International Experience

The Commission visited India, South Africa and Ghana and reviewed the international literatures of the various countries with existing revenue sharing frameworks. The Commission learnt that intergovernmental transfers generally address two key objectives, namely: service delivery and resource redistribution.

In the initial phase of the design of intergovernmental transfers, resource sharing mechanisms inbuilt a redistributive component and the system gradually move away from redistribution objective to service delivery objective in the subsequent reviews. This is based on the fact that sub national governments need to be entrenched and build infrastructure. After some time, as sub national governments develop, more resources are needed for maintenance and service delivery.

From the benchmarking visits and reviews of international literatures, the Commission established that the key parameters used to measure needs of different levels of governments in most countries are population, land area and equal share. Because of differences in levels of development of county governments, poverty and other social-economic measures have been included as measures of developmental needs and therefore measures of economic disparities to achieve the redistribution objective. Finally, on fiscal prudence, most countries have used capacity of county governments to raise own revenue and fiscal discipline as measures to incentivise county governments to optimise capacity to raise revenue.

4.3.2 The First and Second Revenue Sharing Formula

The Commission, as required by the Constitution in Article 216(1)(b), developed the first and second recommendations on the bases for equitable revenue sharing among county governments. This was done through a consultative process, involving different stakeholders at different stages of developing the recommendations. The first basis, approved by the Tenth Parliament, was used for the sharing of revenues among the counties for financial year 2012/13 to 2016/17. The second basis, approved by the 11th

Parliament by June 2016, will be used for the sharing of revenues among counties for financial years 2017/18 and 2018/19. The Constitution under Article 217 read together with the Sixth Schedule Section 16 provides that the first and the second basis for revenue sharing be reviewed at three year intervals. Table 4 summarises the approved parameters and weights of the first and second basis.

Table 4: Parameters & Weights for the Revenue Sharing Bases

No.	Parameter	First Basis for Revenue	Second Basis for Revenue Sharing
1	Population	45	45
2	Equal Share	25	26
3	Poverty	20	18
4	Land Area	8	8
5	Fiscal Effort	2	2
6	Development Factor	-	1
	Total	100	100

Source: Commission on Revenue Allocation, 2016

The choice of parameters used in both the first and second bases was informed by; Constitutional and legislative stipulations, causality, measurability, reliability and international experiences. The parameters chosen have been used by various countries, which have implemented intergovernmental transfers, such as: South Africa, Nigeria, India, Philippines, and Ethiopia. The parameters are used in the basis are defined below:

Population: Population is a good measure of the expenditure needs of a county. It is a simple, objective and transparent measure that ensures predictability. Population parameter guarantees this predictability and also ensures equal per capita transfers to all counties.

Basic Equal Share: Provision of a basic equal share in a transfer system is meant to guarantee a minimum funding for certain key functions, such as administrative costs of setting up and running a government. This is based on the assumption that a number of expenditures are, to some extent, similar for all county governments.

Poverty: The poverty gap provides a measure of welfare deprivation of the citizens. The use of the poverty gap ensures that the poorest of the poor get the highest allocations. Poverty index is a good proxy of developmental needs and economic disparities among counties. Use of this parameter in the formula guarantees allocations of revenue to disadvantaged areas which also happen to be the counties with the greatest need.

Land Area: A county with a larger area has to incur additional administrative costs to deliver a comparable standard of service to its citizens. The use of the size of a county (Land Area) as a parameter in the formula for sharing of revenues compensates counties for additional costs incurred in providing services.

Fiscal Effort: County governments receive transfers, collect and utilise public resources. Fiscal responsibility entails implementation of sound economic and budgetary practices to ensure citizens get value for money. The fiscal effort is a measure of county revenue increment per capita. In using this parameter, the Commission seeks to incentivize counties to maximise on revenue collection and encourage fiscal prudence, in accordance with Article 216 (3) (c) and Section 107 of the PFM Act 2012.

Development Factor: This parameter considers access to water, electricity and roads, to capture economic disparities and developmental needs of counties. This parameter compliments the parameter on poverty to ensure that counties with the greatest developmental needs get additional resources to bring services to the level enjoyed in other counties.

4.4 Challenges Experienced

- (i) Formulation of a resource allocation criteria being a political process, vested interests by stakeholders at times overshadow independent technical input. This was at play when the first submission by the Commission on the second basis for revenue sharing among county governments was rejected by the Senate resulting in delays in approval of the Second Basis for revenue sharing among counties.
- (ii) Data challenges. Data used in determining the basis for revenue sharing refer to different time periods. Whereas the data on poverty is based on the Kenya integrated household budget survey of 2005/06 and the census of 2009, the population and development index data is sourced from the census data of 2009. There is need to regularize the household budget surveys in Kenya.

4.5 Lessons Learnt

- (i) Resource sharing among politically defined units is both a political and a technical process. Political interests need to be managed through elaborate consultative processes.
- (ii) There is need for the Commission to invest in building collaborations with other institutions for data and information sharing.

4.6 Way Forward

- (i) Subsequent modelling of revenue sharing formulae should preferably be based on sectoral approach. This will ensure that allocations are well linked to resource needs and focused more on the level of service delivery;
- (ii) Carefully structured extensive consultations should be conducted to address competing political interests from different stakeholders are addressed.
- (iii) The Commission will in preparing future recommendations provide for adequate timelines for extensive consultations and consensus building with interested parties.

5.1. Introduction

Article 216(2) mandates the Commission to make recommendations on matters concerning the financing of, and financial management by, county governments. As articulated in Chapters Three and Four, the Commission makes recommendations on financing of county governments. The counties have two sources of revenues; transfers and own source revenue. How the counties plan and budget to spend this revenue is important for service delivery. In Article 216(3) (c), the Constitution mandates the Commission to encourage fiscal responsibility while making its recommendations.

5.2. Legal Provisions on Financial Management

The Constitution sets out the overall guidelines on management of public resources in chapter twelve. Article 201 provides five principles that shall guide all aspects of public finance. The principles are:

- (a) there shall be openness and accountability, including public participation in financial matters;
- (b) the public finance system shall promote an equitable society; and in particular:
 - i. the burden of tax shall be shared fairly
 - ii. revenue raised nationally shall be shared equitably between national and county governments and
 - iii. expenditure shall promote the equitable development of the country, including making special provisions for marginalized groups and areas.
- (c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- (d) public money shall be used in a prudent and responsible way; and
- (e) there shall be responsible financial management and a clear fiscal reporting.

The Constitution mandates the Commission to promote responsible management of public finances through its recommendations to county governments. Article 224 of the Constitution stipulates that on the basis of the Division of Revenue Bill passed by Parliament under Article 218, each county government shall prepare and adopt its own Annual Budget and Appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament. To operationalise the provisions of the Constitution, the Public Finance Management Act was enacted in 2012. It guides the oversight role of both national and county assemblies and the responsibilities of national and county governments' entities.

5.3. Public Finance Management Responsibilities of the Commission

Section 8(2) of the Public Finance Management Act 2012 requires that the Budget Committee of Senate considers the recommendation of the Commission in dealing with financial and budgetary matters.

Annually, the Commission provides recommendations to the Senate on the Division of Revenue Bill and County Allocation of Revenue Bill. It also makes recommendations on the public finance management regulations, both for national government and county governments.

The PFMA, 2012 Section 96(2e) requires the Cabinet Secretary to inform the Commission when he stops funds transfer to a state organ that is a county government entity when it has seriously or persistently breached its obligations or financial commitments. It is therefore the duty of the Commission to ensure through its recommendation that Article 225(4) of the Constitution is not breached which requires that not more than fifty percent of the funds due to county governments should be stopped.

The County Treasury is required by Section 117(4) to seek and take into account the views of the Commission in preparing the County Fiscal Strategy Paper (CFSP). The CFSP contains the coming year and medium term county revenue, expenditure and borrowing. Section 123 of the PFMA, requires the county treasury to prepare a debt management strategy paper by 28th of February every year. A copy of this paper is also submitted to Commission for comments and advice.

Section 126 of the PFMA, 2012 requires the county government to prepare annual development plans which describe the medium term strategic priorities; details of programmes to be delivered; payments to be made; significant capital development; detailed proposal of developing human, physical and other resources; a summary budget. Section 163 of the PFMA, 2012 requires County treasury to submit a financial statement consolidating all county entities financial statements not later than four months after the end of the year to the Commission on Revenue Allocation.

Section 164 of the PFMA, 2012 requires individual accounting officers of county governments to submit financial statements to the Commission on Revenue Allocation within three month after the end of the year. Section 166(4)(b) requires the county treasury to consolidate the quarterly reports of county entities and submit a copy of the report to the Commission on Revenue Allocation not later than one month after the end of the quarter.

Section 185 of the PFMA, 2012 requires the County Treasury to prepare an annual report on county governments' involvement or investments or funding of county corporations and submit a copy to the Commission on Revenue Allocation not later than four months after the end of the year.

Section 117(5) of the Public Finance Management Act (2012) stipulates that in preparing the CFSP, the County Treasury shall seek and take into account views of the Commission on Revenue Allocation. The Commission reviews the CFSPs for county governments annually. However, the Commission has noted that unlike in the division of revenue where the National Treasury is required by the PFM Act to present a memorandum on the reasons for deviation from the Commission recommendation to parliament there is no such requirement for County Treasury to present a memorandum to county Assembly indicating to what extent they have incorporated comments from the Commission.

Section 187 of the PFMA, 2012 establishes the Intergovernmental Budget and Economic Council (IBEC) and appoints chairperson of CRA as a member of this Council. Among IBEC's mandate relating to financial management include consultation on: budgeting, economy and financial management and integrated development at the national and county level; matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees; agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections; any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties.

5.4. Achievements and Experiences of the Commission on Financial Management

The Commission in implementing the legal provisions highlighted under section 5.2 and 5.3 above achieved the following:

5.4.1 Capacity Building of the County Governments

The Commission, with support from the UNDP, trained the Members of the County Assemblies in all the county governments to strengthen financial oversight. The MCAs were trained on their roles in planning and budgeting and how to undertake their oversight function to ensure that the county executive implement the aspirations and priorities of the people as articulated in the County Integrated Development Plans (CIDPs), Annual Plans, CFSP and County budgets.

Since 2013 the Commission has also undertaken numerous trainings to the County Executive on financial management. These have been done in partnership with UNDP, Ford Foundation, OCOB, and National Treasury, among others. In 2015 the Commission together with the UNDP trained members of the County Assemblies (MCAs) on their role in county financial oversight. The training was done for all the MCAs in all the 47 counties.

5.4.2 Planning and Budget Cycle for County Governments

The Constitution provides the responsibility of planning to both national and county levels of government. The County Government Act, 2012 requires that all county governments prepare and implement five-year integrated county development plans.

The Commission, in the past six years has been supporting the counties with a view to improve the planning, budgeting and monitoring and evaluation. In this regard the Commission in collaboration with the Office of the Controller of Budget, The Strathmore University and the counties conducted a programme called Kenya Governance Strategic Execution Support (KEGOSES). Under this programme both the County Assembly Committee members and the County Executives were trained on the PFMA legislations, planning and budgeting and monitoring and evaluation.

Indirectly, the Commission is required to ensure that the counties spend their resources in the priority areas that have been assigned to them. The CFSPs are three-year rolling financing mechanisms for the CIDPs. After realising that most counties had not finalised their CIDPs in the second year of operation the Commission teamed up with the Ministry of Devolution and planning to disseminate the guidelines for developing the CIDPs.

5.4.3 Introduction of County Budget Ceilings

Section 107 of the Public Finance Management Act in the medium term provides that county governments need to spend at least 30 per cent of their budget on development and 70 per cent on recurrent needs. Section 107(2A) mandates the Commission to recommend ceiling on County government recurrent expenditures for Senate approval. The Commission developed budget ceilings for county governments for FY2014/15, FY2015/16 and FY 2016/17 through a consultative process with the county governments and the Senate. Ceilings on recurrent expenditures of county governments are meant to ensure that counties release most of their resources towards development.

5.4.4 Recommendation on County Borrowing

Article 212 of the Constitution allows county governments to borrow. The Commission in 2013 made a recommendation to the IBEC that counties should not borrow in their first three years of their operations before laying down a policy and legal framework. This emanated from the initial county budgets of 2013/2014, which showed that many counties had huge deficits that were supposed to be financed by borrowings. The Commission's recommendation was meant to ensure that the country's public debt is manageable and sustainable. Further, it was also to allow the counties adequate time to put prerequisite structures for debt management in place. The recommendation was adopted by the IBEC, which resolved counties should not borrow for the first three years of their operation with effect from financial 2013/14.

5.4.5 Recommendations over Balanced County Budgets

Emanating from the initial county budgets deficits for financial year 2013/2014 the Commission together with office of the Controller of Budgets made recommendations to the IBEC that counties had to have balanced budgets in the first years of their operation. IBEC adopted a recommendation requiring counties to maintain balanced budgets for the first three years of their operation.

5.4.6 Review of the County Planning Documents

The Commission has been reviewing the planning documents submitted by counties and giving feedback as required by PFMA 2012. These documents include CIDP, ADP, CFSP, and the County Budget Review Outlook Paper (CBROP). The Commission takes cognisance of the importance of planning and hence has been advising counties on objective planning, consistency and alignment of budgets to the broad national goals and objectives.

5.4.7 Review of the County Financial Reports

The Commission has been reviewing the county financial reports, submitted by counties, and giving feedback as required by PFMA 2012. These documents include the county budgets, end year county financial statements, end year county entities financial statements, county quarterly financial reports, Receivers of revenues annual and quarterly reports. The reviewed financial documents have brought to the fore the fact that most counties overestimate own revenues projections; some counties are still allocating their budgets towards non-priority expenditures like construction of governors and speakers houses as opposed to allocating adequate resources to roads and health that benefit a wide majority. The budget implementation review reports reveal that majority of the counties are generating very little from own revenue sources. In addition, there is generally very low absorption of development funds.

5.4.8 Guidelines on Financing of Non-Core Development Projects

In FY 2013/14 and 2014/15 most counties, in their development expenditures, gave priority to construction of county offices, governors' houses, assembly speakers' houses and county assembly chambers, among others, at the expense of service delivery to the people. The Commission issued a circular to county governments in 2015 guiding them on financing of major capital projects. The guidelines advised that non-core capital projects, like county offices, governors' houses, assembly speakers' houses and county assembly chambers among others, were not a priority in the first five years of devolution and hence such projects could be funded using long term financing of between 5 to 10 years, unless there was compelling justification. Further the guidelines advised that county governments should seek long term financing, in consultation with CRA and the National Treasury.

5.4.9 County Budgets Economic Forums (CBEF)

Section 137 of the PFMA 2012, provides for the establishment, composition and the functions of the CBEF. The CBEF is a forum which provides platform for consultations by the county governments on preparations of the county plans, CFSP, CBROP, matters relating to budgeting, economy and financial management.

In 2015, the Commission undertook the responsibility of training members of the CBEF in the counties. The trainings were done in conjunction with other stakeholders who included Institute for Social Accountability (TISA) and International Budget Partnership (IBP), Taita Taveta County Budget and Economic Forum and National Taxpayers Association. Out of the trainings 24 counties have established and operationalized their CBEFs.

5.4.10 Public Participation Guidelines

Public Participation in policy making is a prerequisite under the Constitution. Article 201 stipulates that there shall be openness and accountability including public participation in financial matters. The Commission noted gaps on how the public participation was being conducted by counties. In 2015 the Commission in partnership with the International Budget Partnership Kenya (IBP-K) developed public participation guidelines to help the counties to conduct these forums seamlessly. These guidelines have been disseminated to all the counties and are in operation.

5.5. Challenges Experienced

- (i) There has been persistent delay in disbursement of funds by the national government to the county governments leading to low absorption of development budgets and delays in implementation and completion of programmes and projects
- (ii) Slow adoption of the use of IFMIS, due to network and capacity challenges. This is a great impediment in production of accurate financial statements. IFMIS has not been fully rolled out in the counties to facilitate tracking of expenditure especially in the sub-counties and the various departments, mainly due to lack of internet connectivity.
- (iii) The newly implemented Internet banking platform has had challenges in the link with the IFMIS system (inability to decrypt data from IFMIS). This slows down the payments cycle, hampering funds absorption rate by the county Government
- (iv) Disharmony and mistrust between the county executive and assemblies, causing delay in approval of key relevant legislations.
- (v) County fiscal deficits emanating from revenue over projections and low own revenue collection. These impacts negatively on execution of county budgets, especially development.

5.5 Way forward

- (i) There is need for continuous capacity building among county leaders and county staff on planning and budgeting, recording, reporting, auditing and, monitoring and evaluation.
- (ii) Counties to be allowed to borrow for development. This will enable them to prepare realistic revenue estimates to be used in the budgets, to avoid financial stress in the course of the year
- (iii) The Commission with other stakeholders to undertake a comprehensive assessment of the revenue potential of county governments. Based on county revenue potential, counties to be assisted to enhance own sources revenue.
- (iv) Counties need to be facilitated to full implement the IFMIS.
- (v) The National Treasury to make timely disbursement of funds counties.

6.1. Introduction

Article 216 (3)(b) provides that the Commission shall seek, when appropriate, to define and enhance the revenue sources of the national and county governments. Revenue enhancement involves optimizing revenue sources that are legally and administratively available and exploring opportunities to diversify revenue where existing revenues are inadequate to meet the demands of change and growth.

A sound revenue system for both levels of government is essential for the success of devolution. As county governments bring services closer to the people, they will be expected to assist the national government in effectively altering the socioeconomic and political conditions of the citizenry within their jurisdictions.

Citizen expectations, has piled pressure on both the national and county governments to do more with less. Thus, there is need to ensure that revenue enhancement addresses national priorities. It is imperative that the county governments, in collaboration with the national government, the public, and development partners, develop and recommend revenue maximisation and leveraging strategies. These strategies must primarily focus on service delivery to the people, and should be founded on guidelines that maintain service integrity, encourage service coordination, and promote revenue maximisation. Above all, the strategies must be firmly grounded in the Constitution of Kenya.

6.2. Assignment of Revenue Sources

Article 209 of the Constitution of Kenya 2010 assigns sources of revenue for both the national and county governments while Article 216 mandates CRA to define and enhance revenue sources of both levels of government and encourage fiscal responsibility.

Specifically, Article 209(1) of the Constitution of Kenya 2010 provides that only the national government may impose:

- (a) Income tax;
- (b) Value-added tax;
- (c) Customs duties and other duties on import and export goods; and
- (d) Excise tax.

Article 209(3) provides that a county may impose:

- (a) Property rates
- (b) Entertainment taxes
- (c) Any other tax that is authorised to impose by an Act of parliament

Subsection 2 of the same Article provides that an Act of Parliament may authorise the national government to impose any other tax or duty, except a tax specified in clause (3)

(a) or (b). Subsections 4 and 5 provide that the national and county governments may impose charges for the services they provide, but the taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

6.3. Revenue of Counties

CRA recognises that revenue enhancement results in multi-dimensional benefits ranging from enhanced potential (by both levels of government) for offering new or improved services to more equitable and efficient revenue structures. It also reduces the need to cut programs and service unnecessarily.

Section 161 of the PFMA 2012 provides that in imposing a tax or other revenue raising measure, a county government shall ensure that the tax or measure conforms to Article 209(5) of the Constitution and any other legislation, and before imposing any tax or revenue raising measures under this Article, shall seek views of the Cabinet Secretary and the Commission on Revenue Allocation.

Examples of fees and charges that counties can charge include agricultural cess, livestock fees, house rents, market rents and fees, single business permit fees, service delivery charges, parking fees, rents for public facilities (e.g. county parks), leases and concessions. It is important to note that Section 120(1) of the County Governments Act 2012 provides that a county government, or any agency delivering services in the county, shall adopt and implement a tariffs and pricing policy for the provision of public services. Section 120(2) further provides that a county government or agency delivering services through service delivery agreements, shall comply with the provisions of this section.

Further, Article 210 of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. Where legislation permits the waiver of any tax or licensing fee, a public record of each waiver shall be maintained together with the reason for the waiver; and each waiver, and the reason for it, shall be reported to the Auditor-General.

Article 212 provides that a county government may borrow, but only if the national government guarantees the loan, and with the approval of the county government's assembly.

Counties need to enact several pieces of legislations subsequent to the transition period, for them to be able to collect revenues. The Commission partnered with the Kenya Association of Manufactures and the Kenya Law Reform Commission to develop policies and laws that encourage and support businesses while generating revenue for county governments. In 2014 and 2015, the Commission engaged legislation and policy experts to provide technical assistance in all county governments in the review/development of suitable revenue legislation that will boost revenue collection while attracting and retaining investors.

6.4. Revenue Automation in Counties

Revenue automation is crucial to enhancement of revenue at both the national and county governments. Whereas the Kenya Revenue Authority (KRA), which collects revenues on behalf of the national government, has largely automated its revenue collection systems, the county governments inherited manual systems from the defunct local authorities. In implementing its mandate, the Commission held wide consultations with counties on how to optimise capacity to generate more revenues, track expenditures and seal leakages through legislation, capacity building and automation. The following were addressed:

- (i) County Revenue Management System Framework:** The Commission prepared and shared guidelines and standards for automating revenue collection processes to increase revenue collection. The guidelines covered the acquisition of a Revenue Collection System that should have capability to fully integrate with IFMIS for revenue reporting and tracking;
- (ii) County revenue enhancement, automation and revenue source mapping:** The Commission received request from the counties to assist in revenue enhancement through mapping of the various county revenue sources and automation of revenue management. The Commission visited Counties and conducted the revenue automation needs assessment out of which, recommendations have been proposed and adopted by county governments. In all the counties visited CRA has compiled a report detailing:
 - (a) Current Revenue sources and revenue collection operations;
 - (b) Identified risks of revenue loss on the current mode of operation e.g. having casuals man key revenue points;
 - (c) Potential of current revenue sources if operations are automated;
 - (d) Recommendations on types of automation that would be of value with return on investment (ROI);
 - (e) Recommendations on new revenue sources the counties can explore;
 - (f) Recommendations on system requirements on the proposed automations;
 - (g) Recommendations on types of contracts and services level agreements for ICT systems;
 - (h) Recommendation on key personnel training.
- (iii) Adoption of Standard Domain Names:** The Commission has been guiding the county governments to adopt a standard email and website domain naming structure. The Commission has also recommended to the county governments the need to develop a dynamic website with mobile technologies integration. To this extent, the Commission has developed a county website development guide and submitted the same to the county government for consideration.
- (iv) County ICT Roadmaps, ICT sector work plan and County ICT strategies:** The Commission has facilitated counties to develop their ICT Sector work plans as outlined in the County CIDP. The Commission has also developed and circulated

model County ICT policies and procedures. Some of the counties engaged in this area includes: Nyandarua, Marsabit, Machakos, Laikipia, Kisii, Mombasa, Kilifi and Kwale. County Government ICT strategy will support the business transformation priorities of the County government as services are remodelled and sized to meet local needs within an increasingly restrained financial environment.

- (v) **County Revenue Automation Conference:** Continuous engagement with county governments revealed that there was a gap in leverage on technology for automation of revenue management within county departments, leading to low revenue collection and unsuitable revenue management practices. The Commission hosted the County Revenue Automation Conference in July 2015 and December 2016. The Commission will endeavour to bring the counties together annually to share experiences and address emerging challenges in revenue enhancement.

6.5. Challenges Experienced

In executing its mandate on revenue enhancement, the Commission encountered the following challenges:

- (i) Lack of legislative frameworks for compliance to Article 210(1) of the Constitution that states, “No tax or licensing fee may be imposed, waived or varied except as provided by legislation;”
- (ii) Incidents of double taxation arising from the implementation of concurrent functions by the national and county governments, thereby creating confusion due to the overlapping roles in imposition of tax between the two levels of government, and among counties;
- (iii) Failure by counties to seek for the views of the Commission and the National Treasury before implementing new tax measures as required by law resulting in imposition of taxes outside the scope permitted by Article 209(3);
- (iv) Low and ineffective public participation. In some cases the business community has taken county governments to court, citing their failure to involve the public in making decisions on matters that touch on taxation in the counties. Section 14 of the Fourth Schedule of the Constitution requires that county governments will ensure that there is participation of communities in governance at the local level – and that they will coordinate this participation. Section 87 of County Governments Act 2012 further sets out the principles of citizen participation, with Part (b) providing that there shall be reasonable access to the process of formulating and implementing policies, laws, and regulations including the approval of development proposals, projects and budgets. The financial resources and logistical requirements needed to execute this mandate has been a major challenge;
- (v) Inadequate staffing. Most counties have also been unable to attract and retain the requisite skilled personnel needed to maximise on their revenue potential;
- (vi) Failure by a number of county governments to bank all revenues collected to the County Revenue Fund;

- (vii) Low/poor connectivity in some counties posing challenges in adoption of ICT systems;
- (viii) Outdated and poorly maintained rate payers' databases that hinder them from efficiently billing and collecting revenue;
- (ix) Political interference from some elected leaders who incite the public not to pay taxes in order to settle political scores with the county executive;
- (x) Resistance to change by county staffs that have the misplaced notion that automation will lead to loss of jobs.
- (xi) Inadequate geographical information systems to enable counties collect land rates

6.6. Lessons Learnt

- (i) It takes time to overhaul an established way of doing things, especially one that has been there for more than fifty years;
- (ii) A number of pieces of legislation and policies relating to revenue collection and administration, need to be enacted. Although challenges exist, a number of counties have made commendable strides towards enhancing their revenues.
- (iii) The process of procuring revenue automation systems is rife with challenges ranging from the need to comply and adhere to legal provisions to lack of affordable dynamic systems that meet the needs of the counties.

6.7. Way Forward

- (i) Revenue enhancement not only raises revenues but also has the potential to foster political and administrative accountability by empowering communities;
- (ii) Effective revenue enhancement strategies should consider principles such equity, simplicity, efficiency and flexibility;
- (iii) Successful revenue growth and sustainability requires a mix of policy choices and administrative efficiency aimed at maximising revenue from all tax bases, valuations, enforcements, and collections;
- (iv) Need for all stakeholders to work together to promote an environment conducive to business and revenue enhancement.
- (v) Adoption of a multi-faceted approach to revenue enhancement that incorporates identification of untapped revenues, streamlining expenses, improving efficiencies and enhanced financial management.
- (vi) Automation of revenue systems and processes
- (vii) Change management

7.1. Introduction

Article 204 (1) of the Constitution establishes the Equalisation Fund into which, one half per cent of all revenue collected by the national government each year, calculated on the basis of the most recent audited accounts of revenue received as approved by the National Assembly, is paid. The fund is earmarked to provide basic services, including water, roads, health facilities and electricity to marginalised areas, to the extent necessary to bring the level generally enjoyed by the rest of the nation so far as possible.

The Constitution defines a marginalised group as people who because of law or practices are disadvantaged by discrimination on one or more of the grounds articulated in article 27 (4). These grounds include race, sex, pregnancy, marital status, health, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

The Constitution interprets marginalised communities to mean:

- (a) a community that, because of its relatively small population or for any other reason has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
- (b) a traditional community that, out of a need or desire to preserve its unique culture and identify from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on hunter gatherer economy; or
- (d) pastoral persons and communities, whether they are:
 - (i) nomadic; or
 - (ii) a settled community that because of relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

Article 216(4) mandates the Commission 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 published a policy on marginalisation in February 2013, where it identified 14 most marginalised counties that should benefit from the Equalisation Fund. The marginalised counties are: Turkana, Mandera, Wajir, Marsabit, West Pokot, Samburu, Tana River, Kilifi, Kwale, Garissa Taita Taveta, Isiolo Lamu, and Narok. In the policy, the Commission interpreted marginalised areas to mean a geographically

defined unit, whose peoples have limited access to basic services such as health, water, roads, and electricity among other basic amenities. Minorities and marginalised groups are domiciled in these areas.

The Constitution provides options to the national government to apply the Equalisation Fund directly or indirectly as a conditional grant to counties. The Public Finance Management Act 2012 gives the Cabinet Minister for Finance the power to administer the Fund. In regard to this, regulations that guide the administration of the fund have since been developed. The Public Finance Management (Equalisation Fund) regulations, 2015, published in the Kenya gazette notice no. 1711 provides for the guidelines that spell out the following:

- (i) Sources, object and purpose of the Fund;
- (ii) Guidelines on the administration and management of the Fund
- (iii) Establishment of the Equalisation Fund Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (iv) Withdrawal from the Fund; and
- (v) Provision for the winding up of the Fund

The Equalisation Fund is yet to be operationalised. Article 204(4) provides that the Commission shall be consulted and its recommendations considered before Parliament passes any bill appropriating money out of the Equalisation Fund.

7.2. Policy Contextualisation of Kenya's Marginalisation

In Kenya marginalisation can be traced right from the colonial period, where the white's policies initiated native and settlers colonies. This were not geared at promoting development for both the Africans and whites but it created a dual economy meant to exclusively serve white settlers' interests.

The initial creation of disparities in Kenya was entrenched and perpetuated after independence prior to the enactment of the 2010 Constitution. During the colonial era, the high potential areas for agriculture was alienated for White settlers while the low potential areas left for Africans. The areas occupied by Africans were totally ignored, leading to regional disparities and development deficits.

Kenya went to independence in 1963 with a Federal Constitution, referred to as Majimbo Constitution, negotiated at Lancaster House. However, shortly thereafter, it was abandoned for a centralised colonial style of control, command and patronage. In 1963 Local Government Regulations were promulgated to provide for two types of local governments: municipal council for urban areas and county council for rural areas. These also were later financially stifled and made to become central government appendages. The successive governments following independence adopted colonial and economic policies through *Sessional Paper No. 10 on African Socialism and its Application to Planning in Kenya*, which exacerbated regional inequalities.

The Constitution of Kenya 2010 has devolution as one of its main defining feature. This was intended to remedy the long existing inequalities by way of establishing county governments.

7.3. Equalisation Fund

Targeted financing is a common strategy employed by governments to remedy economic disparities. Equalisation serves various potential roles, such as correcting inefficiencies induced by fiscal decentralisation as well as an instrument for achieving horizontal equity among residents of different regions. The general goal of the Equalisation Fund is to compensate for economic disparities across regions. The Fund is earmarked for provision of 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, so far as possible [Article 204 (2)].

7.4. The Marginalisation Policy

The Commission is mandated to determine, publish and regularly review a policy in which it sets out the criteria by which marginalised areas will be identified, for purposes of Article 204 (2).

In accordance with the provisions of Article 216 (4), the Commission published a policy paper in February 2013, setting out criteria by which 14 counties were identified as marginalised, for purposes of them benefiting from the Equalisation Fund. The whole process of developing the policy was done through wide consultation with stakeholders who included civil societies, government agencies such as KNBS, general public, academia, religious groups, professional forums as well as development partners.

The policy borrows from international experiences used in other countries in the identification of the marginalised and marginalised areas. The popular approach has been through adoption and customizing of the Human Development Index (HDI):- The Dominican Republic, Mongolia, India, Mexico, Chile, Indonesia, and Central America use the Human Development Index (HDI). Turkey uses the Social and Economic Development Index (SEDI), Argentina uses the Extended Human Development Index (EHDI). Nepal developed a Human Empowerment Index (HEI) Australia applied the Gender development index, (GDI); and Europe and Portugal developed a Regional Human Development Index (RHDI)

To identify marginalised areas, the Commission developed County Development Index (CDI). Given the uniqueness of the marginalised areas and groups across the country, this information was triangulated with more information from the Historical injustices and County survey reports undertaken by the Commission. The CDI and the county survey reports comprised of both qualitative and quantitative analysis, while the historical injustice report was exclusively qualitative.

7.4.1 The County Development Index

The development of CDI was based on the international concepts of preparing CDI and HDI concepts. The indices give an indication on the wellbeing of the people given the fact that it is generated using indicators that measure quality of life. The Commission used indicators on health, education, infrastructure, and poverty to develop a CDI. The selection of parameters was based on Constitutional stipulations in Article 204(2), causal connection with marginalisation and availability of official data from KNBS.

7.4.2 The Historical Injustices Report

The historical injustices report was prepared by experts, who provided a chronological approach to the history of marginalisation in Kenya. The report provides a situational analysis from the historical colonial period through independence. The report defines the different forms of marginalisation suffered in different regions of Kenya. It articulates the different forms of marginalisation as relates to geographical location, minority and marginalised groups, religion, culture and political inclination.

7.4.3 Country Survey

The Commission undertook a countrywide survey in June 2012. The report captured the respondents' perception on marginalisation in Kenya and the areas they perceived as marginalised. The analysis of both qualitative and quantitative information collected provided an indication on the ranking of counties from the most marginalized to the least marginalized.

7.5. Marginalised Counties and the Criteria for Revenue Sharing

The integration of the three reports gave rise to policy recommendations articulated in the Marginalisation Policy, published by the Commission in February 2013. Besides identifying the marginalised counties, the policy defines criteria for the equitable sharing of revenue among the 14 counties, from the Equalisation Fund. The criteria allocates 50 per cent of the Fund revenue, based on the CDI and 50 percent equally among the 14 counties.

7.6. Challenges Experienced

- (i) The published policy used a county as the geographical unit of analysis. This was mainly influenced by the data available at Kenya National Bureau of Statistics (KNBS). The lowest possible unit area apart from the county could not be used because the data was not available by the time the policy was being developed.
- (ii) Although the Constitution provides for identification of marginalised areas and groups for purposes of sharing revenue from the Equalisation Fund, the Commission used the county as the unit of analysis. This resulted in differences on the administration of the Fund between the Commission, the National Treasury and the Members of Parliaments. These differences have resulted in delays in operationalisation of the Fund greatly undermining the realisation of the objective of the Fund.

- (iii) Duplication of structures for the administration of the fund has had the impact of increasing the fund's cost of administration. Guidelines for administration of the Equalisation Fund provides for the advisory board and the committees. The Advisory Board consists of the Principal Secretary for finance, who is also the Chair and Principal Secretaries in charge of Devolution and Planning, water, roads, health, energy, national coordination and other members of either gender appointed by the Cabinet Secretary from outside the public service. In addition, it provides for co-option of other members and establishment of committees.
- (iv) The establishment of other new parallel structures for the administration of the fund, instead of using the existing county structure eats into the minute Fund by introducing unnecessary administrative costs. This could have been avoided if the Fund was channelled through counties as conditional transfers.
- (v) All counties have a marginalised group or area. The Commission is cognisant of the fact that the Equalisation Fund is meant to enhance levels of service delivery in these marginalised areas to that generally enjoyed by the rest of the country. However, the Commission acknowledges that a half percent is inadequate to achieve equalisation. County governments need to make deliberate efforts to implement equalisation measures from the equitable revenue shares and own source revenues.
- (vi) The Equalisation Fund regulations provide for establishment of a board with national government representation. This poses a challenge of duplication in project, identification given that the fund is meant to finance some functions that belong to county governments.
- (vii) The projects identified for implementation by Fund Advisory Board may also not be in synchrony with the priorities of the marginalised area and groups. For this reason, the projects identified by the board for implementation in the Financial Year 2016/17 have been rejected by Governors, Senators and Members of Parliament from the beneficiary counties, on account of inadequate public participation.

7.7. Lessons Learnt

- (i) The policy used the county as the unit of analysis. However, small area analysis is the conventionally most appropriate unit in as far as identifying marginalised areas and groups are concerned. This is because it has the advantage of ensuring that well targeted policy decisions are implemented.
- (ii) The fund has a term limit of 20 years, as articulated in Article 204 (6). As a targeted fund, a proper intergovernmental monitoring and evaluation framework needs to be put in place to ensure that the marginalised areas and groups are benefiting from the fund and that overall, the objective of improving services to levels enjoyed in other areas is being realised within the period.

7.8. Way Forward

- (i) The Constitution provides for regular review and publication of a policy identifying marginalised areas and groups. The Commission will review the first policy based on new data from Kenya Integrated Household Budget Survey 2016 by the KNBS. The new data provides an opportunity to focus on small area analysis to not only identify the areas and groups, but also identify the needs of the marginalised. This is important in ensuring that the projects financed by the Fund resources are well targeted.
- (ii) The Commission emphasises the importance of continuous proper monitoring and evaluation of the impact of the Fund. This information will inform the Commission's regular reviews and Parliament's decision on whether the term for the fund which lapses after 20 years is to be prolonged or otherwise.

8.1. Introduction

The Constitution of Kenya Chapter Five on Land and Environment clearly stipulates, under Article 69, the role of institutions and the people of Kenya in ensuring sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and in ensuring equitable sharing of the accruing benefits. The Commission mandate in this regard include making recommendations for revenue enhancement in both national and county governments and the need to be consulted on any Bill that includes any provision dealing with sharing of revenue.

According to the Constitution natural resources means, the physical non- human factors and components, whether renewable or non-renewable including: sun light; surface and ground water; forest, biodiversity and genetic resources; rocks, minerals, fossil fuels and other source of energy.

8.2. Policy on Natural Resources

The policy on environment in Kenya is constantly changing. Macro-and micro- economic policies interact on different scales, influencing NRM strategies. The policy formulation approach is multi-sectorial, but is often centralised, with devolved structures provided only for local implementation. These policy reviews provide an excellent opportunity to formulate ‘outward looking’ policies, but the process is only valuable if it can be exploited by proactive leaders, developers, environmental planners and managers as well as use knowledge and information are used to inform sound decisions. The Environmental Management and Coordination Act (EMCA), 1999, is the framework law on environmental management and conservation and is geared towards sustainable natural resources extraction in Kenya.

8.3. Legislations on Natural Resources

The Mining Act 2016 deals exclusively with extraction of minerals. Currently, there are three main Bills related to natural resources: the Energy Bill 2015; the Petroleum (Exploration, Development and Production) Bill 2015 and the Natural Resource (Benefit Sharing) Bill 2014. The Commission has been extensively involved in the formulation of the Mining Act 2016 and continues to play a key role in the finalisation of the other Bills that are currently before Parliament. The Commission has also played a key role in building capacity and in the development of other Bills related to natural resource management as discussed below:

8.3.1 Kenya Petroleum Technical Assistance Project

Kenya Petroleum Technical Assistance Project (KEPTAP) is a World Bank funded project, which is intended to build capacity in the oil and gas sectors. The main objective of the

project is to strengthen upward and downward linkages in the oil and gas industries. KEPTAP programmes include sensitisation workshops in oil and gas, developing capacity in oil and gas with respect to revenue sharing; and management and development of a resource centre for oil and gas.

Through KEPTAP, a team from the Commission visited Australia to benchmark on oil and gas management. The team included three Commissioners, a director and a manager. The Commission has undertaken a number of workshops in Mombasa, Kisumu and Naivasha to sensitise and strengthen the capacity of counties that have oil exploration activities as well as those that will host the pipeline. A total of Thirty CRA staff have benefitted from various local and international trainings aimed at building capacity on oil and gas management.

8.3.2 Natural Resources Related Legislations and Regulations

The Commission has played a role in enriching policies and legislation which touch on natural resource management in order to ensure they are geared towards sustainable natural resources exploitation and management. These are the Mining Act 2016 and the Petroleum (Exploration, Development and Production) Bill 2015. The Commission, within its mandate of ensuring equity in the sharing of resources, played a key role in the sharing of royalties. In this regard, royalties shall be distributed as follows:

- (i) Seventy percent to the national government;
- (ii) Twenty percent to the county government; and
- (iii) Ten percent to the community where the mining operations occur.

8.3.3 Providing Technical Advice to Various Counties

Through organised county visits, the Commission has visited Kitui, Kwale and Taita Taveta counties to assess the progress of natural resource management in these counties. The Commission gave technical advice on relevant legislations in oil and gas as well as natural resources.

8.3.4 Land use Planning Initiative

The Commission has closely worked with the National Land Commission (NLC) on land use planning projects. The engagement focuses on enhancing collaboration on land use planning, improved revenue collection, capacity building on land use planning and maintenance of tree cover in accordance with the provisions of County Government Act 2012, the Urban Areas and Cities Act 2011, and Article 69 (1) (b).

8.4. Challenges Experienced

- (i) Limited budgetary resources. This resulted in the Commission seeking external partners to achieve its targets and goals on natural resource management;
- (ii) Slow implementation of collaborative capacity building projects due to bureaucracy;
- (iii) Slow absorption of donor financing due to lengthy financial approval procedures.

8.5. Way forward

- (i) Need to harmonise the current programmes on exploration for better results and positive impact in sustainable natural resource management;
- (ii) The Commission needs to continue to facilitate internal and external stakeholder capacity building through technical training, study tours, workshops and seminars;
- (iii) Seek for more long-term and robust partnership with local and international institutions in natural resource management;
- (iv) Working to consolidate natural resource management data in Kenya for ease in planning and service delivery by establishing and equipping a resource centre within the Commission;
- (v) Assist counties to develop capacity in natural resources mapping, extraction and sustainable management by identifying human capacity gaps and equipment;
- (vi) Assist Counties to craft, debate and pass sustainable natural resources Act and regulations;
- (vii) Develop performance indicators for CRA to measure revenue enhancement successes and impacts of CRA efforts to Counties on natural resources revenues;
- (viii) Work with Counties in developing modalities on proper usage of the 30 percent revenue share from Mining activities to counties as per Art 183(5) of the Mining Act 2016.

The following are the top twelve successes of the First Commissioners:

1. Establishment of the Secretariat;
2. Recommendations on the basis for sharing revenues between the national and county governments for financial years 2012/13; 2013/14/; 2014/15; 2015/16; 2016/17 and 2017/18;
3. Recommendations on the first and second bases for revenue sharing among county governments;
4. First policy identifying 14 marginalised counties;
5. Criteria for sharing revenue from the Equalisation Fund among the marginalised counties;
6. Recommendations on ceilings in county recurrent budgets;
7. Recommendation on revenue sharing in the Mining Act 2015
8. Preparation of county revenue administration model Laws;
9. Capacity building for county governments;
10. Recommendations on automation of County revenues;
11. Recommendations on the county borrowing framework.
12. Establishment of partnerships with development partners and private sector actors.

1. Promote better harmony among all stakeholders. Notably, between the national and county governments; senators and governors; governors and the deputy governors; governors and members of county assembly; and senators and national assembly members
2. Reduce duplication of administrative services between national and county governments through the restructuring of the provincial administration
3. Ensure the national and county governments' wage bills is sustainable through rationalization.
4. Improve security in counties by lobbying for devolution of the Administration Police to the county governments.
5. Lobby to reduce budgets for national government departments whose functions have been devolved, particularly health, agriculture and roads. Those reductions to be passed over to counties as equitable allocation.
6. Organise Induction Programmes, in liaison with other stakeholders, for incoming Governors, Deputy Governors and members of County Assemblies.
7. Encourage all political parties to put in place measures to ensure more Women are elected to reduce the cost burden of nomination of women to National Assembly, Senate and County Assemblies to meet the gender rule.
8. Continue to draw to the National Treasury the dangers posed by excessive borrowing.
9. Continue to instil financial discipline in counties to reduce wanton wastage of public funds.
10. Lobby for prompt disbursement of funds to county governments.
11. Lobby county governments to contain recurrent budgets and increase development expenditure.
12. Encourage county governments to establish and operationalize County Budget Economic Forums (CBEF) and to ensure involvement of the people in their development.

Picture: Commissioners and Secretariat Staff



Source, CRA 2016

The names and designation of Staff is presented in Annex 1

CRA SECRETARIAT STAFF

S/NO	NAME	DESIGNATION
1.	GEORGE OPONDO OOKO	CEO/SECRETARY
2.	JAMES MUTHUSI KATULE	DIRECTOR FISCAL AFFAIRS
3.	LINETH NYABOKE OYUGI	DIRECTOR RESEARCH AND POLICY
4.	SHEILA ATIENO YIEKE	DIRECTOR LEGAL AFFAIRS
5.	DR. AMENYA PETER NYAKUNDI	DIRECTOR, NATURAL RESOURCES MANAGEMENT
6.	ANGELA WANJIKU KARIUKI	DIRECTOR CORPORATE SERVICES
7.	JOSEPH KAMAU KURIA	DIRECTOR ICT SERVICES
8.	JOHN NYAOKO MOSE	SENIOR ANALYST, REVENUE ALLOCATION AND BUDGET ANALYSIS
9.	MAUREEN KAVIN JUNGE	FINANCE MANAGER
10.	JACQUELINE MARITA	MANAGER COMMUNICATIONS
11.	WILLIAM KIPYEGO BIRECH	MANAGER HUMAN RESOURCE & ADMINISTRATION
12.	MARTHA GAYOYE MANENO	MANAGER LEGAL AFFAIRS
13.	ANASTASIA WANJOHI	MANAGER, NRM
14.	KENNEDY ABONG'O	SENIOR ANALYST
15.	JANE MAINGI MUOTI	SENIOR ANALYST FINANCIAL MANAGEMENT
16.	JOB OMONDI OTIWA	SENIOR ANALYST MACROECONOMICS AND PUBLIC FINANCE
17.	JOHN MARK WAMBUGU	SENIOR ANALYST, REVENUE ENHANCEMENT PROGRAM
18.	HENRY OCHARO MECHA	STATISTICIAN
19.	JENNIFER NAFULA MUKHONGO	RESEARCH OFFICER
20.	STEPHEN ISAAC KHADONDI	RESEARCH OFFICER
21.	MEIMUNA MOHAMED ABDIKEIR	RESEARCH OFFICER
22.	FRIDAH MALINDA MUSYOKA	PROCUREMENT OFFICER
23.	KEVIN EKUTAN EKAL	NATURAL RESOURCE MANAGEMENT OFFICER
24.	RONALD NGENO	COMMUNICATIONS OFFICER
25.	KENNEDY MAKOKHA MURAMBI	MANAGER ICT
26.	GEOFFREY NTOOKI	PROCUREMENT ASSISTANT

S/NO	NAME	DESIGNATION
27.	ELSIE CHEPNGENO KEMEI	ACCOUNTANT
28.	ZINZI KHALWALE	HUMAN RESOURCE & ADMINISTRATION ASSISTANT
29.	COLLINS WANYOIKE NG'ANG'A	ICT OFFICER
30.	TRUPHOSA SHIPUTA ASHIKO	LIBRARY ASSISTANT
31.	CAROLINE KARIMI	REGISTRY ASSISTANT
32.	JOHN KIPLIMO KANGANI	RESEARCH ANALYST
33.	RACHEL NYAMBURA KAGWANJA	RESEARCH ANALYST
34.	DAVID HARITONE SHIKUMO	RESEARCH ANALYST
35.	LAWRENCE ZIA KATANA	RESEARCH ANALYST
36.	ABDI OSMAN	ASSISTANT NRM
37.	EVA GAKII MURUNGI	EXECUTIVE SECRETARY
38.	CONSTANCE AKUMU MULANYA	EXECUTIVE SECRETARY
39.	GLADYS MUSANGI MWINZI	EXECUTIVE SECRETARY
40.	BENTER ACHIENG	RECEPTIONIST
41.	ELIZAPHAN MURIITHI	DRIVER
42.	JOHN KIPRONO CHESEREM	DRIVER
43.	SALVATORY ODHIAMBO OKOTH	DRIVER
44.	DEOCRASIAS ODUOR MHANDO	DRIVER
45.	LEONARD OTIENO ADOYO	DRIVER
46.	CHARLES NYAKERAMBA ARAKA	DRIVER
47.	THOMAS MUTISYA NDAMBUKI	DRIVER
48.	MOHAMED HERI IREI	DRIVER
49.	SIMON NJOROGE RICHU	DRIVER
50.	PHILLIP JEMBE KARISA	DRIVER
51.	SEIN ELKANA KISHOYIAN	DRIVER
52.	ALI HAKIM AWADH	DRIVER
53.	JOYCE WANGUI KURIA	SUPPORT STAFF
54.	SIMON GITHAE MATHENGE	SUPPORT STAFF
55.	ADAH OMUNDHE ATIENO	OFFICE SUPPORT ASSISTANT



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