

REPUBLIC OF KENYA

Budget Statement

For the

Fiscal Year 2015/2016

(1st July – 30th June)

by

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STATEMENT DELIVERED TO THE NATIONAL ASSEMBLY ON 11TH JUNE, 2015
BY MR. HENRY K. ROTICH, CABINET SECRETARY FOR THE NATIONAL
TREASURY, REPUBLIC OF KENYA, WHEN HIGHLIGHTING THE BUDGET
POLICY AND REVENUE RAISING MEASURES FOR FISCAL YEAR 2015/16

1ST JULY, 2015 TO 30TH JUNE, 2016

1. INTRODUCTION

1.1 Overview

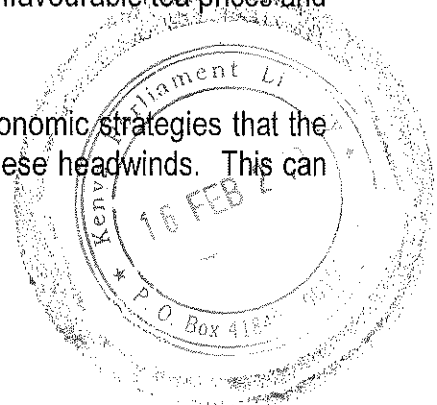
1. **Mr. Speaker**, it is once again my honour to present to this August House the policy highlights of the third Budget of President Uhuru Kenyatta's Administration for the fiscal year 2015/16, in accordance with section 40 of the Public Finance Management Act, 2012 and Standing Order No. 241 of the National Assembly.

2. **Mr. Speaker**, before I proceed, I wish to take this early opportunity to express my sincere appreciation to the Budget and Appropriation Committee of the National Assembly under the wise and very able leadership of Hon Mutava Musyimi, and other Departmental Committees of Parliament for the constructive engagement with my team and for steering the review of the 2015/16 Budget Estimates.

3. In the same vein, **Mr. Speaker**, allow me also to register my utmost appreciation to all Kenyans who responded to my call for "Budget Submission" with very insightful suggestions on how to move our country forward. I would also like to thank all the Hon Members who actively participated in various Departmental Committee meetings to review the budget estimates and finally, **Mr. Speaker**, my gratitude goes to the entire staff at the National Treasury who have worked many hours, including on weekends, under the able leadership of the Principal Secretary, Dr. Kamau Thugge, to put together the budget documents.

4. Today, **Mr. Speaker**, I am addressing Kenyans to inform them of the Government's plan to strengthen our economy further, following the gains we have made so far. Of course, we would have done much better were it not for the myriad of challenges we have encountered; ranging from terrorist events in Nairobi, Lamu, Manderu and recently in Garissa. We have also had to deal with drought, low tourism, unfavourable tea prices and a weak global economy.

5. But **Mr. Speaker**, I want to say to Kenyans that the economic strategies that the Government is currently pursuing are helping us to deal with these headwinds. This can



be demonstrated by the fact that our economy continues to be among the fastest growing in the region while preserving macroeconomic stability.

6. So, today, **Mr. Speaker**, we are taking further steps to consolidate these gains within a framework of prudent management of public resources. That is why in this budget we are continuing to allocate resources to areas such as infrastructure, agriculture, security, health, education, social protection and youth empowerment, which will help boost growth and create jobs.

7. **Mr. Speaker**, the resilience of the economy and creation of about 800,000 jobs last year is by no means an accident. We have significantly improved the business environment; rolled out the biggest infrastructure in Kenya's history (the Standard Gauge Railway (SGR)); completed key programmes in the roads and energy sectors; and brought down the cost of living – Kenyans today are paying less for their electricity and fuel.

8. **Mr. Speaker**, the Jubilee Government's economic agenda is working and things are getting better. The World has expressed growing confidence in Kenya's economic future and Kenyans' too share that optimism.

9. Therefore, **Mr. Speaker**, this Budget is the extension of our existing solid economic plan to take Kenya to the next level. We plan to continue to implement our plan to complete the new rail in the shortest time possible, complete existing roads projects, build new roads under a new approach known as Annuity, modernize security apparatus to make Kenya safe and secure, support our farmers to protect their incomes, invest in the future by unleashing the potential of Kenyan's and support devolution for effective delivery services. This way we will grow our economy, create jobs and reduce poverty.

10. **Mr. Speaker**, in framing this budget, we have taken into account developments both at the global and local fronts. The world economy is projected to grow by 3.5 percent and 3.8 percent in 2015 and 2016, respectively, up from 3.4 percent in 2014, buoyed by stronger growth in advanced economies mainly as a result of the lower oil prices. However, growth in emerging and developing countries remains subdued on account of weaker growth in some major oil exporters because of lower oil prices and diminished macroeconomic space.

11. In Sub Saharan Africa, **Mr. Speaker**, growth is projected to slow down to 4.5 percent in 2015, from 5.0 percent in 2014 largely due to lacklustre economic performance of Nigeria and South Africa. However, in 2016, the economy of the Sub Saharan region is expected to recover to 5.2 percent, due to the impact of lower oil prices and investment in infrastructure.

12. **Mr. Speaker**, on the domestic front, growth and employment prospects remain favourable. We have continued to implement prudent fiscal and monetary policies which

have resulted in low inflation, steadily declining interest rates, and a broadly stable exchange rate and a sustainable public debt position. Reflecting these efforts, **Mr. Speaker**, the economy expanded by 5.3 percent in 2014 supported by strong performance in most sectors of the economy which offset the contraction in the tourism sector. The economy, is expected to expand further by between 6.5 – 7.0 percent in 2015 and to maintain the same pace over the medium term, bolstered by lower oil prices, higher public and private investment, increased consumer confidence and higher total factor productivity reflecting continued implementation of structural reforms and increased investment in health and education.

13. In order to anchor our reform agenda and mitigate against shocks that could derail our development agenda, we have a precautionary Stand-by Arrangement and a Stand-by Credit arrangement with the IMF for an amount of SDR 488.52 million or US\$ 688.3 million. We intend to draw on the facility only in the event of an exogenous domestic or external shock.

14. **Mr. Speaker**, our economy remains strong and its momentum is gaining pace. We have invested heavily in improving the business environment, improving security, enhancing the quality of transport infrastructure and access to affordable energy, reducing dependence on rain fed agriculture, improving the quality of health care and educational systems, and facilitating devolution. As a result, private sector activity is more dynamic and we are attracting more FDI flows. These efforts have contributed to the higher growth experienced in recent years.

15. We nevertheless, **Mr. Speaker**, recognize that challenges remain – challenges of high incidence of poverty and unemployment, frequent droughts and other weather related shocks, low agricultural and industrial productivity, insecurity in some parts of the country and fiscal inefficiencies and corruption.

16. **Mr. Speaker**, going forward, we must all arise and summon our collective will and commit to tackling these challenges so as to unlock the full potential of our economy and achieve prosperity for all Kenyans. Through this budget, therefore, **Mr. Speaker**, we are continuing to focus on implementing the six thematic areas critical to not only addressing the challenges I have just mentioned, but also driving our economy up the value chain to become a regional manufacturing hub on its way to achieving upper middle income status. Accordingly, **Mr. Speaker**, the FY 2015/16 budget will:

- **First**, prioritise addressing the security challenge which is critical to creating a friendly business environment for our private sector. This will be complimented by continued macroeconomic stability and continued efforts to reduce the cost of doing business so as to unleash the efficiency gains necessary for achieving prosperity for all;

- **Second**, we are committing more resources towards infrastructure development and adopting innovative ways to hasten delivery of better roads and other infrastructure necessary for reducing the cost of business and promoting competitiveness and the productivity of our economy;
- **Third**, we are putting in place measures to drive agricultural and industrial transformation so as to build resilience in our economy, ensure food security and lower food prices, increase quality and diversification of exports, accelerate inclusive growth, create jobs and reduce poverty;
- **Fourth**, we are also opening up opportunities to tap the latent talents and entrepreneurial capabilities of our youth, women and persons with disability so as to enable them actively participate in our economic transformation agenda;
- **Fifth**, we will continue to scale up resources and underpin reforms to enhance the quality of our education and health care systems with a view to building a healthy and productive human resource base that we need for driving economic growth while at the same time ensuring adequate social safety net for our vulnerable communities; and
- **Sixth, Mr. Speaker**, with devolution now taking root, the National Government commits through this budget to work very closely with the county governments and to facilitate them to build the capacity to better deliver services and development at the grassroots level.

17. **Mr. Speaker**, with this background, the rest of my speech will elaborate various measures we are introducing under each of the six strategic areas. Thereafter, I will share the fiscal outcomes for fiscal year 2014/15 and the fiscal forecasts for 2015/16 as well as outline the tax and other policy measures we are proposing to support growth of private sector and employment creation.

2. IMPROVING THE BUSINESS ENVIRONMENT

2.1 Addressing Insecurity Concerns for Business Expansion

18. **Mr. Speaker**, tackling insecurity decisively remains the top priority of the Government's strategy to sustain the growth momentum of the economy while creating jobs and reducing poverty on a sustainable basis. **Mr. Speaker**, without security for our Citizens, achieving our growth and development objectives will remain a mirage. **Mr. Speaker**, the recent terrorist attack in Garissa University College is a reminder of the kind of ruthless enemy that we face as a nation. These terrorist activities continue to undermine the

investment climate in the country and have contributed to the loss of jobs and declining activity in our tourism industry. To counter these security challenges, the Government is committed to significantly increase resources to the security sector for purchase of the necessary equipment to effectively address the terrorism menace.

19. **Mr. Speaker**, we have committed substantial resources to this sector over the last two years including: Increasing the number of police vehicles by 2,400 – more than has ever been provided since independence; Equipping our men and women in uniform to control insecurity and better deal with criminals; and recruiting over 15,000 additional security personnel to help secure our country and combat terrorism and crime. We are implementing these measures so as to safeguard the lives of our people while improving the business climate.

20. **Mr. Speaker**, to further underscore the importance the Government attaches to strengthening our National Security and to provide the best counter terrorism capabilities possible, in the FY 2015/16, I have proposed further allocations to the security organs of KSh 223.9 billion, which is KSh 27.1 billion higher than last year. Out of this amount, I propose to allocate KSh 112.5 billion to Defence and NIS and KSh 102.4 billion to the State Department of Interior.

21. These monies will be used to build on the security measures we have put in place in the last two financial years. In particular, to enhance the capacity of our security forces to combat crime, I am proposing to allocate the following resources:

- KSh 7.7 billion for lease financing of Police/Prisons motor vehicles –This will bring the total number of Police vehicles under the leasing programme to 3,200 since the time it was started two years ago;
- KSh 15.0 billion for military modernization;
- KSh 10.0 billion Police Security Modernization;
- KSh 1.7 billion for Police Medical Insurance Scheme;
- KSh 1.3 billion for Police/APs Houses; and
- KSh 6.4 billion for AMISOM/Peace Keeping Missions.

22. **Mr. Speaker**, I have also allocated Ksh 1.4 billion to address poaching of our game animals in the national game parks and reserves. In addition **Mr. Speaker**, we also intend to complete shortly, the rolling out of a security surveillance system and command and control system in Nairobi and Mombasa that will enable us monitor, identify and track criminals. Moreover, we are rolling out our border protection programme aimed at controlling the flow of persons in the porous Kenya-Somalia border and also in our ports of entry. The enhanced allocations to these areas demonstrates, without doubt, our unwavering commitment to secure the lives and property of Kenyans.

23. **Mr. Speaker**, with this kind of investment, the response to terrorism attacks will be swift and uncompromising. These investments are essential for our Nation and it must work!

2.2 Maintaining Macroeconomic Stability for Growth and Employment

24. **Mr. Speaker**, even as we prioritize the security sector, maintaining macroeconomic stability remains paramount in sustaining long term investment, economic growth and development. It is for this very reason, that we aim to strike an appropriate balance between support for rapid and inclusive economic growth and continued fiscal discipline.

25. **Mr. Speaker**, the Kenya Shilling exchange rate, and indeed most currencies in the world, have recently been under pressure against the US dollar, largely due to the strengthening dollar in the global currency market as a result of strengthened US economy and the anticipation of a tightening of monetary policy by the U.S. Federal Reserve Bank. To avoid further pressures, which in part reflect, speculative behavior, the Central Bank of Kenya has tightened monetary policy by raising the Central Bank Rate to 10.0 percent from 8.5 percent. **Mr. Speaker**, this action combined with the significant level of foreign exchange reserves at the Central Bank which are in excess of US\$ 7.0 billion, and our potential access to additional resources from the IMF should stabilize the shilling exchange rate against the U.S. dollar.

26. To ensure debt sustainability, we will endeavor to contain the overall fiscal deficit as well as put emphasis on efficiency and effectiveness in public spending while improving revenue performance. Specifically, fiscal policy will target revenue collection of 21.8 percent of GDP over the medium term and containing the growth of total expenditure. In addition, the policy aims at shifting more public resources from recurrent to capital investment so as to promote strong, sustainable and inclusive growth.

27. **Mr. Speaker**, we are also reforming the tax and revenue systems to enhance revenue yields, promote compliance and facilitate private sector growth and development. To this end, I will be outlining several tax measures in the later part of my statement.

2.3 Structural Reforms to Facilitate Business and Employment Growth

Improving Good Governance

28. **Mr. Speaker**, on governance, we will strengthen the institutions mandated to fight corruption by enhancing their capacity to fight the vice and by facilitating the development and implementation of a comprehensive program on corruption prevention and asset recovery. This should help spur efficiency, increase productivity and reduce the cost of doing business.

29. **Mr. Speaker**, we know very well corruption remains a challenge that continues to bedevil the nation by undermining the Government's development agenda. To confront this challenge, His Excellency The President demonstrated his resolve to deal firmly with corruption through his state of the nation address in April 2015. In addition, the President has launched a new Code of Governance for State Corporations called "Mwongozo" which is expected to address governance and management challenges in our Parastatals. To strengthen the governance institutions, I have allocated Ksh 2.6 billion to the Ethics and Anti-Corruption Commission (EACC) and Ksh 2.2 billion to the Department of Public Prosecutions (DPP) to enable them speed up investigations and prosecutions.

30. In addition, **Mr. Speaker**, we now require all MDAs to use the eProcurement module of the IFMIS so as to safeguard loss of public finances through corruption. Further, **Mr. Speaker**, beginning July 1, 2015 we shall be fully operationalizing the Kenya National Electronic Single Window System for use by all importers and exporters and other related stakeholders. This will enhance transparency, accountability, governance and competitiveness while at the same time improving revenue collection. This will further seal loop holes through which revenues to Government are misappropriated.

Efficiency and Effectiveness in Public Service Delivery

31. **Mr. Speaker**, an effective, efficient and accountable public service is essential to sustaining our developmental agenda and to moving our country towards upper Middle Income status. In this regard, **Mr. Speaker**, we are building on the on-going public finance management reforms to further strengthen PFM oversight, entrench efficiency in expenditure, ensure effective delivery of programs, reform the tax system and enhance revenue efforts, and promote good corporate governance in the state corporations.

32. **Mr. Speaker**, we can achieve a lot more with the resources we generate if only every ministry and departmental agency applies budgetary allocations prudently. Therefore, to assure value for money; **first**, we will roll out to all MDAs the eProcurement module, fully inbuilt with an active price reference to ensure Government does not procure any supplies above the market prices; **secondly**, we shall shortly publish ICT standards for all Government ICT consumables and enter into a negotiated framework agreement with established local dealers or assemblers at a discount; **third**, we will expand leasing to all MDAs in respect of depreciating assets and equipment; and **fourth**, only projects that have been appraised and found to be viable and whose cost is within reasonable margins of similar projects in the private sector shall commence implementation.

33. **Mr. Speaker**, as I stated in my last Budget Highlights, we are moving all payments to Government onto the digital platform. The objective of the Government Digital Program is to ensure that all payments to government are made electronically so as to significantly reduce administrative costs, minimize leakages and expand access to payment points. This has enabled Kenyans to pay for Government services wherever they are and using

payments channels of their choice, thus saving them costs associated with transport and queuing time.

34. To date, **Mr. Speaker**, over 400,000 Kenyans have registered on the eCitizen payment platform, www.eCitizen.go.ke, and with over 8,000 transactions so far, revenue collection is averaging about KSh 10 million daily. Going forward, **Mr. Speaker**, we have programmed to digitize at least 100 inbound payment service transactions by end of 2015 in order to hasten service delivery, reduce transaction cost and safeguard revenue. Priority areas include; payments for business registration, land transaction services, motor vehicle and additional services under the registration of persons, including, birth and death certificates.

35. **Mr. Speaker**, we are also moving Government services closer to Kenyans through two key initiatives: **first** the state of the art One-Stop-Shop Investment centre; and second, One-Stop-Shop Service centres, popularly known as Huduma Centres. These centres are now making it easier for investors to set up businesses and citizens to access public services. Through the Huduma Kenya Program we are delivering more than 35 services under one roof in twenty-three counties. By the end of this financial year, we will have rolled out an additional 23 centres, bringing the total number of Huduma Centres to 46. In FY 2015/16 we shall be expanding to reach all counties. We also intend to harmonise the services provided by eCitizen and by the Huduma Centres to ensure that there is no duplication of services provided to Mwananchi and thereby avoid wastage of scarce Government resources.

36. **Mr Speaker**, we have been implementing the Kenya National Electronic Single Window System –the Kenya Tradenet System—to facilitate international trade by reducing delays and attendant transaction costs relating to processing of imports and exports documentation while at the same time maintaining the requisite controls and ensuring efficient revenue collection. The declaration module has now been put in place and beginning the first of July 2015, all importers and exporters and other related stakeholders will be required to process their transactions through the system. This will enhance transparency, accountability, governance and competitiveness while at the same time improving revenue collection.

37. As a result of these various initiatives, Kenya continues to receive global recognition. In the medium term Kenya is projected by leading economists to be one of the fastest growing economies. Recently, the African Development Bank ranked Kenya as number six in Africa in terms of attracting Foreign Direct Investment (FDI) while the Ernst & Young's 2014 Attractiveness Survey indicated that investors see Kenya as one of three regional hub markets in Sub-Saharan Africa. In addition, our Huduma Centres recently won an award from the United Nations as the overall winner in improving the Delivery of Public Services category.

Ease of doing business

38. **Mr. Speaker**, reducing the cost of doing business and encouraging private sector innovation, entrepreneurship and business expansion is a key prerequisite to achieving strong and sustained economic growth and poverty reduction. As such starting March 2015, the Government has been implementing a Business Regulatory Reform Strategy to substantially raise Kenya's global ranking under the World Bank's Doing Business Indicators. This strategy will focus on measures to improve Kenya's ranking under specific indicators of interest to small businesses and ordinary Kenyans and of course domestic and foreign investors. In particular, just to highlight a few key reform areas, the Government intends to:

- Reduce procedures, time and cost of starting a business, getting electricity and registering property by at least 80 percent in 2016;
- Reduce procedures, time and cost of getting construction permits and paying taxes by 50 percent and 60 percent, respectively in 2016; and
- Make it easy to access credit and to trade across borders.

2.4 Deepening Financial Sector Reforms for Stability, Growth and Employment

39. **Mr. Speaker**, the objective of financial sector reforms remains as stated in the Budget Policy Statement - to create a robust, accessible, efficient, stable and a globally competitive financial sector that promotes mobilization of high levels of savings to finance priority development.

40. As a Government, we have been concerned by the high lending rates which inhibit credit uptake by the private sector. Therefore, to advise on how to increase lending to the private sector for economic growth and development, I constituted a high level Committee on the Cost of Credit and Constraints in Mortgage Finance. Some of the key recommendations arising from the Committee's work which we shall continue to implement include:

- **First**, requiring all Banks to use the Kenya Bankers Reference Rate (KBRR) as a basis for pricing credit. This has enabled borrowers to easily compare lending interest rates offered by different banks. Since the rollout of KBRR framework, the average lending rate for the banking sector has declined from 16.9 percent in July 2014 to 15.5 percent in March 2015 and the spread between the average lending rate and average deposit rate has also declined from 10.3 percent to 8.8 percent over the same period;
- **Second**, developing the Treasury Mobile Direct Programme, which we expect to launch in July 2015. The launch of M-Akiba bond will allow Kenyans to purchase Government Securities directly from the comfort of their mobile phones with a minimum investment of only KSh 3,000.00 compared to the current minimum of KSh 50,000.00. This will allow Kenyans to enjoy significantly higher interest rates

on government securities compared to bank deposits, through a convenient platform and with a low entry threshold;

- **Third**, fast tracking the modernization of the Lands and Companies Registries to facilitate quicker collateral process as well as development of an electronic registry for moveable assets; and
- **Fourth**, ensuring that Government borrowing does not crowd out private sector by containing the fiscal deficit and adopting alternative sources of funding the deficit such as the Euro Bond.

41. In addition, **Mr. Speaker**, the high interest rates on lending and the spread between lending and deposit rates also reflect limited competition in the banking sector. Although we have 44 banks, most are small and only a few banks account for the majority of assets and deposits in the industry. Therefore, in order to make the banking system more competitive locally and regionally, I will later be proposing measures that will strengthen the banks' capital base and increase competition.

42. **Mr. Speaker**, as required by the Constitution, I have submitted the Central Bank of Kenya Bill, 2015 to the Commission on Implementation of the Constitution for further inputs. This Bill gives us an opportunity to comprehensively review the Central Banking law and align it with international best practices. The Bill will later be submitted to the National Assembly and I hereby seek the support of this House in its enactment.

43. **Mr. Speaker**, the Government will also implement additional measures to further deepen and strengthen the financial sector. In particular, in 2015, the Nairobi International Financial Centre Authority will be made fully operational. Further, to safeguard Kenya's economy against financial instability, the CBK will strengthen the prudential oversight framework and effectively manage risks associated with rapid credit growth, rising cross-border operations and expansion of banks activities into holding groups. The Bank will also review and strictly implement the Prudential Guidelines on Risk Classification of Assets and Provisioning, and regularly report progress.

3. BETTER INFRASTRUCTURE FOR PRIVATE SECTOR GROWTH

44. **Mr. Speaker**, transforming Kenya's economy towards prosperity for all requires substantial investments in the development of an efficient, faster and affordable transport network as well as affordable energy and modern harbours and airports. These investments will, in turn, reduce the cost of transport, promote competitiveness, open up business opportunities for our people and facilitate faster and more inclusive growth for employment creation and poverty reduction.

45. **Mr. Speaker**, as such we are investing substantial resources to improve the conditions of our infrastructure network. I am pleased, **Mr. Speaker**, to inform Hon Members and Kenyans at large that the construction of the Standard Gauge Railway is progressing well and is ahead of schedule. The construction of the railway started in early 2015 and is expected to be completed around mid-2017, and should significantly reduce the cost of transport, reduce fossil fuel consumption and save our environment. To facilitate the speedy implementation of this project, I have proposed additional allocation to the Kenya Railways Corporation as follows:

- KSh 118.2 billion for Standard Gauge Railway financed by a loan from China; and
- KSh 25.7 billion to be funded from the Railway Development Levy Fund.

46. Through this project alone, **Mr. Speaker**, we expect to employ over 30,000 Kenyans at the peak of construction. In addition, **Mr. Speaker**, we have insisted on a 40 percent local content requirement that has further created business and employment opportunities for our businesses, industries, entrepreneurs and our women and youth.

47. **Mr. Speaker**, our commitment to generate 5,000 MW of power by 2017 is also on course, with over 280 MW delivered so far under the geothermal program. As a result, the cost of power has dropped by 30 percent, and will without doubt, reduce the cost of doing business, spur growth of enterprise development, encourage industrialization and help accelerate the achievement of our growth and development objective as stated in Vision 2030. In this regard, I have allocated KSh 13.2 billion for further Geothermal Power Development.

48. **Mr. Speaker**, the generation of new electricity is not sufficient to create economic growth unless demand exists to consume it. Therefore, to sustain demand, we program to connect at least one million Kenyans in 2015. The connection will be driven by the recent incentives unveiled by HE the President, including a reduction of connection charges from KSh 35,000 to KSh 15,000. For those not able to raise the required connection charge, they will be allowed to amortize the charge through monthly payments which will be made together with the monthly electricity consumption bill. To further expand access to electricity in the country, **Mr. Speaker**, I propose to allocate:

- KSh 21.1 billion for Power Transmission;
- KSh 14.9 billion for the Rural Electrification Program;
- KSh 4.5 billion for Street lighting; and
- KSh 1.5 billion for the last mile connectivity

49. Further, **Mr. Speaker**, the modernization and expansion of the port of Mombasa at Kilindini as well as the construction of three Berths at Manda Bay in Lamu has commenced. We are now firming up alternative sources of financing to speed up implementation of the Lamu Port. We have also expanded container terminals and cargo handling capacity thus

significantly reducing the time it takes to clear cargo. Similarly, under the program on airports improvement, we are making impressive progress.

50. **Mr. Speaker**, the continued expansion of our road network is critical for enhancing the productivity and competitiveness of our economy. To this end, **Mr. Speaker**, I have proposed the following allocations for expansion of our road network throughout the country:

- KSh 58.5 billion for on-going road construction;
- KSh 26.7 billion for road maintenance;
- KSh 42.0 billion for foreign financed roads; and
- KSh 5.0 billion for the Road Annuity Programme.

51. **Mr. Speaker**, as we invest in ports expansion and modernization, we are cognizant of the challenges faced by ferry users across Likoni. In this regard and in order to assure safety and efficient movement of people and cargo between Mombasa and the mainland, I have allocated KSh 1.3 billion for the purchase of ferries.

52. **Mr. Speaker**, the information and communication sector is one of the key sectors targeted in vision 2030 to help us achieve our growth and developmental objectives. Access to ICT will increase the country's productivity and raise the competitiveness of local businesses in a knowledge based economy. The government is therefore committed to investing resources as well as providing a conducive environment for the ICT sector to thrive. In order to leverage on Information, Communication and Technology, I have allocated KSh 1.9 billion for the continued roll out of IFMIS, KSh 0.8 billion for Konza Techno City, and KSh 0.25 billion for Digital Talent.

53. **Mr Speaker**, the available public sector resources are insufficient to close the existing infrastructure gap. In this context, **Mr. Speaker**, the Government has recognized the critical role that can be played by the private sector in mobilizing resources for infrastructure development and is using the PPP arrangement to accelerate infrastructure development, create jobs and provide efficient services to the people of Kenya.

54. **Mr Speaker**, the projects currently under the PPP programme include: the development of 10,000 kilometres of roads using the annuity approach; the generation of the 5,000MW of electricity; the construction of University hostels; the development of a seaport in Kisumu; the expansion of the Mombasa - Nairobi - Malaba Highway; the construction of the 2nd Nyali Bridge in Mombasa among others. Projects in other sectors of the economy will also be identified and implemented through PPPs.

4. AGRICULTURE AND INDUSTRIAL TRANSFORMATION

4.1 Food Security, Industrialization and Trade for Job Creation

55. **Mr. Speaker**, as Hon Members are aware, agriculture sustains not only our economy but also the livelihood of our people. As such, our strategy for economic transformation and prosperity will not be achieved without investing resources and efforts towards enhancing agricultural productivity. Furthermore, agricultural value addition has the potential to act as a catalyst for Kenya's industrial take-off. Indeed, **Mr. Speaker**, business agriculture is steadily gaining traction in our country and a number of Kenyans, including the youth have recently ventured into agri-business as a viable commercial venture.

56. **Mr. Speaker**, we are continuing to invest in irrigated agriculture, partly to build resilience in our economy and assure food security for our people throughout the year. To this end, I am pleased to note that we have made good progress in the implementation of various irrigation schemes we initiated throughout the country. Our people living in areas served by these schemes now live with dignity – away from the perennial exposure to severe hunger and malnutrition.

57. **Mr. Speaker**, we are also making good progress in the implementation of the 10,000 acres pilot phase of the Galana-Kulalu Irrigation project. The water off-take has been completed, maize planted in over 2,000 acres and shortly, vegetables and herbs, among other crops, will be planted. Upon successful completion of the pilot, and drawing on the lessons learnt, we shall immediately commence the rollout program covering at least 100,000 acres in Galana – Kulalu and other designated suitable schemes throughout the country under a viable business framework. **Mr. Speaker**, to fast track the implementation of the various irrigation projects in the country, I have allocated a total of KSh 13.8 billion, comprising of KSh 10.3 billion for the National Irrigation Board (NIB) and KSh 3.5 billion for the Galana Irrigation Project.

58. **Mr. Speaker**, we will also continue to invest in water supply, put in place measures to control floods and harvest rain water as well as to protect and conserve the environment. Towards this end, therefore, I have allocated KSh 29.5 billion for water supply and sanitation and KSh 2.1 billion for water storage and flood control and KSh 12.6 billion for environmental protection conservation and management.

59. **Mr. Speaker**, to ensure food security and lower food prices as well as provide employment opportunities for our youth, I am going a step further to support the agricultural sector through the following interventions:

- KSh 3.0 billion for inputs subsidy;
- KSh 2.7 billion for the Strategic Grain Reserves;

- KSh 3.1 billion for fisheries development;
- KSh 0.6 billion for the revival of the Kenya Meat Commission;
- KSh 0.3 billion for the revival of the Pyrethrum sector;
- KSh 0.3 billion for Free Disease Zone;
- KSh 1.2 billion for compensation of farmers in the Mwea Irrigation Scheme;
- KSh 1.0 billion for coffee debt write off; and
- KSh 3.5 billion for Land titling.

60. **Mr. Speaker**, Going forward, as part of our agricultural transformation plan and to start preparing small scale farmers to move away from rain fed agriculture, we will, over the next few months and after discussions with farmers, introduce a raft of tax incentives for new investment in water facilities and small holder irrigation equipments.

4.2 Promoting Industrialization for Export, Growth and Employment

61. **Mr. Speaker**, industrialization is a key catalyst for moving agriculture up the value chain and diversifying and growing our export base for a sustained higher shared growth and jobs creation. The Ministry of Industrialization and Enterprise Development is finalizing an industrial transformation strategy which will optimize the prospects for Kenya's industrialization by supporting local companies based on our comparative advantage and creating conditions for attracting foreign anchor investors. The later will help us secure global markets for our products and enhance technological transfer to help boost our competitiveness. As part of the strategy, **Mr. Speaker**, the Government will continue to prioritize and facilitate the establishment of industrial and recreational parks and special economic zones. Therefore, through this budget, I am proposing to allocate KSh 3.0 billion for industrial development. Later in my speech, **Mr. Speaker**, I will be outlining some of the tax incentives to hasten development of industrial and recreational parks and Special Economic Zones (SEZs).

62. **Mr. Speaker**, Kenya has been recognized as a global leader on clean energy with over 80 percent of the energy mix being green. It is, therefore, imperative that we position our economy as a green industrial hub, leveraging cheaper and cleaner geothermal power, steam and water to competitively produce goods of high quality for the region as well as the global market.

63. **Mr. Speaker**, our industrialization strategy will give priority to assembly industries for motor vehicles, domestic appliances, computers and other parts where we have a comparative advantage. We will also target labour-intensive low technology industries such as textiles and leather in the first phase of this industrialization agenda to take advantage of the African Growth Opportunity Act (AGOA) and global markets. To sustain these industries, we intend to invest in industrial and enterprise skills. We are also initiating a targeted approach to identifying potential international investors for our priority industries.

64. **Mr. Speaker**, to safeguard our economy against cheap imports and to promote growth of local industries, as HE The President directed during Madaraka Day, I am putting on notice all those public entities that are yet to fully adhere to the requirements of Build-Kenya, Buy-Kenya. All MDAs are directed to strictly ensure that a minimum of 40 percent local content requirement is adhered to by the winning tenderers at the procurement and supply stage.

65. **Mr. Speaker**, this requirement covers all procurement in respect of road works, railway works, airports and other ports and harbours, works and materials for generation, transmission and distribution of energy and other construction materials made in Kenya. Similarly, as we expand leasing of equipment and assets in the public sector and commit more resources towards security, irrigation and eLearning, I expect Accounting Officers to ensure that suppliers establish manufacturing or assembly plants here locally so as to position Kenya as an industrial hub for the region.

Tourism Recovery

66. **Mr. Speaker**, the Tourism sector is a major employer of our youth and women as well as a major foreign exchange earner for this country. In recent years, the sector has been severely impacted by insecurity forcing most hoteliers to scale down their operations and rendering most of the workers jobless. In order to rehabilitate the industry, I am proposing to allocate in the budget for FY 2015/16, KSh 5.2 billion for Tourism recovery.

5. ENHANCING WOMEN AND YOUTH EMPOWERMENT

67. **Mr. Speaker**, the Government is cognisant of the fact that unless we invest in the potential of the youth and women, we will not achieve a real demographic and gender dividend in the future. Therefore, in line with the Jubilee Coalition commitment, we have revamped and restructured the NYS into a robust and dynamic institution to drive the youth transformation agenda.

68. **Mr. Speaker**, the National Youth Service is expanding both in terms of the scale of its operations and the number of youth engaged. Following the three recruitment cycles, the NYS contingent has grown from 6,000 to 31,000 in just slightly over one year. Another 10,935 recruits will be recruited in September 2015, to bring the total to about 42,000. The NYS servicemen and women will be engaged in national service programmes all over the country in areas such as building small dams and water pans, drilling water, agricultural activities, vector control, border control initiatives and other programmes aimed at building community assets and improving the environment and living standards.

69. Through national service, **Mr. Speaker**, NYS is building a new national psyche of nation building, patriotism, service culture, volunteerism, civic competence and social cohesion, not only amongst themselves, but also working with other young people within their communities. The servicemen and women will work alongside 220,000 youth within the communities in which they serve, working on projects all over the country. These community youth are engaged as casual labour, with the added advantage of receiving on-the-job training and mentorship from NYS.

70. **Mr. Speaker**, NYS will be the premier training institution on artisanal skills, crafts and technical training. Through the vocational training, the youth will be equipped with skills that will enable them contribute to economic development. The training is geared at responding to the needs of our national economic agenda and current economic opportunities. **Mr. Speaker**, the National Youth Service is aiming to become self-sustainable by establishing the National Construction Company for Kenya that can deliver on various infrastructure projects in the country and beyond. Through the NYS Construction Company, the cost of construction will go down by between 30% - 50%, due to the reduction in the cost of labour and machinery.

71. In the FY 2015/16, **Mr. Speaker**, to meet the commitments we have made to our Youth through the NYS, I am allocating KSh 25.0 billion towards youth employment and reengineering the NYS as a vehicle for transforming and empowering the Youth.

72. **Mr. Speaker**, every big company today started small. The Small and Micro Enterprises (SMEs) are a critical part of the private sector and are the best source of new products and innovations that will anchor our future growth. Their development is, unfortunately, hindered by lack of capital since they are considered by banks to be high risk investment targets. In addition, SMEs are constrained by limited market access, poor infrastructure, inadequate knowledge and skills, rapid technology changes, and unfavorable laws and regulations. These challenges have curtailed the growth of many SMEs, contributed to low export product diversification and undermined the national efforts towards graduating from commodities trade to high-end value added manufactured goods.

73. **Mr. Speaker**, to address these challenges, a variety of remedial measures are underway including:

- Supporting Small and Medium Enterprises to acquire small industrial plants for value addition of agricultural products currently produced under the Jua kali;
- Entrenching Buy-Kenya-Build-Kenya policy in all public procurement;
- Introducing legislation to require at least 40 percent local content in all public projects;
- Increasing allocation to Uwezo Fund and the Youth and Women Enterprise Fund;
- Boosting science, technology and innovation by increasing investment in research and development;

- Developing a framework to facilitate leasing by SME's as an alternate financing mechanism for capital expenditures; and,
- Developing a framework to nurture and commercialize inventions, innovations and end-products at the national and county levels.

74. **Mr. Speaker**, to empower youth and female entrepreneurs and ensure that they have access to affordable credit to start, grow and build businesses and enterprises, the Government will continue to increase the capitation of the Youth Enterprise Development Fund (YEDF), the Women Enterprise Fund and the Uwezo Fund. Therefore, in this budget, I am allocating KSh 0.85 billion for the Uwezo Fund, KSh 0.5 billion for the Women Enterprise Fund and KSh 0.3 billion for the Youth Enterprise Fund.

75. **Mr. Speaker**, although the law requires procuring entities to reserve at least 30 percent of their procurement to youth, women and persons with disability, about KSh 10.0 billion has been accessed by this group in the fiscal year 2014/15. This is below our target and as such, all Accounting Officers are instructed to strictly adhere to the requirements of the law so as to support the entrepreneurial growth of our youth, women and persons with disability. In this respect, starting July 1, 2015, I expect all Accounting Officers to submit quarterly reports to the National Treasury in regard to the 30 percent requirements for all procurements.

76. **Mr. Speaker**, we would like to close the chapter of the economic stimulus projects initiated in the last administration. Therefore, in this budget, I have allocated KSh 0.6 billion for upgrading of National Schools, KSh 0.32 billion for purchase of computers, KSh 0.3 billion for prototype fresh produce and wholesale markets, and KSh 0.23 billion for Jua kali sheds. Through these programs, we expect that the concerned MDAs will engage the youth and women in gainful economic activities.

Development of Sports, Culture, and Arts

77. **Mr. Speaker**, development and support of sports, culture and heritage remains a key priority of Government so as to nurture talent of our youth and safeguard our National Heritage. As you well know, Kenya is known throughout the world for her undisputed command of athletics. Our Athletes continue to do Kenya proud and we aim to develop a pool of such sports men and women. In partnership with the private sector, we shall invest in sports development, including expansion and modernization of sports facilities so that we become a sports hub for regional and international sports. As a start, I have allocated Ksh 1.8 billion to construct a major Stadium in each of the following cities: Nairobi; Mombasa; and Eldoret. This will help to encourage growth of youth talents in sports and nurture them as catalyst for growth and development. We expect the Ministry of Sports, Culture and the Arts to utilize this allocation efficiently by employing modern technologies of construction to deliver on this service.

78. Further, **Mr. Speaker**, we shall aim to develop, preserve and protect our culture and National Heritage. Towards this end, I have proposed to allocate Ksh 1.1 billion for cultural programmes.

6. INVESTMENT IN HEALTH, EDUCATION AND SOCIAL PROTECTION FOR OUR PEOPLE

6.1 Investment in Quality Education

79. **Mr. Speaker**, we have made tremendous progress over the recent past on educational access, largely due to increased enrolment following the introduction of free primary education in 2003 and free tuition in secondary schools in 2006. However, there are still concerns on the quality and relevance of education and the high number of pupils dropping out of school with no clear alternative access to acquisition of lifelong skills to enable them find jobs.

80. To improve the quality of basic education in our country, and to lessen the burden of parents, I am proposing to increase capitation to KSh 32.7 billion for free day secondary education and KSh 14.1 billion for free primary education. This will take us a step closer to making Free Primary and Secondary Education truly free. In addition, **Mr. Speaker**, I am allocating KSh 0.4 billion for Sanitary towels for girls in school and KSh 1.0 billion for the School feeding program to ensure that no child misses school. Similarly, I am proposing to allocate KSh 3.0 billion for technical training institutes, KSh 52.9 billion for University Education and KSh 7.5 billion for Higher Education Loans Board to increase the quality as well as access to tertiary institutions.

81. To further support the demand for increased enrollment, I am proposing to allocate KSh 2.3 billion for recruiting an additional 5,000 teachers, and KSh 2.2 billion for promotion of teachers.

82. **Mr. Speaker**, improving the quality of our educational system and making it accessible to all school going children through a comprehensive e-learning program remains a priority of this Administration. As such, through this budget, we are once again allocating a total of KSh 17.58 billion for deployment of ICT learning devices to schools, development of digital content, building the capacity of teachers and rolling out computer laboratory for class 4 to class 8 in all schools throughout the country. I am confident, **Mr. Speaker**, that this time round this key Jubilee Government project will finally take off.

6.2 Equity, Poverty Reduction and Social Protection for Vulnerable Groups

83. **Mr. Speaker**, as a Government that deeply cares for its most vulnerable members of society, we have set aside resources for affirmative action interventions and social safety nets so as to empower these Kenyans and enable them actively participate in our economic development agenda. Accordingly, I have set aside:

- KSh 2.1 billion for Affirmative Action, Social Development Fund;
- KSh 9.0 billion for orphans and vulnerable children;
- KSh 7.4 billion for elder persons;
- KSh 1.2 billion for those with extreme disability;
- KSh 0.3 billion for other disabled persons under coverage of cash transfer;
- KSh 0.3 billion for street families;
- KSh 0.5 billion for insurance cover for persons under the social safety net program through NHIF;
- KSh 0.8 billion for the Children Welfare Society;
- KSh 0.4 billion for the Presidential Secondary School Bursary Scheme for orphan; poor and bright students;
- KSh 2.2 billion for Resettling the IDPs;
- KSh 1.3 billion for hunger safety net;
- KSh 1.3 billion for slum upgrading; and
- KSh 1.0 billion seed capital for the National Fund for Restorative Justice.

Mr. Speaker, to improve the efficiency and effectiveness of targeting of the safety net programmes, we shall move all the transfer payments to beneficiaries to a digital platform which should improve transparency, accountability and reduce costs.

84. **Quality and Accessible Health Care Services for all Kenyans**

85. **Mr. Speaker**, the Government recognizes that investment in quality healthcare services is essential in developing a healthy population with higher productivity for sustained economic growth. Therefore, in partnership with County Governments, we have commenced a program of upgrading healthcare infrastructure and modernizing equipments. The recently launched Managed Equipment Services project will ensure that every County in Kenya has two hospitals fully equipped with the state of the art health care facilities. **Mr. Speaker**, I welcome the fact that the Governors have now accepted to partner with the National Government towards improving health services for Wananchi.

86. **Mr. Speaker**, this essential project will provide each of the selected hospitals with modern theatre equipment, surgical and sterilization equipment, laboratory equipment, kidney dialysis equipment, ICU facilities, digital X-ray machines, ultrasound and imaging equipment. **Mr. Speaker**, I have, therefore, proposed an allocation of KSh 4.5 billion for the lease financing of health care equipment for this program in the fiscal year 2015/16.

87. **Mr. Speaker**, consistent with our policy objective of preventive health care program, notable progress has been registered in our effort towards eradicating infant as well as maternal mortality. Since the introduction of the free maternal service, cases of maternal deaths in the country have reduced from over 500 per 100,000 live births to 488 deaths for every 100,000 live births annually at a time when the number of women giving birth in hospitals rose to 70 percent, up from 44 percent. To further support this program, I have allocated KSh 4.3 billion in FY 2015/16.

88. **Mr. Speaker**, I have also provided for the following interventions in the health sector:

- KSh 3.5 billion for Kenya Medical Training Centers;
- KSh 9.3 billion for the Kenyatta National Hospital;
- KSh 5.8 billion for the Moi Teaching and Referral Hospital;
- KSh 1.9 billion for Kenya Medical Research Institute;
- KSh 3.0 billion for doctors/clinical officers/nurses internship program;
- KSh 0.9 billion for the National Aids Control Council;
- KSh 0.9 billion for free access to all health centers and dispensaries;
- KSh 1.0 billion for slum health care program; and
- KSh 19.7 billion for HIV/AIDS, Malaria and TB (Global Funds).

7. STRENGTHENING DEVOLUTION AND REGIONAL DEVELOPMENT

89. **Mr. Speaker**, the decentralization of service delivery and resources through devolution has had a profound effect on lives of our people at the grass roots level. As witnessed across the country in the past two years of devolution, local development is gaining traction as Counties are becoming the new centres of economic activity. To lock-in and sustain these gains, we will continue to support County Governments through increased allocation of shareable revenues so as to ensure that devolution achieves the objectives of better service delivery and rapid local economic development as well as jobs creation in line with our Vision 2030.

90. Therefore, **Mr. Speaker**, Parliament has allocated to County Governments KSh 259.7 billion as Sharable revenues following consultations with Inter-Governmental Budget and Economic Council comprising the Council of Governors, the Commission on Revenue Authority (CRA), the Commission for the Implementation of the Constitution (CIC), and the Parliament Service Commission. In addition, to further support implementation of the devolved system of Government, KSh 27.3 billion has been set aside as additional conditional allocations to Counties in the FY 2015/16 Budget as follows:

- KSh 4.3 billion as conditional grant for Free Maternal Health Care;
- KSh 4.5 billion as conditional grant for Leasing medical equipment;
- KSh 3.6 billion as conditional grant for level-5 hospitals;
- KSh 0.9 billion as conditional grant to compensate county health facilities for user fees forgone;
- KSh 3.3 billion as conditional grant for maintenance of roads from the Road Maintenance Fuel Levy Fund; and
- KSh 10.7 billion as conditional allocations from Development Partners' loans and grants.

91. **Mr. Speaker**, this brings the total allocation to County Governments to Ksh 287.0 billion which is equivalent to 37.0 percent of the most recent audited revenues approved by the National Assembly which amounted to Ksh 776.6 billion in FY 2012/13. This is more than twice the mandated Constitutional threshold of not less than 15 percent.

92. **Mr. Speaker**, in addition, I have allocated Ksh 35.2 billion to the Constituency Development Fund (CDF) kitty to fund only National Government functions (such as education and security) at the Constituency level.

93. **Mr. Speaker**, in addition, I have allocated Ksh 6.0 billion for the Equalization Fund to cater for the back log and allocation for FY 2015/16. I urge the two Houses to approve the Equalization Fund regulations speedily so as to facilitate the operationalization of the Fund.

94. **Mr. Speaker**, since their establishment in 2013, County Governments have sought to introduce various new fees or service charges, or to raise existing ones. **Mr. Speaker**, if left unchecked, this situation can have detrimental effects on county revenues in the medium term, particularly if they drive away business and investment. In order to promote a conducive business environment and ensure compliance with Article 209 (5) of the Constitution, a clearer response is needed, as well as better coordination and a well-defined framework for regulating business activity throughout the country.

95. **Mr. Speaker**, towards this end, the National Treasury has issued Guidelines for Drafting County Finance Acts (Issue No. 1/15). I urge counties to adhere to these guidelines. To complement these guidelines, the National Treasury will begin consultations with all key actors with a view to introducing legislation aimed at coordinating the manner in which business activity is regulated throughout the country. In addition, there is an urgent need to review some business regulatory laws that impact negatively on businesses, such as the Environment Management and Coordination Act and the National Construction Authority Act with a view to repealing or restructuring them. I look forward to receiving the support of all concerned agencies in these reforms.

96. **Mr. Speaker**, before I move to the revenue measures to finance the planned expenditures, I wish to express our gratitude to Parliament for approving the Estimates of Expenditure submitted to this House. We have prepared the FY 2015/16 Appropriation Bills on the basis of the Certificate issued by the National Assembly. However **Mr. Speaker**, we will be engaging the House with a view of making necessary amendments to address a few emerging issues.

8. BUDGET ESTIMATES FOR 2015/16

97. **Mr. Speaker**, allow me now to turn to the financial projections for the FY 2015/16 budget. We are targeting revenue collection of KSh 1,358.0 billion, equivalent to 20.8 percent of GDP and comprising ordinary revenues of KSh 1,254.9 billion (19.2 percent of GDP), and Ksh 103.2 billion of Appropriations in Aid.

98. **Mr. Speaker**, This performance will be underpinned by on - going reforms in tax policy and revenue administration. The KRA is expected to institute measures to expand the revenue base and eliminate tax leakages. At the moment, KRA and Government is automating and digitizing most of the services and this will enhance collection and reduce revenue leakages.

99. **Mr. Speaker**, the expenditures in FY 2015/16 are guided by the Medium Term Plan II (2013-2017) of Vision 2030 and the Jubilee Administration Strategic Priorities. In FY 2015/16, overall expenditure and net lending are projected at KSh 2,001.6 billion (30.7 percent of GDP). This includes Ministerial recurrent and development expenditures of KSh 784.2 billion (12.0 percent of GDP) and KSh 721.3 billion, respectively; KSh 264.2 billion for County Governments (including allocations for Level 5 and funding from DANIDA); KSh 185.3 billion for interest payments, Ksh 43.4 billion for pensions and Ksh 3.2 billion for other Consolidated Fund Services (CFS).

100. **Mr. Speaker**, in the FY 2015/16, the Government has made it a priority to shift more resources from recurrent expenditure to development expenditure as required by the PFM Act, 2012. As a result, recurrent expenditures are projected to decline from the estimated figure of 16.4 percent of GDP in FY 2014/15 to 15.5 percent of GDP in 2015/16.

101. The ceiling for development expenditures including foreign financed projects (excluding net lending) amounts to KSh 716.3 billion in the FY 2015/16 including Parliament and Judiciary. Most of the outlays are expected to support critical on-going infrastructure development in roads, Standard Gauge Railway, ports, energy, and security among others. Part of this development budget will be funded by project loans and grants, (Ksh 349.3 billion) from development partners, while the balance (Ksh 370.2 billion) will be financed from domestic resources.

102. **Mr. Speaker**, reflecting the projected expenditures and revenues, the overall fiscal balance including grants (amounting to Ksh 73.4 billion), is projected at KSh 570.2 billion (equivalent to 8.7 percent of GDP) in FY 2015/16. Excluding expenditures related to the SGR, the overall deficit would decline to Ksh426.3 billion equivalent to 6.5 percent of GDP.

103. The fiscal deficit in FY 2015/16, will be financed by net external financing of KSh 340.5 billion (5.2 percent of GDP and KSh 229.7 billion (3.5 percent of GDP) of domestic financing. Thus the overall fiscal deficit is fully financed.

104. **Mr. Speaker**, the Government's borrowing plans remain anchored in the Medium-Term Debt Strategy Paper which aims at ensuring public debt sustainability. The strategy envisages continued borrowing from domestic and external sources with the latter being largely on concessional terms. While external financing will be largely on concessional terms, the Government will continue to diversify financing sources by continuing to access commercial sources of financing in the international financial market.

105. **Mr. Speaker**, as Hon Members will recall, last year our debut Sovereign Euro bond was received with a lot of enthusiasm by foreign investors, once again underscoring the confidence foreign investors have in our economy. Going forward, we intend to continue sourcing these type of funds, including from export credit agencies and syndicated loans.

106. **Mr. Speaker**, I would like to assure Hon Members that non-concessional external borrowing will be undertaken in a cautious manner and limited to bankable projects and will broadly be within the ceilings in the Medium-Term Debt Strategy Paper. This will ensure that our total public debt will remain sustainable over the medium term. In addition, the Government will ensure that the level of domestic borrowing does not crowd out the private sector given the need to increase private investment and accelerate economic expansion. A cautious approach will also be adopted in the issuance of external Government loan guarantees and the use of the Public Private Partnership framework for funding infrastructure, in order to minimize the level of contingent liabilities.

9. TAX MEASURES AND MISCELLANEOUS AMENDMENTS

9.1: Overview of the Proposed Tax and Miscellaneous Measures

107. **Mr. Speaker**, the rest of my Statement highlights the various tax measures I intend to introduce through the Finance Bill, 2015, and other miscellaneous amendments I have tabled in this House which are intended to accelerate growth, create employment and ease the cost of living for Kenyans.

108. **Mr. Speaker**, the tax and miscellaneous measures I have proposed are categorized under the following broad areas:

- Facilitating Private Sector Growth to accelerate industrialization and the creation of Jobs;
- Promoting Equity and fairness;
- Deepening Tax Administration Reforms to Ease Compliance and reduce the cost of doing business; and
- Encouraging Growth and Stability of the Financial Sector

Facilitating Private Enterprise Growth for Job Creation

109. **Mr. Speaker**, last year I committed to introduce measures to encourage corporate entities to engage fresh graduates in acquiring relevant experience and skills through internship and apprenticeship programs. Therefore, in this budget, I propose to introduce a tax rebate scheme for employers who shall engage and train at least ten fresh graduates for a period of six months to twelve months. I urge employers and business community to take up this opportunity and help us build a resource base of skilled manpower. In addition, all training levies which are currently being charged will be consolidated into a National Job Fund to benefit the youth initiatives such as on the Job training and attachments in order to enhance skills development.

110. **Mr. Speaker**, the growth of the film industry has a huge potential to attract and nurture Kenyans' talents and position this sector as a key driver of economic growth and employment creation. To enable this latent industry to attain a competitive advantage like the rest of the leading film production destinations and create jobs for our youth, I propose to exempt from withholding tax all payments made by foreign film producers to actors and crew members. In addition, VAT in respect of goods and services purchased for use in the film making will be exempt. Over and above this **Mr. Speaker**, I propose to set up a fund for rebating of expenses by producers in this industry. The modalities for implementing this measure will be worked out shortly.

111. **Mr. Speaker**, as we promote fishing and aquaculture, the demand for fishing nets is on the increase. Therefore, to encourage local manufacturers of fishing nets. I have

provided for importation of nylon yarn and synthetic twine used in the manufacture of fishing nets under the duty remission scheme at a rate of 0% instead of 10%. In addition, imports of made up fishing nets will attract duty at a rate of 25% instead of 10% to protect local manufacturers of fishing nets.

112. **Mr. Speaker**, most of our sugar factories are on the verge of closing down due to competition from cheap imported sugar. In order to protect our sugar industry, I have increased the specific duty rate on imported sugar from USD 200 to USD 460 per metric tonne. The advalorem rate remains 100% of the customs value. This measure will cushion the sugar sector from unfair competition and enable our local factories to break even and pay the farmers promptly.

113. **Mr. Speaker**, paper and paper board products have been subject to a stay of application of the Common External Tariff (CET) at the rate of 25%. This has made paper and paperboard products more expensive for the packing industries and other users of the products. In order to lower cost of paper and paperboard products, I propose to withdraw the stay of application of CET on paper and paperboard products and make them subject to duty at 10% according to the Common External Tariff.

114. **Mr. Speaker**, as Hon Members are aware, the EAC Partner States apply different export duty rates for raw hides and skins thereby encouraging smuggling of these goods. In order to deter these smuggling activities, the Ministers for Finance have agreed to harmonize the export duty rate on hides and skins at 80% of FOB value or 0.52 USD per kg, whichever is higher. The harmonized rate will be implemented during the 2015/16 financial year.

115. **Mr. Speaker**, Kenya is the sole manufacturer of plastic tubes for packing tooth paste and cosmetics in the region. In this regard, I have negotiated for an increase in the import duty rate on plastic tubes for packing toothpaste and cosmetics from 10% to 25% in order to protect our local manufacturers. It is expected that local manufacturers will increase the production of plastic tubes while at the same time maintaining quality.

116. **Mr. Speaker**, pasta is a popular foodstuff increasingly being consumed by many families in the region. Surprisingly, this basic food item is not manufactured locally. Therefore, to encourage investors to produce pasta locally and reduce over-dependence on imports, I have provided for importation of SEMOLINA, the raw material for making pasta, under the EAC duty remission scheme at a rate of 0% instead of 25% for gazetted manufacturers of pasta.

117. **Mr. Speaker**, the consumption of illicit brew has become a serious social problem in the country. However, there exists potential for the manufacture of safe drinks using locally available agricultural products. This will have the twin benefit of providing safe alcoholic drinks as well as promoting agricultural products for our farmers. In this regard,

the proposed Excise Bill grants the Cabinet Secretary, National Treasury to grant remission of excise duty in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products (excluding barley) that is grown in Kenya. I therefore, urge our farmers and the beer manufacturers to take advantage of this incentive not only to create wealth but also to contribute to a healthy nation.

118. **Mr. Speaker**, Kenya is the leading manufacturer of aluminum milk cans in the region. Currently, imported aluminium milk cans are taxed at 10%. In order to encourage increased local production, we negotiated to import aluminum milk cans at 25% instead of 10% to cushion our local manufacturers against cheap imports.

119. **Mr. Speaker**, the importance of infrastructure in the attainment of our development strategy cannot be over emphasized. As Hon members have noticed, the Government has heavily invested in the infrastructure development particularly the road network. In order to further scale up the existing road network, I propose to increase the Road Maintenance Levy by Ksh 3 per litre to be collected and paid into the Road Annuity Fund.

120. **Mr. Speaker**, during the pre-budget consultative meeting held in Arusha on 11th April, 2015, the Ministers for Finance agreed to remove gas cylinders from the exemption regime. In exchange, the import duty rate for the cylinders was reduced from 25% to 0%. Considering that Kenya is the only manufacturer of gas cylinders in the EAC region, I negotiated to import gas cylinders at a rate of 25% instead of 0% to protect our local manufacturers.

121. **Mr. Speaker**, our people in rural areas suffer serious indoor pollution and associated respiratory diseases occasioned by fossil fuel and firewood for domestic cooking. To encourage use of clean and affordable biogas energy system for cooking and lighting to rural households I propose to exempt VAT on plastic bag biogas digesters for use in the sector.

122. **Mr. Speaker**, through the Finance Act 2014, services to goods in transit were exempted from the VAT. The change affected the case of cross-border transport services provided by Kenyan transporters in the regional market, making Kenyan transporters less competitive. In order to encourage and sustain growth in this sector and also to harmonize the treatment of these services across the region, I propose to zero rate services in respect of goods in transit.

123. **Mr. Speaker**, these measures are intended to offer increased incentives to our manufacturers and should result in more jobs for our youth. However, I must urge our manufacturers that these measures should not be an excuse to lower the quality of their products. Therefore, Kenyans will be expecting high quality products at reasonable prices.

124. **Mr. Speaker**, as part of our industrialization strategy and Vision 2030, the Government has prioritized the development of industrial parks targeting the small and medium size enterprises in five selected locations of; Nairobi, Nakuru, Kisumu, Mombasa and Eldoret to provide infrastructure facilities to our investors. I, therefore, propose to exempt from VAT taxable goods and services for use in the construction of infrastructure works in industrial and recreational parks of 100 acres or more. This measure is expected to make it attractive for both foreign and local investors to set up these parks in Kenya and create jobs for our people.

125. **Mr. Speaker**, the use of ICT in schools remains a key priority of the Government that is meant to enhance Primary school education. In order to encourage investments in local assembling of the electronic devices, I propose that inputs imported or purchased locally for the assembly of these devices be exempted from VAT.

126. **Mr. Speaker**, I have continued to receive representations from the private sector on the need to introduce measures to make it cheaper and competitive for them to conduct business in East Africa. I have, therefore, lowered the Import Declaration Fee (IDF) from the rate of 2.25 percent to 2.0 percent as a demonstration of the Government's commitment towards harmonization of IDF in the EAC region.

Promoting Equity and Fairness

127. **Mr. Speaker**, to equip our prisons and ensure criminals are secured away from society, we agreed to include prison authorities in the exemption Schedule to enable them import for their official use, duty free goods, materials, equipment and other supplies. This inclusion will enable our prisons to enjoy similar exemption status as the Kenya Defence Forces and Police.

128. **Mr. Speaker**, the law provides for zero-rating of passenger and personal effects including one motor vehicle to a returning resident of Kenya who is changing residence. Given that Kenya operates right hand motor vehicles, returning Kenyan residents with left hand motor vehicles cannot enjoy this and hence it is perceived to be unfair, inequitable and discriminative. Accordingly, I propose to amend the VAT law to allow such returning residents who have owned the left hand drive motor vehicle for at least twelve months to sell the motor vehicle and import VAT and duty free a right hand motor vehicle of equivalent value subject to specified conditions.

129. **Mr. Speaker**, over the recent past, residential and rental business has witnessed substantial growth. On the contrary, rental income from the same has not grown commensurately. **Mr. Speaker**, I propose to simplify the taxation regime for landlords owning residential property by taxing their gross rental income at 12 percent for gross rental income below Ksh 10 million per year. In addition, **Mr. Speaker**, I propose to introduce a

tax amnesty for land lords who have not fully declared rent or are outside the tax net. In this respect, the land lords with tax arrears are advised to prepare to engage the Kenya Revenue Authority (KRA) to clean their tax records.

130. **Mr. Speaker**, the potential of our gaming industry to create gainful employment and generate revenue for the government and private sector remains untapped in our country. To promote growth of this sector and enable it to play its role in encouraging innovation, creating employment and driving growth, I propose to re-introduce a simplifying gaming tax, which shall be a direct charge on the gross gaming revenue. I also propose to tax public lotteries at 5 percent of the lottery turnover, and tax bookmakers at 7.5 percent of the gross betting revenues.

131. Similarly, **Mr. Speaker**, all prize competition whose costs of entry are premium shall be taxable at 15 percent of the total gross revenue. I will also introduce amendments requiring the appointment of technology providers as withholding agents for purposes of remitting 15 percent of revenue raised through lottery into a Fund to be established under the Public Finance Management Act, 2002 in furtherance of the objectives of the concerned sector.

Deepening Tax Administration Reforms to Ease Compliance

132. **Mr. Speaker**, after our Customs Law became part of the East African Community Customs Management Act in 2004, the Excise duty legislation remained under the Customs and Excise Law. This change necessitated the introduction of a simple and modern stand-alone Excise Bill incorporating International best practices. I can confirm that this Bill is being tabled in this House after under-going public participation as required by the Constitution and Statutory Instruments Act.

133. **Mr. Speaker**, in this simplified and modern Bill, we are imposing excise duty to compensate for harmful effects caused by production, supply, consumption or use of goods and services, which costs are not directly reflected in their prices. Therefore, **Mr. Speaker**, through this Bill, we are introducing a new tax based on units of quantity only. As such the Bill imposes a charge on: (i) sticks of harmful cigarettes and tobacco; (ii) volumes of harmful alcoholic beverage and sugar sweetened beverage consumed; (iii) volume of polluting fossil fuels and age of motor vehicles purchased; and (iv) weight of environmentally damaging plastic bags.

134. **Mr. Speaker**, Hon Members will note that based on the above principles and objectives, all classes of fossil fuels will be taxable upon enactment of this law to safeguard the environment, reduce tendencies for adulteration and assure equity. We are complementing this measure by investing heavily in extending electricity connection to every households, and providing incentives for use of cheaper, safer and cleaner bio-fuels

in cooking stoves. In the same vein, I have proposed a marginal increase of excise duty rate on alcoholic beverages to reflect the current effective rates after adjusting for inflation.

135. I have, in addition, **Mr. Speaker**, converted the current hybrid tax regime for cigarettes into a specific one and changed the taxation of motor vehicles and motorcycles into a regime based on classes of age, in accordance with the principles and objective of the Bill. And to address the challenges of environmental degradation caused by careless disposal of plastic bags, I have enhanced the excise duty on non biodegradable plastic to KShs.120 per kilogram.

136. However, **Mr. Speaker**, I am pleased to inform Kenyans that all bottled water will, upon enactment of this law, not be taxable. Similarly, all other goods that have no harmful effects, hereto taxable under the Customs and Excise Act, will not be taxable under the new law.

137. **Mr. Speaker**, I expect to raise additional revenue amounting to about KSh 25 billion from the various measures underpinning the new Excise Duty law. I, therefore urge Hon Members to consider prioritizing this Bill for debate along with other Bills I am tabling before this House today.

138. **Mr. Speaker**, current tax procedures are contained separately in each tax law. The best practice world-wide is to have all procedures which are general and applicable to all tax laws under one law. In the spirit of tax modernization in Kenya, I propose to introduce the Tax Procedure Bill which will contain uniform procedures across the three tax legislations – Value Added Tax, Excise Duty and Income Tax. The Bill is aimed at simplifying tax administration, which at the same time will reduce the cost of compliance.

139. **Mr. Speaker**, as I committed in last year's Budget Statement, we have now commenced the review of and modernization of the Income Tax Act, which we expect to complete by end of September 2015. The finalization and subsequent enactment of this law will mark the end of our review and modernization of the various tax legislations which began in 2011.

140. **Mr. Speaker**, the VAT Act, 2013 provides for payment of refund in cases where the input tax exceeds output tax and the Commissioner is satisfied such excess arises from making zero rating supplies. The Act however, does not provide timeline within which a taxpayer entitled to such a refund may lodge the claim. I have proposed an amendment to the law to provide that the claim for such refunds shall be made within twelve months from the date the tax became due and payable.

141. **Mr. Speaker**, last year we reviewed the taxation of the extractive industries. However, the review, provided for separate tax treatment for training services and

contractual fees for Petroleum and the Mining sectors bringing disharmony in taxation of the sector. In addition, the review also introduced different tax treatment with regard to withholding tax on training services and contractual fees. **Mr. Speaker**, I propose to amend the Income Tax Act to harmonise the tax treatment in this industry at the withholding tax rate of 12.5 percent and 5.6 percent for training and contractual services, respectively.

142. We also reinstated **Mr. Speaker**, the Capital Gains Tax last year so as to allow property and share owners to make their fair contribution to the exchequer. However, the implementation of the law has faced some challenges in some sectors of the economy. In order to address these challenges and ensure enforceability and compliance, I propose to remove the 5 percent tax on capital gains arising from sale of shares and introduce a 0.3 percent withholding tax on the transaction value of the shares.

143. **Mr. Speaker**, in order to incentivise the shipping sector, I hereby propose to reduce the ships qualifying for investment deduction from 495 tons to 125 tons and to increase the rate of investment deduction from forty to one hundred percent.

144. **Mr. Speaker**, investors are allowed to carry forward losses without Treasury's approval upto the fifth year. I propose to extend this period to ten years considering that there is heavy investment expenditure by some power producers, manufacturers and hotel operators.

145. **Mr. Speaker**, after Customs Law become part of the East African Community Customs Management Act in 2004, and coming up with a stand-alone Excise Bill, it was found necessary to have a Miscellaneous Fee and Charges Bill to cater for levies which were anchored in the Customs and Excise Act, Cap 472 yet to be repealed.

146. **Mr. Speaker**, for continuity in collection of the Railway Development Levy, Import Declaration Fees and Export levies imposed on hides and skins, it is imperative to introduce the Miscellaneous Bill, which will be the legal instrument to empower the Commissioner of Customs to collect the aforesaid levies.

9.2: Encouraging Growth and Stability of the Financial Sector

147. **Mr. Speaker**, Vision 2030 targets the creation of an international financial centre able to attract international investments and participants in the financial services arena. In addition, Kenya needs to have strong well capitalized financial institutions which are not only able to participate in financing the large projects envisaged in the Vision but that are also well capitalized to withstand financial shocks and crisis.

148. In this regard, I am proposing to increase the minimum core capital requirement for banks, mortgage finance companies and insurance companies. For banks, I propose to

increase the minimum core capital progressively from the current KSh 1.0 billion to Ksh 5.0 billion by December 2018. For insurance companies, I propose to increase the minimum capital to KSh 600 million for general insurance, and KSh 400 million for long term insurance business by June 2018.

149. **Mr. Speaker**, our financial sector regulators have all adopted the risk based supervision model in line with best international practice. To facilitate compliance with this supervisory model, I propose to remove the requirement for annual licensing of banks and instead empower the Central Bank of Kenya to issue non-renewable perpetual licences. The Central Bank will continue to monitor banks using the risk based approach and to carry out inspections on periodic basis while retaining powers to withdraw the license at any time. This will eliminate the need for repetitive annual application procedures while still safeguarding financial stability.

150. Similarly, **Mr. Speaker**, for the insurance industry, in addition to increasing the minimum capital requirements, I propose to introduce risk based capital requirements to be determined by the specific risk profile of the company.

151. **Mr. Speaker**, the investment provisions in the Insurance Act are rules based and are not in compliance with international core principles of insurance supervision. I am therefore proposing to move to a more principle based investment framework where insurance companies will be required to prepare and submit investment policies and will be subject to broad prescribed investment guidelines. This investment framework will bring the insurance industry in harmony with the framework already pertaining in the retirement benefits and collective investment sectors.

152. **Mr. Speaker**, whereas over 25,000 agents have qualified for award of Certificate of Proficiency (COP) which is a requirement for licensing as an insurance agent, we only have 5,000 agents licensed by the Insurance Regulatory Authority (IRA). This is partly as a result of an oppressive requirement that agents must be recommended by an insurance company before they can be licensed. In order to expand insurance penetration, I propose to remove this requirement and allow IRA to license agents so long as they have attained the COP and met other licensing requirements.

153. **Mr. Speaker**, Real Estate Investment Trusts (REITs) and Asset Backed Securities (ABS) are investment vehicles that offer companies alternative sources of raising capital. In order to ensure tax neutrality with other forms of debt, I propose to exempt asset transfers and other transactions related to the transfer of assets into REITs and ABS from stamp duty.

154. **Mr. Speaker**, retirement benefits schemes should be able to diversify their investments into new emerging investment vehicles in the capital markets in order to optimize returns to members. I therefore propose to create a new category in the Retirement

Benefits Investment guidelines to allow schemes to invest upto 10 percent of their assets in private equity funds and venture capital funds licensed by the Capital Markets Authority. I, however, propose to introduce in all classes of assets, except government securities, a per issue limit of 15 percent of assets and per issuer limit of 15 percent of issue in order to mitigate potential risks.

155. **Mr. Speaker**, the distribution of surplus in defined benefits schemes is often a contentious matter and scheme members often do not benefit from the surplus, which only accrues to the employer. I therefore propose to amend the retirement benefits regulations to provide clear provisions as to treatment of the surplus, whereby, the employer will enjoy a contribution holiday in cases of on-going schemes, but in case of winding-up or scheme conversion, the surplus is to be shared equally between members and employers.

156. **Mr. Speaker**, to improve governance of retirement benefits schemes, I propose to introduce term limits such that trustees can only serve a maximum of two terms of three years and I also propose to reduce the period for preparation of annual audited accounts for retirement benefits schemes from 6 months to 3 months to ensure expeditious accountability to members.

157. **Mr. Speaker**, to strengthen the supervision of deposit taking Sacco societies by the Sacco Societies Regulatory Authority (SASRA), I am proposing to amend the Sacco Societies Act to allow SASRA to undertake vetting of directors and key officers of these Sacco's. In addition, **Mr Speaker**, I propose to extend the current information sharing framework for Sacco's from the current inter-Sacco sharing of negative information, to also allow sharing of positive information as well as sharing with other financial institutions.

158. In order to strengthen the fight against terrorism and money laundering, **Mr. Speaker**, I am proposing amendments to the Proceeds of Crime and Anti-Money Laundering Act, in order to clarify the objectives of the Financial Reporting Centre (FRC) and strengthen its supervisory role. These changes are in line with the recommendations of the Financial Action Task Force (FATF) and will help improve our international rating following our removal from the FATF watch list in June 2014.

159. **Mr. Speaker**, the Government is aware that some Kenyans hold their wealth outside the country. To encourage these Kenyans bring back their wealth we are working on a mechanism to facilitate them bring back their money to support their investment activities in Kenya to help build the nation. **Mr. Speaker**, specific details on this initiative will be worked out shortly.

160. **Mr. Speaker**, it has come to our attention that the Consumer Protection Act, No. 46 of 2012 is posing challenges with respect to the interpretations of its applicability to loan agreements between public entities and our Development Partners. In order to address this

challenge, I propose to amend the Consumer Protection Act to exempt Credit Agreements between public entities and our Development Partners from the provisions of the Act.

161. **Mr. Speaker**, the scrutiny by this House, through the Committee on Delegated Legislation, of statutory instruments issued by the Executive and regulatory bodies is very welcome as it is meant to ensure that such instruments serve the interests of the Kenyan people. However, it is my considered view that such scrutiny should not extend to routine administrative actions such as guidelines, orders, directions, and forms. I am therefore proposing an amendment to the Statutory Instruments Act to limit the definition of statutory instruments to be laid before the House to regulations, rules, by-laws and tariffs. This will relieve this House from the scrutiny of administrative issues.

10. CONCLUSION

162. **Mr. Speaker**, this budget demonstrates our resolve and concerted efforts to create a prosperous and inclusive country for all Kenyans. It focuses on implementing key development priorities outlined in our economic transformation agenda.

163. **Mr. Speaker**, the budget aims to secure the lives and property of citizens of this great country from the emerging ever evolving insecurity facing us. This budget allocates enormous resources to the security organs and for both Police and Military modernization. Tourism recovery remains our key objective given its potential to create jobs and employment of our youth and women. We target to improve on efficiency and roll out systems that will enable us to save public resources so that Kenyans get value for their money.

164. **Mr. Speaker**, we are firmly behind the efforts by His Excellency The President to deal decisively with corruption that benefits a few individuals instead of the country. In preparing the budget we consulted Kenyans as demanded by the constitution and the Public Finance Management Act, 2012 and I wish to assure Kenyans that through this budget, we intend to address all the concerns raised during the consultative forums. The focus of this budget is on pro-poor growth and sustainable development guided by Vision 2030 so as to generate jobs and wealth for our citizens.

165. **Mr. Speaker**, the implementation of this budget requires the collective effort of all Kenyans. I, therefore, urge Hon Members and all Kenyans at large to join us in building the Kenya we want. A prosperous Kenya – a Kenya in which we all aspire to live in.

166. I wish to thank my Cabinet colleagues and their Principal Secretaries who collectively own this budget and the programmes to be implemented.

167. My sincere appreciation also goes to:

- His Excellency The President and His Excellency the Deputy President for their guidance and support during the budget process
- Majority Leader of the National Assembly, Hon Aden Duale, for his relentless support to get most of the legislative proposals on finance matters pass through the house;
- Members of the Budget and Appropriation Committee as well as the Finance, Planning and Trade Committee led by Hon Mutava Musyimi and Hon Benjamin Langat, respectively, for the constructive engagements throughout the year on Budget and Finance matters;
- The Departmental Committees of Parliaments and the Senate for the valuable inputs into this budget;
- Members of the Intergovernmental Budget and Economic Council (IBEC) and Senate Committee on Finance and Economic Affairs for vibrant discussions on budget allocations to counties;
- Management and Staff of the National Treasury for commitment to excellence in the public service and the long hours they have put to ensure that this budget and supporting documents meet the Constitutional deadlines;
- Management and Staff of the CBK and KRA for their contributions; and,
- All members of the National Assembly and Senate for their cooperation and support.

168. My gratitude goes to Kenyans from all walks of life for their contributions and encouragement.

God Bless You, God Bless Kenya

I Thank You

o

MEMO

*RT Hon Speaker
Forwarded for your approval
19/3/15*

*Approved
[Signature]
19/3/15*

To : **The Speaker Clerk**
Thro' : **The Clerk**
From : **Director, Committee Services**
Date : **19th March, 2015**

**SUBJECT: REPORT OF THE SENATE STANDING COMMITTEE ON
FINANCE, COMMERCE AND BUDGET ON THE MATTER OF
CEILINGS ON RECURRENT EXPENDITURE FOR THE FY
2014/15.**

The Standing Committee on Finance, Commerce and Budget, would wish to table its report on the operations of the Makueni County Assembly.

This is to request for your approval for tabling of the report.



Njenga Njuguna



REPUBLIC OF KENYA



PARLIAMENT
THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

REPORT ON THE STATUS OF FINANCIAL ALLOCATION TO COUNTIES BY
THE COMMISSION ON REVENUE ALLOCATION- THE MATTER OF
CEILINGS ON RECURRENT EXPENDITURE FOR THE FY 2014/15
PURSUANT TO A STATEMENT BY SEN. HASSAN OMAR, MP

PARLIAMENT BUILDINGS
NAIROBI

March, 2015

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PREFACE

Mr. Speaker Sir, on behalf of the Members of the Standing Committee on Finance, Commerce and Budget and pursuant to Standing Order 203(6) of the Senate, I hereby present to this House, the Committee Report on the Status of budget ceilings on recurrent expenditure for governments at the county level for the FY 2014/2015 by the Commission on Revenue Allocation.

In deliberating on this matter the Committee has met with the following stakeholders; the County Assembly Speaker's Forum, the Controller of Budget, the Transitional Authority and the Commission on Revenue Allocation.

Mr. Speaker Sir,

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:

- i) Discuss and review the estimates of County governments and make recommendations to the Senate;
- ii) Examine the Medium term Budget Policy Statement presented to the Senate;
- iii) Examine and report on the Budget allocated to constitutional commissions and independent offices;
- iv) Examine bills related to the Counties;
- v) Examine the Budget, including the Division of Revenue Bill; and
- vi) Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.

Mr. Speaker Sir,

The Committee was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MP. -Chairperson
2. The Hon. Sen. Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.

5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. Boni Khalwale, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. (Dr.) Zipporah Kittony, MP.
10. The Hon. Sen. James Mungai, MP.
11. The Hon. Sen. Catherine Mukiite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP

Standing Order 45 (2) of the Senate Standing Orders provides that a Senator may request for a statement from a Committee Chairperson relating to matters under the mandate of the Committee. At a sitting of the Senate held on Wednesday 5th March 2015, Sen. Hassan Omar Hassan, M.P., requested for a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on the status of financial allocation to counties by the Commission on Revenue Allocation (CRA).

Mr. Speaker Sir,

It is significant to mention that the purpose of this report is to inform the House on the happenings as regards to ceilings on recurrent expenditure for County Governments for the FY 2014/2015 issued by the CRA.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

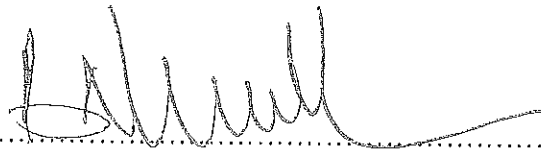
The Committee is grateful to all the stakeholders who appeared to the Committee to make presentation and respond to matters raised.

The Committee is also particularly grateful to the Offices of the Speaker, the Clerk of Senate for the support received as it discharged its mandate. I wish to thank the Senators who participated in the process of ensuring that the Committee completes its report.

Mr. Speaker Sir,

On behalf of the Committee, and pursuant to Standing Order 201(6), it is therefore my pleasant and honourable duty to present and lay on the table of the House the report of the Committee on Finance, Commerce and Budget regarding the status of ceilings on recurrent expenditure for the FY 2014/15

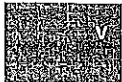
SIGNED:



CHAIRPERSON -SEN. BILLOW KERROW

DATE:

19/03/2015



I. INTRODUCTION

Mr. Speaker

At a sitting of the Senate held on Wednesday 5th March 2015, Sen. Hassan Omar Hassan, M.P., requested for a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on a report on the status of financial allocation to counties by the Commission on Revenue Allocation (CRA). In the Statement, the Senator sought to know whether the Chairman of the Committee is aware of the following:

- a) That, a number of County Assemblies are grinding to a halt in operations and are unable to pay their members and staff because of the budget ceiling imposed by CRA;
- b) That, the Controller of Budget has refused to finance County Assemblies unless they comply with the said ceilings;
- c) That, the High Court has ruled on the matter and though dismissing the petition by county Assemblies, the court has determined that the ceilings by CRA are not binding and can only be binding if the said ceilings are approved by Parliament;
- d) That, the ceilings are just a recommendation as determined by the court;
- e) That, the Controller of Budget is sending County Assemblies to negotiate with CRA to vary the ceilings even though the court has placed that mandate on Parliament;
- f) That, some proposed ceiling by CRA last year and the figures proposed this financial year are irreconcilable, putting into doubt the modalities and criteria used to arrive at the said ceilings; as an example, the CRA proposed a ceiling of Ksh. 191million for Tana River County Assembly last financial year and Ksh. 398 million this financial year; and,
- g) What the National Treasury is doing to ensure that the Controller of Budget releases funds to the County Assemblies on the basis of their Appropriation Acts to allow them perform their constitutional and statutory mandates.

In addition, the Speaker, Makueni County Assembly wrote to the committee vide his letter dated 3rd December, 2014 bringing to the attention of the committee concerns on financial allocation to the assemblies and challenges counties reportedly face on cash flow.

The County Assembly Forum also sought a meeting with the Committee on 24th February, 2015, and drew the attention of the Senate similar concerns. In particular, they stated that the court had ruled that budget ceilings set by the

CRA on the Assemblies were not binding, and hence urged the Senate to give appropriate direction to Controller of Budget to release their funds based on the respective appropriated amounts rather than the set ceilings.

In prosecuting the matters raised above, the Committee heard from the following key stakeholders; the County Assembly Speaker's Forum, Speaker Makueni County Assembly, the Controller of Budget, the Commission on Revenue Allocation, the Transitional Authority, the CEC Finance and Economic Planning, Makueni County Government, and hereby tables a report, containing its observations and recommendation to the House for consideration.

Committee Sitzings

In deliberating on matters raised and held the following sittings:

- a) On 24th February, 2015, the Committee held a meeting with the County Assemblies Leadership Forum, the following was discussed; the operations of the County Assemblies and the challenges related to the ceilings by CRA, and the High Court ruling on the ceilings.
- b) On 10th March, 2015, a consultative meeting was held with the Controller of Budget, Transition Authority, Commission on Revenue Allocation and Makueni County Assembly Speaker. The objective of the meeting was to discuss the operations of the County Assemblies and the challenges related to the ceilings by CRA, the High Court ruling on the ceilings and the operations of Makueni County Assembly.

In July, 2014, the Committee held a sitting with CRA to consider the proposed ceilings on recurrent expenditure for the FY 2014/15. CRA had requested the Committee to propose an amendment to the PFM Act, 2012 to allow CRA to set ceilings for County Governments.

The Committee further noted the contents of the House Hansard Debate of August 5th, 2014, were the Committee proposed an amendment to the PFM Act, 2012. The purport for the amendment was that the CRA had already set budget ceilings on recurrent expenditure on the budgets of each county government and had provided the schedules to both the county executive and the assemblies for the FY 2014/2015. The amendment was intended to protect counties and ensure prudent use of county resources and remedy the concerns that county assemblies have been spending huge amounts of money on very unnecessary expenditure like travel and allowances.

II. BACKGROUND INFORMATION ON THE STATUS OF CEILINGS ON RECURRENT EXPENDITURE FOR COUNTY GOVERNMENTS FY 2014/15

- 1) **Mr. Speaker Sir**, on the 22nd of April, 2014 the Commission on Revenue Allocation (CRA) issued a circular Ref. No. **CRA/CGM/vol.III//99** addressed to all county governments which recommended a ceilings on allocation for all County Assemblies and all County Executives in county budgets for the FY 2014/15.
- 2) The CRA explained that the basis for the circular was Article 216 which gave the CRA the mandate to make recommendations on financial management,
- 3) They explained that it was necessary to set ceilings on the budget for both the County Executive and the County Assembly in each county so that there is a structured determination of how the allocation for new administrative structures in counties can be shared out. This would eliminate arbitrary allocation of funds to the Assemblies by the County Treasury as well as ensure equitable utilisation of resources. CRA also explained that it was necessary to set ceilings to minimise wastage of financial resources by both arms of government.
- 4) At its meeting held on 10th March, 2015, the Committee established that the proposed budget ceilings are appropriate in maintaining financial discipline in the counties and recommended an amendment to the PFM Act through the Allocation of Revenue Act, 2014 to give the proposed ceilings the force of law.
- 5) The Controller of Budget on diverse dates vide various circulars addressed to the county governments demanded that the respective County Assembly budget allocations should comply with the aforementioned circular issued by the CRA. In so doing the Controller of Budget further stressed that failure to comply with these ceilings would result in withdrawals from the county revenue funds or any other county government funds being declined.
- 6) Following this circular, some counties complied with the ceilings while others declined, expressing concerns that they had already approved their respective Appropriation Acts or in some cases votes-on-account and therefore had already had budgets that were valid although they did not adhere to the ceilings.
- 7) The Controller of Budget then proceeded to decline those requests for withdrawals of funds that were based on the Appropriation Bills or

votes-on-account outside of the recommendations of the Commission on Revenue Allocation.

- 8) The County Assemblies then challenged the decision by the Controller of Budget in court, through case no. 368/2014 on the legality of the circular by the Commission on Revenue Allocation setting ceilings on recurrent expenditure for County Assemblies.
- 9) A consent order between the three parties (CRA, COB and County Assemblies) allowing withdrawal of up to 50% resources based on the ceilings was filed by the Court on 25th July, 2014 allowing Counties to implement their respective budgets as they awaited their final ruling on the validity of the ceilings.
- 10) A further consent order was filed in court on 30th January, 2015 allowing counties to withdraw up to 75% of the resources due to counties based on the ceilings. The County Assemblies are left with one quarter which access has not been denied.
- 11) The final ruling on the matter was issued on 20th February, 2015 and provided that;
 - i) A declaration that the 'circulars were null and void for all intents and purposes' and should be 'quashed' were "not granted and are instead dismissed"
 - ii) That it is the duty of the Controller of Budget to oversee the implementation of respective county budgets.
 - iii) Orders that the COB should 'approve and disburse' the Assemblies funds as provided for in every County government's budget estimates and appropriation acts were "not granted" and were instead "dismissed" by the court.
- 12) As at 17th March, 2015 thirty (30) of the counties had complied with the ceilings and are drawing full budgetary provisions from the exchequer. As at the date of this report, the following counties have complied with the CRA ceilings:- Baringo, Bomet, Bungoma, Busia, Elgeyo Marakwet, Garissa, Isiolo, Kakamega, Kiambu, Kirinyaga, Kisii, Kisumu, Laikipia, Mandera, Makueni, Meru, Migori, Muranga, Nandi, Narok, Nyamira, Nyeri, Samburu, Taita Taveta, Trans Nzoia, Uasin Gishu, Vihiga, Wajir, West Pokot and Marsabit.
- 13) An additional thirteen (13) counties have held meetings with the Commission on Revenue Allocation and agreed on a need basis, where adjustments need to be made. They include; Homabay, Kajiado, Kericho,

Kilifi, Kitui, Kwale, Lamu, Machakos, Mombasa, Nyandarua, Siaya, Tharaka Nithi and Turkana;

- 14) Four (4) of the Counties including Embu, Nairobi, Nakuru and Tana River are the only counties that have neither complied nor held discussions with the CRA. However, an initial meeting with Nakuru County is scheduled for 23rd March, 2015;

RESPONSES TO THE STATEMENT FROM THE SENATOR

- 15) The Committee deliberated on the request for a statement by the Sen. Hassan Omar Hassan, M.P. who requested a on the status of financial allocation to counties by the Commission on Revenue Allocation. The Committee noted as follows on each of the matters;

I. On whether the Committee is aware that County Assemblies are grinding to a halt due to the constraints of the budget ceilings imposed by the CRA.

The Committee considered this matter and held meetings with the County Assemblies Forum, and noted that:

- a) County Assemblies do not object to the desirability of budget ceilings and more so on recurrent expenditure of county governments.
- b) Respective County Fiscal Strategy Papers were submitted by the Executives by 28th of February 2014 which was during the formulation stage of the 2014/15 financial year and they contained ceilings for every sector of the County Government, the County Assembly included.
- c) The ceilings set out in the respective county fiscal strategy papers were the basis for the appropriations acts which were not adhering to the ceilings of the Commission on Revenue Allocation.
- d) Several County Assemblies had therefore not anticipated or planned to accommodate the ceilings issued by the CRA and therefore did not budget or indeed expend within the ceilings resulting in unfinanced budgets, reallocated expenditures and budgets that were not implemented fully.
- e) A significant challenge that County Assemblies experienced beyond the ceilings issued by the Commission on Revenue Allocation was the irregular exchequer releases from some county executives once requests for resources had been made to the Controller of Budget.
- f) This was because the rules and regulations governing release of monies to the County, the County Assembly cannot send requisitions for funds directly to the Controller of Budget but through the County Executive Committee Member for Finance.

II. On whether the Controller of Budget has refused to finance County Assemblies unless they comply with the said ceilings

The Committee considered the ruling by the High Court of Kenya on petition number 368 of 2014 as well as submission from the Controller of Budget and noted that;

- a) The Controller of Budget (CoB) had declined to recognize respective County Assembly Appropriation Acts that did not adhere to fiscal prudence and adherence to the ceilings issued by the Commission on Revenue Allocation.
- b) The Controller of Budget had therefore declined to release monies to County Assemblies unless they complied with the said ceilings,
- c) The County Assemblies Forum (CAF) held that CRA recommendations were not binding and the action by the Controller of Budget was not legal.
- d) The Committee further noted that the Controller of Budget had mandate under Article 228 to oversee the implementation of respective county budgets by authorizing withdrawals from respective county revenue funds.

III. On whether the Committee is aware that although the High Court of Kenya dismissed the petition by the County Assemblies, the court had also determined that the said ceilings were not binding and would only be binding if approved by Parliament and that ceilings are just a recommendation.

The Committee considered the ruling by the High Court of Kenya on petition number 368 of 2014 and noted that;

- a) That the circulars on ceilings on recurrent expenditure were issued in advisory capacity granted to the Commission under article 216 of the constitution and are therefore lawful.
- b) Circulars cannot be quashed due to (a) above.
- c) However, ceilings in the circulars are not binding on County Assemblies since they are not directives and can only become binding if adopted by Parliament through the County Allocation of Revenue Act, as parliament has the final say on the matter.
- d) County budgets are subject to national legislation, being Division of Revenue Act and County Allocation of Revenue Act.
- e) Differences in regarding fiscal and budgetary processes should be settled in terms of Article 189(4) of the constitution of Kenya, by way of alternative dispute resolution mechanism and this includes reference of

the dispute to parliament which has the final say in budgetary processes in Kenya.

IV. That the Controller of Budget is sending County Assemblies to negotiate with the CRA to vary the ceilings even though the court has placed that mandate on Parliament

The Committee had hitherto considered this matter and had noted that;

- a) The CRA had held two consultative meetings on the 2015/16 budget ceilings with the County Executive Members for finance and County Assembly Clerks. The first meeting was held in December 2014 and the second was in March 2015.
- b) The Controller of Budget, Transition Authority, Commission on Revenue Allocation had undertaken to work together to come up with a framework for ensuring prompt and just resource allocation to counties.
- c) That it was critical for the respective County Executives, County Assemblies to build synergy with the institutions in (a) above in addressing pending issues which are affecting service delivery and monies meant for recurrent expenditure for the Assemblies should be released with immediate effect
- d) While appreciating the importance of financial accountability. The roles and independence of each arm of County Government should be respected at all times. The Senate has convened a high level workshop to discuss matters of financial accountability at governments at the County level. The Workshop is scheduled for 19th to 22nd March, 2015 as an avenue for further synergy and consultation.

V. On whether the Committee is aware that the proposed ceilings for the 2014/15 and 2015/16 financial years were irreconcilable;

The Committee deliberated on this and noted that;

- a) The CRA had submitted to the Committee that the ceilings were only on specific recurrent expenditures of County Assemblies and County Executives;
- b) The CRA further submitted that the ceilings were designed to curb wasteful expenditure especially on non-priority items such as foreign travel and hiring of non-core personnel.
- c) The ceilings for the 2015/16 financial year were still under deliberation and were not yet final and therefore could not be compared to the 2014/15 ceilings.

- d) The ceilings for the 2015/16 financial year would include allocations for mortgage and car loans due to constitutional office holders provided by the Salaries and Remuneration Commission.

VI. On whether the Committee is aware of what the national treasury is doing to ensure that the COB releases funds to the County Assemblies on the basis of their respective Appropriations Acts;

The Committee noted that:

- a) Several County Assemblies had installed an IFMIS system for financial management and opened operational accounts at the Central Bank of Kenya in an effort to gain financial autonomy but the two were not operational due to limitations from the National Treasury. In this regard County Assemblies have had to depend on the County executive for the stated services.
- b) All County Assembly in Kenya therefore operates under the mercies of the County Executive on issues of finances thus compromising their ability to discharge their mandate.
- c) Given the separation of powers between the Executive and the Assembly, the County Assembly is supposed to oversight the Executive and it's accountable to the Auditor General's Office and the Office of the Controller of Budget
- d) The Committee had directed the Commission on Revenue Allocation and Controller of Budget to liaise with the Integrated Financial Management Systems directorate to ensure that County Assemblies are connect to the IFMIS and G-pay systems to enhance resource flow, accountability and independence in financial resource

II. OBSERVATIONS

The Committee observed that;

- a) The Committee also observed that the CRA issued ceilings well before the amendment of section 117 of the PFM act had been done by Parliament noting that the County Allocation of Revenue Bill was passed in July, 2014.
- b) Although the Commission on Revenue Allocation had met the Committee and subsequently agreed on the importance of taming wasteful expenditure in the assemblies, the Committee did not formally submit proposals for setting the ceilings after the amendment to the PFM Act, 2012 had been passed.
- c) The Committee is convinced that the budget ceilings determined through a structured process is the most prudent way of allocating the resources between the two arms of the government. The alternative

would be an arbitrary process that would encourage wastage, and conflicts in the counties.

- d) The Committee noted that although the Controller of Budget has the mandate to oversee the implementation of respective budgets of the various county governments by authorizing withdrawals, the COB enforced the ceilings set by the CRA to promote prudent financial management, and with the concurrence of the committee.
- e) Pursuant to the court case filed by the assemblies, the court had approved withdrawals of up to 75% of the ceiling for the first three quarters of FY 2014/15 before giving the ruling that dismissed all the prayers sought in the petition. Consequently, COB can only disburse funds for the remaining quarter based on the Appropriation Act.
- f) The Committee also observed that there was no synergy in addressing matters of conflict between the County Assemblies, the County Executive, the offices of the Controller of Budget and the Commission on Revenue Allocation although the law has created sufficient dispute resolution mechanisms as provided for in Article 189(3) and (4) of the Constitution.

III. RECOMMENDATIONS

The Committee therefore recommends that;

1. The County Governments should establish conflict resolution mechanisms and desist from encroaching on each other's Constitutional mandate. Conflicts regarding fiscal and budgetary processes should be settled in terms of Article 189(4) of the constitution of Kenya, by way of alternative dispute resolution mechanism. This includes reference of dispute to the Senate which has the mandate to serve to protect the interests of counties, and their governments.
2. The Senate shall establish new guidelines on the approval of requisitions as well as new structures on access to funds for the Assemblies pursuant to Art.216 of the Constitution.
3. The Senates directs that the COB, CRA and TA, in consultation with the Director of IFMIS submit a report on how County Assemblies can directly access credit requisitioned funds into their operational accounts after the exchequer release.
4. Ceilings on recurrent expenditure of the FY 2014/2015 were lawfully issued but not binding as per the court ruling. The courts had approved withdrawals of up to 75% of the ceilings for the first three quarters. Therefore, the Senate directs that the COB should, in consultation with CRA, release adequate funds to the county assemblies immediately for the fourth quarter.

5. The Senate should protect County Assemblies in accordance with its mandate in Article 96(1) of the Constitution through amendment to the PFM Act in order to ensure that the role of County Assemblies in overseeing the county executive is not compromised. Funds requisitioned by the Assemblies should be released directly from the County Revenue Fund into their operational accounts without further delay to ensure financial independence.
6. Pursuant to PFMA, the Senate should develop guidelines for approval of the recommendation of CRA in respect of budget ceiling for FY 2015/16.
7. The Committee has tasked the COB to furnish it with the status of compliance of the county executive with the budget ceilings for tabling in the House.
8. Pursuant to the court ruling the county assemblies should exercise prudence in their financial management.



MINUTES OF THE 96TH SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL GROUND FLOOR BOARDROOM ON 25TH FEBRUARY, 2015 AT 9.00AM.

MEMBERS PRESENT

1. Sen. Billow Kerrow -Chairman
2. Sen. Peter Ole Mositet -Vice Chairman
3. Sen. Moses Wetang'ula -Member
4. Sen. Beatrice Elachi -Member
5. Sen. Boni Khalwale -Member
6. Sen. Paul Njoroge Ben -Member
7. Sen. (Dr.) Wilfred Machage -Member
8. Sen. Zipporah Kittony -Member
9. Sen. Catherine Mukiite -Member
10. Sen. (Prof.) Anyang Nyong'o -Member
11. Sen. (Prof.) John Lonyangapuo -Member
12. Sen. (Dr.) Agnes Zani - Member

MEMBERS ABSENT

1. Sen. G.G. Kariuki -Member
2. Sen. Mungai James -Member
3. Sen. Mutula Kilonzo Jnr. -Member
4. Sen. Mutahi Kagwe -Member

MEMBERS OF THE COUNTY SPEAKERS FORUM

- 1) Hon. Dr. Nuh Hassan -Speaker, Tana River County
- 2) Hon. Abdi Sheikh -Speaker, Mandera County
- 3) Mr. Chris Kinyanjui -Clerk, Muranga County
- 4) Mr. Jacob Ngwele - Clerk Nairobi County
- 5) Mr. Martin Kariuki -Clerk Taraka Nithi, County
- 6) Mr. Elijah Mutambuki -Clerk Kitui County
- 7) Mr. Wanyoike Mboche -Clerk Lamu County

SECRETARIAT

1. Ms. Emmy Chepkwony -Senior Clerk Assistant
2. Mr. Peter Mulesi -Clerk Assistant
3. Mr. Chelang'a Maiyo -Researcher
4. Mr. Frank Mutulu -Media Relations Officer
5. Ms. Anne Wanjiru -Intern

MIN. 045/2015: PRELIMINARIES

The chairman called the meeting to order at 9.28 am followed with prayer.

He welcomed Sen. (Dr.) Agnes Zani and congratulated her on her appointment by the Rules and Business Committee (RBC) of the Senate to join the Committee.

He then called for introduction of the Members present and invited the County Assembly Speakers Forum to introduce their delegation and make their presentation.

MIN. NO. 046/2015: ADOPTION OF THE AGENDA

The agenda of the day was adopted as follows;

- 1) Prayer
- 2) Adoption of the Agenda
- 3) Meeting with County Assembly Speakers Forum (CASF) on the budget ceilings
- 4) Consideration of Committee's interim report on Narok petition
- 5) Any other Business
- 6) Adjournment and Date of next meeting.

MIN NO. 047/2015: PRESENTATION BY THE COUNTY ASSEMBLY SPEAKER' FORUM

The Chairman of the County Assemblies' Speakers Forum (CASF) thanked the Senate Standing Committee on Finance, Commerce and Budget for giving them opportunity to present their views on the compliance by counties by the budget ceilings set by the commission of Revenue Allocation (CRA). He informed the committee that their intention of appearing before the Committee was to seek the guidance of the Senate on the legality of the Circulars and allow discussions on the way forward for County Assemblies to access their budgets especially following the High Court ruling delivered by Justice Isaac Lenaola on 25th February, 2015 on the matter of budget ceilings by the CRA Circulars.

He informed the Committee that:

1. The budget ceilings on recurrent expenditure be supported by costing statistics to avoid inconsistencies in the process of service delivery to the public as envisaged by the Constitution of Kenya;
2. the County Assemblies' budgets constitute only 10% of the total county budget hence limited scope of operation as compared to the County Executive;
3. the county Appropriation Acts 2014 with respect to county finances were passed by County Assemblies with due consideration of their mandate, but these laws have been in conflict with the county Allocation of Revenue Act 2014;
4. the non-compliance by County Assemblies to the directive by the Controller of Budget on budget ceilings is the main cause of poor service delivery in the

- County Governments, to this end salary, allowances and other benefits due to county Assembly staff have not been honored for the last 6 months;
5. the Commission on Revenue Allocation (CRA) is only required to provide an advisory on the budget ceilings and the appropriateness of the ceilings on the smooth running of county governments;
 6. the timing of the CRA recommendation was difficult to implement since all the 47 County Assemblies had already passed their Financial Year 2014/15 budgets as required by law;
 7. the commission on Revenue Allocation (CRA) through a circular Ref: **NO.CRA/CGM/VOL.III/99 dated 22nd April, 2014**, recommended budget ceilings for County Assemblies and County Executive;
 8. Some County Assemblies disregarded the CRA recommendation since this was not binding and only represented an advisory on the part of county Governments. In view of non-compliance by the county assemblies, a meeting was held between the Commission of Revenue Allocation, Controller of Budget and County Assemblies Forum to look at the stalemate after the County budgets were passed;
 9. If counties are not facilitated their capacity to oversight the executive will be compromised.

The Committee was further informed that:

- i. The Controller of Budget did not agree on allowing county assemblies access its budgets, but until they comply with the CRA recommendations on budget ceilings;
- ii. the County Assemblies' Forum through the speakers of all the 47 County Assemblies proceeded to court seeking inter alia to quash the Commission of Revenue Allocation circular on the County Governments' budget ceilings;
- iii. the High Court dismissed the petition on the prayers to quash the circular, but the judge went further and demarcated the boundaries on the roles of the various state organs involved in the budget making process of County Governments: Parliament, Controller of Budget, and Commission on Revenue Allocation, County Treasury and County Assemblies;
- iv. in the ruling the judge stated that even though the circular was lawfully issued, the recommendations by the Commission on Revenue Allocation on budget ceilings were only advisory and should only be implemented once Parliament has approved them through the County Allocation of Revenue Act;
- v. in view of the ruling by the High Court, the County Assemblies have requested the Controller of Budget to release monies to their County accounts in line with the Appropriation Acts 2014 of County Assemblies;
- vi. However, the Controller of Budget still holds the opinion that the Circular from Commission on Revenue Allocation is binding and that County As-

- semblies have to renegotiate the budget ceilings with CRA before subsequent approval by the Controller of Budget for the release of funds;
- vii. CASF were faced with challenges related to issues of undue advantage by Governors and MCAs on matters of budget making due to political dynamics in the Counties;
 - viii. CASF is therefore, seeking intervention of the Senate within the purview of Art. 96 of the Constitution to compel the Controller of Budget to release the monies due to County Assemblies in line with the Appropriation Acts of specific County Governments;
 - ix. The Senate should check the Constitutional bodies especially those related to devolution to ensure that they do not allocate themselves powers outside the Constitution.

On the matter of ceilings, the Committee was informed that the impression by CRA that a number of County Assemblies had willingly complied with the budget ceiling and a number are negotiating is misleading. All county Assemblies who complied, had done so under duress, those that complied did so after their members and employees went without salaries for months after their county treasuries declined to release funds to the County Assemblies.

That whereas CRA purports to have recommended reasonable ceilings, a cursory look at their recommendations for FY 2014/2015 against recommendations for FY 2015/2016 proves otherwise.

From the deliberations that ensued;

The Chairman informed the CASF that the Senate passed an amendment to the County Allocation of Revenue Act to allow CRA to recommend ceilings to the Senate for approval. As a result CRA has recommended the Ceilings to the Senate although they have not been approved. There are several consultations going on the matter and the Senate will soon engage stakeholders on the matter of budget making process in the counties;

Members expressed concern that in most County Assemblies the Speakers and the Clerks of County Assemblies are arm twisted by the Members of the County Assemblies (MCA's). Concerns were also raised on the threats facing the oversight institutions at the County level and hence the need for separation of powers.

The Committee informed CASF that ceilings are principle of financial prudence and accountability;

The Committee noted with concern that ceilings were guided by complains that the County Assemblies were spending more on foreign travels hence the need for regulation of their budgets mainly to free resources for development;

The CRA should target the quality of Members of the County Assemblies (MCAs) including qualifications on who qualifies for election rather than inhibit those already elected in performing their constitutional functions;

County Assemblies have over employed staff which has bloated their payroll and therefore the need to re-examine the personnel requirements, unplanned and unjustified expenditures;

Members expressed concern that the Division of Revenue Act, 2014 allocated KES. 30 billion as the cost of new administrative structures in the Counties where KES. 16.8 and 13.2 billion were set aside for County Assemblies and County Executive, respectively. The Committee sought explanation on why CASF were then unable to pay salaries when funds had been already allocated;

Members advised that now that the case had been concluded, the monies for the counties should be released to address their needs. CASF should constantly consult, liaise and update the Senators in their respective counties on the matter.

CASF prayed to the Committee that COB be Compelled to release funds to the County Assemblies without reference to the said ceilings; and that the funds be released in accordance with the Appropriation Acts, since the County Appropriation Acts are not in conflict with the Constitution, the PFMA, The Division of Revenue Act, 2014, and the County Allocation of Revenue Act, 2014.

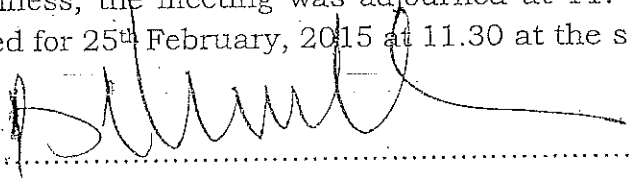
It was resolved that;

- 1) the Commission on Revenue Allocation (CRA), the Transitional Authority (TA) and the Controller of Budget be invited to a meeting of the Committee on Wednesday, 3rd March, 2015 to respond to the matters raised by the CASF;
- 2) The Committee convenes a high level workshop to deliberate on matters of accountability of public resources in the counties and invite the Auditor-General, The Salaries and Remuneration Commission, the Transitional Authority, the Commission on Revenue Allocation and the Controller of Budget (COB) as key resource persons. The workshop will be held at Enashipai Hotel and Spa, Naivasha on 12th to 15th March, 2015;
- 3) The Committee will communicate feedback after consultations with CRA, TA and COB to CASF on the way forward on the matter of Ceilings.
- 4) The Committee further resolved to invite the COB, CRA and TA to a Committee meeting on Tuesday 3rd March, 2015 to deliberate on the following:

- a. The implications of the High Court Ruling on petition no. 368 of 2014 regarding Circulars issued by the Commission on Revenue Allocation (CRA) on budget Ceilings;
- b. Failure by the Makueni County Executive to transfer funds to the County Assembly on grounds that the Assembly failed to submit its books of accounts for inspection by the County Executive;
- c. Concerns that several County Assemblies are unable to pay salaries; and,
- d. Budget making process for Isiolo County.

MINUTE NO. 048/2015: ADJOURNMENT AND DATE OF NEXT MEETING.

There being no other business, the meeting was adjourned at 11: 08 p.m. The next meeting was scheduled for 25th February, 2015 at 11.30 at the same venue.



SIGNED:

CHAIRPERSON -Sen. Billow Kerrow

DATE:.....19-03-2015.....

MINUTES OF THE 99TH SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT CONTINENTAL HOUSE RESTAURANT, PARLIAMENT BUILDING ON 10TH MARCH, 2015 AT 9.00 AM.

PRESENT

1. Sen. Billow Kerrow -Chairman
2. Sen. Peter Ole Mositet -Vice Chair
3. Sen. Moses Wetangula -Member
4. Sen. Beatrice Elachi -Member
5. Sen. Catherine Mukiite -Member
6. Sen. (Prof.) Anyang Nyong'o -Member
7. Sen. MutulaKilonzo Junior -Member
8. Sen. (Dr.) Wilfred Machage -Member
9. Sen.(Dr.) Agnes Zani - Member
10. Sen..John Lonyangapuo -Member

ABSENT

1. Sen. Mutahi Kagwe -Member
2. Sen. Paul Njoroge Ben -Member
3. Sen. Boni Khalwale -Member
4. Sen. Mungai James -Member
5. Sen. G.G. Kariuki -Member
6. Sen. Zipporah Kittony -Member

IN ATTENDANCE

1. Mr. Micah Cheserem- Chairman, CRA
2. Mr. KinuthiaWamwangi- Chairman, Transitional Authority
3. Ms. Fatuma S. Abdikadir, Vice Chair, CRA
4. Hon. AlidanMbinda, ECM, Finance, Makueni County
5. Mr. Edward Libendi, Clerk, Makueni Assembly
6. Mr. Stephen Ngelu, Speaker, Makueni Assembly
7. Mr. Stephen Masha, Deputy CEO, COB
8. Mr. Joshua Musyimi, Director, R&P COB
9. Mr. Stephen Makori, CEO Transitional Authority
10. Ms. Lynnette Oyugi, Director, CRA
11. Mr. James Katule, Director CRA
12. Ms. Martha Maneno, Legal Officer, CRA
13. Mr. Stephen Wangaji, CMPR, COB

SECRETARIAT

1. Mr. Emmy Chepkwony -Snr. Clerk Assistant
2. Peter Mulesi - Clerk Assistant
3. Mr. GichohiMwaniki - Parliamentary Budget office

- | | |
|----------------------|------------------------------|
| 4. Mr. Robert Nyagah | -Parliamentary Budget office |
| 5. Chelang'aMaiyo | - Research officer |
| 6. Ms. Anne Wanjiru | -Intern |

MIN. 058/2015: PRELIMINARIES

The Chairman called the meeting to order at 9.26am followed by a word of prayer. He welcomed all the members and visitors to the meeting and there followed self-introduction.

The Chairman then welcomed the Speaker, the Clerk of Makueni County Assembly and the Chief Executive Officer for Makueni County Government to make presentations to the Committee.

MIN. 059/2015: PRESENTATION BY SPEAKER AND THE CLERK OF MAKUENI COUNTY ASSEMBLY AND THE CEC MAKUENI COUNTY GOVERNMENT.

1) Makueni County Assembly

The officials from the County Assembly of Makueni informed the Committee as follows: That;

1. There has been continuous financial frustration of the Makueni County assembly by the County Executive that have brought operational risks due to the insufficient and unpredictable flow of funds necessary to run the assembly to perform its constitutional mandate. According to the Controller of Budget, the County Assembly cannot send requisitions for funds directly to them but through the County Executive Committee Member for Finance. Requisitions by the County Assembly are done for every two months.
2. After doing the requisitions, especially from July, 2014, the County Assembly has been forced on numerous occasions to beg the County Executive Committee Member for Finance to submit its requisition for funds to the Controller of Budget as the Controller of Budget does not recognize direct requisition of funds from the County Assembly. Even after the requisitions are sent and approved by the Controller of Budget, the CEC Finance delays to submit Form C to the Central bank; the form which authorizes Central Bank to release funds to the County Revenue Fund. This has greatly affected operational autonomy of the County Assembly.
3. From November, 2014, the County Assembly of Makueni has had no finances to operate. Salaries of November and December were paid in mid-January, 2015 and those of January and February, 2015 were paid on Friday, 6th March, 2015. Allowances for MCAs from November had not been paid until last week Friday, 6th March, 2015.
4. On 12th November, 2014 the Clerk of the County assembly received a letter from the Executive Committee Member for Finance (ECM Finance) indicating that he had directed the Assembly Banks to freeze the Makueni County Assembly Bank Accounts. The grounds stated were that the Assembly had undertaken foreign travel without having funds for foreign travel and that

the Assembly had not given its books of account to the CECM Finance for inspection.

5. The true position is that the County Assembly had enough funds in the budget for FY 2014/2015 for foreign travel i.e. Ksh. 50 million and the same had not been exceeded.
6. The Assembly explained to the Executive that it is the Assembly that undertakes oversight over the Executive and not the other way round and we maintained that though the Assembly runs open and transparent financial systems and accounts, the books of accounts of the County Assembly are not supposed to be inspected by the CECM Finance but by the auditor general, and other government agencies like EACC and the auditor has always conducted audits on Assembly books. We also explained that the functions the CECM Finance was trying to usurp to oversight the County Assembly were functions of the Clerk of the County Assembly as given by Sections 147 and 148 of the PFM Act.
7. Suppliers of basic items to the Assembly like paper and fuel have not been paid from November, 2014. We have been forced to fund operations of the Assembly like buying photocopy paper and fuel for the generator and vehicles from our pockets which is costly.
8. The County Assembly after staying without salaries and allowances for that duration ended up passing another budget submitted by the CECM Finance to comply with the ceilings recommended by the CRA in 2014. Based on that budget, the Assembly cannot even pay the normal sitting allowances of MCAs from January onwards. The MCAs ended up even reducing the budget for basic expenses like medical insurance by half just to be in good books with the County Executive and in order to receive their salaries and allowances.
9. Because of this lack of financial autonomy, the oversight role of the County Assembly is compromised and the principal of separation of powers as contained in article 185 of the Constitution is defeated. The MCAs have now agreed to be passing any document that comes from the Governor's office without any scrutiny.
10. The Ceilings recommended by the CRA for 2014/2015 were arbitrarily issued without consultations and without due regard to the actual expenditures of the County Assemblies. In Makueni for example, the CRA recommended a ceiling of Ksh. 356 million for 2014/2015 and of Ksh. 510 million for 2015/2016; whatever has changed materially during this time, we are not aware but the County Assembly will not be able to operate with the Ksh. 356 million given until the end of the financial year. The Assembly will therefore be forced to close its operations at the end of April and wait until July to resume its operations because we shall not have funds for operations.
11. On anticipating that the Appropriations Bill, 2014 would not be passed on time (by 30th June, 2014), the County Assembly passed the Vote

on Account as required by section 134 of the Public Finance Management Act, 2014.

12. The County Assembly received an Appropriations Bill, 2014 from the County Executive Committee Member for Finance on 25th July, 2014 and proceeded to pass it and submitted the same to the Governor for assent.
13. The County Assembly of Makueni has installed an IFMIS system for financial management and opened an operational account at the Central Bank of Kenya to try gain financial autonomy but the two are not operational due to limitations from the National Treasury and Assemblies therefore have to depend on the County executive for the above services.
14. Makueni County Assembly like all county assemblies in Kenya therefore operate under the mercies of the County Executive on issues of finances thus compromising their ability to discharge their mandate.
15. Given the separation of powers between the Executive and the Assembly, the Assembly is supposed to oversight the Executive and it's accountable to the Auditor General's Office and the Office of the Controller of Budget.

They requested the Committee to;

1. intervene and get a lasting solution to this problem so that we can be sure that when we send our requisitions to the Executive to forward to the COB for release of funds, the same is done promptly so that our operations do not ground to a halt;
2. to ensure financial Independence where Assemblies can send requisitions to the COB directly and funds are released to the Assemblies directly and Since the ceilings of 2014/2015 were not tenable, there was need to revise according to the actual needs of the County Assembly.

Concerns Raised by Members

Members raised concern on the following issues.

- a) The Transitional Authority to explain the role of the County Assembly and County Treasury as entities of the PFM Act (Section 127).
- b) The County Assembly of Makueni has a mandate and role in the budget making process (Section 129 (3) and should be independent in approving the budgets by the County Government.
- c) Why the County Assemblies should not get their funds directly though their own independent IFMIS. What is the justification by the COB in withholding funds meant for the Assemblies?
- d) There was concern over the number of foreign trips by the MCAs and even the County Executive which takes almost 50% of the recurrent expenditure.
- e) Whether the County Executive were spending more than the set ceilings. The COB and CRA are only keen on controlling the budgets and expenditures of the Assembly but not the Executive (**How much did the County Executive actually spent above the set limits set?**).

- f) Local Revenue collected by County Governments is not accounted for and is spend at source contrary to the PFM Act;

MIN.060/2015: HIGH COURT RULING ON THE COUNTY BUDGET CEILINGS

The Chairman of the CRA briefed the Committee on the High Court ruling delivered by Judge Isaac Lenaola as follows: That;

1. A petition was filed in Court by all the 47 Speakers of the Assemblies following Commission on Revenue Allocation (CRA) recommendation on budget ceilings for County Assemblies and County Executives for the FY 2014/15;
2. CRA was the first respondent, followed by the Controller of Budget and Attorney General respectively. The Council of Governors was an interested Party;
3. Art.216 (2) mandates the Commission to make recommendations on matters concerning financing of, and financial management by county governments to encourage fiscal responsibility and that the ceilings had saved the exchequer KES.10 billion from the MCAs budgets;
4. Art.249 provides that the object of independent Commissions is to protect the sovereignty of the people;
5. The PFM Act Section 117 (2A) as amended through the County Allocation of Revenue Act, 2014 mandates CRA to make recommendations on County budget ceilings through the Senate.

He informed the Committee that the Prayers of the petitioners were: That;

- a) The Court declares the Circulars void.
- b) The Court quashes the budget ceilings.
- c) The COB be compelled to implement budgets.
- d) The funds be disbursed as passed in the 47 appropriation Acts.

In interpreting the ceilings CRA informed the Committee that in dismissing petition 386 of 2014 by the County Assemblies Forum, the High Court ruled that this particular amendment was never challenged in court and it's therefore in force. The recommendations made by CRA are therefore binding to the county governments.

1. The petition was dismissed
2. The ceilings are legal
3. The County Allocation of Revenue Act, 2014 enforced the ceilings making them binding for counties to implement, and
4. No appeal has been filed challenging this ruling

The CRA Chairman in his tabled document further proposed a way forward that;

- i. The ceilings were only on specific recurrent expenditures of County Assemblies and County Executive;
- ii. Majority of county Governments have held meetings with CRA and resolved some of the challenges posed by the 2014/2015 ceiling (He tabled status on county Compliance with the ceilings);

- iii. Two consultative meetings on the 2015/16 FY budget ceilings with CECs and County Clerks in December, 2014 and March, 2015;
- iv. As provided by Section 117 (2A) of the PFM Act, CRA will recommend the ceilings for FY 2015/16 to the Senate for Approval. However, unlike during the FY 2014/2015, the process will be done much earlier to allow for more discussion, input and consensus.

Resolutions

From the deliberations that ensued, it was resolved that;

1. The Senate, COB, TA, CRA to respond in writing on the standoff in Makueni to urge the CEC to release funds for the Assembly.
2. The County Assembly should appreciate the need for financial accountability. The Senate is organizing a high level workshop on Accountability of public resources on 19th- 21st March, 2015 in Naivasha.
3. The County Executive and the Assembly should work as a team to address pending issues which are affecting service delivery.
4. The CRA and COB to take keen interest in the Makueni issue and further work together and release a Circular to all the Counties on Financial Management.
5. That subject to the ceilings, money meant for recurrent expenditure for the Assembly should be released immediately.
6. The Senate to come up with new guidelines to CECs on the approval of requisitions by the Assemblies as well as new structures on access to funds by both the executive and the Assemblies pursuant to Art.216 of the Constitution.

MIN.061/2015: ANY OTHER BUSINESS

He informed members on the following upcoming events.

- i. The joint Committee sitting between Standing Committee on Finance, Commerce and Budget and the Sessional Committee on Devolved Government will be held on **Wednesday, 11th March, 2015** at the Committee Room 5, Main Parliament at 9.00am to meet with Sen. Anyang' Nyong'o, and the Petitioners of the Kisumu Petition.
- ii. High level workshop on Accountability and the County level of Government will be held on **19th -21st March, 2015 at Great Rift Hotel, Naivasha**. All oversight bodies including the Ethics and Anti-corruption, Commission (EACC), Controller of Budget, Transitional Authority (TA), Criminal Investigation Department (CID), Commission on Revenue Allocation (CRA) have been invited to make presentations.
- iii. A letter from Makueni County Assembly to the Speaker of the Senate stating that the County Assembly had not received money for its recurrent expenditure from the County Treasury since November, 2014 and that they were facing problems with paying staff salaries and suppliers.

MIN.061/2015: ADJOURNMENT AND DATE OF NEXT MEETING

Having exhausted all issues set out in the agenda, the meeting was adjourned at 11.59am. The next meeting will be on 11th March, 2015 at Main Parliament, Committee Room 5 at 9.00 am.

SIGNED:



CHAIRPERSON -SEN. BILLOW KERROW

DATE:

19-03-2015



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COMMISSION ON REVENUE ALLOCATION

OUR REF. CRA/CSO/P&S/13/Vol. 7

DATE: 18th March 2015

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

Dear Mr. Nyegenye,

**RE: STATEMENT BY COMMISSION ON REVENUE
ALLOCATION ON REPORT ON THE STATUS OF
FINANCIAL ALLOCATON TO COUNTIES FOR
FINANCIAL YEARS 2014 /2015 AND 2015 /2016**

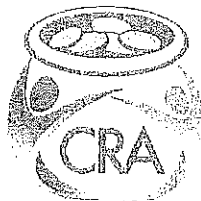
Enclosed, please find CRA statement in response to the Senate letter
referenced SEN/FCB/GEN-CORR.VOL2/050/2015.

Yours sincerely,

George Ooko
COMMISSION SECRETARY



Tel: 254 (20) 42980000
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Website: www.crakenya.org



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NAIROBI

COMMISSION ON REVENUE ALLOCATION

18th March 2015

STATEMENT BY COMMISSION ON REVENUE ALLOCATION ON REPORT ON THE STATUS OF FINANCIAL ALLOCATION TO COUNTIES FOR FINANCIAL YEARS 2014/2015 AND 2015/2016

INTRODUCTION

This is in response to a letter from the Senate (Ref: SEN/FCB/GEN-CORR.VOL2/050/2015) dated 16th March 2015. The Commission would like to respond as follows: -

The Commission on Revenue Allocation (CRA) is established under Article 215 of the Constitution with its principal functions stated in Article 216. In recommending ceilings for recurrent expenditure for the counties, CRA was guided by the following Articles of the Constitution and the relevant Sections of other legislation.

- Article 216 (2) – *The Commission shall make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and other relevant legislation.*
- Article 216 (3) – *In formulating recommendations, the Commission shall seek ...*
 - c) *to encourage fiscal responsibility.*
- Article 249 (1) – *The objects of the commissions and independent offices are to ...*
 - a) *protect the sovereignty of the people.*

2014 / 2015 CEILINGS

The Commission recommended Ksh279 billion be allocated to county governments for financial year 2014/15. In this allocation, the Commission

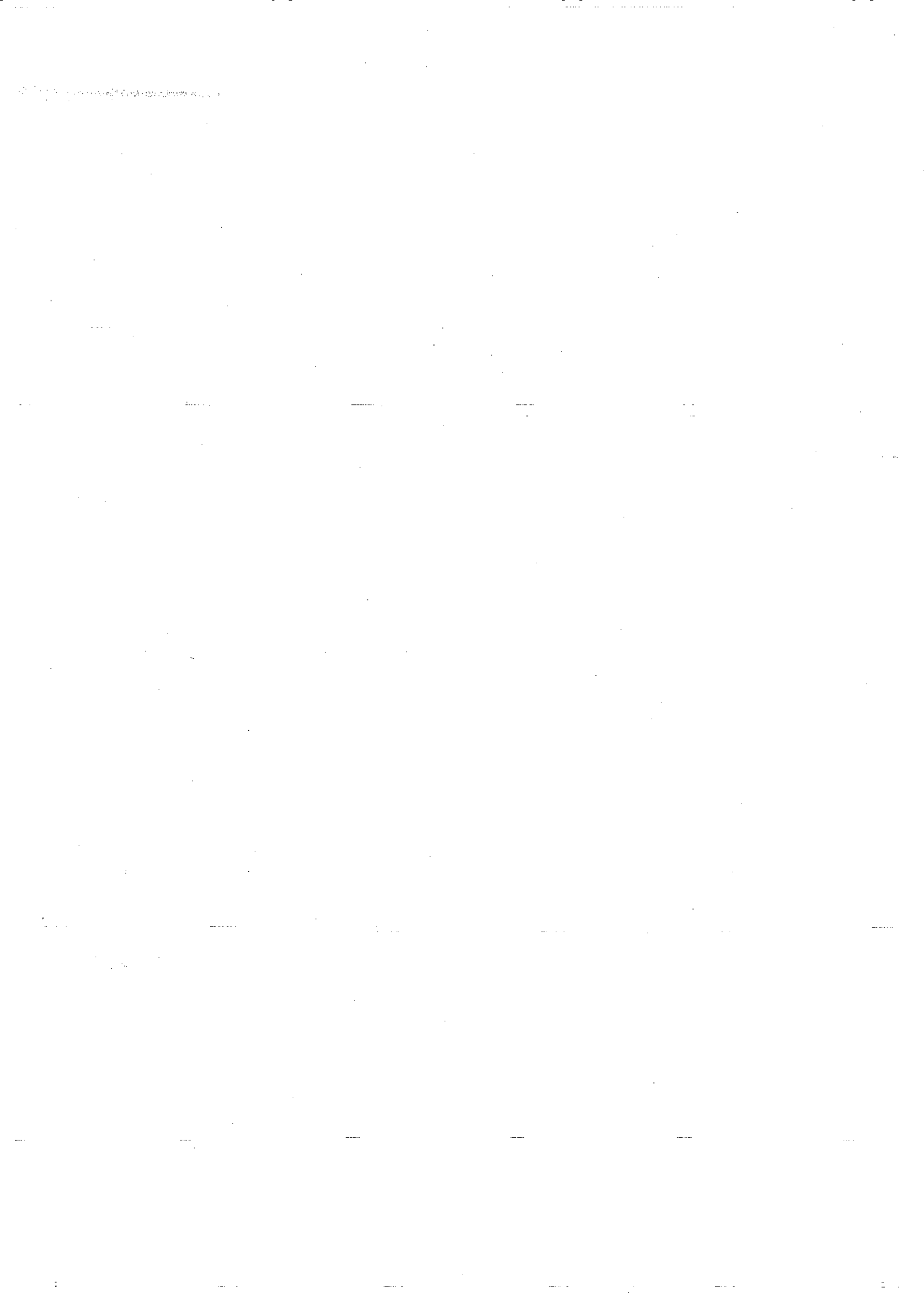
had costed the new county structures at Ksh47 billion. However, the Division of Revenue Act 2014 provided for Ksh226.7 billion for the counties. Out of this amount, Ksh30.2 billion was for the financing of recurrent expenditure for the new structures within the county governments and the rest to finance devolved functions as shown in **Table 1**. The allocation of Ksh30.2 billion provided for Ksh13.456 billion for the county executive and Ksh16.877 billion for the county assemblies as detailed in **Table 2**. It is on the basis of these amounts that the Commission made equitable allocation to individual counties and made recommendations for recurrent expenditure for both the executive and the assemblies.

From an analysis of the initial budgets submitted by the counties, the assemblies had a consolidated figure of Ksh26.876 billion while the executive had a budget of Ksh13.559 billion. If these budgets had been approved, it would mean reducing money meant for development and service provision, which would be contrary to the spirit of devolution. By setting ceilings on the recurrent expenditure, CRA was encouraging fiscal responsibility, ensuring that more resources were allocated to development and service provision.

As at March 17, 2015, thirty (30) of the counties had complied with the ceilings and are drawing their full budgetary provisions from the exchequer. An additional thirteen (13) have held meetings with CRA and agreed, on a need basis, where adjustments need to be made. Four of the counties (Embu, Nairobi, Nakuru and Tana River) are the only counties that have neither complied nor held discussions with the Commission. An initial meeting with Nakuru County is planned for March 23, 2015. (**Table 3**)

In the County Allocation of Revenue Act 2014, Parliament amended Section 107 of the Public Finance Management Act 2012 by inserting subsection (2A) *Pursuant to Articles 201 and 216 of the Constitution and notwithstanding subsection (2), the Commission on Revenue Allocation shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each county government.*

In dismissing petition 386 of 2014 by the County Assemblies Forum, the High Court ruled that this particular amendment was never challenged in court and is therefore in force. The recommendations made by CRA are therefore binding to the county governments.



The CRA made its recommendations to the Senate through our letter REF: CRA/CSO/P&B/13/Vol.4 (1) dated 30th September 2014 (*Copy attached – Annex 1*).

2015 / 2016 CEILINGS

You will note that there is a substantial increase of the amounts provided for each of the counties between 2014/2015 and 2015/2016. This is because the Commission has made provisions for additional staff and additional benefits arising from circulars issued by the Salaries and Remuneration Commission in December 2014. It will also be noted that items such as Ward Offices and extra mileage which were not factored in the 2014/2015 ceilings have now been included.

In developing the recommendations for the allocation of revenue between the national and the county governments for 2015/2016 fiscal year pursuant to article 216(1a) of the Constitution, CRA has computed, in detail, the cost of recurrent expenditure for all the 47 assemblies and the county executive. In so doing, the commission has consulted with the all the county governments (Executive and Assembly) in two different forums held in Utalii Hotel (December 2014), and Maanzoni resort (March 2015), respectively and their inputs have been incorporated into the recommendations. The costing has considered all the benefit circulars issued by the Salaries and Remuneration Commission (SRC). The summary of the ceilings is attached in **Table 4**.

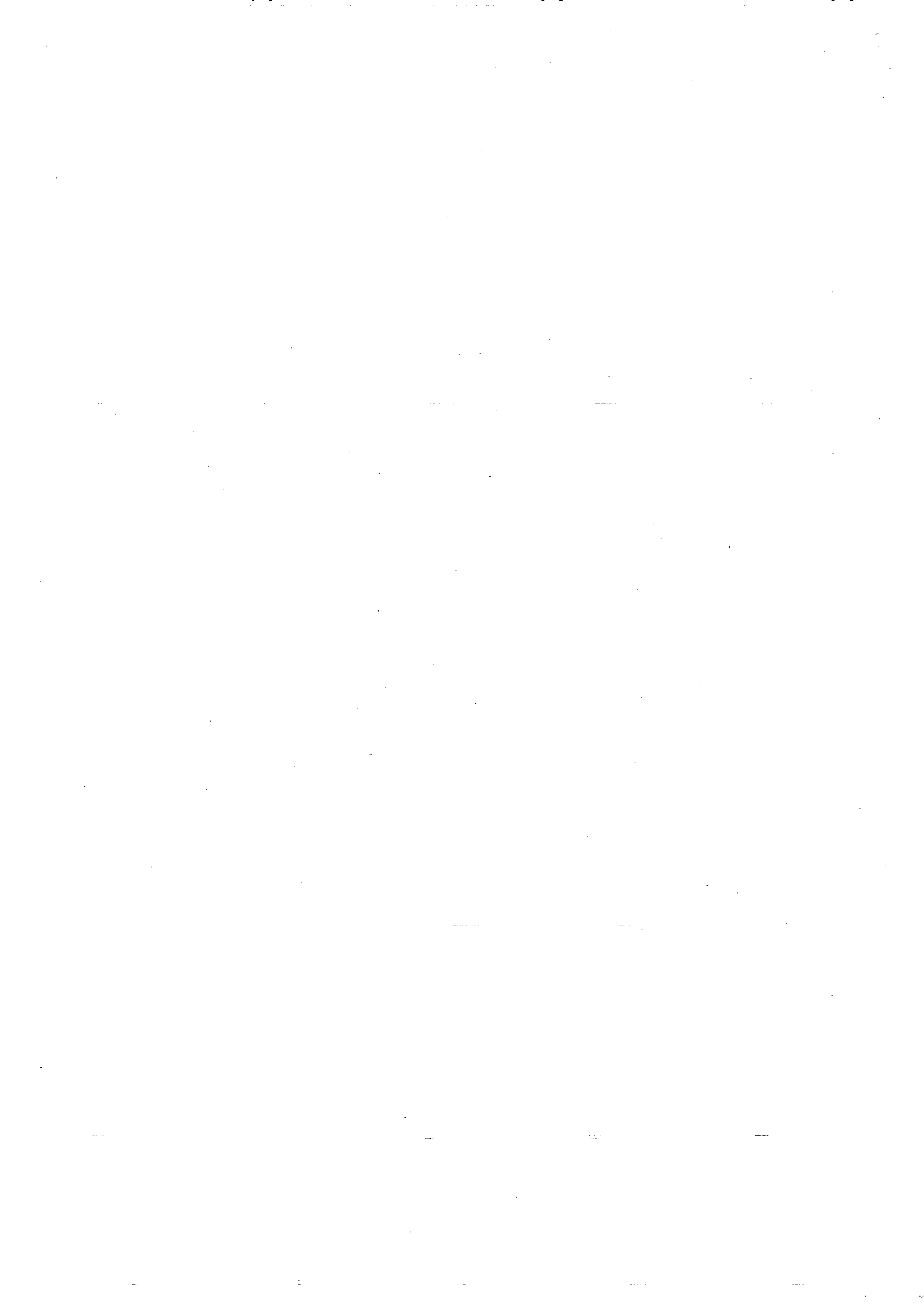


TABLE 1: BUDGET ALLOCATIONS ON VARIOUS DEVOLVED FUNCTIONS YEARS: 2013/14; 2014/15; 2015/16 IN KSH. MILLIONS

	Devolved Functions	2013/14	2014/15	2015/16
1	Health Services	55,562	62,780	69,706
2	Planning & Development	50,904	54,091	56,255
3	Agriculture, Livestock and Fisheries	15,155	16,103	19,020
4	Culture, Public Entertainment & Public Amenities	1,364	2,849	2,992
5	Youth Affairs and Sports	3,181	3,380	4,531
6	Trade, Cooperative Development & Regulation	709	4,404	4,624
7	Roads & Transport	35,916	38,164	40,072
8	Lands, Housing and Public Works	5,523	5,868	6,015
9	Natural Resources & Environment Conservation	6,337	6,734	6,902
10	Pre-Primary Education	1,938	2,059	2,265
11	Sub Total Devolved Functions	176,588	196,433	212,381
12	New County Structures (County Assembly, County Executive)	13,416	30,233	45,627
13	Total Devolved Functions	190,005	226,666	258,008

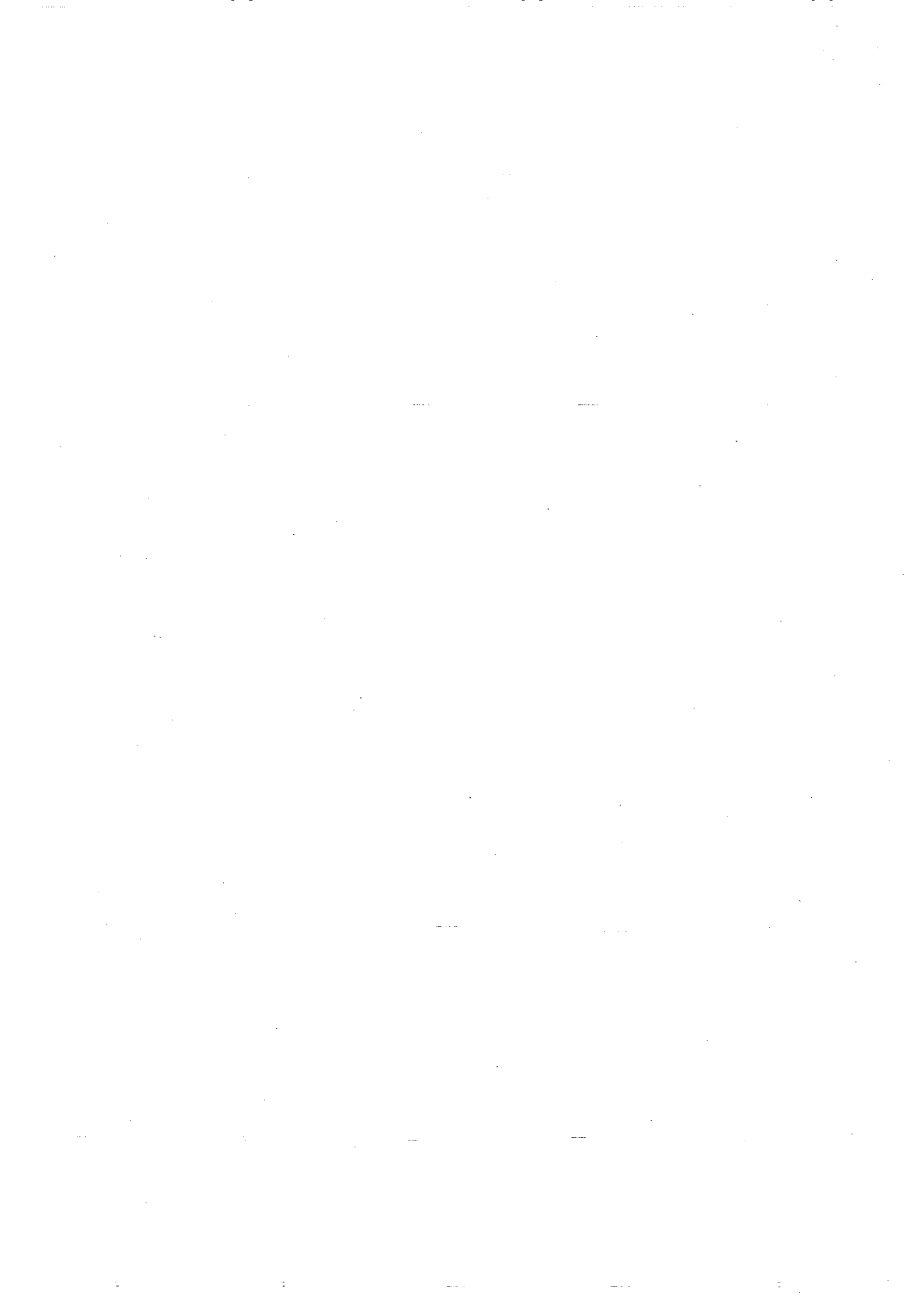


TABLE 2: SUMMARY OF CRA RECOMMENDATION ON COUNTY GOVERNMENTS BUDGET CEILINGS ON RECURRENT EXPENDITURE FOR 2014/2015 ON NEW COUNTY STRUCTURES (KSHS. MILLIONS)

1. COUNTY ASSEMBLY		
1	MCA (Salaries, Allowances & Gratuity)	8,416
2	Speaker (Salaries, Allowances & Gratuity)	339
3	Deputy Speaker (Salaries, Allowances & Gratuity)	245
4	County Assembly- Administrative Staff (Salaries, Allowances & pension)	1,660
5	Other County Assembly Staff (Salaries, Allowances & pension)	922
6	Duty allowances and pension	471
7	Mileage for MCA	1,141
8	O&M	3,683
9	Sub- Total	16,877
2. COUNTY EXECUTIVE		
1	County Executive (Salaries, Allowances & Gratuity)	1,287
2	Chief Officers (Salaries, Allowances & Pension)	946
3	County Secretary (Salaries, Allowances & Pension)	138
4	Governors & Deputy Governors (Salaries, Allowances Gratuity)	845
5	CPSB (Salaries & Pension)	975
6	PFM Staff (Salaries and Pension)	6,134
7	O&M	3,031
8	Sub- Total	13,356
	Total	30,233

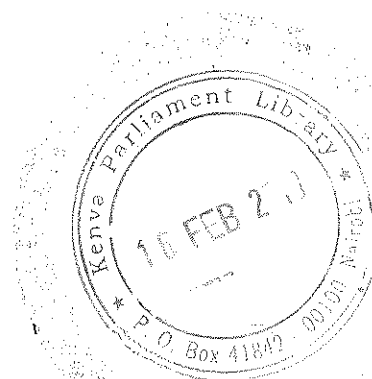
TABLE 3: COUNTY CEILINGS COMPLIANCE LIST

			Date: 17th March 2015
A	FULLY COMPLIED		
1	BARINGO	16	MERU
2	BOMET	17	MIGORI
3	BUNGOMA	18	MURANGA
4	BUSIA	19	NANDI
5	ELGEYO MARAKWET	20	NAROK
6	GARISSA	21	NYAMIRA
7	ISIOLO	22	NYERI
8	KAKAMEGA	23	SAMBURU
9	KIAMBU	24	TAITA TAVETA
10	KIRINYAGA	25	TRANS NZOIA
11	KISII	26	UASIN GISHU
12	KISUMU	27	VIHIGA
13	LAIKIPIA	28	WAJIR
14	MANDERA	29	WEST POKOT
15	MAKUENI	30	MARSABIT
B	DISCUSSED WITH CRA BUT NOT FINALIZED		
1	HOMABAY	8	MACHAKOS
2	KAJIADO	9	MOMBASA
3	KERICHO	10	NYANDARUA
4	KILIFI	11	SIAYA
5	KITUI	12	THARAKA NITHI
6	KWALE	13	TURKANA
7	LAMU		
C	DISCUSSIONS NOT COMMENCED		
1	EMBU	3	NAKURU (To meet on 23/03/2015)
2	NAIROBI	4	TANA RIVER



TABLE 4: SUMMARY OF CRA RECOMMENDATION ON COUNTY GOVERNMENTS BUDGET CEILINGS ON RECURRENT EXPENDITURE FOR 2015/2016 (KSHS. MILLIONS)

1. COUNTY ASSEMBLY			
No.	Item	No.	Amount
1	Members of the County Assembly (MCAs)	2,227	8,715
2	Speaker	47	332
3	Deputy Speaker	47	263
4	County Assembly Staff (more than 60 Wards- 120 staff, 40-<60 Wards-100 staff, 20-<40 Wards- 88 staff & Less 20 Wards gets 65 staff)	4,150	5,543
5	County Assembly Ward Staff (3 per ward)	4,350	1,197
6	Mileage for MCAs		1,429
7	Insurance (more than 60 Wards-60 Millions, 40-<60 Wards-40 Millions, 20-<40 Wards- 30 Millions & Less 20 Wards gets 20 Millions	47	1,480
8	County Assembly Service Board (CASB)	47	267
9	Operations and Maintenance (O & M)		5,768
	Sub-Total		24,994
2. COUNTY EXECUTIVE			
No.	Item	No.	Amount
1	Governor	47	669
2	Deputy Governor	47	451
3	CEC members	453	2,002
4	Chief Officers	453	1,291
5	County Secretary	47	226
6	Chief of Staff	47	134
7	Sub County & Ward Administrators	1,740	2,080
8	County Treasury		6,747
9	County Public Service Board (CPSB)		1,086
10	Staff- Office of the Governor		716
11	Insurance	47	470
12	Operations and Maintenance (O & M)		4,762
	Sub- Total		20,633
	Total		45,627



CRA Recommended Budget Ceilings for County Assembly and County Executive based on Recommended budget on Costs of new County Structures of Ksh. 30,232 Million

No.	County	County Assembly	County Executive	Total
1	Nairobi	962,450,826	294,568,636	1,257,019,472
2	Giambu	659,316,714	294,568,636	953,885,351
3	Kakamega	651,738,361	294,568,636	946,306,998
4	Nakuru	560,798,125	294,568,636	855,366,761
5	Kisii	538,063,066	294,568,636	832,631,702
6	Meru	522,906,360	294,568,636	817,474,996
7	Migori	485,014,594	294,568,636	779,583,231
8	Bungoma	477,436,241	294,568,636	772,004,878
9	Homa Bay	477,436,241	294,568,636	772,004,878
10	Machakos	447,122,829	294,568,636	741,691,466
11	Kitui	431,966,123	294,568,636	726,534,760
12	Busia	401,652,711	294,568,636	696,221,347
13	Kidfi	386,496,005	294,568,636	681,064,641
14	Muranga	371,339,299	294,568,636	665,907,935
15	Kisumu	363,760,946	294,568,636	658,329,582
16	Baringo	363,760,946	294,568,636	658,329,582
17	Garissa	356,182,593	294,568,636	650,751,229
18	Mandera	356,182,593	294,568,636	650,751,229
19	Nandi	356,182,593	294,568,636	650,751,229
20	Siaya	356,182,593	294,568,636	650,751,229
21	Kericho	356,182,593	294,568,636	650,751,229
22	Makueni	356,182,593	294,568,636	650,751,229
23	Narok	356,182,593	294,568,636	650,751,229
24	Nyeri	356,182,593	294,568,636	650,751,229



CRA Recommended Budget Ceilings for County Assembly and County Executive based on Recommended budget on Costs of new County Structures of Ksh. 30,232 Million

No.	County	County Assembly	County Executive	Total
25	Turkana	356,182,593	294,568,636	650,751,229
26	Mombasa	341,025,887	294,568,636	635,594,523
27	Wajir	341,025,887	294,568,636	635,594,523
28	Uasin Gishu	333,447,534	294,568,636	628,016,170
29	Kajiado	310,712,475	280,193,680	590,906,155
30	Nyandarua	310,712,475	280,193,680	590,906,155
31	Tranzoia	295,555,769	280,193,680	575,749,449
32	Vihiga	295,555,769	280,193,680	575,749,449
33	Bomet	265,242,356	280,193,680	545,436,036
34	Taita	265,242,356	273,006,202	538,248,558
35	Embu	250,085,650	273,006,202	523,091,852
36	Kwale	250,085,650	273,006,202	523,091,852
37	Marsabit	250,085,650	273,006,202	523,091,852
38	Nyamira	250,085,650	273,006,202	523,091,852
39	West Pokot	242,507,297	273,006,202	515,513,499
40	Elgeyo/Marakwet	227,350,591	273,006,202	500,356,793
41	Kirinyanga	219,772,238	273,006,202	492,778,440
42	Samburu	197,037,179	258,631,246	455,668,425
43	Tana River	197,037,179	258,631,246	455,668,425
44	Tharaka Nithi	181,880,473	258,631,246	440,511,719
45	Lalikipia	174,302,120	258,631,246	432,933,366
46	Isiolo	151,557,061	244,256,289	395,813,350
47	Lamu	151,557,061	244,256,289	395,813,350
	Total	16,876,992,217	13,355,977,396	30,232,969,613

[The following text is extremely faint and largely illegible. It appears to be a list of references or a series of footnotes, with some words like "Journal", "1998", and "1999" being discernible.]

NOTES

COUNTY ASSEMBLY	
1) MCAs (Salaries, Allowances & Gratuity)	8,415,623,302
2) Speaker (Salaries, Allowances & Gratuity)	339,385,167
3) Deputy Speaker (Salaries, Allowances & Gratuity)	245,086,426
4) County Assembly-Administrative staff (Salaries & Pension)	1,659,681,036
5) Other County Assembly staff (Salaries & Pension)	922,140,000
6) Duty Allowances (Pension & Gratuity)	471,324,720
7) Mileage for MCAs.	1,140,693,888
8) O & M	3,683,057,678
Total	16,876,992,217

COUNTY EXECUTIVE	
1) County Executive (Salaries, Allowances & Gratuity)	1,287,284,400
2) Chief Officers (Salaries, Allowances & Pension)	946,468,800
3) County Secretary (Salaries & Pension)	138,321,000
4) Governors & D. Governors (Salaries, Allowances & Gratuity)	845,114,050
5) CPSE (Salaries & Pension)	974,688,670
6) PFM Staff (Salaries & Pension)	6,133,556,064
7) O & M	3,030,544,412
Total	13,355,977,396



REPUBLIC OF KENYA



OFFICE OF THE CONTROLLER OF BUDGET

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Email: cob@cob.go.ke

P.O. Box 35616 - 00100, Nairobi
Tel. 2211068, 0716274922, 318939

19th March, 2015

REF: OCOB/ SEN/002/1 (19)

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

Dear Mr. Nyegenye,

**RE: STATEMENT BY THE OFFICE OF THE CONTROLLER OF
BUDGET ON FINANCIAL ALLOCATION AND EXCHEQUER
RELEASES TO COUNTIES FOR THE FINANCIAL YEAR
2014/2015**

We acknowledge receipt of your letter Ref. *SEN/FCB/GEN-CORR/VOL.2/049/2015* dated 12th March, 2015 on the above subject matter

Enclosed, herewith please find the Office of the Controller of Budget's statement in response to the issues raised.

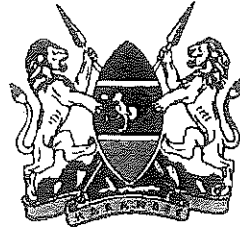
Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Masha'.

Stephen Masha
For: CONTROLLER OF BUDGET

Encls (1)





OFFICE OF THE CONTROLLER OF BUDGET

**FINANCIAL ALLOCATION AND EXCHEQUER RELEASES
TO COUNTIES FOR THE FINANCIAL YEAR 2014/2015**

**STATEMENT BY THE CONTROLLER OF BUDGET TO THE CHAIRMAN,
SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND
BUDGET**

March 19, 2015



STATEMENT BY THE OFFICE OF CONTROLLER OF BUDGET ON FINANCIAL ALLOCATION AND EXCHEQUER RELEASES TO COUNTIES FOR THE FINANCIAL YEAR 2014/2015

Please refer to your letter Ref: SEN/FCB/Gen-Corr/Vol 2/049/2015 of 12th march 2015 on the above subject matter.

The Office of the Controller of Budget (OCOB) is an independent office established by Article 228 of the Constitution. It became operational upon the appointment of the Controller of Budget on 27th August, 2011.

a) As an independent office, COB has the following mandate: -

1. To oversee implementation of the budgets of the National and County Governments. (Article 228 (4)).
2. To approve and authorize withdrawals from Public Funds; Equalization Fund (Article 204 (9)), Consolidated Fund (Article 206 (4)), and Revenue Fund (Article 207 (3)) if satisfied that the same is in accordance with the law (Article 228 (5)).
3. Financial advice to parliament where a Cabinet Secretary has stopped transfer of Funds to a State Organ or Public Entity and there is need to renew the decision to stop further transfer of Funds (Article 225 (2)).
4. Quarterly reporting to the Legislature on implementation of budgets of National and County Governments (Article 228 (6)).
5. Annual reporting to Executive and Legislature (Article 254 (1)).
6. Adhoc reporting to Executive and Legislature (Article 254 (2)).
7. Publishing and publicizing reports (Article 254 (3)).
8. To conduct investigations on its own motion or on a complaint made by a member of the public (Article 252 (1)(a)).
9. To conduct Alternative Dispute Resolution Mechanisms to resolve disputes (Article 252 (1)(b)).

In carrying out its mandate, the OCOB is independent and not subject to direction or control by any person or authority which is clearly buttressed in Article 249 (2) (b) of the Constitution. The OCOB collaborates with other state agencies, including the National Treasury to ensure timely release of funds to government entities.

b) A number of County Assemblies are grinding to a halt in operations

The Office of the Controller of Budget approves withdrawal of funds by counties based on requests by the County Treasuries, for both the County Executive and County Assembly. The approvals are based on the following legal framework; (i) approved Appropriations Acts of county government, (ii) provisions of the Public Financial Management Act, 2012, (iii) the County Allocation of Revenue Act, 2014, and other relevant Acts of parliament. Table 1 shows the summary of exchequer releases to county government as at 17th march 2015 for the financial year 2014/2015.

e) Controller of Budget has refused to finance County Assemblies unless they comply with the said CRA ceilings (Petition No. 368/14)

Petition No. 368/14 was instituted by Speakers of all 47 County Assemblies on 24th July 2014 challenging the issuance of a circular by CRA on the maximum budgetary allocations to the County Assembly and the County Executive for the FY 2014/15. The parties to the petition included the Commission on Revenue Allocation (CRA), the Controller of Budget, Council of Governors and the Attorney General.

The Petitioners sought the following orders *inter alia*:

- a. *A declaration that the circulars breached the Petitioners' constitutional rights and were therefore null and void.*
- b. *An order of certiorari to quash the circular issued by CRA*
- c. *An order of mandamus to compel OCOB to approve withdrawal of fund as provided for in every County Governments budget.*

In order to facilitate the carrying out of essential services and activities by county governments the parties entered into a consent agreement on 25th July 2014 that was subsequently varied on 1st August 2014 before the trial Judge.

A look at consent order No. 2 of 1st August 2014 reads:

“That funds be immediately released to the counties as per section 134 of the Public Finance Management Act in respect of County Budget (Estimates) submitted to the County Assemblies for the FY 2014/15, pending the hearing and determination of the petition herein”

Section 134 of the PFM Act, 2012 only applies in situations where a county has not enacted an Appropriations Act by 30th June. However some counties had enacted Appropriations Acts by 30th June, 2014. Therefore, there was need to vary the consent order No. 1 of 25th July, 2014. It is in this regard that the parties entered into consent order No. 2 dated 1st August, 2014, which brought those counties that had enacted their Appropriations Act into application of section 134 of the PFM Act. This allowed them to access up to 50 per cent of



their budget through to 31st December 2014. The two consent orders envisaged two categories of counties, those that had enacted and those that had not enacted their Appropriations Act as at 30th June, 2014.

For the counties that had not passed their Appropriations Act, Section 134 fully applied and the County Assemblies were required to pass a vote on account on budget estimates presented by their respective CEC Member – Finance on 30th April, 2014.

Further, Section 134 of the PFM Act, 2012 provides:

134. (1) Subject to subsection (2), if the County Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to by the beginning of the financial year, a County Assembly may authorize the withdrawal of money from the County Revenue Fund.

(2) Money withdrawn under subsection (1) –

(a) May be used only for the purpose of meeting expenditure necessary to carry on the services of the county government during the financial year concerned until such time as the relevant appropriation law is passed.

By our understanding, any requisition under Section 134 is for essential services only. Therefore, the COB released funds to counties in line with the consent orders until the judgment was delivered on 20th February, 2015 which, dismissed the petition and did not grant any of the prayers sought by the Petitioners.

Table 1 below shows Exchequer releases to the counties as of March 17, 2015.



TABLE 1: COUNTY SUMMARY OF EXCHEQUER ISSUES AS AT 17th March, 2015 - FY 2014/15

County Code	County Title	COUNTY EXECUTIVE (CE)			COUNTY ASSEMBLY (CA)			TOTAL (g=c+f)
		RECURRENT (a)	DEVELOPMENT (b)	TOTAL (c=a+b)	RECURRENT (d)	DEVELOPMENT (e)	TOTAL (f=d+e)	
301	Baringo	1,661,151,265	768,703,613	2,429,854,878	235,095,610	20,000,000	255,095,610	2,684,950,488
302	Bomet	1,021,653,665	1,345,966,997	2,367,620,662	161,248,243		161,248,243	2,528,868,905
303	Bungoma	2,494,440,950	1,921,491,728	4,415,932,678	307,618,119		307,618,119	4,723,550,797
304	Busia	1,556,369,399	945,000,000	2,501,369,399	381,630,601	5,000,000	386,630,601	2,888,000,000
305	Elgeyo/Mara kwet	1,246,912,986	681,525,927	1,928,438,913	191,847,967	20,125,000	211,972,967	2,140,411,880
306	Embu	1,194,056,877	309,294,070	1,503,350,947	135,499,122		135,499,122	1,638,850,069
307	Garissa	1,977,517,190	2,060,644,899	4,038,162,089	180,644,230		180,644,230	4,218,806,319
308	Homa Bay	1,537,663,142	736,792,079	2,274,455,221	399,094,121	22,207,921	421,302,042	2,695,757,263
309	Isiolo	873,174,529	500,000,297	1,373,174,826	82,783,531		82,783,531	1,455,958,357
310	Kajiado	1,551,191,921	505,453,483	2,056,645,404	207,700,000	34,546,517	242,246,517	2,298,891,921
311	Kakamega	3,104,396,233	2,441,028,182	5,545,424,415	346,562,506	52,908,000	399,470,506	5,944,894,921
312	Kenicho	1,492,877,148	587,161,137	2,080,038,285	363,691,297		363,691,297	2,443,729,582
313	Kiambu	3,797,048,877	763,507,543	4,560,556,420	484,483,188	1,556,159	486,039,347	5,036,595,767
314	Kilifi	2,219,041,144	1,958,384,899	4,177,426,043	221,008,307	162,139,008	383,147,315	4,560,573,358
315	Kirinyaga	1,440,035,431	457,806,400	1,897,841,831	207,942,879	5,141,000	213,083,879	2,110,925,710
316	Kisii	2,433,070,800	1,287,508,347	3,720,578,947	422,405,789		422,405,789	4,142,984,736



317	Kisumu	2,854,275,319	901,365,894	3,755,641,213	217,267,882	-	217,267,882	3,972,909,095
318	Kitui	2,182,220,615	1,634,738,005	3,816,958,620	387,174,813	-	387,174,813	4,204,133,433
319	Kwale	1,440,600,188	1,366,065,595	2,806,665,783	248,073,458	95,875,000	343,948,458	3,150,614,241
320	Laikipia	1,272,956,809	616,520,141	1,889,476,950	92,151,060	33,000,000	125,151,060	2,014,628,010
321	Lamu	158,821,339	58,000,000	216,821,339	108,343,925	26,750,000	135,093,925	351,915,264
322	Machakos	2,772,725,498	1,062,933,457	3,835,658,955	308,755,472	15,750,000	324,505,472	4,160,164,427
323	Makueni	2,104,175,060	806,928,129	2,911,103,189	262,192,585	35,887,492	298,080,077	3,209,183,266
324	Mandera	1,816,792,241	2,442,117,716	4,258,909,958	181,880,473	126,000,000	307,880,473	4,566,790,431
325	Marsabit	1,380,872,393	1,668,795,500	3,049,667,893	194,677,607	8,100,000	202,777,607	3,252,445,500
326	Meru	2,101,788,388	1,567,296,797	3,669,085,185	305,494,815	-	305,494,815	3,974,580,001
327	Migori	1,489,564,214	47,000,000	1,536,564,214	152,465,786	-	152,465,786	1,689,030,000
328	Mombasa	3,186,684,958	325,000,000	3,511,684,958	183,736,575	-	183,736,575	3,695,421,533
329	Murang'a	165,000,000	250,000,000	415,000,000	35,000,000	10,000,000	45,000,000	460,000,000
330	Nairobi City	6,675,489,763	190,000,000	6,865,489,763	840,050,238	-	840,050,238	7,705,540,001
331	Nakuru	3,224,617,671	7,943,251	3,232,560,922	296,642,448	50,000,000	346,642,448	3,579,203,370
332	Nandi	1,385,767,500	1,481,398,415	1,597,055,503	211,288,003	36,057,417	247,345,420	1,844,400,923
333	Narok	2,589,794,000	1,313,500,000	3,903,294,000	36,830,000	105,000,000	141,830,000	4,045,124,000
334	Nyamira	1,414,316,803	813,476,984	2,227,793,787	179,045,000	-	179,045,000	2,406,838,787
335	Nyandarua	256,603,233	355,050,422	98,447,189	256,603,233	-	256,603,233	355,050,422



336	Nyeri	2,106,105,988	667,024,480	2,773,130,468	245,770,945	30,000,000	275,770,945	3,048,901,413
337	Samburu	1,045,168,938	775,770,010	1,820,938,948	128,778,590	17,600,000	146,378,590	1,967,317,538
338	Siaya	1,377,738,472	1,058,000,000	2,435,738,472	382,311,528	47,000,000	429,311,528	2,865,050,000
339	Taita/Taveta	1,307,172,723	641,333,148	1,948,505,871	175,425,983	22,858,844	198,284,827	2,146,790,698
340	Tana River	905,000,000	1,281,780,000	2,186,780,000	159,000,000	45,800,000	204,800,000	2,391,580,000
341	Tharaka - Nithi	950,909,613	590,507,503	1,541,417,116	105,756,300	10,000,000	115,756,300	1,657,173,416
342	Trans Nzoia	1,238,125,839	1,103,267,223	2,341,393,062	170,626,261	60,648,000	231,274,261	2,572,667,323
343	Turkana	1,687,071,389	4,356,678,490	6,043,749,879	300,000,000		300,000,000	6,343,749,879
344	Uasin Gishu	1,979,108,761	1,644,262,408	3,623,371,169	227,092,456	12,500,000	239,592,456	3,862,963,625
345	Vihiga	1,367,729,771	817,856,000	2,185,585,771	157,154,229	153,260,000	310,414,229	2,496,000,000
346	Wajir	1,643,674,193	1,868,034,366	3,511,708,559	224,705,508		224,705,508	3,736,414,067
347	West Pokot	1,352,334,545	957,800,000	2,310,134,545	212,174,467	33,000,000	245,174,467	2,555,309,012
	TOTAL	85,033,807,582	49,930,713,535	133,181,204,239	11,315,725,149	1,298,710,358	12,614,435,507	145,795,639,746

- d) The High Court has ruled on the matter and though dismissing the petition by County Assemblies, the Court has determined that the ceilings by CRA are not binding and can only be binding if the said ceilings are approved by Parliament.**

After analyzing the judgment, it is our considered view that the Court held that by virtue of Article 216 of the Constitution and Section 10 of the Commission on Revenue Allocation Act, 2012, CRA was well within its mandate to issue the circular on budgetary ceilings to the County Governments.

The Court further held that recommendations by CRA, although not binding on the Counties should be given due consideration in the enactment of the budget. The Court emphasized that recommendations by CRA to the Senate should be given due consideration and reasons given for any deviation. It therefore follows that deviation by the County Assembly on the recommendations of CRA would also require such County Assembly to give reasons.

Moreover, the Court held that the recommendations by CRA became binding on the Counties once they are approved by the Senate in the County Allocation of Revenue Act, 2014. Consequently, the Court declared that since the Petitioners did not challenge the validity of CARA, 2014, it would not delve into the validity of CARA, 2014.

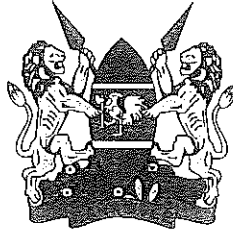
It is therefore our considered opinion, that since the Court did not grant any of the Petitioners prayers and held that the CRA was well within the law and its mandate in issuance of the circular, it follows that the Senate having approved the recommendations of CRA in CARA, 2014, the ceilings are binding on the Counties and should therefore be adhered to.

- e) Controller of Budget is sending County Assemblies to negotiated with CRA to vary ceilings even though the court has placed the mandate on the parliament**

Pursuant to Article 216 (1)(a), the Commission on Revenue Allocation is mandated to make recommendations concerning the basis for the equitable sharing of revenue raised by the National Government between the national and county governments. Article 216 (5) requires CRA to submit its recommendations to the Senate, National Assembly, the National Executive, County Assemblies and County Executives. Therefore, the County Governments should consult CRA and not OCOB on amendments to the budget ceilings for County Assemblies and the County Executives.



REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

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MEMORANDUM ON THE CEILINGS IMPOSED ON COUNTY ASSEMBLIES BY THE COMMISSION ON REVENUE ALLOCATION (CRA)

From: The Speakers of the County Assemblies
To: The Standing Committee on Finance, Commerce and Budget
Date: 24th February, 2015
Subject: **The Position of the 47 County Assemblies on the Budget Ceilings Imposed by the Commission on Revenue Allocation for FY 2014/15**

At the outset, the County Assemblies do not object to the desirability of budget ceilings and the need to use public money in a prudent manner as provided for in Article 201 (d) the Constitution and the section 107 of the Public Finance Management Act.

The County Fiscal Strategy Paper, which in accordance with the Public Finance management Act, 2012, and which is submitted by the Executive by 28th of February every year contains ceilings for every sector of the County Government, the County Assembly included.

The County Assemblies have always held that ceilings ought to be a product of honest negotiations between the sectors (Assembly included) and county treasury.

In April 2014, way after those negotiations were settled and sector ceilings pegged in the

County Fiscal Strategy Paper, the Commission on Revenue Allocation (CRA) gave recommendations on ceilings on recurrent expenditure for County Assembly and County Executive (refer to Annexure 1).

These ceilings were arbitrary figures developed between CRA and the Council of Governors without consultation with the Assemblies.

In July 2014, after enactment of Appropriation Acts by County Assemblies, the Controller of Budget (CoB) declined to recognize the County Appropriation Acts, and refused to authorize withdrawals (release funds to County Assemblies) unless they complied with the ceilings, whereas the County Assemblies Forum (CAF) held that CRA recommendations were not binding. The legality of the County Appropriation Acts has not been challenged in any court in accordance with Article 165 of The Constitution.

It is on the basis of this that CAF went to court in July 2014, to seek an interpretation of the same and sought prayers to quash the circulars and term them unconstitutional and void. Whereas the court dismissed the petition to quash the circulars and termed them lawful, the court made the following determination:

1. That the circulars on ceiling were issued in the advisory capacity granted to the Commission under article 216 of the Constitution and are therefore lawful.
2. Circulars cannot be quashed due to (i) above.
3. However, ceilings in the circulars are **not binding** on County Assemblies since they are not **directives** and can only become binding if adopted by Parliament through the instrument of the County Allocation of Revenue Act, given that Parliament has the final say on the matter.
4. County budgets are subject to national legislation, being Division of Revenue Act and County Allocation of Revenue Act.
5. Differences in regarding fiscal and budgetary processes should be settled in terms of Article 189(4) of the constitution of Kenya, by way of alternative dispute resolution mechanism and this includes reference of the dispute to parliament which has the final say in budgetary processes in Kenya.

Although Parliament amended the PFMA, and inserted a provision allowing CRA to recommend ceilings to the Senate, as it stands today, the Senate in its own wisdom has not approved the said recommended ceilings.

In spite of this, the CoB is still declining to approve withdrawals unless the counties revised their Appropriation Acts to comply with the CRA ceilings. Further, the CoB is asking Assemblies to go to CRA and get clearance letters of compliance with the said ceilings before funds are released to them.

FACTS ABOUT THE CEILINGS

The impression provided by CRA that a number of County Assemblies had willingly complied with the budget ceiling and a number are negotiating is misleading. All county Assemblies who complied, had done so under duress, those that complied did so after their members and employees went without salaries for months after their county treasuries declined to release funds to the County Assemblies.

Whereas CRA purports to have recommended reasonable ceilings, a cursory look at their recommendations for FY 2014/2015 against recommendations for FY 2015/2016 proves otherwise. The figures are irreconcilable.

Below is a list of some counties;

EXPENDITURE CEILINGS FOR COUNTY ASSEMBLIES AS SET BY THE COMMISSION ON REVENUE ALLOCATION			
NO.	NAME OF THE COUNTY ASSEMBLY	CRA RECOMENDED CEILINGS IN KSH	
		2014/2015	2015/2016
1	Lamu	151,567,061	305,000,000
2	Tharaka Nithi	181,880,473	329,000,000
3	Tana River	197,037,179	376,000,000
4	Samburu	197,037,179	358,000,000
5	Kirinyaga	219,772,238	392,000,000
6	Elgeyo Marakwet	227,350,591	399,000,000
7	West Pokot	242,507,297	417,000,000
8	Nyamira	250,085,650	415,000,000
9	Marsabit	250,085,650	483,000,000

Whereas CRA purports to set recurrent ceilings on Executive, they have not done so. CRA purports the presence of a unit/department called "new structure" in the County Executive and left out the bigger chunk of the rest of the executive departments to have unregulated recurrent expenditure. In fact, whatever is intended to be saved from ceilings in County Assemblies is not being channeled to development but to the already bloated recurrent expenditure of the executive.

With the knowledge of the budget making process, whether in the estimates, or the Appropriation Acts, budgets are made in respect of votes (read departments). There is no

vote called "new structures", and neither is there a department known as "new structures" in the Executive arms of all the 47 County Governments.

The purported budget ceilings on County Executive are therefore not enforceable, and CRA made these provisions as public relation gimmick.

Below is a table with a comparison of the actual recurrent expenditure in the Appropriation Act, 2014, against the purported CRA ceilings for a number of County executives;

COMPARISON OF ACTUAL RECURRENT EXPENDITURES AND CRA PROPOSED EXPENDITURE CEILINGS FOR COUNTY EXECUTIVES		
COUNTY	PURPOTED CEILINGS BY CRA	ACTUAL RECURRENT EXPENDITURE FOR EXECUTIVE IN THE APPROPRIATION ACT, 2014
1 Nairobi	962,000,000	17,845,258,242
2 Tana River	378,000,000	1,314,056,105
3 Kwale	396,000,000	3,801,304,919
4 Nakuru	455,000,000	5,595,712,384
5 Lamu	351,000,000	946,104,077
6 Wajir	408,000,000	2,792,201,855

COUNTY ASSEMBLIES' RECOMMENDATIONS:

1. That the Senate confirms that the CRA recommended ceiling are not binding until approved by the Senate in accordance to PFM(Amendment)Act;
2. That the Senate confirms that they have not approved the ceilings recommended by the CRA;
3. That CoB be compelled to release funds to the County Assemblies without reference to the said ceilings;
4. That funds be released in accordance with the Appropriation Acts, since the County Appropriation Acts are not in conflict with the Constitution, the PFMA, The Division of Revenue Act, 2014, and The County Allocation of Revenue Act, 2014;

5. That there is a need to interrogate the formula used by CRA in arriving at the ceiling since there is wide discrepancies between the proposed ceiling for FY 2014/15 and those for FY 2015/16. We note that the CRA recommended ceilings for the county executive are not wholesome and therefore not enforceable.

We attach the following annexures for your reference;

Annex 1: CRA Recommended recurrent budget ceilings for County Assembly and County Executive for 2014/15 Kshs. 30,232 Million

Annex 2: CRA draft recommended recurrent budget ceilings, for the County government for 2015/16 (Kshs. Millions)

Annex 3: Brief of the Court judgement on High Court Petition 368 of 2014(Speakers of the forty seven County Assemblies Vs CRA &2 others)

Annex 4: The Court judgement on High Court Petition 368 of 2014(Speakers of the forty seven County Assemblies Vs CRA &2 others)

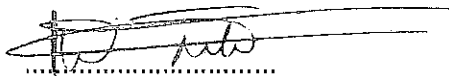
Annex 5: The Nairobi County Appropriation Act, 2014

Annex 6: The Tanariver County Appropriation Act, 2014

Annex 7: The Makueni County Appropriation Act, 2014

Annex 8: The Kwale County Appropriation Bill, 2014

Annex 9: The Nakuru County Appropriation Act, 2014



Hon. (Dr.) Nuh Nassir

Chairman

County Assemblies Forum

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 368 OF 2014

IN THE MATTER OF AN APPLICATION BY THE SPEAKERS OF THE 47
COUNTY ASSEMBLIES OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF ARTICLES 1,2,3,6,10,19,20,22,23(1) & (3), 27(1),
27(4), 27, 43, 47, 73, 159, 160, 165, 174, 175, 176, 179(1), 185, 186, 189,
190, 194, 201, 205, 207, 209, 210, 216, 224, 225, 228, 259 & 260 OF THE
CONSTITUTION OF KENYA

AND

IN THE MATTER OF RULES 23 AND 24 OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE
AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF COUNTY GOVERNMENTS ACT NO.17 OF 2012

AND

IN THE MATTER OF SECTIONS 117, 125, 129, 131, 133 AND 134 OF THE
PUBLIC FINANCE MANAGEMENT ACT, CAP 412C, LAWS OF KENYA

BY

THE SPEAKER, NAKURU COUNTY ASSEMBLY1ST PETITIONER
THE SPEAKER, MOMBASA COUNTY ASSEMBLY2ND PETITIONER
THE SPEAKER, KWALE COUNTY ASSEMBLY3RD PETITIONER
THE SPEAKER, KILIFI COUNTY ASSEMBLY4TH PETITIONER
THE SPEAKER, TANA RIVER COUNTY ASSEMBLY5TH PETITIONER
THE SPEAKER, LAMU COUNTY ASSEMBLY6TH PETITIONER

THE SPEAKER, TAITA-TAVETA COUNTY ASSEMBLY	7 TH PETITIONER
THE SPEAKER, GARISSA COUNTY ASSEMBLY	8 TH PETITIONER
THE SPEAKER, WAJIR COUNTY ASSEMBLY	9 TH PETITIONER
THE SPEAKER, MANDERA COUNTY ASSEMBLY	10 TH PETITIONER
THE SPEAKER, MARSABIT COUNTY ASSEMBLY	11 TH PETITIONER
THE SPEAKER, ISIOLO COUNTY ASSEMBLY	12 TH PETITIONER
THE SPEAKER, MERU COUNTY ASSEMBLY	13 TH PETITIONER
THE SPEAKER, THARAKA NITHI COUNTY ASSEMBLY	14 TH PETITIONER
THE SPEAKER, EMBU COUNTY ASSEMBLY	15 TH PETITIONER
THE SPEAKER, KITUI COUNTY ASSEMBLY	16 TH PETITIONER
THE SPEAKER, MACHAKOS COUNTY ASSEMBLY	17 TH PETITIONER
THE SPEAKER, MAKUENI COUNTY ASSEMBLY	18 TH PETITIONER
THE SPEAKER, NYANDARUA COUNTY ASSEMBLY	19 TH PETITIONER
THE SPEAKER, NYERI COUNTY ASSEMBLY	20 TH PETITIONER
THE SPEAKER, KIRINYAGA COUNTY ASSEMBLY	21 ST PETITIONER
THE SPEAKER, MURANG'A COUNTY ASSEMBLY	22 ND PETITIONER
THE SPEAKER, KIAMBU COUNTY ASSEMBLY	23 RD PETITIONER
THE SPEAKER, TURKANA COUNTY ASSEMBLY	24 TH PETITIONER
THE SPEAKER, WEST POKOT COUNTY ASSEMBLY	25 TH PETITIONER
THE SPEAKER, SAMBURU COUNTY ASSEMBLY	26 TH PETITIONER
THE SPEAKER, TRANS NZOIA COUNTY ASSEMBLY	27 TH PETITIONER
THE SPEAKER, UASIN GISHU COUNTY ASSEMBLY	28 TH PETITIONER
THE SPEAKER, ELGEYO MARAKWET COUNTY ASSEMBLY	29 TH PETITIONER
THE SPEAKER, NANDI COUNTY ASSEMBLY	30 TH PETITIONER
THE SPEAKER, BARINGO COUNTY ASSEMBLY	31 ST PETITIONER
THE SPEAKER, LAIKIPIA COUNTY ASSEMBLY	32 ND PETITIONER
THE SPEAKER, NAROK COUNTY ASSEMBLY	33 RD PETITIONER
THE SPEAKER, KERICHO COUNTY ASSEMBLY	34 TH PETITIONER
THE SPEAKER, KAJIADO COUNTY ASSEMBLY	35 TH PETITIONER
THE SPEAKER, BOMET COUNTY ASSEMBLY	36 TH PETITIONER
THE SPEAKER, KAKAMEGA COUNTY ASSEMBLY	37 TH PETITIONER
THE SPEAKER, VIHIGA COUNTY ASSEMBLY	38 TH PETITIONER
THE SPEAKER, BUNGOMA COUNTY ASSEMBLY	39 TH PETITIONER
THE SPEAKER, BUSIA COUNTY ASSEMBLY	40 TH PETITIONER
THE SPEAKER, SIAYA COUNTY ASSEMBLY	41 ST PETITIONER

THE SPEAKER, KISUMU COUNTY ASSEMBLY42ND PETITIONER
 THE SPEAKER, HOMABAY COUNTY ASSEMBLY43RD PETITIONER
 THE SPEAKER, MIGORI COUNTY ASSEMBLY44TH PETITIONER
 THE SPEAKER, KISII COUNTY ASSEMBLY45TH PETITIONER
 THE SPEAKER, NYAMIRA COUNTY ASSEMBLY46TH PETITIONER
 THE SPEAKER, NAIROBI COUNTY ASSEMBLY47TH PETITIONER

AND

COMMISSION ON REVENUE ALLOCATION.....1ST RESPONDENT
 CONTROLLER OF BUDGET.....2ND RESPONDENT
 THE ATTORNEY GENERAL.....3RD RESPONDENT
 COUNCIL OF GOVERNORS.....INTERESTED PARTY

JUDGMENT

Introduction

1. This Petition concerns the budgetary and related processes in County Governments. All the Petitioners are State Organs established under the provisions of Article 178(1) of the Constitution with their mandate set out under Article 178(2) of the Constitution and include *inter-alia* to preside over the sittings of their respective County Assemblies. They have brought this Petition pursuant to the provisions of Articles 1,2,3,6,10,19,20,22,23(1) & (3), 27(1), 27(4), 27, 43, 47, 73, 159, 160, 165, 174, 175, 176, 179(1), 185, 186, 189, 190, 194, 201, 205, 207, 209, 210, 216, 224, 225, 228, 259 & 260 of the Constitution of Kenya and Rules 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and Sections 117, 125, 129, 131, 133 and 134 of the Public Finance Management Act, Cap.412C, Laws of Kenya on their

own behalf and on behalf of all the Forty Seven Counties created under Article 6(1) of the Constitution as read together with the First Schedule to the Constitution.

2. On or about 22nd April, 2014 vide a circular Reference No. CRA/CGM/Vol.III/99 addressed to all County Governments, the 1st Respondent recommended a ceiling on allocation for all County Assemblies and all County Executives in County budgets for the financial year 2014/2015. Thereafter, the 2nd Respondent on diverse dates vide various circulars addressed to the County Governments allegedly reinforced the 1st Respondent's circular aforesaid and demanded that the County Assemblies' budget allocations should comply with the aforesaid Circular failure to which the 2nd Respondent would not approve withdrawals from the County Revenue Fund or any other fund by County Governments. That at the date of the impugned Circulars, none of the County Governments had passed its County Finance Act for the financial year 2014/2015 to enable implementation of its budget. The Petitioners therefore therefore claim that the 2nd Respondent acted *ultra vires* its mandate in issuing the said circulars to the Counties.
3. The Petitioners have also filed this Petition claiming a violation of Articles 73, 185, 189, 207, 216 and 228 of the Constitution by the Respondents and are further seeking to enforce their fundamental rights and freedoms under Articles 27 and 47 of the Constitution. In

their Petition dated 23rd July 2014, they therefore seek the following orders;

- (a) A declaration that the Circulars that the 1st and 2nd Respondents, jointly and severally, and either by themselves, assigns or any person claiming through them, issued to any County Government in the Republic of Kenya on various dates between the 22nd day of April, 2014 to the 16th day of July 2014, or any other date, to prescribe and or put mandatory ceilings to financial allocation to any County Assembly in a County Budget for the Financial year 2014/2015 breached the Petitioners' constitutional rights under Articles 27(1), 27(4), 27(5), 43 and 47(1) of the Constitution of Kenya, and were null and void for all intents and purposes.*
- (b) Judicial Review order of Certiorari to remove into this Honourable Court and quash the Circulars that the 1st and 2nd Respondents, jointly and severally, and either by themselves, assigns or any person claiming through them, issued to any County Government in the Republic of Kenya on various dates between the 22nd day of April, 2014 to the 16th day of July 2014, or any other date, to prescribe and or put mandatory ceilings to financial allocations to any County Assembly in a County Budget for the Financial Year 2014/2015.*
- (c) Judicial Review orders of Mandamus to remove into this Honourable Court and compel the 2nd Respondent to oversee the implementation of the budgets of County Governments in Kenya for the financial year 2014/2015 in terms of Article 228(4) of the Constitution of Kenya once County Governments pass their respective budgets for the Financial Year 2014/2015.*
- (d) Judicial Review orders of Mandamus to remove into this Honourable Court and compel the Respondents, jointly*

and severally, and either by themselves, assigns or any person claiming through them, to approve and disburse Funds as provided for in every County Government's budgetary allocations as set out in the County's Budgets estimates of Revenue and Expenditure for the Financial year 2014/2015, County's appropriation Acts for the Financial year 2014/2015 and or County's Finance Acts for the Financial year 2014/2015.

- (e) Costs of and incidental to this Petition and;*
- (f) Any other order that this Honourable Court deems fit and just to grant in the circumstances."*

The Petitioners' case

4. Prof. Ojienda, Senior Counsel, presented the Petitioners' case and the gist of their case was that the impugned Circulars were issued without authority and are in breach of the legislative authority of County Assemblies under the provisions of Articles 185(1) and (2) of the Constitution. That in issuing the said Circulars the 1st and 2nd Respondents also violated Article 189 (1) of the Constitution as they failed to consult the County Assemblies on the matter while the same fell within the latter's mandate. They further claimed that in doing so, the 1st and 2nd Respondents violated the fundamental right of County Assemblies under Article 47 of the Constitution to administrative action that is lawful, reasonable and procedurally fair.
5. It was also the Petitioners' contention that the impugned Circulars targeted only votes on account of County Assemblies and County

Executives for the financial year 2014/2015 by creating budgetary ceilings while the Respondents wholly protected budgets for the National Executive, the National Assembly, the Senate, the Judiciary and the twelve Commissions and Independent offices listed in Article 248 of the Constitution. As such they claimed that the impugned Circulars breached the fundamental rights of County Assemblies to the fundamental and inalienable right to equal protection and equal benefit of the law and not to be discriminated against, directly or indirectly, as provided for under Article 27(1), (4) and (5) of the Constitution.

6. On the latter issue, Prof Ojienda submitted that the term 'administrative action' refers to broad areas of governmental activity in which the repositories of power are exercised by statutory bodies, including the adoption of policy making and issuance of a specific direction and application of a general rule to a particular case in accordance with requirements of policy, expediency or administrative practice. He relied on the South African case of President of the Republic of South Africa and Others vs South African Rugby Football Union and Others (CCT 16/98) 2000 (1) SA 1 which discussed the normative content of the right to administrative action. It was therefore Prof. Ojienda's submission that since the 1st and 2nd Respondents purported to direct County Assemblies on how to legislate, their actions amounted to unlawful and unfair administrative action and thus violated Article 47 of the Constitution on three fronts;

7. Firstly, that the notices are *ultra vires* the mandate of the 1st and 2nd Respondents as set out under Articles 216(2) and 228 (4) of the Constitution.
8. Secondly, that the legislative authority of Counties vests in County Assemblies by dint of the provisions of Article 185(1) and(2) of the Constitution. In that regard, that County budgets are estimates of revenue and expenditure by Counties in a given financial year and constitute plans for management of County resources and that approval of County budgets is an express constitutional mandate of County Assemblies under the provisions of Article 184(4) (a). Further, that the Constitution has not apportioned the legislative authority of County Assemblies to approve County budgets as a shared mandate between County Assemblies and the 1st and 2nd Respondents nor does legislative authority to determine votes on accounts in County budgets vest in the 1st and 2nd Respondents, jointly or severally. It was therefore his submission that the Circulars are unconstitutional, unlawful and a manifest of anarchy in the operationalization of the principle of devolution.
9. Thirdly, that the impugned Circulars breach the procedures, time-lines and systems of checks and balances required to be observed by County Assemblies in enacting county budgets as is envisaged under Article 201 of the Constitution and under Sections 117, 125, 129 and 131 of the Public Finance Management Act 2012. He claimed in that regard

that in their budgetary processes, each of the County Assemblies must enact and pass certain instruments before passing its County budget.

10. In addition, that each of the instruments is progressive of and dependent on the previous instruments and it would be illegal to adopt a County Budget Estimates of Revenue and Expenditure that is not consistent with the financial outlook of a County as determined by each of the aforementioned instruments. That at the time of filing this Petition, all Counties had complied with the requirements of the Constitution and the Public Finance Management Act and had enacted County budgets for the financial year 2014/2015 and had adopted their respective County Fiscal Strategy Papers, approved their County Budget Estimates of Revenue and Expenditure by the 30th June 2014 and enacted their Appropriations Acts for the financial year 2014/2015. It was therefore Prof. Ojienda's contention that for the Counties to comply with the Circulars as issued, they had to restart the entire process of reviewing and adopting the Fiscal Strategy Paper, Budget Estimates of Revenue and Expenditure, Appropriations Bills and Acts as well as Finance Bills and Acts which actions would have gone beyond the mandatory statutory timelines set out under the Public Finance Management Act and hence create the risk of invalidating the consequent budgets that they would pass.

11. The Petitioners further contended that the mandate of the 1st Respondent is circumscribed in Article 216 of the Constitution that

mandate is to recommend on matters concerning financing and financial management by the Counties. That the Constitution does not allow it to decide on matters concerning financial management by the Counties and while relying on the Canadian cases of R vs Mac Farlane (1923) HCA 36 and Thomson vs Canada (Deputy Minister of Agriculture) (1992) 1 SCR 385, the Petitioners distinguished a "recommendation" from a "decision" and stated that a recommendation does not have any binding force and does not impose obligations, and therefore a "recommendation" connotes advice which the recipient may be at liberty to accept or disregard.

12. It was also the Petitioners' submission that the mandate of the 2nd Respondent under Article 228 of the Constitution is to oversee the implementation of the budgets of the National and County Governments through its authorization to withdraw from the Equalization, Consolidated and Revenue Funds and Prof. Ojienda further submitted that the said mandate in relation to Counties is limited to ascertaining that withdrawals from Revenue Funds under Article 207 of the Constitution is done only in accordance with the legislation enacted by County Assemblies or an Act of Parliament.
13. It was Prof. Ojienda's further submission that there is no law in Kenya that mandates any of the Respondents to approve budgets or determine votes on account of budgets and to do so would amount to usurpation of powers of the County Assemblies. While relying on the case of Okiya Omtatah Okoiti & 3 Others vs Attorney General & 5 Others Petition

No.227 of 2013 (2014) e KLR and the Supreme Court decision in Re Matter of the Interim Independent Electoral Commission, Constitutional Application No.2 of 2011 (2011) eKLR, he submitted that all constitutional organs are obliged to stick to their mandates as stipulated in the Constitution and do no more.

14. It was also the Petitioners' contention that the impugned Circulars violated their right not to be discriminated against as provided for under Article 27(1), (2) (4) and (5) because they only targeted votes on account of County Assemblies in County budgets for 2014/2015 and that they were therefore a premeditated and decided target. That while the 2nd Respondent oversees the implementation of the budgetary allocations to other State Organs such as the County Executive, National Executive, the National Assembly, the Senate, the Judiciary and the twelve Commissions and Independent Offices, they have not seen a single circular to these other organs faulting their votes for the financial year 2014/2015. In fact they claimed that the Respondents are all deliberately protecting those budgetary allocations in a conspiratorial manner.
15. It was the Petitioners' further contention that the Division of Revenue Act 2014 and the County Allocation of Revenue Act, 2014 contains block figures of revenue that goes to each County Government and that none of these statutes have any provision for the budgetary ceilings set by the 1st and 2nd Respondents vide the impugned circulars.

16. Further, that Parliament did not set a law sanctioning the impugned budgetary ceilings and the Senate in its oversight role dismissed the intended ceilings as is evident in the Hansard of 5th August 2014 and 2nd September 2014. It was therefore Prof. Ojienda's submission that the Respondent breached Article 73(1)(a) and (2) (b) and (c) of the Constitution which enjoins all State Officers, including the Respondents, to exercise public authority as a public trust in a manner that brings honour to the office and promotes public confidence in the integrity of the office. He claimed in that regard that the acts of the 1st and 2nd Respondents in colluding with, obtaining and acting upon directions of the National Executive and purporting to set votes on account of County Assemblies offends Article 249(2) of the Constitution.
17. Lastly, Prof Ojienda urged the Court to find that the impugned Circulars violate the Constitution and grant the Prayers in the Petition as set out above.

The 1st Respondent's case

18. The 1st Respondent, the Commission on Revenue Allocation, is a constitutional commission established under Article 215 of the Constitution and whose functions are set out under Article 216 of the Constitution, the Commission for Revenue Allocation Act and the Public Finance Management Act. Those functions include making recommendations concerning the basis for the equitable sharing of

revenue raised by the National Government between the National and County Governments and among County Governments. The Commission is also mandated to make recommendations on other matters concerning the financing of, and financial management by County Governments and fiscal prudence as required by the Constitution and national legislation.

19. It opposed the Petition through the affidavit of George Ooko, the Commission Secretary, sworn on 28th August 2014. In his Affidavit, he deponed that the 1st Respondent had not violated the Constitution in any way or as alleged by the Petitioners.
20. In the said Affidavit, Mr. Ooko stated that County Governments and Assemblies must comply with the law in their budgetary processes and any County budget that does not do so is illegal and unconstitutional.
21. He claimed that the 1st Respondent's Circular Reference No. CRA/CGM/VOL. III/99 dated 22nd April 2014 did not recommend new budget ceilings for County Assemblies and County Executives. It merely restated the advice that the 1st Respondent had rendered to Parliament as provided by Article 205 of the Constitution and Parliament, while taking into consideration the recommendation, made by the 1st Respondent as provided for by Article 218(1)(a) and (b) of the Constitution, enacted the Division of Revenue Act and the County Allocation of Revenue Bill. That therefore the budgetary ceilings are as a result of existing legislation and not the 1st Respondent's Circular as

alleged. Further, that the 1st Respondent did not seek to micro-manage the County budgetary process in issuing the Circular neither did it seek to legislate on allocations to the County Assemblies and County Executives as alleged by the Petitioners because the legislative role in the County budgetary process is purely a function of Parliament and County Assemblies and that the total amount of revenue available to each County Government was done by Parliament through the Division of Revenue Act pursuant to Article 218(1)(a) of the Constitution.

22. It was his further deposition that no County had submitted copies of the County development plans, debt management strategies or any other information to the 1st Respondent as required by law. Further, that no County Treasury had sought the recommendation of the 1st Respondent, as mandatorily required by Section 117(5) of the Public Finance Management Act, in preparing the County Fiscal Strategy Paper.
23. It was also his contention that there was no discrimination meted out to County Assemblies because budget ceilings are lawfully set by Parliament for all arms of Government, all levels of Government and independent bodies and Commissions and that all the other Government agencies had complied with their set budget ceilings except County Assemblies which deliberately made budgets over and above those ceilings.
24. Mr. Oraro, appearing for the 1st Respondent, also submitted that the provisions of the Division of Revenue Act, 2014 and the County

Allocation of Revenue Act, 2014 are in conformity with the Constitution and that Parliament sets ceilings for County budgets via these two legislations as required by Article 218 of the Constitution while under Article 216, thereof, the 1st Respondent is granted the constitutional mandate of ensuring that County budgets are in compliance with the Division of Revenue Act and the County Allocation of Revenue Act.

25. It was his position therefore that the impugned Circulars are constitutional and lawful and the 1st Respondent acted within its mandate under the Constitution and the Public Finance Management Act, and related legislation.

26. He went on to submit that the various County Appropriation Acts were unconstitutional as they are in conflict with the Division of Revenue Act, 2014 and County Allocation of Revenue Act, 2014 and as such, under Article 191(2) of the Constitution, these two legislations prevail over the County Appropriations Acts. He thus urged the Court to find the County Appropriations Acts as unconstitutional and on the reliefs sought by the Petitioners, Mr. Oraro submitted that they are moot as the recommendations made by the 1st Respondent to County Governments have already been taken into account by Parliament while passing the Division of Revenue Act, 2014 and County Allocation of Revenue Act, 2014.

27. Lastly, it was Mr. Oraro's submission that the Petitioners are State Organs as created under Article 178(1) of the Constitution and the Counties are also State Organs and further that the Petitioners in their official capacity and the forty seven Counties are not persons within the meaning of the Constitution and therefore they are incapable of enjoying/enforcing any right under the Bill of Rights. In that regard, he relied on the case of County Government of County Government Meru vs Ethics-and Anti-Corruption Commission (2014) e KLR where it was held that a County Government was not a person capable of enforcing fundamental rights and freedoms and for the above reasons, he urged the Court to find that the Petition lacked merit and ought to be dismissed in its entirety.

The 2nd Respondent's case

28. The 2nd Respondent, the Controller of Budget, is an office established under Article 228 of the Constitution and its mandate is to oversee the implementation of the budgets of the National and County Governments by authorizing withdrawals from public funds and also to bar any withdrawal from a public fund unless he is satisfied that the withdrawal is authorized by law.
29. It opposed the Petition through the Affidavit of Mr. Waweru Tuti, its Legal Officer, sworn on 12th September 2014. Mr. Arwa appeared for the 2nd Respondent and argued its case.

30. In his affidavit Mr. Waweru deponed that for any withdrawals to be authorized by law, the budgetary process as envisaged by the Constitution and the Public Finance Management Act, must be adhered to.
31. That the 2nd Respondent, before approving any withdrawal from the County Revenue Fund, interrogates the budgetary process to establish whether the requirements of the law have been met and that in the financial year 2013/2014, County Assemblies approved flawed budgets and thereafter their Appropriation Acts were based on the said flawed budgets and consequently, requests for withdrawals from the County Revenue Fund was not approved and the same were referred back to the County Assemblies for rectification and/or incorporation of details and or information that had been omitted thus resulting in the delay of withdrawals of any money from the Fund which in turn stalled the operations of County Governments. That to avoid similar situations, the 2nd Respondent advised County Assemblies to present their proposed budgets ahead of time for advise on what additional information ought to have been incorporated in them before presentation of the budget estimates to the 2nd Respondent. The 2nd Respondent upon being presented with the proposed budgets by each of the County Assemblies for comments prior to enactment of the Appropriation Act, wrote letters to the 47 Counties on diverse dates between 5th June 2014 and 16th June 2014 briefly indicating what requirements of law their budgets had to satisfy before any withdrawal from the County Revenue Fund would be allowed. That the County Assemblies disregarded the recommendations

and circulars sent to them and prepared budgets without due consideration to the recommendations made and therefore the Budgets presented to the 2nd Respondent were not prepared in line with the Programme Based Budget Approach as required by the Public Finance Management Act, and the Transition Authority Circular dated 12th, March 2014 which required all County Governments to implement Programme Based Budgets with effect from the financial year 2014/2015.

32. Further, that the Budget prioritization documents presented by each of the Petitioners were inconsistent with the devolved functions as stipulated under the Fourth Schedule to the Constitution and that the budgets presented did not show the allocation of development projects in the County. In particular, that the geographical distribution of the projects could not be ascertained by examining the particular budget estimates and that the budgets presented did not disclose the comparative data for the development expenditure of the prior year, thus limiting the ability to assess whether enough money had been allocated to complete those projects. Further, that the sub-items in the budget had no codes according to the Government Financial Statistics coding that provides that every item must have a code and lastly, that the Counties had allocated monies that exceeded the monies in the County Revenue Fund and the County Assemblies ignored the recommendations of the 2nd Respondent in the whole budget process.

33. Mr. Waweru thus concluded that there was need to observe the principles of Public Finance as enshrined in Article 201 of the Constitution and ensure prudent and responsible use of money and avoid wastage as was clear in the financial year 2013/2014 where members of County Assemblies made several foreign trips which were unnecessary and a waste of public funds. That the reason why the Petitioner's budgets were therefore not approved was because they had not satisfied the requirements of law in their enactment and that is why they could not be approved as submitted and not because they had exceeded the ceilings set by the 1st Respondent as contended by the Petitioners.

34. Mr. Arwa added that the Petitioners had not been discriminated against as alleged and that the ceilings were made based on an existing legal framework which had to be followed by all agencies including the Petitioners. He thus urged the Court to dismiss the Petition with costs.

The 3rd Respondent's case

35. The 3rd Respondent, the Attorney General, is established under the provisions of Article 156(1) of the Constitution with its mandate set out under Article 156(4)(b) of the Constitution including to represent the National Government in Court or in any other legal proceedings to which the National Government is a party.

36. The Attorney General opposed the Petition and Mr. Moimbo presented his case and while associating himself with the submissions of the 1st and 2nd Respondent, he added as follows;
37. That the generation of budgets at the National and County levels is a process that is strictly guided by both the Constitution and the Public Finance Management Act and as such, any budget based on budget estimates outside the provisions of the Constitution and Public Finance Management Act is unconstitutional and untenable in law.
38. On the issue of the alleged recommendations by the 1st Respondent, he submitted that under Sections 25(5)(a) and 117(5) of the Public Finance Management Act, the National Treasury and the County Treasuries are enjoined to seek and take into account the views of the 1st Respondent while preparing the Budget Policy Statement and the County Fiscal Strategy Paper. He thus submitted that the recommendations made by the 1st Respondent are binding on the Petitioners and that they have the force of law because Article 216(3)(a) of the Constitution removes the basis of such recommendations from the wisdom of the 1st Respondent and places it on the mandatory criteria of equity under Article 203 of the Constitution. That a finding by this Court that the recommendations made by the 1st Respondent are not binding would render the 1st Respondent functionally ineffective and would render Article 203(1) and 216(3) (a) inoperative and useless.

39. As regards the 2nd Respondent, Mr. Moimbo submitted that it can only oversee the implementation of budgets of the National and County Governments, by authorizing withdrawals from public funds under Articles 204, 206 and 207 and that under Article 228(5) such withdrawals can only be made within the law and it is within the mandate of 2nd Respondent to stop a withdrawal that is not legal.
40. Mr. Moimbo thus urged the Court to dismiss the Petition.

The Interested Party's Case

41. The Interested Party, the Council of Governors, opposed the Petition. Mr. Wanyama presented its case and his submissions were that County Assemblies were not persons capable of enjoying rights under the Bill of Rights. That while the provisions of Article 20(1) of the Constitution recognize both horizontal and vertical application of the Bill of Rights, the Constitution has not given State Organs, such as the Petitioners, the power to petition this Court over a violation enshrined in the Bill of Rights. He relied on the case of *Kenya Bus Service Ltd and Anor vs Minister for Transport and 2 Others (2012) eKLR* where it was held that state organs are not entitled to the protection of the Bill of Rights and cannot therefore claim a violation of fundamental rights and freedoms.
42. It was his further submission that the impugned Circulars are binding on the Petitioners and that under the provisions of Section 2 of the Interpretation and General Provisions Act (Cap 2) Laws of Kenya,

the Circular is a form of subsidiary legislation since the 1st Respondent was acting within its powers under Article 216 of the Constitution and Section 10(c) of the Commission on Revenue Allocation Act.

43. He submitted further that in any event, if there was conflict between County legislation and National legislation, National legislation prevails as provided for under Article 191(2) of the Constitution. That because the Commission on Revenue Allocation Act is also a National legislation that has donated powers to the 1st Respondent to make recommendations on how funds should be spent at the County Government, the recommendations made thereunder amount to subsidiary legislation and therefore prevails over County legislation. He claimed further that the fact that County Appropriation Bills as passed exceeded the ceilings imposed by the recommendations of the 1st Respondent shows that they are contrary to the law and in any event, under Article 191(2)(b) of the Constitution, the suspended County Assemblies budgets prejudice the National economic policy and as such are void.

44. He therefore urged the Court to find that the 1st and 2nd Respondent have not violated the Constitution in any way and have instead acted in accordance with the law by issuing the impugned Circulars to the Petitioners. He urged the Court to dismiss the Petition for the above reasons.

Determination

45. Having set out the Parties' submissions as above and looking at the pleadings and submissions before me, I am of the view that there are two main issues for determination in this Petition. Firstly, whether the impugned Circulars were issued in breach of the law and the legislative authority of County Assemblies. To answer that issue I must also consider the budgetary making process and the mandates of County Assemblies as well as that of the 1st Respondent and 2nd Respondent in the said budgetary making process. Secondly, whether the Petitioners' fundamental rights under Article 27 and 47 of the Constitution have been violated by the Respondents, jointly or severally. Lastly, I will consider what remedies are available to the Petitioners, if any.

Whether the impugned circulars were issued in breach of the law and the legislative authority of County Assemblies

46. As already stated, in order to determine the dispute before me, it is important to analyse and confirm the budget making process as outlined in the Constitution and in the Public Finance Management Act *vis-a-vis* the mandate of the County Assemblies as well as the 1st and 2nd Respondent in that process. If I understood Prof. Ojienda well, his submission was that the Constitution does not allow the 1st Respondent to decide on matters concerning financing and fiscal management by Counties and that its mandate is limited to making recommendations on the basis of equitable sharing of finances while that of the 2nd Respondent is to ascertain the lawfulness of withdrawals from

Revenue Funds created under Article 207 of the Constitution. It was therefore his submission that there is no known law presently that mandates any of the Respondents to approve budgets or determine votes on account of budgets of County Assemblies and to do so would amount to usurping the powers of the County Assemblies and therefore the ceilings recommended by the 1st Respondent through Reference No. CRA/CGM/Vol. III/99 are illegal.

47. It is important to state from the outset that the budgetary process in Kenya is undertaken both at the National Level and at the County level. At the National level, the process is managed by the National Treasury while at the County level it is managed by the County Treasury. That being so, the first principle in the budgetary process is to be found in Articles 201(b)(ii) and 202(1) of the Constitution which provide that revenue collected nationally shall be shared equitably between the National and County Governments. As to how and the manner in which that revenue is to be shared, Article 218 (1)(a) of the Constitution is important as it directs that at least two months before the end of each financial year, there shall be introduced into Parliament, a Division of Revenue Bill which shall divide revenue raised by the National Government among the two levels of Government.

48. The National budgetary process proper then starts with the preparation of a Budget Policy Statement by the National Treasury as is provided for in Section 25(1) of the Public Finance Management Act. Section

25(4)(c) of the same Act requires that the Budget Policy Statement must include the amount of indicative transfers of funds from the National Government to the County Governments. Section 25(5)(a) of the same Act enjoins the National Treasury in its preparation of the Budget Policy Statement to seek and take into account the views of the 1st Respondent, County Governments, Controller of Budget, the Parliamentary Service Commission, the Judicial Service Commission, the public and any other interested persons or groups. Section 25(7) of the Act then provides that Parliament, within fourteen days of submission to it of the Budget Policy Statement, shall table and discuss its recommendations and pass a resolution to adopt it with or without amendments. Thereafter, under the provision of Section 25(8) of the Act, the Cabinet Secretary for Finance shall take into account the resolutions passed by Parliament and finalize the budget for that financial year. Lastly, under Section 25(9) of the Act, the National Treasury shall publish and publicize the Budget Policy Statement not later than fifteen days after submission of the said Statement to Parliament.

49. Of importance in this Petition is that the National Treasury indeed prepared the 2014 Budget Policy Statement and presented the same to Parliament and that it was adopted by Parliament on 20th March 2014. In accordance with Article 218(1)(a) of the Constitution which directs that at least two months before the end of each financial year there shall be introduced in Parliament a Division of Revenue Bill which shall

divide revenue raised by the National Government among the National and County levels of Government, Parliament enacted the Division of Revenue Act, 2014 which was assented to by the President on 30th July, 2014 and which came into effect on 4th August 2014. Section 3 of that Act provides as follows;

"The object and purpose of this Act is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2014/2015 in accordance with Article 203(2) of the Constitution".

Further and in the above context, Article 218(1)(b) provides for the enactment of the County Allocation of Revenue Act which provides for the equitable allocation of revenue raised by the National Government among the 47 Counties. In that regard, the County Allocation of Revenue Act, 2014 in Section 3 states it objects as follows;

"(a) provide, pursuant to Article 218(1)(b) of the Constitution, for the allocation of the equitable share of revenue raised by the National Government among the County Governments in accordance with the resolution approved by Parliament under Article 217 of the Constitution for the financial year 2014/2015;

(b) provide, pursuant to Articles 187(2) and 201(2) of the Constitution, for conditional additional allocations for the financial year 2014/2015; and

(c) *facilitate the transfer of allocations made to the County Governments under this Act from the Consolidated Fund to the respective County Revenue Funds."*

50. The National Budgetary process effectively ends when transfers are made to the respective County Revenue Funds and before I start on the budgetary process at the County Level, I am aware that the Petitioners' case is pegged on the import to be attached to Circular Reference as CRA/CGM/VOL.III/99 issued by the 1st Respondent to all the Governors and County Executive Committee Members of Finance in all the 47 Counties. In that regard, it was Prof. Ojienda's submission that the said Circular is void on two fronts. Firstly, that it was issued without authority and in breach of the legislative authority of County Assemblies under the provisions of Articles 185(1) and (2) of the Constitution. Secondly, that in issuing and acting on the said Circular, the 1st Respondent violated Article 189 (1) of the Constitution as it failed to consult County Assemblies on a matter that fell within their mandate and would in effect affect them.

51. For avoidance of doubt that impugned Circular reads as follows;

"COMMISSION ON REVENUE ALLOCATION

Our Ref: CRA/CGM/VOL.III/99

22nd April, 2014

- All governors
- County Executive Committee members – Finance

RE: RECOMMENDED BUDGET CEILINGS FOR COUNTY ASSEMBLY AND COUNTY EXECUTIVE BASED ON RECOMMENDED BUDGET ON COSTS OF NEW COUNTY STRUCTURES OF KSHS.30,232 MILLION

Attached please find CRA recommended ceilings for County Assembly and County Executive with accompanying notes.

Please note that where budget exceeds the recommended ceilings, it would be at the expense of the costed devolved services which will consequently affect service delivery.

Yours sincerely,

SIGNED

George Ooko
COMMISSION SECRETARY

cc - Controller of Budget
- Clerk of the Senate
- Ag. CEO, Council Of Governors." (Emphasis added)

Three facts can be clearly discerned from a plain reading of the Circular. Firstly, it was issued by the 1st Respondent. Secondly, it was directed at Governors and County Executive Committee members in all the 47 Counties, and lastly, it recommended budget ceilings for County Assemblies and County Executives and in that regard a question arises whether the 1st Respondent had powers to issue the Circular and lastly, if so, whether the recommended ceilings were within the law.

52. The 1st Respondent is an Independent Commission established under Article 248(2) of the Constitution. Its functions are stipulated under Article 216(1) and (2) of the Constitution as follows;

"(1) The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the National Government-

(a) between the National and County Governments' and

(b) among the County Governments'.

(2) The Commission shall also make recommendations on other matters concerning the financing of, and financial management by, County Governments' as required by this Constitution and National legislation." (Emphasis added)

In addition to the above provisions, Section 10(1) of the Commission on Revenue Allocation Act, Cap. 5E provides as follows;

"(1) In addition to its principal function under Article 216(1) of the Constitution, the commission shall, in accordance with clause (2) of that Article -

(a) Make recommendations for consideration by Parliament prior to any Bill appropriating money out of the Equalization fund is passed in parliament.

(b) Upon request from the Senate, make recommendations on the basis for allocating

among the counties the share of National revenue that is annually allocated to the County levels of Government.

- (c) Submit recommendations to the Senate, National Assembly, National Executive, County Assembly and County executive on the proposals made for equitable distribution of revenue between the National and County Governments and amongst the County Governments taking into account the criteria set out in Article 203 of the Constitution, including recommendations on the amounts earmarked for specific purposes such as the constituency development fund, among others; and*
- (d) Perform such other functions as are provided for by the Constitution or any other written law.”
(Emphasis added)*

53. Looking at the above provisions and all of them read together, the 1st Respondent is the body charged with the responsibility of making recommendations *inter-alia* to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives on the basis upon which revenue would be shared equitably between the National and County Governments. It also recommends how the revenue allocated to the County Government level would be shared among the County Governments. It also makes recommendations on matters concerning the financing and financial management by the County Governments. None of the Parties disputed these facts but the point of disagreement is whether those recommendations are binding on all the organs to which they are made. Mr. Moimbo for example warned this Court against any interpretation that would mean that the

recommendations aforesaid are not binding. What is the law on the subject?

54. The Concise Oxford English Dictionary defines "recommend" as;

- "(i) put forward with approval as being suitable for a purpose or role*
- (ii) Advise as a course of action".*

Taken in its ordinary English meaning, it would therefore mean that 'recommendations' do not have a binding effect on the person or body to whom they are made. Recommendation are not the same as 'directives' or 'directions' which are certainly binding on those to whom they are addressed, - See Re Thomson (supra). However, in the context of the Petition before me and in order to interpret 'recommendations', the Constitution must be read as a whole in order to ascertain its aim and object so as to establish the aim of the drafters of the Constitution - See Kigula and Others vs The Attorney General (2005) AHGLR 197 (Ug CC 2005). Heed must therefore be paid to the language used and the context of the specific provision under consideration.

55. In that regard and further to what I have stated above, Article 217 of the Constitution states that;

- "(1) Once every five years, the Senate shall, by resolution,*

determine the basis for allocating among the Counties the share of National revenue that is annually allocated to the County level of Government.

- (2) In determining the basis of revenue sharing under clause (1), the Senate shall—*
 - (a) take the criteria in Article 203 (1) into account;*
 - (b) request and consider recommendations from the Commission on Revenue Allocation;*
 - (c) consult the County Governors, the Cabinet Secretary responsible for finance and any organisation of County Governments; and*
 - (d) invite the public, including professional bodies, to make submissions to it on the matter.*
- (3) Within ten days after the Senate adopts a resolution under clause (1), the Speaker of the Senate shall refer the resolution to the Speaker of the National Assembly.*
- (4) Within sixty days after the Senate's resolution is referred under clause (3), the National Assembly may consider the resolution, and vote to approve it, with or without amendments, or to reject it.*
- (5) If the National Assembly--*
 - (a) does not vote on the resolution within sixty days, the resolution shall be regarded as having been approved by the National Assembly without amendment; or*
 - (b) votes on the resolution, the resolution shall have been--*

- (i) amended only if at least two-thirds of the members of the Assembly vote in support of an amendment;
 - (ii) rejected only if at least two-thirds of the members of the Assembly vote against it, irrespective whether it has first been amended by the Assembly; or
 - (iii) approved, in any other case.
- (6) If the National Assembly approves an amended version of the resolution, or rejects the resolution, the Senate, at its option, may either--
- (a) adopt a new resolution under clause (1), in which case the provisions of this clause and clause (4) and (5) apply afresh; or
 - (b) request that the matter be referred to a joint committee of the two Houses of Parliament for mediation under Article 113, applied with the necessary modifications.
- (7) A resolution under this Article that is approved under clause (5) shall be binding until a subsequent resolution has been approved.
- (8) Despite clause (1), the Senate may, by resolution supported by at least two-thirds of its members, amend a resolution at any time after it has been approved.
- (9) Clauses (2) to (8), with the necessary modifications, apply to a resolution under clause (8)." (Emphasis added)

57. The bonding of nature of a resolution above is quite different, obviously, from a mere recommendation. Important is also Article 218 (2) of the Constitution which provides as follows;

"(1) ...

(2) *Each Bill required by clause (1) shall be accompanied by a memorandum setting out--*

(a) *an explanation of revenue allocation as proposed by the Bill;*

(b) *an evaluation of the Bill in relation to the criteria mentioned in Article 203 (1); and*

(c) *a summary of any significant deviation from the Commission on Revenue Allocation's recommendations, with an explanation for each such deviation.* (Emphasis added)

The import of the above provisions is that a recommendation made by the 1st Respondent to the Senate is not binding but for good order, reasons for a deviation must be given.

58. As to who the recommendations are generally made to, Article 218(5) proves as follows;

216 "(1) ...

(2) ...

(3) ...

(4) ...

(5) *The Commission shall submit its recommendations to the Senate, the National Assembly, the National*

Executive, County Assemblies and County Executives."

Reading Articles 216, 217 and 218 of the Constitution as well as Section 10(1) of the Commission on Revenue Allocation Act, Cap.5E, a number of facts can be distilled a viz;

- (i) The principle function of the 1st Respondent is to make recommendations to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives.
- (ii) By the very nature of recommendations, they are persuasive but not binding on the person or body to which they are directed.
- (iii) Its principal functions in Article 216(1) and (2) of the Constitution are to be supplemented by legislation and hence Section 10(1) of the Commission on Revenue Allocation Act, which has been reproduced elsewhere above.
- (iv) The impugned Circular if looked at in the context of Article 216(1) (2) and (5) of the Constitution and Section 10(1) aforesaid cannot be said to be unlawful or unconstitutional

as argued by the Petitioners because it was made well within the mandate of the 1st Respondent.

But that is not the end of the matter because it has been argued that the Circular has breached the legislative authority of the County Assemblies. How has that been done? The Petitioners have stated that the Circular had the effect of invalidating their County Fiscal Strategy Papers, County Budget Estimates of Revenue and Expenditure, Appropriation Bills and Finance Acts but I am at pains to understand that argument because while the circular was issued on 22nd April 2014, the law providing for budgetary ceilings, being Section 12 of the County Allocation of Revenue Act, 2014 came into force on 5th September 2014 while this Petition was filed on 23rd July 2014.

Section 12 aforesaid provides as follows;

"Section 107 of the Public Finance Management Act is amended by inserting the following new Subsection immediately after subsection (2) -

(2A) pursuant to Articles 201 and 216 of the Constitution and notwithstanding Subsection (2), the Commission on Revenue Allocation shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each County Government." (Emphasis mine)

Prof. Ojienda in the above context, submitted that neither the Division of Revenue Act, 2014 nor the County Allocation of Revenue Act, 2014 contained block figures of revenue that goes to each County

government as budgetary ceilings set by the 1st Respondent vide the impugned Circulars. I have again looked at the impugned Circular and the accompanying notes which provide for budget ceilings in block figures to each County. Where then is the dispute? Whether the Petitioners acted on the circular is a non-issue because in fact it was not binding on them or Parliament. That issue is moot because once I have found that the recommendations made are not binding, then it follows that any complaint by the Petitioners ought to be directed at the State Organs with the final say on the budgets i.e. Parliament. There is no argument before me that the County Allocation of Revenue Act, 2014 is unconstitutional or that Section 12 which introduced budgetary ceilings is unconstitutional. I have also not seen any argument that Section 107 of the Public Finance Management Act, Cap.142 is unconstitutional. That Section for avoidance of doubt proves as follows;

"(1) A County Treasury shall manage its public finances in accordance with the principles of fiscal responsibility set out in subsection (2) and shall not exceed the limits stated in the regulations.

(2) In managing the county Government's public finances, the County Treasury shall enforce the following fiscal responsibility principles-

(a) the county Government's recurrent expenditure shall not exceed the County Government's total revenue;

- (b) *over the medium term a minimum of thirty percent of the County Government's budget shall be allocated to the development expenditures;*
 - (c) *the County Government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the County Government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly;*
 - (d) *over the medium term, the Government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;*
 - (e) *the County debt shall be maintained at a sustainable level as approved by County Assembly.*
 - (f) *the fiscal risks shall be managed prudently; and*
 - (g) *a reasonable degree of predictability with respect to the level of tax rates and tax bases shall be maintained, taking into account any tax reforms that may be made in the future.*
- (3) *For the purposes of subsection (2) (d), short term borrowing shall be restricted to management of cash flows and shall not exceed five percent of the most recent audited County Government revenue.*
- (4) *Every County Government shall ensure that its level of debt at any particular time does not exceed a percentage of its annual revenue specified in respect of each financial year by a resolution of the County Assembly.*

(5) *The regulations may add to the list of fiscal responsibility principles set out in subsection (2)."*

Read together with Section 12 aforesaid, the above principles are crucial in the management of funds allocated to County Governments and I see no reason in the circumstances to delve into them in the circumstances of the Petition before me because there is no issue raised with regard to them.

Without Section 12 or Section 107 above being declared unlawful, I do not see the value of any case made out of a non-binding Circular while the law that came subsequent to it remains intact.

59. Notwithstanding my findings above, I also understood one of the Petitioners' complaints to be that the 1st Respondent issued the impugned Circular without having involved and consulted them. I shall now turn to consider this submission.

60. The 1st Respondent is an Independent Constitution Commission and as such under, Article 249(2), it is not subject to the direction or control of any person or authority. The Supreme Court in Re Matter of the Interim Independent Electoral Commission (supra) expressed itself in the following terms as regards independent commissions;

"While bearing in mind that the various commissions and independent offices are required to function free of subjection to "direction or control by any person or authority", we hold that this expression is to be accorded its ordinary and natural meaning; and it means that the Commissions and independent

offices, in carrying out their functions, are not to take orders or instructions from organs or persons outside their ambit. These Commissions or independent offices must, however, operate within the terms of the Constitution and the law; the "independence clause" does not accord them carte blanche to act or conduct themselves on whim; their independence is, by design, configured to the execution of their mandate, and performance of their functions as prescribed in the Constitution and the law."

The Court went further to state that;

For due operation in the matrix, "independence" does not mean "detachment", "isolation" or "disengagement" from other players in public governance. Indeed, for practical purposes, an independent commission will often find it necessary to co-ordinate and harmonise its activities with those of other institutions of Government, or other Commission will often find it necessary to co-ordinate and harmonize its activities with those of other institutions of Government, or other commissions, so as to maximize results, in the public interest. Constant consultation and co-ordination with other organs of Government, and with civil society as may be necessary, will ensure a seamless, and an efficient and effective rendering of service to the people in whose name the Constitution has instituted the safeguards in question.

It then concluded as follows;

The moral of this recognition is that commissions and independent offices are not to plead "independence" as an end in itself; for public-governance tasks are apt to be severely strained by possible "clashes of independences."

61. I am duly guided on the interpretation of the law as above and it is clear to me that the 1st Respondent ought to perform its functions as provided

for under the four corners of the Constitution and the law. Further, in meeting its objectives it is bound by the provisions of Article 249 (1) which are as follows,

- "(1) The objects of the commissions and the independent offices are to—*
- (a) protect the sovereignty of the people;*
 - (b) secure the observance by all State organs of democratic values and principles; and*
 - (c) promote constitutionalism".*

Some of the democratic values and principles which also bind the 1st Respondent are those stated at Article 10 of the Constitution are as follows;

- "(1) ...*
- (2) The National values and principles of governance include--*
- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*
 - (a) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;*
 - (c) good governance, integrity, transparency and accountability; and State and religion. National symbols and national days. National values and principles of governance.*

(d) sustainable development."

62. Further, under Article 216(3) of the Constitution;

"(3) In formulating recommendations, the Commission shall seek--

(b) to promote and give effect to the criteria mentioned in Article 203 (1);

(c) when appropriate, to define and enhance the revenue sources of the national and county governments; and

(c) to encourage fiscal responsibility."

63. In addition to the above, Section 10(2) of the Commission on Revenue Allocation Act provides that;

"In making recommendations under this Section, the Commission shall take into consideration such facts or information as may be given to it by a County Government".

64. Having rendered the law as I have done above, did the 1st Respondent seek any information from County Governments before making the recommendation for budgetary ceilings and was it obligated to do so? I do not think so and I say so because I have no evidence to the contrary. Section 10(2) above creates no obligation in the manner suggested by the Petitioner although the information required may be useful to the 1st Respondent. It is a matter wholly of discretion on its part.

65. I reiterate that the 1st Respondent was not bound by the Constitution and the Act to seek information and representations from the County Government before making its recommendations on budget ceilings. I say so well aware that the principles in Article 189 of the Constitution encourage consultation between the two levels of Government and I dare add that the same principles would apply to relations between the levels of Government and Independent Commissions and Offices. That Article provides as follows;

"(1) Government at either level shall—

- (a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;*
- (b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and*
- (c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.*

(2) Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

(3) *In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by mean of procedures provided under national legislation.*

(4) *National legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration."*

66. In addition to the above, I am aware of the provisions of Section 25 (5) of the Public Finance Management Act which provides that;

"(1) ...

(2) ...

(3) ...

(4) ...

(5) In preparing the Budget Policy Statement, the National Treasury shall seek and take into account the views of -

(a) the Commission on Revenue Allocation;

(b) County Governments;

(c) Controller of Budget;

(d) The Parliamentary Service Commission;

(e) The judicial Service Commission;

(f) The public; and

(g) Any other interested persons or groups;"

67. All the above provisions read together would point to the fact that in the entire budgetary process, the views of County Governments and

Assemblies are important and ought to be considered and taken seriously in making the Budget Policy Statement which would be used in preparing the National Annual Budget but I am not prepared to hold that it is a mandatory obligation to do so on the part of the 1st Respondent. I say so because while it is a good practice to consult and in terms set out in Article 189 above, failure to do so cannot amount to a violation of any law or the Constitution itself. The point is that out of respect for each other's roles and expertise, each organ should not off-handedly dismiss any suggestions or information obtained from the other but failure to do so cannot attract this Court's sanctions.

68. Having found as I have, I must now consider the other interrelated issue on whether the 1st and 2nd Respondents usurped the legislative mandate of the County Government in the County budgetary process. Prof. Ojienda strenuously submitted on this point and argued that the Circular is unconstitutional, unlawful and manifests anarchy because approval of County budgets is within the mandate of County Assemblies and it is not within the 1st and 2nd Respondents' mandate to determine particular votes on County Budgets.
69. In that regard, under the provisions of Section 104(1)(a)(b) of the Public Finance Management Act, it is the responsibility of the County Treasury to prepare the Annual Budget for a County and co-ordinate the preparation of Estimates of Revenue and Expenditure of a County Government. The procedure for the budgetary process under

Section 117 of the Public Finance Management Act therefore starts with the preparation of a County Fiscal Strategy Paper which is then submitted for approval by the County Assembly by 28th February of each financial year. In preparing the County Fiscal Strategy Paper, the County Treasury is obligated to specify the broad strategic priorities and policy goals that will guide the County Government in preparing its budget for the coming financial year. Thereafter, under Section 118 of the Act, the County Treasury prepares a County Budget Review and Outlook Paper in respect of the County for each financial year and submits the paper to the County Executive Committee by 30th September of that year. The County Executive Committee then is obligated to discuss that Outlook Paper and after approval it is laid before the County Assembly before it is published and publicised.

70. The County Government budget process therefore consists of the following stages as stipulated under Section 125(1) of the Public Finance Management Act;

“(1) ...

- (a) Integrated development planning process which shall include both long term and medium term planning;*
- (b) Planning and establishing financial and economic priorities for the County over the medium term;*
- (c) Making an overall estimation of the County Government's revenues and expenditures;*

- (d) *Adoption of County Fiscal Strategy Paper;*
 - (e) *Preparing budget estimates for the County Government and submitting estimates to the County Assembly;*
 - (f) *Approving of the estimates by the County Assembly;*
 - (g) *Enacting an appropriation law and any other laws required to implement the County Government's budget;*
 - (h) *Implementing the County Government's budget; and*
 - (i) *Accounting for, and evaluating, the County Government's budget revenues and expenditures.*
- (2) *The County Executive Committee member for Finance shall ensure that there is public participation in the budget process."*

71. As can be seen and above, one can only but agree with Prof. Ojienda for the Petitioners that it is within the mandate of the Treasury, County Executive and County Assembly to prepare and approve budgets for a County. However, that process cannot be read in isolation of other processes because I have already found that it is within the mandate of the 1st Respondent to recommend to the Senate, the National Assembly, the County Assembly and the County Government on equitable sharing of revenue between the two levels of Government and as between County Governments. By so recommending, the 1st Respondent would in essence be performing its obligations under Article 216 of the Constitution and I therefore reiterate that even if the 1st Respondent had recommended budgetary ceilings in the County Budgets for

2014/2015 financial year, that action does not violate the Constitution. I further reiterate that it is actually the core responsibility of the 1st Respondent to recommend the manner in which the National Revenue is to be shared between the two levels of Government and among the Counties and such recommendation may include prescribing ceilings. However it must do so in the framework and in accordance with the Constitution and the law as I have found elsewhere above.

72. Before I conclude on this issue, I recall that by Prof. Ojienda submitted that there are strict timelines and systems of checks and balances required to be observed by County Assemblies in enacting County budgets. In that regard, under the provisions of Sections 117, 125, 129 and 133 of the Public Finance Management Act, the following instruments must be passed during the budgetary process in each financial year;

(j) A County Fiscal Strategy Paper, which, pursuant to the provisions of Sections 117(1) and (6) of the Public Finance Management Act must be submitted to a County Assembly by the County Treasury by 28th February each year, and adopted by the County Assembly by 14th March each year. It is the County Fiscal Strategy Paper that presents the financial outlook of a County with respect to County Government revenues, expenditures and borrowing for the coming financial year and over the medium term;

- (ii) A County Budget Estimates of Revenue and Expenditure, which, pursuant to the provisions of Sections 125(2) (a), 129(6) and 131(1) of the Public Finance Management Act, must be presented to a County Assembly by the County Executive Committee Member for Finance by 30th April each year and approved by the County Assembly promptly and in any event before 30th June each year;
 - (iii) A County Appropriations Act which the County Assembly must consider and enact by 30th June each year; and
 - (iv) A County Finance Act, which pursuant to the provisions of Section 133 of the Public Finance Management Act, a County Assembly must consider and enact by 30th September each year.
73. In the above context, I note that the impugned Circular is dated 22nd April 2014. As can be seen from the provisions of Section 117 of the Public Finance Management Act, the County Fiscal Paper ought to be prepared by 28th of February in each financial year. I must therefore agree with Prof. Ojienda that for Counties to comply with the Circular as issued by the 1st Respondent, they had to restart the budgetary process with the preparation and adoption of the Fiscal paper. But to my mind the issue is moot considering that the Allocation of Revenue Act, 2014 is in operation and it is the one that creates the offending ceilings even if it is based on non-binding recommendations from the 1st Respondent. I

will say no more on the subject because that Act is not the subject of challenge in this Petition.

74. The last issue I will deal with on this question regards the submission made by the Petitioners that it is the constitutional duty of the County Assemblies to approve budgets for County Assemblies and as such the 2nd Respondent acted *ultra vires* its mandate by purporting to approve the said County Budgets.

75. In that regard, under Article 228(4) of the Constitution, the mandate of the 2nd Respondent is to oversee the implementation of the budgets of the National and County Governments by authorizing withdrawals from public funds under Articles 204, 206 and 207 of the Constitution. Under Article 228(5), the Controller of Budget shall not approve any withdrawal from a public fund unless that withdrawal is authorized by law.

76. If I understood Mr. Arwa properly, his submission was that the 2nd Respondent had failed to authorize withdrawals from the County Revenue Fund mainly because the County Assemblies had disregarded the recommendations made in the respective Circulars issued to them on diverse dates between 5th June 2014 and 16th June 2014. The question I must therefore answer is whether the 2nd Respondent acted *ultra vires* its mandate by so doing.

77. In that context, I recall Mr. Waweru, the Legal Officer for the 2nd Respondent stated in his Affidavit that in the financial year 2013/2014, the County Assemblies approved flawed budgets and thereafter their Appropriation Acts were rendered on rendered equally flawed and as such withdrawals from the Revenue Fund were not approved. That in order to avoid a similar situation for the financial year 2014/2015, the 2nd Respondent advised County Assemblies to present budget estimates to the 2nd Respondent for comments prior to the enactment of the Appropriation Acts and that the budget estimates were thereafter submitted and the Controller of Budget wrote letters on diverse dates between 5th June and 16th July 2014 advising the County Governments on what items their budgets ought to have included before their finalization and ultimately enactment of the Appropriation Acts; Was that a lawful action on the part of the 2nd Respondent? I think not.

78. I say so because the law on the subject is very clear. Section 102 of the Public Finance Management Act sets out the principles that County Governments must adhere to in respect of public finances. They are as follows;

“(1) Each County Government shall ensure adherence to—

- (a) the principles of public finance set out in Chapter Twelve of the*
- (b) the fiscal responsibility principles provided in section 107 under this Act;*
- (c) national values set out in the Constitution; and*

- (d) any other requirements of this Act.*
- (2) The County Executive Committee shall observe principles of collective responsibility in exercising their functions under this Act.*
- (3) In making decisions a county assembly shall take cognisance of Article 216(2) of the Constitution."*

79. As regards the responsibility of a County Treasury with respect to County public funds, Article 207(1) of the Constitution as well as Section 109 of the Public Finance Management Act establishes a County Revenue Fund for each County Government and the fund is to be administered by the County Treasury. Under Section 109(4) of that Act, the County Treasury shall arrange for the fund to be kept in the Central Bank or an account approved by the County Executive Committee member responsible for finance. Under Article 207(2)(3) as well as Section 109(6) of the Public Finance Management, the County Treasury shall obtain the approval of the Controller of Budget before withdrawing money from the County Revenue Fund under the authority of an Act of the County Assembly appropriating money for a public purpose, an Act of Parliament or county legislation that imposes a charge on that fund or in accordance with the provision of Section 134 and 135 of the Public Finance Management Act.

80. Prior to the above processes and as stated earlier, the budget process in a County starts with the preparation of the County Fiscal Strategy Paper by the County Treasury. Under Section 117 (2) of the Public

Finance Management Act, the County Treasury ought to align its County Fiscal Strategy Paper with the national objectives in the Budget Policy Statement. The County Treasury shall in that regard, include in its County Fiscal Strategy Paper the financial outlook with respect to county government revenues, expenditures and borrowing for the coming financial year and over the medium term. Under Section 117 (5) of that Act, in preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of the Commission on Revenue Allocation, the public, any interested persons or groups and any other forum that is established by legislation. Under Section 126 of that Act, in developing the County Fiscal Strategy paper, the County Treasury consults with and takes into account the recommendations of the 1st Respondent and not the 2nd Respondent. Similarly, in developing the County Development Plan, the County Treasury sends the approved copy by the County Assembly.

In addition, Section 131(1) of the Public Finance Management Act provides that;

"the County Assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year."

81. I have deliberately reproduced the above sections of the Public Finance Management Act to demonstrate that nowhere in the law is any role created for the 2nd Respondent and specifically for it to review budgets of County Governments before they are enacted. Fiscal reporting mechanisms are clear at the National level and so are they in the County level with the County Executive, County Treasury and County Assemblies each charged with the responsibility of ensuring accountability and transparency in utilization of County resources and specifically, the mandate of approving County Budgets is the responsibility of a County Assembly. I must therefore agree with the Petitioners that the 2nd Respondent obviously encroached on their mandate when it sought to get involved in their budgetary processes. I have read the affidavits of Mr. Waweru Tuti and Mr. George Ooko and whereas I note their concerns about the alleged untidy spending habits of County Governments and alleged claims of misuse of public funds as well as the need to ensure prudent utilization of public funds, good faith and meaningful intentions are worthless if those objects and designs are constitutionally and statutorily objectionable.
82. Before I conclude on this issue, I also recall the submission made by Mr. Oraro that the various County Appropriation Acts are invalid as they are in conflict with the Constitution and as such are not enforceable.

83. It is indeed true that under Article 191(2) of the Constitution, National legislation prevails over County legislation. However, in terms of the Petition before me, and as I have found elsewhere above, I have not seen any law authorizing the 2nd Respondent to undertake the function of approving County Budgets. Article 228 is very clear that the 2nd Respondent only oversees the implementation of budgets. In that regard, the importance of the Appropriation Act is obvious and cannot be understated. The argument made by the Respondents that the 2nd Respondent would only authorize withdrawals from the County Revenue if the law and the budgetary process as envisaged by the Constitution and the Public Finance Management Act, 2012 was adhered to is a matter of interpretation of the Constitution and Statute based on a specific set of contested facts. Who should ultimately determine alleged violations of the Constitution and the Public Finance Management Act? Who determines whether the County Appropriation Acts are in line with the Constitution and Public Finance Management Act.

84. The provisions of Article 165 of the Constitution are clear in that regard. For avoidance of doubt it states thus;

165(3)(1) ...

(a) ...

(b) ...

(2) ...

(3) *Subject to clause (5), the High Court shall have—*

(a) ...

(b) *jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;*

(c) ...

(d) *jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—*

(i) *the question whether any law is inconsistent with or in contravention of this Constitution;*

(ii) *the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;*

(e) ...”

The dispute before me does not concern itself with the legality or otherwise of the Counties Appropriation Acts but it regards the mandate of the 1st and 2nd Respondent in the budgetary process and in overseeing the implementation of County budgets. The allegation that Counties had not submitted copies of County developments plans, debt management strategies as required by the law was not proved and given my findings as above, that issue is moot. That being the case, this Court cannot enter into such a vague dispute. It would only intervene

had it been shown that the Appropriation Acts as enacted by the Counties violated the existing national legislation or that the Petitioners acted in contravention of the law, which is not the case before me.

85. In conclusion, the 2nd Respondent's role is limited to overseeing the implementation of budgets including withdrawals from public funds. But having said so, as will be seen shortly, in fact this issue was not one in which any specific order was sought against the 2nd Respondent.

Whether the fundamental rights and freedoms of the Petitioners were violated

86. I now turn to consider the last issue I set out to determine which is the alleged violation of the Petitioners' rights under Articles 27 and 47 of the Constitution. In this regard, Prof. Ojienda submitted that in issuing the impugned Circular, the 1st Respondent failed to consult the Petitioners thus violating their right to fair administrative action as provided for under Article 47 of the Constitution. He also claimed that the fact that the impugned Circular on budget ceilings targeted only votes on account for County Assemblies and County Executive for the financial year 2014/2015 and did not affect budgets of other State Organs such as the National Executive, National Assembly, Senate, Judiciary and the twelve Commissions and Independent offices, was discriminatory and therefore a violation of Article 27 of the Constitution.

87. The 2nd Respondent on the other hand argued that there was no discrimination as alleged because budget ceilings were set for all arms of Governments and independent bodies and that all these other Government agencies had complied with their budget ceilings requirements save the Petitioners. On his part, Mr. Oraro submitted therefore that the Petitioners are State Organs under Article 178(1) of the Constitution and as such they are not persons capable of enforcing any of the fundamental rights and freedoms under the Bill of Rights.
88. I will start by determining this preliminary issue and if I find that County Governments are not persons for purposes of enforcing fundamental rights and freedoms, the matter ends there. If not, I will proceed and determine the merits of the claims aforesaid.
89. It is not in doubt that the Petitioners have invoked the provisions of Article 22 of the Constitution to allegedly enforce their right to protection against discrimination and right to fair administrative action as provided for under the provisions of Article 27 and 47 of the Constitution respectively.
90. Article 20(2) of the Constitution is on the application of the Bill of Rights and it provides that;

“Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedoms”.

Under Article 260 of the Constitution a 'person' includes "a company, association or other body of persons whether incorporated or unincorporated".

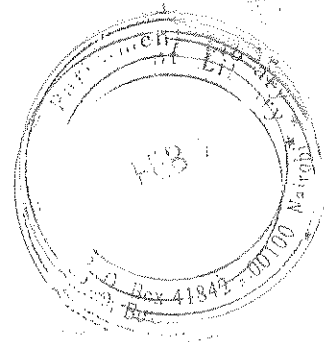
The issue therefore is whether County Assemblies are persons capable of having their fundamental rights protected and enforced. In answering that question, Majanja J in County Government of Meru vs Ethics and Anti-Corruption Commission (supra) stated as follows;

"A County Government is recognized as part of the State organs that exercise the sovereign power of the people under Articles 1(4), 6 and 176 of the Constitution. Under Article 260 of the Constitution, "State", when used as a noun, means the collectivity of offices, organs and other entities comprising the Government of the Republic under this Constitution" while the term person, "includes a company, association or other body of persons whether incorporated or unincorporated." Under Article 21 of the Constitution, the obligations, regarding the implementation of fundamental rights and freedoms are cast on the on the State and every State organ. Article 22 of the Constitution, which has been invoked by the Petitioner, grants every "persons" the right to Institute Court proceedings claiming that a right or fundamental freedom in the bill of Rights has been denied, violated or infringes or is threatened."

The learned judge continued thus;

"The provisions I have cited above show that there is a clear distinction between a person and a County Government which is a State organ vis-à-vis the rights and obligations under the Bill of Rights. I am doubtful, that the County Government qua County government can lodge a claim under Article 22 of the Constitution against another State organ to enforce fundamental rights and freedoms as the County Governments is not a person for purposes of the Constitution ad more particularly the Bill of Rights. I therefore find and hold that the Petitioner cannot agitate a claim for violation of fundamental rights and freedoms against the Commission. I therefore decline to grant prayer (b) of the Amended Petition."

91. I am in agreement with the learned judge and I adopt his reasoning in the instant Petition. I do so because the Petitioners are not private individuals but officers serving in a public office as defined in Article 260 of the Constitution. The Respondents are also officers and offices in the same public office and it is inconceivable how one can violate the other's rights in the context of the Bill of rights. In any event, in the circumstances of the Petition before me, any differences regarding the fiscal and budgetary processes between affected State Organs should not be such as to attract this Court's intervention under the Bill of Rights. Those differences are to be settled in the manner envisaged by Article 189(4) of the Constitution and not by litigation predicated on the Bill of Rights. In addition, the dispute at hand concerns the powers



REPUBLIC OF KENYA

Budget Statement

For the

Fiscal Year 2015/2016

(1st July – 30th June)

by

Mr. HENRY K. ROTICH

Cabinet Secretary for The National Treasury

June 11, 2015



STATEMENT DELIVERED TO THE NATIONAL ASSEMBLY ON 11TH JUNE, 2015
BY MR. HENRY K. ROTICH, CABINET SECRETARY FOR THE NATIONAL
TREASURY, REPUBLIC OF KENYA, WHEN HIGHLIGHTING THE BUDGET
POLICY AND REVENUE RAISING MEASURES FOR FISCAL YEAR 2015/16

1ST JULY, 2015 TO 30TH JUNE, 2016

1. INTRODUCTION

1.1 Overview

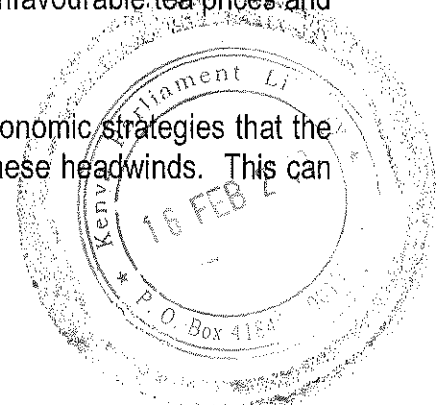
1. **Mr. Speaker**, it is once again my honour to present to this August House the policy highlights of the third Budget of President Uhuru Kenyatta's Administration for the fiscal year 2015/16, in accordance with section 40 of the Public Finance Management Act, 2012 and Standing Order No. 241 of the National Assembly.

2. **Mr. Speaker**, before I proceed, I wish to take this early opportunity to express my sincere appreciation to the Budget and Appropriation Committee of the National Assembly under the wise and very able leadership of Hon Mutava Musyimi, and other Departmental Committees of Parliament for the constructive engagement with my team and for steering the review of the 2015/16 Budget Estimates.

3. In the same vein, **Mr. Speaker**, allow me also to register my utmost appreciation to all Kenyans who responded to my call for "Budget Submission" with very insightful suggestions on how to move our country forward. I would also like to thank all the Hon Members who actively participated in various Departmental Committee meetings to review the budget estimates and finally, **Mr. Speaker**, my gratitude goes to the entire staff at the National Treasury who have worked many hours, including on weekends, under the able leadership of the Principal Secretary, Dr. Kamau Thugge, to put together the budget documents.

4. Today, **Mr. Speaker**, I am addressing Kenyans to inform them of the Government's plan to strengthen our economy further, following the gains we have made so far. Of course, we would have done much better were it not for the myriad of challenges we have encountered; ranging from terrorist events in Nairobi, Lamu, Mandera and recently in Garissa. We have also had to deal with drought, low tourism, unfavourable tea prices and a weak global economy.

5. But **Mr. Speaker**, I want to say to Kenyans that the economic strategies that the Government is currently pursuing are helping us to deal with these headwinds. This can



be demonstrated by the fact that our economy continues to be among the fastest growing in the region while preserving macroeconomic stability.

6. So, today, **Mr. Speaker**, we are taking further steps to consolidate these gains within a framework of prudent management of public resources. That is why in this budget we are continuing to allocate resources to areas such as infrastructure, agriculture, security, health, education, social protection and youth empowerment, which will help boost growth and create jobs.

7. **Mr. Speaker**, the resilience of the economy and creation of about 800,000 jobs last year is by no means an accident. We have significantly improved the business environment; rolled out the biggest infrastructure in Kenya's history (the Standard Gauge Railway (SGR)); completed key programmes in the roads and energy sectors; and brought down the cost of living – Kenyans today are paying less for their electricity and fuel.

8. **Mr. Speaker**, the Jubilee Government's economic agenda is working and things are getting better. The World has expressed growing confidence in Kenya's economic future and Kenyans' too share that optimism.

9. Therefore, **Mr. Speaker**, this Budget is the extension of our existing solid economic plan to take Kenya to the next level. We plan to continue to implement our plan to complete the new rail in the shortest time possible, complete existing roads projects, build new roads under a new approach known as Annuity, modernize security apparatus to make Kenya safe and secure, support our farmers to protect their incomes, invest in the future by unleashing the potential of Kenyan's and support devolution for effective delivery services. This way we will grow our economy, create jobs and reduce poverty.

10. **Mr. Speaker**, in framing this budget, we have taken into account developments both at the global and local fronts. The world economy is projected to grow by 3.5 percent and 3.8 percent in 2015 and 2016, respectively, up from 3.4 percent in 2014, buoyed by stronger growth in advanced economies mainly as a result of the lower oil prices. However, growth in emerging and developing countries remains subdued on account of weaker growth in some major oil exporters because of lower oil prices and diminished macroeconomic space.

11. In Sub Saharan Africa, **Mr. Speaker**, growth is projected to slow down to 4.5 percent in 2015, from 5.0 percent in 2014 largely due to lacklustre economic performance of Nigeria and South Africa. However, in 2016, the economy of the Sub Saharan region is expected to recover to 5.2 percent, due to the impact of lower oil prices and investment in infrastructure.

12. **Mr. Speaker**, on the domestic front, growth and employment prospects remain favourable. We have continued to implement prudent fiscal and monetary policies which

have resulted in low inflation, steadily declining interest rates, and a broadly stable exchange rate and a sustainable public debt position. Reflecting these efforts, **Mr. Speaker**, the economy expanded by 5.3 percent in 2014 supported by strong performance in most sectors of the economy which offset the contraction in the tourism sector. The economy, is expected to expand further by between 6.5 – 7.0 percent in 2015 and to maintain the same pace over the medium term, bolstered by lower oil prices, higher public and private investment, increased consumer confidence and higher total factor productivity reflecting continued implementation of structural reforms and increased investment in health and education.

13. In order to anchor our reform agenda and mitigate against shocks that could derail our development agenda, we have a precautionary Stand-by Arrangement and a Stand-by Credit arrangement with the IMF for an amount of SDR 488.52 million or US\$ 688.3 million. We intend to draw on the facility only in the event of an exogenous domestic or external shock.

14. **Mr. Speaker**, our economy remains strong and its momentum is gaining pace. We have invested heavily in improving the business environment, improving security, enhancing the quality of transport infrastructure and access to affordable energy, reducing dependence on rain fed agriculture, improving the quality of health care and educational systems, and facilitating devolution. As a result, private sector activity is more dynamic and we are attracting more FDI flows. These efforts have contributed to the higher growth experienced in recent years.

15. We nevertheless, **Mr. Speaker**, recognize that challenges remain – challenges of high incidence of poverty and unemployment, frequent droughts and other weather related shocks, low agricultural and industrial productivity, insecurity in some parts of the country and fiscal inefficiencies and corruption.

16. **Mr. Speaker**, going forward, we must all arise and summon our collective will and commit to tackling these challenges so as to unlock the full potential of our economy and achieve prosperity for all Kenyans. Through this budget, therefore, **Mr. Speaker**, we are continuing to focus on implementing the six thematic areas critical to not only addressing the challenges I have just mentioned, but also driving our economy up the value chain to become a regional manufacturing hub on its way to achieving upper middle income status. Accordingly, **Mr. Speaker**, the FY 2015/16 budget will:

- **First**, prioritise addressing the security challenge which is critical to creating a friendly business environment for our private sector. This will be complimented by continued macroeconomic stability and continued efforts to reduce the cost of doing business so as to unleash the efficiency gains necessary for achieving prosperity for all;

- **Second**, we are committing more resources towards infrastructure development and adopting innovative ways to hasten delivery of better roads and other infrastructure necessary for reducing the cost of business and promoting competitiveness and the productivity of our economy;
- **Third**, we are putting in place measures to drive agricultural and industrial transformation so as to build resilience in our economy, ensure food security and lower food prices, increase quality and diversification of exports, accelerate inclusive growth, create jobs and reduce poverty;
- **Fourth**, we are also opening up opportunities to tap the latent talents and entrepreneurial capabilities of our youth, women and persons with disability so as to enable them actively participate in our economic transformation agenda;
- **Fifth**, we will continue to scale up resources and underpin reforms to enhance the quality of our education and health care systems with a view to building a healthy and productive human resource base that we need for driving economic growth while at the same time ensuring adequate social safety net for our vulnerable communities; and
- **Sixth, Mr. Speaker**, with devolution now taking root, the National Government commits through this budget to work very closely with the county governments and to facilitate them to build the capacity to better deliver services and development at the grassroots level.

17. **Mr. Speaker**, with this background, the rest of my speech will elaborate various measures we are introducing under each of the six strategic areas. Thereafter, I will share the fiscal outcomes for fiscal year 2014/15 and the fiscal forecasts for 2015/16 as well as outline the tax and other policy measures we are proposing to support growth of private sector and employment creation.

2. IMPROVING THE BUSINESS ENVIRONMENT

2.1 Addressing Insecurity Concerns for Business Expansion

18. **Mr. Speaker**, tackling insecurity decisively remains the top priority of the Government's strategy to sustain the growth momentum of the economy while creating jobs and reducing poverty on a sustainable basis. **Mr. Speaker**, without security for our Citizens, achieving our growth and development objectives will remain a mirage. **Mr. Speaker**, the recent terrorist attack in Garissa University College is a reminder of the kind of ruthless enemy that we face as a nation. These terrorist activities continue to undermine the

investment climate in the country and have contributed to the loss of jobs and declining activity in our tourism industry. To counter these security challenges, the Government is committed to significantly increase resources to the security sector for purchase of the necessary equipment to effectively address the terrorism menace.

19. **Mr. Speaker**, we have committed substantial resources to this sector over the last two years including: Increasing the number of police vehicles by 2,400 – more than has ever been provided since independence; Equipping our men and women in uniform to control insecurity and better deal with criminals; and recruiting over 15,000 additional security personnel to help secure our country and combat terrorism and crime. We are implementing these measures so as to safeguard the lives of our people while improving the business climate.

20. **Mr. Speaker**, to further underscore the importance the Government attaches to strengthening our National Security and to provide the best counter terrorism capabilities possible, in the FY 2015/16, I have proposed further allocations to the security organs of KSh 223.9 billion, which is KSh 27.1 billion higher than last year. Out of this amount, I propose to allocate KSh 112.5 billion to Defence and NIS and KSh 102.4 billion to the State Department of Interior.

21. These monies will be used to build on the security measures we have put in place in the last two financial years. In particular, to enhance the capacity of our security forces to combat crime, I am proposing to allocate the following resources:

- KSh 7.7 billion for lease financing of Police/Prisons motor vehicles –This will bring the total number of Police vehicles under the leasing programme to 3,200 since the time it was started two years ago;
- KSh 15.0 billion for military modernization;
- KSh 10.0 billion Police Security Modernization;
- KSh 1.7 billion for Police Medical Insurance Scheme;
- KSh 1.3 billion for Police/APs Houses; and
- KSh 6.4 billion for AMISOM/Peace Keeping Missions.

22. **Mr. Speaker**, I have also allocated Ksh 1.4 billion to address poaching of our game animals in the national game parks and reserves. In addition **Mr. Speaker**, we also intend to complete shortly, the rolling out of a security surveillance system and command and control system in Nairobi and Mombasa that will enable us monitor, identify and track criminals. Moreover, we are rolling out our border protection programme aimed at controlling the flow of persons in the porous Kenya-Somalia border and also in our ports of entry. The enhanced allocations to these areas demonstrates, without doubt, our unwavering commitment to secure the lives and property of Kenyans.

23. **Mr. Speaker**, with this kind of investment, the response to terrorism attacks will be swift and uncompromising. These investments are essential for our Nation and it must work!

2.2 Maintaining Macroeconomic Stability for Growth and Employment

24. **Mr. Speaker**, even as we prioritize the security sector, maintaining macroeconomic stability remains paramount in sustaining long term investment, economic growth and development. It is for this very reason, that we aim to strike an appropriate balance between support for rapid and inclusive economic growth and continued fiscal discipline.

25. **Mr. Speaker**, the Kenya Shilling exchange rate, and indeed most currencies in the world, have recently been under pressure against the US dollar, largely due to the strengthening dollar in the global currency market as a result of strengthened US economy and the anticipation of a tightening of monetary policy by the U.S. Federal Reserve Bank. To avoid further pressures, which in part reflect, speculative behavior, the Central Bank of Kenya has tightened monetary policy by raising the Central Bank Rate to 10.0 percent from 8.5 percent. **Mr. Speaker**, this action combined with the significant level of foreign exchange reserves at the Central Bank which are in excess of US\$ 7.0 billion, and our potential access to additional resources from the IMF should stabilize the shilling exchange rate against the U.S. dollar.

26. To ensure debt sustainability, we will endeavor to contain the overall fiscal deficit as well as put emphasis on efficiency and effectiveness in public spending while improving revenue performance. Specifically, fiscal policy will target revenue collection of 21.8 percent of GDP over the medium term and containing the growth of total expenditure. In addition, the policy aims at shifting more public resources from recurrent to capital investment so as to promote strong, sustainable and inclusive growth.

27. **Mr. Speaker**, we are also reforming the tax and revenue systems to enhance revenue yields, promote compliance and facilitate private sector growth and development. To this end, I will be outlining several tax measures in the later part of my statement.

2.3 Structural Reforms to Facilitate Business and Employment Growth

Improving Good Governance

28. **Mr. Speaker**, on governance, we will strengthen the institutions mandated to fight corruption by enhancing their capacity to fight the vice and by facilitating the development and implementation of a comprehensive program on corruption prevention and asset recovery. This should help spur efficiency, increase productivity and reduce the cost of doing business.

29. **Mr. Speaker**, we know very well corruption remains a challenge that continues to bedevil the nation by undermining the Government's development agenda. To confront this challenge, His Excellency The President demonstrated his resolve to deal firmly with corruption through his state of the nation address in April 2015. In addition, the President has launched a new Code of Governance for State Corporations called "Mwongozo" which is expected to address governance and management challenges in our Parastatals. To strengthen the governance institutions, I have allocated Ksh 2.6 billion to the Ethics and Anti-Corruption Commission (EACC) and Ksh 2.2 billion to the Department of Public Prosecutions (DPP) to enable them speed up investigations and prosecutions.

30. In addition, **Mr. Speaker**, we now require all MDAs to use the eProcurement module of the IFMIS so as to safeguard loss of public finances through corruption. Further, **Mr. Speaker**, beginning July 1, 2015 we shall be fully operationalizing the Kenya National Electronic Single Window System for use by all importers and exporters and other related stakeholders. This will enhance transparency, accountability, governance and competitiveness while at the same time improving revenue collection. This will further seal loop holes through which revenues to Government are misappropriated.

Efficiency and Effectiveness in Public Service Delivery

31. **Mr. Speaker**, an effective, efficient and accountable public service is essential to sustaining our developmental agenda and to moving our country towards upper Middle Income status. In this regard, **Mr. Speaker**, we are building on the on-going public finance management reforms to further strengthen PFM oversight, entrench efficiency in expenditure, ensure effective delivery of programs, reform the tax system and enhance revenue efforts, and promote good corporate governance in the state corporations.

32. **Mr. Speaker**, we can achieve a lot more with the resources we generate if only every ministry and departmental agency applies budgetary allocations prudently. Therefore, to assure value for money; **first**, we will roll out to all MDAs the eProcurement module, fully inbuilt with an active price reference to ensure Government does not procure any supplies above the market prices; **secondly**, we shall shortly publish ICT standards for all Government ICT consumables and enter into a negotiated framework agreement with established local dealers or assemblers at a discount; **third**, we will expand leasing to all MDAs in respect of depreciating assets and equipment; and **fourth**, only projects that have been appraised and found to be viable and whose cost is within reasonable margins of similar projects in the private sector shall commence implementation.

33. **Mr. Speaker**, as I stated in my last Budget Highlights, we are moving all payments to Government onto the digital platform. The objective of the Government Digital Program is to ensure that all payments to government are made electronically so as to significantly reduce administrative costs, minimize leakages and expand access to payment points. This has enabled Kenyans to pay for Government services wherever they are and using

payments channels of their choice, thus saving them costs associated with transport and queuing time.

34. To date, **Mr. Speaker**, over 400,000 Kenyans have registered on the eCitizen payment platform, www.eCitizen.go.ke, and with over 8,000 transactions so far, revenue collection is averaging about KSh 10 million daily. Going forward, **Mr. Speaker**, we have programmed to digitize at least 100 inbound payment service transactions by end of 2015 in order to hasten service delivery, reduce transaction cost and safeguard revenue. Priority areas include; payments for business registration, land transaction services, motor vehicle and additional services under the registration of persons, including, birth and death certificates.

35. **Mr. Speaker**, we are also moving Government services closer to Kenyans through two key initiatives: **first** the state of the art One-Stop-Shop Investment centre; and second, One-Stop-Shop Service centres, popularly known as Huduma Centres. These centres are now making it easier for investors to set up businesses and citizens to access public services. Through the Huduma Kenya Program we are delivering more than 35 services under one roof in twenty-three counties. By the end of this financial year, we will have rolled out an additional 23 centres, bringing the total number of Huduma Centres to 46. In FY 2015/16 we shall be expanding to reach all counties. We also intend to harmonise the services provided by eCitizen and by the Huduma Centres to ensure that there is no duplication of services provided to Mwananchi and thereby avoid wastage of scarce Government resources.

36. **Mr Speaker**, we have been implementing the Kenya National Electronic Single Window System –the Kenya Tradenet System—to facilitate international trade by reducing delays and attendant transaction costs relating to processing of imports and exports documentation while at the same time maintaining the requisite controls and ensuring efficient revenue collection. The declaration module has now been put in place and beginning the first of July 2015, all importers and exporters and other related stakeholders will be required to process their transactions through the system. This will enhance transparency, accountability, governance and competitiveness while at the same time improving revenue collection.

37. As a result of these various initiatives, Kenya continues to receive global recognition. In the medium term Kenya is projected by leading economists to be one of the fastest growing economies. Recently, the African Development Bank ranked Kenya as number six in Africa in terms of attracting Foreign Direct Investment (FDI) while the Ernst & Young's 2014 Attractiveness Survey indicated that investors see Kenya as one of three regional hub markets in Sub-Saharan Africa. In addition, our Huduma Centres recently won an award from the United Nations as the overall winner in improving the Delivery of Public Services category.

Ease of doing business

38. **Mr. Speaker**, reducing the cost of doing business and encouraging private sector innovation, entrepreneurship and business expansion is a key prerequisite to achieving strong and sustained economic growth and poverty reduction. As such starting March 2015, the Government has been implementing a Business Regulatory Reform Strategy to substantially raise Kenya's global ranking under the World Bank's Doing Business Indicators. This strategy will focus on measures to improve Kenya's ranking under specific indicators of interest to small businesses and ordinary Kenyans and of course domestic and foreign investors. In particular, just to highlight a few key reform areas, the Government intends to:

- Reduce procedures, time and cost of starting a business, getting electricity and registering property by at least 80 percent in 2016;
- Reduce procedures, time and cost of getting construction permits and paying taxes by 50 percent and 60 percent, respectively in 2016; and
- Make it easy to access credit and to trade across borders.

2.4 Deepening Financial Sector Reforms for Stability, Growth and Employment

39. **Mr. Speaker**, the objective of financial sector reforms remains as stated in the Budget Policy Statement - to create a robust, accessible, efficient, stable and a globally competitive financial sector that promotes mobilization of high levels of savings to finance priority development.

40. As a Government, we have been concerned by the high lending rates which inhibit credit uptake by the private sector. Therefore, to advise on how to increase lending to the private sector for economic growth and development, I constituted a high level Committee on the Cost of Credit and Constraints in Mortgage Finance. Some of the key recommendations arising from the Committee's work which we shall continue to implement include:

- **First**, requiring all Banks to use the Kenya Bankers Reference Rate (KBRR) as a basis for pricing credit. This has enabled borrowers to easily compare lending interest rates offered by different banks. Since the rollout of KBRR framework, the average lending rate for the banking sector has declined from 16.9 percent in July 2014 to 15.5 percent in March 2015 and the spread between the average lending rate and average deposit rate has also declined from 10.3 percent to 8.8 percent over the same period;
- **Second**, developing the Treasury Mobile Direct Programme, which we expect to launch in July 2015. The launch of M-Akiba bond will allow Kenyans to purchase Government Securities directly from the comfort of their mobile phones with a minimum investment of only KSh 3,000.00 compared to the current minimum of KSh 50,000.00. This will allow Kenyans to enjoy significantly higher interest rates

on government securities compared to bank deposits, through a convenient platform and with a low entry threshold;

- **Third**, fast tracking the modernization of the Lands and Companies Registries to facilitate quicker collateral process as well as development of an electronic registry for moveable assets; and
- **Fourth**, ensuring that Government borrowing does not crowd out private sector by containing the fiscal deficit and adopting alternative sources of funding the deficit such as the Euro Bond.

41. In addition, **Mr. Speaker**, the high interest rates on lending and the spread between lending and deposit rates also reflect limited competition in the banking sector. Although we have 44 banks, most are small and only a few banks account for the majority of assets and deposits in the industry. Therefore, in order to make the banking system more competitive locally and regionally, I will later be proposing measures that will strengthen the banks' capital base and increase competition.

42. **Mr. Speaker**, as required by the Constitution, I have submitted the Central Bank of Kenya Bill, 2015 to the Commission on Implementation of the Constitution for further inputs. This Bill gives us an opportunity to comprehensively review the Central Banking law and align it with international best practices. The Bill will later be submitted to the National Assembly and I hereby seek the support of this House in its enactment.

43. **Mr. Speaker**, the Government will also implement additional measures to further deepen and strengthen the financial sector. In particular, in 2015, the Nairobi International Financial Centre Authority will be made fully operational. Further, to safeguard Kenya's economy against financial instability, the CBK will strengthen the prudential oversight framework and effectively manage risks associated with rapid credit growth, rising cross-border operations and expansion of banks activities into holding groups. The Bank will also review and strictly implement the Prudential Guidelines on Risk Classification of Assets and Provisioning, and regularly report progress.

3. BETTER INFRASTRUCTURE FOR PRIVATE SECTOR GROWTH

44. **Mr. Speaker**, transforming Kenya's economy towards prosperity for all requires substantial investments in the development of an efficient, faster and affordable transport network as well as affordable energy and modern harbours and airports. These investments will, in turn, reduce the cost of transport, promote competitiveness, open up business opportunities for our people and facilitate faster and more inclusive growth for employment creation and poverty reduction.

45. **Mr. Speaker**, as such we are investing substantial resources to improve the conditions of our infrastructure network. I am pleased, **Mr. Speaker**, to inform Hon Members and Kenyans at large that the construction of the Standard Gauge Railway is progressing well and is ahead of schedule. The construction of the railway started in early 2015 and is expected to be completed around mid-2017, and should significantly reduce the cost of transport, reduce fossil fuel consumption and save our environment. To facilitate the speedy implementation of this project, I have proposed additional allocation to the Kenya Railways Corporation as follows:

- KSh 118.2 billion for Standard Gauge Railway financed by a loan from China; and
- KSh 25.7 billion to be funded from the Railway Development Levy Fund.

46. Through this project alone, **Mr. Speaker**, we expect to employ over 30,000 Kenyans at the peak of construction. In addition, **Mr. Speaker**, we have insisted on a 40 percent local content requirement that has further created business and employment opportunities for our businesses, industries, entrepreneurs and our women and youth.

47. **Mr. Speaker**, our commitment to generate 5,000 MW of power by 2017 is also on course, with over 280 MW delivered so far under the geothermal program. As a result, the cost of power has dropped by 30 percent, and will without doubt, reduce the cost of doing business, spur growth of enterprise development, encourage industrialization and help accelerate the achievement of our growth and development objective as stated in Vision 2030. In this regard, I have allocated KSh 13.2 billion for further Geothermal Power Development.

48. **Mr. Speaker**, the generation of new electricity is not sufficient to create economic growth unless demand exists to consume it. Therefore, to sustain demand, we program to connect at least one million Kenyans in 2015. The connection will be driven by the recent incentives unveiled by HE the President, including a reduction of connection charges from KSh 35,000 to Ksh 15,000. For those not able to raise the required connection charge, they will be allowed to amortize the charge through monthly payments which will be made together with the monthly electricity consumption bill. To further expand access to electricity in the country, **Mr. Speaker**, I propose to allocate:

- KSh 21.1 billion for Power Transmission;
- KSh 14.9 billion for the Rural Electrification Program;
- KSh 4.5 billion for Street lighting; and
- KSh 1.5 billion for the last mile connectivity

49. Further, **Mr. Speaker**, the modernization and expansion of the port of Mombasa at Kilindini as well as the construction of three Berths at Manda Bay in Lamu has commenced. We are now firming up alternative sources of financing to speed up implementation of the Lamu Port. We have also expanded container terminals and cargo handling capacity thus

significantly reducing the time it takes to clear cargo. Similarly, under the program on airports improvement, we are making impressive progress.

50. **Mr. Speaker**, the continued expansion of our road network is critical for enhancing the productivity and competitiveness of our economy. To this end, **Mr. Speaker**, I have proposed the following allocations for expansion of our road network throughout the country:

- KSh 58.5 billion for on-going road construction;
- KSh 26.7 billion for road maintenance;
- KSh 42.0 billion for foreign financed roads; and
- KSh 5.0 billion for the Road Annuity Programme.

51. **Mr. Speaker**, as we invest in ports expansion and modernization, we are cognizant of the challenges faced by ferry users across Likoni. In this regard and in order to assure safety and efficient movement of people and cargo between Mombasa and the mainland, I have allocated KSh 1.3 billion for the purchase of ferries.

52. **Mr. Speaker**, the information and communication sector is one of the key sectors targeted in vision 2030 to help us achieve our growth and developmental objectives. Access to ICT will increase the country's productivity and raise the competitiveness of local businesses in a knowledge based economy. The government is therefore committed to investing resources as well as providing a conducive environment for the ICT sector to thrive. In order to leverage on Information, Communication and Technology, I have allocated KSh 1.9 billion for the continued roll out of IFMIS, KSh 0.8 billion for Konza Techno City, and KSh 0.25 billion for Digital Talent.

53. **Mr Speaker**, the available public sector resources are insufficient to close the existing infrastructure gap. In this context, **Mr. Speaker**, the Government has recognized the critical role that can be played by the private sector in mobilizing resources for infrastructure development and is using the PPP arrangement to accelerate infrastructure development, create jobs and provide efficient services to the people of Kenya.

54. **Mr Speaker**, the projects currently under the PPP programme include: the development of 10,000 kilometres of roads using the annuity approach; the generation of the 5,000MW of electricity; the construction of University hostels; the development of a seaport in Kisumu; the expansion of the Mombasa - Nairobi - Malaba Highway; the construction of the 2nd Nyali Bridge in Mombasa among others. Projects in other sectors of the economy will also be identified and implemented through PPPs.

4. AGRICULTURE AND INDUSTRIAL TRANSFORMATION

4.1 Food Security, Industrialization and Trade for Job Creation

55. **Mr. Speaker**, as Hon Members are aware, agriculture sustains not only our economy but also the livelihood of our people. As such, our strategy for economic transformation and prosperity will not be achieved without investing resources and efforts towards enhancing agricultural productivity. Furthermore, agricultural value addition has the potential to act as a catalyst for Kenya's industrial take-off. Indeed, **Mr. Speaker**, business agriculture is steadily gaining traction in our country and a number of Kenyans, including the youth have recently ventured into agri-business as a viable commercial venture.

56. **Mr. Speaker**, we are continuing to invest in irrigated agriculture, partly to build resilience in our economy and assure food security for our people throughout the year. To this end, I am pleased to note that we have made good progress in the implementation of various irrigation schemes we initiated throughout the country. Our people living in areas served by these schemes now live with dignity – away from the perennial exposure to severe hunger and malnutrition.

57. **Mr. Speaker**, we are also making good progress in the implementation of the 10,000 acres pilot phase of the Galana-Kulalu Irrigation project. The water off-take has been completed, maize planted in over 2,000 acres and shortly, vegetables and herbs, among other crops, will be planted. Upon successful completion of the pilot, and drawing on the lessons learnt, we shall immediately commence the rollout program covering at least 100,000 acres in Galana – Kulalu and other designated suitable schemes throughout the country under a viable business framework. **Mr. Speaker**, to fast track the implementation of the various irrigation projects in the country, I have allocated a total of KSh 13.8 billion, comprising of KSh 10.3 billion for the National Irrigation Board (NIB) and KSh 3.5 billion for the Galana Irrigation Project.

58. **Mr. Speaker**, we will also continue to invest in water supply, put in place measures to control floods and harvest rain water as well as to protect and conserve the environment. Towards this end, therefore, I have allocated KSh 29.5 billion for water supply and sanitation and KSh 2.1 billion for water storage and flood control and KSh 12.6 billion for environmental protection conservation and management.

59. **Mr. Speaker**, to ensure food security and lower food prices as well as provide employment opportunities for our youth, I am going a step further to support the agricultural sector through the following interventions:

- KSh 3.0 billion for inputs subsidy;
- KSh 2.7 billion for the Strategic Grain Reserves;

- KSh 3.1 billion for fisheries development;
- KSh 0.6 billion for the revival of the Kenya Meat Commission;
- KSh 0.3 billion for the revival of the Pyrethrum sector;
- KSh 0.3 billion for Free Disease Zone;
- KSh 1.2 billion for compensation of farmers in the Mwea Irrigation Scheme;
- KSh 1.0 billion for coffee debt write off; and
- KSh 3.5 billion for Land titling.

60. **Mr. Speaker**, Going forward, as part of our agricultural transformation plan and to start preparing small scale farmers to move away from rain fed agriculture, we will, over the next few months and after discussions with farmers, introduce a raft of tax incentives for new investment in water facilities and small holder irrigation equipments.

4.2 Promoting Industrialization for Export, Growth and Employment

61. **Mr. Speaker**, industrialization is a key catalyst for moving agriculture up the value chain and diversifying and growing our export base for a sustained higher shared growth and jobs creation. The Ministry of Industrialization and Enterprise Development is finalizing an industrial transformation strategy which will optimize the prospects for Kenya's industrialization by supporting local companies based on our comparative advantage and creating conditions for attracting foreign anchor investors. The later will help us secure global markets for our products and enhance technological transfer to help boost our competitiveness. As part of the strategy, **Mr. Speaker**, the Government will continue to prioritize and facilitate the establishment of industrial and recreational parks and special economic zones. Therefore, through this budget, I am proposing to allocate KSh 3.0 billion for industrial development. Later in my speech, **Mr. Speaker**, I will be outlining some of the tax incentives to hasten development of industrial and recreational parks and Special Economic Zones (SEZs).

62. **Mr. Speaker**, Kenya has been recognized as a global leader on clean energy with over 80 percent of the energy mix being green. It is, therefore, imperative that we position our economy as a green industrial hub, leveraging cheaper and cleaner geothermal power, steam and water to competitively produce goods of high quality for the region as well as the global market.

63. **Mr. Speaker**, our industrialization strategy will give priority to assembly industries for motor vehicles, domestic appliances, computers and other parts where we have a comparative advantage. We will also target labour-intensive low technology industries such as textiles and leather in the first phase of this industrialization agenda to take advantage of the African Growth Opportunity Act (AGOA) and global markets. To sustain these industries, we intend to invest in industrial and enterprise skills. We are also initiating a targeted approach to identifying potential international investors for our priority industries.

64. **Mr. Speaker**, to safeguard our economy against cheap imports and to promote growth of local industries, as HE The President directed during Madaraka Day, I am putting on notice all those public entities that are yet to fully adhere to the requirements of Build-Kenya, Buy-Kenya. All MDAs are directed to strictly ensure that a minimum of 40 percent local content requirement is adhered to by the winning tenderers at the procurement and supply stage.

65. **Mr. Speaker**, this requirement covers all procurement in respect of road works, railway works, airports and other ports and harbours, works and materials for generation, transmission and distribution of energy and other construction materials made in Kenya. Similarly, as we expand leasing of equipment and assets in the public sector and commit more resources towards security, irrigation and eLearning, I expect Accounting Officers to ensure that suppliers establish manufacturing or assembly plants here locally so as to position Kenya as an industrial hub for the region.

Tourism Recovery

66. **Mr. Speaker**, the Tourism sector is a major employer of our youth and women as well as a major foreign exchange earner for this country. In recent years, the sector has been severely impacted by insecurity forcing most hoteliers to scale down their operations and rendering most of the workers jobless. In order to rehabilitate the industry, I am proposing to allocate in the budget for FY 2015/16, KSh 5.2 billion for Tourism recovery.

5. ENHANCING WOMEN AND YOUTH EMPOWERMENT

67. **Mr. Speaker**, the Government is cognisant of the fact that unless we invest in the potential of the youth and women, we will not achieve a real demographic and gender dividend in the future. Therefore, in line with the Jubilee Coalition commitment, we have revamped and restructured the NYS into a robust and dynamic institution to drive the youth transformation agenda.

68. **Mr. Speaker**, the National Youth Service is expanding both in terms of the scale of its operations and the number of youth engaged. Following the three recruitment cycles, the NYS contingent has grown from 6,000 to 31,000 in just slightly over one year. Another 10,935 recruits will be recruited in September 2015, to bring the total to about 42,000. The NYS servicemen and women will be engaged in national service programmes all over the country in areas such as building small dams and water pans, drilling water, agricultural activities, vector control, border control initiatives and other programmes aimed at building community assets and improving the environment and living standards.

69. Through national service, **Mr. Speaker**, NYS is building a new national psyche of nation building, patriotism, service culture, volunteerism, civic competence and social cohesion, not only amongst themselves, but also working with other young people within their communities. The servicemen and women will work alongside 220,000 youth within the communities in which they serve, working on projects all over the country. These community youth are engaged as casual labour, with the added advantage of receiving on-the-job training and mentorship from NYS.

70. **Mr. Speaker**, NYS will be the premier training institution on artisanal skills, crafts and technical training. Through the vocational training, the youth will be equipped with skills that will enable them contribute to economic development. The training is geared at responding to the needs of our national economic agenda and current economic opportunities. **Mr. Speaker**, the National Youth Service is aiming to become self-sustainable by establishing the National Construction Company for Kenya that can deliver on various infrastructure projects in the country and beyond. Through the NYS Construction Company, the cost of construction will go down by between 30% - 50%, due to the reduction in the cost of labour and machinery.

71. In the FY 2015/16, **Mr. Speaker**, to meet the commitments we have made to our Youth through the NYS, I am allocating KSh 25.0 billion towards youth employment and reengineering the NYS as a vehicle for transforming and empowering the Youth.

72. **Mr. Speaker**, every big company today started small. The Small and Micro Enterprises (SMEs) are a critical part of the private sector and are the best source of new products and innovations that will anchor our future growth. Their development is, unfortunately, hindered by lack of capital since they are considered by banks to be high risk investment targets. In addition, SMEs are constrained by limited market access, poor infrastructure, inadequate knowledge and skills, rapid technology changes, and unfavorable laws and regulations. These challenges have curtailed the growth of many SMEs, contributed to low export product diversification and undermined the national efforts towards graduating from commodities trade to high-end value added manufactured goods.

73. **Mr. Speaker**, to address these challenges, a variety of remedial measures are underway including:

- Supporting Small and Medium Enterprises to acquire small industrial plants for value addition of agricultural products currently produced under the Jua kali;
- Entrenching Buy-Kenya-Build-Kenya policy in all public procurement;
- Introducing legislation to require at least 40 percent local content in all public projects;
- Increasing allocation to Uwezo Fund and the Youth and Women Enterprise Fund;
- Boosting science, technology and innovation by increasing investment in research and development;

- Developing a framework to facilitate leasing by SME's as an alternate financing mechanism for capital expenditures; and,
- Developing a framework to nurture and commercialize inventions, innovations and end-products at the national and county levels.

74. **Mr. Speaker**, to empower youth and female entrepreneurs and ensure that they have access to affordable credit to start, grow and build businesses and enterprises, the Government will continue to increase the capitation of the Youth Enterprise Development Fund (YEDF), the Women Enterprise Fund and the Uwezo Fund. Therefore, in this budget, I am allocating KSh 0.85 billion for the Uwezo Fund, KSh 0.5 billion for the Women Enterprise Fund and KSh 0.3 billion for the Youth Enterprise Fund.

75. **Mr. Speaker**, although the law requires procuring entities to reserve at least 30 percent of their procurement to youth, women and persons with disability, about KSh 10.0 billion has been accessed by this group in the fiscal year 2014/15. This is below our target and as such, all Accounting Officers are instructed to strictly adhere to the requirements of the law so as to support the entrepreneurial growth of our youth, women and persons with disability. In this respect, starting July 1, 2015, I expect all Accounting Officers to submit quarterly reports to the National Treasury in regard to the 30 percent requirements for all procurements.

76. **Mr. Speaker**, we would like to close the chapter of the economic stimulus projects initiated in the last administration. Therefore, in this budget, I have allocated KSh 0.6 billion for upgrading of National Schools, KSh 0.32 billion for purchase of computers, KSh 0.3 billion for prototype fresh produce and wholesale markets, and KSh 0.23 billion for Jua kali sheds. Through these programs, we expect that the concerned MDAs will engage the youth and women in gainful economic activities.

Development of Sports, Culture, and Arts

77. **Mr. Speaker**, development and support of sports, culture and heritage remains a key priority of Government so as to nurture talent of our youth and safeguard our National Heritage. As you well know, Kenya is known throughout the world for her undisputed command of athletics. Our Athletes continue to do Kenya proud and we aim to develop a pool of such sports men and women. In partnership with the private sector, we shall invest in sports development, including expansion and modernization of sports facilities so that we become a sports hub for regional and international sports. As a start, I have allocated Ksh 1.8 billion to construct a major Stadium in each of the following cities: Nairobi; Mombasa; and Eldoret. This will help to encourage growth of youth talents in sports and nurture them as catalyst for growth and development. We expect the Ministry of Sports, Culture and the Arts to utilize this allocation efficiently by employing modern technologies of construction to deliver on this service.

78. Further, **Mr. Speaker**, we shall aim to develop, preserve and protect our culture and National Heritage. Towards this end, I have proposed to allocate Ksh 1.1 billion for cultural programmes.

6. INVESTMENT IN HEALTH, EDUCATION AND SOCIAL PROTECTION FOR OUR PEOPLE

6.1 Investment in Quality Education

79. **Mr. Speaker**, we have made tremendous progress over the recent past on educational access, largely due to increased enrolment following the introduction of free primary education in 2003 and free tuition in secondary schools in 2006. However, there are still concerns on the quality and relevance of education and the high number of pupils dropping out of school with no clear alternative access to acquisition of lifelong skills to enable them find jobs.

80. To improve the quality of basic education in our country, and to lessen the burden of parents, I am proposing to increase capitation to KSh 32.7 billion for free day secondary education and KSh 14.1 billion for free primary education. This will take us a step closer to making Free Primary and Secondary Education truly free. In addition, **Mr. Speaker**, I am allocating KSh 0.4 billion for Sanitary towels for girls in school and KSh 1.0 billion for the School feeding program to ensure that no child misses school. Similarly, I am proposing to allocate KSh 3.0 billion for technical training institutes, KSh 52.9 billion for University Education and KSh 7.5 billion for Higher Education Loans Board to increase the quality as well as access to tertiary institutions.

81. To further support the demand for increased enrollment, I am proposing to allocate KSh 2.3 billion for recruiting an additional 5,000 teachers, and KSh 2.2 billion for promotion of teachers.

82. **Mr. Speaker**, improving the quality of our educational system and making it accessible to all school going children through a comprehensive e-learning program remains a priority of this Administration. As such, through this budget, we are once again allocating a total of KSh 17.58 billion for deployment of ICT learning devices to schools, development of digital content, building the capacity of teachers and rolling out computer laboratory for class 4 to class 8 in all schools throughout the country. I am confident, **Mr. Speaker**, that this time round this key Jubilee Government project will finally take off.

6.2 Equity, Poverty Reduction and Social Protection for Vulnerable Groups

83. **Mr. Speaker**, as a Government that deeply cares for its most vulnerable members of society, we have set aside resources for affirmative action interventions and social safety nets so as to empower these Kenyans and enable them actively participate in our economic development agenda. Accordingly, I have set aside:

- KSh 2.1 billion for Affirmative Action, Social Development Fund;
- KSh 9.0 billion for orphans and vulnerable children;
- KSh 7.4 billion for elder persons;
- KSh 1.2 billion for those with extreme disability;
- KSh 0.3 billion for other disabled persons under coverage of cash transfer;
- KSh 0.3 billion for street families;
- KSh 0.5 billion for insurance cover for persons under the social safety net program through NHIF;
- KSh 0.8 billion for the Children Welfare Society;
- KSh 0.4 billion for the Presidential Secondary School Bursary Scheme for orphan; poor and bright students;
- KSh 2.2 billion for Resettling the IDPs;
- KSh 1.3 billion for hunger safety net;
- KSh 1.3 billion for slum upgrading; and
- KSh 1.0 billion seed capital for the National Fund for Restorative Justice.

Mr. Speaker, to improve the efficiency and effectiveness of targeting of the safety net programmes, we shall move all the transfer payments to beneficiaries to a digital platform which should improve transparency, accountability and reduce costs.

84. **Quality and Accessible Health Care Services for all Kenyans**

85. **Mr. Speaker**, the Government recognizes that investment in quality healthcare services is essential in developing a healthy population with higher productivity for sustained economic growth. Therefore, in partnership with County Governments, we have commenced a program of upgrading healthcare infrastructure and modernizing equipments. The recently launched Managed Equipment Services project will ensure that every County in Kenya has two hospitals fully equipped with the state of the art health care facilities. **Mr. Speaker**, I welcome the fact that the Governors have now accepted to partner with the National Government towards improving health services for Wananchi.

86. **Mr. Speaker**, this essential project will provide each of the selected hospitals with modern theatre equipment, surgical and sterilization equipment, laboratory equipment, kidney dialysis equipment, ICU facilities, digital X-ray machines, ultrasound and imaging equipment. **Mr. Speaker**, I have, therefore, proposed an allocation of KSh 4.5 billion for the lease financing of health care equipment for this program in the fiscal year 2015/16.

87. **Mr. Speaker**, consistent with our policy objective of preventive health care program, notable progress has been registered in our effort towards eradicating infant as well as maternal mortality. Since the introduction of the free maternal service, cases of maternal deaths in the country have reduced from over 500 per 100,000 live births to 488 deaths for every 100,000 live births annually at a time when the number of women giving birth in hospitals rose to 70 percent, up from 44 percent. To further support this program, I have allocated KSh 4.3 billion in FY 2015/16.

88. **Mr. Speaker**, I have also provided for the following interventions in the health sector:

- KSh 3.5 billion for Kenya Medical Training Centers;
- KSh 9.3 billion for the Kenyatta National Hospital;
- KSh 5.8 billion for the Moi Teaching and Referral Hospital;
- KSh 1.9 billion for Kenya Medical Research Institute;
- KSh 3.0 billion for doctors/clinical officers/nurses internship program;
- KSh 0.9 billion for the National Aids Control Council;
- KSh 0.9 billion for free access to all health centers and dispensaries;
- KSh 1.0 billion for slum health care program; and
- KSh 19.7 billion for HIV/AIDS, Malaria and TB (Global Funds).

7. STRENGTHENING DEVOLUTION AND REGIONAL DEVELOPMENT

89. **Mr. Speaker**, the decentralization of service delivery and resources through devolution has had a profound effect on lives of our people at the grass roots level. As witnessed across the country in the past two years of devolution, local development is gaining traction as Counties are becoming the new centres of economic activity. To lock-in and sustain these gains, we will continue to support County Governments through increased allocation of shareable revenues so as to ensure that devolution achieves the objectives of better service delivery and rapid local economic development as well as jobs creation in line with our Vision 2030.

90. Therefore, **Mr. Speaker**, Parliament has allocated to County Governments KSh 259.7 billion as Shareable revenues following consultations with Inter-Governmental Budget and Economic Council comprising the Council of Governors, the Commission on Revenue Authority (CRA), the Commission for the Implementation of the Constitution (CIC), and the Parliament Service Commission. In addition, to further support implementation of the devolved system of Government, KSh 27.3 billion has been set aside as additional conditional allocations to Counties in the FY 2015/16 Budget as follows:

- KSh 4.3 billion as conditional grant for Free Maternal Health Care;
- KSh 4.5 billion as conditional grant for Leasing medical equipment;
- KSh 3.6 billion as conditional grant for level-5 hospitals;
- KSh 0.9 billion as conditional grant to compensate county health facilities for user fees forgone;
- KSh 3.3 billion as conditional grant for maintenance of roads from the Road Maintenance Fuel Levy Fund; and
- KSh 10.7 billion as conditional allocations from Development Partners' loans and grants.

91. **Mr. Speaker**, this brings the total allocation to County Governments to Ksh 287.0 billion which is equivalent to 37.0 percent of the most recent audited revenues approved by the National Assembly which amounted to Ksh 776.6 billion in FY 2012/13. This is more than twice the mandated Constitutional threshold of not less than 15 percent.

92. **Mr. Speaker**, in addition, I have allocated Ksh 35.2 billion to the Constituency Development Fund (CDF) kitty to fund only National Government functions (such as education and security) at the Constituency level.

93. **Mr. Speaker**, in addition, I have allocated Ksh 6.0 billion for the Equalization Fund to cater for the back log and allocation for FY 2015/16. I urge the two Houses to approve the Equalization Fund regulations speedily so as to facilitate the operationalization of the Fund.

94. **Mr. Speaker**, since their establishment in 2013, County Governments have sought to introduce various new fees or service charges, or to raise existing ones. **Mr. Speaker**, if left unchecked, this situation can have detrimental effects on county revenues in the medium term, particularly if they drive away business and investment. In order to promote a conducive business environment and ensure compliance with Article 209 (5) of the Constitution, a clearer response is needed, as well as better coordination and a well-defined framework for regulating business activity throughout the country.

95. **Mr. Speaker**, towards this end, the National Treasury has issued Guidelines for Drafting County Finance Acts (Issue No. 1/15). I urge counties to adhere to these guidelines. To complement these guidelines, the National Treasury will begin consultations with all key actors with a view to introducing legislation aimed at coordinating the manner in which business activity is regulated throughout the country. In addition, there is an urgent need to review some business regulatory laws that impact negatively on businesses, such as the Environment Management and Coordination Act and the National Construction Authority Act with a view to repealing or restructuring them. I look forward to receiving the support of all concerned agencies in these reforms.

96. **Mr. Speaker**, before I move to the revenue measures to finance the planned expenditures, I wish to express our gratitude to Parliament for approving the Estimates of Expenditure submitted to this House. We have prepared the FY 2015/16 Appropriation Bills on the basis of the Certificate issued by the National Assembly. However **Mr. Speaker**, we will be engaging the House with a view of making necessary amendments to address a few emerging issues.

8. BUDGET ESTIMATES FOR 2015/16

97. **Mr. Speaker**, allow me now to turn to the financial projections for the FY 2015/16 budget. We are targeting revenue collection of KSh 1,358.0 billion, equivalent to 20.8 percent of GDP and comprising ordinary revenues of KSh 1,254.9 billion (19.2 percent of GDP), and Ksh 103.2 billion of Appropriations in Aid.

98. **Mr. Speaker**, This performance will be underpinned by on - going reforms in tax policy and revenue administration. The KRA is expected to institute measures to expand the revenue base and eliminate tax leakages. At the moment, KRA and Government is automating and digitizing most of the services and this will enhance collection and reduce revenue leakages.

99. **Mr. Speaker**, the expenditures in FY 2015/16 are guided by the Medium Term Plan II (2013-2017) of Vision 2030 and the Jubilee Administration Strategic Priorities. In FY 2015/16, overall expenditure and net lending are projected at KSh 2,001.6 billion (30.7 percent of GDP). This includes Ministerial recurrent and development expenditures of KSh 784.2 billion (12.0 percent of GDP) and KSh 721.3 billion, respectively; KSh 264.2 billion for County Governments (including allocations for Level 5 and funding from DANIDA); KSh 185.3 billion for interest payments, Ksh 43.4 billion for pensions and Ksh 3.2 billion for other Consolidated Fund Services (CFS).

100. **Mr. Speaker**, in the FY 2015/16, the Government has made it a priority to shift more resources from recurrent expenditure to development expenditure as required by the PFM Act, 2012. As a result, recurrent expenditures are projected to decline from the estimated figure of 16.4 percent of GDP in FY 2014/15 to 15.5 percent of GDP in 2015/16.

101. The ceiling for development expenditures including foreign financed projects (excluding net lending) amounts to KSh 716.3 billion in the FY 2015/16 including Parliament and Judiciary. Most of the outlays are expected to support critical on-going infrastructure development in roads, Standard Gauge Railway, ports, energy, and security among others. Part of this development budget will be funded by project loans and grants, (Ksh 349.3 billion) from development partners, while the balance (Ksh 370.2 billion) will be financed from domestic resources.

102. **Mr. Speaker**, reflecting the projected expenditures and revenues, the overall fiscal balance including grants (amounting to Ksh 73.4 billion), is projected at KSh 570.2 billion (equivalent to 8.7 percent of GDP) in FY 2015/16. Excluding expenditures related to the SGR, the overall deficit would decline to Ksh426.3 billion equivalent to 6.5 percent of GDP.

103. The fiscal deficit in FY 2015/16, will be financed by net external financing of KSh 340.5 billion (5.2 percent of GDP and KSh 229.7 billion (3.5 percent of GDP) of domestic financing. Thus the overall fiscal deficit is fully financed.

104. **Mr. Speaker**, the Government's borrowing plans remain anchored in the Medium-Term Debt Strategy Paper which aims at ensuring public debt sustainability. The strategy envisages continued borrowing from domestic and external sources with the latter being largely on concessional terms. While external financing will be largely on concessional terms, the Government will continue to diversify financing sources by continuing to access commercial sources of financing in the international financial market.

105. **Mr. Speaker**, as Hon Members will recall, last year our debut Sovereign Euro bond was received with a lot of enthusiasm by foreign investors, once again underscoring the confidence foreign investors have in our economy. Going forward, we intend to continue sourcing these type of funds, including from export credit agencies and syndicated loans.

106. **Mr. Speaker**, I would like to assure Hon Members that non-concessional external borrowing will be undertaken in a cautious manner and limited to bankable projects and will broadly be within the ceilings in the Medium-Term Debt Strategy Paper. This will ensure that our total public debt will remain sustainable over the medium term. In addition, the Government will ensure that the level of domestic borrowing does not crowd out the private sector given the need to increase private investment and accelerate economic expansion. A cautious approach will also be adopted in the issuance of external Government loan guarantees and the use of the Public Private Partnership framework for funding infrastructure, in order to minimize the level of contingent liabilities.

9. TAX MEASURES AND MISCELLANEOUS AMENDMENTS

9.1: Overview of the Proposed Tax and Miscellaneous Measures

107. **Mr. Speaker**, the rest of my Statement highlights the various tax measures I intend to introduce through the Finance Bill, 2015, and other miscellaneous amendments I have tabled in this House which are intended to accelerate growth, create employment and ease the cost of living for Kenyans.

108. **Mr. Speaker**, the tax and miscellaneous measures I have proposed are categorized under the following broad areas:

- Facilitating Private Sector Growth to accelerate industrialization and the creation of Jobs;
- Promoting Equity and fairness;
- Deepening Tax Administration Reforms to Ease Compliance and reduce the cost of doing business; and
- Encouraging Growth and Stability of the Financial Sector

Facilitating Private Enterprise Growth for Job Creation

109. **Mr. Speaker**, last year I committed to introduce measures to encourage corporate entities to engage fresh graduates in acquiring relevant experience and skills through internship and apprenticeship programs. Therefore, in this budget, I propose to introduce a tax rebate scheme for employers who shall engage and train at least ten fresh graduates for a period of six months to twelve months. I urge employers and business community to take up this opportunity and help us build a resource base of skilled manpower. In addition, all training levies which are currently being charged will be consolidated into a National Job Fund to benefit the youth initiatives such as on the Job training and attachments in order to enhance skills development.

110. **Mr. Speaker**, the growth of the film industry has a huge potential to attract and nurture Kenyans' talents and position this sector as a key driver of economic growth and employment creation. To enable this latent industry to attain a competitive advantage like the rest of the leading film production destinations and create jobs for our youth, I propose to exempt from withholding tax all payments made by foreign film producers to actors and crew members. In addition, VAT in respect of goods and services purchased for use in the film making will be exempt. Over and above this **Mr. Speaker**, I propose to set up a fund for rebating of expenses by producers in this industry. The modalities for implementing this measure will be worked out shortly.

111. **Mr. Speaker**, as we promote fishing and aquaculture, the demand for fishing nets is on the increase. Therefore, to encourage local manufacturers of fishing nets. I have

provided for importation of nylon yarn and synthetic twine used in the manufacture of fishing nets under the duty remission scheme at a rate of 0% instead of 10%. In addition, imports of made up fishing nets will attract duty at a rate of 25% instead of 10% to protect local manufacturers of fishing nets.

112. **Mr. Speaker**, most of our sugar factories are on the verge of closing down due to competition from cheap imported sugar. In order to protect our sugar industry, I have increased the specific duty rate on imported sugar from USD 200 to USD 460 per metric tonne. The advalorem rate remains 100% of the customs value. This measure will cushion the sugar sector from unfair competition and enable our local factories to break even and pay the farmers promptly.

113. **Mr. Speaker**, paper and paper board products have been subject to a stay of application of the Common External Tariff (CET) at the rate of 25%. This has made paper and paperboard products more expensive for the packing industries and other users of the products. In order to lower cost of paper and paperboard products, I propose to withdraw the stay of application of CET on paper and paperboard products and make them subject to duty at 10% according to the Common External Tariff.

114. **Mr. Speaker**, as Hon Members are aware, the EAC Partner States apply different export duty rates for raw hides and skins thereby encouraging smuggling of these goods. In order to deter these smuggling activities, the Ministers for Finance have agreed to harmonize the export duty rate on hides and skins at 80% of FOB value or 0.52 USD per kg, whichever is higher. The harmonized rate will be implemented during the 2015/16 financial year.

115. **Mr. Speaker**, Kenya is the sole manufacturer of plastic tubes for packing tooth paste and cosmetics in the region. In this regard, I have negotiated for an increase in the import duty rate on plastic tubes for packing toothpaste and cosmetics from 10% to 25% in order to protect our local manufacturers. It is expected that local manufacturers will increase the production of plastic tubes while at the same time maintaining quality.

116. **Mr. Speaker**, pasta is a popular foodstuff increasingly being consumed by many families in the region. Surprisingly, this basic food item is not manufactured locally. Therefore, to encourage investors to produce pasta locally and reduce over-dependence on imports, I have provided for importation of SEMOLINA, the raw material for making pasta, under the EAC duty remission scheme at a rate of 0% instead of 25% for gazetted manufacturers of pasta.

117. **Mr. Speaker**, the consumption of illicit brew has become a serious social problem in the country. However, there exists potential for the manufacture of safe drinks using locally available agricultural products. This will have the twin benefit of providing safe alcoholic drinks as well as promoting agricultural products for our farmers. In this regard,

the proposed Excise Bill grants the Cabinet Secretary, National Treasury to grant remission of excise duty in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products (excluding barley) that is grown in Kenya. I therefore, urge our farmers and the beer manufacturers to take advantage of this incentive not only to create wealth but also to contribute to a healthy nation.

118. **Mr. Speaker**, Kenya is the leading manufacturer of aluminum milk cans in the region. Currently, imported aluminium milk cans are taxed at 10%. In order to encourage increased local production, we negotiated to import aluminum milk cans at 25% instead of 10% to cushion our local manufacturers against cheap imports.

119. **Mr. Speaker**, the importance of infrastructure in the attainment of our development strategy cannot be over emphasized. As Hon members have noticed, the Government has heavily invested in the infrastructure development particularly the road network. In order to further scale up the existing road network, I propose to increase the Road Maintenance Levy by Ksh 3 per litre to be collected and paid into the Road Annuity Fund.

120. **Mr. Speaker**, during the pre-budget consultative meeting held in Arusha on 11th April, 2015, the Ministers for Finance agreed to remove gas cylinders from the exemption regime. In exchange, the import duty rate for the cylinders was reduced from 25% to 0%. Considering that Kenya is the only manufacturer of gas cylinders in the EAC region, I negotiated to import gas cylinders at a rate of 25% instead of 0% to protect our local manufacturers.

121. **Mr. Speaker**, our people in rural areas suffer serious indoor pollution and associated respiratory diseases occasioned by fossil fuel and firewood for domestic cooking. To encourage use of clean and affordable biogas energy system for cooking and lighting to rural households I propose to exempt VAT on plastic bag biogas digesters for use in the sector.

122. **Mr. Speaker**, through the Finance Act 2014, services to goods in transit were exempted from the VAT. The change affected the case of cross-border transport services provided by Kenyan transporters in the regional market, making Kenyan transporters less competitive. In order to encourage and sustain growth in this sector and also to harmonize the treatment of these services across the region, I propose to zero rate services in respect of goods in transit.

123. **Mr. Speaker**, these measures are intended to offer increased incentives to our manufacturers and should result in more jobs for our youth. However, I must urge our manufacturers that these measures should not be an excuse to lower the quality of their products. Therefore, Kenyans will be expecting high quality products at reasonable prices.

124. **Mr. Speaker**, as part of our industrialization strategy and Vision 2030, the Government has prioritized the development of industrial parks targeting the small and medium size enterprises in five selected locations of; Nairobi, Nakuru, Kisumu, Mombasa and Eldoret to provide infrastructure facilities to our investors. I, therefore, propose to exempt from VAT taxable goods and services for use in the construction of infrastructure works in industrial and recreational parks of 100 acres or more. This measure is expected to make it attractive for both foreign and local investors to set up these parks in Kenya and create jobs for our people.

125. **Mr. Speaker**, the use of ICT in schools remains a key priority of the Government that is meant to enhance Primary school education. In order to encourage investments in local assembling of the electronic devices, I propose that inputs imported or purchased locally for the assembly of these devices be exempted from VAT.

126. **Mr. Speaker**, I have continued to receive representations from the private sector on the need to introduce measures to make it cheaper and competitive for them to conduct business in East Africa. I have, therefore, lowered the Import Declaration Fee (IDF) from the rate of 2.25 percent to 2.0 percent as a demonstration of the Government's commitment towards harmonization of IDF in the EAC region.

Promoting Equity and Fairness

127. **Mr. Speaker**, to equip our prisons and ensure criminals are secured away from society, we agreed to include prison authorities in the exemption Schedule to enable them import for their official use, duty free goods, materials, equipment and other supplies. This inclusion will enable our prisons to enjoy similar exemption status as the Kenya Defence Forces and Police.

128. **Mr. Speaker**, the law provides for zero-rating of passenger and personal effects including one motor vehicle to a returning resident of Kenya who is changing residence. Given that Kenya operates right hand motor vehicles, returning Kenyan residents with left hand motor vehicles cannot enjoy this and hence it is perceived to be unfair, inequitable and discriminative. Accordingly, I propose to amend the VAT law to allow such returning residents who have owned the left hand drive motor vehicle for at least twelve months to sell the motor vehicle and import VAT and duty free a right hand motor vehicle of equivalent value subject to specified conditions.

129. **Mr. Speaker**, over the recent past, residential and rental business has witnessed substantial growth. On the contrary, rental income from the same has not grown commensurately. **Mr. Speaker**, I propose to simplify the taxation regime for landlords owning residential property by taxing their gross rental income at 12 percent for gross rental income below Ksh 10 million per year. In addition, **Mr. Speaker**, I propose to introduce a

tax amnesty for land lords who have not fully declared rent or are outside the tax net. In this respect, the land lords with tax arrears are advised to prepare to engage the Kenya Revenue Authority (KRA) to clean their tax records.

130. **Mr. Speaker**, the potential of our gaming industry to create gainful employment and generate revenue for the government and private sector remains untapped in our country. To promote growth of this sector and enable it to play its role in encouraging innovation, creating employment and driving growth, I propose to re-introduce a simplifying gaming tax, which shall be a direct charge on the gross gaming revenue. I also propose to tax public lotteries at 5 percent of the lottery turnover, and tax bookmakers at 7.5 percent of the gross betting revenues.

131. Similarly, **Mr. Speaker**, all prize competition whose costs of entry are premium shall be taxable at 15 percent of the total gross revenue. I will also introduce amendments requiring the appointment of technology providers as withholding agents for purposes of remitting 15 percent of revenue raised through lottery into a Fund to be established under the Public Finance Management Act, 2002 in furtherance of the objectives of the concerned sector.

Deepening Tax Administration Reforms to Ease Compliance

132. **Mr. Speaker**, after our Customs Law became part of the East African Community Customs Management Act in 2004, the Excise duty legislation remained under the Customs and Excise Law. This change necessitated the introduction of a simple and modern stand-alone Excise Bill incorporating International best practices. I can confirm that this Bill is being tabled in this House after under-going public participation as required by the Constitution and Statutory Instruments Act.

133. **Mr. Speaker**, in this simplified and modern Bill, we are imposing excise duty to compensate for harmful effects caused by production, supply, consumption or use of goods and services, which costs are not directly reflected in their prices. Therefore, **Mr. Speaker**, through this Bill, we are introducing a new tax based on units of quantity only. As such the Bill imposes a charge on: (i) sticks of harmful cigarettes and tobacco; (ii) volumes of harmful alcoholic beverage and sugar sweetened beverage consumed; (iii) volume of polluting fossil fuels and age of motor vehicles purchased; and (iv) weight of environmentally damaging plastic bags.

134. **Mr. Speaker**, Hon Members will note that based on the above principles and objectives, all classes of fossil fuels will be taxable upon enactment of this law to safeguard the environment, reduce tendencies for adulteration and assure equity. We are complementing this measure by investing heavily in extending electricity connection to every households, and providing incentives for use of cheaper, safer and cleaner bio-fuels

in cooking stoves. In the same vein, I have proposed a marginal increase of excise duty rate on alcoholic beverages to reflect the current effective rates after adjusting for inflation.

135. I have, in addition, **Mr. Speaker**, converted the current hybrid tax regime for cigarettes into a specific one and changed the taxation of motor vehicles and motorcycles into a regime based on classes of age, in accordance with the principles and objective of the Bill. And to address the challenges of environmental degradation caused by careless disposal of plastic bags, I have enhanced the excise duty on non biodegradable plastic to KShs.120 per kilogram.

136. However, **Mr. Speaker**, I am pleased to inform Kenyans that all bottled water will, upon enactment of this law, not be taxable. Similarly, all other goods that have no harmful effects, hereto taxable under the Customs and Excise Act, will not be taxable under the new law.

137. **Mr. Speaker**, I expect to raise additional revenue amounting to about KSh 25 billion from the various measures underpinning the new Excise Duty law. I, therefore urge Hon Members to consider prioritizing this Bill for debate along with other Bills I am tabling before this House today.

138. **Mr. Speaker**, current tax procedures are contained separately in each tax law. The best practice world-wide is to have all procedures which are general and applicable to all tax laws under one law. In the spirit of tax modernization in Kenya, I propose to introduce the Tax Procedure Bill which will contain uniform procedures across the three tax legislations – Value Added Tax, Excise Duty and Income Tax. The Bill is aimed at simplifying tax administration, which at the same time will reduce the cost of compliance.

139. **Mr. Speaker**, as I committed in last year's Budget Statement, we have now commenced the review of and modernization of the Income Tax Act, which we expect to complete by end of September 2015. The finalization and subsequent enactment of this law will mark the end of our review and modernization of the various tax legislations which began in 2011.

140. **Mr. Speaker**, the VAT Act, 2013 provides for payment of refund in cases where the input tax exceeds output tax and the Commissioner is satisfied such excess arises from making zero rating supplies. The Act however, does not provide timeline within which a taxpayer entitled to such a refund may lodge the claim. I have proposed an amendment to the law to provide that the claim for such refunds shall be made within twelve months from the date the tax became due and payable.

141. **Mr. Speaker**, last year we reviewed the taxation of the extractive industries. However, the review, provided for separate tax treatment for training services and

contractual fees for Petroleum and the Mining sectors bringing disharmony in taxation of the sector. In addition, the review also introduced different tax treatment with regard to withholding tax on training services and contractual fees. **Mr. Speaker**, I propose to amend the Income Tax Act to harmonise the tax treatment in this industry at the withholding tax rate of 12.5 percent and 5.6 percent for training and contractual services, respectively.

142. We also reinstated **Mr. Speaker**, the Capital Gains Tax last year so as to allow property and share owners to make their fair contribution to the exchequer. However, the implementation of the law has faced some challenges in some sectors of the economy. In order to address these challenges and ensure enforceability and compliance, I propose to remove the 5 percent tax on capital gains arising from sale of shares and introduce a 0.3 percent withholding tax on the transaction value of the shares.

143. **Mr. Speaker**, in order to incentivise the shipping sector, I hereby propose to reduce the ships qualifying for investment deduction from 495 tons to 125 tons and to increase the rate of investment deduction from forty to one hundred percent.

144. **Mr. Speaker**, investors are allowed to carry forward losses without Treasury's approval upto the fifth year. I propose to extend this period to ten years considering that there is heavy investment expenditure by some power producers, manufacturers and hotel operators.

145. **Mr. Speaker**, after Customs Law become part of the East African Community Customs Management Act in 2004, and coming up with a stand-alone Excise Bill, it was found necessary to have a Miscellaneous Fee and Charges Bill to cater for levies which were anchored in the Customs and Excise Act, Cap 472 yet to be repealed.

146. **Mr. Speaker**, for continuity in collection of the Railway Development Levy, Import Declaration Fees and Export levies imposed on hides and skins, it is imperative to introduce the Miscellaneous Bill, which will be the legal instrument to empower the Commissioner of Customs to collect the aforesaid levies.

9.2: Encouraging Growth and Stability of the Financial Sector

147. **Mr. Speaker**, Vision 2030 targets the creation of an international financial centre able to attract international investments and participants in the financial services arena. In addition, Kenya needs to have strong well capitalized financial institutions which are not only able to participate in financing the large projects envisaged in the Vision but that are also well capitalized to withstand financial shocks and crisis.

148. In this regard, I am proposing to increase the minimum core capital requirement for banks, mortgage finance companies and insurance companies. For banks, I propose to

increase the minimum core capital progressively from the current KSh 1.0 billion to Ksh 5.0 billion by December 2018. For insurance companies, I propose to increase the minimum capital to KSh 600 million for general insurance, and KSh 400 million for long term insurance business by June 2018.

149. **Mr. Speaker**, our financial sector regulators have all adopted the risk based supervision model in line with best international practice. To facilitate compliance with this supervisory model, I propose to remove the requirement for annual licensing of banks and instead empower the Central Bank of Kenya to issue non-renewable perpetual licences. The Central Bank will continue to monitor banks using the risk based approach and to carry out inspections on periodic basis while retaining powers to withdraw the license at any time. This will eliminate the need for repetitive annual application procedures while still safeguarding financial stability.

150. Similarly, **Mr. Speaker**, for the insurance industry, in addition to increasing the minimum capital requirements, I propose to introduce risk based capital requirements to be determined by the specific risk profile of the company.

151. **Mr. Speaker**, the investment provisions in the Insurance Act are rules based and are not in compliance with international core principles of insurance supervision. I am therefore proposing to move to a more principle based investment framework where insurance companies will be required to prepare and submit investment policies and will be subject to broad prescribed investment guidelines. This investment framework will bring the insurance industry in harmony with the framework already pertaining in the retirement benefits and collective investment sectors.

152. **Mr. Speaker**, whereas over 25,000 agents have qualified for award of Certificate of Proficiency (COP) which is a requirement for licensing as an insurance agent, we only have 5,000 agents licensed by the Insurance Regulatory Authority (IRA). This is partly as a result of an oppressive requirement that agents must be recommended by an insurance company before they can be licensed. In order to expand insurance penetration, I propose to remove this requirement and allow IRA to license agents so long as they have attained the COP and met other licensing requirements.

153. **Mr. Speaker**, Real Estate Investment Trusts (REITs) and Asset Backed Securities (ABS) are investment vehicles that offer companies alternative sources of raising capital. In order to ensure tax neutrality with other forms of debt, I propose to exempt asset transfers and other transactions related to the transfer of assets into REITs and ABS from stamp duty.

154. **Mr. Speaker**, retirement benefits schemes should be able to diversify their investments into new emerging investment vehicles in the capital markets in order to optimize returns to members. I therefore propose to create a new category in the Retirement

Benefits Investment guidelines to allow schemes to invest upto 10 percent of their assets in private equity funds and venture capital funds licensed by the Capital Markets Authority. I, however, propose to introduce in all classes of assets, except government securities, a per issue limit of 15 percent of assets and per issuer limit of 15 percent of issue in order to mitigate potential risks.

155. **Mr. Speaker**, the distribution of surplus in defined benefits schemes is often a contentious matter and scheme members often do not benefit from the surplus, which only accrues to the employer. I therefore propose to amend the retirement benefits regulations to provide clear provisions as to treatment of the surplus, whereby, the employer will enjoy a contribution holiday in cases of on-going schemes, but in case of winding-up or scheme conversion, the surplus is to be shared equally between members and employers.

156. **Mr. Speaker**, to improve governance of retirement benefits schemes, I propose to introduce term limits such that trustees can only serve a maximum of two terms of three years and I also propose to reduce the period for preparation of annual audited accounts for retirement benefits schemes from 6 months to 3 months to ensure expeditious accountability to members.

157. **Mr. Speaker**, to strengthen the supervision of deposit taking Sacco societies by the Sacco Societies Regulatory Authority (SASRA), I am proposing to amend the Sacco Societies Act to allow SASRA to undertake vetting of directors and key officers of these Sacco's. In addition, **Mr Speaker**, I propose to extend the current information sharing framework for Sacco's from the current inter-Sacco sharing of negative information, to also allow sharing of positive information as well as sharing with other financial institutions.

158. In order to strengthen the fight against terrorism and money laundering, **Mr. Speaker**, I am proposing amendments to the Proceeds of Crime and Anti-Money Laundering Act, in order to clarify the objectives of the Financial Reporting Centre (FRC) and strengthen its supervisory role. These changes are in line with the recommendations of the Financial Action Task Force (FATF) and will help improve our international rating following our removal from the FATF watch list in June 2014.

159. **Mr. Speaker**, the Government is aware that some Kenyans hold their wealth outside the country. To encourage these Kenyans bring back their wealth we are working on a mechanism to facilitate them bring back their money to support their investment activities in Kenya to help build the nation. **Mr. Speaker**, specific details on this initiative will be worked out shortly.

160. **Mr. Speaker**, it has come to our attention that the Consumer Protection Act, No. 46 of 2012 is posing challenges with respect to the interpretations of its applicability to loan agreements between public entities and our Development Partners. In order to address this

challenge, I propose to amend the Consumer Protection Act to exempt Credit Agreements between public entities and our Development Partners from the provisions of the Act.

161. **Mr. Speaker**, the scrutiny by this House, through the Committee on Delegated Legislation, of statutory instruments issued by the Executive and regulatory bodies is very welcome as it is meant to ensure that such instruments serve the interests of the Kenyan people. However, it is my considered view that such scrutiny should not extend to routine administrative actions such as guidelines, orders, directions, and forms. I am therefore proposing an amendment to the Statutory Instruments Act to limit the definition of statutory instruments to be laid before the House to regulations, rules, by-laws and tariffs. This will relieve this House from the scrutiny of administrative issues.

10. CONCLUSION

162. **Mr. Speaker**, this budget demonstrates our resolve and concerted efforts to create a prosperous and inclusive country for all Kenyans. It focuses on implementing key development priorities outlined in our economic transformation agenda.

163. **Mr. Speaker**, the budget aims to secure the lives and property of citizens of this great country from the emerging ever evolving insecurity facing us. This budget allocates enormous resources to the security organs and for both Police and Military modernization. Tourism recovery remains our key objective given its potential to create jobs and employment of our youth and women. We target to improve on efficiency and roll out systems that will enable us to save public resources so that Kenyans get value for their money.

164. **Mr. Speaker**, we are firmly behind the efforts by His Excellency The President to deal decisively with corruption that benefits a few individuals instead of the country. In preparing the budget we consulted Kenyans as demanded by the constitution and the Public Finance Management Act, 2012 and I wish to assure Kenyans that through this budget, we intend to address all the concerns raised during the consultative forums. The focus of this budget is on pro-poor growth and sustainable development guided by Vision 2030 so as to generate jobs and wealth for our citizens.

165. **Mr. Speaker**, the implementation of this budget requires the collective effort of all Kenyans. I, therefore, urge Hon Members and all Kenyans at large to join us in building the Kenya we want. A prosperous Kenya – a Kenya in which we all aspire to live in.

166. I wish to thank my Cabinet colleagues and their Principal Secretaries who collectively own this budget and the programmes to be implemented.

167. My sincere appreciation also goes to:

- His Excellency The President and His Excellency the Deputy President for their guidance and support during the budget process
- Majority Leader of the National Assembly, Hon Aden Duale, for his relentless support to get most of the legislative proposals on finance matters pass through the house;
- Members of the Budget and Appropriation Committee as well as the Finance, Planning and Trade Committee led by Hon Mutava Musyimi and Hon Benjamin Langat, respectively, for the constructive engagements throughout the year on Budget and Finance matters;
- The Departmental Committees of Parliaments and the Senate for the valuable inputs into this budget;
- Members of the Intergovernmental Budget and Economic Council (IBEC) and Senate Committee on Finance and Economic Affairs for vibrant discussions on budget allocations to counties;
- Management and Staff of the National Treasury for commitment to excellence in the public service and the long hours they have put to ensure that this budget and supporting documents meet the Constitutional deadlines;
- Management and Staff of the CBK and KRA for their contributions; and,
- All members of the National Assembly and Senate for their cooperation and support.

168. My gratitude goes to Kenyans from all walks of life for their contributions and encouragement.

God Bless You, God Bless Kenya

I Thank You

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MEMO

*RT Hon Speaker
Forwarded for your approval
19/3/15*

*Approved
19/3/15*

To : **The Speaker Clerk**
Thro' : The Clerk
From : Director, Committee Services
Date : 19th March, 2015

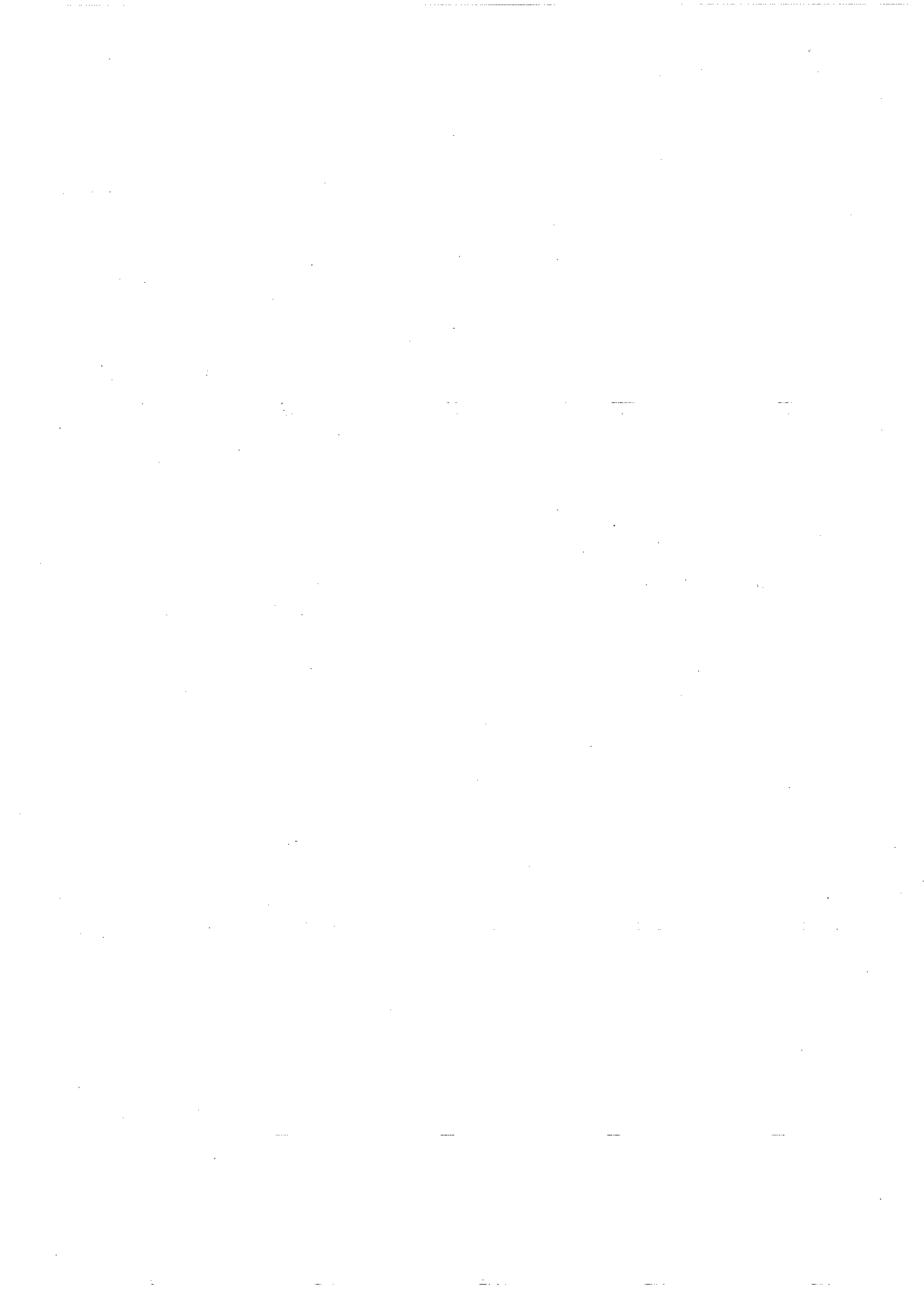
**SUBJECT: REPORT OF THE SENATE STANDING COMMITTEE ON
FINANCE, COMMERCE AND BUDGET ON THE MATTER OF
CEILINGS ON RECURRENT EXPENDITURE FOR THE FY
2014/15.**

The Standing Committee on Finance, Commerce and Budget, would wish to table its report on the operations of the Makueni County Assembly.

This is to request for your approval for tabling of the report.



Njenga Njuguna



REPUBLIC OF KENYA



PARLIAMENT
THE SENATE

ELEVENTH PARLIAMENT - THIRD SESSION

STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

REPORT ON THE STATUS OF FINANCIAL ALLOCATION TO COUNTIES BY
THE COMMISSION ON REVENUE ALLOCATION- THE MATTER OF
CEILINGS ON RECURRENT EXPENDITURE FOR THE FY 2014/15
PURSUANT TO A STATEMENT BY SEN. HASSAN OMAR, MP

PARLIAMENT BUILDINGS
NAIROBI

March, 2015

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PREFACE

Mr. Speaker Sir, on behalf of the Members of the Standing Committee on Finance, Commerce and Budget and pursuant to Standing Order 203(6) of the Senate, I hereby present to this House, the Committee Report on the Status of budget ceilings on recurrent expenditure for governments at the county level for the FY 2014/2015 by the Commission on Revenue Allocation.

In deliberating on this matter the Committee has met with the following stakeholders; the County Assembly Speaker's Forum, the Controller of Budget, the Transitional Authority and the Commission on Revenue Allocation.

Mr. Speaker Sir,

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:

- i) Discuss and review the estimates of County governments and make recommendations to the Senate;
- ii) Examine the Medium term Budget Policy Statement presented to the Senate;
- iii) Examine and report on the Budget allocated to constitutional commissions and independent offices;
- iv) Examine bills related to the Counties;
- v) Examine the Budget, including the Division of Revenue Bill; and
- vi) Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.

Mr. Speaker Sir,

The Committee was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MP. -Chairperson
2. The Hon. Sen. Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.

5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. Boni Khalwale, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. (Dr.) Zipporah Kittony, MP.
10. The Hon. Sen. James Mungai, MP.
11. The Hon. Sen. Catherine Mukiite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP

Standing Order 45 (2) of the Senate Standing Orders provides that a Senator may request for a statement from a Committee Chairperson relating to matters under the mandate of the Committee. At a sitting of the Senate held on Wednesday 5th March 2015, Sen. Hassan Omar Hassan, M.P., requested for a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on the status of financial allocation to counties by the Commission on Revenue Allocation (CRA).

Mr. Speaker Sir,

It is significant to mention that the purpose of this report is to inform the House on the happenings as regards to ceilings on recurrent expenditure for County Governments for the FY 2014/2015 issued by the CRA.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

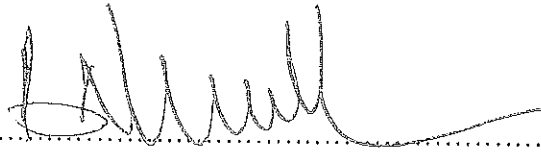
The Committee is grateful to all the stakeholders who appeared to the Committee to make presentation and respond to matters raised.

The Committee is also particularly grateful to the Offices of the Speaker, the Clerk of Senate for the support received as it discharged its mandate. I wish to thank the Senators who participated in the process of ensuring that the Committee completes its report.

Mr. Speaker Sir,

On behalf of the Committee, and pursuant to Standing Order 201(6), it is therefore my pleasant and honourable duty to present and lay on the table of the House the report of the Committee on Finance, Commerce and Budget regarding the status of ceilings on recurrent expenditure for the FY 2014/15

SIGNED:



CHAIRPERSON -SEN. BILLOW KERROW

DATE:

19/03/2015



I. INTRODUCTION

Mr. Speaker

At a sitting of the Senate held on Wednesday 5th March 2015, Sen. Hassan Omar Hassan, M.P., requested for a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on a report on the status of financial allocation to counties by the Commission on Revenue Allocation (CRA). In the Statement, the Senator sought to know whether the Chairman of the Committee is aware of the following:

- a) That, a number of County Assemblies are grinding to a halt in operations and are unable to pay their members and staff because of the budget ceiling imposed by CRA;
- b) That, the Controller of Budget has refused to finance County Assemblies unless they comply with the said ceilings;
- c) That, the High Court has ruled on the matter and though dismissing the petition by county Assemblies, the court has determined that the ceilings by CRA are not binding and can only be binding if the said ceilings are approved by Parliament;
- d) That, the ceilings are just a recommendation as determined by the court;
- e) That, the Controller of Budget is sending County Assemblies to negotiate with CRA to vary the ceilings even though the court has placed that mandate on Parliament;
- f) That, some proposed ceiling by CRA last year and the figures proposed this financial year are irreconcilable, putting into doubt the modalities and criteria used to arrive at the said ceilings; as an example, the CRA proposed a ceiling of Ksh. 191million for Tana River County Assembly last financial year and Ksh. 398 million this financial year; and,
- g) What the National Treasury is doing to ensure that the Controller of Budget releases funds to the County Assemblies on the basis of their Appropriation Acts to allow them perform their constitutional and statutory mandates.

In addition, the Speaker, Makueni County Assembly wrote to the committee vide his letter dated 3rd December, 2014 bringing to the attention of the committee concerns on financial allocation to the assemblies and challenges counties reportedly face on cash flow.

The County Assembly Forum also sought a meeting with the Committee on 24th February, 2015, and drew the attention of the Senate similar concerns. In particular, they stated that the court had ruled that budget ceilings set by the

CRA on the Assemblies were not binding, and hence urged the Senate to give appropriate direction to Controller of Budget to release their funds based on the respective appropriated amounts rather than the set ceilings.

In prosecuting the matters raised above, the Committee heard from the following key stakeholders; the County Assembly Speaker's Forum, Speaker Makueni County Assembly, the Controller of Budget, the Commission on Revenue Allocation, the Transitional Authority, the CEC Finance and Economic Planning, Makueni County Government, and hereby tables a report, containing its observations and recommendation to the House for consideration.

Committee Sitzings

In deliberating on matters raised and held the following sittings:

- a) On 24th February, 2015, the Committee held a meeting with the County Assemblies Leadership Forum, the following was discussed; the operations of the County Assemblies and the challenges related to the ceilings by CRA, and the High Court ruling on the ceilings.
- b) On 10th March, 2015, a consultative meeting was held with the Controller of Budget, Transition Authority, Commission on Revenue Allocation and Makueni County Assembly Speaker. The objective of the meeting was to discuss the operations of the County Assemblies and the challenges related to the ceilings by CRA, the High Court ruling on the ceilings and the operations of Makueni County Assembly.

In July, 2014, the Committee held a sitting with CRA to consider the proposed ceilings on recurrent expenditure for the FY 2014/15. CRA had requested the Committee to propose an amendment to the PFM Act, 2012 to allow CRA to set ceilings for County Governments.

The Committee further noted the contents of the House Hansard Debate of August 5th, 2014, were the Committee proposed an amendment to the PFM Act, 2012. The purport for the amendment was that the CRA had already set budget ceilings on recurrent expenditure on the budgets of each county government and had provided the schedules to both the county executive and the assemblies for the FY 2014/2015. The amendment was intended to protect counties and ensure prudent use of county resources and remedy the concerns that county assemblies have been spending huge amounts of money on very unnecessary expenditure like travel and allowances.

II. BACKGROUND INFORMATION ON THE STATUS OF CEILINGS ON RECURRENT EXPENDITURE FOR COUNTY GOVERNMENTS FY 2014/15

- 1) **Mr. Speaker Sir**, on the 22nd of April, 2014 the Commission on Revenue Allocation (CRA) issued a circular **Ref. No. CRA/CGM/vol.III//99** addressed to all county governments which recommended a ceilings on allocation for all County Assemblies and all County Executives in county budgets for the FY 2014/15.
- 2) The CRA explained that the basis for the circular was Article 216 which gave the CRA the mandate to make recommendations on financial management,
- 3) They explained that it was necessary to set ceilings on the budget for both the County Executive and the County Assembly in each county so that there is a structured determination of how the allocation for new administrative structures in counties can be shared out. This would eliminate arbitrary allocation of funds to the Assemblies by the County Treasury as well as ensure equitable utilisation of resources. CRA also explained that it was necessary to set ceilings to minimise wastage of financial resources by both arms of government.
- 4) At its meeting held on 10th March, 2015, the Committee established that the proposed budget ceilings are appropriate in maintaining financial discipline in the counties and recommended an amendment to the PFM Act through the Allocation of Revenue Act, 2014 to give the proposed ceilings the force of law.
- 5) The Controller of Budget on diverse dates vide various circulars addressed to the county governments demanded that the respective County Assembly budget allocations should comply with the aforementioned circular issued by the CRA. In so doing the Controller of Budget further stressed that failure to comply with these ceilings would result in withdrawals from the county revenue funds or any other county government funds being declined.
- 6) Following this circular, some counties complied with the ceilings while others declined, expressing concerns that they had already approved their respective Appropriation Acts or in some cases votes-on-account and therefore had already had budgets that were valid although they did not adhere to the ceilings.
- 7) The Controller of Budget then proceeded to decline those requests for withdrawals of funds that were based on the Appropriation Bills or

votes-on-account outside of the recommendations of the Commission on Revenue Allocation.

- 8) The County Assemblies then challenged the decision by the Controller of Budget in court, through case no. 368/2014 on the legality of the circular by the Commission on Revenue Allocation setting ceilings on recurrent expenditure for County Assemblies.
- 9) A consent order between the three parties (CRA, COB and County Assemblies) allowing withdrawal of up to 50% resources based on the ceilings was filed by the Court on 25th July, 2014 allowing Counties to implement their respective budgets as they awaited their final ruling on the validity of the ceilings.
- 10) A further consent order was filed in court on 30th January, 2015 allowing counties to withdraw up to 75% of the resources due to counties based on the ceilings. The County Assemblies are left with one quarter which access has not been denied.
- 11) The final ruling on the matter was issued on 20th February, 2015 and provided that;
 - i) A declaration that the 'circulars were null and void for all intents and purposes' and should be 'quashed' were "not granted and are instead dismissed"
 - ii) That it is the duty of the Controller of Budget to oversee the implementation of respective county budgets.
 - iii) Orders that the COB should 'approve and disburse' the Assemblies funds as provided for in every County government's budget estimates and appropriation acts were "not granted" and were instead "dismissed" by the court.
- 12) As at 17th March, 2015 thirty (30) of the counties had complied with the ceilings and are drawing full budgetary provisions from the exchequer. As at the date of this report, the following counties have complied with the CRA ceilings:- Baringo, Bomet, Bungoma, Busia, Elgeyo Marakwet, Garissa, Isiolo, Kakamega, Kiambu, Kirinyaga, Kisii, Kisumu, Laikipia, Mandera, Makueni, Meru, Migori, Muranga, Nandi, Narok, Nyamira, Nyeri, Samburu, Taita Taveta, Trans Nzoia, Uasin Gishu, Vihiga, Wajir, West Pokot and Marsabit.
- 13) An additional thirteen (13) counties have held meetings with the Commission on Revenue Allocation and agreed on a need basis, where adjustments need to be made. They include; Homabay, Kajiado, Kericho,

Kilifi, Kitui, Kwale, Lamu, Machakos, Mombasa, Nyandarua, Siaya, Tharaka Nithi and Turkana;

- 14) Four (4) of the Counties including Embu, Nairobi, Nakuru and Tana River are the only counties that have neither complied nor held discussions with the CRA. However, an initial meeting with Nakuru County is scheduled for 23rd March, 2015;

RESPONSES TO THE STATEMENT FROM THE SENATOR

- 15) The Committee deliberated on the request for a statement by the Sen. Hassan Omar Hassan, M.P. who requested a on the status of financial allocation to counties by the Commission on Revenue Allocation. The Committee noted as follows on each of the matters;

I. On whether the Committee is aware that County Assemblies are grinding to a halt due to the constraints of the budget ceilings imposed by the CRA.

The Committee considered this matter and held meetings with the County Assemblies Forum, and noted that:

- a) County Assemblies do not object to the desirability of budget ceilings and more so on recurrent expenditure of county governments.
- b) Respective County Fiscal Strategy Papers were submitted by the Executives by 28th of February 2014 which was during the formulation stage of the 2014/15 financial year and they contained ceilings for every sector of the County Government, the County Assembly included.
- c) The ceilings set out in the respective county fiscal strategy papers were the basis for the appropriations acts which were not adhering to the ceilings of the Commission on Revenue Allocation.
- d) Several County Assemblies had therefore not anticipated or planned to accommodate the ceilings issued by the CRA and therefore did not budget or indeed expend within the ceilings resulting in unfinanced budgets, reallocated expenditures and budgets that were not implemented fully.
- e) A significant challenge that County Assemblies experienced beyond the ceilings issued by the Commission on Revenue Allocation was the irregular exchequer releases from some county executives once requests for resources had been made to the Controller of Budget.
- f) This was because the rules and regulations governing release of monies to the County, the County Assembly cannot send requisitions for funds directly to the Controller of Budget but through the County Executive Committee Member for Finance.

II. On whether the Controller of Budget has refused to finance County Assemblies unless they comply with the said ceilings

The Committee considered the ruling by the High Court of Kenya on petition number 368 of 2014 as well as submission from the Controller of Budget and noted that;

- a) The Controller of Budget (CoB) had declined to recognize respective County Assembly Appropriation Acts that did not adhere to fiscal prudence and adherence to the ceilings issued by the Commission on Revenue Allocation.
- b) The Controller of Budget had therefore declined to release monies to County Assemblies unless they complied with the said ceilings,
- c) The County Assemblies Forum (CAF) held that CRA recommendations were not binding and the action by the Controller of Budget was not legal.
- d) The Committee further noted that the Controller of Budget had mandate under Article 228 to oversee the implementation of respective county budgets by authorizing withdrawals from respective county revenue funds.

III. On whether the Committee is aware that although the High Court of Kenya dismissed the petition by the County Assemblies, the court had also determined that the said ceilings were not binding and would only be binding if approved by Parliament and that ceilings are just a recommendation.

The Committee considered the ruling by the High Court of Kenya on petition number 368 of 2014 and noted that;

- a) That the circulars on ceilings on recurrent expenditure were issued in advisory capacity granted to the Commission under article 216 of the constitution and are therefore lawful.
- b) Circulars cannot be quashed due to (a) above.
- c) However, ceilings in the circulars are not binding on County Assemblies since they are not directives and can only become binding if adopted by Parliament through the County Allocation of Revenue Act, as parliament has the final say on the matter.
- d) County budgets are subject to national legislation, being Division of Revenue Act and County Allocation of Revenue Act.
- e) Differences in regarding fiscal and budgetary processes should be settled in terms of Article 189(4) of the constitution of Kenya, by way of alternative dispute resolution mechanism and this includes reference of

the dispute to parliament which has the final say in budgetary processes in Kenya.

IV. That the Controller of Budget is sending County Assemblies to negotiate with the CRA to vary the ceilings even though the court has placed that mandate on Parliament

The Committee had hitherto considered this matter and had noted that;

- a) The CRA had held two consultative meetings on the 2015/16 budget ceilings with the County Executive Members for finance and County Assembly Clerks. The first meeting was held in December 2014 and the second was in March 2015.
- b) The Controller of Budget, Transition Authority, Commission on Revenue Allocation had undertaken to work together to come up with a framework for ensuring prompt and just resource allocation to counties.
- c) That it was critical for the respective County Executives, County Assemblies to build synergy with the institutions in (a) above in addressing pending issues which are affecting service delivery and monies meant for recurrent expenditure for the Assemblies should be released with immediate effect
- d) While appreciating the importance of financial accountability. The roles and independence of each arm of County Government should be respected at all times. The Senate has convened a high level workshop to discuss matters of financial accountability at governments at the County level. The Workshop is scheduled for 19th to 22nd March, 2015 as an avenue for further synergy and consultation.

V. On whether the Committee is aware that the proposed ceilings for the 2014/15 and 2015/16 financial years were irreconcilable;

The Committee deliberated on this and noted that;

- a) The CRA had submitted to the Committee that the ceilings were only on specific recurrent expenditures of County Assemblies and County Executives;
- b) The CRA further submitted that the ceilings were designed to curb wasteful expenditure especially on non-priority items such as foreign travel and hiring of non-core personnel.
- c) The ceilings for the 2015/16 financial year were still under deliberation and were not yet final and therefore could not be compared to the 2014/15 ceilings.

- d) The ceilings for the 2015/16 financial year would include allocations for mortgage and car loans due to constitutional office holders provided by the Salaries and Remuneration Commission.

VI. On whether the Committee is aware of what the national treasury is doing to ensure that the COB releases funds to the County Assemblies on the basis of their respective Appropriations Acts;

The Committee noted that:

- a) Several County Assemblies had installed an IFMIS system for financial management and opened operational accounts at the Central Bank of Kenya in an effort to gain financial autonomy but the two were not operational due to limitations from the National Treasury. In this regard County Assemblies have had to depend on the County executive for the stated services.
- b) All County Assembly in Kenya therefore operates under the mercies of the County Executive on issues of finances thus compromising their ability to discharge their mandate.
- c) Given the separation of powers between the Executive and the Assembly, the County Assembly is supposed to oversight the Executive and it's accountable to the Auditor General's Office and the Office of the Controller of Budget
- d) The Committee had directed the Commission on Revenue Allocation and Controller of Budget to liaise with the Integrated Financial Management Systems directorate to ensure that County Assemblies are connect to the IFMIS and G-pay systems to enhance resource flow, accountability and independence in financial resource

II. OBSERVATIONS

The Committee observed that;

- a) The Committee also observed that the CRA issued ceilings well before the amendment of section 117 of the PFM act had been done by Parliament noting that the County Allocation of Revenue Bill was passed in July, 2014.
- b) Although the Commission on Revenue Allocation had met the Committee and subsequently agreed on the importance of taming wasteful expenditure in the assemblies, the Committee did not formally submit proposals for setting the ceilings after the amendment to the PFM Act, 2012 had been passed.
- c) The Committee is convinced that the budget ceilings determined through a structured process is the most prudent way of allocating the resources between the two arms of the government. The alternative

would be an arbitrary process that would encourage wastage, and conflicts in the counties.

- d) The Committee noted that although the Controller of Budget has the mandate to oversee the implementation of respective budgets of the various county governments by authorizing withdrawals, the COB enforced the ceilings set by the CRA to promote prudent financial management, and with the concurrence of the committee.
- e) Pursuant to the court case filed by the assemblies, the court had approved withdrawals of up to 75% of the ceiling for the first three quarters of FY 2014/15 before giving the ruling that dismissed all the prayers sought in the petition. Consequently, COB can only disburse funds for the remaining quarter based on the Appropriation Act.
- f) The Committee also observed that there was no synergy in addressing matters of conflict between the County Assemblies, the County Executive, the offices of the Controller of Budget and the Commission on Revenue Allocation although the law has created sufficient dispute resolution mechanisms as provided for in Article 189(3) and (4) of the Constitution.

III. RECOMMENDATIONS

The Committee therefore recommends that;

1. The County Governments should establish conflict resolution mechanisms and desist from encroaching on each other's Constitutional mandate. Conflicts regarding fiscal and budgetary processes should be settled in terms of Article 189(4) of the constitution of Kenya, by way of alternative dispute resolution mechanism. This includes reference of dispute to the Senate which has the mandate to serve to protect the interests of counties, and their governments.
2. The Senate shall establish new guidelines on the approval of requisitions as well as new structures on access to funds for the Assemblies pursuant to Art.216 of the Constitution.
3. The Senates directs that the COB, CRA and TA, in consultation with the Director of IFMIS submit a report on how County Assemblies can directly access credit requisitioned funds into their operational accounts after the exchequer release.
4. Ceilings on recurrent expenditure of the FY 2014/2015 were lawfully issued but not binding as per the court ruling. The courts had approved withdrawals of up to 75% of the ceilings for the first three quarters. Therefore, the Senate directs that the COB should, in consultation with CRA, release adequate funds to the county assemblies immediately for the fourth quarter.

5. The Senate should protect County Assemblies in accordance with its mandate in Article 96(1) of the Constitution through amendment to the PFM Act in order to ensure that the role of County Assemblies in overseeing the county executive is not compromised. Funds requisitioned by the Assemblies should be released directly from the County Revenue Fund into their operational accounts without further delay to ensure financial independence.
6. Pursuant to PFMA, the Senate should develop guidelines for approval of the recommendation of CRA in respect of budget ceiling for FY 2015/16.
7. The Committee has tasked the COB to furnish it with the status of compliance of the county executive with the budget ceilings for tabling in the House.
8. Pursuant to the court ruling the county assemblies should exercise prudence in their financial management.



MINUTES OF THE 96TH SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL GROUND FLOOR BOARDROOM ON 25TH FEBRUARY, 2015 AT 9.00AM.

MEMBERS PRESENT

1. Sen. Billow Kerrow -Chairman
2. Sen. Peter Ole Mositet -Vice Chairman
3. Sen. Moses Wetang'ula -Member
4. Sen. Beatrice Elachi -Member
5. Sen. Boni Khalwale -Member
6. Sen. Paul Njoroge Ben -Member
7. Sen. (Dr.) Wilfred Machage -Member
8. Sen. Zipporah Kittony -Member
9. Sen. Catherine Mukiite -Member
10. Sen. (Prof.) Anyang Nyong'o -Member
11. Sen. (Prof.) John Lonyangapuo -Member
12. Sen. (Dr.) Agnes Zani - Member

MEMBERS ABSENT

1. Sen. G.G. Kariuki -Member
2. Sen. Mungai James -Member
3. Sen. Mutula Kilonzo Jnr. -Member
4. Sen. Mutahi Kagwe -Member

MEMBERS OF THE COUNTY SPEAKERS FORUM

- 1) Hon. Dr. Nuh Hassan -Speaker, Tana River County
- 2) Hon. Abdi Sheikh -Speaker, Mandera County
- 3) Mr. Chris Kinyanjui -Clerk, Muranga County
- 4) Mr. Jacob Ngwele - Clerk Nairobi County
- 5) Mr. Martin Kariuki -Clerk Taraka Nithi, County
- 6) Mr. Elijah Mutambuki -Clerk Kitui County
- 7) Mr. Wanyoike Mboche -Clerk Lamu County

SECRETARIAT

1. Ms. Emmy Chepkwony -Senior Clerk Assistant
2. Mr. Peter Mulesi -Clerk Assistant
3. Mr. Chelang'a Maiyo -Researcher
4. Mr. Frank Mutulu -Media Relations Officer
5. Ms. Anne Wanjiru -Intern

MIN. 045/2015: PRELIMINARIES

The chairman called the meeting to order at 9.28 am followed with prayer.

He welcomed Sen. (Dr.) Agnes Zani and congratulated her on her appointment by the Rules and Business Committee (RBC) of the Senate to join the Committee.

He then called for introduction of the Members present and invited the County Assembly Speakers Forum to introduce their delegation and make their presentation.

MIN. NO. 046/2015: ADOPTION OF THE AGENDA

The agenda of the day was adopted as follows;

- 1) Prayer
- 2) Adoption of the Agenda
- 3) Meeting with County Assembly Speakers Forum (CASF) on the budget ceilings
- 4) Consideration of Committee's interim report on Narok petition
- 5) Any other Business
- 6) Adjournment and Date of next meeting.

MIN NO. 047/2015: PRESENTATION BY THE COUNTY ASSEMBLY SPEAKER' FORUM

The Chairman of the County Assemblies' Speakers Forum (CASF) thanked the Senate Standing Committee on Finance, Commerce and Budget for giving them opportunity to present their views on the compliance by counties by the budget ceilings set by the commission of Revenue Allocation (CRA). He informed the committee that their intention of appearing before the Committee was to seek the guidance of the Senate on the legality of the Circulars and allow discussions on the way forward for County Assemblies to access their budgets especially following the High Court ruling delivered by Justice Isaac Lenaola on 25th February, 2015 on the matter of budget ceilings by the CRA Circulars.

He informed the Committee that:

1. The budget ceilings on recurrent expenditure be supported by costing statistics to avoid inconsistencies in the process of service delivery to the public as envisaged by the Constitution of Kenya;
2. the County Assemblies' budgets constitute only 10% of the total county budget hence limited scope of operation as compared to the County Executive;
3. the county Appropriation Acts 2014 with respect to county finances were passed by County Assemblies with due consideration of their mandate, but these laws have been in conflict with the county Allocation of Revenue Act 2014;
4. the non-compliance by County Assemblies to the directive by the Controller of Budget on budget ceilings is the main cause of poor service delivery in the

County Governments, to this end salary, allowances and other benefits due to county Assembly staff have not been honored for the last 6 months;

5. the Commission on Revenue Allocation (CRA) is only required to provide an advisory on the budget ceilings and the appropriateness of the ceilings on the smooth running of county governments;
6. the timing of the CRA recommendation was difficult to implement since all the 47 County Assemblies had already passed their Financial Year 2014/15 budgets as required by law;
7. the commission on Revenue Allocation (CRA) through a circular Ref: **NO.CRA/CGM/VOL.III/99 dated 22nd April, 2014**, recommended budget ceilings for County Assemblies and County Executive;
8. Some County Assemblies disregarded the CRA recommendation since this was not binding and only represented an advisory on the part of county Governments. In view of non-compliance by the county assemblies, a meeting was held between the Commission of Revenue Allocation, Controller of Budget and County Assemblies Forum to look at the stalemate after the County budgets were passed;
9. If counties are not facilitated their capacity to oversight the executive will be compromised.

The Committee was further informed that:

- i. The Controller of Budget did not agree on allowing county assemblies access its budgets, but until they comply with the CRA recommendations on budget ceilings;
- ii. the County Assemblies' Forum through the speakers of all the 47 County Assemblies proceeded to court seeking inter alia to quash the Commission of Revenue Allocation circular on the County Governments' budget ceilings;
- iii. the High Court dismissed the petition on the prayers to quash the circular, but the judge went further and demarcated the boundaries on the roles of the various state organs involved in the budget making process of County Governments: Parliament, Controller of Budget, and Commission on Revenue Allocation, County Treasury and County Assemblies;
- iv. in the ruling the judge stated that even though the circular was lawfully issued, the recommendations by the Commission on Revenue Allocation on budget ceilings were only advisory and should only be implemented once Parliament has approved them through the County Allocation of Revenue Act;
- v. in view of the ruling by the High Court, the County Assemblies have requested the Controller of Budget to release monies to their County accounts in line with the Appropriation Acts 2014 of County Assemblies;
- vi. However, the Controller of Budget still holds the opinion that the Circular from Commission on Revenue Allocation is binding and that County As-

- semblies have to renegotiate the budget ceilings with CRA before subsequent approval by the Controller of Budget for the release of funds;
- vii. CASF were faced with challenges related to issues of undue advantage by Governors and MCAs on matters of budget making due to political dynamics in the Counties;
 - viii. CASF is therefore, seeking intervention of the Senate within the purview of Art. 96 of the Constitution to compel the Controller of Budget to release the monies due to County Assemblies in line with the Appropriation Acts of specific County Governments;
 - ix. The Senate should check the Constitutional bodies especially those related to devolution to ensure that they do not allocate themselves powers outside the Constitution.

On the matter of ceilings, the Committee was informed that the impression by CRA that a number of County Assemblies had willingly complied with the budget ceiling and a number are negotiating is misleading. All county Assemblies who complied, had done so under duress, those that complied did so after their members and employees went without salaries for months after their county treasuries declined to release funds to the County Assemblies.

That whereas CRA purports to have recommended reasonable ceilings, a cursory look at their recommendations for FY 2014/2015 against recommendations for FY 2015/2016 proves otherwise.

From the deliberations that ensued;

The Chairman informed the CASF that the Senate passed an amendment to the County Allocation of Revenue Act to allow CRA to recommend ceilings to the Senate for approval. As a result CRA has recommended the Ceilings to the Senate although they have not been approved. There are several consultations going on the matter and the Senate will soon engage stakeholders on the matter of budget making process in the counties;

Members expressed concern that in most County Assemblies the Speakers and the Clerks of County Assemblies are arm twisted by the Members of the County Assemblies (MCA's). Concerns were also raised on the threats facing the oversight institutions at the County level and hence the need for separation of powers.

The Committee informed CASF that ceilings are principle of financial prudence and accountability;

The Committee noted with concern that ceilings were guided by complains that the County Assemblies were spending more on foreign travels hence the need for regulation of their budgets mainly to free resources for development;

The CRA should target the quality of Members of the County Assemblies (MCAs) including qualifications on who qualifies for election rather than inhibit those already elected in performing their constitutional functions;

County Assemblies have over employed staff which has bloated their payroll and therefore the need to re-examine the personnel requirements, unplanned and unjustified expenditures;

Members expressed concern that the Division of Revenue Act, 2014 allocated KES. 30 billion as the cost of new administrative structures in the Counties where KES. 16.8 and 13.2 billion were set aside for County Assemblies and County Executive, respectively. The Committee sought explanation on why CASF were then unable to pay salaries when funds had been already allocated;

Members advised that now that the case had been concluded, the monies for the counties should be released to address their needs. CASF should constantly consult, liaise and update the Senators in their respective counties on the matter.

CASF prayed to the Committee that COB be Compelled to release funds to the County Assemblies without reference to the said ceilings; and that the funds be released in accordance with the Appropriation Acts, since the County Appropriation Acts are not in conflict with the Constitution, the PFMA, The Division of Revenue Act, 2014, and the County Allocation of Revenue Act, 2014.

It was resolved that;

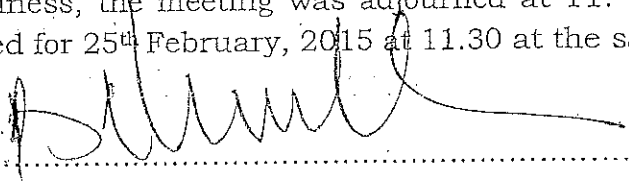
- 1) the Commission on Revenue Allocation (CRA), the Transitional Authority (TA) and the Controller of Budget be invited to a meeting of the Committee on Wednesday, 3rd March, 2015 to respond to the matters raised by the CASF;
- 2) The Committee convenes a high level workshop to deliberate on matters of accountability of public resources in the counties and invite the Auditor-General, The Salaries and Remuneration Commission, the Transitional Authority, the Commission on Revenue Allocation and the Controller of Budget (COB) as key resource persons. The workshop will be held at Enashipai Hotel and Spa, Naivasha on 12th to 15th March, 2015;
- 3) The Committee will communicate feedback after consultations with CRA, TA and COB to CASF on the way forward on the matter of Ceilings.
- 4) The Committee further resolved to invite the COB, CRA and TA to a Committee meeting on Tuesday 3rd March, 2015 to deliberate on the following:

- a. The implications of the High Court Ruling on petition no. 368 of 2014 regarding Circulars issued by the Commission on Revenue Allocation (CRA) on budget Ceilings;
- b. Failure by the Makueni County Executive to transfer funds to the County Assembly on grounds that the Assembly failed to submit its books of accounts for inspection by the County Executive;
- c. Concerns that several County Assemblies are unable to pay salaries; and,
- d. Budget making process for Isiolo County.

MINUTE NO. 048/2015: ADJOURNMENT AND DATE OF NEXT MEETING.

There being no other business, the meeting was adjourned at 11: 08 p.m. The next meeting was scheduled for 25th February, 2015 at 11.30 at the same venue.

SIGNED:



CHAIRPERSON -Sen. Billow Kerrow

DATE:

19-03-2015

MINUTES OF THE 99TH SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT CONTINENTAL HOUSE RESTAURANT, PARLIAMENT BUILDING ON 10TH MARCH, 2015 AT 9.00 AM.

PRESENT

1. Sen. Billow Kerrow -Chairman
2. Sen. Peter Ole Mositet -Vice Chair
3. Sen. Moses Wetangula -Member
4. Sen. Beatrice Elachi -Member
5. Sen. Catherine Mukiite -Member
6. Sen. (Prof.) Anyang Nyong'o -Member
7. Sen. MutulaKilonzo Junior -Member
8. Sen. (Dr.) Wilfred Machage -Member
9. Sen.(Dr.) Agnes Zani - Member
10. Sen. John Lonyangapuo -Member

ABSENT

1. Sen. Mutahi Kagwe -Member
2. Sen. Paul Njoroge Ben -Member
3. Sen. Boni Khalwale -Member
4. Sen. Mungai James -Member
5. Sen. G.G. Kariuki -Member
6. Sen. Zipporah Kittony -Member

IN ATTENDANCE

1. Mr. Micah Cheserem- Chairman, CRA
2. Mr. KinuthiaWamwangi- Chairman, Transitional Authority
3. Ms. Fatuma S. Abdikadir, Vice Chair, CRA
4. Hon. AlidanMbinda, ECM, Finance, Makueni County
5. Mr. Edward Libendi, Clerk, Makueni Assembly
6. Mr. Stephen Ngelu, Speaker, Makueni Assembly
7. Mr. Stephen Masha, Deputy CEO, COB
8. Mr. Joshua Musyimi, Director, R&P COB
9. Mr. Stephen Makori, CEO Transitional Authority
10. Ms. Lynnette Oyugi, Director, CRA
11. Mr. James Katule, Director CRA
12. Ms. Martha Maneno, Legal Officer, CRA
13. Mr. Stephen Wangaji, CMPR, COB

SECRETARIAT

1. Mr. Emmy Chepkwony -Snr. Clerk Assistant
2. Peter Mulesi - Clerk Assistant
3. Mr. GichohiMwaniki - Parliamentary Budget office

- | | |
|----------------------|------------------------------|
| 4. Mr. Robert Nyagah | -Parliamentary Budget office |
| 5. Chelang'aMaiyo | - Research officer |
| 6. Ms. Anne Wanjiru | -Intern |

MIN. 058/2015: PRELIMINARIES

The Chairman called the meeting to order at 9.26am followed by a word of prayer. He welcomed all the members and visitors to the meeting and there followed self - introduction.

The Chairman then welcomed the Speaker, the Clerk of Makueni County Assembly and the Chief Executive Officer for Makueni County Government to make presentations to the Committee.

MIN. 059/2015: PRESENTATION BY SPEAKER AND THE CLERK OF MAKUENI COUNTY ASSEMBLY AND THE CEC MAKUENI COUNTY GOVERNMENT.

1) Makueni County Assembly

The officials from the County Assembly of Makueni informed the Committee as follows: That;

1. There has been continuous financial frustration of the Makueni County assembly by the County Executive that have brought operational risks due to the insufficient and unpredictable flow of funds necessary to run the assembly to perform its constitutional mandate. According to the Controller of Budget, the County Assembly cannot send requisitions for funds directly to them but through the County Executive Committee Member for Finance. Requisitions by the County Assembly are done for every two months.
2. After doing the requisitions, especially from July, 2014, the County Assembly has been forced on numerous occasions to beg the County Executive Committee Member for Finance to submit its requisition for funds to the Controller of Budget as the Controller of Budget does not recognize direct requisition of funds from the County Assembly. Even after the requisitions are sent and approved by the Controller of Budget, the CEC Finance delays to submit Form C to the Central bank; the form which authorizes Central Bank to release funds to the County Revenue Fund. This has greatly affected operational autonomy of the County Assembly.
3. From November, 2014, the County Assembly of Makueni has had no finances to operate. Salaries of November and December were paid in mid-January, 2015 and those of January and February, 2015 were paid on Friday, 6th March, 2015. Allowances for MCAs from November had not been paid until last week Friday, 6th March, 2015.
4. On 12th November, 2014 the Clerk of the County assembly received a letter from the Executive Committee Member for Finance (ECM Finance) indicating that he had directed the Assembly Banks to freeze the Makueni County Assembly Bank Accounts. The grounds stated were that the Assembly had undertaken foreign travel without having funds for foreign travel and that

the Assembly had not given its books of account to the CECM Finance for inspection.

5. The true position is that the County Assembly had enough funds in the budget for FY 2014/2015 for foreign travel i.e. Ksh. 50 million and the same had not been exceeded.
6. The Assembly explained to the Executive that it is the Assembly that undertakes oversight over the Executive and not the other way round and we maintained that though the Assembly runs open and transparent financial systems and accounts, the books of accounts of the County Assembly are not supposed to be inspected by the CECM Finance but by the auditor general, and other government agencies like EACC and the auditor has always conducted audits on Assembly books. We also explained that the functions the CECM Finance was trying to usurp to oversight the County Assembly were functions of the Clerk of the County Assembly as given by Sections 147 and 148 of the PFM Act.
7. Suppliers of basic items to the Assembly like paper and fuel have not been paid from November, 2014. We have been forced to fund operations of the Assembly like buying photocopy paper and fuel for the generator and vehicles from our pockets which is costly.
8. The County Assembly after staying without salaries and allowances for that duration ended up passing another budget submitted by the CECM Finance to comply with the ceilings recommended by the CRA in 2014. Based on that budget, the Assembly cannot even pay the normal sitting allowances of MCAs from January onwards. The MCAs ended up even reducing the budget for basic expenses like medical insurance by half just to be in good books with the County Executive and in order to receive their salaries and allowances.
9. Because of this lack of financial autonomy, the oversight role of the County Assembly is compromised and the principal of separation of powers as contained in article 185 of the Constitution is defeated. The MCAs have now agreed to be passing any document that comes from the Governor's office without any scrutiny.
10. The Ceilings recommended by the CRA for 2014/2015 were arbitrarily issued without consultations and without due regard to the actual expenditures of the County Assemblies. In Makueni for example, the CRA recommended a ceiling of Ksh. 356 million for 2014/2015 and of Ksh. 510 million for 2015/2016; whatever has changed materially during this time, we are not aware but the County Assembly will not be able to operate with the Ksh. 356 million given until the end of the financial year. The Assembly will therefore be forced to close its operations at the end of April and wait until July to resume its operations because we shall not have funds for operations.
11. On anticipating that the Appropriations Bill, 2014 would not be passed on time (by 30th June, 2014), the County Assembly passed the Vote

on Account as required by section 134 of the Public Finance Management Act, 2014.

12. The County Assembly received an Appropriations Bill, 2014 from the County Executive Committee Member for Finance on 25th July, 2014 and proceeded to pass it and submitted the same to the Governor for assent.
13. The County Assembly of Makueni has installed an IFMIS system for financial management and opened an operational account at the Central Bank of Kenya to try gain financial autonomy but the two are not operational due to limitations from the National Treasury and Assemblies therefore have to depend on the County executive for the above services.
14. Makueni County Assembly like all county assemblies in Kenya therefore operate under the mercies of the County Executive on issues of finances thus compromising their ability to discharge their mandate.
15. Given the separation of powers between the Executive and the Assembly, the Assembly is supposed to oversight the Executive and it's accountable to the Auditor General's Office and the Office of the Controller of Budget.

They requested the Committee to;

1. intervene and get a lasting solution to this problem so that we can be sure that when we send our requisitions to the Executive to forward to the COB for release of funds, the same is done promptly so that our operations do not ground to a halt;
2. to ensure financial Independence where Assemblies can send requisitions to the COB directly and funds are released to the Assemblies directly and Since the ceilings of 2014/2015 were not tenable, there was need to revise according to the actual needs of the County Assembly.

Concerns Raised by Members

Members raised concern on the following issues.

- a) The Transitional Authority to explain the role of the County Assembly and County Treasury as entities of the PFM Act (Section 127).
- b) The County Assembly of Makueni has a mandate and role in the budget making process (Section 129 (3) and should be independent in approving the budgets by the County Government.
- c) Why the County Assemblies should not get their funds directly though their own independent IFMIS. What is the justification by the COB in withholding funds meant for the Assemblies?
- d) There was concern over the number of foreign trips by the MCAs and even the County Executive which takes almost 50% of the recurrent expenditure.
- e) Whether the County Executive were spending more than the set ceilings. The COB and CRA are only keen on controlling the budgets and expenditures of the Assembly but not the Executive (**How much did the County Executive actually spent above the set limits set?**).

- f) Local Revenue collected by County Governments is not accounted for and is spend at source contrary to the PFM Act;

MIN.060/2015: HIGH COURT RULING ON THE COUNTY BUDGET CEILINGS

The Chairman of the CRA briefed the Committee on the High Court ruling delivered by Judge Isaac Lenaola as follows: That;

1. A petition was filed in Court by all the 47 Speakers of the Assemblies following Commission on Revenue Allocation (CRA) recommendation on budget ceilings for County Assemblies and County Executives for the FY 2014/15;
2. CRA was the first respondent, followed by the Controller of Budget and Attorney General respectively. The Council of Governors was an interested Party;
3. Art.216 (2) mandates the Commission to make recommendations on matters concerning financing of, and financial management by county governments to encourage fiscal responsibility and that the ceilings had saved the exchequer KES.10 billion from the MCAs budgets;
4. Art.249 provides that the object of independent Commissions is to protect the sovereignty of the people;
5. The PFM Act Section 117 (2A) as amended through the County Allocation of Revenue Act, 2014 mandates CRA to make recommendations on County budget ceilings through the Senate.

He informed the Committee that the Prayers of the petitioners were: That;

- a) The Court declares the Circulars void.
- b) The Court quashes the budget ceilings.
- c) The COB be compelled to implement budgets.
- d) The funds be disbursed as passed in the 47 appropriation Acts.

In interpreting the ceilings CRA informed the Committee that in dismissing petition 386 of 2014 by the County Assemblies Forum, the High Court ruled that this particular amendment was never challenged in court and it's therefore in force. The recommendations made by CRA are therefore binding to the county governments.

1. The petition was dismissed
2. The ceilings are legal
3. The County Allocation of Revenue Act, 2014 enforced the ceilings making them binding for counties to implement, and
4. No appeal has been filed challenging this ruling

The CRA Chairman in his tabled document further proposed a way forward that;

- i. The ceilings were only on specific recurrent expenditures of County Assemblies and County Executive;
- ii. Majority of county Governments have held meetings with CRA and resolved some of the challenges posed by the 2014/2015 ceiling (He tabled status on county Compliance with the ceilings);

- iii. Two consultative meetings on the 2015/16 FY budget ceilings with CECs and County Clerks in December, 2014 and March, 2015;
- iv. As provided by Section 117 (2A) of the PFM Act, CRA will recommend the ceilings for FY 2015/16 to the Senate for Approval. However, unlike during the FY 2014/2015, the process will be done much earlier to allow for more discussion, input and consensus.

Resolutions

From the deliberations that ensued, it was resolved that;

1. The Senate, COB, TA, CRA to respond in writing on the standoff in Makueni to urge the CEC to release funds for the Assembly.
2. The County Assembly should appreciate the need for financial accountability. The Senate is organizing a high level workshop on Accountability of public resources on 19th- 21st March, 2015 in Naivasha.
3. The County Executive and the Assembly should work as a team to address pending issues which are affecting service delivery.
4. The CRA and COB to take keen interest in the Makueni issue and further work together and release a Circular to all the Counties on Financial Management.
5. That subject to the ceilings, money meant for recurrent expenditure for the Assembly should be released immediately.
6. The Senate to come up with new guidelines to CECs on the approval of requisitions by the Assemblies as well as new structures on access to funds by both the executive and the Assemblies pursuant to Art.216 of the Constitution.

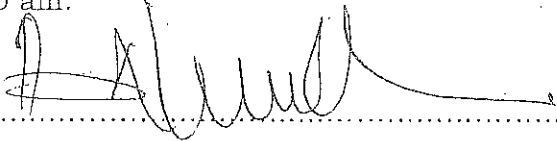
MIN.061/2015: ANY OTHER BUSINESS

He informed members on the following upcoming events.

- i. The joint Committee sitting between Standing Committee on Finance, Commerce and Budget and the Sessional Committee on Devolved Government will be held on **Wednesday, 11th March, 2015** at the Committee Room 5, Main Parliament at 9.00am to meet with Sen. Anyang' Nyong'o, and the Petitioners of the Kisumu Petition.
- ii. High level workshop on Accountability and the County level of Government will be held on **19th -21st March, 2015 at Great Rift Hotel, Naivasha**. All oversight bodies including the Ethics and Anti-corruption, Commission (EACC), Controller of Budget, Transitional Authority (TA), Criminal Investigation Department (CID), Commission on Revenue Allocation (CRA) have been invited to make presentations.
- iii. A letter from Makueni County Assembly to the Speaker of the Senate stating that the County Assembly had not received money for its recurrent expenditure from the County Treasury since November, 2014 and that they were facing problems with paying staff salaries and suppliers.

MIN.061/2015: ADJOURNMENT AND DATE OF NEXT MEETING

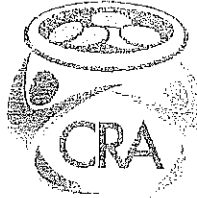
Having exhausted all issues set out in the agenda, the meeting was adjourned at 11.59am. The next meeting will be on 11th March, 2015 at Main Parliament, Committee Room 5 at 9.00 am.

SIGNED: 

CHAIRPERSON -SEN. BILLOW KERROW

DATE: 19-03-2015

Tel: 254 (20) 4298000
Email: info@crakenya.org
Website: www.crakenya.org



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P.O. Box 1310 - 00200
NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF. CRA/CSO/P&S/13/Vol. 7

DATE: 18th March 2015

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

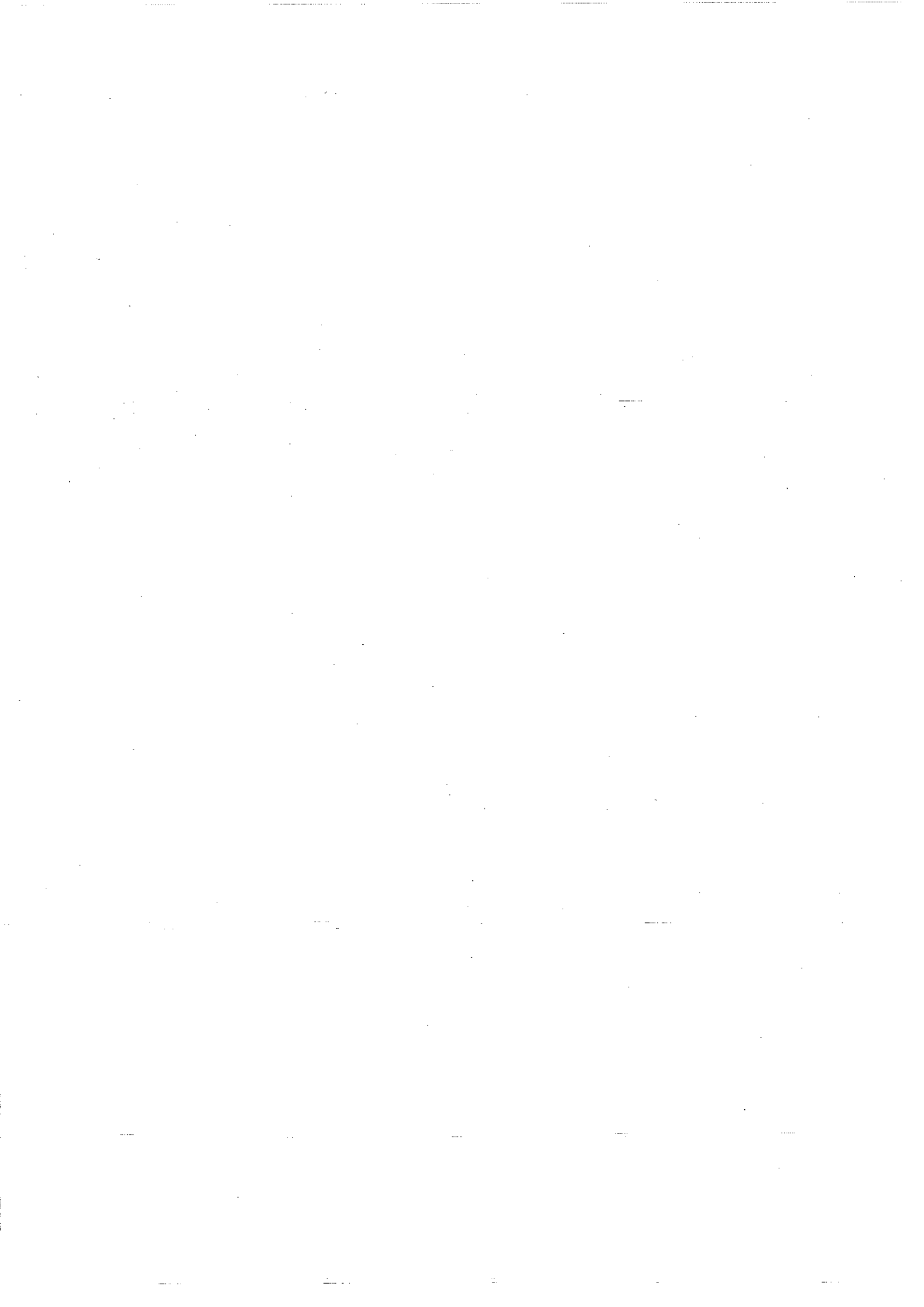
Dear Mr. Nyegenye,

**RE: STATEMENT BY COMMISSION ON REVENUE
ALLOCATION ON REPORT ON THE STATUS OF
FINANCIAL ALLOCATON TO COUNTIES FOR
FINANCIAL YEARS 2014 /2015 AND 2015 /2016**

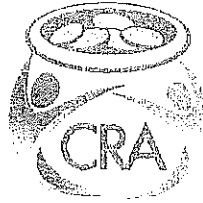
Enclosed, please find CRA statement in response to the Senate letter
referenced SEN/FCB/GEN-CORR.VOL2/050/2015.

Yours sincerely,

George Ooko
COMMISSION SECRETARY



Tel: 254 (20) 42980000
Email: info@crakenya.org
Website: www.crakenya.org



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Grosvenor block
2nd Floor
P.O. Box 1310 – 00200
NAIROBI

COMMISSION ON REVENUE ALLOCATION

18th March 2015

STATEMENT BY COMMISSION ON REVENUE ALLOCATION ON REPORT ON THE STATUS OF FINANCIAL ALLOCATION TO COUNTIES FOR FINANCIAL YEARS 2014/2015 AND 2015/2016

INTRODUCTION

This is in response to a letter from the Senate (Ref: SEN/FCB/GEN-CORR.VOL2/050/2015) dated 16th March 2015. The Commission would like to respond as follows: -

The Commission on Revenue Allocation (CRA) is established under Article 215 of the Constitution with its principal functions stated in Article 216. In recommending ceilings for recurrent expenditure for the counties, CRA was guided by the following Articles of the Constitution and the relevant Sections of other legislation.

- Article 216 (2) – *The Commission shall make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and other relevant legislation.*
- Article 216 (3) – *In formulating recommendations, the Commission shall seek ...*
 - c) *to encourage fiscal responsibility.*
- Article 249 (1) – *The objects of the commissions and independent offices are to ...*
 - a) *protect the sovereignty of the people.*

2014 / 2015 CEILINGS

The Commission recommended Ksh279 billion be allocated to county governments for financial year 2014/15. In this allocation, the Commission



had costed the new county structures at Ksh47 billion. However, the Division of Revenue Act 2014 provided for Ksh226.7 billion for the counties. Out of this amount, Ksh30.2 billion was for the financing of recurrent expenditure for the new structures within the county governments and the rest to finance devolved functions as shown in **Table 1**. The allocation of Ksh30.2 billion provided for Ksh13.456 billion for the county executive and Ksh16.877 billion for the county assemblies as detailed in **Table 2**. It is on the basis of these amounts that the Commission made equitable allocation to individual counties and made recommendations for recurrent expenditure for both the executive and the assemblies.

From an analysis of the initial budgets submitted by the counties, the assemblies had a consolidated figure of Ksh26.876 billion while the executive had a budget of Ksh13.559 billion. If these budgets had been approved, it would mean reducing money meant for development and service provision, which would be contrary to the spirit of devolution. By setting ceilings on the recurrent expenditure, CRA was encouraging fiscal responsibility, ensuring that more resources were allocated to development and service provision.

As at March 17, 2015, thirty (30) of the counties had complied with the ceilings and are drawing their full budgetary provisions from the exchequer. An additional thirteen (13) have held meetings with CRA and agreed, on a need basis, where adjustments need to be made. Four of the counties (Embu, Nairobi, Nakuru and Tana River) are the only counties that have neither complied nor held discussions with the Commission. An initial meeting with Nakuru County is planned for March 23, 2015. (**Table 3**)

In the County Allocation of Revenue Act 2014, Parliament amended Section 107 of the Public Finance Management Act 2012 by inserting subsection (2A) ***Pursuant to Articles 201 and 216 of the Constitution and notwithstanding subsection (2), the Commission on Revenue Allocation shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each county government.***

In dismissing petition 386 of 2014 by the County Assemblies Forum, the High Court ruled that this particular amendment was never challenged in court and is therefore in force. The recommendations made by CRA are therefore binding to the county governments.

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The CRA made its recommendations to the Senate through our letter REF: CRA/CSO/P&B/13/Vol.4 (1) dated 30th September 2014 (*Copy attached – Annex 1*).

2015 / 2016 CEILINGS

You will note that there is a substantial increase of the amounts provided for each of the counties between 2014/2015 and 2015/2016. This is because the Commission has made provisions for additional staff and additional benefits arising from circulars issued by the Salaries and Remuneration Commission in December 2014. It will also be noted that items such as Ward Offices and extra mileage which were not factored in the 2014/2015 ceilings have now been included.

In developing the recommendations for the allocation of revenue between the national and the county governments for 2015/2016 fiscal year pursuant to article 216(1a) of the Constitution, CRA has computed, in detail, the cost of recurrent expenditure for all the 47 assemblies and the county executive. In so doing, the commission has consulted with the all the county governments (Executive and Assembly) in two different forums held in Utalii Hotel (December 2014), and Maanzoni resort (March 2015), respectively and their inputs have been incorporated into the recommendations. The costing has considered all the benefit circulars issued by the Salaries and Remuneration Commission (SRC). The summary of the ceilings is attached in **Table 4**.



TABLE 1: BUDGET ALLOCATIONS ON VARIOUS DEVOLVED FUNCTIONS YEARS: 2013/14; 2014/15; 2015/16 IN KSH. MILLIONS

	Devolved Functions	2013/14	2014/15	2015/16
1	Health Services	55,562	62,780	69,706
2	Planning & Development	50,904	54,091	56,255
3	Agriculture, Livestock and Fisheries	15,155	16,103	19,020
4	Culture, Public Entertainment & Public Amenities	1,364	2,849	2,992
5	Youth Affairs and Sports	3,181	3,380	4,531
6	Trade, Cooperative Development & Regulation	709	4,404	4,624
7	Roads & Transport	35,916	38,164	40,072
8	Lands, Housing and Public Works	5,523	5,868	6,015
9	Natural Resources & Environment Conservation	6,337	6,734	6,902
10	Pre-Primary Education	1,938	2,059	2,265
11	Sub Total Devolved Functions	176,588	196,433	212,381
12	New County Structures (County Assembly, County Executive)	13,416	30,233	45,627
13	Total Devolved Functions	190,005	226,666	258,008

TABLE 2: SUMMARY OF CRA RECOMMENDATION ON COUNTY GOVERNMENTS BUDGET CEILINGS ON RECURRENT EXPENDITURE FOR 2014/2015 ON NEW COUNTY STRUCTURES (KSHS. MILLIONS)

1. COUNTY ASSEMBLY		
1	MCA (Salaries, Allowances & Gratuity)	8,416
2	Speaker (Salaries, Allowances & Gratuity)	339
3	Deputy Speaker (Salaries, Allowances & Gratuity)	245
4	County Assembly- Administrative Staff (Salaries, Allowances & pension)	1,660
5	Other County Assembly Staff (Salaries, Allowances & pension)	922
6	Duty allowances and pension	471
7	Mileage for MCA	1,141
8	O&M	3,683
9	Sub- Total	16,877
2. COUNTY EXECUTIVE		
1	County Executive (Salaries, Allowances & Gratuity)	1,287
2	Chief Officers (Salaries, Allowances & Pension)	946
3	County Secretary (Salaries, Allowances & Pension)	138
4	Governors & Deputy Governors (Salaries, Allowances Gratuity)	845
5	CPSB (Salaries & Pension)	975
6	PFM Staff (Salaries and Pension)	6,134
7	O&M	3,031
8	Sub- Total	13,356
	Total	30,233

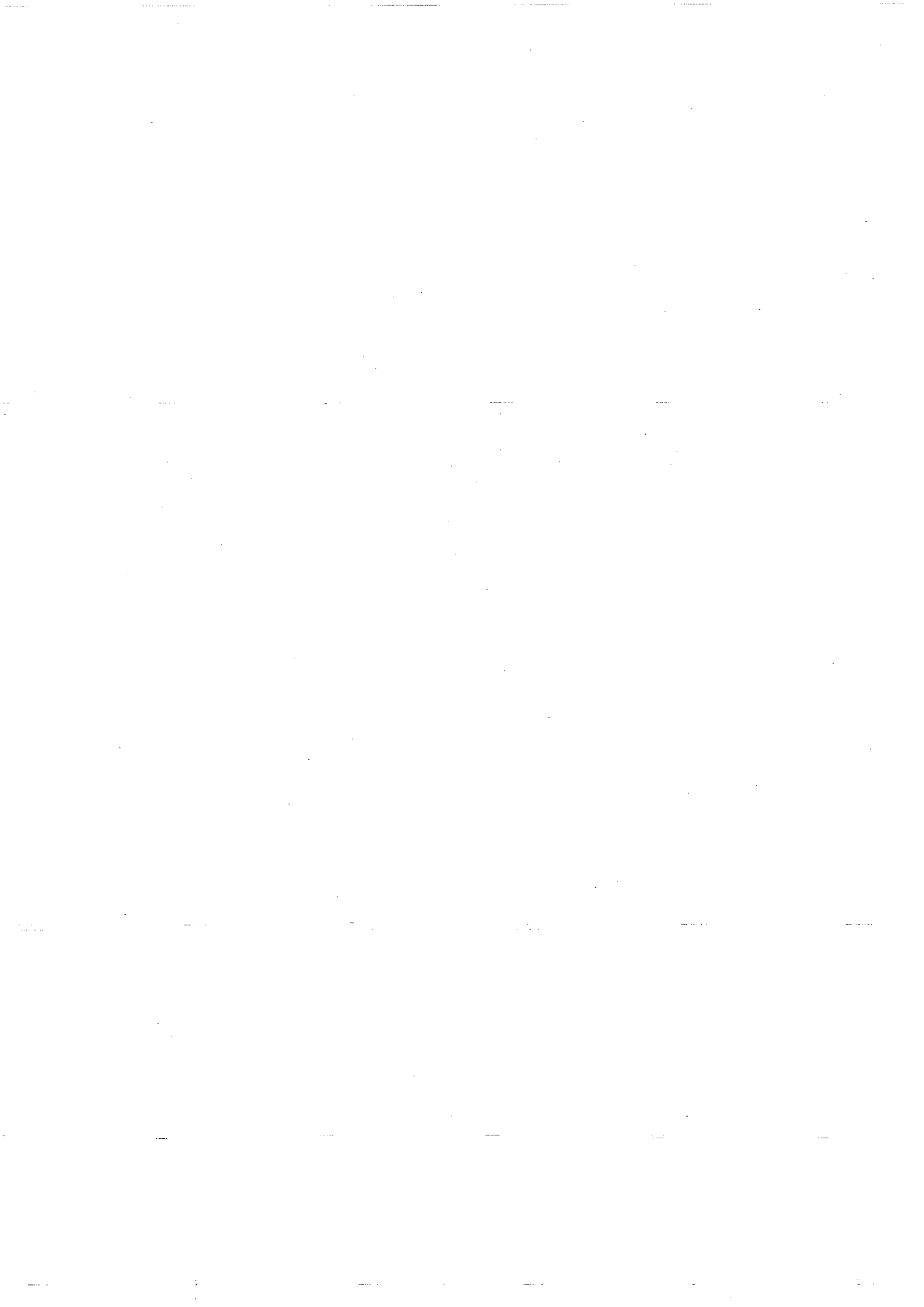


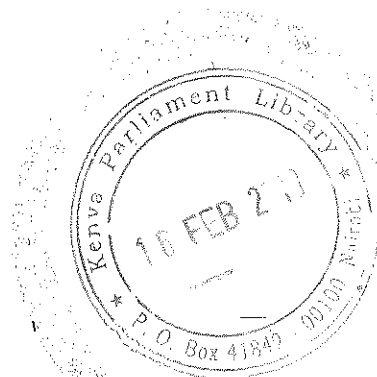
TABLE 3: COUNTY CEILINGS COMPLIANCE LIST

			Date: 17th March 2015
A	FULLY COMPLIED		
1	BARINGO	16	MERU
2	BOMET	17	MIGORI
3	BUNGOMA	18	MURANGA
4	BUSIA	19	NANDI
5	ELGEYO MARAKWET	20	NAROK
6	GARISSA	21	NYAMIRA
7	ISIOLO	22	NYERI
8	KAKAMEGA	23	SAMBURU
9	KIAMBU	24	TAITA TAVETA
10	KIRINYAGA	25	TRANS NZOLA
11	KISII	26	UASIN GISHU
12	KISUMU	27	VIHIGA
13	LAIKIPIA	28	WAJIR
14	MANDERA	29	WEST POKOT
15	MAKUENI	30	MARSABIT
B	DISCUSSED WITH CRA BUT NOT FINALIZED		
1	HOMABAY	8	MACHAKOS
2	KAJIADO	9	MOMBASA
3	KERICHO	10	NYANDARUA
4	KILIFI	11	SIAYA
5	KITUI	12	THARAKA NITHI
6	KWALE	13	TURKANA
7	LAMU		
C	DISCUSSIONS NOT COMMENCED		
1	EMBU	3	NAKURU (To meet on 23/03/2015)
2	NAIROBI	4	TANA RIVER.



TABLE 4: SUMMARY OF CRA RECOMMENDATION ON COUNTY GOVERNMENTS BUDGET CEILINGS ON RECURRENT EXPENDITURE FOR 2015/2016 (KSHS. MILLIONS)

1. COUNTY ASSEMBLY			
No.	Item	No.	Amount
1	Members of the County Assembly (MCAs)	2,227	8,715
2	Speaker	47	332
3	Deputy Speaker	47	263
4	County Assembly Staff (more than 60 Wards-120 staff, 40-<60 Wards-100 staff, 20-<40 Wards- 88 staff & Less 20 Wards gets 65 staff)	4,150	5,543
5	County Assembly Ward Staff (3 per ward)	4,350	1,197
6	Mileage for MCAs		1,429
7	Insurance (more than 60 Wards-60 Millions, 40-<60 Wards-40 Millions, 20-<40 Wards- 30 Millions & Less 20 Wards gets 20 Millions	47	1,480
8	County Assembly Service Board (CASB)	47	267
9	Operations and Maintenance (O & M)		5,768
	Sub-Total		24,994
2. COUNTY EXECUTIVE			
No.	Item	No.	Amount
1	Governor	47	669
2	Deputy Governor	47	451
3	CEC members	453	2,002
4	Chief Officers	453	1,291
5	County Secretary	47	226
6	Chief of Staff	47	134
7	Sub County & Ward Administrators	1,740	2,080
8	County Treasury		6,747
9	County Public Service Board (CPSB)		1,086
10	Staff- Office of the Governor		716
11	Insurance	47	470
12	Operations and Maintenance (O & M)		4,762
	Sub- Total		20,633
	Total		45,627





CRA Recommended Budget Ceilings for County Assembly and County Executive based on Recommended Budget on Costs of new County Structures of Ksh. 30,232 Million				
No.	County	County Assembly	County Executive	Total
1	Nairobi	962,450,836	294,568,636	1,257,019,472
2	Kiambu	659,316,714	294,568,636	953,885,351
3	Kakamega	651,738,361	294,568,636	946,306,998
4	Nakuru	560,798,125	294,568,636	855,366,761
5	Kisii	538,063,066	294,568,636	832,631,702
6	Meru	522,906,360	294,568,636	817,474,996
7	Migori	485,014,594	294,568,636	779,583,231
8	Bungoma	477,436,241	294,568,636	772,004,878
9	Homa Bay	477,436,241	294,568,636	772,004,878
10	Machakos	447,122,829	294,568,636	741,691,466
11	Kitui	431,966,123	294,568,636	726,534,760
12	Busia	401,652,711	294,568,636	696,221,347
13	Kilifi	401,652,711	294,568,636	696,221,347
14	Muranga	386,496,005	294,568,636	681,064,641
15	Kisumu	371,339,299	294,568,636	665,907,935
16	Baringo	363,760,946	294,568,636	658,329,582
17	Garissa	363,760,946	294,568,636	658,329,582
18	Mandera	363,760,946	294,568,636	658,329,582
19	Nandi	363,760,946	294,568,636	658,329,582
20	Siaya	363,760,946	294,568,636	658,329,582
21	Kenicho	356,182,593	294,568,636	650,751,229
22	Makueni	356,182,593	294,568,636	650,751,229
23	Narok	356,182,593	294,568,636	650,751,229
24	Nyeri	356,182,593	294,568,636	650,751,229



**CRA Recommended Budget Ceilings for County Assembly and County Executive based on Recommended
budget on Costs of new County Structures of Ksh. 30,232 Million**

No.	County	County Assembly	County Executive	Total
25	Turkana	356,182,593	294,568,636	650,751,229
26	Mombasa	341,025,887	294,568,636	635,594,523
27	Wajir	341,025,887	294,568,636	635,594,523
28	Uasin Gishu	333,447,534	294,568,636	628,016,170
29	Kajiado	310,712,475	280,193,680	590,906,155
30	Nyandarua	310,712,475	280,193,680	590,906,155
31	Tranzonia	295,555,769	280,193,680	575,749,449
32	Vihiga	295,555,769	280,193,680	575,749,449
33	Bomet	255,242,356	280,193,680	545,436,036
34	Taita	255,242,356	273,006,202	538,248,558
35	Embu	250,085,650	273,006,202	523,091,852
36	Kwale	250,085,650	273,006,202	523,091,852
37	Marsabit	250,085,650	273,006,202	523,091,852
38	Nyamira	250,085,650	273,006,202	523,091,852
39	West Pokot	242,507,297	273,006,202	515,513,499
40	Elgeyo/Marakwet	227,350,591	273,006,202	500,356,793
41	Kirinyanga	219,772,238	273,006,202	492,778,440
42	Samburu	197,037,179	258,631,246	455,668,425
43	Tana River	197,037,179	258,631,246	455,668,425
44	Tharaka Nithi	181,880,473	258,631,246	440,511,719
45	Laikipia	174,302,120	258,631,246	432,933,366
46	Isiolo	151,567,061	244,256,289	395,823,350
47	Lamu	151,567,061	244,256,289	395,823,350
	Total	16,876,992,217	13,355,977,396	30,232,969,613

NOTES

COUNTY ASSEMBLY	
1) MCAs (Salaries, Allowances & Gratuity)	8,415,623,302
2) Speaker (Salaries, Allowances & Gratuity)	339,385,167
3) Deputy Speaker (Salaries, Allowances & Gratuity)	245,086,426
4) County Assembly--Administrative staff (Salaries & Pension)	1,659,681,036
5) Other County Assembly staff (Salaries & Pension)	922,140,000
6) Duty Allowances (Pension & Gratuity)	471,324,720
7) Mileage for MCAs.	1,140,693,888
8) O & M	3,683,057,678
Total	16,876,992,217

COUNTY EXECUTIVE	
1) County Executive (Salaries, Allowances & Gratuity)	1,287,284,400
2) Chief Officers (Salaries, Allowances & Pension)	946,468,800
3) County Secretary (Salaries & Pension)	138,321,000
4) Governors & D. Governors (Salaries, Allowances & Gratuity)	845,114,050
5) CFSB (Salaries & Pension)	974,688,670
6) PFM Staff (Salaries & Pension)	6,133,556,064
7) O & M	3,030,544,412
Total	13,355,977,396

REPUBLIC OF KENYA



OFFICE OF THE CONTROLLER OF BUDGET

Bina House, 12th Floor
Harambee Avenue
Fax. 020 2211920
Email: cob@cob.go.ke

P.O. Box 35616 - 00100, Nairobi
Tel. 2211068, 0716274922, 318939

19th March, 2015

REF: OCOB/ SEN/002/1 (19)

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

Dear Mr. Nyegenye,

RE: STATEMENT BY THE OFFICE OF THE CONTROLLER OF
BUDGET ON FINANCIAL ALLOCATION AND EXCHEQUER
RELEASES TO COUNTIES FOR THE FINANCIAL YEAR
2014/2015

We acknowledge receipt of your letter Ref. SEN/FCB/GEN-CORR/VOL.2/049/2015 dated 12th March, 2015 on the above subject matter

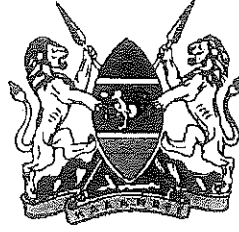
Enclosed, herewith please find the Office of the Controller of Budget's statement in response to the issues raised.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Masha'.

Stephen Masha
For: CONTROLLER OF BUDGET

Encls (1)



OFFICE OF THE CONTROLLER OF BUDGET

**FINANCIAL ALLOCATION AND EXCHEQUER RELEASES
TO COUNTIES FOR THE FINANCIAL YEAR 2014/2015**

**STATEMENT BY THE CONTROLLER OF BUDGET TO THE CHAIRMAN,
SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND
BUDGET**

March 19, 2015

STATEMENT BY THE OFFICE OF CONTROLLER OF BUDGET ON FINANCIAL ALLOCATION AND EXCHEQUER RELEASES TO COUNTIES FOR THE FINANCIAL YEAR 2014/2015

Please refer to your letter Ref: SEN/FCB/Gen-Corr/Vol 2/049/2015 of 12th march 2015 on the above subject matter.

The Office of the Controller of Budget (OCOB) is an independent office established by Article 228 of the Constitution. It became operational upon the appointment of the Controller of Budget on 27th August, 2011.

a) As an independent office, COB has the following mandate: -

1. To oversee implementation of the budgets of the National and County Governments. (Article 228 (4)).
2. To approve and authorize withdrawals from Public Funds; Equalization Fund (Article 204 (9)), Consolidated Fund (Article 206 (4)), and Revenue Fund (Article 207 (3)) if satisfied that the same is in accordance with the law (Article 228 (5)).
3. Financial advice to parliament where a Cabinet Secretary has stopped transfer of Funds to a State Organ or Public Entity and there is need to renew the decision to stop further transfer of Funds (Article 225 (2)).
4. Quarterly reporting to the Legislature on implementation of budgets of National and County Governments (Article 228 (6)).
5. Annual reporting to Executive and Legislature (Article 254 (1)).
6. Adhoc reporting to Executive and Legislature (Article 254 (2)).
7. Publishing and publicizing reports (Article 254 (3)).
8. To conduct investigations on its own motion or on a complaint made by a member of the public (Article 252 (1)(a)).
9. To conduct Alternative Dispute Resolution Mechanisms to resolve disputes (Article 252 (1)(b)).

In carrying out its mandate, the OCOB is independent and not subject to direction or control by any person or authority which is clearly buttressed in Article 249 (2) (b) of the Constitution. The OCOB collaborates with other state agencies, including the National Treasury to ensure timely release of funds to government entities.

b) A number of County Assemblies are grinding to a halt in operations

The Office of the Controller of Budget approves withdrawal of funds by counties based on requests by the County Treasuries, for both the County Executive and County Assembly. The approvals are based on the following legal framework; (i) approved Appropriations Acts of county government, (ii) provisions of the Public Financial Management Act, 2012, (iii) the County Allocation of Revenue Act, 2014, and other relevant Acts of parliament. Table 1 shows the summary of exchequer releases to county government as at 17th march 2015 for the financial year 2014/2015.

c) Controller of Budget has refused to finance County Assemblies unless they comply with the said CRA ceilings (Petition No. 368/14)

Petition No. 368/14 was instituted by Speakers of all 47 County Assemblies on 24th July 2014 challenging the issuance of a circular by CRA on the maximum budgetary allocations to the County Assembly and the County Executive for the FY 2014/15. The parties to the petition included the Commission on Revenue Allocation (CRA), the Controller of Budget, Council of Governors and the Attorney General.

The Petitioners sought the following orders *inter alia*:

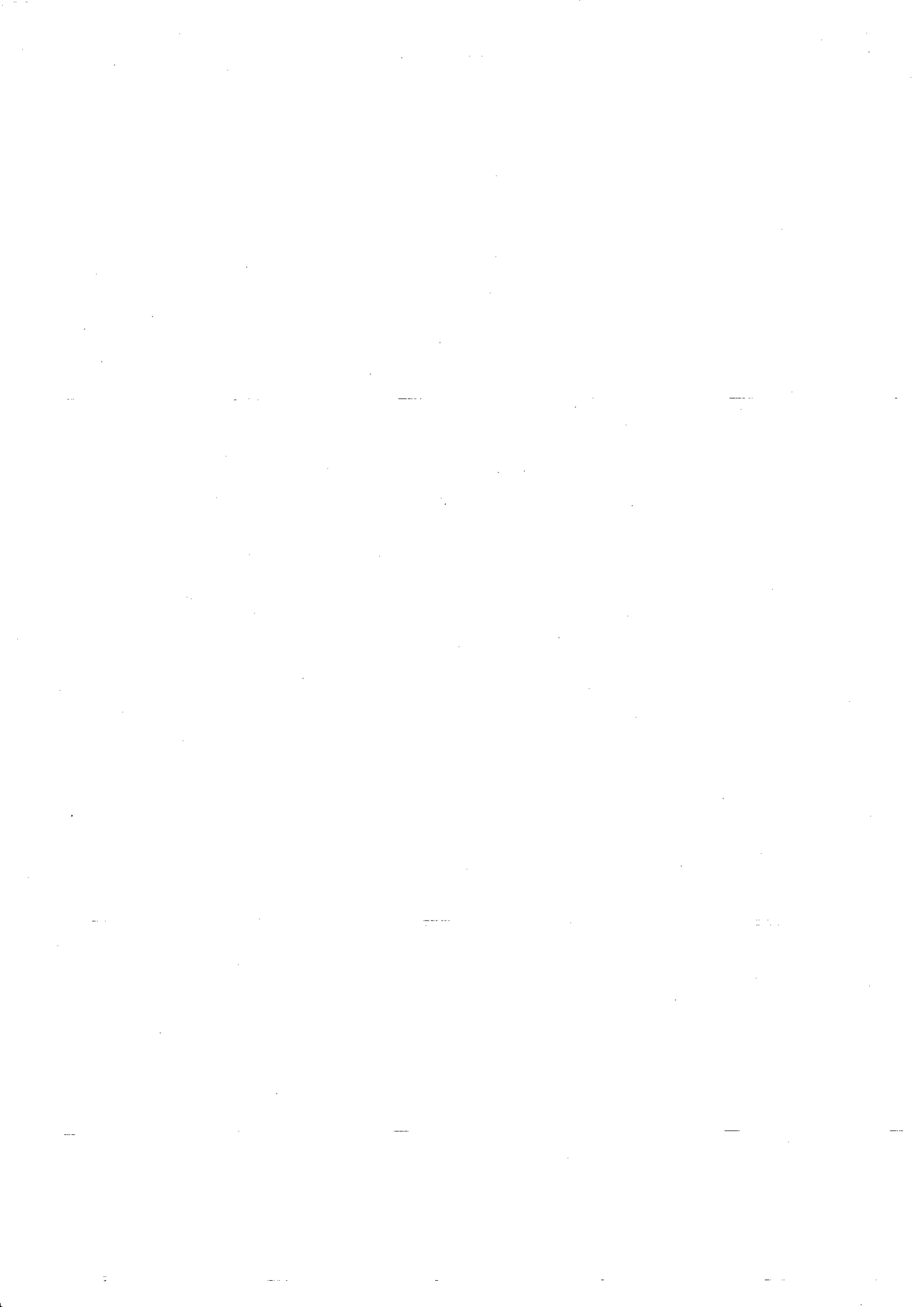
- a. *A declaration that the circulars breached the Petitioners' constitutional rights and were therefore null and void.*
- b. *An order of certiorari to quash the circular issued by CRA*
- c. *An order of mandamus to compel OCOB to approve withdrawal of fund as provided for in every County Governments budget.*

In order to facilitate the carrying out of essential services and activities by county governments the parties entered into a consent agreement on 25th July 2014 that was subsequently varied on 1st August 2014 before the trial Judge.

A look at consent order No. 2 of 1st August 2014 reads:

"That funds be immediately released to the counties as per section 134 of the Public Finance Management Act in respect of County Budget (Estimates) submitted to the County Assemblies for the FY 2014/15, pending the hearing and determination of the petition herein"

Section 134 of the PFM Act, 2012 only applies in situations where a county has not enacted an Appropriations Act by 30th June. However some counties had enacted Appropriations Acts by 30th June, 2014. Therefore, there was need to vary the consent order No. 1 of 25th July, 2014. It is in this regard that the parties entered into consent order No. 2 dated 1st August, 2014, which brought those counties that had enacted their Appropriations Act into application of section 134 of the PFM Act. This allowed them to access up to 50 per cent of



their budget through to 31st December 2014. The two consent orders envisaged two categories of counties, those that had enacted and those that had not enacted their Appropriations Act as at 30th June, 2014.

For the counties that had not passed their Appropriations Act, Section 134 fully applied and the County Assemblies were required to pass a vote on account on budget estimates presented by their respective CEC Member – Finance on 30th April, 2014.

Further, Section 134 of the PFM Act, 2012 provides:

134. (1) Subject to subsection (2), if the County Appropriation Bill for a financial year has not been assented to, or is not likely be assented to by the beginning of the financial year, a County Assembly may authorize the withdrawal of money from the County Revenue Fund.

(2) Money withdrawn under subsection (1) –

(a) May be used only for the purpose of meeting expenditure necessary to carry on the services of the county government during the financial year concerned until such time as the relevant appropriation law is passed.

By our understanding, any requisition under Section 134 is for essential services only. Therefore, the COB released funds to counties in line with the consent orders until the judgment was delivered on 20th February, 2015 which, dismissed the petition and did not grant any of the prayers sought by the Petitioners.

Table 1 below shows Exchequer releases to the counties as of March 17, 2015.



TABLE 1: COUNTY SUMMARY OF EXECUTIVE ISSUES AS AT 17th March, 2015 - FY 2014/15

County Code	County Title	COUNTY EXECUTIVE (CE)			COUNTY ASSEMBLY (CA)			TOTAL (g=c+f)
		RECURRENT (a)	DEVELOPMENT (b)	TOTAL (c=a+b)	RECURRENT (d)	DEVELOPMENT (e)	TOTAL (f=d+e)	
301	Baringo	1,661,151,265	768,703,613	2,429,854,878	235,095,610	20,000,000	255,095,610	2,684,950,488
302	Bomet	1,021,653,665	1,345,966,997	2,367,620,662	161,248,243		161,248,243	2,528,868,905
303	Bungoma	2,494,440,950	1,921,491,728	4,415,932,678	307,618,119		307,618,119	4,723,550,797
304	Busia	1,556,369,399	945,000,000	2,501,369,399	381,630,601	5,000,000	386,630,601	2,888,000,000
305	Elgeyo/Mara kwet	1,246,912,986	681,525,927	1,928,438,913	191,847,967	20,125,000	211,972,967	2,140,411,880
306	Embu	1,194,056,877	309,294,070	1,503,350,947	135,499,122		135,499,122	1,638,850,069
307	Garissa	1,977,517,190	2,060,644,899	4,038,162,089	180,644,230		180,644,230	4,218,806,319
308	Homa Bay	1,537,663,142	736,792,079	2,274,455,221	399,094,121	22,207,921	421,302,042	2,695,757,263
309	Isiolo	873,174,529	500,000,297	1,373,174,826	82,783,531		82,783,531	1,455,958,357
310	Kajiado	1,551,191,921	505,453,483	2,056,645,404	207,700,000	34,546,517	242,246,517	2,298,891,921
311	Kakamega	3,104,396,233	2,441,028,182	5,545,424,415	346,562,506	52,908,000	399,470,506	5,944,894,921
312	Kericho	1,492,877,148	587,161,137	2,080,038,285	363,691,297		363,691,297	2,443,729,582
313	Kiambu	3,797,048,877	753,507,543	4,550,556,420	484,483,188	1,556,159	486,039,347	5,036,595,767
314	Kilifi	2,219,041,144	1,958,384,899	4,177,426,043	221,008,307	162,139,008	383,147,315	4,560,573,358
315	Kirinyaga	1,440,035,431	457,806,400	1,897,841,831	207,942,879	5,141,000	213,083,879	2,110,925,710
316	Kisii	2,433,070,600	1,287,508,347	3,720,578,947	422,405,789		422,405,789	4,142,984,736

317	Kisumu	2,854,275,319	901,365,894	3,755,641,213	217,267,882	217,267,882	217,267,882	3,972,909,095
318	Kitui	2,182,220,615	1,634,738,005	3,816,958,620	387,174,813	-	387,174,813	4,204,133,433
319	Kwale	1,440,600,188	1,366,065,595	2,806,665,783	248,073,458	95,875,000	343,948,458	3,150,614,241
320	Lakipia	1,272,956,809	616,520,141	1,889,476,950	92,151,060	33,000,000	125,151,060	2,014,628,010
321	Lamu	168,821,339	58,000,000	216,821,339	108,343,925	26,760,000	135,093,925	351,915,264
322	Machakos	2,772,725,498	1,062,933,457	3,835,658,955	308,755,472	15,760,000	324,505,472	4,160,164,427
323	Makueni	2,104,175,060	806,928,129	2,911,103,189	262,192,585	35,887,492	298,080,077	3,209,183,266
324	Mandera	1,816,792,241	2,442,117,716	4,258,909,958	181,880,473	126,000,000	307,880,473	4,566,790,431
325	Marsabit	1,380,872,393	1,668,795,500	3,049,667,893	194,677,607	8,100,000	202,777,607	3,252,445,500
326	Meru	2,101,788,388	1,567,296,797	3,669,085,185	305,494,815	-	305,494,815	3,974,580,001
327	Migori	1,489,564,214	47,000,000	1,536,564,214	152,465,786	-	152,465,786	1,689,030,000
328	Mombasa	3,186,684,958	325,000,000	3,511,684,958	183,736,575	-	183,736,575	3,695,421,533
329	Muranga	165,000,000	250,000,000	415,000,000	35,000,000	10,000,000	45,000,000	460,000,000
330	Nairobi City	6,675,489,763	190,000,000	6,865,489,763	840,050,238	-	840,050,238	7,705,540,001
331	Nakuru	3,224,617,671	7,943,251	3,232,560,922	296,642,448	50,000,000	346,642,448	3,579,203,370
332	Nandi	1,385,767,500	1,481,398,415	1,597,065,903	211,288,003	36,057,417	247,345,420	1,844,400,923
333	Narok	2,589,794,000	1,313,500,000	3,903,294,000	36,830,000	105,000,000	141,830,000	4,045,124,000
334	Nyamira	1,414,316,803	813,476,984	2,227,793,787	179,045,000	-	179,045,000	2,406,838,787
335	Nyandarua	256,603,233	355,050,422	98,447,189	256,603,233	-	256,603,233	355,050,422

336	Nyeri	2,106,105,988	667,024,480	2,773,130,468	245,770,945	30,000,000	275,770,945	3,048,901,413
337	Samburu	1,045,168,938	775,770,010	1,820,938,948	128,778,590	17,600,000	146,378,590	1,967,317,538
338	Siaya	1,377,738,472	1,058,000,000	2,435,738,472	382,311,528	47,000,000	429,311,528	2,865,050,000
339	Taita/Taveta	1,307,172,723	641,333,148	1,948,505,871	175,425,983	22,858,844	198,284,827	2,146,790,696
340	Tana River	905,000,000	1,281,780,000	2,186,780,000	159,000,000	45,800,000	204,800,000	2,391,580,000
341	Tharaka - Nithi	950,909,613	590,507,503	1,541,417,116	105,756,300	10,000,000	115,756,300	1,657,173,416
342	Trans Nzoia	1,238,125,839	1,103,267,223	2,341,393,062	170,626,261	60,648,000	231,274,261	2,572,667,323
343	Turkana	1,687,071,389	4,356,678,490	6,043,749,879	300,000,000		300,000,000	6,343,749,879
344	Uasin Gishu	1,979,108,761	1,644,262,408	3,623,371,169	227,092,456	12,500,000	239,592,456	3,862,963,625
345	Vhiga	1,367,729,771	817,856,000	2,185,585,771	157,154,229	153,260,000	310,414,229	2,496,000,000
346	Wajir	1,643,674,193	1,868,034,366	3,511,708,559	224,705,508		224,705,508	3,736,414,067
347	West Pokot	1,352,334,545	957,800,000	2,310,134,545	212,174,467	33,000,000	245,174,467	2,555,309,012
	TOTAL	85,033,807,582	49,930,713,535	133,181,204,239	11,315,725,149	1,298,710,358	12,614,435,507	145,795,639,746



- d) The High Court has ruled on the matter and though dismissing the petition by County Assemblies, the Court has determined that the ceilings by CRA are not binding and can only be binding if the said ceilings are approved by Parliament.**

After analyzing the judgment, it is our considered view that the Court held that by virtue of Article 216 of the Constitution and Section 10 of the Commission on Revenue Allocation Act, 2012, CRA was well within its mandate to issue the circular on budgetary ceilings to the County Governments.

The Court further held that recommendations by CRA, although not binding on the Counties should be given due consideration in the enactment of the budget. The Court emphasized that recommendations by CRA to the Senate should be given due consideration and reasons given for any deviation. It therefore follows that deviation by the County Assembly on the recommendations of CRA would also require such County Assembly to give reasons.

Moreover, the Court held that the recommendations by CRA became binding on the Counties once they are approved by the Senate in the County Allocation of Revenue Act, 2014. Consequently, the Court declared that since the Petitioners did not challenge the validity of CARA, 2014, it would not delve into the validity of CARA, 2014.

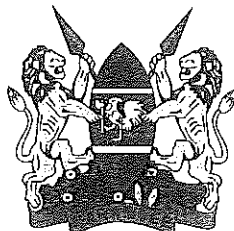
It is therefore our considered opinion, that since the Court did not grant any of the Petitioners prayers and held that the CRA was well within the law and its mandate in issuance of the circular, it follows that the Senate having approved the recommendations of CRA in CARA, 2014, the ceilings are binding on the Counties and should therefore be adhered to.

- e) Controller of Budget is sending County Assemblies to negotiated with CRA to vary ceilings even though the court has placed the mandate on the parliament**

Pursuant to Article 216 (1)(a), the Commission on Revenue Allocation is mandated to make recommendations concerning the basis for the equitable sharing of revenue raised by the National Government between the national and county governments. Article 216 (5) requires CRA to submit its recommendations to the Senate, National Assembly, the National Executive, County Assemblies and County Executives. Therefore, the County Governments should consult CRA and not OCOB on amendments to the budget ceilings for County Assemblies and the County Executives.



REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

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MEMORANDUM ON THE CEILINGS IMPOSED ON COUNTY ASSEMBLIES BY THE COMMISSION ON REVENUE ALLOCATION (CRA)

From: The Speakers of the County Assemblies
To: The Standing Committee on Finance, Commerce and Budget
Date: 24th February, 2015
Subject: **The Position of the 47 County Assemblies on the Budget Ceilings Imposed by the Commission on Revenue Allocation for FY 2014/15**

At the outset, the County Assemblies do not object to the desirability of budget ceilings and the need to use public money in a prudent manner as provided for in Article 201 (d) the Constitution and the section 107 of the Public Finance Management Act.

The County Fiscal Strategy Paper, which in accordance with the Public Finance management Act, 2012, and which is submitted by the Executive by 28th of February every year contains ceilings for every sector of the County Government, the County Assembly included.

The County Assemblies have always held that ceilings ought to be a product of honest negotiations between the sectors (Assembly included) and county treasury.

In April 2014, way after those negotiations were settled and sector ceilings pegged in the

County Fiscal Strategy Paper, the Commission on Revenue Allocation (CRA) gave recommendations on ceilings on recurrent expenditure for County Assembly and County Executive (refer to Annexure 1).

These ceilings were arbitrary figures developed between CRA and the Council of Governors without consultation with the Assemblies.

In July 2014, after enactment of Appropriation Acts by County Assemblies, the Controller of Budget (CoB) declined to recognize the County Appropriation Acts, and refused to authorize withdrawals (release funds to County Assemblies) unless they complied with the ceilings, whereas the County Assemblies Forum (CAF) held that CRA recommendations were not binding. The legality of the County Appropriation Acts has not been challenged in any court in accordance with Article 165 of The Constitution.

It is on the basis of this that CAF went to court in July 2014, to seek an interpretation of the same and sought prayers to quash the circulars and term them unconstitutional and void. Whereas the court dismissed the petition to quash the circulars and termed them lawful, the court made the following determination:

1. That the circulars on ceiling were issued in the advisory capacity granted to the Commission under article 216 of the Constitution and are therefore lawful.
2. Circulars cannot be quashed due to (i) above.
3. However, ceilings in the circulars are **not binding** on County Assemblies since they are not **directives** and can only become binding if adopted by Parliament through the instrument of the County Allocation of Revenue Act, given that Parliament has the final say on the matter.
4. County budgets are subject to national legislation, being Division of Revenue Act and County Allocation of Revenue Act.
5. Differences in regarding fiscal and budgetary processes should be settled in terms of Article 189(4) of the constitution of Kenya, by way of alternative dispute resolution mechanism and this includes reference of the dispute to parliament which has the final say in budgetary processes in Kenya.

Although Parliament amended the PFMA, and inserted a provision allowing CRA to recommend ceilings to the Senate, as it stands today, the Senate in its own wisdom has not approved the said recommended ceilings.

In spite of this, the CoB is still declining to approve withdrawals unless the counties revised their Appropriation Acts to comply with the CRA ceilings. Further, the CoB is asking Assemblies to go to CRA and get clearance letters of compliance with the said ceilings before funds are released to them.

FACTS ABOUT THE CEILINGS

The impression provided by CRA that a number of County Assemblies had willingly complied with the budget ceiling and a number are negotiating is misleading. All county Assemblies who complied, had done so under **duress**, those that complied did so after their members and employees went without salaries for months after their county treasuries declined to release funds to the County Assemblies.

Whereas CRA purports to have recommended reasonable ceilings, a cursory look at their recommendations for FY 2014/2015 against recommendations for FY 2015/2016 proves otherwise. The figures are irreconcilable.

Below is a list of some counties;

EXPENDITURE CEILINGS FOR COUNTY ASSEMBLIES AS SET BY THE COMMISSION ON REVENUE ALLOCATION			
NO.	NAME OF THE COUNTY ASSEMBLY	CRA RECOMENDED CEILINGS IN KSH	
		2014/2015	2015/2016
1	Lamu	151,567,061	305,000,000
2	Tharaka Nithi	181,880,473	329,000,000
3	Tana River	197,037,179	376,000,000
4	Samburu	197,037,179	358,000,000
5	Kirinyaga	219,772,238	392,000,000
6	Elgeyo Marakwet	227,350,591	399,000,000
7	West Pokot	242,507,297	417,000,000
8	Nyamira	250,085,650	415,000,000
9	Marsabit	250,085,650	483,000,000

Whereas CRA purports to set recurrent ceilings on Executive, they have not done so. CRA purports the presence of a unit/department called "new structure" in the County Executive and left out the bigger chunk of the rest of the executive departments to have unregulated recurrent expenditure. In fact, whatever is intended to be saved from ceilings in County Assemblies is not being channeled to development but to the already bloated recurrent expenditure of the executive.

With the knowledge of the budget making process, whether in the estimates, or the Appropriation Acts, budgets are made in respect of votes (read departments). There is no

vote called “new structures”, and neither is there a department known as “new structures” in the Executive arms of all the 47 County Governments.

The purported budget ceilings on County Executive are therefore not enforceable, and CRA made these provisions as public relation gimmick.

Below is a table with a comparison of the actual recurrent expenditure in the Appropriation Act, 2014, against the purported CRA ceilings for a number of County executives;

COMPARISON OF ACTUAL RECURRENT EXPENDITURES AND CRA PROPOSED EXPENDITURE CEILINGS FOR COUNTY EXECUTIVES		
COUNTY	PURPOTED CEILINGS BY CRA	ACTUAL RECURRENT EXPENDITURE FOR EXECUTIVE IN THE APPROPRIATION ACT, 2014
1 Nairobi	962,000,000	17,845,258,242
2 Tana River	378,000,000	1,314,056,105
3 Kwale	396,000,000	3,801,304,919
4 Nakuru	455,000,000	5,595,712,384
5 Lamu	351,000,000	946,104,077
6 Wajir	408,000,000	2,792,201,855

COUNTY ASSEMBLIES' RECOMMENDATIONS:

1. That the Senate confirms that the CRA recommended ceiling are not binding until approved by the Senate in accordance to PFM(Amendment)Act;
2. That the Senate confirms that they have not approved the ceilings recommended by the CRA;
3. That CoB be compelled to release funds to the County Assemblies without reference to the said ceilings;
4. That funds be released in accordance with the Appropriation Acts, since the County Appropriation Acts are not in conflict with the Constitution, the PFMA, The Division of Revenue Act, 2014, and The County Allocation of Revenue Act, 2014;

5. That there is a need to interrogate the formula used by CRA in arriving at the ceiling since there is wide discrepancies between the proposed ceiling for FY 2014/15 and those for FY 2015/16. We note that the CRA recommended ceilings for the county executive are not wholesome and therefore not enforceable.

We attach the following annexures for your reference;

Annex 1: CRA Recommended recurrent budget ceilings for County Assembly and County Executive for 2014/15 Kshs. 30,232 Million

Annex 2: CRA draft recommended recurrent budget ceilings, for the County government for 2015/16 (Kshs. Millions)

Annex 3: Brief of the Court judgement on High Court Petition 368 of 2014(Speakers of the forty seven County Assemblies Vs CRA &2 others)

Annex 4: The Court Judgement on High Court Petition 368 of 2014(Speakers of the forty seven County Assemblies Vs CRA &2 others)

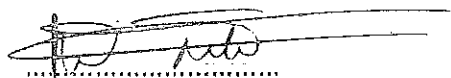
Annex 5: The Nairobi County Appropriation Act, 2014

Annex 6: The Tanariver County Appropriation Act, 2014

Annex 7: The Makueni County Appropriation Act, 2014

Annex 8: The Kwale County Appropriation Bill, 2014

Annex 9: The Nakuru County Appropriation Act, 2014



Hon. (Dr.) Nuh Nassir

Chairman

County Assemblies Forum



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 368 OF 2014

IN THE MATTER OF AN APPLICATION BY THE SPEAKERS OF THE 47
COUNTY ASSEMBLIES OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF ARTICLES 1,2,3,6,10,19,20,22,23(1) & (3), 27(1),
27(4), 27, 43, 47, 73, 159, 160, 165, 174, 175, 176, 179(1), 185, 186, 189,
190, 194, 201, 205, 207, 209, 210, 216, 224, 225, 228, 259 & 260 OF THE
CONSTITUTION OF KENYA

AND

IN THE MATTER OF RULES 23 AND 24 OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE
AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF COUNTY GOVERNMENTS ACT NO.17 OF 2012

AND

IN THE MATTER OF SECTIONS 117, 125,129, 131, 133 AND 134 OF THE
PUBLIC FINANCE MANAGEMENT ACT, CAP 412C, LAWS OF KENYA

BY

THE SPEAKER, NAKURU COUNTY ASSEMBLY1ST PETITIONER
THE SPEAKER, MOMBASA COUNTY ASSEMBLY2ND PETITIONER
THE SPEAKER, KWALE COUNTY ASSEMBLY3RD PETITIONER
THE SPEAKER, KILIFI COUNTY ASSEMBLY4TH PETITIONER
THE SPEAKER, TANA RIVER COUNTY ASSEMBLY5TH PETITIONER
THE SPEAKER, LAMU COUNTY ASSEMBLY6TH PETITIONER

THE SPEAKER, TAITA-TAVETA COUNTY ASSEMBLY	7 TH PETITIONER
THE SPEAKER, GARISSA COUNTY ASSEMBLY	8 TH PETITIONER
THE SPEAKER, WAJIR COUNTY ASSEMBLY	9 TH PETITIONER
THE SPEAKER, MANDERA COUNTY ASSEMBLY	10 TH PETITIONER
THE SPEAKER, MARSABIT COUNTY ASSEMBLY	11 TH PETITIONER
THE SPEAKER, ISIOLO COUNTY ASSEMBLY	12 TH PETITIONER
THE SPEAKER, MERU COUNTY ASSEMBLY	13 TH PETITIONER
THE SPEAKER, THARAKA NITHI COUNTY ASSEMBLY	14 TH PETITIONER
THE SPEAKER, EMBU COUNTY ASSEMBLY	15 TH PETITIONER
THE SPEAKER, MACHAKOS COUNTY ASSEMBLY	16 TH PETITIONER
THE SPEAKER, MAKUENI COUNTY ASSEMBLY	17 TH PETITIONER
THE SPEAKER, NYANDARUA COUNTY ASSEMBLY	18 TH PETITIONER
THE SPEAKER, NYERI COUNTY ASSEMBLY	19 TH PETITIONER
THE SPEAKER, KIRINYAGA COUNTY ASSEMBLY	20 TH PETITIONER
THE SPEAKER, MURANG'A COUNTY ASSEMBLY	21 ST PETITIONER
THE SPEAKER, KIAMBU COUNTY ASSEMBLY	22 ND PETITIONER
THE SPEAKER, TURKANA COUNTY ASSEMBLY	23 RD PETITIONER
THE SPEAKER, WEST POKOT COUNTY ASSEMBLY	24 TH PETITIONER
THE SPEAKER, SAMBURU COUNTY ASSEMBLY	25 TH PETITIONER
THE SPEAKER, TRANS NZOIA COUNTY ASSEMBLY	26 TH PETITIONER
THE SPEAKER, UASIN GISHU COUNTY ASSEMBLY	27 TH PETITIONER
THE SPEAKER, ELGEYO MARAKWET COUNTY ASSEMBLY	28 TH PETITIONER
THE SPEAKER, NANDI COUNTY ASSEMBLY	29 TH PETITIONER
THE SPEAKER, BARINGO COUNTY ASSEMBLY	30 TH PETITIONER
THE SPEAKER, LAIKIPIA COUNTY ASSEMBLY	31 ST PETITIONER
THE SPEAKER, NAROK COUNTY ASSEMBLY	32 ND PETITIONER
THE SPEAKER, KERICHO COUNTY ASSEMBLY	33 RD PETITIONER
THE SPEAKER, KAJIADO COUNTY ASSEMBLY	34 TH PETITIONER
THE SPEAKER, BOMET COUNTY ASSEMBLY	35 TH PETITIONER
THE SPEAKER, KAKAMEGA COUNTY ASSEMBLY	36 TH PETITIONER
THE SPEAKER, VIHIGA COUNTY ASSEMBLY	37 TH PETITIONER
THE SPEAKER, BUNGOMA COUNTY ASSEMBLY	38 TH PETITIONER
THE SPEAKER, BUSIA COUNTY ASSEMBLY	39 TH PETITIONER
THE SPEAKER, SIAYA COUNTY ASSEMBLY	40 TH PETITIONER
THE SPEAKER, SIAYA COUNTY ASSEMBLY	41 ST PETITIONER

THE SPEAKER, KISUMU COUNTY ASSEMBLY42ND PETITIONER
 THE SPEAKER, HOMABAY COUNTY ASSEMBLY43RD PETITIONER
 THE SPEAKER, MIGORI COUNTY ASSEMBLY44TH PETITIONER
 THE SPEAKER, KISII COUNTY ASSEMBLY45TH PETITIONER
 THE SPEAKER, NYAMIRA COUNTY ASSEMBLY46TH PETITIONER
 THE SPEAKER, NAIROBI COUNTY ASSEMBLY47TH PETITIONER

AND

COMMISSION ON REVENUE ALLOCATION.....1ST RESPONDENT
 CONTROLLER OF BUDGET.....2ND RESPONDENT
 THE ATTORNEY GENERAL.....3RD RESPONDENT
 COUNCIL OF GOVERNORS.....INTERESTED PARTY

JUDGMENT

Introduction

1. This Petition concerns the budgetary and related processes in County Governments. All the Petitioners are State Organs established under the provisions of Article 178(1) of the Constitution with their mandate set out under Article 178(2) of the Constitution and include *inter-alia* to preside over the sittings of their respective County Assemblies. They have brought this Petition pursuant to the provisions of Articles 1,2,3,6,10,19,20,22,23(1) & (3), 27(1), 27(4), 27, 43, 47, 73, 159, 160, 165, 174, 175, 176, 179(1), 185, 186, 189, 190, 194, 201, 205, 207, 209, 210, 216, 224, 225, 228, 259 & 260 of the Constitution of Kenya and Rules 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and Sections 117, 125, 129, 131, 133 and 134 of the Public Finance Management Act, Cap.412C, Laws of Kenya on their

own behalf and on behalf of all the Forty Seven Counties created under Article 6(1) of the Constitution as read together with the First Schedule to the Constitution.

2. On or about 22nd April, 2014 vide a circular Reference No. CRA/CGM/Vol.III/99 addressed to all County Governments, the 1st Respondent recommended a ceiling on allocation for all County Assemblies and all County Executives in County budgets for the financial year 2014/2015. Thereafter, the 2nd Respondent on diverse dates vide various circulars addressed to the County Governments allegedly reinforced the 1st Respondent's circular aforesaid and demanded that the County Assemblies' budget allocations should comply with the aforesaid Circular failure to which the 2nd Respondent would not approve withdrawals from the County Revenue Fund or any other fund by County Governments. That at the date of the impugned Circulars, none of the County Governments had passed its County Finance Act for the financial year 2014/2015 to enable implementation of its budget. The Petitioners therefore therefore claim that the 2nd Respondent acted *ultra vires* its mandate in issuing the said circulars to the Counties.
3. The Petitioners have also filed this Petition claiming a violation of Articles 73, 185, 189, 207, 216 and 228 of the Constitution by the Respondents and are further seeking to enforce their fundamental rights and freedoms under Articles 27 and 47 of the Constitution. In

their Petition dated 23rd July 2014, they therefore seek the following orders;

- (a) A declaration that the Circulars that the 1st and 2nd Respondents, jointly and severally, and either by themselves, assigns or any person claiming through them, issued to any County Government in the Republic of Kenya on various dates between the 22nd day of April, 2014 to the 16th day of July 2014, or any other date, to prescribe and or put mandatory ceilings to financial allocation to any County Assembly in a County Budget for the Financial year 2014/2015. breached the Petitioners' constitutional rights under Articles 27(1), 27(4), 27(5), 43 and 47(1) of the Constitution of Kenya, and were null and void for all intents and purposes.*
- (b) Judicial Review order of Certiorari to remove into this Honourable Court and quash the Circulars that the 1st and 2nd Respondents, jointly and severally, and either by themselves, assigns or any person claiming through them, issued to any County Government in the Republic of Kenya on various dates between the 22nd day of April, 2014 to the 16th day of July 2014, or any other date, to prescribe and or put mandatory ceilings to financial allocations to any County Assembly in a County Budget for the Financial Year 2014/2015.*
- (c) Judicial Review orders of Mandamus to remove into this Honourable Court and compel the 2nd Respondent to oversee the implementation of the budgets of County Governments in Kenya for the financial year 2014/2015 in terms of Article 228(4) of the Constitution of Kenya once County Governments pass their respective budgets for the Financial Year 2014/2015.*
- (d) Judicial Review orders of Mandamus to remove into this Honourable Court and compel the Respondents, jointly*

and severally, and either by themselves, assigns or any person claiming through them, to approve and disburse Funds as provided for in every County Government's budgetary allocations as set out in the County's Budgets estimates of Revenue and Expenditure for the Financial year 2014/2015, County's appropriation Acts for the Financial year 2014/2015 and or County's Finance Acts for the Financial year 2014/2015.

- (e) Costs of and incidental to this Petition and;*
- (f) Any other order that this Honourable Court deems fit and just to grant in the circumstances."*

The Petitioners' case

4. Prof. Ojienda, Senior Counsel, presented the Petitioners' case and the gist of their case was that the impugned Circulars were issued without authority and are in breach of the legislative authority of County Assemblies under the provisions of Articles 185(1) and (2) of the Constitution. That in issuing the said Circulars the 1st and 2nd Respondents also violated Article 189 (1) of the Constitution as they failed to consult the County Assemblies on the matter while the same fell within the latter's mandate. They further claimed that in doing so, the 1st and 2nd Respondents violated the fundamental right of County Assemblies under Article 47 of the Constitution to administrative action that is lawful, reasonable and procedurally fair.
5. It was also the Petitioners' contention that the impugned Circulars targeted only votes on account of County Assemblies and County

Executives for the financial year 2014/2015 by creating budgetary ceilings while the Respondents wholly protected budgets for the National Executive, the National Assembly, the Senate, the Judiciary and the twelve Commissions and Independent offices listed in Article 248 of the Constitution. As such they claimed that the impugned Circulars breached the fundamental rights of County Assemblies to the fundamental and inalienable right to equal protection and equal benefit of the law and not to be discriminated against, directly or indirectly, as provided for under Article 27(1), (4) and (5) of the Constitution.

6. On the latter issue, Prof Ojienda submitted that the term 'administrative action' refers to broad areas of governmental activity in which the repositories of power are exercised by statutory bodies, including the adoption of policy making and issuance of a specific direction and application of a general rule to a particular case in accordance with requirements of policy, expediency or administrative practice. He relied on the South African case of President of the Republic of South Africa and Others vs South African Rugby Football Union and Others (CCT 16/98) 2000 (1) SA 1 which discussed the normative content of the right to administrative action. It was therefore Prof. Ojienda's submission that since the 1st and 2nd Respondents purported to direct County Assemblies on how to legislate, their actions amounted to unlawful and unfair administrative action and thus violated Article 47 of the Constitution on three fronts;

7. Firstly, that the notices are *ultra vires* the mandate of the 1st and 2nd Respondents as set out under Articles 216(2) and 228 (4) of the Constitution.
8. Secondly, that the legislative authority of Counties vests in County Assemblies by dint of the provisions of Article 185(1) and(2) of the Constitution. In that regard, that County budgets are estimates of revenue and expenditure by Counties in a given financial year and constitute plans for management of County resources and that approval of County budgets is an express constitutional mandate of County Assemblies under the provisions of Article 184(4) (a). Further, that the Constitution has not apportioned the legislative authority of County Assemblies to approve County budgets as a shared mandate between County Assemblies and the 1st and 2nd Respondents nor does legislative authority to determine votes on accounts in County budgets vest in the 1st and 2nd Respondents, jointly or severally. It was therefore his submission that the Circulars are unconstitutional, unlawful and a manifest of anarchy in the operationalization of the principle of devolution.
9. Thirdly, that the impugned Circulars breach the procedures, time-lines and systems of checks and balances required to be observed by County Assemblies in enacting county budgets as is envisaged under Article 201 of the Constitution and under Sections 117, 125, 129 and 131 of the Public Finance Management Act 2012. He claimed in that regard

that in their budgetary processes, each of the County Assemblies must enact and pass certain instruments before passing its County budget.

10. In addition, that each of the instruments is progressive of and dependent on the previous instruments and it would be illegal to adopt a County Budget Estimates of Revenue and Expenditure that is not consistent with the financial outlook of a County as determined by each of the aforementioned instruments. That at the time of filing this Petition, all Counties had complied with the requirements of the Constitution and the Public Finance Management Act and had enacted County budgets for the financial year 2014/2015 and had adopted their respective County Fiscal Strategy Papers, approved their County Budget Estimates of Revenue and Expenditure by the 30th June 2014 and enacted their Appropriations Acts for the financial year 2014/2015. It was therefore Prof. Ojienda's contention that for the Counties to comply with the Circulars as issued, they had to restart the entire process of reviewing and adopting the Fiscal Strategy Paper, Budget Estimates of Revenue and Expenditure, Appropriations Bills and Acts as well as Finance Bills and Acts which actions would have gone beyond the mandatory statutory timelines set out under the Public Finance Management Act and hence create the risk of invalidating the consequent budgets that they would pass.

11. The Petitioners further contended that the mandate of the 1st Respondent is circumscribed in Article 216 of the Constitution that

mandate is to recommend on matters concerning financing and financial management by the Counties. That the Constitution does not allow it to decide on matters concerning financial management by the Counties and while relying on the Canadian cases of *R vs Mac Farlane (1923) HCA 36* and *Thomson vs Canada (Deputy Minister of Agriculture) (1992) 1 SCR 385*, the Petitioners distinguished a "recommendation" from a "decision" and stated that a recommendation does not have any binding force and does not impose obligations, and therefore a "recommendation" connotes advice which the recipient may be at liberty to accept or disregard.

12. It was also the Petitioners' submission that the mandate of the 2nd Respondent under Article 228 of the Constitution is to oversee the implementation of the budgets of the National and County Governments through its authorization to withdraw from the Equalization, Consolidated and Revenue Funds and Prof. Ojienda further submitted that the said mandate in relation to Counties is limited to ascertaining that withdrawals from Revenue Funds under Article 207 of the Constitution is done only in accordance with the legislation enacted by County Assemblies or an Act of Parliament.
13. It was Prof. Ojienda's further submission that there is no law in Kenya that mandates any of the Respondents to approve budgets or determine votes on account of budgets and to do so would amount to usurpation of powers of the County Assemblies. While relying on the case of *Okuya Omtatah Okoiti & 3 Others vs Attorney General & 5 Others Petition*

No.227 of 2013 (2014) e KLR and the Supreme Court decision in Re Matter of the Interim Independent Electoral Commission, Constitutional Application No.2 of 2011 (2011) eKLR, he submitted that all constitutional organs are obliged to stick to their mandates as stipulated in the Constitution and do no more.

14. It was also the Petitioners' contention that the impugned Circulars violated their right not to be discriminated against as provided for under Article 27(1), (2) (4) and (5) because they only targeted votes on account of County Assemblies in County budgets for 2014/2015 and that they were therefore a premeditated and decided target. That while the 2nd Respondent oversees the implementation of the budgetary allocations to other State Organs such as the County Executive, National Executive, the National Assembly, the Senate, the Judiciary and the twelve Commissions and Independent Offices, they have not seen a single circular to these other organs faulting their votes for the financial year 2014/2015. In fact they claimed that the Respondents are all deliberately protecting those budgetary allocations in a conspiratorial manner.
15. It was the Petitioners' further contention that the Division of Revenue Act 2014 and the County Allocation of Revenue Act, 2014 contains block figures of revenue that goes to each County Government and that none of these statutes have any provision for the budgetary ceilings set by the 1st and 2nd Respondents vide the impugned circulars.

16. Further, that Parliament did not set a law sanctioning the impugned budgetary ceilings and the Senate in its oversight role dismissed the intended ceilings as is evident in the Hansard of 5th August 2014 and 2nd September 2014. It was therefore Prof. Ojienda's submission that the Respondent breached Article 73(1)(a) and (2) (b) and (c) of the Constitution which enjoins all State Officers, including the Respondents, to exercise public authority as a public trust in a manner that brings honour to the office and promotes public confidence in the integrity of the office. He claimed in that regard that the acts of the 1st and 2nd Respondents in colluding with, obtaining and acting upon directions of the National Executive and purporting to set votes on account of County Assemblies offends Article 249(2) of the Constitution.
17. Lastly, Prof Ojienda urged the Court to find that the impugned Circulars violate the Constitution and grant the Prayers in the Petition as set out above.

The 1st Respondent's case

18. The 1st Respondent, the Commission on Revenue Allocation, is a constitutional commission established under Article 215 of the Constitution and whose functions are set out under Article 216 of the Constitution, the Commission for Revenue Allocation Act and the Public Finance Management Act. Those functions include making recommendations concerning the basis for the equitable sharing of

revenue raised by the National Government between the National and County Governments and among County Governments. The Commission is also mandated to make recommendations on other matters concerning the financing of, and financial management by County Governments and fiscal prudence as required by the Constitution and national legislation.

19. It opposed the Petition through the affidavit of George Ooko, the Commission Secretary, sworn on 28th August 2014. In his Affidavit, he deponed that the 1st Respondent had not violated the Constitution in any way or as alleged by the Petitioners.
20. In the said Affidavit, Mr. Ooko stated that County Governments and Assemblies must comply with the law in their budgetary processes and any County budget that does not do so is illegal and unconstitutional.
21. He claimed that the 1st Respondent's Circular Reference No. CRA/CGM/VOL. III/99 dated 22nd April 2014 did not recommend new budget ceilings for County Assemblies and County Executives. It merely restated the advice that the 1st Respondent had rendered to Parliament as provided by Article 205 of the Constitution and Parliament, while taking into consideration the recommendation, made by the 1st Respondent as provided for by Article 218(1)(a) and (b) of the Constitution, enacted the Division of Revenue Act and the County Allocation of Revenue Bill. That therefore the budgetary ceilings are as a result of existing legislation and not the 1st Respondent's Circular as

alleged. Further, that the 1st Respondent did not seek to micro-manage the County budgetary process in issuing the Circular neither did it seek to legislate on allocations to the County Assemblies and County Executives as alleged by the Petitioners because the legislative role in the County budgetary process is purely a function of Parliament and County Assemblies and that the total amount of revenue available to each County Government was done by Parliament through the Division of Revenue Act pursuant to Article 218(1)(a) of the Constitution.

22. It was his further deposition that no County had submitted copies of the County development plans, debt management strategies or any other information to the 1st Respondent as required by law. Further, that no County Treasury had sought the recommendation of the 1st Respondent, as mandatorily required by Section 117(5) of the Public Finance Management Act, in preparing the County Fiscal Strategy Paper.
23. It was also his contention that there was no discrimination meted out to County Assemblies because budget ceilings are lawfully set by Parliament for all arms of Government, all levels of Government and independent bodies and Commissions and that all the other Government agencies had complied with their set budget ceilings except County Assemblies which deliberately made budgets over and above those ceilings.
24. Mr. Oraro, appearing for the 1st Respondent, also submitted that the provisions of the Division of Revenue Act, 2014 and the County

Allocation of Revenue Act, 2014 are in conformity with the Constitution and that Parliament sets ceilings for County budgets via these two legislations as required by Article 218 of the Constitution while under Article 216, thereof, the 1st Respondent is granted the constitutional mandate of ensuring that County budgets are in compliance with the Division of Revenue Act and the County Allocation of Revenue Act.

25. It was his position therefore that the impugned Circulars are constitutional and lawful and the 1st Respondent acted within its mandate under the Constitution and the Public Finance Management Act, and related legislation.

26. He went on to submit that the various County Appropriation Acts were unconstitutional as they are in conflict with the Division of Revenue Act, 2014 and County Allocation of Revenue Act, 2014 and as such, under Article 191(2) of the Constitution, these two legislations prevail over the County Appropriations Acts. He thus urged the Court to find the County Appropriations Acts as unconstitutional and on the reliefs sought by the Petitioners, Mr. Oraro submitted that they are moot as the recommendations made by the 1st Respondent to County Governments have already been taken into account by Parliament while passing the Division of Revenue Act, 2014 and County Allocation of Revenue Act, 2014.

27. Lastly, it was Mr. Oraro's submission that the Petitioners are State Organs as created under Article 178(1) of the Constitution and the Counties are also State Organs and further that the Petitioners in their official capacity and the forty seven Counties are not persons within the meaning of the Constitution and therefore they are incapable of enjoying/enforcing any right under the Bill of Rights. In that regard, he relied on the case of County Government of County Government Meru vs Ethics-and Anti-Corruption Commission (2014) e KLR where it was held that a County Government was not a person capable of enforcing fundamental rights and freedoms and for the above reasons, he urged the Court to find that the Petition lacked merit and ought to be dismissed in its entirety.

The 2nd Respondent's case

28. The 2nd Respondent, the Controller of Budget, is an office established under Article 228 of the Constitution and its mandate is to oversee the implementation of the budgets of the National and County Governments by authorizing withdrawals from public funds and also to bar any withdrawal from a public fund unless he is satisfied that the withdrawal is authorized by law.
29. It opposed the Petition through the Affidavit of Mr. Waweru Tuti, its Legal Officer, sworn on 12th September 2014. Mr. Arwa appeared for the 2nd Respondent and argued its case.

30. In his affidavit Mr. Waweru deponed that for any withdrawals to be authorized by law, the budgetary process as envisaged by the Constitution and the Public Finance Management Act, must be adhered to.

31. That the 2nd Respondent, before approving any withdrawal from the County Revenue Fund, interrogates the budgetary process to establish whether the requirements of the law have been met and that in the financial year 2013/2014, County Assemblies approved flawed budgets and thereafter their Appropriation Acts were based on the said flawed budgets and consequently, requests for withdrawals from the County Revenue Fund was not approved and the same were referred back to the County Assemblies for rectification and/or incorporation of details and or information that had been omitted thus resulting in the delay of withdrawals of any money from the Fund which in turn stalled the operations of County Governments. That to avoid similar situations, the 2nd Respondent advised County Assemblies to present their proposed budgets ahead of time for advise on what additional information ought to have been incorporated in them before presentation of the budget estimates to the 2nd Respondent. The 2nd Respondent upon being presented with the proposed budgets by each of the County Assemblies for comments prior to enactment of the Appropriation Act, wrote letters to the 47 Counties on diverse dates between 5th June 2014 and 16th June 2014 briefly indicating what requirements of law their budgets had to satisfy before any withdrawal from the County Revenue Fund would be allowed. That the County Assemblies disregarded the recommendations

and circulars sent to them and prepared budgets without due consideration to the recommendations made and therefore the Budgets presented to the 2nd Respondent were not prepared in line with the Programme Based Budget Approach as required by the Public Finance Management Act, and the Transition Authority Circular dated 12th, March 2014 which required all County Governments to implement Programme Based Budgets with effect from the financial year 2014/2015.

32. Further, that the Budget prioritization documents presented by each of the Petitioners were inconsistent with the devolved functions as stipulated under the Fourth Schedule to the Constitution and that the budgets presented did not show the allocation of development projects in the County. In particular, that the geographical distribution of the projects could not be ascertained by examining the particular budget estimates and that the budgets presented did not disclose the comparative data for the development expenditure of the prior year, thus limiting the ability to assess whether enough money had been allocated to complete those projects. Further, that the sub-items in the budget had no codes according to the Government Financial Statistics coding that provides that every item must have a code and lastly, that the Counties had allocated monies that exceeded the monies in the County Revenue Fund and the County Assemblies ignored the recommendations of the 2nd Respondent in the whole budget process.

33. Mr. Waweru thus concluded that there was need to observe the principles of Public Finance as enshrined in Article 201 of the Constitution and ensure prudent and responsible use of money and avoid wastage as was clear in the financial year 2013/2014 where members of County Assemblies made several foreign trips which were unnecessary and a waste of public funds. That the reason why the Petitioner's budgets were therefore not approved was because they had not satisfied the requirements of law in their enactment and that is why they could not be approved as submitted and not because they had exceeded the ceilings set by the 1st Respondent as contended by the Petitioners.

34. Mr. Arwa added that the Petitioners had not been discriminated against as alleged and that the ceilings were made based on an existing legal framework which had to be followed by all agencies including the Petitioners. He thus urged the Court to dismiss the Petition with costs.

The 3rd Respondent's case

35. The 3rd Respondent, the Attorney General, is established under the provisions of Article 156(1) of the Constitution with its mandate set out under Article 156(4)(b) of the Constitution including to represent the National Government in Court or in any other legal proceedings to which the National Government is a party.

36. The Attorney General opposed the Petition and Mr. Moimbo presented his case and while associating himself with the submissions of the 1st and 2nd Respondent, he added as follows;
37. That the generation of budgets at the National and County levels is a process that is strictly guided by both the Constitution and the Public Finance Management Act and as such, any budget based on budget estimates outside the provisions of the Constitution and Public Finance Management Act is unconstitutional and untenable in law.
38. On the issue of the alleged recommendations by the 1st Respondent, he submitted that under Sections 25(5)(a) and 117(5) of the Public Finance Management Act, the National Treasury and the County Treasuries are enjoined to seek and take into account the views of the 1st Respondent while preparing the Budget Policy Statement and the County Fiscal Strategy Paper. He thus submitted that the recommendations made by the 1st Respondent are binding on the Petitioners and that they have the force of law because Article 216(3)(a) of the Constitution removes the basis of such recommendations from the wisdom of the 1st Respondent and places it on the mandatory criteria of equity under Article 203 of the Constitution. That a finding by this Court that the recommendations made by the 1st Respondent are not binding would render the 1st Respondent functionally ineffective and would render Article 203(1) and 216(3) (a) inoperative and useless.

39. As regards the 2nd Respondent, Mr. Moimbo submitted that it can only oversee the implementation of budgets of the National and County Governments, by authorizing withdrawals from public funds under Articles 204, 206 and 207 and that under Article 228(5) such withdrawals can only be made within the law and it is within the mandate of 2nd Respondent to stop a withdrawal that is not legal.

40. Mr. Moimbo thus urged the Court to dismiss the Petition.

The Interested Party's Case

41. The Interested Party, the Council of Governors, opposed the Petition. Mr. Wanyama presented its case and his submissions were that County Assemblies were not persons capable of enjoying rights under the Bill of Rights. That while the provisions of Article 20(1) of the Constitution recognize both horizontal and vertical application of the Bill of Rights, the Constitution has not given State Organs, such as the Petitioners, the power to petition this Court over a violation enshrined in the Bill of Rights. He relied on the case of *Kenya Bus Service Ltd and Anor vs Minister for Transport and 2 Others (2012) eKLR* where it was held that state organs are not entitled to the protection of the Bill of Rights and cannot therefore claim a violation of fundamental rights and freedoms.

42. It was his further submission that the impugned Circulars are binding on the Petitioners and that under the provisions of Section 2 of the Interpretation and General Provisions Act (Cap 2) Laws of Kenya,

the Circular is a form of subsidiary legislation since the 1st Respondent was acting within its powers under Article 216 of the Constitution and Section 10(c) of the Commission on Revenue Allocation Act.

43. He submitted further that in any event, if there was conflict between County legislation and National legislation, National legislation prevails as provided for under Article 191(2) of the Constitution. That because the Commission on Revenue Allocation Act is also a National legislation that has donated powers to the 1st Respondent to make recommendations on how funds should be spent at the County Government, the recommendations made thereunder amount to subsidiary legislation and therefore prevails over County legislation. He claimed further that the fact that County Appropriation Bills as passed exceeded the ceilings imposed by the recommendations of the 1st Respondent shows that they are contrary to the law and in any event, under Article 191(2)(b) of the Constitution, the suspended County Assemblies budgets prejudice the National economic policy and as such are void.

44. He therefore urged the Court to find that the 1st and 2nd Respondent have not violated the Constitution in any way and have instead acted in accordance with the law by issuing the impugned Circulars to the Petitioners. He urged the Court to dismiss the Petition for the above reasons.

Determination

45. Having set out the Parties' submissions as above and looking at the pleadings and submissions before me, I am of the view that there are two main issues for determination in this Petition. Firstly, whether the impugned Circulars were issued in breach of the law and the legislative authority of County Assemblies. To answer that issue I must also consider the budgetary making process and the mandates of County Assemblies as well as that of the 1st Respondent and 2nd Respondent in the said budgetary making process. Secondly, whether the Petitioners' fundamental rights under Article 27 and 47 of the Constitution have been violated by the Respondents, jointly or severally. Lastly, I will consider what remedies are available to the Petitioners, if any.

Whether the impugned circulars were issued in breach of the law and the legislative authority of County Assemblies

46. As already stated, in order to determine the dispute before me, it is important to analyse and confirm the budget making process as outlined in the Constitution and in the Public Finance Management Act *vis-a-vis* the mandate of the County Assemblies as well as the 1st and 2nd Respondent in that process. If I understood Prof. Ojienda well, his submission was that the Constitution does not allow the 1st Respondent to decide on matters concerning financing and fiscal management by Counties and that its mandate is limited to making recommendations on the basis of equitable sharing of finances while that of the 2nd Respondent is to ascertain the lawfulness of withdrawals from

Revenue Funds created under Article 207 of the Constitution. It was therefore his submission that there is no known law presently that mandates any of the Respondents to approve budgets or determine votes on account of budgets of County Assemblies and to do so would amount to usurping the powers of the County Assemblies and therefore the ceilings recommended by the 1st Respondent through Reference No. CRA/CGM/Vol. III/99 are illegal.

47. It is important to state from the outset that the budgetary process in Kenya is undertaken both at the National Level and at the County level. At the National level, the process is managed by the National Treasury while at the County level it is managed by the County Treasury. That being so, the first principle in the budgetary process is to be found in Articles 201(b)(ii) and 202(1) of the Constitution which provide that revenue collected nationally shall be shared equitably between the National and County Governments. As to how and the manner in which that revenue is to be shared, Article 218 (1)(a) of the Constitution is important as it directs that at least two months before the end of each financial year, there shall be introduced into Parliament, a Division of Revenue Bill which shall divide revenue raised by the National Government among the two levels of Government.

48. The National budgetary process proper then starts with the preparation of a Budget Policy Statement by the National Treasury as is provided for in Section 25(1) of the Public Finance Management Act. Section

25(4)(c) of the same Act requires that the Budget Policy Statement must include the amount of indicative transfers of funds from the National Government to the County Governments. Section 25(5)(a) of the same Act enjoins the National Treasury in its preparation of the Budget Policy Statement to seek and take into account the views of the 1st Respondent, County Governments, Controller of Budget, the Parliamentary Service Commission, the Judicial Service Commission, the public and any other interested persons or groups. Section 25(7) of the Act then provides that Parliament, within fourteen days of submission to it of the Budget Policy Statement, shall table and discuss its recommendations and pass a resolution to adopt it with or without amendments. Thereafter, under the provision of Section 25(8) of the Act, the Cabinet Secretary for Finance shall take into account the resolutions passed by Parliament and finalize the budget for that financial year. Lastly, under Section 25(9) of the Act, the National Treasury shall publish and publicize the Budget Policy Statement not later than fifteen days after submission of the said Statement to Parliament.

49. Of importance in this Petition is that the National Treasury indeed prepared the 2014 Budget Policy Statement and presented the same to Parliament and that it was adopted by Parliament on 20th March 2014. In accordance with Article 218(1)(a) of the Constitution which directs that at least two months before the end of each financial year there shall be introduced in Parliament a Division of Revenue Bill which shall

divide revenue raised by the National Government among the National and County levels of Government, Parliament enacted the Division of Revenue Act, 2014 which was assented to by the President on 30th July, 2014 and which came into effect on 4th August 2014. Section 3 of that Act provides as follows;

"The object and purpose of this Act is to provide for the equitable division of revenue raised nationally between the national and county levels of government for the financial year 2014/2015 in accordance with Article 203(2) of the Constitution".

Further and in the above context, Article 218(1)(b) provides for the enactment of the County Allocation of Revenue Act which provides for the equitable allocation of revenue raised by the National Government among the 47 Counties. In that regard, the County Allocation of Revenue Act, 2014 in Section 3 states it objects as follows;

"(a) provide, pursuant to Article 218(1)(b) of the Constitution, for the allocation of the equitable share of revenue raised by the National Government among the County Governments in accordance with the resolution approved by Parliament under Article 217 of the Constitution for the financial year 2014/2015;

(b) provide, pursuant to Articles 187(2) and 201(2) of the Constitution, for conditional additional allocations for the financial year 2014/2015; and

(c) facilitate the transfer of allocations made to the County Governments under this Act from the Consolidated Fund to the respective County Revenue Funds."

50. The National Budgetary process effectively ends when transfers are made to the respective County Revenue Funds and before I start on the budgetary process at the County Level, I am aware that the Petitioners' case is pegged on the import to be attached to Circular Reference as CRA/CGM/VOL.III/99 issued by the 1st Respondent to all the Governors and County Executive Committee Members of Finance in all the 47 Counties. In that regard, it was Prof. Ojienda's submission that the said Circular is void on two fronts. Firstly, that it was issued without authority and in breach of the legislative authority of County Assemblies under the provisions of Articles 185(1) and (2) of the Constitution. Secondly, that in issuing and acting on the said Circular, the 1st Respondent violated Article 189 (1) of the Constitution as it failed to consult County Assemblies on a matter that fell within their mandate and would in effect affect them.

51. For avoidance of doubt that impugned Circular reads as follows;

"COMMISSION ON REVENUE ALLOCATION

Our Ref: CRA/CGM/VOL.III/99

22nd April, 2014

- All governors
- County Executive Committee members - Finance

RE: RECOMMENDED BUDGET CEILINGS FOR COUNTY ASSEMBLY AND COUNTY EXECUTIVE BASED ON RECOMMENDED BUDGET ON COSTS OF NEW COUNTY STRUCTURES OF KSHS.30,232 MILLION

Attached please find CRA recommended ceilings for County Assembly and County Executive with accompanying notes.

Please note that where budget exceeds the recommended ceilings, it would be at the expense of the costed devolved services which will consequently affect service delivery.

Yours sincerely,

SIGNED

George Ooko
COMMISSION SECRETARY

cc - Controller of Budget
- Clerk of the Senate
- Ag. CEO, Council Of Governors." (Emphasis added)

Three facts can be clearly discerned from a plain reading of the Circular. Firstly, it was issued by the 1st Respondent. Secondly, it was directed at Governors and County Executive Committee members in all the 47 Counties and lastly, it recommended budget ceilings for County Assemblies and County Executives and in that regard a question arises whether the 1st Respondent had powers to issue the Circular and lastly, if so, whether the recommended ceilings were within the law.

52. The 1st Respondent is an Independent Commission established under Article 248(2) of the Constitution. Its functions are stipulated under Article 216(1) and (2) of the Constitution as follows;

"(1) The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the National Government-

(a) between the National and County Governments' and

(b) among the County Governments'.

(2) The Commission shall also make recommendations on other matters concerning the financing of, and financial management by, County Governments' as required by this Constitution and National legislation." (Emphasis added)

In addition to the above provisions, Section 10(1) of the Commission on Revenue Allocation Act, Cap. 5E provides as follows;

"(1) In addition to its principal function under Article 216(1) of the Constitution, the commission shall, in accordance with clause (2) of that Article -

(a) Make recommendations for consideration by Parliament prior to any Bill appropriating money out of the Equalization fund is passed in parliament.

(b) Upon request from the Senate, make recommendations on the basis for allocating

among the counties the share of National revenue that is annually allocated to the County levels of Government.

- (c) Submit recommendations to the Senate, National Assembly, National Executive, County Assembly and County executive on the proposals made for equitable distribution of revenue between the National and County Governments and amongst the County Governments taking into account the criteria set out in Article 203 of the Constitution, including recommendations on the amounts earmarked for specific purposes such as the constituency development fund, among others; and*
- (d) Perform such other functions as are provided for by the Constitution or any other written law." (Emphasis added)*

53. Looking at the above provisions and all of them read together, the 1st Respondent is the body charged with the responsibility of making recommendations *inter-alia* to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives on the basis upon which revenue would be shared equitably between the National and County Governments. It also recommends how the revenue allocated to the County Government level would be shared among the County Governments. It also makes recommendations on matters concerning the financing and financial management by the County Governments. None of the Parties disputed these facts but the point of disagreement is whether those recommendations are binding on all the organs to which they are made. Mr. Moimbo for example warned this Court against any interpretation that would mean that the

recommendations aforesaid are not binding. What is the law on the subject?

54. The Concise Oxford English Dictionary defines "recommend" as;

- "(i) put forward with approval as being suitable for a purpose or role*
- (ii) Advise as a course of action".*

Taken in its ordinary English meaning, it would therefore mean that 'recommendations' do not have a binding effect on the person or body to whom they are made. Recommendation are not the same as 'directives' or 'directions' which are certainly binding on those to whom they are addressed; - See Re Thomson (supra). However, in the context of the Petition before me and in order to interpret 'recommendations', the Constitution must be read as a whole in order to ascertain its aim and object so as to establish the aim of the drafters of the Constitution - See Kigula and Others vs The Attorney General (2005) AHGRLR-197 (Ug CC 2005). Heed must therefore be paid to the language used and the context of the specific provision under consideration.

55. In that regard and further to what I have stated above, Article 217 of the Constitution states that;

- "(1) Once every five years, the Senate shall, by resolution,*

determine the basis for allocating among the Counties the share of National revenue that is annually allocated to the County level of Government.

- (2) In determining the basis of revenue sharing under clause (1), the Senate shall—
 - (a) take the criteria in Article 203 (1) into account;
 - (b) request and consider recommendations from the Commission on Revenue Allocation;
 - (c) consult the County Governors, the Cabinet Secretary responsible for finance and any organisation of County Governments; and
 - (d) invite the public, including professional bodies, to make submissions to it on the matter.
- (3) Within ten days after the Senate adopts a resolution under clause (1), the Speaker of the Senate shall refer the resolution to the Speaker of the National Assembly.
- (4) Within sixty days after the Senate's resolution is referred under clause (3), the National Assembly may consider the resolution, and vote to approve it, with or without amendments, or to reject it.
- (5) If the National Assembly--
 - (a) does not vote on the resolution within sixty days, the resolution shall be regarded as having been approved by the National Assembly without amendment; or
 - (b) votes on the resolution, the resolution shall have been--

- (i) amended only if at least two-thirds of the members of the Assembly vote in support of an amendment;
 - (ii) rejected only if at least two-thirds of the members of the Assembly vote against it, irrespective whether it has first been amended by the Assembly; or
 - (iii) approved, in any other case.
- (6) If the National Assembly approves an amended version of the resolution, or rejects the resolution, the Senate, at its option, may either--
- (a) adopt a new resolution under clause (1), in which case the provisions of this clause and clause (4) and (5) apply afresh; or
 - (b) request that the matter be referred to a joint committee of the two Houses of Parliament for mediation under Article 113, applied with the necessary modifications.
- (7) A resolution under this Article that is approved under clause (5) shall be binding until a subsequent resolution has been approved.
- (8) Despite clause (1), the Senate may, by resolution supported by at least two-thirds of its members, amend a resolution at any time after it has been approved.
- (9) Clauses (2) to (8), with the necessary modifications, apply to a resolution under clause (8)." (Emphasis added)

57. The bonding of nature of a resolution above is quite different, obviously, from a mere recommendation. Important is also Article 218 (2) of the Constitution which provides as follows;

"(1) ...

(2) *Each Bill required by clause (1) shall be accompanied by a memorandum setting out--*

(a) *an explanation of revenue allocation as proposed by the Bill;*

(b) *an evaluation of the Bill in relation to the criteria mentioned in Article 203 (1); and*

(c) *a summary of any significant deviation from the Commission on Revenue Allocation's recommendations, with an explanation for each such deviation.* (Emphasis added)

The import of the above provisions is that a recommendation made by the 1st Respondent to the Senate is not binding but for good order, reasons for a deviation must be given.

58. As to who the recommendations are generally made to, Article 218(5) proves as follows;

216 "(1) ...

(2) ...

(3) ...

(4) ...

(5) *The Commission shall submit its recommendations to the Senate, the National Assembly, the National*

Executive, County Assemblies and County Executives."

Reading Articles 216, 217 and 218 of the Constitution as well as Section 10(1) of the Commission on Revenue Allocation Act, Cap.5E, a number of facts can be distilled a viz;

- (i) The principle function of the 1st Respondent is to make recommendations to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives.
- (ii) By the very nature of recommendations, they are persuasive but not binding on the person or body to which they are directed.
- (iii) Its principal functions in Article 216(1) and (2) of the Constitution are to be supplemented by legislation and hence Section 10(1) of the Commission on Revenue Allocation Act, which has been reproduced elsewhere above.
- (iv) The impugned Circular if looked at in the context of Article 216(1) (2) and (5) of the Constitution and Section 10(1) aforesaid cannot be said to be unlawful or unconstitutional

as argued by the Petitioners because it was made well within the mandate of the 1st Respondent.

But that is not the end of the matter because it has been argued that the Circular has breached the legislative authority of the County Assemblies. How has that been done? The Petitioners have stated that the Circular had the effect of invalidating their County Fiscal Strategy Papers, County Budget Estimates of Revenue and Expenditure, Appropriation Bills and Finance Acts but I am at pains to understand that argument because while the circular was issued on 22nd April 2014, the law providing for budgetary ceilings, being Section 12 of the County Allocation of Revenue Act, 2014 came into force on 5th September 2014 while this Petition was filed on 23rd July 2014.

Section 12 aforesaid provides as follows;

“Section 107 of the Public Finance Management Act is amended by inserting the following new Subsection immediately after subsection (2) -

(2A) pursuant to Articles 201 and 216 of the Constitution and notwithstanding Subsection (2), the Commission on Revenue Allocation shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each County Government.” (Emphasis mine)

Prof. Ojienda in the above context, submitted that neither the Division of Revenue Act, 2014 nor the County Allocation of Revenue Act, 2014 contained block figures of revenue that goes to each County

government as budgetary ceilings set by the 1st Respondent vide the impugned Circulars. I have again looked at the impugned Circular and the accompanying notes which provide for budget ceilings in block figures to each County. Where then is the dispute? Whether the Petitioners acted on the circular is a non-issue because in fact it was not binding on them or Parliament. That issue is moot because once I have found that the recommendations made are not binding, then it follows that any complaint by the Petitioners ought to be directed at the State Organs with the final say on the budgets i.e. Parliament. There is no argument before me that the County Allocation of Revenue Act, 2014 is unconstitutional or that Section 12 which introduced budgetary ceilings is unconstitutional. I have also not seen any argument that Section 107 of the Public Finance Management Act, Cap.142 is unconstitutional. That Section for avoidance of doubt proves as follows;

"(1) A County Treasury shall manage its public finances in accordance with the principles of fiscal responsibility set out in subsection (2) and shall not exceed the limits stated in the regulations.

(2) In managing the county Government's public finances, the County Treasury shall enforce the following fiscal responsibility principles-

(a) the county Government's recurrent expenditure shall not exceed the County Government's total revenue;

- (b) *over the medium term a minimum of thirty percent of the County Government's budget shall be allocated to the development expenditures;*
 - (c) *the County Government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the County Government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly;*
 - (d) *over the medium term, the Government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;*
 - (e) *the County debt shall be maintained at a sustainable level as approved by County Assembly.*
 - (f) *the fiscal risks shall be managed prudently; and*
 - (g) *a reasonable degree of predictability with respect to the level of tax rates and tax bases shall be maintained, taking into account any tax reforms that may be made in the future.*
- (3) *For the purposes of subsection (2) (d), short term borrowing shall be restricted to management of cash flows and shall not exceed five percent of the most recent audited County Government revenue.*
- (4) *Every County Government shall ensure that its level of debt at any particular time does not exceed a percentage of its annual revenue specified in respect of each financial year by a resolution of the County Assembly.*

(5) *The regulations may add to the list of fiscal responsibility principles set out in subsection (2)."*

Read together with Section 12 aforesaid, the above principles are crucial in the management of funds allocated to County Governments and I see no reason in the circumstances to delve into them in the circumstances of the Petition before me because there is no issue raised with regard to them.

Without Section 12 or Section 107 above being declared unlawful, I do not see the value of any case made out of a non-binding Circular while the law that came subsequent to it remains intact.

59. Notwithstanding my findings above, I also understood one of the Petitioners' complaints to be that the 1st Respondent issued the impugned Circular without having involved and consulted them. I shall now turn to consider this submission.

60. The 1st Respondent is an Independent Constitution Commission and as such under, Article 249(2), it is not subject to the direction or control of any person or authority. The Supreme Court in Re Matter of the Interim Independent Electoral Commission (supra) expressed itself in the following terms as regards independent commissions;

"While bearing in mind that the various commissions and independent offices are required to function free of subjection to "direction or control by any person or authority", we hold that this expression is to be accorded its ordinary and natural meaning; and it means that the Commissions and independent

offices, in carrying out their functions, are not to take orders or instructions from organs or persons outside their ambit. These Commissions or independent offices must, however, operate within the terms of the Constitution and the law; the "independence clause" does not accord them carte blanche to act or conduct themselves on whim; their independence is, by design, configured to the execution of their mandate, and performance of their functions as prescribed in the Constitution and the law."

The Court went further to state that;

For due operation in the matrix, "independence" does not mean "detachment", "isolation" or "disengagement" from other players in public governance. Indeed, for practical purposes, an independent commission will often find it necessary to co-ordinate and harmonise its activities with those of other institutions of Government, or other Commission will often find it necessary to co-ordinate and harmonize its activities with those of other institutions of Government, or other commissions, so as to maximize results, in the public interest. Constant consultation and co-ordination with other organs of Government, and with civil society as may be necessary, will ensure a seamless, and an efficient and effective rendering of service to the people in whose name the Constitution has instituted the safeguards in question.

It then concluded as follows;

The moral of this recognition is that commissions and independent offices are not to plead "independence" as an end in itself; for public-governance tasks are apt to be severely strained by possible "clashes of independences."

61. I am duly guided on the interpretation of the law as above and it is clear to me that the 1st Respondent ought to perform its functions as provided

for under the four corners of the Constitution and the law. Further, in meeting its objectives it is bound by the provisions of Article 249 (1) which are as follows,

"(1) The objects of the commissions and the independent offices are to—

- (a) protect the sovereignty of the people;*
- (b) secure the observance by all State organs of democratic values and principles; and*
- (c) promote constitutionalism".*

Some of the democratic values and principles which also bind the 1st Respondent are those stated at Article 10 of the Constitution are as follows;

"(1) ...

(2) The National values and principles of governance include--

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*
- (a) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;*
- (c) good governance, integrity, transparency and accountability; and State and religion. National symbols and national days. National values and principles of governance.*

(d) *sustainable development.*"

62. Further, under Article 216(3) of the Constitution;

"(3) In formulating recommendations, the Commission shall seek--

(b) to promote and give effect to the criteria mentioned in Article 203 (1);

(c) when appropriate, to define and enhance the revenue sources of the national and county governments; and

(c) to encourage fiscal responsibility."

63. In addition to the above, Section 10(2) of the Commission on Revenue Allocation Act provides that;

"In making recommendations under this Section, the Commission shall take into consideration such facts or information as may be given to it by a County Government".

64. Having rendered the law as I have done above, did the 1st Respondent seek any information from County Governments before making the recommendation for budgetary ceilings and was it obligated to do so? I do not think so and I say so because I have no evidence to the contrary. Section 10(2) above creates no obligation in the manner suggested by the Petitioner although the information required may be useful to the 1st Respondent. It is a matter wholly of discretion on its part.

65. I reiterate that the 1st Respondent was not bound by the Constitution and the Act to seek information and representations from the County Government before making its recommendations on budget ceilings. I say so well aware that the principles in Article 189 of the Constitution encourage consultation between the two levels of Government and I dare add that the same principles would apply to relations between the levels of Government and Independent Commissions and Offices. That Article provides as follows;

"(1) Government at either level shall—

- (a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;*
- (b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and*
- (c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.*

(2) Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

(3) *In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by mean of procedures provided under national legislation.*

(4) *National legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration."*

66. In addition to the above, I am aware of the provisions of Section 25 (5) of the Public Finance Management Act which provides that;

"(1) ...

(2) ...

(3) ...

(4) ...

(5) In preparing the Budget Policy Statement, the National Treasury shall seek and take into account the views of -

(a) the Commission on Revenue Allocation;

(b) County Governments;

(c) Controller of Budget;

(d) The Parliamentary Service Commission;

(e) The judicial Service Commission;

(f) The public; and

(g) Any other interested persons or groups;"

67. All the above provisions read together would point to the fact that in the entire budgetary process, the views of County Governments and

Assemblies are important and ought to be considered and taken seriously in making the Budget Policy Statement which would be used in preparing the National Annual Budget but I am not prepared to hold that it is a mandatory obligation to do so on the part of the 1st Respondent. I say so because while it is a good practice to consult and in terms set out in Article 189 above, failure to do so cannot amount to a violation of any law or the Constitution itself. The point is that out of respect for each other's roles and expertise, each organ should not off-handedly dismiss any suggestions or information obtained from the other but failure to do so cannot attract this Court's sanctions.

68. Having found as I have, I must now consider the other interrelated issue on whether the 1st and 2nd Respondents usurped the legislative mandate of the County Government in the County budgetary process. Prof. Ojienda strenuously submitted on this point and argued that the Circular is unconstitutional, unlawful and manifests anarchy because approval of County budgets is within the mandate of County Assemblies and it is not within the 1st and 2nd Respondents' mandate to determine particular votes on County Budgets.
69. In that regard, under the provisions of Section 104(1)(a)(b) of the Public Finance Management Act, it is the responsibility of the County Treasury to prepare the Annual Budget for a County and co-ordinate the preparation of Estimates of Revenue and Expenditure of a County Government. The procedure for the budgetary process under

Section 117 of the Public Finance Management Act therefore starts with the preparation of a County Fiscal Strategy Paper which is then submitted for approval by the County Assembly by 28th February of each financial year. In preparing the County Fiscal Strategy Paper, the County Treasury is obligated to specify the broad strategic priorities and policy goals that will guide the County Government in preparing its budget for the coming financial year. Thereafter, under Section 118 of the Act, the County Treasury prepares a County Budget Review and Outlook Paper in respect of the County for each financial year and submits the paper to the County Executive Committee by 30th September of that year. The County Executive Committee then is obligated to discuss that Outlook Paper and after approval it is laid before the County Assembly before it is published and publicised.

70. The County Government budget process therefore consists of the following stages as stipulated under Section 125(1) of the Public Finance Management Act;

"(1) ...

- (a) Integrated development planning process which shall include both long term and medium term planning;*
- (b) Planning and establishing financial and economic priorities for the County over the medium term;*
- (c) Making an overall estimation of the County Government's revenues and expenditures;*

- (d) *Adoption of County Fiscal Strategy Paper;*
 - (e) *Preparing budget estimates for the County Government and submitting estimates to the County Assembly;*
 - (f) *Approving of the estimates by the County Assembly;*
 - (g) *Enacting an appropriation law and any other laws required to implement the County Government's budget;*
 - (h) *Implementing the County Government's budget; and*
 - (i) *Accounting for, and evaluating, the County Government's budget revenues and expenditures.*
- (2) *The County Executive Committee member for Finance shall ensure that there is public participation in the budget process."*

71. As can be seen and above, one can only but agree with Prof. Ojienda for the Petitioners that it is within the mandate of the Treasury, County Executive and County Assembly to prepare and approve budgets for a County. However, that process cannot be read in isolation of other processes because I have already found that it is within the mandate of the 1st Respondent to recommend to the Senate, the National Assembly, the County Assembly and the County Government on equitable sharing of revenue between the two levels of Government and as between County Governments. By so recommending, the 1st Respondent would in essence be performing its obligations under Article 216 of the Constitution and I therefore reiterate that even if the 1st Respondent had recommended budgetary ceilings in the County Budgets for

2014/2015 financial year, that action does not violate the Constitution. I further reiterate that it is actually the core responsibility of the 1st Respondent to recommend the manner in which the National Revenue is to be shared between the two levels of Government and among the Counties and such recommendation may include prescribing ceilings. However it must do so in the framework and in accordance with the Constitution and the law as I have found elsewhere above.

72. Before I conclude on this issue, I recall that by Prof. Ojienda submitted that there are strict timelines and systems of checks and balances required to be observed by County Assemblies in enacting County budgets. In that regard, under the provisions of Sections 117, 125, 129 and 133 of the Public Finance Management Act, the following instruments must be passed during the budgetary process in each financial year;

(j) A County Fiscal Strategy Paper, which, pursuant to the provisions of Sections 117(1) and (6) of the Public Finance Management Act must be submitted to a County Assembly by the County Treasury by 28th February each year, and adopted by the County Assembly by 14th March each year. It is the County Fiscal Strategy Paper that presents the financial outlook of a County with respect to County Government revenues, expenditures and borrowing for the coming financial year and over the medium term;

- (ii) A County Budget Estimates of Revenue and Expenditure, which, pursuant to the provisions of Sections 125(2) (a), 129(6) and 131(1) of the Public Finance Management Act, must be presented to a County Assembly by the County Executive Committee Member for Finance by 30th April each year and approved by the County Assembly promptly and in any event before 30th June each year;
 - (iii) A County Appropriations Act which the County Assembly must consider and enact by 30th June each year; and
 - (iv) A County Finance Act, which pursuant to the provisions of Section 133 of the Public Finance Management Act, a County Assembly must consider and enact by 30th September each year.
73. In the above context, I note that the impugned Circular is dated 22nd April 2014. As can be seen from the provisions of Section 117 of the Public Finance Management Act, the County Fiscal Paper ought to be prepared by 28th of February in each financial year. I must therefore agree with Prof. Ojienda that for Counties to comply with the Circular as issued by the 1st Respondent, they had to restart the budgetary process with the preparation and adoption of the Fiscal paper. But to my mind the issue is moot considering that the Allocation of Revenue Act, 2014 is in operation and it is the one that creates the offending ceilings even if it is based on non-binding recommendations from the 1st Respondent. I

will say no more on the subject because that Act is not the subject of challenge in this Petition.

74. The last issue I will deal with on this question regards the submission made by the Petitioners that it is the constitutional duty of the County Assemblies to approve budgets for County Assemblies and as such the 2nd Respondent acted *ultra vires* its mandate by purporting to approve the said County Budgets.
75. In that regard, under Article 228(4) of the Constitution, the mandate of the 2nd Respondent is to oversee the implementation of the budgets of the National and County Governments by authorizing withdrawals from public funds under Articles 204, 206 and 207 of the Constitution. Under Article 228(5), the Controller of Budget shall not approve any withdrawal from a public fund unless that withdrawal is authorized by law.
76. If I understood Mr. Arwa properly, his submission was that the 2nd Respondent had failed to authorize withdrawals from the County Revenue Fund mainly because the County Assemblies had disregarded the recommendations made in the respective Circulars issued to them on diverse dates between 5th June 2014 and 16th June 2014. The question I must therefore answer is whether the 2nd Respondent acted *ultra vires* its mandate by so doing.

77. In that context, I recall Mr. Waweru, the Legal Officer for the 2nd Respondent stated in his Affidavit that in the financial year 2013/2014, the County Assemblies approved flawed budgets and thereafter their Appropriation Acts were rendered on rendered equally flawed and as such withdrawals from the Revenue Fund were not approved. That in order to avoid a similar situation for the financial year 2014/2015, the 2nd Respondent advised County Assemblies to present budget estimates to the 2nd Respondent for comments prior to the enactment of the Appropriation Acts and that the budget estimates were thereafter submitted and the Controller of Budget wrote letters on diverse dates between 5th June and 16th July 2014 advising the County Governments on what items their budgets ought to have included before their finalization and ultimately enactment of the Appropriation Acts; Was that a lawful action on the part of the 2nd Respondent? I think not.

78. I say so because the law on the subject is very clear. Section 102 of the Public Finance Management Act sets out the principles that County Governments must adhere to in respect of public finances. They are as follows;

"(1) Each County Government shall ensure adherence to—

(a) the principles of public finance set out in Chapter Twelve of the

(b) the fiscal responsibility principles provided in section 107 under this Act;

(c) national values set out in the Constitution; and

- (d) any other requirements of this Act.*
- (2) The County Executive Committee shall observe principles of collective responsibility in exercising their functions under this Act.*
- (3) In making decisions a county assembly shall take cognisance of Article 216(2) of the Constitution."*

79. As regards the responsibility of a County Treasury with respect to County public funds, Article 207(1) of the Constitution as well as Section 109 of the Public Finance Management Act establishes a County Revenue Fund for each County Government and the fund is to be administered by the County Treasury. Under Section 109(4) of that Act, the County Treasury shall arrange for the fund to be kept in the Central Bank or an account approved by the County Executive Committee member responsible for finance. Under Article 207(2)(3) as well as Section 109(6) of the Public Finance Management, the County Treasury shall obtain the approval of the Controller of Budget before withdrawing money from the County Revenue Fund under the authority of an Act of the County Assembly appropriating money for a public purpose, an Act of Parliament or county legislation that imposes a charge on that fund or in accordance with the provision of Section 134 and 135 of the Public Finance Management Act.

80. Prior to the above processes and as stated earlier, the budget process in a County starts with the preparation of the County Fiscal Strategy Paper by the County Treasury. Under Section 117 (2) of the Public

Finance Management Act, the County Treasury ought to align its County Fiscal Strategy Paper with the national objectives in the Budget Policy Statement. The County Treasury shall in that regard, include in its County Fiscal Strategy Paper the financial outlook with respect to county government revenues, expenditures and borrowing for the coming financial year and over the medium term. Under Section 117 (5) of that Act, in preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of the Commission on Revenue Allocation, the public, any interested persons or groups and any other forum that is established by legislation. Under Section 126 of that Act, in developing the County Fiscal Strategy paper, the County Treasury consults with and takes into account the recommendations of the 1st Respondent and not the 2nd Respondent. Similarly, in developing the County Development Plan, the County Treasury sends the approved copy by the County Assembly.

In addition, Section 131(1) of the Public Finance Management Act provides that;

"the County Assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year."

81. I have deliberately reproduced the above sections of the Public Finance Management Act to demonstrate that nowhere in the law is any role created for the 2nd Respondent and specifically for it to review budgets of County Governments before they are enacted. Fiscal reporting mechanisms are clear at the National level and so are they in the County level with the County Executive, County Treasury and County Assemblies each charged with the responsibility of ensuring accountability and transparency in utilization of County resources and specifically, the mandate of approving County Budgets is the responsibility of a County Assembly. I must therefore agree with the Petitioners that the 2nd Respondent obviously encroached on their mandate when it sought to get involved in their budgetary processes. I have read the affidavits of Mr. Waweru Tuti and Mr. George Ooko and whereas I note their concerns about the alleged untidy spending habits of County Governments and alleged claims of misuse of public funds as well as the need to ensure prudent utilization of public funds, good faith and meaningful intentions are worthless if those objects and designs are constitutionally and statutorily objectionable.
82. Before I conclude on this issue, I also recall the submission made by Mr. Oraro that the various County Appropriation Acts are invalid as they are in conflict with the Constitution and as such are not enforceable.

83. It is indeed true that under Article 191(2) of the Constitution, National legislation prevails over County legislation. However, in terms of the Petition before me, and as I have found elsewhere above, I have not seen any law authorizing the 2nd Respondent to undertake the function of approving County Budgets. Article 228 is very clear that the 2nd Respondent only oversees the implementation of budgets. In that regard, the importance of the Appropriation Act is obvious and cannot be understated. The argument made by the Respondents that the 2nd Respondent would only authorize withdrawals from the County Revenue if the law and the budgetary process as envisaged by the Constitution and the Public Finance Management Act, 2012 was adhered to is a matter of interpretation of the Constitution and Statute based on a specific set of contested facts. Who should ultimately determine alleged violations of the Constitution and the Public Finance Management Act? Who determines whether the County Appropriation Acts are in line with the Constitution and Public Finance Management Act.

84. The provisions of Article 165 of the Constitution are clear in that regard. For avoidance of doubt it states thus;

165(3)(1) ...

(a) ...

(b) ...

(2) ...

(3) *Subject to clause (5), the High Court shall have—*

(a) ...

(b) *jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;*

(c) ...

(d) *jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—*

(i) *the question whether any law is inconsistent with or in contravention of this Constitution;*

(ii) *the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;*

(e) ...”

The dispute before me does not concern itself with the legality or otherwise of the Counties Appropriation Acts but it regards the mandate of the 1st and 2nd Respondent in the budgetary process and in overseeing the implementation of County budgets. The allegation that Counties had not submitted copies of County developments plans, debt management strategies as required by the law was not proved and given my findings as above, that issue is moot. That being the case, this Court cannot enter into such a vague dispute. It would only intervene

had it been shown that the Appropriation Acts as enacted by the Counties violated the existing national legislation or that the Petitioners acted in contravention of the law, which is not the case before me.

85. In conclusion, the 2nd Respondent's role is limited to overseeing the implementation of budgets including withdrawals from public funds. But having said so, as will be seen shortly, in fact this issue was not one in which any specific order was sought against the 2nd Respondent.

Whether the fundamental rights and freedoms of the Petitioners were violated

86. I now turn to consider the last issue. I set out to determine which is the alleged violation of the Petitioners' rights under Articles 27 and 47 of the Constitution. In this regard, Prof. Ojienda submitted that in issuing the impugned Circular, the 1st Respondent failed to consult the Petitioners thus violating their right to fair administrative action as provided for under Article 47 of the Constitution. He also claimed that the fact that the impugned Circular on budget ceilings targeted only votes on account for County Assemblies and County Executive for the financial year 2014/2015 and did not affect budgets of other State Organs such as the National Executive, National Assembly, Senate, Judiciary and the twelve Commissions and Independent offices, was discriminatory and therefore a violation of Article 27 of the Constitution.

87. The 2nd Respondent on the other hand argued that there was no discrimination as alleged because budget ceilings were set for all arms of Governments and independent bodies and that all these other Government agencies had complied with their budget ceilings requirements save the Petitioners. On his part, Mr. Oraro submitted therefore that the Petitioners are State Organs under Article 178(1) of the Constitution and as such they are not persons capable of enforcing any of the fundamental rights and freedoms under the Bill of Rights.
88. I will start by determining this preliminary issue and if I find that County Governments are not persons for purposes of enforcing fundamental rights and freedoms, the matter ends there. If not, I will proceed and determine the merits of the claims aforesaid.
89. It is not in doubt that the Petitioners have invoked the provisions of Article 22 of the Constitution to allegedly enforce their right to protection against discrimination and right to fair administrative action as provided for under the provisions of Article 27 and 47 of the Constitution respectively.
90. Article 20(2) of the Constitution is on the application of the Bill of Rights and it provides that;

“Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedoms”.

Under Article 260 of the Constitution a 'person' includes "a company, association or other body of persons whether incorporated or unincorporated".

The issue therefore is whether County Assemblies are persons capable of having their fundamental rights protected and enforced. In answering that question, Majanja J in County Government of Meru vs Ethics and Anti-Corruption Commission (supra) stated as follows;

"A County Government is recognized as part of the State organs that exercise the sovereign power of the people under Articles 1(4), 6 and 176 of the Constitution. Under Article 260 of the Constitution. "State", when used as a noun, means the collectivity of offices, organs and other entities comprising the Government of the Republic under this Constitution" while the term person, "includes a company, association or other body of persons whether incorporated or unincorporated." Under Article 21 of the Constitution, the obligations, regarding the implementation of fundamental rights and freedoms are cast on the on the State and every State organ. Article 22 of the Constitution, which has been invoked by the Petitioner, grants every "persons" the right to Institute Court proceedings claiming that a right or fundamental freedom in the bill of Rights has been denied, violated or infringes or is threatened."

The learned judge continued thus;

"The provisions I have cited above show that there is a clear distinction between a person and a County Government which is a State organ vis-à-vis the rights and obligations under the Bill of Rights. I am doubtful, that the County Government qua County government can lodge a claim under Article 22 of the Constitution against another State organ to enforce fundamental rights and freedoms as the County Governments is not a person for purposes of the Constitution ad more particularly the Bill of Rights. I therefore find and hold that the Petitioner cannot agitate a claim for violation of fundamental rights and freedoms against the Commission. I therefore decline to grant prayer (b) of the Amended Petition."

91. I am in agreement with the learned judge and I adopt his reasoning in the instant Petition. I do so because the Petitioners are not private individuals but officers serving in a public office as defined in Article 260 of the Constitution. The Respondents are also officers and offices in the same public office and it is inconceivable how one can violate the other's rights in the context of the Bill of rights. In any event, in the circumstances of the Petition before me, any differences regarding the fiscal and budgetary processes between affected State Organs should not be such as to attract this Court's intervention under the Bill of Rights. Those differences are to be settled in the manner envisaged by Article 189(4) of the Constitution and not by litigation predicated on the Bill of Rights. In addition, the dispute at hand concerns the powers

of the 1st and 2nd Respondent in revenue allocation, budgetary processes and budget implementation. Article 10 of the Constitution sets out the principles of rule of law, transparency, accountability and good governance as some of the national values to guide such processes. Rule of law dictates that every state organ, independent offices and Commission must apply the Constitution and the law in its affairs and it is the duty of this Court to determine the legality of their actions and that is how far the Court should go.

92. In a nutshell, I see no reason to make any finding that any rights as under Articles 27 and 47 of the Constitution have been breached as far as the Petitioners are concerned and I so hold and find. All their complaints in that regard and which have been set out elsewhere above are dismissed.

Whether the orders sought can be granted

93. From what I have stated above and noting the prayers in the Petition, once I have held that the impugned Circulars were not binding yet were lawfully issued, it follows that Prayers (a) and (b) in the Petition cannot be granted and are instead dismissed.

94. As regards prayers (c) and (d), it is the duty of the 2nd Respondent to oversee the implantation of the budget in accordance with the law subject to what I have stated above. It is also not bound to follow the respective County Budgets which are themselves subject to National

Revenue Allocation Laws to wit the Public Finance Management Act, the Division of Revenue Act and the County Allocation of Revenue Act. No challenge has been made to those laws and the powers donated to the 1st and 2nd Respondents in that regard. The prayers as crafted cannot be granted and are instead dismissed.

95. As for costs, I see no reason to award costs as this was litigation between State Organs and offices.

Conclusion

96. This case brings to the fore the need for prudence in the use of public funds and the need to follow the lawful processes set by the Constitution and relevant Statutes. It also makes urgent the need for a clear across-the-board understanding of Chapter 12 of the Constitution. Although one of the most important Chapters in the Constitution, seldom has it been subjected to an interrogation at the practical level. The result is that each of the Organs and institutions charged with its implementation invariably find relevance in areas reserved for others. The Chapter creates distinct roles for the National Executive, Parliament, County Executives and County Assemblies, Independent Commissions and offices and in this judgment, I have attempted to demarcate those roles. Should any of them for whatever reason become rogue, and should any wrangles arise, the law has created sufficient dispute resolution mechanisms to quickly address such situations including alternative dispute resolution mechanisms as is provided for in Article 189(3) and (4) of the Constitution.

