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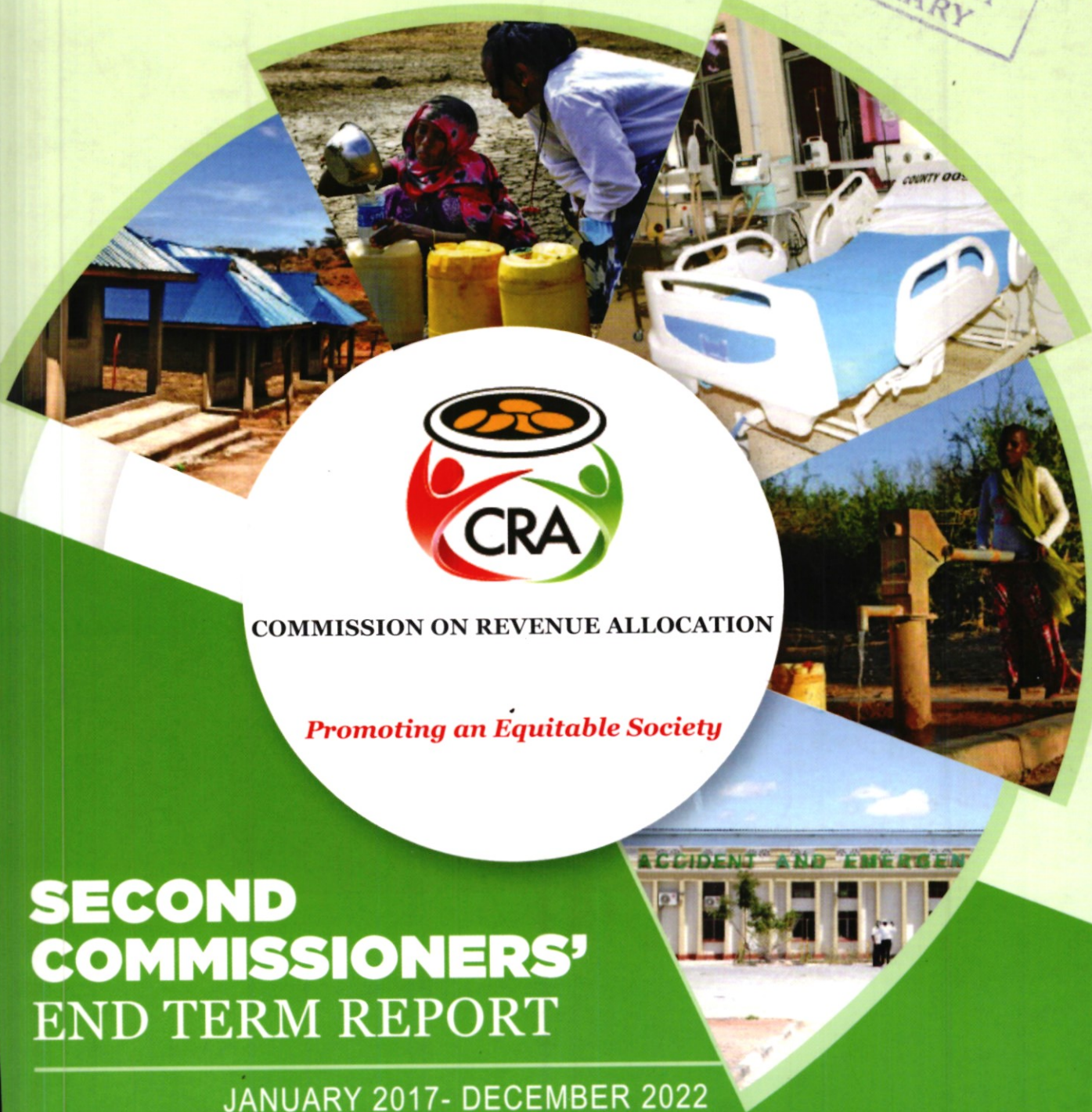


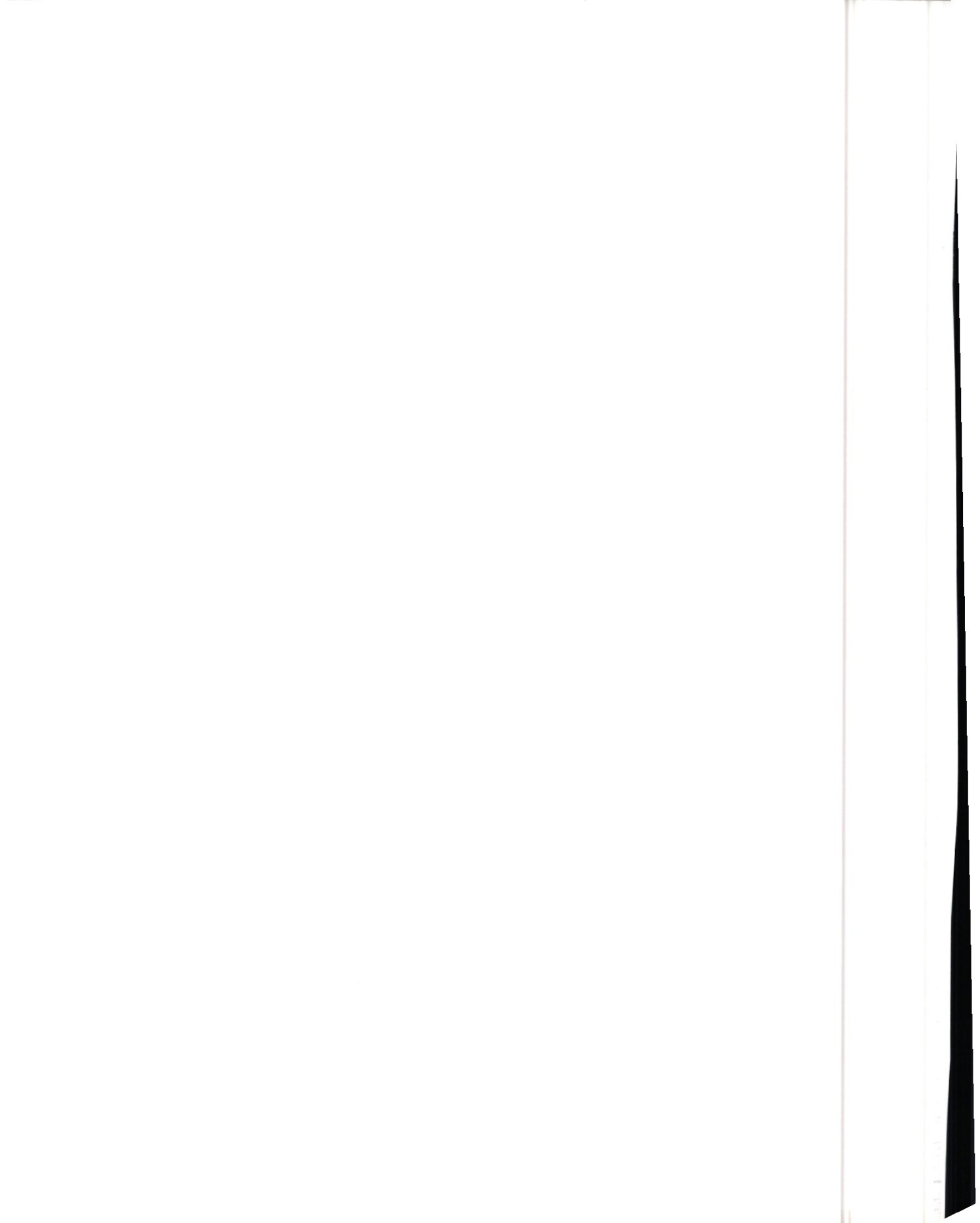
COMMISSION ON REVENUE ALLOCATION

Promoting an Equitable Society

SECOND COMMISSIONERS' END TERM REPORT

JANUARY 2017- DECEMBER 2022







COMMISSION ON REVENUE ALLOCATION

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Acronyms and Abbreviations

BPS	Budget Policy Statement
BROP	Budget Review and Outlook Paper
CARA	County Allocation Revenue Act
CBEFs	County Budget Economic Forums
CECM	County Executive Committee Member
CFSPs	County Fiscal Strategy Papers
CRA	Commission on Revenue Allocation
DORA	Division of Revenue Act
ECDE	Early Childhood Development Education
FY	Financial Year
HQs	Head Quarters
IBEC	Intergovernmental Budget and Economic Council
ICT	Information Communication Technology
Ksh	Kenya Shilling
MDAs	Ministries, Departments and Agencies
MES	Medical Equipment Services
OSR	Own Source Revenue
PFMA	Public Finance Management Act
RMLF	Roads Maintenance Levy Fund
SRC	Salaries and Remuneration Commission
UACA	Urban Areas and Cities Act
UNDP	United Nations Development Program



Foreword

Working at the Commission has been an exciting tour of duty working with seven knowledgeable colleagues and friends – Humphrey Wattanga, Dr. Irene Koech Asienga, Prof. Edward Oyugi, Peter Gachuba, Fouzia Abdikadir, Kishanto Ole Suuji, and Prof. Peter Kimuyu.

We started on high note and agreed early-on, on the modalities of engagement in fulfilling our mandate as a full-time Commission. Besides the quarterly full Commission meetings, the weekly Monday morning meetings (MMM) morphed into our 'true north'.

Through the MMM we tracked progress and delivery and it also became the forum where we connected and bonded even at a personal level. The MMM became our 'sand box' and oftentimes we got out of the box. In total we held 140 Monday morning status meetings and 26 full Commission meetings. The full time secretariat has provided the much needed technical inputs and analytical rigor required for effective delivery of the Commission's mandate.

It is Albert Einstein who said that "When you stop learning you start dying". Working at the Commission has been a six-year experiential learning journey. I learnt that Kenya's devolution cannot be narrated in a single story, it's many different stories.

I will share three experiences to tell the story in the context of, and from my lens as the chairperson of the Commission.

I now appreciate the essence of the Commission's mission and commitment 'to Leave no one behind'. Working at the Commission has been a great opportunity to appreciate and understand what it really means to leave some people behind.

During one of the county visits I met a woman trying to 'draw' water at the bottom of a dry water pan.



I could not fathom how long she would take to fill the 20-litre jerry can, from a dry bed, using a cup and the journey back to her home. She represents the struggle of a significant proportion of Kenyan women, yes because water is a woman issue.

It is my prayer that one day, maybe, water will become the First Policy priority in Kenya. During the current ravaging drought, I still wonder if this mother kept the family alive. The framers of Article 204 had such families and communities in mind. We identified them in the 2nd policy on marginalised areas, 5 million Kenyans, and yes if we can identify them, we can reach them and tackle their challenges.

Sadly, the implementation of marginalisation policies remains lacklustre partly due to litigation and other administrative challenges.



Because of devolution we can re-imagine a prosperous and equitable Kenya. This memorable visit to Mandera Water and Sanitation Company in Mandera County demonstrates that indeed Kenya can be prosperous and equitable. The Ksh2,946 billion devolved to county governments since the onset of devolution has been transformative in some counties.

I learnt from this quote by Winston Churchill that “Politics is almost as exciting as war and quite as dangerous. In war you can be killed once, but in politics many times”. This Second Commission recommended the Third Basis for revenue sharing among county governments, which is fully anchored in the tenets of Articles 202, 203 and 216, and for the first-time aligning funding to functions. The recommendation was killed eleven times at the Senate.

In the end the Senate kept the formula safe for two parameters whose objectives was good governance in the revenue sharing framework. In essence the removal of these two parameters at the Senate was a big setback in improving governance in Kenya’s devolution.

Dr. Jane Kiringai

Chairperson



Acknowledgements

I am pleased to present to you the Second Commissioners' end-term report. The report highlights the activities the Second Commissioners undertook to fulfill the Commission's mandate. It also elaborates on the successes attained, and challenges faced and provides proposals on strengthening the mandate of the Commission and devolution in general.

The Commission wishes to appreciate the dedication of all the Commissioners led by the Commission Chairperson in providing strategic leadership and direction in the execution of the Commission's functions. We are particularly grateful to them for their tireless effort and commitment to the Commission during their tenure in office. Dedicated Secretariat staff also spent substantial amount of time and determination, under the guidance of Commissioners leading to the many achievements elaborated in this report.

We are also grateful to the support the Commission has received from other constitutional commissions and independent offices, national and county governments, development partners, civil society and professional bodies, among others. This support has been instrumental to the Commission's achievements.

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

CPA, James Katule

Commission Secretary/CEO



Executive Summary

The Commission on Revenue Allocation is established under Article 215 of The Constitution of Kenya, 2010. The principal function of the Commission as stipulated in Article 216 (1) is to recommend the basis for the equitable sharing of revenue raised by the national government between the national and county governments and among the county governments. Other functions of the Commission include: making recommendations on other matters concerning the financing of, and financial management by, county governments, and determining, publishing and regularly reviewing a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of sharing of the Equalisation Fund.

The Commission is composed of eight Commissioners appointed for a term of six years non-renewable. In execution of its mandate, the Commission has adopted a functional framework based on a Committee system of governance comprising of six committees. To support Commissioners in undertaking their work, there is a Secretariat structured into six directorates.

The term of the Second Commissioners ran from January 2017 to December 2022. During this period the Commission developed seven recommendations on the sharing of revenue between the national and county governments for the financial years 2017/18 to 2023/24. Through the equitable sharing of revenue, the national government's allocation grew from Ksh.1,254.5 billion in the financial year 2017/18 to Ksh. 2,151.5 billion in 2023/24, the county governments' allocation grew from Ksh. 302 billion to 407.4 billion during the same period. The Second Commissioners also developed the Third Basis for revenue sharing among county governments. The Basis will be used to share revenues among the county governments for the financial years 2020/21 to 2024/25. The Third Basis used a sectoral approach to revenue sharing. This was guided by key functions assigned to County Governments in the Fourth Schedule of the Constitution and the principle in Article 187(2) that finance should follow functions.

The Commission made recommendations on other matters concerning the financing of, and financial management by county governments. On financing of county governments, the Commission promoted the capacity of the county governments to enhance their Own Source Revenue collection in such areas as: revenue legislation and automation. The Commission also developed a revenue tariffs and pricing policy, training guidelines, and revenue forecasting tools. Further, a study was conducted on own-source revenue potential and tax gap, this provided counties revenue potential that would enable counties to work towards achieving by conducting revenue reforms.

To enhance counties' capacity to borrow, the Commission in collaboration with the World Bank Group (WBG) conceived the County Creditworthiness Initiative (CCI) for Kenya. The purpose of the CCI is to provide technical assistance to county governments in bridging the creditworthiness gap and access market finance for infrastructure and other development projects. Through the initiative, 11 counties were sensitized on credit worthiness initiative while six Counties were credit rated. To promote the financial management by county governments, the Commission provided recommendations to the county

governments in the areas of: the establishment of public finance structures; non-core infrastructure, pending bills, adherence to fiscal responsibility principles, and county budget ceilings.

In accordance with the Constitution's provisions for determining, publishing and regularly reviewing a policy identifying marginalised areas, the Commission developed the Second Policy identifying marginalised areas. The Policy moved the focus and rationale from marginalised counties to marginalised areas in conformity with the Constitution and driven by the smallest administrative unit for which data was available. The Policy identified 1,424 marginalised areas. The Commission also helped design the new Public Finance Management (Equalisation Fund Administration) Regulations 2021, which allow withdrawals from the Fund and new projects under the First Policy and any subsequent policies.

The Commission in the execution of its mandate is optimistic that indeed devolution is a game change and has transformed service delivery and development in the counties. This is particularly in the sectors of health, water, roads, and education. To continue strengthening devolution and the Commission, the Second Team of Commissioners proposes further considerations in the following areas:

- i. The need to promote better collaboration in dealing with developmental challenges in the provision of clean, safe drinking water;
- ii. The need to prioritise the financing of cities;
- iii. The need to strengthen the division of revenue;
- iv. Review of the Commission's Act; and
- v. Gazettement of the Commission's regulations.





Preface

The Second Commissioners' end-term report seeks to shed light and inform Kenyans about the remarkable journey of devolution seen from the lens of a front-seat Constitutional Commission. Further, the report shares the experiences gained along the way and the immense lessons learned.

The promulgation of The Constitution of Kenya, 2010 was the culmination of many years of consistent clamour for change in Kenya's governance structure. Over the years, Kenyans had a continued push for fair access to social, economic, and political opportunities. They wanted a governance structure that would ensure a meaningful say in how they are governed, and how resources are shared and ensured a more balanced development leading towards a more equitable and just society. The colonial and post-colonial governments prior to the Constitution developed and implemented numerous policies to address socio-economic challenges. However, evidence pointed out that despite relatively strong economic growth in Kenya over the years, disparities still persisted. The key underlying policy impetus could only be achieved through an overhaul of the Constitution to guarantee regions control and access to resources.

The central pillar of the Constitution is devolution. The Constitution established a devolved system of governance consisting of the national government and 47 county governments. The governments at the national and county levels are distinct and interdependent and each level has been assigned functions and revenue-raising powers. The powers granted in Chapter 11 of the Constitution enable counties to govern themselves, including raising revenue, making laws, and electing local leaders. Article 203, provides a framework for the equitable

sharing of revenues raised nationally between the national and county governments and among county governments. Further, the Constitution provides for affirmative action through transitional equalisation by providing more resources to areas considered to be marginalised before the promulgation of the The Constitution of Kenya, 2010, to achieve equitable development.

The Commission has been mandated to make recommendations concerning the equitable sharing of revenue raised by the national government between national and county governments and among county governments. At the minimum, county governments are guaranteed an allocation of at least 15 percent of the nationally generated revenues. The Constitution assigns the mandate of ensuring equity in sharing of resources to the Commission and Parliament. In upholding the promise of devolution, the Commission has ensured that equity is not compromised while acknowledging that revenue sharing is both a technical and political process.

From the start of devolution in the financial year 2013/14 to 2022/23, county governments have received Ksh.3,620 billion to provide services for devolved functions as mandated by the Constitution. This amount has primarily come from equitable transfers from the nationally raised revenues, conditional grants from the national government, donor loans and grants and counties Own Source Revenue(OSR).

This is a significant amount that has truly made devolution a game-changer. So far, a number of Counties, cognisant of the high expectations of their citizens, have used their allocations to



London ECD Centre in Tiwi Ward, Kwale County



County Referral Hospital in Marsabit County

improve healthcare services, provision of water, early childhood education, transport, agriculture, and build markets, county offices, and official and residential residences, among other priorities.

Access to healthcare has significantly improved in almost all counties. Notable improvements in service delivery has happened in marginalised counties. For example, citizens no longer have to travel over six hours to access a magnetic resonance imaging machine in Nairobi. Across the country, well-equipped local hospitals now provide the much-needed services, drugs, equipment, and health personnel.

This is just a start

During the Commission's numerous field visits across the country, it was evident that there is a notable improvement in education. More children enjoy learning in thousands of modern Early Childhood Development Education facilities built close to their homes, with lunches and improved toilet facilities along with drinking water.

And this is not all

Several counties have opened meat, mango, milk, and other processing factories, improving farmers' market access.

The successes are however not rosy everywhere

As the Second Commissioners leave office, we are cognisant of specific issues that require attention and are important in strengthening devolution. These include:

- Delayed disbursements of the county's equitable share. This has to a large extent contributed to stalled projects in the counties. Stalled projects could also be attributed to poor financial administration and management, and the shifting budget priorities as evidenced through county supplementary budgets.
- Counties' pending bills that have left suppliers frustrated and put some out of business.

There are good reasons for optimism

There is enough evidence that devolution has made a difference and is maturing nationwide. There are now numerous public participation forums across the country, and residents remain vigilant about



Nasukuta Export Abattoir in Chepareria West Pokot County

resource sharing, as well as project identification and monitoring. Given devolution's triumphs already witnessed, there are genuine reasons to remain optimistic.

The following sections describe the Second Commissioners' accomplishments, challenges, and lessons learned in executing the Commission's principal and subsidiary mandates. The report also includes gives proposals for strengthening devolution going forward.

This publication was developed using several Commission reports and documents. The report also benefited from county visits and conversations with national and county officials.

The rest of the report is organised as follows:

Chapter One gives the mandate, functions and governance structure of the Commission, Chapter Two provides the achievements, the lessons learned, and proposals for strengthening the equitable sharing of revenue. Chapter Three provides the achievements, lessons learned and proposals for strengthening the financing of and financial management by county governments. Chapter Four presents the achievements, lessons learned, and proposals for strengthening the identification of marginalised areas. Chapter Five presents some of the gains from devolution in the sectors of health, water, roads, and education. Chapter Six concludes by providing further proposals for consideration by future Commissioners.



Statements



Humphrey Wattanga, Vice Chairperson: We need to figure out how to transfer best practices from county to county

Devolution is the most critical component of the new Constitution. I am confident and assured that the Second Commission has supported a critical phase of the country's transformation.

Navigating the politically charged process of developing recommendations to allocate resources in a rational and equitable manner was challenging, but we lived up to the promise of the assignment. Our mandate was derived from a rather broad democratic process, and this should be the guiding spirit in future processes.

The people have elected Members of Parliament and Senators, who are expected to approve the Commission's recommendations for revenue sharing, revenue enhancement and prudent public financial management.

The question remains: How do we push ourselves as a country to close the revenue gap when we collect Ksh2 trillion with a budget of Ksh3.5 trillion and have nearly reached our debt ceiling? This is a critical question to be answered in the Third Commission.

As we move forward, greater emphasis is expected on financial management to enable us rationalise our expenditures and leave enough for development. The fact that counties are collecting just a fraction of their local revenues requires strong leadership at the counties.

There are systemic and process issues that must be addressed, such as revenue system automation and hiring competent personnel. I have observed that revenue performance in many counties is inconsistent, and depends on which governor is in charge. It's a bit of a mixed bag.

Some counties have gone above and beyond what is required of them such as building certain classes of roads, developing water and health services. In others, the county leadership has effectively led the development meat, mango, milk, and other agricultural processing factories emerging enhancing farmers' access to market opportunities.

But some counties have little to show for the funds they receive. I hope the next Commission can closely monitor county's performance, and figure



out how to transfer best practices from county to county. For example, in some counties revenue collection has improved tremendously due to valuation rolls and updated land rates. We can learn from the Ministry of Lands' efforts towards digitization of processes and records. If Nairobi can automate its revenue collection effectively and close up the loopholes, it can comfortably collect Ksh70 billion instead of the current Ksh. 10 billion.

Currently, there are at least 15 different revenue management systems, collecting only Ksh34 billion. Adopting a single integrated system for counties could transform revenue collection and improve cash flow in the counties. But there is an undeniable opacity - a lack of transparency and personnel issues that frustrate even the best leaders with the best intentions.

When we studied counties local revenue potential, we noted that there were at least 100 reported streams and in some counties, several hundred separate fees and charges existed. This reflects an inconsistency in reporting of revenue streams, which are often the same or similar sources reported under a slightly different name.

I hope that a County (Taxes, Fees and Charges) Act that specifies all the revenue streams (authorised by legislation) and specifies the relevant tax rate, fee or charge can be implemented in the next few years to make it possible for counties to provide the quality and quantity of services needed by the people.

Bio Data

- Commissioner Humphrey Wattanga has a Master's degree in Business Administration from the University of Pennsylvania's Wharton School of Finance and a Bachelor's degree in Biochemistry (Cum Laude) from Harvard University in the United States.
- He has over 15 years of international experience as a business development, corporate finance and transaction adviser to private equity firms, private sector companies, development finance institutions, governments, and public organisations.
- He is a Grand Challenges Canada Peer Review member, a member of the Brookings Institution's review panel on the potential and limitations of Social Impact Bonds, and a key contributor to the conceptualisation, structuring, and roll-out of the M-Akiba platform, the world's first mobile-only government bond.



Dr. Irene Koech Asienga, Chair, Revenue Enhancement Committee: We had to be practical and sensible to accomplish much within the six years

When this Commission was appointed in 2017, there was talk of reviewing the constitutional provisions of devolution, and with them all institutions tasked with entrenching county governments.

But, having tasted some fruits and promises of devolution, Kenyans could not be more persuaded to abandon it in a referendum. We shifted to work on entrenching the new system while streamlining the operations of devolved government units.

One of our priorities when we came in 2017 was to build on the achievements of the First Commission. We also needed to simplify our operations. This entailed streamlining the division of labor among Commissioners so that each was in charge of overseeing critical functions for greater effectiveness.

As the citizens' expectations were high, we had to identify what could be accomplished quickly, with minimal resistance and within the timeframes allotted in the law. For instance, the Revenue Enhancement Committee researched and published the first ever 'Comprehensive Own Source Revenue (OSR) Potential and Tax Gap Study' to provide pointers on what can be done to increase county revenues.

It was critical for the Commission to raise awareness on the possibilities and missed opportunities in counties' efforts to boost their own revenue. According to the report, the average collection of all county governments is just Ksh34 billion, which is Ksh20 billion short of the targeted Ksh54. billion, and a fraction of their potential. The report was well received by county leadership and many are already working on their strategic revenue development and management.

As I leave the Commission, I am delighted to have contributed to the developing counties' local revenues. Of course, we are not



blind to the difficulties counties face in realizing their revenue potentials.

I hope that the Third Commission can assist counties to overcome their many challenges, and build on the gains made by this Commission. I am particularly keen on the establishment and implementation of the Integrated County Revenue Management Systems and development of natural resource-based revenue streams.

I also hope the Third Commission will find ways of incentivizing counties to raise their own revenues, as had been proposed in the Commission's recommendations to Parliament on the Third Basis for revenue sharing among counties.

Bio Data

- Dr. Irene Koech Asienga has over 15 years' experience in research, teaching and administration. She has worked as a Senior Lecturer and Director in Kabarak University, Nairobi Campus, responsible for mentoring, teaching, grading and supervising students. She was also involved in strategic planning, coordination of academic programs, supervision of teaching and non-teaching staff, academic advising, marketing, among other duties.
- She is a former Dean, Business School and Head of Commerce Department at the same university. Dr. Asienga holds a doctorate degree in Economics from the University of Strathclyde, Scotland, UK; a Master of Arts in Economics from the University of Malawi and B.A in Economics from the UoN.



Prof Edward Oyugi, Chair, Transitional Equalization & Stakeholder Management Committee: We believe the sub-location is the best unit of analysis in identifying marginalised areas

Historical records and our research show clearly Kenya's unbalanced approach to development, which resulted in marginalisation of a number of areas and communities.

The Second Commission developed the Second Policy identifying marginalised areas using sub-locations. This is in spite of political challenges relating to the Equalisation Fund. This expanded the marginalised areas from 14 counties to 1,424 areas in 34 counties.

Our observations and wide stakeholder consultations revealed that using the county as the unit of analysis was not ideal because it negated the spirit and letter of our Constitution.

Our visits to counties confirmed that we had people within marginalised areas that were excluded even further from basic services like water, roads, education, health facilities, power, and education. Conversely, we had people living in developed counties that could not access the services.

I am saddened that money earmarked for essential amenities in marginalised regions has piled up at the National Treasury due to rule delays, late project identification, and administrative and legislative barriers. According to the most recent Auditor-report, General's total Equalisation Fund entitlement from 2011/12 to 2019/20 was Ksh 30.78 billion. Up to Ksh 12 billion have been transferred to the Equalisation Fund, leaving the Consolidated Account with Ksh18 billion.

I hope that the Funds earmarked for communities will be availed soon to demarginalise the more than 1,400 areas and make development a reality for them.



Bio Data

- Prof. Edward Oyugi has held senior academic and research positions in several universities such as Kenyatta University, Bayreuth University (Germany), University of Heidelberg, (Germany), United States International University, Kenya and Tangaza College, Kenya.
- He has been a member of the National Economic and Social Council and the Task Force on Devolution.
- He was also the Executive Director of Social Development Network (SODNET) for several years. Prof. holds a PhD in Psychology and paedagogy from the University of Cologne, Germany and post-doctoral training from University of Cologne, Germany and University of Bayreuth, Germany.



Peter Gachuba, Chair, Finance and Administration Committee: The Commission is a financially prudent institution that consistently receives unqualified audits

I was charged with ensuring that the Commission's internal structures were run smoothly and efficiently. The Commission has received clean audits for several years. This has set a good example for the counties.

Although the Commission has made significant progress, we could have accomplished much more if our mandate was phrased differently. For instance, the word 'recommendation' should be revised. The Senate or National Assembly are currently under no obligation to adopt our recommendations. By the time we present our recommendations, we usually have spent significant resources especially on research and stakeholder engagement.

I consider the next Commission's work already cut out. Policy proposals require rigorous stakeholder engagement, which requires strong internal mechanisms. Further, the next team needs to ensure effective collaboration with key stakeholders to ensure the resulting recommendations are credible, scientific and easy to sell to policy makers and the wider public.

Bio Data

- Peter Gachuba is an Investment Banker with over 20 years of Investment Banking and Private Equity experience. He has worked as Managing Partner of Strategic Africa Fund, Strategic Africa and as Managing Partner of AfriCap Fund, a specialized Private Equity Fund based in Johannesburg South Africa, Kestrel Capital, Cooperative Bank of Kenya, Acacia Fund Limited, CDC Capital Partners, KPMG and Loita Capital Partners.
- He has also served as a Non- Executive Director in Boards of Faulu Microfinance Bank, Equity Bank Limited, and has worked in USA, South Africa, Mozambique, Malawi, Uganda and Tanzania. He holds a Master's Degree in International Business from Southern New Hampshire University in New Hampshire, USA and Bachelor's degree in Accounting.



Fouzia Abdikadir, Chair, Audit, Corporate Governance and Risk Management Committee: The Country is on course in 'Bringing to Kenya' the Northern Frontier Districts

Since 2013, I have experienced first-hand devolution's transforming effect. As a resident of a region classified as arid and semi-arid and Chair of the Commission's Audit and Risk Management Committee has given me a unique perspective on the Commission's impact.

I grew up in Garissa and can attest to its post-devolution development. I have seen the government both present and absent. In Garissa, when we travelled to Nairobi, we often said we were leaving the Northern Frontier Districts (NFD). But today, our perspective has changed.

Devolution has made available a number of services in Garissa, Wajir, Mandera, and other northern counties. Witnessing this transformation has exposed me to development politics and I now understand the dire economic condition in Arid and Semi-Arid Lands (ASALs) and other underprivileged counties.

For many Kenyans in the Northern Frontier region, CRA's role in promoting devolution and equitable revenue sharing has been a game changer. Today, Mandera is like a city with enviable services that even Ethiopia seeks.

In Garissa, modern medical tests like Computed Tomography (CT) Scans and MRI (Magnetic Resonance Imaging) are now easily available, improving access to such services. Such initiatives have improved the residents' quality of life and made them feel more Kenyan, which many locals attribute to the Commission's equitable sharing of revenue. In short, lives have been saved.

The deadlock over the Equalisation Fund hurt marginalised counties. A portion of the First Policy Identifying marginalised areas was never released, while the Second Policy has never been implemented. We are developing the Third Policy and hope all three policies will be implemented quickly. This will make a huge



difference to marginalised areas. It is critical that the Third Commission effectively engages all key stakeholders to prevent such future scenarios.

It would be critical for the next Commission to engage lawmakers and explore options of making its recommendations legally binding.

Bio Data

- Former finance manager Ms Fouzia Abdikadir holds a Postgraduate Diploma in Portfolio Management and Investment Analysis from the London School of Commerce in the United Kingdom and a Bachelor of Commerce-Finance from the Jomo Kenyatta University of Agriculture and Technology. A masters in Public Policy and Administration from Kenyatta University
- Commissioner Fouzia is a Mandela Fellow (Young African Leadership Initiative, 2014).
- She has published the challenges of education for girls in Africa in the Hunger Report by Bread for the World.



Kishanto ole Suuji, Chair, Public Financial Management Committee: Our recommendations have, for the most part, been accepted

This Commission set out to support counties to overcome challenge related to public finance management. We monitored, engaged with counties and pointed out areas of compliance or non-compliance with the Public Finance Management Act (PFMA).

The Commission served as a liaison between national and county governments, with close cooperation with the Intergovernmental Budget and Economic Council (IBEC), which oversees revenue sharing among the two levels of government.

As a result, the Commission provided advisory to county governments, such as on the duties of county treasuries, county revenue funds, county emergency funds, and the preparation of county fiscal strategy papers. We also guided counties on the preparation of county budget review and outlook papers, and other budget-related documents. Section 190 of the PFMA empowers the Commission to make revenue-sharing recommendations with ceilings for both levels of government.

Our work with the World Bank Group (WBG) to develop the County Creditworthiness Initiative (CCI) for Kenya is promising. Once operationalized, counties will be able to borrow, in line with the legal provisions. We hope that our engagement and advisory to county governments on how to achieve higher credit worthy ratings in accordance with the provisions of the PFMA will achieve much in the long term.

It is also worth noting that The Commission was involved in the development of the new Public Finance Management (Equalisation Fund Administration) Regulations 2021, which allow for withdrawals from the Fund and the implementation of envisaged projects.



One of the greatest challenges that the new Commission would have to overcome is the fact that our recommendations are not legally binding. They can be adopted, modified, or rejected.

My experience is that because we advise at a very high level, you expect stakeholders to have robust opinions. The Commission's recommendations have, however, for the most part been accepted. For instance, although the Third Basis for revenue sharing among county governments was highly contested in the Senate, we eventually got it adopted with modifications.

I hope that we can safeguard the gains made so far in the coming years.

Bio Data

- Mr. Kishanto ole Suuji has over twenty-seven years' experience in public service and the financial sector. Prior to joining the Commission on Revenue Allocation, Mr. Suuji worked as a Director at Kenya School of Monetary Studies, Central Bank of Kenya, in charge of the Finance and Administration Department.
- He holds a Master of Business Administration (MBA) from Jomo Kenyatta University of Agriculture and Technology (JKUAT) and a B.A. in Economics and Government from University of Nairobi.



Prof. Peter Kimuyu, Chair, Division and Allocation of Revenue Committee: Past experiences and new data from the counties shaped the revenue-sharing formula

The spirit and letter of the Constitution envisaged equitable sharing of revenues between the two levels of Government, and among the 47 counties. The Commission ably undertook the task of developing a revenue-sharing framework to effectively deliver services to the people, including those who were previously left behind in development.

Every formula we have developed is driven by clear national objectives in line with Article 203 of the Constitution. In deriving the recommendations that determine the revenue allocation between the national and county government (vertical recommendations), we considered the functions assigned to both levels as well as projected annual revenues.

In developing the Third Basis for revenue sharing among the county governments (horizontal recommendations), we departed from the methods used in the First and Second Bases, informed by the need to closely align funding to functions assigned to county governments.

You will note that the earlier horizontal recommendations were not aligned to the devolved functions of the county governments assigned in Part 2 of the Fourth Schedule of the Constitution; including agriculture, health, cultural activities, county transport, local trade, pre-primary education, county public works, and aspects of natural resources and environmental conservation. So we unpacked just the key functions, otherwise we could have ended up with a very complicated formula.

Our sector-wide consultations with local and international experts, intergovernmental sector practitioners, County Governments, the public and Parliament provided useful perspectives that yielded the Third Basis for Revenue Sharing Among County Governments, based on the functions assigned to County Governments in the Fourth



Schedule of the Constitution, and the criteria provided in Article 203.

The Commission also conducted an internal review of the two previous formula, and developed a framework with ten parameters – population, basis equal share, poverty, land areas, fiscal effort, development, urban services, health, agriculture and roads. Fiscal effort and fiscal prudence had been introduced to promote effective public financial management among the counties.

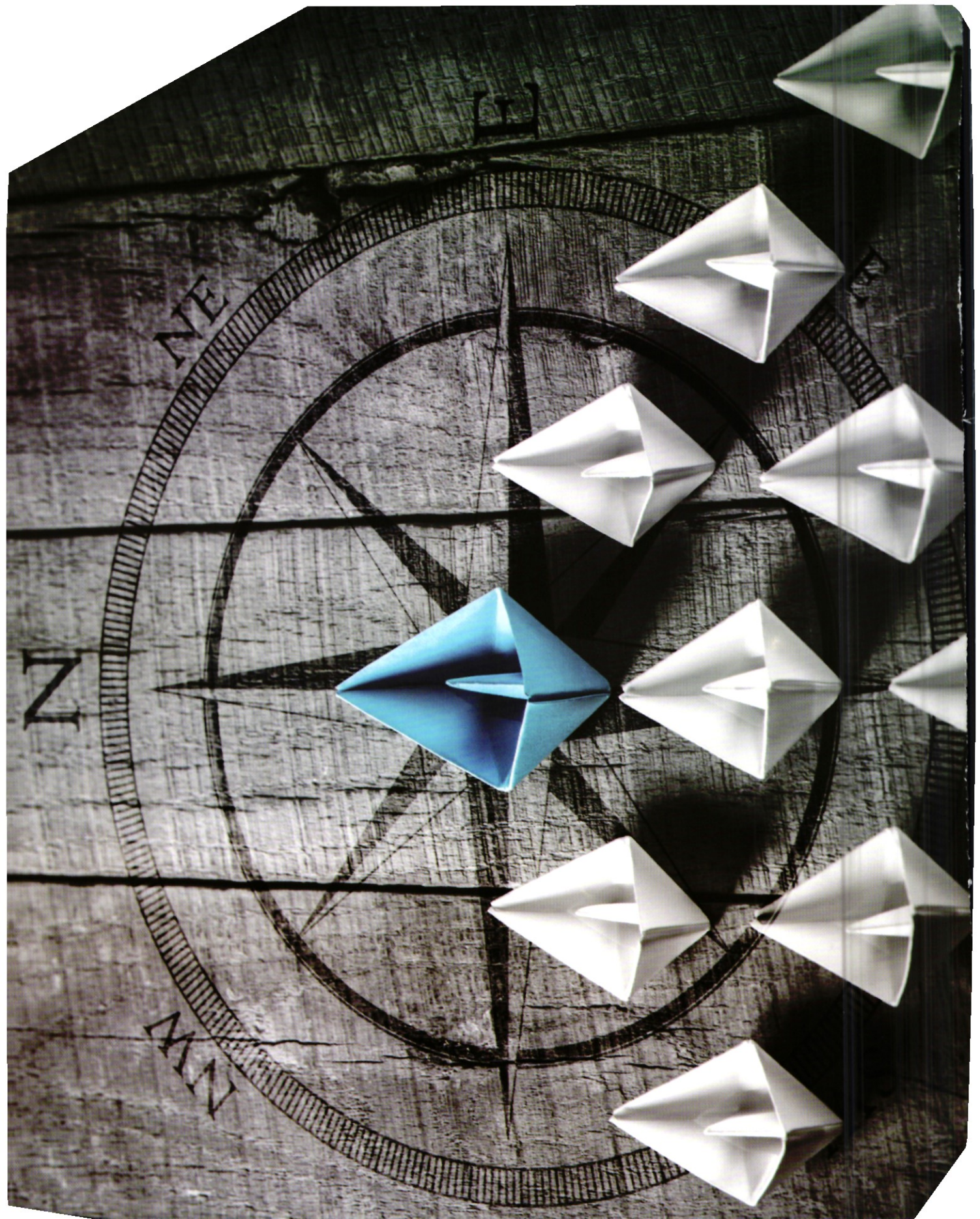
The recommendations on the Horizontal Formula submitted by the Commission to Parliament sought to address four objectives; to enhance equitable service delivery, to promote balanced development, to incentivize counties, to optimise their capacity to raise revenue and incentivize prudent use of public resources by the counties.

Our work in developing the Commission's first basis for revenue sharing among county governments (2013/14 - 2016/17) also relied on experiences and lessons from other countries with a similar decentralized system of governance like Ethiopia, Philippines, India, South Africa, Ghana, Indonesia, Bolivia, Uganda, Nigeria and Brazil. Historical expenditures for the Kenyan counties also provided data to develop this Basis.

I must commend the devolved units because this Commission's work greatly benefited from new data emerging from the counties. Considering the rapid socio-economic and political changes, the application of new data is very critical.

Bio Data

- Prof. Peter Kimuyu is the founding Director of the University of Nairobi (UoN) School of Economics and former Executive Director of the Institute of Policy Analysis and Research.
- He has held board-level appointments with the Export Promotion Council, Privatization Commission and KCB Group. He is a trustee with Africa International University, Technical Advisor to Scott Christian University and a lapsed member of the New York Academy of Sciences.
- Prof. Kimuyu holds a PhD in Energy Economics (UoN), M.Sc. in Energy Economics (University of Surrey, UK); M.A. in Economics and B.Ed. in Economics and Mathematics both from the UoN.



Chapter 01



Mandate and Governance Structure of the Commission

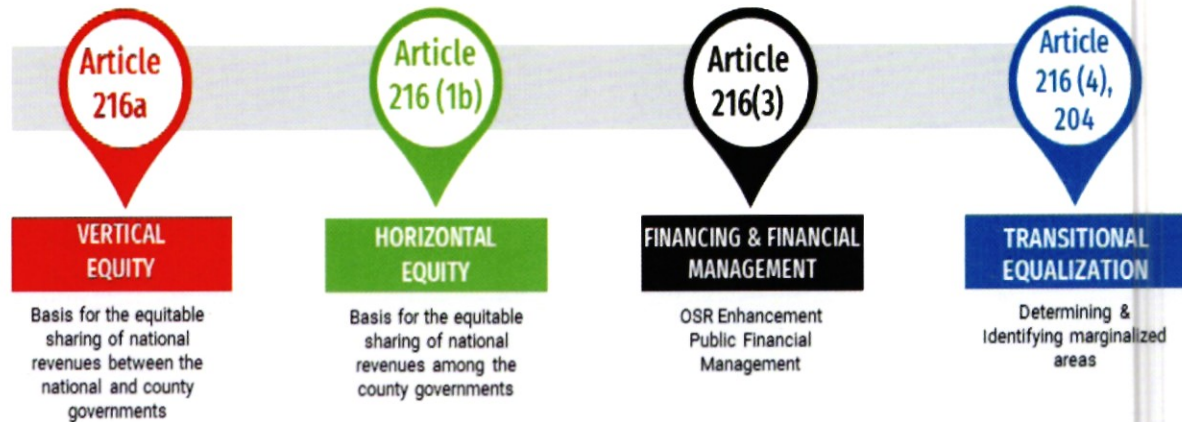


1.1 Mandate and Functions of the Commission

The Commission on Revenue Allocation (The Commission) is an independent Commission established under Article 215 of the Constitution. The Commission derives its mandate from Articles 216, 203, 204, 205, 249, and the Sixth Schedule of the Constitution.

The Commission's mandate is shown below:

Principal Mandate



Subsidiary Mandate

Recommend to Senate budgetary ceilings on counties' recurrent expenditures	Provide input into the County Fiscal Strategy Paper of the County Treasury	Receive financial statements from Administrators of a National Public Fund	Provide input in the Budget Policy Statement prepared by the National Treasury	Provide input to county governments on tax imposition or revenue-raising measures	Provide recommendations to county governments on their objective criteria for allocating funds to the urban areas or cities
PFMA 2012, Section 107(2)(a)	PFMA, 2012 Section 117 (5)	PFMA 2012, Section 24(10)(b)	PFMA 2012, Section 25(5)(a)	PFMA, 2012 Section 161	PFMA, 2012 Section 161



1.2 Vision, Mission, and Core Values

1.2.1 Vision and Mission

The Commission is guided by the vision of No Kenyan Left Behind and the mission is to make reliable recommendations on equitable revenue sharing, revenue enhancement, and prudent public financial management.

1.2.2 Core Values

To achieve its vision and mission the Commission is committed to the following values:

- i. **Equity:** The Commission is guided by the spirit of fairness, inclusion, and respect;
- ii. **Inclusiveness:** The Commission is guided by the principle of ensuring that its recommendations consider the views of all stakeholders;
- iii. **Objectivity:** In the execution of its mandate, the Commission is guided by factual and empirical technical facts.
- iv. **Excellence:** The Commission maintains quality control and strives for the highest standards in all aspects of its work; and
- v. **Integrity:** The Commission's staff are required to abide by and uphold Chapter Six of the Constitution.

1.3 Commission's Governance Structure

The governance structure of the Commission is established under Article 215. The Commission comprises of the following nine persons appointed by the President:

- i. A Chairperson, nominated by the President and

approved by the National Assembly;

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

The Second Commissioners were appointed via Gazette Notice 401 on January 20, 2017. The Chairperson was appointed through Gazette Notice Number 1809 of 24th February, 2017. Before taking the oath of office on 28th February, 2017, Parliament vetted them. The term of the Second Commissioners was from January 2017 to December 2022.

To support Commissioners in undertaking their work, there is a Secretariat structured into six directorates that include; Economic Affairs, Fiscal Affairs, Research, Information, Communication and Technology (ICT), Legal Services, and Corporate Services. Other important Departments within the secretariat are; Communication and Knowledge Management and Internal Audit.

In execution of its mandate, the Commission has adopted a functional framework based on a Committee system of governance.

Four mandate-driven Committees were created that are outward-looking and whose functions and activities are directly aligned to the Commission's constitutional mandates. The mandate-driven Committees include: Division and Allocation of Revenue Committee; Public Financial Management Committee; Revenue Enhancement Committee;



and Transitional Equalisation and Stakeholder Management Committee. Two inward-facing committees that deal with institutional structures together with governance and other statutory requirements were also created these are: Finance

and Administration Committee and Audit, Corporate Governance and Risk Management Committee. The Commission's governance structure is illustrated in Figure 1.

Figure 1: Commission on Revenue Allocation Governance Structure





All the Committees and their respective functions are elaborated below:

i. Division and Allocation of Revenue Committee

The Division and Allocation of Revenue is charged with the responsibility of guiding the Commission's technical functions on recommendations concerning the basis for the equitable sharing of revenue between the national and county governments and among the county governments. Further, the Committee leads in various consultations and advisory work that involves all legislative Bills that address sharing of revenue.

ii. Public Financial Management Committee

The Public Financial Management Committee is responsible for guiding in the preparation of the Commission's recommendations on the financing of, and financial management by county governments. The Committee's responsibilities also involve providing guidance in the Commission's mandate of encouraging fiscal responsibility by counties in the use of public resources. In addition, the Committee provides guidance in the development of



recommendations on counties financial plans, budgets and their implementation and the management of county governments' recurrent expenditures.

iii. Revenue Enhancement Committee

The Committee fulfils the Commission's revenue enhancement responsibilities by: guiding activities that support county governments in: enacting revenue legislations; advising the county Governments on tax imposition and other legal revenue raising measures; advising both the national and the county governments on policies relating to revenue generation from natural resources and; supporting county governments in setting up and enhancing systems of revenue projection, collection, administration, and internal controls.

iv. Transitional Equalisation and Stakeholder Management Committee

This Committee's mandate is to guide the Commission in developing the marginalisation policies that seek to determine and identify marginalised areas in Kenya. The Committee also leads in the advisory work to parliament before the passage of any Bill appropriating money out of the Equalisation



Fund. Further, the Committee is responsible for maintaining the necessary engagements, relationships, and contacts with stakeholders that have a role to play in the Commission's mandate.

v. Finance and Administration Committee

This Committee is responsible for supporting the Commission by ensuring that all the structures of the Commission are running smoothly and efficiently. The Committee broadly provides policy and guidance to ensure that the Commission is an efficient, accountable, and transparent institution in human resources, financial management, administration, communication, ICT, and procurement. The Committee also undertakes performance reviews on the implementation of the Commission's mandates.

vi. Audit, Corporate Governance, and Risk Management Committee

This Committee is to assist the Commission in fulfilling its oversight responsibilities on governance, risk management, internal controls, audit process as well as compliance with relevant laws and regulations. The Committee achieves this by: providing an independent assessment of the activities of the management; the quality of risk management, financial reporting, financial management, as well as, internal audit. Further, it ensures that the quality of internal audit is of an appropriate standard and that management has full regard for internal audit recommendations; monitors and reviews the risks, control, and governance processes that have been established. It further ensures that external audit recommendations are fully addressed.

1.4 Commission's Strategic Plan (2017-2022)

To perform its functions effectively, the Commission is guided by five-year strategic plans. In this regard, the Second Commissioners prepared the Commission's Second Strategic Plan for the period 2017 – 2022. The plan articulated the following strategic objectives:

- i. To review and develop the bases for equitable sharing of revenue;
- ii. To promote fiscal decentralization for equity;
- iii. To promote prudent financial management at the county government level;
- iv. To promote adherence to principles of fiscal responsibility;
- v. To define and enhance revenue sources at both levels of government;
- vi. To strengthen revenue administration systems;
- vii. To improve access to basic services including water, electricity, roads, and health facilities in marginalised areas;
- viii. To attract, develop and retain requisite human capital;
- ix. To enhance operational efficiency;
- x. To enhance the Commission's capability and knowledge management;
- xi. To undertake effective internal and external communication;
- xii. To enhance stakeholder collaboration in support of the Commission's mandate;
- xiii. To ensure good corporate governance; and
- xiv. To develop and implement Information Communication and Technology infrastructure and business solutions.

Chapter 02



Equitable Sharing of Revenue



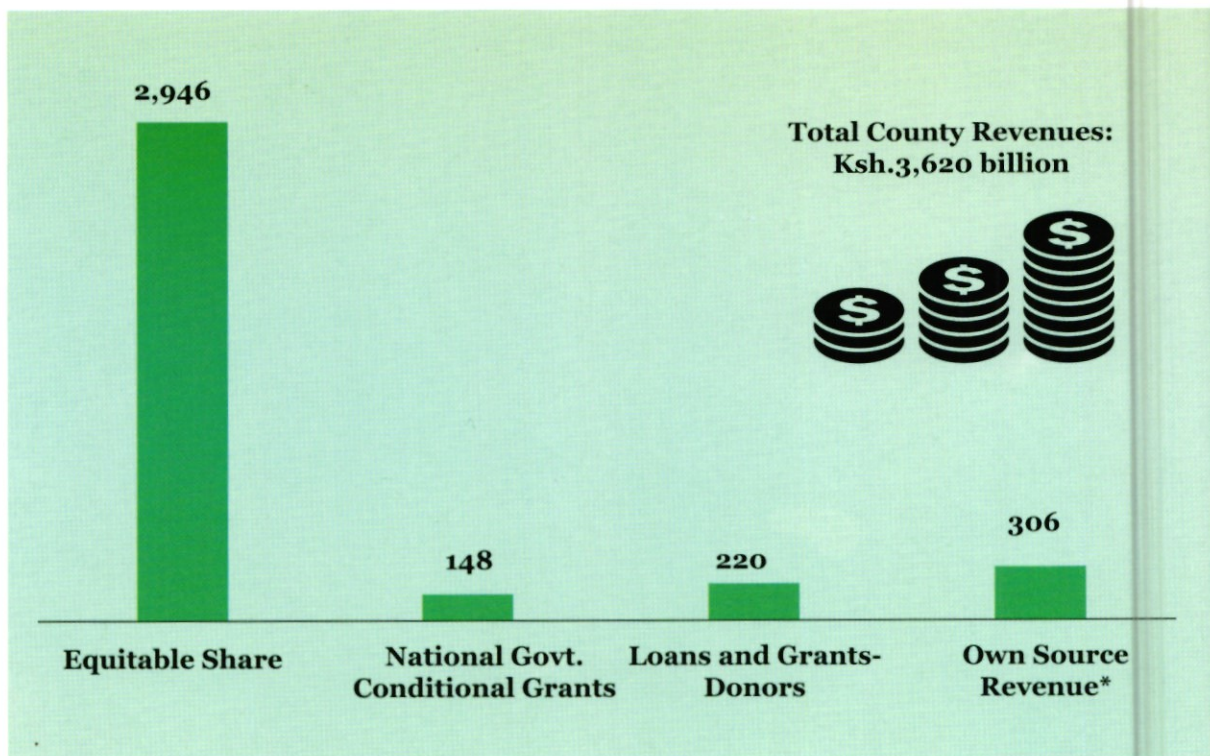
2.1 Introduction

Over the last ten years of devolution (financial year 2013/14 to 2022/23), county governments have collectively received Ksh.3,620 billion. This comprises: Ksh. 2,946 billion as equitable share; Ksh.148 billion national government

conditional grants and Ksh.220 billion loans and grants from development partners.

County governments have also collected their own revenue amounting to Ksh.306 billion.

Figure 2: Total County Revenues for the FY 2013/14 to 2022/23



Source of Data: DORA, Various Issues

*Own Source Revenue is up to the financial year 2021/22

The next sub-sections detail the achievements, challenges, lessons learned and proposals for strengthening the sharing of revenue between

the national and county governments and among county governments.



2.2 Equitable Sharing of Revenue Between the National and County Governments

Article 202(1) stipulates that the nationally raised revenue shall be shared equitably between the national and county governments. The shareable revenue is defined in the Constitution and Section 2 of the CRA Act, 2011 as:

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

The Commission since the inception of devolution has developed twelve recommendations on the equitable sharing of revenue between the national and county governments. The Second Commissioners has developed seven of the twelve recommendations for the financial years 2017/18 to 2023/24.

In determining the equitable shares between the national and county governments, the Commission was guided by the criteria in Article 203 (1). In particular, the Commission has considered seven of the eleven Article 203 criteria. These include: (i) the national interest; (ii) provisions in respect of the public debt and other national obligations; (iii) the needs of the national government, determined by objective criteria; (iv) the need to ensure that county governments are able to perform the functions allocated to them; (v) the fiscal capacity and efficiency of county governments; (vi) the desirability of stable and predictable allocations

of revenue; and (vii) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

The process of developing the recommendations involves both technical and political processes. The Commission develops the technical recommendations which are subjected to political and non-political stakeholders. The process of engaging stakeholders is crucial in building consensus to achieve the optimal and desired outcomes. The stakeholders involved during the preparation process include: The Senate, National Assembly, Council of Governors, National Treasury, and non-state actors.

Section 190(1) of the Public Finance Management Act (PFMA) 2012 requires the Commission to make the recommendation six months before the beginning of the financial year or at a later date agreed between the National Treasury and the Commission. Section 25 (2) of the PFMA requires the National Treasury to submit to Parliament by the 15th February in each year the Budget Policy Statement (BPS), and legislative proposals on the division of revenue and the county allocation of revenue which among other things contains the indicative transfers to county governments. The submission of the BPS to Parliament by the National Treasury is done almost two months after the Commission has submitted its recommendations. Given that the Commission submits its recommendations ahead of the National Treasury, differences do arise due to changes in the

¹Art. 206(1)(a)(b) refers to revenues excluded from the Consolidated Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ. Art 209(4) refers to revenues from charges for services provided by either level of government.

* At the time of publishing this report, the recommendation on the sharing of revenue between the national and county governments for the financial year 2023/24 was still in preparation



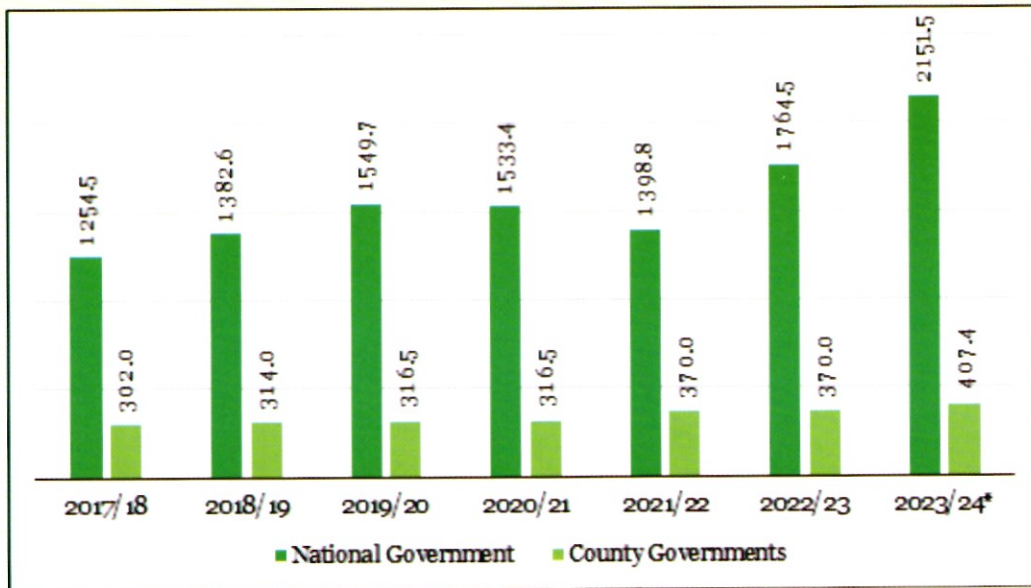
revenue projections and the emerging priorities of the government.

Section 191(5)(b) of the PFMA requires the National Treasury to report the extent of the deviation of the division of revenue legislative proposals contained

from the Commission's recommendations. The discrepancies drive stakeholder negotiations at the Intergovernmental Budget and Economic Council (IBEC) and Parliament.

Figure 3 shows the revenue that has been allocated

Figure 3: Equitable Share of Revenue Allocated to the National and County Level of Government for the FY 2017/18 to 2023/24-Ksh. billion



Source of data: DORA, Various Issues

*Proposed

to either level of government during the tenure of the Second Commissioners. The national government's allocation has grown from Ksh.1,254.5 billion in the financial year 2017/18 to 2,151.5 billion in FY 2023/24, the county governments' allocation has grown from Ksh. 302 billion to 407.4 billion in the same period.

The Commission, in sharing revenue between the

two levels of government, has ensured that the county government's equitable share allocation has been above the 15 percent constitutional threshold as provided in Article 203(2).

2.3 Conditional Allocations to County Governments

Conditional allocations to county governments fall into two categories: national government



conditional grants and conditional grants from development partners.

i. National Government Conditional Grants

Article 202(2) provides that the National Government may give from its equitable share additional allocations to County governments, either conditionally or unconditionally. Conditional grants from nationally raised revenues are for financing specific programs under health, roads, county headquarters and education.

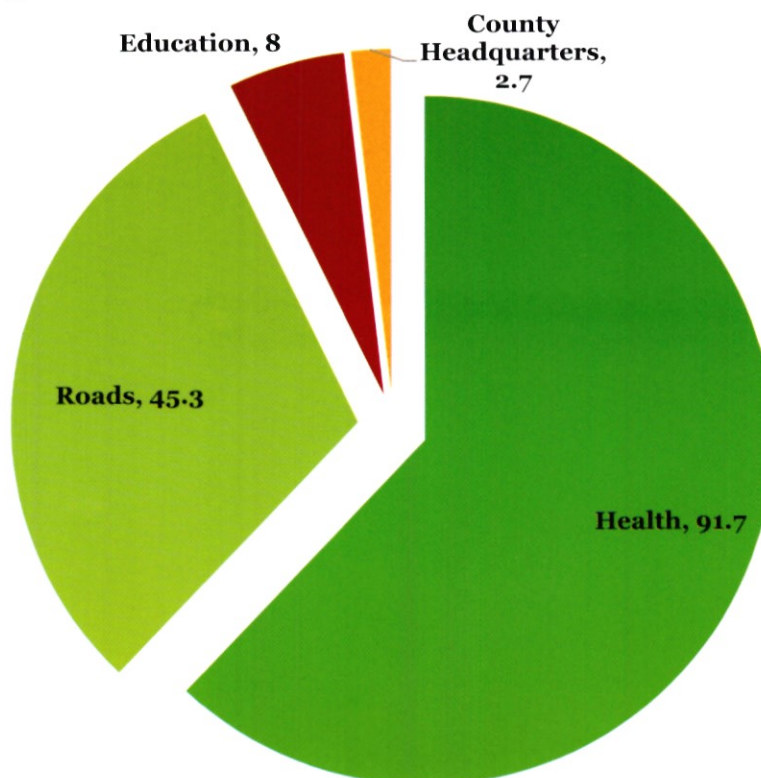
Conditional grants to counties from the national government for the financial year 2013/14 to 2022/23 are summarised in Figure 4. In aggregate

county governments have received Ksh. 148 billion as conditional grants from the national government.

The conditions attached to conditional grants have in some cases led to inequitable sharing of the grants. For instance, due to capacity challenges, most counties did not meet these conditions leading to low access and absorption rates.

This notwithstanding, the approved Third Basis for revenue sharing among county governments contains key indicators in health and roads, the Commission along with other stakeholders considered the transfer of conditional grants in these sectors as part of the equitable share. The

Figure 4: National Government Conditional Grants to County Governments for the FY 2013/14-2022/23



Source of data: DORA, Various Issues



Conditional grants that had conditions removed include: level 5 hospitals, user fees foregone, Roads Maintenance Levy Fund, and rehabilitation of village polytechnics.

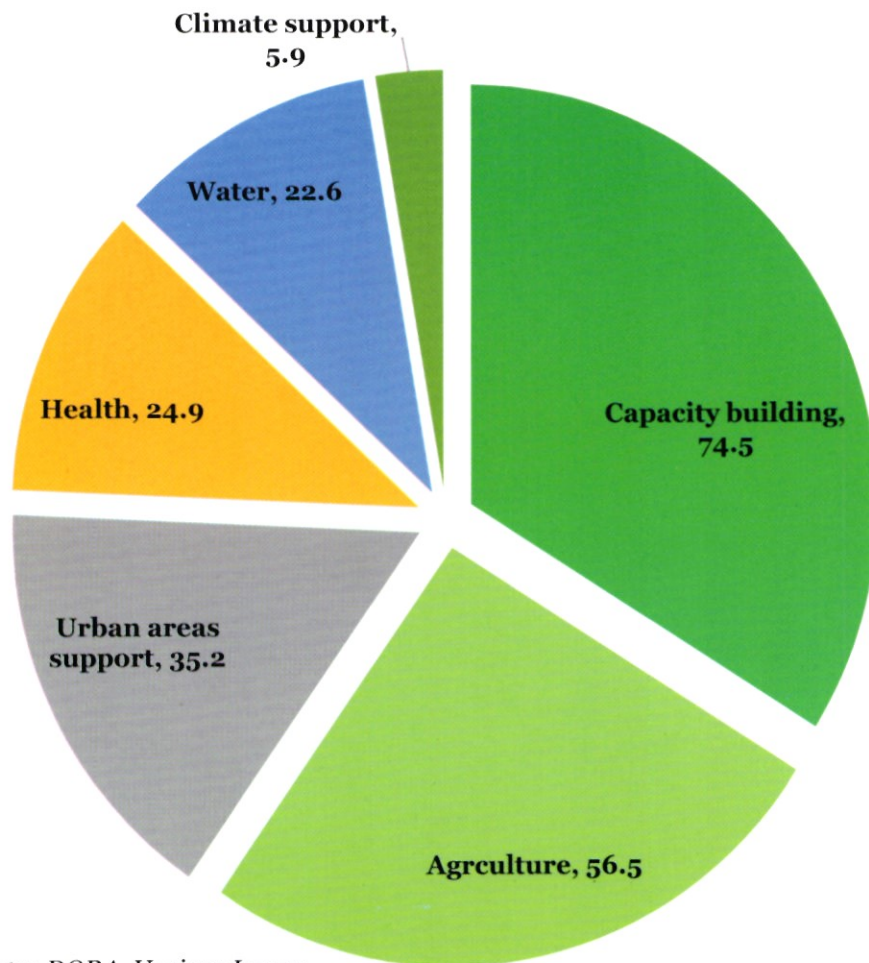
From the financial year 2013/14 to 2020/21 conditional grants were channeled to counties through the County Allocation Revenue Act. Following a court ruling a new legislation the

County Government's Additional Allocations Bill was developed in 2022 to share the conditional allocations to counties.

ii. Conditional Grants from Development Partners

County governments also receive loans and grants indirectly from donors through the national government. These grants are for financing health,

Figure 5: Conditional Grants from Development Partners for the FY 2013/14-2022/23



Source of data: DORA, Various Issues



agriculture, infrastructure, water and sanitation, social protection, and capacity building. The conditional grants from development partners have grown from Ksh. 16.6 billion in the financial year 2013/14 to Ksh. 31.4 billion in the financial year 2022/23.

Collectively county governments have received Ksh.220 billion as conditional grants from development partners from the financial year 2013/14 to 2022/23. Conditional grants from development partners are summarized in Figure 5.

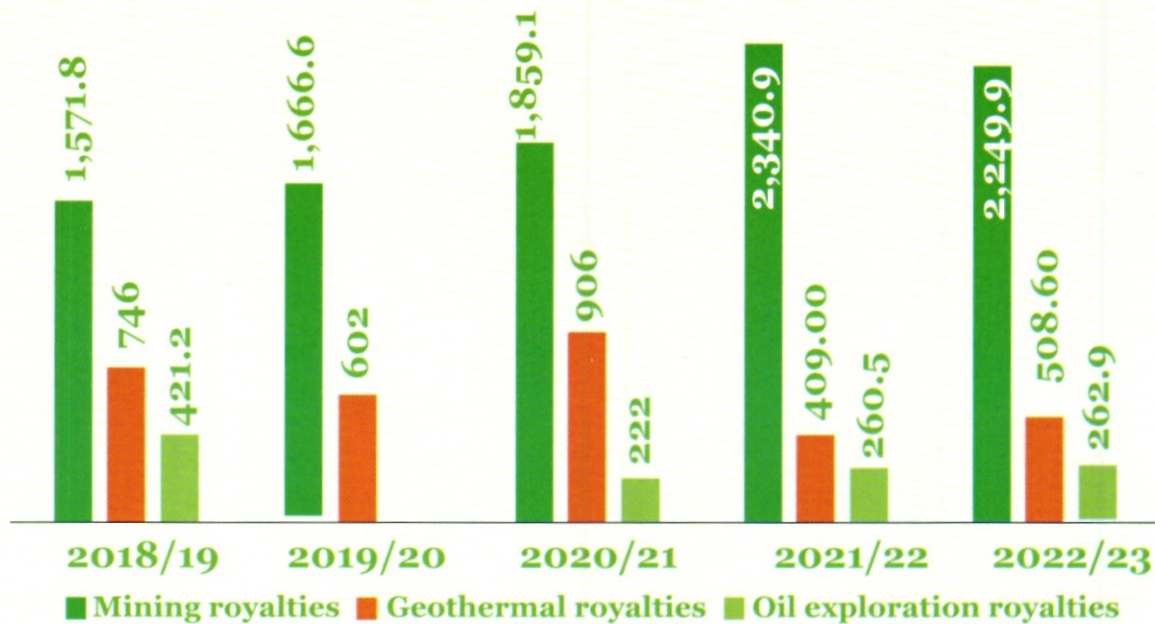
2.4 Ongoing Work

2.4.1 Division of Revenues from Natural Resource Royalties

Natural resources revenues form part of the nationally raised revenue. These include proceeds from royalties and other levies from extractives as guided by the legal provisions in the Mining Act 2016, Petroleum Act 2019, and the Energy Act 2019. The natural resource revenues due to counties and communities are shown in Figure 6.

The largest component of revenues from natural resources comes from cement levy which is collected from cement companies on account of use of limestone, gypsum and other minerals as key raw materials. Cement minerals being key natural resources, it is important that a framework is developed to collect the cement minerals royalty at the source.

Figure 6: Natural Resources Revenues FY 2018/19 to 2022/23* (Ksh. Million)



Source of data: The National Treasury * Projections



Despite legal provisions on revenue sharing from natural resources in the Petroleum Act 2019, Energy Act 2019, and Mining Act 2016, lack of a framework and regulations on their sharing mean that beneficiary counties and communities do not benefit. The Commission and other partners created a structure for sharing mineral royalties' earnings

in financial years 2021/22 and 2022/23. However, in order to be operational, the framework must be grounded on yet-to-be-developed regulations. A task force of which the Commission is a member has been constituted to develop the regulations by June 2023.

Table 1: Actual and Projected Ordinary Revenues for the FY 2013/14 to 2021/22-Ksh. billion

Year	Projected Ordinary Revenues	Actual Ordinary Revenues	Revenue Shortfall
2013/14	939.4	919	(20.4)
2014/15	1,039.90	1,031.80	(8.1)
2015/16	1,256.30	1,152.50	(103.8)
2016/17	1,393.70	1,306.60	(87.1)
2017/18	1,560.30	1,365.10	(195.2)
2018/19	1,651.50	1,499.80	(151.7)
2019/20	1,877.20	1,573.40	(303.8)
2020/21	1,776.00	1,562.00	(214)
2021/22	1,806.80	1,917.90	111.1

Source of data: The National Treasury

2.5 Challenges, Lessons learned, and Proposals for Strengthening the Sharing of Revenue Between the National and County Governments

In executing its mandate, the Commission faced several challenges in making recommendations on equitable sharing of revenue between the national and county governments. The Commission also learnt lessons and proposed enhancing revenue

sharing as follows:

i. Underperformance of the Nationally Raised Revenues

The Commission in making recommendations



on the sharing of revenue between the national and county governments uses projected revenues. During the devolution period revenues have underperformed as shown in Table 1.

Under the Division of Revenue Act, the national government covers revenue shortfalls. The shortfall borne by the national government leads to budget cuts to the Ministries, Departments and

Agencies. The shortfall has also resulted into debt accumulation.

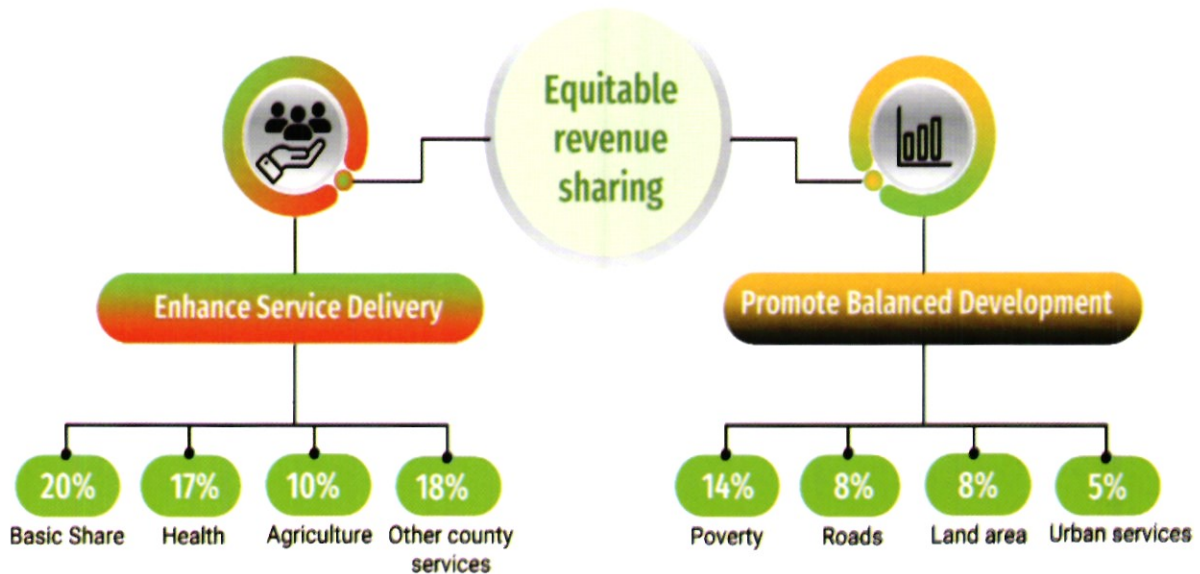
The National Treasury needs to carry out revenue projections with caution to avoid comprising implementation of the functions of one level of government whenever the projected revenues are not realised.

2.6 Equitable Sharing of Revenue Among County Governments

In the sharing of revenues among the county governments, the Commission is guided by the provisions of Article 203(1). These include: (i) The need to ensure that county governments are able to perform the functions allocated to them; (ii) The fiscal capacity and efficiency of county

governments; (iii) Developmental and other needs of counties; (iv) Economic disparities within and among counties; (v) The need for affirmative action in respect of the disadvantaged; (vi) The need for economic optimisation of each county; and (vii) The desirability of stable and predictable allocations of

Figure 7: Third Basis for Revenue Sharing Among County Governments (FY 2020/21-2024/25)





The Commission met with Marsabit County Government Executive to discuss the 3rd revenue-sharing basis and the Second Policy Identifying Marginalised Areas - May 20, 2019

revenue.

The Second Commissioners developed the Third Basis for revenue sharing among county governments. The Basis will be used to share revenues among the county governments for the financial years 2020/21 to 2024/25. The Third Basis differs from the First and Second revenue-sharing Bases which were transitional Bases. These Bases were used to share revenue among county governments for the financial years 2013/14 to 2019/20 and used expenditure proxies.

The Third Basis uses a sectoral approach to revenue sharing. This was guided by key functions assigned to County Governments in the Fourth Schedule of the Constitution and the principle in Article 187(2) that finance should follow functions. The sector-based approach was aimed at ensuring that the financing of County Governments is aligned to service delivery and that counties are adequately compensated for the services they offer to promote balanced development.

Figure 6 provides a summary of the approved Third Basis for revenue sharing among the county governments.

The Commission develops the revenue-sharing basis which is submitted to Parliament for approval in accordance with Article (217). The Commission began the process of developing the Third Basis in 2018 through a participatory approach that involved wide consultations with key stakeholders including the national government, county governments, academia, non-state actors and the public.

Other activities that informed the development of the Third Basis included: a review and analysis of the Second Basis, peer learning, review of international experiences on intergovernmental fiscal transfers; and, county spending patterns by functional areas. The revenue-sharing recommendation was submitted to Parliament in April 2019.

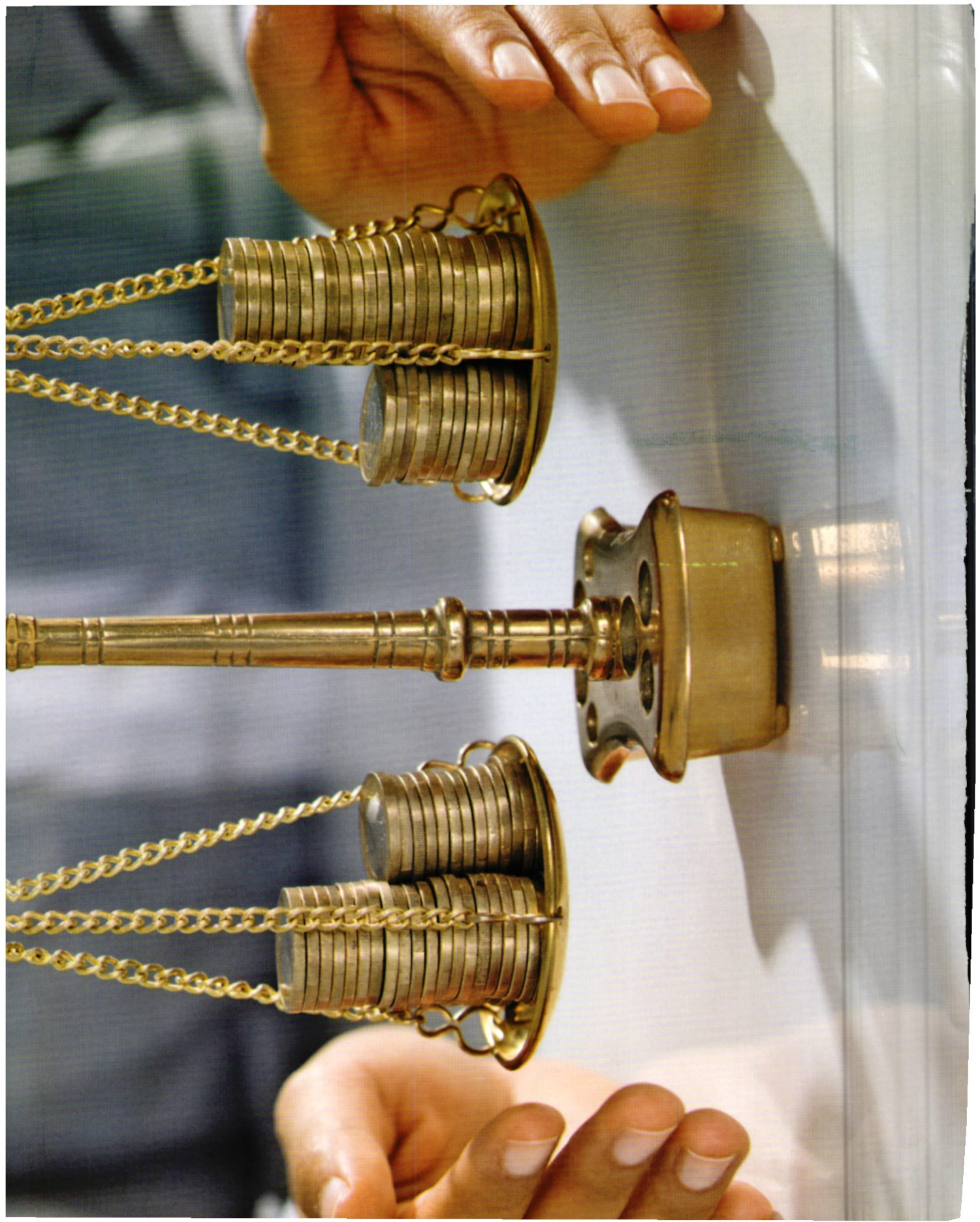
The Senate engaged stakeholders in consensus building before approving the Basis in September 2020 after the start of the effective financial year. The Commission is cognisant that consensus-building takes time and these engagements need to be well managed to ensure future basis are approved before the commencement of a financial year to ease transition.



Public Participation Forum on the 3rd Basis for Revenue Allocation Among County Governments - February 7, 2019

2.7 Challenges, Lessons learned and Proposals for Strengthening the Sharing of Revenue Among the County Governments

- i. Stakeholder engagements: Revenue sharing is both technical and political. Third Basis stakeholder engagements generated useful debate and divergent views, including how to incentivise counties to optimise their capacity to generate revenue and adhere to fiscal responsibility. This needs a lot of consensus building. Beneficiaries always want more resource sharing. Consensus building must therefore be managed carefully so that no stakeholder feels left out.
- ii. In preparing the future basis, the Commission must start two years early to ensure that engagements with stakeholders are conclusive and the basis is approved before the start of a financial year to ease the transition. It is also important for the Commission to engage stakeholders to reach a consensus on how to incentivise counties, as it is part of the revenue-sharing criteria specified in Article 203(1).
- iii. The Senate, in approving the Third Basis, decided that a county's allocation should not be less than the previous years. This meant that either the formula should not be changed or the equitable share to counties should be increased substantially. Given the revenue underperformance, the Senate's position greatly limits future basis reviews.



Chapter

03



Financing and Financial Management by County Governments



3.1 Introduction

Between 2013/14 and 2021/22, county governments raised their Own Source Revenue (OSR) totalling Ksh.306 billion. The Commission has a constitutional duty under Article 216(2) to advise county governments to enhance their own-source revenue collection. To accomplish this objective, the Commission has committedly worked with all 47 county governments with the objective of developing a sustainable mechanism of collecting and managing their own-source revenue.

The Constitution also mandates the Commission to promote responsible management of public finances by county governments through the establishment

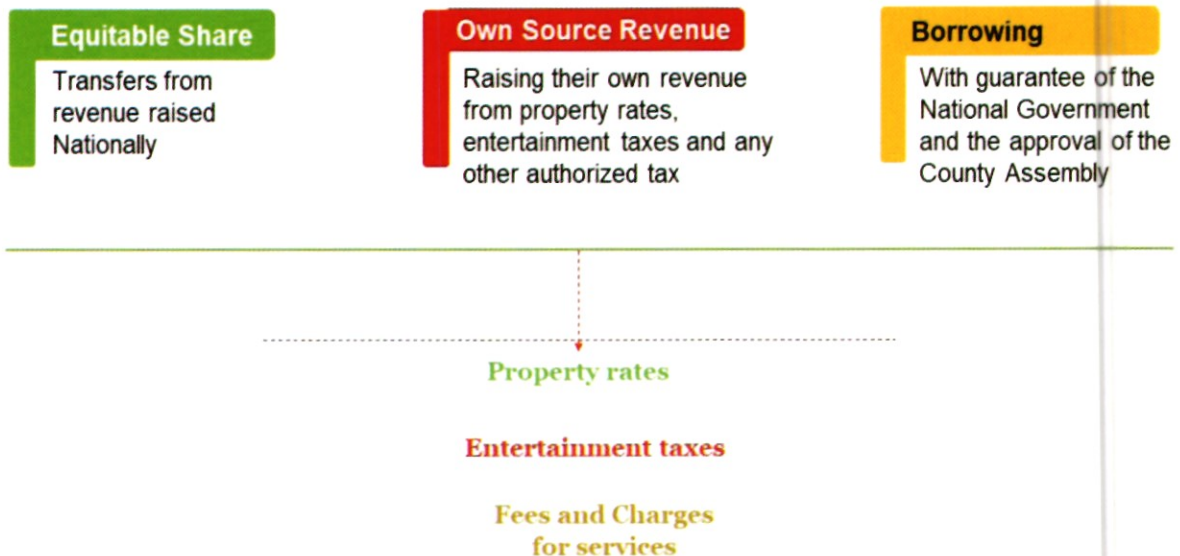
of public finance structures and adherence to fiscal responsibility principles among others. The next sub-sections detail the achievements, challenges, lessons learned, and proposals for strengthening the financing of and financial management by county governments.

3.2 Financing of County Governments

The Constitution in Article 202, 209 (3 and 4) identifies various sources of revenue for County Governments: transfers from nationally raised revenues ; raising their own revenue, and borrowing subject to Article 212 (Figure 8).

Figure 8: Sources of County Revenue

Sources of County Revenue



²Transfers from nationally raised revenues elaborated in Chapter 2 under equitable sharing of revenue

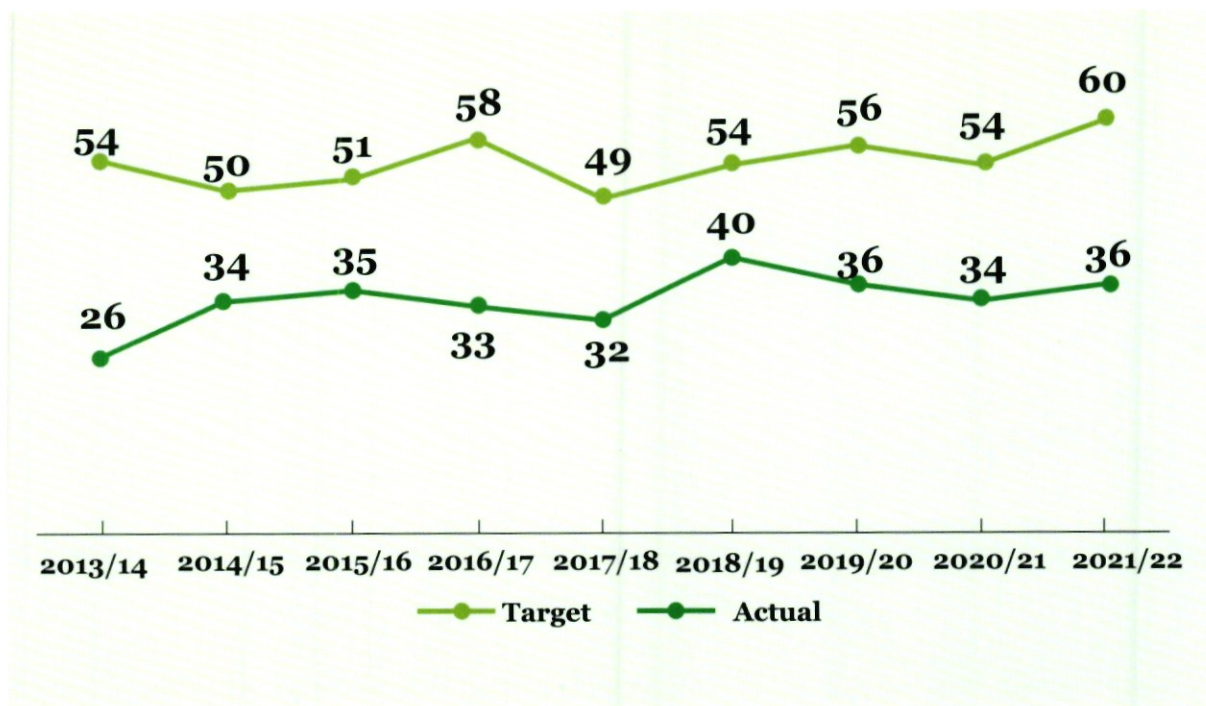


3.2.1 County Own Source Revenue

Adequate Own Source Revenue (OSR) mobilisation is key to counties providing better services. Strengthening OSR mobilisation can improve fiscal autonomy by providing more predictable access to revenue, giving counties more ownership and control over their development agenda.

Figure 9 shows that OSR collection has been below target and unstable over time. Measures taken by county governments to contain the COVID-19 pandemic hurt OSR in 2019/20 and 2020/2021.

Figure 9: Performance of OSR against Target FY 2013/14 to 2021/22(Ksh. billion)



Source of data: Office of the Controller of Budget

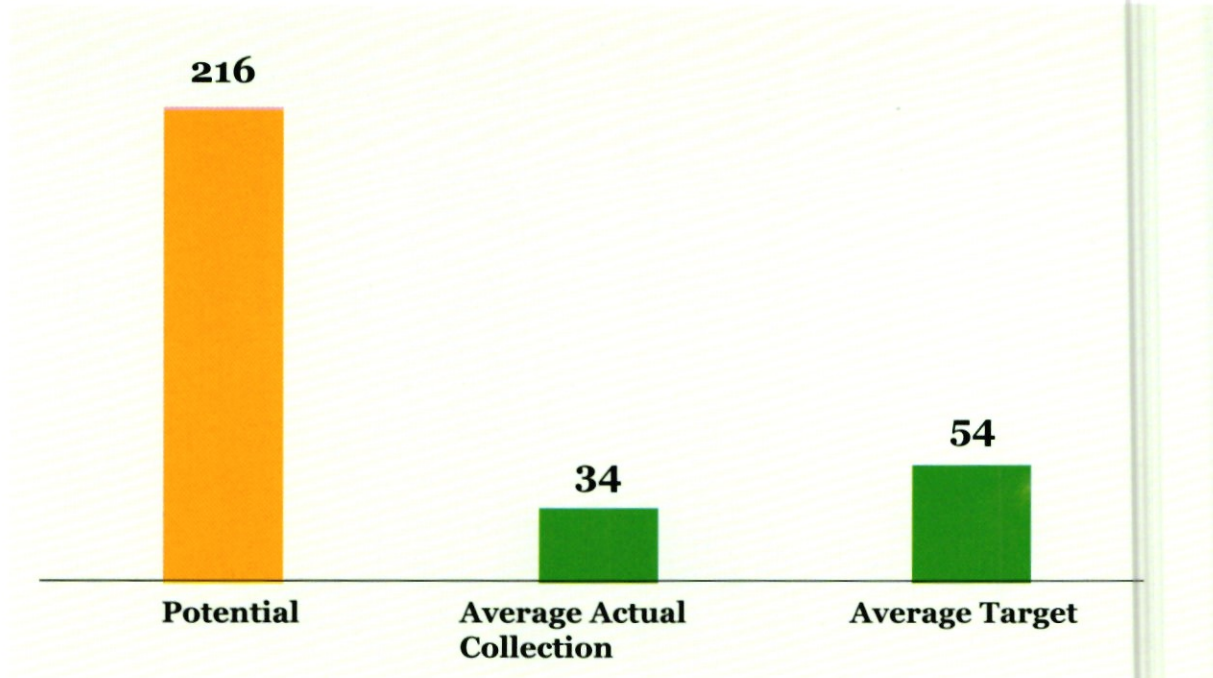
In the financial year 2021/22 county governments collected OSR amounting to Ksh. 36 billion against a target of Ksh. 60 billion. This represented an OSR performance of 66.7 percent. Over the devolution

period, the highest collection by counties was in the financial year 2018/19 of Ksh. 40 billion, equivalent to 74.8 percent of the target.



Though county actual revenue collection remains unstable, available data on their OSR potential reveals that counties can collect higher revenues (Figure 10).

Figure 10: Average Counties' Actual and Target Own Source Revenue (2013/14 -2021/22)- Ksh. billion vis-a-vis Estimated Potential



Source of data: Office of the Controller of Budget and CRA

To enhance the county's Own Source Revenue collection, during the tenure of the Second Commissioners, the Commission promoted the capacity of the county governments to improve their own source revenue collection. This is through the following measures:

i. Capacity Building on Own Source Revenue Legislation

The Commission helped domesticate its model revenue laws and assisted in drafting of revenue

Bills for several counties, including Nakuru, Kwale, Nairobi, Kericho and Murang'a. The Commission built OSR oversight capacity in 46 county assemblies. This has helped entrench fiscal responsibility and compliance with Article 210 of the Constitution, which requires county governments to have legislation for imposing, waiving, or varying taxes or licensing fees.

ii. Development of a Model Tariffs and Pricing Policy

The Commission developed a model Tariffs and



Pricing Policy through an inter-agency committee. This model policy helps counties comply with Section 120 of the County Governments Act . Section 120 requires county governments to create a Tariffs and Pricing Policy for all their user fees and charges. All county user charges should be clearly mapped and matched to expected services, and fees should be aligned with cost.

iii. Studies on Own Source Revenue Potential

As part of its county government financing recommendations, the Commission studied OSR

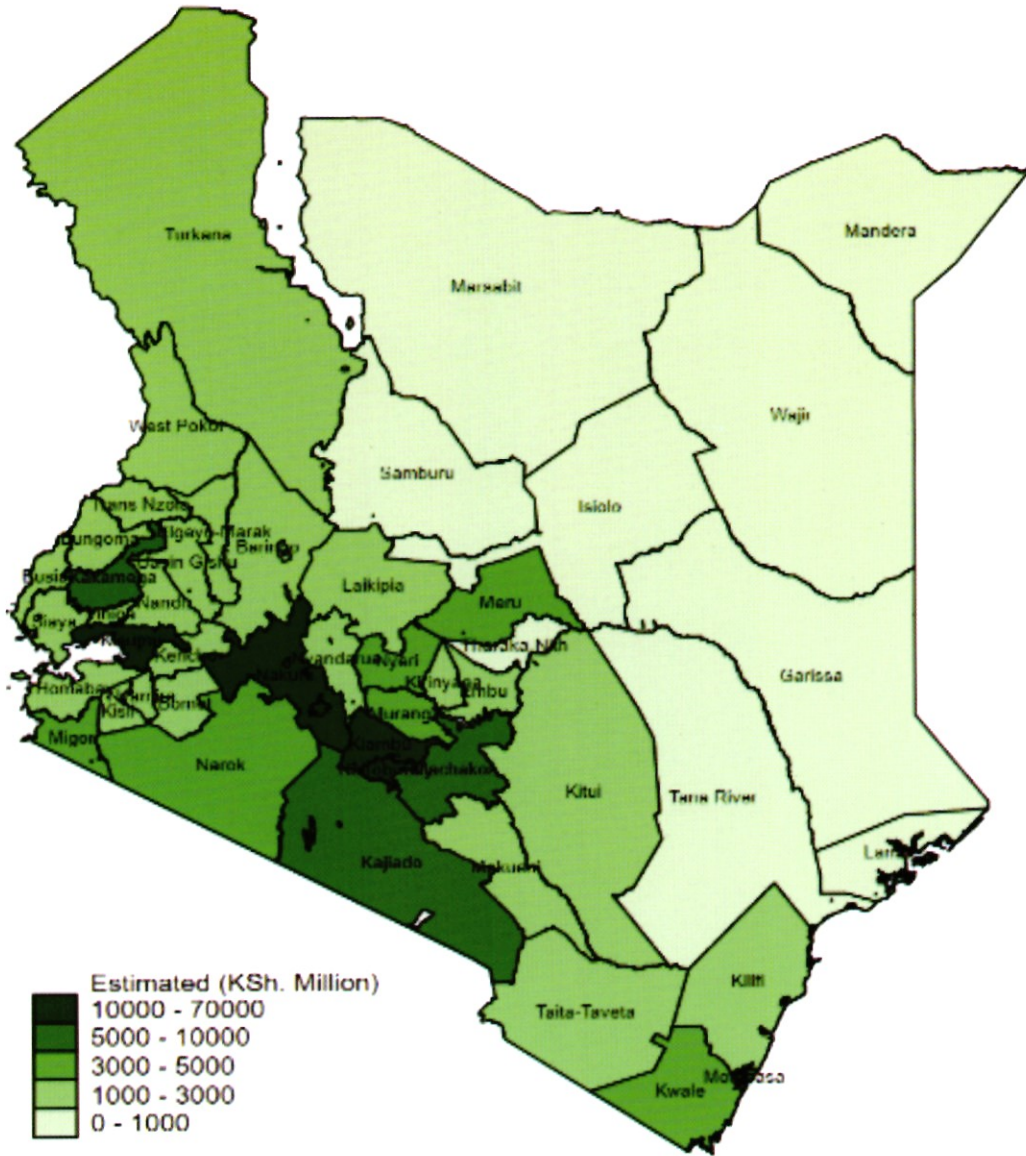
potential and tax gaps. The most recent study was done in 2022 and used 2019 census data and 2017 Gross County Product (GCP). The study included 80% of counties' OSR. The study used top-down and frontier analysis to calculate revenue potential.

The estimated revenue potential of county governments would enable revenue reforms by counties to achieve their potential. Map 1 shows the estimated county governments' OSR potentials. Nairobi County has the highest potential at Ksh.67.7 billion.



A fish trader at the Busia Fish Transshipment Market and Auction Centre in Busia County

Map 1: Counties' Own Source Revenue Potential



Source of data: Commission on Revenue Allocation



iv. Advisory on Own Source Revenue Enhancement and Automation Systems

The Commission championed a single revenue management system for all county governments. The Commission is a member of the Multi-Agency Task Force on Single Integrated County Revenue Management System (ICRMS) set up following a Presidential directive in 2019. The Task Force developed a framework, business case, and detailed minimum specifications. A comparative analysis of three revenue systems - Kenya Revenue Authority (KRA), Bungoma, and Kwale counties - was also done to appreciate their development and functionality. The recommendations of the Task Force are awaiting approval at the Steering Committee level.

v. Development of Counties' Own-Source Revenue Training Guidelines

One of the key goals in the Commission's 2017-2022 Strategic Plan was to develop a training curriculum for county governments on OSR. The Counties' OSR Training Guidelines were developed through a consultative and collaborative effort by a Multi-Agency Task Force. This allowed the Commission to tap into the expertise and experience of several institutions. These Multi-agencies consisted of: *the Commission, Office of the Auditor General, Controller of Budget, The National Treasury, Kenya Revenue Authority-Kenya School of Revenue Administration (KESRA), Kenya Institute of Public Policy Research Analysis (KIPPR), Kenya Law Reform Commission, Ministry of Petroleum, Institute of Certified Public Accountants of Kenya (ICPAK), Council of Governors, County Assemblies Forum, and Ministry of Devolution, Arid and Semi-Arid Lands (ASAL).*

The training guidelines envisage strengthening the technical capacity of the Own Sources Revenue

Administration at the county level with the aim of improving OSR performance. In summary, the training guidelines sought to:

- Create uniformity in OSR training.
- Document knowledge and experience gathered on revenue enhancement.
- Provide trainers with a tool for training the county governments' revenue staff, supervisors, management, and policymakers.

vi. Revenue Administration and Enforcement Framework Assessments

The Commission conducted revenue administration framework assessments for eleven county governments in two phases. In phase one, the Commission conducted assessment for Nyeri, Kwale, Migori, Wajir and Nairobi between 2016 and 2018. In this phase, revenue administration assessments were conducted with the support of the European Union.

In phase two, a gender-responsive administration assessment tool was developed for Samburu, Lamu, Turkana, Isiolo, Kajiado, and Tana River counties. The Commission worked with each county to develop action plans for reforming revenue administration.

The Commission found a need for gender mainstreaming in stakeholder engagement, revenue legislation, revenue management, automation and integration, compliance and enforcement, accounting and reporting.

vii. Training on Revenue Administration

EU, UNDP, and counties supported training on county revenue administration. The training seeks to strengthen the capacity of counties in revenue administration matters. It covered the Commission's



The CRA Chairperson Dr. Jane Kiringai with a worker at KIKOTEC during a visit, November 10, 2022

mandate, revenue performance, forecasting, monitoring and evaluation, revenue collection and recording processes and procedures, internal control, revenue legislation, revenue automation, and revenue enforcement and compliance. The training has increased revenue collection in the participating counties, and the staff are motivated after gaining new skills.

viii. Development of Own Source Revenue Forecasting Tools

The Commission developed a revenue analysis and forecasting tool to support counties in their revenue analysis and target setting with the support of the World Bank. The tool was piloted in: Laikipia, Kisumu, and Makeni. The Commission also trained

county governments on the use of the revenue forecasting tool. In the financial year 2018/19, the County Government of Samburu began to use the revenue forecasting tool and the actual revenue collection improved to 96 percent of their targeted collection.

3.2.2 County Borrowing

Section 140 of the PFMA allows counties to borrow up to 20 percent of their total revenues subject to the national government guarantee. Section 141 of the PFMA regulates county borrowing.

The Commission and the World Bank Group (WBG) conceived the County Creditworthiness Initiative (CCI) for Kenya in 2019 to increase



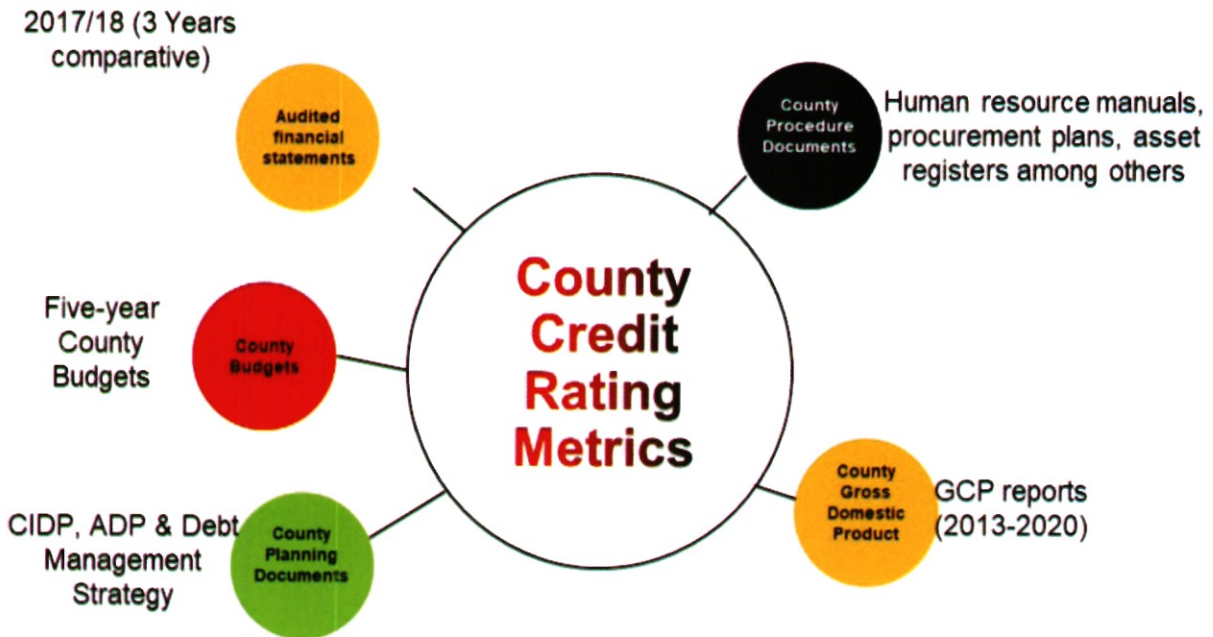
counties' borrowing capacity. The purpose of the CCI is to provide technical assistance to county governments in bridging the creditworthiness gap and access market finance for infrastructure and other development projects. This initiative seeks to deepen understanding of barriers to subnational government borrowing and propose solutions. The initiative should result in (i) a strengthened regulatory framework for subnational government borrowing, (ii) a reformed fiscal decentralisation typology that supports responsible borrowing, (iii) a ready capital

market for subnational government borrowing, and (iv) strengthened financial management by subnational governments for market access.

Since its inception in 2019, 11 counties have been sensitised on the credit worthiness initiative, with Laikipia, Bungoma, Makueni, Kisumu, Mombasa, and Nyandarua being credit rated. Nakuru County and the seventh reached self-assessment stage. County credit rating uses five metrics as follows (Figure 11):

Figure 11: County Credit Rating Metrics

County Credit Rating Metrics





The Commission has also collaborated with the Capital Markets Authority to enhance the capacity of counties on assessing money from the market. To this end, only Laikipia County has been approved to borrow by Parliament in June 2022.

3.3 Challenges and Lessons Learned in the Financing of County Governments

i. County governments' actual own-source revenue has been declining in relation to the target. The decline is associated with the following:

- a) Weak revenue administration leading to revenue leakages and under-collection of OSR;
- b) Inadequate enforcement mechanisms;
- c) Ineffective revenue monitoring and control systems;
- d) Lack of updated taxpayers' databases;
- e) Slow pace in enactment of revenue legislation;
- f) Use of manual collection methods and slow progress towards automation and integration of revenue functions; and
- g) Insufficient political goodwill from both arms of the county government.

ii. Lack of a comprehensive definition of all counties OSR streams leading to low collection, reporting, and analysis of OSR.

iii. The lack of a unified automated revenue management systems among counties leading to high revenue collection costs.

iv. There is need for counties to focus on key revenue streams to minimize the cost of collection and enhance accountability.

v. There is need for counties to legislate on the primary revenue streams to provide the basis for

revenue collection and avoid litigation.

vi. Revenue boards are only recommended when counties are able to provide autonomy in human resources, finance, and administration to the revenue administration and the cost of establishing the board is low in comparison to the revenue collected.

vii. There is need for counties to change from casual revenue staff to contractual staff to reduce the risk of revenue leakages.

3.4 Proposals on Strengthening the Financing of County Governments

i. The Commission to continue strengthening the capacity of county government in OSR in order to promote their fiscal autonomy.

ii. The Commission to continue working with various stakeholders to ensure that a robust revenue administration and systems are in place across all counties.

iii. The Commission to encourage counties to be credit rated for them to borrow.

3.5 Financial Management of County Governments

Article 216(2) mandates the Commission to make recommendations on other matters concerning the financial management by county governments as required by the Constitution and national legislation. The Commission has provided recommendations to the county governments in the areas of: establishment of public finance structures; non-core infrastructure, pending bills, adherence to fiscal responsibility principles, and county budget ceilings.

3.5.1 Public Finance Structures

The Constitution provides a set of reforms with opportunities to participate in governance, including

the management of public finances for efficient services and development. Central to these reforms in public financial management is the budget process, which involves the broader public and designed to ensure the effective use of public resources. At the county level, a crucial tool for facilitating the management of the public finances is the County

Budget and Economic Forums (CBEFs).

The Commission has been supporting counties in the establishment and operationalisation of County Budget and Economic Forums (CBEFs). Between 2017 -2022, 46 counties established CBEFs as shown in Map 2.

Map 2: CBEFs Establishment and Capacity Development 2017-2022



Source of data: CRA



In 2019 the Commission developed the CBEF effectiveness tool to monitor and evaluate their performance in the budget process. The Commission also inducted and trained 46 county governments on the role of the CBEF in monitoring and evaluating budget performance.

3.5.2 Non-Core Infrastructure

The Commission monitors the counties' use of funds for long-term infrastructure projects, such as county headquarters, Governor and Deputy Governors' residences, county assembly chambers, county assembly office blocks, and Speakers' residences. The Commission found that these projects' budgets were varied and, in some cases, very high, causing public outcry.

The Commission, through Circular No. 5 of 2015 advised counties to focus on core development and budget for non-core projects over 5-10 years. The advisory, however, encouraged renovating existing offices and assembly space while renting accommodation.

The Senate's Infrastructure Committee reviewed the adequacy of county headquarters in various counties and recommended funding to construct headquarters in five counties: Nyandarua, Tharaka Nithi, Isiolo, Tana River, and Lamu through a conditional grant from the national government.

Through Gazette Notice No. 6518 (now quashed) and Circular No. SRC/TS/CGOVT/3/61 dated 24th October 2016 and SRC/TS/CGOVT/3/61 VOL (45) dated 25th August 2017 the Salaries and Remuneration Commission (SRC) issued guidelines on rent for Governors, Deputy Governors and County Assembly Speakers residences. SRC provided that all counties must have constructed the said residences by 30th June 2019. The deadline for constructing the residences was extended to June 30, 2022.

The status of counties' non-core infrastructure is shown in Table 2. The missing counties under each category did not submit their records at the time of publishing this report.



Table 2: Status of Non-Core Infrastructure by County Governments

	County Infrastructure	Completed	Ongoing	Stalled	Not started
1	County headquarters	Kwale, Lamu, Machakos, Makueni, Samburu, Taita Taveta	Isiolo, Laikipia, Nyandarua		Elgeyo Marakwet Narok
2	Governors' residence	Kilifi, Kisii, Makueni, Tharaka Nithi	Samburu, Laikipia, Kwale	Busia, Elgeyo Marakwet, West Pokot	Nyandarua, Lamu, Kirinyaga, Taita Taveta, Nairobi, Siaya, Narok
3	Deputy governors' residence	Makueni	Tharaka Nithi		Nyandarua, Elgeyo Marakwet, Narok
4	County assembly chambers	Busia, Kilifi, Kisii, Kwale, Laikipia, Lamu, Machakos, Makueni, Nyandarua	Samburu, West Pokot, Elgeyo Marakwet		
5	Speakers' residences	Busia, Kisii, Kwale, Makueni, Nyandarua	Samburu, Tharaka Nithi	West Pokot, Elgeyo Marakwet	

Source of data: CRA

3.5.3 Pending Bills

The Commission in developing the financial year 2021/22 county recurrent expenditure ceilings noted County Assemblies had huge pending bills. County Assemblies' pending bills were reported to be as a result of:

- Bills from staff pensions and gratuity inherited from the first County Assemblies,
- Fringe tax benefits due to car loans and mortgages in the Assemblies.
- Challenges of non-disbursement of all budgetary allocation. This leads to non-remittance of all payroll recoveries for Lapfund, Laptrust and car and mortgage fund.

The Commission, in submitting the financial year 2021/22 county recurrent expenditure budget ceilings recommended to the Senate to make a legislation allowing County Assemblies to include pending bills as a result of delayed exchequer release to their budgets for the following year.

The Senate considered the Commission's recommendation and amended Section 130 of the PFMA, 2012 to allow the County Executive Committee Member (CECM) responsible for finance to include, in the annual appropriation any unspent funds amount that had been appropriated to the County Assembly in the immediate preceding financial year.



The CRA Team with Marsabit County officials outside the County headquarters

3.5.4 Fiscal Responsibility Principles

Fiscal responsibility principles are outlined in the PFM Act 2012 and its Regulations 2015. The objective of the PFMA, 2012 is to institute fiscal discipline which is a key value in public finance management both at the National and County Government levels. Section 15 (2) outlines fiscal responsibility while Section 107 of the PFMA, 2012 and Regulation 25 of the Public Finance Management Regulations (county governments), 2015 require a county treasury to manage its public finances in accordance with the following principles of fiscal responsibility.

a) Over the medium term a minimum of 30 percent of the county government's budget shall be allocated to the development expenditure;

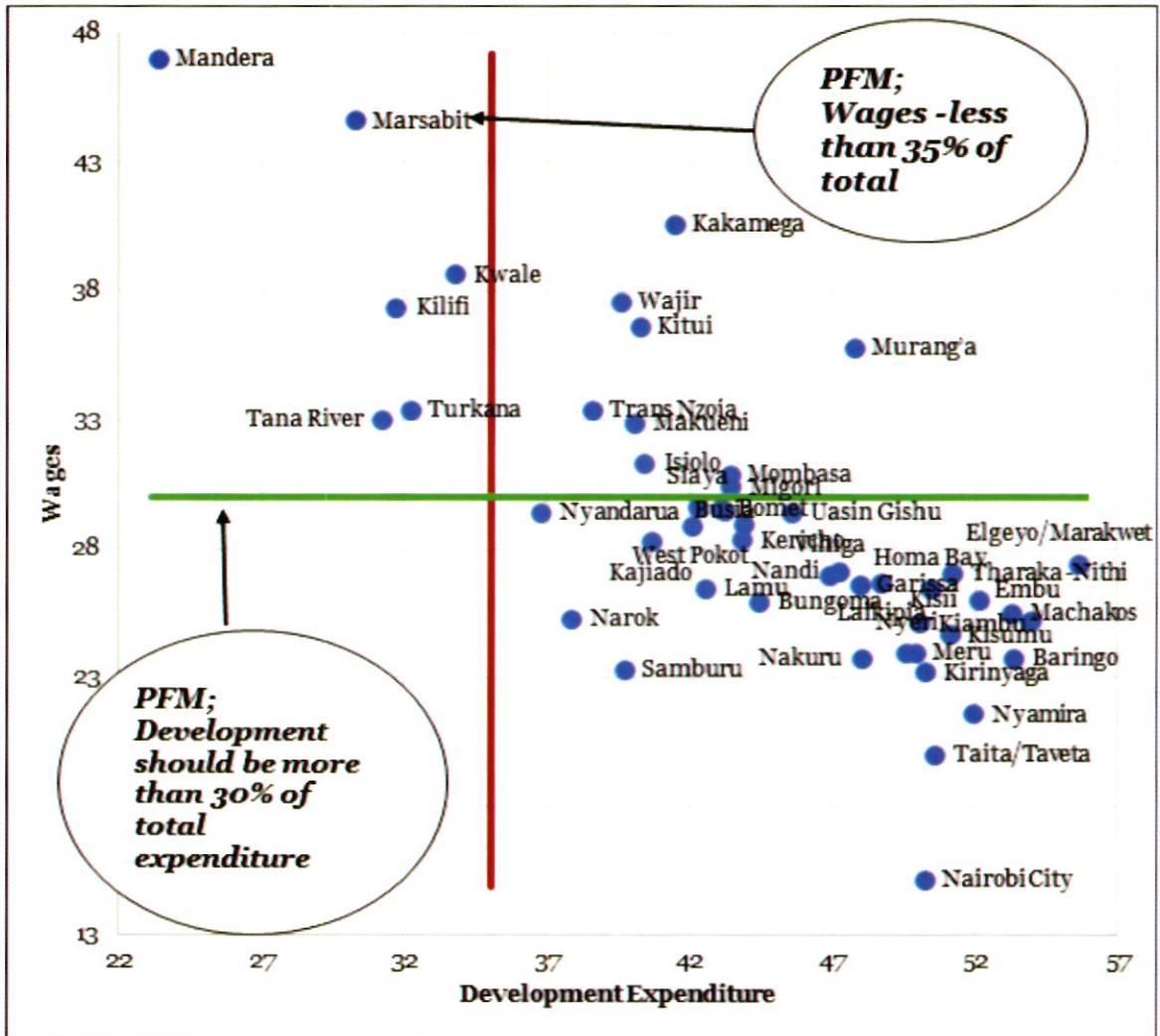
b) The county government's expenditure on wages and benefits for its public officers shall not exceed 35 percent of the county government's total revenue as prescribed by the CECM for finance and approved by the County Assembly.

The Commission has been analysing counties' development, wages and benefits expenditure to assess adherence to the fiscal responsibility principles.

Counties show mixed performance on the adherence on the principles as shown in Figure 12. Only six counties - Mandera, Marsabit, Kwale, Kilifi, Tana River and Turkana - are adhering to the two fiscal principles.



Figure 12: Adherence to Fiscal Responsibility Principles by Counties



Source of Data: Office of the Controller of Budget

The Commission is cognisant of the fact that a majority of the counties comply to fiscal responsibility at the planning and budgeting stage and not at the implementation. The Commission,

therefore, needs to collaborate with other PFM institutions especially the National Treasury and the Office of the Controller of Budget to enforce compliance.



3.5.5 County Recurrent Expenditure Ceilings

The Commission makes recommendations of the Recurrent Expenditure Budget Ceilings for county government for Senate approval. Over the last 4 years, the allocation towards the county's recurrent expenditure budget ceilings has been guided by the country's fiscal consolidation policies.

There have been emerging issues affecting ceilings namely;

- Staff establishments that are not aligned to the requirements of the counties,
- The looming deadline on staff rationalization. The Standing Committee on Finance and Budget of the Senate in their report of May 2021, resolved that the rationalization of the staff establishment in county governments be extended to June 2023.

3.6 Challenges and Lessons Learned in Financial Management by County Governments

- i. The Commission needs to rationalise expenditures for non-core infrastructure projects to ensure prudent use of resources and minimise wastages. The Commission to pronounce itself on the SRC circular to stem the abuse and inconsistencies in the expenditures.
- ii. Wage bill: Building more hospitals and ECDE centres in the county requires human resources to deliver service delivery. This continues to increase the wage bill to higher levels leading to non-adherence to the fiscal responsibility parameter of 35 percent on personnel emoluments. There is a need for PFM institutions to provide direction on the classification of staff in the human capital development sector of health and education.

- iii. Public participation is a very costly affair, there is need to revisit existing frameworks for public participation to sensitize the counties on its applicability.
- iv. Irregular flow of resources leading to pending bills.
- v. Lack of transparency in the implementation of projects pending bills.

3.7 Proposals on Strengthening the Financial Management of County Governments

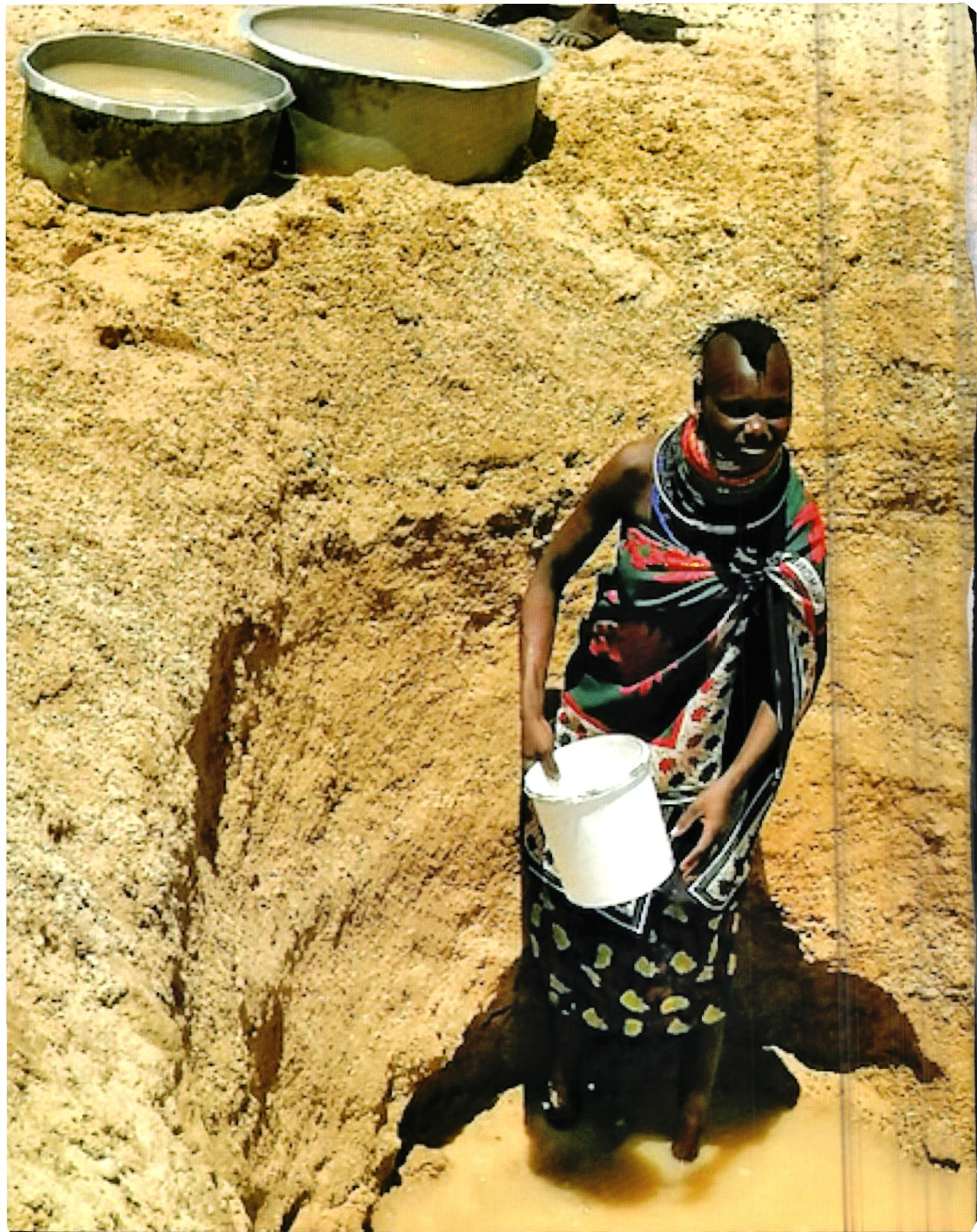
- i. Continuous capacity building of county government staff especially the technical team on linking planning to budgets.
- ii. The Commission, to continue pushing for support from other oversight bodies including the Controller of Budget, the Auditor General, and the National Treasury to ensure that the issues of non-compliance to the requirements of the Public Finance Management Act and its attendant regulations attract sanctions. This will help in greatly reducing and eventually eliminating cases of non-compliance in terms of statutory deadlines, content, and required input.
- iii. The Commission to suggest an amendment of PFM Act 2012 to include sanctions for non-submission of the County Finance Strategy Papers (CFSPs) by county governments.
- iv. Counties should be able to show all the eligible pending bills as at the date of preparation of the CFSP, indicate the action being taken within the current year and justify provision in the planning year.
- v. Review PFMA, 2012 to include a timeline as



to when Senate should approve the County Allocation of Revenue Bill for counties to operationalize CFSP and consequently budget estimates for proper planning.

vi. The Commission is concerned with low

compliance of the fiscal responsibility principles on development expenditure and personnel emoluments. There is need for further discussion and consensus with the other Public Finance Institutions on the effective thresholds



Chapter 04



Policies Identifying Marginalised Areas



4.1 Introduction

The history of marginalisation is linked to Kenya's colonial past, ideology, democratic progress, and fiscal and resource-sharing systems. In recognition of this, the Constitution established the Equalisation Fund. The Equalisation Fund is a national government fund with a sunset of twenty years, ending in 2030. It is made up of one-half percent of all revenue collected by the national government each year, calculated on the basis of the most recent audited accounts of revenue received as approved by the National Assembly.

Article 204 (2) provides that the Equalisation Fund be used to "provide basic services including water, roads, health facilities and electricity to

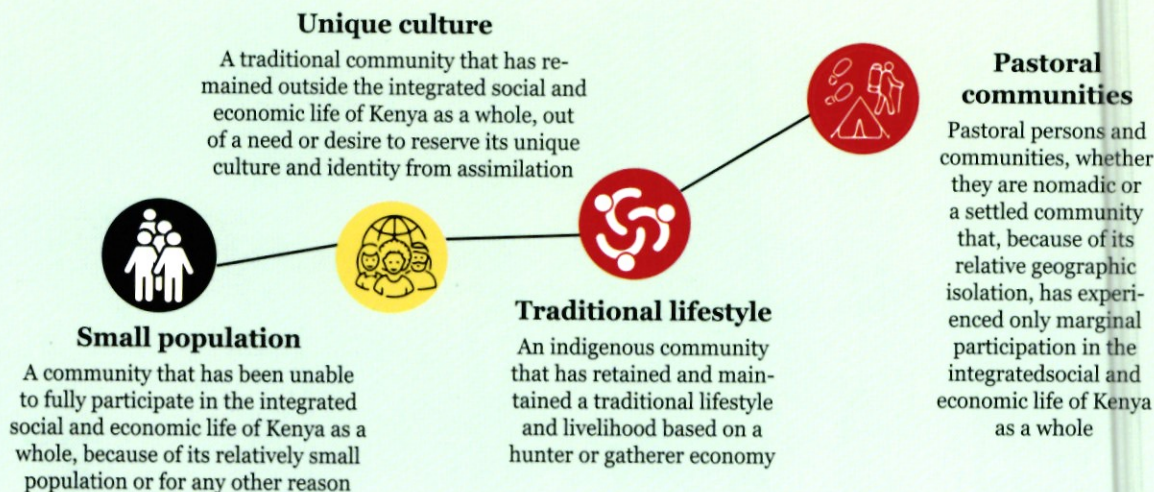
marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible". Article 201(b)(iii) stipulates that expenditure shall promote the equitable development of the country, including making special provision for marginalized groups and areas.

Article 216(4) of the Constitution mandates the Commission to determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of sharing of the Equalisation Fund.

The Commission has since the onset of devolution prepared two policies identifying marginalised areas.

What is a Marginalised Community?

Article 260 defines marginalised community as:



i. First Policy

The Commission prepared the first three-year policy in 2013. This policy identified fourteen marginalised counties and would be used to share money from the Equalisation Fund for the financial years 2014/15 to 2016/17. The implementation of the First Policy began in the financial year 2016/17 and was only partially implemented with only Ksh. 6.9 Billion utilized out of the Ksh. 12.4 Billion set aside for implementation. This was due to a Petition that put to question the sharing of the Equalisation Fund and the mode of disbursement as well as the binding nature of the Commission's recommendations as contained in the policies identifying marginalised areas.

The court in its judgment held that the Equalisation Fund, being for the benefit of marginalised counties can only be disbursed by the national government through the respective and affected county governments, and in accordance with the recommendations made by the Commission as approved by Parliament. Further, it directed National Treasury to within six (6) months of the date of the judgment, and in consultation with all relevant stakeholders, prepare an appropriate policy and/or statutory instruments on the administration of the Equalisation Fund.

The Commission participated in the development of new Public Finance Management (Equalisation Fund Administration) Regulations 2021 which provide for withdrawals from the Fund and implementation of new projects under the First Policy and all other future policies. It is therefore expected that implementation of the Equalisation Fund projects will continue under the new regulations.

ii. Second Policy

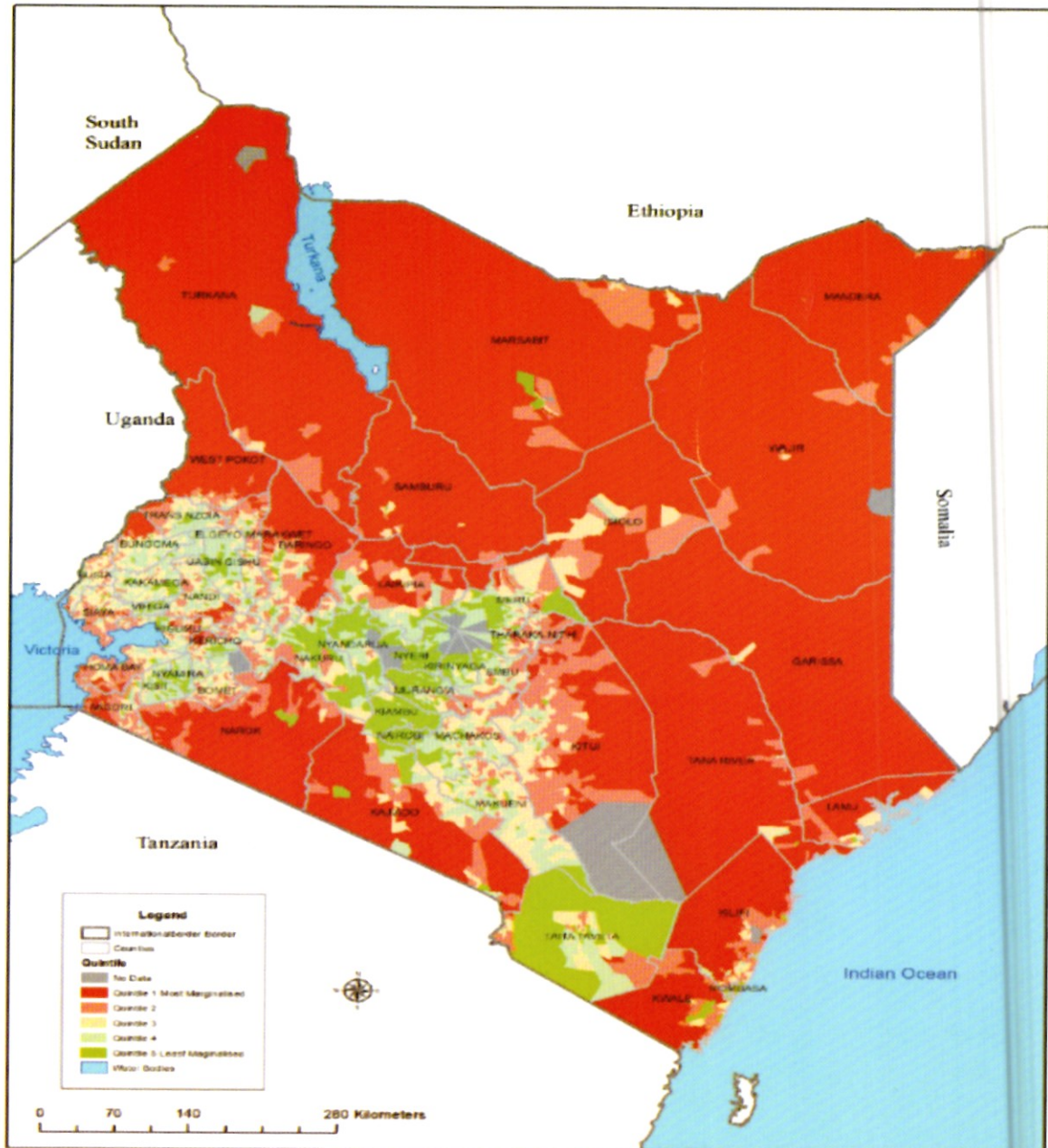
The Second Policy prepared in 2017, changed the focus and rationale from the identification of marginalised counties to identification of marginalised areas in compliance with the Constitution and as, guided by the smallest administrative unit for which data was available. This meant that deprived areas in otherwise well-developed counties had a chance of being identified as marginalised. Similarly, developed areas in otherwise poor counties would be excluded from consideration. In the Second Policy, the Commission also recognised that even



² Petition No. 272 of 2016 (Council of County Governors v Attorney General & 2 others; Commission on Revenue Allocation & 15 others (Interested Parties) [2019] eKLR).

within marginalised areas, there are some minorities that need special consideration. The Policy, identified 1,424 areas as marginalised as shown on Map 3.

Map 3: Areas Identified as Marginalised in the Second Policy on Marginalisation



Source of data: CRA

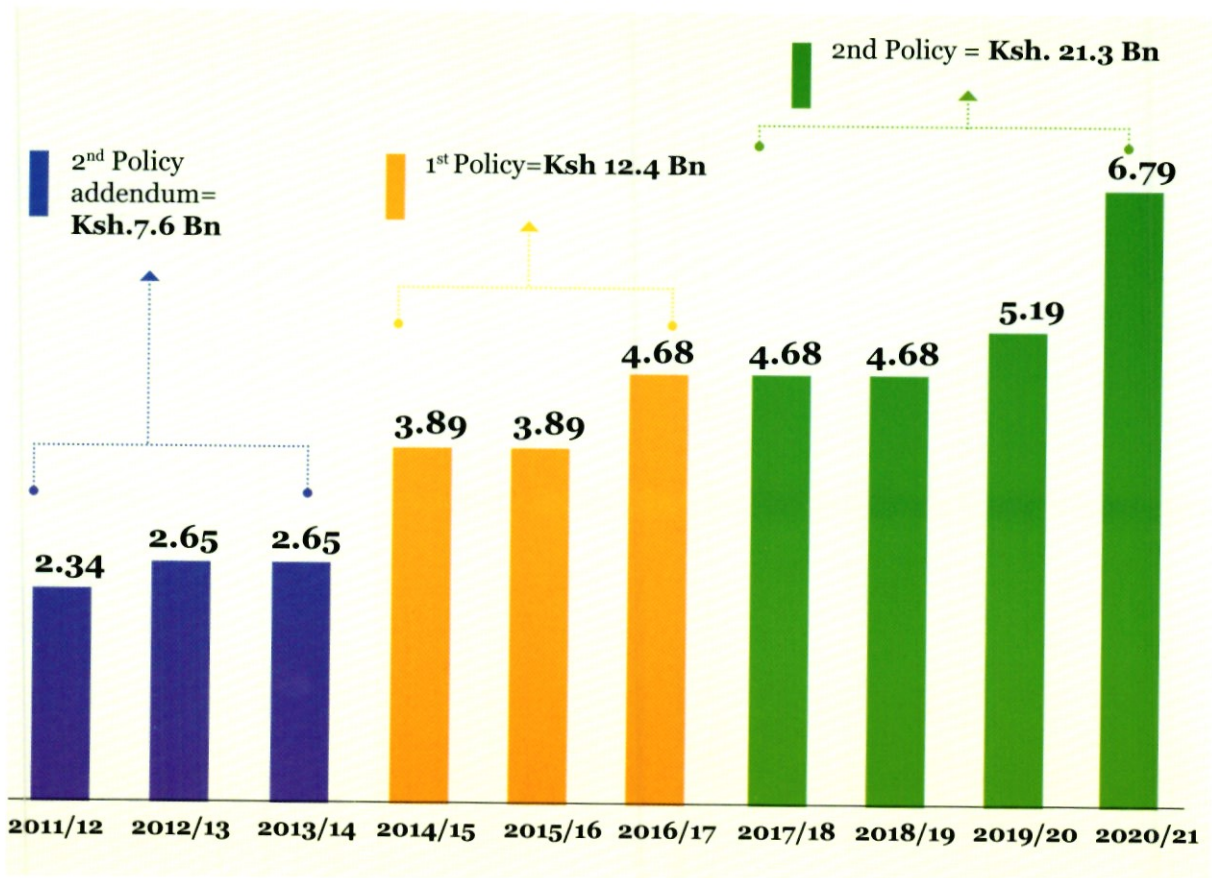


Map 3 shows 1,424 marginalised areas identified by the Policy.

The Second Policy prepared in 2017, changed the focus and rationale from the identification of marginalised counties to identification of marginalised areas in compliance with the Constitution and as, guided by the smallest administrative unit for which data was available. This meant that deprived areas in otherwise well-

developed counties had a chance of being identified as marginalised. Similarly, developed areas in otherwise poor counties would be excluded from consideration. In the Second Policy, the Commission also recognised that even within marginalised areas, there are some minorities that need special consideration. The Policy, identified 1,424 areas as marginalised as shown on map 3.

Figure 13: Monies Allocated under Each of the Policies in Ksh. billion



Source of data: Equalisation Fund Board



4.2 Ongoing Work

4.2.1 Third Policy Identifying Marginalised Areas

The Second Commissioners initiated the development of the Third Policy identifying marginalised areas. The Policy is awaiting finalisation and stakeholder validation. The 2019 Kenya Population and Housing Census identified 1,777 marginalised areas using an index of deprivation based on five indicators: access to safe drinking water, improved sanitation, electricity, net primary school attendance rate, and net secondary school attendance rate. To assess the status of service delivery deprivation, the Commission visited 27 of these areas. More visits to 1,777 areas are needed. Before finalising the policy and declaring areas marginalised, the Commission must engage county governments, the national government, and Parliament.

4.3 Challenges and Lessons Learned

- i. Stalled/Incomplete Projects under the First Policy: Following a petition that put to question the sharing of the Equalisation Fund, implementation of projects stalled for three financial years-2019/20 to 2020/21. However, with a new Equalisation Fund Board and regulations in place implementation of the projects is expected to continue.
- ii. As per the provisions of the Constitution in Article 6(2), both levels of government should work together on the basis of consultation and cooperation. The petition that put to question the sharing of the Equalisation Fund could have been avoided if both levels of government had worked together in collaboration.
- iii. The Commission is cognisant of the fact that the

Equalisation Fund is meant to enhance levels of service delivery in the marginalised areas to that generally enjoyed by the rest of the country. However, the Commission acknowledges that the allocation to the Equalisation Fund of one-half percent of all revenues collected by the national government each year is inadequate to achieve equalisation. County governments need to make deliberate efforts to implement equalisation measures from the equitable revenue shares and own source revenues.

4.4 Proposals for Strengthening Implementation of the Equalisation Fund

- i. **Partnerships:** There is need for collaboration between the national governments, county governments and donors to hasten the process of demarginalising marginalised areas and communities.
- ii. **The Equalisation Fund has a 20-year term limit.** With only eight years left, a proper intergovernmental monitoring and evaluation framework must be put in place to ensure that marginalised areas and groups benefit from the Fund, and that the overall goal of improving services to other areas will be realised.
- iii. **It's important to learn from other jurisdictions' successes and failures.** There is a need to emphasise the imperative of public participation in order for the implementation of the Fund to benefit from citizens' voices in the prioritisation of the envisaged interventions.

Chapter
05



ACCIDENT AND EMERGENCY CENTER

**Gains from
Devolution**



5.1 Introduction

Article 174 (f) outlines one of the objectives of devolution as to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya. To realize this objective, certain functions were transferred from the national to the county level of government. Following the transfer of these functions, arrangements were put in place to ensure that resources necessary for their performance or exercise of the power are transferred in line with the principle of funds follow functions as outlined in Article 187(2). As the preceding sections have shown, the Commission has been a key player in the operationalization of the objectives of devolution through its key mandates of sharing revenue between the national and county governments and among the county governments. Further, the Commission has been promoting the prudent financial management of resources as well as developing policies identifying marginalised areas.

The Commission in the course of execution of its mandate has been interacting and visiting counties to assess the state of devolution and devolved services. The Commission's observation has been that indeed devolution is a game changer and has transformed service delivery and development in the counties. The key gains from devolution in the sectors of health, water, roads, and education are highlighted below.

5.2. Health Sector

Provision of and access to healthcare is a fundamental human right that guarantees human capital development with the goal of ensuring a healthy, skilled, and productive population. Access to quality and affordable healthcare in Kenya is a basic right guaranteed in Article 43 (1) for the general population, Article 53 (c) for children, and Article 56 (e) for minorities and marginalised groups. Health is a concurrent function between the national and county governments.

County governments have put up many innovative efforts to improve healthcare. The health sector constitutes one of the largest components of the county budgets taking up 27 percent of the overall annual budget. To ensure citizens easily access healthcare services counties have significantly improved the number of health facilities between 2012 and 2021. In 2012, there were a total of 8,466 primary health facilities (Levels 2 and 3) in the country, these have increased to 12,316 in 2021. A majority of the counties have bridged level 2 gaps, 15 counties have bridged level 3 gaps and 14 counties have bridged level 4 gaps. Counties have also upgraded their primary facilities to referral. Under the Managed Equipment Scheme (MES), most counties expanded and equipped existing hospitals to provide specialised treatment.

It is now evident that Kenyans can access healthcare more easily, due to the increased number of health facilities, equipping of pre-existing facilities, and the construction of new ones.



Lokitang Hospital, Turkana County



Ambulances in Mandera County



Improved road networks and the availability of ambulance services in counties have also been major contributing factors.

The expansion of health facilities and equipment

has resulted in an increase in the deliveries in health facilities from 37.5 percent in 2012 to 75 percent in 2021. The national average for infant mortality rate has declined from 38.2 in 2012 to 31.2 per 1,000 live births in 2020. Under-five



mortality has also declined from 54.1 in 2012 to 41.9 per 1,000 live births in 2020. Maternal mortality

also declined from 373 in 2012 to 355 per 100,000 live births in 2020.

5.3 Water Sector

Article 43 (1) (d) provides that every person has a right to access clean, safe water and in adequate quantities. The Kenya Vision 2030 envisages universal access to water and sanitation. This is to be achieved progressively through various initiatives geared towards achieving 200,000 new water connectivity for about 3.2 million people over the vision period.

Water is a concurrent function performed by both levels of government and is essential in health, industry, agriculture, energy, and domestic use. County governments have enhanced access to safe drinking water through such initiatives as the drilling of boreholes and pans and the development of water treatment plants.

In Heilu, Moyale sub-county, travel in search of

Heilu Water pan in Marsabit County



Muruny-Siyoi Water Treatment plant under Construction, West Pokot County



Solar Panels pump water from Lake Victoria to citizens at the East Uyoma Water Supply in Siaya County



water was reduced by over 5 kilometers after the construction of the Heilu water pan. An ongoing project seeks to use solar to pump the water to the nearby settlements to bring the water closer to residents.

Some counties have increased access to safe drinking water, while others have declined over the last decade. Access to safe water is above 80 percent in the densely populated counties of Kiambu, Nairobi, Nyeri, Uasin Gishu and Bungoma and below 40 percent in Narok, West Pokot, Baringo, Mandera, Samburu, Kitui and Bomet.

5.4 Roads Sector

Sustainable infrastructure development and maintenance are key to economic growth and prosperity. The provision of reliable transport

infrastructure influences the level of productivity, access to markets, welfare, and security of citizens. Kenya relies heavily on road transport. 64 percent of freight and 93 percent of passenger traffic is by road.

County governments are responsible for building and maintenance, and of county roads and public road transport. Kenya's road networks have improved, boosting the economy. County governments have also been at the forefront of opening up new areas through road construction.

Although all counties have made significant efforts in opening up new roads and upgrading of the existing ones. There exist differences in the status of roads across counties with most accessible roads being generally concentrated in areas of dense population and high economic activity, mainly

Ongoing upgrading of a county road



high agricultural and commercial areas.

The city counties of Nairobi and Mombasa have the highest proportions of their populations within

two kilometers of a motorable road, while Turkana, Marsabit, Samburu, Mandera, Wajir, Tana River, and Lamu have less than 20 percent.

5.5 Early Childhood Development Education

Education is a basic right under Article 43 (1)(f), while Article 53 (1) (b) advocates for free and compulsory basic education, and Article 54 grants the disabled the right to education. Kenya Vision 2030 identifies education and training as a key sector in the social pillar, which aims to provide globally competitive quality education, training, and research for equitable social development. Preschool, village polytechnics, home craft centres, and childcare are county responsibilities.

Early Childhood Development Education (ECDE) has received attention in government policies and programmes. To boost school attendance, counties have built new ECDE classrooms with desks and other supplies.

The ECDE facilities have increased from 24,702 in 2013 to 28,383 in 2019. This has increased enrolment from 1,691,286 in 2013 to 1,916,690 in 2019. High enrolments have been witnessed in Kakamega, Turkana, Bungoma, and Migori.

Sichei ECD Centre- Baringo County





Chapter 06



Further Considerations by Future Commissioners



To further strengthen devolution, and the Commission in general, the Second Team of Commissioners gives the following further considerations.

i. Promote better collaboration in dealing with developmental challenges

Water remains the most important development challenge in Kenya today. Indeed, Article 43 (1) (d) provides that every person has a right to access clean, safe water and in the right quantities. Cognisant of this fact, the Commission wanted to use access to water as a parameter in the Third Basis recommendation as well as in the Second and Third Policies identifying marginalised areas. This was however not possible due to the lack of reliable data. Despite this effort, the Commission recognises that the water sector is one of the heavily funded sectors consuming about 5 percent of the total national budget. Further, the sector also benefits from support from development partners. Citizens also contribute towards funding the sector through cost-sharing arrangements. These interventions have however not eased the scarcity of water in the country. The commission recommends that future commissioners consider water as a priority sector and initiate collaborations with various stakeholders in ensuring water accessibility, particularly for citizens in the marginalised areas.

ii. Prioritise the financing of Cities

The Urban Areas and Cities Act (UACA), 2011 made the delivery of urban services a statutory requirement. The Act confers the responsibility for local urban service delivery to the county governments. The Act also recognises five cities namely: Nairobi, Mombasa and Kisumu. These were recognized in 2011. Nakuru and Eldoret were recognized as cities with an amendment to the

UACA Act in 2017. The first schedule of the UACA provides that cities provide the following basic services: water and sanitation; storm drainage; fire-fighting and disaster management; refuse collection; and solid waste management.

Access to basic urban services within cities is poor and lagging far behind the rising demand, this is exerted by growing urban populations. The level of access is disproportionately favorable to higher income households. High urbanization will continue to put pressure for service delivery on the cities. While the Third Basis for sharing revenue among the county governments contains a parameter on urban services with a weight of 5 percent, the needs of cities require enhanced funding. The Commission recommends that future Commissioners consider additional targeted funding for cities so that they can effectively and efficiently deliver basic services.

iii. Division of Revenue

In line with Article 203(3) of the Constitution, the revenue shared between the national and county governments must first be audited and approved by Parliament. However, the process of tabling the audits before Parliament for approval has been very slow, as a result, the sharing of revenues has not been based on recent revenue bases. For instance, the recommendation on revenue sharing for the financial year 2022/23 was based on audited accounts for the financial year 2017/18. The future commissioners should initiate conversations with Parliament so that the sharing of revenue is based only on the audited accounts.

iv. Review of the CRA Act

The Commission's Act having been established ten



CRA Commissioners at launch of Third Formula on the December 18, 2018

years ago requires a review to adopt to the changing fiscal environment with regard to: the definition of revenue; obligations of the Commission's recommendation; and functions of Commissioners among other responsibilities.

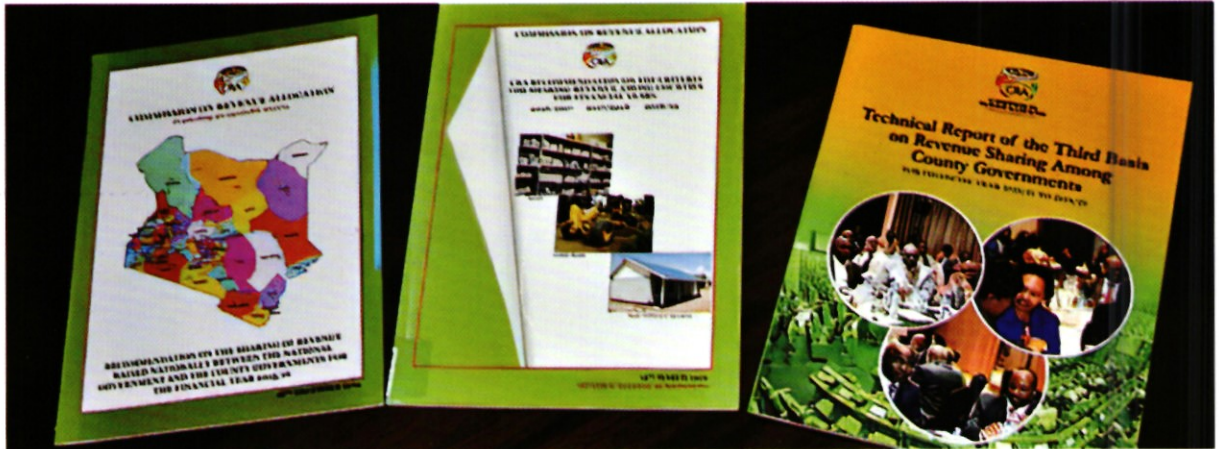
v. *Gazettement of CRA Regulations*

The Second Commission initiated the process of development of the Commission's Regulations. The objective of these Regulations is to set out the structure and procedure for the carrying out functions of the Commission as provided in the Constitution and the Commission on Revenue Allocation Act.

The process is still ongoing and is not completed due to limited resources. Therefore, the future Commissioners should continue and conclude this process.



Pictorial



The Commission visit to the institute of Social Sciences in India.

CRA Chairperson, Dr. Jane Kiringai, and Commissioner Fouzia met with the Moyale Deputy Sub County Administrator, Ms. Halima Ibrahim.





Commissioners during a visit to Tana River County, one of the marginalised areas in Kenya



The Second Commissioners during a budget preparation meeting



The Commissioners at a mediation meeting between the Elgeyo Marakwet County Executive and the County Assembly



Stakeholders Workshop for the Preparation of the Third Revenue Allocation Formula on the September 24, 2018

A meeting with the Governor of Kericho County Paul Chepkwony



The Second Commission received the Devolution Warrior Award at the Devolution Conference 2017 in Naivasha



Public Participation on the ThirdBasis, February 7, 2019

Presentation of goats to members of the Recce Squad to appreciate their support following the attack on the Dusit hotel on January 15, 2019



Presentation of foodstuff to the Head of Recce Squad following the attack on the Dusit hotel in Nairobi on January 15, 2019





Commission on Revenue Allocation



14 Riverside Drive, Grosvenor Suite,
2nd Floor.

P.O. Box 1310 – 00200
Nairobi.

Tel: 020-4298000 / 0709-822000
/ 0708-106 072 / 0708-752 539 /
0731-776 666

info@cra.go.ke

<https://www.cra.go.ke>