

REPUBLIC OF KENYA



PARLIAMENT
THE SENATE

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of the Senate by Chairperson
of the Standing Committee on
Finance, Commerce and
Budget on 1/04/2015*



ELEVENTH PARLIAMENT - THIRD SESSION

REPORT OF THE SENATE STANDING COMMITTEE ON FINANCE,
COMMERCE & BUDGET ON OPERATIONS OF MAKUENI COUNTY
ASSEMBLY

*Hon. Speaker
You may approve
for tabling.
2000
25/03/15*

*Approved
~~Signature~~
26/3/15*

PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2015



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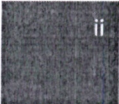
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PREFACE

Mr. Speaker Sir, on behalf of the Members of the Standing Committee on Finance, Commerce and Budget and pursuant to Standing Order 203(6) of the Senate, I hereby present to this House, the Committee's Report on the Operations of Makueni County Assembly.

Mr. Speaker Sir, it is significant to mention that the purpose of this report is to protect and enhance the independence of County Assemblies in performing their statutory functions of representation, legislation and oversight as espoused in chapter eleven (11) of the Constitution of Kenya and Section 9 of the County Governments Act, 2011.

Mr. Speaker Sir, the Committee deliberated on the operations of the Makueni County Assembly and consulted the following key stakeholders; the Speaker Makueni County Assembly, the County Executive Committee Member (CECM) for Finance and Economic Planning, Makueni County Government, the Controller of Budget, the Transitional Authority and the Commission on Revenue Allocation and hereby tables a report, containing its observations and recommendations.

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

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

Mr. Speaker Sir, the Committee on Finance, Commerce and Budget was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MP. -Chairperson
2. The Hon. Sen. Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.
5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. Boni Khalwale, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. (Dr.) Zipporah Kittony, MP.
10. The Hon. Sen. James Mungai, MP.
11. The Hon. Sen. Catherine Mukite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP

COMMITTEE SITTINGS

In deliberating on issues affecting the County Assembly of Makueni, the held the following sittings:

- a) At a sitting held on Wednesday 3rd December, 2014 the Committee considered a prayer by the County Assembly of Makueni. The Committee was informed that the Makueni County Executive responsible for Finance had stopped the transfer of funds to the County Assembly of Makueni on grounds that the Assembly failed to submit its books of accounts for inspection by the County Executive and that the Assembly used funds for foreign travel which had not been approved in the budget.
- b) On 24th February, 2015, the Committee held a meeting with the County Assemblies Forum leadership (CASF) and among others; discussed the challenges facing County Assemblies on the matter of ceilings on recurrent expenditure by the CRA.
- c) On 10th March, 2015, the Committee held a consultative meeting with the County Assembly of Makueni, the Controller of Budget, Transition Authority and Commission on Revenue Allocation to deliberate the roles

of each stakeholder and clarify on matters concerning the operations in the County Assembly of Makueni.

Summary of Recommendations

From the deliberations that ensued, the Committee made the following recommendations:

- i) the Commission on Revenue Allocation and Controller of Budget should release funds to the County Assembly subject to their requisition and the provisions of the PFM Act 2012 without necessarily disrupting the operations of the County Assembly;
- j) The Commission on Revenue Allocation to review the budget ceilings for the County Assembly in consultation with the County Assembly Speaker and the County Executive Committee Member Finance with the view to increasing the allocation;
- k) The Controller of Budget, Transition Authority, Commission on Revenue Allocation to ensure that the standoff in Makueni is addressed with a view to proposing possible solutions of ensuring this does not happen in other Counties;
- l) While appreciating the importance of financial accountability, the roles and independence of each arm of County Government should be respected at all times;
- m) The County Executive and the Assembly should build synergy in addressing pending issues which are affecting service delivery. Funds meant for recurrent expenditure for the County Assemblies should be released with immediate effect;
- n) Arising from a concern that budget ceilings for 2014/2015 are not tenable, there is need for a more consultative process in the setting of ceilings to ensure that the ability and capacity of the County Assemblies to perform their oversight role and tame the excesses of the County Executive is safeguarded;
- o) The Commission on Revenue Allocation and Controller of Budget to liaise with the Integrated Financial Management Systems directorate to ensure that County Assemblies are connected to the IFMIS and G-pay systems to enhance resource flow, accountability and independence in financial resource use by the County Assemblies; and,

- i) The Committee recommends that the 2015/16 budget ceiling for recurrent expenditure be enhanced to enable the County Assemblies carry out their oversight functions.

ACKNOWLEDGEMENT

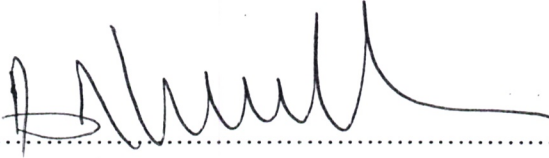
Mr. Speaker Sir,

The Committee is grateful to the Makueni County Assembly, especially the Speaker and County Assembly Clerk, Controller of Budget, Transition Authority and Commission on Revenue Allocation who appeared before the Committee to make presentation and respond to matters raised share on the operational capacity of the County Assembly of Makueni.

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

Mr. Speaker Sir,

On behalf of the Committee, and pursuant to standing order 201(6), It is therefore my pleasant and honourable duty to present and lay on the table of the House the report of the Finance, Commerce and Budget Committee regarding the operations of the County Assembly of Makueni for consideration and subsequent adoption.

SIGNED: 

CHAIRPERSON -SEN. BILLOW KERROW

DATE: 19-03-2015.

I. INTRODUCTION

Background on the status of Makueni County Assembly.

- 1) **Mr. Speaker Sir**, as part of its oversight role, the Committee considered the letter from the Clerk of the County Assembly of Makueni, forwarded to the Committee by the Clerk of the Senate detailing on the challenges facing Makueni County Assembly
- 2) The process of developing the County Budget, Appropriation Bill and approval of the County Finance Bill has been slow and full of constant disagreements between the two arms of government. Contention especially on the issue of the CRA proposed budget ceiling for the County Assembly that the Executive has tried to implement has been one of the biggest areas of disagreement
- 3) **Mr. Speaker Sir**, Service delivery is the primary goal of devolution; therefore the programmes designed in the County Budget and County Integrated Development Plan (CIDP) are key to realizing citizens' aspiration on socio-economic development. Constant wrangles between the two arms government on budget implementation and level of oversight has delayed the gains of devolution to the Makueni County citizens particularly on efficient service delivery.
- 4) **Mr. Speaker Sir**, the Commission on Revenue allocation (CRA) through a circular **Ref NO.CRA/CGM/VOL.III/99** dated 22nd April, 2014 recommended budget ceilings for both the County Assemblies and County Executive on recurrent expenditure.
- 5) The designation of accounting officers for County Government entities is the preserve of the County Executive Member for Finance and Economic Planning, whereas the accounting officer responsible for the County Assembly is the Clerk of the County Assembly as provided for in the Public Finance Management Act 2012.
- 6) At a sitting held on Wednesday 3rd December, 2014 the Committee was informed that the Makueni County Executive responsible for Finance had stopped the transfer of funds to the County Assembly of Makueni on grounds that the Assembly failed to submit its books of accounts for inspection by the County Executive and that the Assembly used funds on foreign travel which had not been approved in the budget.
- 7) Article 225(3) of the Constitution of Kenya mandates the Office of the Controller of Budget to advise Parliament on financial matters where the Cabinet Secretary responsible for Finance stops the transfer of funds to

a state organ or public entity and Article 252(a)) provides that Office of the Controller of Budget may conduct investigation on its own motion or on a complaint made by a member of the public with regard to budget implementation.

II. SUBMISSION FROM PARTIES

The Committee received submissions from following parties on the standoff in Makueni County Government.

i) Submission from the Makueni County Assembly

The County Assembly of Makueni through the Speaker and the Clerk submitted as follows: That;

1. The County Assembly of Makueni has been experiencing continuous financial frustration by the County Executive. The assembly has been subjected to insufficient and unpredictable flow of funds. This has brought operational risks.
2. According to the rules and regulations governing release of monies to the County, the County Assembly cannot send requisitions for funds directly to the Controller of Budget but through the County Executive Committee Member for Finance.
3. Requisition by the County Assembly is done quarterly. After doing the requisitions, especially from July, 2014, the County Assembly has been forced on numerous occasions to beg the County Executive Committee Member for Finance to submit its requisition for funds to the Controller of Budget as the Controller of Budget does not recognize direct requisition of funds from the County Assembly. Even after the requisitions are sent and approved by the Controller of Budget, the CECM Finance delayed to submit Form C to the Central bank; the form which authorizes Central Bank to release funds to the County Revenue Fund. This has greatly affected the operational autonomy of the County Assembly.
4. From November, 2014, the County Assembly of Makueni has had no finances to operate. Salaries of November and December were paid in mid-January, 2015 and those of January and February, 2015 were paid on Friday, 6th March, 2015. Allowances for MCAs from November had not been paid until last week Friday, 6th March, 2015.
5. On 12th November, 2014, the Clerk of the County Assembly received a letter from the County Executive Committee Member for Finance and

Economic Planning indicating that he had directed the financial institution with whom the Assembly has had banking arrangements with to freeze the Makueni County Assembly Bank Accounts. The grounds stated were that the Assembly had undertaken foreign travel having exhausted their vote on foreign travel and that the Assembly had not given its books of accounts to the CECM Finance for inspection.

6. The true position is that the County Assembly had enough funds in the budget for FY 2014/2015 for foreign travel i.e. Ksh. 50 million and the same had not been exceeded.
7. The Assembly explained to the Executive that it is the Assembly that undertakes oversight over the Executive and not the other way round and maintained that though the Assembly runs open and transparent financial systems and accounts, the books of accounts of the County Assembly are not supposed to be inspected by the County Executive Committee Member Finance but by the auditor general, and other watchdog government agencies like Ethics. In any case the Auditor General and Anti-Corruption Commission and the auditor has always conducted audits on Assembly books. The Assembly explained that the functions the CECM Finance was trying to usurp to oversight the County Assembly were functions of the Clerk of the County Assembly as given by Sections 147 and 148 of the PFM Act.
8. Suppliers of basic items to the County Assembly like stationery and fuel have not been paid from November, 2014. The County Assembly leadership has been forced on several occasions to fund operations of the County Assembly like buying photocopy paper and fuel for the generator and vehicles from their pockets which has been costly.
9. The County Assembly after being starved of financial resources, debated and passed another budget submitted by the County Executive Committee Member Finance to comply with the budget ceilings recommended by the Commission on Revenue Allocation in 2014. Based on that budget, the Assembly cannot even pay the normal sitting allowances of Members of County Assembly from January 2015 onwards. The Members of County Assembly amended the Assembly budget further by reducing the allocation for basic expenses like medical insurance by half just to be in good books with the County Executive and in order to receive their salaries and allowances.

10. With respect to lack of financial autonomy, the oversight role of the County Assembly is compromised and the principle of separation of powers as contained in article 185 of the Constitution is defeated. The MCAs have now agreed to be passing any document that comes from the Governor's office without any scrutiny.
11. The budget Ceilings recommended by the CRA for 2014/2015 were arbitrarily issued without consultations and without due regard to the actual expenditures of the County Assemblies. In Makueni for example, the CRA recommended a ceiling of Ksh. 356 million for 2014/2015 on recurrent expenditure. The amount approved by the County Assembly was Ksh. 613 million for recurrent expenditure. The County Assembly will not be able to operate with the Ksh. 356 million allocations until the end of the financial year. The Assembly will therefore be forced to close its operations at the end of April and wait until July to resume its operations as it shall not have funds for operations.
12. On anticipating that the Appropriations Bill, 2014 would not be passed on time (by 30th June, 2014), the County Assembly passed the Vote on Account as required by Section 134 of the Public Finance Management Act, 2014.
13. The County Assembly received an Appropriations Bill, 2014 from the County Executive Committee Member for Finance on 25th July, 2014 and proceeded to pass it and submitted the same to the Governor for assent.
14. The County Assembly of Makueni has installed an IFMIS system for financial management and opened an operational account at the Central Bank of Kenya in an effort to gain financial autonomy but the two are not operational due to limitations from the National Treasury. In this regard County Assemblies have to depend on the County executive for the stated services.
15. Makueni County Assembly like all other Assemblies in Kenya operate under the mercies of the County Executive on issues of finances thus compromising their ability to discharge their mandate.
16. Given the separation of powers between the Executive and the Assembly, the Assembly is supposed to oversight the Executive and is

accountable to the Auditor General's Office and the Office of the Controller of Budget.

Makueni County Assembly requested the Committee to:

1. intervene and get a lasting solution to delays in exchequer releases and the budget ceilings as recommended by Commission on Revenue Allocation. In so doing the County Assembly will be sure that requisitions made through the Executive member finance are forwarded to the Controller of Budget for timely release of funds hence efficiency in service delivery and,
2. ensure financial independence of the County Assemblies, to enable Assemblies make independent requisitions to the Controller of Budget and funds to be released to the County Assemblies operational accounts.

ii) Submissions from the Makueni County Executive Member Finance

The County Executive Committee Member for Finance and Economic Planning submitted as follows: That;

- 1) The County Government of Makueni has one County Treasury, established pursuant to the provisions of Section 103 of the Public Finance Management Act 2012. This sole County Treasury serves both the County Executive and Assembly.
- 2) The County executive Committee member finance informed the Committee that he is the appointing authority for the accounting officers in each county entity.
- 3) That County Assembly is an entity within the County Government but, the accounting officer to this entity is appointed by law as in the PFM Act 2012.
- 4) The County Assembly can approve County Budgets with or without amendments and forwards it to the Executive for publication.
- 5) He further informed the Committee that section 129(3) of the PFM Act requires that the County Assembly submits its budget estimates to the County Executive member finance for consideration.
- 6) That the County Assembly diverted money voted for the purchase of Deputy Speakers vehicle to other expenditure hence disconnect in financial requirement for the County Assembly.
- 7) That he was implementing the Budget ceilings in budget estimates for both the County Assemblies and County Executive as recommended by the Commission on Revenue Allocation; and as approved by the High Court of Kenya.

- 8) That changes in the appropriation Act 2014 by the County Assembly was uncalled for since their budget was already capped by the ceilings provided by the Commission on Revenue Allocation.
- 9) Delays in the final requisition by the County Assembly were due to late submission of form C.
- 10) That the County Assembly of Makueni has indeed conducted itself as a public entity all along by the following:
 - a) All accounting officers of County Government entities are required to submit their financial statements to the Auditor-General and deliver copies thereof to the County Treasury, the Controller of Budget and the Commission on Revenue Allocation. The Clerk who is the accounting officer of the County Assembly appointed under Sec. 147 of the Public Finance Management Act submitted financial statements to the auditor general and delivered a copy thereof to the County Treasury as required under Section 164(1) and (3) of the Public Finance Management Act 2012.
 - b) Upon establishment of the County Government of Makueni a single account was opened at the Central Bank of Kenya as provided under section 119 (2) of the Public Finance Management Act 2012, through which all funds for the various county government entities are channelled. This account is operated by the County Treasury. The County Assembly has continuously drawn all its funds from this single account, which they should never have done if they were not a County Government entity.
 - c) Under Sec. 119 (1) of the Public Finance Management Act the County Treasury of a County is responsible for authorizing the opening, operation and closing of bank accounts for county government entities. In respect to this provision the County Assembly sought for Authorization from the County Treasury to open and operate its current account to which they draw their funds for both recurrent and development votes
- 11) The County Executive Committee Member Finance had released the 72million last week (6th March, 2015) being the last requisition by the County Assembly. There is no pending requisition with the County Executive Committee Member Finance as of today.

iii) Submissions from the Commission on Revenue Allocation (CRA)

The chairman Commission on Revenue Allocation submitted as follows: That;

- (a) Article 216 (2) of the constitution mandates the commission to make recommendations on other matters relating to financing of, and financial

management by County Governments and to encourage fiscal responsibility.

- (b) The public Finance Management Act 2012 section 117(2A) as amended through the County Allocation of Revenue Act 2014 mandates CRA to make recommendations on County budget ceilings through the Senate.
- (c) That County Governments who have not complied with the budget ceilings can only access their funds on items which do not fall within the ceilings.
- (d) The commission imposed budget ceilings on specific budget items in the recurrent expenditure items to enhance fiscal responsibility for both the county Executive and County Assemblies.
- (e) Makueni County Assembly modified their budget to comply with the budget ceilings and that County Government of Makueni is receiving its requisitions from the Central Bank.
- (f) That the Commission on Revenue Allocation has held meetings with the County Executive Member for Finance and County Clerks on the recommended budget ceilings.

As provided for in the Public Finance Management Act Section 117(2A), Commission on Revenue Allocation will recommend budget ceilings for financial year 2015/16 to the Senate for approval.

iv) Submissions from the Office of the Controller of Budget

The Deputy Controller of Budget submitted as follows: That;

- a) Makueni County Assembly Budget Estimates were above the recommended ceilings by the CRA.
- b) The release of funds to the Assembly was delayed as the CECM Finance did not submit the requisition for the County Assembly on time.
- c) Even after the requisitions were received and approved by the Controller of Budget in December, 2015 the CECM Finance delayed to submit Form C to the Central bank; the form which authorizes Central Bank to release funds to the County Revenue Fund. This was part of the reasons why funds were further delayed.
- d) The Makueni County Assembly has since received all monies to the last requisition.

III. COMMITTEE OBSERVATIONS

The Committee raised concerns about the emerging issues and subsequently made the following observations:

- a) The Controller of Budget, Transitional Authority and Commission on Revenue Allocation had not proactively intervened on the matter and had failed to provide a timely advisory to the County Government of Makueni on the matter;

- b) The Transitional Authority should clearly define the roles of the County Assembly and County Executive as entities of the PFM Act (Section 127);
- c) The County Assembly of Makueni has a mandate and role in the budget making process (Section 129(3)) of the PFM Act and should be independent in approving the budgets for the County Government;
- d) County Assemblies are not getting their funds directly through their own operational accounts;
- e) There were concerns that the County Executive were spending more than the set ceilings. The Controller of Budget and the Commission on Revenue Allocation are only keen on controlling the budgets and expenditures of the County Assembly but not the County Executive;
- f) The County Assembly had utilised funds released as per the Court orders on non- priority votes such as foreign travel hence the challenges related to finances. There were concerns over the number of foreign trips by the County Executive; and,
- g) The County Executive Committee Member Finance over-reacted by freezing the finances of the County Assembly pursuant citing Section 105 of the Public Finance Management Act 2012, because of delay in submission of financial reports and other pertinent information relating to public financial management at the County Government.

IV. RECOMMENDATIONS

The Committee recommends as follows:

From the deliberations that ensued, the Committee made the following recommendations:

- q) the Commission on Revenue Allocation and Controller of Budget should release funds to the County Assembly subject to their requisition and the provisions of the PFM Act 2012 without necessarily disrupting the operations of the County Assembly;
- r) The Commission on Revenue Allocation to review the budget ceilings for the County Assembly in consultation with the County Assembly Speaker and the County Executive Committee Member Finance with the view to increasing the allocation;
- s) The Controller of Budget, Transition Authority, Commission on Revenue Allocation to ensure that the standoff in Makueni is addressed with a view to proposing possible solutions of ensuring this does not happen in other Counties;
- t) While appreciating the importance of financial accountability, the roles and independence of each arm of County Government should be respected at all times;

- u) The County Executive and the Assembly should build synergy in addressing pending issues which are affecting service delivery. Funds meant for recurrent expenditure for the County Assemblies should be released with immediate effect;
- v) Arising from a concern that budget ceilings for 2014/2015 are not tenable, there is need for a more consultative process in the setting of ceilings to ensure that the ability and capacity of the County Assemblies to perform their oversight role and tame the excesses of the County Executive is safeguarded;
- w) The Commission on Revenue Allocation and Controller of Budget to liaise with the Integrated Financial Management Systems directorate to ensure that County Assemblies are connected to the IFMIS and G-pay systems to enhance resource flow, accountability and independence in financial resource use by the County Assemblies; and,
- x) The Committee recommends that the 2015/16 budget ceilings for recurrent expenditure be enhanced to enable the County Assemblies carry out their oversight functions effectively.

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

MEMBERS PRESENT

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

MEMBERS ABSENT

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

MEMBERS OF THE COUNTY SPEAKERS FORUM

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

SECRETARIAT

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

MIN. 045/2015: PRELIMINARIES

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

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

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

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

The agenda of the day was adopted as follows;

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

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

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

He informed the Committee that:

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

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

The Committee was further informed that:

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

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

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

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

From the deliberations that ensued;

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

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

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

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

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

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

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

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

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

It was resolved that;

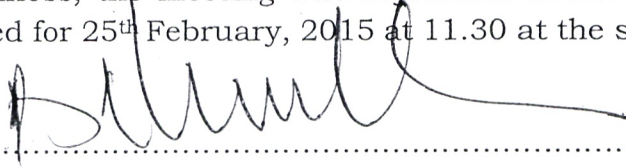
- 1) the Commission on Revenue Allocation (CRA), the Transitional Authority (TA) and the Controller of Budget be invited to a meeting of the Committee on Wednesday, 3rd March, 2015 to respond to the matters raised by the CASF;
- 2) The Committee convenes a high level workshop to deliberate on matters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

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

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

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

SIGNED:



CHAIRPERSON -Sen. Billow Kerrow

DATE: 19-03-2015

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

PRESENT

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

ABSENT

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

IN ATTENDANCE

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

SECRETARIAT

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

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

MIN. 058/2015: PRELIMINARIES

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

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

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

1) Makueni County Assembly

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

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

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

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

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

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

They requested the Committee to;

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

Concerns Raised by Members

Members raised concern on the following issues.

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

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

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

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

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

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

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

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

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

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

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

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

Resolutions

From the deliberations that ensued, it was resolved that;

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

MIN.061/2015: ANY OTHER BUSINESS

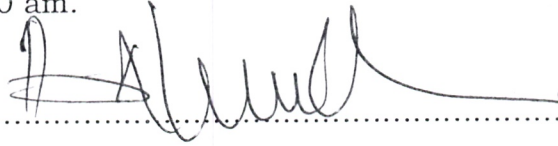
He informed members on the following upcoming events.

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

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

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

SIGNED:



CHAIRPERSON -SEN. BILLOW KERROW

DATE:

19-03-2015

