REPUBLIC OF KENYA

HARAMBEE

PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

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Recommended for approval for tabling.
10/05/22

Rt. Hon. Speaker
You may approve for tabling.
10/05/22

Approved
10/5/2022

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET

ON

THE COUNTY ALLOCATION OF REVENUE (SENATE BILLS NO. 1 OF 2022)

PAPERS LAID	
DATE	MAY 10. 2022
TABLED BY	SEN. FARHIYA HAJI
COMMITTEE	FINANCE & BUDGET
CLERK AT THE TABLE	M. ADJIBSON

CLERK CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

MAY 2022

DC-EG
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10/05/2022

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PREFACE

Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya, provides for the establishment of committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in plenary on inquiry of certain issues under the mandate of a particular committee.

The Standing Committee on Finance and Budget is established pursuant to standing order 212(3) of the Senate Standing Order and is mandated –

a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –*
   i) *the Budget Policy Statement presented to the Senate;*
   ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
   iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*
   iv) *to 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 and monetary policies and public debt, planning and development policy and*

b) *To pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

Further, the Public Finance Management Act, 2012 section 8 (1)(b) on the responsibility of the Senate Budget Committee in public finance matters provides that- *The Committee of the Senate established to deal with budgetary and financial matters has responsibilities to review the County Allocation of Revenue Bill and the Division of Revenue Bill in accordance with Article 218(1)(b) of the Constitution at least two months before the end of the financial year*.

Membership of the Committee

The Standing Committee on Finance and Budget was constituted by the House on Thursday, 14th December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24th June, 2020, during the Fourth Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

1. Sen. Charles Kibiru, MP - Chairperson
2. Sen. (Dr.) Ochillo Ayacko, EGH, MP, - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Kimani Wamatangi, MP - Member
5. Sen. Mutula Kilonzo Junior, CBS, MP - Member
6. Sen. Aaron Cheruiyot, MP - Member
7. Sen. Rose Nyamunga, CBS, MP - Member
8. Sen. CPA Farhiya Haji, MGH, MP - Member
9. Sen. Milicent Omanga, MP - Member

BACKGROUND AND EXECUTIVE SUMMARY

The County Allocation of Revenue Bill was introduced by Sen. Charles Kibiru, MP the Chairperson the Standing Committee on Finance and Budget Committee pursuant to the provisions of standing order 182 (1) of the Senate Standing Orders. The Bill was published on 8th April, 2022 and subsequently tabled in the House for First Reading on 27th April, 2022. Thereafter committed to the Standing Committee on Finance and Budget for consideration pursuant to standing order 140(1) of the Senate Standing Orders.

The Committee invited members of public and stakeholders *inter alia* the National Treasury, the Commission on Revenue Allocation, the Council of County Governors, the County Assembly Forum and the Society of the Clerks At-The-Table (SOCATT) to submit their comments on the Bill.

The principle object of the Bill is to allocate among counties the share of national revenue that is annually allocated to the county level of government for the Financial Year 2022/23.

Pursuant to Article 217 of the Constitution, the Senate in 2020 approved the Third Basis for allocating among the counties the share of national revenue annually allocated to the county level of government. Further, Article 96 (3) of the Constitution provides that the Senate determines the allocation of national revenue among counties. The Bill provides for the equitable allocation of revenue to counties based on this basis.

The bill proposes an allocation of Kshs. 370.0 billion which is the county equitable share for Financial Year 2022/23. The allocation among counties is as set out in the First Schedule to the Bill.

Further, the bill proposes budget ceilings on recurrent expenditure in Financial Year 2022/2023 for county executives and county assemblies at Kshs. 28,486,731,674 and Kshs. 34,493,121,001 respectively.

The Committee extensively considered the recommendations of Commission on Revenue Allocation (CRA), requests by CAF, SOCATT and various county assemblies on the county government recurrent expenditure ceilings for the Financial Year 2022/23 pursuant to the provisions of Section 107 (2) (a) of the PFM Act, 2012 and made several observations.

The Committee recommends that the House approves the Bill with amendments on the Second Schedule.

ACKNOWLEDGEMENTS

The Committee acknowledges all the stakeholders and members of the public who made insightful contributions and recommendations to the Bill.

In addition, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate. Appreciations to all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time.

This report is hereby submitted to the Senate for consideration and adoption pursuant to Standing Order 213 of the Senate Standing Orders.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on the County Allocation of Revenue Bill (Senate Bills No. 1 of 2022).

SIGNATURE: ____________________

SEN. CHARLES KIBIRU, MP.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

DATE: 10th May, 2022

CHAPTER ONE

INTRODUCTION

The County Allocation of Revenue (Senate Bills No. 1 of 2022) was read for the First Time on 27th April, 2022. The main object of the Bill is to provide for the allocation of revenue raised nationally among county governments for the Financial Year 2022/23 as well as the transfer of the county allocations from the Consolidated Fund to the respective County Revenue Funds.

HORIZONTAL ALLOCATION OF REVENUE FOR FINANCIAL YEAR 2022/23

Overview of the County Allocation of Revenue Bill, 2022

1. The County Allocation of Revenue Bill (CARB) is a Bill for an Act of Parliament to provide for the equitable allocation of revenue raised nationally among the respective county governments for the financial year 2022/23.
2. The Bill is prepared in accordance to Articles 217 and 218 of the Constitution which provides for the allocation of equitable share of revenue raised nationally among county governments. The CARB shares equitable revenue nationally raised and allocated to Counties as reflected in the Annual Division of Revenue Act.
3. The CARB guarantees county governments their respective share of revenue raised nationally for service delivery and ensure seamless operations at county level. This is achieved through the enactment of the County Allocation of Revenue Act based on the provisions in the Division of Revenue Act (DORA). The DORA 2022 gives a total allocation of Kshs. 370 billion as equitable share to County Governments.

Content of the County Allocation of Revenue Bill 2022

4. The County Allocation of Revenue Bill 2022 proposes to share the allocation of Ksh. 370 billion amongst the county governments for FY 2022/23. The bill has two schedules relating to-
    i. First schedule on equitable share – **KSh. 370 billion** allocations of each County Government equitable share of revenue raised nationally for Financial Year 2022/23,

ii. Second Schedule on County Government budget ceilings of recurrent expenditure in Financial Year 2022/23.

5. The first schedule provides for the horizontal distribution of the equitable share among the 47 County Governments using the formula approved by Parliament in September, 2020 which is arrived at by using one half of the equitable share allocated to counties in the financial year 2019/ 20 amounting to Kshs. 158. 25 billion and distributing it using the allocation ratio for financial year 2019/22 and netting out from the equitable share of Kshs. 370 billion. The balance of Kshs. 211.75 billion is then allocated among county governments using the Formula as shown below.

INDEX	*PERCENTAGE*	*AMOUNT (KSh. Millions)*
Population	18%	38.12
Health	17%	35.99
Agriculture	10%	21.18
Urban	5%	10.59
Poverty	14%	29.65
Land Area	8%	16.94
Roads	8%	16.94
Basic Share	20%	42.35
TOTAL		**211.75**

SOURCE: PBO COMPUTATION

6. The second schedule is in relation to County Governments' budget ceilings on recurrent expenditure for the County Executive and the County Assemblies for the financial year 2022/23. The recommendations are in fulfillment of the requirement of Articles 216 (2) and (3)(c) of the Constitution and Section 107 (2) (a) of the Public Finance Management Act (PFMA) 2012.

County Assembly & Executive Ceilings

7. The Commission on Revenue Allocations review existing legislation and Salaries and Remuneration Commission (SRC) circulars on personnel benefits and adjust expenditure to factor increase and decrease in salaries and allowances as provided.

Analysis of County Assembly ceilings

8. County Assembly ceilings cover expenses on personnel emoluments, mileage allowance for all MCAs, training and Insurance and other Operations & Maintenance. The County Assembly ceilings recommended by the CRA for the FY 2022/23 is Kshs. 34.49 billion which is a reduction when compared with the ceilings for the FY 2021/22. Table 1 shows a trend of the County Assembly ceilings from the FY 2014/15- to 2022/23.

Table 1: County Assembly Ceilings FY 2014/15-2022/23

No.	YEAR	County Assembly	Percentage change
1	2014/15	16,879,992,217	-
2	2015/16	27,493,395,927	62.88%
3	2016/17	29,060,469,640	5.70%
4	2017/18	28,897,399,203	-0.56%
5	2018/19	32,783,118,606	13.45%
6	2019/20	33,247,585,464	1.42%
7	2020/21	33,247,585,464	0.00%
8	2021/22	35,656,167,688	7.24%
9	2022/23	34,493,121,002	-3.26%

Source: CARA (Various)

9. An overview of the allocations as shown in table 1 reveal the County Assembly ceilings increased from Kshs. 16.88 billion in the FY 2014/15 to Kshs. 35.65 billion in the FY 2021/22. The major increase was in the FY 2015/2016 and the FY 2018/2019 in which the ceilings increased by 62.8 percent and 13.5 percent respectively. However, the ceilings remained the same for the FY 2019/20 and 2020/21.

10. In the FY 2021/22 the CRA recommended Kshs.33.25 billion for County Assemblies however, the Senate adjusted the ceilings to Kshs. 35.65 billion. The adjustment of Kshs. 2.41 billion was to cater for County Assembly pending bills of Kshs. 980 million and staff annual salary increments of Kshs. 1.42 billion.

11. In the FY 2022/23, the CRA has recommended Kshs. 34.49 billion for the County Assembly ceilings. This represents a reduction of Kshs. 1.16 billion, which is as a result of non-inclusion of pending bills as was the case in FY 2021/22 and adjustment for salaries of MCAs after the General Elections as their salary will be starting at the base level.

Analysis of County Executive Ceilings

12. County Executive ceilings cover expenses on personnel emoluments, training and Insurance and other Operations & Maintenance. The County Executive ceilings recommended by the CRA for the FY 2022/23 is Kshs. 28.48 billion which is an increment of Kshs. 1.78 billion when compared with the ceilings for the Financial Year 2021/22. Table 2 shows a trend of the County Executive ceilings from the FY 2014/15- to 2022/23.

Table 2: County Executive Ceilings FY 2014/15-2022/23

No.	Year	County Executive	Percentage change
1	2014/15	13,356	-
2	2015/16	20,663	54.71%
3	2016/17	20,843	0.87%
4	2017/18	25,886	24.20%
5	2018/19	26,779	3.45%
6	2019/20	26,708	-0.27%
7	2020/21	26,708	0.00%
8	2021/22	26,708	0.00%
9	2022/23	28,486	6.66%

Source: CRA

13. As shown in table 2 the county executive ceilings increased from Kshs13.35 billion in the FY 2014/15 to Kshs. 26.70 billion in the FY 2021/22. The major increase was in the FY 2015/2016 and the FY 2017/2018 which increased by 54.7 percent and 24.2 percent respectively. However, the ceilings remained the same for the FY 2019/20 to 2021/22.

14. In the FY 2022/23 the CRA has recommended Kshs.28.48 billion for county executives, this is an increase of 6 percent when compared to the Kshs. 26.70 billion approved in the FY 2021/22.

CHAPTER TWO

SUBMISSION BY STAKEHOLDERS

2.1 Submission by the Commission on Revenue Allocation (CRA)

The CRA made a presentation as follows-

15. The Bill should be consistent in reference to the Third basis for revenue Sharing among county governments. In some instances, its referred to as criteria or formulae. Recommended usage of the term as referred in Article 217 of the Constitution.
16. The Commission on Revenue Allocation (CRA) developed the recommendation on County Governments' Recurrent Expenditure Budget Ceilings for FY 2022/23 and forwarded to the Senate on 21st December 2021 for consideration.
17. In determining the County Assemblies recurrent expenditure ceilings, the following were considered-

a) Salaries, allowances, mileage, insurance and gratuity for Speakers and MCAs.
b) Salaries, allowances, insurances and pension for Assemblies staff.
c) Salaries, allowances and gratuity for County Assembly Service Board and secretariat.
d) Salaries and allowances for partisan staff for all MCAs.
e) Provision for Operations and Maintenance.
f) Provision for oversight and public participation.
g) Provisions for training and induction of the assemblies.
h) Provision for operations of audit committees.

18. In determining the County executives' recurrent expenditure ceiling the following were considered-

a) *Salaries, allowances, mileage, insurance and gratuity for Governors and Deputy Governors.*
b) *Salaries, allowances, mileage, insurance and gratuity for County Secretary and CEC Members.*
c) Salaries, allowances and gratuity for county attorney.

d) Salaries, allowances, insurance and pension for county administrative staff.
e) Salaries, allowances for Governor and Deputy Governor allocated staff.
f) Salaries, allowances and gratuity for County Public Service Board.
g) Provisions for operationalization of audit committees.
h) Provision for operational and maintenance.
i) Provision for training and induction of executive.
j) Provision for operationalization of county Budget Economic forum.

19. The Commission recommendation for County Assembly recurrent expenditure ceilings for the FY 2022/23 is Kshs. 34.49 billion while the County executive recurrent expenditure ceilings recommended for the FY 2022/23 is Kshs. 28.48 billion. which is an increment of Kshs. 1.78 billion when compared with the ceilings for the Financial Year 2021/22.

2.2 Submission by The Institute for Social Accountability (TISA)

The Institute for Social Accountability made a submission on the bill regarding funding of the transferred functions (clause 6) as follows-

20. Referring to Article 10, 187 and 200 of the Constitution, section 25, 26, 27, 29 of the Intergovernmental Relations Act the Institute observed that the proposed modalities of funding of transferred functions under clause 6 of the County Allocation of Revenue Bill are inadequate.
21. They recommended that Parliament should enact regulations to operationalize section 25, 26,27, 29 of the Intergovernmental Relations Act. The regulations should include a comprehensive resourcing framework for delivery of powers, function or competency transferred or delegated from one level of government to another as well as public participation in the decision-making process.

2.3 Submission by Busia County Assembly

The County Assembly of Bungoma made a submission on the Bill as follows-

22. Status of pending bill as provided in the CARA 2021- The Assembly was allocated KSh 30,336,326 through CARA 2021 for pending bill. The amount is to be paid through exchequer requisition of April and May 2022 after CECM responsible for Finance has ascertained the amount pursuant to the Senate resolution
23. Current Status of pending bills- The outstanding pending bill of KSh 68,110,860 owed to Busia County Assembly. The Revolving fund being car loan and mortgage loan payroll recoveries yet to remitted to the fund due non disbursement of all budgeted revenues during FY 2014/2015,2015/2016 2016/2017 and 2017/2018 to by the County Exchequer

    The office of the Auditor General undertook a special audit on pending bills and through its Audit report dated 23rd December 2021 established that outstanding eligible pending bills and other payables as at 30th April 2021 was KSh 110,705,395. We have managed to settle part of the outstanding pending bills and we have since remained with KSh 68,110,860 as pending bill owed to Car loan and Mortgage fund as 30th March 2022.

24. Additional allocation for pending bill amount of KSh 37,774,534 during CARA 2022- The Assembly requests for an allocation of an additional of KSh 37,774,534 to enable clearance of outstanding pending bill owed to car loan and mortgage fund during the FY 2022/2023 Budget.

    The Assembly had requested KSH KSh 68,110,860 through SOCATT during consideration of ceiling for CARA 2021 however allocation made was KSh 30,336,326. Thus, at the end of this financial year a balance of KSh 37,774,534 and hence the justification for this additional request.

2.4 Submission by Bungoma County Assembly

25. The current County Assembly of Bungoma ceilings has constrained funding of critical programs and projects while at the same time failing to consider the effects of external shocks on the economy, such as the escalating costs of fuel.
26. Total County Assembly spending in 2022/23 fiscal year is projected at Kshs. 1.2 billion comprising both recurrent spending and development expenditure. The proposed ceiling as per the second schedule is Kshs. 871,842,235 in the FY 2022/23 compared to Kshs. 890,983,497 in the FY 21/22. This represents a projected deficit of over Kshs. 328 million.
27. Requested for a ceiling increase that would enable sustain implementation of various reforms and infrastructural development targeted at enhancing efficiency in the delivery of public services, while supporting structural and governance reforms. Among the critical projects that must be implemented in this fiscal year 2022/23 to realize optimal County Assembly services include-
    a) Operationalizing of the County Assembly office complex. The associated costs of this project include equipping with supportive infrastructure, office tools and equipment at an estimated cost of Kshs. 50 million
    b) Automation of a Fixed Asset register; Kshs. 10,000,000.
    c) Integrated Security Management System (ISMS) like Intrusion detectors, under belly scanners, CCTV expanders, HFM radios, walk through scanners and communication gadgets. The installations can be phased out with an initial requirement of Kshs. 20 million.
    d) Car grant for the 65 New MCAs at Kshs 130 million
    e) Pending bills which includes:
        - Team mate Audit Management system - Kshs. 3,550,418.57; and
        - Hansard System pending bill of Kshs. 2,709,406.29
    f) Capacity development of Members of County Assembly (MCA). There is need to plan for the incoming MCAs in August. These members will attract

extra costs for induction and training to enhance their capacity for the delivery of their mandate. The total Cost Kshs. 50 million

g) Public participation. The law requires the assembly to conduct public participation for every bill, petition, and regulations considered. There has been an annual budgetary increase requirement for the enhanced public participation forums. An additional 10 million will ensure compliance.

h) Improved ICT infrastructure with a plan of the County Assembly going paperless. These includes:

- Procuring of ICT Equipment to be used in the Assembly offices; to replace of the obsolete/ faulty equipment in use. Kshs 5 million
- Procuring of Tablets to be used in the Assembly by the new MCAs Approx. 65; Kshs. 6,500,000
- Back up for Website, Intranet, BAR, Workstation data and other available systems at Kshs.3 million
- Business Continuity, Data Centre, Data Recovery & Disaster Management Policy development training & implementation Kshs. 10 million.

On development:

Construction of Speaker's official residence as per the requirement of SRC at Kshs. 35 million.

2.5 Submission by County Assembly of Nairobi City

The county Assembly of Nairobi City made submissions on the bill as follows-

28. The recurrent expenditure ceilings for Nairobi City County Assembly for the FY 2022/23 have been reviewed downwards in comparison with the current FY from **Kshs1,545,872,087** to **Kshs1,444,469,758.**

29. Accordingly, in order to accommodate pressing needs of the County Assembly and to cater for the uniqueness of Nairobi City County Assembly as a City County Assembly, requested the Senate to consider enhancing the recurrent ceilings for the Nairobi City County Assembly by **Kshs 420 million.**

Additional allocation to cater for meaningful Public Participation

30. Public participation is a crucial pillar of the Kenyan Constitution and provides the public with the opportunity to take part in decision-making processes in government. Article 196(b) of the Constitution and Standing Order 131 of Nairobi City County Assembly require public participation in the legislative and other business of the County Assembly and its Committees.

31. The County Assembly has not been achieving meaningful public participation as envisaged under the Constitution due to limited funding. The only avenue of engaging the public has been through inviting residents to Charter Hall, City Hall for them to give their views on business before the Assembly and its Committees. This approach leaves out the views of many residents who cannot congregate at Charter Hall.

32. The County Assembly has been sued on several occasions for failure to conduct meaningful/reasonable public participation especially on the Budget process. This has led to unnecessary expenditure on Legal Fees and nullification of laws/policies enacted by the County Assembly thus exposing the County in terms of seamless performance. For instance, the **High Court** in ***Constitutional Petition No. 104 of 2020; Kaps Parking Limited & another vs the County Government of Nairobi City & Nairobi City County Assembly*** agreed with the Petitioners and issued the following Orders.

33. The County Assembly faces the following limitations while conducting public participation-

(a) High population:

34. Nairobi City County has an estimated population of 4.4M spread across 17 constituencies and 85 wards. In order to reach this population and have meaningful public participation, the County Assembly especially the Committees must hold public forums in each of the 85 Wards on every substantive business before it. The County Assembly has 15 Committees which considers business such as Bills, Petitions, Budget documents and inquiries that must be subjected to public participation. This comes with the following associated costs such as hire of halls, Public Address Systems, transport re-imbursement to Members and Participants, security mobilization especially in informal settlements, refreshments, documentation, mobilization of residents.

(b) Myriad business subjected to public participation:

35. Nairobi City County is a unique County and the number of business transacted in the County Assembly and which must be subjected to public participation is enormous. For instance, in the past two Financial Years, the County Assembly has been involved in the approval of business related to the Transfer of Functions to the National Government under the Nairobi Metropolitan Services (NMS). Other business includes Bills, Budget related documents, approval of nominees, and impeachment of County Executive Officials amongst others. Furthermore, due to the centrality of Nairobi to the Kenyan economy, the National Government has been developing policies in collaboration with the County Government as a way of making the City an international business hub. These policies creating institutions such as the Nairobi Metropolitan Area Transport Authority (NAMATA), require public approval through the County Assembly. This will require extensive public participation exercises by the County Assembly.

36. Accordingly, requested an additional **<u>Kshs 40 million</u>** over and above the allocated amount to facilitate conduct meaningful/reasonable public participation as detailed hereunder: -

Estimated No. of business in the FY	Estimated additional cost per business	Total Cost
10	4,000,000/=	40,000,000/=

Additional funds for renting and furnishing of Offices for Members of the County Assembly within the CBD.

37. The County Assembly has never acquired sufficient office space for staff and Hon. Members. The Plenary Chamber and Committee Rooms are located at City Hall within the Nairobi CBD. At City Hall, the office space is limited and only a few staff and the Assembly leadership have been allocated office space. Hon. Members therefore have no offices with the CBD.

38. In view of the above, the County Assembly has budgeted in its Development Budget the acquisition of an Administration Block to host the Hon. Members and Staff within the CBD. However, due to the long procurement process associated with the acquisition of the block, the acquisition process may not be achieved in the next FY. As such, the County Assembly intends to rent and furnish offices for the MCAs within the CBD in the next FY. Due to the nature of the Offices and the cost of renting offices within the CBD and associated furnishing costs, it is estimated to cost **Kshs 80 million** as detailed hereunder-

Cost of leasing		
Office space requirement (sq.ft)	**Estimated cost per sq.ft (Kshs) per annum**	**Total Cost**
40,000	960/=	38,400,000/=

Other associated costs		
Item description	**Estimated cost (Kshs)**	
Furnishing	26,000,000/=	
Annual Utility Bills	15,600,000/=	
Total		41,600,000/=
Total		**80,000,000/=**

Additional allocation to cater for pending litigation costs.

39. The County Assembly has been incurring heavy litigation costs over the years. These litigation cases relate to the impeachment, passage of laws and approval of the budget. Of particular concern was the Financial Year 2020/2021 whose effects have spilled into the current financial year 2021/2022 and the same is likely to spill over to the next Financial year.
40. Due to this influx of litigations the Assembly has received demands on litigations amount to Ksh.300M. It is appreciated that litigation is an expenditure outside the control of any institution. However, where the formation is known at the planning stage, it is only fair and justifiable to make necessary financial provisions. It is imperative to note that failure to meet these litigation costs creates more costs in form of penalties imposed by the courts.

2.6 Submission by County Assembly Forum

41. CAF appreciates Parliament for coming up with this Bill which seeks to provide, pursuant to Article 218(1)(b) of the Constitution, for the allocation of an equitable share of revenue raised nationally among the county governments, in accordance with the resolution approved by Parliament under Article 217 of the Constitution for the financial year 2022/23 and to facilitate the transfer of allocations made to counties under the Act from the Consolidated Fund to the respective County Revenue Funds.

42. CAF commends this Bill for coming up with Additional Sections unlike the County Allocation of Revenue Bill, 2021 which had limited clauses and sections. The 2022 Bill introduces sections providing for modalities of funding of transferred functions, actions constitution to financial misconduct and publishing of monthly reports among others which enhances accountability.
43. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes that CLAUSE 5 on Budget Ceilings for recurrent expenditure- requests for consideration and increase of County Government Budgetary ceilings on recurrent expenditure in Financial year 2022/2023. The justification is that the provided recurrent expenditure ceilings risks constraining the funding of critical programs and projects of County Assemblies. The Forum had received comments from several County Assemblies, all complaining about the effects of the reduction of the ceilings.

2.7 Submission by Society of Clerks at The Table in Kenya (SOCATT-K)

The Society of Clerks at the Table (SOCATT-K) submitted the following views for consideration-

44. Induction costs- The County Assemblies will be transitioning to the third session Assemblies in the coming financial year. The newly elected members of the County Assemblies will require their capacities regarding their respective mandates enhanced in order to discharge their duties effectively hence the need for additional resources to conduct the induction trainings within the recurrent budgets.
45. Annual Increment of Staff Salaries- The proposed recurrent budget ceilings have not adequately considered the annual increment of the emoluments for County Assembly service. This amount computed reflects to a total amount of Kshs two hundred sixty-seven million, one hundred and eight thousand, and one hundred ninety sixty.

46. Operations and Maintenance costs- Inflation- currently at 6.5 % annually, thus need for revenue allocation to anticipate effects of the inflation and cushion the County Governments from the same.

a) Speakers Residence- Some County Assemblies are yet to construct the Speaker's Residence hence need for payment of rent.

b) Medical Insurance: Annual growth on the cost as well as the work injury benefits not provided for in the ceilings.

c) Public Participation- provide for as an independent budget line for it currently consumes 15% of the budget.

47. Other Comments-

a) Requested the Senate to intervene and ensure disbursement to Counties are effected quarterly and not monthly to mitigate the effect of pending bills and ensure that all the statutory obligations (including PAYE) are met on time.

b) Garissa County Assembly: Requested for an additional one- of payment of Kshs 20 million above the proposed ceiling to construct County Assembly chambers, furniture and fittings which were razed down by fire. The commission did not object to the proposed increment.

c) Busia County Assembly: Has accumulated pending bills amounting to Kshs 37 million, seven hundred and seventy four thousand, five hundred and thirty four shillings (KSh.37,772,734/-).

2.8 Submission by International Budget Partnership Kenya

The International Budget Partnership Kenya (IBP Kenya) submitted the following to the Committee-

48. Applauded the application of the third determination of the basis of the division of revenue in allocating the equitable share among the counties. However, raised several matters concerning the need for clarity on determination of recurrent expenditure ceilings. Schedule Two of the Bill does not provide information on how the ceilings are generated. It is noted that some counties receive additional resources

while the majority are reduced. For instance, Mandera County is the only one with an increase in the County Assembly ceilings, while the rest have been reduced. What is the rationale for this? Can Senate have this information published to provide clarity on future actions?

49. Allocation, spending, and reporting of the Equalization Fund remains unclear. In every financial year, the government sets aside funds for the Equalization Fund. However, the expenditure and reporting of the fund remain unclear. The IBP called upon Parliament to take up their oversight role by ensuring that reports are provided on allocating and utilizing the equalization fund to reduce the regional disparities among the beneficiary counties.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Observations

50. The Committee made the following observations on the Bill-

a) The proposed county allocation of revenue (horizontal distribution of the equitable share among the 47 County Governments) is based on the third basis approved by Parliament in September, 2020.

b) The increase in the county executive recurrent expenditure ceiling from Kshs. 26.70 billion approved in the FY 2021/22 to proposed Kshs.28.48 billion for FY 2022/23 is mainly due to the need to provide operational costs for the office of the county attorney.

c) The decrease in county assembly recurrent expenditure ceiling from Kshs. 35.65 billion approved in the FY 2021/22 to proposed Kshs. 34.49 billion for FY 2022/23 is due to-

- The salaries and associated benefits to new MCAs will start at the base.
- The provisions to the County Assemblies in FY 2021/22 for clearance of pending bills was a one-off provision.
- Determination of salaries of County Assembly Staff (Salaries, Pension & Allowances) using approved optimum numbers instead of actual number of employees.

d) Notwithstanding the decrease in the county assembly recurrent expenditure ceiling, the provision for training and induction of new MCAs had been adjusted from 5% to 10% of the total personnel emoluments.

e) The request by County Assembly of Garissa to increase its recurrent expenditure ceiling by Kshs. 20 million to enable construction of the chamber and restoration of the equipment destroyed by fire was not tenable as this spending would be classified as development expenditure.

f) The request by Nairobi City County Assembly for adjustments of recurrent expenditure ceiling to enable leasing of MCAs offices within the proximity of the assembly precincts would be expensive in the long run. Additionally, this spending would be classified as development expenditure and not recurrent expenditure.

g) The request by SOCATT to adjust recurrent expenditure ceiling for county assemblies to provide for additional allocation to cater for public participation independent from the operations and maintenance would only be achieved if mechanisms are put in place to ascertain the actual spending.

h) The Kenya Revenue Authority penalizes county governments for delay in filing Pay As You Earn (PAYE) returns even though the delay is occasioned by late payment of employees' salaries due to delay by the National Treasury to disburse of equitable share.

Recommendations

51. The Committee recommends as follows-

a) That the House approves the Bill with the following amendments to the second schedule adjustments of county assemblies' recurrent expenditure ceilings by additional Kshs. 83,353,968 to enable the assemblies compensate the actual numbers of employees.

b) To minimize operational costs, county assemblies renting offices for MCAs' while within the precincts should plan to construct or acquire such offices.

c) County governments should notify KRA of late payments of salaries due to delayed disbursement of equitable share as a means to mitigate the imposition of penalties for delay in filing of PAYE returns.

Annex

1. Proposed Committee stage amendments
2. Minutes of the Committee
3. Submissions from Stakeholders