"OCoB 1"

REPUBLIC OF KENYA

OFFICE OF THE CONTROLLER OF BUDGET

INVESTIGATION REPORT ON BOMET COUNTY BUDGET PROCESS FOR FINANCIAL YEAR 2014/2015

OCTOBER, 2014

TABLE OF CONTENTS

LIST OF TABLES

ACRONYMS

ADP	-	Annual Development Plan
B&A	-	Budget and Appropriation Committee
BE	-	Budget Estimates
CA	-	County Assembly
CBROP	-	County Budget Review and Outlook Paper
CE	-	County Executive
CEC/F	-	County Executive Committee Member, Finance
CFSP	-	County Fiscal Strategy Paper
CGA	-	County Governments Act, 2012
CIDP	-	County Integrated Development Plan
COB	-	Controller of Budget
CRA	-	Commission on Revenue Allocation
DG	-	Deputy Governor
DMSP	-	Debt Management Strategy Paper
FY	-	Financial Year
ICT	-	Information Communication Technology
OCOB	-	Office of the Controller of Budget
O&M	-	Operations and Maintenance
PFMA	-	Public Finance Management Act, 2012

EXECUTIVE SUMMARY

This investigation is undertaken in compliance with the directions of Hon. Justice Lenaola in ***NRB. Petition No. 415 of 2014 Tyson Ngetich & Anor –vs- Governor Bomet County, the Speaker, the County Executive Member for Finance, the Controller of Budget and the Attorney General*** for the Office of the Controller of Budget to undertake investigations on the budget process for the financial year 2014/15 in Bomet County.

In the Petition, the Petitioners are seeking the following prayers from the Court:

a. A declaration that the budget making process of Bomet County for the financial year 2014/15 be declared unlawful and unconstitutional,
b. A declaration that the Bomet County Appropriation Act, 2014 and Bomet County Appropriation (Amendment) Act, 2014 are unprocedural, unconstitutional, null and void
c. A declaration that the CEC Finance Bomet County and the Governor of Bomet County violated the Constitution by hijacking the budget making process for the financial year 2014/15,
d. An order that the Bomet County begins that budget process afresh in full compliance of the Constitution and the Public Finance Management Act, 2012,
e. An order that the Controller of Budget only release one half of the amount included in the budget estimates submitted to the County Assembly on the 5th of June, 2014 pending the passing of a new appropriation Act that complies with the Constitution and Statutes,
f. Cost of the Petition be awarded to the Petitioner
g. Any other or further relief that the Honourable Court may deem just and fit to grant.

The objectives of the investigation were to;

1. Establish whether the budget process as provided in law was adhered to,
2. Establish whether the statutory timeliness were adhered to in the budget making process,
3. Establish whether public participated in the budget process, and
4. Establish the number of Bomet County Appropriation Acts in place for the financial year 2014/15.

The investigation team conducted a desk review to examine the key documents that guided the budget process in Bomet County. These documents included among others the Budget Estimates, the Vote on Account, the Appropriation Bills, the Appropriation Act, the General Warrant, the County Integrated Development Plan, the County Fiscal Strategy Paper and reports of the County Assembly including the Hansard reports. The team conducted interviews with various officials of Bomet County Government.

The budget process is governed by the Constitution of Kenya, 2010, the Public Finance Management Act, 2012 and the County Government Act, 2012.The importance of public participation in the budget process has been strengthened by Article 10 and 201 of the Constitution of Kenya, 2010, Section 207 of the Public Finance Management Act, 2012 and Section 87 of the County Government Act, 2012. The stages in county government budget process are provided for in Section 125 of the Public Finance Management Act, 2012. The detailed statutory timeliness and budget Process are outlined from Section 126 to Section 134 of the Public Finance Management Act, 2012.

In the analysis of findings, it was realized that the budget process and timeliness as provided for in law was not adhered to fully by the Bomet County. In particular, the County Integrated development Plan and the Annual Development Plan prior to the preparation of the Budget Estimates as required by law. Consequently, the budget was not aligned to the above planning documents as provided for in Section 104 (1) and 107 of the County Government Act, 2012.

In preparing the budget estimates, the Bomet County Executive held public participation forums in five sub-counties namely; Chepalungu, Bomet East, Sotik, Konoin and Bomet Central. The Executive submitted the budget estimates to the County Assembly on 30th April, 2014. However, these budget estimates were rejected by the County Assembly as it was not a program based budget as required by law. The Executive resubmitted the budget estimates on 5th June, 2014.

The Budget and Appropriations Committee reviewed the budget estimates submitted on 5th June, 2014 and held consultative meetings with the Executive. Public hearings were held in each of the five sub-counties from 10th to 12th June, 2014.The report of the committee was tabled on 24th June, 2014 and was adopted by the Assembly. The approval of the Budget Estimates with amendments was communicated to the Executive on 25th June, 2014 and thereafter, the Appropriation Bill No. 12 was submitted to the County Assembly for approval. The Appropriation Bill No. 12 was not in conformity with the approved budget estimates and therefore, the Committee amended it and the Assembly approved the amended Appropriation Bill No. 12 on 30th June, 2014.

The Speaker communicated the passing of the Appropriation Bill on 30th June, 2014 to the Executive. On 2nd July, 2014, the Governor referred the Appropriation Bill No. 12 back to the County Assembly giving reasons for declining to assent. On 16th July, 2014, the Assembly rejected the Governor's memorandum and passed the Appropriation Bill No. 12 a second time without amendments which resolution was communicated to the Governor on 17th July, 2014. The statutory time for assent to the bill is seven days as provided for under the County Government Act, 2012. Consequently, it is our considered view that the Appropriation Bill No. 12 became law on 25th July, 2014 since the Governor did not assent within the seven days.

On 24th July, 2014, the Executive submitted another budget estimates together with the Appropriation (Amendment) Bill No. 13 to the County Assembly. On 28th July, 2014, the Budget and Appropriation Committee submitted its report to the Assembly recommending rejection of the Budget estimates and Appropriation (Amendment) Bill no. 13. The Committee was of the view that the County had an Appropriation Act in place and therefore the same can only be amended through a Supplementary Appropriation Bill and not by an Amendment Bill. Further, they were of the view that the Amendment Bill addressed the issue of budget ceilings which is the subject of an ongoing Court case being NRB. Petition No. 368/14.

However, the County Assembly passed a motion that the committee's report be expunged and approved the Budget estimates submitted on 24th July, 2014 and Appropriation (Amendment) Bill no. 13 on 28th July, 2014. The Appropriation (Amendment) Bill No. 13 did not comply with the recommended ceilings by the Commission on Revenue Allocation. The Bill No. 13 was assented to by the Governor on 28th July, 2014.

It is our considered view that an Appropriation Act can only be amended by way of a Supplementary Act. Therefore, the Appropriation (Amendment) Act No. 3 assented to on 28th July, 2014 did not meet the legal requirements for amending the Appropriation Act, 2014 passed on 16th July, 2014.

The Budget Estimates approved by the County Assembly were as a result of a flawed process as some statutory timeliness were not met and key planning documents were not in place to guide the process. Consequently, both the Appropriation Bill No. 12 and No. 13 were a result of a flawed process and are therefore null and void. We recommend that the budget process in Bomet County should be redone as per the provisions of the law.

Although the County conducted public hearing and invited the public to give views on the budget, Bomet County Government has not developed a framework to guide public participation. It is our recommendation that a framework to guide public participation be developed and adopted by the County Government of Bomet.

Mrs. Agnes Odhiambo
Controller of Budget

1. INTRODUCTION

The Office of the Controller of Budget is an independent office established by the Constitution of Kenya, 2010 under **Article 228**. The core mandate of the office is to oversee and report on the implementation of budgets for both national and county governments to the Senate and the National Assembly every four months.

In addition, the Office prepares reports on budget implementation upon request by either the President or Parliament; conducts investigations upon receipt of a complaint from the Public, the Parliament and the Executive, mediates and resolves disputes between the national government and county governments or between county government's entities in matters of public finance and budget implementation. The office also ensures that budget implementation information is disseminated to the public.

This report is a Special Investigative Report as contemplated under **Article 252 (1)** as read together with **Article254 (2) & (3)** of the Constitution of Kenya 2010. According to **Article 252(1)** of the Constitution, each commission, and each holder of an independent office:

a) may conduct investigations on its own initiative or on a complaint made by a member of the public;

d) may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.

Article 254 of the Constitution, which discusses reporting by commissions and independent offices, provides *inter alia*:

2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.

3) ***Every report required from a commission or holder of an independent office under this Article shall be published and publicised.***

2. BASIS FOR UNDERTAKING THE INVESTIGATION

This investigation is undertaken in compliance with the directions of Hon. Justice Lenaola in ***NRB. Petition No. 415 of 2014 Tyson Ngetich & Anor –vs- Governor Bomet County, the Speaker, the County Executive Member for Finance, the Controller of Budget and the Attorney General*** for the Office of the Controller of Budget to undertake investigations on the budget process for the financial year 2014/15 in Bomet County.

In the Petition, the Petitioners are seeking the following prayers from the Court:

a. A declaration that the budget making process of Bomet County for the financial year 2014/15 be declared unlawful and unconstitutional,
b. A declaration that the Bomet County Appropriation Act, 2014 and Bomet County Appropriation (Amendment) Act, 2014 are unprocedural, unconstitutional, null and void
c. A declaration that the CEC Finance Bomet County and the Governor of Bomet County violated the Constitution by hijacking the budget making process for the financial year 2014/15,
d. An order that the Bomet County begins that budget process afresh in full compliance of the Constitution and the Public Finance Management Act, 2012,
e. An order that the Controller of Budget only release one half of the amount included in the budget estimates submitted to the County Assembly on the 5th of June, 2014 pending the passing of a new appropriation Act that complies with the Constitution and Statutes,
f. Cost of the Petition be awarded to the Petitioner
g. Any other or further relief that the Honourable Court may deem just and fit to grant.

The objectives of the investigation were to;

1. Establish whether the budget process as provided in law was adhered to,
2. Establish whether the statutory timeliness were adhered to in the budget making process,
3. Establish whether public participated in the budget process, and
4. Establish the number of Bomet County Appropriation Acts in place for the financial year 2014/15.

2.1 Scope of the Investigation

The investigation was aimed at establishing whether Bomet County Budget for the financial year 2014/2015 was prepared according to law.

2.2 Objectives of the Investigation

The Office of Controller of Budget carried out an investigation as directed by the court, seeking to:

a) Establish whether the budget process as provided for in law was adhered to.

b) Establish whether the statutory timelines were adhered to in the budget making process.

c) Establish whether public participated in the budget process.

d) Establish the number of Bomet County appropriations act for the financial year 2014/2015.

3. INVESTIGATION PROCEDURE

The Office of the Controller of Budget constituted a team on 2nd September, 2014 to investigate whether Bomet County 2014/2015 budget was prepared according to law.

3.1 Investigation Process

The Office of the Controller of Budget undertook the investigation commencing from 2nd September, 2014.

3.1.1 Investigation Plan

The Investigation team conducted a desk review to examine the policy documents that guided the budget process in Bomet County. These included the Budget Estimates, General Warrant and Appropriation Act, reports of the County Assembly, the CIDP and CFSP.

The team then travelled to Bomet County to conduct interviews. The field visit was from 4th to 7th September, 2014. During the field visit, the team conducted the following interviews:

i. Interview with the Deputy Governor of Bomet County Hon. Stephen Mutai on 5th September, 2014, at the Governor's Office Lounge.
ii. Interview with the Speaker Hon. Geoffrey Kipng'etich on 4th September, 2014 at the Bomet County Assembly Clerk's Office.
iii. Interview with the County Executive Committee Member, Finance and Economic Planning, on 5th September, 2014 at the Governor's Office Lounge.
iv. Interview with the Chief Finance Officer, on 5th September, 2014 at the County Budget Coordinator's Office.
v. Interview with the Clerk to Bomet County Assembly Mr. Isaac K. Kitur on 4th September, 2014 at Bomet County Assembly Clerk's Office.
vi. Interview with the Chair Budget and Appropriation Committee Hon. Aurelia C. Rono at Bomet County Assembly Clerk's Office on 4th September, 2014.

a. Documents Reviewed

The following documents were reviewed;

i. The Constitution of Kenya, 2010
ii. The Public Finance Management Act, 2012
iii. The County Governments Act 2012
iv. Bomet County Assembly Budget for 2014/2015 financial year.
v. Bomet County Medium Term Expenditure Framework Budget for 2014/2015 – 2016/2017 and Annual Budget for the year ending 30th June, 2015.
vi. Bomet County Assembly, Votes and Proceedings of Tuesday, 24th June, 2014 at 2.30p.m.
vii. Budget and Appropriation Committee report on Bomet County MTEF 2014/2015 – 2016/2017 and Annual Budget for the year ending 30th June, 2015.
viii. Minutes of the Budget and Appropriation Committee held in the Assembly chambers on 20th June, 2014 at 3.30p.m.
ix. Minutes of the Budget and Appropriation Committee held in the Assembly chambers on 19th June, 2014 at 10.30a.m.
x. Minutes of the Budget and Appropriation Committee held in the Assembly chambers on 16th June, 2014 at 10.30a.m.
xi. Minutes of the Budget and Appropriation Committee held in the Assembly chambers on 6th June, 2014 at 12.30p.m.
xii. Minutes of the Budget and Appropriation Committee held in the Assembly chambers on 19th May, 2014 at 1.30p.m.
xiii. Bomet County Appropriation Bill, 2014 (No. 14), of 27th June, 2014
xiv. Bomet County Votes and Proceedings of Monday 30th June, 2014 at 10.00a.m
xv. Bomet County Assembly Hansard of Monday, 30th June, 2014
xvi. The ~~Speaker's~~ Governor's memorandum on the County Appropriation Bill 2014, dated 2nd July, 2014.
xvii. Bomet County Treasury memorandum to County Assembly Budget on Budget estimates 2013/14
xviii. Bomet County Votes and Proceedings of Wednesday 16th July, 2014 at 9.00a.m
xix. Bomet County Assembly Hansard of Wednesday, 16th July, 2014
xx. Bomet County MTEF 2014/2015 – 2016/2017 and Annual Budget for the year ending 30th June, 2015.
xxi. Bomet County Assembly Hansard of Monday, 28th July, 2014 (Special Sitting)
xxii. Bomet County Appropriation Bill, 2014 (No. 15), of 26th July, 2014
xxiii. Bomet County Votes and Proceedings of Monday 28th July, 2014 at 9.30a.m
xxiv. Bomet County, First County Integrated Development Plan 2013/2017

xxv. Bomet County, Medium Term County Fiscal Strategy Paper and Debt Management.

xxvi. Bomet County Assembly Hansard of Tuesday, 22nd July, 2014

xxvii. Bomet County Assembly Clerk's letter Ref. BCA/GOV.FEP/13/6/1 dated 25th June, 2014 forwarding the report of the Committee of Budget and Appropriations, votes and proceedings and the order paper to CEC/F.

xxviii. Bomet County Assembly Speaker's letter Ref. BCA/GOV/13/8/14 dated 28th July, 2014 forwarding vote on account to the Governor.

xxix. Bomet County Assembly Hansard of Tuesday, 24th June, 2014.

xxx. Bomet County Assembly Hansard of Wednesday, 14th May, 2014.

xxxi. Bomet County Assembly Hansard of Wednesday, 13th March, 2014.

xxxii. Bomet County Assembly Report of the Budget and Appropriation Committee on the Medium Term County Fiscal Strategy Paper (CFSP) 2014, dated 13th March 2014.

xxxiii. Bomet County Assembly Report of the Budget and Appropriation Committee on the Medium Term Expenditure Framework Budget 2014/15 – 2016/17 and Annual Budget for the year ending 30th June, 2015, dated 24th June, 2014.

xxxiv. Bomet County Assembly Report of the Finance, ICT and Economic Planning Committee on the first integrated development plan (CIDP) 2013-2017, dated 16th July, 2014.

xxxv. Bomet County Assembly Report of the Finance, ICT and Economic Planning Committee on the Annual Development Plan 2014-2015, dated 7th August, 2014.

xxxvi. Bomet County Annex for projects and programme priorities for the first County Integrated Development.

xxxvii. Bomet County, First County Integrated Development Plan 2013-2017, dated August, 2013.

xxxviii. Appendix 3, proposed addendum from the public to be incorporated in appendix 2 of the CIDP.

xxxix. Newspaper extract on Public participation advertisement inviting public views in preparation of the county Fiscal Strategy Paper

xl. The Speaker's letter reference BCA/GOV/13/8/14 dated 17th July, 2014 forwarding approved Bomet County Appropriation Bill 2014.

xli. Newspaper extract inviting public views for Budget preparation consultative forums for financial year 2014/15 dated April 19/20, 2014.

xlii. Minutes for the meeting held at Konoin Sub-County Mogogosiek pavilion on 22nd April, 2014 at 2.00p.m.

xliii. Minutes for Budget Public participation at Chepalungu Sub-County held at Sigor market on the 23rd April, 2014.

xliv. Minutes for Budget Public participation at Bomet Central Sub-County held at Silibwet on the 22nd April, 2014.

xlv. Minutes for Budget Public participation at Bomet East Sub-County held at Longisa market on the 23rd April, 2014.

xlvi. Minutes for Budget Public participation at Sotik Sub-County held at Sotik market on the 24th April, 2014.

xlvii. Bomet County Appropriation (Amendment) Act, 2014

xlviii. Bomet County Appropriation (Amendment) Bill, 2014 (No.13) 26th July, 2014

xlix. Bomet County Appropriation Bill, 2014 (No. 12), of 27th June, 2014

l. Bomet County IFMIS uploaded Budget for the Financial year 2014/2015

li. Bomet County Votes and Proceedings of Tuesday 22nd July, 2014

lii. Letter to the speaker from the Governor dated 22nd July, 2014 on Vote on account.

liii. Governor's Memorandum on the Bomet County Appropriation Bill 2014 dated 2nd July, 2014.

liv. Bomet County annual cash flow projection for the financial year 2014/15 and letter forwarding it to the Office of the Controller of Budget dated 12th June, 2014.

lv. Letter reference CGB/TRE/B/5/1 dated 5th May, 2014 from the CEC/F to the Clerk of Bomet County Assembly on the County Assembly's budget estimates.

lvi. CEC/F letter dated 30th April, 2014 forwarding the annual budget estimates for the financial year 2014/15 to the County Assembly.

lvii. CEC/F letter dated 23rd April, 2014 forwarding the CRA ceilings for the County to the CA.

lviii. Letter reference number, BCA/FM/6/1/1 dated 30th April, 2014 by the Clerk of the Assembly submitting the County Assembly's budget estimates to CEC/F for comments.

lix. Letter reference number, CGB/TRE/B/5/1 dated 17th March, 2014 by the CEC/F to the Clerk of the Assembly on Medium term fiscal strategy paper.

lx. Letter reference number BCA/GO/13/1/1 dated 13th March, 2014 from the Clerk of the County Assembly forwarding the approved medium term fiscal strategy paper 2014 to CEC/F

lxi. CEC/F letter dated 28th February, 2014 submitting the approved fiscal strategy paper 2014 to the CA.

lxii. County Budget Review and Outlook Paper, September, 2013.

lxiii. Bomet County Treasury Circular No. 1/2013.

4. LEGAL FRAMEWORK GUIDING THE BUDGET PROCESS

4.1 Introduction

Section 3(1) of the Interpretation and General Provisions Act provides that the financial year for the Government runs from the 1st July in any year to the 30th June in the immediately succeeding year, both days inclusive. The Budget process for both the national government and county governments is governed by the Constitution, Public Finance Management Act and County Government Act.

4.2 Public Participation

Public participation in governance is at the core of the constitutional dispensation in Kenya. Article 10 of the Constitution provides that public participation is one of the key national values and principles of governance.

Public Finance Management is governed by the principles enshrined in Article 201 of the Constitution which provide:

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

Further, Section 207 of the PFMA, 2012 provides

207 (1) Regulations may provide for participatory governance for purposes of this Act.

(2) Regulations made under this section may provide for the following matters-

> ***a) structures for participation;***
> ***b) mechanisms, processes and procedures for participation;***
> ***c) receipt, processing and consideration of petitions, and complaints lodged by members of the community;***
> ***d) notification and public comment procedures;***
> ***e) public meetings and hearings;***
> ***f) special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups;***
> ***g) matters with regard to which community participation is encouraged;***
> ***h) the rights and duties of members of community; and***
> ***i) any other matter that enhances community participation.***

Moreover, Sec. 87(b) of the CGA provides that:

> ***87. Citizen participation in county governments shall be based upon the following principles—***
> ***a) timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;***
> ***b) reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;***

The budget process is part of the public finance management framework which is a governance tool. Consequently, public participation is mandatory as per the above quoted provisions of the law.

4.3 The Budget Cycle/Process

Section 125(1) of the Public Finance Management Act, 2012 provides that the budget process for county governments in any financial year shall consist of the following stages:

a. integrated development planning process which shall include both long term and medium term planning;
b. planning and establishing financial and economic priorities for the county over the medium term;
c. making an overall estimation of the county government's revenues and expenditures;
d. adoption of County Fiscal Strategy Paper;

e. preparing budget estimates for the county government and submitting estimates to the County Assembly;
f. approving of the estimates by the County Assembly;
g. enacting an appropriation law and any other laws required to implement the county government's budget;
h. implementing the county government's budget; and
i. accounting for, and evaluating, the county government's budgeted revenues and expenditures;

Article 201(a) of the Constitution of Kenya, 2010 and Section 125(2) of the PFMA, 2012, 2012 provide that the County Executive Committee member for finance shall ensure that there is public participation in the budget process.

4.3.1 Budget Circular

On 30th August of each year, the County Executive Committee member for finance issues a budget circular to all county entities. (section 128 of the PFMA, 2012). The circular should contain key dates in the budget cycle; limits of each sector as recommended and key policy areas and issues to be taken into consideration when preparing the budgets.

4.3.2 Annual Development Plan

On 1st September of each year, the County Executive Member for Planning submits an Annual Development Plan to County Assembly for approval, with a copy to the CRA and National Treasury. (section 126(3) of the PFMA, 2012).

The ADP contains strategic priorities for the medium term that reflect the county government's priorities and plans; a description of how the county government is responding to changes in the financial and economic environment; programmes to be delivered with details for each programme. This details include the strategic priorities to which the programme will contribute; the services or goods to be provided; measurable indicators of performance where feasible; and the budget allocated to the programme.

The ADP also contains details on payments to be made on behalf of the county government; a description of significant capital developments; a detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the county, including measurable indicators where those are feasible; a summary budget in the format required by regulations; and such other matters as may be required by the Constitution of Kenya, 2010 or the PFMA, 2012.

4.3.3 County Budget Review and Outlook Paper (CBROP)

On 30th September, County Executive Member for Finance prepares and submits the County Budget Review and Outlook Paper to the County Executive Committee (Sec. 118 PFMA, 2012). The CBROP specifies the details of the actual fiscal performance in the previous year compared to the budget appropriation for that year; the updated economic and financial forecasts with sufficient information to show changes from the forecasts in the most recent County Fiscal Strategy Paper; information on any changes in the forecasts compared with the County Fiscal Strategy Paper; or how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility principles, or the financial objectives in the County Fiscal Strategy Paper for that financial year; and reasons for any deviation from the financial objectives in the County Fiscal Strategy Paper together with proposals to address the deviation and the time estimated for doing so.

Upon submission by the CEC/F the County Executive Committee shall consider the CBROP with a view to approving it, with or without amendments, within fourteen days after its submission. Not later than seven days after the County Budget Review and Outlook Paper is approved by the County Executive Committee, the County Treasury shall arrange for the Paper to be laid before the County Assembly; and as soon as practicable after having done so, publish and publicise the Paper. (Sec. 118(3) & (4) PFMA, 2012)

4.3.4 County Fiscal Strategy Paper (CFSP)

The County Treasury shall prepare and submit to the County Executive Committee the County Fiscal Strategy Paper for approval and the County Treasury shall submit the approved Fiscal Strategy Paper to the County Assembly, by the 28th February of each year. In preparing the CFSP, the County Treasury shall ensure that the CFSP is aligned with the national objectives in the Budget Policy Statement. (Sec. 117 PFMA, 2012)

In preparing the County Fiscal Strategy Paper, the County Treasury shall specify the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term. The County Treasury shall include in its CFSP the financial outlook with respect to county government revenues, expenditures and borrowing for the coming financial year and over the medium term. Further, in preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of the Commission on Revenue Allocation; the public; any interested persons or groups; and any other forum that is established by legislation.

Not later than fourteen days after submitting the CFSP to the County Assembly, the County Assembly shall consider and may adopt it with or without amendments. The County Treasury must consider any recommendations made by the County Assembly when finalising the budget proposal for the financial year concerned.

The County Treasury shall publish and publicise the County Fiscal Strategy Paper within seven days after it has been submitted to the County Assembly.

Further, Section 108(1) PFMA, 2012 provides that "A county government may, with the approval of its County Assembly, deviate from the financial objectives in the relevant County Fiscal Strategy Paper, but only on a temporary basis and only if the deviation is required because of a major natural disaster or some other significant unforeseen event."

It is thus clear that the CEC/F is bound by the provisions of the approved CFSP in preparation of the budget estimates. The CEC/F may deviate from the CFSP only with approval of the County Assembly.

4.3.5 Debt Management Strategy paper (DMSP)

On or before the 28th February in each year, the County Treasury shall submit to the County Assembly a statement setting out the debt management strategy of the county government over the medium term with regard to its actual liability and potential liability in respect of loans and its plans for dealing with those liabilities. (Section 123 PFMA, 2012)

The County Treasury shall include the following information in the statement: the total stock of debt as at the date of the statement; the sources of loans made to the county government; the principal risks associated with those loans; the assumptions underlying the debt management strategy; and an analysis of the sustainability of the amount of debt, both actual and potential.

As soon as is practicable after the statement has been submitted to the County Assembly under this section, the County Executive Committee member for finance shall publish and publicise the statement and submit a copy to the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council.

4.3.6 Cash Flow Projection (Section 127 PFMA, 2012)

Not later than the 15th June of each financial year, every county government shall prepare an annual cash flow projection for the county for the next financial year, and submit the cash flow projection to the Controller of Budget with copies to the Intergovernmental Budget and Economic Council and the National Treasury.

4.3.7 Budget Estimates (Sec. 129 PFMA, 2012)

A County Executive Committee member for finance shall submit to the County Executive Committee for its approval: the budget estimates and other documents supporting the budget of the county government, excluding the County Assembly; and the draft Bills at county level required to implement the county government budget, in sufficient time to meet the deadlines prescribed by this section.

Following approval by the County Executive Committee, the County Executive Committee member for finance shall by the 30th April submit to the County Assembly the budget estimates, supporting documents, and any other Bills required implementing the budget, except the Finance Bill. The CEC/F shall ensure that the estimates submitted are in accordance with the resolutions adopted by County Assembly on the County Fiscal Strategy Paper.

Each County Assembly clerk shall prepare and submit to the County Assembly the budget estimates for the County Assembly and a copy shall be submitted to the County Executive Committee member for finance. (Sec. 129(3) PFMA, 2012) The County Executive Committee member for finance shall prepare and present his comments on the budget estimates presented by the County Assembly clerk.

The CEC/F shall within reasonable time after submission publish and publicise the budget estimates.

Upon approval of the budget estimates by the County Assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the County Assembly of the approved estimates.

The County Assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year. (Sec. 131 PFMA, 2012)

Before the County Assembly considers the budget estimates the relevant committee of the County Assembly shall discuss and review the estimates and make recommendations to the County Assembly, and in finalising the recommendations to County Assembly, the committee shall take into account the views of the County

Executive Committee member for finance and the public on the proposed recommendations.

An amendment to the budget estimates may be made by the County Assembly only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and if

a. any increase in expenditure in a proposed appropriation, is balanced by a reduction in expenditure in another proposed appropriation; and
b. any proposed reduction in expenditure is used to reduce the deficit.

Where a Bill originating from a member of a County Assembly proposes amendments after the passing of budget estimates and the Appropriations Bill by the County Assembly, the County Assembly may proceed in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and ensure:

a. an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or
b. a proposed reduction in expenditure is used to reduce the deficit.

Within twenty-one days after the County Assembly has approved the budget estimates, the County Treasury shall consolidate the estimates and publish and publicise them.

4.3.8 Appropriations Act

The law requires that a County Assembly shall pass their Appropriations Bill and the same is assented to by the Governor by 30th June of each year. (Sec. 131 PFMA, 2012)

Upon approval of the budget estimates by the County Assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the County Assembly of the approved estimates. (Sec. 129(7) PFMA, 2012)

In preparing the annual Appropriation Bill to put before the County Assembly, the County Executive Committee member for finance shall ensure that the expenditure appropriations in the Bill are in a form that is accurate, precise, informative and pertinent to budget issues; and which clearly identifies the appropriations by Vote and programme. (Sec. 130(2) PFMA, 2012)

It is clear from the above quoted provisions of the law that the procedure to be followed is; the County Assembly passes the budget estimates with or without amendments; the CEC/F then prepares an Appropriations Bill based on the approved estimates; where after the County Assembly is required to pass the Appropriations Bill submitted and the Governor should assent to it before 30th June of each year.

5. INVESTIGATION FINDINGS AND ANALYSIS

5.1 Budget Circular

The CEC/F issued the budget circular to all accounting officers of the County entities as provided for under section 128 of the PFMA, 2012. However, the Clerk of the CA denied having received the budget circular. Further, the circular is not dated and therefore we could not establish whether it was issued within the statutory timelines of 30th August, 2013.

A review of the budget circular confirms that it complies with the requirements of section 128 of the PFMA, 2012 as to its contents. It includes key dates in the budget cycle; limits of each sector as recommended and key policy areas and issues to be taken into consideration when preparing the budgets. However, it did not outline the procedures to be followed for public participation in the budget making process as required by section 128(2) (d) of the PFMA, 2012.

5.2 Annual Development Plan

The Bomet County Assembly passed the Annual Development Plan on 7th August, 2014. The ADP is one of planning documents that guides the preparation of the Budget estimates for the FY 2014/15 as per Sec. 126 PFMA. Consequently, Bomet County breached the law as the ADP passed on **7th August, 2014** cannot be used as a basis for the preparation of the budget estimates which were required to be passed on **30th June, 2014**.

5.3 County Budget Review and Outlook Paper (CBROP)

A review of the CBROP confirms compliance with section 118 of the PFMA, 2012. The CBROP gave details of the actual fiscal performance against the budget appropriation for financial year 2012/2013; macroeconomic forecast. It should be noted that the CBROP was for the period March to June 2013, as the County government came into existence on 4th March, 2013.

5.4 County Fiscal Strategy Paper (CFSP)

The CEC/F submitted the CFSP to the CA on 28th February, 2014 as required by section 117 of the PFMA, 2012. During interviews with the Clerk and the speaker of the CA, there were allegations that the County Executive altered the CFSP approved by the CA.

Table 1: Analysis of the approved CFSP and the printed CFSP (Amount in Kshs. Millions)

Budget Item	Amount in the Printed CFSP	Changes	Recommendations by the B&A Committee on the CFSP	CFSP Approved by the County Assembly
	A	B=C-A	C	D
Office of the Governor, Administration and Public Service	646.50	(155.00)	491.50	491.50
County Treasury	582.80	(200.00)	382.80	382.80
Agriculture, Veterinary Services and Fisheries	205.30	-	205.30	205.30
Cooperatives, Livestock and Marketing	170.10	50.00	220.10	220.10
Roads and Public Works	562.30	-	562.30	562.30
Water, Environment and Natural Resources	254.50	50.00	304.50	304.50
Education, Youth and Sports	327.70	-	327.70	327.70
Economic Planning and Social Services	364.10	-	364.10	364.10
Health	704.10	(100.00)	604.10	604.10
Energy, Industry, Trade and Tourism	67.50	-	67.50	67.50
Lands, Housing and Urban Planning	157.00	-	157.00	157.00
County Assembly	351.00	355.00	706.00	706.00
Recurrent Expenditure				
Executive				
PE	1,001.90	-	1,001.90	1,001.90
O&M	890.00	(311.00)	579.00	579.00
County Assembly				
PE	130.00	-	130.00	130.00
O&M	198.00	355.00	553.00	553.00
Development Expenditure				
Executive	2,150.00	(44.00)	2,106.00	2,106.00
Assembly	23.00	-	23.00	23.00

Total	4,392.90	-	4,392.90	4,392.90

From Table 1 it is evident that the CFSP approved by the County Assembly differs from the CFSP that was printed by the CEC/F. The CA in approving the CFSP recommended a reduction in the following votes: Office of the Governor, Administration & Public Service by KShs. 155 Million; County Treasury by 200 Million and a reduction in Health of KShs. 100Million. The CA had also recommended an increase in the following votes: Cooperative, Livestock & Marketing by KShs. 50 Million; Water, Environment & Natural Resources by KShs. 50 Million and County Assembly by KShs. 355 Million.

The CEC/F did not effect these recommendations and instead printed the CFSP submitted to the County Assembly on 28th February, 2014 as the approved CFSP.

The alterations to the approved CFSP were confirmed by the CEC/F, that indeed the County Executive did not include the recommendations of the CA when publishing the CFSP. According to CEC/F section 117 of the PFMA, 2012 provides that the executive is not bound by the recommendations of the CA.

The CFSP published by the CEC/F was irregular as it disregarded the binding recommendations of the CA and did not seek or take into account the views of CRA contrary to Sec. 117 PFMA.

5.5 Debt Management Strategy Paper (DMSP)

The County has in place a DMSP as require by section 123 of the PFMA, 2012. However, the team could not either establish when the DMSP was submitted to the CA or passed by the Assembly. During debate of the CA on 13th March, 2014 it was noted that the DMSP had not been submitted to the CA.

5.6 Cash Flow Projection (Sec. 127 PFMA, 2012)

The County submitted the cash flow projections to COB on 12th June, 2014 with copies to National Treasury and Intergovernmental Budget and Economic Council. Consequently, the County complied with section 127(1) of PFMA, 2012.

5.7 Budget Estimates (Sec. 129 PFMA, 2012)

The CEC/F submitted the budget estimates for the FY 2014/15 on 30th April, 2014 as required by law (Sec. 129(2) (a) of the PFMA, 2012). The Clerk of the County Assembly in accordance with the provisions of Sec. 129(3) PFMA, 2012 also submitted the budget estimates of FY 2014/15 to the County Assembly with a copy to the CEC/F.

The budget estimates for FY 2014/15 submitted by the CEC/F was for KShs. 4,341,800,000/=. The recurrent budget was KShs. 2,097,200,000/= which is forty eight percent (48%) of the total budget while the development budget was KShs. 2,244,850,000/= which represented fifty two percent (52%) of the total budget. The allocation to the County Executive was Kshs. 3,943,800,000/= (being KShs. 1,698,950,000/= for recurrent expenditure and KShs. 2,244,850,000/= for development expenditure) while the allocation to the Assembly was KShs. 398,000,000/= all for recurrent expenditure.

Before submission of the budget estimates on 30th April, 2014, the County Treasury held public participation forums on 22nd April, 2014 to 24th April, 2014. The forums were held in Chepalungu sub-county at Sigor market; Bomet East sub-county at Longisa market, Sotik sub-county at Sotik market, Konion Sub-county at Mogogosiek pavillion; and Bomet central sub-county at Silibwet Market Center.

The budget estimates for the County Assembly submitted by the Clerk amounted to KShs. 871,929,221.20/=. Recurrent expenditure was KShs. 716,929,221.20/= while development expenditure was Kshs. 155,000,000/= (for construction of the Assembly chamber KShs. 150,000,000/= and purchase of a generator for Kshs. 5,000,000/=).

Upon receipt of the budget estimates from the Clerk of the Assembly, the CEC/F in accordance with Sec. 129(4) PFMA, 2012 presented his comments on the same on 5th May, 2014. In his letter, the CEC/F indicated that the allocation to Bomet County from the National Treasury had increased by 15% of which 7.5% was to be allocated to development expenditure. Further, he noted that the actual expenditure on salaries for the County Assembly in FY 2013/14 was KShs. 144,000,000/= and therefore, the KShs. 261,553,053.20/= for salaries in the estimates for FY 2014/15 was not justified.

It should be noted that the budget submitted on 30th April, 2014 was a line budget and therefore contravened the provisions of Section 12 of Schedule 2 of the PFM Act. The Budget & Appropriations Committee sitting on 19th May, 2014 resolved that the CEC/F should submit a program based budget. Thereafter, by a letter dated 19th May, 2014 the Clerk of the County Assembly requested the County Executive to submit a Program Based Budget in line with Section 12 of Schedule 2 of the PFMA, 2012.

The CEC/F resubmitted a Program Based Budget on 5th June, 2014. The total budget amount was KShs. 4,341,840,000/=.

An analysis of the Budget Estimates submitted on 30th April, 2014 and those submitted on 5th June, 2014 shows a variance in the amounts for the different votes. See Table 2 below.

Table 2: Analysis of budget estimates submitted on 30th April, 2014 and budget estimates submitted on 5th June, 2014

VOTE TITLE	BUDGET ESTIMATES SUBMITTED ON 30TH APRIL 2014 (AMOUNT IN KSHS. MILLION)			BUDGET ESTIMATES SUBMITTED ON 5TH JUNE 2014 (AMOUNT IN KSHS. MILLION)			VARIANCE
	Recurrent Expenditure Allocation	Development Expenditure Allocation in Kshs. Millions	Total	Recurrent Expenditure Allocation	Development Expenditure Allocation in Kshs. Millions	Total	
Office Of The Governor,Administration And Public Service	1,699.20	104.00	1,803.20	432.00	104.00	536.00	(1,267.20)
Finance And Economic Planning		92.00	92.00	181.00	86.00	267.00	175.00
Fisheries, Forestry & Environment		20.00	20.00	30.00	60.00	90.00	70.00
Children,Culture And Social Services		254.50	254.50	64.00	320.00	384.00	129.50
Health And Sanitation		285.05	285.05	380.00	339.74	719.74	434.69
Lands, Housing And Urban Planning		124.80	124.80	63.00	150.00	213.00	88.20
Agri-Business, Cooperatives And Marketing		174.00	174.00	205.00	277.50	482.50	308.50
Water And Irrigation		216.50	216.50	57.00	216.00	273.00	56.50
Education, Sports And Vocational Trainings		358.00	358.00	230.00	337.50	567.50	209.50
Roads And Public Works		584.50	584.50	104.00	342.50	446.50	(138.00)
Trade,Energy, Tourism And Industralization		31.50	31.50	26.60	71.00	97.60	66.10
County Assembly	398.00		398.00	265.00	-	265.00	(133.00)
							-
Total	**2,097.20**	**2,244.85**	**4,342.05**	**2,037.60**	**2,304.24**	**4,341.84**	**(0.21)**

From Table 2, it is evident that the recurrent expenditure reduced from KShs. 2,097.2 million to Kshs. 2,037.6 million (reduction of KShs. 59.6Million) while development expenditure was increased from KShs. 2,244.85 Million to KShs. 2,304.24 Million (increase of KShs. 59.39 Million).

The Budget & Appropriations Committee of Bomet County Assembly reviewed the budget estimates submitted on 5th June, 2014. The Committee held consultative meetings with the Executive Committee members. The Committee also held 5 public hearings in each of the five sub- counties from 10th to 12th June, 2014: Chepalungu sub-county at Sigor market; Bomet East sub-county at Longisa market, Sotik sub-county at Sotik market, Konion Sub-county at Mogogosiek market; and Bomet central sub-county at Silibwet Market Center.

The Budget & Appropriation Committee after review of the budget estimates prepared and laid before the Assembly its report on 24th June, 2014. In the report, the Committee noted that the County had not passed the CIDP and the ADP which are some of the planning documents required in budget preparation. OCOB concurs that it is a legal requirement that the budget should be based on a planning framework as per the provisions of Sec. 104(1) & 107 of the County Government Act, 2012.

Further, the Committee noted that in spite of the County having in place an approved CFSP, the budget estimates submitted were not aligned to the CFSP.

Table 3: Analysis of approved CFSP and the budget estimates submitted on 5th June, 2014 (Amount in Kshs. Millions)

Vote Item	CFSP Approved by the County Assembly (Kshs. Millions)	Budget Estimates Submitted on 5th June, 2014 (Kshs. Millions)	Variance (Kshs. Millions)
	A	B	C=A-B
Office of the Governor, Administration and Public Service	491.50	536.00	(44.50)
County Treasury	382.80	267.00	115.80
Agriculture, Veterinary Services and Fisheries	205.30	90.00	115.30
Economic Planning and Social Services	220.10	384.00	(163.90)
Health	562.30	719.74	(157.44)
Lands, Housing and Urban Planning	304.50	213.00	91.50
Cooperatives, Livestock and Marketing	327.70	482.50	(154.80)
Water, Environment and Natural Resources	364.10	273.00	91.10
Education, Youth and Sports	604.10	567.50	36.60
Roads and Public Works	67.50	446.50	(379.00)
Energy, Industry, Trade and Tourism	157.00	97.60	59.40
County Assembly	706.00	265.00	441.00
Total	**4,392.90**	**4,341.84**	**51.06**

The CFSP set ceilings for the various spending units in the County. It is a legal requirement under section 129 (2) b for the CEC/F to ensure that the budget estimates submitted are in accordance with the resolutions adopted by the County Assembly on the CFSP. From table 3 it is clear that in the CFSP, the priorities of the County were in supporting the activities of the County Assembly, Education sector and Health sector which had a total allocation of KShs.1, 872.4 Million (43%). However, in the budget estimates submitted health, education and Office of the Governor & Administration which had a total allocation of KShs. 1,823.24 Million (42%).

The sectors adversely affected in allocation of resources in the budget estimates were, the County Assembly with a reduction of KShs. 441 Million; County Treasury with a reduction of KShs. 115.8Million and agriculture with a reduction of KShs. 115 Million.

The Committee also noted that the budget estimates submitted by the CEC/F purported to contain the budget for the County Assembly in clear contravention of Sec. 129(3) PFMA, 2012. Further, the Committee noted that the 2014/15 MTEF budget did not fully conform to the PBB as required under Section 12 of the Second Schedule of the PFMA, 2012. Program based

In its report laid before the house on 24th June, 2014, the Budget & Appropriations Committee recommended various amendments to the Budget Estimates submitted on 5th June, 2014. Table 4 shows the analysis of the proposed amendments.

Table 4: Analysis of the B&A Committees Report on Budget Estimates and the County Assembly Approval (Amount in Kshs.)

Vote Title	B/E submitted on 5th June,2014	B&A Proposed Amendments to B/E	B/E approved by County Assembly
	A	B	C=A+B
Office Of The Governor, Administration And Public Service	536,000,000	(140,000,000)	396,000,000
Finance And Economic Planning	267,000,000	(101,200,000)	165,800,000
Fisheries, Forestry & Environment	90,000,000	(13,500,000)	76,500,000
Children, Culture And Social Services	384,000,000	(19,400,000)	364,600,000
Health And Sanitation	719,740,000	(36,740,000)	683,000,000
Lands, Housing And Urban Planning	213,000,000	(47,000,000)	166,000,000
Agri-Business, Cooperatives And Marketing	482,500,000	(25,770,000)	456,730,000
Water And Irrigation	273,000,000	-	273,000,000
Education, Sports And Vocational Trainings	567,500,000	(19,400,000)	548,100,000
Roads And Public Works	446,500,000	(30,770,000)	415,730,000
Trade, Energy, Tourism And Industrialization	97,600,000	(1,000,000)	96,600,000
County Assembly	265,000,000	434,780,000	699,780,000
			-
	4,341,840,000	-	4,341,840,000

The County Assembly sitting on 24th June, 2014 adopted the report of the Budget & Appropriations Committee. (The allocations approved are shown in Column C). Vide a letter Ref. No. BCA/GOV/FEP/13/6/1 dated 25th June, 2014 and received on 26th June, 2014, the Clerk of the CA wrote to the CEC/F informing him of the approval of the Budget Estimates with amendments.

The CEC/F then prepared and submitted Appropriations Bill No. 12 to the CA. However, contrary to the law, the Appropriations Bill submitted by the CEC/F differed from the budget estimates (See Table 4- Column C) approved by the CA.

Table 5 is an analysis of the Appropriations Bill No. 12 submitted by the CEC/F to the County Assembly.

Table 5: Analysis of Bill No. 12

VOTE TITLE	RECURRENT EXPENDITURE ALLOCATION		DEVELOPMENT EXPENDITURE ALLOCATION	TOTAL ALLOCATION
	Salaries	Operations and Maintenance		
Office Of The Governor, Administration And Public Service	1,302,600,000	597,460,000	125,000,000	2,025,060,000
Finance And Economic Planning	-	-	20,000,000	20,000,000
Fisheries, Forestry & Environment	-	-	13,800,000	13,800,000
Children, Culture And Social Services	-	-	365,200,000	365,200,000
Health And Sanitation	-	-	372,240,000	372,240,000
Lands, Housing And Urban Planning	-	-	100,000,000	100,000,000
Agri-Business, Cooperatives And Marketing	-	-	458,400,000	458,400,000
Water And Irrigation	-	-	214,700,000	214,700,000
Education, Sports And Vocational Trainings	-	-	545,600,000	545,600,000
Roads And Public Works	-	-	412,000,000	412,000,000
Trade, Energy, Tourism And Industrialization	-	-	74,000,000	74,000,000
County Assembly	165,000,000	100,000,000	-	265,000,000
TOTAL	**1,467,600,000**	**697,460,000**	**2,700,940,000**	**4,866,000,000**

The total budget allocation in the printed Appropriation Bill No. 12 was indicated as KShs. 4,601,000,000/= made up of allocation to County Executive KShs. 4,336,000,000/= and County Assembly Kshs. 265,000,000/=. However, the summation of the votes amounts to KShs. 4,866,000,000/= comprising of County Executive KShs. 4,601,000,000/= and County Assembly Kshs. 265,000,000/=as indicated in Table 5.

Table 4 and 5, indicates that Bill No. 12 increased the total budget allocation from KShs. 4,341,840,000 to KShs. 4,866,000,000/= an increment of KShs. 524,160,000/=. The alteration of the budget estimates approved by the County Assembly in the Appropriation Bill is a contravention of the law. Section 129(7) PFMA, 2012 is clear that the Appropriations Bill is a mirror of the approved budget estimates. Moreover, the Appropriations Bill should be accurate, precise, informative and pertinent to budget issues (Sec. 130(2) (a) PFMA, 2012)

Further, in Appropriation Bill No. 12, the recurrent expenditure for the Executive Services have only been broken down into salaries (Kshs.1, 302,600,000) and O&M (Kshs.597, 460,000) without any breakdown of how much goes to each department. This is contrary to the principles of public finance management which require transparency as provided for under Art. 201(a) of the Constitution. In addition Section

130(2) (b) PFMA, 2012 requires that the Appropriations Bill should clearly identify the appropriations by Vote and programme.

The CEC/F indicated to the investigative team that the changes were necessitated by the need to comply with the CRA recommended ceilings on recurrent expenditure for both the County Executive and the County Assembly.

On 30th June, 2014, The B&E Committee tabled a report to the County Assembly amending Appropriations Bill No. 12 to bring it into conformity with the approved budget estimates. The report was adopted by the whole House and the Appropriations Bill No. 12 was passed with amendments.

Table 6: Analysis of Appropriation Bill No. 12 submitted to CA by CEC/F and the Appropriation Bill passed by the CA after amendments (Amount in Kshs.)

VOTE TITLE	APPROPRIATION BILL NO. 12				APPROPRIATION BILL NO. 12 AFTER AMENDMENTS BY THE CA			
	RECURRENT EXPENDITURE ALLOCATION		DEVELOPMENT EXPENDITURE ALLOCATION	TOTAL ALLOCATION	RECURRENT EXPENDITURE ALLOCATION		DEVELOPMENT EXPENDITURE ALLOCATION	TOTAL ALLOCATION
	Salaries	Operations and Maintenance			Salaries	Operations and Maintenance		
Office Of The Governor, Administration And Public Service	1,302,600,000	597,460,000	125,000,000	2,025,060,000	313,000,000	-	83,000,000	396,000,000
Finance And Economic Planning	-	-	20,000,000	20,000,000	116,600,000	-	49,200,000	165,800,000
Fisheries, Forestry & Environment	-	-	13,800,000	13,800,000	27,500,000	-	49,000,000	76,500,000
Children, Culture And Social Services	-	-	365,200,000	365,200,000	52,600,000	-	312,000,000	364,600,000
Health And Sanitation	-	-	372,240,000	372,240,000	349,000,000	-	334,000,000	683,000,000
Lands, Housing And Urban Planning	-	-	100,000,000	100,000,000	54,000,000	-	112,000,000	166,000,000
Agri-Business, Cooperatives And Marketing	-	-	458,400,000	458,400,000	166,230,000	-	290,500,000	456,730,000
Water And Irrigation	-	-	214,700,000	214,700,000	57,000,000	-	216,000,000	273,000,000
Education, Sports And Vocational Trainings	-	-	545,600,000	545,600,000	209,100,000	-	339,000,000	548,100,000
Roads And Public Works	-	-	412,000,000	412,000,000	93,230,000	-	322,500,000	415,730,000
Trade, Energy, Tourism And Industrialization	-	-	74,000,000	74,000,000	89,163,160	-	70,000,000	159,163,160
County Assembly	165,000,000	100,000,000	-	265,000,000	261,553,053	353,226,947	85,000,000	699,780,000
Total	1,467,600,000	697,460,000	2,700,940,000	4,866,000,000	1,788,976,213	353,226,947	2,262,200,000	4,404,403,160

An analysis of Table 6 shows that in making the amendments, the CA disaggregated the amount allocated to salaries and O&M (KShs. 1,302,600,000 and KShs. 597,460,000/= respectively) to the various votes.

It should also be noted that the total budget estimates in the amended Appropriations Bill No. 12 is KShs. 4,404,403,160 which differs from the amount that was in the approved budget estimates of KShs. 4,341,840,000 by KShs. 62,563,160. An analysis of Table 4 and Table 6 shows that the department of Trade, Energy, Tourism and Industrialisation was increased by KShs. 62,563,160/=.

On the same day, 30th June, 2014, the County Assembly debated and passed a Vote on Account based on the approved budget estimates. This was informed by the fact that since the Appropriation Bill No. 12 was passed late at night on 30th June, 2014 (Assembly adjourned at 8.20 p.m.); it would not be possible to comply with the provisions of Sec. 131 PFMA, 2012 which requires that the Appropriations Bill be assented to by 30th June. The CA therefore passed a Vote on Account of KShs. 2, 170, 920,000/= being one half of the budget estimates approved by the CA.

By a letter dated 30th June, 2014, the Speaker of the County Assembly informed the CEC/F of the passing of the Vote on Account authorizing the Executive to spend up to one half of the approved budget estimates.

By a letter dated, 2nd July, 2014, and received by the CA on 10th July, 2014, the Governor referred the Appropriation Bill No. 12 back to the CA. The letter outlined the reasons that the Governor declined to assent to the Bill which include *inter alia* that the amendment to the Bill disregarded the ceilings set by CRA on recurrent expenditure; the plans by the County Executive to allocate 60% of the funds to development and failure to take into account the views of the CEC/F on the amendments to the budget estimates in accordance with Sec. 131(2) PFMA, 2012.

Further, the Governor noted that the passage of the Vote on Account was not in accordance with the provisions of Sec. 134(2)(b) PFMA, 2012 which require that the vote on account should be based on the submitted budget estimates and not the approved budget estimates.

The County Assembly sitting on 16th July, 2014 rejected the Governors memorandum and passed the Appropriation Bill No. 12 a second time without amendments.

By a letter Ref. No. BCA/GOV/13/8/14 dated 17th July, 2014, the Speaker of the CA wrote to the Governor informing him of the CA rejection of his memorandum and passage of the Appropriation Bill No. 12 without any amendments which was supported by more than two thirds of the members(29 out of 35) in line with Sec. 24(5) CGA.

The letter dated 17th July, 2014 was received at the Governor's Office on 18th July, 2014. The statutory time for assent of the Bill being 7 days (Sec. 24 (5) & (6) CGA) time started running from 18th July, 2014. Consequently, we are of the view that the Governor should have assented to the Bill on or before 25th July, 2014.

On 22nd July, 2014, the Governor, wrote to the Speaker of the CA indicating that he had reservations on Appropriation Bill No. 12 as amended and the Vote on Account both passed on 30th June, 2014. He was of the view that contrary to Sec. 134 PFMA, 2012, the Vote on Account was based on the approved budget estimates and not on the submitted budget estimates by the CEC/F. Further, he indicated that the CA in amending Appropriation Bill No. 12 did not take into account the ceilings set by CRA and the reduction in the allocation to the health, roads, education and social services sectors was against the County priorities.

The Governor did not assent to the Bill in line with Sec. 24(6) CGA and therefore the Appropriation Bill No. 12 became law on 25th July, 2014. It is our considered view that a reading of Sec. 24(6) CGA shows that the letter dated 22nd July, 2014 written by the Governor did not in any way extend the time for assent of the Appropriation Bill No. 12.

The CA sitting on 22nd July, 2014, rescinded its resolution approving the Vote on Account for both recurrent and development expenditure passed on 30th June, 2014. The CA then proceeded to pass a Vote on Account for recurrent expenditure in line with Sec. 134(2) (a) PFMA, 2012.

The CA passed a Vote on Account of KShs. 1,193, 056, 610.06/= being one half of the budget estimates. Sec. 134 requires that the Vote on Account should be based on the budget estimates submitted by the CEC/F and be one half of the recurrent expenditure. From our analysis, the Vote on Account should have been based on the budget estimates submitted on 5th June, 2014. This is because the budget estimates of 30th April, 2014 had been rejected by the CA and the CEC/F resubmitted budget estimates on 5th June, 2014 (See. Table 2).

The total budget estimates submitted on 5th June, 2014 was KShs. 4,341,840,000/=. The recurrent expenditure was KShs.2, 037,600,000/= Therefore, the Vote on Account should have been one half of KShs. 2, 037, 600,000/= being KShs. 1,018,800,000/=. Consequently, the Vote on Account passed on 22nd July, 2014 (KShs. 1,193, 056, 610.06/=) was not based on the budget estimates submitted on 5th June, 2014 and thus was in contravention of Sec. 134 PFMA, 2012.

On 24th July, 2014, The CEC/F tabled another budget estimates together with Appropriation Bill (Amendment) Bill. No. 13 to the CA. The resubmitted budget estimates were then committed to the B&A Committee.

During a special sitting convened on 28th July, 2014, the B&A Committee tabled a report on the estimates submitted on 24th July, 2014. The Committee was of the view that the County already had an Appropriation Act in place and therefore the same can only be amended by way of a Supplementary Appropriations Bill and not through an amendment Act. Further, they indicated that the Appropriation (Amendment) Bill No. 13 addressed the issue of the ceilings issued by CRA which is the subject of an ongoing case being **NRB. Petition No. 368/14** and discussing the Bill No. 13 would be *sub judice*. Consequently, the B&A Committee proposed that the Appropriation (Amendment) Bill No. 13 be rejected by the CA.

During debate on the report of the B&A Committee, the Speaker ruled that it would be a contravention of the law for the House to deliberate on the Appropriation (Amendment) Bill No. 13 as the CEC/F should have tabled a supplementary bill.

However, in the afternoon sitting of 28th July, 2014, the House passed a resolution that it was in order for the House to debate on the Appropriation (Amendment) Bill No. 13. Further, the CA passed a motion that the report by the B&A Committee on the Appropriation (Amendment) Bill No. 13 be expunged and recommended that the budget estimates submitted on 24th July, 2014 be approved.

Consequently, the Budget Estimates submitted on 24th July, 2014 were approved without amendments by the Assembly. The House then debated the Appropriation (Amendment) Bill No. 13 which was based on the approved budget estimates of 24th July, 2014. The CA passed a motion exempting Appropriation (Amendment) Bill No. 13 from the normal legislative process and timelines as outlined in the Bomet County Assembly Standing Orders. The Bill therefore went through the first and second reading together with the committee stage and the third reading in one afternoon sitting. The CA thereafter passed the Appropriation (Amendment) Bill No. 13 with amendments.

Table 7 shows an analysis of the Appropriation (Amendment) Bill No. 13 and Appropriation (Amendment) Act No. 3.

Table 7: Analysis of Appropriation (Amendment) Bill No. 13 and Appropriation (Amendment) Act No. 3 (Amount Kshs.)

VOTE TITLE	APPROPRIATION AMENDMENT BILL NO. 13				APPROPRIATION AMENDMENT ACT NO. 3			
	RECURRENT EXPENDITURE ALLOACTION		DEVELOPMENT EXPENDITURE ALLOCATION	TOTAL	RECURRENT EXPENDITURE ALLOACTION		DEVELOPMENT EXPENDITURE ALLOCATION	TOTAL
	Salaries	O&M			Salaries	O&M		
Office Of The Governor, Administration And Public Service	272,000,000	191,100,000	125,000,000	588,100,000	272,000,000	191,100,000	125,000,000	588,100,000
Finance And Economic Planning	101,000,000	159,264,000	20,000,000	280,264,000	101,000,000	159,264,000	20,000,000	280,264,000
Fisheries, Forestry & Environment	18,000,000	6,836,000	13,800,000	38,636,000	18,000,000	6,836,000	13,800,000	38,636,000
Children, Culture And Social Services	42,000,000	7,846,000	365,200,000	415,046,000	42,000,000	7,846,000	365,200,000	415,046,000
Health And Sanitation	300,000,000	33,320,000	372,240,000	705,560,000	300,000,000	33,320,000	372,240,000	705,560,000
Lands, Housing And Urban Planning	35,000,000	18,626,000	100,000,000	153,626,000	35,000,000	18,626,000	100,000,000	153,626,000
Agri-Business, Cooperatives And Marketing	135,000,000	14,010,000	458,400,000	607,410,000	135,000,000	14,010,000	458,400,000	607,410,000
Water And Irrigation	30,000,000	8,350,000	214,700,000	253,050,000	30,000,000	8,350,000	214,700,000	253,050,000
Education, Sports And Vocational Trainings	160,000,000	6,906,000	545,600,000	712,506,000	160,000,000	6,906,000	545,600,000	712,506,000
Roads And Public Works	30,000,000	44,626,000	412,000,000	486,626,000	30,000,000	44,626,000	412,000,000	486,626,000
Trade, Energy, Tourism And Industrialization	14,600,000	6,576,000	74,000,000	95,176,000	14,600,000	6,576,000	74,000,000	95,176,000
County Assembly	165,000,000	100,000,000	-	265,000,000	192,190,000	72,810,000	-	265,000,000
Total	**1,302,600,000**	**597,460,000**	**2,700,940,000**	**4,601,000,000**	**1,302,600,000**	**597,460,000**	**2,700,940,000**	**4,601,000,000**

An analysis of Appropriation (Amendment) Act No. 3 as shown in Table 7 shows that the CA allocation adhered to the recommended CRA ceiling of KShs. 265,000,000/=. However, the Executive did not adhere to the recommended ceiling the ... insulting of estimates cannot be the purpose of adherence to the CRA Ceilings

Of KShs. 280,193,680/= having allocated KShs. 463, 100,000/=. The Executive therefore overshot the ceilings by KShs. 198,100,000/=.

A comparison of Appropriation (Amendment) Act, 2014 (No. 3) and Appropriation (Amendment) Bill No. 13 shows that the CA amended the allocation for salaries from KShs. 165,000,000/= to KShs. 192,190,000/= an increment of KShs. 27,190,000/=. They further amended the allocation for O&M from 100,000,000/= to Kshs. 72,810,000/= a decrease of KShs. 27,190,000/=. This had the effect of maintaining the total allocation for the CA at KShs. 265,000,000/= as recommended by CRA.

More?

As earlier stated, the Appropriation Bill No. 12 upon passage by the CA on 16th July, 2014 became law on 25th July, 2014. It is our considered view that the Appropriation Act is a "special" kind of law that is the culmination of a long process in which public participation is vital. Consequently, an amendment to the Appropriation Act is governed by certain rules. These rules are that the supplementary can only be sought where the amount appropriated for a certain program is insufficient or money has been withdrawn from the Emergency fund. Further, the amendment should not exceed 10% of the budget.

It is our opinion that any amendment to the Appropriation Act must be guided by Sec. 135 PFMA, 2012 which is a mirror of Art. 223 of the Constitution which deal with supplementary budgets. Sec. 135 provides

> ***"135. (1) A county government may spend money that has not been appropriated if the amount appropriated for any purpose under the County Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, or money has been withdrawn from the county government Emergency Fund.***
>
> ***(2) A county government shall submit a supplementary budget in support of the additional expenditure for authority for spending under subsection (1).***
>
> ***(3) In complying with subsection (2), a county government shall describe how the additional expenditure relates to the fiscal responsibility principles and financial objectives.***
>
> ***(4) Except as provided by subsection (5), the approval of the County Assembly for any spending under this section shall be sought within two months after the first withdrawal of the money.***

(5) If the County Assembly is not sitting during the time contemplated in subsection (4), or is sitting but adjourns before approval has been sought, approval shall be sought within fourteen days after it next sits.

(6) When the County Assembly has approved spending under subsection (2), a supplementary Appropriation Bill shall be introduced for the appropriation of the money spent.

(7) In any financial year, the county government may not spend under this section more than ten percent of the amount appropriated by the County Assembly for that year unless that County Assembly has, in special circumstances, approved a higher percentage."

Consequently, the amendment of the Appropriation Act which emanated from passage of the Appropriation Bill No. 12 should be within the parameters of Sec. 135 PFMA, 2012.

Table 8: Analysis of the Appropriation Bill No. 12 passed by the CA & Appropriation (Amendment) Act No. 3

VOTE TITLE	APPROPRIATION BILL NO. 12 APPROVED BY THE COUNTY ASSEMBLY				APPROPRIATION AMENDMENT ACT NO. 3			
	RECURRENT EXPENDITURE ALLOACTION		DEVELOPMENT EXPENDITURE ALLOCATION	TOTAL	RECURRENT EXPENDITURE ALLOACTION		DEVELOPMENT EXPENDITURE ALLOCATION	TOTAL
	Salaries	O&M			Salaries	O&M		
Office Of The Governor, Administration And Public Service	313,000,000	-	83,000,000	396,000,000	272,000,000	191,100,000	125,000,000	588,100,000
Finance And Economic Planning	116,600,000	-	49,200,000	165,800,000	101,000,000	159,264,000	20,000,000	280,264,000
Fisheries, Forestry & Environment	27,500,000	-	49,000,000	76,500,000	18,000,000	6,836,000	13,800,000	38,636,000
Children, Culture And Social Services	52,600,000	-	312,000,000	364,600,000	42,000,000	7,846,000	365,200,000	415,046,000
Health And Sanitation	349,000,000	-	334,000,000	683,000,000	300,000,000	33,320,000	372,240,000	705,560,000
Lands, Housing And Urban Planning	54,000,000	-	112,000,000	166,000,000	35,000,000	18,626,000	100,000,000	153,626,000
Agri-Business, Cooperatives And Marketing	166,230,000	-	290,500,000	456,730,000	135,000,000	14,010,000	458,400,000	607,410,000
Water And Irrigation	57,000,000	-	216,000,000	273,000,000	30,000,000	8,350,000	214,700,000	253,050,000
Education, Sports And Vocational Trainings	209,100,000	-	339,000,000	548,100,000	160,000,000	6,906,000	545,600,000	712,506,000
Roads And Public Works	93,230,000	-	322,500,000	415,730,000	30,000,000	44,626,000	412,000,000	486,626,000
Trade, Energy, Tourism And Industrialization	89,163,160	-	70,000,000	159,163,160	14,600,000	6,576,000	74,000,000	95,176,000
County Assembly	261,553,053	353,226,947	85,000,000	699,780,000	192,190,000	72,810,000	-	265,000,000
Total	**1,788,976,213**	**353,226,947**	**2,262,200,000**	**4,404,403,160**	**1,329,790,000**	**570,270,000**	**2,700,940,000**	**4,601,000,000**

An analysis of Appropriation Bill No. 12 passed by the CA & Appropriation (Amendment) Act No. 3 shows that the amendment was 4% of the total budget which is within the 10% requirement of Sec. 135 PFMA, 2012.

It is noted that during debate on the Appropriation (Amendment) Bill No. 13, it was in contention as to whether an Appropriation Act can be amended or it should only be amended through a supplementary Act as it is a "special Act". We are of the view that an Appropriation Act should be amended by way of a Supplementary Act.

6. RECOMMENDATIONS

6.1 Adherence to Budget Cycle and Timelines

From our investigations, it was established that the budget cycle as laid down in the Constitution and the PFMA, 2012 was not strictly adhered to in Bomet County.

The CEC/F issued a budget circular in line with Sec. 128 PFMA, 2012. However, it was not dated and therefore the Office could not establish whether it was issued within the statutory timeline. Further, the provisions of Sec. 128 PFMA, 2012 as to the contents of the Circular were adhered to except it did not outline the procedure for public participation.

As at 1st July, 2014, when the financial year began, the County had not passed an Annual Development Plan for the FY 2014/15 in line with Sec. 126 PFMA, 2012. It should be noted that the ADP is a key policy document which guides the County in formulating the development agenda of the County during the budget process. The County Assembly passed the ADP on 7th August, 2014 after the start of the FY 2014/15.

In compliance with Sec. 118 PFMA, 2012, the County had in place a CBROP for the FY 2012/13 as at 30th September, 2014.

The County has in place a Debt Management Strategy Paper as required by section 123 of the PFMA, 2012. However, OCOB could not either establish when the DMSP was submitted to the CA or passed by the Assembly. During debate of the CA on 13th March, 2014 it was noted that the DMSP had not been submitted to the CA.

The CEC/F submitted the County Fiscal Strategy Paper to the County Assembly on 28th February, 2014 in compliance with Sec. 117 PFMA, 2012. However, the printed CFSP issued by the CEC/F did not tally with the CFSP approved by the CA. This is in contravention of the law as the recommendations of the CA on the CFSP are binding on the CEC/F.

In compliance with Sec. 127 PFMA, 2012, the CEC/F submitted the Cash Flow projections for the FY 2014/15 to OCOB on 12th June, 2014 which is within the required statutory period.

As per the provisions of Sec. 129 PFMA, 2012, the CEC/F submitted Budget Estimates for the FY 2014/15 on 30th April, 2014. However, the BE submitted was a line budget and therefore contravened the provisions of Sec. 12 of Schedule 2 PFMA, 2012 which requires that budget estimates be program based. The CEC/F therefore resubmitted the BE which was program based on 5th June, 2014, thus the period remaining(25 days) was not adequate for the CA to properly interrogate the BE. Further, the BE was not aligned to the CFSP approved by the CA as required by Sec. 129(2) (b) PFMA, 2012 thus contravening the law.

In light of the above, it is our finding that the budget process as stipulated in law was not fully adhered to in Bomet County as some statutory timelines were not met and some policy documents were not prepared. Consequently, the Appropriation Act which is the product of this flawed process is null and void and therefore its implementation would be contrary to the law.

We recommend that in future, the budget cycle and timelines should be strictly followed.

6.2 Bomet County Appropriation Act

On 24th June, 2014, the County Assembly approved the Budget Estimates submitted on 5th June, 2014 with amendments. The CEC/F then prepared and submitted Appropriations Bill No. 12 to the CA. However, contrary to the law, the Appropriations Bill submitted by the CEC/F differed from the budget estimates approved by the CA.

Appropriation Bill No. 12 increased the total budget allocation from KShs. 4,341,840,000 to KShs. 4,866,000,000/= an increment of KShs. 524,160,000/=. The alteration of the budget estimates approved by the County Assembly in the Appropriation Bill is a contravention of the law. Section 129(7) PFMA, 2012 is clear that the Appropriations Bill should be a mirror of the approved budget estimates.

We recommend that the Appropriations Bill submitted by the CEC/F should be aligned to the budget estimates approved by the County Assembly.

Further, in Appropriation Bill No. 12, the recurrent expenditure for the Executive Services have only been broken down into salaries (Kshs.1, 302,600,000) and O&M (Kshs.597, 460,000) without any breakdown of how much goes to each department. This is contrary to the principles of public finance management which require transparency as provided for under Art. 201(a) of the Constitution. In addition Section 130(2) (b) PFMA, 2012 requires that the Appropriations Bill should clearly identify the appropriations by Vote and programme.

We recommend that in preparing the budget estimates, the CEC/F should ensure that expenditure is disaggregated to show allocations to each department, programme and vote in order to ensure transparency.

On 30th June, 2014, The B&A Committee tabled a report to the County Assembly amending Appropriations Bill No. 12 to bring it to conformity with the approved budget estimates. The report was adopted by the whole House and the Appropriations Bill No. 12 was passed with amendments.

On 2nd July, 2014, the Governor in line with Sec. 24(2) (b) of CGA referred back the Appropriation Bill No. 12. On 16th July, 2014, the CA passed the Appropriation Bill No. 12 a second time without incorporating the Governor's memorandum. The Speaker submitted the Bill to the Governor on 16th July, 2014 which was received by the Governor on 17th July, 2014. The Governor did not assent to the Bill in line with Sec. 24(6) of CGA and therefore the Appropriation Bill No. 12 became law on 25th July, 2014.

On 24th July, 2014, The CEC/F tabled another budget estimates together with Appropriation (Amendment) Bill. No. 13 to the CA. During a special sitting convened on 28th July, 2014, the CA passed the Appropriation (Amendment) Bill. No. 13 which was assented to by the Governor on 28th July, 2014 becoming Bomet County Appropriation (Amendment) Act, 2014 (No. 3).

It is our considered view that the Appropriation Act is a "special" kind of law that is the culmination of a long planning process in which public participation is vital. Consequently, an amendment to the Appropriation Act is governed by certain rules. These rules are that an amendment can only be sought where the amount appropriated for a certain program is insufficient or money has been withdrawn from the Emergency fund and should be by way of a supplementary bill. Further, the amendment should not exceed 10% of the budget (Sec. 135 PFMA, 2012).

In Bomet County, the Appropriation (Amendment) Bill. No. 13, adhered to the provisions of Sec. 135(7) PFMA, 2012 as the amendment was 4% of the total budget which is within the 10% requirement of Sec. 135(7) PFMA, 2012. However, the amendment did not comply with Sec. 135(1) PFMA, 2012 as to the criteria giving rise to a supplementary. Consequently, the amendment was not in conformity with the law.

We recommend that any amendment of the Appropriation Act should be by way of a supplementary Act. Further, the supplementary should only be undertaken where a need has arisen for which no funds had been appropriated or where the funds appropriated are not sufficient or money has been withdrawn from the emergency fund.

From the investigations, it is our finding that in Bomet County, there is an Appropriation Act, 2014 which came into force by operation of the law Sec.

24(6) of the County Governments Act. Bomet County also has an Appropriation (Amendment) Act, 2014.

6.3 Public Participation

Our finding is that in Bomet County, the public was involved in the budget making process in line with the principles of public finance management.

We recommend that the County should put in place a framework that will guide public participation in the budget process in line with Sec. 207 PFMA, 2012.

7. CONCLUSION

The Constitution of Kenya, 2010 and the Public Finance Management Act, 2012 provides a framework which guides the budget making process. Bomet County must conform to the timelines for preparation of the planning documents that inform the budget.

From the investigation, it is clear that the budget process as outlined in law was not strictly adhered to in Bomet County. Consequently, the County should ensure that its budget for the FY 2014/15 is based on the planning documents required by law. Further, they should ensure that in future they fully adhere to the processes in budget formulation as laid down in law.

We however, commend Bomet County in ensuring public engagement in formulation of the budget.

Mrs. Agnes Odhiambo
Controller of Budget

3rd October, 2014