COMMISSION ON REVENUE ALLOCATION

Promoting an equitable society

CORE MANDATE

Presentation outline

1. Constitutional and Legal Functions of CRA
2. Division of Revenue and Sharing of Revenues Among Counties
3. Equalisation Fund
4. Public Finance Management
5. Revenue Enhancement
6. The Role of ICT in County Own Source Revenue Enhancement and Revenue Administration

1. Constitutional & Legal Functions

Constitutional Functions

CRA is established under Article 215. Its functions are:

- Revenue Allocation Function: two levels of govt. (Art. 203, 216-1)
- Public Financial Management Function: Financing and financial management of the counties (Art. 205, 216-2,3b,c)
- Revenue Enhancement Function: Defining & enhancing revenue sources of national and county governments (Art. 216-3b)
- Development of Marginalisation Policy for purposes of the Equalisation Fund (Art. 204-4; 216-4)
- Constitutional interpretation & application function (Art. 249)
- Investigative, conciliation, mediation & negotiation functions (Art.252)

1. Constitutional & Legal Functions

a. Revenue Allocation Function

- Revenue allocation is one of the Commission's principal functions.

- Relates to revenue allocation between National & Governments (Vertical) and among county governments (Horizontal).

1. Constitutional & Legal Functions

a. Revenue Allocation Function

Allocation of revenue must be guided by:

- The Criteria set under Article 203 (National Interest, provisions for public debt and other national obligations, needs of national and county governments)
- The Principles of Public Finance (Article 201)
- The Objects of Devolution (Article 174)
- The Principles of Devolution (Article 175)
- The Functions of the Two Levels Of Government under Article 186 read with the Fourth Schedule.

1. Constitutional & Legal Functions

a. Revenue Allocation Function

- Equitable share of revenue allocated to counties shall not be less than 15% of all revenue collected by the national government (Article 203(2))

- The Senate is required to request and consider CRA recommendations when determining the basis for allocating among counties the share of national revenue that is annually allocated to counties once very five years (Article 217)

1. Constitutional & Legal Functions

b. Public Finance Management Function

- PFM is concerned with the effective management of the collection and expenditure of funds by the government
- Scope of PFM: Revenue raising, planning on use of revenue, execution of plans & monitoring and spending
- PFM also includes:
  - Budgeting of revenue
  - Keeping of books of account
  - Internal audits

1. Constitutional & Legal Functions

b. Public Finance Management Function

- Encouraging fiscal responsibility: CRA is required to CRA to provide for how best to regulate matters including:
  - Expenditure limits
  - Revenue floors (or ceilings on government proceeds)
  - Limits on overall fiscal balance
  - Limits on public debt

  (Article 216-3c)

1. Constitutional & Legal Functions

c. Revenue Enhancement Function

- Entails some form of unbundling of revenue sources assigned to the two levels of government under Article 209
- Identification of additional sources of revenue for both levels of government e.g. identification of other revenue raising powers for county governments in terms of Article 209(3)(c)- “any other tax that is authorised to impose by an Act of Parliament”

1. Constitutional & Legal Functions

d. Development of a Policy identifying Marginalized Areas

- This functions seeks to operationalize Article 204 that establishes the Equalization Fund
- Despite legal hurdles the Fund is now operational Council of Governors vs AG & 2 Others (Petition No. 272 of 2016)
- This function is time bound as per Article 204(6)

1. Constitutional & Legal Functions

e. Constitutional Interpretation & Appn. Function

When interpreting and applying these provisions, CRA must bear in mind the fact that Article 249 requires it to:

1. Protect the sovereignty of the people
2. Secure the observance by all state organs of democratic values and principles
3. Promote constitutionalism

1. Constitutional & Legal Functions

e. Constitutional Interpretation & Appn. Function

CRA is required to give recommendations on any Bill concerning sharing of revenue or any financial matter concerning county governments. Such recommendations are to be considered before parliament passes such a Bill:

- Appropriating money out of the Equalization Fund
- That includes provisions dealing with sharing of revenue (DORB, CARB, county governments additional allocations bill)
- That includes provisions dealing with any financial matter concerning county governments

1. Constitutional & Legal Functions

f. Investigative, conciliation, mediation and negotiation functions

- CRA may conduct investigations on its own initiative or on a complaint made by a member of the public
- CRA has the powers necessary for conciliation, mediation and negotiation

1. Constitutional & Legal Functions

Legal Functions

In addition to its principal function under Article 216(1) of the Constitution, the Commission is required under clause (2) of that Article to:

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

(b) upon request from the Senate, make recommendations on the basis for allocating among the counties the share of national revenue that is annually allocated to the county levels of government;

1. Constitutional & Legal Functions

Legal Functions

In addition to its principal function under Article 216(1) of the Constitution, the Commission is required under clause (2) of that Article to:

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

(b) upon request from the Senate, make recommendations on the basis for allocating among the counties the share of national revenue that is annually allocated to the county levels of government;

1. Constitutional & Legal Functions

Legal Functions

c. Submit recommendations to the Senate, National Assembly, national executive, County Assembly and county executive on the proposals made for equitable distribution of revenue between the national and county governments and amongst the county governments taking into account the criteria set out in Article 203 of the Constitution, including recommendations on the amounts earmarked for specific purposes such as the constituency development fund, among others; and

1. Constitutional & Legal Functions

Legal Functions

c. Perform such other functions as are provided for by the Constitution or any other written law (Public Finance and Management Act - specifics on the DORB, IBEC membership, receipt of various reports, Section 161 on revenue raising measures for counties), Energy Act, Section 85, and others) (CRA Act Section 10)

2. Division of Revenue and Sharing of Revenue Among Counties

c. Perform such other functions as are provided for by the Constitution or any other written law (Public Finance and Management Act - specifics on the DORB, IBEC membership, receipt of various reports, Section 161 on revenue raising measures for counties), Energy Act, Section 85, and others)

(CRA Act Section 10)

2. Division of Revenue and Sharing of Revenue Among Counties

a. Vertical Equity: national vs. county share-216 (1)(a)

Criteria for sharing of revenue

- Article 203(1): National Interest, provisions for public debt and other national obligations, needs of national and county governments
- Assignment of functions as per Schedule Four
- Article 187(2)(a): Finance should follow functions
- Article 203(2): Allocation to county governments shall be not less than 15% of the most recent audited accounts of revenue

2. Division of Revenue and Sharing of Revenue Among Counties

a. Vertical Equity: national vs. county share-216 (1)(a)

Definition of shareable revenue

- All taxes imposed by the national government and any other revenue including investment income authorized by an Act of Parliament.

- Excludes revenue referred to under Article 206(1)(a)(b) and Article 209(4)

(Article 209(1) and Section 2 of the CRA Act, 2011)

2. Division of Revenue…

a. Vertical Equity: national vs. county share

- **Timelines**: PFMA Section 190 (1)(a): Six months before the beginning of the financial year: Recommendations are made annually

- **Responsibilities**

1. Article 216(1)(a): CRA to make recommendations
2. Article 218 & PFMA, Section 191(1):National Treasury to introduce before Parliament the DORB and the CARB
3. PFMA, Section 187(2)(g): Intergovernmental Budget & Economic Council (IBEC) to consider any differences between CRA and NT
4. Art. 112,113: National Assembly& the Senate to consider the Bills