

**REPUBLIC OF KENYA**



**THE COUNTY ASSEMBLY OF SIAYA**

**SECOND ASSEMBLY – SECOND SESSION**

**THE JOINT COMMITTEE OF BUDGET AND  
APPROPRIATIONS & JUSTICE AND LEGAL AFFAIRS**

**REPORT ON**

**THE SIAYA COUNTY SUPPLEMENTARY  
PROGRAMME BASED AND LINE BUDGET, 2018/2019**




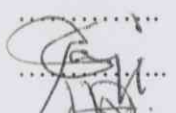








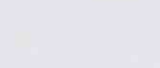

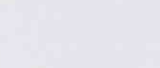



**NOVEMBER, 2018**

## PREFACE

**Mr. Speaker Sir,**

The Joint Committee on Budget and Appropriations & Justice and Legal Affairs was established by way of Communication from the Chair on Tuesday, 13/11/2018 pursuant to Standing Order No. 193 and was mandated to discuss and review the proposed Siaya County Supplementary Budget, 2018/2019 and make recommendations to the County Assembly;

The Joint Committee, as was constituted composes of the following members of the two Committees;

<u>Name of Member</u>	<u>Position</u>	<u>Sign</u>
1. <b>Hon. Sylvester Madialo, MCA</b>	- Chairperson (Budget & Appropriations)	
2. <b>Hon. Francis Otiato, MCA</b>	- Co – Chairperson (Justice & Legal Affairs)	
3. Hon. Nick Ochola, MCA	- Member	
4. Hon. Hellen Winga, MCA	- Member	
5. Hon. Samuel Olasi, MCA	- Member	
6. Hon. James Obiero Otare, MCA	- Member	
7. Hon. Leonard Oriaro	- Member	
8. Hon. William Kinyanyi, MCA	- Member	
9. Hon. Lornah Adida, MCA	- Member	
10. Hon. Edwin Odhiambo, MCA	- Member	
11. Hon. Fredrick Omoro, MCA	- Member	
12. Hon. Fredrick Opanga, MCA	- Member	
13. Hon. Jane Odhiambo	- Member	
14. Hon. Joseph Mboha, MCA	- Member	
15. Hon. Winnie Otieno, MCA	- Member	
16. Hon. Charlton Andiego, MCA	- Member	
17. Hon. SIMON OUSA MCA – Member		
Hon. LEONAR OTIENO OARIARO – Member		

## ACKNOWLEDGEMENT

**Mr. Speaker Sir**, first and foremost, on behalf of this Joint Committee we wish to express our gratitude to the offices of Siaya County Assembly Speaker and the Siaya County Assembly Clerk for the support received as it discharged its mandate of examining the Siaya County Supplementary Programme Based Budget, 2018/2019.

Further, we wish to express our appreciation to the Honorable Members of the Joint Committee who traded off their time to participate in the activities of the Joint Committee and whose dedication and fortitude saw the completion of this report.

Special appreciation also goes to the Secretariat to the Joint Committee who, on several occasions, had to go beyond the normal call of duty. The commitment and devotion to duty of all those involved in this noble task made the work of the Joint Committee and production of this report a success.

**Mr. Speaker Sir**, it is therefore our pleasant duty and privilege, on behalf of the Joint Committee on Budget and Appropriations & Justice and Legal Affairs, to table this report and recommend it to the Assembly for adoption.

Signed ..........

Hon. Sylvester Madialo, Chairman,  
(Budget and Appropriations Committee),  
County Assembly of Siaya.

Date ..13<sup>th</sup> Nov. 2018.....

Signed ..........

Hon. Francis Otiato, Co-Chairman,  
(Justice and Legal Affairs Committee),  
County Assembly of Siaya.

Date ..13<sup>th</sup> Nov. 2018.....

## **1. CHAPTER ONE: INTRODUCTION**

### **1.1 Introduction**

**Mr. Speaker Sir**, as required by the Constitution and the Public Finance Management Act, the supplementary budget estimates and related documents for the two arms of government namely, County Executive, and the County Assembly were submitted to the County Assembly by 7<sup>th</sup> November 2018. The supplementary budget was thereafter committed to the Joint Committee of Budget and Appropriations & Justice and Legal Affairs for consideration and reporting back to the Assembly.

Mr. Speaker Sir, this is the first supplementary budget to be prepared in trying to implement the Siaya CIDP, 2018-2022 during the FY 2018/2019. The Joint Committee of Budget and Appropriations & Justice and Legal Affairs has therefore examined and discussed the Estimates and has made recommendations which are contained in this report.

**Mr. Speaker Sir**, in reviewing the 2018/2019 Supplementary Budget Estimates, the Joint Committee held one (1) Sitting. Similarly, in line with this constitutional responsibility, the Sectoral Committees were tasked by the County Assembly to undertake an exercise to review the 2018/19 supplementary budget for the respective sectors. To ensure that the Joint Committee has taken into the account the recommendations of the Sectoral Committees, it interacted with the Sectoral Committees during a Special Sitting on Tuesday, 13/11/2018.

### **1.2 Methodology**

The Joint Committee pursuant to its mandate adopted various methods in executing the inquiry as listed below:

- 1) Deliberative meeting sessions;
- 2) Interrogative sessions;
- 3) Analysis of submitted documents; and,

The above documents and methodology helped inform the Joint Committee in making key observations and subsequently recommendations.



### **1.3 Legal basis for the Preparation and Submission of the Supplementary Budget Estimates**

**Mr. Speaker Sir**, the process of submission and approval of the Supplementary Budget Estimates by the County Assembly is anchored in Section 135 of the Public Finance Management (PFM) Act, 2012, read together with Section 112 of the PFM Act, 2012 and Regulation no. 39 of the PFM Act, Regulations 2015. The above legislations, as summarized below, provide for certain circumstances under which a supplementary budget may be submitted to the County Assembly by the County Treasury.

#### **a) Public Finance Management Act, 2012**

Section 135 of the Public Finance Management Act (PFMA), 2012 provides for the circumstances under which a supplementary budget may be proposed. In considering the proposed supplementary budget, the Joint Committee sought to find out whether the supplementary budget is aligned with budget making documents such as the County Fiscal Strategy Paper, Annual Development Plan, County Integrated Development Plan approved by the County Assembly.

*“(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.*

#### **b) PFM (County Governments) Regulations 2015**

*Reg. 39(1) states that each Accounting Officer shall within the guidelines of the supplementary budget circular and in conformity with budget guidelines issued by the County Executive Committee Member, prepare revised budget estimates in the format to be issued by the Cabinet Secretary.*

*Reg. 39(2) states that prior to incurring any expenditure under paragraph (1), Accounting Officers shall seek the approval of the County Treasury and if approval is granted by the County Executive Committee Member, it shall be communicated to the Accounting Officers through a notification which shall be copied to the Auditor General and the Controller of budget.*

*Reg. 39(3) state that the purpose for which approval is sought for a supplementary budget shall be-*

- a) unforeseen and unavoidable, in circumstances where the budget provision was made; or*
- b) Unavoidable, in circumstances where there is an existing budgetary provision which, however, is inadequate.*

*Reg. 39(4) for purposes of paragraph (3), the following shall not be considered unforeseen and unavoidable expenditure-*

- a) Expenditure that, although known when finalizing the estimates of the original budget, could not be accommodated within allocations*

*Section 112 of the PFM Act defines the unforeseen event as one which—*

- ✓ Threatens damage to human life or welfare; or
- ✓ Threatens damage to the environment

In reviewing the Supplementary Budget, the Joint Committee considered these legal provisions to determine the extent to which they were adhered to in preparation of the Supplementary Estimates. The key elements reviewed were the compliance with the relevant provisions of the law; supporting documents or other Bills with which the supplementary budget estimates was submitted; and whether there was reliable, stakeholder consultation – public participation – as well as adherence to recommendations by the County Assembly on the County Fiscal Strategy Paper, 2018 among other planning documents approved by the County Assembly.



## 2. CHAPTER TWO: JOINT COMMITTEE FINDINGS AND OBSERVATIONS

**Mr. Speaker Sir**, in considering the Proposed Siaya County Supplementary Budget, 2018/2019, the Joint Committee of Budget and Appropriations & Justice and Legal Affairs made the following findings and observations;

### 1. Legal compliance of the Supplementary budget

Section 135 of the Public Finance Management (PFM) Act, 2012 as read together with, **Section 112 of the PFM Act, 2012 and Regulation no. 39 of the PFM Act, Regulations 2015** provides for certain circumstances under which a supplementary budget may be prepared. When;

- i. *A need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act*
- ii. *Money has been withdrawn from the County Government Emergency Fund*
- iii. *The County Government has spent money that has not been appropriated if the amount appropriated for any purpose under the County Appropriation Act is insufficient*
- iv. *Further supplementary budgets are used to bridge deficits to reflect changes in the fiscal environment since the appropriation was approved*

Specifically, Regulation no 39(3) of *the PFM Act, Regulations 2015* states that the purpose for which approval is sought for a supplementary budget shall be-

- a) *Unforeseen and unavoidable, in circumstances where the budget provision was made; or*
- b) *Unavoidable, in circumstances where there is an existing budgetary provision which, however, is inadequate.*

Section 112 of the PFM Act defines the unforeseen event as one which—

- ✓ Threatens damage to human life or welfare; or
- ✓ Threatens damage to the environment

Additionally, Reg. 39(4) states that *for the purposes of paragraph (3), the following shall not be considered unforeseen and unavoidable expenditure; **Expenditure that, although known when finalizing the estimates of the original budget, could not be accommodated within allocations.***

From the legal provisions above and considering the proposed supplementary budget, it is clear that there is no evidence or justification or demonstration that preparation of the proposed supplementary budget for FY 2018/2019 was triggered by the circumstances mentioned above.

## **2. The County Allocation of Revenue Act (CARA), 2018**

The County Allocation of Revenue Act, 2018 – an Act of the Parliament awarded Siaya County Ksh 46,076,429 for the purposes of Kenya Devolution Support Program (KDSP). However the CEC Member for Finance has proposed to budget for Ksh 149,658,522. This gives a deficit of Ksh 103,582,093 which the CEC Member is not justifying its source. Furthermore, this is in contravention of an Act of Parliament. If approved as part of the budget, this may cause a deficit in the budget whose correction is not given.

**In view of this, the County Government did not comply fully with provisions of CARA, 2018.**

## **3. Own Source Revenue**

The County Government has proposed to enhance its own source revenue by Ksh. 75M from Ksh. 275M to Ksh. 350M. However, considering the previous fiscal years performance of the County in own source revenue collection as shown in the table below, there is no justification as to why the own source revenue projection should be enhanced.

**Table 1: Analysis of local revenue performance**

<b>Financial Year</b>	<b>Projected</b>	<b>Actual</b>	<b>% Actual</b>
2015/16	230,000,000	135,583,664	58.95%
2016/17	270,000,000	172,822,681	64.01%
2017/18	270,000,000	127,729,540	47.31%

Moreover, the County Government, in its County Budget Review and Outlook Paper (CBROP) which reviewed the performance of FY 2017/2018, the government reported on page 24 that *“it is worth noting that the implementation of the FY 2018/19 budget is experiencing challenges particularly on revenue collection and elevated expenditure pressures. The outturn for the FY 2017/18 indicates the need to review the projected revenues in FY2018/19 in order to take into*



*account the lower than expected revenue performance in the base year. As such the revenue forecasts for FY 2018/19 have been reviewed downwards to reflect outcome in FY 2017/18”.*

**There is therefore a contradiction of the Government’s position on the collection of local revenue as demonstrated in the two documents which may lead to a budget deficit during the financial year and therefore the County Assembly is not able to make an informed decision based on the two documents.**

#### **4. Roll overs from FY 2017/2018**

- a) On 28/6/2018 while concluding on the Committee’s recommendations on the proposed Siaya County Budget Estimates, 2018/2019, the County Treasury informed the Budget and Appropriations Committee that the County would roll over projects valued at **Ksh 1,763,014,403.30**. However, this has changed in the proposed supplementary budget in which the County Treasury is proposing (in pages viii & x) to roll over projects worth **Ksh 1,080,043,031** from FY 2017/2018.
- b) This amount further changes to **Ksh. 1,296,588,967** on page xi of the same document.

**The County Assembly is therefore not able to ascertain the exact value of the rolled over projects from FY 2017/2018. Further, there is no explanation as to the whereabouts of Ksh 700 million variance in the value of rolled projects.**

#### **5. Variation between the proposed supplementary budget and the approved budget**

- a) Regulation no. 39(6) of the PFM Act Regulations, 2015 specifically states that *“The request for supplementary budget in paragraph (5) shall be presented in a format that facilitates comparison with the **original budget** and shall contain all the information necessary to enable a decision on the application to be reached and shall include”*

39-(6)(a) *“ The vote, program, sub-programme and a broad expenditure category which is desired to supplement, **the original sum voted** thereon and any supplements which may have since been added.*

- b) There are differences between the approved itemized budgets and what the Government has captured as itemized budgets in the proposed supplementary. This has been illustrated in tables 2 and 3 below:

**Table 2: Analysis of variances in summation of departmental itemized budgets**

Vote No	Vote Details	Printed 2018/19	Estimates FY	Proposed supp. FY 2018/19	Variance
1	County Assembly		258,900,000	258,900,000	-
2	Governance and Administration		135,149,299	100,000,000	(35,149,299)
3	Finance and Economic Planning		2,000,000	2,000,000	-
4	Agriculture, Food, Livestock & Fisheries		167,000,000	167,000,000	-
5	Water, Irrigation, Environment & Natural Resources		306,050,000	306,050,000	-
6	Education, Youth Affairs, Gender & Social Services		224,450,000	56,500,000	(167,950,000)
7	County Health Services		376,600,000	306,500,000	(70,100,000)
8	Lands, Physical Planning, Urban Development and Housing		105,300,000	91,600,000	(13,700,000)
9	Enterprise and Industrial Development		151,984,632	68,500,000	(83,484,632)
10	Tourism, Culture, Sports and Arts		138,150,000	118,000,000	(20,150,000)
11	Roads, Public Works, Energy and Transport		699,587,198	699,087,198	(500,000)
	<b>Total</b>		<b>2,565,171,129</b>	<b>2,174,137,198</b>	<b>(391,033,931)</b>

**Table 3: Analysis of Ward transfers**

A	B	C	D	E
Ward	Approved Estimates	FY 2018/19 as captured in the supp.	Proposed Supplementary	Variance = (D-B)
Central Alego	30,000,000	30,000,000	6,500,000	(23,500,000)
Central Gem	30,000,000	22,500,000	3,000,000	(27,000,000)
Central Sakwa	30,000,000	12,500,000	6,000,000	(24,000,000)
East Asembo	30,000,000	21,200,000	2,500,000	(27,500,000)
East Gem	30,000,000	17,000,000	2,500,000	(27,500,000)
East Ugenya	30,000,000	24,300,000	2,500,000	(27,500,000)
North-Alego	30,000,000	25,500,000	2,500,000	(27,500,000)
North Gem	30,000,000	15,300,000	4,088,721	(25,911,279)
North Sakwa	30,000,000	16,100,000	4,036,244	(25,963,756)
North Ugenya	30,000,000	14,000,000	6,400,988	(23,599,012)
North Uyoma	30,000,000	28,500,000	2,500,000	(27,500,000)
Siaya Township	30,000,000	28,000,000	2,500,000	(27,500,000)
Sidindi	30,000,000	18,100,000	3,980,988	(26,019,012)
Sigomre	30,000,000	11,000,000	3,980,494	(26,019,506)
South East Alego	30,000,000	22,000,000	6,081,315	(23,918,685)
South Gem	30,000,000	14,600,000	3,500,000	(26,500,000)
South Sakwa	30,000,000	23,500,000	3,989,000	(26,011,000)

A	B	C	D	E
Ward	Approved Estimates	FY 2018/19 as captured in the supp.	Proposed Supplementary	Variance = (D-B)
South Uyoma	30,000,000	15,600,000	4,900,000	(25,100,000)
Ugunja	30,000,000	12,400,000	4,347,360	(25,652,640)
Ukwala	30,000,000	27,500,000	2,500,000	(27,500,000)
Usonga	30,000,000	18,000,000	3,000,000	(27,000,000)
West Alego	30,000,000	16,900,000	2,500,000	(27,500,000)
West Asembo	30,000,000	16,400,000	2,500,000	(27,500,000)
West Gem	30,000,000	8,700,000	2,989,000	(27,011,000)
West Sakwa	30,000,000	20,200,000	2,500,000	(27,500,000)
West Ugenya	30,000,000	26,000,000	2,500,000	(27,500,000)
West Uyoma	30,000,000	17,000,000	2,500,000	(27,500,000)
Yimbo West	30,000,000	10,500,000	9,500,000	(20,500,000)
Yala Township	30,000,000	21,600,000	3,162,688	(26,837,312)
Yimbo East	30,000,000	10,200,000	4,600,000	(25,400,000)
<b>Total</b>	<b>900,000,000</b>	<b>565,100,000</b>	<b>114,056,798</b>	<b>(785,943,202)</b>

*The figures which the Government has captured to be the approved budget estimates are in most cases not similar to what was approved by the County Assembly as demonstrated in the tables 2 & 3 above. This may mean that the County Treasury has a different copy of budget other than what this Assembly approved. This therefore contravenes the provisions of the Regulation no 39 (6) as stated above.*

*Variances of approved estimates for FY 2018/2019 versus the alleged approved estimates as captured in the supplementary FY 2018/2019 must be explained.*

#### **c) Special Groups**

Funds earlier allocated for the purposes of empowerment of women have been reduced from the approved **Ksh 7.5 million to Ksh 1,746,958**. Similarly, the funds earlier allocated for the purposes of empowerment of PWDs have been reduced from the approved **Ksh 7.5 million to Ksh 1,746,958**.

The Joint Committee as well found out that the earlier approved Ksh 45 million earmarked for the construction of Ward offices has been struck off in the proposed supplementary budget. This will certainly frustrate the implementation of the project.

By reducing the budgetary provisions for the above special groups, the County Government contravenes Article 56 of the Constitution of Kenya, 2010.



## 6. Analysis of the variations in the departmental budgets

Section 135 (7) of the PFM Act, 2012, read together with Regulation no 39(9) of the PFM Regulations provides for limitations within which variations can be done on an appropriated budget estimates.

Section 135(7) categorically states that *“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”*. Likewise, Regulation no. 39(9) of the Public Finance Management Act, Regulations 2015 states that *“In approving any estimates under sections 135 and 154 of the Act, that the County Assembly approval **shall not exceed ten (10%) percent of the approved budget estimates** of a program of Sub-vote unless it is for an unforeseen and unavoidable need as defined in section 112 of the Act”*.

A summary of how adjustments were done in the proposed supplementary is given in the table below;

**Table 4: Analysis of Combined budget**

A	B	C	D	E	F
Vote No.	Vote Details	Approved Estimates 2018/19	FY Proposed supp. FY 2018/19	Variance	% Variance
1	County Assembly	907,556,207	720,756,207	(186,800,000)	-20.58%
2	Governance and Administration	706,227,275	651,408,917	(54,818,358)	-7.76%
3	Finance and Economic Planning	566,996,155	661,922,400	94,926,245	16.74%
4	Agriculture, Food, Livestock & Fisheries	433,745,401	476,526,248	42,780,847	9.86%
5	Water, Irrigation, Environment & Natural Resources	390,474,126	435,474,126	45,000,000	11.52%
6	Education, Youth Affairs, Gender & Social Services	489,409,781	384,847,807	(104,561,974)	-21.36%
7	County Health Services	2,067,822,799	2,106,966,302	39,143,503	1.89%
8	Lands, Physical Planning, Urban Development and Housing	176,750,647	157,113,335	(19,637,312)	-11.11%

A	B	C	D	E	F
Vote No.	Vote Details	Approved Estimates FY 2018/19	Proposed supp. FY 2018/19	Variance	% Variance
9	Enterprise and Industrial Development	242,125,315	166,633,252	(75,492,063)	-31.18%
10	Tourism, Culture, Sports and Arts	245,763,036	237,335,666	(8,427,370)	-3.43%
11	Roads, Public Works, Energy and Transport	780,720,452	994,475,123	213,754,671	27.38%
	<b>Total</b>	<b>7,007,591,194</b>	<b>6,993,459,383</b>	<b>(14,131,811)</b>	<b>-0.20%</b>

Some of the departments have had their budgets revised by more than 10% of what was appropriated. The Assembly cannot therefore proceed to approve the proposed supplementary budget as that will contravene the provisions of the Section 135 (7) of the PFMA, 2012 and Regulation number 39 (9) of the PFM Regulations, 2015.

#### **7. Totally eliminated development projects**

The County Government, in preparing the supplementary budget, has totally eliminated development projects worth over one billion shillings. These projects were identified, subjected to public participation, considered, approved and finally funds appropriated by the County Assembly for implementation. Summary of the projects proposed for elimination is attached to this report as Annexure One.

The total approved development budget for FY 2018/2019 was Ksh 2,565,171,129. By proposing to eliminate projects worth Ksh 1 billion, it implies that the County Treasury would be interfering with nearly 50% of the development budget.

There was no justification on the stages of implementation of the projects that were already appropriated and now being proposed for total elimination

#### **8. Newly introduced development projects**

- a) The County Government has introduced new projects worth over one billion shillings; projects which were not subjected to public participation and some of which are not in the County's planning documents. Some of the newly introduced projects are as follows;
  - i. Rehabilitation of 5 dams at a total cost of Ksh 28,582,090

- ii. Eco ablutions at a total cost of Ksh 135 million (whose locations of implementation is not known)
- iii. Construction of Ngeta Kapongo water project (Phase 1) at Ksh 25 million
- iv. Got Mbaga – Uranga – Nyadorera water pipeline at Ksh 15 million
- v. Centre of Excellence at Ksh 20 million
- vi. Construction of maternity wings at Madiany, Ambira and Ukwala at a total cost of Ksh 75 million
- vii. Upgrading of Bar Kowino – Nango road (10km) to bitumen standards at Ksh 350 million
- viii. Upgrading of Opoda - Nyakasumbi road (2km) to bitumen standards at Ksh 70 million
- ix. Upgrading of Segere - Ogaso road (6km) to bitumen standards at Ksh 210 million

NB: Additionally, budgetary provisions for the following projects have been proposed for enhancement; Siaya County Stadium by Ksh 30,908,575 and construction of the County office annex by Ksh 15,330,941.

**There was no demonstration as to whether the newly introduced projects were subjected to public participation.**

**There was no evidence that the additional or new introductions arose from a request from the affected Accounting officers pursuant to the provisions of Regulation no 39 (5) & (7)**

**By proposing to introduce projects worth Ksh 1 billion, it implies that the County Treasury would be interfering with nearly 50% of the development budget.**

**The Government may not be able to utilize the huge amounts proposed in the supplementary budget for roads within the remaining period of the financial year**

**In case the County Assembly approves this supplementary budget, it will be in contravention of the provisions of Regulation 39 (8) of the PFM Regulations, 2015 which states that *“for avoidance of doubt, budget allocations for new policy options and service delivery initiatives shall only be considered when introduced in the annual estimates of budget in accordance with the procedure laid down in the Act and these Regulations”*.**



## **b) Upgrading of Bar – Kowino – Nango road**

The County Government has proposed to allocate Ksh 350 million for the upgrading of Bar – Kowino Nango road (10km).

However, the National Government under the Kenya Rural Roads Authority (KERRA) in its Annual Public Roads Programme for Financial Year 2018/2019 (page 20) has allocated funds for Liunda Beach – Bondo road (C843, 18.98KM). This may be the same road as Bar Kowino – Nango road on which the County has proposed an allocation of funds. Furthermore, the County does not have a mandate to undertake any work on Class C roads.

**From the document provided, there was no demonstration as to whether a MoU was signed between the County Government of Siaya and National Government mandating the County Government to perform the said function on behalf of the National Government.**

**In addition to Bar – Kowino – Nango road, the following issues remain unclear regarding the other newly introduced roads;**

- Whether the County Government has conducted feasibility studies on the said roads
- Whether the County Government has designed the roads to be upgraded
- Whether the proposed budget included provisions for compensation for people who may be affected by the projects as well as litigations costs that may arise in the course of the upgrading

## **9. Provisions of the Fourth Schedule of the Constitution of Kenya, 2010**

The Fourth Schedule of the Constitution of Kenya, 2010 stipulates the distribution of functions between National and the County Governments. No. 5(a) of the second Part of the Schedule indicates, as a function of the County Government, the County transport including the County roads. Moreover, No. 9 of the same Part indicates that the County Government shall deal with pre-primary education, village polytechnics, home craft centres and childcare facilities. Considering the two functions of the County Government listed vis a vis the proposed Supplementary budget, upgrading of Bar Kowino – Nango road (10km) to bitumen standards at Ksh 350 million and the centre of excellence – considering the project's objectives earlier reported to this Assembly by the County Executive – are not functions of the County Government. The provisions of this Schedule, therefore read together with Section 196(1) of the

PFM Act, 2012 expects spending of public money only on functions envisaged as functions of the County Government.

### 10. Recurrent budget

The County Government has proposed substantial enhancements in the recurrent budget. Some of the notable activities proposed for increments are as enumerated in the table below.

**Table 5: Summary of enhanced projects**

No	Department/sector	Item code	Item name	2018/2019 budget estimate	Supplementary budget	Variance	% Variance
1	Finance & Economic Planning	2210301	Travel Costs	8,116,828	27,116,828	19,000,000	234.08%
		2210303	Daily Subsistence Allowance	16,845,752	29,787,484	12,941,732	76.82%
		2210910	Medical Insurance	43,436,351	59,436,351	16,000,000	36.84%
		2211201	Refined Fuel and Lubricants for Transport	5,004,758	15,004,758	10,000,000	199.81%
		2211310	Contracted Professional Services	9,677,106	21,177,106	11,500,000	118.84%
		2211399	Other Operating Expenses - Other (Budget)	6,966,063	22,633,998	15,667,935	224.92%
2	Education, Youth Affairs, Gender & Social Services		Governor's scholarship programme	5,000,000	37,500,000	32,500,000	650.00%
3	Enterprise and Industrial Development	2210303	Daily Subsistence Allowances	1,853,240	17,353,240	15,500,000	836.37%
		2211308	Legal Dues/fees, Arbitration and Compensation Payments	200,000	13,968,127	13,768,127	6884.06%
4	Tourism, Culture, Sports and ICT	2211310	Contracted Professional Services	1,100,000	15,500,000	14,400,000	1309.09%
5	Public Works, Roads and Transport	2211310	Contracted Professional Services	1,172,754	19,172,754	18,000,000	1534.85%

No	Department/sector	Item code	Item name	2018/2019 budget estimate	Supplementary budget	Variance	% Variance	
6	County Services	Health	2210303	Daily Subsistence Allowances (CHEW, Community Dialogue Meetings, Community Disease Surveillance& Travel Reimbursements)	8,000,000	17,500,000	9,500,000	118.75%

The County Treasury has not indicated the source of funds for the additional expenditure to be incurred on the proposed recurrent enhancements. In absence of clear source of funds to finance the additional expenditure on recurrent budget, the Government may be terminating development projects in order to raise funds for the recurrent expenditure as shown by a proposed reduction of Ksh 175 million from the development budget

The Governor's bursary kitty has been enhanced from Ksh 2 million to Ksh 37.5 without any justification. Moreover, the County Government is yet to account for Ksh 37.5 million allocated and not spent on the County bursary during the FY 2017/2018

There are no proposals by the County Government to roll over funds meant for bursary for FY 2017/18. This therefore means that the whole allocation for FY 2017/18 was utilized.

The Government has not justified that the above increments arose from unforeseen and unavoidable circumstances which could not be established during the appropriation of the budget estimates, 2018/2019

Similarly, the County Government has proposed major reductions in the recurrent budget, some of which are as shown in the table below;

**Table 6: Summary of reduced allocations**

No	Department/sector	Item code	Item name	2018/2019 budget estimate	Supplementary budget	Variance
1.	Enterprise and Industrial Development		Waste market cleaners	29,000,000	0	29,000,000
2.	County Health Services	2211001	Medical drugs	85,012,000	79,873,357	5,138,643
		2211002	Dressing and non-pharmaceuticals	47,500,000	36,500,000	11,000,000



From Table 6 above, it is clear that reductions have been proposed on essential items that directly affect the common citizen and instead enhancements proposed on items that may not have direct impact on the common citizen, e.g. Daily subsistence allowances and travel costs.

By totally eliminating Ksh 29 million meant for waste market cleaners, this may mean that the County Government has no intention to clean the markets for the remaining period of the financial year. Additionally, the fate of the already engaged market cleaners remains in doubt.

### **11. Linkage of the budget estimates with the County Plans**

The County Assembly, in performing its roles, had approved the Siaya County Plans – the CIDP, 2018-2022, the ADP, 2019/2020 and the CFSP, 2018. The main objective of the CFSP, for instance, is to set sector ceiling as well as strengthens the link between policy, planning and allocation of resources in the budget. In reference to Section 107 (2) of the County Government Act, 2012 which states that, *‘the County plans shall be the basis for all budgeting and spending in a county’*, the county budgets and spending are expected to be clearly linked to the approved County plans listed above. However, critically analyzing the proposed Supplementary budget vis a vis the approved County plans, a project of eco – ablution, proposed to be constructed within the County does not appear in any of the approved plans hence not linked. The Siaya CIDP, 2018-2022 indicates that the County would tarmac 10km of **County roads**. According to the classification of Kenyan roads, Bar Kowino – Nango road, otherwise called Liunda Beach – Bondo road, C843 (Kenya Rural Roads Authority Annual Public Roads Programme for Financial Year 2018/2019) is not a County road and therefore cannot be part of the 10km envisaged in the CIDP, 2018-2022. The inclusion of the mentioned projects therefore contravenes the provision of the Section 107(2) County Government Act, 2012 as explained above.

### **12. Public Participation**

The Constitution of Kenya, in its preamble acknowledges the supremacy of Almighty God of all creation. It also emphasises on the sovereign and inalienable rights of the people to determine the form of governance our country and having participated fully in the making of the constitution.

Public participation is compulsory in budget making process. This is stipulated in Section 125 of the PFM Act, 2012. Failure to subject the supplementary budget for public scrutiny is therefore an illegality.

The court has equally ruled in several occasions that Public participation is a must in budget making process. Odunga, J in the case of **Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR** in defining what public participation entails expressed the following opinion:

**“In my view, public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purpose of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply “tweet” messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many forum as possible such as churches, mosques, temples, public barazas, national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action.”**

In view of the above rulings by the learned judges, it is clear that though this was an amendment to an Act of the County Assembly – Siaya County Appropriation Act, 2018 – which had been subjected to public participation at the time of enactment, the amendments to the Act are so substantial hence failure to subject the supplementary budget to public scrutiny violates not only the constitutional dictates but also the principle of public participation. There was no evidence that the new projects were subjected to public participation. The County Assembly does not want to act in futility because such an action will land the Assembly into problems which may be costly to the Assembly, the Government and the people of Siaya County.

### **3. CHAPTER THREE: JOINT COMMITTEE RECOMMENDATIONS**

**Mr. Speaker,** having considered the above matters, the Joint Committee recommends as follows:

1. That the proposed Siaya County Supplementary Budget be rejected and returned to the County Treasury for non-compliance with the provisions of Sections 112 and 135 of the PFM Act, 2012; Regulation 39 of the PFM Regulations, 2015; Section 115 of the County Governments Act, 2012 and County Allocation of Revenue Act (CARA), 2018 as discussed in the findings above.

#### **Conclusion**

Mr. Speaker Sir, the Joint Committee therefore requests this Assembly to adopt this Report on the Siaya County Supplementary Budget Estimates for Financial Year 2018/2019 and further resolve that the proposed recommendation as contained in this Joint Committee Report be adopted.