



## **Memorandum on the Draft Public Investment Management Guidelines**

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To:  
**The Principal Secretary,  
National Treasury,  
P. O. Box 30007 – 00100,  
Nairobi.**  
*Your Ref: NT/PIM/05 “A”*

*14<sup>th</sup> September 2018*

### **About TISA**

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

### **Review of the Draft Public Investment Management Guidelines**

We commend the National Treasury efforts to develop the public investment management guidelines to facilitate national and county government's entities to strengthen the process for project selection, appraisal, budgeting monitoring, evaluation, reporting to ensure that only priority projects are financed and fully implemented. However we propose the following:

- i. All investments should be approved by the National Assembly and or County Assemblies dependent on the recipient level of government.
- ii. All investment proposals to be accompanied by a memorandum detailing the anticipated socio-economic impacts of the investment and a debt strategy statement indicating the impact of the debt situation of the county and or country.

### **Public Participation**

It is commendable that the draft guidelines require the department for planning at the national and county government level to convene public participation and stakeholder consultation forums to identify priorities to be included in the national development plans and county intergrated development plan respectively. (*Clause 6.4 and 6.5*) However, the guideline does not provide clear mechanisms for public participation. For effective public participation there must be clear mechanisms for engagement and articulation of the interests of the public.

- i. There is need to establish both sub county and ward public participation forums to enhance public participation at the local level.
- ii. The stakeholder consultation forums must be representative and inclusive of all stakeholders including women, youth, faith based organizations and marginalized groups to give more value based contributions and represent their community's interests.

- iii. The conveners of the public participation and stakeholder consultative forum must provide timely information; give sufficient notice of fourteen days for planning meetings and undertake awareness creation/ civic education to enable meaningful participation.
- iv. There must be direct public participation in all public investment management stages starting from project identification and planning; project feasibility and appraisal; project selection for budgeting; implementation, monitoring, evaluation and reporting; project closure, sustainability and impact assessment to enhance stakeholder ownership.

### **Access to Information**

Whereas the guidelines provide that the National Treasury shall develop a public investment management information disclosure framework for both National and County Governments and their entities (*clause 6.2.1*), the *Constitution Article 35* and the *Access to Information Act 2016* places the obligation for disclosure of information on all public entities. *Section 5* of the Access to Information Act provides as follows:

#### *5. Disclosure of information by public entities*

- (1) *Subject to section 6, a public entity shall—*
- (c) *publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles;*
- (e) *upon signing any contract, publish on its website or through other suitable media the following particulars in respect of the contract entered into—*
  - i. *the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;*
  - ii. *the contract sum; the name of the service provider, contractor or individual to whom the contract has been granted; and*
  - iii. *the periods within which the contract shall be completed.*

There must be access to information by the public of all stages in the public investment management process starting from project identification and planning; project feasibility and appraisal; project selection for budgeting; implementation, monitoring, evaluation and reporting; project closure to ensure that the public are informed as a measure of accountability.

### **Project Committee**

The guidelines provide for the formation of project committees comprising of head of directorate/department; a person from finance department; four members appointed on ad hoc basis based on their technical knowledge and project being implemented; a person from any department of MDAs/CDAs and head of planning. (*Clause 6.7 O*) However, the four members of the project committee to be appointed on ad hoc basis must undergo vetting process based on their qualifications and character and if qualified their names be published in the Kenya Gazette.

### **Project identification and Planning**

The provision that potential projects are identified using top down, bottom up or combination of the two is vague.

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