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The Institute for Social Accountability



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Kenya National Assembly
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*5th October 2017*

**REF: MEMORANDUM ON THE NATIONAL GOVERNMENT SUPPLEMENTARY BUDGET 2017/18**

**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

**Background**

Section 44 of the Public Finance Management Act, 2012 states that the national government shall submit to parliament for approval a supplementary budget in support of money spent under Article 223 of the constitution and that the supplementary budget shall include a statement showing how the additional expenditure relates to the fiscal responsibility principles and financial objectives.

Further Article 223 of the constitution stipulates that the national government may spend money that has not been appropriated if the amount appropriated for any purpose under the Appropriation Act is insufficient or need has arisen for expenditure for purpose for which no amount has been appropriated by the Act; or money has been withdrawn from the contingencies fund. Article 223(5) further states that in any particular financial year, the national government may not spend under this Article more than 10 percent of the sum appropriated by parliament for that financial year unless, in special circumstances, parliament has approved a higher percentage

On 27th September 2017, the national treasury issued a memorandum on supplementary budget estimates for financial year 2017/18 for consideration and subsequent approval by the national assembly.

Fiscal year 2017/18 was an electioneering year, precisely for that reason an allocation of Kshs 49 billion was staggered across financial years 2016/17 and 2017/18 worth Kshs 27 and 22 billion respectively. Despite the Kshs.49 billion allocations towards the August 8th election, the country is set to go back to the polls after the nullification of the presidential elections. The repeat election Kshs. 10 billion budget translating to 46.1 percent increase from Kshs. 21.6 printed estimates to 31.6 billion in the supplementary budget. Prolonged drought, insecurity, implementation of agreed CBAs, the repeat presidential elections as well as shortfalls in revenue collections occasioned by the business environment are challenges the national government is grappling with in implementation of the 2017/18 budget hence compelling the move to reorganize the planned expenditures in the current financial year through supplementary budget.

This memorandum is prepared in response to the memorandum on supplementary estimates and highlights on key issues to be considered by the national assembly during its deliberations prior to approval of the supplementary budget as follows:

1. **Inadequate justification on Ministries Departments and Agencies (MDA) budgets changes**

The overall supplementary budget amount to Kshs. 22.3 billion (0.8%) precisely allocated towards discretionary expenses for the aforementioned challenges in the current fiscal year. The information provided on the remarks section explaining the reasons for programme changes as either increasing or reducing is in sufficient. For instance, the explanation provided in over 90% of programmes changes is ***"reduction as a result of budget rationalization"***. In a bid to meet discretionary expenses, it is legally acceptable that the national government embark on programmes budget revision. However, the move should be undertaken in a prudent and transparent manner through demonstrating the criteria adopted to come up with the changes across sectors and programmes.

2. **What is the criteria for programme budget revisions?**

Article 223 (5) of the constitution states that in any financial year, the national government may not spend more than 10% of the sum appropriated by the parliament for that particular financial year unless in special circumstances, parliament has approved a higher percentage. The memorandum points out that special approval on programmes indicating more than 10% changes threshold shall be sought from the national assembly. However, there is evidenced significant variations from printed estimates allocations and those proposed in the supplementary estimates hence raising the question on the criterion used to come up with the revisions across all the sectors/programmes. From the table below, changes across the MDA are on average 23.6%. the highest decrease is under the justice service commission at 62.6 % followed by state department of public works at 55.9% and state department of investment and industry at 49.2%. the three MDA with the least decrease are the Auditor general at 10%, followed by presidency 10.7% and the judiciary at 11%.

Table 1: MDA with over 10 percent threshold on appropriated changes in supplementary budget

| Ministry | Allocations 2017/18 printed estimates | Allocations 2017/18 Supplementary estimates | Deviations | % Deviation |
|---|---|---|---|---|
| The Judiciary | 17,561,435,272 | 15,610,743,912 | 1,070,766,360 | (11.1) |
| Parliamentary service commission | 14,876,950,001 | 9,333,002,038 | 5,543,947,963 | (37.3) |
| State department for public works | 3,022,140,000 | 1,333,597,617 | 1,688,542,383 | (55.9) |
| National land commission | 1,752,000,000 | 1,093,767,550 | 658,232,450 | (37.6) |
| State department for east African integration | 1,616,000,000 | 1,421,495,896 | 194,504,104 | (12.0) |
| State law office and department of justice | 6,133,938,571 | 4,726,813,340 | 1,407,125,231 | (22.9) |
| National Assembly | 21,165,033,200 | 17,473,549,178 | 3,692,484,022 | (17.4) |
| Economic policy and national planning | 33,239,519,455 | 26,689,598,385 | 6,549,921.070 | (19.7) |
| Ministry of foreign affairs | 19,746,000,000 | 14,817,571,498 | 4,928,428,502 | (25.0) |
| National police service commission | 550,990,000 | 467,393,780 | 83,596,220 | (15.2) |
| State department for labour | 3,074,000.000 | 2,428,968,511 | 645,031,489 | (21.0) |
| State department for environment | 6,467,300,000 | 4,909,066,011 | 1,558,233,989 | (24.1) |
| Controller of budget | 575,000,000 | 494,931,000 | 80,069,000 | (13.9) |
| State department for trade | 2,741,900,000 | 2,235,560,293 | 506,339,707 | (18.5) |

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|---|---|---|---|---|
| Office of the Director of public prosecution | 2,332,630,000 | 1,946,992,462 | 385,637,538 | (16.5) |
| State department for investment and industry | 7,722,462,000 | 4,883,173,928 | 2,839,288,072 | (49.2) |
| Kenya National Commission on Human Rights | 450,410,000 | 389,766,300 | 60,643,700 | (13.5) |
| State department for planning and statistics | 43,193,306,000 | 33,361,668,391 | 9,831,637,608 | (22.8) |
| State department for cooperatives | 936,000,000 | 804,287,448 | 131,712,522 | (14,1) |
| Judicial Service commission | 490,160,000 | 183,537,700 | 306,622,300 | (62.6) |
| State department for petroleum | 5,380,510,000 | 3,772,107,407 | 1,608,402,593 | (29.9) |
| State department for fisheries and blue economy | 2,970,300,000 | 2,265,385,848 | 704,914,152 | (23.7) |
| State department for ICT & innovations | 20,523,290,000 | 14,432,796,912 | 6,090,493,088 | (29.7) |
| Auditor General | 5,511,000,000 | 4,961,015,615 | 549,984,385 | (10) |
| The presidency | 9,812,407,012 | 8,760,466,719 | 1,051,940,293 | (10.7) |
| State department for broadcasting and telecommunication | 2,859,700,000 | 2,148,173,235 | 711,526,765 | (24.9) |
| Deputy President services | 2,770,016,081 | 1,932,599,445 | 837.416.636 | (30.2) |
| State department for arts and culture | 3,985,402,906 | 3,507,025,296 | 478,377,610 | (12) |

| | | | | |
|---|---|---|---|---|
| Department for special programmes: General administration services | 312,846,976 | 228,839,476 | 84,007,500 | (26.9) |

### 3. Sectors Absorption Rate

Over the preceding fiscal years 2014/15 -16/17 (third quarter) there is evidenced high uptake of resources across various sectors. The sectors with the highest absorption rate over the three financial years is National security, Education, General Economic and Commercial Affairs (GECA), Governance, Justice, Law and Order (GJLOS), Public Administration and International Relations (PAIR), Social Protection, Culture and Recreation, Agriculture, Rural & Urban Development, Health, Energy, Infrastructure and Information Communications Technology (EI & ICT) and lastly Environmental Protection, Water and Natural Resources respectively.

Gauging from the absorption rate of the sectors across the years, we recommend that revisions with respect to supplementary budget should factor in the issue of absorption and revision be determined based on the rate of absorption of funds by various sector. In this case the Environmental Protection, Water and Natural Resources and Energy, Infrastructure and Information Communications Technology (EI & ICT) sectors should indicate huge budget decrease as opposed to sectors that absorb almost all there monies by the end of fiscal year implementation including the National security, Governance, Justice, Law and Order (GJLOS) and General Economic and Commercial Affairs (GECA) sectors.

**Table 2: Sectors absorption rate between 2014/15-2016/17 (Third quarter)**

| Sector | % Absorption 2014/15 | % Absorption 2015/16 | % Absorption 2016/17 | Rank |
|---|---|---|---|---|
| Agriculture, Rural & Urban Development | 71.8 | 69.0 | 54.9 | 7 |
| Education | 88.0 | 90.7 | 69.1 | 2 |
| Energy, Infrastructure and Information Communications Technology (EI & ICT) | 30.1 | 59.8 | 45.5 | 9 |
| Environmental Protection, Water and Natural Resources | 57.9 | 45.1 | 31.6 | 10 |
| General Economic and Commercial Affairs (GECA) | 90.1 | 93.0 | 64.2 | 3 |
| Governance, Justice, Law and Order (GJLOS) | 77.4 | 90 | 57.7 | 4 |
| Health | 70.6 | 68.5 | 56.3 | 8 |

| | | | | |
|---|---|---|---|---|
| Public Administration and International Relations (PAIR) | 75.6 | 81.4 | 61.3 | 5 |
| Social Protection, Culture and Recreation | 70.2 | 86.7 | 56.6 | 6 |
| National Security | 99.9 | 99.9 | 69.0 | 1 |

***Source: controller of budget reports***

## 4. Constitutional Breaches

Independent institutions established under chapter 15 of the constitution are mandated under Article 249, to protect the sovereignty of the people; secure the observance by all state organs of democratic values and principles; and promote constitutionalism. The commissions/ independent institutions are subject only to the constitution and the law; and are independent and not subject to direction or control by any person or authority. The constitutions further stipulate that parliament shall allocate adequate funds to enable each commission and independent offices to perform its functions and the budget of each commission and independent office shall be a separate vote. Whereas the treasury has made attempts adhere to constitution through separation of budget votes to these institutions, there is evidenced breach of Article 249(3) of the constitution through inadequate resource/funds allocation to the independent institutions a move that is anticipated to hamper effective implementation of these institutions' mandates in 2017/18.

Imperative to note is that most of the independent institutions exclusively comprise of recurrent budget, resources that are directed towards remuneration of staffs. Therefore, by slashing over 50% of these budget is a clear indication of paralyzing the institution/s.

**Table 3: Deviations in budgetary allocations from the programme requirements**

| Programme | Requirement 2017/18 | Actual Allocation 2017/18 | Supplementary Budget 2017/18 | Deviation Between requirement and supplementary budget allocations | % Deviation |
|---|---|---|---|---|---|
| **The Judiciary: Dispensation of justice** | **35,952.67** | **17,561.43** | **15,610.74** | **(20,341.93)** | **(56.5)** |
| **Independent Boundaries and Electoral Commission** | **19,849** | **21,617** | **31,572** | **11723** | **59.1** |

| | | | | | |
|---|---|---|---|---|---|
| **Office of the Directorate of Public Prosecution** | **3,491.00** | **2,332.63** | **1,946.99** | **(1,544.01)** | **(44)** |
| **Kenya National Commission on Human Rights** | **622.17** | **450.41** | **389.76** | **(2,32.41)** | **(37.4)** |
| **Judicial Service Commission** | **782** | **490.16** | **183.53** | **(460.47)** | **(71.2)** |
| **Independent Police Oversight Authority** | **850.00** | **750.00** | **695.86** | | **(18.2)** |

**Conclusion**

In conclusion therefore, in preparation of the supplementary budget 2017/18, we note that the government has sought to adhere to the 10% rule in the overall proposed changes. However, the criteria for budget reallocations is not given or accountable. For instance, it does not address how budget cuts will affect institutions affected. Furthermore, the budget cuts to Governance, Justice, Law and Order (GJLOS) institutions which are presently underfunded and have a high absorption rate, will have the effect of paralyzing governance reform and enforcement. It is noteworthy judiciary is presently handling over 277[1] election petitions. Supplementary budgets should not disrupt or frustrate operations of any institutions more so constitutional oversight bodies and thus the proposal to slash GJLOS sector funding can only be construed as political and a blatant disregard for good governance. We therefore recommend that these proposals be rejected and recrafted based on objective and non-punitive political agenda.

Finally, the proposed supplementary budget must be viewed as an affront on constitutional bodies and attack on the constitution of Kenya and should be therefore be rejected.

[1] http://allafrica.com/stories/201709120536.html