



**The Clerk Senate**

**The Parliament of Kenya**

*Tuesday, 12 April 2016*

**TISA MEMORANDUM ON THE DIVISION OF REVENUE BILL 2016**

**About The Institute for Social Accountability (TISA)**

1. The Institute for Social Accountability (TISA) is a civil society initiative committed towards the achievement of sound policy and good governance in local development in Kenya, to uplift livelihoods of, especially, the poor and marginalized. TISA has established itself as a leading player in decentralised governance field and has engaged with relevant state and non-state actors in the quest to promote effective local governance in Kenya.

**2. Public Participation**

The CRA proposed a conditional grant of Kes 5 billion for public participation (approx 101million per county government). However this proposal was rejected by both the National Treasury and National Assembly. On the other hand, only a handful of county governments have made concrete attempts at establishing public participation frameworks as envisioned in the devolution laws. It is the responsibility of both levels of government to support the exercise of citizen sovereignty through adequate financial allocations.

**County Governments are assigned function 14** *Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.* Unbundled this function requires an estimated Ksh 100-150million. (See Annex 1 and 2). There is therefore needed a conditional grant to support this central tenant of the constitution and devolved government. We therefore urge Senate to reinstate the conditional grant for public participation. This grant should be accompanied by conditions that aid transparency, accountability and intra/inter-governmental relations in the application of public participation as well as in county processes. Some proposed conditions are:

Counties contribute at least 10% of the proposed 101 million; Counties establish a public participation framework to administrate, monitor and report on the application of all funds on public participation; Counties ensure intra - and intergovernmental relations are addressed in the framework; Counties ensure a reciprocal role of non-state-actors is provided; Counties ensure measures for transparency, citizen monitoring and oversight and accountability are empowered through the framework; Provide a period of three years.

### 3. Roads Maintenance Levy Fund

- i. *Lack of clarity on county roads:* The constitution identifies two types of roads, National trunk roads and county roads. However, there is contestation of the definition and assignment of roads falling under the mandate of the National and County Governments. The DoR should clarify the class of roads targeted by the RMLF for accountability purposes.
- ii. *Decline in allocations:* Historically, maintenance of class A, B & C roads took up 40% of resources of the Road Maintenance Levy Fund.

Road Maintenance	Allocations
A, B and C roads	40%
roads in constituencies	32%
roads in cities and municipalities	15%
roads in National Parks and Game Reserves	1%

*Source: Kenya Roads Board*

The rest of the roads including all roads in cities, municipalities and town councils are county roads therefore in essence, 47% of the RMLF is what should be currently funding roads in counties. This however is not the case. Currently county governments are receiving 15% of the RMLF, 32% less than what they would be receiving prior to devolution.

- iii. *Weak legal framework:* The Road Maintenance Levy Fund Act, 1993 and the Kenya Roads Board Act, 1999 have both undesirable and unconstitutional provisions. The composition of board members is by both the government officials and non-state actors; the president is responsible for appointing of the chairperson a clear indication of political influence. These institutional arrangements and practices undermine the road funds autonomy. Further, general oversight of the road sector is entirely by the KRB, this leaves limited room for public to query on accountability. The ongoing review of the Roads Bill 2015 should address these gaps.

- iv. *Weak decentralized agency structure:* The County Governments have been working well with the national agencies. However, there is still need for structured systems for planning and implementation (Senate (2015) Report on Roads and Transport). According to the Kenya Roads Bill, 2015, each county government is to establish County Roads Agency's for the management, development and maintenance of county roads. The Kenya National Highways Authority and the Kenya National Secondary Roads Authority (KeNSRA) will replace KuRA and KeRRA and absorb their assets and employees which will manage and develop national trunk roads on behalf of the national government. What support will be accorded to county governments to perform this function? Which staff will be seconded seeing that KeNSRA is absorbing historic 'county' agencies? What is the planned evolution of the agency structure?
  
- v. *Lack of conditional grant framework:* Section 24(11) of The Public Finance Management Act, 2012 provides that 'The regulations shall provide for the establishment, management, operation or winding up of national public funds'. However, the PFM regulations in turn fail provide a comprehensive funds policy. Therefore, currently the republic of Kenya at this time has no framework for the effective management of public funds. Given the wanton proliferation of funds with poor coordination, reporting and measurability, it is difficult to monitor how far counties will deliver on maintaining and repairing roads.

#### **4. The uncoordinated restructuring of government owned entities (Parastatals)**

We laud the President's move to establish the Taskforce on Parastatal Reform in 2014, but we note that the Task Force report paid only cursory attention to devolution. Firstly in its composition - the institutions that arbitrate for devolution were excluded from the assignment. Secondly, the Taskforce report proposed the merging and dissolution of several agencies with no rationale given and inadequate attention paid to functional roles.

The shortcomings in the report manifest themselves in the *The Government Owned Entities Bill, 2014* which fails to provide a procedure for the handing over of state agencies working in sectors falling under the functions of county government. Further to this, the amendments of the various laws as proposed in the second schedule are inadequate from the perspective of county functional mandates.

In addition, state corporations (Government Owned Entities) account for a growing share of Kenya's budget. Presently, state corporations performing functions that should have been devolved receive around 78 billion Kenyan Shillings in domestic funds from the budget. If these

corporations are reformed, this would flow to counties either through conditional grant or the unconditional equitable share.<sup>1</sup>

## **5. Incomplete transition activities not addressed in the DoR2016**

The CIC End Term Report<sup>2</sup> and the Interim Report of the Working Group on Socio-Economic Audit of the Constitution of Kenya<sup>3</sup> both highlight the achievements as well as gaps in the transition process. The failure to complete these transitional activities has a direct bearing on the effectiveness of county governments. A 2016 report by the Transition Authority cites these as:<sup>4</sup> Incomplete assets audit, valuation and transfer/non-cooperation by Ministries, Lack of national policies/attempt to claw back national functions, failure to update public human resource database, failure to transfer pending functions/performed by state corporations, failure to determine costing of county functions, inadequate capacity building of the counties, delays in setting up county pensions schemes among other issues. The National Treasury and NA have rejected the CRA proposals to fund some of these transition items, it now falls to the Senate to safeguard devolution by reinstating funds to complete the transition process.

## **6. Dialogue over implementation process**

With the exit of the CIC and TA, and given numerous outstanding, and contentious issues we call for a national dialogue on the status of implementation of devolution to prepare a roadmap for the next three years of devolution.

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<sup>1</sup> International Partnership Kenya - Have state corporations changed under devolution? (2015)

<sup>2</sup> Commission for the Implementation of the Constitution - End Term Report December 2015.

<sup>3</sup> Interim Report of the Working Group on Socio - Economic Audit of the Constitution of Kenya, May 2015. Commissioned by the Parliamentary Budget Committee of the National Assembly of Kenya.

<sup>4</sup> Daily Nation – Transition Authority Status of Transition to Devolved System of Government, February 2016 (Thursday 4<sup>th</sup> February 2016).

## **Annex 1 Unbundling Public Participation**

### **i. Management of Public Participation**

- Policy development and administration (legislation, regulations)
- Decentralization
- Establishment and administration of villages/village councils
- Management of neighbourhood/residents associations
- Administration of administrative units
- Establishment and administration of County Assembly public participation framework

### **ii. Planning**

- Establishment of planning units
- Ongoing stakeholder mapping and engagement

### **iii. Civic Education of public**

- Content development
- Designation of civic educators
- Development of materials
- Undertaking CE
- Monitoring and reporting

### **iv. Capacity development of county officers**

- Supporting public participation training activities for county officers
- Monitoring and evaluating capacity building

### **v. Citizen Forums**

- Administration of citizen forums notifications, guided dialogue, reporting, feedback

### **vi. Communication**

- Develop & administrate communication policy
- Undertake national statutory notifications
- County communication staff and procedures
- Notice boards, use of ICT, resource centers, use of mass media

### **vii. Petition procedures to the county executive and county assembly**

### **viii. Complaints and feedback mechanisms**

### **ix. Reporting on public participation**

### **x. Monitoring public participation**

### **xi Involvement of Non State Actors (round table, meetings, joint work plans)**

### **xii Supporting Intra and Inter- governmental forums**

- County elected leaders forum (91(f))
- Intergovernmental planning and coordination

### **xiii Public Participation in the County Budget process**

**Annex 2 Tentative Budget for the Implementation of Public Participation Annual (KES)**

Activity	Sub-Activities	Proposed Cost Per Sub- Activity	Notes
<b>Stakeholder mapping</b>	Community resource persons 2 per ward	800,000	This cost will cater for 2 resource persons per ward at a cost of 10,000 per ward in the 40 wards of the County
	Production of Materials	200,000	This cost will cater for duplication/production of any materials needed during stakeholder mapping
	Development of tool	200,000	This cost will cater for a consultant to develop a stakeholder mapping tool.
<b>Database Management</b>	Database officer	480,000	This cost will support the database officer at a cost of 40,000 per month for 12 months.
	Purchase of Laptop	80,000	This cost will cater for the cost of purchasing of a laptop to aid in data management.
<b>Sub-Total</b>		<b>1,760,000</b>	
<b>Citizen Forums convened by Ward administrator after every two months</b>	Notification	2,400,000	This support for notices/SMS/community radio cost at a cost of 200,000 per month
	Meeting Venue/Public Address system	3,600,000	This cost will support the expenses related to venue and public address system during the citizen forums at a cost of 15000 per ward for 40 wards in 6 months.
	Refreshments	2,400,000	This cost will support refreshments during the citizen forums at a cost of 10,000 per citizen forum in 40 wards in 12 months.

	Production of Materials	2,400,000	This cost will support duplication/production of materials needed during the citizen forums at a cost of 10,000 per citizen forum in 40 wards in 6 months.
	Translation for People with Disabilities(PWDs)	2,400,000	This cost will support translation related costs such as sign language interpreters, Braille translations at a cost of 10,000 per forum in 40 wards in 6 months.
	Documentation and report writing.	360,0000	This cost will support a Monitoring and Evaluation officer who will be responsible for document at a cost of 60,000 per month.
	Administrator (Field allowance)	960,000	This cost will support field allowances for the ward administrators at a cost of 2000 per forum
<b>Sub-Total</b>		<b>14,520,000</b>	
<b>Quarterly Sub County Forums</b>	Notifications	400,000	This support for notices/SMS/community radio cost at a cost of 100,000 per month
	Venue, PA system,	40,000	This will support venue and public address system during the sub-county forum at a cost of 10,000 per quarterly forum
	Refreshments	400,000	This will support participants refreshments during the sub-county forum at a cost of 200 per person for an estimated 200 people per quarterly forum
	Production of Materials	800,000	This will support duplication of materials including reports that may will be used during the sub-county forum at a cost of 200 per person for an estimated 200 people per quarterly forum

	Translation for People with Disabilities(PWDs)	40,000	This will cater for translation related cost at a cost of 5000 for 2 people per quarterly forum
	Documentation including report writing	120,000	This cost will support a rapporteur per quarterly forum at a cost of 30,000 per forum
<b>Sub-total</b>		<b>1,800,000</b>	
<b>Monthly Village Administrator Meetings</b>	Monthly village forums	2,460,000	This cost will cater for expenses related to organizing and holding village level meetings in all the 246 villages of Kitui County at a cost of 10,000 Per village forum
<b>Village council</b>	Members monthly allowance	14,760,000	This cost will support allowances for the 5 village elders at a cost of 1000 for 246 villages per year.
<b>Ward Development Committee</b>	Members allowance	1,680,000	This cost will support allowances for the 7 members of the ward development committee at a cost of 500 per committee member in 40 wards.

<b>Oversight Forums</b>	Hire of venue and PA system Refreshments for participants	300,000	This cost will support 2 oversight forums per year including venue, PA and refreshments at a cost of 150,000 per forum
	Forum materials(Stationery, duplication of reports)	40,000	This cost will support all expenses related to duplication/production of any materials needed during the oversight forums
	Documentation including report writing, photography ,video	120,000	This cost will support documentation processes of results of the oversight committees forums at a cost of 60,000 per forum.
	Translation services for PWDS	40,000	This cost will support translation related costs such as sign language interpreters during the 2 oversight forums
<b>Incentives to promote good practice</b>	Awards ceremony Prizes Media visibility	5,000,000	This cost will support initiatives that acknowledges good practices of public participation such as award ceremonies for best performers at the County
<b>Sub-Total</b>		<b>26,400,000</b>	
<b>Sub-Total Estimated Public Participation Budget</b>		<b>44,480,000</b>	
<b>Monitoring Public Participation</b>		<b>2,224,000</b>	0.5% of total public participation budget. This cost will support activities that go towards monitoring public participation initiatives to enable documentation of successes, challenges and lessons learnt in the process of documentation.
<b>Total Estimated Public Participation Budget</b>		<b>46,704,000</b>	
<b>Civic Education</b>	Generation of content (experts)	500,000	This cost will support consultancy services to develop

			content for civic education
	Publishing of Materials	2,000,000	This cost will support all expenses related to publishing of materials including editing, design, layout and printing.
	Notifications	500,000	This will support cost related to notifications e.g to citizens on civic education initiatives through community radio, SMS, placement of notices
	Civic education resource persons	2,400,000	This cost will support 80 civic education resource persons at a rate of 60,000 per year per person.
<b>Sub-Total</b>		<b>5,400,000</b>	
<b>Capacity Building</b>	<i>Training frontline Officers</i>	2,400,000	This cost will cater for training expenses for 100 officers at a cost of 3000 per officer for 6 days per year
	<i>Training citizen committees</i>	2,250,000	This cost will support training of 300 representatives from citizen committees at a cost of 1500 per person for 5 days annually.
	<i>Materials (Stationery, hand outs etc)</i>	1,000,000	This will support duplication of materials including reports that may will be used during the capacity building forums.
<b>Sub-total</b>		<b>5,650,000</b>	
<b>Communication</b>	Simplification of content	1,440,000	This cost will support two assistant officers at Ksh 60,000 each who will be responsible for data simplification.
	Use of online platforms	1,000,000	This cost will support online platforms such as website, SMS, which will be used for communication.
	Use of Mass Media	40,000,000	This cost will support mainstream media

			communication initiatives such as national newspapers, TV adverts
	Notice boards	1,000,000	This is a one off cost that the County will incur to purchase and put up notice boards in strategic areas within the County for placing important communication.
	Ward level Resource Centres	20,000,000	Establishing Ward Resource centres approximately 500,000 per ward and will include cost for purchase of e.g 2 computers, photocopier, one staff)
	Sub County level Resource Centres	1,200,000	This cost will facilitate setting up of resource centres at the sub-county level at an appropriate cost of 150,000 per sub-county
	Materials preparation	3,000,000	This cost will facilitate the development of materials such as reports, brochures as needed
	PWD considerations		TBC
	Dissemination costs	500,000	This cost will cater for dissemination costs such as courier services among others of materials and other information that the county will need to disseminate to the constituents
	Petitions and complaints officer	820,000	This cost will cater for an officer who will be responsible for handling petitions and complaints at a 60,000 per month and purchase of a laptop at 100,000
	Documentation(preparation and dissemination of monthly	300,000	This cost will support documentation including reports preparations and

	reports/other materials)		dissemination expenses
	Social Media complaint mechanism	720,000	This cost will support an officer who will be responsible for the social media complaint mechanism at a cost of 60,000 per month.
	Online platform development and support	1,500,000	This cost will support development and maintenance of an online platform as agreed bt the county.
<b>Sub-Total</b>		<b>71,480,000</b>	
<b>Non-State actors Annual Round Table Forum</b>	Non State Actors annual Round Table Forum	500,000	This cost will facilitate an annual non-state actors round table on public participation
<b>County Budget and Economic Support</b>	County Budget and Economic Forum (CBEF) support	2,000,000	This cost will support activities of the CBEF including, Trainings Meetings and Field engagements.
<b>County Leaders Forum support</b>	County Leaders Forum	1,000,000	This cost will support at least 2meetings of the County leaders forum
<b>The County Intergovernmental Forum</b>	County Intergovernmental Forum	500,000	This cost will support at least four meetings of the County intergovernmental forum
<b>Support to the County Planning and Budget process</b>	Public participation at all budget implementation stages	9,240,000	<i>(see excel attached)</i>
<b>Sectoral Engagement at the County level</b>	Public Participation initiatives at the sector level	5,000,000	This cost will facilitate any public participation initiatives at the sector level at an approximate cost of 500,000 per Ministry for the 10 sectors of Kitui County.
<b>Sub-total</b>		<b>18,240,000</b>	
<b>Total Annual Tentative Budget for Public Participation</b>		<b>147,474,000</b>	

**Other cost (oversight)**

<b>Project Management Committees</b>			1000 shilling per month per member from the cost of the project
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