The Institute for Social Accountability

Mr. Henry Rotich,
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The National Treasury,
P.O Box 30007-00100,
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3rd January, 2016

REF: MEMORANDUM ON THE 2016 DRAFT BUDGET POLICY STATEMENT

2015/16 is the final transition year as defined in the Sixth Schedule of the Constitution and in the Transition to Devolved Government Act, 2012. As we engage past transition in FY 2016/17 several developments have yet to occur in terms of laying the legal, institutional and administrative foundations for successful fiscal decentralization and in doing so, we are likely to continue postponing the transfer of functions indefinitely, and in the process, weaken and undermine devolution. The Institute for Social Accountability (TISA) wishes to make the following observations in the Budget Policy Statement FY 2016/17

III. POLICIES TO ACHIEVE MEDIUM TERM OUTLOOK

Pillar II: Infrastructure Expansion to Facilitate Economic Transformation

BPS 57 and 219: Whereas we do recognize the good progress in development and expansion of the infrastructure sector and specifically the roads subsector, the share of the Road Maintenance Levy Fund to counties remains underfunded. In it's working policy review of the Roads Maintenance Levy Fund, The Institute for Social Accountability (TISA) recognizes that Kenya Rural Roads Authority (KeRRA) and Kenya Urban Roads Authority (KURA) are largely doing county functions and the administrative and fiscal function need to be streamlines to follow the county roads function in the fourth schedule. As is, the 15% allocated to counties is greatly underwhelming and we support the need CRA recommendation for the need to increase this amount to reflect the road function of counties

Pillar V: Devolution and Service Delivery

BPS 108: With regard to cash management, the national government will continue to disburse funds to counties in accordance with the disbursement schedule approved by senate and gazzeted by the cabinet secretary. However the national government seeks to impose a condition to the transfer of county's share of revenue contrary to Article 219 of the Constitution. To 'prioritize disbursements to county governments with the least balances at the central bank' violates article 219 where 'the county share of revenue shall be transferred to the county without undue delay and deduction except when for serious breach or persistent material breaches'. The BPS has further citied in BPS 205 that this financial control is due to idle cash held by counties bank accounts amounting to Kes. 39.2 billion As at July 2014. The BPS however failed to mention that the National government too had Kshs. 100 million also held in bank accounts over the same period[1]. Where as we do agree that more needs to be done to ensure prudent and responsible financial, these clauses are a one sided approach to 'prudent and responsible financial management' and should be applied to both levels of government.

Furthermore, The BPS 2016 is only using one aspect of exerting financial control that disfavors the counties. The issue of pending bills for which the national government has accumulated Kes. 111.9 billion Will affect the budget execution of the FY 2016/17[2]. This has not been addressed as a financial control measure to prudent and responsible financial management. Counties too have accumulated Kes. 37.6 billion pending bills.

Other structural governance reforms

BPS 114: Where as the BPS 2016 declares to continue to strengthen the institutional capacity of the PFM oversight agencies through funding their programs, this is however not reflected in the Auditor General's budgetary allocation of FY 2016/17. Allocation trends show that the OAG receives an average of about 0.27 percent of all monies allocated to MDAs. This year, the office received 0.28 percent. Considering the audit queries rose last financial year where Kes. 66.7 billion was unsupported expenditure and considering the growing size of the budget to be audited by OAG (including national and county), the OAG budget should be increased in tandem to 1% of the total budget to audited

COMPLETING TRANSFER OF FUNCTIONS AND BUDGETING

[1] COB, 2014, first quarter national budget implementation report

[2] COB, 2015, Annual national budget implementation report

BPS 216: We once again observe that the Budget Policy Statement is not aligned to Articles 186, 189 and 190 of the Constitution which provide that 'Either level of government shall respect the functional and institutional integrity of government at the other level, and respect the constitutional status and institutions of government at the other level'; and 'The National Parliament shall pass legislation to ensure that county governments have adequate support to enable them perform their functions'. We note that the BPS 2016 has roundly ignored the Judgment passed by Judge Mumbi Ngugi on 11th December 2015 on Petition 472 of 2014 roads function where the Attorney general has 90 days to gazette the transfer of functions to the county governments as contained in the Report of the Sessional Committee on Devolved Government on the Appeals for Transfer of Functions to Counties as passed by the Senate on 17th April 2014*.* These illegalities pointed out are instead reinforced in the budget statement which states that 'the management of county roads is yet to be transferred due to inconclusive agreement…'

DIVISION OF REVENUE BETWEEN NATIONAL AND COUNTY GOVERNMENT

BPS 217: Whereas we do recognize that the monetary increase in equitable share to counties, from Kes. 259.7 million in FY 2015/16 to the proposed Kes. 285.3 million in FY 2016/17, this however as a share of the total sharable revenue has decreased from 20.7 percent to 20.4 percent. Furthermore this diverges significantly from the CRA recommendation of December 2015 where it was proposed Kes. 331.7 million be allocated to county Governments as an equitable share.

Furthermore, The BPS fails to consider the greatest challenge to devolution, the limited civic education and the ineffective public participation in governance that continue to severely hinder *Wanjiku's* role in the implementation of her constitution at either level of government. The CRA proposed allocating Kes. 5 billion to public participation to be included in the equitable share to set up necessary structures to enable the public participate effectively in planning, legislation, budgeting and implementation of county affairs. The structures required include but not limited to: setting up of information communication platforms, town halls, establishment of citizen fora among others.

The Institute of Social Accountability in its working paper *proposed operational guidelines for public participation* costed Kes. 147.7 million (Kes. 7.05 billion for all 47 counties) as the financial needs per county to operationalize the envisioned public participation structures.

We therefore agree with the CRA recommendation for the need to allocate funds for public participation in the division of revenue of FY 2016/17.

In conclusion, The Institute for Social Accountability is committeed to continue engaging in the process and for further information kindly contact us at

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Signed,

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