The Institute for Social Accountability

The Nairobi City County Secretary,
City Hall,
P.O Box 30075-00100
Nairobi, Kenya.

25th February 2016

REF: MEMORANDUM ON THE NAIROBI CITY COUNTY FISCAL STRATEGY PAPER 2016

Section 117(1) of the PFM Act, 2012, provides that the county treasury shall prepare and submit to the county executive committee the county fiscal strategy paper for approval and the county treasury shall submit the approved Fiscal Strategy Paper (CFSP) to the county assembly, by the 28th February of each year and in doing so the county treasury shall seek and take into account the views of the public.

Section 117(3), states that in preparing the CFSP, the county treasury shall specify the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term.(4) the county treasury shall include in its CFSP the financial outlook with respect to county government revenues, expenditures and borrowing for the coming FY and over the medium term and essentially, the CSFP should answer the two questions

1. What will be the size of our upcoming budget: How much do we expect to raise in revenues? How much in expenditure? These should be informed by past performance
2. What are the priorities of the sectors and distribution of the budget within them

The County Budget Review and Outlook Paper 2015 which looks at previous year's budget performance set to focus on improving absorption rate for development from the current 33% to above 90%, use a balanced budget approach to ensure matching of resources to needs in the county and avoid off budget spending. In addition, Revenue enhancement remains a key focus area by widening the revenue base and updating the valuation roll and committed to slow down recruitment on non essential manpower, outsourcing non-core services.

In light of these, we wish to make observations and queries on the Nairobi County Fiscal Strategy paper 2016

1. **Internal Revenue**

1.1 Internal revenue performance and Priority sources of focus

During the FY 2015/16 revenue projections were revised down from Kes. 17.53 billion to 14.8 billion due to underperformance of revenue sources in the first half of the year. This was a **15% reduction in revenue targets.**

The underperformance in internal revenues was attributed to the county's major revenue streams i.e. Parking fees underperformed 38%, Single Business Permit which underperformed by 48%, Building Permits that recorded a shortfall of 32% of target and Bill Boards with a negative deviation of 52%. How will the county respond towards improving revenue collection in the low performing sources?

Over the last two financial years, the Nairobi CBROP 2014, CBROP 2015 and CFSP 2016 have cited similar measures to mitigate these challenges of weak local revenue collection. Of concern is the remedy proposals are yet to be implemented

On Rates, although performance has improved through waivers, a large portion still remains untapped. Rates defaults were to be remedied through county wide data collection on all county facilities and development of a valuation roll. However one and a half years since the proposal, this is still under development. Although the county recognises the need to speed up this process, interim measures of transparency and accountability such as publishing and publicising the land assets held by the county should be put in place to mitigate the challenges of public resistance to land rates revaluation and collection already cited by the county.

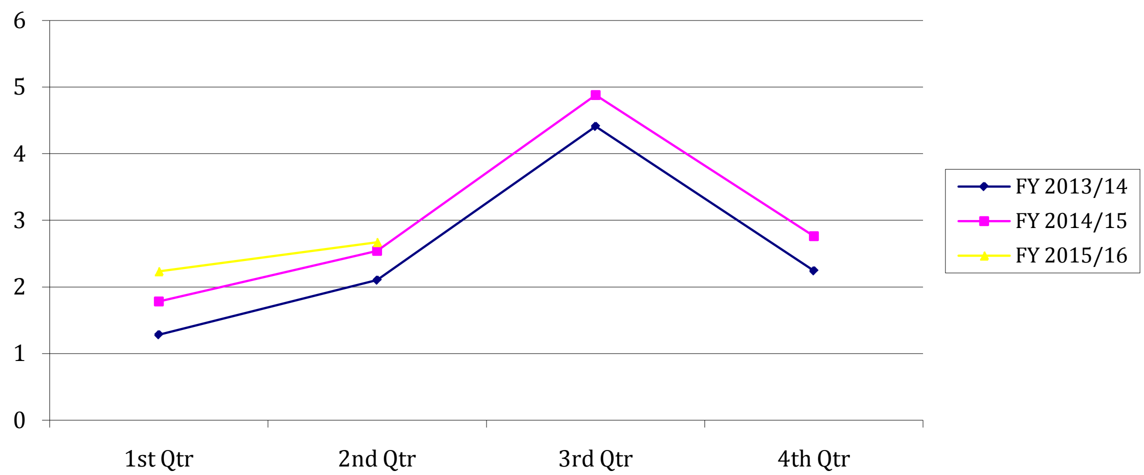
On parking fees, the county attributes the low performance to weak enforcement due to a lack of staff and equipment. The county proposes to increase staff to remedy this challenge. However of concern is not the lack of collection, but the lack of reporting on the collection.
The auditor general report cites that **Kshs. 75.5 million** of collected revenue was used at source contrary to Article 207 and section 109 of the PFM Act. This issue has also been cited as a persistent issue by the Controller of Budget in the implementation of the 2014/15 budget and the 2015/16 first quarter budget implementation report. Because of the persistence of this illegality, the controller has cited possible stoppage of funds to the county.

1.2 Internal revenue Projections for FY 2016/17

Within the revised targets, as of the half year ending December 2015, the county had only managed to collect Kshs. Kes.4.9 billion, 33.1 percent of the annual revenue target. Of concern is that this trend is not new to the county. Over the last two financial years, the county has collected an **average of Kshs. 10.97billion**[1]. If the revenue performance over the last two years is any indication, the county may not attain revenue target of Kes.14.8 billion in this financial year and the Kes. Kshs. 17.8 billion projected for the upcoming FY 2016/17

[1] 9.98billion in FY 2013/14 and the expected 11.96billion in 2014/15

Nairobi City County comparative Trend in local revenue collection by quarter FY 2013/14, 2014/15 and FY 2015/16



In light of past internal revenue performance the question arises as to whether Nairobi County is good at making revenue projections and how can the county justify this revenue projection[2]?

2.0 Expenditure

2.1 Expenditure performance

During the FY 2015/16 expenditure projections were revised **up** by Kshs. 1.15 billion from Kes.30.828 billion to 31.984 billion. This increment was attributed to an increase in recurrent expenditure specifically additional funding for garbage (800M of which 420 million was contracted to due NYS[3]), medical insurance (250M), the liquor board (219M), and also due to increase in salaries.

Table 1: Nairobi City County Sector Allocations FY 2015/16

VOTE HEAD	RECCURENT	DEVELOPMENT	TOTAL	Additional recurrent
5311 COUNTY PUBLIC SERVICE BOARD	79,999,862	20,000,000	99,999,862	
5312 OFFICE OF GOVERNOR	4,519,000,000	300,000,000	4,819,000,000	250,000,000
5313 INFORMATION TECNOLOGY ,E-GOVERNMENT AND PUBLIC COMMUNICATIONS	144,000,000	250,000,000	394,000,000	
5314 FINANCE AND ECONOMIC PLANNING	3,085,000,000	127,000,000	3,212,000,000	219,000,000
5315 HEALTH	5,038,000,000	950,000,000	5,988,000,000	

[2] See paragraph 186 of Nairobi CFSP 2016
[3] See paragraph 198 of Nairobi CFSP 2016

5316 PHYSICAL PLANNING,LANDS AND HOUSING	375,000,000	300,000,000	675,000,000	
5317 PUBLIC WORKS, INFRASTRUCTURE AND TRANSPORT	1,355,000,001	5,880,000,000	7,235,000,001	
5318 EDUCATION,YOUTH AFFAIRS,SPORTS,CULTURE AND SOCIAL SERVICES	1,504,000,000	450,000,000	1,954,000,000	
5319TRADE,INDUSTRIALISATION,COOPERATIVES & TOURISM	208,000,000	450,000,000	658,000,000	
5320 PUBLIC SERVICE MANAGEMENT	786,923,808	30,000,000	816,923,808	
5321 AGRICULTURE AND LIVESTOCK DEVELOPMENT	288,000,001	50,000,000	338,000,001	
5323WATER,ENERGY,ENVIROMENT,FORESTRY AND NATURAL RESOURCES	873,000,000	283,000,000	1,156,000,000	800,000
TOTAL EXPENDITURE FOR VOTE 531	**18,255,923,672**	**9,090,000,000**	**27,345,923,672**	

Source: Nairobi Budget estimates 2015/16

To fund this increase in recurrent costs, the county reduced spending to development from Kes. 11 billion[4] to Kes. 10.22 billion a reduction from 35% to 30%.

Development absorption remains low at 20% of the 2015/16 annual development budget. The county over the last two financial years has had poor development expenditure absorption. In FY 2013/14, the county absorbed 25% of its development budget and 33% in 2014/15. This is an improvement from 6.4% absorption realised during the first half of FY 2014/15. However, the county has consistently absorbed 99% of its recurrent expenditure over the last three years. Recurrent spending should be incurred to support development expenditure and when **recurrent spending continues to be absorbed without proportional absorption of development expenditure, this is a concern**.

2.2. Expenditure projections and priority areas

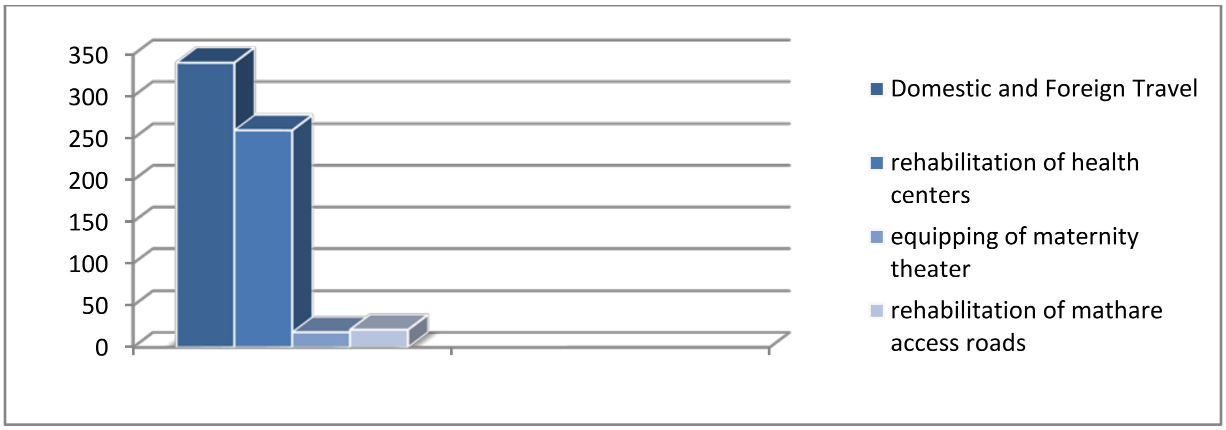
In the FY 2016/17, the total county expenditure will amount to Kes. 34.3 billion Consisting of Kes. 23.1 billion Recurrent expenditure and Kes. 11.6 billion Development expenditure. Whereas the county does comply with the 70:30 distribution of funding, of concern is the allocation with the recurrent expenditure.

[4] CBROP 2015 paragraph 2.7

Recurrent expenditure consists of salaries and wages, Operations and maintenance, debt repayment and emergency fund. The county has cited that in this financial year 2015/16, the budget revision was mainly attributed to a 54% increase in Operations and Maintenance[5]. The county cites that the increases were meant to fund garbage (800M) medical insurance (250M), the liquor board (219M) It is however not clear which of these are for Operations and Maintenance.

According to the Controller of Budget[6], more money was spent on domestic and foreign travel Kes. 340.5 million (of which 135 million was by the County Executive and 205.2 million by the County Assembly) than on rehabilitation of health centers (Kes. 260 million), equipping of maternity theater (Kes. 18.1 million), rehabilitation of mathare access roads (Kes. 21.2 million) combined.

Chart 1: Nairobi County spending FY 2014/15



Further, the amount spent on hospitality of Kes. 98 million was higher than the amounts of funds spent on the street lights at Kes. 87.42 million.

In Quarter 1 of FY 2015/16[7], Spending trends on sitting allowances and domestic travel continue with Kes. 94.4M and Kes. 27.09M respectively compared to spending on rehabilitation of markets (Kes. 35.5 million) and rehabilitation of schools (Kes.20.3 million). Therefore the question begs is the county spending on priority areas? Is the increase in the counties recurrent expenditure at the expense of development spending justifiable when areas such as hospitality and travel exceed spending on priority areas of street lights, equipping maternity theatres, maintenance of roads?

3.0 MTEF public priorities for FY2016/17

In December 2015, the County Government invited the public to the MTEF consultative forums. The meetings were aimed at collecting residents' views in regards to priority project /programmes activities to be considered/ incorporated in the fiscal year 2016/17 MTEF. From the advertisement placed in the

[5] See paragraph 95 of CFSP
[6] COB annual budget implementation report 2014/15
[7] Controller of Budget 1st quarter budget implementation report FY 2015/16

national newspaper, the MTEF public consultative forums were to be held in 84[8] wards in Nairobi County. However from the MTEF report, only 57 wards were visited. This is contrary to the CFSP which indicates that 85 wards were visited and violates Section 117(5) (b) of the PFM Act, 2012, which states that in preparing the CFSP; the county treasury shall seek and take into account the views of the public. Further, according to the county MTEF report '*Most wards expressed great dissatisfaction especially since they had not seen any tangible development projects within their wards since the county government took over from the defunct City Council*.

This position of not taking public views into consideration has been further perpetuated in the FY 2016/17 proposed budget allocation. Table 1.1 below compares the expressed need by the citizen according to the Nairobi City County MTEF public participation report

Table 2: Sector allocations FY 2016/17 in comparison with citizen views

Sector	MTEF views[9]	County Budget allocation FY 2016/17 %
Education, Youth, Sports, Culture and Social Services	19%	9%
Health services	15%	29%
Public works, Roads and Transport	19%	25%
Water, Energy, Environment, Forest and Natural Resources	17%	11%
Physical Planning, Lands and Housing	9%	3%
ICT, E-Government and Public Relations	3%	1%
Agriculture, Livestock and Fisheries Development	4%	2%
Finance & Economic Planning	2%	14%
Trade, Commerce & Industry, Tourism, Cooperative Societies	12%	6%
Totals	100%	100%

From the table above, there is variance between the priority ceilings from the CFSP and those from the MTEF report specifically education, trade and commerce, water, physical planning and housing were underfunded and sector such as roads, finance and economic planning were overfunded. **It appears MTEF process is not being accorded due importance and this may lead to legal challenges**. What are the steps the county is taking is review the MTEF process so that citizens have more say through a stronger ADP and planning process? What are the justifications for deviations? The county should

[8]The County Government placed an advertisement in the standard newspaper on the 4th December 2016 inviting the public to the consultative forum, this advertisement was made three (3) days prior to the commencement of the forums, this was such a short notice leaving the residents with no room for preparation/engagement on same, this violated section 87 of the County Government Act,2012 that provides for citizen participation based on timely access to information, data, documents, and other information relevant or related to policy formulation and implementation.

[9] Frequency distribution of MTEF public participation report: the number of times the sector issues was raised in the MTEF report expressed as a percentage

provide stronger implementation reporting through the CFSP, CBROP and implementation plans and provide for citizen reviews prior to budget process. The county may wish to consider a two year citizen planning approach. The **county needs guidelines of participatory budgeting.**

Table 3: County proposals and citizen views for consideration to be included

Sector	County priority Agenda (CFSP 2016)	Public priority views (Nairobi MTEF report 2015)
Education, Youth, Sports, Culture and Social Services	• Develop bills and policies on E.C.D.E & VTC on education; • To increase enrolment at VCTs • Automation of library and information services • Promotion of sports through engagement of communities in sports, theatre and cultural activities	• Bursaries[10] • Reposes land grabbed • Constructing of perimeter walls • Build capacity • Equip the ECDEs • Construct ward library • Empowerment programmes(IGAS)
Health services	• Strengthen collaboration with health related sectors • Work towards preventive and promotive health services • Upgrading of coronal services through acquiring of 120 acres of land in Kitengela, • Purchase and installing of modern cremator • Construction of a funeral parlor • Upgrading of medical stores through purchasing of pickup truck and installation of power generators.	• Facilitate water tanks • Construct toilets • Fulltime medical personnel
Public works, Roads and Transport	• Development of Transportation Master Plan • Asset Management System • Road Safety Policy and Strategy. • Development of traffic improvement schemes (CBD) development of a storm water drainage master plan • Engage development partners for technical assistance	• Rehabilitation of roads • Maintenance of feeder road • Road expansion
Water, Energy, Environment, Forest and Natural Resources	• procure contractors for waste transportation • To curb pollution, Air quality machinery will be procured and	• Legal waste/garbage point[11] • Installation/construction of new sewer lines • Organize clean-ups

[10] Bursaries allocation is not tied on the Ward Development Fund but rather at sector level.
[11] The county should consider empowering youths to take up the initiative.

	surveillance • water subsector to enhance the regeneration of Nairobi rivers	• Initiate tree plant project • building of gabions • Ensure prompt electricity supply
Physical Planning, Lands and Housing	• Implementation of NIUPLAN • Implementation of the Physical Address System • Development of e-DPMS	• Rehabilitation of estates i.e the roofs and perimeter walls, unblock drainages and tarmac estate road • Reposes grabbed land • Issue title deeds
ICT, E-Government and Public Relations	• automate County Services through Digitization of County Records, Electronic Solid Waste Management System • Develop County ICT Policy and Regulation Services, and ICT infrastructure	• Undertake civic education
Agriculture, Livestock and Fisheries Development	• Urban and peri-urban agriculture • Crop, livestock and fisheries production	• Extermination of stray dogs

4.0 Adherence to the fiscal responsibility principles

Unlike in previous years, the CFSP doesn't provide a proactive review on the county's adherence to fiscal responsibility principles in line with the Constitution, the new Public Finance Management (PFM) Act, 2012, on ensuring prudent and transparent management of public resources. The PFM law (Section 15) and PFM county regulations (Section 25 (1) states that:

1) Over the medium term, a minimum of 30 percent of the national and county budgets shall be allocated to development expenditure.

Whereas the county does comply with the 70:30 distribution of funding, of concern is the distribution of funding within with the recurrent expenditure and priority spending and recurrent budget absorption proportionate to development spending

2) The county government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the county government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly.

The regulations have prescribed this amount shall not exceed 35% of total county revenues amounting to 12 billion[12]. In the upcoming FY 2016/17, The County however has projected spending Kes. 14.34 billion, 2.34 billion more on salaries and wages[13]. We therefore recommend the revision of the CFSP salary and wages ceilings to comply with the PFM Act and regulations.**

3) Over the medium term, the national and County government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure

The Budget Policy statement (249) cites that Nairobi County took an unguaranteed and unapproved loan by national government of 300 million for which the purpose is not clear. What is the purpose of this loan? Legally counties can only borrow for capital projects with high economic growth potential. If this was the case, the county should provide a breakdown of the funds and their use of it.

4) The county public debt shall not exceed 20% of the county government total revenue at any one time.

Although the county has provided for debt resolution in the CFSP at Kes.1.2 billion, this shadows in comparison to the current county debt which stands at Kes. 110.9 billion As at December 2015[14] with Rates debtor's accounts for about 99% of all debts. This 223% of the counties total revenue (Kes. 34.2 billion)

Table 4: Schedule of outstanding debtors as at 30th June 2015

	SOURCE	DETAIL	2014	2015
1	**LAND RATES**	ANNUAL RATES	3,209,770,169	3,160,582,125
		PRINCIPAL RATES ARREARS	6,548,536,613	9,398,617,750
		GROUND RENT	461,452	544,389
		OTHER CHARGES	18,886,592	569,369
		ACCUMULATED PENALTIES	89,825,725,328	134,028,398,356
		ADJ.Rates on Gok & exempted properties)	-36,500,000,000	-36,500,000,000
		SUB-TOTAL	**63,103,380,154**	**110,088,711,989**
2	**RENTAL**	EASTLANDS	46,774,279	47,703,746
		E.O.T.E	46,949,999	54,912,525
		MARKETS/TPS ESTATES	22,268,899	33,461,492
		SUB-TOTAL	**115,993,177**	**136,077,763**

[12] 35% of total projected revenues of 34.291 billion
[13] See table 2.2 on expenditure projections
[14] Nairobi county Budget Review and Outlook Paper 2015

	SOURCE	DETAIL	2014	2015
3	S.B.P	ANNUAL PERMITS	81,868,000	104,191,000
		SUB-TOTAL	**81,868,000**	**104,191,000**
4	SUNDRY DEBTORS	GROUND RENTS	194,870,692	274,892,750
		INSTITUTIONAL HOUSES	5,231,000	8,226,500
		COUNCIL PREMISES	2,619,679	2,608,520
		SUB-TOTAL	**202,721,371**	**285,727,770**
5	PARKING	LOADING ZONES-G.O.K	139,200,000	139,200,000
		LOADING ZONES-PRIVATE	5,800,000	8,040,000
		SUB-TOTAL	**145,000,000**	**147,240,000**
6	WAYLEAVES	WAYLEAVE FEES	86,401,443	92,945,783
7	BILLBOARDS	ADVERTISERS	34,105,820	39,214,022
8	H.D.D	SITE & SERVICE SCHEMES	37,330,341	25,186,433
		GRAND TOTAL	**63,806,800,306**	**110,919,294,760**

The County took possession of defunct council debt amounting to Kshs. 45 billion although without validation and has been cited by the national government and the controller of Budget as depriving budget items of adequate funding. As these were not formally handed over by the transition authority the county should not proceed in further payments of the balance of Kshs. 45 billion as it is not known when these assets will be handed over to the county government. The county is thus illegally servicing inherited debt. It is noteworthy that the CBEF has not been presented with the debt management strategy papers of 2015/16 or 2016/17 that should be tabled to the assembly by 28th February of every year. The CBEF is therefore not able to ascertain the veracity of debt repayments by the county.

Even excluding the 45 billion, county debt of 65.9 billion still stands at 92% of total county revenues, 72% above the recommended 20%. For transparency and accountability, We recommend that in the county debt management strategy paper the county give in detail the debt position including the who, what for and time of accruing the debt for CBEF review prior to its tabling to the assembly

5) The approved expenditure of the county assembly shall not exceed 7% of the total revenues of the county or twice the personnel emoluments of the county assembly, whichever is lower

The PFM regulations set the county assembly ceilings at 2.4 billion. The county assembly ceilings are projected by the county at 1.97 billion

NAIROBI CITY COUNTY				
	2015/2016	2016/2017	Projections	
Sector	Printed Estimates	CFSP	2017/2018	2018/2019
County Assembly	1,697,993,568	1,803,811,042	1,880,876,076	1,975,244,318
Employee cost	752,298,796	812,482,700	877,481,316	947,679,821
Other recurrent	801,265,088	841,328,342	883,394,760	927,564,497
Development	144,429,684	150,000,000	120,000,000	100,000,000

Recommendations:

Revenue Generation: The County continues to commit to enhance local revenue by widening the revenue base and updating the valuation roll. Of concern is the slow updating of the valuation roll and has been in implementation for the last 1 and a half years. What are the timelines for the completion? What are the timelines for the roll out?

However as the county strengthens its revenue collection measures, revenue estimates should be based on what the county has actually been able to collect. The key policy issue to take into consideration is to not inflate revenue targets as has been done in the past. Therefore, the county should review revenue projections in appendix 2 along the lines of a Kshs. 11 billion revenue target as recommended by the Nairobi County Budget and Economic Forum in December 2015[15]

Spending money at source: As cited by both the auditor general and the controller of Budget, there is a persistent lack of reporting on collections made on behalf of the Nairobi County Government**.**
All funds raised on behalf of the county should be remitted into the county revenue fund and this should be a key policy that should be communicated and implemented by all county units. We further request a breakdown of parking fee collections both by location and collecting officer against estimated revenue collection

Allocations to O&M and ceilings for sitting allowances: The County proposes to spend Kes. 7.4 billion (32%) on operations and maintenance in the coming 2016/17 financial year. The maximum take home monthly sitting allowance is Kes.48, 000 per month equating to Kes. 576,000 According to the SRC ceilings. Nairobi County with 128 members should have a maximum annual ceiling of Kes. 73.7m however FY 2014/15 last financial year the county assembly spent 205.2 million on sitting allowances. Although the Budget Policy Statement 2016 recommends austerity measures of curbing high expenditures on sitting allowances and travel, we emphasis the need for the county to adhere to the

[15] CBEF report on the Nairobi CBEF constituents meeting on the Nairobi CBROP 2015

provisions provided in law and in turn revise the high spending on Operations and Maintenance previously attributed to allowances.

(a) Additional Allowances and Benefits:

The following additional allowances shall apply to State Officers serving in the County Government:

(i) Governor Allowance: To be paid at the rate of KSh. 80,000 per month

(ii) Deputy Governor Allowance: To be paid at the rate of KSh. 64,000 per month

(iii) County Assembly Committee Sitting Allowances: To be paid to a County Representative as follows:

1. Chairperson: KSh.5,000 per day of meeting(s) for a maximum of 4 days in a week subject to a maximum of KSh. 80,000 per month
2. Vice Chairperson: KSh. 4,000 per day of meeting(s) for a maximum of 4 days in a week subject to a maximum of KSh. 64,000 per month
3. Member: KSh. 3,000 per day of meeting(s) for a maximum of 4 days in a week subject to a maximum of KSh. 48,000 per month

Rising spending on salaries and wages: The composition of the county's wage bill raises deep concern. According to the CBROP 2015 and CFSP 2016, spending on salaries and wages of Nairobi City County Government is increasing steadily by 5% from Kes.13.6 billion in 2014/15 to Kes. 14.3billion in 2016/17 and further projected to rise to Kes. 15.08 billion in FY 17/18. The county committed austerity measures in the CBROP 2015 to slow down recruitment on non essential manpower, outsourcing non-core services and despite these we see a continued growth in the budget. What are the solid proposals by the county government on maintaining the current wage bill and further reducing it in the long term?

County debt: Currently, county debt 223% of the county revenues, 203% above the PFM ceiling of 20%. For transparency and accountability, We recommend that in the county debt management strategy paper the county give in detail the debt position including the who, what for and time of accruing the debt for CBEF review prior to its tabling to the assembly

Questionable county assets: PFM 104(g) implores the County Treasury as the 'acting as custodian of the inventory of the county government's assets. Currently it is not known the status of the assEts held by the county in addition to the public lands held. For transparency and accountability we recommend the publishing of the county assets and liabilities for discussion with both the county Budget and Economic Forum and the County Assembly

Participatory budgeting guidelines: There is variance between the priority ceilings from the CFSP and those from the MTEF report specifically, education, trade and commerce, water, physical planning and housing were underfunded and sector such as roads, finance and economic planning were overfunded. It appears MTEF process is not being accorded due importance and this may lead to legal challenges. We recommend the county undertake deliberate action through policy guidelines on public participation in

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budgeting. TISA has developed proposed policy guidelines and subsequent necessary budget allocations that seek to remedy these challenges in public participation.

Regards,

Wanjiru Gikonyo,
NATIONAL COORDINATOR,
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY