

Press Release

High Court Declares the Tabling of National Budget without Enactment of the Division of Revenue Bill to be Unconstitutional

(Constitutional Petition No. 232 of 2019 as consolidated with Petition 277 of 2019)

16/12/2020 We the petitioners Kenya Human Rights Commission, Transparency International Kenya, AfriCOG and Wanjiru Gikonyo on behalf of The Institute for Social Accountability (TISA) working together with Katiba Institute welcome the decision of the High Court which serves to protect the interests of county governments in the national budget process in Kenya.

Informed by the unlawful reading of the 2019/2020 national budget statement by the then CS Henry Rotich in parliament on 14th June 2019, at a time when there was a standoff over the Division of Revenue Bill 2019, we moved to court to challenge the decision of the National Treasury to deliver the national budget statement for the financial year 2019/2020. We were aggrieved that the tabling of the budget estimates without incorporation of the Division of Revenue Bill 2019, which Bill dictates the sharing of revenue between the National and County Governments, was illegal and unconstitutional, and that it had violated the budgeting process prescribed in Articles 218 and 221 of the Constitution of Kenya.

We sought Court orders that, among other things, a declaration that the tabling of the national budget policy highlights by the Cabinet Secretary without incorporation of the Division of Revenue Bill 2019 was illegal and unconstitutional, a declaration that the passing of any subsequent Appropriation Act and Finance Bill by the National Assembly would be illegal and contrary to the Constitution, and a declaration that in the absence of the Division of Revenue Act no money can be allocated to constituencies under the NGCDF.

The Court carved out two principal issues for determination. **The first issue was with respect to the process of annual division and allocation of revenue bills as stipulated in Article 218 and enabling provisions of the PFM Act.** The implication of Article 218, stated the Court, is that by the 30th day of April of any financial year, the Division of Revenue Bill ought to be introduced in Parliament simultaneously with the County Allocation of Revenue Bill. Once introduced in Parliament, section 42 of the PFM Act requires that these Bills be considered by Parliament within 30 days with a view of enacting them. The National Assembly can only amend the budget estimates of the national government in accordance with the Division of Revenue Act, the implication of which is that the Division of Revenue Bill and Appropriation Bill must have been passed and assented to by 30th June of the preceding financial year.

Therefore, the Court, has decreed *“the passage of the Division of Revenue Bill into an Act of Parliament precedes the Budget Policy highlights and the Appropriation Act.”* The Court has further decreed that *“the answer to the question whether the Cabinet Secretary for Finance in tabling the national budget policy statement and legislative proposals on 13 June 2019 without the passing of the Division of Revenue Bill 2019 acted contrary to the Constitution and the PFM Act is in the affirmative”* and that *“the Cabinet Secretary for Finance cannot in subsequent years table the highlights in the absence of the Division of Revenue law.”*

The second issue was with respect to the question of whether the allocation of the NGCDF can be effected in the absence of the Division of Revenue law. The Court has decreed that monies for the CDF is a share of the national government share of the revenue and hence can only be allocated in accordance with the Division of Revenue Act.

We welcome the Court’s decision as a reminder to all state officers of their duty to uphold the spirit and law of the supreme law of the land.

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Many Thanks

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