April 3, 2020

Clerk of the Senate/ Secretary,

Parliamentary Service Commission,

P.O. Box 41842-00100, Nairobi,

Dear Clerk,

RE: Submission: The Division of Revenue Bill (National Assembly Bills No. 3 of 2020)

In response to invitation for submissions to the subject, Open Governance Institute (OGI) Kenya wishes to present the following comments and input on the bill. We have the following comments and reflections on the bill.

1. **The basis for freezing county revenue growth in 2020/21 is contradictory:**
    a. That, paragraph eight (8) discusses potential revenue underperformance as a basis for denying county governments increase in revenue, however, that is contradicted by paragraph 14 which estimates revenue growth of Ksh. 89.8 billion.
    b. That, by county governments not, directly or indirectly, receiving a share of loans borrowed by National Government, at least not according to the bill, renders paragraph (7) (e) unreasonable basis for denying county governments additional revenue in 2020/21. According to this paragraph, any increase in revenue in 2020/21 will be applied for the repayment for debt and pensions.
    c. That, paragraph nine (9) punishes county governments for not having been affected by shortfalls in national revenue in the past. In light of lack of properly costed county and national functions to determine the actual budgetary requirements for respective functions, and that county governments receives just a under third of the nationally raised revenue is unreasonable factor for denying county government an increase in its revenue.

2. **The bill must take the following factors into account:**
    a. That, county governments incur incremental cost annually as a result of various factors including inflation rates. Over the last five years, the inflation rate as averaged 6.5% and expected to stand at 5.02% in 2021. That, means budgets for county governments for the coming year must, at least, provide for that inflation.
    b. That, county governments have registered an average of 12% increase in personnel emoluments (PE) since 2016/17. Using expenditure base of 2018/19 of Ksh. 162.77 billion according to Controller of Budget (COB), county governments will require Ksh. 185 billion for 2019/20 for PE costs, and subsequently an increase of Ksh. 22 billion, representing Ksh. 207 billion in 2020/21.
    c. That, public servants are entitled to 1.5% automatic annual salary increment cushion against inflation. Using the estimated cost for personnel emoluments for 2020/21 at Ksh. 207 billion,

47 county governments will require Ksh. 3 billion for salary increments bringing the budget to Ksh. 210.3 billion.

d. That, county governments receiving smaller portions of equitable share and low OSR, have in the past had tight budgets, struggled to meet the requirements of Public Finance Management (PFM) Act 2012 on budget ration of 30:70 for development to recurrent budget vote shares. Thus, maintaining the revenue share means for the costs outlined in (a), (b) and (c), county governments will be forced to secure such costs from development votes, thus technically violating the PFM provisions.

3. **On the basis of the above factors, we recommend the following:**
   a. That, Senate having extensively discussed and questioned the decision that led to Leasing of Medical Equipment agreement that has since bind county governments, albeit the devolved units having not been consulted on the same, and Senate being the guardian to the devolved system of government, the institution of the Senate has an opportunity to offer leadership. The cost of Leasing Medical Equipment must be borne by national government therefore increasing the portion of the sharable revenue available to county governments by Ksh. 6.2 billion.
   b. That, to cushion county governments against cost pressure on her recurrent budget votes and subsequently, ensure that county government meet the minimum legal PFM requirements of 30:70 ratio of development and recurrent votes, the portion of the sharable revenue available to counties must, at least increase by 12%, raising the share of sharable revenue available to counties to Ksh. 354.5 billion from current financial year's share of Ksh. 316.5 billion.

Open Governance Institute (OGI) Kenya will be available to discuss and clarify any of these recommendations. Please contact our Executive Director via skype @kironotc or phone +254723 757 574 or email kipronotc@gmail.com

Sincerely

Timothy Kiprono

Executive Director

Open Governance Institute