MEMORANDUM TO THE SENATE ON THE DIVISION OF REVENUE BILL 2020

The Institute of Certified Public Accountants of Kenya (ICPAK), The Institute for Social Accountability (TISA) and the International Budget Partnership (IBP Kenya) have submitted a joint memorandum on the Division of Revenue Bill 2020 to the Senate, raising concerns as follows:

1. **LACK OF CLARITY ON THE FUNDING OF FUNCTIONS TRANSFERRED FROM NAIROBI COUNTY TO THE NATIONAL GOVERNMENT, AND THE PROPOSED MECHANISMS BY THE BILL THAT ARE PROBLEMATIC AT BEST.**

The allocation process for functions that were transferred by Nairobi City County to the National Government is opaque and explanations are inadequate. The Division of Revenue Bill makes proposals on how to handle the funding for functions that were transferred to the national government to run them. These proposals do not give a clear and practical direction of how county revenue will be handled in these scenarios where functions will be run by two separate levels of government. Therefore, there are some challenges to the approach and the level of details provided on this issue that the Senate needs to address as follows:

(i) Unconstitutional Retainment of Nairobi County equitable share

The DOR Bill proposes to retain the full equitable share for Nairobi County in the consolidated fund which would be in violation of Article 207 of the Constitution and Section 109 of the Public Finance Management Act that create the County Revenue Fund and direct its management and instances when county funds can be exempted from being remitted in the County Revenue Fund. Transfer of functions between two levels of government do not fall under the given exemptions. Nairobi County has full responsibility on any revenue raised on its behalf including transfers under the equitable share. Therefore, any transfer of monies from the county should be from the County Revenue Fund.

(ii) Adherence to Funding Follows Function Principle

Nairobi county transferred four functions, namely, health, transport, planning and development, public works, utilities and ancillary functions to the national government according to the deed gazetted on 25th of February 2020. This means the county still has budgetary responsibilities to run the other ten functions that remain under its management. Therefore, the proposal to retain all funds in the consolidated account leaves a lot of confusion on how the other services will be funded. The ten functions include: *Agriculture; Control of air and noise pollution, other public nuisances and outdoor advertising; Cultural activities, public entertainment and public amenities; Animal control and welfare; Trade development and regulation; Pre-primary education, village polytechnics, homecraft centers and childcare facilities; Implementation of specific national government policies on natural resources and environmental conservation; Firefighting services and disaster management; Control of drugs and pornography; Ensuring and coordinating the participation of communities and locations in governance at the local level*. According to the CRA recommendations on shareable revenue the criteria of sharing revenue is based on the support for all devolved functions.

(iii) Spending levels for the transferred functions

The amount to be withheld by the national government at KES. 15.9 Billion seems to be on the higher side. Spending levels for the four functions over the last 4 years show that the amounts have been lower. Table 4 below shows the trends from the three departments that host the four functions. The highest is the 2019/20 total allocation of KES. 14.3 Billion. Worth noting is that there is a huge variance between what approved estimates and actual expenditures in Nairobi County. As such the amounts to be transferred should be based on the actuals and for which the proposed KES. 15.9 billion would be on the higher side.

Table 4: Spending levels for the transferred functions

Department	2014/15		2015/16		2016/17		2017/18		2018/19		2019/20
	Approved Estimates	Actual Estimates	Approved Estimates	Actual Estimates	Approved Estimates	Actual Estimates	Approved Estimates	Actual Estimates	Approved Estimates	Actual Estimates	Approved Estimates
Health	4.92	5.25	6.31	4.90	6.30	4.23	6.95	5.44	6.56	5.57	7.58
Public Works Transport and Infrastructure	5.71	2.34	5.60	3.01	7.91	3.24	4.18	1.86	5.58	4.68	4.78
Environment, Water, energy and Natural resources	1.01	1.17	1.87	1.61	2.83	2.15	2.30	1.63	2.72	2.39	1.98
Total for 3 departments	***11.63***	***8.76***	***13.78***	***9.53***	***17.04***	***9.63***	***13.43***	***8.92***	***14.86***	***12.65***	***14.34***
Total for all (county) departments/total budget	**25.59**	**21.02**	**29.09**	**23.95**	**34.78**	**24.86**	**33.65**	**24.54**	**33.34**	**29.40**	**36.98**

2. DESPITE DEVOLUTION BEING A KEY ASPECT OF SERVICE DELIVERY IN KENYA, THE ALLOCATIONS TO THE COUNTY GOVERNMENTS HAVE BEEN DECLINING.

The Bill proposes to allocate to county governments Kshs. 316.5 Billion which is same to the 2019 financial year allocation. Although the growth in national revenue has remained stable over the last six years, the amounts approved to counties as a proportion of national revenue has been declining. This year will see a zero per cent growth in allocations to counties. This does not reflect the increased growth in demand for services at that level of governance. Parliament should address this situation so as not to lose the gains already made through devolution of public services.

3. PUBLIC DEBT, PENSIONS AND OTHER CHARGES OF THE CONSOLIDATED FUND SERVICES (CFS) ARE CROWDING OUT THE AMOUNT AVAILABLE FOR SHARING AND HURTING COUNTIES ALLOCATION.

Public debt service has been growing at a high rate and that is limiting how much is available for allocation to devolved services. Parliament should address the issue of public debt servicing and pensions which are the leading CFS items. Additionally, public borrowing has a very direct impact on the size of the sharable revenue, but it is only the National Treasury that makes decisions on this vital national instrument. Counties and the Senate should be involved in the discussion on national borrowing because it has an impact on the revenue that is shared between the two levels of government.

4. UNREALISTIC REVENUE PROJECTION HAS NEGATIVELY AFFECTED REVENUE SHARING.

Ambitious nature of National Treasury's revenue projections are unrealistic and negatively affect revenue sharing between the national and county governments.

5. LACK OF TRANSPARENCY, ACCOUNTABILITY AND MEANINGFUL PUBLIC ENGAGEMENT IS AFFECTING THE DIVISION OF REVENUE PROCESS.

Although Parliament has embraced public participation in the legislative process and made efforts towards facilitating public participation, public engagement in the division of revenue process is not effective but tokenistic and inconsequential in the ultimate decision-making process. There is need for public participation regulations on the national budget process pursuant to the PFM section 207 that should include sanctions for failure by government to undertake meaningful public participation in the budget process including the division of revenue process.