SUBMISSION OF THE COUNTY GOVERNMENT (REVENUE RAISING PROCESS) BILL, 2023.

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1.0.Introduction

The proposed County Governments (Revenue, Raising Process) Bill seeks to give effect to the constitutional requirement under Article 209(5) of the Constitution which requires taxation and other revenue-raising powers of a county not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods,services, capital or labour.

The Coast Regional Budget Hub (CRBH) is pleased to share its insights through this submission. The Coast Regional Budget Hub is a platform for Public Finance Management (PFM) practitioners that brings together regional voices for collective efforts and synergy to enhance public budgets and services across the Coast Region of Kenya. The Coast Regional Budget Hub operates in the six Coastal counties: Mombasa, Kwale, Kilifi, Lamu, Taita-Taveta, and Tana River Counties.

The Hub comprises budget coordinators, facilitators, and champions from various organizations/ institutions, informal groups, academia, and individuals across the Coast. The Coast Regional Hub builds communities' collective capacity to engage effectively and mobilizes participation in the budget-making processes at the county, regional, and national levels. The CRBH achieves this through continuous capacity building of budget champions and communities in budget processes, research, and budget analysis for evidence-based advocacy engagement and network building with stakeholders. The Hub has over 15 budget facilitators and over 300 budget champions across the Coast.

The submission presents the views of 100 budget champions, six budget facilitators and other stakeholders involved in the development of this memorandum. The memorandum captures our understanding and observations on the proposed bill, our concerns and lastly proposals that the Senate needs to consider.

2.0. Our Observations, interpretation and understanding of the proposedBill.

1. **Establishment of Interagency Committee on County Taxes and Revenues-** Clause 4 of the County Government (Revenue Raising Process) Bill, 2023, proposes the establishment of an *Interagency Committee on County Taxes and Charges.* The Committee will be comprised of persons nominated from the national treasury, Commission on Revenue Allocation, Intergovernmental Relations Technical Committee, the Council of Governors and

Kenya Revenue Authority, and appointed by the Cabinet Secretary, National Treasury. Particularly Clause 4 (3) states that the Interagency Committee shall be responsible for considering and approving taxes, and charges imposed by a county government.

2. **Introduction of taxes and charges-** Clause 5 of the Bill provides for the process of introduction of county government tax and other revenue-raising measures. It requires county governments to submit tax proposals to the Inter-Agency Committee on County Taxes for approval. Specifically, clause 5 (1) of the proposed bill requires the county executive committee member, ten months (September) before the commencement of the financial year, to submit particulars of the proposal to the Committee, if the county government introduces a charge, levy or tax.

3. That the overall objective of the bill is to give effect to the constitutional requirement under Article 209(5) of the Constitution which requires taxation and other revenue-raising powers of a county not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

3.0. Key Concerns /Issues

i. We are strongly concerned with the role of the Interagency committee, in considering and approving the taxes, and charges imposed by a county government, which is Primarily the role of the County Assemblies. As such, the establishment of such a committee with the sole responsibility of considering and approving taxes, charges, and fees proposals, not only undermines the principle of separation of powers but also the role of county Assemblies as per Article 185 (4) (a).

ii. Clause 4 of the Bill contravenes Article 209 of the Constitution given that each county has the mandate to charge taxes, charges as they deem fit. Besides, the national government has its taxes to impose and should not interfere with the county's mandate by having a multi-sectoral approach.

iii. Further, the national and county governments are mandated to impose charges on the services they provide, according to Article 209 (4) of the Constitution of Kenya, 2010. As such, each level of government should perform their own mandate. This is not an area for coordination due to the independence of each county government to impose taxes and fees. The committee therefore cannot be responsible for considering and approving taxes, and charges imposed by a county government as provided for in clause 4(3).

iv. The proposed composition of the people in the committee excludes any representatives from the county Assemblies and or from the county executive. The bill undermines the independence of counties and contravenes Article 6 (2) of the constitution of Kenya 2010 which says the two levels of Government are distinct but interdependent and shall conduct their mutual relations based on consultation and cooperation.

v. **Contradicting timelines-** The Public Finance Management Act, 2012, section 132 (1)

(2) requires the CECM Finance, with approval of the county executive Committee, a pronouncement of the revenue-raising measures, including submission of the County Finance Bill, before the County Assembly. According to the budget calendar, the turnaround time for this is 30th April. However, the Bill proposes a timeline of 10 months before the start of the financial year, which is around September. According to Section 133 of the Public Finance Management Act, 2012, county assemblies are required to approve the finance bill, with or without amendments, not later those 90 days (3 months) after the passing of the appropriation bill. We note with keen interest that the proposed timelines are contrary to the provisions of PFMA, section 133. Importantly, by the said timelines, the discussions on the division of Revenue and the decisions around the same subject are usually incomplete.

vi. **Overstepping on the mandate of the County Assembly in approving Finance Bill-** Clause 4 (3) states that the Committee established under clause 4 of the proposed bill, shall, within three months of the date of receipt of the proposal under subsection (1), consider the proposal and notify the county executive committee member of its decision in writing. This is contrary to Section 133 of the Public Finance Management Act, 2012, on the role of the County Assembly in considering and approving the finance, Bill. As this is the sole mandate of the County Assembly.

vii. **Lack of clarity on what pertains to national economic policies and economic boundaries across counties**

4.0. Proposals/ Recommendations.

i. The National Treasury and the Commission on Revenue allocation could provide support to county governments, both executive and legislative arms on how to adhere to Article 209 (5) while proposing taxes, and charges and (ensure counties do not prejudice national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour), without necessarily interfering with the mandate of the county governments.

ii. The Bill needs to provide provisions on the efforts and support of the national Treasury to counties on how to incentivize and maximize their revenue collection while respecting the mandate of the county governments.

iii. County Government entities should be fully consulted duly as far as this bill is concerned, with the quest to respect the provisions of article 6 (2) of the Constitution of Kenya.

iv. While giving effect to Article 209 (5) of the Constitution, the principle of separation of Powers and intergovernmental relations should be duly respected. The autonomy and independence of the counties should be respected!

v. There is a need to refer to the National Economic Policies that may hinder the County Governments from imposing Taxes While we acknowledge that this is a challenge andis costing taxpayers a lot of money, for example, a Mombasa Bound Bus Travelling from Nairobi has to pay parking fees in Nairobi, Makueni, Taita Taveta and MombasaCounties, there is a need for a mechanism to regulate.