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REPUBLIC OF KENYA  
*5/5/2021*



THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING  
.....

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT  
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2019)

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

MAY, 2021



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## CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No. 48 of 2019) which was published on **28<sup>th</sup> June, 2019** and read a First Time on Wednesday, 31<sup>st</sup> July, 2019 and committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

Following the request for memoranda from members of the public through placement of adverts in the print media on Wednesday, 14<sup>th</sup> August, 2019 requesting for stakeholder's comments on the Bill pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee did not receive any memorandum with comments on the Bill however, the Committee put into consideration comments submitted by the National Treasury and the Kenya Law Reform Commission during pre-publication scrutiny of the Legislative Proposal. Both stakeholders opposed the amendments proposed in the Bill.

The Bill has three (3) clauses and seeks to amend the Public Finance Management Act, 2012 in order to provide for a specific limit of the amount that the Government may borrow in order to reduce the country's internal and external debt. It also seeks to entrench the oversight role of Parliament in law by ensuring that the National Assembly pays attention to the revenue side of the budget and not just the expenditure part by mandating the Cabinet Secretary in charge of the National Treasury to seek the approval of Parliament before borrowing any funds. Further, the Bill seeks to specify the exact limit of funds that can be borrowed to six trillion shillings and provides for the need to ensure that the Cabinet Secretary submits the intended purpose for borrowing and the envisaged repayment of the loan to the National Assembly.

The Committee recommended that the Bill be deleted in its entirety because the main object of the Bill being to fix the national internal and external debt ceiling at six trillion (as opposed to debt to GDP ratio which was not to exceed 50% of the net present value of the GDP) had been overtaken by events given that the debt ceiling was reviewed by Parliament through the Public Finance Management (National Government) (Amendment) Regulations, 2019 to KSh. 9 trillion.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Finance Management (Amendment) Bill (N.A. Bill No. 48 of 2019). The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Hon. Alexander Kosgey for sponsoring the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Public Finance Management (Amendment) Bill (N.A. Bill No. 48 of 2020) and have the honour to report back to the National Assembly with the recommendation that the Bill should be **deleted in its entirety**.

**Hon. Gladys Wanga, CBS, M.P.**

**Chairperson, Departmental Committee on Finance and National Planning**



## 1 PREFACE

### 1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
  - a. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
  - b. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
  - c. **To study and review all the legislation referred to it;**
  - d. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - e. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - f. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
  - g. To examine treaties, agreements and conventions;
  - h. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - i. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
  - j. To examine any questions raised by Members on a matter within its mandate.

### 1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following Government Ministries and Departments:
  - a. National Treasury and Planning
  - b. State Department for Devolution
  - c. Commission on Revenue Allocation (CRA)
  - d. Office of the Controller of Budget
  - e. Salaries and Remuneration Commission (SRC)

### 1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was reconstituted by the House on Wednesday 15<sup>th</sup> July, 2020 and comprises of the following Members:

#### **Chairperson**

Hon. Gladys Wanga, CBS, MP  
MP for Homabay County

#### **ODM Party**

#### **Vice-Chairperson**

Hon. Isaac W. Ndirangu  
M.P for Roysambu Constituency

#### **Jubilee Party**

#### **Members**

Hon. Jimmy O. Angwenyi, MP  
MP for Kitutu Chache North Constituency

#### **Jubilee Party**

Hon. Christopher Omulele, MP  
MP for Luanda Constituency

#### **ODM Party**

Hon. Shakeel Shabbir Ahmed, CBS, MP  
MP for Kisumu Town East Constituency

#### **Independent Member**

Hon. Daniel Epuyo Nanok, MP  
MP for Turkana West Constituency

#### **Jubilee Party**

Hon. Christine Ombaka, MP  
MP for Siaya County

#### **ODM Party**

Hon. Andrew Adipo Okuome, MP  
MP for Karachuonyo Constituency

#### **ODM Party**

Hon. David Mwalika Mboni, MP  
MP for Kitui Rural Constituency

#### **CCU Party**

Hon. Francis Kuria Kimani, MP  
MP for Molo Constituency

#### **Jubilee Party**

Hon. Joseph Maero Oyula, MP  
M.P. for Butula Constituency

#### **ODM Party**

Hon. Joshua Chepyegon Kandie, MP  
MP for Baringo Central Constituency

#### **MCC Party**

Hon. Stanley Muiruri Muthama, MP  
MP for Lamu West Constituency

#### **Jubilee Party**

Hon. Edith Nyenze, MP  
MP for Kitui West Constituency

#### **WDM-K**

Hon. Catherine Waruguru, MP  
MP for Laikipia County

#### **Jubilee Party**

Hon. James Gichuhi Mwangi, MP  
MP for Tetu Constituency

#### **Jubilee Party**

Hon. (Prof.) Mohamud S. Mohamed, MP  
MP for Wajir South Constituency

#### **Jubilee Party**

Hon. Peter Lochakapong, MP  
MP for Sigor Constituency

#### **Jubilee Party**

Hon. Qalicha Gufu Wario, MP  
MP for Moyale Constituency

#### **Jubilee Party**

#### **1.4 COMMITTEE SECRETARIAT**

5. The Committee is facilitated by the following Members of the Secretariat:

Ms. Leah W. Mwaura

*Senior Clerk Assistant (Team Leader)*

Ms. Jennifer Ndeto

*Principal Legal Counsel I*

Ms. Laureen Wesonga

*Clerk Assistant II*

Mr. Josephat Motonu

*Senior Fiscal Analyst*

Mr. Chelang'a Maiyo

*Research Officer II*

Mr. Yakub Ahmed

*Media Relations Officer II*

Mr. John Njoro

*Serjeant-At-Arms*

Ms. Christine Maeri

*Audio Officer*

Mr. Vitalis Augo

*Office Superintendent*



## **2 OVERVIEW OF THE PUBLIC FINANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2019)**

### **2.1 INTRODUCTION**

6. The Bill introduces a debt ceiling of KSh. 6 trillion and ways of capping the level of borrowing by the Government. Previously, the CS, National Treasury presented an analysis of old loans, how they were being repaid and the reason for taking the new loans. This made it possible for the borrowing in the country to be monitored by Parliament. This was however amended in the Public Finance Management Act, 2012 which provides that the debt to GDP ratio should not exceed 50% of the net present value of the GDP. Resultantly, the borrowing levels in the country have gone up and the borrowed money is not accounted for.
7. The Bill will make it possible for Parliament to oversight the debt level in the country. The Bill puts the borrowing ceiling at KSh. 6 trillion as opposed to a percentage because a figure can easily be monitored compared to a percentage. The National Treasury will also be required to give a proposed loan repayment plan as opposed to the current scenario where loans are taken to repay old loans.

### **2.2 ANALYSIS OF THE BILL**

8. The Public Finance Management (Amendment) Bill (National Assembly Bill No. 48 of 2019) has three (3) clauses and seeks to amend the Public Finance Management Act, 2012 in order to provide for a specific limit of the amount that the Government may borrow in order to reduce the country's internal and external debt. The clauses propose the following amendments:
  9. **Clause 1** provides for the short title of the Bill.
  10. **Clause 2** seeks to entrench the oversight role of Parliament in law by ensuring that the National Assembly pays attention to the revenue side of the budget and not just the expenditure part. The clause mandates the Cabinet Secretary in charge of the National Treasury to seek the approval of Parliament before borrowing any funds.
  11. **Clause 3** of the Bill seeks to specify the exact limit of funds that can be borrowed to six trillion shillings and provides for the need to ensure that the Cabinet Secretary submits the intended purpose for borrowing and the envisaged repayment of the loan to the National Assembly.
  12. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.
  13. The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it affects the functions and powers of county governments as set out in the Fourth Schedule of the Constitution.
  14. The enactment of the Bill shall not occasion additional expenditure of public funds as provided in Article 114 of the Constitution.



### 3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

15. Following the call for memoranda from the public through the placement of adverts in the print media on **Wednesday, 14<sup>th</sup> August, 2019**, the Committee did not receive any memorandum from the public with comments on the Bill. The Committee however received comments from the following stakeholders during pre-publication scrutiny of the Bill:
- i. The National Treasury; and
  - ii. The Kenya Law Reform Commission

#### 3.1 THE NATIONAL TREASURY AND PLANNING

The National Treasury and Planning in its letter **ref. DMD 4/85** dated **12<sup>th</sup> June, 2019** opposed the amendments proposed in the Legislative Proposal for the following reasons:

16. **Not practical:** Contracting of loans is a daily operation and attempt to seek prior consent for each loan is conducted and adjudicated by joint Central Bank and National Treasury Committee on a weekly basis and at specific times of the day as part of Treasury cash management operations. Daily sittings of National Assembly to consider outcome and grant approvals is impractical.
17. **Contradicts and undermines oversight role of the legislature:** The National Assembly will assume the role of the Executive by undertaking financial operations. The Auditor General submits audit findings to the National Assembly.
18. They opposed proposed amendment to section 50 of the Public Finance Management Act, 2012 because it will exclude the Senate from responsibility on matters relating to national government debt. The National Treasury and Planning opposed this amendment because the Senate has responsibility over public debt and guarantees for the following reasons:
- i. National and County Government debt (and guarantees) constitute Kenya's Public Debt;
  - ii. County Government Budget is financed partly through borrowing by the National Government;
  - iii. Servicing of public debt is through taxation and borrowing; and
  - iv. Article 114(3) of the Constitution provides that "a money Bill" means a Bill other than a Bill specified in Article 218, that contains provisions dealing with (d) the raising or guaranteeing of any loans or its repayment or matters incidental to any of those matters raised or guaranteed and securities issued or guaranteed by the national government.
19. The proposed amendment to delete '*limit set by Parliament*' and substituting with the expression '*six trillion shillings*' was opposed by the National Treasury and Planning because:
- i. Debt stock arises from past borrowings to finance fiscal deficit reflected in the annual national budget approved by Parliament. Debt stock is an outcome of the fiscal policy stance outlined in the Budget Policy Statement and approved by Parliament.
  - ii. The ceiling of six trillion shillings is arbitrary and not justified or anchored on any particular rationale.
20. The proposed amendment to insert new subsection c '*in seeking prior approval to borrow from the National Assembly, the CS National Treasury shall state purpose of borrowing and repayment plan*' was not supported by the National Treasury and Planning because it is not practical and undermines oversight role of the Legislature. Borrowing operations are conducted by the Public Debt Management Office at the National Treasury in accordance with the PFM Act. The management and operations of debt and borrowing are subject to audit by the Auditor General. In addition, the National Treasury submits periodic reports to Parliament as required under the PFM Act.



### **3.2 THE KENYA LAW REFORM COMMISSION**

In a letter to the Committee, the CEO of the Commission submitted that:

#### **Clause 2**

21. The clause requires the Cabinet Secretary to seek approval of the National Assembly before effecting any borrowing within Kenya or from outside Kenya. The Memorandum of Reasons and Objects elaborates the objective of this proposal is to ensure the National Assembly pays attention to the revenue side of the budget and not just the expenditure.

#### **Observations**

22. This proposal requiring the National Treasury to seek approval of Parliament before any borrowing, even though well intended, is restrictive and an undue interference with the mandate of the National Treasury. It goes beyond the oversight role of Parliament. Any legislation on public debt ought to be in line with Article 211 of the Constitution. Article 211(1) requires Parliament by legislation, to prescribe the terms in which the national government may borrow and impose reporting requirements.
23. It is worth noting that the Constitution does not require the legislation to be made by Parliament to approve the borrowing. Therefore, any provision on PFM should be in line with the Constitution. They believed that not requiring the National Assembly's approval before borrowing by the national government was deliberate. Secondly, this requirement heralds huge logistical difficulties. Borrowing by the government is not only to raise funds. Often it is one of the monetary policy tools to control inflation and mop up liquidity in the economy. This is by way of fiscal tools such as Treasury Bills.
24. Further, the government is often inclined to do borrowing internally as a general cash management mechanism to meet any exigency and a general fiscal policy tool. This is by issuing instruments with short-term maturity such as Treasury Bonds, M-Akiba bonds, among others. Debt management is a mandate of the National Treasury with Parliament exercising oversight and not as a direct participant in debt floatation, which would be the eventual implication of this proposal.
25. They were aware that there have been sentiments of perceived over-borrowing by the national government. However, a parliamentary solution to such an issue lies in Article 211(1). To such extent, Parliament should legislate on the clear terms on which the government should borrow and set out clear reporting mechanism. Requiring direct approval to every borrowing is not legally sound.

#### **Recommendation**

26. They recommended deletion of the clause for being a legislative overkill and not in line with Article 211(1) of the Constitution. The provision should be substituted with provisions that clearly prescribe the terms on which the national government may borrow, an aspect they were of the view is not sufficiently legislated in the PFM Act.

#### **Clause 3(a)**

27. The sub-clause amends Section 50 by deleting the word "Parliament" wherever it appears and substituting it with the words "National Assembly".

#### **Observations**

28. They were of the view that the proposed amendment is unnecessary since Article 93 of the Constitution establishes Parliament as consisting of the National Assembly and Senate. The



distinction between the two Houses becomes important when they are dispensing their respective mandates as demarcated under the Fourth Schedule of the Constitution.

29. Where the National Assembly or Senate does an act in exercise of their mandate, such action is, for all intent and purposes, taken to be an action taken by Parliament. Further, the word Parliament is a terminology used in legislation and they did not find anything distinctive with this specific provision to warrant distinction and it is not proper drafting.
30. If the mischief is to remove issues of debt management from the Senate, then this completely misses the point especially the principle of intergenerational equity which is highlighted in Chapter 12 of the Constitution. Issues of national debt is a function of shareable revenue between the two levels of Government therefore the Senate cannot certainly be kept of it.

#### **Recommendation**

31. They recommended that clause 3(a) should be deleted.

#### **Clause 3(b)**

32. The clause seeks to limit the funds that the national government may borrow to six trillion shillings.

#### **Observations**

33. They appreciated this proposal as legal and in line with Article 211. However, there are shortcomings of having a fixed sum as proposed. This makes the proposal to be fixated on the present state of affairs and ignores other parameters that are involved in determining debt sustainability.
34. The issue with the Kenyan debt is not the amount generally but concerns on its sustainability in the long run. The imposition would require an amendment to the Act before any future borrowing is done when the debt reaches KSh. 6 Trillion, even when other parameters would indicate the amount to be sustainable.

#### **Recommendation**

35. They recommended that the provision should be redrafted to provide clear discernible parameters and statistics that would be used to set the upper limit of the debt, instead of having fixed sum. Such a move is short-termism and will basically require periodic amendments to the Act for future borrowing.

#### **Clause 3 (c)**

36. The sub-clause introduces a new section 3A, which requires that in seeking approval for borrowing, the Cabinet Secretary shall submit to the National Assembly the intended purpose of borrowing and envisaged repayment mode.

#### **Observation**

37. They referred to their earlier comment on the view that it is not legally sound to provide for the National Treasury to seek approval of parliament every time they effect a borrowing. This limits their scope and mandate on the fiscal and monetary policy.

**Recommendation**

38. They recommended that the clause should be redrafted to offer guidance on Article 211(1)(b) which mandates the legislation to impose reporting requirement on borrowing. Such reporting requirement would include the mode of debt repayments and timelines for reporting.

**CONCLUSION**

39. They appreciated the intention of the Bill and the concerns the Honorable Member seeks to address. However, they were of the view that the solution to some of these concerns is adequately provided for in Article 211 (2) of the Constitution, which empowers Parliament to summon the CS Treasury on matters pertaining public borrowing.
40. The proposed amendments should be more geared towards providing certainty on terms of borrowing and reporting requirements, which would go a long way towards addressing the issue of perceived escalation of public debt.



#### **4 COMMITTEE OBSERVATION**

41. The Committee observed that the main object of the Bill being to limit the amount of money that the Government may borrow to KSh. Six (6) trillion had become null and void given that the debt ceiling was reviewed by Parliament through the Public Finance Management (National Government) (Amendment) Regulations, 2019 to KShs .Nine (9) trillion.

**5 COMMITTEE RECOMMENDATION**

42. The Committee having considered the Public Finance Management (Amendment) Bill (National Assembly Bill No. 48 of 2019), the stakeholder's comments on the Bill and the above observations recommends to the House that the Bill be **DELETED IN ITS ENTIRETY**.

SIGNED.....



DATE.....

5<sup>th</sup> May 2021

**THE HON. GLADYS WANGA, CBS, MP**

**CHAIRPERSON,**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**



**ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2019)**

The report on the consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No. 48 of 2019) was adopted by the Committee on Tuesday, 4<sup>th</sup> April 2021 having been proposed and seconded by Hon. Peter Lochakapong, M.P. and Hon. Edith Nyenze, M.P. respectively. The following Members acceded to the recommendation proposed in the report to be considered during the Committee Stage having been present in the meeting:

1. Hon. Gladys Wanga, CBS, M.P. - **Chairperson**
2. Hon. Isaac Waihenya Ndirangu, M.P. - **Vice-Chairperson**
3. Hon. Jimmy Angwenyi, MGH, M.P.
4. Hon. Christopher Omulele, CBS, M.P.
5. Hon. Shakeel Shabbir Ahmed, CBS, M.P.
6. Hon. David Mboni, M.P.
7. Hon. Joshua Kandie, M.P.
8. Hon. Edith Nyenze, M.P.
9. Hon. Catherine Waruguru, M.P.
10. Hon. (Prof.) Mohamud Sheikh Mohamed, M.P.
11. Hon. Peter Lochakapong, M.P.





**MINUTES OF THE 20<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD VIRTUALLY ON TUESDAY, 4<sup>TH</sup> MAY, 2021 AT 10:00 A.M.**

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**PRESENT**

- |   |   |                         |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP               | - | <b>Chairperson</b>      |
| 2. Hon. Isaac W. Ndirangu, MP               | - | <b>Vice Chairperson</b> |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP          |   |                         |
| 4. Hon. Christopher Omulele, CBS, MP        |   |                         |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP      |   |                         |
| 6. Hon. David M. Mboni, MP                  |   |                         |
| 7. Hon. Joshua C. Kandie, MP                |   |                         |
| 8. Hon. Edith Nyenze, MP                    |   |                         |
| 9. Hon. Catherine Waruguru, MP              |   |                         |
| 10. Hon. (Prof.) Mohamud Sheikh Mohamed, MP |   |                         |
| 11. Hon. Peter Lochakapong, MP              |   |                         |

**ABSENT**

1. Hon. (Dr.) Christine Ombaka, MP
2. Hon. Andrew A. Okuome, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. James Gichuhi Mwangi, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Qalicha Gufu Wario, MP

**INATTENDANCE**

**SECRETARIAT**

- |                           |   |  |
|---------------------------|---|--|
| 1. Ms. Leah Mwaura        | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto     | - | Principal Legal Counsel I                  |
| 3. Ms. Laureen Wesonga    | - | Clerk Assistant II                         |
| 4. Mr. Chelang'a R. Maiyo | - | Research Officer II                        |
| 5. Ms. Christine Maeri    | - | Audio Officer                              |
| 6. Ms. Jeruto Kosgey      | - | Intern                                     |

**AGENDA**

1. Prayers
2. Communication from the Chairperson
3. **Adoption of the reports on the consideration of the Public Finance Management (Amendment) Bill, 2019 by Hon. Alexander Kosgey, M.P. and the Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Patrick Jungle Wainaina, M.P.**
4. Any Other Business
5. Adjournment/Date of Next Meeting

**MIN.NO.NA/F&NP/2021/094:**

**COMMUNICATION FROM CHAIRPERSON**

The meeting was called to order at 10:05 a.m. and a prayer was said. The Chairperson called for introduction of those virtually present before welcoming the meeting to deliberate on the day's agenda.

**MIN.NO.NA/F&NP/2021/095:**

**CONFIRMATION OF MINUTES**

Agenda deferred.

**MIN.NO.NA/F&NP/2021/096:**

**ADOPTION OF THE REPORTS ON THE  
CONSIDERATION OF THE PUBLIC  
FINANCE MANAGEMENT (AMENDMENT)  
BILL (NATIONAL BILL NO. 48 OF 2019)  
AND THE PUBLIC PROCUREMENT AND  
ASSET DISPOSAL (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 20 OF  
2020**

The Chairperson invited the Secretariat to brief the Members on the Public Finance Management (Amendment) Bill, 2019 by Hon. Alexander Kosgey, M.P. and the Public Procurement and Asset Disposal (Amendment) Bill, 2020 by Hon. Patrick Jungle Wainaina, M.P. The Committee was informed as follows:

1. On the Public Finance Management (Amendment) Bill (N.A. Bill No. 48 of 2019) by Hon. Alexander Kosgey, M.P. the Committee had agreed that the Bill be deleted in its entirety because the main object of the Bill being to limit the amount of money that the Government may borrow to KSh. 6 trillion had been overtaken by events given that the debt ceiling was reviewed by Parliament through the Public Finance Management (National Government) (Amendment) Regulations, 2019 to KSh. 9 trillion.

**Resolution: The Committee adopted the report with the recommendation to delete the Bill in its entirety having been proposed and seconded by Hon. Peter Lochakapong, M.P. and Hon. Edith Nyenze, M.P. respectively.**

2. On the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 20 of 2020) by Hon. Patrick Jungle Wainaina, M.P., the Committee had agreed that the Bill be deleted in its entirety because it was proposing in clause 2 to split tenders into more than one procurements where procuring entities are to be barred from awarding more than one tender to one tendering company. The Committee had observed that the amendment will contravene the provision of Section 54(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that "*No procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure except where prescribed.*" In addition, Clause 3 was proposing to amend Section 86 of the said Act so as to provide an additional requirement for determination of a successful tender so that any successful tender shall be within the range of fifteen percent of the Engineers Estimate. The Committee was opposed to this amendment as it was subject to abuse where public officers can collude with tenderers to manipulate pricing of tenders. Regarding clause 4 of the Bill, the Committee observed that the Bill was seeking to address delays in making payments for completed works. The Committee agreed that the matter can be cured through a separate legislation. In



terms of clause 5, the Bill was proposing to amend Section 157 of the Act to ensure that exclusive preference is given to Kenyans for all tenders below one billion. The Committee had observed that the matter had been exhaustively addressed by Regulation 163(a) of the Public Procurement and Asset Disposal Regulations, 2020. Additionally, the matter of reviewing the thresholds are better handled through Subsidiary Regulations as they are bound to change from time to time.


**Resolution:** In view of the foregoing, the Committee agreed that the Bill be deleted in its entirety. The report on the Bill was therefore adopted having been proposed and seconded by Hon. David Mboni, M.P. and Hon. Peter Lochakapong, M.P. respectively.

MIN.NO.NA/F&NP/2021/097:                      ADJOURNMENT/DATE                      OF                      NEXT  
MEETING

There being no other business to deliberate on, the meeting was adjourned at 11:32 a.m. The next meeting will be held on Friday 7<sup>th</sup> May, 2021 in Naivasha.

HON. GLADYS WANGA, CBS, MP  
(CHAIRPERSON)

SIGNED.....



DATE.....

5<sup>th</sup> May 2021



