Approved
SNA
21/6/23

**REPUBLIC OF KENYA**

**THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT (SECOND SESSION)**

**PUBLIC DEBT AND PRIVATIZATION COMMITTEE**

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# REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 16 OF 2023)

**JUNE 2023**

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**List of Acronyms and Abbreviations**

| | |
|---|---|
| **BPS** | Budget Policy Statement |
| **CS** | Cabinet Secretary |
| **FY** | Financial Year |
| **GDP** | Gross Domestic Product |
| **IBP** | International Budget Partnership |
| **ICPAK** | Institute of Certified Public Accountants of Kenya |
| **IEA** | Institute of Economic Affairs |
| **MTDS** | Medium Term Debt Management Strategy |
| **PDMO** | Public Debt Management Office |
| **PFM** | Public Finance Management |
| **TISA** | The Institute for Social Accountability |

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## CHAIRPERSON'S FOREWORD

The Public Finance Management (Amendment) Bill, 2023 (National Assembly Bill No. 16) was published on 4th May, 2023 and read a First Time on 6th June, 2023. Thereafter, the bill was referred to the Public Debt and Privatization Committee for consideration subject to National Assembly Standing Order 207A and for reporting to the House.

Pursuant to Article 118(1) (b) of the Constitution of Kenya and the National Assembly Standing Order 127(3), both of which require House Committees considering Bills to facilitate public participation, two advertisements were placed in the Daily Nation and Standard Newspapers on 8th June 2023 calling for submission of memoranda on the amendment Bill.

### Examination of the Bill

In line with the mandate of the Committee to examine matters relating to public debt, the Committee has examined the Public Finance Management (Amendment) Bill, 2023 (National Assembly Bill No. 16) and has prepared a report to the House for consideration and adoption.

In reviewing the bill, the Committee held productive deliberations with key stakeholders and received their submissions. These include the Institute of Social Accountability (TISA), International Budget Partnership (IBP) Kenya, Institute of Economic Affairs (IEA), and Institute of Certified Public Accountants (ICPAK). The Committee also received submissions from the University of Nairobi Women Economic Empowerment Hub, Civil Engineering Contractors Association as well as concerned individuals, namely: Jimi Wanjigi, and Valentine Wangechi Rukwaro. The Committee also held discussions with the National Treasury before the report on the bill was finalized.

### Key Recommendations

Arising from these consultative engagements, the Committee has made the following recommendations:

**CLAUSE 2**

**THAT** clause 2 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph:

"(b). by inserting the following new definitions in their proper alphabetical sequence—

"financial obligation" means outstanding liabilities related to public debt, including principal, interest, fees, commissions and other expenses incidental to the raising of public debt or its repayment and shall be a charge on the Consolidated Fund or another public fund established by the national government or any of its entities.

"public debt" has the meaning assigned to it under Article 214 (2) of the Constitution"

**JUSTIFICATION**

The proposal will provide a clear definition of the word "financial obligation" that is used under Article 214 (2) of the Constitution but is not defined. The proposal aims to define "financial obligation" to include costs related to servicing a public debt and to make the obligations chargeable on the Consolidated Fund or any other Fund designated by the Cabinet Secretary.

**CLAUSE 4**

**THAT** clause 4 of the Bill is amended by deleting paragraph (a).

**JUSTIFICATION**

The amendment aims to safeguard the oversight role of Parliament as provided in the constitution.

**CLAUSE 6**

**THAT** clause 6 of the Bill is amended —

(a) in paragraph (a):

(i) in sub-paragraph (i) by deleting the word "set" appearing immediately after the words "the word" and substituting therefor the word "the";

(ii) by deleting sub-paragraph (ii) and substituting the following new sub paragraph:

"(ii) by inserting the following new subsections—

"(2A). The threshold set under subsection (2) shall be a debt anchor of 55 percent and not exceed plus five percent of the gross domestic product in present value terms.

**JUSTIFICATION**

The amendment aims to provide that the threshold for debt shall be a debt anchor of 55 percent and shall not exceed plus five percent of the gross domestic product in present value terms

**CLAUSE 7**

**THAT** clause 7 of the Bill be deleted.

**JUSTIFICATION**

The amendment aims to safeguard the oversight role of Parliament as provided in the constitution.

**Acknowledgements**

The Committee extends its gratitude to the Office of the Speaker, the Office of the Clerk of the National Assembly for the support extended in fulfilling its mandate of reviewing the Public Finance Management (Amendment) Bill 2023. Sincere gratitude is also extended to the National Treasury as well as the key stakeholders and members of the public who honoured the invitation to present their views on the bill and provided critical information that has been most useful in arriving at the recommendations contained in this report.

Finally, the Committee would like to appreciate the Parliamentary Budget Office and the Legal Department of the National Assembly for the extensive technical assistance provided in the review of the bill and the finalization of this report.

It is therefore my pleasant undertaking, on behalf of the Public Debt and Privatization Committee, to table this report to this House and recommend it for adoption.

**SIGNED**

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**HON. (DR.) MAKALI MULU M.P.**

**VICE-CHAIRPERSON, PUBLIC DEBT & PRIVATIZATION COMMITTEE**

21/06.2023

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**DATE**

## PREFACE

### Establishment and Mandate of the Committee

The powers of each House of Parliament to establish committees and to make standing orders for the orderly conduct of its proceedings are provided for under Article 124 of the Constitution of Kenya, 2010. For critical oversight over matters relating to public debt and debt guarantees, public-private partnerships and privatization of national assets, standing order 207A establishes the Public Debt and Privatization Committee with specific mandates among which is to:

i. Oversight public debt and guarantees, pursuant to Article 214 of the Constitution
ii. Examine matters relating to debt guarantees by the National government;
iii. Oversight Consolidated Fund Services excluding audited accounts;
iv. Examine reports on the status of the economy in respect of the public debt;
v. Oversight public-private partnership programmes by the national government in respect of the public debt; and
vi. Oversight privatization of national assets

This Committee is therefore mandated, among other functions, to examine the Consolidated Fund Service Expenditures and propose recommendations to the House for adoption.

### Membership of the Committee

The Public Debt and Privatization Committee as currently constituted, comprises of the following Members of Parliament: -

**CHAIRPERSON**
**Hon. Abdi Shurie, M.P.**
**Balambala Constituency**
**Jubilee Party**

**VICE-CHAIRPERSON**
**Hon. (Dr.) Makali Mulu M.P**
**Kitui Central**
**Wiper Party**

Hon. Junet, Mohamed S.N. CBS. M.P
Suna East Constituency
**ODM Party**

Hon. Mohamed, Abdikadir Hussein, M.P
Lagdera Constituency
**ODM Party**

Hon. Omboko Milemba M.P
Emuhaya Constituency
**ANC Party**

Hon. Suleka, H. Harun. M.P
Nominated
**UDM Party**

Hon. (Dr.) Irene Kasalu M.P
Kitui County
**Wiper Party**

Hon. Chege Njuguna M.P
Kandara Constituency
**UDA Party**

Hon. Kwenya, Thuku Zachary, M.P
Kinangop Constituency
**Jubilee Party**

Hon. Abdi Ali Abdi, M.P
Ijara Constituency
**NAP-K**

Hon. Kipkoros, Joseph Makilap M.P
Baringo North Constituency
**UDA Party**

Hon. Letipila, Dominic Eli, M.P
Samburu North Constituency
**UDA Party**

Hon. Aden Daud, EBS, M.P
Wajir East Constituency
**Jubilee Party**

Hon. Kirwa, Abraham Kipsang, M.P
Mosop Constituency
**UDA Party**

Hon. (Dr.) Daniel Manduku, M.P
Nyaribari Masaba Constituency
**ODM Party**

**Committee Secretariat**

In the preparation of this report, the committee was facilitated by the following staff:

Mr. Chacha Machage
Fiscal Analyst I/ Lead Clerk

Mr. Job Mugalavai
Fiscal Analyst III/ Clerk Assistant

Mr. Fridah Ngari
Media Relations Officer III

Mr. Eugene Luteshi
Audio Officer III

Ms. Yasmin Hassan
Assistant Serjeant-at-Arms

Mr. Sapan Pkiror
Fiscal Analyst III

**Parliamentary Budget Office**

The Committee also received technical support from the following staff of the Parliamentary Budget Office:

Dr. Martin Masinde
Director, Parliamentary Budget Office (PBO)

Mr. Robert Nyaga
Deputy Director, Parliamentary Budget Office (PBO)

Ms. Millicent Makina
Fiscal Analyst I

Ms. Julie Mwithiga
Fiscal Analyst I

# 1.0.OVERVIEW OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO.16 OF 2023)

## 1.1. Introduction

2. The Public Finance Management (Amendment) Bill, 2023 (National Assembly Bill No. 16) seeks to amend the Public Finance Management (PFM) Act No. 18 of 2012, by adjusting the framework for monitoring public debt and borrowing. The Bill seeks to align the PFM Act, 2012 with the provisions of the Constitution relating to definition of public debt, financial obligations, as well as to amend the debt limit and provide provisions for the Cabinet Secretary in charge of the National Treasury to provide an explanation to parliament in the case public debt exceeds the debt threshold.

3. The Bill is structured as follows:

i. Clause 1 of the Bill sets out the short title of the proposed Act.

ii. Clause 2 of the Bill contains provisions to amend the Act by deleting the word "public" in the definition of the words "County Public Debt" and inserting the definition of the words "financial obligations" and "public debt".

iii. Clause 3 of the Bill proposes to amend section 12 of the Act by deleting paragraph (b) and introducing a new provision that provides for the proper management and efficient use of budgetary resources by the national government and its entities.

iv. Clause 4 of the Bill seeks to amend section 15 of the Act to provide for financial obligations to be maintained at a substantial level as advised by Public Debt Management Office and Parliament. It also deletes the words "national debt" and substituting therefor the words "public debt" as the Constitution defines "public debt" and not "national debt".

v. Clause 5 of the Bill contains provisions to amend section 31 of the Act by deleting the words "national debt" wherever it appears and replace it with the words "public debt" to align it with the definition in the Constitution.

vi. Clause 6 of the Bill seeks to amend section 50 of the Act to require the Cabinet Secretary to give an explanation to Parliament, in writing, where the public debt exceeds the threshold set out in law and the remedial plan.

vii. Clause 7 of the Bill seeks to amend the Act by introducing a new paragraph in section 63 to add functions of the Public Debt Management Office to include advising Parliament and the Cabinet Secretary on the sustainable levels of public debt and the annual borrowing limit.

## 1.2. Review of the Bill

2. A general review of the Bill indicated that some of the provisions may not enhance sustainable public debt management and/or oversight. As per the Bill, the regulation of public debt appears to mostly be a reserve of the National Treasury and does not fully promote the essential role of parliamentary oversight and/or approval. Further, without the appropriate, reporting, transparency and accountability provisions particularly with regard to the debt threshold, the Bill might weaken public debt management and consequently long-term debt sustainability. To this extent, the committee has

reviewed each clause of the bill extensively and has proposed amendments to some of the clauses and rejected others.

3. Notably, the bill seeks to amend the Act to address the matter of a public debt ceiling by introducing a threshold. This amendment is supported by the lack of fiscal space to finance the FY 2023/24 and medium-term expenditures. As of end of March 2023, public debt amounted to Kshs. 9.39 trillion and is forecasted to range between Kshs. 9.6 trillion and Kshs. 9.7 trillion by end of June 2023. Given the current stipulated public debt limit of Kshs. 10 trillion, the borrowing space to finance the FY 2023/24 budget estimates is projected to be less than Kshs. 300 billion. As such, the borrowing room will be insufficient to finance the budget deficit for FY 2023/24 estimated to amount to Kshs. 718.4 billion, and without any amendment, the debt limit will be breached in the course of the FY 2023/24.

## 2.0.SUBMISSIONS BY STAKE HOLDERS

4. In a meeting held on 19th June 2023, the Public Debt and Privatization Committee received submissions from the following key stakeholders: the Institute of Social Accountability, International Budget Partnership (IBP) Kenya, Institute of Economic Affairs (IEA), Institute of Certified Public Accountants (ICPAK) and Mr. Jimi Wanjigi.

### 1) The Institute of Social Accountability and International Budget Partnership Kenya (TISA/IBP)

5. TISA/IBP-Kenya jointly proposed the following amendments to the Bill:

**Clause 2a**

6. The stakeholders rejected the amendment of Clause 2a which deletes the word 'public' in the words 'county public debt' in the definition section. This is because the proposed definition by removing public debt in the definition of county debt, deviates from the language and spirit of the Constitution which defines national government and county government debt as public debt. The use of 'public' is important in ensuring that governments retain fidelity to the members of the public on whose behalf they acquire and appropriate debt. Both levels of government must retain consistent language of public debt, whether at national or county level.

**Committee Observation**

**The committee agrees with the observation of the stakeholder and rejects the amendment proposed in clause 2a to remove the word 'public' from county public debt in the definition section.**

**Clause 2b**

7. The stakeholders supported the amendment in clause 2b of the bill which amends section 2 of the Act by adding the definition of 'financial obligation' in the interpretation section. This is because the amendment provides needed clarity in the implementation of the meaning of public debt as per Article 214 of the constitution, which defines public debt to mean all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government. The definition clarifies the term which is used severally in the PFM act.

**Committee observation**

**The committee agreed with this observation and amended clause 2(b) to redefine the term 'financial obligation' in order to provide further clarity.**

**Clause 3a**

8. The stakeholders support the amendment of section 12(1)(b) of the Act which deletes the word 'national' wherever it appears. The proposal to amend this is a positive step that will ensure the National Treasury manages the level and composition of all debts and financial obligations that the government has, including those borrowed by county governments. It bestows the National Treasury with responsibility for all public debt.

**Committee observation**

**The committee agreed with this submission as it will ensure that the National Treasury is responsible for managing debt at both the national and county levels of government.**

**Clause 3b**

9. The amendment proposes the deletion and replacement of Section 12(2)(b) with the following words, 'ensure proper management and control of, and accounting for the finances of the government and its entities in order to promote the efficient and effective use of budgetary resources;"
10. The amendment seeks to delete the words 'national' from section 12(2)b of the PFM act and bring all county government debt into the ambit of the control of the treasury. Whereas the national treasury has an oversight role on county governments, it is important to note that the devolved system of government creates layers of oversight. The National Treasury, according to the constitution and the PFM act, would be required to guarantee county public debt but not to have ultimate oversight. This is the role of the county treasury (PFM Act, Sec. 104(1)(e)), and additional management and control is availed by county assemblies, the senate and independent institutions.

11. Further, the relationship between county treasuries and the Public Debt Management Office (PDMO), which operates under the National Treasury, is clearly defined in Section 65 of the PFM Act 2012. Sub-section (1) states that the PDMO shall assist the county government in its debt management and borrowing, but only at the request of the county treasury. Therefore, if the intent of the proposed amendment is to have some level of oversight on county government, the nature and scope of this oversight would need to be clearly legislated upon.

**Committee observation**

**The committee notes the observation of the stakeholder on the need for clarity in legislation to have the National Treasury oversight county governments debt. The committee is in agreement with the amendment to clause 3b as proposed in the bill as this will ensure that the national government is able to oversight all debt at both levels of government.**

**Clause 4a**

12. The stakeholders object the amendment which seeks to delete and replace Section 15(2)(d) of the Principal Act with the following new paragraph; "public debt and financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed are maintained at a sustainable level as advised by the Public Debt Management Office and approved by Parliament for the national government and by the county assembly for county government." Whereas the amendment seeks to strengthen the role of the public debt management office, there is need to ensure that the wording of the provision does not take away the constitutional mandate of parliament.

**Committee observation**
**The Committee agreed with the stakeholders and rejected this amendment to section 15(2)(d) of the PFM Act.**

**Clause 4b**

13. The stakeholders support the amendments which propose the deletion and replacement of the word "national debt" with "public debt' under section 15(4) of the Principal Act. This is a progressive amendment as it will allow the National Treasury to put into consideration all debts accrued by the government, whether it is the national government or its entities, or county governments; and all other financial obligations placed on the government while ensuring the level of debts do not exceed what has been provided in the medium-term national government debt management strategy

**Committee observation**

**The committee is in agreement with this submission as it will allow the National Treasury to manage all debt acquired by the national as well as county governments.**

**Clause 6a**

14. The stakeholders object the amendment of Section 50(2) of the PFM Act which seeks to delete the words "a limit" and replace them with the words "set threshold", with an insertion of a proviso at the end of the sentence that reads; 'provided that if at any time the Cabinet Secretary is unable to maintain the public debt threshold as required under this subsection or the regulations thereunder, the Cabinet Secretary shall submit a written report to Parliament explaining the cause of the breach on the threshold and provide a time-bound remedial plan."
15. This amendment is largely in terms of semantics and does not address the real problem of debt accountability. TISA/IBP_Kenya expressed concern over the proposal for language that expressly anticipates a breach and only places on the Cabinet Secretary, National Treasury to inform parliament of the breach. This provision ultimately gives the Cabinet Secretary a free pass in terms of accumulation of public debt beyond the "set threshold" without any consequences.
16. TISA/IBP Kenya recommend a direct role by Parliament with the advice of the PDMO in the reviewing and approval of any adjustment or breach of the set threshold in the annual approval of the Medium Term Debt Management Strategy Paper and the Budget Policy Statement.

**Committee observation**

**The committee is in agreement with the proposed amendment to move from the term 'limit' to 'threshold', noting that it does not materially alter the objective of providing a set maximum level of debt. However, the committee agrees with the concerns of the stakeholders with regard to the breach of the threshold and how this should be reported to Parliament and has proposed amendments to Clause 6(a)(ii) to properly define the threshold.**

**Clause 7**

17. The amendments seek to add to the Public Debt Management Office a function of advising Parliament and the Cabinet Secretary on the sustainable levels of public debt and the annual borrowing limits.
18. TISA/IBP Kenya posit that this is an effort geared towards sustainable debt management. Often, the borrowing strategy adopted by parliament, as shown in approved Budget Policy Statements, deviates with that recommended by the PDMO through the Medium-Term Debt

Management Strategy paper (MTDS). For example, the BPS of 2023 stipulates a fiscal deficit of Kshs. 720 billion for FY 2023/24, to be financed through external borrowing of Kshs. 198.6 billion and domestic borrowing of Kshs. 521.5 billion. This implies a borrowing mix of 27% from external sources and 73% from domestic sources. However, the MTDS of 2023 recommended a 50:50 borrowing mix from external and domestic sources. The proposed amendment seeks to reduce such deviations by giving the PDMO more of a substantive role in the sustainable management of public debt.

**Committee observation**

**The committee rejects the amendment to have the Public Debt Management Office (PDMO) advise Parliament on debt matters, noting the principle of separation of powers and that the PDMO is a department under the National Treasury and can therefore only advise the Cabinet Secretary of the National Treasury.**

## 2) Institute of Economic Affairs (IEA)

**19. The Institute of Economic Affairs presented the following submissions on the Bill:**

**Clause 6 (a)(i)**

20. IEA is of the opinion that the amendment to Section 50(2) of the PFM Act to replace the word "limit" with the word "threshold" makes no legal difference for public debt levels of its management. IEA proposes that Parliament should not place arbitrary numbers for debt thresholds or limits but instead impose a deficit finance rule for balanced budgets in every five-year cycle or a deficit of no more than 3% of GDP per year.

**Committee observation**

**The committee is in agreement with the proposed amendment to move from the word 'limit' to 'threshold', noting that it does not materially alter the objective of providing a set maximum level of debt.**

**Clause 6(a)(ii)**

21. This clause seeks to provide discretion to the Cabinet Secretary for Finance to submit a written report to Parliament when the threshold of debt is breached. The IEA proposes an amendment to the clause to read "The Cabinet secretary should provide an annual report on the possibility of breach within 30 days of her assessment showing that a risk of breach is eminent. That report must contain the reasons and decompose the debt risk by Domestic and Foreign components."
22. Article 220(1) (c) requires reporting on borrowing and other liabilities and this adequately covers for reporting on the risks of the escalation of debt. The implications for the changes

on economic circumstances should be addressed through the requirements of this constitutional safeguard.

**Committee observation**

**The committee agrees with the stakeholders' observation and has proposed an amendment to clause 6(a)(ii) to properly define the breach of the threshold.**

**Clause 6b**

23. This clause seeks to delete section 31 (6) of the PFM Act for the Cabinet Secretary for Finance to charge debt costs to any other fund apart from the Consolidated Fund. The IEA proposes that this clause be expunged as it would provide discretion and authority to the Cabinet Secretary to exceed powers intended by the article 214 (1) of the Constitution. The Constitution of Kenya does not contemplate that directions for charging debt to a separate fund would be enabled by regulations.

**Committee observation**

**The committee notes the concern of the stakeholders but is in agreement with the proposal in clause 6b.**

## 3) Institute of Certified Public Accountants (ICPAK)

24. **The Institute of Certified Public Accountants (ICPAK) presented the following submissions on the Bill:**

**Clause 2**

25. This clause proposes to amend section 2 of the Public Finance Management Act ('the Act") by deleting the word "public" in the "county public debt". Further it proposes insertion of new definitions "public debt" and "financial obligation".

26. ICPAK proposes the deletion of Clause 2(a) as they feel that deleting the word "public" from the definition under Clause 2(a) delinks the debt contractual agreement from public scrutiny and implies that debt incurred by the County Governments will not meet the Constitutional provisions. This will be detrimental to the public whose interest the Counties represent. The institute further submits that including the word "public" in county debt maintains the rigor of the Constitutional provision in the definition and will require such debts to be guaranteed by the National Government and safeguard the public from suffering the risks should the county government fail to meet the debt obligation.

**Committee observation**

**The committee agreed with the stakeholder's proposal and rejected the amendment proposed in Clause 2(a).**

**Clause 3**

27. This clause proposes to amend section 12(1) of the Act by deleting paragraph (b) and replacing it with a new paragraph that provides for proper management and efficient use of budgetary resources by the national government and its entities.
28. Further, it proposes to amend section 12(2) of the Act by deleting paragraph (b) and replacing it with a new paragraph that provides for the proper management and efficient use of budgetary resources by the national government and its entities.
29. The Institute supports this provision, noting that it is comprehensive and streamlines prudent management of public resources.

**Committee observation**

**The committee agrees with the stakeholder and supports the amendment proposed in clause 3(a) and 3(b).**

**Clause 4**

30. This clause seeks to amend section 15 of the PFM Act to provide for financial obligations to be maintained at a sustainable level as advised by the Public Debt Management Office and Parliament.
31. It also deletes the words" national debt" and substitutes therefor the words "public debt" as the constitution defines" public debt" and not "national debt".
32. The Institute support the elevation of the Public Debt Management Office to advise on sustainable levels with the approval of public and calls for further strengthening of the office devoid of control and interference by the executive. The placement of the PDMO should guarantee their independence and autonomy to provide their advisory role in a manner that is enforceable.

**Committee observation**

**The committee observes that the Public Debt Management Office, being a department under the National Treasury, can only advise the Cabinet Secretary and doesn't have the jurisdiction to advise Parliament. The committee therefore rejected the amendment proposed in clause 4(a).**

**Clause 5**

33. This clause contains provisions to amend section 31 of the Act by deleting the words "national debt" wherever it appears and replace it with the words "public debt" to align with the definition in the Constitution.
34. The institute supports this provision in line with the constitutional definition of "public debt".

**Committee observation**

**The committee agrees with the stakeholder's observation and supports the amendment proposed in Clause 5.**

**Clause 6**

35. This clause seeks to amend section 50 of the Act to require the Cabinet Secretary to give an explanation to Parliament, in writing, where the public debt exceeds the threshold set out in law and the remedial plan. The Institute proposes deletion of Clause 6(a)(i), noting that it can be abused and be grounds for accumulation of more debt to the detriment of the current and future generations.

36. The concern is that whilst the threshold proposed under Clause 6(a)(i) provides latitude and space to grow public debt, the variables in the measurement of the threshold are subjective and prone to manipulation. For example, there is controversy in the measurement of GDP which makes it uncertain. Having the debt level pegged on a percentage limit, provides for a reliable and consistent measure that withstands the variabilities in the variables. This therefore cures the risk of variance to public debt.

37. On granting the powers to the Cabinet Secretary, exceeding the public debt threshold is a violation of the constitution and the Public Finance Management Act. Therefore, the Cabinet Secretary should not be given discretionary powers to advise on any excesses from the approved by the National Assembly and County Assemblies. As a country, we should at all levels not exceed the set debt sustainability levels.

**Committee observation**

**The committee agreed with the observations of the stakeholder and has proposed an amendment to clause 6(a)(ii) of the bill to properly define the threshold breach.**

## 4) Mr. Jimi Wanjigi

38. The sponsor proposed that the public finance management (amendment) bill, 2023 be rejected in its entirety.

**Committee observations**

**The committee notes the concern of the stakeholder but rejects the proposal to reject the bill in its entirety. Instead, the committee has proposed various amendments to the bill in order to provide clarity and eliminate risk of abuse of some of the provisions.**

## 3.0.WRITTEN MEMORANDA

39. The Departmental Committee on Public Debt and Privatization acknowledge submissions through email from the following stakeholders:
    i. University of Nairobi Women Economic Empowerment Hub
    ii. Civil Engineering Contractors Association
    iii. Valentine Wangechi Rukwaro

### 1) University of Nairobi Women Economic Empowerment Hub

**New amendment to Clause 3(b) of the bill**

40. The stakeholder introduced a new amendment to Clause 3(b) of the bill by adding a new proposal (k) The National Treasury shall be responsible for ensuring equity in fiscal policy, with the objective of promoting fairness and equality in the distribution of financial resources and benefits across sectors, genders, and regions of the country.
41. Further, another proposal should be added to clause 3(b) of the bill stating that "(l) The Cabinet Secretary shall be required to publish an Equity Report outlining measures to promote gender equity, alongside the Budget Policy Statement and printed estimates submitted to the National Assembly."
42. These amendment introduce newer functions to powers and functions of the National Treasury and ensure transparency and accountability in promotion of gender equity and mainstreaming gender in fiscal policy.

**Committee observation**

**The committee observed that the memorandum proposes to deal with a different subject and proposes to unreasonably or unduly expand the subject of the Bill contrary to standing order 133(5).**

**Clause 3(b)**

43. The stakeholder proposes to add the word 'lawful' to the proposal "The National Treasury shall ensure proper management, control, and lawful accounting of the finances of the government and its entities to promote the efficient and effective use of budgetary resources."

44. Emphasizing the lawful accounting of finances reinforces the importance of adhering to legal and regulatory frameworks in managing public funds. This will ensure transparency, accountability and the responsible use of public resources.

**Committee observation**

**The committee observed that the memorandum proposes to deal with a different subject and proposes to unreasonably or unduly expand the subject of the Bill contrary to standing order 133(5).**

**Clause 4(a)**

45. The stakeholder recommends a redrafting of Clause 4(a) to remove ambiguity as follows - "The national government's public debt and financial obligations associated with loans as defined under article 260 raised or guaranteed shall be maintained at a sustainable level, as advised by the Public Debt Management Office and approved by Parliament, and the county government's public debt and financial obligations shall be maintained at a sustainable level, as advised by the Public Debt Management Office and approved by the respective county assembly."

46. The revised provision ensures clarity by explicitly assigning responsibility to both the national and county governments to maintain their public debt and financial obligations at sustainable levels. Further, seeking advice from the specialized Public Debt Management Office and obtaining approval from the respective legislative bodies (Parliament and county assembly) promotes oversight, transparency, and accountability. This fosters responsible financial management, prevents excessive debt accumulation, and enhances fiscal stability for both levels of government.

**Committee observation**

**The submission proposes to depart from the amendment to section 15 in the bill that is defining the fiscal responsibility principles that the National Treasury is required to enforce. Nevertheless, the Committee rejected the amendment proposed in Clause 4(a), noting that the Public Debt Management Office does not have the jurisdiction to advise Parliament on debt matters.**

**New amendment to Clause 4(a)**

47. The stakeholder proposed addition of a new proposal "(d)(i) Parliament shall mandate the Parliamentary Budget Office to publish a comprehensive report confirming the state of public debt at the national and county levels."
48. Parliament can obtain objective and independent analysis of the public debt situation by mandating the publication of a comprehensive report by the Parliamentary Budget Office. This allows for more informed decision-making and oversight at the national and county levels, as well as a better understanding of the country's overall debt situation.

**Committee observation**

**The Parliamentary Budget Office is established under section 9 and 10 of the Public Finance Management Act, 2012. Section 10 of the PFM Act defines the responsibilities of the Parliamentary Budget Office which includes providing professional services in respect of budget, financial and economic information to the committees of Parliament; as well as prepare analyses of specific issues including financial risks posed by government policies and activities to guide Parliament. To this extent, the Parliamentary Budget Office is already providing the service proposed in the amendment to Parliament.**

**Clause 6(a)(ii)**

49. The stakeholder proposes a rejection of this amendment. The provision requires the Cabinet Secretary to submit a written report to Parliament if the public debt threshold is breached, along with a time-bound remedial plan. However, this reliance on self-reporting limits proactive oversight by Parliament, lacks transparency as the report may not be made public, and lacks specific enforcement measures. To improve oversight, the provision should mandate regular reporting, ensure public disclosure of the report and plan, and establish consequences for noncompliance. These enhancements would strengthen accountability and transparency in managing public debt.

**Committee observation**

**The committee agreed with the stakeholder that the amendment will limit proactive oversight by Parliament. To this extent, the committee amended the clause to properly define the breach of the threshold.**

**Clause 6(b)**

50. The stakeholder proposes to remove CS Treasury discretion and require Parliamentary Approval at any stage. The stakeholder further observes that changing the constitutional requirement for public debt and financial obligations to be charged to the Consolidated Fund negatively affects parliamentary oversight by diminishing control, reducing transparency, increasing the potential for abuse, and introducing complexity and inefficiency in financial management.

**Committee observation**

**The proposal by the stakeholder and the justification do not appear connected. Nevertheless, the committee is in agreement with the amendment proposed in clause 6(b).**

**Clause 7**

51. The memorandum proposes to amend the clause to read as follows: "(i) advising Parliament and the Cabinet Secretary on the sustainable levels of public debt and the annual borrowing

limit" and it reports shall be published and publicized. The publishing and publicization of the reports will enhance transparency on levels of Kenya's public debt.

**Committee observation**

**The committee rejected the proposed amendment in clause 7, noting that the Public Debt Management Office does not have jurisdiction to advise Parliament on debt matters and can only advise the Cabinet Secretary who is accountable to Parliament for the work of the Public Debt Management Office.**

## 2) Civil Engineering Contractors Association

52. The memorandum did not submit a specific proposal to amend a clause in the bill but made the following general observations:

- **i.** Governments should facilitate timely payments to contractors. Delayed payments to contractors always has an adverse impact on cash flow and in turn project delivery.
- **ii.** Government should ensure adequate budgetary provisions on all infrastructure projects and should provide payment guarantees. Some projects are underfunded.
- **iii.** Retention money should be paid immediately and not more than 30 days after project completion. Delay in paying retention monies and valid claims to contractor's impacts on cash flow.
- **iv.** Procuring entities should plan and budget adequately for each project prior to procurement. Poor and inadequate project planning by procuring entities lead to underfunding, lack of exchequer, additional costs, loses, damages and poor value for investment.
- **v.** The government should reduce borrowing locally to enable release of capital into the local markets and consequently the local industries may access capital at affordable and realistic costs.
- **vi.** Eliminate 16% VAT on advance payment to contractors
- **vii.** Reduce issuance of work permits by 80% for menial jobs which can be filled by our youth
- **viii.** Promote buy Kenya build Kenya initiative. This will Support economic growth by citizens and Encourage re investment of profits rather than repatriation.
- **ix.** Consider removing duty on cement, bitumen and steel which are the main ingredient in construction across the board. Implement the law as provided without favour.
- **x.** Eliminate clauses that allow for over importation of materials of raw materials and equipment.
- **xi.** Introduce a standard tenders specification document that encompasses local contractors' capacity and enhancement of capacity.
- **xii.** Increase the threshold on the Public Procurement and Asset Disposal PPAD (2020) Section 163 (a) to Kshs. 5 Billion for procurement in respect to works, construction materials which are made in Kenya.

**Committee observations**
**The submissions by the stakeholder do not touch on the contents of the public finance management (amendment) bill, 2023.**

### 3) Ms. Valentine Wangechi Rukwaro

53. The memorandum did not submit a specific proposal to amend a clause in the bill but made the following pertinent observations:

   i. The bill should outline the remedial measures that will be taken when the public debt exceeds the set threshold. This should include provisions for comprehensive action plans to address the underlying causes of the debt escalation and to restore fiscal sustainability.
   ii. The bill should also require regular progress reports to be submitted to Parliament, outlining the implementation of these remedial measures.
   iii. The bill should provide clear guidelines on the qualifications and appointment process for key positions within the Public Debt Management Office, emphasizing meritocracy, integrity, and experience in debt management and financial analysis

**Committee observation**

**The committee has amended clause 6(a)(ii) in the bill to provide clarity on the set threshold. Further, on the role of the Public Debt Management Office, the Committee opines that this is an office under the National Treasury and its advice is to the Cabinet Secretary of the National Treasury who is held accountable for the work of the Public Debt Management Office.**

**5.0. RECOMMENDATIONS**

54. In view of the foregoing, the committee that the National Assembly adopts the bill with amendments.

**<u>CLAUSE 2</u>**

**THAT** clause 2 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph:

"(b). by inserting the following new definitions in their proper alphabetical sequence—

"financial obligation" means outstanding liabilities related to public debt, including principal, interest, fees, commissions and other expenses incidental to the raising of public debt or its repayment and shall be a charge on the Consolidated Fund or another public fund established by the national government or any of its entities.

"public debt" has the meaning assigned to it under Article 214 (2) of the Constitution"

**JUSTIFICATION**

The proposal will provide a clear definition of the word "financial obligation" that is used under Article 214 (2) of the Constitution but is not defined. The proposal aims to define "financial obligation" to include costs related to servicing a public debt and to make the obligations chargeable on the Consolidated Fund or any other Fund designated by the Cabinet Secretary.

**CLAUSE 4**

**THAT** clause 4 of the Bill is amended by deleting paragraph (a).

**JUSTIFICATION**

The amendment aims to safeguard the oversight role of Parliament as provided in the constitution.

**CLAUSE 6**

**THAT** clause 6 of the Bill is amended —

(b) in paragraph (a):

(iii)in sub-paragraph (i) by deleting the word "set" appearing immediately after the words "the word" and substituting therefor the word "the";

(iv)by deleting sub-paragraph (ii) and substituting the following new sub paragraph:

"(ii) by inserting the following new subsections—

"(2A). The threshold set under subsection (2) shall be a debt anchor of 55 percent and not exceed plus five percent of the gross domestic product in present value terms.

**JUSTIFICATION**

The amendment aims to provide that the threshold for debt shall be a debt anchor of 55 percent and shall not exceed plus five percent of the gross domestic product in present value terms

**CLAUSE 7**

**THAT** clause 7 of the Bill be deleted.

**JUSTIFICATION**

The amendment aims to safeguard the oversight role of Parliament as provided in the constitution.

**SIGNED**

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**HON. (DR.) MAKALI MULU M.P.**

**VICE-CHAIRPERSON, PUBLIC DEBT & PRIVATIZATION COMMITTEE**

21/06/2023

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**DATE**