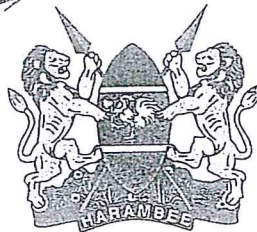


REPUBLIC OF KENYA

*Rt. Hon. Speaker
You may approve
for tabling.
05/11/19*



REPUBLIC OF KENYA

THE SENATE

*Approved
5/11/2019*

*DC-EG
Recommended for approval
04/11/19*

TWELFTH PARLIAMENT - THIRD SESSION (2019)

THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

AND

THE STANDING COMMITTEE ON FINANCE AND BUDGET

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (NATIONAL GOVERNMENT) (AMENDMENT)
REGULATIONS, 2019 (LEGAL NOTICE 155 OF 2019)

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

COY

OCTOBER, 2019

*Recommended for
approval for tabling*

*EG
05/10/19*



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ABBREVIATIONS

CRA	Commission on Revenue Allocation
COG	Council of Governors
CBEF	County Budget and Economic Forums
IFMIS	Integrated Financial Management Information System
PFM	Public Finance Management

PREFACE

Establishment of the Committee on Delegated Legislation

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 221 which states:

- 1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- 2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- 3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument: -
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) directly or indirectly bars the jurisdiction of the courts;
 - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - f) involves expenditure from the Consolidated Fund or other public revenues;
 - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
 - h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - i) appears to have had unjustifiable delay in its publication or laying before Parliament;

- j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- l) inappropriately delegates legislative powers;
- m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- n) appears for any reason to infringe on the rule of law;
- o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- p) accords to any other reason that the Committee considers fit to examine.

(4) If the Committee-

- a) resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b) does not accede to the statutory instrument, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

Membership of the Committee on Delegated Legislation

The Membership of the Committee is as follows: -

1. Sen. Samuel Poghio, EGH, MP - Chairperson
2. Sen. (CPA) Farhiya Haji, MP - Vice Chairperson

- | | |
|---------------------------------|----------|
| 3. Sen. Judith Pareno, MP | - Member |
| 4. Sen. Irungu Kang'ata, MP | - Member |
| 5. Sen. Millicent Omanga, MP | - Member |
| 6. Sen. Victor Prengei, MP | - Member |
| 7. Sen. Mutinda Kabaka, MP | - Member |
| 8. Sen. Okong'o Omogeni, SC, MP | - Member |
| 9. Sen. Mohamed Faki, MP | - Member |

Establishment of the Standing Committee on Finance, Committee and Budget

The Standing Committee on Finance and Budget is established under section 8(1) of the Public Finance Management Act, 2012 and standing order 212(3) of the Standing Orders of the Senate and is mandated to -

- a) *investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine -*
 - i) *the Budget Policy Statement presented to the Senate;*
 - ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
 - iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments; and*
- b) *consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy.*
- c) *pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

Membership of the Committee on Finance, Commerce and Budget

The Membership of the Committee is as follows: -

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson

- | | |
|--------------------------------------|-------------|
| 2. Sen. (Dr) Isaac Mwaura, CBS, MP | -Vice Chair |
| 3. Sen. Wetang'ula Moses M., EGH, MP | -Member |
| 4. Sen. Mutula Kilonzo Junior, MP | - Member |
| 5. Sen. Aaron Cheruiyot, MP | - Member |
| 6. Sen. (Dr.) Ali Abdullahi, CBS, MP | - Member |
| 7. Sen. (Dr) Rose Nyamunga, MP | - Member |
| 8. Sen. CPA Farhiya Haji, MP | - Member |
| 9. Sen. Boniface Mutinda Kabaka, MP | - Member |

Acknowledgement

The Joint Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it. The Committee also expresses its gratitude to stakeholders and members of the public who made submissions, both orally and in writing.

Mr. Speaker Sir,

On behalf of the Members of the Select Committee on Delegated Legislation and the Members of the Standing Committee on Finance and Budget and pursuant to Standing Order 213 (6), section 205 of the PFM Act, 2012 and section 17 of the Statutory Instrument Act, 2013, it is my pleasure and duty to present to the House, the Joint Committee report detailing the considerations of the Public Finance Management (National Government) (Amendment) Regulations, 2019 (Legal Notice 155 of 2019).

SIGNATURE.....

(CO-CHAIRPERSON: SEN. SAMUEL POGHISIO, EGH, MP

SIGNATURE.....

(CO-CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD, MP

DATE.....

EXECUTIVE SUMMARY

In exercise of the powers conferred by section 205 of the Public Finance Management Act, 2012, the Cabinet Secretary responsible for the National Treasury published the Public Finance Management (National Government) (Amendment) Regulations, 2019 on the 26th of September, 2019 vide Legal Notice No. 155 of 2019. The Regulations were submitted to the Clerk of the Senate on Wednesday, 16th October, 2019 and tabled before the House on the same day. Section 205 of the Public Finance Management Act contemplates that regulations made under this section shall be approved by both Houses of Parliament. For pragmatic reasons it only follows that the regulations would be submitted to both Houses simultaneously to allow for the concurrent consideration of the regulations. However, in this case, the regulations were submitted to the Senate after they had already been submitted and approved by the National Assembly.

Going forward it would be prudent for the Cabinet Secretary, in such instances, to submit the regulations to both Houses simultaneously. We further recommend that due to the seriousness of regulations made under this Act and their implication on prudent use and management of public funds, the Cabinet Secretary would do well in future to engage both Houses on draft regulations before publication to allow for sufficient consultation and acquiescence on the same.

By a Communication made on Wednesday, 16th October, 2019, the Speaker of the Senate referred the Regulations to a Joint Committee of the Sessional Committee on Delegated Legislation and the Standing Committee on Finance and Budget for consideration. The Speaker directed that the Joint Committee files its report within the next fifteen sitting days.

The Regulations seek to amend Regulation 26(1)(c) of the Public Finance Management (National Government) Regulations, 2015 (Legal Notice No.34 of 2015) to provide a numerical limit to the total public debt of Kshs. 9 trillion in place of the current debt limit set at fifty per cent (50%) of GDP in net present value terms.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the regulation making authority to a consultative meeting on 23rd October, 2019 to consider the said statutory instrument. The CS, National Treasury submitted both oral and written submissions¹.

The Joint Committee held its first meeting on Thursday, 17th October, 2019 to consider the Regulations. In considering the regulations, the Joint Committee, invited stakeholders including the Council of Governors, Commission on Revenue Allocation and the Institute of Certified Accountants to a stakeholder meeting on Thursday, 23rd October, 2019. The Committee received submissions from the Commission on Revenue Allocation, Institute of Certified Accountants (ICPAK) and the Council of Governors.

Pursuant to Article 118(1) (b) of the Constitution and Senate Standing Orders, the Committee invited submissions from members of the public on the said Regulations via an advertisement on the Daily Nation Newspaper and the Standard on Saturday, 19th October, 2019.

Having scrutinized the Public Finance Management (National Government) (Amendment) Regulations, 2019 against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013, the Committee **approved the regulations** for reasons advanced in this Report.

The Report is submitted to the House in accordance with section 205 (4) of the Public Finance Management Act, 2012 which requires that the Regulations made under this section of the Act be presented to Parliament for approval before they take effect.

¹ Annexure 1: documents received from the National Treasury

1.0 CONSIDERATION OF THE REGULATIONS

1.1 Public Finance Management (National Government) (Amendment) Regulations, 2019

Introduction

1. The Public Finance Management (National Government) (Amendment) Regulations, 2019 were published by the Cabinet Secretary responsible for the National Treasury pursuant to section 205 of the Public Finance Management Act, 2012.
2. The Regulations were published in the Gazette as *Legal Notice No 155* of 2019 on the 26th of September, 2019 vide Legal Notice No. 164 of 2019. The Regulations were submitted to the Clerk of the Senate on Wednesday, 16th October, 2019² and tabled before the House on the same date.
3. The Regulations seek to—
 - (i) provide clarity in terms of controls and timely oversight mechanism on the growth of public debt. Monitoring public debt as a percentage of GDP makes it unclear and difficult to enforce compliance and undermine accountability as actual GDP number is a moving target;
 - (ii) provide a numerical limit to the total public debt of Kshs. 9 trillion in place of the current debt limit set at fifty per cent (50%) of GDP in net present value terms;
 - (iii) provide adequate borrowing space to cater for potential guarantees for borrowing by County Governments & state-owned enterprises; and
 - (iv) allow the government access to concessional funding sources (multilateral financial institutions and bilateral sources) thereby facilitating government interventions in the public sector.

² Annexure 1: Paper Laid – Legal Notice No. 155/2019

Rationale for Amendments

4. The set debt limit as currently expressed on net present value terms as a percentage of GDP is unclear, difficult to verify compliance and thus undermines accountability.
5. In general terms, public debt limits are necessary in safeguarding an economy from shocks and risks such as exchange risks, interest rate risk and international financial instabilities and safeguarding public debt at sustainable levels as envisaged in the Constitution, the PFM Act and in accordance with international best practice.
6. The ceiling is proposed at Kshs. 9 trillion. As at end of June, 2019, public debt stood at 5.8 trillion and is expected to rise to Kshs. 6.3 trillion by the end of the current fiscal year based on the approved BPS by Parliament. The amendment will therefore enable implementation of the FY 2019/20 Budget as approved by Parliament.
7. To be able to re-profile existing high cost of debts through debt re-financing facilities guaranteed by multi-lateral financial institutions and bilateral sources to enable it pay-off expensive syndicated/commercial loans.
8. To be able to minimise domestic borrowing and allow local SMEs and private sector at large access affordable credit and avoid crowding out the private sector by confining multi-lateral and bilateral creditors which have lower interest rates and longer repayment terms.

Scrutiny of the Instrument

9. Following the Communication from the Chair, on Wednesday, 16th October, 2019, the Joint Committee held its first sitting on Thursday, 17th October, 2019 to consider the regulations and to map out the stakeholders. The Committee invited members of the Public to give submissions on the regulations.
10. Pursuant to section 16 of the Act, the Committee held a meeting with the regulation making authority on 23rd October, 2019 in Shimba Hills hall, KICC, Nairobi where the Cabinet Secretary responsible for National Treasury, Hon. (Amb.) Ukur Yattani, made a presentation to the Committee on the proposed changes to the Regulations.

11. The Committee was also guided by technical briefs from the Parliamentary Budget Office (PBO), the Senate Directorate of Legal Services, the Submissions by the Commission on Revenue Allocation (CRA), the Submission by the Institute of Certified Public Accountants.

12. The Regulations were considered against the principal Regulations, i.e., the **Public Finance Management (National Government) Regulations, 2015 (Legal Notice No.34 of 2015)**, the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Public Finance Management Act, 2012 and the Statutory Instruments Act (No 23 of 2013).

2.2.1 Submission by the Parliamentary Budget Office³

The Parliamentary Budget Office informed the Committee as follows –

13. The Public Finance Management (National Government) (Amendment) Regulations, 2019 seeks to amend regulation 26 (1) (c) which provides that the national public debt shall not exceed 50 percent of Gross Domestic Product (GDP) in net present value terms and replace it with a provision of a Ksh. 9 Trillion national public debt ceiling. Subsequently, Regulation 196 (1) is amended to delete the provision of net present value of total public debt and substituting it with *the set limit*.

14. The current total public debt stands at Ksh. 5.81 Trillion⁴ as of June, 2019 and this is equivalent to 61.8 percent of nominal GDP⁵. Indeed, the most recent data indicate that as at August 2019, the total debt figure rose to Kshs. 6.01 trillion.⁶ This indicates that the PV of debt to GDP is actually higher than the 50 percent threshold provided in the PFM regulation, as evidenced by the recent IMF Debt Sustainability Analysis for Kenya.

³ Annexure 2

⁴ As reported in the Quarterly Economic and Budgetary Review (QEBR), August 2019 Edition

⁵ The nominal GDP for 2018/19 is estimated at Ksh. 9.51 Trillion

⁶ Central Bank weekly bulletin, 18th October 2019 issue

15. Parliament, as required in Article 211, has the power to legislate the terms on which the national government may borrow. In addition, Section 50 (2) of the PFM Act, 2012 provides that the National Government may borrow money in accordance with the PFM Act or any other legislation and shall not exceed a limit set by Parliament. Indeed, the proposal to amend the limit is in line with National Assembly's resolution in report on the Budget Policy Statement 2019 on public debt which was as follows-*that at an appropriate time, the PFM Act should be amended to provide for a numerical debt ceiling as opposed to the current scenario where the debt is pegged on GDP projections.* It was envisaged that the limit would be in line with the approved fiscal consolidation path.

16. Earlier in 2014 before the PFM Regulations were in place, Parliament approved an increase in the ceiling for external debt from USD 14 Billion (Kshs 1.2 Trillion) to USD 28 Billion (Kshs 2.5 Trillion) through the Sessional Paper No. 14.

Legal Underpinning

17. The public debt limits have been provided for in several laws as follows-

(i) **The Constitution:** Article 211 provides for borrowing by national government and gives power to Parliament to prescribe through legislation the terms on which the national government may borrow and also impose reporting requirements. In addition, Article 214 provides for the meaning of Public Debt, that it is all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government. Further, it provides that a public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds.

(ii) **EAC Treaty:** Kenya is a signatory to the EAC Monetary Union Protocol that provides that in the convergence criteria, member countries will endeavor to

achieve a public debt ceiling of 50 percent of the Gross Domestic Product (GDP) in Net Present Value (NPV) terms by 2021.

(iii) Repealed Internal Loans Act and the External Loans Act: These Acts were in place and regulated the borrowing by the National Government before the PFM Act, 2012 came into place. In terms of providing borrowing limits, the Internal Loans Act did not provide a legal limit for domestic debt, however the External Loans Act provided that the limit for external debt was to be approved by Parliament.

(iv) Public Finance Management Act (PFM Act), 2012: Section 50(2) provides that the National Government may borrow money in accordance with the PFM Act or any other legislation and shall not exceed a limit set by Parliament.

(v) Public Finance Management Act (PFM) Regulations, 2015: Regulation 26(1) (c) provides that the national public debt shall not exceed 50 percent of Gross Domestic Product (GDP) in net present value terms.

Macroeconomic and Fiscal Implication of the Proposed Amendment

18. **Increasing the debt ceiling is likely to give more room for borrowing which will be inconsistent with the approved fiscal consolidation path FY 2019/20 and the medium term.** The government in its effort to achieve fiscal consolidation had projected the total public debt as a share of GDP to be 44 percent by FY 2022/23 which is Kshs. 7.21 Trillion, compared to the current level of 61.8 percent of GDP, as of June, 2019⁷. This implies that if the debt limit is set at Kshs. 9 Trillion, the country will be moving away from the fiscal consolidation path and the targets will be surpassed much earlier than expected. In addition, the fiscal deficit which has to be financed through borrowing is not consistent with the proposed fiscal consolidation path, where we have to borrow more and this affects the fiscal

⁷ As reported in the Quarterly Economic and Budgetary Review (QEBR), August 2019 Edition

sustainability path. Therefore, before approving the amendment, there is need to consider the trends in the fiscal deficit, and the fiscal consolidation path.

Table 1: Total Debt for FY 2016/17 to FY 2022/23 (Kshs. Billion)

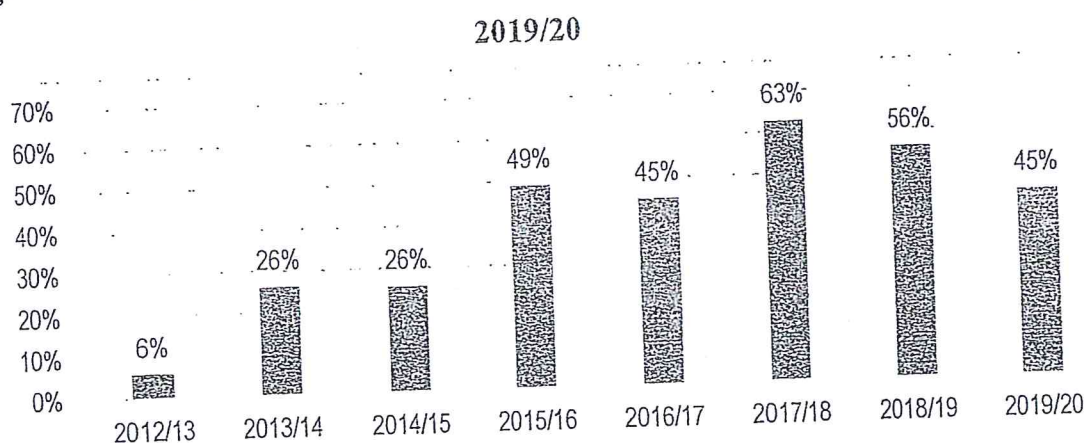
	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
	Actual	Preliminary Actual	Preliminary Actual	Estimate	Projection	Projection	Projection
Total Debt as a Share of GDP (%)	51.9	51.5	61.8	50.6	48.8	46.4	44.0
Fiscal Deficit (inclusive of grants) as a share of GDP (%)	8.8	6.8	6.3	5.1	3.9	3.3	3.1

Source: BPS, 2019

19. **Increasing the debt ceiling is likely to alter the approved borrowing framework for FY 2019/20 of 38% of external borrowing and 62% of domestic borrowing, to lean more towards external borrowing.** Additional room for borrowing will increase the chance of additional loans from external sources since domestic borrowing is not a viable option, at the moment. The current situation in the domestic market is that the government has crowded-out the private sector borrowers since lending to government is deemed to be risk-free with guaranteed returns. This reduces credit to the private sector which in turn adversely affects growth in investment, growth of SMEs and creation of job opportunities.
20. **Increasing the debt ceiling is likely to increase external borrowing and mainly from commercial sources which are more expensive.** The evolution of commercial debt since FY 2012/13 indicates that it has increasingly been a source of financing the budget deficit because it is easy to acquire with less demanding conditions when

compared to concessional funding from multi-lateral and bi-lateral agencies. However, it is a high-risk option and also more expensive given that the interest rates are higher with a shorter pay-back period. If the country is not able to generate the targeted revenue in the shorter-term before the return on investment is realized, then it faces a refinancing risk and this forces the country to get into a debt roll-over (where it borrows to repay existing debt obligations that are due). If the debt ceiling is increased, then there should be a limit on external borrowing at commercial rates to contain external vulnerabilities.

Figure 1: Evolution of commercial debt as a share of budget deficit FY 2012/13 -



Source: Budget Policy Statement

International Standards and Practice

21. The IMF provides for public debt sustainability benchmark thresholds that guide countries in different stages of development ranging from low-income to the advanced economies. This enables efficient tracking of the sustainability of debt given the prevailing macroeconomic environment in terms of the performance of GDP, revenue and exports.
22. **Currently, the country has surpassed some of the debt sustainability thresholds, in particular the more distressing is the debt service to revenue ratio. This implies that**

the economy is not generating enough revenues to cover the debt servicing requirements. The risk is that the country will continue to borrow to repay the existing debts and not for development expenditure as contemplated in law. Table 2 provides the threshold for Kenya (which is currently a lower middle-income country), the performance since 2016 and the projections.

Table 2: Public Sector Debt Sustainability Ratios

		Actual		Estimate		Projections		
PV of Public Sector Debt to GDP	IMF - 74%	50.6	55.4	60.6	59.9	56.9	54.3	53.1
PV of public Sector Debt to Revenue	300	275.9	285	299.6	292.9	282.1	269.7	261.5
Debt Service to Revenue Ratio	30%	36.3	42.7	44.8	49.4	49.3	48.9	37.6

Source: IMF, 2018

23. The country may be experiencing the tragedy of commons which implies that we presume that what we borrow is for productive expenditure, however, the trend indicates that borrowing has been used for recurrent expenditure as it is not fully financed by the ordinary revenue collected (*See Table 3*). To reduce the risk of external and domestic loans being used for recurrent expenditure instead of development projects and programmes as provided for in the law, it would be prudent to set rules on pre-approval of debt-financed projects/ programmes. In addition, the auditor general should undertake a forensic audit on the current stock of public sector debt.

EFFECT OF DEBT ON COUNTY GOVERNMENT ALLOCATION

24. According to article 203 of the Constitution, public debt is a non-discretionary obligation which has a bearing on the size of revenue that is eventually shared between the two levels of government. The higher the share of ordinary revenue that is taken

up by public debt and other national obligations the lower the sharable revenue and allocations to counties. Table 3.0 provides a summary of distribution of ordinary revenues to various key broad expenditures for the period FY 2014/2015- FY 2019/2020.

Details	Distribution (%)					
	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Total Ordinary Revenue	100%	100%	100%	100%	100%	100%
o/w Interest payments	17%	19%	21%	24%	23%	23%
o/w Pensions	4%	5%	5%	5%	5%	6%
Total Net Recurrent	63%	65%	58%	63%	56%	54%
County Allocation	22%	22%	21%	22%	18%	17%
Available Resources for Development	-6%	-11%	-5%	-14%	-2%	0%

Source: The National Treasury; Derivations: PBO

25. As shown in the table 3.0 above, allocations to interest payments grew at an average annual growth rate of 6 percent between the FYs 2014/15-2019/20 indicating mounting pressure on government's capacity to repay loans. Growth in debt repayment therefore means there is less to be shared between the national and county governments hence the drop in the projected allocations to counties in the FY 2019/20. This will have direct implications on the level of funds that counties can commit to improvement service delivery.

26. The county allocation as a proportion of ordinary revenue has been an average of 22 percent from FY 2014/15 to the FY 2017/18. This has dropped down to 18 percent in the FY 2018/19 and reduced further to 17 percent in the FY 2019/20. Increasing the debt ceiling is likely to lead to a further increase in borrowing which will further reduce the proportion of ordinary revenue available to counties in the FY 2020/21 and the medium term.

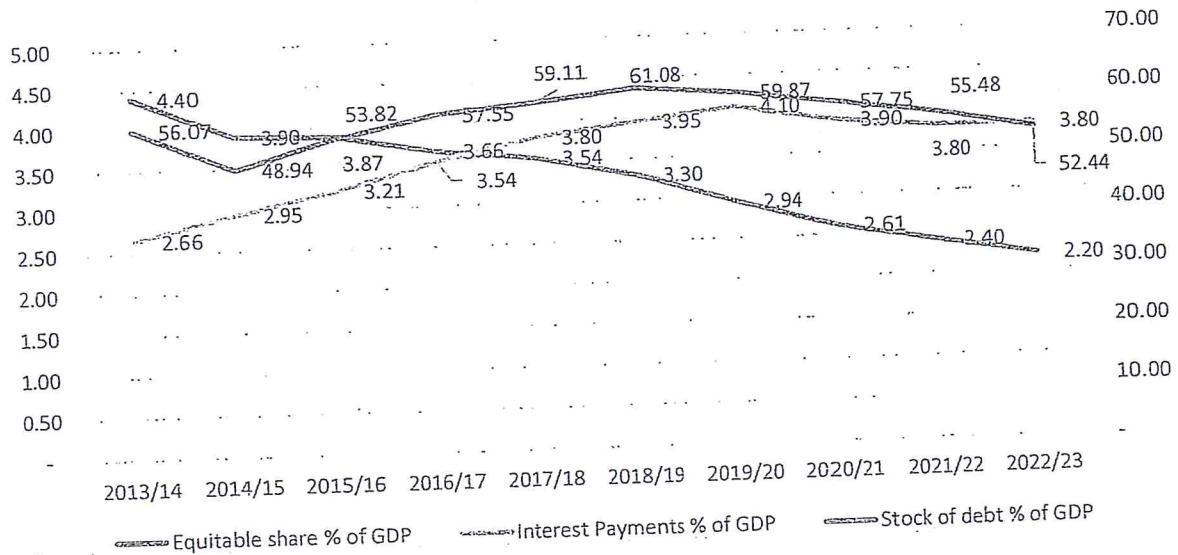
27. Table 4.0 provides a summary of changes in equitable share to counties as a proportion of GDP.

FY	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23
Equitable share % of GDP	4.40	3.90	3.87	3.66	3.54	3.30	2.94	2.61	2.40	2.20
Stock of debt % of GDP	56.07	48.94	53.82	57.55	59.11	61.08	59.87	57.75	55.48	52.44
Interest Payments % of GDP	2.66	2.95	3.21	3.54	3.80	3.95	4.10	3.90	3.80	3.80

Data Source: The National Treasury (Budget Review & Outlook Paper, various)

28. The equitable share to county governments has consistently been dropping from a high of 4.40 percent of GDP in the FY 2013/14 to a low of 2.94 percent of GDP in the FY 2019/2020 as shown in table 4.0. The National Treasury projects that the equitable share will further go down to 2.61 percent in the FY 2020/21 and 2.20 percent in the FY 2022/23.
29. The proposals to open up the debt ceiling to Kshs. 9 trillion will drop the percentage of equitable share as a percentage of GDP due to debt service this amount was borrowed immediately or the next two years. In addition, there is no evidence indicating whether the Kshs. 9 trillion debt ceiling provides a window for national government guarantees of borrowing to county governments.
30. The high level of public debt in Kenya narrows the window for future borrowing, and increases vulnerability to fiscal risk and possible debt distress which if materialize, may have dire consequences to fiscal stability and sustainability of county governments.
31. Chart 1.0 shows the comparison of the county shareable allocation and debt service as a percentage of GDP for the FY 2013/2014-FY 2019/20120 and the projections over the medium term

Chart 1.0: Equitable share and Debt service as a percentage of GDP



Source: The National Treasury (Budget Review & Outlook Papers)

I. POLICY OPTIONS

1) The following are the viable policy options-

Table 5.0: Summary of Policy Options

	Policy Options	Likely Implication
1.	Accept the amendment as proposed by the National Treasury	<p>(i) The country will likely not comply with the EAC convergence criteria EAMU protocol ratified by Parliament;</p> <p>(ii) Reduce the flexibility in the budget as debt repayment, which is a first charge to the consolidated fund, will increase;</p>

		<p>(iii) Distortion of revenue sharing between the national and county governments since the higher the share of ordinary revenue that is taken up by public debt and other national obligations the lower the sharable revenue and allocations to counties; and</p> <p>(iv) Allow the National Treasury to restructure its debt portfolio and additional borrowing.</p>
2.	Reject the proposed amendment	<p>(i) Status Quo remains</p> <p>(ii) Allows the National Treasury to reconsider the debt limits to be within the Fiscal Consolidation path to achieve the GDP ratio of 44 percent in the FY 2022/23 as approved in the BPS 2019</p>

2.2.2 Submission by the Commission on Revenue Allocation

The Commission on Revenue Allocation submitted as follows-

32. The National Treasury should guarantee that the amount borrowed will not in any way compromise the Division of Revenue Act (DORA).
33. That the amount borrowed annually should be limited to budget support on development projects only.
34. That the National Treasury should retire the expensive loans and take concessional loans instead.
35. That there should be a commitment for additional conditional grants to finance cities as an incentive to increase won source revenue.

2.2.3 Submission by the Institute of Certified Public Accountants

The Institute of Certified Public Accountants of Kenya (ICPAK) submitted as follows-

36. The Institute is concerned with the rapid growth in public debt over the years. According to the recent Central Bank of Kenya (CBK) statistics, the country's debt currently stands at Kshs 5.81 trillion, which includes Kshs 3.01 trillion external and 2.79 trillion domestic debt.
37. Kenya, by changing to a numerical limit breaches the East Africa Community ceiling on debt accumulation, that is public debt is equivalent to 50% of the GDP.
38. The Institute is concerned that the National Treasury has not provided the basis for KSHs 9 trillion number. This will raise our debt to near 100% of GDP. In line with Article 201(e) of the Constitution, the basis of this debt level should be clear.
39. Delinking Debt and Economic Performance: Just like the conventional banking, access to loans is based on one's ability to pay. In similar manner ICPAK is of the opinion that we cannot de-link the measure of an acceptable debt limit with the performance of the economy and ability of the economy to repay (revenue collection). It is imprudent to approve debt without presenting a clear programme on ability to pay. This will conform with Section 15 of the Public Finance Management Act on fiscal responsibility principles.
40. Purpose for changing to numerical limit of Ksh.9 Trillion: The National Treasury indicates that the rationale for increasing the limit is for easier computation of debt, debt restructuring through retiring expensive loans and for predictability. However, there is no guarantee that in the absence of extensive regulations, more borrowing (at a cheaper rate) will be used to repay/retire more expensive loans and that the same shall be tracked per development project. Framework on debt repayment should be presented to support any approvals.
41. Breach of the law: With the debt levels hitting over 50% of the GDP, the country has already breached Section 26(1)(c) which states that, "the national public debt shall not exceed 50 percent of GDP in net present value terms. Besides, the gazette process in many ways breached the provisions of Art. 201 of the Constitution on openness, accountability and public participation.

42. National Trust and Standing among other EAC countries: The Institute is concerned that the proposal breaches the East Africa Community ceiling on debt accumulation, that is public debt is equivalent to 50% of the GDP. This has significant impact on our image as a country with respect to international obligations including the EAC neighbors.
43. Globally, it has been demonstrated that different economies cope with the debt burden in different ways. Sometimes crises appear even at low levels of share in the debt of the gross domestic product (GDP), whereas some economies function very well even when their public debt significantly exceeds the value of the total one-year production in the country as indicated in the annexed report.
44. According to the statistics from the National Treasury, Medium Term Debt Management Strategy 2019, debt sustainability indicators show that Kenya faces a moderate risk of external debt distress due since public debt is estimated at 52.7 percent of GDP which is lower than the World Bank debt sustainability threshold of 70 percent. Kenya public finance management threshold was initially set at 50 per cent of net present value of debt to GDP ratio in line with the East Africa Community debt threshold.

PUBLIC DEBT REDEMPTION

Public debt repayment obligations and interests charged from the disbursed borrowed loans crowd out service delivery as they are paid from the consolidated funds. Compared with revenue generated, the remaining amount cannot be sufficient to fully fund the government's programmes.

45. According to the Controller of Budget, Annual National Government Budget Implementation Review Report for financial year 2018/19, the revised allocation for public debt was Kshs.848.3 billion, recording 30.6% growth compared to Kshs.649.4 allocated in FY 2017/18.

DEBT SERVICING CHARGES AS A PERCENTAGE OF EXPORT EARNINGS

46. Over the years, different methods and criteria

Similarly, other factors such as debt servicing charges indicate that Kenya's debt position is not that rosy. For instance, the debt servicing charges as a percentage of export earnings has been increasing since the financial year 2016/17. This was attributable to a faster growth in debt servicing charges compared to the growth in export earnings.

ICPAK RECOMMENDATIONS

The Institute recommends the following:

i. Fiscal Consolidation

The Institute takes note and commends the Government for recognizing the need for fiscal consolidation to reduce budget deficit. The recent expenditure rationalization measures adopted by the National Treasury such as controlling foreign travel, hospitality cleaning and regular audit of the payroll register among others. However, these measures should have tangible targets and outcomes and should not be seen as measures to hinder service delivery. Efficiency gains, not additional funding, is the key to effective implementation of government projects without further accumulation of debt. The 2019/2020 budget has indicated a commitment to fiscal consolidation through limiting government spending as well as enhancing revenue collection. Efficiency gains entail effective utilization of public resources such that the country is able to achieve more with fewer resources.

ii. Critical review of the progress of existing development projects financed through borrowing:

The PFM Act provides that Public debt and obligations shall be maintained at a sustainable level as approved by Parliament (for National Government) and County Assemblies (for County Governments). According to the Parliamentary Budget Office (PBO), in order to finance major infrastructural and other flagship project, sustained borrowing needs for the country have quadrupled over the past seven years and as a result, the stock of debt has had an annualized growth rate of 16% for since June 2013 to reach Ksh. 5.4 trillion as at the end of March 2019. If debt is mainly for financing development expenditure as stipulated by section 15(2)(c) of the Public Finance Management Act 2012, then it will be sustainable

in the long-run. An audit of current projects is critical to wipe out white elephant projects. A clear framework for tracing and auditing debt financed projects is needed for equity.

- iii. Public availability of information on debt management policies and overall national debt book. The objectives for debt management should be clearly defined and publicly disclosed, and the measures of cost and risk that are adopted should be explained.
- iv. The government should also consider the following measures to enhance public financial management.
 - a) Expenditure Vs Revenue: In the past few years, public expenditure has been growing at a faster pace than revenue. The major outcome has been huge budget deficits.
 - b) We should b) Consider PPP framework as a better alternative: The government ought to enhance these partnerships to tap into the benefits that the contribution of the private sector brings to the economy which will eventually help bring down the level of external debt financing
 - c) Implementation of budget monitoring reports: Act on Auditor General and Controller of Budget recommendations in respect to public debt.
 - d) Enhance accountability in public and private sectors to free more resources to development
 - e) Audit of the Public Debt Register: Establishing the authenticity of the public debt register including the true debt sustainability position is critical. Government sources and the world bank continue to give conflicting statistics of Kenya's debt situation.
 - f) Accounting for debt: The public is not sure on the accuracy and completeness of the debt register. National Treasury and Central Bank of Kenya have conflicting statistics on national public debt. The Auditor General in its Report for the Financial Year 2017/18 pointed out misstatements and differences between the financial statements and the confirmed balances. Further, a comparison of the statement of receipts and payments and the ledger for the period under review reflected different account balances.

47. Kenya's public debt has been rapidly growing over the years. The growth of the country's public debt can be attributed to many factors such as supporting the national budget and investment in essential infrastructure projects among others. However, the high level of public debt in Kenya narrows the window for future borrowing and increases vulnerability to fiscal risk in the event of any urgent need for borrowing.
48. The National Government has control of the income and assets of the National Economy through taxation or other measures, the aggregate economic performance is therefore a useful indicator for government debt. Notwithstanding, most economies apply Gross Domestic Product (GDP) as the denominator of the caps on government to-debt-GDP ratio. If GDP Growth lags behind debt growth, this creates a higher debt burden for future generations. Use of this measure shall be in line with Art. 201(c) of the Constitution which stipulates that the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations.
49. During the public hearing on the Regulations, in their oral submission ICPAK, indicated that they are not opposed to the debt ceiling of Kshs. 9 trillion, however they were concerned on how the figure was arrived at. Contrary, in the written submission, the ICPAK recommended rejection of the amendment and proposed the use of Debt to GDP ratio as a realistic measure of the public debt limit, desirability and sustainability.

Committee Findings

50. The level of public debt as of June, 2019⁸ was Ksh. 5.8 Trillion which is equivalent to 61.8 percent of nominal GDP. Indeed, the most recent data indicate that as at August 2019, the total debt figure rose to Kshs. 6.01 trillion.⁹ The government in its effort to achieve fiscal consolidation had projected the total public debt as a share of GDP to be 44 percent by FY 2022/23 which is Ksh. 7.21 Trillion. This implies that if the debt limit is set at Ksh. 9 Trillion, the country will be moving away from the approved fiscal consolidation path.

⁸ As reported in the Quarterly Economic and Budgetary Review (QEBR), August 2019 Edition

⁹ Central Bank weekly bulletin, 18th October 2019 issue

51. Over the medium-term it is indicated that the government will require to borrow approximately Ksh. 1.81 trillion to finance its budget deficit. This is comprised of approximately Ksh. 635 billion in the FY 2019/20, Ksh. 585 billion in the FY 2020/21, and Ksh. 587 billion in the FY 2021/22 as per the draft Budget Review and Outlook Paper (BROP) published by the National Treasury in October 2019. Therefore, the cumulative debt in the medium term would be approximately Ksh. 7.6 trillion. Given the limited role of the senate in the scrutiny of the annual budget deficit which is a key driver of public debt, the committee observes that it would be prudent for the debt ceiling to cover the medium term as opposed to a longer period.
52. That the Country is already in breach of the public debt ceiling of 50 percent of the Gross Domestic Product (GDP) in net present value terms as provided for in the PFM Regulation 26 (1) (c). This implies that any development expenditure for the FY 2019/20 requires an increase in the debt ceiling. However, there should be a substantial reduction on commercial borrowing which has high interest payments.
53. The economy is not generating enough revenues to cover the debt servicing requirements. According to the IMF debt Sustainability analysis for Kenya, the debt service to revenue ratio has surpassed the 30 per cent threshold since 2017 and is estimated at 49.4 per cent in 2019. This means that the debt service presently takes almost Kshs. 50 for every Ksh. 100 collected as revenue. The risk is that the country is not collecting adequate revenue and therefore will likely continue borrowing to repay the existing debts and not for development expenditure as contemplated in law.
54. Interest payments as a share of ordinary revenue has gradually increased from 17 per cent in 2014/15 to an estimated 23 per cent in 2019/20. While the County allocation as a share of ordinary revenue has declined from 22 per cent to 17 per cent during the same period. Given that interest payments are a first charge to the consolidated fund coupled

with under-performance of ordinary revenue therefore means there is less to be shared between the national and county governments. This will have direct implications on the level of funds that counties can commit to improve service delivery. Emphasis should be on revenue creating measures as well as measures to drastically reduce the fiscal deficit to below the GDP growth level.

55. The National Treasury was aware that as at 30th June 2019 the Country had surpassed its legal debt ceiling of 50 percent of the Gross Domestic Product (GDP) in net present value terms as provided for in the PFM Regulation, however, the National Assembly approved the FY 2019/20 budget estimates with a deficit of approximately Kshs. 635 billion. There is therefore no sufficient evidence to show that this will not happen in the future.

56. Kenya is a signatory to the EAC Monetary Union Protocol (EAMU) that provides in the convergence criteria, that member countries will endeavor to achieve a public debt ceiling of 50 percent of the Gross Domestic Product (GDP) in Net Present Value (NPV) terms by 2021. If the debt limit is set at Ksh. 9 trillion the Country will not comply with the EAC convergence criteria EAMU protocol ratified by Parliament and the implications of this is not clearly stated.

57. The stock of commercial debt, which are expensive, has been rising from a low of 8 percent of the total external debts in the FY 2011/12 to 36 percent in 2018/19 while the cheaper multilateral debt has steadily declined from 71 percent to 30 percent during the same period. One of the rationale advanced by the National Treasury for the proposed amendment is to create space to refinance the expensive debt, however, there is no evidence that there are any multilateral lenders willing to take over the expensive loans.

58. The Committee observed that the pilferage of public resources due to overpricing of public projects and corruption was a major concern and recommended the need to enhance oversight and protection of public resources.

2.0 COMMITTEE OBSERVATIONS

The Committee made the following observations, that -

59. **Statutory Timelines:** The Regulations were not submitted to the Senate within the statutory timeline provided for in section 11(1) of the Statutory Instruments Act, 2013.
60. **Regulatory Impact Statement:** Sections 6, 7, and 8 of the Statutory Instrument Act requires the regulatory making authority to carry out a Regulatory Impact Assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a sect of the community. The Public Finance Management (National Government) (Amendment) Regulations, 2019 do impose significant costs on the community and hence need for the Regulation making authority to prepare a Regulatory Impact Statement.

The Senate is in receipt of the Regulatory Impact Statement that demonstrates that the regulation making authority conducted a regulatory impact assessment as required Sections 6, 7, and 8 of the Statutory Instruments Act, 2013.

61. **Submission of explanatory Memoranda on the Consultations/Public participation:** Articles 10 and 118 of the Constitution, the Statutory Instrument Act, and standing order 221 of the Senate Standing Orders require the regulation making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. An explanatory memorandum detailing

the outcomes of such consultations are to be submitted to Parliament together with the regulations.

The Senate is in receipt of the explanatory memorandum demonstrating that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution and sections 5, 5A and the schedule of the Statutory Instruments Act.

3.0 COMMITTEE RECOMMENDATION

62. Pursuant to Standing Order 210 (4) and having examined the Public Finance Management (National Government) (Amendment) Regulations, 2019 (*Legal Notice No. 155 of 2019*) against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013, the Committee recommends that the House approves the said statutory instrument.

SIGNATURE.....
Samuel Poghisio

(CO-CHAIRPERSON: SEN. SAMUEL POGHISIO, EGH, MP)

for SIGNATURE.....
Mohamed Maalim Mahamud

(CO-CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD, MP)

DATE.....
24/10/19

MINORITY REPORT

At a sitting of the Joint Committee held on 24th October, 2019 at 10.00am, the Committee considered its report and adopted its resolution contained in the Committee recommendations in accordance to the provisions of standing Order 213 (5) of the Senate Standing Orders. The House reconvened at 2.00pm the same date to validate its processes and to approve the Minority report.

The report having been adopted by the majority of members reference was made to the Standing order, 213 (6) where the following members of the Committee recorded a dissenting view on the resolution of the Committee and therefore wrote a minority report in accordance with Standing order, 213(6) .

The following Members recorded a No vote on the recommendation of the Committee contained in the report. As per the appended list.

- 1. Sen. Wetang'ula Moses M., EGH, MP -Member
- 2. Sen. Mutula Kilonzo Junior, MP - Member
- 3. Sen. Aaron Cheruiyot, MP - Member
- 4. Sen. Millicent Omanga, MP - Member
- 5. Sen. Victor Prengei, MP - Member

It was recommended that the Minority report provides that, pursuant to Senate Standing Orders and having examined the Public Finance Management (National Government) (Amendment) Regulations, 2019 (Legal Notice No. 155 of 2019) against the Constitution of Kenya, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013, the Minority report rejects the resolution of the Joint Committee and its recommendation to the House to approve the said Statutory Instrument.

1. SIGNATURE.....
(CO-CHAIRPERSON: SEN. MUTULA KILONZO JNR, MP)
DATE.....

2. SIGNATURE..... *Wetang'ula*

(SEN. MOSES WETANG'ULA, MP)

DATE..... *24/10/2019*

3. SIGNATURE..... *Aaron Cheruiyot*

(SEN. AARON CHERUIYOT, MP)

DATE..... *24/10/2019*

4. SIGNATURE..... *Millicent Omanga*

(SEN. MILLICENT OMANGA, MP)

DATE..... *24/10/2019*

5. SIGNATURE.....

(SEN. VICTOR PRENGEI, MP)

DATE.....

6. SIGNATURE:
(SEN. OKONG'O OMONGENI SC, MP)

DATE:

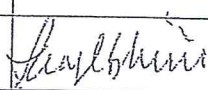
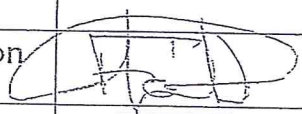
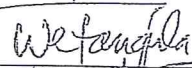

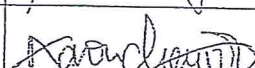
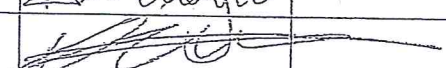

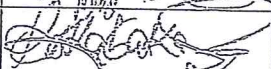




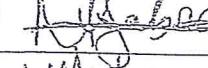
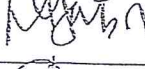
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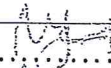
JOINT SITTING OF STANDING COMMITTEE ON FINANCE AND BUDGET AND SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

ATTENDANCE REGISTER

DATE: 24/10/2019 SITTING NO. 4 sitting
 TIME: 2:00 PM
 VENUE: Ground floor, county Hall Boardroom

COMMITTEE MEMBERS

	NAME	SIGNATURE	REMARKS
1.	Sen. (Eng.) Mohamed Maalim Mahamud, MP- Chairperson		
2.	Sen. Samuel Poghiso, EGH, MP - Chairperson		
3.	Sen. (Dr.) Isaac Mwaura, MP- V. Chairperson		
4.	Sen. (CPA) Farhiya Haji, MP - V. Chairperson		
5.	Sen. Wefang'ula Moses Masika, MP		
6.	Sen. Mutula Kilonzo Jnr, MP		
7.	Sen. Cheruiyot Aaron, MP		
8.	Sen. Irungu Kang'ata, MP		
9.	Sen. (Dr.) Ali Abdullahi Ibrahim, MP		
10.	Sen. Boniface Mutinda Kabaka, MP		
11.	Sen. Judith Pareno, MP		
12.	Sen. Rose Nyamunga, MP		
13.	Sen. Okong'o Omogeni, SC, MP		
14.	Sen. Mohamed Faki, MP		
15.	Sen. Millicent Omanga, MP		
16.	Sen. Victor Prengei, MP		

Committee Secretariat: 

Signature: 

THE SENATE

JOINT SITTING OF STANDING COMMITTEE ON FINANCE AND BUDGET AND
SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

REPORT ON PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) AMENDMENT
REGULATIONS, 2019

DATE: 24/10/19

TIME: 10:00am VENUE: County Hall, ground floor boardroom

IN THE QUESTION OF WHETHER THE HOUSE SHOULD ACCEPT OR REJECT THE
REGULATIONS, THE COMMITTEE MEMBERS VOTED AS FOLLOWS

NO.	NAME	ACCEPT SIGNATURE	REJECT SIGNATURE
1.	Sen. Samuel Poghiso, EGH, MP - Chairperson		
2.	Sen. (Eng.) Mohamed Maalim Mahamud, MP- Chairperson		
3.	Sen. (Dr.) Isaac Mwaura, MP- V. Chairperson		
4.	Sen. (CPA) Farhiya Haji, MP - V. Chairperson		
5.	Sen. Wetang'ula Moses Masika, MP		<i>Wetang'ula</i>
6.	Sen. Mutula Kilonzo Jnr, MP		<i>Mutula</i>
7.	Sen. Cheruiyot Aaron, MP		<i>Cheruiyot</i>
8.	Sen. Irungu Kang'ata, MP		
9.	Sen. (Dr.) Ali Abdullahi Ibrahim, MP		
10.	Sen. Boniface Mutinda Kabaka, MP		<i>Boniface</i>
11.	Sen. Judith Pareno, MP		
12.	Sen. Rose Nyamunga, MP		
13.	Sen. Okong'o Omogeni, SC, MP		
14.	Sen. Mohamed Faki, MP		
15.	Sen. Millicent Omanga, MP		<i>Millicent</i>
16.	Sen. Victor Prengei, MP		<i>Victor</i>

Committee Secretariat: Joseph Mwangi

Signature: *[Signature]* not present at
on 24/10/2019 at 10:00am at County Hall, ground floor boardroom.

MINUTES OF THE 1ST JOINT MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET AND SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 17TH OCTOBER, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

- | | |
|-------------------------------------|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | - Co-Chair |
| 2. Sen. Samuel Poghio, EGH, MP | - Co-Chair |
| 3. Sen. (CPA) Farhiya Haji, MP | - V. Chairperson |
| 4. Sen. Moses Wetangula, EGH, MP | - Member |
| 5. Sen. (Dr) Rose Nyamunga, MP | - Member |
| 6. Sen. Boniface Mutinda Kabaka, MP | - Member |
| 7. Sen. Aaron Cheruiyot, MP | - Member |
| 8. Sen. Judith Pareno, MP | - Member |
| 9. Sen. Okong'o Omogeni, SC, MP | - Member |
| 10. Sen. Mohamed Faki, MP | - Member |
| 11. Sen. Millicent Omanga, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|---|--------------------|
| 1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP | - Chairperson |
| 2. Sen. (Dr) Isaac Mwaura, CBS, MP | - Vice Chairperson |
| 3. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP | - Member |
| 4. Sen. Irungu Kang'ata, MP | - Member |
| 5. Sen. Victor Prengei, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|-----------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Mr. Robert Nyaga | - Deputy Director PBO |
| 3. Mr. Joash Kosimba | - Fiscal Analyst |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Yunis Amran | - Fiscal Analyst |
| 6. Ms. Julie Mwithiga | - Fiscal Analyst |

MIN. NO. 1/10/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 10.28 am and followed a word of prayer.

MIN.NO. 2/10/2019:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Millicent Omanga, MP and seconded by Sen. (Dr) Rose Nyamunga, MP.

**MIN.NO. 3/10/2019: BRIEFING ON THE PUBLIC FINANCE MANAGEMENT
(NATIONAL GOVERNMENT) AMENDMENT) REGULATIONS, 2019**

The Co-Chair informed the Committee that the Regulations were submitted to the Senate and tabled in the House on 16th October, 2019. Thereafter, the House directed the two Committees to consider the regulations and report back to the House within 14 calendar days. Thus, the meeting was convened for briefing on the matter and consideration of the way forward.

The Committee was briefed as follows-

- a) The Public Finance Management (National Government) Amendment) Regulations, 2019 seeks to amend the Regulation 26(1)(c) which provides for the ceilings for national public debt.
- b) The Regulation provide that national public debt shall not exceed 50% of Gross Domestic Product (GDP).
- c) The amendment is to delete the provision and replace with ksh. 9 trillion.
- d) As at June 2019 the public debt was Ksh. 8.81 trillion which was equivalent to-
 - 61.8% of the nominal GDP
 - 50.7% of the GDP in Net Present Value (NPV) terms
- e) The limits on public debt is also provided in several laws in the East Africa Community Treaty provides debt ceiling of 50% of GDP in NPV terms.
- f) The IMF provided the public debt sustainability thresholds and Kenya had surpassed them especially the threshold on debt service to revenue ratio.
- g) There were fear that borrowing may have been used to finance some current expenditure instead of development projects and programmes.
- h) The FY 2019/20 budget the fiscal deficit is Ksh. 634 billion. This gap may only be met by external/ internal borrowing.
- i) As provided in the Statutory Instruments Act and Standing orders, the Committee had two options either approve the regulations or reject the Regulations.

The Committee observed the following-

- a) Increasing the debt ceiling may create a room for borrowing which may lead to inconsistent with the approved fiscal consolidation path for Financial year 2019/20.
- b) Approving the regulations would lead to the country surpassing the main threshold provided in the law, by IMF and EAC treaty.
- c) Increasing the public debt adversely affects the county government equitable share.
- d) The high level of debt narrows the window for future borrowing, increases vulnerability to fiscal risk and possible debt distress.
- e) There was no transparency in borrowing; hence need to approve borrowing annually as well as projects to be funded. This would ensure borrowed funds are only used for development projects and programmes.
- f) There was need for full disclosure of expecting borrowing levels in the BPS.
- g) There was need for justification why the National Treasury would shift the public debt measure from percentage of GDP to a nominal figure.
- h) The fate of the existing projects funded through borrowing in case the regulations were not approved.

On the way forward the Committee resolved as follows-

- a) Conduct public hearing on the Regulations on Wednesday, 23rd October, 2019 at 10.30 am;
- b) Invite the Cabinet Secretary, the National Treasury for a meeting on Wednesday, 23rd October, 2019;
- c) Request the National Treasury to submit the following documents to the Committee-
 - i) list of projects earmarked to be financed by Financial Year 2019/2020 Budget indicating whether new or ongoing;
 - ii) the list of loans, indicating the amount, guaranteed to county governments; and
 - iii) Debt register as at 30th September, 2019
- d) Invite the Stakeholders for the public hearing.

MIN.NO. 4/10/2019: ANY OTHER BUSINESS

The Committee resolved to have an in house meeting on Wednesday, 23rd October, 2019 at 9:30 am.

The Chairperson adjourned the meeting at 12:15 pm.

SIGNATURE.....*Samuel Poghio*
(CO-CHAIRPERSON: SEN. SAMUEL POGHISIO, EGH, MP)

Pr

SIGNATURE.....*Mohamed Maalim Mahamud*
(CO-CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD, MP)

DATE.....*27/11/2019*

MINUTES OF THE 2ND JOINT MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET AND SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 23RD OCTOBER, 2019 AT K.I.C.C, SHIMBA HILLS HALL, AT 10:30 AM.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | - Co-Chair |
| 2. Sen. Samuel Poghiso, EGH, MP | - Co-Chair |
| 3. Sen. (CPA) Farhiya Haji, MP | - Vice- Chairperson |
| 4. Sen. Moses Wetangula, EGH, MP | - Member |
| 5. Sen. (Dr) Rose Nyamunga, MP | - Member |
| 6. Sen. Boniface Mutinda Kabaka, MP | - Member |
| 7. Sen. Aaron Cheruiyot, MP | - Member |
| 8. Sen. Judith Pareno, MP | - Member |
| 9. Sen. Okong'o Omogeni, SC, MP | - Member |
| 10. Sen. Mohamed Faki, MP | - Member |
| 11. Sen. Millicent Omanga, MP | - Member |
| 12. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP | - Member |
| 13. Sen. Irungu Kang'ata, MP | - Member |
| 14. Sen. Victor Prengei, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP | - Chairperson |
| 2. Sen. (Dr) Isaac Mwaura, CBS, MP | - Vice Chairperson |

SECRETARIAT

- | | |
|-------------------------|-----------------------------|
| 1. Ms. Emmy Chepkwony | - Principal Clerk Assistant |
| 2. Mr. Martin Masinde | - Deputy Director PBO |
| 3. Mr. Joseph Mwangi | - Clerk Assistant |
| 4. Ms. Julie Mwithiga | - Fiscal Analyst |
| 5. Ms. Lucy Radoli | - Legal Counsel |
| 6. Ms. Yunis Amran | - Fiscal Analyst |
| 7. Ms. Lucy Makara | - Fiscal Analyst |
| 8. Ms. Viola Khalwali | -Legal pupil |
| 9. Ms. Hawa Abdi | -Sergeant-At-Arms |
| 10. Mr. Collins Mahamba | -Audio Officer |

MIN. NO. 6/10/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 10.37 am followed by a word of prayer. Thereafter the Chairperson called Members and the public stakeholders to introduce themselves.

MIN.NO. 7/10/2019:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. (CPA) Farhiya Ali, MP and seconded by Sen. Moses Wetang'ula, MP.

MIN.NO. 8/10/2019:

PUBLIC HEARING ON THE PUBLIC FINANCE
MANAGEMENT (NATIONAL GOVERNMENT)
AMENDMENT) REGULATIONS, 2019

The Chairperson invited the various stakeholders' submissions:

1. Cabinet Secretary National Treasury remarks-

- a) The National Treasury borrows money due to its inability to raise sufficient funds to fund Government projects.
- b) Debt is not a bad thing. Some developed economies such as Japan and Germany were built on concessional debt.
- c) The debt level in Kenya is sustainable since a country can borrow up to 70% of its GDP and the current debt level is at 50%. The current debt level was at Ksh.5.8 trillion.
- d) If the National Treasury is disallowed to increase the ceiling, it may find it difficult to implement the budget as it were. There was a budget deficit at the time.
- e) The Ministry would also be unable to disburse approximately Ksh.295 Billion donor funding due to the ceiling limitation.

The Ministry submitted the documents requested for by the Joint Committee; the documents included:

1. list of projects earmarked to be financed by Financial Year 2019/2020 Budget indicating whether new or ongoing;
2. the list of loans, indicating the amount, guaranteed to county governments; and
3. Debt register as at 30th September, 2019.

2. Mr. George Owoko- Chief Executive Officer (C.E.O) Commission on Revenue Allocation Submission:

Indicated that his Commission had had extensive engagement with the National treasury on the matter and the Commission was in support of the amendment on the Regulations as proposed by the National Treasury.

3. Institute of Certified Public Accountants Kenya

1. The Institute did not oppose the increase of the ceiling to Ksh. 9 trillion however they did not understand the justification of the increment.
2. There was also concern that the change to a numerical value Ksh.9trillion for the ceiling would be out of line with the East African Community agreement of having 50% as the debt ceiling.
3. The Institute observed that the percentage would be a better comparison to the numerical value when it came to analysis of debt effect to future generations.
4. The institute also observed that Kenya's risk to external debt had moved from low risk to moderate risk in the recent past.
5. The country was unable to make payments for the loans which led to contraction of the economy, making the economy to be very expensive due to high interest rates among other factors.

The Committee observed the following-

- a) Pending Bills were an issue that had spiralled to the County Governments.
- b) There was need to create avenues to collect more revenue, without overburdening the citizenry as opposed to relying on borrowing.
- c) Public Private Partnership (PPP) in the country had not been well operationalized.
- d) More borrowing would lead to impoverishing further the population.
- e) The projects that the National Treasury was funding left out some areas further marginalizing these areas.
- f) The Members needed to know the irreducible minimum of the debt ceiling, by the National Treasury.
- g) Increasing the public debt adversely affects the county government equitable share.
- h) Members had not been convinced by the Ministry on the justification for the shift from percentage of GDP to a nominal figure.
- i) That the Regulations were submitted late to the Senate compared to the time they were submitted to the National Assembly. The issue of the Ministry having gazetted the Regulations before presenting the same to the Senate.
- j) There was need for the National Treasury to shun commercial loans.

On the way forward the Committee resolved as follows-

i. To meet on Thursday, 24th October, 2019 at 10.00 am, to adopt the report on the Regulations.

ii. The findings of the Joint Committee would be tabled during Plenary on Thursday, 24th October, 2019.

MIN.NO. 9/10/2019: ANY OTHER BUSINESS

The Committee resolved to have an in house meeting on Wednesday, 23rd October, 2019 immediately after the meeting to deliberate on the way forward.

MIN.NO. 10/10/2019: ADJOURNMENT

The Chairperson adjourned the meeting at 1:27 pm.

SIGNATURE.....

(CO-CHAIRPERSON: SEN. SAMUEL POGHISIO)

DATE.....24/10/2019

SIGNATURE.....

(CO-CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....27/10/19

MINUTES OF THE 4TH JOINT MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET AND SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 24TH OCTOBER, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM, AT 2:00 PM.

PRESENT

1. Sen. Mutula Kilonzo Junior, MP - Co-Chair
2. Sen. Samuel Poghisi, EGH, MP - Co-Chair
3. Sen. (CPA) Farhiya Haji, MP - Vice- Chairperson
4. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
5. Sen. Boniface Mutinda Kabaka, MP - Member
6. Sen. Moses Wetangula, EGH, MP - Member
7. Sen. (Dr) Rose Nyamunga, MP - Member
8. Sen. Aaron Cheruiyot, MP - Member
9. Sen. Judith Pareno, MP - Member
10. Sen. Okong'o Omogeni, SC, MP - Member
11. Sen. Millicent Omanga, MP - Member
12. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
13. Sen. Irungu Kang'ata, MP - Member
14. Sen. Victor Prengei, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Mohamed Faki, MP - Member

SECRETARIAT

1. Ms. Emmy Chepkwony - Principal Clerk Assistant
2. Mr. Joseph Mwangi - Clerk Assistant
3. Ms. Julie Mwithiga - Fiscal Analyst
4. Ms. Lucy Radoli - Legal Counsel
5. Ms. Yunis Amran - Fiscal Analyst
6. Ms. Hawa Abdi - Sergeant-At-Arms
7. Mr. Collins Mahamba - Audio Officer

MIN. NO. 16/10/2019: PRELIMINARIES

The Chairperson called the meeting to order at 2.09 pm.

MIN. NO. 17/10/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. (CPA) Farhiya Ali, MP and seconded by Sen. Rose Nyamunga, MP.

MIN. NO. 18/10/2019: CONFIRMATION OF PREVIOUS MINUTES

The Minutes of the previous sittings were approved as a true record of the proceedings and signed by the Co- Chairpersons.

Date of sitting	Proposer	Secunder
1 st sitting 17/10/2019	Sen. Millicent Omanga	Sen. Judith Pareno
2 nd Sitting 23/10/2019	Sen. Moses Wetang'ula	Sen. Ali Ibrahim
3 rd Sitting 24/10/19	Sen. Millicent Omanga	Sen. Judith Pareno

MIN. NO. 19/10/2019: MATTERS ARISING

The Members agreed to have the Regulations report tabled at the Plenary the same day on 24th October, 2019.

MIN. NO. 20/10/2019: AFFIRMATION OF COMMITTEE RESOLUTIONS

The Committee affirmed its resolutions made in the 3rd sitting and approved the Minority Report.

MIN. NO. 21/10/2019: ANY OTHER BUSINESS

There was no other business.

MIN. NO. 22/10/2019: ADJOURNMENT

The Chairperson adjourned the meeting at 2:28 pm.

SIGNATURE.....*Samuel Poghio*
(CO-CHAIRPERSON: SEN. SAMUEL POGHISIO)

DATE.....*24/10/2019*

pr SIGNATURE.....*Mohamed Maalim Mahamud*
(CO-CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....*24/10/2019*

MINUTES OF THE 3RD JOINT MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET AND SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 24TH OCTOBER, 2019 AT COUNTY HALL, GROUND FLOOR BOARDROOM, AT 10:00 AM.

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | - Co-Chair |
| 2. Sen. Samuel Poghio, EGH, MP | - Co-Chair |
| 3. Sen. (CPA) Farhiya Haji, MP | - Vice-Chairperson |
| 4. Sen. (Dr) Isaac Mwaura, CBS, MP | - Vice Chairperson |
| 5. Sen. Moses Wetangula, EGH, MP | - Member |
| 6. Sen. (Dr) Rose Nyamunga, MP | - Member |
| 7. Sen. Aaron Cheruiyot, MP | - Member |
| 8. Sen. Judith Pareno, MP | - Member |
| 9. Sen. Okong'o Omogeni, SC, MP | - Member |
| 10. Sen. Millicent Omanga, MP | - Member |
| 11. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP | - Member |
| 12. Sen. Irungu Kang'ata, MP | - Member |
| 13. Sen. Victor Prengei, MP | - Member |
| 14. Sen. Boniface Mutinda Kabaka, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP | - Chairperson |
| 2. Sen. Mohamed Faki, MP | - Member |

SECRETARIAT

- | | |
|------------------------|-----------------------------|
| 1. Ms. Emmy Chepkwony | - Principal Clerk Assistant |
| 2. Mr. Joseph Mwangi | - Clerk Assistant |
| 3. Ms. Julie Mwithiga | - Fiscal Analyst |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Yunis Amran | - Fiscal Analyst |
| 6. Ms. Hawa Abdi | - Sergeant-At-Arms |
| 7. Mr. Collins Mahamba | - Audio Officer |

MIN. NO. 11/10/2019:

PRELIMINARIES

The Chairperson called the meeting to order at 10.14 am followed by a word of prayer.

MIN.NO. 12/10/2019:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. (CPA) Farhiya Ali, MP and seconded by Sen. Rose Nyamunga, MP.

MIN.NO. 13/10/2019:

ADOPTION OF THE REPORT ON THE PUBLIC
FINANCE MANAGEMENT (NATIONAL
GOVERNMENT) AMENDMENT) REGULATIONS, 2019

The Committee considered its report and adopted its resolution contained in the Committee recommendations in accordance to the provisions of standing Order 213 (5) of the Senate Standing Orders and adopted it with the following recommendation.

That, Pursuant to Standing Order 210 (4) and having examined the Public Finance Management (National Government) (Amendment) Regulations, 2019 (*Legal Notice No. 155 of 2019*) against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Public Finance Management Act, 2012 and the Statutory Instruments Act, 2013, the Committee recommends that the House approves the said statutory instrument.

The report having been adopted by the majority of members reference was made to the Standing order, 213 (6) where the following members of the Committee recorded a dissenting view on the resolution of the Committee and therefore wrote a minority report in accordance with Standing order, 213(6) .

At the time of the resolution the following five Members recorded a No vote on the recommendation of the Committee contained in the report. As per the appended list.

- | | |
|--------------------------------------|----------|
| 1. Sen. Wetang'ula Moses M., EGH, MP | -Member |
| 2. Sen. Mutula Kilonzo Junior, MP | - Member |
| 3. Sen. Aaron Cheruiyot, MP | - Member |
| 4. Sen. Millicent Omanga, MP | - Member |
| 5. Sen. Victor Prengei, MP | - Member |

It was recommended that the Minority report provides that, pursuant to Senate Standing Orders and having examined the Public Finance Management (National Government) (Amendment) Regulations, 2019 (*Legal Notice No. 155 of 2019*) against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Public Finance Management Act, 2012 and the Statutory

Instruments Act, 2013, the Minority report rejects the resolution of the Joint Committee and its recommendation to the House to approve the said Statutory Instrument.

Some Members present arrived at the meeting when the resolution of the Committee had been made.

MIN.NO. 14/10/2019: ANY OTHER BUSINESS

There was no other business.

MIN.NO. 15/10/2019: ADJOURNMENT

The Chairperson adjourned the meeting at 1:13 pm.

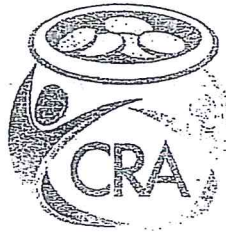
SIGNATURE.....*Samuel Poghisio*
(CO-CHAIRPERSON: SEN. SAMUEL POGHISIO)

DATE.....*24/10/2019*

SIGNATURE.....*M W M A*
(CO-CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....*24/10/2019*

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NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/.....

DATE: 22nd October, 2019

YOUR REF:

To
J.M. Nyegenye, CBS,
Clerk of the Senate/Secretary
Parliamentary Service Commission

Dear

RE: MEMORANDUM ON THE PUBLIC FINANCE
MANAGEMENT (NATIONAL GOVERNMENT)
(AMENDMENT) REGULATIONS, 2019

We refer to the captioned amendment and your letter dated 17th October, 2019.

The Commission has a mandate according to Article 205(1) to make recommendations to the National Assembly and Senate when any Bill containing provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published.

In view of this mandate, we have reviewed the Public Finance Management (National Government) (Amendment) Regulations, 2019 and are opined that for the amendments to stand-

- a. The National Treasury should guarantee that the amount borrowed will not in any way compromise the DORA for financial years 2020-2024;
- b. That the amount borrowed annually should be limited to budget support on development projects only;
- c. That National Treasury should retire the expensive loans and take concessional loans instead; and
- d. That there should be a commitment for additional conditional grants to finance cities as an incentive to increase own source revenue.

We thank you for your continued support.

Yours Sincerely,



George Ooko
Commission Secretary/CEO