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THE NATIONAL ASSEMBLY

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DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY  
PAPERS LAID  
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Member, Finance Committee  
CLERK REPORT ON: National Assembly Bill  
THE TABLE: National Assembly Bill

THE PUBLIC DEBT MANAGEMENT AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2020)

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## TABLE OF CONTENTS

|  |    |
|--|----|
| CHAIRPERSON'S FOREWORD .....   | 3  |
| PART ONE.....  | 5  |
| 1 PREFACE .....  | 5  |
| 1.1 ESTABLISHMENT OF THE COMMITTEE.....  | 5  |
| 1.2 MANDATE OF THE COMMITTEE.....  | 5  |
| 1.3 COMMITTEE MEMBERSHIP .....   | 6  |
| 1.4 COMMITTEE SECRETARIAT.....   | 7  |
| PART TWO.....  | 8  |
| 2 OVERVIEW OF THE PUBLIC DEBT MANAGEMENT AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2020)..... | 8  |
| 2.1 INTRODUCTION .....   | 8  |
| 2.2 ANALYSIS OF THE BILL.....  | 8  |
| PART THREE .....   | 10 |
| 3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION .....   | 10 |
| 3.1 CAPITAL MARKETS AUTHORITY (CMA) .....  | 10 |
| 3.2 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK).....                              | 12 |
| 3.3 KENYA BANKERS ASSOCIATION (KBA).....   | 14 |
| 3.4 OFFICE OF THE AUDITOR GENERAL (OAG) .....  | 16 |
| 3.5 THE INSTITUTE OF SOCIAL ACCOUNTABILITY (TISA) AND TRANSPARENCY INTERNATIONAL KENYA.....          | 17 |
| 3.6 INSTITUTE OF PUBLIC FINANCE KENYA (IPF).....   | 19 |
| 3.7 THE NATIONAL TREASURY.....   | 20 |
| 3.8 CENTRAL BANK OF KENYA .....  | 26 |
| PART FOUR.....   | 29 |
| 4 COMMITTEE OBSERVATIONS.....  | 29 |
| PART FIVE.....   | 30 |
| 5 COMMITTEE RECOMMENDATION.....  | 30 |
| PART SIX.....  | 31 |
| 6 SCHEDULE OF PROPOSED AMENDMENTS .....  | 31 |
| ANNEXURES .....  | 36 |

## CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Public Debt Management Authority Bill (*National Assembly Bill No. 36 of 2020*) which was published on 29<sup>th</sup> October 2020.

The Bill underwent the First Reading on 22<sup>nd</sup> December 2020 and was thereafter committed to the Departmental Committee on Finance and National Planning for review and reporting to the House pursuant to Standing Order 127.

The Bill has eighty-three (83) clauses and seeks to establish the Public Debt Management Authority as an independent body to manage the public debt in the country at both levels of government. The country's debt is rising at an alarming level and there is a need to control the same to protect the current and future generations. Therefore, the Authority shall succeed the Public Debt Management Office.

Following placement of advertisements in the print media on 11<sup>th</sup> February 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received one (1) written memorandum.

In order to extensively carry out public participation on the Bill, the Committee invited stakeholders vide letter REF: NA/DDC/F&NP/2021/33 dated 21<sup>st</sup> July 2021 for a stakeholder engagement meeting which was held on Wednesday, 28<sup>th</sup> July 2021 at Hilton Garden Inn Hotel in Machakos County. Four (4) stakeholders attended the meeting, while the rest submitted written memoranda.

Most stakeholders supported the Bill noting that if properly implemented, it will go a long way in taming Kenya's public debt. However, some stakeholders noted that there is no need to establish a Public Debt Management Authority since all the functions of the Authority are contained in the Public Finance Management Act, 2012. Additionally, establishing a Public Debt Management Authority without giving it the powers, resources and space to discharge its mandate aptly will not tame the debt situation in Kenya. The stakeholders' comments on the Bill are contained in Part III of the Report. All the stakeholders' comments were considered while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

While considering the Bill, the Committee noted that the Bill had put certain functions that are in conflict with the role of the Central Bank of Kenya. For instance, the Bill proposes a takeover of CBK's role as fiscal agent and banker to the Government without indicating the perceived problems with the current arrangement. Section 45 of the CBK Act empowers CBK as a fiscal agent and banker to Government and any public entity. Specifically, CBK is empowered *inter alia* to accept deposits and make payments on behalf of Government, administer domestic public debt, and purchase, sell or hold in custody foreign exchange. The above functions are crucial to CBK's effectiveness in its other functions and importantly, coordination of monetary and fiscal policies, managing the exchange rate, lender of last resort to the banking sector and regulator of the National Payments System. Stripping CBK of its function as a fiscal agent and banker to Government will not only weaken CBK. In addition to this, the Bill as drafted attempts to give the Cabinet Secretary powers to open other public funds accounts in contradiction with the Constitution. The Constitution and the PFM Act envisage and make provision for the opening of the Consolidated Fund as a solitary fund held in a single account and maintained at CBK for purposes of facilitating payments into and out of the account. To this end,

the Committee made amendments to the Bill to remedy the issues raised above. Details of the Committee's proposed amendments are contained in Part VI of the Report.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Hon. Sakwa Bunyasi, MP for sponsoring the Bill and all stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Debt Management Authority Bill, 2020 with the recommendation that the Bill be **approved with amendments** as contained in the report.

**Hon. Gladys Wanga, CBS, MP**

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

## PART ONE

### 1 PREFACE

#### 1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
- iii. To study and review all the legislation referred to it;*
- iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House,*
- vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
- vii. To examine treaties, agreements and conventions;*
- viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- x. To examine any questions raised by Members on a matter within its mandate.*

#### 1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

3. In executing its mandate, the Committee oversees the following government Ministries and departments:

- i. National Treasury and Planning
- ii. State Department for Devolution
- iii. Commission on Revenue Allocation
- iv. Office of the Controller of Budget
- v. Salaries and Remuneration Commission

### 1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in July, 2020 and comprises of the following Members:

#### Chairperson

Hon. Gladys Wanga, CBS, MP  
Homabay County  
ODM Party

#### Vice-Chairperson

Hon. Isaac W. Ndirangu, MP  
Roysambu Constituency  
Jubilee Party

#### Members

Hon. Jimmy O. Angwenyi, MGH, MP  
Kitutu Chache North Constituency  
Jubilee Party

Hon. Christopher Omulele, CBS, MP  
Luanda Constituency  
ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP  
Kisumu East Constituency  
Independent Member

Hon. Daniel Nanok, MP  
Turkana West Constituency  
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP  
Siaya County  
ODM Party

Hon. Andrew Okuome, MP  
Karachuonyo Constituency  
ODM Party

Hon. David Mboni, MP  
Kitui Rural Constituency  
CCU Party

Hon. Francis K. Kimani, MP  
Molo Constituency  
Jubilee Party

Hon. Joseph Oyula, MP  
Butula Constituency

#### ODM Party

Hon. Joshua Kandie, MP  
Baringo Central Constituency  
MCC Party

Hon. Stanley Muthama, MP  
Lamu West Constituency  
MCC Party

Hon. Edith Nyenze, MP  
Kitui West Constituency  
WDM-K

Hon. Catherine Waruguru, MP  
Laikipia County  
Jubilee Party

Hon. James Gichuhi Mwangi, MP  
Tetu Constituency  
Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP  
Wajir South Constituency  
Jubilee Party

Hon. Peter Lochakapong, MP  
Sigor Constituency  
Jubilee Party

Hon. Qalicha Gufu Wario, MP  
Moyale Constituency  
Jubilee Party

#### **1.4 COMMITTEE SECRETARIAT**

5. The Committee is facilitated by the following Secretariat:

**Ms. Leah W. Mwaura  
Principal Clerk Assistant II/Head of Secretariat**

**Ms. Jennifer Ndeto  
Deputy Director, Legal Services**

**Ms. Lauren O. Wesonga  
Clerk Assistant II**

**Mr. Josephat Motonu  
Senior Fiscal Analyst**

**Mr. Chelang'a Maiyo  
Research Officer II**

**Mr. Luka Mutua  
Serjeant-At-Arms II**

**Ms. Terry Ondiko  
Fiscal Analyst III**

**Mr. George Ndenjeshe  
Fiscal Analyst III**

**Ms. Christine Maeri  
Audio Officer**

## PART TWO

### 2 OVERVIEW OF THE PUBLIC DEBT MANAGEMENT AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2020)

#### 2.1 INTRODUCTION

6. The setting up of separate Public Debt Management Authority will help to establish transparency, and assign specific responsibility and accountability on the debt manager. This could lead to an integrated and more professional management of all government liabilities, with a focussed mandate to operate on sound economic and commercial principles. Presently, the Debt Management Office is an office under the National Treasury which has created a lack of independence.
7. The main objective of the Public Debt Management Authority Bill, 2020 is to establish the Public Debt Management Authority as an independent body to manage the public debt in the country at both levels of government. The country's debt is rising at an alarming level and there is need to manage the same to protect the current and future generations. The Authority will be a successor of the Public Debt Management office.

#### 2.2 ANALYSIS OF THE BILL

The Bill proposes the following amendments:

8. **Part I (Clauses 1 to 3)** of the Bill provides for preliminary provisions of the Bill including the short title and objective of the Act.
9. **Part II (Clauses 4 to 23)** of the Bill deals with the establishment, functions and powers of the Authority. Clause 4 specifically establishes the Public Debt Management Authority. The functions and powers of the Board are outlined under clauses 5 and 6 respectively.
10. **Part III (Clauses 24 to 28)** of the Bill deals with the financial provisions. The sources of funds for the Board are outlined in clause 23. The Board is required to comply with prudent financial management systems including the provisions of the Public Audit Act (No. 34 of 2015).
11. **Part IV (Clauses 29 to 43)** of the Bill deals with provisions on loans and guarantees by the national government.
12. **Part V (Clauses 44 to 50)** of the Bill deals with provisions on loans and guarantees by the county government.
13. **Part VI (Clauses 51 to 54)** of the Bill contains miscellaneous provisions. For example, it provides for the requirement of the Authority to have a public engagement strategy. It also outlines the guiding principles for the Cabinet Secretary when formulating delegated legislation.
14. **Part VII (Clauses 55 to 82)** of the Bill contains repeal and saving provisions.
15. The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

16. The Bill affects the functions of county governments and is therefore a Bill concerning counties for purposes of the Standing Orders.
17. Enactment of this Bill will occasion additional expenditure of public funds to be provided for through the annual estimates.

## PART THREE

### 3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

18. Following the call for memoranda from the public through the placement of adverts in the print media on 11<sup>th</sup> February 2021 and vide a letter REF: NA/DDC/F&NP/2021/31 dated 8<sup>th</sup> July 2021 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

- i. Capital Markets Authority (CMA)
- ii. Institute of Certified Public Accountants of Kenya (ICPAK)
- iii. Kenya Bankers Association (KBA)
- iv. Office of the Auditor General (OAG)
- v. The Institute of Social Accountability (TISA) and Transparency International Kenya
- vi. Institute of Public Finance Kenya (IPF)
- vii. The National Treasury and Planning
- viii. The Central Bank of Kenya

The stakeholders submitted as follows:

#### 3.1 CAPITAL MARKETS AUTHORITY (CMA)

The Chief Executive Officer for CMA Mr. Wyckliffe Shamiah appeared before the Committee Wednesday, 28<sup>th</sup> July 2021, the CEO. He proposed the following THAT—

19. The definition of public debt as domestic and external public debt is limiting. There is a need to include a new definition of “*Public Debt Issuance*” to cover the entire spectrum and debt instruments issued by the National Government as well as potential county debt issuances, including county bonds, corporate bonds by State-Owned Enterprises (SOEs) and securitization transactions (Asset-backed securities).

##### Committee’s Observation

The proposal was agreed to.

20. Market institutions be defined to avoid the risk of dual/overlapping oversight and licensing and promote cooperation between the Public Debt Management Authority and other regulators.

##### Committee’s Observation

The proposal was agreed to.

21. The definition for the term “*Derivatives Financial Instruments*” be provided because it is not clear in the Bill what these products could range from currency/interest rate swaps to bond derivatives. This may creep into the CBK and CMA regulatory space and may require advisories or no objections before such contracts are entered into.

##### Committee’s Observation

The proposal was agreed to.

22. Clause 5(k) be amended to include “*in consultations with CBK and CMA*”. While section 20 of the CMA Act states that government securities are not subject to CMA approval, the derivative

financial instruments referenced may not necessarily be debt instruments. They could be currency or interest rate swaps. CMA and CBK have regulatory responsibilities on derivatives markets and monetary policy, so they may need to advise and possibly provide no objection to the Authority.

**Committee's Observation**

The proposal was rejected since both institutions are represented in the Board of the Authority hence no need for the amendment.

23. Clause 5 be amended by providing that the Authority should issue and maintain an issuance calendar. The Authority should also develop a criterion for county governments borrowing so that it is clear what they need to comply with to secure the guarantee. This is to ensure the efficiency of the Authority.

**Committee's Observation**

The proposal was agreed to.

24. Sub-clause 7(1)(h) be amended by providing the criteria for nominating one person by the four institutions. In addition, the Board should include a representative from the biggest institutional investors such as pension and insurance schemes as they are the main investors in government debt instruments/paper.

**Committee's Observation**

The proposal was agreed to.

25. Amend sub-clause 7(2)(b) by expanding the qualifications of the Chairman to include finance, economics, law or any other relevant degree. This is because corporate governance competence through understanding of debt management economics and law alone is quite limiting.

**Committee's Observation**

The proposal to include other professionals was agreed to as it would allow inclusion of professionals in the finance field as well as other relevant degrees.

26. Clause 9 be amended by making reference to sub-clause 7(1)(h) instead of sub-clause 8(1)(h). This is to correct a typographical error.

**Committee's Observation**

The proposal was agreed to as it would correct the cross referencing error.

27. Clause 11 be amended by inserting paragraph 11(3) which will provide for the co-option of members. This gives the Board more flexibility and enhances participation in board meetings (avoid quorum hitches).

**Committee's Observation**

The proposal was agreed to. Co-option of other members may be necessary in case a specific expertise is required in the Board.

28. Amend clause 12 by adding development of debt management strategies as one of the functions of the Authority to counties. This is because very few counties will willingly request the Authority to streamline their debt management strategies hence the need to include it in law.

**Committee's Observation**

The proposal was agreed to so that the Authority can have the powers to develop debt management strategies for counties.

29. Amend sub-clauses 15(1)(b) and (c) by harmonizing them with requirements for similar positions in other public agencies in order to create uniformity in the public sector.

**Committee's Observation**

The proposal was agreed to.

30. Amend clause 16 by including risk management as one of the roles of the director general. This is because risk management has become an integral part of management systems and it should therefore be clearly brought out.

**Committee's Observation**

The proposal was agreed to.

31. Amend sub-clause 18(1) by clearly indicating that the Registrar will be reporting to the director general. This is for clarity of roles and responsibilities.

**Committee's Observation**

The proposal was agreed to.

32. Amend clause 30(5) by providing that the Authority shall set ceilings for county government borrowing on an annual basis without unfairly limiting their capacity to borrow. This will assist counties to plan their borrowing.

**Committee's Observation**

The proposal was rejected as the function of setting ceilings is to be performed by Parliament for both levels of Government.

33. Delete clause 33(11) because secondary trading of all securities in Kenya is governed by Capital Markets Act and Regulations.

**Committee's Observation**

The proposal was agreed to.

**3.2 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)**

The Vice-Chairman of the Institute of Certified Public Accountants of Kenya, CPA Philip Kakai, appeared before the Committee on Wednesday, 28<sup>th</sup> July 2021. He submitted that there were adequate legal safeguards to ensure public debt management strategies are adhered to and to address the debt scenario in the country for instance sections 49, 50, 55, 62 and 63 of the Public Finance Management Act, 2012. However, in light of the Bill, the Institute had the following proposed amendments, THAT—

34. Clause 7 be amended to read as follows; "*(k) Controller of Budget; and (l) Commission on Revenue Allocation*". This is because the Controller of Budget is responsible for issuing Authority to debit the Consolidated Fund Service Account to settle the Government's debt. In addition, the

Commission on Revenue Allocation is significant when it comes to revenue forecasting, accounting, internal control and reporting. Given that debt is one of the financing strategies to plug fiscal deficit, it is imperative to incorporate their advice.

**Committee's Observation**

Committee agreed to include the Controller of Budget into the membership of the Authority.

35. Amend sub-clause 7(h) of the Bill as follows; "*(v) the Council of Governors (CoG); and (vi) State Corporations Advisory Committee (SCAC)*". This is because county governments and state corporations are among the key contributors and managers of public debt. They should therefore be on the Board to form part of the debt management strategy.

**Committee's Observation**

The Committee agreed to include Council of Governors into the Membership of the Authority.

36. Sub-clause 7(h) be amended by inserting the following new paragraph; "*(4) The appointments shall adhere to the two-thirds gender rule*". This is in order to comply with the Constitution.

**Committee's Observation**

The Committee agreed to amend to ensure that the appointment comply with the principle of two-third gender.

37. Sub-clause 7(2)(b) be amended to read as follows; "*Has a minimum of a bachelor's degree in economics, accountancy or law or any other related field*". This is because debt comprises financial and other risks related to cash flow that require the expertise of accountants and financial experts.

**Committee's Observation**

The proposal was agreed to.

38. Clause 9 be amended to read as follows; "*The chairperson and members appointed under section 8(1)(h) shall hold office for a term of four-years renewable for one further term only*". A four-year term is sufficient to deliver the mandate.

**Committee's Observation**

The proposal was agreed to.

39. Clause 15 be amended to read as follows; "*15(1)(b) has a minimum of a bachelor's degree in economics, accountancy or law or any other related field*". This is because financial and accountancy background is relevant in executing tasks related to financial management and accounting.

**Committee's Observation**

The proposal was agreed to.

40. New Clause be inserted immediately after Clause 52 as follows "*52. Standard terms and conditions of outstanding bonds as well as of other debt instruments employed, including, if applicable, collective action clause. Risk management framework to identify and manage the tradeoffs between expected cost and risk in the government debt portfolio*". The amendment is intended to ensure that information regarding

debt management strategies and operations is made public. In addition, documentation describing the legal basis for debt management policy and operations should be ensured.

**Committee's Observation**  
The proposal was agreed to.

### **3.3 KENYA BANKERS ASSOCIATION (KBA)**

KBA representative, Mr. Kennedy Mutisya appeared before the Committee on Wednesday, 28<sup>th</sup> July 2021. He submitted THAT—

41. Amend sub-clause 3(b) to read as follows; "*The development of a public debt and external debt market*". This is to provide clarity on inclusion of foreign debt instruments like the Eurobond and syndicated loans.

**Committee's Observation**  
The proposal was agreed to.

42. Amend sub-clause 3(c) to read as follows; "*The development of domestic debt market*". This is to cover all aspects in respect to development of domestic debt market.

**Committee's Observation**  
The proposal was agreed to.

43. Amend sub-clause 5(e) to read as follows; "*Maintaining a register of all loans advanced to the national government, county governments and their entities including loans guaranteed by the national government and grants*". This is to provide visibility on list of grants issued/obtained.

**Committee's Observation**  
The proposal was agreed to.

44. Delete sub-clause 5(h) or amend it to read as follows; "*Advice the national and county governments on public debt securities issuance*". This is to avoid conflict of interest between issuance of debt and monitoring of the same.

**Committee's Observation**  
The proposal to delete was agreed to as the mandate belongs to Central Bank of Kenya.

45. Amend sub-clause 5(j) as follows; "*Advice on the issuance of loan guarantees including assessment and management of risks in national government securities*". This is to address a conflict between issuance and monitoring role.

**Committee's Observation**  
The proposal to delete was agreed to as the mandate belongs to Central Bank of Kenya.

46. Amend sub-clause 5(k) by deleting the words "*transact in*" and replacing with the words "*development of*". This is to broaden the role.

#### **Committee's Observation**

The Clause was deleted in totality as the mandate belongs to Central Bank of Kenya.

47. Amend sub-clause 7(1) by including the Office of the Controller of Budget or a representative and include representation from all market exchanges. This is to ensure the expenditure side of government is included in the board and to provide a level playing ground for key stakeholders.

#### **Committee's Observation**

The proposal was agreed to. The Controller of Budget is responsible for authorizing all withdrawals hence his/her inclusion into the Membership is justified. In addition, given that there is a potential of having more than one exchange, it is therefore necessary to amend so that it gives room for all market exchanges to nominate a representative. The Bill has made provision for only the Chief Executive Officer of the Nairobi Securities Exchange.

48. Amend sub-clause 7(3) to read as follows; "*The members of the Board shall elect a vice chairperson from among the members under sub-section (1)*".

#### **Committee's Observation**

The proposal was agreed to as the Bill proposes to elect Vice-Chairperson from representatives of institutions specified in sub-section (h). The Authority should be given a free hand to elect a Vice-Chairperson based on its composition.

49. Amend sub-clause 8(2) to read as follows; "*The Board shall be properly constituted notwithstanding a vacancy in its membership, but subject to at least five board members being in office*". This is to avoid cases of only few members running the Authority.

#### **Committee's Observation**

The proposal was agreed to.

50. Amend clause 9 by deleting the reference to section 8(1) (h) because it is a non-existent section.

#### **Committee's Observation**

The proposal was agreed to. The Committee agreed to amend by deleting the reference to section 8(1) (h) and replace with section 7(1) (h).

51. Amend sub-clause 18(1) to read as follows; "*There shall be a registrar of the national loans, guarantees, grants and government securities*".

#### **Committee's Observation**

The proposal was rejected.

52. Amend sub-clauses 30(1), (2) and (3) by inserting the words "*and county governments*" immediately after the words "*national government*".

#### **Committee's Observation**

The proposal was agreed to. The proposal will include county governments borrowing. The Committee further proposed to amend the marginal notes to also cover county governments.

53. Amend sub-clause 33(14) to read as follows; *"If after six years from the redemption date of a National Government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder's personal representatives, the Cabinet Secretary shall forward the uncollected amounts to the Unclaimed Financial Assets Authority"*. Delete sub-clause 33(15).

**Committee's Observation**

The proposal was agreed as the Unclaimed Financial Assets Authority is mandated by the Unclaimed Financial Assets Act (No. 40 of 2011) to receive unclaimed financial assets from the holders of such assets, safeguard and re-unite the assets with their rightful owners.

54. Delete clauses 37, 38, 39, 40 and 41 in order to avoid duplication or contradiction with the Public Finance Management Act, 2012.

**Committee's Observation**

The proposal was rejected.

**3.4 OFFICE OF THE AUDITOR GENERAL (OAG)**

In their letter, Ref: C.806 Vol.III (43) dated 27<sup>th</sup> July 2021, the Auditor General, CPA. Nancy Gathungu submitted that the Office is in support of the Bill. They proposed the following amendments to the Bill:

55. Amend sub-clauses 7(1)(b), (c) and (d) to read as follows; *"(a) The Cabinet Secretary responsible for matters finance or a representative designated in writing; (b) The Attorney General or a representative designated in writing; and (c) The Governor of Central Bank or a person designated in writing"*. This is to have consistency of membership to the Board and especially where representation is on a permanent basis.

**Committee's Observation**

Proposal was agreed to.

56. Amend clause 9 to read as follows; *"Members appointed under section 7(1)(h)"*.

**Committee's Observation**

The proposal to amend by making proper cross-referencing was agreed to.

57. Amend sub-clause 15(1) and 15(2) to provide the experience required for the Director-General in order to remove ambiguity on the requisite academic background and area of experience.

**Committee's Observation**

The Committee amended Clause 15 to include additional educational qualifications. In terms of specific area of experience the Committee observed that there was need to include expertise in a certain field to ensure that the Director-General is grounded on matters relating to finance, economics and relevant field and not just possession of senior management experience.

58. Sub-clause 15(2) opens up room for subjectivity in the terms of service in the Office and does not bode well with the envisaged independence.

#### Committee's Observation

The proposal was rejected as the Director-General is recruited by the Board and hence his or her terms and conditions of employment are to be determined by the Board.

59. Amend clause 18 by introducing a new section providing for the qualifications for appointment as Registrar and provision for the term of office of the Registrar for transparency

#### Committee's Observation

The proposal was agreed to. It is necessary to provide for the qualifications for appointment of the Registrar and to provide for his or her term of office.

### 3.5 THE INSTITUTE OF SOCIAL ACCOUNTABILITY (TISA) AND TRANSPARENCY INTERNATIONAL KENYA

In their joint memorandum, they proposed the following amendments to the Bill.

60. Amend clause 2 by inserting definition of the word "*public debt*" to mean "*public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government. .and includes internal and external debts*".

#### Committee's Observations

The proposal was agreed to.

61. Amend clause 3 by inserting the following new clause 3A: "*In fulfilling its mandate, the Authority shall be guided by the following principles – (a) There shall be openness and accountability, including public participation in public debt management matters including the participation of marginalised groups in the society; (b) In the management of public debt, the highest level of transparency and prudence shall be maintained; (c) There shall be clear, accurate and consistent fiscal reporting of relevant information to all relevant stakeholders, including but not limited to the National Assembly, private sector, Civil Society and NGO's and the public in the public debt management process, (d) Public debt management shall be carried out in the most prudent and responsible manner; (e) There shall be the highest level of accountability by all actors responsible for the sustainable public debt management; and (f) Public debt management shall promote and equitable society and in particular: (i) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations; and (ii) Expenditure of public debt shall promote equitable development of the country including by making special provision for marginalized groups and areas; fair distribution of public debt financed investments and projects across the country*".

#### Committee's Observations

The proposal was agreed to. The proposal will ensure that the Authority has guiding principles in carrying out its functions.

62. Amend clause 5 by inserting the following new paragraphs; "*(x) subject to Article 35 of the Constitution, ensure that all public debt reports, register and other documents produced by the Authority are prepared, published, and publicized not later than fourteen days after production; and (y) In carrying out its functions under clause 5, the Authority shall observe the principle of public participation in public debt management matters*". This is to include provisions on transparency and public participation which will enhance accountability in the Authority's work.

#### **Committee's Observations**

The proposal was rejected as the right to any public information is already guaranteed in the Constitution of Kenya hence no need to make this amendment. In addition, public participation is a requirement of Article 118 of the Constitution hence all public bodies are mandated to ensure that it is done.

63. Amend sub-clause 7(1)(h) by inserting the following new paragraphs; “(v) *Council of Governors*; and (vi) *A representative from the civil society/NGO Board*”.

#### **Committee's Observations**

The Committee agreed to include the Council of Governors.

64. Amend sub-clause 18(3) by inserting the following new paragraphs; “*The public debt register must include: (1) details on the contractual terms of the loans – principal amount, interest, repayment terms, collateral; (ii) purpose and use of loans including comprehensive list of projects, programmes, investments; status of implementation; implementing agency; and (iii) Report on project, programme, investment social, economic, environment impact assessment, value for money*”. The Article 201 of the Constitution requires the government to embrace openness and accountability in public finance matters, ensure responsible financial management and clear fiscal reporting.

#### **Committee's Observations**

The proposal was agreed to. The proposal will ensure there is transparency and openness in any debt contracted.

65. Amend sub-clause 18(4) to read as follows; “*Loans, guarantees and securities issued by or on behalf of the national government shall be published in the Gazette and publicized annually*”. It is important to include timelines for publication of loans by national government.

#### **Committee's Observations**

The proposal was agreed to. The proposal will ensure there is transparency and openness in any debt contracted.

66. Amend sub-clause 30(3) by inserting the following new paragraphs; “*Budgets in each level of government must contain: (a) estimates of revenue and expenditure, differentiating between capital and current expenditure; and (b) proposals for financing any anticipated deficit for the period to which they apply; and (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year*”. This will ensure National government and county government budgets and budgetary processes promote transparency, accountability and the effective financial management of the economy, debt, and the public sector.

#### **Committee's Observations**

The proposal was rejected as the same is already been done when budgets are being presented for consideration.

67. Amend sub-clause 30(7) by inserting the following new paragraph; “*Clearly and accurately listed and the use of the same clearly and accurately recorded and included in the bi-annual report on government public debt activities as under clause 52 (1) and (2) of this Act*”. The issue of proceeds of public debt is one that is at the centre of the discussions surrounding public debt management in Kenya.

**Committee's Observations**

The proposal was agreed to.

68. Amend sub-clause 52(2) by inserting the following new paragraphs; "(f) *A list of all the proceeds of the loans raised and the intended and or actual use of the said proceeds; and (g) Details on the costs, interests, economic outlook situation and risk factors including macro-fiscal, political and security risks on all the loans held or intended to be acquired by the national government*".

**Committee's Observations**

The proposal was agreed to. This will increase efficiency of Parliament as it undertakes its oversight role.

**3.6 INSTITUTE OF PUBLIC FINANCE KENYA (IPF)**

In a letter, Ref: IPFK/SUBM/03/07-2021 dated 27<sup>th</sup> July 2021, the CEO, Mr. James Muraguri proposed the following amendments to the Bill:

69. Amend clause 4 by inserting the following new paragraph; "*The Authority shall enter any debt contract after tabling before the National Assembly a full disclosure relating to the amount borrowed, how the debt will be utilized, interest payable, debt repayment period, commitment of the Kenya Government to the debt, and any other terms and conditions*". Inserting the word debt contract will explicitly limit the contracting capacity of the Authority to public debt contract, while requiring the Authority to disclose all terms and conditions before entering any debt contract will promote accountability and transparency and proper utilization of borrowed money.

**Committee's Observation**

The proposal was agreed to.

70. Amend sub-clause 5(c) to read as follows; "*Review and make public an analysis of the economic and social impact of domestic and external debt and management strategies*". A review is an assessment but analysis is a detailed and methodical examination to explain and interpret results. The amendment will promote completeness and openness.

**Committee's Observation**

The proposal was agreed to.

71. Amend sub-clause 7(h) by inserting the following new paragraph; "*(i) The appointments shall adhere to the two thirds gender rule*". This is to comply with the Constitution.

**Committee's Observation**

The proposal was agreed to.

72. Amend sub-clause 15(2) by specifying the duration of service of the Director General in order to remove any ambiguity in decision making and allow other qualified people to also serve the public in this capacity.

**Committee's Observation**

The proposal was agreed to.

73. Amend sub-clause 18(2) by deleting the word “*who*”. This is to clean up the clause.

**Committee’s Observation**

The proposal was agreed to.

74. Amend sub-clause 18(6) by specifying conditions allowing for amendment. Specifications should be listed, whether they have been transferred, they have appreciated or depreciated in value.

**Committee’s Observation**

The proposal was agreed to.

75. Amend clause 29 by inserting the words “*propose to the Authority*” immediately after the words “*national government*”.

**Committee’s Observation**

The proposal was rejected.

### 3.7 THE NATIONAL TREASURY

In a meeting with the Committee held on Wednesday, 18<sup>th</sup> July 2021, Hon. Nelson Gaichuhie, Chief Administrative Secretary, National Treasury proposed the following amendments to the Bill:

76. Amend by deleting the definition of “*borrowing*” and substituting with the following definition; “*borrowing means the procedures for the creation of financial liabilities by conclusion of (a) loan agreements; (b) exchange of letters that constitute an agreement; (c) subscription agreements in regard to external government securities; (d) national government guarantee, (e) advances to Government under the Central Bank of Kenya Act*”.

**Committee’s Observation**

The proposal was agreed to.

77. Amend definition of “*Cabinet Secretary*” as follows; “*Cabinet Secretary means the Cabinet Secretary responsible for matters relating to finance*”.

**Committee’s Observation**

The proposal was agreed to.

78. Amend definition of “*public debt*” as follows; “*Public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national Government*”. The definition is in accordance with Article 214 (2) of the Constitution of Kenya.

**Committee’s Observation**

The proposal was agreed to.

79. Insert the following definition for “*A government security*”; “*A government security is a Treasury bill or a Treasury bond issued by the Government of Kenya either inside or outside Kenya*”.

**Committee's Observation**

The proposal was agreed to.

80. Amend clause 3 by inserting the following functions of the Authority: "(i) *Monitoring of implicit financial guarantees; (ii) Undertake domestic and foreign borrowing including receiving/acceptance of grants in accordance with the Debt and Borrowing Policy, Kenya External Resource Policy and the relevant laws; (iii) Seeking legal opinions from the Attorney General on Loan agreements and liaising with implementing agencies to ensure that conditions precedents are fulfilled in time to save government from undue costs on commitment fees; (iv) Coordinate missions and technical assistance from cooperating development partners; (v) Facilitate acquisition of work permit for external consultants; (vi) Formulating Annual borrowing plan and in consultation with the fiscal agent, prepare the annual domestic debt issuance calendar; (vii) Mobilize domestic and external resources for financing National and County Government budgetary requirements; (viii) Undertake research on public debt management to inform policy; (ix) Undertake monitoring of implementation of projects; and (x) Promote development of domestic markets for government debt securities*".

**Committee's Observation**

The proposal was agreed to.

81. Amend sub-clause 5(a) by deleting the words "*public debt management policy*" and replacing with the words "*Debt and Borrowing Policy*".

**Committee's Observation**

The proposal was agreed to.

82. Amend sub-clause 5(e) by deleting the words "*loan guarantees by national government*" in all other sections and replacing with the words "*debts guaranteed by the national Government*" to ensure inclusivity in line with the spirit of Article 214 (2) of the Constitution of Kenya.

**Committee's Observation**

The proposal was agreed to. Article 214 (2) of the Constitution of Kenya defines "*public debt*" as all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government. As such, the reference to debts as opposed to loans will ensure inclusivity.

83. Amend sub-clause 5(h) by deleting the words "*Government Public debt securities*" and replacing with the words "*Government Securities*".

**Committee's Observation**

The Clause was deleted entirely hence no need for further amendment. The clause will interfere with the role of CBK.

84. Delete sub-clause 5(i) and replace it with the following paragraph "*Participating in bilateral and multilateral negotiations relating to loans and grants with creditors and advising the Cabinet Secretary on all borrowings*".

**Committee's Observation**

The proposal was agreed to.

85. Amend sub-clause 5(r) by deleting the words "*share capital subscription*" because it is not a debt function, these are investments and should be expunged from the list of functions unless captured in the context of the debt market institutions

**Committee's Observation**  
The proposal was agreed to.

86. Amend sub-clause 5(u) by deleting the words "*public debts*" and replacing with the words "*public debt*".

**Committee's Observation**  
The proposal was agreed to.

87. Amend sub-clause 5(w) by deleting the word "*things*" and replacing with the word "*duties*".

**Committee's Observation**  
The proposal was agreed to.

88. Amend sub-clause 5(v) to read as follows; "*establishing a financial merit system to enable County Governments and their entities and National Government entities with good financial management systems and balance sheet to qualify for borrowing including issuance of domestic government bonds.*"

**Committee's Observation**  
The proposal was agreed to.

89. Amend the Bill by including grant receipt and administration. Usually loans have an element of grant to make them concessional. If grants are separated from loans then there is a risk of over-costing the loans. The grants and credits are usually intertwined to co-finance the credit.

**Committee's Observation**  
The proposal was agreed to.

90. Amend the Bill by assigning to counties the responsibility of reporting, forecasting/debt, borrowing plan to the Authority.

**Committee's Observation**  
The proposal was agreed to.

91. Amend sub-clause 7(a) by providing that the Chairperson shall be appointed by the President.

**Committee's Observation**  
The proposal was rejected. The role of Parliament in approving public appointments is necessary.

92. Amend sub-clause 7(b) to read as follows; "*the Cabinet Secretary responsible for matters relating to finance, or a representative appointed in writing by the Cabinet Secretary*".

**Committee's Observation**  
The proposal was agreed to.

93. Amend sub-clause 7(c) to read as follows; *“the Attorney-General, or a representative appointed in writing by the Attorney-General”*.

**Committee’s Observation**

The proposal was agreed to.

94. Amend sub-clause 7(d) by deleting the words *“The Governor Central Bank of Kenya (CBK)”*. This is because the Governor, CBK should not be a member of the board if CBK remains a Fiscal Agent of the government to avoid conflict of interest. The Governor CBK should be a member of the Board if the Fiscal Agency functions are performed by a separate entity or the Authority.

**Committee’s Observation**

The proposal was rejected. The Governor of CBK is necessary to provide expertise on the monetary policy especially for interest rates and any borrowing to be made.

95. Amend sub-clause 7(f) by deleting the words *“the Chief Executive Officer of the Nairobi Securities Exchange or a representative designated in writing”* and replacing with the following words *“a person with experience in debt and capital markets appointed by the Cabinet Secretary responsible for matters relating to finance”*. This is because there is more than one exchange in the market.

**Committee’s Observation**

The proposal was rejected. The Committee chose to adopt the proposal to have a representative of securities exchanges as there is a potential of having more than one exchange.

96. Amend sub-clause 7 (h) by deleting the words *“Kenya Private Sector Alliance”* and replacing with the words *“a person knowledgeable in consumer rights”*. This is because Kenya Private Sector Alliance is not a body corporate.

**Committee’s Observation**

The proposal was rejected as the Kenya Private Sector Alliance is a key player in the industry.

97. Amend the Bill by providing the following functions of the Board: *“The Board shall be responsible for: (i) Advising the Cabinet Secretary for finance on necessary policies to ensure Kenya’s debt remain sustainable; (ii) Consideration, review and approval of the policies of the Authority; (iii) Monitoring of the performance of the Authority in carrying out its functions; and (iv) The welfare, discipline and control of staff of the Authority appointed under this Act”*.

**Committee’s Observation**

The proposal was agreed to.

98. Delete paragraph 7 (3).

**Committee’s Observation**

The proposal was agreed to.

99. Amend sub-clause 12(2) by deleting the word “Office” and replacing with the word “Authority”.

**Committee’s Observation**

The proposal was agreed to. The proper reference is to the “Authority” and not “Office”. The amendment is therefore a clean-up.

100. Amend sub-clause 14(1) by inserting the words “...and who shall serve for four years and may be re-appointed for one further term”.

**Committee’s Observation**

The proposal was agreed to as it will provide for the term of office for the Director General of the Authority.

101. Delete sub-clause 15(1)(b) and replace with the following new paragraph “has a minimum of a Master’s Degree in finance, law and economic matters with relevant experience in public debt management”.

**Committee’s Observation**

The proposal was agreed to. Higher Qualification is necessary for one to serve as the Director General.

102. Delete sub-clause 15(1)(c) and replace with the following new paragraph “has not less than 15 years of working experience, 5 of which should be at senior management level” to create the flexibility expunged from 15 (1)(b) above”.

**Committee’s Observation**

The proposal was agreed to.

103. Insert the following new paragraphs 15(1)(d) and (e); “(d) demonstrated outstanding professional competence, effective leadership, managerial and administrative skills; (e) Possess effective negotiation, analytical and communication skills”.

**Committee’s Observation**

The proposal was agreed to.

104. Amend clause 16 by inserting the following new paragraph; “(g) being Secretary to the Board of the Authority”.

**Committee’s Observation**

The proposal was agreed to as it will clearly specify that the Secretary to the Board to avoid any possible conflict with the Registrar.

105. Amend sub-clause 29(b) to read as follows; “Public Debt Management Strategy of the national government over the medium term”.

**Committee’s Observation**

The proposal was agreed to.

106. Amend sub-clause 30(1) by deleting the words “In guaranteeing and borrowing money...” and replacing with the words “In borrowing and guaranteeing ...”.

**Committee's Observation**

The proposal was agreed to.

107. Amend sub-clause 30(7) by deleting the words "...proceeds of any loans raised..." and replacing with the words "...proceeds of any debt raised..."

**Committee's Observation**

The proposal was agreed to.

108. Delete sub-section 33(14) because it is in conflict with the Unclaimed Financial Assets Act unless it is exempted by an Act of Parliament.

**Committee's Observation**

The proposal was agreed to.

109. Amend sub-clause 38(1) by deleting the word "loan" and replacing with the word "debt/borrowing" to ensure both loans and securities are covered, in line with the spirit of Section 214 (2) of the Constitution of Kenya.

**Committee's Observation**

The proposal was agreed to.

110. Delete sub-clause 38(2)(c) and replace with the following paragraph; "In case of a private borrower there is sufficient security for the loan as prescribed by the regulations".

**Committee's Observation**

The proposal was agreed to. To make provision for making regulations by CS to guide implementation of the provision.

111. Amend sub-clause 38(2)(c) by defining term "sufficient security" to ensure fairness and equity in case of a private borrower requesting for guarantee.

**Committee's Observation**

The proposal was agreed to.

112. Amend clause 39 by inserting the following new paragraph "(v) to include forms of security provided by the private borrower".

**Committee's Observation**

The proposal was agreed to. This will ensure that a statement on private borrowers is also provided.

113. Insert definition of the term "government to government loan" to mean; "Government to government loan means any loan that is negotiated with or covered by any government or national government entity including any government Export Credit Agency (ECA) or investment insurance agency or financial institution that acts as an intermediary between the Government and exporters to facilitate export financing, whether by means of buyer or supplier credit, credit insurance, financial intermediary loans, guarantees, Organization for Economic Cooperation and Development (OECD) tied-aid credit or officially supported export credit depending on the mandate granted to such export credit agency by the

*relevant government for the purpose of facilitating trade and investment between the two countries.” This is in accordance with the Public Finance Management Act, 2012*

**Committee’s Observation**

The proposal was agreed to.

114. Delete sub-clause 83(1) and replace as follows *“Every person who, immediately before the commencement of this Act, was an officer or member of staff of the Public Debt Management Office, not being then under notice of dismissal or resignation may choose to be an officer or member of staff of the Authority on his/her volition”.*

**Committee’s Observation**

The proposal was agreed to. This will give officers an opportunity to choose to continue serving under the Authority. The Bill makes it mandatory by use of the term *“shall”*.

**3.8 CENTRAL BANK OF KENYA**

In their memorandum dated 9<sup>th</sup> August 2021, Dr. Patrick Njoroge, Governor CBK noted that the objective of bringing public debt back on a stronger footing is welcome but raised concern that the Bill does not provide indication of how the same would be realized but will disrupt critical elements of the country’s economic management. He submitted the following comments on the Bill:

115. Kenya’s public debt needs sustained actions on fiscal policy to contain the debt risks but the Bill does not provide any evidence of how this will come about. The growing public debt reflects a sustained fiscal deficit on account of declining revenues and increasing expenditures. The solution therefore, is a multi-year fiscal consolidating strategy that will sustainably lower the overall fiscal deficit. The strategy should be centered on strengthening revenue and tightening expenditure controls. Additionally, debt reprofiling operations that will replace the more expensive debt with debt under better terms will be helpful. To this end, the Government has presented a proposal that will put the ratio of public debt-to-GDP firmly on a downward path. The proposal envisages a multi-year effort through a combination of revenue mobilization and spending rationalization measures that will reduce the fiscal deficit from 7.8 percent of the GDP in FY 2019/20 to 3.6 percent of the GDP by FY 2024/25.
116. The Bill proposes a takeover of CBK’s role as fiscal agent and banker to Government but without indicating the perceived problems with the current arrangement. Section 45 of the CBK Act empowers CBK as fiscal agent and banker to Government and any public entity. Specifically, CBK is empowered *inter alia* to accept deposits and make payments on behalf of Government, administer domestic public debt as well as purchase, sell or hold in custody foreign exchange. The above functions are crucial to CBK’s effectiveness in its other functions and importantly, coordination of monetary and fiscal policies, managing the exchange rate, lender of last resort to the banking sector and regulator of the National Payments System. Stripping CBK of its function as a fiscal agent and banker to Government will not only weaken CBK and overall economic management but also place those responsibilities in an organ that does not have the capacity to deliver and will not improve the prospect of solving the debt problem. The decoupling with the other functions of CBK will jeopardize the other critical objectives. Further, there is significant infrastructure required to perform any of the above functions effectively, it will therefore require a lot of resources to set up the Public Debt Management Authority.

#### **Committee's Observation**

The Committee agreed with the views raised by the CBK and consequently proposed to d, h, j and K functions.

117. As proposed in the Bill, the Public Debt Management Authority will decouple debt operations from the Government's financing needs. This decoupling and resultant absence of tight coordination will weaken overall public finance management and lead to poor outcomes. For instance, Government will be uncertain about its ability to borrow to finance expenditures when revenues fall short and there will be poor coordination with regard to long term borrowing to finance. Currently, the financing operations of the National Government are linked to its debt operations and borrowing program through the annual Medium Term Debt Management Strategy. The Bill proposes this significant change but does not provide insight as to how this supports the objective of dealing with the debt problem. It is also unclear how the problems that are created by decoupling financing needs and debt operations would be resolved. It is also unclear how effectively the PDMA can prepare a public debt management strategy without coordination on the financing needs or why the current arrangement is deemed inadequate.
118. A review of practices in other countries show that debt offices are located predominantly in the ministries of finance or the central banks in a few cases. While a few countries have independent debt offices/agencies outside ministries of finance and central banks, it is largely legacy from earlier efforts to simplify more complex arrangements. Nigeria is the only African country with the Public Debt Management Office outside the Ministry of Finance which was created to consolidate and reduce the complexities of five different departments that were inefficiently involved in public debt management. Nevertheless, Nigeria's public debt has been on the rise. In contrast, public debt management in Kenya is the responsibility of National Treasury and CBK which are efficiently coordinated.
119. Clause 54 of the Bill provides that once established, the PDMA shall be independent in carrying out its functions and shall not be subject to the direction of control of any person. Whereas the Bill sets out its independence, the PDMA is subject to the Cabinet Secretary in virtually all functions relating to public debt management and administration. It is therefore unlikely to be truly independent.

#### **Committee's Observation**

The proposal was rejected. The sole reason for the Bill is to create a Debt Management Authority that is able to exercise its powers without being directed. The current Debt Management Office has not been able to achieve its intended objective given that it is domiciled at the National Treasury rendering it ineffective in debt management.

120. The Bill is silent on the statutory requirement that any funds drawn from the consolidated fund must be subject to an approval from the Office of the Controller of Budget, pursuant to Article 206(4) of the Constitution as read together with section 17(4) of the Public Finance Management Act.

#### **Committee's Observation**

The proposal was agreed to.

121. The Constitution and the PFM Act envisage and make provision for the opening of the Consolidated Fund as a solitary fund held in a single account and maintained at CBK for purposes of facilitating payments into and out of the account. As such, the Bill as drafted

attempts to give the Cabinet Secretary non-existent and unfettered powers to open other public funds accounts in contradiction with the Constitution.

**Committee's Observation**

**The proposal was agreed to.**

122. Clause 38 of the Bill gives powers to the Cabinet Secretary to guarantee loans for private borrowers. This provision could in effect transform the Government into a private lending institution or credit guarantee institution, negating best practice in so far as government loan guarantee is concerned. Additionally, clauses 30 to 34 of the Bill delegate the mandate for guarantee of debt to a third party while not providing a rationale for such a proposal.

**Committee's Observation**

**The proposal was agreed to.**

## PART FOUR

### 4 COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed THAT—

123. The Bill establishes the Public Debt Management Authority which will be charged with the mandate of managing the country's debt with a view of reducing Kenya's debt burden.
124. The Bill proposes to take away the mandate of CBK as the Government's fiscal agent and vests it in the Public Debt Management Authority. This is an anomaly as the Section 32 of CBK Act provides that the fiscal agent for all of the Government's transactions with international financial institutions of which Kenya is a member or with which Kenya is associated shall be CBK.
125. If given the independence, funding, autonomy and support that it needs, the Authority will develop strategies necessary to deal with the ballooning debt level to be in line with internationally accepted debt level to GDP.
126. In addition to setting up the Authority, measures should be put in place to reduce the fiscal deficit and to maximize revenue collection. The government should also look for other ways of raising revenue including divestiture of State-Owned Enterprises.

## PART FIVE

### 5 COMMITTEE RECOMMENDATION

127. The Committee having considered the Public Debt Management Authority Bill (*National Assembly Bill No. 36 of 2020*) recommends that the House approves the Bill with the amendments proposed in the Schedule below.

## PART SIX

### 6 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House during the Committee Stage:

#### CLAUSE 2

128. THAT, Clause 2 of the Bill be amended by—

- (a) deleting the definition of “*borrowing*” and substituting therefor the following new definition—

“*Borrowing*” means the procedures for the creation of financial liabilities by conclusion of—

- (a) loan agreements;
- (b) exchange of letters that constitute an agreement;
- (c) subscription agreements in regard to external government securities;
- (d) national government guarantee; and
- (e) advances to Government under the Central bank of Kenya Act’.

- (b) deleting the definition of “*Cabinet Secretary*” and substituting therefor the following new definition—

“*Cabinet Secretary*” means the Cabinet Secretary responsible for matters relating to finance’.

- (c) deleting the definition of “*public debt*” and substituting therefor the following new definition—

“*Public debt*” means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government’.

- (d) inserting the following new definition in its proper alphabetical sequence—

“*Government security*” means a treasury bill or treasury bond issued by the Government of Kenya either inside or outside Kenya’.

#### Justification

To provide for the appropriate definition of terms as used in the Bill

#### CLAUSE 3

129. THAT, Clause 3 of the Bill be amended—

- (a) by deleting paragraph (b) and substituting therefor the following new paragraph—

“ (b) the development of a domestic public debt and external debt market”.

- (b) in paragraph (c), by deleting the words “*market institutions*” and substituting therefor the words “*the domestic debt market*”.

- (c) by inserting a new clause immediately after sub-clause (3) —

“(3A) In fulfilling its mandate, the Authority shall be guided by the following principles—

- (a) openness, accountability, public participation including public participation of marginalised groups in public debt management matters;
- (b) transparency and prudence in carrying out public debt management; and
- (c) clear, accurate and consistent fiscal reporting of all relevant information to the public”.

### Justification

To provide for clear principles that should be adhered to in managing public debt in the country

#### CLAUSE 5

130. THAT, Clause 5 of the Bill be amended—

- (a) in paragraph (a) by deleting the words "*public debt management*" and substituting therefor the words "*debt and borrowing*".
- (b) by deleting paragraph (d).
- (c) by inserting the following new paragraphs immediately after paragraph (d)—  
"*(da) maintaining a register of all loans advanced to the National Government, county governments and their entities including loans guaranteed by the National Government and grants;*  
*(db) maintaining a debt issuance calendar; and*  
*(dc) participating in bilateral and multilateral negotiations relating to loans and grants with creditors and advising the Cabinet Secretary on all borrowing*".
- (d) in paragraph (e) by deleting the word "*loans*" appearing immediately after the word "*including*" and substituting therefor the word "*debts*".
- (e) by deleting paragraph (g).
- (f) by deleting paragraph (h).
- (g) by deleting paragraph (k).
- (h) by deleting paragraph (l).
- (i) delete paragraph (r).
- (j) in paragraph (u) by deleting the words "*public debts*".
- (k) by deleting paragraph (v) and substituting therefor the following new paragraph—  
"*(v) establishing a financial merit system to enable county governments and their entities and National Government entities with good financial management systems and balance sheet to qualify for borrowing including issuance of domestic government securities*".

### Justification

Outline the proper functions of the Authority and delete all functions that pertain to the Central Bank of Kenya such as administering domestic public debt.

#### CLAUSE 7

131. THAT, Clause 7 of the Bill be amended—

- (a) in sub-clause (1)—
  - (i) by deleting paragraph (b) and substituting therefor the following new paragraph—  
"*(b) the Cabinet Secretary responsible for matters relating to finance or a representative appointed in writing*".

- (ii) by deleting paragraph (f) and substituting therefor the following new paragraph—  
“(f) a person nominated by securities exchanges in Kenya”.

**Justification**

To include other securities exchanges in nominating a person to the Board.

- (iii) by deleting paragraph (g)

- (iv) by deleting paragraph (h) and substituting therefor the following new paragraph—  
“(h) one person nominated through a competitive process by the following institutions—  
(i) the institute of Certified Public Accountants of Kenya;  
(ii) the Kenya Bankers Association;  
(iii) the Kenya Private Sector Alliance; and  
(iv) the Law Society of Kenya”.

**Justification**

To provide a process of how the institutions will nominate a person to the Board.

- (v) by inserting the following paragraphs immediately after paragraph (h)—  
“(ha) a person nominated by the Council of Governors; and  
(hb) the Controller of Budget”.

**Justification**

To provide for the Controller of Budget who is responsible for the issuance of authority to debit the Consolidated Fund to settle government debt.

- (b) by inserting a new sub-clause immediately after sub-clause (1) —  
“(1A) In the case of equal votes on any question at a meeting of the Board, the Chairperson shall have a casting vote”.
- (c) in sub-clause (2), by deleting the words “*economics or law*” and substituting therefor the words “*economics, law, accounting, finance or any other relevant degree*” in paragraph (b);

**Justification**

To include other educational qualifications that are relevant in public debt management.

- (d) by deleting sub-clause (3).

**CLAUSE 9**

132. THAT, Clause 9 of the Bill be amended by deleting the expression “*section 8 (1) (h)*” and substituting therefor “*section 7 (1) (h)*”.

**CLAUSE 11**

133. THAT, Clause 11 of the Bill be amended by inserting the following new sub clause immediately after sub clause (2) —  
“(3) The Board may co-opt such person or public officer whose knowledge and experience is necessary for the performance of the functions of the Board”.

**CLAUSE 12**

134. **THAT**, Clause 12 of the Bill be amended in subsection (2) by deleting the word “office” and substituting therefor the word “authority”.

**CLAUSE 14**

135. **THAT**, Clause 14 of the Bill be amended by inserting the following new sub clause immediately after sub clause (2)-  
“(3) *The Director General shall hold office for a period of four years, renewable once*”.

**CLAUSE 15**

136. **THAT**, Clause 15 (2) of the Bill be amended by deleting paragraph (b) and (c) and substituting therefor the following new paragraphs-
- (b) *“has at the minimum a Master’s Degree in finance, law and economic matters with relevant experience in public debt management;*
  - (c) *has not less than fifteen years of working experience, five of which should be at senior management level;*
  - (d) *demonstrated outstanding professional competence, effective leadership, managerial and administrative skills; and*
  - (e) *possess effective negotiation, analytical and communication skills”*.

**CLAUSE 16**

137. **THAT**, the Bill be amended in clause 16 by inserting the following new paragraph immediately after paragraph (e)-  
“(ea) *risk management*”

**CLAUSE 18**

138. **THAT**, the Bill be amended in Clause 18 –
- (a) by deleting the word “who” appearing in sub clause (2);
  - (b) by inserting the following new sub-clauses immediately after sub-clause (2)-  
“(2a) *The Registrar shall be responsible to the Director General in the performance of his or her functions.*  
  
(2b) *A person shall be qualified for appointment as the Director General, if that person-*  
    - (a) *holds a relevant degree from a university recognized in Kenya; and*
    - (b) *has at least five years’ experience”*.
  - (c) by inserting the following new sub-clause immediately after sub-clause (3)-  
“(3a) *The public debt register shall include-*  
    - (a) *details on the contractual terms of the loans, principal amount, interest, repayment terms, collateral;*
    - (b) *purpose and use of loans including comprehensive list of projects, programmes, investments, status of implementation, implementing agency; and*
    - (c) *report on project, programme, investment social, economic, environment impact assessment, value for money”*.
  - (d) in sub clause (4), by inserting the word “annually” immediately after the word “publicized”.

**CLAUSE 33**

139. THAT, the Bill be amended in clause 33 by-

(a) deleting sub clause (11);

(b) deleting the words "*shall return the uncollected amount to the National Exchequer Account to form part of the Consolidated Fund in accordance with regulations.*" and substituting therefor the words "*shall forward the uncollected amounts to the Unclaimed Financial Assets Authority*" in sub-clause 14.

**CLAUSE 42**

140. THAT, Clause 42 of the Bill be deleted.

**CLAUSE 43**

141. THAT, Clause 43 of the Bill be deleted.

**CLAUSE 52**

142. THAT, Clause 52 of the Bill be amended in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (e)-

*"(f) standard terms and conditions of outstanding bonds as of other debt instruments employed, including, if applicable, collective action clause;*

*(g) risk management framework to identify and manage the tradeoff between expected cost and risk in government debt portfolio;*

*(h) a list of all the proceeds of the loans raised and the intended and or actual use of the said proceeds, and*

*(i) details on the costs, interests, economic outlook situation and risk factors including macro-fiscal, political and security risks on all the loans held or intended to be acquired by the national government".*

**CLAUSE 55**

143. THAT, Clause 55 of the Bill be deleted.

**Justification**

The proposed deletion of clauses 42, 43 and 45 is to reflect the role of the CBK. The Authority may be usurping the Role of CBK if granted through this Bill.

SIGNED.......... DATE. 22<sup>nd</sup> Feb 2022.

HON. GLADYS WANGA, CBS, MP  
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

## ANNEXURES

1. Adoption Schedule
2. Minutes of the 11<sup>th</sup> Sitting
3. Minutes of the 87<sup>th</sup> Sitting
4. Minutes of the 62<sup>nd</sup> Sitting
5. Newspaper Advert

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

ADOPTION SCHEDULE

REPORT ON THE CONSIDERATION OF THE PUBLIC DEBT MANAGEMENT  
AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2020)

DATE:

| NAME   | SIGNATURE |
|--|-----------|
| 1. HON. GLADYS WANGA, CBS, MP - CHAIRPERSON      |           |
| 2. HON. ISAAC W. NDIRANGU, MP - VICE-CHAIRPERSON |           |
| 3. HON. JIMMY N. O. ANGWENYI, MGH, MP            |           |
| 4. HON. CHRISTOPHER OMULELE, MP                  |           |
| 5. HON. SHAKEEL SHABBIR AHMED, CBS, MP           |           |
| 6. HON. DANIEL EPUYO NANOK, MP                   |           |
| 7. HON. DR. CHRISTINE OMBAKA, MP                 |           |
| 8. HON. DAVID MWALIKA MBONI, MP                  |           |
| 9. HON. FRANCIS KURIA KIMANI, MP                 |           |
| 10. HON. ANDREW ADIPO OKUOME, M.P                |           |
| 11. HON. STANLEY MUIRURI MUTHAMA, MP             |           |
| 12. HON. JOSHUA KANDIE, MP                       |           |
| 13. HON. JOSEPH M. OYULA, MP                     |           |
| 14. HON. EDITH NYENZE, MP                        |           |
| 15. HON. CATHERINE WARUGURU, MP                  |           |
| 16. HON. JAMES GICHUHI MWANGI, MP                |           |
| 17. HON. (PROF.) MOHAMUD SHEIKH MOHAMED, MP      |           |
| 18. HON. PETER LOCHAKAPONG, MP                   |           |
| 19. HON. QALICHA GUFU WARIO, MP                  |           |

**MINUTES OF THE 11<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AND VIRTUALLY ON THURSDAY, 17<sup>TH</sup> FEBRUARY 2022 AT 10:00 A.M.**

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**PRESENT**

1. Hon. Gladys Wanga, CBS, MP - Chairperson
2. Hon. Isaac W. Ndirangu, MP - Vice-Chairperson
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Stanley M. Muthama, MP
12. Hon. Edith Nyenze, MP
13. Hon. Catherine Waruguru, MP
14. Hon. James Gichuhi Mwangi, MP
15. Hon. Peter Lochakapong, MP
16. Hon. Qalicha Gufu Wario, MP

**ABSENT WITH APOLOGY**

1. Hon. Daniel E. Nanok, MP
2. Hon. (Dr.) Christine Ombaka, MP
3. Hon. (Prof.) Mohamud Sheikh Mohamed, MP

**IN ATTENDANCE**

**SECRETARIAT**

1. Ms. Leah Mwaura - Principal Clerk Assistant II/Head of Secretariat
2. Ms. Laureen Wesonga - Clerk Assistant II
3. Mr. Luka Mutua - Serjeant-At-Arms II
4. Ms. Terry Ondiko - Fiscal Analyst III
5. Mr. George Ndenjeshe - Fiscal Analyst III
6. Ms. Carol Waweru - Hansard Officer III
7. Ms. Caroline Musyoka - Hansard Officer III
8. Ms. Christine Maeri - Audio Officer

**NATIONAL TREASURY**

1. Julius Muia, PhD, CBS - Principal Secretary
2. Mr. Benard Ndung'u - Director General, Accounting Services
3. Eng. Stanley Kamau - Director General, PIPM
4. Mr. Musa Kathanje
5. Ms. Damaris Onsomu - Senior Principal Finance Officer
6. Mr. Maurice Oray - Deputy Commissioner, KRA
7. Mr. Alex Mwangi - Deputy Commissioner, KRA
8. Mr. John Njera - Director of Planning
9. Mr. Silas Muyela - Deputy Director, Budget
10. Mr. Livingstone Bumbe - Deputy Director
11. Ms. Miriam Musyoki - ADB, NT
12. Mr. Edward Muchai - Chief Manager Finance, KRA

- |                         |   |                                    |
|-------------------------|---|------------------------------------|
| 13. Mr. Dolton Mbanu    | - | Ag. Chief Manager, KRA             |
| 14. Ms. Jemimah Matu    | - | Finance Manager, KRC               |
| 15. Mr. Jack Owuor      | - | Principal Finance Officer          |
| 16. Ms. Faith Kiptis    | - | Principal Finance Officer          |
| 17. Ms. Stella Osoro    | - | Principal Economist                |
| 18. Ms. Isabella Kogei  | - | Parliamentary Liaison Officer      |
| 19. Mr. George Muraguri | - | KRA                                |
| 20. Ms. Calinael Kianga | - | Parliamentary Liaison Officer, KRA |

## AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. Meeting with the National Treasury to consider Supplementary Estimates No. 1 for FY 2021/22
5. Adoption of the Report on the Consideration of the Public Debt Management Authority Bill, 2020
9. Any Other Business
10. Adjournment/Date of Next Meeting

**MIN.NO.NA/F&NP/2022/54: COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 10.20 a.m. and a prayer was said. The chairperson called for introduction of those present before inviting the PS to present National Treasury's submission on the Supplementary Estimates No. 1 for FY 2021/22.

**MIN.NO.NA/F&NP/2022/55: CONFIRMATION OF MINUTES**  
Agenda deferred.

**MIN.NO.NA/F&NP/2022/56: CONSIDERATION OF SUPPLEMENTARY ESTIMATES NO. 1 FOR FY 2021/22 WITH THE NATIONAL TREASURY**

The PS submitted that the revised budget was proposing to revise the National Treasury's budget from KSh. 157,743.43 million to KSh. 170,236.02 million.

The reallocations in the National Treasury's budget are as follows:

## RECURRENT

### Increases

1. Use of Goods and Services
  - i. Insurance to civil servants (NHIF) KSh. 3,876.2 million;
  - ii. Training expenses for newly recruited auditors and accountants KSh. 40 million;
  - iii. Hospitality supplies and services to meet the cost of meetings especially budget preparation activities including development of sector reports and sector hearings KSh. 57 million; and
  - iv. Office and general supplies and services majorly to support printing of the budget KSh. 40 million.
2. Grants and other Transfers: KSh. 6,999.10 million which includes: Budget reserve and other transfers of KSh. 2,690 million; Kenya Revenue Authority – KSh. 3,875.76 million.
3. Other Recurrent: Acquisition of fixed and capital assets at KSh. 164 million.

## Reductions

1. **Compensation to employees:** The allocation of salary adjustments to civil servants of KSh. 6.7 billion has been distributed to various ministries to cater for salary adjustments and realignment of the payroll.
2. **Use of goods**
  - i. Foreign travel and subsistence and other transport costs had a reduction of KSh. 34.3 million due to COVID-19 restrictions;
  - ii. Domestic travel and subsistence and other transport reduced by KSh. 9.2 million due to COVID restrictions on travel;
  - iii. Security operations (leasing of police motor vehicles) KSh. 480 million;
  - iv. Communication supplies and services KSh. 12 million; and
  - v. Printing and advertising KSh. 11.1 million.

## DEVELOPMENT

### Increases

1. Contingency Fund KSh. 3,700 million;
2. Construction of Naivasha ICD (Kenya Railway Line) KSh. 1,500 million;
3. Kenya Financing Locally Led Climate Action Programme (FLLCoA) KSh. 517 million;
4. Financial Sector Support Project (FSSP) KSh. 1,816.35 million;
5. Implementation of e-procurement KSh. 300 million (GoK); and
6. Strategic Investment in Public Enterprises (Kenya Airways) KSh. 20,000 million.

### Decreases

1. Kenya Affordable Housing Project KSh. 2,800 million;
2. Dongo Kundu Special Economic Zone KSh. 4,980 million; and
3. Mombasa Port Development Project KSh. 7,060 million.

### New Project

Communication and Economic Recovery Support Project KSh. 32 million.

The PS also provided responses to the issues that had been raised by Members in the meeting where the Committee was briefed on the Supplementary Estimates No. 1 for FY 2021/22 by the Parliamentary Budget Office.

## DELIBERATIONS

1. **National Government-Constituency Development Fund:** The PS informed the Committee that the NG-CDF arrears for FY 2011/12, 2013/14 and 2014/15 will be factored in the Supplementary Estimates No. 1 of 2021/22. The disbursement of the arrears to the constituencies will be done after completing the disbursement of the NG-CDF allocation for the current FY in mid-April.

The National Treasury has been disbursing KSh. 2 billion to constituencies on a weekly basis for the CDF allocation for FY 2021/22. The balance as at 17<sup>th</sup> February 2022 was KSh. 18 billion which will be cleared by mid-April.

2. **Financial Sector Support Project:** The PS stated that some funds under the FSSP had already been spent and the budgetary allocation will be absorbed by 30<sup>th</sup> June 2022. The Programme is partly funded by the World Bank and is aimed at strengthening the capital markets. The Programme has a deadline of 30<sup>th</sup> June with an extension of four months.

3. **Infrastructure Finance and Public Private Partnership Project (IF PPP):** The allocation of KSh. 300 million to the programme will cater for implementation of the Public Private Partnerships Act and to fund activities of the PPP Directorate. The Directorate had made a budgetary request of KSh. 3 billion but the National Treasury approved only 10% of their request.
4. **Credit Guarantee Scheme:** The Scheme was launched in December 2020. Seven banks were recruited into the scheme and the National Bank is working on recruiting more banks. Plans are in place to transition the Scheme into a standalone company in order to attract financing from development partners.
5. **Leasing of Motor Vehicles:** The National Treasury had made savings of KSh. 480 million on the Programme yet some regions in the country did not have enough security vehicles. The PS informed the meeting that the National Treasury responds to requests made by ministries. He stated that the savings made were because they had negotiated for favourable prices.
6. **Allocation to Kenya Railways Corporation:** There was no allocation for Marine School and the Kisumu-Butere meter gauge railway in the Supplementary Estimates. The Kisumu-Butere railway line rehabilitation required KSh. 575 million and there were pending bills of KSh. 465 million at the Marine School.

#### FINANCIAL RECOMMENDATIONS

The Committee recommended the following re-allocations:

1. **Commission on Revenue Allocation – KSh. 14.41 million**
  - i. Personnel Emoluments: addition of **KSh. 0.6 million**;
  - ii. Printing and dissemination of OSR and inequality reports: addition of **KSh. 3 million**;
  - iii. Conferencing and consultancy: addition of **KSh. 3.32 million**;
  - iv. Office and General Supplies: addition of **KSh. 1.5 million**; and
  - v. Request for A-i-A: addition of **KSh. 5.99 million**.
2. **State Department for Devolution – KSh. 450 million**
  - i. Construction of Kisumu Convention Centre: addition of **KSh. 200 million**; and
  - ii. Pending bill for Spencon (K) Limited: addition of **KSh. 250 million**
3. **State Department for Planning – 5,306.5 million**
  - i. MTP IV and its 25 Sector Plans: addition of **KSh. 190 million**;
  - ii. National Government Planning Offices at the county level: addition of **KSh. 140 million**; and
  - iii. NG-CDF arrears: addition of **KSh. 4,976.5 million**.
4. **National Treasury – KSh. 700 million**
  - i. Marine School: addition of **KSh. 200 million**;
  - ii. Rehabilitation of the Kisumu-Butere rail: addition of **KSh. 300 million**; and
  - iii. Naivasha ICD: addition of **KSh. 200 million**.

MIN.NO.NA/F&NP/2022/57:

ADOPTION OF THE REPORT ON THE  
CONSIDERATION OF THE PUBLIC DEBT  
MANAGEMENT AUTHORITY BILL, 2020

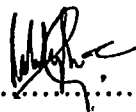
The Report on the Consideration of the Public Debt Management Authority Bill, 2020 was adopted having been proposed by Hon. Peter Lochakapong, MP and seconded by Hon. Edith Nyenze, MP.

MIN.NO.NA/F&NP/2022/58:

ADJOURNMENT/DATE OF NEXT  
MEETING

There being no other business to deliberate on, the meeting was adjourned at 12.57 p.m. The next meeting will be held on notice.

HON. GLADYS WANGA, CBS, MP  
(CHAIRPERSON)

SIGNED.....<sup>for</sup>  ..... DATE. 22<sup>nd</sup> Feb 2022 .....

**MINUTES OF THE 87<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD VIRTUALLY ON MONDAY, 29<sup>TH</sup> NOVEMBER 2021 AT 10:00 A.M.**

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**PRESENT**

- |  |   |                  |
|--|---|------------------|
| 1. Hon. Gladys Wanga, CBS, MP          | - | Chairperson      |
| 2. Hon. Isaac W. Ndirangu, MP          | - | Vice-Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP     |   |                  |
| 4. Hon. Christopher Omulele, CBS, MP   |   |                  |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP |   |                  |
| 6. Hon. Daniel E. Nanok, MP            |   |                  |
| 7. Hon. (Dr.) Christine Ombaka, MP     |   |                  |
| 8. Hon. Andrew A. Okuome, MP           |   |                  |
| 9. Hon. David M. Mboni, MP             |   |                  |
| 10. Hon. Joshua C. Kandie, MP          |   |                  |
| 11. Hon. Edith Nyenze, MP              |   |                  |

**ABSENT WITH APOLOGY**

1. Hon. Francis K. Kimani, MP
2. Hon. Joseph M. Oyula, MP
3. Hon. Stanley M. Muthama, MP
4. Hon. Catherine Waruguru, MP
5. Hon. James Gichuhi Mwangi, MP
6. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
7. Hon. Peter Lochakapong, MP
8. Hon. Qalicha Gufu Wario, MP

**IN ATTENDANCE**

**SECRETARIAT**

- |                        |   |  |
|------------------------|---|--|
| 1. Ms. Leah Mwaura     | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Laureen Wesonga | - | Clerk Assistant II                         |
| 3. Ms. Brigitta Mate   | - | Legal Counsel II                           |
| 4. Mr. Eugene Luteshi  | - | Audio Officer                              |
| 5. Ms. Hannah Mwangi   | - | Intern                                     |

**AGENDA**

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. Meeting to:
  - i. Consider the Public Debt Management Authority Bill, 2020 clause by clause and to adopt the report on the consideration of the Bill; and
  - ii. Adopt the report on the consideration of the Petition by Hon. Florence Mutua, MP regarding devolution of pension services.
5. Any Other Business
6. Adjournment/Date of Next Meeting

**MIN.NO.NA/F&NP/2021/411: COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 10:25 a.m. and a prayer was said. The chairperson called for introduction of those present before welcoming the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2021/412:  
Agenda deferred

## CONFIRMATION OF MINUTES

MIN.NO.NA/F&NP/2021/413:

## CLAUSE BY CLAUSE CONSIDERATION OF THE PUBLIC DEBT MANAGEMENT AUTHORITY BILL, 2020

The meeting considered the Bill and agreed as follows:

### Clause 5

Amend by deleting paragraphs d, g, h, j and k

### Justification

They are functions of the Central Bank of Kenya

### Clause 7

Amend as follows:

- 1 (b) Amend to read as follows; *"the Cabinet Secretary responsible for matters finance or a representative nominated in writing"*.
- (c) insert the words *"or a representative designated in writing"*
- (d) insert the words *"or a representative designated in writing"*
- (f) delete and insert the following paragraph, *"one person nominated by the securities exchange in the country"*.
- (g) delete
- (h) amend by including the Council of Governors in the list, providing for the procedure of nomination and providing for two thirds gender representation

Include the Controller of Budget in the list.

(2) Amend by including finance, accountancy and other related fields in the list.

(3) Amend by deleting reference to paragraph (h).

Clause 33: delete

MIN.NO.NA/F&NP/2021/414:

## ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PETITION BY HON. FLORENCE MUTUA, MP REGARDING DEVOLUTION OF PENSION SERVICES

The Committee considered the report on the Petition by Hon. Florence Mutua, MP regarding devolution of pension services and adopted it having been proposed by Hon. Jimmy Angwenyi, MGH, MP and seconded by Hon. Edith Nyenze, MP.

MIN.NO.NA/F&NP/2021/415:

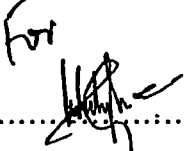
## ANY OTHER BUSINESS

Members were informed that the Committee will have stakeholder engagement on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021 and the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021 on Tuesday 30<sup>th</sup> November 2021 and Wednesday 1<sup>st</sup> December 2021 at Hilton Garden Inn Hotel.

MIN.NO.NA/F&NP/2021/416: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 11.49 a.m. The next meeting will be on Tuesday, 30<sup>th</sup> November 2021 at 9.00 a.m.

HON. GLADYS WANGA, CBS, MP  
(CHAIRPERSON)

SIGNED.....*For* .....DATE *8<sup>th</sup> Dec 2021*.....

MINUTES OF THE 62<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN PAVILLION CONFERENCE ROOM, HILTON GARDEN INN HOTEL ON THURSDAY, 29<sup>TH</sup> JULY 2021 AT 2:30 P.M.

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**PRESENT**

1. Hon. Isaac W. Ndirangu, MP - Vice Chairperson
2. Hon. Jimmy O. Angwenyi, MGH, MP
3. Hon. Christopher Omulele, CBS, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Joshua C. Kandie, MP
7. Hon. Edith Nyenze, MP
8. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
9. Hon. Qalicha Gufu Wario, MP

**ABSENT WITH APOLOGY**

1. Hon. Gladys Wanga, CBS, MP - Chairperson
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. (Dr.) Christine Ombaka, MP
5. Hon. Francis K. Kimani, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Stanley M. Muthama, MP
8. Hon. Catherine Waruguru, MP
9. Hon. James Gichuhi Mwangi, MP
10. Hon. Peter Lochakapong, MP

**INATTENDANCE**

**SECRETARIAT**

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Chelang'a Maiyo - Research Officer II
5. Mr. John Njoro - Serjeant-At-Arms
6. Mr. Collins Mahamba - Audio Officer
7. Mr. Vitalis Augo - Office Assistant
8. Ms. Hannah Mwangi - Intern

**AGENDA**

1. Prayers
2. Communication from the Chairperson
3. Clause by clause consideration of the Public Debt Management Authority Bill, 2020
4. Any Other Business
5. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/287: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.25 p.m. and a prayer was said. The Chairperson then welcomed the Legal Counsel to take the Committee through clause by clause consideration of the Bill.

MIN.NO.NA/F&NP/2021/288:  
Agenda deferred

CONFIRMATION OF MINUTES

MIN.NO.NA/F&NP/2021/289:

CLAUSE BY CLAUSE CONSIDERATION OF  
THE PUBLIC DEBT MANAGEMENT  
AUTHORITY BILL, 2020

The committee deliberated and agreed as follows on the Bill:

Clause 2

1. Amend definition of "*borrowing*" as per National Treasury's proposal.
2. Amend definition of "*Cabinet Secretary*" as per National Treasury's proposal.
3. Amend definition of "*public debt*" as per National Treasury's and the Institute of Social Accountability's proposal.
4. Amend definition of "*government security*" as per National Treasury's proposal.

Clause 3(b): Amend by deleting and inserting Kenya Bankers Association's proposal.

The Committee observed that the Bill substantially affects the mandate of CBK and therefore resolved to shelve its consideration until they get comments from CBK.

MIN.NO.NA/F&NP/2021/290:

ADJOURNMENT/DATE OF NEXT  
MEETING

There being no other business to deliberate on, the meeting was adjourned at 5.22 p.m. The next meeting will be held on Friday, 30<sup>th</sup> July 2021 at 9.30 a.m.

HON. GLADYS WANGA, CBS, MP  
(CHAIRPERSON)

SIGNED..........DATE.....25/8/2021.....

Queries Teachers, learners, parents, education officials, the civil society, and religious leaders made phone calls to

# Here's all you need to know about new school curriculum

BY DAVID MUCHUNGUH

A day after President Uhuru Kenyatta unveiled the Competency-Based Curriculum (CBC), education stakeholders spent a better part of yesterday trying to understand how it will change school.

Teachers, learners, parents, education officials, the civil society, and religious leaders made phone calls to the Nation newsroom, seeking information.

Here is a sample of the most frequently asked questions and answers, as adopted from the report by the taskforce on implementation of CBC.

**How many years will learners spend at each level, and school in total?**

Children will spend two years in pre-primary, six years in primary and six years in secondary school.

Those who proceed to universi-

ty will study for three years while those who join certificate, diploma and technical courses will study for varied periods, depending on the programme.

The cumulative years spent in school will also be reduced by one, from 18 under 8-4-4, to 17 in the new 2-6-3-3-3 structure.

**What will happen at the end of every level?**

At the end of pre-primary 2, the learners will be assessed internally, but will all transition to Grade 1 in primary school.

Primary school has been divided into lower (Grades 1,2,3) and upper (Grades 4,5,6).

At Grade 3, they will undertake a school-based national assessment to monitor their learning, but this will not be used for ranking or placement as they all proceed to Grade 4, 5 and 6.

At each of these grades, learners will be assessed in tests weighted at

20 per cent each year.

At Grade 6, learners will undertake a national assessment that will be weighted at 40 per cent to add on to the 60 per cent scored in the previous years.

The performance of the learners at this level and their interests will be used to place them in junior secondary school (JSS), which will constitute Grades 7, 8 and 9. All the current secondary schools in the country will have a JSS section.

Learners will again be formatively assessed with a summative assessment at the end of JSS (Grade 9). The scores and learners' preferences will be used for placement in senior secondary school (SSS) where they will follow one of their preferred pathways.

**Will KCPE and KCSE exams be retained?**

No. The exams will cease to exist as we know them. KCPE will be replaced by the assessment de-

scribed above which is a combination of formative and summative tests.

Teachers will play a crucial role in the administration and scoring of the formative assessments.

It is only the summative assessment, that may resemble KCPE.

It is still not yet decided what the examination and certificate awarded at the end of primary school will be named.

**Will learners transition to secondary school younger than under 8-4-4?**

Yes. It is expected that the entry age for secondary school will be lowered from the current average of 14 years to 12 years.

However, they will spend six years in secondary school rather than the current four.

**What will be learnt in the three pathways in senior secondary, and which schools will offer them?**

The pathways are: Arts and Sports Science, Social Sciences and Science Technical Engineering and Mathematics (STEM).

Each of the pathways will have various individual subjects attached to it.

The following tracks are under the Arts and Sports Science Pathway: Sports Science, Performing Arts, and Visual Arts.

Under the Social Sciences Pathway, learners will choose between

two tracks: Languages and Literature and Humanities and Business Studies.

Under STEM, learners will choose from the following tracks: Pure Sciences, Applied Sciences, Technical and Engineering and Careers and Technology Studies.

Secondary schools that can host all three pathways will be identified and their infrastructural capacity enhanced.

**What is different in how learners are taught in 8-4-4 and in CBC?**

The main difference is that 8-4-4 focuses more on mastery of content, which encourages rote learning, while CBC focuses on learners' performance of skills and competencies that are observable.

**What competencies will be taught/learned?**

There are seven core competencies in CBC—communication and collaboration, critical thinking and problem solving, imagination and creativity, citizenship, learning to learn, self-efficacy and digital literacy.

**Which countries were used to benchmark the CBC?**

Canada and Israel are Kenya's model countries. Comparative studies were done against Singapore, select states in the US and the UK, Japan, Germany, Netherlands, Indonesia, South Korea, Rwanda, South Sudan.



**What learning areas will be under CBC?**

There will be the following learning areas in pre-primary: Language Activities, Mathematical Activities, Environmental Activities, Psychomotor and Creative Activities, Religious Education Activities and Pre-Braille Activities.

Digital literacy and pertinent and contemporary issues are integrated across all learning areas.

The learning areas in lower primary are: Literacy Activities/Braille Literacy Activities, Kiswahili Language Activities/Kenya Sign Language for learners who are deaf, English Language Activities, Mathematical Activities, Environmental Activities, Hygiene and Nutrition Activities, Religious Education Activities, Movement and Cre-

## REPUBLIC OF KENYA



### TWELFTH PARLIAMENT (FIFTH SESSION) THE NATIONAL ASSEMBLY

#### INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA

(Article 118 (1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders)

In the matters of consideration by the National Assembly:-

1. The Public Procurement and Asset Disposal (Amendment) (No. 2) Bill (National Assembly Bill No. 34 of 2020)
2. The Public Debt Management Authority Bill (National Assembly Bill No. 36 of 2020)

#### SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that: "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order (S.O.) 127(3) provides that "the Departmental Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Public Procurement and Asset Disposal (Amendment) (No. 2) Bill (National Assembly Bill No. 34 of 2020) introduced by Hon. Richard Tongi, MP, seeks to amend the Public Procurement and Asset Disposal Act (No. 33 of 2015) to provide that all foreign tenders participating in international tenders shall source all their locally available supplies from citizen contractors. The purpose of the amendment is to promote the growth of local industries and contractors.

The Public Debt Management Authority Bill (National Assembly Bill No. 36 of 2020) introduced by Hon. Sakwa Bunyasi, MP, seeks to establish the Public Debt Management Authority as an independent body to manage the public debt in the country at both levels of government. The country's debt is rising at an alarming level and there is need to manage the same to protect the current and future generations. The Office shall succeed the Public Debt Management Office.

The Bills have undergone First Reading pursuant to Standing Order 127(3) and stand committed to the Departmental Committee on Finance and National Planning for consideration and thereafter report to the House.

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations that they may have on the said Bills. The Bills can be accessed from the parliamentary website at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi, or emailed to [clerk@nparliament.go.ke](mailto:clerk@nparliament.go.ke); to be received on or before Wednesday, 17<sup>th</sup> February, 2021 at 5:00 pm.

MICHAEL R. SIALAI, CBS  
CLERK OF THE NATIONAL ASSEMBLY

## REPUBLIC OF KENYA



### THE PARLIAMENTARY SERVICE COMMISSION

VACANCY NO: PPP/PSC/

#### POSITION ADVERTISED: PARLIAMENTARY PUPILLAGE PROGRAMME, 2021

The Parliament of Kenya is one of the institutions set out in the Council of Legal Education (Admission) Regulations, 2007 as an Institution in which students of the Kenya School of Law may undertake their Pupillage Programme. The Parliamentary Service Commission now seeks to engage twelve (12) highly motivated Kenyans to undertake their Pupillage Programme with the Parliament of Kenya for a period of six (6) months commencing May, 2021.

The successful pupils shall be selected from applicants who-

- (a) possess at least a Bachelor of Laws (LL.B) degree (Upper Second Class Honors) from a recognized University;
- (b) are admitted to the Kenya School of Law and be sitting for the Kenya School of Law exams in April 2021;
- (c) demonstrate good verbal and written communication skills in both English and Kiswahili, as evidenced by a score of at least a "B" plain grade in both subjects;
- (d) demonstrate a proactive attitude and willingness to learn and to be part of a team handling challenging tasks within specific timelines; and
- (e) are computer literate.

Interested and qualified persons are requested to apply **ONLINE ONLY** through the Parliamentary Service Commission website, [www.parliament.go.ke/vacancies](http://www.parliament.go.ke/vacancies) so as to reach the undersigned on or before **26<sup>th</sup> February 2021**.

Please note:

Applications are strictly online and applications through the post office, email or hand delivery will not be accepted.

J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE/SECRETARY  
PARLIAMENTARY SERVICE COMMISSION