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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026


DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL
PLANNING

REPORT ON:

THE CONSIDERATION OF THE NATIONAL INFRASTRUCTURE
FUND BILL, 2026 (NATIONAL ASSEMBLY BILLS NO. 1 OF 2026)

VOLUME 2

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DATE: 03 MAR 2026	DAY: Tuesday
TABLED BY:	Hon. FCPA Kuria Kimani (Chairperson, Finance and National Planning Committee)
CLERK-AT THE-TABLE:	Miriam Mado



**PRESENTATION TO THE NATIONAL ASSEMBLY DEPARTMENTAL
COMMITTEE ON FINANCE AND NATIONAL PLANNING ON
STAKEHOLDER ENGAGEMENT ON THE NATIONAL
INFRASTRUCTURE FUND BILL (NATIONAL ASSEMBLY BILL NO. 1 OF
2026)**

24 February, 2026

The Chairperson, the National Assembly Departmental Committee on Finance and National Planning, Hon. FCPA Kimani Francis Kuria, MP, CBS

Honorable Members of the Committee,

A. Appreciation

1. I thank the National Assembly Departmental Committee on Finance and National Planning for granting my Office the opportunity to provide feedback on the **Infrastructure Fund Bill, 2026**. This Bill introduces a transformative framework for financing national priorities, and as such, this stakeholder engagement is critical in order to ensure that the Bill's framework upholds the highest standards of accountability and protects the taxpayer from unforeseen financial exposure.
2. I also appreciate Parliament for the support accorded to the Office of the Auditor-General, not only through consideration of our audit reports, but also advocating for strengthening of the independence and adequate resourcing of the Office.

B. Our Relationship with Parliament

3. Article 229(7) of the Constitution requires the Auditor-General to submit audit reports to Parliament and the relevant County Assemblies. Further, Article 229(8) of the Constitution requires Parliament or County Assemblies to debate and consider the report of the Auditor-General and take appropriate action. Audit reports are committed to the Committees of Parliament or County Assemblies for deliberation and adoption by Parliament or respective County Assembly. The Committees, therefore are the primary audience of the Auditor-General.
4. Parliamentary Committees and the Auditor-General have a mutual dependency and symbiotic relationship. The Committees depend on the Auditor-General to provide accurate and insightful reports on the management of public resources and also reports on any particular matter that Parliament may request, as guided by Article 254(2) of the Constitution. The Auditor-General depends on the

Committees and Parliament to enforce audit recommendations and follow-up on implementation to ensure appropriate action is taken.

C. Discussion on the Infrastructure Fund Bill, (National Assembly Bill No. 1 of 2026)

**Honorable Chair
Honorable Members**

5. I will now delve into the discussion on the Infrastructure Fund Bill. My Office has subjected the provisions of the Bill to stringent scrutiny, identifying Clauses that may create oversight gaps. Consequently, I wish to bring to the attention of the Committee the following Clauses of the Bill for discussion: -

Clause of the Bill	Observations
<p>Clause 5: Establishment of the Fund</p>	<p>Lack of Alignment with other Supporting Laws</p> <p>(i) While the Fund can borrow money, the lack of explicit alignment with Article 206 of the Constitution and the Public Finance Management Act Cap 412A, (2012) may lead to loopholes in the management and oversight of public funds.</p> <p>(ii) There is need for the Bill to be read together with the Public Finance Management Act Cap. 412A, 2012 on matters of finance and to align with the provisions of the Investment Promotion Act (Cap 485B) on matters relating to investment policy.</p>
<p>Clause 6: Board of Directors It vests the management of the Fund to independent Board of Directors.</p>	<p>(i) There may be need to have some non-independent Directors, with knowledge of matters on national infrastructure development, in addition to the Principal Secretary to The National Treasury.</p> <p>(ii) However, with the exception of the PS, The National Treasury, there is no requirement for the other Directors to have expertise in infrastructure development, including Finance, Economics, investment banking and other related areas of expertise.</p>

Clause of the Bill	Observations
<p>Clause 12: Powers of the Board</p> <p>It gives powers to the Board that includes investment in projects by way of equity, debt and acquisition of security</p>	<p>Lack of Alignment with the Public Procurement and Asset Disposal Act, Cap.412C, 2015</p> <p>(i) Clause 12 gives the Board broad powers to invest in projects by way of equity and debt, surrender and dispose, but fails to be specific on procedural safeguards, specifically on competitive bidding or public auction, as required under the provisions of the Public Procurement and Asset Disposal Act, Cap. 412C, 2015, potentially enabling inherent governance risks upon implementation.</p> <p>Contradiction of Object and Content</p> <p>(i) While the object of the Bill at Clause 4 is to reduce reliance on public debt for financing, Clause 12 contradicts this objective by prioritizing public debt as one of the key financing strategies.</p>
<p>Clause 13. Remuneration</p> <p>It provides that the remuneration of Directors shall be governed by the remuneration structure and guidelines issued by the Cabinet Secretary, The National Treasury from time to time.</p>	<p>Failure to Recognize the Role of the Salaries and Remuneration Commission</p> <p>(i) The Bill vests the mandate of remuneration of the Directors to the Cabinet Secretary, The National Treasury and does not mention the need for consultation with the Salaries and Remuneration Commission (SRC), and or upon receiving advisories from SRC as provided under Article 230(4) of the Constitution.</p>
<p>Clause 15: Chief Executive Officer</p> <p>Clause 16: Fund Administrator</p>	<p>(i) Clause 15 and Clause 16 create two (2) parallel executive lines; a Chief Executive Officer appointed by the Board (Clause 15) and an “Administrator of the Fund” designated by the Cabinet Secretary under Section 24(5) of the PFM Act, 2012.</p> <p>(ii) This is not aligned to the provisions of Section 24(4) of the PFM Act, 2012 that gives authority to the Cabinet Secretary to</p>

Clause of the Bill	Observations
	<p>establish a national government public fund with the approval of the National Assembly. The National Infrastructure Fund as proposed to be established under Clause 5 of the Bill, does not make reference to Section 24(4) of the PFM Act, 2012.</p>
<p>Clause 21: Investment Policy</p> <p>This Clause mandates the Board to develop an investment policy based on priority, proposals, exposure limits, oversee and conduct feasibility studies and negotiate investment agreements</p>	<p>Overlapping Mandates with the Investment Promotion Act (Cap. 485B)</p> <p>(i) Clause 21 of the Bill provides a wide mandate to the Board on developing an investment policy and monitoring the investment agreements, without making reference to The Investment Promotion Act (Cap 485B), which through Section 27, provides similar powers to the National Investment Council.</p> <p>(ii) The National Investment Council advises the Government and government agencies on ways to increase investment and economic growth in Kenya; promotion of co-operation between the public and private sectors in the formulation and implementation of government policies relating to the economy, investment and monitoring the economic environment to identify impediments to investment and economic growth.</p> <p>Overlap of Mandate with Public Investment Management</p> <p>(i) The Directorate of Public Investment and Portfolio Management under The National Treasury has a wide mandate that includes monitoring the management of the finances of public enterprises and investments by the national government and its entities, divestiture of public enterprises and managing the public investment policy.</p> <p>(ii) The functions of the Board as proposed under Clause 21 undermine or overlap on the mandate and functions of The National Treasury under the Directorate of Public Investment and Portfolio Management</p>

Clause of the Bill	Observations
<p>Clause 22: Project Preparation and</p> <p>Clause 23: Feasibility Studies</p>	<p>Need for Consistency with Existing Laws</p> <p>(i) In order to keep the Country shielded from unfunded obligations, I request that the proposed law makes explicit cross-references to the Public Private Partnership Act, Cap.430, on value-for-money, affordability and contingent-liability limits, and to the Public Finance Management Regulations, 2015 on multi-year commitments. This will ensure viable, bankable projects that pass Kenya's fiscal guardrails.</p>
<p>Clause 24: Standards and procedures for identification and selection of investment projects</p>	<p>Risk of contradiction with the Public Procurement and Asset Disposals Act, Cap412C, 2015</p> <p>(i) Clause(24)(2) makes reference to development of standards by the Cabinet Secretary on the conduct of competitive tender processes, public participation, and timelines. However, all the indicated/mentioned areas are expressly provided for in the PPDA Act, 2012 and its Regulations, 2020 and in the Public Participation Bill,2025 respectively. There is therefore, a potential risk of overlap and/or conflicts between the laws.</p> <p>(ii) In view of this, I recommend that Clause 24 should align with the provisions of the Public Procurement and Asset Disposal Act (PPADA),2015 and its 2020 Regulations, including mandatory e-GP usage; and, where a transaction is structured as a Public Private Partnership, the Public Private Partnerships Act, 2021 must prevail.</p> <p>(iii) This ensures the Fund is operationalized without weakening compliance or exposing projects to legal challenges.</p>
<p>Clause 25: Government Support Measure</p> <p>The Clause mandates the Cabinet Secretary to issue</p>	<p>Contradiction with the Objective of reducing use of Public Debt Instruments</p>

Clause of the Bill	Observations
<p>government support to investment projects through letters of support, letters of credit, credit guarantees and other instruments.</p>	<p>(i) While Clause 4 of the Bill lays emphasis on reduction of reliance on Public Debt, Clause 25(1)(c)(d) and (e) reflect that the Fund can utilize debt instruments to finance investment projects.</p> <p>(ii) Unless the clause is tightly anchored to the Public Finance Management and Public Private Partnerships laws, it can generate off-balance-sheet liabilities and hidden debt.</p> <p>(iii) I therefore, recommend three(3) safeguards:</p> <p>(a) Make issuance of debt instruments conditional on The National Treasury's ex-ante fiscal-risk clearance and the annual Debt Management Strategy under the PFM Act, 2012;</p> <p>(b) Require full compliance with the Public Private Partnerships Act 2021, tests on value-for-money, affordability and contingent-liability limits before any support is granted; and</p> <p>(c) Mandate annual disclosures to Parliament of all outstanding support. This will enhance private capital without compromising fiscal transparency or debt sustainability.</p> <p>Lack of Procedures for Issuance of Letters of Credit and Support</p> <p>(iv) While Clause 25(1)(a)(b)(c) and (e) provide for new instruments of financing, there is lack of criteria on how the instruments will be identified, sourced and applied. This presents risk of misapplication due to lack of specific Guidelines.</p> <p>Non-reference to the Public Finance Management Act, 2012 on Issuance of Guarantees</p> <p>(v) Section 58 to Section 62 of the PFM Act, 2012 provides the guidelines of borrowing and circumstances for issuance of guarantees by the Government. However, no reference has been made to this law.</p> <p>By Passing Parliamentary Approvals and Contradicting Section 49 of the PFM Act, 2012.</p>

Clause of the Bill	Observations
	<p>(vi) The Bill has mandated the Cabinet Secretary, The National Treasury, to oversight the activities of the Board, including development of investment policies and operations of the Fund. However, there is no clarity on the role of Parliament on oversight in the process, which is contrary to Article 206 of the Constitution.</p>
<p>Clause 29: Funds</p>	<p>(i) Clause 29(b) provides that the funds of the Fund shall include monies appropriated to the Fund by Parliament. However, the Bill has not made provision for budget estimates of the Fund and in particular, fails to provide that the Estimated shall be submitted to the Cabinet Secretary for review and submitted to the National Assembly in accordance with Article 221 of the Constitution.</p> <p>(ii) Funds appropriated by Parliament will be deemed to be withdrawn from the Consolidated Fund in accordance with Article 206 of the Constitution and require approval of the Controller of Budget and audit by the Auditor-General.</p>
<p>Clause 32: Expenditure and Commitment of the Fund</p> <p>Clause 33: Withdrawals from the Fund</p>	<p>Lack of clarity on approvals- and non-reference to the Public Finance Management Act, 2012 and Public Finance Management Regulations,2015.</p> <p>(i) The structure as proposed bypasses the Controller of Budget's mandate to authorize withdrawals from public funds. This creates a legal loophole where funds could be moved without the constitutional and PFM Act,2012 thresholds.</p>
<p>Clause 35: Annual estimates</p>	<p>(i) Clause 35 should require granular disclosure of the Fund's operating and capital budgets, advisory fees, performance-linked fees, platform costs, and transaction expenses, and cross-reference PFM Act formats.</p> <p>(ii)Such transparency improves Parliamentary scrutiny and market confidence, while avoiding hidden cost build-ups in complex transactions.</p>

Clause of the Bill	Observations
<p>Clause 36: Audit</p>	<p>(i) Clause 36(2) provides that the Board shall submit to the Auditor-General, the financial statements of the Fund.</p> <p>(ii) To avoid a parallel regime and protect audit quality, we propose identifying the Accounting Officer given the ambiguity created under Clause 15 and 16 on parallel executive lines.</p> <p>(iii) We further propose adding explicit performance-audit reach over Fund Special Purpose Vehicle that receives public support.</p> <p>(iv) Further, Clause 36(2) of the Bill requires submission of the Fund's financial statements to the Auditor-General within four months after the end of each financial year.</p> <p>(v) This contravenes the provisions of Section 47(1) of the Public Audit Act, Cap. 412B, 2015, that requires that Accounting Officers to submit their accounts to the Auditor-General within three months after the end of the financial year, in the form and manner prescribed under the PFM framework. It is also important to note that currently the Office has been proposing for reduction of this timeline to ensure timely accountability.</p>

D. Comparative Analysis of the Legal Framework Governing Other Infrastructure Funds

Honorable Chair
Honorable Committee Members

6. I will now discuss comparative analysis of the legal framework governing other Infrastructure Funds in the region and globally: -

7. **Diversification of sources of funding**-Kenya's proposed Infrastructure Fund is more focused on the use of asset monetization. While the Nigeria Sovereign

Investment Authority ¹relies primarily on excess oil revenue. Further, Kenya plans to capitalize its Fund by selling existing State stakes. This is a recycling strategy similar to models used in the Arab Republic of Egypt and the Republic of Singapore (Temasek), but it carries higher risks if the assets are sold during market downturns and the asset values may be understated compared to the actual market values. The sale of the assets may also mean that at a point in future, there may be no more assets to sell, in other words, future generations will be overburdened by the current decisions, contrary to the principles of public finance under Article 201(c) on equitable sharing of the burdens and benefits of the use of resources and public borrowing between present and future generations.

8. **A transparent valuation process for assets being disposed**-The Infrastructure Fund Bill focuses on the management of money once it is in the Fund but does not include the valuation process before the sale of Assets. To ensure Value for Money, the Bill should include a requirement for independent valuation of state assets before they are offloaded to seed the Fund. Without a transparent valuation process, privatization can result in sale of state assets for less than their true value.

9. **Alignment of the Fund to the National Budget**- Section 2.4 of the Organization for Economic Co-operation and Development (OECD) Journal on Budgeting, Volume 2, No. 2, requires that all state guarantees be disclosed as contingent liabilities. **Clause 25** of the Infrastructure Fund Bill allows for such guarantees without a mandatory reporting link to the National Budget. To avoid hidden debt, I recommend this Clause be aligned with Section 2.4 of the Journal on Budgeting.

10. **Whole of Government Approach to promote transparency and accountability**- Part VI of The OECD 'Practice on Governance of Infrastructure', recommends a Whole Government Approach in infrastructure development to promote a coherent and predictable and efficient regulatory framework and to manage threats and risks of governance processes. While the Infrastructure Bill

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includes Clause 26 and Clause 27 on reporting and disclosure, it focuses on performance contracts with The National Treasury rather than the direct, public-facing accountability models used by successful Sovereign Wealth Funds globally such as Nigeria Sovereign Investment Authority Act(2011). OECD provides that to ensure sustainable tariff setting, overall regulatory quality, greater confidence from the market and effective implementation of the Policy, Whole of Government Approach should be adopted to increase transparency and accountability. This may include Parliamentary oversight of the Investment Policy, five-year plans and public participation on drafting and implementation of the Investment Policy among others.

11. **Investment Plan for Future Generations-** Section 39 of the Nigerian Sovereign Investment Authority Act, 2011 provides for a rolling five-year plan and strategies, as may be determined from time to time, for future generations with a solid savings base. This is in cognizance of the fact that hydrocarbon reserves, being a key source of funding for Nigeria may be exhausted in the near future. The Act provides for reinvestment of all realized proceeds and dividends from portfolio investment, into a future generations fund. However, the National Infrastructure Fund Bill, 2026 focuses on developing a portfolio of investments with the object of development of critical infrastructure, without reference to how and whether the infrastructure funds will be rolled over to benefit future generations or if a percentage of the funds will be set aside and utilized for maintenance and renewal of the infrastructure developed through the Fund.

E. Conclusion

Honorable Chair
Honorable Committee Members

12. As I conclude, it is my expectation that the feedback provided in this Stakeholder Engagement will provide valuable insights for Parliament's consideration on the **National Infrastructure Fund Bill, 2026**. I urge the Committee to consider the

proposed amendments to ensure that the Fund is aligned to other laws already enacted by Parliament and is supported by effective oversight mechanisms that uphold the constitutional principles of public finance and the national values of transparency and accountability, equity and equality.

13. I thank the Committee for your continued support to the Office of the Auditor-General and forward to further engagements on our joint mandate in enhancing transparency and accountability in the use and management of public resources for the benefit of citizens.

I thank you.

FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

24 February, 2026



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Attention: Mr. Benjamin Magut

By Email: ddc@parliament.go.ke; Benjamin.magut@parliament.go.ke

Dear Sir

STAKEHOLDER ENGAGEMENT ON THE NATIONAL INFRASTRUCTURE FUND BILL (NATIONAL ASSEMBLY BILL NO. I OF 2026) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

We write to submit the memorandum of our law firm (Cliffe Dekker Hofmeyr) on the National Infrastructure Fund Bill, 2026 (the "**Bill**"), for consideration by the National Assembly. Our firm has extensively reviewed the Bill and prepared a memorandum with a comprehensive set of comments. We have attached it for your reference.

The submission is in line with the principle of public participation in fulfilment of Article 118 of the Constitution of Kenya, 2010 and Standing Order 127(3) the National Assembly, which encourage stakeholders to provide their representations on Bills under consideration.

We are available to provide clarification during the Committee's hearings and remain committed to supporting the legislative process. The undersigned may be reached on the email address; **Alex.Kanyi@cdhlegal.com** or on the following number; **+ 254 724 498 999**.

Kind regards


Alex Kanyi

Partner

No	Clause	Description of the Clause	Proposal	Justification
1.	Clause 4: <i>Purpose of the Fund</i>	<p>Clause 4 sets out the objectives of the Fund, which include scaling up and accelerating the development of national infrastructure such as transport networks, energy, water, irrigation, and agribusiness projects. The Fund is also mandated to mobilise private and non-traditional sources of finance, including pension funds, collective investment schemes, sovereign wealth funds, and climate finance, while reducing reliance on public debt for commercially viable investments. In addition, the Fund is intended to strengthen national capacity to structure and execute large and complex infrastructure projects.</p>	<p>We propose the insertion of a subclause providing for safeguards for institutional investors, as follows:</p> <p>“(2) Where the Fund mobilises capital from institutional investors, including pension funds or collective investment schemes, it shall:</p> <p>(a) conduct due diligence and risk assessment to ensure that investments are consistent with the trustees’ fiduciary duties;</p> <p>(b) adopt a formal risk management framework for each project, including limits on leverage, guarantees, and contingent liabilities;</p> <p>(c) provide regular reporting to investors on project performance, risk exposure, and liquidity; and</p> <p>(d) ensure defined exit mechanisms or structured arrangements to protect investors’ capital.”</p>	<p>We propose this amendment to ensure that institutional investors such as NSSF can participate in the Fund’s infrastructure projects without compromising the security of contributors’ funds.</p> <p>Infrastructure projects are typically long-term, capital-intensive, and illiquid. Without clear safeguards, institutional investors may face financial, liquidity, or operational risks inconsistent with their legal and fiduciary obligations.</p> <p>This proposal strengthens governance, aligns the Fund with best practice in infrastructure financing, and ensures that mobilising private institutional capital does not undermine the financial security of contributors. It also enhances transparency, accountability, and public confidence in the Fund’s operations.</p>

2.	<p>Clause 7: <i>Qualifications for appointment as a chairperson or member of a Board</i></p>	<p>Clause 7 sets out the eligibility criteria for appointment as chairperson or member of the Board. It requires that a person have “proven business leadership or relevant professional experience,” at least fifteen years’ experience in senior management or leadership, and meet the requirements of Chapter Six of the Constitution.</p> <p>While these requirements emphasise integrity and general leadership experience, they do not expressly require expertise in infrastructure development, infrastructure finance, project finance, public finance, or risk management. As drafted, the clause allows appointment of individuals with senior leadership experience that may not be relevant to the highly technical nature of infrastructure fund governance.</p>	<p>Refine Clause 7 to introduce sector-specific competence, for example by amending it to read:</p> <p>“(a) has proven business leadership and demonstrable professional experience in infrastructure development, <u>infrastructure finance, project finance, public finance,</u> economics, engineering, risk management, or a related field;”</p> <p>Alternatively, insert an additional paragraph:</p> <p>“(d) possesses demonstrable expertise relevant to the financing, development, management, or regulation of large-scale infrastructure projects.”</p>	<p>The National Infrastructure Fund will oversee complex, long-term investments involving public resources, contingent liabilities, and sophisticated financial structures. General leadership experience, while valuable, is not sufficient on its own to ensure effective oversight of such a fund.</p> <p>Explicitly requiring sector-specific expertise ensures that Board members are capable of interrogating project proposals, understanding risk allocation, and safeguarding public finances. This refinement strengthens governance without excluding experienced leaders, reduces the risk of poorly informed decision-making, and aligns the Fund with international best practice for infrastructure and sovereign investment funds.</p>
3.	<p>Clause 8: <i>Disqualification</i></p>	<p>Clause 8 sets out comprehensive disqualification criteria for appointment as an independent director of the Fund, excluding individuals with recent employment, advisory, political, familial, or financial</p>	<p>Retain Clause 8 as drafted, but insert a new subsection to provide for ongoing conflict management:</p> <p>“(3) An independent director who has a direct or indirect personal, financial, or other</p>	<p>While Clause 8 safeguards independence at the point of appointment, infrastructure projects are dynamic and conflicts may arise during the life of a project through</p>

	<p>affiliations that may compromise independence at the point of appointment.</p> <p>However, the clause is largely pre-appointment focused. It does not expressly address conflicts of interest that may arise after appointment, particularly in relation to specific transactions, projects, or counterparties considered by the Board during a director's tenure. As currently drafted, a validly appointed independent director may still participate in deliberations or decisions in which they acquire a direct or indirect personal or financial interest, without a statutory obligation to disclose or recuse themselves.</p>	<p>interest in any matter under consideration by the Board shall—</p> <p>(a) disclose the nature of that interest to the Board as soon as it arises; and</p> <p>(b) not participate in any deliberation or decision of the Board relating to that matter.</p> <p>(4) Each independent director shall submit an annual declaration of interests to the Board, including any direct or indirect financial, professional, or familial relationships that could create a conflict of interest.</p> <p>(5) An independent director shall not acquire a material interest in any entity that provides services to or receives funding from the Fund without first obtaining Board approval and disclosing the interest to the Board.</p> <p>(6) An independent director shall not accept employment, consultancy, or advisory roles with any entity that is a significant counterparty to the Fund within one year of leaving the Board.</p> <p>(7) The Board shall establish a Conflict of Interest and Ethics Committee to review</p>	<p>shareholdings, advisory roles, related-party transactions, or changes in personal circumstances.</p> <p>An explicit disclosure and recusal obligation ensures that independence is maintained continuously, not only at appointment. This refinement complements the existing disqualification framework, strengthens ethical governance, and aligns the Bill with best practice in public fund management and corporate governance.</p> <p>In respect to a director's future employment cooling off period, it prevents "revolving door" conflicts where a director could make decisions benefiting a future employer.</p> <p>Furthermore, the proposal to establish a Board subcommittee or a designated independent compliance officer to review conflict disclosures and ensure recusal rules are followed. Self-reporting alone may be insufficient. Independent</p>
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			<p>disclosures and ensure compliance with this section.</p> <p>(8) A breach of the disclosure or recusal obligations under this section may result in removal from the Board in accordance with Clause 10 (2), or referral to the relevant ethics authority.”</p>	<p>oversight ensures transparency, reduces reputational risk, and strengthens public confidence.</p> <p>We propose an enforcement mechanism as a form of sanctions for non-disclosure or participation in conflicted decisions, such as removal from the Board or referral to the Ethics Commission. We understand that without enforcement, disclosure requirements are only advisory. Sanctions reinforce accountability and deter breaches.</p>
4.	Clause 12: Powers of the Board	<p>Clause 12 grants the Board wide discretion to approve investments, enter into financing arrangements, and make long-term commitments on behalf of the Fund. This includes investing in projects through equity, debt, or other project finance mechanisms, acquiring and managing security interests, entering into arrangements with government or private entities (including acting as agent or providing financial assistance on their behalf), and acquiring, disposing of, or leasing real and personal property. Sub-section (2) places limited restrictions on borrowing, requiring that the Board not borrow or take credit against its balance sheet and</p>	<p>We propose the insertion of provisions to introduce strategic oversight and formal risk management, as follows:</p> <p>“(3) Any investment, borrowing, guarantee, financial commitment, or arrangement entered into by the Fund, including where the Fund acts as agent or provides financial assistance on behalf of another entity, exceeding Kenya Shillings one billion, or creating obligations exceeding ten (10) years, shall require prior approval by the National Assembly.</p>	<p>Infrastructure projects are capital-intensive and often involve long-term commitments that may bind future governments and the public purse. While operational discretion is necessary for efficient project execution, unchecked authority to approve large investments, guarantees, or borrowing exposes the public to financial risk.</p> <p>These amendments are necessary to:</p>

		<p>that project financing be undertaken in accordance with the Act.</p> <p>While these powers provide operational flexibility, Clause 12 does not establish quantitative or procedural limits on financial exposure, guarantees, or contingent liabilities. It also does not require prior parliamentary approval, nor does it mandate a formal risk management framework. Furthermore, the clause does not explicitly require compliance with existing statutory frameworks such as the Public Finance Management Act or the Privatisation Act, which govern the use of public funds and contingent liabilities. As currently drafted, the Fund is capable of assuming substantial long-term fiscal obligations without statutory safeguards, creating potential financial risk for the public.</p>	<p>(4) The Fund shall establish a formal risk management framework, approved by the National Treasury, to identify, measure, monitor, and manage financial and contingent liabilities, and ensure all investments and commitments comply with the Public Finance Management Act, the Privatisation Act, and any other applicable law.”</p>	<ul style="list-style-type: none"> i. Introduce a strategic parliamentary oversight threshold for high-value or long-term financial commitments; ii. Ensure formal risk management is in place to monitor exposure, protect fiscal sustainability, and guide prudent decision-making; and iii. Balance operational flexibility with democratic accountability, consistent with constitutional principles on public expenditure as per Articles 201 and 226 of the Constitution and internationally recognised best practices in infrastructure finance. <p>This approach ensures transparency, mitigates contingent liabilities, and strengthens confidence that the Fund’s investments are sustainable,</p>
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				properly monitored, and aligned with national development priorities.
5.	Clause 17: <i>Staff of the Fund</i>	<p>Clause 17 empowers the Board to appoint officers necessary for the discharge of the Fund's functions on such terms and conditions as it may determine, subject to guidelines issued by the Cabinet Secretary. The clause is intended to provide the Board with flexibility in staffing the Fund.</p> <p>However, the clause does not specify the recruitment framework to be applied, nor does it expressly subject the recruitment of officers to established public service standards and oversight mechanisms.</p>	<p>We propose an insertion in Clause 17 as follows:</p> <p>"(2) The recruitment of officers and staff of the Fund shall be undertaken through the <u>Public Service Commission</u> in accordance with the Constitution and applicable written law."</p>	<p>The Fund is a public institution entrusted with significant public resources. Requiring recruitment through the Public Service Commission promotes merit-based, transparent, and competitive hiring, consistent with Articles 232 and 234 of the Constitution. This amendment strengthens institutional integrity and public confidence while preserving the Board's role in determining staffing needs and terms of service.</p>
6.	Clause 19: <i>Performance management</i>	<p>Clause 19 requires the Cabinet Secretary to convey performance targets to the Fund through performance contracts and obliges the Board to enter into such contracts. The clause provides that the performance contracts are intended to enhance the Fund's commercial performance, safeguard its long-term sustainability, ensure returns commensurate with investments made, and minimise fiscal risks to the national exchequer.</p> <p>While the objectives of the clause are appropriate, it vests significant influence in the Cabinet Secretary</p>	<p>We propose that Clause 19 be refined by inserting a safeguard provision as follows:</p> <p>"(4) Performance contracts entered into under this section shall be based on the Investment Policy approved under Section 21 and the investment plan adopted under Section 18, shall be limited to strategic, financial, and risk management objectives, and shall not interfere with or override the Board's statutory powers or independence in</p>	<p>Performance contracting is a legitimate accountability tool in the management of public funds. However, without clear limits, it may inadvertently constrain the Fund's operational autonomy or expose investment decisions to non-commercial considerations. The proposed amendment preserves accountability to the Executive while safeguarding the Board's independence, ensuring that</p>

		over the Fund's performance framework without clearly distinguishing between strategic oversight and operational independence. As drafted, the clause may allow performance contracts to affect investment decisions or risk appetite, potentially limiting the Board's independence.	making investment and operational decisions under this Act."	performance contracts reinforce prudent governance, commercial discipline, and fiscal sustainability without undermining the Fund's statutory mandate.
7.	Clause 21(3): <i>Validity of the Investment Policy</i>	<p>Clause 21(3) provides that the Investment Policy approved under the Act shall be valid for a period of five years. The clause is intended to ensure periodic review of the Fund's investment priorities, asset allocation, and exposure limits.</p> <p>However, major infrastructure projects typically have long development, construction, and recovery horizons that extend well beyond five years. Projects such as national railways and toll roads illustrate that returns and fiscal impacts often materialise over decades rather than within a single policy cycle.</p>	<p>We propose that Clause 21(3) be refined as follows:</p> <p>"An Investment Policy shall be valid for a period of ten years and may provide for long-term projects whose investment horizon and recovery period extend beyond the policy period, subject to periodic review."</p>	<p>Major infrastructure projects have long development and recovery periods that extend well beyond five years. For example, the Standard Gauge Railway was constructed between 2014 and 2017, but its debt repayment and revenue recovery period is projected to go upto 2040. Similarly, the Nairobi Expressway was developed between 2019 and 2022 under a concession arrangement with an estimated recovery period of approximately 25–30 years.</p> <p>Limiting the Investment Policy to a rigid five-year horizon risks misalignment with the economic and financial realities of such long-term infrastructure investments. The proposed amendment preserves periodic policy review while</p>

				accommodating extended recovery periods, thereby ensuring policy stability, realistic financial planning, and investor confidence without weakening accountability.
8.	Clause 23: <i>Feasibility Studies</i>	<p>Clause 23 requires the Fund to undertake feasibility studies on investment projects to determine their commercial viability. Subsection (2) sets out the factors to be considered, including technical, legal, social, economic, environmental, financial, and land-related requirements necessary for effective project initiation.</p> <p>While these criteria cover essential project preparation elements, the clause does not explicitly require the Fund to assess broader public interest considerations, such as equitable access to infrastructure, impacts on local communities, alignment with county development plans, or long-term social benefits versus commercial returns. Without explicitly integrating public interest into feasibility assessments, there is a risk that projects could prioritise commercial viability over societal and developmental outcomes.</p>	<p>We propose inserting a new subsection as follows:</p> <p>“(3) In undertaking feasibility studies, the Fund shall assess the public interest in the project, including the social, economic, and developmental impacts on communities, counties, and the nation, and shall conduct public participation in accordance with the Constitution and consult relevant county governments to ensure alignment with public policies and county development plans.”</p>	<p>Feasibility studies should balance commercial viability with the Fund’s broader mandate to catalyse national infrastructure that benefits the public. Explicitly incorporating public interest considerations ensures that projects are socially and economically sustainable, responsive to local and national priorities, and consistent with constitutional and devolved governance principles. This amendment strengthens transparency, accountability, and alignment with the Fund’s development objectives without undermining commercial assessment requirements.</p>
9.	Clause 26: <i>Reporting</i>	<p>Clause 26 establishes a reporting framework for the Fund. It requires the Fund to prepare quarterly and annual reports and submit them to the Cabinet</p>	<p>We propose that Clause 26 be amended to strengthen direct parliamentary</p>	<p>Clause 26 recognises the importance of reporting and disclosure but locates primary</p>

	<p>Secretary in a manner prescribed by regulations. The clause further empowers the Cabinet Secretary to make half-yearly reports to the Cabinet and annual reports to the National Assembly, based on publicly available information.</p> <p>The clause therefore creates an indirect reporting chain, whereby the Fund reports to the Cabinet Secretary, and the Cabinet Secretary exercises discretion over the timing, content, and transmission of reports to Cabinet and Parliament.</p> <p>However, the clause does not impose a direct statutory obligation on the Fund to report to Parliament, nor does it prescribe timelines within which reports must reach the National Assembly. Parliamentary reporting is contingent on executive action and discretion, and the clause does not require that quarterly reports prepared by the Fund be submitted to, or laid before, Parliament.</p> <p>As currently drafted, this structure weakens direct legislative oversight, delays access to information, and limits Parliament's ability to conduct timely scrutiny of the Fund's financial performance, investment decisions, and risk exposure.</p>	<p>accountability by inserting the following subsections:</p> <p>"(4) The Fund shall submit quarterly financial and performance reports directly to the National Assembly within thirty (30) days of the end of each quarter."</p> <p>"(5) The annual report of the Fund shall be submitted to the National Assembly within three (3) months after the end of each financial year and shall be laid before the National Assembly by the Cabinet Secretary within fourteen (14) days of receipt."</p> <p>"(6) Reports submitted under this section shall include information on the implementation of the approved investment plan, performance against applicable performance contracts, financial position, risk exposure, and contingent liabilities of the Fund."</p>	<p>accountability within the Executive rather than Parliament. While executive oversight is necessary, it is not a substitute for direct legislative scrutiny, particularly where public funds, contingent liabilities, and long-term infrastructure commitments are involved.</p> <p>We propose these amendments to ensure that Parliament receives timely, complete, and unfiltered information directly from the Fund. Direct reporting enhances transparency, reduces the risk of delayed or selective disclosure, and enables Parliament to exercise its constitutional mandate over public finance meaningfully and proactively.</p> <p>This refinement aligns the Fund's reporting obligations with best practice in public finance governance, reinforces checks and balances, and strengthens public confidence in the management of national infrastructure investments.</p>
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10.	Clause 26 (3): <i>Reporting</i>	<p>Clause 26(3) provides that “the Cabinet Secretary shall with respect to make, based on publicly available information, analysed annual reports to Cabinet and the National Assembly.” As currently drafted, the clause is unclear in its wording and intent.</p>	<p>We propose an amendment to Clause 26(3) to bring clarity on the reporting obligations. The amendment should specify the exact nature and scope of the analysed reports, the source of information to be used, the timelines and frequency for submission, and whether the reports are intended for public dissemination or limited to internal oversight. This will ensure that the reporting framework is clear, consistent, and effectively supports transparency and parliamentary oversight.</p>	<p>Clear and precise reporting obligations are essential for accountability, transparency, and effective parliamentary oversight. Ambiguities in Clause 26(3) could lead to inconsistent reporting, duplication of effort, or gaps in oversight. Clarification would strengthen the Fund’s reporting framework and ensure that the role of the Cabinet Secretary complements, rather than complicates, the Fund’s disclosure obligations.</p>
11.	Clause 27 (1): <i>Disclosure</i>	<p>Clause 27(1) requires the Cabinet Secretary to publish and publicise information relating to the Fund on the National Treasury website or other publicly accessible information platforms. The clause is intended to promote transparency and public access to information.</p> <p>However, as currently drafted, the phrase “shall make publish and publicize” is grammatically incorrect and creates unnecessary ambiguity in interpretation.</p>	<p>We propose that Clause 27(1) be amended by deleting the word “make” so that the clause reads:</p> <p>“The Cabinet Secretary shall publish and publicise on the National Treasury website or such other information platforms as may be accessible to the public.”</p>	<p>Clear and precise legislative drafting is essential to avoid ambiguity and ensure effective implementation. The proposed amendment corrects a grammatical error to enhance clarity, consistency, and ease of interpretation.</p>

12.	<p>Clause 32: <i>Expenditure and commitments of the Fund</i></p>	<p>Clause 33 provides that withdrawals from the Fund shall only be made for the purposes for which the Fund is established. The clause is intended to ensure that Fund resources are applied strictly in furtherance of its statutory mandate.</p> <p>However, while the clause sets a general-purpose limitation, it does not expressly exclude the use of Fund resources for social, political, or other non-commercial initiatives that may be introduced through policy or administrative action but fall outside the Fund's core infrastructure financing mandate.</p>	<p>We propose that Clause 33 be amended as follows:</p> <p>"Withdrawals from the Fund shall only be for the purposes for which the Fund is established under this Act and shall not be used to finance social, political, or other non-commercial initiatives unrelated to the Fund's infrastructure investment mandate."</p>	<p>The Fund is established as a commercial infrastructure financing vehicle intended to mobilise capital, attract private investment, and deliver financially sustainable projects while minimising fiscal risk. Explicitly restricting withdrawals to the Fund's statutory purposes protects its integrity, preserves investor confidence, and prevents mission drift. This amendment strengthens accountability and ensures that the Fund is not repurposed, directly or indirectly, to finance programmes that are inconsistent with its mandate.</p>
13.	<p>New Clause (<i>To be inserted after Clause 25</i>)</p>	<p>The Bill does not expressly provide for the procurement framework applicable to the Fund or require compliance with the Government's e-Government Procurement system and existing public procurement laws. As drafted, this creates uncertainty as to whether procurement undertaken by the Fund is fully subject to the national public procurement regime.</p>	<p>We propose the insertion of a new clause immediately after Clause 25 as follows:</p> <p>"25A. (1) The Fund shall undertake all procurement of goods, works, and services through the Government e-Government Procurement system in accordance with the applicable procurement regulations.</p> <p>(2) The Fund shall ensure that all projects undertaken under its approved work plan are procured and implemented in accordance with the Public Procurement and Asset</p>	<p>The Fund will undertake large-scale, capital-intensive infrastructure projects with significant public and private financial exposure. Explicitly subjecting its procurement activities to the Government e-Government Procurement system and the Public Procurement and Asset Disposal Act enhances transparency, accountability, and value for money, while reducing the risk of procurement abuse, fragmentation,</p>

			Disposal Act (Cap. 412C) and any other applicable written law.”	or legal challenge. The proposed clause aligns the Fund with existing public procurement standards, strengthens oversight, and ensures consistency with established public finance and governance frameworks without constraining operational efficiency.
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MEMORANDUM OF OPPOSITION

Submitted to: The Departmental Committee on Finance and National Planning

Institution: Parliament of Kenya

Subject: Opposition to the National Infrastructure Fund Bill, 2026

Submitted by: Liberal Democratic Party (LDP)

1. Introduction

The Liberal Democratic Party (LDP) hereby submits this memorandum opposing the proposed National Infrastructure Fund Bill, 2026.

While infrastructure development is essential for national growth, the proposed structure of this Fund raises serious constitutional, fiscal, governance, and public trust concerns. Kenya does not suffer from a shortage of funds or institutions. Kenya suffers from weak execution, poor prioritization, and governance deficits.

Creating another fund will not solve structural failures. It risks compounding them.

2. Constitutional Concerns

(a) Violation of Public Finance Principles

The Constitution requires transparency, accountability, public participation, and prudent use of public resources. The proposed Fund:

Creates a parallel financial structure outside established public finance safeguards.

Risks diluting parliamentary control over public assets.

May undermine Articles governing public debt management and asset disposal.

Public assets cannot be transferred into quasi-corporate structures without strict constitutional guardrails.

(b) Asset Disposal Without Adequate Sovereign Safeguards

The Bill contemplates monetization and privatization of strategic national assets.



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If those proceeds are transferred directly to the Infrastructure Fund instead of first entering the Consolidated Fund and then being appropriated by Parliament, it may violate Article 206.

Parliament must authorize expenditure through the appropriation process. A structure that automatically reallocates asset proceeds bypasses that safeguard.

If structured off-balance-sheet, it may undermine:

- Article 206 (control of public money),
- Article 201 (principles of public finance),
- Article 212 (public debt reporting).

Article 206 exists to prevent:

Executive discretion over large public financial pools,

Shadow budgeting,

Off-ledger financing,

Asset diversion without full parliamentary accountability.

If the Infrastructure Fund centralizes significant financial authority in a corporate vehicle, it risks recreating exactly what Article 206 was designed to prevent: concentration of fiscal power outside the Consolidated Fund oversight framework.



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Why This Matters

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The Constitution deliberately centralized public revenue control to prevent:

- Misuse of public assets,
- Parallel treasuries,
- Politically controlled financial vehicles,
- Reduced transparency.

The debate is not about infrastructure.

It is about constitutional guardrails.

Infrastructure must be financed — but not at the expense of constitutional discipline.

Conclusion

LDP opposes the National Infrastructure Fund Bill, 2026 because:

- It risks constitutional violations especially article 206
- It enables disposal of strategic national assets.
- It duplicates existing financial mechanisms.
- It increases governance and misuse risks.
- It ignores more urgent national priorities.
- It fails to address root causes of fiscal distress.

Kenya does not need another fund.

Kenya needs disciplined governance.

Kenya needs prioritization.

Kenya needs execution.



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7. Public Trust Is a Foundational Requirement

Major asset restructuring requires high public trust.

At present, trust deficits remain significant. Citizens question:

- Transparency in asset valuation,
- Independence of oversight mechanisms,
- Political neutrality of appointments,
- Commitment to accountability.

In such an environment, concentration of financial power increases risk.

Public confidence must precede structural transformation.

How the National Infrastructure Fund Bill May Violate Article 206 of the Constitution of Kenya

Article 206 of the Constitution governs the Consolidated Fund — the central constitutional account into which all money raised or received by or on behalf of the national government must be paid, except where the Constitution or an Act of Parliament provides otherwise

Article 206 provides that: All money raised or received by or on behalf of the national government shall be paid into the Consolidated Fund, except money reasonably excluded by an Act of Parliament. Money may only be withdrawn from the Consolidated Fund:

All public revenue must flow through a transparent, parliamentary-controlled system. It prevents the Executive from creating parallel financial structures that bypass constitutional safeguards. This is Where the Infrastructure Fund Raises Constitutional Red Flags



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5. Prioritize High-Impact, Low-Cost Infrastructure

Focus on:

- Rural roads for agricultural productivity,
- Energy cost reduction,
- Water access,
- Logistics efficiency.

Targeted infrastructure yields better returns than mega-project symbolism.

6. The Debt Trap: Real Solutions

Escaping debt pressure requires:

- Revenue growth through industrialization,
- Export competitiveness,
- Lower energy costs,
- Improved productivity,
- Reduction of corruption leakages which has cost this country 6.7 Trillion as per petition We submitted at the Senate last year in September which has received no reponse.

Selling state assets to fund projects while maintaining high recurrent expenditure is not reform. It is asset substitution.

A nation does not solve debt stress by restructuring ownership while keeping the same spending culture.



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5. There Are Better Alternatives

LDP proposes the following alternatives:

1. Strengthen Existing Public Finance Frameworks

- Expand infrastructure bonds transparently.
- Utilize pension and insurance capital under regulated structures.
- Deepen domestic capital markets.

2. Renegotiate Debt and Improve Fiscal Discipline

- Prioritize expenditure rationalization.
- Cut wasteful spending.
- Reduce non-essential borrowing.
- Renegotiate high-cost external debt.

Escaping the debt trap requires fiscal discipline, not institutional multiplication.

3. Public-Private Partnerships (PPP) Reform

Kenya already has PPP legislation. Reform and streamline it instead of duplicating structures.

4. Improve Project Execution

Many infrastructure projects stall due to:

- Procurement inefficiencies,
- Corruption,
- Poor contract management,
- Political interference.

Fix execution before creating new funds.



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Oversight is only effective where public trust exists.

Under the administration of William Ruto, public trust in fiscal management has significantly eroded. Introducing a powerful, semi-autonomous financial entity in an environment of trust deficit amplifies systemic risk.

Public finance operates on credibility. Credibility cannot be legislated; it must be earned.

4. Infrastructure Is Important — But So Is Prioritization

- Kenya's most urgent development indicators today are:
- Youth unemployment
- Education quality
- Healthcare access
- Food security
- Household purchasing power
- Infrastructure is a tool — not an end in itself.

A government that struggles to:

Create jobs,

Stabilize food prices,

Improve learning outcomes,

Deliver accessible healthcare, cannot credibly argue that creating another financial fund will solve systemic development challenges.

Development is measured by:

Jobs created,

Children educated,

Families fed,

Lives improved.

Not by the number of financial vehicles established.



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Strategic assets — including stakes in telecommunications, pipeline infrastructure, energy, and logistics — are not ordinary commodities. They are sovereign economic levers.

Disposing of them to finance projects:

Trades long-term dividend income for short-term liquidity.

Reduces strategic state control.

Risks undervaluation.

Weakens national bargaining power in key sectors.

A nation cannot sell its inheritance to finance its operations.

3. Governance and Misuse Risks

Kenya already has:

The National Treasury,

State corporations,

Infrastructure bonds,

Public-Private Partnership frameworks,

Sovereign bond structures.

If these existing frameworks have not delivered optimally, why create another vehicle with broad discretionary powers?

Without ironclad safeguards, the proposed Fund risks becoming:

A politically controlled investment vehicle,

A mechanism for asset stripping,

A new center of fiscal opacity.



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MEMORANDUM OF OPPOSITION

Submitted to: The Departmental Committee on Finance and National Planning

Institution: Parliament of Kenya

Subject: Opposition to the National Infrastructure Fund Bill, 2026

Submitted by: Liberal Democratic Party (LDP)

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PPRA/DG/2/11 VOL.III (63)

23rd February 2026

Clerk of the National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI
Email: cna@parliament.go.ke

Attention: Serah Kioko, MBS

**STAKEHOLDER ENGAGEMENT ON THE NATIONAL INFRASTRUCTURE
FUND BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2026) BY THE
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

Reference is made to your letter NA/DDC/F&NP/2026/042 dated 18th February 2026, inviting the Public Procurement Regulatory Authority (the Authority) to a discussion on The National Infrastructure Bill.

The Authority appreciates the invitation and had confirmed participation in the meeting as scheduled on 23rd February 2026 from 2.30 p.m.

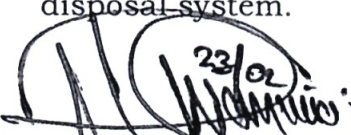
We have however been informed that the meeting has been rescheduled to tomorrow Tuesday 24th February, 2026.

The Authority underscores the importance of the Fund in addressing the challenges being experienced in the public procurement and asset disposal system in Kenya, including pending bills, that have continued to constraint the economy.

The Authority is pleased to submit its comments on the Bill and will provide further comments during the discussions.

I wish to request for your indulgence to send my Deputy Director, Strategy and Planning Mr. Polycarp Oduor as I have a scheduled Board Meeting where I am also the Secretary to the Board.

The Authority, appreciate the continued collaboration in promoting a competitive, transparent, and accountable public procurement and asset disposal system.



Patrick Ki Wanjuki
DIRECTOR GENERAL
(Encls)

Memorandum on The National Infrastructure Fund Bill, 2026

The Public Procurement Regulatory Authority (the Authority) has reviewed the National Infrastructure Fund Bill, 2026, as proposed and comments as follows:

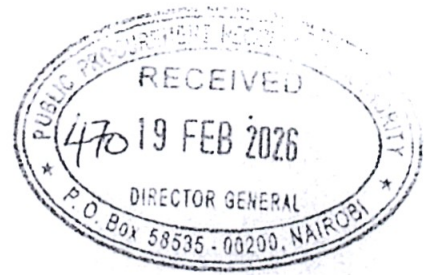
No	Clause	Description of the Clause	Proposal	Justification
1.	4	Purpose of the Fund	Amend 4(a) to include ICT infrastructure, and Research and Innovation	The World is transitioning to the provision and consumption of electronic services (e-services), thus ICT is a viable sector. It is mainly through innovation that a country can prosper. The Fund should finance and incubate innovative ideas.
			Add another purpose (f): promote sustainable, resilient, and inclusive infrastructural investment and development	This is aimed at ensuring the incorporation of sustainability in the planning, designing, and constructing of infrastructural systems that are environmentally friendly, economically viable, and socially inclusive over their entire life cycle
2.	6	Board of Directors	Amend 6(1), amend the composition to include: the Cabinet Secretary in charge of Roads and transport; and the Attorney General	<ol style="list-style-type: none"> 1. The Cabinet Secretary for roads and transport is to ensure harmony in the investment approaches and projects 2. The AG is to ensure that in all the operations of the Fund, the Government is not legally exposed
3.	7	Qualifications for appointment as chairperson or member of the Board	Amend 7(a) to read: "possesses a degree in finance, commerce, economics, project management, engineering, law, or related fields.56	The chairperson must be sufficiently qualified in academic, professional, and entrepreneurial skills. This is to stewardship and leadership of the Fund.
4.	11	Role of the Board	Amend to add: <ul style="list-style-type: none"> • (a) to read, mobilizing resources for the Fund in line with the Investment Policy and Plan; 	<ul style="list-style-type: none"> • To ensure that the mobilization of resources is aligned with the policy and plan

No	Clause	Description of the Clause	Proposal	Justification
			<ul style="list-style-type: none"> • Develop an Investment Policy • Develop and approve the Investment Plan • Amend (g) to read: Establish performance targets for the Chief Executive Officer • Amend (f) to read: approve annual budgets and procurement plans, and related funding for the Fund, • Add after (e): establish and monitor public financial management systems in accordance with the Public Finance Management Act Cap.412A and Public Procurement and Asset Disposal Act Cap.412C, and their attendant Regulations 	<ul style="list-style-type: none"> • Policy and Plan are the primary roles of the Board • For (g) key performance indicators are at a lower level of performance management • Amended to add procurement plan, since the Fund is a body cooperate • The Fund being a public entity, must operate within the confines of the Public Finance Management Act and the Public Procurement and Asset Disposal Act, and the attendant regulations
5.	12	Powers of the Board	12(a) amend to read: invest in projects, including by way of equity investment, or debt, based on the bankability of the project, or any other project finance mechanism in line with the Public Investment Management Regulations;	<ul style="list-style-type: none"> • There is a need to effectively ensure compliance with the Public Investment Management Regulations in all infrastructure fund projects.
6.	18	Investment Plan	Amend 18(1) to include the contents of the Investment Plan and to ensure it is aligned	<ul style="list-style-type: none"> • The contents of the Investment Plan will ensure ease of compliance and monitoring

No	Clause	Description of the Clause	Proposal	Justification
			with national infrastructure priorities. The investment plan shall be accompanied by the procurement strategy for the identified projects.	<ul style="list-style-type: none"> The procurement strategy development allows for analysis of potential procurement risks and gaps, and design measures to overcome them
7.	23	Feasibility Studies	23(2) add (f): the procurement strategy or approach for the project 23(2) add (g): the Life Cycle Assessment and costing of the infrastructural project (s)	<ul style="list-style-type: none"> This is aimed at addressing procurement-related issues at the stage of project conceptualization. This is to ensure a detailed cost-benefit, sustainability, and circularity analysis is undertaken on the projects over their life span.

Other General comments:

1. There is an inadequate linkage of the Fund to financing Government priority projects or clearing outstanding pending bills in the infrastructure sector.
2. There is a need to create a linkage of the Fund to the Annual Government Budgets, since one of the purposes of the Fund is to relieve the country from borrowing.
3. Given that the Fund is exclusively for the National Government, does it imply that each County Government can also create its own Fund of this nature? Can this Fund be opened to address the needs of both levels of Government and serve as a conditional fiscal transfer to the counties?



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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Email: ena@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote
REF: NA/DDC/F&NP/2026/042

18th February 2026

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Treasury Buildings
NAIROBI


FCPA Nancy Gathungu, CBS
Auditor-General
3rd Floor, Anniversary Towers
University Way
NAIROBI

Hon. Shadrack John Mose, CBS
Solicitor General
Office of the Attorney-General and
Department of Justice, Sheria House,
Harambee Avenue
NAIROBI

Dr. Margaret Nyakang'o
Controller of Budget
The Office of Controller of Budget
Bima House, 12th Floor
Harambee Avenue
NAIROBI

Mr. Patrick Wanjuki
Director General
Public Procurement Regulatory Authority
6th Floor KISM Towers, Ngong Road
NAIROBI

Dr Eldah Onsomu
Executive Director,
The Kenya Institute for Public Policy Research
and Analysis
2nd Floor Bishops Garden Towers
NAIROBI

Dear 

**RE: STAKEHOLDER ENGAGEMENT ON THE NATIONAL
INFRASTRUCTURE FUND BILL (NATIONAL ASSEMBLY BILL NO. 1 OF
2026) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING**

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to *study and review all the legislation referred to it*.

The National Infrastructure Fund Bill (National Assembly Bill No. 1 of 2026) is before the Committee for consideration and reporting to the House. The Bill seeks to provide a legal framework for the establishment and the management of the National Infrastructure Fund.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for meetings to discuss the said Bill. The meetings will be held between **Monday 23rd February, 2026 to Friday 27th February, 2026** as per the attached schedule at a venue to be communicated in due course.

You are required to avail twenty (20) hard copies of your submissions to the meeting, soft copies of which may be sent to cna@parliament.go.ke. The template format to capture your submission is herewith attached to this letter.

The Committee's Liaison officer for these meeting is Mr. Benjamin Magut, who may be contacted on Tel. No. 0712974966 or email address: benjamin.magut@parliament.go.ke or ddc@parliament.go.ke

Yours *Sincerely*



Serah Kioko, MBS

FOR: CLERK OF THE NATIONAL ASSEMBLY

Copy: Hon. FCPA John Mbadi Ng'ongo, EGH
Cabinet Secretary
Ministry of National Treasury and Economic Planning
Treasury Buildings
NAIROBI

Hon. Dorcas Oduor, OGW, EBS, SC
Attorney General of the Republic of Kenya
Office of the Attorney General and Department of Justice
State Law Office
Sheria House, Harambee Avenue
NAIROBI



Confidential

The National Assembly
Office of the Clerk
P.O Box 41842-00100
Main Parliament Buildings
Nairobi, Kenya

25 February 2026

REF: NA/DDC/F&NP/2026/44

Sent via email to: cna@parliament.go.ke

Dear Sirs,

Subject: Stakeholder engagement on the National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026) by the Departmental Committee on Finance and National Planning

Pursuant to the notice issued on February 18, 2026, by the Office of the Clerk of the National Assembly and Article 118 (1)(b) of the Constitution of Kenya, PricewaterhouseCoopers Limited (“we”, “PwC”, “us”) are pleased to share with you our comments on the National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026) and recommendations for your consideration. We have included our comments as an appendix to this cover letter.

We would be grateful for an opportunity to engage you further on our proposals and provide any additional information should you require us to.

Yours faithfully,

For: **PricewaterhouseCoopers Limited**

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APPENDIX

Background

The National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026) (the “**Bill**”), seeks to establish the National Infrastructure Fund (the “**Fund**”). The purpose of the Fund is

- i. to scale up and accelerate development of catalytic national infrastructure including, national highway and railway networks, air and seaports, electricity generation, transmission and distribution, water reservoirs, irrigation and agribusiness infrastructure;
- ii. to mobilize private capital and non-traditional sources of infrastructure finance including domestic pension funds and collective investment schemes, sovereign wealth funds, climate finance; and
- iii. to reduce the reliance of public debt for the financing of commercially viable infrastructure investments; and
- iv. to strengthen the national capacity for origination, structuring and execution of large and complex infrastructure projects

In compliance with the provisions of Article 118(1)(b) of the Constitution of Kenya and Standing Order 127(3), the Committee invited interested members of the public and stakeholders to submit their inputs and comments for consideration. A public notice to this effect was issued on 18 February 2026, and the submissions should be channelled to the office of the Clerk of the National Assembly.

We are glad to present the recommendations and comments on the Bill, 2026 (National Assembly Bill No. 1 of 2026) to the Departmental Committee on Finance and National Planning.

Table 1: Comments and recommendations on the National Infrastructure Fund Bill, 2026 (National Assembly Bill No.1 of 2026) (the “Bill”)

No	Clause	Description of the Clause	Proposal	Justification
1.	-	The Memorandum of objects and reasons states that the Bill does not concern County Governments as it does not affect their functions and powers. However, clause 4(a) indicates the Fund will develop infrastructure including water reservoirs, irrigation, and agribusiness infrastructure, which may have significant local and regional impacts.	<ol style="list-style-type: none">1. Insert a new clause requiring consultation with affected County Governments during project identification, feasibility studies, and implementation phases.2. Amend clause 23 (Feasibility Studies) to include mandatory consideration of relevant county governments.	Many infrastructure projects will traverse or directly impact county jurisdictions. Excluding county governments risks duplication of efforts, conflict with devolved functions, and undermines the constitutional framework of devolution. Meaningful intergovernmental consultation would improve project design and community buy-in, such as with the Council of Governors.

No	Clause	Description of the Clause	Proposal	Justification
2	Clause 5(2)	The clause establishes the Fund as a body corporate but does not specify the applicable corporate governance regime or clarify its relationship with other corporate legislation.	<p>Amend clause 5 to provide clarity on which corporate governance/regulatory framework applies to the Fund (for example, specifying that the Fund's governance shall be exclusively governed by Government Owned Enterprises Act Act No. 25 of 2025, Laws of Kenya ("GOE Act")).</p> <p>The Bill appears to create a hybrid entity that does not fit neatly into any category as provided under the Public Finance Management Act, Cap 412A, Laws of Kenya ("PFMA").</p>	<p>Clarity on the applicable corporate governance regime is essential for legal certainty, investor confidence, and accountability. The current drafting leaves ambiguity that could lead to disputes and undermine the Fund's effectiveness.</p> <p>Additionally, the Bill should clarify the Fund's classification under the PFMA - either as a public fund subject to full Treasury control, or as a state corporation with appropriate ring-fencing from the Consolidated Fund</p>
3.	Clause 6(2) and (3)	The clause provides that directors shall be appointed by the Cabinet Secretary ("CS") by notice in the Gazette, without any requirement for parliamentary approval or vetting, while at the same stating that the independent directors shall be recruited competitively in accordance with section 13 of the GOE Act.	Amend clause 6(3) to require that the appointment of directors be subject to vetting by the relevant committee of the National Assembly, and approval by Parliament.	Given the significant public funds and strategic national infrastructure at stake, parliamentary oversight of key appointments would enhance accountability, transparency, and public confidence in the Fund's governance. This aligns with constitutional principles of checks and balances and mirrors practices for other significant state appointments in Kenya.
4.	Clause 12(1)	Clause 12(1)(a) empowers the Board to "invest in projects, including by way of equity investment, or debt based on the bankability of the project, or any other project	<p>Amend clause 12 to insert a new subsection requiring the Board to observe prudential investment limits, including:</p> <ul style="list-style-type: none"> • Maximum exposure to any single project (e.g., not exceeding a 	Whilst clause 21(2)(f) references "exposure limits per sector and project" as a matter for the investment policy, there is no statutory floor or ceiling embedded in the Bill itself. This leaves the Fund vulnerable to excessive concentration risk and potential pressure to invest disproportionately in favoured

No	Clause	Description of the Clause	Proposal	Justification
		finance mechanism" without prescribing any limits on the size, concentration, or risk profile of individual investments	<p>specified percentage of total Fund assets);</p> <ul style="list-style-type: none"> • Maximum sectoral concentration limits; • A requirement that investment limits be specified in the investment policy under clause 21 and reviewed annually by the audit committee. 	projects. Statutory guardrails would enhance fiscal discipline and protect public funds.
5.	Clause 12(1)	Clause 12 (1) (b) to (j) empowers the Board to acquire and hold security or a security interest, including, a right in a security, of any kind and in any form for the due discharge of obligations under an investment or agreement that it makes, realize the security, security interest or right in the security made, acquired or held by it on the investment or agreement; exchange, sell, assign, convey or otherwise dispose of, or lease, the investment, agreement, security, security interest or right in a security; enter into arrangements or agreements with, and act as agent or mandatory for, any department or agency of the government of	<p>Amend clause 12 to insert a new subsection requiring that the exercise of powers under clause 12(1)(b) to (j) be subject to prior approval by the relevant Committee of the National Assembly and Parliament, where:</p> <ul style="list-style-type: none"> • The transaction value exceeds a prescribed threshold (to be specified in the Bill or regulations); • The transaction involves the acquisition or disposal of a controlling interest in any entity; • The transaction involves acting as agent for, or delivering financial assistance on behalf of, any private person or body; • The transaction involves the disposal of strategic national infrastructure assets; or • The transaction involves the acquisition or disposal of real 	The powers enumerated in clause 12(1)(b) to (j) are among the most consequential in the Bill, enabling the Board to commit, encumber, and dispose of substantial public resources without any parliamentary oversight. This raises several concerns including constitutional accountability: Article 201 of the Constitution of Kenya, 2010 (the "Constitution") requires openness, accountability, and public participation in financial matters. Article 95 vests the National Assembly with oversight of State organs. Permitting the Board to exercise such far-reaching powers without parliamentary scrutiny is inconsistent with these constitutional principles.

No	Clause	Description of the Clause	Proposal	Justification
		Kenya, or any other body or person, for the development of infrastructure projects to, by, on behalf of or jointly with that institution and deliver financial assistance on their behalf under the arrangement or agreement; accept any interest or rights in real property personal property or any rights in immovable movables as security for the due performance any arrangement or agreement with the Fund; determine the form of compensation for services provided by the Fund in the exercise of its powers or the performance of its functions under this Act; acquire and dispose of any interest or right in any entity by any means; and acquire, hold, exchange, sell or otherwise dispose of, or lease, any interest or rights in real property	<p>property above a prescribed value.</p> <p>The approval process should require the Board to submit a written report to the relevant committee setting out the nature, value, rationale, and risk assessment of the proposed transaction, with the committee empowered to approve, reject, or request modifications within a specified timeframe, and a further approval by Parliament.</p>	
6.	Clause 12(1)(a)	Clause 12(1)(a) empowers the Board to invest in projects by way of equity, debt, or other project finance mechanisms based	The Bill does not specify what proportion of the Fund may be deployed as concessional or loss capital to support the de-risking of capital projects.	De-risking mechanisms, including first-loss capital, are essential to mobilising private investment in infrastructure, particularly for projects with developmental but uncertain commercial returns. However, without clear limits, there is a

No	Clause	Description of the Clause	Proposal	Justification
		on bankability. Clause 21(2)(e) requires the investment policy to specify asset allocation and portfolio distribution.	Amend clause 21(2) to insert a new sub-clause requiring the investment policy to specify: the maximum proportion of Fund assets that may be allocated as loss capital or first-loss capital to de-risk projects; the criteria and approval process for deploying loss capital, including Board approval and disclosure requirements; and reporting obligations on the utilisation and performance of loss capital in the Fund's annual report.	risk of excessive exposure to non-recoverable investments.
7.	Clause 12 (1) (e)	<p>Clause 12(1)(e) empowers the Board to "exchange, sell, assign, convey or otherwise dispose of, or lease, the investment, agreement, security, security interest or right in a security".</p> <p>However, the Bill does not address exit strategies, investment horizons, or the reinvestment of proceeds from mature investments.</p>	<p>Insert a new clause requiring:</p> <ul style="list-style-type: none"> • The Fund to develop exit strategies for all investments at the time of initial investment approval; • The investment policy to specify investment horizons and conditions for exit, including target holding periods and triggers for divestment; • All proceeds from investment exits to be reinvested into the Fund, unless otherwise directed by Parliament; • The Board to report annually on investment exits, including proceeds realised and reinvestment decisions; and • The Cabinet Secretary to make regulations prescribing 	Long-term sustainability requires the Fund to recycle capital by exiting mature investments and reinvesting proceeds. The absence of statutory guidance on exits creates a risk that the Fund will hold investments indefinitely, reducing capital efficiency, or that exit proceeds will be diverted for other purposes. Clear exit and reinvestment provisions would ensure the Fund operates as a revolving vehicle for infrastructure development.

No	Clause	Description of the Clause	Proposal	Justification
			detailed criteria for investment horizons, exit conditions, and reinvestment procedures.	
	Clause 16	<p>The clause empowers the Cabinet Secretary to designate a person to be the administrator of the Fund in accordance with section 24 (5) of the PFMA.</p> <p>PFMA section 24(5) relates to national public funds controlled by the National Treasury. This Bill creates a corporate body, not a Treasury-administered fund. This creates a contradiction</p>	The Bill should either (a) remove the reference to section 24(5) of the PFMA and establish a bespoke administrator role appropriate for a corporate entity (even if National Treasury is a shareholder), or (b) restructure the Fund as a Treasury-administered national fund without corporate status. The current drafting attempts to have it both ways.	The structural ambiguity created may impede effective governance, create accountability gaps, and potentially deter the private investment the Fund is designed to attract. The Bill should adopt one model or the other, with appropriate consequential amendments throughout.
8.	Clause 22	The clause provides that the Fund shall develop capacity to undertake project structuring and implementation, including overseeing feasibility studies, preparing project investment plans, and negotiating investment agreements. The Fund may also engage development finance institutions to leverage their	Amend clause 22 to establish a Project Preparation Facility (“PPF”) as a distinct allocation within the Fund; and require the Board to develop guidelines, subject to Cabinet Secretary approval, for recovering PPF costs from project developers upon financial close or project commencement.	Project preparation is a critical but often underfunded phase of infrastructure development. Without a ring-fenced allocation and recovery mechanism, there is a risk that preparation costs will erode the Fund’s capital base or that the Fund will under-invest in preparation, leading to poorly structured projects.

No	Clause	Description of the Clause	Proposal	Justification
		project preparation, structuring, and finance capabilities. However, the Bill does not establish a dedicated Project Preparation Facility, nor does it specify what proportion of Fund resources may be allocated to project preparation activities or how such expenditure may be recovered from project developers.		
9.	Clause 24 (2)	<p>The clause empowers the to prescribe standards and procedures on the conduct of competitive tender processes.</p> <p>The creation of a parallel procurement system for Fund projects - even if described as "competitive" - risks fragmenting the national procurement regime and creating opportunities for selective application of less rigorous standards.</p>	Clause 24 to be amended to require that all procurement by the Fund comply with the Public Procurement and Asset Disposal Act Cap. 412C, Laws of Kenya ("PPADA"), with any sector-specific modifications being made through regulations issued under PPADA, rather than under this Bill.	PPADA establishes a uniform, mandatory procurement framework applicable to all procuring entities. Article 227 of the Constitution requires that procurement be conducted in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective.
10	Clause 24(2)	The clause empowers the Cabinet Secretary to prescribe standards and procedures for "public	Elevate the requirement for public participation from a matter to be prescribed by regulation to a substantive obligation in the Bill itself. Insert a new clause mandating	Public participation is a constitutional requirement under article 10 and article 201 of the Constitution. Leaving this entirely to regulations creates risk of inadequate or inconsistent implementation. Embedding

No	Clause	Description of the Clause	Proposal	Justification
		participation and stakeholder engagement during project development stages".	public participation at the project identification and feasibility stages, and all matters in clause 24 with clear timelines and mechanisms for public input.	public participation directly in the Bill ensures compliance with constitutional values and enhances project legitimacy.
11.	Clause 25	<p>Clause 25(1) empowers the Cabinet Secretary to issue Government support measures to investment projects of the Fund, including: binding undertakings; letters of support; letters of credit; credit guarantees (whether partial or full); approval for issuance of partial risk guarantees and political risk insurance; or any other instrument that the Cabinet Secretary may determine on the advice of the Board. The proviso states that such instruments shall comply with the provisions of the law relating to public finance management.</p> <p>Clause 25(2) permits the Cabinet Secretary to issue these support measures where necessary to lower premiums factored for the profiling of political risks, or to underwrite approved</p>	<p>Amend clause 25 to:</p> <ul style="list-style-type: none"> Require prior approval by Parliament for any government support measure that creates a contingent liability above a prescribed materiality threshold; Insert a new subsection requiring that all contingent liabilities arising from government support measures be: Disclosed in the Fund's annual reports, with details of the nature, value, beneficiary, and risk profile of each guarantee or support instrument; and Reported in the National Treasury's annual debt management report to Parliament. Insert a new subsection specifying that the aggregate value of contingent liabilities arising from government support measures shall be subject to the national debt 	<p>The proposal is justified on the following grounds:</p> <ul style="list-style-type: none"> Government support measures—including guarantees, letters of credit, and partial risk guarantees—create contingent liabilities that may crystallise into actual public debt obligations if the underlying project or borrower defaults. Permitting the Cabinet Secretary to issue such instruments without parliamentary approval risks circumventing the constitutional framework for debt oversight. The PFMA requires parliamentary approval for national government guarantees. Whilst clause 25(1) includes a proviso requiring compliance with "the law relating to public finance management", this is insufficient. The Bill does not expressly require parliamentary approval for guarantees or other support measures, nor does it specify how compliance with the PFMA will be operationalised. This ambiguity could be interpreted as creating a parallel regime that bypasses PFMA requirements for parliamentary oversight.

No	Clause	Description of the Clause	Proposal	Justification
		<p>commercial risks under a negotiated project investment agreement.</p> <p>Critically, there is no requirement in the Bill for parliamentary approval of any government support measure, regardless of the value, nature, or risk profile of the contingent liability created. The Bill also does not require disclosure of contingent liabilities arising from such support measures in the Fund's annual reports or in the National Treasury's debt management reporting.</p>	<p>ceiling established under the Public Finance Management Act;</p> <ul style="list-style-type: none"> Require the Cabinet Secretary to make regulations prescribing: The materiality threshold above which parliamentary approval is required; The form and content of disclosures; The methodology for valuing and reporting contingent liabilities. 	
12.	Clause 29(a)	The clause lists "proceeds from privatization and disposal of government assets" as a source of funds for the Fund.	Amend clause 29(a) to clarify that only proceeds from privatisations specifically designated by Parliament for the Fund may be credited to the Fund. Require annual reporting to Parliament on the source and quantum of privatisation proceeds received.	Without this limitation, there is a risk that privatisation proceeds intended for other purposes (such as deficit reduction or social programmes) could be diverted to the Fund without parliamentary scrutiny. Clarity and reporting requirements would enhance fiscal transparency and accountability.
13.	Conflict of Interest	The Bill vests significant decision-making authority in the CS including appointment of directors, approval of the Investment Policy, issuance of government support measures,	Amend the Bill to insert a new clause establishing a conflict of interest regime applicable to the Cabinet Secretary's exercise of powers under the Bill, including mandatory disclosure, mandatory recusal and delegation in cases of recusal.	Chapter six of the Constitution establishes principles of integrity and requires public officers to avoid conflicts between personal interests and public duties. Whilst these general obligations exist, the Bill should embed specific, tailored provisions reflecting the unique risks associated with the Cabinet Secretary's extensive powers over

No	Clause	Description of the Clause	Proposal	Justification
		<p>and prescription of procurement standards.</p> <p>Notably, whilst clause 24(2)(g) requires the Cabinet Secretary to prescribe standards and procedures "on the management of conflicts of interest", this applies only to project-level conflicts during investment selection—not to conflicts of interest that the Cabinet Secretary personally may have in relation to specific projects, investors, or other Fund decisions. The Bill contains no provisions requiring the Cabinet Secretary to disclose personal, financial, or political interests in relation to specific projects or investors, nor any requirement for recusal from decisions where such conflicts arise.</p>		<p>a major public infrastructure fund.</p> <p>The Bill concentrates substantial powers in the Cabinet Secretary—spanning appointments, policy approval, Government support measures, procurement standards, remuneration, and performance evaluation. This concentration creates significant potential for conflicts of interest, particularly where the Cabinet Secretary (or persons connected to the Cabinet Secretary) may have financial, political, or personal interests in specific projects, investors, or contractors. The absence of any conflict-of-interest regime applicable to the Cabinet Secretary is a material governance gap.</p>
14.	Absence of Independent Review or Appeal Mechanism	The Bill establishes a comprehensive framework for the Fund's investment decisions, project selection, and implementation, conferring significant	Amend the Bill to insert a new part (or new clauses within Part IV or Part VII) establishing an independent review and appeal mechanism, such as an internal review request by any project sponsor, contractor, investor, or other affected	<p>The proposal is justified on the following grounds:</p> <ul style="list-style-type: none"> • Constitutional Right to Fair Administrative Action. Article 47 of the Constitution of Kenya, 2010, guarantees every person the right to

No	Clause	Description of the Clause	Proposal	Justification
		<p>decision-making powers upon the Board and the Cabinet Secretary.</p> <p>Notably, the Bill does not establish any mechanism for independent review or appeal of Fund decisions. There is no internal review process, no access to an independent tribunal, and no right of affected parties to challenge decisions relating to project selection, procurement, investment terms, or the issuance or refusal of Government support measures. The only reporting and disclosure provisions (clauses 26 and 27) require reports to the Cabinet Secretary and publication of audited accounts and performance evaluations—but these do not provide affected parties with any avenue for redress</p>	<p>party aggrieved by a decision of the Board or the Fund (including decisions relating to project selection, procurement, investment terms, or refusal of Government support).</p>	<p>administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Where an administrative action adversely affects a person's rights or fundamental freedoms, that person has the right to be given written reasons for the action. The Bill's failure to establish any review or appeal mechanism is inconsistent with these constitutional requirements;</p> <ul style="list-style-type: none"> • Significant Commercial Interests at Stake. The Fund will make decisions affecting billions of shillings in infrastructure investment, involving project sponsors, contractors, investors, and development finance institutions. Decisions on project selection, procurement, investment terms, and Government support measures will have profound commercial consequences for affected parties. The absence of any mechanism for independent review exposes these parties to the risk of arbitrary, unreasonable, or unlawful decision-making, with no avenue for redress; and • Risk of Arbitrary Decision-Making. The Bill vests broad discretionary powers in the Board and the Cabinet Secretary, including the power to prescribe standards and procedures, select projects, and issue

No	Clause	Description of the Clause	Proposal	Justification
				Government support measures. Without an independent review mechanism, there is an elevated risk that these powers could be exercised arbitrarily, inconsistently, or for improper purposes. An independent review function provides a check against such abuse and promotes consistency and accountability.
15.	Transitional Provisions and Existing Liabilities	The Bill lacks transitional provisions addressing how existing infrastructure projects (such as those under the PPP Act) or liabilities will be transferred to or managed by the Fund upon commencement.	Insert a Part on Transitional Provisions specifying: (a) the process for transferring existing projects and assets to the Fund; (b) the treatment of pre-existing contractual liabilities; and (c) timelines for the Board to assume full operational control.	Transitional provisions are standard legislative practice for new statutory bodies. Without clear transitional provisions, there is a risk of legal uncertainty, operational disruption, and potential disputes over inherited obligations.



POSITION PAPER & SUBMISSION ON THE NATIONAL INFRASTRUCTURE FUND BILL 2026

FEBRUARY 2026

INTRODUCTION

Kenya's infrastructure financing needs have expanded sharply as the country pursues industrialization, regional competitiveness and inclusive economic growth under Vision 2030 and the Bottom-Up Economic Transformation Agenda. At the same time, fiscal space has narrowed significantly due to elevated public debt, rising debt-servicing costs and persistent expenditure pressures. Traditional budget-based infrastructure financing is therefore increasingly constrained, necessitating alternative, sustainable financing models that can mobilize long-term capital without exacerbating fiscal risks.

To address this, the Government has proposed the establishment of the National Infrastructure Fund (NIF) alongside a Sovereign Wealth Fund (SWF), as outlined in the Budget Policy Statement 2026 and the National Infrastructure Fund Bill 2026.

The NIF is designed to mobilize Kshs 5 trillion through domestic resources, monetization of public assets, and by crowding in private capital at a leverage ratio of up to Kshs 10 for every shilling invested, while ring-fencing privatization proceeds for food security, infrastructure expansion, and energy-driven industrialization.

However, the scale of the proposed Fund relative to Kenya's current fiscal capacity and capital markets raises critical questions regarding feasibility, sequencing, governance, and risk management.

OBJECTIVES OF THE NATIONAL INFRASTRUCTURE FUND

The objectives of the National Infrastructure Fund (NIF) are to:

1. Scale up and accelerate development of catalytic national infrastructure including, national highway and railway networks, air and sea ports, electricity generation, transmission and distribution, water reservoirs, irrigation and agribusiness infrastructure.
2. Mobilize private capital and non-traditional sources of infrastructure finance including domestic pension funds and collective investment schemes, sovereign wealth funds, climate finance;
3. Reduce the reliance of public debt for the financing of commercial viable infrastructure investments
4. Strengthen the national capacity for origination, structuring and execution of large and complex infrastructure projects.

LEGAL, GOVERNANCE AND INSTITUTIONAL FRAMEWORK

The National Infrastructure Fund Bill, 2026 seeks to provide a formal statutory framework for the establishment, governance, capitalization and operation of the NIF. The Bill proposes the creation of the NIF as a corporate investment vehicle with a defined mandate to mobilize and deploy long-term capital for priority infrastructure projects. It outlines the Fund's legal personality, governance structure, permissible sources of capital, investment scope, accountability framework, and reporting obligations.

- a) A central issue under legislative consideration is the legal character of the Fund specifically whether it should operate as a limited liability company under corporate law or as a public fund within the public finance framework. This distinction carries significant constitutional and fiscal implications. If structured as a company, the NIF may enjoy operational flexibility and commercial discipline. However, questions arise regarding its classification under Article 206 of the Constitution, the Public Finance Management (PFM) Act, 2012 and the treatment of public monies and public assets. Clarity is required to avoid ambiguity around whether NIF constitutes a public fund, a state corporation, or a government-owned enterprise.
- b) Another key issue concerns the ring-fencing of privatization proceeds. The Bill proposes that proceeds from the monetization of public assets be channeled exclusively into the NIF to finance infrastructure, food security, and energy-driven industrialization. Legislators must ensure that such ring-fencing is clearly anchored in statute, consistent with the PFM framework, and subject to transparent reporting to prevent diversion, quasi-fiscal use, or off-budget liabilities.
- c) The question of oversight and accountability is equally central. The Bill contemplates oversight by the National Treasury and reporting to Parliament, but the depth and enforceability of such oversight will determine the Fund's credibility. Clear provisions are required regarding parliamentary approval of capital injections, disclosure of investment decisions, publication of audited financial statements, and alignment with the Medium-Term Debt Strategy and fiscal responsibility principles.
- d) Governance risk represents perhaps the most decisive factor in the Fund's long-term credibility. Without strong board independence, clearly defined fiduciary duties, and protection from political interference, the NIF risks capital misallocation, weak project selection, and diminished investor confidence. Infrastructure funds globally have underperformed when governance structures were vulnerable to short-term political pressures or lacked professional investment capacity. To mitigate this, board appointments must be merit-based and transparent, conflict-of-interest rules must be strictly enforced and robust internal controls and independent external audits

must be institutionalized. Parliamentary oversight and public disclosure requirements further strengthen accountability.

INVESTMENT STRATEGY

The Fund's investment strategy focuses on strategic infrastructure projects that are critical to national development and economic transformation. Eligible projects include:

- **Transport Infrastructure:** Development and expansion of national highway and railway networks, as well as air and seaports, to enhance connectivity, facilitate trade, and strengthen regional integration.
- **Energy Infrastructure:** Investment in electricity generation, transmission, and distribution systems to improve energy reliability, expand access, and support industrial growth.
- **Water Infrastructure:** Construction and modernization of water reservoirs and irrigation systems to strengthen water security, climate resilience, and agricultural productivity.
- **Agribusiness Infrastructure:** Development of agro-industrial facilities and value chain infrastructure to promote food security, agro-processing, and export competitiveness.

The NIF will prioritize projects based on economic impact, alignment with national development plans, and potential to leverage private sector participation, ensuring that limited resources generate maximum social and economic returns.

KENYA'S CURRENT FISCAL POSITION

According to the Budget Review and Outlook Paper 2024/25, Kenya's fiscal position was constrained by revenue underperformance and expenditure rationalization. Total revenue, including Appropriations-in-Aid (AiA), reached KES 2,923.6 billion, equivalent to 17.0% of GDP, falling short of the target by KES 62.0 billion.

On the expenditure side, development spending was notably constrained, with development expenditure amounting to only KES 582.9 billion. The fiscal deficit, including grants, stood at KES 1,019.1 billion (5.9% of GDP), largely financed through domestic borrowing.

These outcomes indicate that the budget had limited capacity to accommodate additional infrastructure financing without exacerbating fiscal pressures. For the NIF, this means that large-scale capitalization through the Exchequer or additional sovereign borrowing would be fiscally risky and could undermine debt sustainability efforts.

The Draft Budget Policy Statement 2026 projects that fiscal pressures will persist into FY 2026/27. Total revenue, including AiA, is projected at KES 3,487.0 billion (16.7% of GDP), while development expenditure is expected to rise modestly to KES 759.1 billion (3.6% of GDP). However, the fiscal deficit is projected at KES 1,106.1 billion (5.3% of GDP), with the bulk of financing coming from domestic borrowing amounting to KES 1,006.6 billion (4.8% of GDP). The reliance on domestic financing is particularly significant for the NIF, as it increases competition for domestic savings and raises the risk of crowding out private investment. This reinforces that a large NIF cannot be sustainably financed through budget allocations or additional domestic borrowing.

FEASIBILITY OF THE NATIONAL INFRASTRUCTURE FUND

A KES 5 trillion National Infrastructure Fund would represent an exceptionally large financing vehicle in Kenya's macroeconomic context. This is equivalent to roughly 28–30% of Kenya's GDP, and exceeds the 2026/27 projected annual development budget of KES 759.1 billion by 6.6 times. This scale implies that the Fund would not simply be an additional line item in the budget, but a major structural change in how Kenya finances infrastructure.

Under current fiscal conditions, financing such a Fund through traditional public channels would be highly challenging. Kenya's FY 2024/25 fiscal performance shows persistent revenue shortfalls and a compressed development budget, while the medium-term outlook indicates ongoing deficits financed primarily through domestic borrowing.

In this environment, relying on direct budgetary transfers to capitalize the NIF would necessitate either significant cuts to other development priorities or an increase in the fiscal deficit. Both options are undesirable given the current need to protect core social and economic services and to maintain macroeconomic stability. For the NIF to be credible and sustainable, it must be structured around alternative financing sources that do not increase fiscal deficits or compromise debt sustainability.

POTENTIAL FUNDING SOURCES

NIF will be financed through a blend of public and private resources, structured to ensure sustainable, long-term funding for Kenya's priority infrastructure projects. Key funding sources include:

a) Privatization Proceeds

Privatization proceeds refer to revenue generated from the sale or monetization of public assets. The Government proposes that these proceeds will be ring-fenced and channeled directly into the NIF, ensuring that the funds are dedicated to infrastructure investment rather than general government expenditure. This is a prudent approach because it avoids additional borrowing and leverages existing public assets to generate capital for new investments.

However, the scale of potential privatization receipts must be assessed realistically. Even large, commercially viable public assets such as KPC and Safaricom are unlikely to generate proceeds commensurate with the proposed headline size of KES 5 trillion.

This underscores the need to position the NIF as a catalytic investment platform, rather than a fully capitalized fund at inception.

To maximize impact, privatization proceeds should be ring-fenced as capital receipts and deployed strategically through the NIF to support project preparation, equity participation and risk-sharing mechanisms. Strong governance, transparent transactions, and clear legal safeguards will be essential to preserve fiscal integrity and investor confidence.

b) Institutional and Private Sector Investment

The Government proposes that the NIF actively mobilize capital from institutional investors, development finance institutions, and the private sector. This approach is essential for scaling up infrastructure financing and promoting risk-sharing. Institutional investors such as pension funds and insurance companies have long-term liabilities that align with the long-dated nature of infrastructure assets. Private sector participation can also improve efficiency, innovation, and project delivery.

Nevertheless, attracting institutional and private capital requires a credible pipeline of bankable projects, robust legal and regulatory frameworks, and transparent governance structures. Investors will demand clear revenue streams, predictable returns, and strong risk mitigation measures. The NIF must therefore prioritize project preparation, strengthen contract enforcement mechanisms, and establish clear frameworks for public-private collaboration.

c) Crowding-In of Development Finance

The NIF aims to crowd in concessional and commercial financing from multilateral and bilateral development partners. Development finance can lower the overall cost of capital and provide critical technical assistance for project preparation, feasibility studies, and climate resilience. This source is particularly important for infrastructure sectors that have high social returns but may not be immediately attractive to commercial investors, such as water and sanitation, affordable housing, and rural connectivity.

However, development finance is typically project-specific and may come with conditions that require careful alignment with national priorities. While it can significantly enhance the scale and impact of the Fund, it is unlikely to provide the entire capital base needed for a KES 5 trillion fund. Therefore, development finance should be treated as a complementary source that enhances leverage and reduces financing costs.

COMPARATIVE ANALYSIS

a) SINGAPORE

Singapore does not operate a stand-alone national infrastructure fund. Government of Singapore Investment Corporation (GIC) and Temasek Holdings are two of the most prominent sovereign wealth funds in Singapore. GIC focuses on preserving and enhancing the long-term value of Singapore's reserves, with a primary goal of achieving good risk-adjusted returns. The fund invests globally across a wide range of asset classes, including equities, fixed income, real estate, and private equity. In contrast, Temasek has a more active investment approach, seeking to generate sustainable returns over the long term by investing in companies with strong growth potential.

GIC operates as a sovereign wealth fund under the purview of the Ministry of Finance, with a board of directors appointed by the government. The fund is subject to strict regulations and reporting requirements to ensure prudent management of Singapore's reserves. Temasek is a private company wholly owned by the Minister for Finance, with a board of directors comprising industry experts and professionals. The fund operates as a commercial entity and is not subject to the same level of regulatory oversight as GIC. These entities are capitalized by budget surpluses and retained earnings from state-owned enterprises.

Infrastructure investments are made within a globally diversified portfolio, guided by strong governance, professional management, and long-term return objectives. Singapore's experience underscores that governance quality, credible capital sources, and bankable project pipelines matter more than headline fund size. While Kenya cannot replicate

Singapore's surplus-based financing model, the NIF can adopt its governance framework and catalytic use of public capital to mobilize private and institutional finance sustainably.

b) UNITED KINGDOM

The United Kingdom's National Wealth Fund (NWF) was established in October 2024, following the expansion and rebranding of the UK Infrastructure Bank, which had been created in 2021 and placed on a statutory footing under the UK Infrastructure Bank Act, 2023.

The Fund is wholly owned by HM Treasury, operates at arm's length from government, and is governed by an independent board, with strategic priorities set by the Treasury for each parliamentary term.

The NWF works primarily by crowding in private investment, rather than directly financing infrastructure on its own balance sheet. It deploys public capital through loans, equity investments, guarantees, and credit enhancements, deliberately targeting projects that are economically viable but face market failures such as high upfront costs or long payback periods.

Its capitalization, approximately £27.8 billion, comes from public budget allocations and is fully reflected in national accounts.

The Fund is used to support infrastructure in clean energy, transport, advanced manufacturing, digital infrastructure, and regional development, while also providing advisory services to local authorities to help projects reach financial close.

c) AUSTRALIA

Australia's Clean Energy Finance Corporation (CEFC), created in 2012 under the Clean Energy Finance Corporation Act, is a sector-specific green investment fund.

Its mandate is to accelerate clean energy, energy efficiency, and low-emission infrastructure investment.

CEFC operates on commercial principles, using government equity injections and retained earnings to issue loans, equity, and hybrid instruments that crowd-in private capital.

The statutory framework guarantees independence, transparency, and performance measurement, demonstrating that public investment can simultaneously achieve developmental and fiscal objectives.

d) CANADA

Canada provides one of the clearest examples of a legislatively anchored infrastructure investment model through the Canada Infrastructure Bank (CIB).

Established in 2017 under the Canada Infrastructure Bank Act, the CIB is a federal Crown Corporation mandated to invest in revenue-generating infrastructure projects that align with public policy priorities.

Unlike traditional grant-based infrastructure funding, the CIB functions as an investment institution, offering loans, equity investments, and loan guarantees to public and private project sponsors. Its capital base, authorized at up to CAD 35 billion is drawn from federal government appropriations, but its core purpose is to mobilize significantly larger volumes of private and institutional capital, including pension funds.

The CIB focuses on sectors such as public transit, clean power, broadband, and trade and transportation corridors, targeting projects that are economically transformative yet face financing barriers.

Legally, its operations are governed by statute, corporate governance rules applicable to Crown corporations, and parliamentary accountability mechanisms, ensuring both operational flexibility and public oversight.

For Kenya, there is need for statutory clarity, professional governance, disciplined project selection and strategic private-sector engagement to ensure that the NIF can achieve scale while safeguarding public resources.

e) INDIA

India's National Investment and Infrastructure Fund (NIIIF), launched in 2015 and incorporated under the Companies Act, 2013, is a sovereign-anchored investment platform structured as a Category II Alternative Investment Fund (AIF). NIIIF manages multiple sub-funds, including the Master Fund (core infrastructure), Private Markets Fund, Strategic Opportunities Fund, and bilateral initiatives such as the India-Japan Fund.

The Government of India anchors the fund with 49% capital commitment, while 51% comes from domestic and international institutional investors, including pension funds and sovereign wealth funds.

NIIIF's investments span transport, energy (including renewables), logistics, digital infrastructure, and strategic industrial assets. Its governance combines sovereign oversight with independent professional fund management, enabling large-scale, commercially viable infrastructure development.

f) NIGERIA

Nigeria's Infrastructure Fund (NIF), a ring-fenced fund within the Nigeria Sovereign Investment Authority (NSIA), was established under the NSIA Act, 2011 and began operations in 2012.

The fund is dedicated to long-term, commercially oriented infrastructure investment, initially allocating 40% of NSIA's seed capital (~US\$400 million), growing to around US\$1 billion through subsequent federal contributions.

NIF invests in power and energy (including renewables), transport, healthcare, agriculture, industrial platforms, and innovative ecosystems.

It operates under a Five-Year Rolling Investment Plan and an Investment Policy Statement, with professional in-house management, an independent board, and statutory oversight, ensuring alignment with national priorities while maintaining disciplined capital deployment.

For Kenya, the Nigerian experience underscores that legal clarity, ring-fencing, disciplined project selection, and professional governance are essential preconditions for a scalable and sustainable infrastructure financing vehicle.

g) SAUDI ARABIA

Saudi Arabia's **National Infrastructure Fund (NIF)**, established under the **National Development Fund (NDF)** in 2017, serves as the Kingdom's principal infrastructure financing vehicle within the Vision 2030 framework.

The NIF accelerates strategic nationwide infrastructure projects, stimulates private sector participation, and deepens capital markets.

It mobilizes capital through co-investments, loans, guarantees, and structured financing instruments, drawing on NDF resources and partnerships with domestic and international investors.

Its investment focus spans transport and logistics, communications and digital infrastructure, energy and water systems, industry and manufacturing, health and education infrastructure, and sustainable projects aligned with Vision 2030. The fund operates under ministerial approval and the statutory framework of NDF, combining development objectives with financial sustainability, and has already co-financed major renewable energy and urban infrastructure initiatives.

For Kenya institutional clarity, disciplined governance and blended financing mechanisms are prerequisites for scaling infrastructure finance sustainably.

h) SOUTH AFRICA

South Africa established its Infrastructure Fund in partnership with the Development Bank of Southern Africa (DBSA), National Treasury and Infrastructure South Africa (ISA) to mobilize blended finance and crowd in private sector investment for large infrastructure programmes. The Fund's mandate is to improve the commercial viability of public infrastructure projects by providing blended finance solutions alongside co-financing mechanisms, thereby reducing pressure on the national budget.

Despite this sound conceptual design, implementation has been held back by weak project preparation and institutional capacity constraints. Analysts and government officials note that an inadequate pipeline of investment-grade projects and weak front-end planning have limited the Fund's ability to attract private and institutional capital. The lack of sufficient project structuring, baseline feasibility work and coordinated delivery frameworks continues to undermine investor interest and project bankability.

DRAFT SUBMISSION ON THE NATIONAL INFRASTRUCTURE FUND BILL

#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	Clause 2 Provides the Interpretation of terms in the Bill	The Interpretation sections omit important terms such as development, Fiscal Risk and National Infrastructure pipeline yet they are used in the Bill.	Amend by inserting the following terms <ul style="list-style-type: none"> • “<i>Development Fund</i>” means a sovereign development and infrastructure investment fund whose primary objective is to generate risk-adjusted commercial returns while catalyzing private capital for national infrastructure. • “<i>Fiscal risk</i>” means any actual or potential liability, explicit or implicit, arising from guarantees, letters of support, undertakings, or other Government support measures. • “<i>National Infrastructure Pipeline</i>” means the Cabinet-approved list of priority infrastructure projects aligned to national development plans. 	<p>Including these definitions reduces ambiguity and strengthens the legal and operational framework of the Fund.</p> <p>It ensures that all stakeholders have a shared understanding of the Fund’s objectives, risk considerations, and strategic priorities.</p> <p>This clarifies the fund type (as done in Ireland ISIF and Indonesia INA) and embeds fiscal discipline.</p>
2.	Clause 3 Provides the Objects of the Act	The outlined objects are limiting and inconclusive	Add new sub-clause (c): “(c) to ensure that the Fund operates with operational independence, commercial discipline, and transparency consistent with international best practice for sovereign development funds.”	Granting the Fund autonomy in decision-making protects it from undue political influence or short-term pressures, enabling investment and management decisions to be guided by professional judgment and long-term strategic objectives.

#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
3.	Clause 4 Stipulates the purpose of the fund	Needs to be broadened to align with global best practice.	Add new sub-clauses: “(e) to mobilize private capital through co-investment structures with pension funds, sovereign wealth funds, and institutional investors.” “(f) to support climate-resilient and sustainable infrastructure in line with national climate commitments.” “(g) to ensure long-term financial sustainability and avoid undue fiscal risks.”	Aligns with global norms on climate, private capital mobilization, and fiscal sustainability.
4.	Clause 5 — Establishment Provides for the establishment of the National Infrastructure Fund.	The current wording fails to ring-fence investment from political interference.	Add new sub-clause: “(3) The Fund shall be operationally independent and shall not be subject to direction on specific investments by any person or authority, except as provided under this Act.”	By insulating the Fund from directives on specific investments, the provision minimizes the likelihood of politically motivated decisions that could compromise financial performance.
5.	Clause 6 Provides for the Governance and Board of Directors of the Fund.	The composition of the Board lacks important skills particularly persons with expertise in Sustainability and independent professional financial oversight. This may expose the Fund to risks related to financial reporting, project valuation, and	Amend by adding the following: (f) one person with expertise in climate finance or ESG risk management.” (g) one person nominated by the Accountancy Professional Body; Add new sub-clause: “(4) The Board shall reflect a skills matrix including expertise in project finance, infrastructure engineering,	A well-rounded Board is better equipped to monitor management performance, assess risks, ensure compliance with legal and regulatory requirements, and uphold fiduciary responsibility. Including a nominee from the Accountancy Professional Body on the Board strengthens fiduciary oversight, enhances financial integrity and risk management, and reinforces investor confidence by

#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
		investment decision-making.	law, risk management, investment management, and ESG.”	ensuring independent, professionally regulated expertise in infrastructure fund governance.
6.	Clause 7 Outlines the qualifications for appointment as Chairperson or Member of the Board	Make the qualifications comprehensive.	Add: “(d) meets the fit-and-proper criteria prescribed in regulations, including integrity, competence, and financial soundness.”	Ensures that persons serving in the Board possess the requisite competence, integrity, experience, and professional judgment
7.	Clause 8 — Disqualification Provides for disqualification for appointment as Director of the Fund	Omits necessary integrity prerequisites for appointment.	Add new disqualifications: “(k) has <u>been found culpable of corruption or unethical conduct by a competent authority.</u> ” “(l) has beneficial ownership in any entity that seeks to transact with the Fund unless such interest is fully disclosed and managed under a conflict-of-interest framework.”	Strengthens integrity and conflict-of-interest safeguards.
8.	Clause 9 — of Conduct Meetings	The Bill fails to align to corporate governance practices such as board documents and charters	Amend by inserting 6) The Board shall adopt and publish Board charters and committee charters.”	For best corporate governance.

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#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
9.	Clause 11 — Role of the Board	The stipulated functions are limiting.	<p>Add new functions:</p> <p>“(l) approve an annual fiscal risk assessment for all projects involving Government support measures.”</p> <p>“(m) ensure compliance with ESG, climate, and integrity standards.”</p> <p>“(n) approve ex-post evaluations of completed projects.”</p>	For proper discharge of the Board’s mandate.
10.	Clause 12 — Powers of the Board	The Bill fails to align to corporate governance practices.	<p>Amend sub-clause (2)(a):</p> <p>Replace with: “shall not borrow or take credit against its balance sheet except as expressly approved by Parliament under the Public Finance Management Act.”</p> <p>Add new sub-clause:</p> <p>“(3) The Board shall establish the following committees:</p> <p>(a) Investment Committee;</p> <p>(b) Risk and Compliance Committee;</p> <p>(c) Nomination and Remuneration Committee;</p> <p>(d) Audit Committee (as already provided).”</p>	<p>Requiring parliamentary approval embeds checks and balances, ensuring that any leverage is subject to scrutiny, justification, and compliance with national legal frameworks.</p> <p>Committees allow detailed analysis, deliberation, and recommendations on critical matters before Board approval, ensuring decisions are well-informed and timely.</p>
11.	Clause 15 — Chief Executive Officer	Provide for the competitive recruitment of the CEO.	Amend by adding the following:	A transparent, competitive process guarantees that the CEO is chosen based on professional

#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			“(8) The CEO shall be appointed through a transparent, competitive process conducted by the Board”	qualifications, experience, and demonstrated capacity to lead.
12.	Clause 16 Administrator —	The Bill fails to clarify the role of the administrator in relation to investment decisions.	Amend to clarify roles: “The Administrator shall be the accounting officer for purposes of the Public Finance Management Act but shall not interfere with investment decisions, which remain the responsibility of the Board.”	Assigning the Administrator responsibility for financial management under the Public Finance Management Act ensures compliance with legal, accounting, and reporting obligations while leaving strategic and investment decisions with the Board.
13.	Clause 18 Investment Plan —	Need to integrate public participation in finance matters as stipulated by Article 201 of the Constitution and the PFM Act	Add: “(4) The Investment Plan shall be subject to public consultation and shall be aligned to the National Infrastructure Pipeline.”	Need to integrate public participation in finance matters as stipulated by Article 201 of the Constitution and the PFM Act
14.	Clause 19 Performance Management —	The Clause on Performance Management omits critical dimensions of investment-related performance evaluation, including financial performance metrics, Environmental, Social, and Governance (ESG) indicators, and capital mobilization targets, which are essential for a comprehensive and accountable assessment framework.	Clause 19 — Performance Management Add: “(4) Performance contracts shall include financial, developmental, ESG, and private capital mobilization targets.”	Including financial, ESG, and capital mobilization metrics in investment-related performance evaluation ensures performance evaluation aligns with institutional & national strategy and long-term economic development goals.

#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
15.	Clause 20 — Performance Evaluation	Fails to include the role of National Assembly in the performance evaluation process.	Add: “(6) The Cabinet Secretary shall table the annual performance evaluation report before the National Assembly within 90 days of completion.”	To recognize and correctly provide the reporting structure and oversight by the National Assembly.
16.	Clause 21 — Investment Policy	The provision does not integrate ESG and other climate related risks in the Investment Policy.	Clause 21 — Investment Policy Add: “(g) ESG and climate-risk integration standards.” “(h) minimum private capital mobilization thresholds for commercially viable projects.”	The new provision will embed environmental, social, and climate considerations into investment and operational decisions, mitigating long-term financial, reputational, and regulatory risks.
17.	Clause 22 — Project Preparation	“(3) The Fund shall maintain a Project Preparation Facility to ensure high-quality feasibility studies and structuring.”		A dedicated Project Preparation Facility ensures that all proposed projects undergo rigorous feasibility studies, technical assessments, and financial structuring before approval, improving the likelihood of successful implementation.
18.	Clause 23 — Feasibility Studies	“(f) a value-for-money assessment comparing delivery options including PPPs, concessions, and public procurement.” “(g) a fiscal risk assessment consistent with the Public Finance Management Act.”		These provisions ensure that the Fund makes economically sound, legally compliant, and fiscally responsible investment decisions while maximizing value and mitigating risks.
19.	Clause 24 — Standards and Procedures	Add: “(l) mandatory publication of project summaries, feasibility study findings, and Government support measures, except where disclosure would compromise national security or commercial confidentiality.”		

#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
20.	Clause 25 — Government Support Measures	“(4) All Government support measures shall be recorded, disclosed, and managed within national contingent liability ceilings.” “(5) The Cabinet Secretary shall publish an annual statement of fiscal risks arising from Government support measures.”		Clear reporting and adherence to ceilings allow the Treasury, regulators, and oversight bodies to monitor compliance and intervene if risks exceed approved thresholds Aligns with IMF PFRAM and global fiscal transparency norms.
21.	Clause 26 — Reporting	Add: “(4) The Fund shall publish quarterly investment performance reports on its website.”		Regular publication of investment performance reports promotes openness in the Fund’s operations. It enables stakeholders to access timely and accurate information regarding financial returns, portfolio composition, and risk exposure
22.	Clause 27 — Disclosure	Add: “(3) The Fund shall publish: (a) portfolio composition by sector and instrument; (b) investment performance against benchmarks; (c) project-level impact indicators; (d) ESG and climate-risk disclosures.”		Publishing ESG and climate-risk information strengthens risk management, enhances regulatory compliance, and aligns the Fund with global sustainable finance standards
23.	Clause 28 — Financial Transparency	Add: “(d) maintain a public register of all related-party transactions and conflict-of-interest disclosures.”		A public register reinforces the Fund’s commitment to high standards of integrity by ensuring that any actual, potential, or perceived conflicts are transparently disclosed and appropriately managed

Big Projects - Take 5 years

#	CLAUSE & PROVISION	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
24.	Clause 29 — Sources of Funds	Add: “(e) a minimum of 70% of net privatization proceeds shall be transferred to the Fund, with the balance applied to public debt reduction.”		Allocating a minimum of 70% of net privatization proceeds to the Fund ensures a predictable and substantial capital inflow, strengthening its ability to implement investment programs and achieve strategic objectives. By directing the remaining 30% toward public debt reduction, the provision balances long-term investment funding with immediate macroeconomic issues such as public debt repayment
25.	Clause 33 — Withdrawals	Add: “(2) Withdrawals shall be guided by a withdrawal policy approved by the Board and consistent with long-term sustainability.”		Board approval embeds oversight at the highest level, reinforcing fiduciary responsibility and creating a clear line of accountability for all withdrawal decisions
26.	Clause 37 — Regulations	Add: “(d) fit-and-proper criteria for Board members and senior management; (e) ESG and climate-risk standards; (f) fiscal risk assessment methodology; (g) conflict-of-interest and integrity framework.”		Ensures that individuals in key leadership positions possess the requisite competence, integrity, experience, and professional judgment Incorporating these provisions strengthens the Fund’s governance architecture, ensures responsible and sustainable management.

POLICY RECOMMENDATIONS

1. The Bill should provide for the establishment of an independent statutory oversight body to supervise Kenya's National Infrastructure Fund (NIF) to enhance credibility, transparency, and fiscal discipline. This is similar to the ring-fenced governance and statutory oversight structure adopted under Nigeria's Sovereign Investment framework.
2. The NIF Bill should expressly provide for structured and continuous public participation, consistent with Articles 10, 118 and 201 of the Constitution.
3. **Adopt a phased capitalization strategy**
Start with an initial, credible capital base and expand only after demonstrating performance and fiscal sustainability.
4. **Prioritize asset recycling as the primary funding source**
Use privatization proceeds and asset monetization to capitalize the Fund, ensuring proceeds are ring-fenced and not diverted to recurrent spending.
5. **Ensure transparent and safeguarded privatization**
6. **Conduct asset sales through competitive bidding, independent valuation, and strict oversight to protect public value.**
Strengthen governance, transparency and accountability. Establish an independent board, professional management, and robust reporting and audit mechanisms to build investor confidence.
7. **Leverage blended finance strategically.**
Use development and climate finance to reduce risk and crowd in private capital, while avoiding dependency on concessional funding.
8. **Limit fiscal and contingent liability risks.**
Set explicit limits on guarantees and off-budget obligations to protect debt sustainability and fiscal consolidation.
9. **Align investments with national priorities and value for money.**
Prioritize projects with high economic multipliers and sustainable revenue streams, supported by rigorous cost-benefit analysis and monitoring.

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Our Ref: IPF/SBM/24/02-2026

February 25, 2025

Mr. Samuel Njoroge,
Clerk of the National Assembly,
P. O. Box 41842-00100,
Nairobi, Kenya.

RE: INSTITUTE OF PUBLIC FINANCE MEMORANDUM ON THE NATIONAL INFRASTRUCTURE BILL

Greetings from the Institute of Public Finance (IPF).

IPF is an independent, non-partisan, and non-profit think tank that advances the principles and practice of public finance management. With over a decade of experience, we support state and non-state actors at both national and county levels to improve public finance systems through credible evidence and technical assistance. In this note, the Institute submits its analysis, insights and proposals on the National Infrastructure Bill, 2026.

We begin by applauding the Finance and National Planning Committee of the National Assembly for giving the public the opportunity to air their views on this critical Bill which is of great significance to the development of the country. Before we discuss our submission in detail, we set the context.

1. Shroud of Limited Transparency at the Inception of the National Infrastructure Fund (NIF)

The NIF was conceived as a strategic, executive-led initiative reportedly approved by Cabinet in December 2025. Its principal objective was to shift Kenya away from conventional, debt-intensive sovereign borrowing for large-scale infrastructure projects and instead establish a specialized, corporate-structured investment vehicle capable of mobilizing alternative financing. In principle, this policy shift reflects an appreciation of the country's fiscal constraints and the need for innovative financing mechanisms.

However, from its inception, concerns emerged regarding the transparency and accountability framework underpinning the Fund's establishment. Notably, the decision to anchor the NIF under the Government Owned Enterprises Act, 2025 raised legitimate public apprehension. Structuring the Fund through this legislative route was perceived as circumventing robust parliamentary scrutiny at the formative stage and, consequently, weakening the safeguards of public oversight ordinarily associated with public finance institutions. This approach, at the very outset, created a deficit of public confidence and invited questions regarding governance safeguards and the true institutional character of the Fund.



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While the introduction of the NIF Bill before the National Assembly represents a commendable and necessary step toward strengthening transparency, it does not fully cure the foundational concerns that accompanied the Fund's establishment. The Bill indeed provides for governance structures, including a Board of Directors, an Audit Committee, defined roles for the Cabinet Secretary, and reporting obligations to Parliament, measures that we acknowledge and commend. Nevertheless, and as highlighted below, significant substantive concerns remain, particularly in relation to certain contentious provisions that warrant careful reconsideration to ensure alignment with constitutional principles of transparency and accountability.

2. Need for Clear and Precise Definitions within the Bill

A fundamental concern arising from the Bill is the absence of a clear and legally precise definition of what constitutes “national infrastructure.” While the Bill provides an indicative list of sectors, such as railway networks, airports, seaports, and other large-scale projects, it does not articulate the criteria or threshold that qualifies a project as “national infrastructure” in character or significance. A mere enumeration of examples, without a definitional framework, creates interpretive ambiguity and expands discretionary space beyond what is desirable in a statute governing substantial public resources.

The absence of definitional clarity presents both legal and fiscal risks. Without objective criteria, such as scale, strategic national importance, cross-county impact, contribution to economic productivity, or alignment with national development plans, the term “national infrastructure” may be susceptible to overly broad interpretation. In a context where large-scale projects have previously been launched with significant public expenditure but questionable economic viability or sustainability, this ambiguity could permit the inclusion of projects that do not meet rigorous national investment standards.

3. Legislative inconsistency on sources of funds

The Bill leaves significant ambiguity regarding the lawful sources of the Fund's capitalization and, in doing so, creates potential conflict with existing statutory frameworks. In particular, the proposal that the Fund be financed through proceeds from privatization is inconsistent with Section 54 of the Privatization Act, which expressly provides that privatization proceeds shall be paid into the Consolidated Fund. Redirecting such proceeds to the NIF without formally amending the parent Act would create a direct legal inconsistency and render the provision vulnerable to challenge. Beyond the legal conflict, privatization policy is anchored in macro-fiscal objectives, such as debt reduction, fiscal consolidation, and efficient asset management, objectives that are ordinarily achieved through the central budgetary framework rather than through earmarking mechanisms.

Further, the Bill indicates that the Fund may also receive allocations from the national budget. However, this raises additional concerns regarding alignment with the fiscal responsibility principles under **Section 15(2)(a)**



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of the **Public Finance Management Act**, which requires that at least 30% of the national budget be allocated to development expenditure. It is therefore unclear how allocations to the NIF would be treated within this framework, specifically whether such allocations would form part of the 30% development threshold or operate parallel to it. This creates policy uncertainty as to what constitutes development expenditure and risks distorting the existing fiscal architecture if not clearly delineated.

The Bill raises serious concerns regarding institutional duplication and functional overlap with existing statutory bodies. Several of the proposed Board's functions intersect with mandates already conferred upon established entities, thereby risking fragmentation and inefficiency within the public investment framework. For instance, responsibilities relating to road infrastructure development overlap with those of the Kenya National Highways Authority, which is statutorily mandated to develop and manage national road infrastructure. Similarly, the Fund's role in reviewing and screening large-scale projects for feasibility and viability prior to budget allocation, standardizing project identification processes, and developing policies and regulations to guide public investment closely mirrors the mandate of the Public Investment Management Unit (PIMU). Such duplication not only creates institutional ambiguity but also threatens to dilute accountability by dispersing responsibility across multiple bodies with substantially similar functions.

Additionally, there remains uncertainty as to the applicable overarching governance framework. While the Fund was initially referred as being anchored under the Government Owned Enterprises Act, 2025, the Bill does not clearly articulate how this framework interfaces with public finance laws and parliamentary oversight mechanisms. The absence of harmonization between these legal regimes creates ambiguity and undermines coherence in public financial management. For a Fund of this scale and fiscal consequence, statutory clarity and legislative alignment are indispensable.

4. Concentration of Executive Power and the Need for a Robust Enforcement Framework

The Bill appears to confer extensive discretionary authority upon the Cabinet Secretary, particularly in the approval of infrastructure projects and policies of the Fund. Given the scale and fiscal significance of the NIF, such concentration of power warrants stronger parliamentary scrutiny and clearer statutory limits. Infrastructure prioritization and approval decisions carry long-term financial implications for the Republic and therefore should be subject to structured oversight mechanisms that ensure transparency and collective decision-making. Without clear checks, the governance architecture risks weakening accountability rather than strengthening it.

Equally concerning is the limited enforcement framework within the Bill. The NIF is designed to mobilize and manage substantial public resources, complex investment instruments, and long-term contractual arrangements. In such an environment, broad accountability principles alone are insufficient. Kenya's historical experience with procurement irregularities, conflicts of interest, misappropriation of funds, and abuse of office demonstrates that where large-scale capital projects are involved, risks are heightened. The absence of clearly



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articulated offences and penalty provisions tailored to the operational realities of the Fund creates a structural vulnerability, leaving enforcement to general statutes that may not adequately address the specific risks associated with the NIF.

We therefore recommend that:

1. The Bill harmonized with other legal frameworks to eliminate ambiguities and strengthen transparency, coherence, and public trust in the purpose and governance of the NIF.
2. Clear statutory limits be placed on the Cabinet Secretary's powers, with enhanced parliamentary oversight over infrastructure project approvals and policy frameworks developed by the Board.
3. The definitions within the Bill be strengthened to provide precise and objective criteria for what constitutes qualifying infrastructure.
4. Specific offences and proportionate penalties be incorporated into the Bill to ensure deterrence and personal accountability in the event of violations.

We are available to provide further information and discuss our recommendations on the proposed tax measures. Our specific proposals are in the annexed table.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Ndirangu', with a horizontal line underneath.

Daniel Ndirangu,
Chief Executive Officer,
Institute of Public Finance.

IPF SUBMISSIONS ON THE NATIONAL INFRASTRUCTURE BILL, 2025

Clause	Description of the Clause	Proposal	Justification
Clause 2	Definitions	Add a clear definition of what <u>constitutes National Infrastructure</u>	For avoidance of the fund being employed to other infrastructural projects apart from those mentioned in the bill, it is necessary that an explicit definition of “National Infrastructure” be included, mentioning what it entails.
Clause 4(a)	4(a) The purpose of this fund is to scale up and accelerate development of catalytic national infrastructure including, national highway and railway networks, air and seaports, electricity generation, transmission and distribution, water reservoirs, irrigation and agribusiness infrastructure	As above, provide a definition of “Catalytic National Infrastructure”	For purposes of transparency and accountability to the public, the Bill should provide a clear and operational distinction between “infrastructure” and “catalytic infrastructure,” specifying the criteria that differentiate the two categories.
Clause 4(b)	4(b) To mobilize private capital and non-traditional sources of infrastructure finance including <u>domestic funds and collective investment schemes</u> , sovereign wealth funds, climate finance	Include the statement “In the most prudent manner and in accordance with the Privatization Act and PFM Act.”	With the requirement of the PFM Act 15(2), There ought to be an addition mentioning that it aims to mobilize funds in the most prudent manner that ensures fiscal sustainability, ensuring that such financing mechanisms minimize adverse impacts on the budget.
Clause 6 (1)	Composition of the board	Amend the proposal.	The bill should explicitly ensure at least one third of either gender is represented on the board in accordance with article 27 of the constitution. Kenya has progressively incorporated the two-thirds gender rule into various pieces of legislation establishing public

Board of directors			bodies. Omitting it from this Bill would be a regression from that trend and would likely invite constitutional challenge. Courts have in the past nullified appointments to public bodies where the gender principle was not observed, which could expose the Fund's Board decisions to legal challenge and create operational uncertainty.
Clause 11 Role of the board	The clause enumerates the role of the Board	Amend the proposal. The Bill should amend Clause 11 to include an explicit obligation on the Board to consider equitable regional distribution of infrastructure investments as part of its strategic direction-setting function.	This would align the Fund with the equitable development principles in the Constitution, which speaks to reducing regional disparities and ensuring balanced development across Kenya.
Clause 16 Administrator of the fund Cap.412A	The Cabinet Secretary may designate a person to be the administrator of the fund in accordance with section 24(5) of the public finance management act.	Amend the proposal.	The use of the word 'may' suggests the appointment of an administrator is discretionary rather than mandatory. Adopt the proposal but change the word 'may' to 'shall'. Furthermore, there is no specified qualification criteria for administrator in the bill as is the case for Chief Executive Officer and the board members. The bill should specify minimum qualifications for the person delegated as the fund's administrator. This will ensure the fund has a clear identified administrator with explicit defined roles to avoid duplication of roles with the CEO and the board.
Clause 18	18. (1) The Board shall, prior to the commencement of a financial year, adopt an investment plan based on the national strategic objectives. (2) The investment plan shall be effective on the first day of	18 (1) Adopt the proposal and add mandatory minimum contents for the investment plan eg prioritization criteria. To enhance accountability, the Bill should ensure that	Enhances public oversight, improves transparency, investor confidence, and aligns with open government and accountability norms. Inserting a defined time not only improves transparency but also promotes accountability and public trust in the investment plan. Furthermore, ensuring that Parliament approves the plan promotes oversight and ensures effective participation in the utilisation of funds.

	the financial year to which it applies. (3) The investment plan shall form the basis of annual performance contracts to be signed between the Cabinet Secretary and the Fund	the investment plan should be scrutinized and approved by Parliament. 18 (2) Adopt the proposal and add a defined requirement to publish the approved plan	
Clause 21	21. (1) The Board shall develop an Investment Policy for approval by Cabinet. <i>Nalanda Mwangi</i>	Add requirements for Annual and mid-term review and require publication of the approved Investment Policy as suggested in the above clauses.	Keeps policy responsive while retaining long-term direction and promoting accountability. Further, there is need that the policy is tabled in parliament and approved to make sure that the policy directions are in line with the national objectives and the priority areas in line with PFM. Lastly, adding Annual and mid-term review helps in addressing any shocks that may come up during implementation of the policy.
Clause 23 (1) & (2)	Feasibility studies by the Fund on investment projects to determine the commercial viability of the project. <i>[Signature]</i>	Reject this proposal.	The Fund's role in reviewing and screening large-scale projects for feasibility and viability mirrors the mandate of the Public Investment Management Unit (PIMU). Such duplication not only creates institutional ambiguity but also threatens to dilute accountability by dispersing responsibility across multiple bodies with substantially similar functions.
Clause 24	24. (1) Role of the cabinet secretary in prescribing the standards and procedures for the identification and selection investment projects under this Act	Amend this proposal and instead Include Parliament oversight in the approval of the standards.	We should tame the powers of the Cabinet Secretary and require all procedures to be consistent with existing procurement, PPP and PFM frameworks not under discretion of the cabinet secretary. Alternatively, the cabinet secretary should table the prescribed standards and procedures for the identification and selection of investment to parliament for approval.
Clause 29 (a): Funds and Conflict with Other Legislation	The clause provides that the proceeds from privatization and disposal of government	Reject this Proposal	This proposal directly contradicts the framework established under section 54 of the Privatization Act 2025, which provides that proceeds from privatization are to be channeled into the Consolidated Fund. Redirecting privatization proceeds to the NIF



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	<p>assets shall include funds for the NIF.</p>		<p>through subsidiary legislation or an ordinary statutory clause would create legal conflict and undermine legislative coherence. In the absence of a formal amendment to the Privatization Act, such a provision would be legally untenable.</p> <p>Furthermore, privatization policy is anchored on specific macroeconomic objectives, including debt reduction, fiscal consolidation, and efficiency in public asset management. The rationale behind channeling proceeds to the Consolidated Fund is to allow the National Treasury to apply such resources toward debt servicing, deficit reduction, or other national priorities determined through the budgetary process. Diverting these proceeds directly to the NIF risks fragmenting fiscal policy and weakening coordinated debt management. At a time when fiscal sustainability and debt alleviation remain central national concerns, maintaining coherence between privatization policy and broader public finance objectives is imperative.</p> <p>Additionally, if the policy intention is indeed to earmark privatization proceeds for infrastructure development, such a shift requires deliberate legislative harmonization. This would necessitate a formal amendment to the Privatization Act, 2025 to align revenue allocation mechanisms and clarify the fiscal rationale. Absent such harmonization, embedding this provision within the NIF Bill would create statutory inconsistency and expose the law to legal challenge.</p>
<p>Clause 34: Investment of Surplus Funds</p>	<p>The Bill proposes that the Board with approval from the CS Treasury shall invest such surplus funds in government securities</p>	<p>The proposal should be rejected and reformulated to provide greater clarity and governance safeguards. In particular, the provision should</p>	<p>The proposal fails to define what constitutes “surplus funds,” thereby creating ambiguity in interpretation and implementation. Without a clear statutory definition tied to actuarial assessments or liquidity thresholds, the provision may expose the Fund to inconsistent or imprudent application as evidenced even with other funds such as the Affordable Housing Levy. Moreover, the</p>



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		<p>clearly define what constitutes “surplus funds,” and mandate the development of a comprehensive investment policy to guide decision-making.</p>	<p>requirement for prior approval of the Cabinet Secretary raises serious governance concerns. The Board owes fiduciary duties to the Fund and its beneficiaries, and its investment decisions should be guided by statutory principles and an approved investment policy, not discretionary executive control. Embedding ministerial approval at the operational level risks politicizing investment decisions, weakening institutional independence, and creating uncertainty in financial management.</p> <p>The revised clause should also expressly incorporate principles of prudence, transparency, accountability, and risk management to ensure sound financial stewardship. Further, instead of requiring case-by-case approval from the Cabinet Secretary, the law should provide that investments be undertaken in accordance with an approved and periodically reviewed Investment Policy Statement (IPS), thereby strengthening institutional autonomy while maintaining structured oversight.</p>
<p>Part VII on the Miscellaneous Provision</p>	<p>-</p>	<p>Part VII of the NIF Bill must be strengthened to include clear, comprehensive, and enforceable criminal and offences provisions in order to safeguard the integrity, transparency, and accountability of the Fund.</p> <p>Offences should therefore extend to:</p>	<p>Given the scale, sensitivity, and developmental significance of the NIF, a weak enforcement framework would undermine both its credibility and its operational effectiveness. Firstly, the NIF Bill establishes a mechanism intended to mobilize, manage, and ring-fence public finances for national infrastructure development. Such a Fund will inevitably handle substantial financial resources, long-term investment instruments, and complex contractual arrangements. In this context, the absence of detailed offences and penalty provisions creates a structural vulnerability.</p> <p>Secondly, Kenya’s historical experience with corruption, procurement irregularities, and mismanagement of public funds demonstrates that broad principles of accountability are insufficient without corresponding criminal liability. Where large capital projects</p>



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		<ul style="list-style-type: none"> • Misuse or misapplication of Fund resources. • Authorization of unlawful investments or expenditures. • Failure to disclose conflicts of interest. • Falsification or concealment of financial records. • Obstruction of audits, investigations, or parliamentary oversight. • Breach of statutory investment or procurement principles. 	<p>are involved, risks often arise in areas such as misappropriation of funds, conflict of interest, abuse of office, unlawful authorization of expenditure, manipulation of procurement processes, and failure to comply with fiduciary standards. If these acts are not explicitly criminalized within the framework of the NIF Bill, enforcement may be left to general statutes, which may not adequately capture the specific operational risks unique to the Fund.</p> <p>Thirdly, a strong offences regime serves both a punitive and preventive function. Clearly articulated offences, coupled with proportionate penalties, create deterrence. They send a strong institutional signal that violations of the Act, will attract personal liability. This strengthens institutional discipline and enhances public trust in the Fund.</p> <p>Fourthly, strengthening Part VII would align the NIF Bill with modern public finance governance standards, which require that any statutory body entrusted with significant financial authority operate under strict accountability frameworks.</p>
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*****End*****



PUBLIC PARTICIPATION STAND / POSITION PAPER NATIONAL INFRASTRUCTURE FUND BILL, 2026

Presented by: Bunge la Mwananchi (People's Parliament)

1. Introduction

Bunge la Mwananchi, as a people-centered civic platform committed to transparency, accountability and inclusive development, hereby presents its official stand on the National Infrastructure Fund Bill, 2026.

We recognize infrastructure as a critical pillar for economic growth, job creation, regional integration and social transformation. Roads, railways, energy systems, water projects, ports and digital infrastructure are foundational to Kenya's long-term prosperity.

However, while we support the objective of strengthening infrastructure financing, we strongly emphasize that public resources must be safeguarded with strict governance mechanisms to prevent loss, misuse or misappropriation of funds.

This position paper therefore outlines:

- i. Our general position on the Bill
- ii. Key concerns raised by wananchi
- iii. Constitutional and governance considerations
- iv. Specific measures that must be incorporated to prevent loss of funds
- v. Final recommendations

2. General Position of Bunge la Mwananchi

Bunge la Mwananchi takes a conditional support position on the National Infrastructure Fund Bill, 2026.

We support:

- i. Creation of a sustainable infrastructure financing framework
- ii. Reduction of over-reliance on external debt
- iii. Attraction of private and institutional investment
- iv. Long-term planning for national development

However, we oppose:

- i. Weak oversight structure
- ii. Governance loopholes that expose public funds to loss
- iii. Political interference in fund management
- iv. Any structure that bypasses constitutional financial safeguards

3. Key Issues Raised During Public Engagement

During consultations and civic discussions, the following major concerns emerged:

A. Governance Structure

1. Lack of clarity on who has ultimate financial oversight.
2. Risk of the Fund operating outside strong Public Finance Management controls.
3. Unclear relationship between the Fund and existing oversight bodies such as Parliament, Auditor-General and Controller of Budget.

B. Risk of Political Interference

1. Concerns that project selection may be politically motivated instead of economically viable.
2. Fear that the Fund could become a vehicle for patronage.

C. Transparency Gaps

1. No strong requirement for real-time public disclosure of projects and expenditures.
2. Risk of procurement manipulation.

D. Protection of Institutional Funds

Concerns over pension funds or institutional investments being exposed to high-risk infrastructure ventures without proper risk mitigation.

E. Risk of Corruption and Fund Diversion

Given Kenya's past experiences with mega infrastructure projects, wananchi raised fears of:

1. Inflated project costs
2. Ghost projects
3. Advance payments without delivery
4. Procurement cartels
5. Delayed or stalled projects

4. Constitutional and Public Finance Considerations

Bunge la Mwananchi emphasizes that:

- i. The Bill must fully comply with Chapter 12 of the Constitution on Public Finance.
- ii. Any borrowing by the Fund must align with national debt sustainability frameworks.
- iii. The Fund must not operate as a parallel financial structure that weakens parliamentary oversight.
- iv. County governments must be consulted where projects affect devolved functions.

5. MEASURES TO AVOID LOSS OR MISUSE OF FUNDS

To safeguard public resources, Bunge la Mwananchi proposes the following mandatory safeguards:

5.1 Strong Legal Safeguards

1. Ring-Fencing of Funds

- ✓ Funds must only be used for specifically approved infrastructure projects.
- ✓ Diversion of funds should attract criminal liability.

2. Clear Definition of Eligible Projects

- ✓ Projects must pass strict economic viability and social impact tests.
- ✓ Political considerations must not override technical evaluation.

3. Mandatory Parliamentary Approval

All major borrowings and guarantees must be approved by Parliament.

5.2 Independent Oversight Mechanisms

1. Controller of Budget Oversight

No withdrawal should occur without approval.

2. Auditor-General Annual and Special Audits

Mandatory forensic audit for projects exceeding a defined financial threshold.

3. Public Accounts Committee Supervision

Regular reporting to parliamentary committees.

5.3 Transparent Procurement Systems

1. Full Compliance with Public Procurement Law

- ✓ Open and competitive tendering only.
- ✓ No restricted procurement except in legally defined emergencies.

2. Digital Procurement Portal

Publish:

- ✓ Tender notices
- ✓ Bid evaluation results
- ✓ Winning bidders
- ✓ Contract amounts
- ✓ Project timelines

3. Blacklist Corrupt Contractors

Companies involved in inflated or fraudulent contracts must be permanently barred.

5.4 Professional Project Management

1. Independent Technical Review Panels

Engineers, economists, financial analysts must evaluate projects.

2. Cost Benchmarking

Compare project costs with regional and global standards.

3. Performance-Based Disbursement

Release funds in phases based on verified milestones.

5.5 Protection of Pension and Institutional Investments

1. Risk Diversification Requirements

Limit exposure of pension funds to infrastructure projects.

2. Guarantee Mechanisms

Provide partial government guarantees only within debt limits.

3. Independent Investment Committee

Separate from political leadership.

5.6 Public Transparency & Citizen Oversight

1. Public Infrastructure Dashboard

Real-time display of:

- ✓ Project status
- ✓ Budget allocation
- ✓ Amount disbursed
- ✓ Percentage completion

2. Community Monitoring Framework

Allow citizens in project areas to monitor progress.

3. Whistleblower Protection

Legal protection for individuals reporting corruption.

5.7 Anti-Corruption and Criminal Accountability

1. Automatic Investigation Clause

Any unexplained cost overrun beyond a set percentage triggers investigation.

2. Personal Liability

Board members and accounting officers held personally liable for negligence.

3. Lifestyle Audit Provisions

For senior Fund officials managing large portfolios.

6. Strategic Recommendations

Bunge la Mwananchi recommends:

1. Amend the Bill to strengthen constitutional compliance.
2. Embed strong anti-corruption clauses.
3. Clearly define oversight roles of Parliament and independent institutions.
4. Introduce strict risk management frameworks.
5. Involve citizens and civil society in monitoring implementation.

7. Conclusion

Bunge la Mwananchi acknowledges that Kenya requires bold and innovative infrastructure financing mechanisms to unlock economic growth and transform livelihoods.

However, infrastructure development must not become a channel for financial leakage or accumulation of hidden liabilities.

We therefore maintain that:

A strong Infrastructure Fund must be built on transparency, accountability, professionalism, constitutional alignment and citizen oversight.

If these safeguards are properly incorporated, the National Infrastructure Fund Bill, 2026 can become a transformative instrument for national development. Without them, it risks becoming a financial vulnerability.

Submitted by:
Bunge la Mwananchi
People's Parliament
For Transparency, Accountability and Inclusive Development

President ⇒ Hagai Kimani.

NAKURU COUNTY PUBLIC OPINION CONSULTATIVE INITIATIVE

P.O Box 10076 Nakuru 0720988086

Promoting public discourse in governance issues

RECOMMENDATIONS ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2026

Nakuru County Public Opinion Consultative Initiative, **NO-POCI**, is a respected and trusted public watchdog organization with a keen interest in all **governance issues including policy formulation, implementation and review** in Kenya

We wish to make the following recommendations to enrich this policy document guided by the clear provisions on Public Participation under Kenya Constitution 2010.

From the onset, we further wish to confirm to the Ministry of Finance and Economic Planning and the National Assembly that we have collectively and individually read and perused this document so as to objectively and rationally inform our well thought **recommendations, suggestions, reservations and observations** wherever it may apply.

We thus tax payers and infrastructure projects service consumers want to submit as follows;

PART I - PRELIMINARY

We have no reservations whatsoever against the **Short Title and Commencement, Interpretations and Object** of this Bill as captured in this section.

Evidently, the clarity of the said interpretations serves to spur easy comprehension of the said Bill especially by Kenyans without **legal background, orientation and training**.

As for **Purpose** of this fund, we support the good intentions of this Fund to allocate extra monies to the following infrastructural sectors;

- **Highways Network**
- **Air and Sea Ports**
- **Electricity Generation, Transmission and Distribution**
- **Water Reservoirs and**
- **Irrigation**



However, we have reservations **Railway Network** and **Agribusiness** which we want deleted from this section.

The rationale for this is due to the fact that the National Government via the **Kenya Railway Policy** which in 2024 was subjected for mandatory Public Participation all over Kenya purposes to restructure Kenya Railways Corporation to among others creates a **Kenya Railways Authority** and too opens the sector for **Public Private Partnerships**.

As for Agribusiness Infrastructure, we strongly feel that construction of modern markets should be left to County Governments.

PART 11- ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL INFRASTRUCTURE FUND

CLAUSE 6 (1)

We prefer a **lean and efficient team of just seven (7) Board of Directors**.

Going by the above proposition, we recommend the number of **Independent Directors** to be reduced by half thus **two** from the proposed **four** in **(6) (1) (c)**

CLAUSE 7 (b)

We want the work experience cited in this section to be **twenty (20)** years and not **fifteen (15)** years noting the effective management of this Fund will require hiring of people with vast experience in matters finance.

This to apply in other relevant section of this Bill i.e. Clause 15 (2) (b)

CLAUSE 8 (1) (c) – (j)

We fully concur with the provisions of these sections which we find to be well pronounced to cushion the fund from issues of conflict of interests that may arise if ill motivated persons are appointed as Board of Directors.

CLAUSE 9 (2)

We are opposed to unnecessary absenteeism in the in the running of the Fund by Chairperson and all the Directors.

For this reason, we are of the strong opinion any such that misses three (3) consecutive meetings to immediately resign due to public interest.

CLAUSE 10



A handwritten signature in blue ink is written over a purple rectangular stamp. The stamp contains the following text: "NC-POCI", "P.O. Box 10076-20100, NAKURU", and "Date: 25-02-26".

We prefer the Board Directors to serve single term of five (5) years. This we feel will afford them individually and collectively adequate time to deliver on the mandate bestowed to them by Kenyans in the running of this Fund.

CLAUSE 16

We want **may** be replaced by **shall** so as to commit the Cabinet Secretary for the Ministry of Finance and Economic Planning to be proactive as per the provision of this section.

PART III- PERFORMANCE EVALUATION

As a general recommendation we want the signing of **Performance Contracts** cited in this section be opened to members of the public and this to be convened in venues very accessible to the said members of the public.

Further, we want the **Office of Controller of Budget of Kenya** to conduct oversight in the use of the Funds.

PART IV -PROJECT PREPARATION AND IMPLEMENTATION

CLAUSE 21 (1)

We feel that there will be a need to subject the **Investment Policy** cited in this section for mandatory Public Participation all over Kenya.

CLAUSE 23

We recommend that the feasibility studies to also include project completion times and too economic shocks of among others inflation and weakening of the Kenya shilling.

Further, for any land acquisition, this to be undertaken by **National Land Commission** which as per it core mandate will ensure among others prompt compensation to the affected land owners.

CLAUSE 24 (e)

We have noted that this section is well pronounced on Public Participation and Stakeholders engagements. However, we want same to be conducted in a structured manner as per provisions of the Public Participation Act, 2025.

PART V – REPORTING AND DISCLOSURE

CLAUSE 28 (c)



Provision of this section is very alarming. We want the Director to be barred from using the Fund to advance their own selfish interests or those of their close relatives or companies associated with them.

PART VI –FINANCIAL PROVISIONS

CLAUSE 29 (b)

We recommend Parliament to appropriate five (5%) of the National Government annual Budget to the Fund.

Further, we want three (3%) of the Fund to be used for administration purposes.

PART VII- MISCELLANEOUS PROVISIONS

As a general recommendation we want the Cabinet Secretary to prioritize the formulation of the Regulations cited in this section and too subject the same for **mandatory Public Participation all over Kenya.**

SPECIFIC RECOMMENDATIONS ON ABSORPTION OF THE FUND

We recommend that following not benefit from this Fund;

- Public Private Partnerships projects
- All infrastructural projects (**ongoing or stalled**) which were commissioned before operationalization of this Fund.
- All projects under ongoing negotiations and of value less than fifty (50) billions
- Any project whose implementation will be challenged in Courts.

Signed in Nakuru City Today 25-02-2026


Daniel Murugu

Secretary



NAKURU COUNTY PUBLIC OPINION CONSULTATIVE INITIATIVE





26th February 2026.

**MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE NATIONAL
INFRASTRUCTURE FUND BILL, 2025**

I. Introduction

WeCare Youth Organization welcomes the proposal to establish a National Infrastructure Fund to mobilize alternative financing for strategic infrastructure and reduce reliance on sovereign borrowing.

Infrastructure investment remains essential to Kenya's growth trajectory. However, the governance and fiscal design of the Fund will determine whether it accelerates sustainable development or becomes another channel for accumulating fiscal risk.

This memorandum evaluates the Bill against four national imperatives:

1. Fiscal sustainability and debt risk
2. Youth development and employment impact
3. Cost of living implications
4. Constitutional compliance and intergenerational equity

**I. PROPOSED CLAUSE-BY-CLAUSE AMENDMENTS TO THE NATIONAL
INFRASTRUCTURE FUND BILL, 2025**

Clause No.	Description of the Clause	Proposal	Justification
4	Purpose of the fund- The clause focuses on financing infrastructure but omits sustainability, affordability, and socio-economic equity	<i>Insert a new paragraph (e):</i> to ensure that infrastructure financed under the Fund promotes environmental sustainability, affordability of essential services,	This aligns the Fund with Article 10 and Article 201 of the Constitution of Kenya and ensures projects deliver social value, not only financial returns.

	safeguards.	youth employment creation, and equitable access to public goods.	
6	Composition of the Board - There is no representation of public interest sectors such as youth, climate, or social infrastructure expertise.	Amend Clause 6(1)(c) to read: “(c) four persons, who are independent directors, at least one of whom shall have expertise in youth employment, social infrastructure planning, or labour market development.”	Ensures infrastructure investment decisions incorporate employment and social equity impacts.
11	Role of the Board	The Board functions lack the obligation to consider socio-economic and affordability impacts. - Insert new paragraph (l): To ensure that all Fund-financed projects undergo affordability, employment impact, and fiscal risk assessments before approval.”	This will prevent projects from raising tariffs or creating contingent liabilities without social safeguards.
18	Investment Plan	There is no requirement for parliamentary oversight or public participation in investment planning. We therefore recommend; Inserting new subsections: “(4) The Investment Plan shall be submitted to the National Assembly for approval before implementation. (5) The Investment Plan shall be subjected to public participation, including targeted youth consultation forums.”	This enhances democratic oversight and compliance with constitutional participation principles.

21	INVESTMENT POLICY	<p>There are no sustainability or lifecycle cost requirements. We ask the committee to Insert new paragraph (g):</p> <p>“(g) life cycle costing analysis, climate resilience assessment, and projected maintenance obligations for each proposed project.”</p>	<p>The current framework suffers from "initial cost bias." By focusing only on the immediate construction or acquisition price, the national government risks inheriting projects that are poorly built, expensive to maintain, and vulnerable to a changing climate.</p> <p>It prevents the accumulation of infrastructure maintenance liabilities estimated in Kenya to exceed KSh 150 billion annually.</p>
23	FEASIBILITY STUDIES	<p>The clause mentions environmental and economic impacts, but not fiscal exposure or tariff affordability, and we ask the committee to amend Clause 23(2) to add new paragraphs:</p> <ul style="list-style-type: none"> - “(f) assessment of contingent fiscal liabilities to the national government; - (g) projected tariff or service cost impacts on households; - (h) expected youth employment creation and skills transfer outcomes.” 	<ul style="list-style-type: none"> - Modern infrastructure or development projects often carry "hidden" costs. By requiring an assessment of contingent fiscal liabilities, the committee ensures that the government isn't signing a blank check for future taxpayers. - A project can be "economically viable" on paper while being "socially unaffordable" in reality. Adding projected tariff or service cost impacts forces a reality check on how the project affects the average citizen's cost of living. - Development shouldn't just build things; it should build people. Including youth employment and skills transfer ensures that the project leaves a lasting legacy beyond physical infrastructure.

24	STANDARDS AND PROCEDURES	Public participation is mentioned but not defined or enforceable. We therefore recommend inserting a new subsection: “(3) Regulations made under this section shall prescribe minimum public disclosure standards, including publication of feasibility studies, projected project costs, financing structure, and expected fiscal exposure.”	Strengthens transparency and prevents hidden liabilities.
25	GOVERNMENT SUPPORT MEASURES	It allows guarantees without fiscal ceilings, creating the risk of hidden public debt. - We recommend inserting new subsections: “(4) Government support measures issued under this section shall not exceed 1.5 percent of Gross Domestic Product in any financial year. - (5) Any guarantee exceeding KSh 10 billion shall require prior approval of the National Assembly.	Protects fiscal sustainability and limits contingent liabilities that could otherwise exceed KSh 300 billion. Capping support measures at 1.5% of GDP prevents the "snowball effect" of contingent liabilities. <ul style="list-style-type: none"> ● Debt Sustainability: It ensures that government guarantees stay within a predictable range, protecting the national credit rating. ● Risk Concentration: By setting an annual ceiling, the government is forced to prioritize high-value projects rather than over-extending on multiple risky ventures.
26	REPORTING	Reporting is to be done to the Cabinet Secretary, not directly to the Parliament nor the public. We propose inserting a new subsection:	1.) Breaking the Information Monopoly: Currently, the Cabinet Secretary acts as a gatekeeper. This amendment ensures that the National Assembly , which holds the

		“(4) The Fund shall submit quarterly fiscal risk exposure reports to the National Assembly and publish them on its website	<p>"power of the purse," has direct and timely access to the Fund's risk profile.</p> <p>2.) Real-Time Fiscal Monitoring: "Quarterly" reporting prevents "end-of-year surprises." It allows Parliament to intervene if fiscal risk exposure begins to trend toward dangerous levels before a crisis occurs.</p> <p>3.) Market and Public Trust: Publishing reports on a public website invites independent analysis from economists, investors, and civil society. This transparency lowers the "risk premium" for the country by proving that the government is not hiding "toxic" liabilities.</p> <p>4.) Enhances transparency and allows early oversight of emerging fiscal risks.</p>
27	DISCLOSURE	<p>Disclosure requirements are limited to financial statements.</p> <p><i>We propose</i> to insert a new paragraph:</p> <p>“(d) a register of all government guarantees, letters of support, and contingent liabilities to be issued under the Fund.</p>	This allows Parliament and citizens to track fiscal exposure in real time.
29	FUNDS OF THE FUND	<p>It does not specify limits on public contributions or borrowing exposure.</p> <p><i>Proposed Amendment</i></p> <p>Insert new subsection:</p>	- It prevents the Fund from becoming an unchecked fiscal drain.

		“(2) Appropriations from public funds to the Fund shall not exceed 0.5 percent of Gross Domestic Product (GDP) in any financial year without approval from the National Assembly.	
37	REGULATIONS	Delegates wide powers to the Cabinet Secretary without sufficient parliamentary safeguards. We therefore recommend inserting a new subsection: “(4) Regulations made under this Act shall be tabled before the National Assembly within fourteen days of publication and shall not take effect unless approved.”	This ensures legislative oversight over key financial rules.

2. Constitutional and Legal Framework

The Bill must comply with the Constitution of Kenya, particularly:

Article 10 – transparency and accountability

Article 43 – socio-economic rights

Article 174 – equitable development

Article 201 – prudent use of public resources

- Any infrastructure financing mechanism that creates contingent liabilities without safeguards risks violating Article 201(d), which requires that public debt be used prudently and equitably.

3. Fiscal Sustainability and Debt Risk

3.1 Potential Fiscal Exposure

Clause 25 allows government guarantees, letters of support, and credit guarantees.

International evidence shows such instruments often convert into public debt:

- In South Africa, state guarantees to infrastructure SOEs exceeded 10% of GDP by 2020.
- In Indonesia, infrastructure guarantees triggered fiscal liabilities exceeding USD 12 billion after PPP failures.

Kenya's current public debt is approximately KSh 12.3 trillion (*Institute of Economic Affairs, Kenya National Debt Counter 2026*) (~69% of GDP).

If even 5% of Fund-backed projects default, contingent liabilities could exceed KSh 250 billion.

Opportunity Cost

Such liabilities would crowd out:

1. education financing
2. county transfers
3. health sector funding

Equivalent to over two years of the Higher Education Loans Board funding, or the full annual budget of several counties combined.

3.2 Recommendation to Parliament

Insert a clause limiting government guarantees under the Fund to:

No more than 1.5% of GDP annually

No more than 10% of the total public debt stock cumulatively

Require that all guarantees be approved by Parliament under the Public Finance Management Act.

4. Sustainability and Project Selection

Clause 23 requires feasibility studies, including economic and environmental impact.

However, the Bill does not require:

1. climate resilience assessment
2. life cycle cost analysis
3. Maintenance funding guarantees

This risks infrastructure becoming a fiscal burden rather than a productive asset.

Comparative Example

Chile requires life cycle costing for all infrastructure financed through national funds.

This reduced long-term maintenance costs by nearly 25%.

Recommendation

Amend Clause 23 to require:

- Climate-resilience screening for all projects above KSh 5 billion
- Mandatory life cycle costing
- Publication of economic rate of return (ERR) estimates

5. Youth Development and Employment Impact

Infrastructure is Kenya's largest public investment sector, but it does not automatically translate into youth jobs.

Evidence from past mega-projects shows:

1. capital-intensive procurement structures

2. heavy reliance on imported labour and materials
3. limited local skills transfer

Opportunity Cost

Global evidence from the World Bank, International Monetary Fund and International Labour Organization shows that if infrastructure spending of KSh 1 trillion annually generates only 0.2 jobs per million shillings, Kenya loses the opportunity to create up to 200,000 additional youth jobs per year.

Recommendations

Insert provisions requiring:

- A. Minimum 30% youth and local enterprise participation in Fund-financed projects.
- B. Mandatory apprenticeship and skills-transfer plans in all contracts above KSh 2 billion.
- C. Allocation of 1% of project value to youth technical training funds.

For example, A KSh 50 billion railway project would generate KSh 500 million for skills development.

6. Cost of Living Implications

Infrastructure financing affects the cost of living through:

1. energy tariffs
2. transport tolls
3. water pricing
4. logistics costs

If infrastructure is financed through cost-recovery tariffs without safeguards, households may face rising prices.

Comparative Evidence

In the Philippines, toll-road PPP expansion raised commuter transport costs by 15–20%.

Recommendation

Insert a new clause requiring:

1. Affordability impact assessments for all projects affecting essential services.
2. Cap on tariff increases tied to inflation.
3. Social pricing mechanisms for water, electricity, and transport infrastructure.

7. Governance and Transparency

The Bill establishes a Board with strong executive appointment powers but weak parliamentary oversight. This risks creating a large financial institution with limited democratic accountability.

Recommendation

Parliament should amend the Bill to:

1. Require parliamentary approval of the Fund's 5-year investment strategy.
2. Require quarterly disclosure of:
 - project pipeline
 - government guarantees issued
 - expected fiscal exposure
3. Require Auditor-General value-for-money audits on projects above KSh 10 billion.

8. Intergenerational Equity

Infrastructure financed today will be paid for by future taxpayers.

The Constitution requires that fiscal decisions not disproportionately burden future generations.

Recommendation

1. Insert a clause requiring:
2. Intergenerational fiscal impact statements
3. Debt Sustainability Certification for all Fund projects

9. Strategic Fiscal Scenario

If properly structured, the Fund could:

1. reduce reliance on sovereign borrowing by KSh 200–300 billion annually
2. crowd in pension capital
3. lower interest costs

But without safeguards, it could:

1. increase hidden debt
2. raise tariffs
3. worsen inequality

The Bill must therefore embed fiscal discipline and social safeguards at the outset.

Conclusion

The National Infrastructure Fund has the potential to transform Kenya's infrastructure financing model.

However, for it to align with the Constitution and national development priorities, Parliament must ensure the Fund:

1. strengthens fiscal sustainability
2. promotes youth employment
3. protects households from rising costs
4. preserves intergenerational equity

WeCare Youth Organization respectfully urges the National Assembly to incorporate the above amendments before passing the Bill.


AQUILLA LEVINTA MOKAYA
EXECUTIVE DIRECTOR



Institute of
Economic Affairs

MEMO

Views on the National Infrastructure Fund Bill

(National Assembly Bill No. 1 of 2026)

Date: 26th February 2026

The Institute of Economic Affairs (IEA Kenya) is a think-tank that provides a platform for informed discussions in order to influence public policy in Kenya. We seek to promote pluralism of ideas through open, active and informed debate on public policy issues. We undertake research and conduct public education on key economic and topical issues in public affairs in Kenya and the region and utilize the outcomes of the research for policy dialogue and to influence policy making.

This memo presents the IEA-Kenya’s response to the National Assembly call for the public to provide their input into the National Infrastructure Fund Bill, 2026.

The Institute of Economic Affairs does not support the establishment of the National Infrastructure Fund as proposed. Given Kenya’s tight fiscal position, characterised by high public debt, rising debt-servicing costs, liquidity constraints, and mounting pending bills, the creation of a standalone fund with independent borrowing powers is fiscally imprudent. By shifting infrastructure financing outside the Consolidated Fund, the Bill weakens budget transparency, turning the Fund into a mechanism for obscuring debt rather than strengthening fiscal discipline. However, should the Fund nonetheless proceed, the following proposals are advanced to mitigate the attendant fiscal, governance, and accountability risks.

Issue	Recommendation	Justification
1. Clauses 24 provides for feasibility study and approval of projects but fails to provide feasibility thresholds to safeguard against approval of loss-making and poorly structured projects	Amend Clause 24 by inserting a new sub-clause requiring that all feasibility or economic appraisal study reports be undertaken by an independent expert and be published on the Fund’s website, published and publicized and submitted to Parliament within thirty days of completion for review and approval.	The absence of such a requirement has in the past enabled the approval of loss-making and poorly structured projects. A mandatory, rigorous feasibility or economic appraisals threshold will prevent non-viable projects from proceeding and safeguard the Fund’s capital base.
2. Clause 5, establishes the Fund as a legal entity but does not explicitly bind the bond to Public Finance Management Act	Amend Clause 5 by requiring all bond-related cashflows to comply with Public Finance Management Act	This will require all bond-related operations to comply with Public Finance Management Act.
3. Clauses 18–20 establish the requirement for an investment plan, a performance management framework and annual performance evaluation, but none of them explicitly	Amend the clauses to require that the investment plan, performance management framework and performance evaluations include indicators that measure project timeline adherence, cost performance, milestone progress and the projected effect of these factors on the Fund’s capacity	Without KPIs linked to repayment capacity, the Fund may fail to detect emerging cost pressures, schedule delays or underperformance that weaken the cashflows required for timely debt servicing. This exposes the Fund to liquidity stress, increases the likelihood of repayment shortfalls and

<p>require performance indicators, for example, that show whether funded projects will generate sufficient cashflows to support future bond-repayment obligations.</p>	<p>to meet its bond-repayment commitments.</p>	<p>undermines financial credibility.</p>
<p>4. Clauses 31 and 32 provides for withdrawals from the fund but do not require timely payments or reporting of pending bills.</p>	<p>Insert Clause 32B requiring prompt payment within set timelines and quarterly reporting of pending bills.</p>	<p>Introducing prompt-payment and pending-bill reporting requirements promotes predictable cash-flow management and financial discipline. This approach aligns with governance expectations applied to other national funds,</p>
<p>5. Sunset Clause (Missing) The Bill contains no sunset, expiry or mandatory review clause. The official text ends at Clause 37 without providing for periodic legislative reassessment or renewal of the Fund.</p>	<p>Insert a new Clause 38 – Sunset and Mandatory Review, requiring a statutory review after five years to assess investment performance, governance, contingent liabilities and bond-repayment capacity, with provisions for Parliamentary renewal, amendment or discontinuation and a structured six-month wind-down trigger.</p>	<p>Without a sunset or mandatory review clause, the Fund may continue indefinitely even if it becomes financially unsustainable, accumulates contingent liabilities, underperforms on investments or exhibits governance failures. This exposes the State to escalating fiscal risk, erosion of public value and long-term debt-servicing vulnerability.</p>



**MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE NATIONAL INFRASTRUCTURE FUND
BILL, 2026**

February 2026

Okoa Uchumi Campaign, in response to the National Assembly's call for public input on the National Infrastructure Fund Bill, 2026, is pleased to submit this memorandum.

The Okoa Uchumi Campaign is a civil society platform working with stakeholders to redress Kenya's public debt crisis. The coalition seeks to push for political accountability, and bolster constitutional safeguards in public debt management, for debt sustainability through a balanced and equitable budget.

Introduction

The concept of the National Infrastructure Fund was first conceived in 2025 through a communique and was intended to support the country's long-term development and economic transformation. In pursuit of this agenda, and in response to concerns raised in a petition (Petition E835 of 2025) challenging the establishment of the fund as a public fund being established outside the constitutional and statutory framework, steps have been taken to anchor the proposed fund in legislation through the National Infrastructure Fund Bill, 2026.

This legislative approach is consistent with Article 206(1)(a) of the Constitution, which states that a national government fund other than one established by the Constitution may only be created through an Act of Parliament or under the PFM Act. These efforts, from having the fund as an executive initiative to a statutory framework in law, are a commendable effort to align the fund's establishment with constitutional requirements and to provide a lawful basis for its operations.

The Bill reflects the government's intention to create a financing mechanism to support Kenya's long-term development. At face value, it presents a forward-looking framework that incorporates features observed in comparable infrastructure funds in jurisdictions such as India and Saudi Arabia. However, while the Bill addresses the procedural concerns raised in the above-mentioned petition, which is still ongoing in court, by providing a statutory foundation for the fund, legality alone does not equal constitutional compliance. The substantive provisions of the Bill must fully align with the Constitution, particularly the principles of public finance, including transparency, accountability, and prudent use of public resources, while also safeguarding the national interest.

More broadly, the establishment of a National Infrastructure Fund constitutes a significant intervention within Kenya's public finance architecture. If well curated and designed, such a fund can mobilize long-term capital, enhance project preparation, and accelerate delivery of strategic infrastructure. Comparative international experience nevertheless demonstrates that the effectiveness of infrastructure funds depends less on their creation and more on the clarity of their mandate, the robustness of their governance arrangements, and their integration within existing planning and budgeting systems. Where these elements are insufficiently defined, infrastructure funds have tended to fragment accountability, duplicate institutional mandates, and generate contingent fiscal liabilities outside the core budget framework.



The Bill at hand, while placing the proposed fund on a statutory footing, still makes a few misses. It does not specify categories of infrastructure to be financed, the institutional relationship between the Fund and existing public investment management processes. All these give rise to material uncertainty as to whether the proposed fund is intended to operate as a complementary financing instrument within the existing public investment framework or as a parallel institutional mechanism for infrastructure financing

Thus, while Kenya may benefit from a properly structured infrastructure financing vehicle, the Bill and as it is, raises substantive concerns relating to mandate precision, adequacy of governance safeguards, and exposure to long-term fiscal risk. While Kenya may benefit from a well-structured infrastructure financing vehicle if it is firmly anchored within the constitutional public finance framework designed to enhance, rather than bypass, existing accountability mechanisms, as currently drafted, the Bill risks pursuing an institutional solution that may not address the underlying constraints to infrastructure delivery and could therefore amount to a costly and complex institutional experiment without commensurate benefits. Considering this, TISA hereby submits its views on the bill and proposes various amendments intended to fortify the Bill's legal, governance, and fiscal architecture so as to secure alignment with constitutional requirements and recognize international best practice as follows:



GENERAL COMMENTS	
Key Issues	Justification
Lack of clarity on the objects of the Bill, and limited definitions	<p>As proposed, the Bill sets very vague objectives. This ambiguity creates room for discretionary allocation of public resources, which may be inconsistent with the constitutional requirements of transparency, equity, and accountability in public finance management under Chapter Twelve of the Constitution.</p> <p>Further, the bill fails to define what constitutes public infrastructure and non-traditional financing, yet these two definitions are key to the architecture of the proposed fund. Having the two definitions explicitly interpreted in the definition sections will enhance legal certainty, delineate the fund's jurisdiction, and reduce interpretive uncertainty.</p>
Weak anchoring of Public Finance Principles enshrined in the Constitution.	The proposed Bill is not anchored on Chapter 12 of the Constitution. It fails to expressly inculcate and operationalize the public finance principles enshrined in Chapter 12 on the Constitution. Having the fund anchored on this chapter of the constitution would strengthen the fund's constitutional legitimacy and guide its overall operational conduct.

Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
CLAUSE 1 (Clause 7 & 8)	Board members must have "at least fifteen years" senior management experience (Clause 7b). Disqualification includes political party affiliation in preceding five years (Clause 8j).	The 15-year experience requirement systematically excludes professionals under 40 from Board positions governing infrastructure that will shape Kenya's economy for the next 50 years. For a country where 75% of the population is under 35, this creates intergenerational taxation without representation: young Kenyans will bear the debt burden and	<ol style="list-style-type: none"> Amend Clause 7(b) to read: "has served in a senior management or leadership position for a period of at least ten years, provided that at least two (2) Board members shall be persons aged 35 years or below at the time of appointment" Insert new Clause 7(d): "demonstrates expertise in 	Infrastructure investment is the primary determinant of youth labor market outcomes: roads determine where young people can access jobs, electricity determines which sectors can employ them, water infrastructure determines agricultural productivity for 70% of youth in rural areas. A Board with zero mandatory youth representation governing projects funded by debt that young Kenyans will repay for 30+ years



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
		<p>employment consequences of infrastructure decisions made entirely by a gerontocratic Board with no mandatory youth voice. Furthermore, the political affiliation disqualification—while appearing neutral—disproportionately excludes young civic leaders who have used political platforms as the only available avenue for economic advocacy, given systemic exclusion from corporate and government senior management roles that require "15 years' experience."</p>	<p>youth employment, labor market transitions, or socio-economic inclusion"</p> <p>Amend Clause 8(j) to: "has been a paid executive officer of a political party in the immediately preceding five years" (distinguishing between partisan employment and civic/advocacy political engagement</p>	<p>violates principles of intergenerational equity and democratic accountability. The 15-year threshold requiring Board members to be minimum age 38-40, means decisions on AI-era infrastructure, climate adaptation, and digital economy transitions will be made by those least affected by their long-term consequences. International best practice (e.g., EU Youth Guarantee, UNDP Youth Strategy) mandates youth representation in governance of systems determining their economic futures.</p>
<p>Clause 4(a)</p>	<p>Purpose: to 'scale up and accelerate development of catalytic national infrastructure'</p>	<p>No definition of 'catalytic' or criteria for what qualifies. This gives the Board and Cabinet Secretary unconstrained discretion to designate any project as 'catalytic', bypassing normal parliamentary appropriation and procurement scrutiny.</p> <p>The bill has <u>no cap or limit on how much the fund can commit to projects to limit government exposure to the Fund outside the budget framework.</u></p>	<p>Define 'catalytic infrastructure' with objective criteria (e.g., economic multiplier thresholds, job creation minimums, inter-county connectivity). Require Parliamentary approval of the list of qualifying projects.</p> <p>In addition to defining the term "catalytic infrastructure", the Fund should have a percentage cap of the total capital structure of any project</p>	<p>Undefined terms vest excessive discretion and create entry points for arbitrarily routing politically favored projects into the Fund, circumventing the Public Procurement and Asset Disposal Act and necessary parliamentary scrutiny.</p> <p>Without limits, the Fund risks providing excessive guarantees or committing significant portions to one large project or overexpose itself to a single sector.</p>



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
Clause 4(b)	Purpose: to mobilize 'private capital and non-traditional sources including domestic pension funds, collective investment schemes, sovereign wealth funds, climate finance'	<p>No ring-fencing or investor protection provisions. Pension funds are fiduciary assets of workers. The Bill does not impose minimum return guarantees, risk disclosure requirements, or limits on pension fund exposure to any single project. The bill also intends to mobilize capital from Sovereign Wealth funds which is non-existent, or not yet operationalized in Kenya. It is also not clear where funds from private capital or national asset sales are channeled before appropriation to the National Infrastructure Fund.</p> <p>The insertion of climate finance here is ambiguous and it is not clear what the fund from the stated national infrastructure projects.</p> <p>This clause risks embedding a neoliberal infrastructure model that emphasizes privatization and market solutions to Kenya's infrastructure needs and does not necessarily guarantee automatic reduced public borrowing and</p>	<p>Add a sub-clause requiring: (i) minimum hurdle rate of return for pension fund investments; (ii) maximum concentration limits (e.g., no more than 5% of a fund's assets in any single NIF project); (iii) mandatory independent risk disclosure to beneficiaries; and (iv) compliance with Retirement Benefits Act.</p> <p>Remove Sovereign Wealth funds and climate finance as sources</p> <p>Add a Subclause requiring (i). Full compliance with PFM laws including the channeling of public asset sales through the Consolidated Fund before appropriated to the National Infrastructure Fund.</p>	<p>Workers' retirement savings should not be exposed to infrastructure project risk without robust safeguards. Analogous frameworks (South Africa's GEPF, Nigeria's PENCOM guidelines) impose strict concentration and liquidity limits.</p> <p>In its current form, the proposed SWF bill 2025 presents challenges of weak parliamentary oversight provisions, places heavy discretion in the office of the Cabinet Secretary, and limited safeguards on withdrawal without binding parameters</p> <p>Climate finance can only fund mitigation, adaptation and climate aligned projects.</p>



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
		instead risks restructuring borrowing into Public Private Partnership liabilities(PPPs)		
Clause 6(1)(b)	The Cabinet Secretary to the National Treasury or a representative designated in writing sits on the Board	The CS National Treasury is already the appointing authority (Clause 6(3)), the performance evaluator (Clause 20), the signatory to performance contracts (Clause 19) and controls remuneration (Clause 13). A seat on the Board creates an irreconcilable conflict of interest and undermines board independence.	Remove the Cabinet Secretary from the Board entirely. Replace with a non-executive nominee of the Controller of Budget or Auditor-General to preserve independence while maintaining oversight. Alternatively, the CS should be a non-voting observer only.	The CS cannot simultaneously be the Board's principal, appraiser, remunerator, and a voting member of the Board. This contravenes corporate governance norms and Article 10 of the Constitution on good governance.
Clause 6(2) & (3)	Independent directors recruited competitively per Government Owned Enterprises Act, s.13; appointed by Cabinet Secretary by Gazette notice	Despite 'competitive' recruitment, final appointment rests solely with the CS National Treasury with no Parliamentary ratification. This is inconsistent with the constitutional standard for appointments of key public officers in Article 73 and the practice under comparable Acts (e.g., Competition Act, CBK Act).	Require that the names of directors shortlisted through the competitive process be submitted to the National Assembly's relevant Committee for vetting and approval before Gazette appointment. Insert a 14-day vetting window.	Given the Fund will manage public resources potentially exceeding hundreds of billions of shillings, appointments of its directors should face the same Parliamentary scrutiny as CBK Governor appointments. This prevents cronyism and ensures merit.
Clause 8(1)(a) & (b)	A person disqualified if employed by a Government Owned Enterprise or National Government in the preceding five years	The <u>five-year cooling-off period is inconsistent</u> : it bars former public servants but has no equivalent bar for <u>persons who have had commercial dealings with parastatals currently being divested</u> . Someone who personally profited	Add a new sub-clause: 'A person is disqualified if they were a transaction advisor, underwriter, or financial intermediary in any Government divestiture transaction in the preceding seven years.' Extend	With the Government actively divesting stakes in KPLC, Telkom, KCB and others, there is a heightened conflict risk where Board members could steer Fund investments to entities they previously advised, creating self-dealing arrangements.



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
		from privatization transactions could legally sit on the Board and influence further divestitures.	cooling-off to seven years for senior executive roles.	
Clause 9(3)	Quorum of the meeting of the Board shall be five directors	The Board has up to nine members (chairperson, CS rep, four independent directors, two development banking experts, and CEO ex-officio). A quorum of five out of nine means four members, including the CS representative and CEO ex-officio, could form a quorum with only three independent directors, allowing government-aligned members to drive decisions.	Raise quorum to six members, with a mandatory requirement that at least four of those present are independent directors. This prevents executive capture of Board decisions.	Best practice in public finance governance (cf. UK National Infrastructure Bank Act, 2021; Ghana Infrastructure Investment Fund Act) requires majority-independent quorum to insulate strategic decisions from executive interference.
Clause 11 & 12	Board roles include mobilizing resources, investment decisions, risk governance; Board may invest by equity, debt, project finance; Board shall not borrow against its balance sheet	Clause 12(2)(a) prohibits the Board from borrowing against its balance sheet but there is no aggregate investment ceiling, no single-project exposure limit, and no leverage ratio. The Fund could commit all its resources to a single project with no legislative guardrail.	Insert: (i) A single-project investment cap of 20% of the Fund's total assets; (ii) a sector concentration limit of 35% ; (iii) requirement that any investment exceeding KES 10 billion requires specific National Assembly approval; (iv) minimum liquidity reserve of 10% of assets.	Comparable infrastructure funds globally impose exposure limits to prevent concentration risk. The absence of these limits is particularly concerning given the Fund will co-invest with private parties, where conflicts of interest on project selection are acute.
Clause 13	Remuneration of directors governed by guidelines issued by Cabinet Secretary from time to time	Remuneration set by the CS, who also sits on the Board, without Parliamentary oversight or public disclosure creates a closed compensation loop. The CS could set advantageous remuneration to	Require that: (i) remuneration guidelines be tabled before the National Assembly and approved by resolution; (ii) all Board remuneration be disclosed in the annual report; (iii) the SRC (Salaries and Remuneration Commission) concurrence be obtained	Article 230(4) of the Constitution mandates that the SRC set and review remuneration for State officers. Board members of a body corporate established by an Act of Parliament are State officers. This provision as drafted may be unconstitutional.

SRC



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
		incentivise friendly Board votes on government-favoured projects.	as required under Article 230 of the Constitution.	
Clause 16	Cabinet Secretary may designate a person as Administrator of the Fund under PFMA s.24(5)	The Administrator, who controls bank accounts (Clause 31), expenditure (Clause 32) and withdrawals (Clause 33), is a designee of the CS with no Board confirmation or Parliamentary approval required. This creates a backchannel through which the CS controls Fund cash flows independently of the Board.	Require that the Board confirm the Administrator's designation, that the Administrator be recruited competitively, and that the position be subject to a performance contract approved by the Audit Committee. The Administrator should be accountable to the Board, not to the CS.	Separating cash control (Administrator/CS) from investment decision-making (Board) without clear accountability boundaries is a recipe for financial mismanagement. The Kenya National Highways Authority mismanagement precedent illustrates this risk.
Clause 18 & 19	Board adopts annual investment plan based on national strategic objectives; CS conveys performance targets via performance contracts	The investment plan is set by the Board (Clause 18(1)) but performance contracts are set by the CS (Clause 19(1)). There is no requirement that these be consistent. The CS can set performance targets that override or contradict the Board-approved investment plan without amendment or review.	Insert: 'The performance targets under section 19 shall be derived exclusively from the investment plan adopted under section 18, and any deviation shall require Board approval and be publicly disclosed within 30 days.'	The current drafting creates a dual planning system that the CS can weaponize to redirect Fund activities away from the Board-approved plan towards politically preferred projects without transparency or accountability.
Clause 21(3)	An Investment Policy shall be valid for a period of five years	A five-year policy validity with no mandatory mid-term review is excessive in a dynamic infrastructure and capital markets environment. It also creates a lock-in that new governments or economic shocks cannot address without amending the policy.	Reduce validity to three years; require a mandatory independent mid-term review at 18 months; and require that any material change in macroeconomic conditions (e.g., GDP contraction exceeding 2%) trigger an automatic policy review within 90 days.	Infrastructure pipelines, interest rate environments and private capital availability change rapidly. A rigid five-year policy without review mechanisms can lock the Fund into unviable investments.

MTP



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
Clause 23(2)	Feasibility studies determine commercial viability	Clause 23(2) does not establish minimum return thresholds or require benchmarking against the government's cost of capital. In a high yield domestic borrowing environment, infrastructure investments that generate returns below sovereign borrowing costs effectively destroy fiscal value.	Require IRR to exceed weighted average cost of capital plus sovereign risk premium; mandate publication of financial assumptions	Project yielding below borrowing costs worsens fiscal sustainability and increases debt service pressure
Clause 24		The clause provides for feasibility study and approval of projects but fails to provide feasibility thresholds to safeguard against approval of loss-making and poorly structured projects	"Amend Clause 24 by inserting a new sub-clause requiring that all feasibility study reports be undertaken by independent experts and be published on the Fund's website and submitted to Parliament within thirty days of completion."	The absence of such a requirement has in the past enabled the approval of loss-making and poorly structured projects. A mandatory, rigorous feasibility threshold will prevent uneconomic projects from proceeding and safeguard the Fund's capital base."
Clause 25	Cabinet Secretary may issue Government support measures: binding undertakings, letters of credit, credit guarantees, political risk insurance, to investment projects	This is the most fiscally dangerous clause in the Bill. The CS can issue unlimited contingent liabilities (guarantees) to Fund projects with no: (i) aggregate ceiling on total guarantees; (ii) Parliamentary approval threshold; (iii) requirement to book guarantees as contingent liabilities in the budget; or (iv) linkage to the public debt ceiling under Article 211 of the Constitution.	Insert: (i) aggregate guarantee ceiling of 0.5% of GDP in any financial year; (ii) any single guarantee exceeding KES 5 billion requires National Assembly approval by resolution; (iii) all guarantees must be disclosed in supplementary budget estimates; (iv) guarantees are subject to the Public Finance Management (Public Debt Management) Regulations.	Government guarantees are the single greatest source of Kenya's off-balance-sheet fiscal risk. The Standard Gauge Railway guarantee precedent demonstrates that uncapped contingent liabilities can destabilize public finances for decades. This clause, as drafted, is unconstitutional under Article 211(3) which requires Parliamentary approval for public borrowing.
Clause 26(2)	Cabinet Secretary may make half-yearly reports	'May' is permissive, not mandatory. The CS has discretion to withhold	Replace 'may' with 'shall'. Require quarterly reports to the National	Public accountability for a sovereign infrastructure fund demands mandatory,



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
	on the Fund to Cabinet and annually to National Assembly	reports from the National Assembly indefinitely. Annual reporting is also insufficient for a Fund of this scale and risk profile.	Assembly's relevant Committee; require an immediate report whenever a Government support measure (guarantee) is issued; and require disclosure of any investment whose value declines by more than 20%.	regular and event-triggered disclosure. Permissive reporting language has historically been exploited to suppress disclosure of poorly performing State investments.
Clause 29	Sources of funds include privatization proceeds, Parliamentary appropriations, fees/monies from Fund activities, donations/loans	Clause 29(a) directs privatization and disposal proceeds into the Fund. This is deeply problematic in the context of ongoing divestitures (KPLC, Safaricom, Kenya Re, Telkom, etc.). Privatization proceeds under the Privatization Act, 2023 and public finance law should flow to the Consolidated Fund unless Parliament specifically appropriates them elsewhere. Routing them directly to the NIF bypasses Article 206 of the Constitution.	Delete Clause 29(a) or amend to: 'Proceeds from privatization and disposal of government assets as may be appropriated by Parliament into the Fund pursuant to Article 206(1)(b) of the Constitution.' Insert a requirement for Parliamentary resolution before each transfer of privatization proceeds.	Article 206(1) of the Constitution requires all public money to be paid into the Consolidated Fund unless otherwise provided by legislation. Automatically routing privatization proceeds to a Fund managed by a Board appointed by the CS, without specific Parliamentary appropriation for each transaction, is unconstitutional. It also creates a moral hazard where the Fund benefits financially from recommending divestitures.
Clause 34	Board may, with Cabinet Secretary approval, invest surplus funds in Government securities	Investing surplus infrastructure funds in Government securities (i.e., lending back to the same government) while the government is simultaneously issuing guarantees to Fund projects creates a circular arrangement that obscures real fiscal exposure. The net position to the exchequer may be zero but the gross contingent liability is hidden.	Expand eligible investments for surplus funds to include CBK-regulated instruments, listed equities, and money market funds in addition to Government securities. Require the Audit Committee to approve the investment mix. Prohibit investment in securities of any company in which the Fund holds a direct equity stake.	Concentration of surplus funds in Government securities while the Government provides guarantees to the Fund means a Fund default and a government fiscal crisis would occur simultaneously, amplifying systemic risk rather than diversifying it.



Clause	Specific Provision	Gap / Concern	Proposed Amendment	Justification
Clause 36	Board to submit accounts to Auditor-General within four months of financial year end; audited per Public Audit Act	Four months is the statutory minimum but there is no requirement to make audited accounts publicly available within a specified timeframe after Auditor General sign-off. There is no prohibition on the CS suppressing or delaying the tabling of audit reports in Parliament.	Insert: (i) Auditor General report to be tabled in the National Assembly within 30 days of sign-off; (ii) if the Board fails to submit accounts within four months, the Administrator to be personally surcharged; (iii) special audit may be commissioned by the relevant Parliamentary Committee at any time.	Kenya's audit ecosystem suffers from delayed tabling and low consequence for non-compliance. Without enforcement provisions, audit accountability becomes ceremonial.
Clause 37 (Regulations)	Cabinet Secretary may make regulations for implementation; regulations may prescribe investment policy, government support measures, standards and procedures	The enabling provision allows the CS to prescribe investment policy by regulation, effectively allowing the CS to override the Board's investment plan (Clause 18) and the Cabinet-approved Investment Policy (Clause 21) through subordinate legislation. This creates an unconstitutional sub-delegation and collapses the accountability architecture.	Limit regulation-making power strictly to procedural and administrative matters. Removing 'investment policy for Fund' from Clause 37(3)(a) – investment policy must remain within the Board's mandate under Clause 21 and require Cabinet, not CS, approval. Require all regulations to be tabled before and approved by the National Assembly before coming into force (affirmative resolution procedure).	Article 94(6) of the Constitution prohibits Parliament from delegating legislative authority in a manner that undermines Parliament's primary role. Allowing a CS to alter investment policy by regulation without Parliamentary approval violates this provision and removes the primary accountability mechanism for the Fund's most consequential decisions.



Conclusion

The National Infrastructure Fund Bill, 2026, represents an ambitious and necessary legislative initiative. Kenya's infrastructure financing gap is real, and the proposed Fund could catalyse transformative investments if properly structured. However, as currently drafted, the Bill concentrates excessive powers in the Cabinet Secretary for the National Treasury, creates significant accountability gaps, and contains provisions that are potentially unconstitutional.

The gaps identified in this submission are not minor technical deficiencies, several go to the heart of public finance accountability and constitutional governance. The National Assembly is respectfully urged to require these amendments as a condition of the Bill's progression, and to commission an independent constitutional audit of the Bill with a specific focus on Articles 201, 206, 211, 230, and 94(6) before the Bill is passed into law.

The experience of Kenya's previous off-budget financing vehicles, including the SGR financing arrangement and various infrastructure bond programmes, demonstrates that inadequate accountability frameworks for large infrastructure funds create fiscal risks that can take a generation to resolve. The National Assembly has the opportunity to ensure that the National Infrastructure Fund becomes a model of transparent, accountable infrastructure finance rather than another chapter in Kenya's long history of opaque public investment management.

Submission by the National Treasury on the NIF Bill, 2025, to the Departmental Committee on Finance and National Planning

Presentation by:

HON. FCPA JOHN MBADI NG'ONGO

CABINET SECRETARY, THE NATIONAL TREASURY





INTRODUCTION

- **Honourable Chairman and Members of the Departmental Committee on Finance and National Planning.**
 1. Thank you for the opportunity you have given to the National Treasury to meet this Committee and make submissions on the **National Infrastructure Fund Bill, 2025.**
 2. We have a brief submission organised in two short, but related, parts – namely:
 - i. Background – Global benchmarks on establishment of NIF; and,
 - ii. Highlights of the NIF Bill, 2025.

INTRODUCTION



- National Infrastructure Funds (NIF) are investment vehicles that pool capital from investors to develop and manage infrastructure projects, including national highways and railway networks, air and seaports, electricity generation, transmission and distribution, irrigation and agribusiness infrastructure, and more.
- Investments in NIF enables investors to capitalize on the growth potential of the infrastructure sector. The Funds promote growth of infrastructure projects by pooling capital from diverse sources - such as pension funds, sovereign wealth funds, private equity, among others, to finance large scale, long-term projects.



BACKGROUND-PRECEDENCE

- The establishment of National Infrastructure Funds has significantly reshaped global investment landscapes by acting as catalysts for transitioning from traditional, debt-heavy public spending to *blended, investment-led financing models* as follows:
 1. South Africa
 - The Infrastructure Fund (IF) in South Africa was established through a tripartite memorandum of agreement between the Development Bank of South Africa (DBSA), National Treasury (NT) and the Department of Public Works and Infrastructure (DPWI).
 - The IF is operationalized by the DBSA as a ring-fenced unit within the Bank, and Infrastructure South Africa provides oversight over the Fund.



BACKGROUND

- The IF creates blended finance solution to significantly crowd in private sector investment in the implementation of infrastructure projects and programs in South Africa.
- The IF also seeks to improve the commercial viability of public infrastructure projects by providing blended finance solutions and co-finance mechanisms and attracting private investment.
- Since its inception in August 2020, the IF has achieved 26 approved blended finance infrastructure projects, with capital value of R102 billion in sectors like water and sanitation, human settlements, transport, health and energy.



BACKGROUND

2. India

- In India, the **National Investment and Infrastructure Fund (NIIF)** is a sovereign-linked alternative asset manager anchored by the Government of India, catalyzing global capital to invest in sectors and asset classes that drive India's growth story.
- Established in August 2015, the NIIF is anchored on a sound corporate governance which clearly defines roles and responsibilities that ensure accountability.
- The NIIF has a governing council chaired by Finance Minister and comprises leaders from businesses, investments and public policy. The Council provides a strategic guidance and convenes annually to provide direction on the overall strategy of the NIIF.



BACKGROUND

- The investment committee is responsible for all investments and divestment decisions and reviews investment performance regularly. The committee comprises senior management team members from NIIF (MD and CEO) and Chief Investment Officer. The NIIF private equity platform offers a gateway for global institutional investors to participate in India's dynamic growth trajectory.
- India's NIIF is financed through a combination of government funding and private capital from institutional investors. The Indian government has committed a significant portion of its capital, while the remaining and majority of its funds are raised from global and domestic institutional investors, including sovereign wealth funds, pension funds, and multilateral development banks.



BACKGROUND

3. Canada

- The Government of Canada has several Infrastructure Funds and programs designed to support public, social and economic infrastructure.
- The **Canada Housing Infrastructure Fund (CHIF)** aims to accelerate the construction and upgrading of housing by enabling drinking water, wastewater, stormwater, and solid waste infrastructure, directly supporting the creation of new homes and increasing densification.
- In 2024, the Government released budget providing \$6 billion over 10 years for housing enabling infrastructure such as water and waste systems to support new homes.



BACKGROUND

- The **Investing in Canada Infrastructure Program (ICIP)** provides long term, stable funding delivered by Housing, Infrastructure and Communities Canada. Under this program, \$33 billion in funding is being delivered through bilateral agreements between Housing, Infrastructure, and Communities Canada & each of the Provinces and Territories. Through the program the Government of Canada is helping to build stronger communities, grow economy and deliver for Canadians.
- The **Critical Minerals Infrastructure Fund (CMIF)** offers \$1.5 billion in federal funding until 2030 for infrastructure supporting sustainable development of critical minerals.
- The Infrastructure Funds are financed by the Government of Canada.



BACKGROUND

4. Saudi Arabia

- The Saudi Arabia's **National Infrastructure Fund (NIF)** is the lead development financing partner facilitating high level private sector investment to accelerate the delivery of infrastructure projects critical in social and economic development.
- The Fund partners with local and international investors to build long-term infrastructure financing markets. It operates under a professional investment framework to ensure financial sustainability



BACKGROUND

- 5. Singapore
 - Singapore has a variety of Infrastructure Funds including government intervention, private equity firms and listed companies which cater for different investment goals. The Monetary Authority of Singapore (MAS) actively promotes private capital mobilization to meet infrastructure needs through blended finance and public-private partnerships
 - Singapore established Infrastructure Asia in April 2018 as a platform to connect local and international stakeholders across the value chain for joint projects.



BACKGROUND

- The financial ecosystem is working with multilateral development banks to improve the bankability of Asian infrastructure projects. The strategy is to crowd in private capital through innovative market mechanisms and infrastructure investment benchmarks.
- Projects are focused on long-term sustainability, including integrated transport hubs, renewable energy, and flood management systems.
- Singapore has significantly increased infrastructure investment, with over Singapore dollar (SGD) 93 billion allocated for projects in its 2024 budget to drive development through 2030.



BRIEF ON THE BILL

- The **National Infrastructure Fund Bill, 2025 (NIF Bill, 2025)** is a proposed legal framework for the establishment and management of the National Infrastructure Fund.
- The **National Infrastructure Fund (NIF)** is an innovative way of financing commercially viable infrastructure investments by unlocking large-scale private sector capital to fund national priorities while reducing borrowing and taxation.
- NIF is the engine to scale up and accelerate development of catalytic national infrastructure, including national highway and railway networks, air and seaports, electricity generation, transmission and distribution, irrigation and agribusiness infrastructure.



BRIEF ON THE BILL

- Through NIF, Kenya seeks to raise Kshs.5 trillion through mobilization of domestic resources, strategic monetization of mature national assets, democratization of ownership through capital markets, and deployment of national savings.
- Privatization proceeds will be ring-fenced and invested into NIF to generate and preserve value.
- For every shilling invested in the NIF, Kenya will attract ten more shillings from long term investors, including pension funds, sovereign partners, private equity funds, and development finance institutions, allowing the Country to develop without the constraints that come with debt and taxation.



BRIEF ON THE BILL

- On 15th December 2025, the Cabinet approved the establishment of *National Infrastructure Fund (NIF)* in Kenya and also approved the commencement of the necessary legal framework required for establishment and operationalization of the Fund.
- The NIF Bill, 2025, provides legal framework for establishment of the NIF.
- The proposals in the NIF Bill, 2025 are informed by lessons learnt and best-practices from other Countries that have experienced significant infrastructure development by transitioning from traditional, debt-heavy public spending to *blended, investment-led financing models*.
- Some of the Key Provisions of the NIF Bill, 2025, include:-

ESTABLISHMENT AND PURPOSE OF THE FUND



- I. The NIF is proposed for establishment pursuant to Article 206 of the Constitution of Kenya, 2010 and Section 24 (4) of Public Finance Management Act, 2012.
- II. The purpose of the Fund is to: -
 - a. to raise capital for the development and management of infrastructure projects by crowding in private sector investments;
 - b. to undertake strategic investments in key economic sectors including transport, energy and water;
 - c. to support dualling of highways, expansion of railways, modernization of seaports and airports, renewable energy projects, power generation, mega dams for irrigation and food security;
 - d. to undertake project preparation and governance by screening bankable infrastructure projects, among others.



ESTABLISHMENT AND PURPOSE OF THE FUND..... CONT'D

- III. The Fund shall be managed by a Board of Directors comprising a Chairperson, who is an independent director; Cabinet Secretary for the National Treasury or a representative designated in writing; Four (4) independent directors; Two (2) persons who have proven experience in senior leadership roles in development banking; and a CEO who shall be an *ex-officio* member of the Board.
- IV. The Independent Directors above shall be recruited competitively in accordance with section 13 of the Government Owned Enterprises Act, 2025. An independent director shall serve for a term of three years, renewable once.



POWERS AND ROLE OF THE BOARD

- V. The Board has powers to invest in projects, including by way of equity investment in, or borrowing based on the bankability of the project, or any other project finance mechanism.
- VI. The Board shall be responsible for (a) mobilizing resources for the Fund, (b) entering into contracts on behalf of the Fund, (c) appointment and removal of the Chief Executive Officer, (e) setting of the Fund strategic direction and approval of strategic plans, (f) approving of annual budgets and the related funding for Fund level, among others.



PERFORMANCE EVALUATION

- VIII. The Board shall, prior to the commencement of a financial year, adopt an investment plan based on the national strategic objectives. The investment plan shall form the basis of annual performance contracts to be signed between the Cabinet Secretary and the Fund.
- IX. The Cabinet Secretary shall by means of performance contracts convey to the Fund performance targets for the specified period.
- X. The Cabinet Secretary shall be responsible for performance evaluation of the Fund and for purposes of performance evaluation, may co-opt relevant external experts that may include those from relevant Ministries.



PROJECT PREPARATION AND IMPLEMENTATION

XI. The Fund shall develop sufficient capacity to undertake the structuring and implementation project phases including: - (a) overseeing the conduct of feasibility studies, (b) preparing the project investment plans, and (c) negotiating investment agreements for the projects

XII. The Fund shall undertake feasibility studies on investment projects to determine the commercial viability of the project.

XIII. Government support measures to the Fund may include: (a) a binding undertaking, (b) a letter of support, (c) a letter of credit, (d) a credit guarantee, among others.



REPORTING AND DISCLOSURE

XIV. The Fund shall make quarterly and annual reports to the Cabinet Secretary in such manner as may be prescribed.

XV. The Cabinet Secretary may make half-yearly reports on the Fund to the Cabinet and annually to the National Assembly.

XVI. The Cabinet Secretary shall publish and publicize on the National Treasury website or such other information platforms as may be accessible to the public:

- Audited annual reports of the Fund;
- Annual performance evaluation results of the Fund; and
- Reports on appointment of independent directors of the Fund.



REQUEST TO THE COMMITTEE

- The National Assembly is requested to consider the bill and approve it to pave way for establishment and operationalization of NIF, which is an innovative way of financing commercially viable infrastructure investments in Kenya.

Thank you





MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2025

Submitted to

**SAMUEL NJOROGE
THE CLERK, NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS, NAIROBI**

Presented By

**TOBIAS ALANDO, CHIEF EXECUTIVE,
KENYA ASSOCIATION OF MANUFACTURERS**

FEBRUARY 2026 – NAIROBI, KENYA

1. About KAM

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through her strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value add industries.

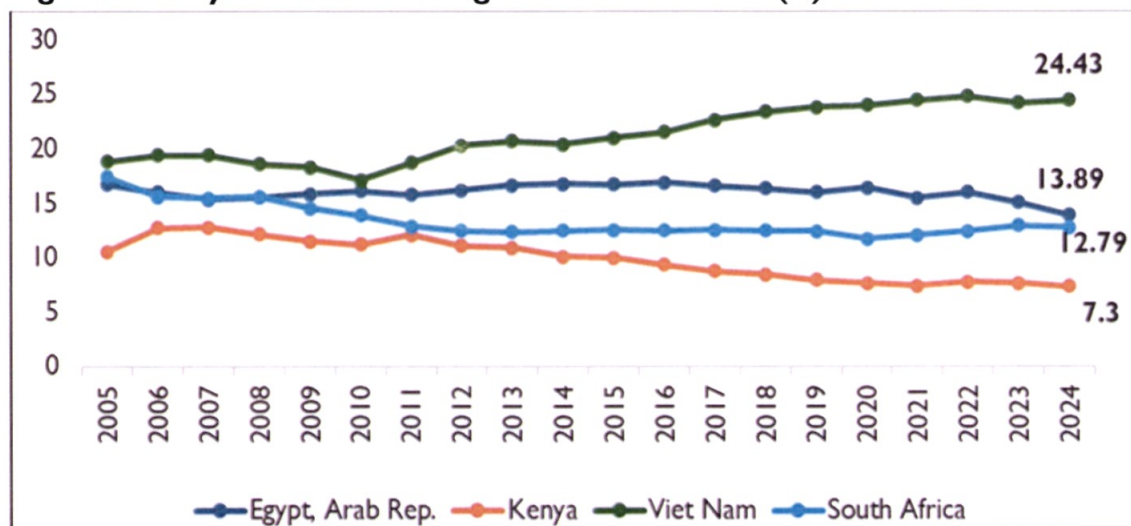
KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya Playing a critical role. The EAC region integration is expected to spur the manufacturing sector enhancing intra-EAC trade in value added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Service ranging from **Food and Beverage, Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood and Furniture; Electric and Electronic; Building, Mining and Construction; Agro-Processing.**

2. About the manufacturing sector in Kenya

- On 17th February 2026, KAM launched 2026 Manufacturing Priority Agenda titled "Turbocharging the economy through the manufacturing sector to spur all-inclusive economic transformation".
- Kenya's manufacturing GDP contribution currently stands at 7.3% lower than comparator countries such as Vietnam and competitors in regional trade, such as Egypt and South Africa (Figure 1).

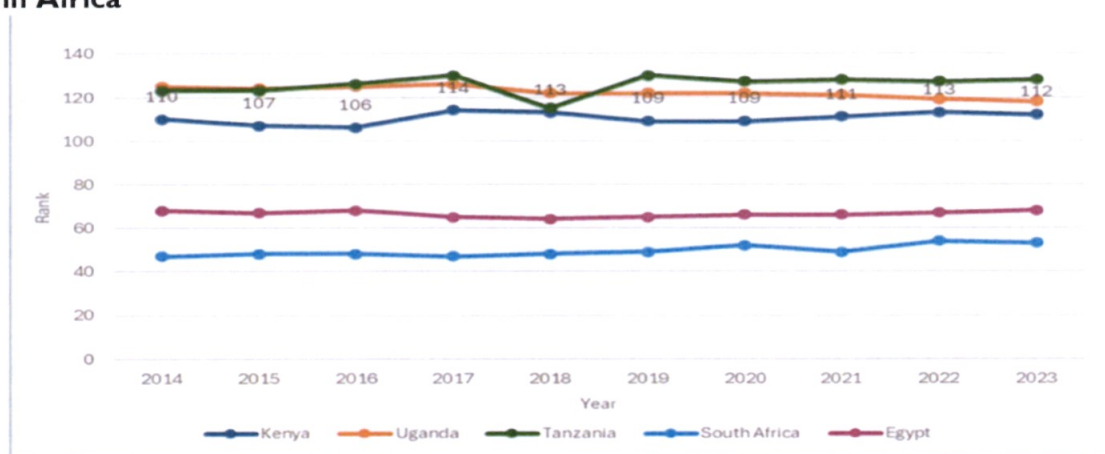
Figure 1: Kenya's manufacturing GDP contribution (%) 2005-2024



Data source: WDI

- KAM identifies for key areas of focus to turbo-charge the economy through the manufacturing sector:
 - Global competitiveness
 - Export-led industrialization
 - SME development
 - Agriculture for Industry (A4I)
- A reason why Egypt and South Africa have a higher manufacturing GDP contribution than Kenya is that their economies are more competitive than Kenya.
- According to the 2023 Competitive Industrial Performance Index (CIP) produced by the United Nations Industrial Development Organization (UNIDO), Kenya was ranked position 112 compared to 53 and 68 for South Africa and Egypt, respectively (Figure 2).

Figure 2: Competitiveness Industrial Performance Index (CIP) Rank Comparison in Africa



Data source: UNIDO (2025)

- A well-developed infrastructure will go a long way in realizing a competitive advantage for Kenyan industries.

3. About the Infrastructure Fund

- The World Bank estimates an annual infrastructure financing gap of about US\$ 4 billion.
- KAM acknowledges that this Fund is an innovative idea that amongst other objectives seeks to reduce the reliance of public debt to finance infrastructure projects by mobilizing private capital and non-traditional sources such as pension funds, climate finance etc.
- The following would be priority infrastructure for the manufacturing sector: roads, rail, electricity, maritime, and water.
- It is also important to appreciate the existence of other existing institutions in the infrastructure space e.g., KeNHA, KURA, KERA, Kenya Roads Board, KETRACO, Ken Gen, Kenya Pipeline etc.
- The government is also pursuing fiscal consolidation in an effort to reduce public debt accumulation. For example, in January 2025, the Cabinet proposed merger of 42 state agencies among them Kenya Rural Roads Authority & Kenya Urban Roads Authority.

- Thus, the proposed Fund can therefore appear as a contradiction.
- It is essential for Kenya to learn from other countries such as Brazil.
 - The Brazilian Economic Development Bank (BNDES) was established on 20th June 1952 with the aim of developing and carrying out national economic development projects.
 - The BNDES is the main provider of long-term finance and its key responsibilities in supporting long-term growth of the Brazilian economy includes:
 - Machinery and equipment financing;
 - **Infrastructure financing;**
 - Project finance;
 - Export financing; and
 - Equity investment.
- Kenya has BNDES equivalent in the name of Kenya Development Corporation (KDC) which is a product of fiscal consolidation and can have its mandate expanded to include infrastructure projects.
- It is also important to enhance the role of private sector in the proposed fund by explicitly providing for private sector Member Organizations in the Board.

4. Proposed Amendments to the National Infrastructure Fund Bill, 2025

In response to the call for public participation on the afore-referenced Bill, we propose the following amendments to be considered before the draft Bill is passed:

Specific Proposals

	Clause	Proposal	Justification
I.	Clause 2 Interpretation	We propose a definition of infrastructure in the Bill. Infrastructure should include: (a) Roads (b) Rail (c) Maritime (d) Electricity (e) Airport (f) Water and Irrigation	This is based on the following justifications: <ul style="list-style-type: none"> ● The bill does not define infrastructure, which should be clearly defined. ● According MTP 4, the infrastructure sector comprises of the following key sub-sectors: <ul style="list-style-type: none"> ○ Roads and Transport ○ Energy and Petroleum ○ Broadcasting and Telecommunication ○ ICT and Digital Economy ○ Land, Public Works, Housing and Urban Development ○ Water and Irrigation ● To achieve the intended objectives and bearing in mind the need to maximize scarce financial resources, it is essential to limit the scope of infrastructure.

	Clause	Proposal	Justification
2.	Clause 4 Purpose of the Fund	We propose to amend Clause 4 to include a new sub-clause (e) that reads as follows: (e) To facilitate the development of industrial parks, Special Economic Zones (SEZs), and value-addition infrastructure to support the Kenya Industrial Transformation Programme.	This is based on the following justifications: <ul style="list-style-type: none"> • Globally, the manufacturing sector has proven to be the core driver of economic growth and high-quality jobs. • Kenya's manufacturing sector has continued to shrink relative to other economic sectors and now stands at 7.3% of GDP. • Despite the decline, the manufacturing sector remains a critical source of productivity growth, innovation, exports, and a means of integrating into the global supply chains. • In line with this, we therefore propose the Fund to explicitly cater for the growth of the manufacturing sector through the development of industrial parks, special economic zones, and other value addition infrastructure.
3.	Clause 5 Establishment of the Fund	We propose the establishment of a two-tier governance structure by introducing a 'Board of Trustees.	This is based on the following justifications: <ul style="list-style-type: none"> • The Trustees shall serve as the legal custodians of the Fund's assets and cash, providing oversight and ringfencing the money from diversion. • The 'Board of Directors shall remain responsible for technical investment decisions but must seek 'Custodial Clearance' from the Trustees for all major disbursements. • This separation improves governance by preventing concentration of authority in a single body and reducing the risk of conflicts of interest, operational interference, or weak oversight. • A Board of Trustees will serve as the ultimate fiduciary body responsible for safeguarding the assets of the Fund and ensuring they are used strictly in accordance with the law and the Fund's mandate. Unlike an operational board that may be involved in management

	Clause	Proposal	Justification
			decisions, trustees exercise independent, high-level oversight and act in the best interests of the Fund and the public.
4.	Clause 6 Board of Directors	We propose to include two Directors representing leading business membership organizations	This is based on the following justifications: <ul style="list-style-type: none"> • The Bill should allow private sector representatives to have seats on the Board. • Private sector is one of the key beneficiaries of the envisaged improved infrastructure and it is essential that they be explicitly provided for in the Board
5.	New Clause Administrative Costs	We propose a new clause limiting the administrative costs of the Fund to 0.5% of the Fund , to read as follows: “The administrative costs of the Fund shall not exceed zero point five per cent of the Fund.”	This is based on the following justifications: <ul style="list-style-type: none"> • This will ensure that the Fund accomplishes its intended purpose of developing national infrastructure. • Capping the administrative costs to 0.5% of the Fund will ensure that the bulk of the Fund’s resources are directed toward productive investments rather than recurrent operational expenses. • Without a cap, administrative expenditure may gradually consume a disproportionate share of fund resources, eroding capital available for investment, and reducing the Fund’s developmental impact. • This will further compel the Board to operate as efficiently as possible, prioritizing essential expenditure, and avoiding wasteful spending.
6.	Clause 12 (1)(a) Powers of the Board	We propose to amend as follows: <ul style="list-style-type: none"> a) ReNUMBER the provisions to include subclause (1) b) Cap on the share of equity in investment in any public 	This is based on the following justifications: <ul style="list-style-type: none"> • If commercial lenders are willing to finance a larger share of a project at rates that are economically viable for the project, then the Fund should not crowd out that debt with its own equity. Capping the equity share forces the Fund to leverage its capital rather than concentrate it, maximizing the

	Clause	Proposal	Justification
		<p>infrastructure project where the larger percentage is cheaper than finance from commercial financing.</p>	<p>number and scale of projects it can support simultaneously.</p> <ul style="list-style-type: none"> • Infrastructure finance theory holds that a project should be financed with the cheapest available capital that matches the risk profile of each layer of the capital structure. Senior secured debt from commercial banks or development finance institutions is typically cheaper than equity because it carries lower risk. It is repaid first, often against predictable cash flows like tolls, tariffs, or government offtake agreements. Where such debt is available and affordable, using equity to fill that space is financially suboptimal and effectively subsidizes the project unnecessarily. • Further, a mandatory cap creates a clear, auditable rule for investment committees, oversight boards, and parliamentary scrutiny. Without such a rule, there is a risk that political pressure leads to the Fund over-equitizing projects that should be commercially financed — effectively using the Fund as a back-channel subsidy mechanism without transparent authorization. The cap makes the financing logic explicit and defensible.
7.	<p>New Clause Ring Fencing the Fund</p>	<p>We propose to ring-fence the Fund to prevent diversion.</p> <p>To read as follows: 18A) The assets and cash of the Fund are strictly ringfenced and shall not be diverted, reallocated, or utilized for any expenditure falling outside the scope of</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> • The primary purpose of the Fund is to finance infrastructure projects that support national economic growth, enhance productivity, and improve public service delivery. Ringfencing ensures that all financial resources entrusted to the Fund are applied strictly toward achieving this mandate.

	Clause	Proposal	Justification
		<p>the infrastructure projects defined in this Act.</p>	<ul style="list-style-type: none"> Without such a safeguard, there is a risk that the Fund's assets could be diverted to unrelated expenditures, including recurrent government expenses, emergency spending, or politically driven projects that do not align with the Fund's statutory objectives. This would undermine the Fund's purpose and dilute its developmental impact. This provision will also help to attract co-investment from development partners, institutional investors, pension funds, and private sector participants. These stakeholders require assurance that their investments will be protected and used exclusively for their intended purposes.
8.	<p>Clause 18 (1) Investment Plan</p>	<p>We propose to rephrase this clause to have it referenced the Medium-Term Plan.</p> <p>To read as follows:</p> <p>(1) The Board shall, prior to the commencement of a financial year, adopt an investment plan based on the Medium-Term Plan.</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> The investment plan for the Fund should be based on the Medium-Terms Plan (MTP) priorities to avoid proliferation of infrastructure projects that in the end become hard to implement.
9.	<p>Clause 21 Investment Policy</p>	<p>We propose adding a new subclause (4) on the utilization of local content, to read as follows:</p> <p>(4) (i) The Investment Policy shall require that for all projects funded by the Fund, at least 40% of the value of construction materials shall be sourced locally from</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> Guaranteed demand from a major public fund provides local manufacturers with the revenue predictability needed to invest in capacity expansion, technology upgrading, and quality improvement. Over time, as local manufacturers gain scale and experience, their products become more competitive both

	Clause	Proposal	Justification
		<p>manufacturers operating within Kenya.</p> <p>(ii) Preference and deliberate action in technology transfer, use of local service companies eg construction firms and engineers and labour</p>	<p>domestically and for export, reducing the need for policy support.</p> <ul style="list-style-type: none"> Kenya's broader development agenda, including the Bottom-Up Economic Transformation Agenda, prioritizes building domestic productive capacity. Requiring 40% local sourcing directly channels public investment into stimulating the manufacturing sector, helping move Kenya up the value chain from a primarily agricultural and services economy toward industrial production. Moreover, sectors such as construction are labor-intensive. A mandatory local sourcing threshold will create employment not just in factories but in quarrying, logistics, packaging, and ancillary services.
10.	<p>Clause 21 (2) Investment Policy</p> <p>The investment plan shall specify-</p> <p>a) Priority sectors proposed for development</p> <p>b) Proposed projects</p>	<p>We propose the investment plan be guided exclusively by the Medium-Term Plans.</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> The Medium-Term Plans (MTPs) guide development in the country for five successive years. They further provide the basis for preparation of County Integrated Development Plans (CIDPs). The Fourth Medium Term Plan 2023-2027 themed 'Bottom-Up Economic Transformation Agenda for Inclusive Growth' translates BETA aspirations into concrete priority interventions to be implemented. Kenya therefore already has a national blueprint for development, which the investment policy and the Fund can fit into.
11.	<p>Clause 22 Project Preparation</p>	<p>We propose adding a subclause on Project exit and an Asset Transfer Framework.</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> The Bill is silent on the lifecycle of projects once they mature, or the investment period expires. There is no clarity on how assets transition from

	Clause	Proposal	Justification
			<p>the Fund's balance sheet back to the National or County Governments.</p> <ul style="list-style-type: none"> The Bill should be amended to include a mandatory 'Asset Transfer Framework. This must define the specific 'Exit Clauses for every project and prescribe the technical and legal procedures for the handover of completed infrastructure projects from the Fund to the relevant Government Ministry, Department, or Agency (MDA).
12.	<p>Clause 25 (1) Government support measures</p> <p>The Cabinet Secretary may issue Government support measures to investment projects of the Fund, including –</p> <p>a) a binding undertaking</p>	<p>Delete paragraph (a) of subclause (1).</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> This will safeguard fiscal sustainability, preserve parliamentary oversight, and protect public resources from unintended liabilities. Binding undertakings can transform into public debt where the Fund underperforms or is unable to meet its obligations. This is because the Government guarantees and binding financial commitments effectively function as contingent on public debt. Worse, these undertakings may not be reflected in the public debt register, thereby obscuring the Government's true fiscal exposure. Further, Parliament, through the National Assembly, should have oversight over any binding undertaking that the Cabinet Secretary may commit to.
13.	<p>Clause 34 Investment of surplus funds</p> <p>34. The Board may, with approval of the Cabinet Secretary,</p>	<p>We propose the deletion of the clause.</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> It is not feasible for the fund to have a surplus given an estimated annual infrastructure finance deficit of US\$ 4 billion (Ksh. 516 billion). Deletion of this provision will ensure that the Board focuses on delivering catalytic infrastructure projects, and not on generating surpluses.

	Clause	Proposal	Justification
	invest such surplus funds in Government securities.		
14.	<p>PART VII MISCELLANEOUS PROVISIONS</p> <p>Penalties</p>	<p>We propose to add penalties for various offences under the Act as follows:</p> <p>38. Offences for misappropriation of funds</p> <p>(1) A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, commits an offence and is liable on conviction to—</p> <p>(a) pay twice the amount misappropriated; and</p> <p>(b) a fine not less than ten million shillings or imprisonment for a term of not less than five years or to both.</p> <p>(2) Without prejudice to subsection (1), a person who misappropriates, assists or causes any person to misappropriate from the Fund, shall be held liable for any loss arising from that loss and shall make good the loss whether that person remains the holder of the office or not.</p> <p>39. General penalties</p> <p>A person who contravenes the provisions of this Act where no specific penalty is provided,</p>	<p>This is based on the following justifications:</p> <ul style="list-style-type: none"> • This will ensure accountability in the operations of the Fund, while ensuring no money is misappropriated.

	Clause	Proposal	Justification
		commits an offence and is liable on conviction to imprisonment for a term not less than two years or to a fine not less than five million shillings or to both.	

26 February 2026

Clerk of National Assembly
P.O. Box 41842 - 00100
Main Parliament Building
Parliament Road
Nairobi

cna@parliament.go.ke

Sent via e-mail

Dear *Mr Njoroge, CBS,*

Re: Memorandum on the National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026)

Katiba Institute (KI) is a research and public interest litigation institution established in 2011 to promote knowledge and understanding of Kenya's Constitution and constitutionalism, defend the Constitution, and facilitate its implementation.

This memorandum represents KI's comments on the National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026).

Background

On 15 December 2025, the Cabinet communicated its approval for the establishment of a National Infrastructure Fund, as a limited liability company. The Fund was intended to mobilise resources, including those drawn from the privatisation of public assets, for purposes of investing in public infrastructure projects.

This communique gave rise to Petition E835 of 2025 which contested the constitutionality of the Cabinet resolution. Among other issues raised in the Petition is the constitutionality of establishing the Fund as a limited liability company (LLC).

Katiba Institute is listed in the Petition, alongside the Law Society of Kenya, as an interested party (2nd). KI has participated in all stages of the Petition including through filing pleadings and submissions in this Petition. The Petition is coming up for hearing of an application for conservatory orders on 06 March 2026.

The Bill was introduced in the National Assembly around 12 February 2026 and seeks to provide a legal framework for the establishment and management of the National Infrastructure Fund. In setting this as its objective, the passing of the Bill will have the effect of addressing some of the issues raised in the Petition.

Summary and General Remarks

The Bill is a commendable step in ensuring that public funds are established under the Authority of an Act of Parliament as is required under Article 206(1)(a) of the Constitution.

However, the Bill raises constitutional and rule of law concerns in the manner in which it is set to be enacted, in its substance and in the manner it is intended to be managed. Among these concerns is the fact that despite the scope of the infrastructure projects anticipated to be implemented under the Act extending to what are otherwise county government functions and despite the fact that some sources of funds directly impact on finances available for counties, the Bill is marked as a Bill not concerning county governments, thereby excluding the involvement of the Senate in its enactment. In addition to this is a general concern that while the Constitutional scheme of national revenue, borrowing and expenditure emphasizes parliamentary pre-authorisation and oversight, not enough measures have been included in the Bill to guarantee closer Parliamentary oversight or expenditure control through institutions such as the Controller of Budget. This is notwithstanding the fact that the Fund is expected to continually handle hundreds of billions of shillings while at the same time directly influencing Kenya's fiscal risk profile outside the control of the national budget and expenditure process.

Article 10(2) as well as Article 201(b)(iii) emphasize the need for ensuring equity in the allocation of resources and development. However, the Act does not provide for any mechanism for ensuring that infrastructure development in the country is implemented equitably by the Fund.

Besides and subject to our general comments above, KI has the following specific concerns regarding the Bill:

No.	Reference	Comment/Observation	Recommendation
1.	Long Title	The long title does not indicate the basis upon which the Bill is sought to be enacted.	Amend the long title to specifically cite Article 206(1) (a) of the Constitution as the basis for the Bill's enactment.
2.	Clause 4(a)	The Clause identifies irrigation and agribusiness infrastructure, as well as electricity generation, transmission, and distribution, as catalytic national infrastructure projects to be prioritized by the Fund. However, under the Part 2 (Paragraphs 1 and 8(e)) of the Fourth Schedule of the Constitution, these functions fall under the mandate of County Governments. By not addressing county involvement, the Bill risks entrenching encroachment on devolved functions contrary to Articles 6(2) and 189(1)(a) of the Constitution.	<p>Amend to include County Governments in the definition of 'Government' under Clause 2 and provide mechanisms to ensure county governments' participation in the operationalisation of the Fund including in the identification and implementation of infrastructure projects across the 47 counties.</p> <p>Amend the Memorandum of Objects and Reasons to re-classify the Bill as a Bill concerning Counties under Article 110(1)(a) hence requiring the concurrence of the Senate.</p> <p>Alternatively, amend to restrict the Fund's focus to strictly what is objectively identifiable as national government functions under the Fourth Schedule of the Constitution. This will, however, also require an amendment to Clause 29(a) to</p>

			exclude proceeds to privatization and disposal of government assets as sources of funds given that these assets are not exclusively national government assets.
3.	Clause 4(c)	<p>The Clause states that one of the purposes of the Fund is to reduce reliance on public debt for financing commercially viable infrastructure investments. While this objective is commendable, all matters relating to public debt have implications for both national and county governments, as they directly affect the revenue available for sharing under Article 202 of the Constitution.</p> <p>This needs to be read alongside Clause 5(2)(c) of the Bill that clothes the Fund with the capacity to borrow money.</p> <p>It also needs to be read alongside Clause 25 that empowers the Cabinet Secretary to issue government support measures. These are typically contingent liabilities with the potential to increase the State's debt stock which directly impact revenue available for vertical sharing with counties.</p>	<p>Amend to reclassify the Bill as a one concerning county governments hence requiring the Senate's concurrence.</p> <p>Alternatively, amend to remove all references to borrowing and the issuance of government support measures.</p>

		A Bill touching on public debt (whether the goal is to increase or reduce public debt) and brought pursuant to any provisions of Chapter Twelve of the Constitution, qualifies as a Bill affecting the finances of county governments thereby qualifying as a Bill concerning county governments under Article 110(1)(c) of the Constitution that ought to be subjected to Senate's concurrence.	
4.	Clause 5(2)(c)	<p>Clause 5(2)(c) capacitates the Fund to borrow money.</p> <p>There, however, appears to be a contradiction under Clause 12(2)(a) which expressly prohibits the Board from borrowing against its balance sheet.</p> <p>This could also be translated to mean that any form of borrowing that does not involve the use of the Fund's balance sheet is permitted. This is supported by Clause 29(c) that identifies "lent" money as a source of funds for the Fund.</p>	Amend to clearly detail the borrowing powers of the Fund, the forms of borrowing permitted and the pre-conditions for any borrowing including making the obtaining of a national government guarantee a prerequisite for any borrowing. A financial threshold should also be set for when the approval of both Houses of Parliament will be required in order the Fund to borrow.
5.	Clause 6	Clause 6 provides for the composition of the Board of Directors but fails to incorporate constitutional requirements on inclusive representation. Specifically, the clause does not provide for compliance with the	Amend to expressly require that the composition of the Board complies with the two-thirds gender principle and provide for the representation of persons with disabilities.

		two-thirds gender principle under Article 27(8) of the Constitution, nor does it ensure representation of persons with disabilities as required under Articles 27 and 54. The omission creates a risk of constitutional inconsistency and undermines the principles of equality, non-discrimination, inclusivity, and affirmative action in public appointments.	
6.	Clause 12(2)(a)	The Board shall not borrow or take credit against its balance sheet. This clause contradicts Clause 5(2)(c).	Refer to the recommendation under Clause 5(2)(c) above.
7.	Clause 13	<p>The Clause provides that the remuneration of Directors shall be governed by the remuneration structure and guidelines issued by the Cabinet Secretary from time to time.</p> <p>This approach raises constitutional concerns. Under Article 230 of the Constitution, the mandate to set and regularly review the remuneration and benefits of all State officers, and to advise on the remuneration of other public officers, is vested exclusively in the Salaries and Remuneration Commission (SRC). Granting the Cabinet Secretary unilateral authority to determine remuneration risks encroaching upon the constitutional mandate of the SRC and creating potential conflicts</p>	An amendment providing that the remuneration and allowances of the Directors be determined by or based on the advice of the SRC in accordance with Article 230 of the Constitution.

		with the constitutional framework on public finance and governance.	
8.	Clause 14	<p>The Clause provides for Audit Committees and states that the committee shall be responsible for engagement with external auditors as well as reviewing all reports and communication with external auditors.</p> <p>However, under Article 229(4)(b), the Auditor-General is responsible for auditing and reporting on the accounts of all public funds. Being a national government Fund, all audits outside those undertaken by internal audit teams ought to be done by the Auditor General. This will ensure compliance with constitutional audit requirements and safeguard transparency and accountability in the Fund's financial management.</p>	Amend to ensure clarity and consistency on the fact that all audits relating to the Fund must be conducted by the Auditor-General in accordance with Article 229(4)(b) of the Constitution.
9.	Part III - Performance Evaluation	Performance evaluation of the Fund, as currently provided in the Bill, does not explicitly include periodic reporting to Parliament. Without clear reporting obligations, parliamentary oversight of the Fund's performance and accountability is weakened. The Bill also does not clarify Parliament's role in reviewing, monitoring, or acting on performance evaluations,	Amend to mandate regular, periodic reporting of the Fund's performance to both Houses of Parliament. The Bill should also clarify Parliament's role in reviewing these reports and ensuring that any recommendations arising from performance evaluations are implemented. This will ensure the maintenance of Parliamentary

		leaving an important gap in the governance and accountability framework of the Fund.	oversight of national spending and accountability in the management of the Fund.
10.	Clause 24 (2) (e)	The Clause states that the Cabinet Secretary shall prescribe standards and procedures for public participation and stakeholder engagement during project development stages. The Clause limits participation to the project development stage. This approach overlooks the importance of engaging the public and stakeholders at other critical stages, including planning, implementation, monitoring, and evaluation. This ultimately risks undermining transparency, inclusivity and accountability throughout the life cycle of projects.	An amendment to provide that the Cabinet Secretary prescribes general standards and procedures for public participation and stakeholder engagement applicable to all stages of a project, including planning, development, implementation, monitoring and evaluation. This ensures active and meaningful involvement of the people throughout a project cycle.
11.	Clause 25(2)	The Bill outlines the circumstances under which the Cabinet Secretary may issue Government Support Measures (GSMs) but does not provide for oversight or approval by the National Assembly. Without parliamentary sanction, there is a risk that GSMs could increase public liability without legislative scrutiny.	An amendment to provide that any Government Support Measures issued by the Cabinet Secretary, or the guidelines governing their implementation, shall be submitted to and approved by the National Assembly. This ensures parliamentary oversight and safeguards against the accumulation of contingent liability hence facilitating sustainable development provided for under Article 10 of the Constitution.

12.	Clause 26(2)	The bill states that the Cabinet Secretary may make half yearly reports on the Fund to the Cabinet and annually to the National Assembly. The word “may” connotes optional or discretionary. This risks undermining transparency and accountability in the running of the Fund. Moreover, half or yearly reports for a Fund responsible for spending significant sums of public money are inadequate to secure the prudent and responsible use of resources.	Amend to have the word “ may ” replaced with “ shall ”, to make the provision of reports mandatory. Increase the reporting to quarterly and require all reports to be submitted to cabinet and both Houses of Parliament, unless the elements rendering this Bill one concerning counties are eliminated as proposed above.
13.	Clause 27	The bill provides for publishing and publicising of reports and annual performance evaluation results on the National Treasury’s website. Limiting the publication and publicising to just the Treasury’s website is very limiting and risks inhibiting access to information regarding the Fund’s operations and health.	Amend to require the publication and publicising in not only the National Treasury’s Website but also in two newspapers of nation-wide circulation.
14.	Clause 29	The Clause states that funds of the Fund shall include proceeds from privatization and disposal of government assets. It is important to note that these government assets do not only belong to the national government hence the approval of the Bill and the running of the Fund ought to involve both Houses of Parliament as well as relevant	Re-classify the Bill as a Bill concerning county governments. Amend the Bill to make provision for an intergovernmental process relating to planning, and implementation of projects under the Fund. Amend the Clause to specify that parliament appropriated funds for the Fund shall be drawn

		<p>intergovernmental processes. While the constitution allows the exclusion of revenue from the Consolidated Fund, where this is to the financial detriment of counties, any legislation touching on it ought to be deliberated upon by both Houses.</p> <p>Additionally, being an entity intended to undertake national government functions, the provision allowing the appropriation of money by Parliament for its use should specify that such money shall be 'from the National Government's share of revenue raised nationally.</p>	<p>from the National Government's equitable share of revenue raised nationally.</p>
15.	Clause 31	<p>The Clause provides that the Administrator of the Fund shall cause bank accounts to be opened in the name of the Fund in a bank regulated by the Central Bank of Kenya (CBK).</p> <p>It is not clear why the Fund would need multiple bank accounts and why not have the accounts at the Central Bank of Kenya. Nonetheless, for accountability, the Bill should require that any and all accounts of the Fund be linked to the national Treasury Single Account provided for under Section 28 of the Public Finance Management Act. This will facilitate transparency and</p>	<p>Amend to expressly require that the Fund's bank accounts be opened and maintained at the Central Bank of Kenya.</p> <p>Require also that any and all accounts operated by the Fund be linked to the national Treasury Single Account.</p>

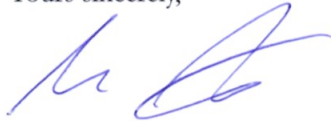
		accountability in the handling of the finances of the Fund.	
16.	Clause 34	The Clause grants the Board authority to invest surplus funds in Government securities with the approval of the Cabinet Secretary. However, the investment of public funds is comprehensively regulated under the Public Finance Management Act and the National Treasury Regulations and guidelines. Allowing the Board to invest surplus funds solely with the approval of the Cabinet Secretary, without express reference to compliance with the PFMA and oversight by the National Treasury, risks being rendered unconstitutional.	An amendment expressly providing that any investment of surplus funds by the Board shall be undertaken strictly in accordance with the Public Finance Management Act, its regulations, and the guidelines issued by the National Treasury.
17.	Section 36	The Clause for the first time introduces a role for the Auditor General in auditing and reporting on the accounts of the Fund under the Public Audit Act. This is in line with Article 229(4) of the Constitution and should be maintained throughout the Act. Further, the Bill does not clearly outline Parliament's oversight role in considering and ensuring the implementation of audit findings following the	Amend the clauses of the Act referring to the use of any external auditor not directly engaged by the Auditor General to ensure harmony with the Constitutional role of the Auditor General. All external audit under the Act should be undertaken by the Auditor General in line with the Constitution and the Public Audit Act.

		submission of audit reports. Given the express reference to the Auditor-General, clarity on the post-audit accountability framework is essential to ensure effective financial oversight and compliance with the Constitution.	Additionally, the Bill should expressly provide for Parliament's oversight role, including in overseeing the implementation of audit recommendations and reporting on compliance.
18.	Clause 37	The Clause gives the CS power to make regulations for the better carrying into effect of the provisions of this Act. However, the Clause intentionally omits the requirement for parliamentary approval.	Amend the clause to require the approval of Parliament on any regulations.
19.	Memorandum of Objects and Reasons	<p>The Clause states that the Bill is not one that concerns County Governments on the basis that it does not affect the functions and powers of County Governments. However, as already pointed out above, the Bill touches on county government functions and powers relating to Agriculture and electricity reticulation.</p> <p>Additionally, the Bill qualifies as a Bill affecting the finances of counties enacted under Chapter Twelve thereby rendering it a Bill concerning counties under Article 110(1)(c).</p>	Amend to re-classify the Bill as one concerning County Governments within the meaning of Article 110(1) of the Constitution. The legislative process should therefore comply with the constitutional requirements for such Bills, including concurrence by the Senate.

Conclusion

Establishment of the National Infrastructure Fund under an Act of Parliament represents a step in the right direction in regularizing the Constitutionality of the Bill. However, the Fund's enactment needs to be cognisant of and ensure compliance with critical constitutional principles, key among them being devolution and parliamentary oversight of national revenue and spending. KI urges the National Assembly to seriously consider the recommendations made in this memorandum in order to address constitution-related and other rule of law concerns identified for its consideration.

Yours sincerely,



Nora Mbagathi
Executive Director

Katiba Institute
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Nairobi
info@katibainstitute.org

3. Operates commercially and transparently;
4. Improves bankability of infrastructure projects.

2. RECOMMENDATIONS

KNCCI recommends that the National Infrastructure Fund Bill, 2026 be amended to:

Clause	Issue Identified	Proposed Amendment	Justification (KNCCI Position)
Clause 4 – Purpose of the Fund	No explicit catalytic leverage requirement; risk of crowding out private capital.	Insert new paragraph: “The Fund shall mobilize private capital through a prescribed minimum leverage ratio of private-to-public investment.”	Ensures Fund crowds in private investment, enhances capital efficiency, and attracts pension and institutional investors.
Clause 6 – Board Composition & Appointment	Directors appointed solely by Cabinet Secretary; no structured private sector representation.	(a) Provide for at least one director nominated by recognized national private sector with countrywide reach. (b) Require National Assembly approval for Chairperson. (c) Prescribe mandatory expertise in infrastructure finance, capital markets, PPPs, and risk management.	Strengthens governance independence, enhances credibility with investors, reduces politicization risk.
Clause 10 – Tenure and Removal of Directors	Removal safeguards not sufficiently protected from executive discretion.	Insert provision requiring due process and tabling of removal reasons before Parliament.	Protects board independence and institutional stability.
Clause 12(2)(a) – Borrowing Restriction	Absolute prohibition on borrowing limits structured finance and leverage capability.	Replace with: “The Board may borrow subject to compliance with the Public Finance Management Act and parliamentary approval above prescribed thresholds.”	Enables blended finance, co-investment structures, and capital market instruments while maintaining fiscal safeguards.
Clause 18 – Investment Plan	No requirement for stakeholder consultation in development of investment plan.	Insert provision mandating structured stakeholder and private sector consultation before approval.	Ensures pipeline reflects market realities and improves bankability of projects.

Clause	Issue Identified	Proposed Amendment	Justification (KNCCI Position)
Clause 19 – Performance Contracts	Performance metrics not clearly linked to development impact.	Provide that performance contracts include both financial return metrics and development impact metrics (jobs, MSME participation, export growth, regional integration).	Aligns Fund performance with national economic transformation goals.
Clause 20 – Performance Evaluation	Evaluation centralized under Cabinet Secretary with limited parliamentary oversight.	Require annual performance report to be submitted to and reviewed by the relevant Parliamentary Committee.	Enhances oversight, transparency, and accountability.
Clause 21 – Investment Policy	No cap on sector exposure; no leverage framework; no ESG requirement; no stakeholder consultation requirement.	Insert requirements for: (a) sector exposure limits; (b) project exposure caps; (c) minimum leverage ratio; (d) ESG and climate standards; (e) mandatory public consultation prior to adoption.	Reduces concentration risk, strengthens sustainability standards, improves investor confidence.
Clause 22 – Project Preparation	No explicit transparency requirement for feasibility studies.	Require publication of feasibility studies and project preparation summaries (subject to commercially sensitive redactions).	Reduces information asymmetry and accelerates financial close.
Clause 23 – Feasibility Studies	Commercial viability assessment not explicitly tied to value-for-money analysis.	Insert requirement that all feasibility studies include value-for-money, fiscal risk, and affordability assessments.	Protects public finances and enhances project discipline.
Clause 24 – Standards and Procedures	Procurement safeguards reliant on regulation; risk of opaque project allocation.	Insert explicit statutory requirement that all projects be procured through open, competitive, and transparent processes consistent with applicable procurement and PPP laws.	Enhances integrity, prevents corruption risk, improves investor trust.

Clause	Issue Identified	Proposed Amendment	Justification (KNCCI Position)
Clause 25 – Government Support Measures	No cap on contingent liabilities; no mandatory disclosure framework.	(a) Introduce ceiling on contingent liabilities subject to Parliamentary approval. (b) Require independent risk assessment prior to issuance. (c) Mandate annual public disclosure of guarantees issued.	Protects fiscal sustainability, enhances transparency, safeguards public debt exposure.
Clause 26 – Reporting	Reporting framework does not mandate public project-level disclosure.	Require publication of project-level dashboards including financial performance, delays, cost overruns, and return metrics.	Strengthens transparency and market confidence.
Clause 27 – Disclosure	Disclosure provisions not sufficiently detailed regarding investment agreements.	Mandate publication of investment agreements (subject to confidentiality protections).	Improves investor predictability and public accountability.
Clause 28 – Financial Transparency	Financial audit provided, but no independent performance audit.	Insert requirement for annual independent performance audit in addition to financial audit.	Ensures operational efficiency and value-for-money beyond accounting compliance.
Clause 29 – Sources of Funds	No explicit ring-fencing; risk of diversion to recurrent expenditure.	Insert clause ring-fencing funds exclusively for capital investments and project preparation; prohibit use for recurrent expenditure.	Protects integrity of infrastructure financing mandate.
Clause 29 – Project Preparation Allocation	No guaranteed allocation to pipeline development.	Require minimum 10% of annual allocations reserved for project preparation and feasibility development.	Strengthens pipeline development and improves project bankability.
Clause 37 – Regulation-Making Powers	Broad discretionary powers granted to Cabinet Secretary; limited parliamentary scrutiny.	Require all Regulations under the Act to be tabled and approved by the National Assembly before taking effect.	Enhances democratic oversight and prevents regulatory overreach.

3. ADDITIONAL STRATEGIC RECOMMENDATIONS

KNCCI further recommends:

1. Clear coordination clause with the PPP Directorate to avoid duplication.
2. Alignment with Kenya's AfCFTA trade corridor strategy.
3. Mandatory local content and MSME participation thresholds in supply chains.
4. Adoption of international blended finance best practices to attract pension and sovereign wealth capital.

4. CONCLUSION

The Bill provides a solid structural foundation for an infrastructure financing vehicle. However, to attract pension funds, sovereign wealth capital, climate finance, and institutional investors, the Fund must be:

- Independent in governance;
- Transparent in operations;
- Disciplined in fiscal risk;
- Commercially oriented;
- Predictable in regulatory framework.

KNCCI supports the Bill subject to amendments that enhance investor confidence and safeguard public resources.

SIGNED

For and on behalf of the Kenya National Chamber of Commerce and Industry (KNCCI):


KK Mutai
Chief Executive Officer



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

AG/LDD/578/1/117

24th February, 2026

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Parliament Building
P.O Box 41842-00100
NAIROBI.

**RE: PRE-PUBLICATION SCRUTINY OF THE NATIONAL INFRASTRUCTURE FUND BILL
2026(NATIONALASSEMBLY BILL NO.1 OF 2026).**

This is in reference to your letter dated 18th February 2026, ref NA/DDC/F & NP/2026/042 forwarding the proposed National Infrastructure Fund Bill (National Assembly Bill No.1 of 2026), for our consideration and comments.

Following the review of the proposed Bill with respect to the Constitution and relevant statutes, we note several legal issues arising from the draft Bill. We hereby provide the following observations:-

1. Clause 4 of the Bill provides that the National Infrastructure Fund shall be for infrastructure development of highways, railways, ports, electricity, water, irrigation; mobilising private and non-traditional capital including pension funds, sovereign wealth funds and climate finance; reducing reliance on public debt for commercially viable projects and building national capacity for complex infrastructure project execution.

We note that although Clause 4 provides for a multi-sectoral mandate of the Fund, the Board composition is limited to Cabinet Secretary for the National Treasury and independent directors. Under clause 6 of the Bill, the Board has no representation for the sectors specified under clause 4.

2. Clause 5 of the Bill establishes the Fund as a body corporate with perpetual succession, capable of holding property, borrowing, contracting, and litigating in its own name. This implies the Fund is perpetual in nature and has under clause 15

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CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

appointed a Chief Executive Officer, whilst under clause 16 of the Bill the Cabinet Secretary for the National Treasury is required to designate a person to be the Administrator of the Fund in accordance with section 24(5) of the Public Finance Management Act.

The responsibilities of the Chief Executive Officer specified under clause 15 (5) (a) which is to *inter alia* includes to manage the day to day affairs of the Fund may overlap with that of the proposed Administrator of the Fund.

There is need for clarity whether the Bill is a national public fund established pursuant to section 24 of the Public Finance Management Act or it is a perpetual Fund established by statute.

3. Clause 6 of the Bill sets out the composition of the Board with representation of the Cabinet Secretary for the National Treasury and four independent directors and two development banking experts.

The inclusion of the Cabinet Secretary for the National Treasury Secretary as a Board member under Clause 6(1)(b) undermines the Boards' independence, as the Cabinet Secretary for the National Treasury is also responsible for performance evaluation under clause 20, signing performance contracts under clause 19, and approving investment policy under clause 21. The grant of oversight and participation in governance on the Cabinet Secretary for the National Treasury creates a governance conflict that may compromise the Fund's operational integrity.

4. Clause 6 (2) of the Bill provides that the four independent directors and two development banking experts shall be recruited in accordance with the procedure set out under section 13 of the Government Owned Enterprises Act (No. 25 of 2025).

Section 13 of the Government Owned Enterprises Act prescribes a competitive recruitment process for independent directors of Government Owned Enterprises. However, the National Infrastructure Fund is not a 'Government Owned Enterprise' by virtue of section 2 of that Act, since a Government Owned Enterprise is defined as a self-financing and self-sustaining company engaged in commercial activities, whereas the Fund is a public fund established by statute with broad development objectives.

5. Clause 7 of the Bill provides for the qualification for appointment of a chairperson or member of a Board.

The criteria for appointment includes proven business leadership or relevant professional experience, at least fifteen years' demonstrable service in a senior management or leadership position and satisfies Chapter 16 of the Constitution.

We note that the clause has omitted details on the academic qualifications of the independent Board members as compared to the academic qualification provided for the Chief Executive Officer specified under clause 15 (2) of the Bill. The Bill should also propose the grounds for removal for the chairperson and Board members since such grounds have been provided for the Chief Executive Officer under clause 15 (6) of the Bill.

6. Clause 13 of the Bill provides that the remuneration of directors shall be governed by the remuneration structure and guidelines issued by the Cabinet Secretary for the National Treasury from time to time.

The remuneration and benefits of the directors are required to be determined by the Public Service Commission on the advice of the Salaries and Remuneration Commission.

7. The Bill does not contain transitional provisions or a savings clause addressing the status of any existing infrastructure financing arrangements or funds currently managed by the National Treasury or other entities, which the new Fund may absorb or supersede. Such provisions are necessary for legal certainty.

We trust this is in order.



Hon. Shadrack J. Mose, CBS

SOLICITOR GENERAL

Outlook

Memorandum on the National Infrastructure Fund Bill, 2026

From Sam Sani Nzevela <szevela@gmail.com>

Date Mon 02/16/2026 1:34 PM

To Clerk of the National Assembly Kenya <cna@parliament.go.ke>

1 attachment (60 KB)

NIF_Bill_Master_Submission_Sani_Nzevela.pdf



Dear Sir/Madam,

Please find attached my memorandum submitted in response to the call for public participation on the National Infrastructure Fund Bill, 2026.

I am a private citizen and independent researcher motivated by concern for Kenya's long-term prosperity and intergenerational welfare. The submission proposes safeguards and strategic considerations to strengthen the Bill so that the Fund becomes a sustainable national capital institution.

I respectfully request that this memorandum be considered during deliberations on the Bill.

Kindly acknowledge receipt.

Yours faithfully,
Samson Sani Nzevela
Private Citizen & Independent Researcher

<https://www.linkedin.com/in/samsaninzevela/>

+254 722 987 385 | +254 728 051 632
Machakos, Kenya

Benjamin Magut, HoP
Pls bring to the attention of
the Departmental Committee
on Finance. DM 12/02/26



REPUBLIC OF KENYA

MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2026 (National Assembly Bill No. 1 of 2026)

Submitted to: National Assembly of Kenya

Purpose: Public Participation Submission

Submitted by: Samson Sani Nzevela

Status: Private Citizen & Independent Researcher

Submitted to:

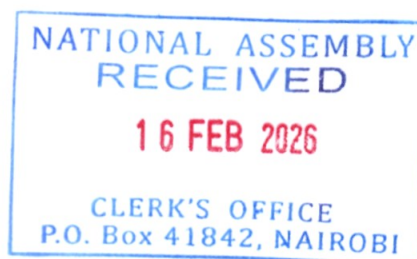
The Clerk of the National Assembly

Parliament of Kenya

Submitted by:

Samson Sani Nzevela, Private Citizen and Independent Researcher

Date: 16th February 2026



PUBLIC MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2026

The Clerk of the National Assembly

Parliament Buildings

P.O. Box 41842-00100

Nairobi, Kenya

26th February 2026

**RE: PUBLIC MEMORANDUM ON THE NATIONAL
INFRASTRUCTURE FUND BILL, 2026**

Dear Sir/Madam,

I respectfully submit this comprehensive memorandum in response to the National Assembly's call for public participation on the National Infrastructure Fund Bill, 2026. I make this submission solely as a private citizen and independent researcher concerned with the present and future prosperity, stability, and intergenerational welfare of the Republic of Kenya.

The Bill presents a historic opportunity to transition Kenya from debt-dependent development toward a disciplined, asset-based national capital model capable of sustainably financing infrastructure, human development, and economic transformation through the year 2060 and beyond.

This memorandum consolidates my proposals into a coherent sovereign-grade framework to strengthen the Bill so that the proposed Fund operates as a cornerstone institution within a broader National

PUBLIC MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2026

Resilience and Capital Authority (NRCA) and National Sovereign Wealth Framework (NSWF), supported by transparent governance, diversified capitalization, ethical public service, sustainable revenue generation, and protection of national financial sovereignty.

I respectfully urge Parliament to consider these recommendations in the national interest and for the benefit of present and future generations.

Yours faithfully,

Samson Sani Nzevela

Private Citizen and Independent Researcher

1.0 EXECUTIVE SUMMARY

This submission proposes that the National Infrastructure Fund be strengthened to serve as the cornerstone of a long-term national capital stewardship system that:

- i. Reduces reliance on external debt and foreign currency exposure
- ii. Preserves and grows national wealth
- iii. Enhances fiscal and monetary stability
- iv. Supports equitable development across all counties
- v. Strengthens human capital and social cohesion
- vi. Mobilizes domestic and diaspora resources
- vii. Secures intergenerational prosperity

Key elements include establishment of NRCA, a Sovereign Wealth Framework, a Single National Income Aggregation Account, rules-based capitalization, strong governance, social stability programs, strategic infrastructure investment, new revenue streams, public service reforms, and protection of monetary sovereignty through local-currency capitalization.

2.0 CONSTITUTIONAL ALIGNMENT

This framework aligns with the Constitution of Kenya, 2010, including Articles 1, 10, 201, 203, 6(2), 62, 73, 57, and 232, emphasizing

sovereignty of the people, prudent use of public funds, integrity, equity, and public trust.

3.0 STRATEGIC PURPOSE OF THE FUND

The Fund should operate as a sovereign-grade national capital engine financing productive infrastructure while preserving long-term public wealth and economic sovereignty.

4.0 NRCA AND SOVEREIGN WEALTH FRAMEWORK

A National Resilience and Capital Authority (NRCA) should steward national assets, stabilization reserves, intergenerational savings, and strategic investments, with the Infrastructure Fund operating as a sub-fund.

5.0 SINGLE NATIONAL INCOME AGGREGATION ACCOUNT

All national revenues should be consolidated into a transparent account enabling equitable, rules-based allocations to sovereign funds, national government, and county governments.

6.0 RULES-BASED CAPITAL CONTRIBUTIONS

Sources may include defined shares of revenue, county contributions, SBU revenues, investment returns, asset monetization, and voluntary diaspora participation.

7.0 HUMAN CAPITAL AND SOCIAL STABILITY

- i. Compulsory one-year National Youth Skills Bridging & Service Program
- ii. Monthly support for senior citizens aged 65+ without pensions

8.0 STRATEGIC HOUSING

Affordable housing financed through investment mechanisms using public land and generating sustainable rental income.

9.0 TRADE, LOGISTICS, AND INDUSTRIAL DEVELOPMENT

Development of SEZs, FEZs, inland bonded warehouses, dry ports, and rail-aligned freight systems to improve safety and competitiveness.

10.0 TOURISM AND NATURAL CAPITAL

Investment in high-value eco-tourism and hospitality assets with conservation safeguards and capital market participation.

11.0 NEW REVENUE STREAMS

- i. GIS and national addressing systems
- ii. Airspace and maritime rights
- iii. Blue economy development
- iv. Data licensing
- v. Livestock digitization

12.0 PUBLIC EXPENDITURE DISCIPLINE

- i. Lease rather than purchase government vehicles
- ii. Preference for hybrid and electric fleets
- iii. Transparent procurement
- iv. Elimination of wasteful spending

13.0 MONETARY SOVEREIGNTY — LOCAL CURRENCY CAPITALIZATION

All capital investment contracts for nationally significant infrastructure projects should be denominated in Kenya Shillings (KES) to avoid foreign currency risk and protect intergenerational assets.

Foreign participation should avoid imposing domestic foreign-currency repayment obligations and may use equity or hedged structures.

14.0 INTERNATIONAL BENCH-MARKING

Comparable elements exist in Singapore (strategic investment), Norway (intergenerational savings), and Chile (rules-based stabilization).

15.0 IMPLEMENTATION PRINCIPLES

- i. Phased rollout
- ii. Capacity building
- iii. Digital governance
- iv. Independent audits
- v. Public participation
- vi. Anti-corruption safeguards

16.0 FORMAL AMENDMENT SCHEDULE (CLAUSE-BY-CLAUSE)

Clause 1 — Staggered commencement for readiness

Clause 2 — Insert definitions (National Capital, Intergenerational Equity, NRCA)

Clause 3 — Specify sovereign-grade capital institution

Clause 4 — Expand objects to include wealth preservation & resilience

Clause 5 — Include rules-based revenue transfers & SBU contributions

Clause 6 — Strengthen governance & integrity vetting

Clause 7 — Require risk-managed investment policy

Clause 8 — Mandate transparency & audits

Clause 9 — Capital Preservation Rule

Clause 10 — Local Currency Rule (KES denomination)

Clause 11 — Enable integration into sovereign wealth framework

Clause 12 — Require regulations before operationalization

17.0 PARLIAMENTARY EXECUTIVE BRIEF

Purpose: Ensure sustainable infrastructure financing without excessive debt.

Key Benefits:

- i. Reduced debt vulnerability
- ii. Accelerated infrastructure delivery
- iii. Strong fiscal buffers
- iv. Investor confidence
- v. Equitable development
- vi. Key Safeguards:
- vii. Professional governance
- viii. Transparency
- ix. Capital preservation
- x. Local-currency investment
- xi. Long-term planning alignment

18.0 POLICY BRIEF FOR MEMBERS OF PARLIAMENT

Issue: Need sustainable infrastructure financing.

Solution: Sovereign-grade fund with strong safeguards.

Expected Impact:

- i. Fiscal sustainability
- ii. Infrastructure growth

iii. Improved quality of life

iv. Long-term prosperity

19.0 PUBLIC HEARING SPEAKING STATEMENT

Chairperson and Honourable Members,

The National Infrastructure Fund can transform Kenya's development by shifting from debt-driven spending to asset-based growth. Strong governance, protection of public assets, and intergenerational responsibility are essential.

If properly structured, the Fund can catalyze growth, create jobs, and secure prosperity for future generations.

Thank you.

20.0 VISION 2060 NATIONAL CAPITAL WHITE PAPER (SUMMARY)

Vision: A resilient, prosperous Kenya built on disciplined stewardship of national assets.

Core Pillars:

1. Sovereign Capital Management
2. Infrastructure-Led Growth
3. Human Capital Excellence

PUBLIC MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2026

4. Environmental Sustainability

5. Fiscal Stability

6. Innovation Economy

7. Social Cohesion

21.0 CONCLUSION

The National Infrastructure Fund Bill, 2026 provides a historic opportunity to establish a sovereign-grade development financing system grounded in constitutional principles, fiscal discipline, monetary sovereignty, and long-term stewardship of national wealth for present and future generations.

Respectfully submitted,

Samson Sani Nzevela,

Private Citizen & Independent Researcher

Date: 16th February 2026



Benjamin magut, HOD



NAIROBI INTERNATIONAL FINANCIAL CENTRE

*pls deal
waiting 23/2/26*

NAIROBI INTERNATIONAL FINANCIAL CENTRE AUTHORITY

REF: NIFCA/CS/ADMIN/1/18/VOL. 1/ (2)

20th February, 2026

Mr. Samuel Njoroge, CBS
The Clerk of the National Assembly
Office of the Clerk,
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

*D/DC
Please deal
23/02/26*



Dear *Sir,*

RE: SUBMISSION OF MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL 2026 (NATIONAL ASSEMBLY BILL NO. 1 OF 2026)

Reference is made to the invitation issued by the National Assembly vide public notice dated 13 February 2026 inviting stakeholders to submit memoranda on the Miscellaneous Fees and Levies (Amendment) Bill, 2025 (National Assembly Bill No. 57 of 2025) and the National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026).

Pursuant to that invitation, the Nairobi International Financial Centre Authority (NIFCA), established under the Nairobi International Financial Centre Act (Cap. 495), hereby formally submits its Memorandum containing proposed amendments to the National Infrastructure Fund Bill, 2026.

The Authority's submission is guided by its statutory mandate under Section 6 of the Nairobi International Financial Centre Act (Cap 495) to facilitate and support the development of an efficient and globally competitive financial services sector in Kenya, and to collaborate with relevant authorities in strengthening Kenya's legal and regulatory framework for international competitiveness.

The Memorandum proposes targeted, facilitative amendments intended to:



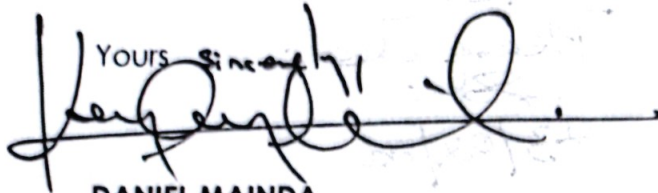
- i. Strengthen the Fund's capital mobilization architecture;
- ii. Formalize structured coordination between the Fund and the Nairobi International Financial Centre framework on matters relating to capital structuring, investor outreach, and market access;
- iii. Enhance Kenya's ability to attract domestic and international institutional capital for infrastructure financing; and
- iv. Align the Bill with international best practice in jurisdictions where national infrastructure vehicles are integrated with international financial centre frameworks.

8th Floor, KASNEB Towers II, Off Hospital Rd, Upper Hill, P.O. Box 30007-00100 Nairobi

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The proposed amendments do not alter the Fund's fiscal framework, fiduciary obligations, or accountability structures under the Constitution of Kenya (2010) and the Public Finance Management Act (Cap 412A). The proposed amendments are intended to enhance investor confidence while preserving institutional autonomy.

The Authority therefore, submits the enclosed Memorandum to be considered by the National Assembly during the deliberations on the National Infrastructure Fund Bill, 2026.

Yours sincerely,


DANIEL MAINDA
CHIEF EXECUTIVE OFFICER



NAIROBI INTERNATIONAL
FINANCIAL CENTRE

NAIROBI INTERNATIONAL FINANCIAL CENTRE AUTHORITY

REF: NIFCA/CS/ADMIN/1/18/VOL. I/ (2)

20th February, 2026

Mr. Samuel Njorge, CBS

The Clerk of the National Assembly

Office of the Clerk,
Parliament Buildings
P.O. Box 41842-00100

NAIROBI

Dear *Sir,*

NATIONAL ASSEMBLY
RECEIVED

23 FEB 2026

CLERK'S OFFICE
P.O. Box 41842, NAIROBI

RE: SUBMISSION OF MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL 2026 (NATIONAL ASSEMBLY BILL NO. 1 OF 2026)

Reference is made to the invitation issued by the National Assembly vide public notice dated 13 February 2026 inviting stakeholders to submit memoranda on the Miscellaneous Fees and Levies (Amendment) Bill, 2025 (National Assembly Bill No. 57 of 2025) and the National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026).

Pursuant to that invitation, the Nairobi International Financial Centre Authority (NIFCA), established under the Nairobi International Financial Centre Act (Cap. 495), hereby formally submits its Memorandum containing proposed amendments to the National Infrastructure Fund Bill, 2026.

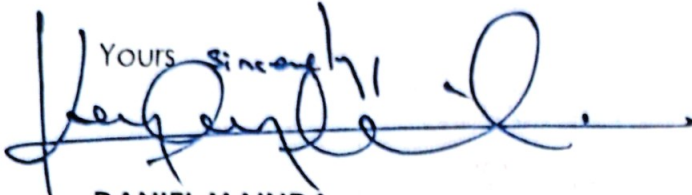
The Authority's submission is guided by its statutory mandate under Section 6 of the Nairobi International Financial Centre Act (Cap 495) to facilitate and support the development of an efficient and globally competitive financial services sector in Kenya, and to collaborate with relevant authorities in strengthening Kenya's legal and regulatory framework for international competitiveness.

The Memorandum proposes targeted, facilitative amendments intended to:

- i. Strengthen the Fund's capital mobilization architecture;
- ii. Formalize structured coordination between the Fund and the Nairobi International Financial Centre framework on matters relating to capital structuring, investor outreach, and market access;
- iii. Enhance Kenya's ability to attract domestic and international institutional capital for infrastructure financing; and
- iv. Align the Bill with international best practice in jurisdictions where national infrastructure vehicles are integrated with international financial centre frameworks.

The proposed amendments do not alter the Fund's fiscal framework, fiduciary obligations, or accountability structures under the Constitution of Kenya (2010) and the Public Finance Management Act (Cap 412A). The proposed amendments are intended to enhance investor confidence while preserving institutional autonomy.

The Authority therefore, submits the enclosed Memorandum to be considered by the National Assembly during the deliberations on the National Infrastructure Fund Bill, 2026.

Yours sincerely,


DANIEL MAINDA
CHIEF EXECUTIVE OFFICER



NAIROBI INTERNATIONAL FINANCIAL CENTRE AUTHORITY

**MEMORANDUM ON THE NATIONAL INFRASTRUCTURE FUND BILL 2026
(NATIONAL ASSEMBLY BILL NO. 1 OF 2026)**

**PRESENTED TO
THE NATIONAL ASSEMBLY
THE THIRTEENTH PARLIAMENT (FIFTH SESSION)**

**SUBMITTED TO
THE CLERK OF THE NATIONAL ASSEMBLY
P.O. BOX 41842-00100, NAIROBI**

**IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF (1) THE
MISCELLANEOUS FEES AND LEVIES (AMENDMENT) BILL, 2025 (NATIONAL
ASSEMBLY BILL NO. 57 OF 2025) AND (2) THE NATIONAL INFRASTRUCTURE
FUND BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 1 OF 2026)**

20 FEBRUARY 2026

**SUBMITTED BY:
NAIROBI INTERNATIONAL FINANCIAL CENTRE AUTHORITY (NIFCA)
KASNEB TOWER II, 8TH FLOOR, OFF HOSPITAL ROAD, UPPER HILL
P.O. BOX 30007-00100, NAIROBI
Email: info@nifca.go.ke**

1. EXECUTIVE SUMMARY

This memorandum proposes targeted amendments to the National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026) (hereinafter the "Bill") strengthen Kenya's infrastructure financing architecture by enhancing capital mobilization capacity, aligning the Fund with Kenya's international financial framework, and reinforcing international investor confidence in Kenya as a credible destination for long-term infrastructure capital.

The proposed amendments seek to formalize institutional collaboration between the National Infrastructure Fund (hereinafter "the Fund"), the Nairobi International Financial Centre (NIFC) and the Nairobi International Financial Centre Authority (NIFCA), established under the Nairobi International Financial Centre Act (Cap 495). The amendments introduce structured coordination in the areas of governance, investment policy development, capital structuring, international market access and global investor outreach.

The objective is not to alter the constitutional, fiscal, or policy mandate of the Fund, but to strengthen its ability to mobilize domestic and international capital through globally competitive financial market mechanisms, consistent with Kenya's ambition to position Nairobi as a continental financial hub.

2. LEGAL JUSTIFICATION

The Bill expressly seeks to mobilize private capital, sovereign wealth funds, pension funds, climate finance and other non-traditional financing sources for infrastructure development. The Nairobi International Financial Centre (NIFC) established under Section 4 of the Nairobi International Financial Centre Act (Cap 495) is an operating framework managed by the Nairobi International Financial Centre Authority (NIFCA) in order to facilitate and support the development of an efficient and globally competitive financial services sector in Kenya.

Further, Section 6 (c) of the NIFC Act (Cap 495) authorizes the Authority to review and recommend, in collaboration with the relevant authorities developments to the legal and regulatory framework in order to develop Kenya as an internationally competitive financial centre.

These statutory provisions position the NIFC as Kenya’s statutory framework for attracting and facilitating international capital flows and structured financial vehicles. Institutional alignment between the Fund and NIFCA will:

- i. Enhance credibility in international markets. International financial centres operate under predictable, transparent, and globally benchmarked regulatory environments. Leveraging the NIFC framework strengthens investor confidence and reduces perceived jurisdictional risk.
- ii. Support structuring of infrastructure investment vehicles. The NIFC provides a platform for structured vehicles, capital market instruments, and investor-facing frameworks that facilitate large-scale capital aggregation.
- iii. Strengthen pension and sovereign wealth and institutional investor participation. Institutional investors require clear governance structures, market access mechanisms, and internationally familiar legal environments. Collaboration with NIFCA supports these requirements.
- iv. Position Kenya as a regional infrastructure financing hub. Coordinated use of the NIFC framework will allow Kenya to structure infrastructure capital for domestic and regional projects, reinforcing Nairobi’s role as a gateway for African infrastructure investment.

3. PROPOSED LEGISLATIVE AMENDMENTS

3.1 Amendment of Clause 6 – Board of Directors

THAT Clause 6 (1) be amended by inserting the following new paragraph (ca) immediately after paragraph (b)—

“(ca) the Chief Executive Officer of the Nairobi International Financial Centre Authority established under the Nairobi International Financial Centre Act, (Cap 495), or a representative designated in writing;”

3.2 Amendment of Clause 11 – Role of the Board

That Clause 11 be amended by inserting the following new paragraph (aa) immediately after paragraph (a)—

“(aa) mobilizing domestic and international capital for the Fund through structured engagement with capital markets, institutional investors, and development finance institutions, in consultation with the Nairobi International Financial Centre Authority.”

3.3 Amendment of Clause 12 – Powers of the Board

That Clause 12 be amended by inserting the following new paragraph (fa) immediately after paragraph (f)—

“(fa) establish special purpose vehicles, pooled investment vehicles, infrastructure funds or other capital market instruments for purposes of mobilizing private capital, including vehicles domiciled within the Nairobi International Financial Centre.”

3.4 Amendment of Clause 21 – Investment Policy, Capital Mobilization and Market Access

That Clause 21 be amended by inserting the following three new sub-clauses 2A, 2B and 2C immediately after sub-clause 2—

“(2A) In developing the Investment Policy, the Board shall consult the Nairobi International Financial Centre Authority on matters relating to capital mobilization strategy, structuring of investment vehicles, international investor participation, and market access mechanisms.

(2B) The Fund shall leverage the Nairobi International Financial Centre as a platform for-

- a) international investor outreach;
- b) structuring and domiciliation of investment vehicles;
- c) engagement with institutional investors; and
- d) facilitation of cross-border capital flows.

(2C) Nothing in this section shall derogate from the fiduciary responsibility of the Board of the Fund or its accountability under this Act and other applicable public finance laws.”

4. IMPLEMENTATION CONSIDERATIONS

The proposed amendments do not alter the fiscal structure or public finance accountability framework of the Fund. The amendments strengthen the governance architecture and capital mobilization capability of the Fund by introducing institutional coordination and providing a predictable framework for structured infrastructure finance. The amendments are facilitative and operational in nature. They preserve the fiduciary responsibility of the Board and are in compliance with the Public Finance Management Act (Cap 412A).

5. CONCLUSION

The proposed amendments are intended to ensure that Kenya's infrastructure financing strategy is fully integrated with its international financial centre framework. By formalizing collaboration between the National Infrastructure Fund and the Nairobi International Financial Centre Authority, Kenya will reinforce investor confidence, reduce structural barriers to capital aggregation, and enhance its ability to finance transformative infrastructure sustainably.

The Authority submits these proposals for consideration with the objective of strengthening Kenya's long-term infrastructure financing capacity and international competitiveness.

DANIEL MAINDA

Chief Executive Officer

Nairobi International Financial Centre

NAIROBI



National Gender and Equality Commission

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NATIONAL GENDER AND EQUALITY COMMISSION

NGEC/CS/LEGAL/VOL.III (22)

Mr. Samuel Njoroge, C.B.S.
The Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI
ena@parliament.go.ke

20th February 2026

*D/DC
Please deal
26/02/26*

*Benjamin Magut, HOD
Pls deal
26/2/26*

Dear *Mr. Njoroge, CBS*

**MEMORANDA ON THE NATIONAL INFRASTRUCTURE FUND BILL
(NATIONAL ASSEMBLY BILL NO 1 OF 2026)**

Reference is made to the call for submission of memoranda on the National Infrastructure Fund Bill 2026.

Section 8 (b) of the National Gender and Equality Commission Act, CAP 7K mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*;

In line with its mandate, the Commission presents to you a memorandum analyzing the proposed Bill and making proposals where necessary.

Yours

Purity Ngina, PhD, MBS
COMMISSION SECRETARY/ CEO



"Gender Equality and Non-Discrimination"



MEMORANDA: THE NATIONAL INFRASTRUCTURE FUND BILL NO 1 OF 2026

S/NO	PROVISION	PROPOSAL FOR AMENDMENTS	RATIONALE/JUSTIFICATION
1.	<p>CLAUSE 6</p> <p>6. (1) The Fund shall be managed by a Board of Directors which shall consist of—</p> <p>(a) a chairperson, who is an independent director;</p> <p>(b) the Cabinet Secretary to the National Treasury or a representative designated in writing;</p> <p>(c) four persons, who are independent directors;</p> <p>(d) two persons who have proven experience in senior leadership roles in development banking; and</p> <p>(e) the chief executive officer who shall be an ex-officio member of the Board.</p>	<p>The Commission proposes the following amendments to clause 6</p> <p>i. To consider including a second Director representing the Cabinet Secretary in charge of Roads and Transport</p> <p>ii. Indicate the Chairperson will be appointed by the president</p> <p>iii. Provide for gender balance and fair disability representation</p> <p>iv. Include provisions on the Corporation Secretary</p>	<p>The Roads and Transport Ministry (infrastructure) is a major stakeholder in infrastructure and its addition as a Director will bring the total membership to 9 which is compliance with the <i>Mwongozo</i> code for good governance.</p> <p>A second government representative will create a fair balance between the two categories of directorship.</p> <p>Proposals ii, iii and iv is for purposes of inclusion and for compliance with the <i>Mwongozo</i> code as well</p>
2.	<p>Clause 13 – Remuneration</p> <p>13. The remuneration of directors shall be governed by the structure and</p>		<p>The SRC is established to set and review remuneration.</p>

	guidelines issued by the Cabinet Secretary from time to time.	To amend, thus the remuneration shall be in consultation with the Salaries and Remuneration Commission (SRC)	
3.	<p>Clause 16 -Administrator of the Fund</p> <p>16. The Cabinet Secretary may designate a person to be the Administrator of the Fund in accordance with Cap.412A section 24 (5) Public Finance Management Act.</p>	<p>The Commission proposes –</p> <ol style="list-style-type: none"> 1. The deletion of clause 16 without replacement and 2. Clause 15(5) to be amended to indicate that the Chief Executive Officer shall be the Administrator. 3. The deletion of the interpretation of the term “Administrator”. <p>An alternative is for the proposed law to clearly state the duties of the Administrator. The duties of the administrator which include clause 31- opening of bank accounts, Clause 32- expenditure of the fund and clause 36- keeping books of records are ordinarily the conventional duties of the Chief Executive Officer</p>	<p>Clause 15 already designates the Chief Executive officer as the in charge of the Fund as below-;</p> <p>15 (5) The Chief Executive Officer shall—</p> <p>(a) be responsible to the Board of the Fund for the day-to-day management of the affairs of the Fund;</p> <p>The clarity will avoid overlaps, conflicts and duplicity of duties between the CEO and the Fund Administrator</p>
4.	<p>Proposed new Clause on offences/sanctions</p>	<p>The Commission has noted that the framework does not provide for offences and penalties</p> <p>The considered offences would include-;</p> <ol style="list-style-type: none"> i Misappropriation or diversion of funds ii Fraudulent reporting iii Breach of fiduciary duties 	<p>Sanctions will</p> <ol style="list-style-type: none"> i Boost investor confidence ii Promote transparency iii Protect public funds iv Deter misconduct by directors and other staff

		iv Conflict of interests etc The Bill to provide for both criminal sanctions and civil liability	
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Clerk of the National Assembly
Parliament Buildings
P.O BOX 41842 -00100, Nairobi
Email: cna@parliament.go.ke

COMMENTS ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2026 (NATIONAL ASSEMBLY BILL NO. 1 OF 2026.

By Mizani254

S/No.	Item of the Bill/Proposal	Comment/Our Proposal	Justification
1.	Exposure Limits on Government Guarantees <ul style="list-style-type: none">• Clause 21(2)(f) – Investment Policy must include exposure limits per sector and project.• Clause 25 – Cabinet Secretary may issue government support measures including guarantees.• Clause 19(3)(c) – Performance contracts should minimize fiscal cost and risk to the national exchequer.	<p>The Bill does not specify an overall cap on guarantees, a debt sustainability linkage, or a national exposure ceiling. As such, we propose that:</p> <ul style="list-style-type: none">• The Act include an explicit aggregate ceiling on total government support measures issued under Clause 25.• All guarantees be incorporated into the Medium-Term Debt Strategy and reported as contingent liabilities.• Government support measures be aligned with debt sustainability thresholds under the Public Finance Management Act.• Parliament be provided with an annual statement of outstanding guarantees.	<p>If exposure is uncapped:</p> <ul style="list-style-type: none">• The Fund could accumulate large off-balance-sheet obligations.• Future taxpayers inherit hidden fiscal pressure.

2.	<p>Publication of Feasibility Studies & Project Assessments</p> <ul style="list-style-type: none"> • Clause 23 – Feasibility studies must consider technical, legal, environmental, affordability, and value-for-money aspects. • Clause 24(2)(c) – Cabinet Secretary shall prescribe disclosure requirements. 	<ul style="list-style-type: none"> • All feasibility studies and value-for-money analyses conducted under Clause 23 be published on a publicly accessible platform before final investment approval. • A summary of cost-benefit analysis and projected rate of return (Clause 21(2)(d)) be tabled before Parliament and made public. • No project above a defined threshold be approved unless feasibility findings have undergone a minimum public disclosure period. 	<ul style="list-style-type: none"> • Infrastructure projects are long-term and capital intensive. • Kenya has previously experienced “white elephant” projects driven by political considerations rather than economic merit. • Public access to feasibility studies enhances: Transparency; Investor confidence; Prevention of inflated project costs; Protection of taxpayers
3.	<p>Alienation of Parliament & Concentration of Mandates in the Cabinet Secretary</p> <ul style="list-style-type: none"> • Clause 6(3) – Directors are appointed by the Cabinet Secretary. • Clause 20(1) – The Cabinet Secretary evaluates performance of the Fund. • Clause 21(1) – Investment Policy is developed by the Board but approved by Cabinet. • Clause 25 – Cabinet Secretary may issue Government Support Measures (guarantees, letters of credit, binding undertakings). • Clause 37 – Cabinet Secretary makes Regulations for implementation. 	<ul style="list-style-type: none"> • Appointment of the Chairperson and Independent Directors be subject to vetting and approval by the National Assembly. • Any Government Support Measure under Clause 25 that exposes the government to contingent liabilities above a defined threshold must receive prior Parliamentary approval. <p>Investment Policy under Clause 21 should be tabled before the National Assembly for review before approval.</p>	<ul style="list-style-type: none"> • The Fund may issue guarantees that create future debt obligations. • Under Article 201 of the Constitution of Kenya, public finance must promote accountability and transparency. • Concentrating appointment, evaluation, regulatory power, and guarantee issuance in one office creates institutional imbalance. <p>Parliamentary involvement ensures proper representation as envisioned under the Constitution, guaranteeing that the voices and interests of the people are reflected in the fund, rather than decisions being driven solely by executive or political priorities.</p>



REPUBLIC OF KENYA



Office of the Controller of Budget

Bima House, 12th Floor
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COMMENTS ON THE NATIONAL INFRASTRUCTURE FUND BILL (NATIONAL ASSEMBLY BILL NO.1 OF, 2026)5

PRESENTED BY:

THE OFFICE OF THE CONTROLLER OF BUDGET

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Introduction

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The Office of the Controller of Budget (OCoB) is established under Article 228 of the Constitution to oversee the implementation of the budgets of the National and County Governments by authorising withdrawals from public funds as established under Articles 204, 206 and 207 of the Constitution of Kenya. Article 228 (5) of the Constitution requires the Controller of Budget (CoB) not to approve any withdrawals from public funds unless satisfied that such withdrawals are authorised by law. The CoB is further guided by public finance principles as articulated under Article 201 of the Constitution, which requires that public funds be used prudently and responsibly.

Functions and Role of the Controller of Budget

- a. **Oversight Role:** The CoB oversees the implementation of the national and county governments' budgets per Article 228 (4) of the Constitution. This role involves monitoring the use of public funds and reporting to Parliament on the utilisation.
- b. **Controlling Role:** The COB authorises withdrawals from public funds, namely, the Consolidated Fund (Article 206(4)), County Revenue Fund (Article 207(2)(3)), and Equalization Fund (Article 204(9)). In authorising withdrawals, the CoB must be satisfied that the withdrawal is in accordance with the law and permitted as stipulated under Article 228(5) of the Constitution.
- c. **Reporting Role:** By preparing statutory reports (quarterly, annual and special reports) to the Executive and Legislature on the Budget implementation of the National and County governments (Article 228(6) and sections 9 & 10 of the CoB Act. Through these reports, the Controller of Budget ensures continuous monitoring of the usage of public funds.
- d. **Advisory Role:** Providing advice to parliament and County Governments on financial matters, including where the Cabinet Secretary responsible for the National Treasury exercises his mandate to stop the transfer of funds to a state organ or public entity.
- e. **Investigation Role:** Conducting investigations through the Controller of Budget's own initiative or following a complaint made by a member of the public on budget implementation matters, pursuant to Article 252(1)(a) of the Constitution.

- f. **Dispute Resolution Role:** Undertaking alternative dispute resolution, namely reconciliation, mediation, and negotiation, to resolve conflicts and issues relating to budget implementation between the national and county governments or between county governments.
- g. **Public Sensitization Role:** disseminating information to the public on budget implementation at both levels of Government (Section 39(9) of the Public Finance Management Act, 2012, hereinafter referred to as the PFM Act"). This is in line with Article 35 of the Constitution, which provides for the right to access information held by the State. This ensures that the public is well informed about budget implementation, enabling it to actively and effectively participate in the budget process.
- h. **Monitoring Role:** Undertaking monitoring, evaluating, reporting and making recommendations to the National and County Governments on measures to improve budget implementation.
- i. **Enforcement of Budget Ceilings:** Enforcing budgetary ceilings as set by legislation and other institutions mandated to set any such limit as mandated under Section 5(d) of the Controller of Budget Act, 2016

This report is prepared in response to a letter Ref: NA/PBO/PDPC/2026/076 dated 17th February 2026 from the Office of the Clerk of the National Assembly inviting the Controller of Budget to a meeting to consider the National Infrastructure Bill, 2025. Specifically, the Controller of Budget is required to present appropriate recommendations.

Object and Purpose of the Bill

1. The Bill at Clause 3 provides for the objects, namely, to establish a legal framework for the establishment and management of the National Infrastructure Fund.
2. Clause 4 sets out the purpose of the Fund, namely to scale up and accelerate development of national infrastructure (including highways, railways, ports, electricity generation and transmission, water infrastructure, irrigation and agribusiness infrastructure) and to mobilise private capital and other non-traditional sources of infrastructure finance.

3. In essence, the Bill seeks to establish a commercially oriented infrastructure financing model.

Establishment and Legal Status of the Fund

4. The Bill at Clause 5 establishes the Fund as a body corporate with perpetual succession, with the capacity to sue and be sued, acquire and dispose of property, borrow money, and enter into contracts.
5. Article 206 of the Constitution, as read together with section 17(2)(a) of the PFMA (CAP 412A), provides that all monies raised or received on behalf of the national government shall be paid into the Consolidated Fund except money that is reasonably excluded by an Act of Parliament and paid into another public fund established for a specific purpose. Clause 29 provides that the sources of funds include proceeds from privatisation and the disposal of government assets. However, the Bill does not explicitly provide for the exclusion of money from the Consolidated Fund; therefore, these proceeds must first be deposited into the Consolidated Fund before being transferred to the Infrastructure Fund.
6. Moreover, the Fund is not established as a Fund under Section 24 of the Public Finance Management Act (CAP 412A), but as a corporate entity. Therefore, the exclusion under Article 206(1)(a) of the Constitution does not apply.
7. The provisions under clauses 5 & 29 of the Bill raise concerns, particularly regarding:
 - a. Applicability of the PFMA to the Fund;
 - b. Oversight by the Controller of Budget (COB); and
 - c. Treatment of withdrawals and expenditure.

Governance and Institutional Structure

8. Clause 6 establishes a Board of Directors comprising a Chairperson, Cabinet Secretary (National Treasury) or representative, four independent directors, two persons with development banking/infrastructure leadership experience, and the Chief Executive Officer (ex officio).

9. Directors are appointed by the Cabinet Secretary by notice in the Gazette. Independent directors are to be recruited competitively in accordance with the Government Owned Enterprises Act.
10. Clauses 8-10 provide for disqualification, tenure and conduct of meetings.
11. Clause 8(1)(f) disqualifies a person who is affiliated with an organisation receiving significant funding from the Fund from being appointed as an independent Director. There is a need to clarify what affiliation means and the level of significance of the financing. Further, the affiliation to a political party should be amended to require it to be in an official capacity.
12. Clause 11 sets out the role of the Board, which includes mobilising resources, approving annual budgets, entering into contracts, establishing risk governance systems and evaluating the CEO. Risk management is a key function of any Board; the Clause should therefore be amended to make it a Board function.
13. Clause 12 grants powers to the Board, including equity participation, the acquisition of securities, the entering into of arrangements as an agent of the Government, and the holding of security interests.
14. Clause 13 provides that the remuneration shall be as determined by the Cabinet Secretary in the Guidelines. However, the setting of remuneration and benefits of public officers is the purview of the Salaries and Remuneration Commission.
15. Clause 15(4) provides that the tenure of the Chief Executive Officer shall be 4 years. To align with the prevailing best practice, the Clause should be amended to provide for a term of five (5) years.
16. While the governance structure mirrors that of a state corporation, the Bill does not expressly state whether the Fund is subject to the State Corporations Act. Clarification may be necessary to avoid regulatory ambiguity.
17. Clause 16 of the Bill provides that the Cabinet Secretary *may* designate a person as an Administrator of the Fund. However, section 24(5) of the PFMA is couched in mandatory terms, requiring the Cabinet Secretary to designate an administrator for a public fund.

Investment and Performance Framework

18. Clauses 18–20 provide for Investment Plans and performance contracts between the Cabinet Secretary and the Fund.
19. Clause 21 requires the development of an Investment Policy valid for five years.
20. Clauses 22–23 require feasibility studies and project preparation processes.
21. Clause 23(2)(e) provides land requirements as a consideration in undertaking the feasibility study. Given Kenya's move to tap into the blue economy, sea- and marine-related requirements should also be considered in a feasibility study.
22. Clause 24 empowers the Cabinet Secretary to prescribe standards and procedures, including competitive tender processes, disclosure requirements, public participation and conflict of interest management.
23. This indicates that Regulations will broadly define the Fund's operational framework.

Government Intervention

24. Clause 25 gives the Cabinet Secretary the power to issue Government support measures, including guarantees, letters of credit, partial risk guarantees, and political risk insurance.
25. These instruments have fiscal implications and may create contingent liabilities for the Government. The Bill does not expressly provide for:
 - a. Parliamentary approval of guarantees as required under Article 211 of the Constitution and the PFMA; and
 - b. Recording and reporting of contingent liabilities.
26. There is a need to align the Bill with section 50 of the PFMA on public debt and issuance of guarantees.

Reporting

27. Clause 26 provides for quarterly and annual reports to the Cabinet Secretary.
28. However, the Bill does not expressly provide for the submission of quarterly and annual reports to the Controller of Budget. Given the constitutional mandate of the COB to report

on budget implementation. The Bill should be amended to provide for the Fund Administrator to submit quarterly reports to the Controller of Budget.

29. Further, Clause 26(2) of the Bill provides that the Cabinet Secretary *may* make half-yearly reports to Cabinet and annually to the National Assembly. Article 201(a) & (e) specifically provide for fiscal reporting. This is a mandatory constitutional duty; therefore, the clause should be amended to require the Cabinet Secretary to report.

Key Constitutional and PFMA for Consideration

a. Controller of Budget Oversight

The Bill provides for parliamentary appropriations to the Fund and authorises expenditure for investment and project financing purposes. However, it does not expressly require authorisation by the Controller of Budget for withdrawals of funds, as required under Article 206(4) of the Constitution.

For avoidance of doubt and to forestall constitutional contestation, the Bill should expressly provide that all withdrawals of appropriated funds shall be subject to authorisation by the Controller of Budget in accordance with the Constitution and the PFMA.

b. Contingent Liabilities

The Bill empowers the Cabinet Secretary to issue guarantees, letters of credit, partial risk guarantees, political risk insurance and other support instruments. These instruments may create contingent liabilities for the national government.

Under Articles 211 and 214 of the Constitution and Part IV of the PFMA, public debt and guarantees are subject to strict approval, reporting and disclosure requirements, including parliamentary oversight and inclusion in debt sustainability analysis.

The Bill does not expressly provide for parliamentary approval before the issuance of guarantees, the recording and disclosure of contingent liabilities in fiscal risk statements, or their integration into the public debt management framework.

Given the scale of infrastructure financing transactions, failure to embed these safeguards may expose the Exchequer to unmanaged fiscal risks. The Bill should therefore expressly align issuance of guarantees and risk instruments with constitutional and statutory debt management provisions.

c. Linkage to the Budget Cycle

Although the Bill provides that annual estimates shall be prepared in accordance with the PFMA, it does not clearly articulate the linkage between the annual budget process under Articles 220–221 of the Constitution, parliamentary appropriation, release of funds and expenditure control mechanisms.

The Bill should expressly provide that allocations to the Fund shall form part of the Appropriation Act, that disbursements shall be subject to approved cash flow plans, that expenditure shall conform to approved programme-based budgets, and that the Fund shall operate within fiscal ceilings established by the National Treasury.

This clarification will ensure compliance with Article 201 on openness, accountability, and the prudent use of public resources.

d. Reporting

The Bill provides for reporting to the Cabinet Secretary and publication of audited financial statements. However, it does not expressly require submission of quarterly and annual budget implementation reports to the Controller of Budget.

Given the COB's constitutional mandate to report on budget implementation, the Fund must be integrated into the national reporting architecture. The Bill should therefore require submission of quarterly budget implementation reports to the Controller of Budget,

e. State Corporation Status and Regulatory Framework

The Bill establishes the Fund as a body corporate but does not expressly clarify whether it is subject to the State Corporations Act or other government-owned enterprise governance frameworks. This raises questions regarding the applicability of governance codes (Mwongozo), remuneration controls and oversight by constitutional bodies.

The applicable governance regime should be expressly defined to prevent regulatory ambiguity and oversight gaps.

Conclusion

The National Infrastructure Fund Bill, 2025, presents an ambitious and progressive framework for infrastructure financing and contains commendable provisions relating to governance, investment policy, performance management and transparency.

However, from a constitutional public finance perspective, the Bill requires strengthening to ensure complete alignment with Article 206(4) on withdrawal control; Article 228 on the mandate of the Controller of Budget; Article 201 on public finance principles; constitutional and statutory provisions governing public debt and guarantees; and the reporting architecture under the PFMA.

In its current form, the Bill risks creating ambiguity regarding fiscal oversight, contingent liability management, and withdrawal authorisation. These gaps may expose the Fund and the National Government to constitutional challenge and weaken public financial accountability.

It is therefore recommended that the Bill be amended to expressly provide for authorisation of withdrawals by the Controller of Budget; align issuance of guarantees and fiscal risk instruments with constitutional and PFMA debt management provisions; integrate the fund fully into the budget cycle; require quarterly and annual reporting to the Controller of Budget; and clarify the governance and regulatory framework applicable to the Fund.

The proposed amendments would ensure that the Bill provides a more constitutionally compliant and fiscally accountable framework for national infrastructure financing.

Our Ref: ADM/16

26th February, 2026

Mr. Samuel Njoroge, CBS,
The Clerk of the National Assembly,
Departmental Committee on Finance and National Planning
P.O. Box 41842-00100,
NAIROBI.

Dear Mr Njoroge,

RE: SUBMISSION ON THE NATIONAL INFRASTRUCTURE FUND BILL, 2026

1. INTRODUCTION

The Kenya National Chamber of Commerce and Industry (KNCCI) is a non-profit, autonomous, and private sector-led organization representing thousands of MSMEs and large enterprises across all counties. Our mission is to promote an enabling business environment through policy advocacy, trade development, and enterprise support.

The Kenya National Chamber of Commerce and Industry (KNCCI), as the umbrella body representing businesses across all 47 counties, appreciates the opportunity to submit its views on the National Infrastructure Fund Bill, 2025 ("the Bill").

KNCCI supports the establishment of a National Infrastructure Fund (NIF) to accelerate catalytic infrastructure development and mobilize private capital. However, to ensure the Fund effectively crowds in investment, protects public resources, and strengthens Kenya's competitiveness, we propose the following clause-by-clause amendments.

The Bill correctly:

- Establishes a corporate entity (Section 5).
- Anchors performance contracts (Sections 18–20).
- Requires an Investment Policy (Section 21).
- Provides for government support instruments (Section 25).
- Mandates transparency and reporting (Sections 26–28).

However, from a private sector and investment climate perspective, several governance, risk allocation, crowding-in, and accountability provisions require strengthening to ensure the Fund:

1. Does not become fiscally burdensome;
2. Crowds in private capital rather than crowding it out;