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THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT- THIRD SESSION (2019)

COMMITTEE ON DELEGATED LEGISLATION

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

OCTOBER 2019

| | |
|--------------------------------------|--|
| THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: 09 OCT 2019 | DAY: WED |
| TABLED BY: | Hon G. Shollei Chair, Delegated Legislation |
| CLERK OF THE TABLE: | W. Ndindiri |

Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.

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ABBREVIATIONS

| | |
|------------|-----------------------------|
| BPS | Budget Policy Statement |
| GDP | Gross Domestic Product |
| LN | Legal Notice |
| PFM | Public Finance Management |
| RMA | Regulatory Making Authority |
| SI | Statutory Instruments |
| SO | Standing Order |

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 205 of the Public Finance Management Act, 2012, the Cabinet Secretary responsible for the National Treasury published the Public Finance Management (National Government) (Amendment) Regulations, 2019 on the 26th of September, 2019 vide Legal Notice No. 155 of 2019. The Regulations were submitted to the Clerk of the Assembly on 1st October, 2019 and tabled before the House on the same date. This was within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

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

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the regulation making authority to a consultative meeting on 8th October, 2019 to consider the said statutory instrument.

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

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

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) and section 67 of the Value Added Tax Act, 2013, it is my pleasure and duty to present to the House the Committee's Report on the Consideration of the Public Finance Management (National Government) (Amendment) Regulations, 2019.

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1. Establishment and Mandate of the Committee

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

The Committee is mandated to consider in respect of any statutory instrument, whether it:

- a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- b) infringes on fundamental rights and freedoms of the public;
- c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of the Parliament;
- d) contains imposition of taxation;
- e) directly or indirectly bars the jurisdiction of the court;
- f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- g) it involves expenditure from the consolidated fund or other public revenues;
- h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- j) appears to have had unjustifiable delay in its publication or laying before Parliament;
- k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m) inappropriately delegates legislative powers;
- n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o) appears for any reason to infringe on the rule of law;
- p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative
Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. Robert Mbui, MP
Kathiani Constituency,
Wiper Democratic Movement -Kenya

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency
Jubilee Party

Hon. Ronald Tonui, MP
Bomet Central Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. William Kassait Kamket, MP
Tiaty Constituency
KANU

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. Jennifer Shamalla, MP
Nominated
Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement – Kenya

Hon. Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi Koropu Tepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Anne Njeri Kigoro
Research Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE REGULATIONS

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

2.1.1 Introduction

1. The Public Finance Management (National Government) (Amendment) Regulations, 2019 were made by the Cabinet Secretary responsible for the National Treasury pursuant to section 205 of the Public Finance Management Act, 2012.
2. The Regulations were published in the Gazette as *Legal Notice No 155* of 2019 on the 26th of September, 2019 vide Legal Notice No. 164 of 2019. The Regulations were submitted to the Clerk of the Assembly on 1st October, 2019¹ and tabled before the House on the same date. This was within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

2.1.2 Purpose of the Regulations

3. The Regulations seek to –
 - (i) to provide clarity in terms of controls and timely oversight mechanism on the growth of public debt. Monitoring public debt as a percentage of GDP makes it unclear and difficult to enforce compliance and undermine accountability as actual GDP number is a moving target;
 - (ii) to provide a numerical limit to the total public debt of Kshs. 9 trillion in place of the current debt limit set at fifty per cent (50%) of GDP in net present value terms;
 - (iii) to provide adequate borrowing space to cater for potential guarantees for borrowing by County Governments & state-owned enterprises; and
 - (iv) allow the government access to concessional funding sources (multilateral financial institutions and bilateral sources) thereby facilitating government interventions in the public sector.

2.1.3 Policy Context & Rationale for the Amendments

4. The set debt limit as currently expressed on net present value terms as a percentage of GDP is unclear, difficult to verify compliance and thus undermines accountability.
5. In general terms, public debt limits are necessary in safeguarding an economy from shocks and risks such as exchange risks, interest rate risk and international financial instabilities and safeguarding public debt at sustainable levels as envisaged in the Constitution, the PFM Act and in accordance with international best practice.
6. The ceiling is proposed at Kshs. 9 trillion. As at end of June, 2019, public debt stood at 5.8 trillion and is expected to rise to Kshs. 6.3 trillion by the end of the current fiscal year

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

based on the approved BPS by Parliament. The amendment will therefore enable implementation of the FY 2019/20 Budget as approved by Parliament.

7. To be able to re-profile existing high cost of debts through debt re-financing facilities guaranteed by multi-lateral financial institutions and bilateral sources to enable it pay-off expensive syndicated/commercial loans.
8. To be able to minimise domestic borrowing and allow local SMEs and private sector at large access affordable credit and avoid crowding out the private sector by confining multi-lateral and bilateral creditors which have lower interest rates and longer repayment terms.

2.1.4 Scrutiny of the Instrument

9. Pursuant to section 16 of the Act, the Committee held a meeting with the regulation making authority on 8th October, 2019 in Nairobi where Hon. (Amb.) Ukur Yattani, Cabinet Secretary responsible for the National Treasury made a presentation to the Committee on the proposed changes to the Regulations. The Committee was also guided by technical briefs from the Parliamentary Budget Office and the National Assembly Directorate of Legal Services.
10. The Committee considered the Regulations against the principal Regulations, i.e., the **Public Finance Management (National Government) Regulations, 2015 (Legal Notice No.34 of 2015)**, the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Public Finance Management Act, 2012 and the Statutory Instruments Act (No 23 of 2013).

2.2.1 Submission by the Parliamentary Budget Office²

The Parliamentary Budget Office informed the Committee as follows –

11. The current total public debt stood at Kshs. 5.81 Trillion³ as of June, 2019 and this is equivalent to 61.8 percent of nominal GDP⁴. This indicates that the PV of debt to GDP is actually higher than the 50 percent **threshold** provided in the PFM regulation, as evidenced by the recent IMF Debt Sustainability Analysis for Kenya.
12. Parliament, as required in Article 211, has the power to legislate the terms on which the national government may borrow. In addition, Section 50 (2) of the PFM Act, 2012 provides that the National Government may borrow money in accordance with the PFM Act or any other legislation and shall not exceed a limit set by Parliament. Indeed, the proposal to amend the limit is in line with the National Assembly's resolution in the Report on the Budget Policy Statement 2019 on public debt which provided that "*at an appropriate time, the PFM Act should be amended to provide for a numerical debt ceiling as opposed to the current scenario where the debt is pegged on GDP projections.*" It was envisaged that the limit would be in line with the approved fiscal consolidation path.

² Annexure 2

³ As reported in the Quarterly Economic and Budgetary Review (QEBR), August 2019 Edition

⁴ The nominal GDP for 2018/19 is estimated at Kshs. 9.51 Trillion

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

Legal Underpinning

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

- (i) **EAC Treaty:** Kenya is a signatory to the EAC Monetary Union Protocol that provides that in the convergence criteria, member countries will endeavor to achieve a public debt ceiling of 50 percent of the Gross Domestic Product (GDP) in Net Present Value (NPV) terms by 2021.
- (ii) **The Constitution:** Article 211 provides for borrowing by national government and gives power to Parliament to prescribe through legislation the terms on which the national government may borrow and also impose reporting requirements. In addition, Article 214 provides for the meaning of Public Debt, that it is all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government. Further, it provides that a public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds.
- (iii) **Repealed Internal Loans Act and the External Loans Act:** These Acts were in place and regulated the borrowing by the National Government before the PFM Act, 2012 came into place. In terms of providing borrowing limits, the Internal Loans Act did not provide a legal limit for domestic debt, however the External Loans Act provided that the limit for external debt was to be approved by Parliament.
- (iv) **Public Finance Management Act (PFM Act), 2012:** Section 50(2) provides that the National Government may borrow money in accordance with the PFM Act or any other legislation and shall not exceed a limit set by Parliament.
- (v) **Public Finance Management Act (PFM) Regulations, 2015:** Regulation 26(1) (c) provides that the national public debt shall not exceed 50 percent of Gross Domestic Product (GDP) in net present value terms.

Macroeconomic and Fiscal Implication of the Proposed Amendment

15. **Increasing the debt ceiling is likely to give more room for borrowing which will be inconsistent with the approved fiscal consolidation path FY 2019/20 and the medium term.** The government in its effort to achieve fiscal consolidation had projected the total public debt as a share of GDP to be 44 percent by FY 2022/23 which is Kshs. 7.21 Trillion, compared to the current level of 61.8 percent of GDP, as of June, 2019⁵. This implies that if the debt limit is set at Kshs. 9 Trillion, the country will be moving away from the fiscal consolidation path and the targets will be surpassed much earlier

⁵ As reported in the Quarterly Economic and Budgetary Review (QEBR), August 2019 Edition

than expected. In addition, the fiscal deficit which has to be financed through borrowing is not consistent with the proposed fiscal consolidation path, where we have to borrow more and this affects the fiscal sustainability path. Therefore, before approving the amendment, there is need to consider the trends in the fiscal deficit, and the fiscal consolidation path.

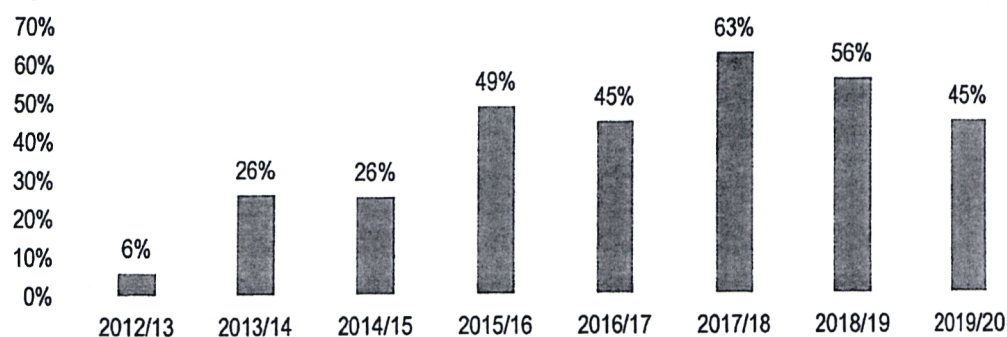
Table 1: Total Debt for FY 2016/17 to FY 2022/23 (Kshs. Billion)

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

Source: BPS, 2019

16. **Increasing the debt ceiling is likely to alter the approved borrowing framework for FY 2019/20 of 38% of external borrowing and 62% of domestic borrowing, to lean more towards external borrowing.** Additional room for borrowing will increase the chance of additional loans from external sources since domestic borrowing is not a viable option, at the moment. The current situation in the domestic market is that the government has crowded-out the private sector borrowers since lending to government is deemed to be risk-free with guaranteed returns. This reduces credit to the private sector which in turn adversely affects growth in investment, growth of SMEs and creation of job opportunities.
17. **Increasing the debt ceiling is likely to increase external borrowing and mainly from commercial sources which are more expensive.** The evolution of commercial debt since FY 2012/13 indicates that it has increasingly been a source of financing the budget deficit because it is easy to acquire with less demanding conditions when compared to concessional funding from multi-lateral and bi-lateral agencies. However, it is a high-risk option and also more expensive given that the interest rates are higher with a shorter pay-back period. If the country is not able to generate the targeted revenue in the shorter-term before the return on investment is realized, then it faces a refinancing risk and this forces the country to get into a debt roll-over (where it borrows to repay existing debt obligations that are due). If the debt ceiling is increased, then there should be a limit on external borrowing at commercial rates to contain external vulnerabilities.

Figure 1: Evolution of commercial debt as a share of budget deficit FY 2012/13 - 2019/20



Source: Budget Policy Statement

International Standards and Practice

18. The IMF provides for public debt sustainability benchmark thresholds that guide countries in different stages of development ranging from low-income to the advanced economies. This enables efficient tracking of the sustainability of debt given the prevailing macroeconomic environment in terms of the performance of GDP, revenue and exports.
19. **Currently, the country has surpassed some of the debt sustainability thresholds, in particular the more distressing is the debt service to revenue ratio. This implies that the economy is not generating enough revenues to cover the debt servicing requirements. The risk is that the country will continue to borrow to repay the existing debts and not for development expenditure as contemplated in law. Table 2 provides the threshold for Kenya (which is currently a lower middle-income country), the performance since 2016 and the projections.**

Table 2: Public Sector Debt Sustainability Ratios

| Indicator | Threshold | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|--|-----------|--------|--------|----------|----------|------------|------------|------------|
| | | Actual | Actual | Estimate | Estimate | Projection | Projection | Projection |
| PV of Public Sector Debt to GDP | IMF - 74% | 50.6 | 55.4 | 60.6 | 59.9 | 56.9 | 54.3 | 53.1 |
| PV of public Sector Debt to Revenue | 300 | 275.9 | 285 | 299.6 | 292.9 | 282.1 | 269.7 | 261.5 |
| Debt Service to Revenue Ratio | 30% | 36.3 | 42.7 | 44.8 | 49.4 | 49.3 | 48.9 | 37.6 |

Source: IMF, 2018

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

Table 3: Distribution to ordinary revenue to key expenditure categories, FY 2014/15 to 2019/20

| Details | | Distribution (%) | | | | | |
|-------------------------------------|-------------------|------------------|---------|---------|---------|---------|----------|
| | | 2014/15 | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20* |
| Total Ordinary Revenue | | 100% | 100% | 100% | 100% | 100% | 100% |
| o/w | Interest payments | 17% | 19% | 21% | 24% | 23% | 23% |
| o/w | Pensions | 4% | 5% | 5% | 5% | 5% | 6% |
| Total Net Recurrent | | 63% | 65% | 58% | 63% | 56% | 54% |
| County Allocation | | 22% | 22% | 21% | 22% | 18% | 17% |
| Available Resources for Development | | -6% | -10% | -6% | -14% | -4% | 1% |

Source: The National Treasury; Derivations: PBO

Policy Options

21. The following are the viable policy options-

| | Policy Options | Implication |
|----|---|---|
| 1. | Accept the amendment as proposed by the National Treasury | (i) The country will no longer comply with the EAC convergence criteria which it is a signatory to. (ii) Reduce the flexibility in the budget as debt repayment, which are a first charge to the consolidated fund, will increase. (iii) It will undermine credibility of the budget, in particular the medium-term projections which are part of the Medium-Term Expenditure Framework (MTEF). |
| 2. | Reject the proposed amendment | (i) Status quo remains (ii) Allow the National Treasury to reconsider the limits to be within the fiscal consolidation path. |

3.0 COMMITTEE OBSERVATIONS

The Committee observed THAT –

22. **Statutory Timelines:** The Regulations were submitted to the National Assembly within the statutory timeline provided for in section 11(1) of the Statutory Instruments Act, 2013.
23. **Consultations / Public participation:** Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210 require the regulation making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The outcomes of such consultations are to be indicated within the explanatory memorandum in detail.

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

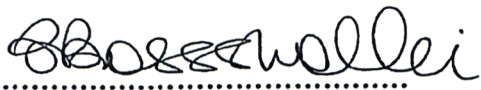
24. **Regulatory Impact Statement:** Sections 6, 7, and 8 of the Act requires the regulatory making authority to carry out a Regulatory Impact Assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a sect of the community. The Public Finance Management (National Government) (Amendment) Regulations, 2019 do impose significant costs on the community and hence need for the Regulation making authority to prepare a Regulatory Impact Statement.


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

25. Pursuant to section 13 (q) of the Statutory Instruments Act, the Committee observed with concern that the fight against corruption ought to be stepped up to stem the increased in pilferage of public resources.

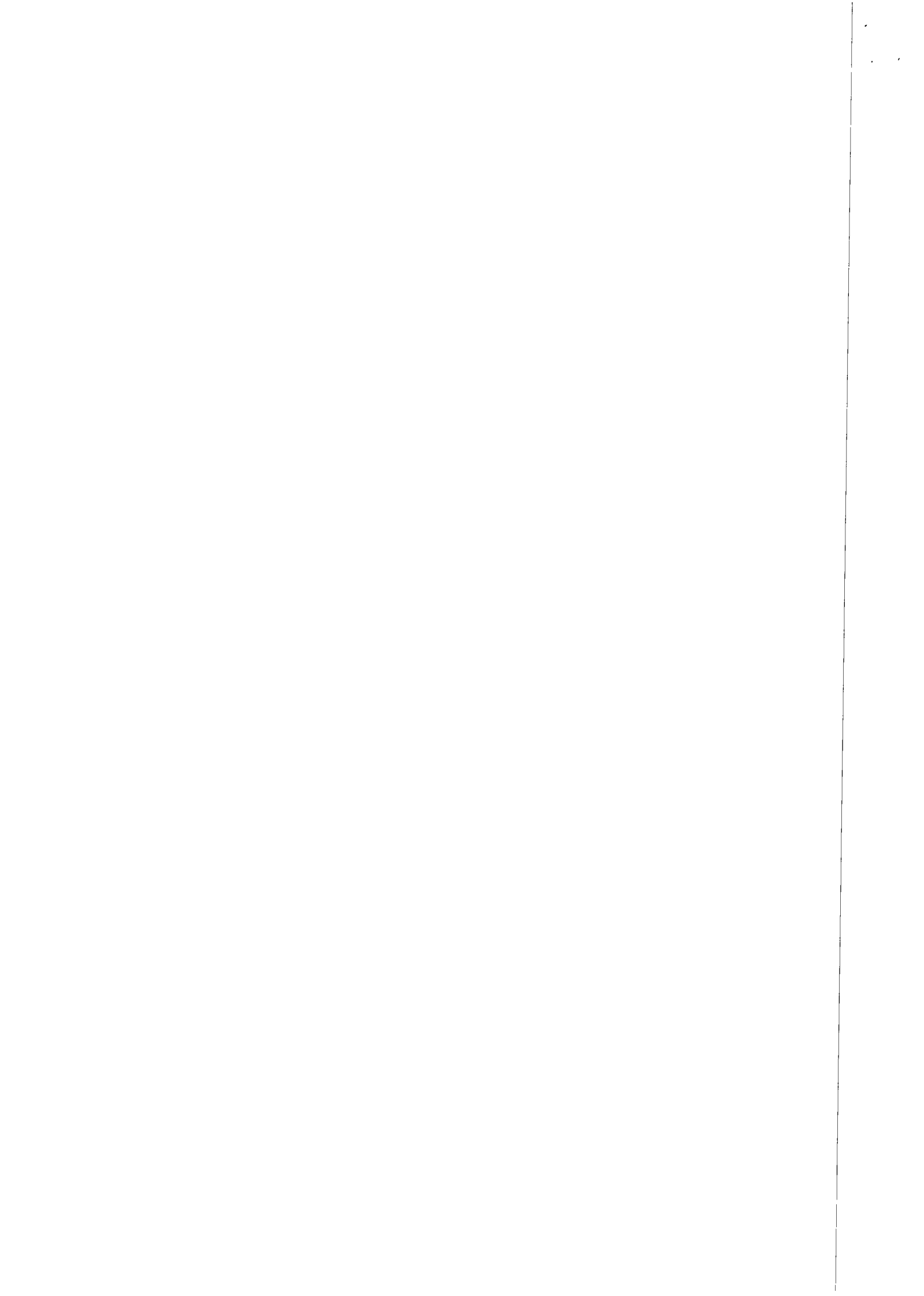
4.0 COMMITTEE RECOMMENDATION

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

Signed.....
HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

Date.....

ANNEXURES



COMMITTEE ON DELEGATED LEGISLATION

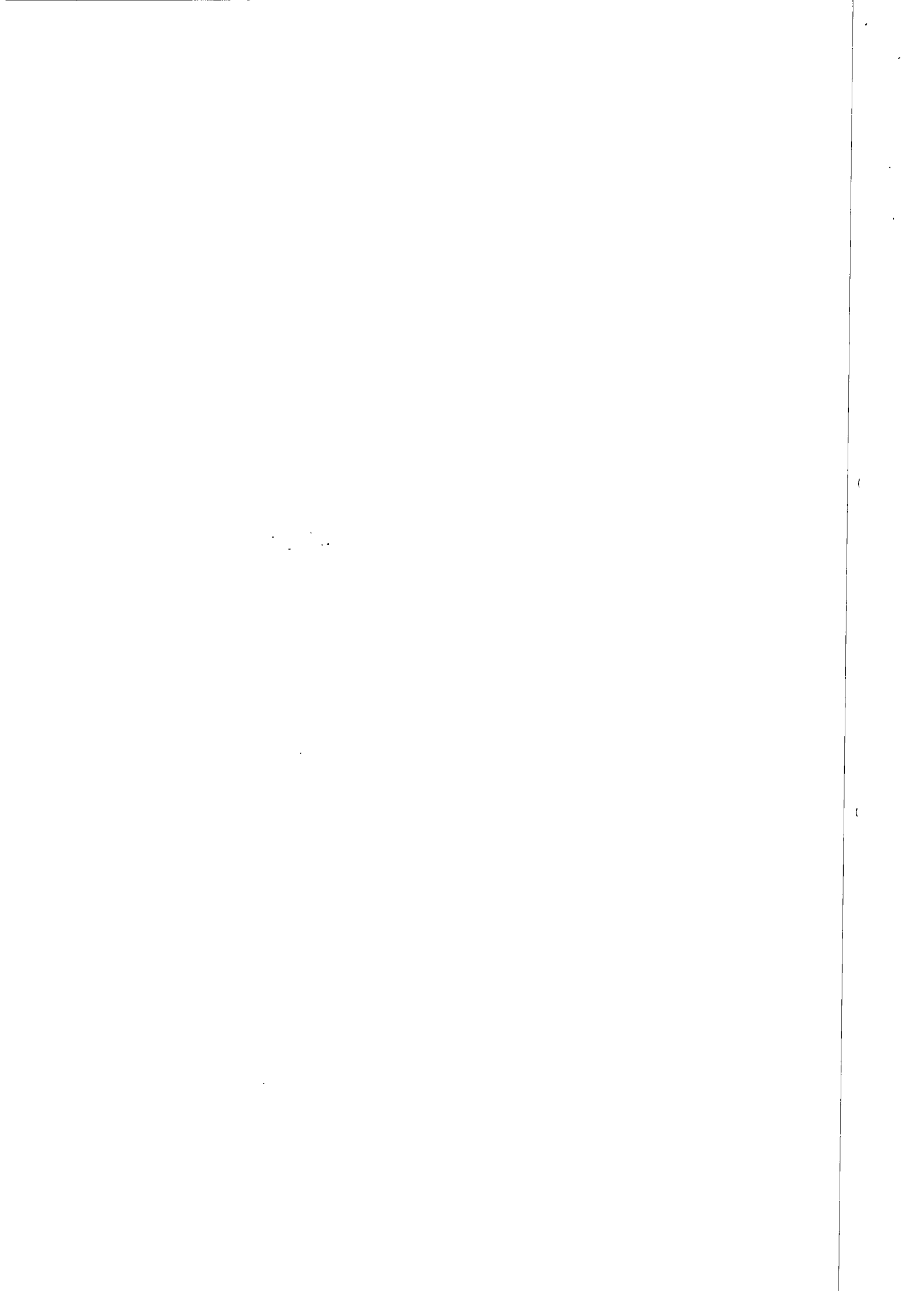
ADOPTION LIST

Report on the Consideration of the Public Finance Management (National Government) (Amendment) Regulations, 2019 (Legal Notice No. 155 of 2019)

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 9 October 2019

| | HON. MEMBER | SIGNATURE |
|-----|---|-----------|
| 1. | Hon. Gladys Boss-Shollei CBS MP (Chairperson) | |
| 2. | Hon. Fatuma Ali Gedi, MP (Vice Chairperson) | |
| 3. | Hon. Isaac Waihenya Ndirangu, MP | |
| 4. | Hon. Robert Mbui, MP | |
| 5. | Hon. Alice Wahome, MP | |
| 6. | Hon. Daniel Maanzo, MP | |
| 7. | Hon. Muriuki Njagagua, MP | |
| 8. | Hon. Martha Wangari, MP | |
| 9. | Hon. Timothy Wanyonyi, MP | |
| 10. | Hon. William Kamoti Mwamkale, MP | |
| 11. | Hon. Patrick Kariuki Mariru, MP | |
| 12. | Hon. Ronald Kiprotich Tonui, MP | |
| 13. | Hon. William Kassait Kamket, MP | |
| 14. | Hon. Munene Wambugu, MP | |
| 15. | Hon. George Gitonga Murugara, MP | |
| 16. | Hon. Jennifer Shamalla, MP | |
| 17. | Hon. Muturi Kigano, MP | |
| 18. | Hon. (Dr.) Wilberforce Oundo, MP | |
| 19. | Hon. Sammy Seroney, MP | |
| 20. | Hon. Tindi Mwale, MP | |
| 21. | Hon. Gideon Mulyungi, MP | |
| 22. | Hon. Abdi Tepo, MP | |
| 23. | Hon. Alfred Sambu, MP | |



MINUTES OF THE 54TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 8TH OCTOBER, 2019 AT 3.30 P.M. COMMITTEE ROOM 7, MAIN PARLIAMEN BUILDINGS

PRESENT

1. The Hon. Gladys Boss Shollei CBS MP - Chairperson
2. The Hon. Fatuma Gedi, MP - Vice Chairperson
3. The Hon. Timothy Wanyonyi, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Robert Mbui, MP
6. The Hon. (Dr.) Wilberforce Oundo, MP
7. The Hon. Jennifer Shamalla, MP
8. The Hon. Muturi Kigano, MP
9. The Hon. Kamoti Mwamkale, MP
10. The Hon. Muriuki Njagagua, MP
11. The Hon. Ronald Tonui, MP
12. The Hon. Martha Wangari, MP
13. The Hon. Kassait Kamket, MP
14. The Hon. Sammy Seroney, MP
15. The Hon. Abdi Koropu Tepo, MP

ABSENT WITH APOLOGY

1. The Hon. Waihenya Ndirangu, MP
2. The Hon. Daniel Maanzo, MP
3. The Hon. George Murugara, MP
4. The Hon. Patrick Mariru, MP
5. The Hon. Gideon Mulyungi, MP
6. The Hon. Munene Wambugu, MP
7. The Hon. Tindi Mwale, MP

ABSENT

1. The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr Sydney Lugaga - Legal Counsel I
4. Ms. Ann Kigoro - Research and Policy Analyst
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Anthony Wamae - Serjeant at Arms
8. Mr. Brian Wechabe - Legal Intern

MIN.NO. NA/CDL/2019/307

PRAYER AND RELIMINARIES

The session resumed with prayers at 3.35 p.m.

The Committee was briefed as follows, THAT;

1. The Public Finance Management (National Government) (Amendment) Regulations, 2019 are made by the Cabinet Secretary responsible for the National Treasury pursuant to section 205 of the Public Finance Management Act, 2019.
2. The Regulations were published in the Gazette as Legal Notice No. 155 of 2019 on the 26th of September, 2019, received by the Clerk of National Assembly on the 1st October, 2019 and tabled before the House on Wednesday 2nd October, 2019 within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
3. The Regulations are intended to amend regulation 26(1)(c) of the Public Finance Management (National Government) Regulations to provide that the national public debt shall *not exceed nine trillion shillings* as opposed to exceeding 50 percent of Gross Domestic Product (GDP) in net present value terms.

Committee Observations

The Committee made the following observations: - THAT;

a) Statutory timelines

the Regulations were submitted to the National Assembly were published on the 27th September, 2019, received by the Clerk of National Assembly on the on 1st October, 2019 and tabled on Wednesday 2nd October, 2019. Pursuant to section 11(1) of the Statutory Instruments Act the Regulations were submitted within the statutory timeline (hereinafter referred to as the Act). Section 11(1) of the Statutory Instruments Act provides that “Every Cabinet Secretary responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.”

b) Consultation / Public participation

Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210 require the regulation –making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The outcomes of such consultations are to be indicated within the explanatory memorandum in detail. The explanatory memorandum from the Cabinet Secretary, National Treasury addresses and indicates their consultation with relevant stakeholders.

The Committee noted that the RMA conducted public participation by writing to various institutions including Parliament and that the stakeholders responded which informed the policy changes effecting amendment to the PFM (National Government) (Amendment) Regulations, 2019.

c) Regulatory Impact Statement

Sections 6, 7, and 8 of the Act requires the regulatory making authority to carry out a Regulatory Impact Assessment and submit to Parliament a Regulatory Impact Statement if

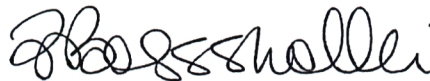
the proposed regulation has significant cost or impact to the community or a sect of the community. The Public Finance Management (National Government Amendment) Regulations 2019 do impose significant costs on the community and hence need for the Regulation making authority to prepare a Regulatory Impact Statement. The Committee is in receipt of documentations that demonstrates that the regulation making authority conducted a Regulatory Impact Assessment.

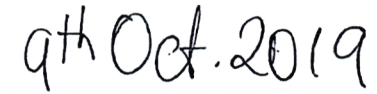
Committee Resolution

The Committee deferred decision making on the Regulations to the next meeting.

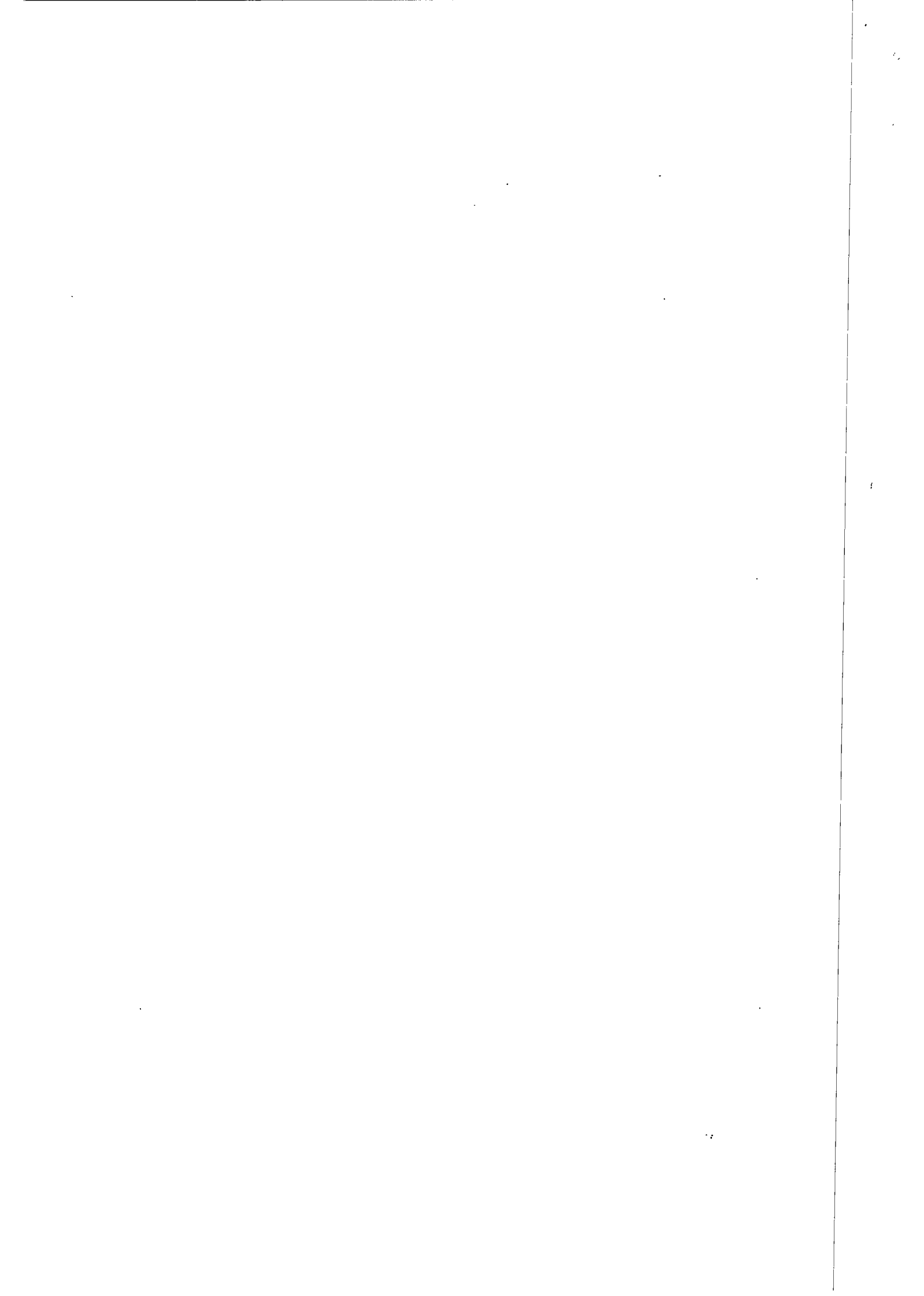
**MIN.NO. /NA/CDL/2019/309 ADJOURNMENT AND DATE OF NEXT
MEETING**

The meeting was adjourned at 7.15 p.m. until the following day Wednesday, 9th October, 2019 at 9.00 a.m

Signed: 

Date: 

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**



**MINUTES OF THE 52ND SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 8TH OCTOBER, 2019 AT 7.30 A.M. IN
INTERCONTINENTAL HOTEL**

PRESENT

1. The Hon. Gladys Boss Shollei CBS MP - Chairperson
2. The Hon. Fatuma Gedi, MP - Vice Chairperson
3. The Hon. Timothy Wanyonyi, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Robert Mbui, MP
6. The Hon. (Dr.) Wilberforce Oundo, MP
7. The Hon. Jennifer Shamalla, MP
8. The Hon. Muturi Kigano, MP
9. The Hon. Kamoti Mwamkale, MP
10. The Hon. Muriuki Njagagua, MP
11. The Hon. Ronald Tonui, MP
12. The Hon. Martha Wangari, MP
13. The Hon. Kassait Kamket, MP
14. The Hon. Sammy Seroney, MP
15. The Hon. Abdi Koropu Tepo, MP

ABSENT WITH APOLOGY

1. The Hon. Waihenya Ndirangu, MP
2. The Hon. Daniel Maanzo, MP
3. The Hon. George Murugara, MP
4. The Hon. Patrick Mariru, MP
5. The Hon. Gideon Mulyungi, MP
6. The Hon. Munene Wambugu, MP
7. The Hon. Tindi Mwale, MP

ABSENT

1. The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr Sydney Lugaga - Legal Counsel I
4. Ms. Ann Kigoro - Research and Policy Analyst
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Anthony Wamae - Serjeant at Arms
8. Mr. Brian Wechabe - Legal Intern

THE NATIONAL TREASURY & PLANNING

1. Hon. Amb.Ukur Yattani, EGH - Cabinet secretary
2. Daniel Ndolo - Director / Dept policy strategy

- | | | |
|-------------------------|---|--|
| 3. Mr. Livigstone Bumba | - | Deputy Director DPS&RM |
| 4. Dr. Haron Lesirima | - | Director General, PDMO |
| 5. Mr. Aineest Mwenda | - | DG-BFEA |
| 6. Mr. Bernard Ndungu | - | DG/ASA QA |
| 7. CPA Isabella Kogei | - | Parliamentary Liaison |
| 8. Ms. Zahra Haji | - | Personal Assistant to the Cabinet Secretary |
| 9. Mr Moses K. Kanagi | - | Deputy Director and Head Europe 1 Division, Resource Mobilization Department. |

MIN.NO. NA/CDL/2019/298 PRAYER AND RELIMINARIES

The session resumed with prayers at 8.15 am.

**MIN.NO. /NA/CDL/2019/299 CONSIDERATION OF PUBLIC FINANCE
MANAGEMENT (NATIONAL
GOVERNMENT) (AMENDMENT)
REGULATIONS, 2019**

Submissions on the Regulations

Brief by the Parliamentary Budget Office

The Parliamentary Budget Office briefed as follows-

- 1) The PFM (National Government) (Amendment) Regulations, 2019 which seeks to amend the that the National public debt shall not exceed 50 per cent of Gross Domestic Product (GDP) in net present value terms and replace it with a provision of a Kenya Shilling 9 Trillion national public debt ceiling.
- 2) The Regulation is intended to amend the principal Regulation which proposes the deletion of the provision of net present value of total public debt and substituting it with the set limit.
- 3) The current total public debt stands 5.81 Trillion of as of June, 2019 which represents 61.8% of the nominal GDP.
- 4) This indicates that the Present value of debt to GDP is higher than the 50% threshold provided in the PFM Act, 2012.
- 5) Parliament as required in Article 211 has the power to legislate the terms on which the national government may borrow.
- 6) Section 50 of the PFM Act, 2012 provides that the national government may borrow money in accordance with the Act or any other legislation and shall not exceed a limit set by Parliament.
- 7) The proposal to amend the limit is in line with the National Assembly's Resolution in report on the Budget Policy Statement 2019 on public debt.
- 8) The PFM Act to be amended to provide for a numerical debt ceiling because currently the debt is pegged on GDP projections.
- 9) The fiscal analyst further stated the legal laws underpinning the public debt like the EAC Treaty where Kenya is a signatory to the Monetary Union Protocol. The Constitution of Kenya, Article 211 and Article 214 which provides for the Public debt, the PFM Act, 2012 and the PFM (National Regulations) 2015; which is Regulation 26(1) (c)

The brief by PBO further guides the macroeconomic and fiscal implication of the amendment that by increasing the debt ceiling-

1. Give more room for borrowing which will be inconsistent with the approved fiscal consolidation path 2019/2020 and the medium term. The government had projected the total public debt as a share of GDP to be 44 percent FY 2022/2023.
The fiscal consolidation path and the targets will be surpassed much earlier than expected hence there's need to consider the trends in the fiscal deficit and fiscal consolidation path.
2. Alter the approved borrowing framework for FY 2019/2020 of 38% of external borrowing and 62% of domestic borrowing to lean towards external borrowing.
3. Also lead to increase external borrowing and from commercial sources which are considered to be more expensive.

The fiscal analyst further guided Members through the international standards and practice: -

- (i) IMF provides member countries for public debt sustainability benchmark thresholds that guide countries in different stages of development ranging from low-income to the advanced economies,
- (ii) The country has surpassed the threshold the sustainability threshold in debt servicing to revenue ratio. The economy is not generating enough revenue to cover for the debt servicing requirement.

PBO informed that the Committee has two policy options-

- a) Either accept the amendment as proposed, or;
- b) Reject to remain status quo to allow the National Treasury to reconsider the limits to be within the Fiscal Consolidation Path.

**MIN.NO. /NA/CDL/2019/300 MEETING WITH THE NATIONAL TREASURY
TO CONSIDER THE PUBLIC FINANCE
MANAGEMENT (NATIONAL GOVERNMENT)
(AMENDMENT) REGULATIONS, 2019 – LEGAL
NOTICE NO. 155**

Submission by the Cabinet Secretary - The National Treasury & Planning

Purpose of the proposed amendment

- a) To provide clarity in terms of control and timely oversight mechanism and the growth of the public debts;
- b) To provide a numerical limit to the total public debt of 9 trillion in net present value terms.
- c) To provide adequate borrowing space
- d) Allow the government access to multilateral institutions there by facilitating government investment in the public sector.

Policy context and rationale for the amendment

1. The set debt limit on net present value terms is unclear and difficult to verify compliance

2. The ceiling is proposed at 9 trillion as at June 2019 therefore the public debt stood at ksh5.8 trillion and is expected to rise to ksh6.3 trillion.
3. Enables implementation of 2019/2020 budget approved by parliament.

Legislative context

The proposed amendment to the regulation is anchored to the PFM Act section 2205 and regulation 6 of the PFM (National government) (Amendment) Regulations 2019.

Public participation

The national treasury has undertaken public participation by inviting comments from stakeholders and general public on proposed amendments relating to PFM regulations. The outcome from the stakeholders and the general public consultation undertaken was incorporated into the final document and this is considered as part of the process of the amendments.

Plenary discussions

- 1) With regard to date ceiling, the committee raised the following concern; -
 - a) transparency in debt levels and borrowing,
 - b) weakness in revenue collection
 - c) need for equity in donor funded project,
 - d) wastage of public funds,
 - e) commitment to fiscal austerity measure
 - f) appetite for commercial borrowing,
 - g) sustainability of public debt,
 - h) institutional arrangement of public debt arrangement office and the need to reset the ceiling to a lower level of ksh7.5 trillion
- 2) On public participation, the CS noted that the National Treasury has conducted public participation as required by Section, 5, 5A, 13 (a) (m) of the Statutory Instruments Act which require that the regulation-making authority conducts public participation and that sufficient consultation with key stakeholders
- 3) The Cabinet Secretary committed to a sound economic and financial policies, prudent management debt and borrowing.
- 4) The proposed amendments to the regulation is firmly anchored to the PFM Act and is consistent with the provision of the constitution and take into consideration, the current and the future generations.
- 5) On media campaign and awareness to the general public; the CS assured the Committee that media will be involved to thoroughly make the public understand the debt ceiling and its implications to the country,

Way forward

The Committee further directed the CS and his team to submit additional documentation which indicates that consultations with relevant stakeholders were adequately undertaken.

The Committee deferred decision making on the Regulations to the next meeting.


the proposed regulation has significant cost or impact to the community or a sect of the community. The Public Finance Management (National Government Amendment) Regulations 2019 do impose significant costs on the community and hence need for the Regulation making authority to prepare a Regulatory Impact Statement. The Committee is in receipt of documentations that demonstrates that the regulation making authority conducted a Regulatory Impact Assessment.

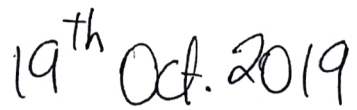
Committee Resolution

The Committee deferred decision making on the Regulations to the next meeting.

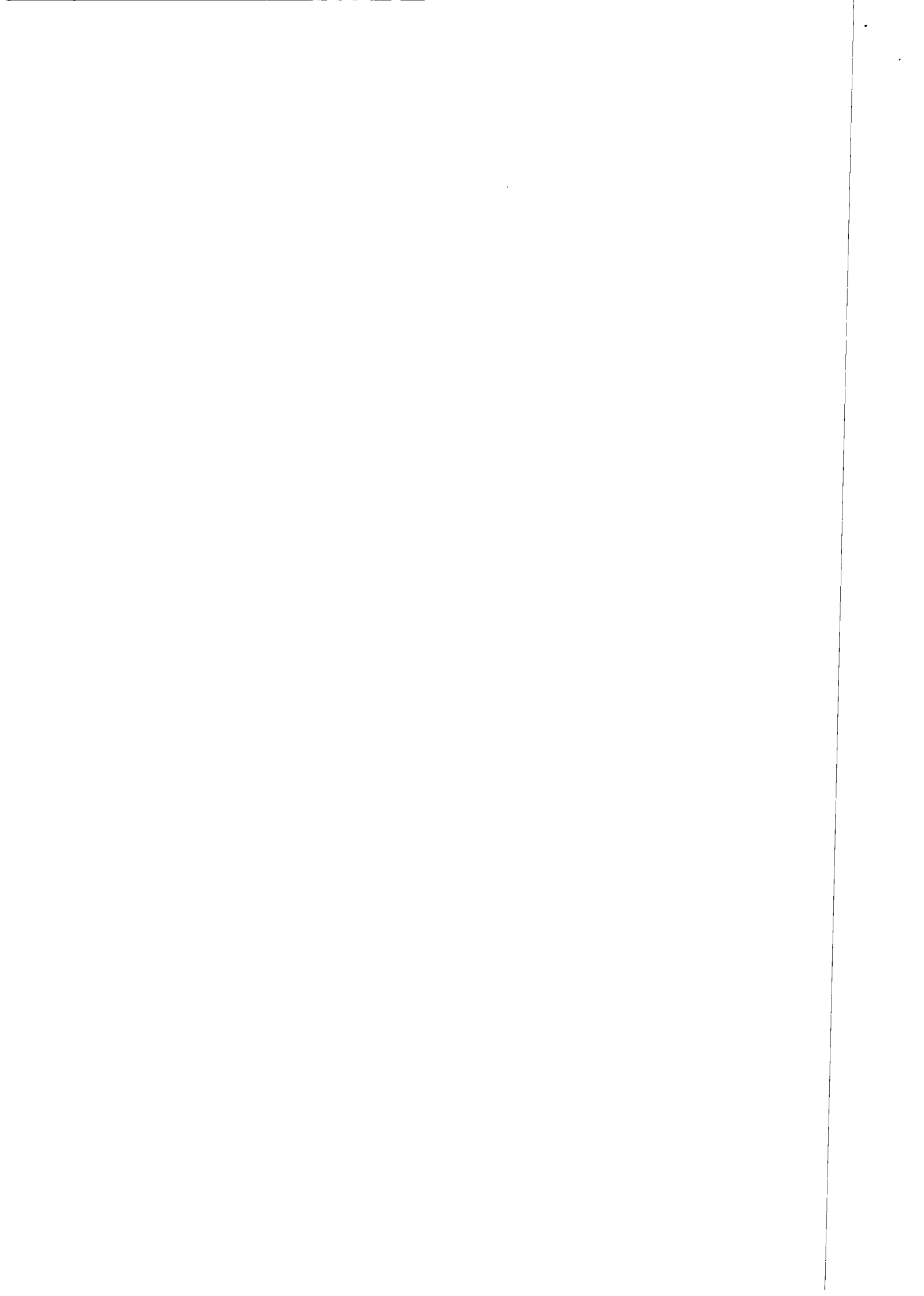
**MIN.NO. /NA/CDL/2019/309 ADJOURNMENT AND DATE OF NEXT
MEETING**

The meeting was adjourned at 7.15 p.m. until the following day Wednesday, 9th October, 2019 at 9.00 a.m

Signed: 

Date: 

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**



Annex 2

② Mr. Kampati

Please deal urgently.

[Handwritten signature]

01/10/19



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance - Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

SECRET

THE NATIONAL TREASURY
P O BOX 30007- 00100
NAIROBI

Ref: DMD 4/85/N/(13)

Date: September 27, 2019

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

① DC. Sarah Kioko
For tabling in the
House after being
entered
in the
Register.

Dear Clerk,

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

The National Treasury is proposing amendment to the Public Finance Management (National Government) Regulations, 2015 Section 26(1) (c) through the Kenya Gazette Supplement No. 164 dated 26th September 2019. The purpose of the amendment is to set limit on total public debt as required under the Public Finance Management Act, 2012. The proposed amendment is subject to approval by Parliament.

The purpose of this letter is to submit herewith the Kenya Gazette Supplement No. 164 dated 26th September 2019 the request for the proposed amendment of Public Finance Management Regulations to be laid before the National Assembly for consideration and approval.

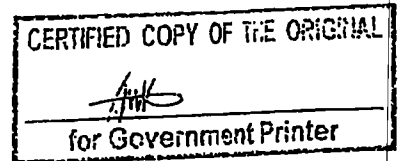
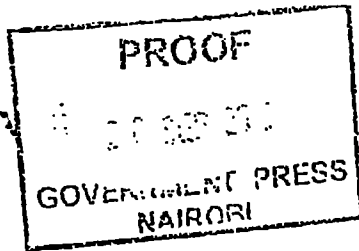
[Handwritten signature]
HON (AMB.) UKUR YATANI
Ag. CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Attachment

Copy to: Dr. Joseph K. Kinyua, EGH
Head of the Public Service
Executive Office of the President
Harambee House
NAIROBI

Justice (Rtd) P. Kihara Kariuki, CBS
Attorney General
Office of the Attorney General &
Department of Justice
State Law Office
NAIROBI

SECRET



SPECIAL ISSUE

871

Kenya Gazette Supplement No. 164

26th September, 2019

(Legislative Supplement No. 56)

LEGAL NOTICE NO. 155

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 205 of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

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

1. These Regulations may be cited as the Public Finance Management (National Government)(Amendment) Regulations, 2019.

2. The Public Finance Management (National Government) Regulations, 2015, (in these Regulations referred to as the "principal Regulations") are amended in regulation 26(1) subparagraph (c) by deleting the words "50 percent of Gross Domestic Product (GDP) in net present value terms" and substituting therefor the words "nine trillion shillings".

Sub. Leg.

3. Regulation 196 of the principal Regulations is amended in paragraph (1) by deleting the words "net present value of the total public debt that is" and substituting therefor the words "set limit".

Made on the 25th September, 2019.

UKUR YATANI,
Ag. Cabinet Secretary
for the National Treasury & Planning.



Annex 3

REGULATORY IMPACT STATEMENT

THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) (AMENDMENT) 2019

1. Introduction

The Regulatory Impact Statement for the proposed the proposed amendment to The Public Finance Management (National Government) (Amendment) 2019 was prepared in accordance with the provisions of the Statutory Instruments Act, 2013 (No.23 of 2013).

2. A Statement of the Objectives and Reasons for the Regulations

- i. Provide an effective oversight mechanism and accountability on sustainable level of public debt. It is difficult to monitor debt limit set as a percentage of GDP under a short time span due to a lag in publication of GDP figures. Furthermore, GDP figures may distort debt to GDP ratios due to periodic revisions;
- ii. Provide a numerical limit to the total public debt of Kenya Shillings nine trillion in place of the current public debt limit set at 50 per cent of GDP in net present value terms;
- iii. Allow the Government access to concessional funding sources (multilateral and bilateral agencies) facilitating public sector investment supportive of inclusive economic growth and development ;
- iv. Provide adequate borrowing space to cater for potential guarantees for borrowing by County Governments and State Owned Enterprises.

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3. Statement on the Effects of the proposed Regulations

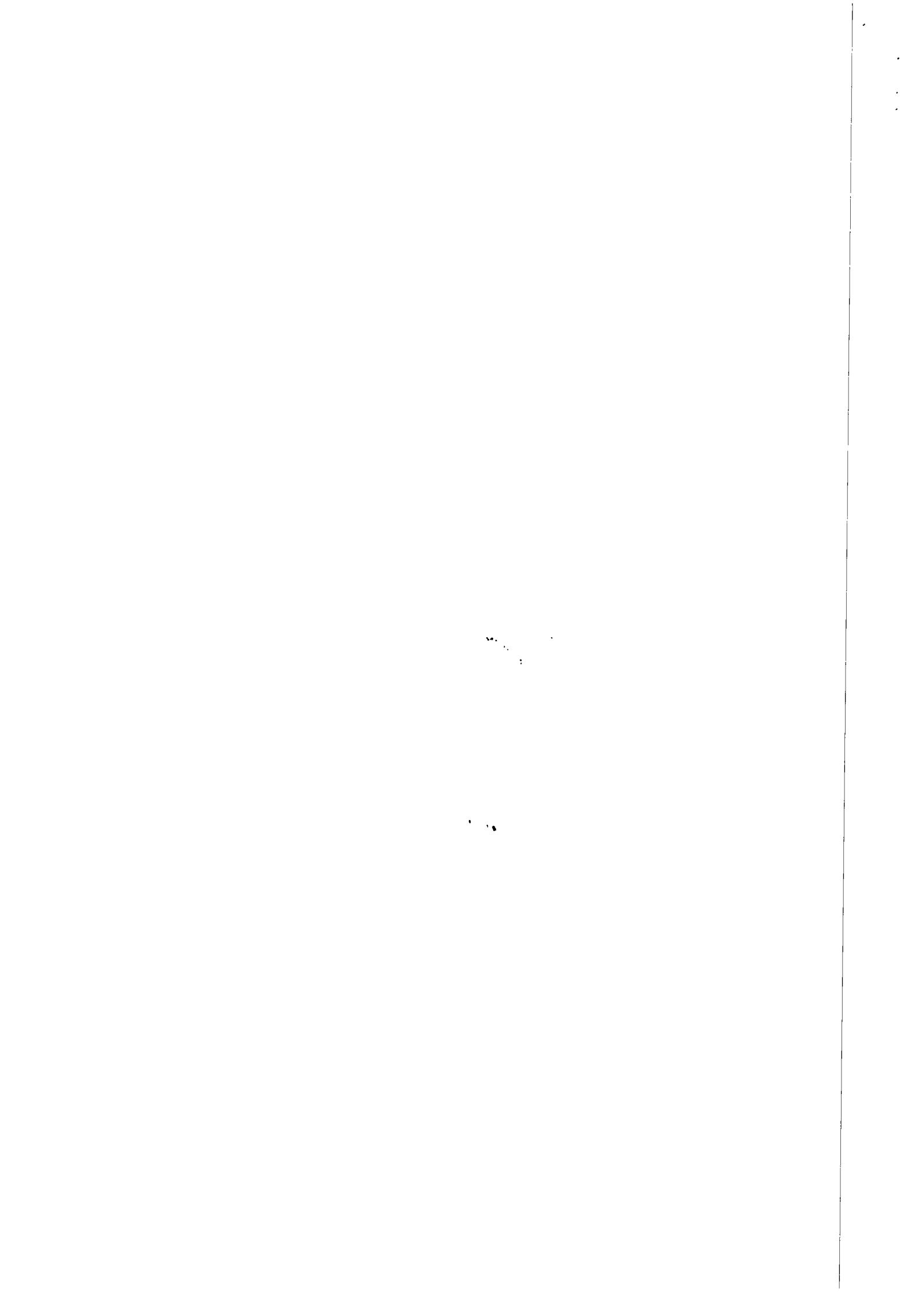
- i. The regulation seeks to strengthen the effectiveness of the PFM Regulation (National Government) 2015, specifically making the debt ceiling more transparent and facilitates more accountability and clear fiscal reporting in line with the principles of public finance specified under the Constitution of Kenya.
- ii. It enables the economy to respond effectively to shocks, provides a solid foundation for the country to have increased access to foreign capital, more resources for private and public investments, improve business confidence, and a stronger safety net for Kenyans.
- iii. Allows implementation of the FY 2019/20 National Budget and subsequent years.
- iv. Enables re-profiling of existing high cost and risky debts in the portfolio through debt structuring techniques like re-financing with guaranteed multilateral financial institutions and bilateral agencies debt facilities;
- v. Minimize government domestic borrowing and avoid '*crowding-out*' private sector, particularly Micro and Small Enterprises from accessing credit;

4. Statement of other practical means of achieving those Objectives

The substitute for borrowing is mobilization of domestic resources through revenue to finance expenditures. It's not feasible to raise adequate resources to finance the country's development needs solely through taxation. Raising tax rates to realize the amount equivalent to current and projected fiscal deficit will have undesirable effects to welfare of Kenyans.

5. Assessment of Costs and Benefits of the proposed Legislation

- i. The cost of adjusting the debt ceiling is equivalent to Kshs 3 trillion being the amount of additional debt to be incurred over the medium-term. It is expected that the additional debt will be contracted on highly concessional terms with real interest costs below inflation rates. Interest cost will be minimal.



- ii. The benefit from the additional borrowing is estimated to be more than Kshs 3 trillion in form of direct and indirect benefits associated new public investment.

6. The reasons why other means are not appropriate

- i. Maintaining current debt ceiling limits the ability of the Government to fully implement the FY2019/20 National Budget and subsequent years;
- ii. There is no scope to raise taxes to close the fiscal deficit without negative effects on the entire economy;

7. The proposed statutory regulation

- i. The Public Finance Management (National Government) (Amendment) 2019



**HON. (AMB) UKUR YATANI,
ACTING CABINET SECRETARY, THE NATIONAL TREASURY &
PLANNING**

DATE.....*27th September, 2019*.....





Annex 4

**REPUBLIC OF KENYA
OFFICE OF THE DEPUTY PRESIDENT**

EXTRACT RESOLUTION OF THE EXTRA-ORDINARY SESSION OF THE INTERGOVERNMENTAL BUDGET AND ECONOMIC COUNCIL (IBEC) HELD AT THE OFFICE OF THE DEPUTY PRESIDENT, KAREN OFFICE ON 7TH OCTOBER, 2019.

Following deliberations as per attached justification, the Council at its extra-ordinary session held on 7th October, 2019 considered and approved proposed amendments to the Public Finance Management (National Government) Regulations 2015 by having the debt ceiling set at an absolute numerical of **nine trillion shillings** rather than a **percentage of gross domestic product in net present value terms.**

Arising from the above, the Council directs the Cabinet Secretary, the National Treasury and Planning to transmit the recommended amendments to Parliament for consideration.

**Dr. Patrick Omutia, CBS
Special Secretary IBEC**

JUSTIFICATION FOR PROPOSED AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS 2015, 26(1)(c) AND 196(1)

1. An absolute numerical rather than a percentage numerical rather than a percentage of gross domestic product (GDP) in net present value terms would provide better clarity in terms of controls and timely oversight mechanism on the grown of public debt.
2. The percentage of GDP in net present value term gives a moving target which poses difficulty in enforcing compliance and it undermine accountability.
3. The target absolute figure of nine trillion Shilling shall:
 - (a) Provide adequate borrowing space to allow the Government to implement the financial year 2019/2020 budget which has a deficit of Kshs. 635 billion for development financing through borrowing;
 - (b) Provide adequate borrowing space to allow the Government to access concession funding sources to facilitate Government investment for which such funding to the tune of Kshs 421 billion which have been concluded awaiting signature;
 - (c) Provide adequate borrowing space to cater for potential guarantees for borrowing by County Governments and Parastatals;
 - (d) In the medium term enable the Government implant its debt consolidation plan aimed both reducing deficit financing from 6.3% in 2018/19 to 3% of GDP in 2023/24 and reduce debt service levels thereby releasing additional shareable resources to both levels of Government.
4. To buttress the consolidation strategy Government shall deepen expenditure rationalization in the medium term and implement revenue enhancement measures.
5. As a safeguard, new debt over the consolidation period shall be monitored and managed through annual parliamentary budget approvals.
6. The proposed shift in methodology does not breach Kenya's debt sustainability threshold of 70% debt to GDP ratio in present value terms as set by the IMF World Bank.

Annex 5



**REPUBLIC OF KENYA
PARLIAMENTARY SERVICE COMMISSION
PARLIAMENTARY BUDGET OFFICE**

**Analysis of the Public Finance Management (National Government) (Amendment)
Regulations, 2019**

October, 2019

A copy

Disclaimer

Parliamentary Budget Office (PBO) is a non-partisan professional office of Parliament of the Republic of Kenya. The primary function of the Office is to provide professional non-partisan advice in respect of budget, finance and economic information to committees of Parliament.

Parliamentary Budget Office, 2019

For more information, contact:

The Director,

Parliamentary Budget Office

Parliament of the Republic of Kenya

Protection House, 10th Floor

P.O. Box 41842 – 00100 GPO

NAIROBI, KENYA

Tel : +254-20-284-8810

Email: pbo@parliament.go.ke.

I. OVERVIEW

- 1) The Public Finance Management (National Government) (Amendment) Regulations, 2019 seeks to amend regulation 26 (1) (c) which provides that the national public debt shall not exceed 50 percent of Gross Domestic Product (GDP) in net present value terms and replace it with a provision of a Ksh. 9 Trillion national public debt ceiling. Subsequently, Regulation 196 (1) is amended to delete the provision of net present value of total public debt and substituting it with *the set limit*.
- 2) The current total public debt stands at Ksh. 5.81 Trillion¹ as of June, 2019 and this is equivalent to 61.8 percent of nominal GDP². This indicates that the PV of debt to GDP is actually higher than the 50 percent threshold provided in the PFM regulation, as evidenced by the recent IMF Debt Sustainability Analysis for Kenya.
- 3) Parliament, as required in Article 211, has the power to legislate the terms on which the national government may borrow. In addition, Section 50 (2) of the PFM Act, 2012 provides that the National Government may borrow money in accordance with the PFM Act or any other legislation and shall not exceed a limit set by Parliament. Indeed, the proposal to amend the limit is in line with the National Assembly's resolution in report on the Budget Policy Statement 2019 on public debt which was as follows-*that at an appropriate time, the PFM Act should be amended to provide for a numerical debt ceiling as opposed to the current scenario where the debt is pegged on GDP projections*. It was envisaged that the limit would be in line with the approved fiscal consolidation path.
- 4) Earlier in 2014 before the PFM Regulations were in place, Parliament approved an increase in the ceiling for external debt from USD 14 Billion (Kshs 1.2 Trillion) to USD 28 Billion (Kshs 2.5 Trillion) through the Sessional Paper No. 14.

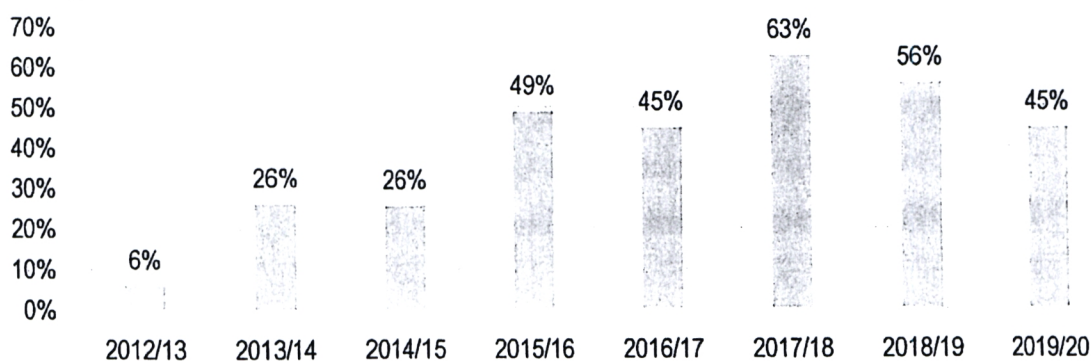
¹As reported in the Quarterly Economic and Budgetary Review (QEBR), August 2019 Edition

² The nominal GDP for 2018/19 is estimated at Ksh. 9.51 Trillion

towards external borrowing. Additional room for borrowing will increase the chance of additional loans from external sources since domestic borrowing is not a viable option, at the moment. The current situation in the domestic market is that the government has crowded-out the private sector borrowers since lending to government is deemed to be risk-free with guaranteed returns. This reduces credit to the private sector which in turn adversely affects growth in investment, growth of SMEs and creation of job opportunities.

- 8) **Increasing the debt ceiling is likely to increase external borrowing and mainly from commercial sources which are more expensive.** The evolution of commercial debt since FY 2012/13 indicates that it has increasingly been a source of financing the budget deficit because it is easy to acquire with less demanding conditions when compared to concessional funding from multi-lateral and bi-lateral agencies. However, it is a high risk option and also more expensive given that the interest rates are higher with a shorter pay-back period. If the country is not able to generate the targeted revenue in the shorter-term before the return on investment is realized, then it faces a refinancing risk and this forces the country to get into a debt roll-over (where it borrows to repay existing debt obligations that are due). If the debt ceiling is increased, then there should be a limit on external borrowing at commercial rates to contain external vulnerabilities.

Figure 1: Evolution of commercial debt as a share of budget deficit FY 2012/13 - 2019/20



Source: Budget Policy Statement

IV. INTERNATIONAL STANDARDS AND PRACTICE

- 9) The IMF provides for public debt sustainability benchmark thresholds that guide countries in different stages of development ranging from low-income to the advanced economies. This enables efficient tracking of the sustainability of debt given the prevailing macroeconomic environment in terms of the performance of GDP, revenue and exports.
- 10) **Currently, the country has surpassed some of the debt sustainability thresholds, in particular the more distressing is the debt service to revenue ratio.** This implies that the economy is not generating enough revenues to cover the debt servicing requirements. The risk is that the country will continue to borrow to repay the existing debts and not for development expenditure as contemplated in law. Table 2 provides the threshold for Kenya (which is currently a lower middle-income country), the performance since 2016 and the projections.

Table 2: Public Sector Debt Sustainability Ratios

| Indicator | Threshold | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|-------------------------------------|-----------|--------|------|----------|-------|-------------|-------|-------|
| | | Actual | | Estimate | | Projections | | |
| PV of Public Sector Debt to GDP | IMF - 74% | 50.6 | 55.4 | 60.6 | 59.9 | 56.9 | 54.3 | 53.1 |
| PV of public Sector Debt to Revenue | 300 | 275.9 | 285 | 299.6 | 292.9 | 282.1 | 269.7 | 261.5 |
| Debt Service to Revenue Ratio | 30% | 36.3 | 42.7 | 44.8 | 49.4 | 49.3 | 48.9 | 37.6 |

Source: IMF, 2018

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

Table 3: Distribution to ordinary revenue to key expenditure categories, FY 2014/15 to 2019/20

| Details | | Distribution (%) | | | | | |
|-------------------------------------|-------------------|------------------|---------|---------|---------|---------|----------|
| | | 2014/15 | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20* |
| Total Ordinary Revenue | | 100% | 100% | 100% | 100% | 100% | 100% |
| o/w | Interest payments | 17% | 19% | 21% | 24% | 23% | 23% |
| o/w | Pensions | 4% | 5% | 5% | 5% | 5% | 6% |
| Total Net Recurrent | | 63% | 65% | 58% | 63% | 56% | 54% |
| County Allocation | | 22% | 22% | 21% | 22% | 18% | 17% |
| Available Resources for Development | | -6% | -10% | -6% | -14% | -4% | 1% |

Source: The National Treasury; Derivations: PBO

V. POLICY OPTIONS

11) The following are the viable policy options-

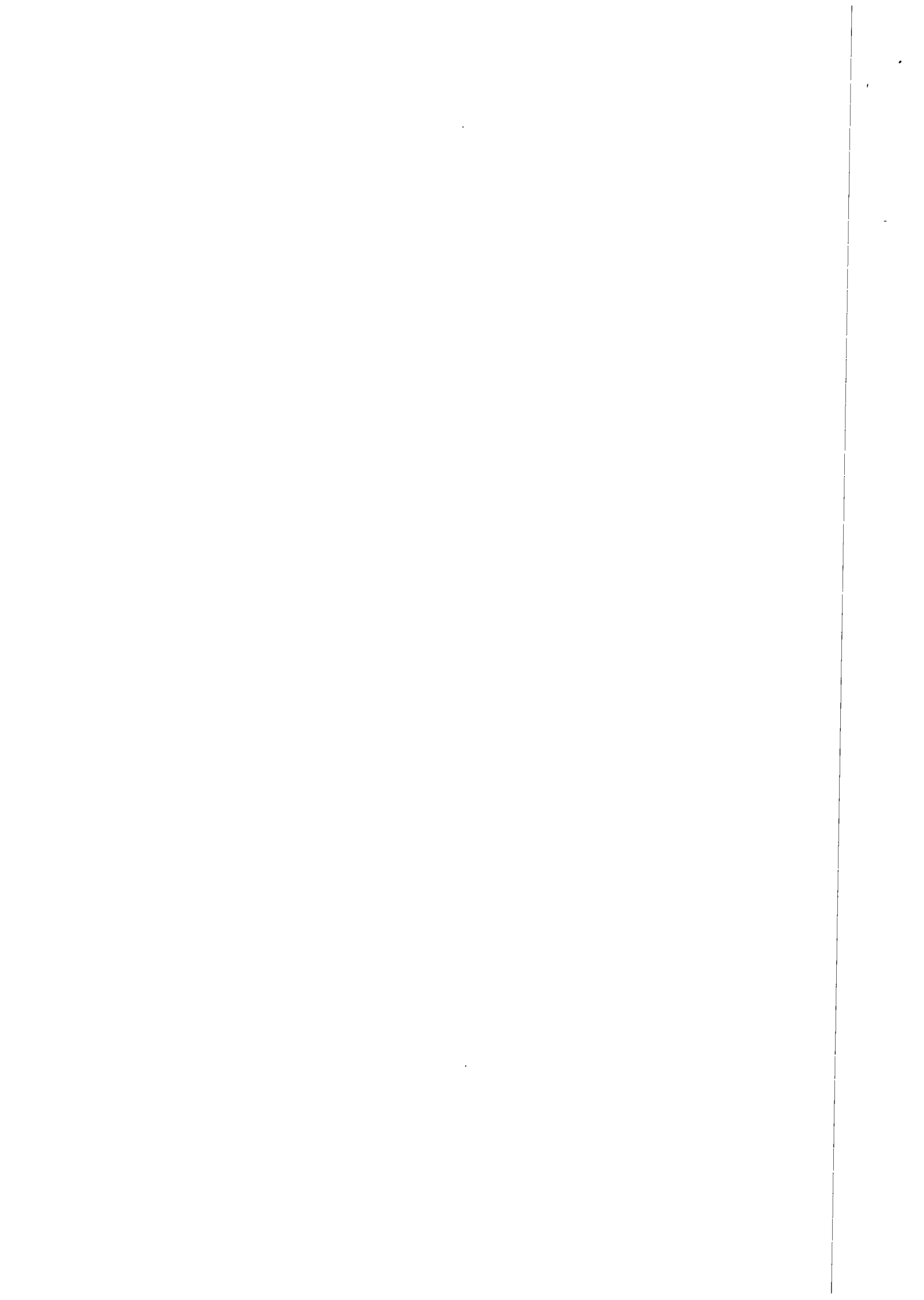
| | Policy Options | Implication |
|----|---|--|
| 1. | Accept the amendment as proposed by the National Treasury | <p>(i) The country will no longer comply with the EAC convergence criteria which it is a signatory to.</p> <p>(ii) Reduce the flexibility in the budget as debt repayment, which are a first charge to the consolidated fund, will increase.</p> <p>(iii) It will undermine credibility of the budget, in particular the medium term projections which are part of the Medium Term Expenditure Framework (MTEF).</p> |

| | | |
|----|-------------------------------|---|
| 2. | Reject the proposed amendment | (i) Status Quo remains (ii) Allow the National Treasury to reconsider the limits to be within the Fiscal Consolidation path. |
|----|-------------------------------|---|

ANNEX: Key Fiscal Indicators

| No. | Indicators | | 2018/19 | 2019/20 | 2020/21 | 2021/22 | 2022/23 |
|-----|---|-----------------------|--------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| 1 | Total Debt | | Kshs. 5.8 Trillion | Kshs. 6.44 Trillion | Kshs. 7.03 Trillion | Kshs. 7.61 Trillion | Kshs. 8.19 Trillion |
| 2 | Debt / GDP ratio | Draft BROP 2019 | 61.8% | 55.2% | 53.6% | 51.8% | 49.2% |
| | | Budget Estimates 2019 | | 49.9% | 48.8% | 46.4% | 44.0% |
| | | BPS 2019 | | 50.6% | 48.8% | 46.4% | 44.0% |
| 3 | Real GDP growth | Draft BROP 2019 | | 6.1% | 6.3% | 6.5% | 6.8% |
| | | BPS 2019 | | 6.2% | 6.4% | 6.7% | 7.0% |
| 4 | Budget deficit (Excl. Grants) | Draft BROP 2019 | | 7.1% | 5.1% | 4.6% | 4.0% |
| | | BPS 2019 | | 6.0% | 4.3% | 3.7% | 3.4% |
| 5 | Ordinary Revenue as a share of GDP | Draft BROP 2019 | | 17.0% | 15.3% | 15.3% | 15.2% |
| | | BPS 2019 | | 17.4% | 16.7% | 17.0% | 17.1% |
| 6 | Recurrent expenditure as a share of GDP | Draft BROP 2019 | | 16.1% | 14.9% | 14.4% | 13.9% |
| | | BPS 2019 | | 16.2% | 14.2% | 14.1% | 13.9% |
| 7 | Development & Net lending expenditure as a share of GDP | Draft BROP 2019 | | 6.6% | 4.5% | 4.5% | 4.5% |
| | | BPS 2019 | | 5.9% | 5.7% | 5.7% | 5.8% |

Source: BPS 2019, Draft Budget Review & Outlook Paper, 2019



**SUMMARY OF STATUS OF LOAN AGREEMENTS PENDING APPROVAL OR
UNDER NEGOTIATION BETWEEN THE GOVERNMENT OF KENYA AND
DEVELOPMENT PARTNERS AS AT 30TH SEPTEMBER 2019**

TABLE 1: LENDER AND LOAN AMOUNTS

| NO | DEVELOPMENT PARTNER | AMOUNT IN KENYA SHILLINGS |
|--------------|---------------------------------|----------------------------------|
| 1 | Africa Development Bank | 94,155,038,000 |
| 2 | China | 86,950,000,000 |
| 3 | Japan | 83,313,300,000 |
| 4 | World Bank | 51,300,000,000 |
| 5 | Agence De Francaise Development | 30,552,000,000 |
| 6 | South Korea | 15,900,000,000 |
| 7 | Germany KfW | 15,276,000,000 |
| 8 | IFAD | 12,380,000,000 |
| 9 | Middle East | 9,700,000,000 |
| 10 | French Embassy | 5,989,560,000 |
| 11 | Spain | 4,233,868,686 |
| 12 | European Investment Bank | 3,990,000,000 |
| 13 | Italy | 3,066,072,522 |
| 14 | Belgium | 2,838,000,000 |
| 15 | Finland | 2,280,000,000 |
| TOTAL | | 421, 923, 839, 208 |

TABLE 2: SECTOR AND LOAN AMOUNTS

| NO. | SECTOR | NO. OF AGREEMENTS | AMOUNT IN KENYA SHILLINGS |
|--------------|-----------------------|--------------------------|----------------------------------|
| 1 | Infrastructure | 10 | 149,193,468,686 |
| 2 | Water & Irrigation | 14 | 126,897,298,000 |
| 3 | Energy | 7 | 50,451,700,000 |
| 4 | Trade & Manufacturing | 1 | 35,977,300,000 |
| 5 | Housing | 2 | 35,260,000,000 |
| 6 | TIVET | 4 | 13,148,000,000 |
| 7 | Higher Education | 1 | 3,420,000,000 |
| 8 | Health | 2 | 3,009,072,522 |
| 9 | Environment | 1 | 2,255,000,000 |
| 10 | Basic Education | 1 | 1,400,000,000 |
| 11 | Urban Development | 1 | 912,000,000 |
| TOTAL | | 44 | 421, 923, 839, 208 |

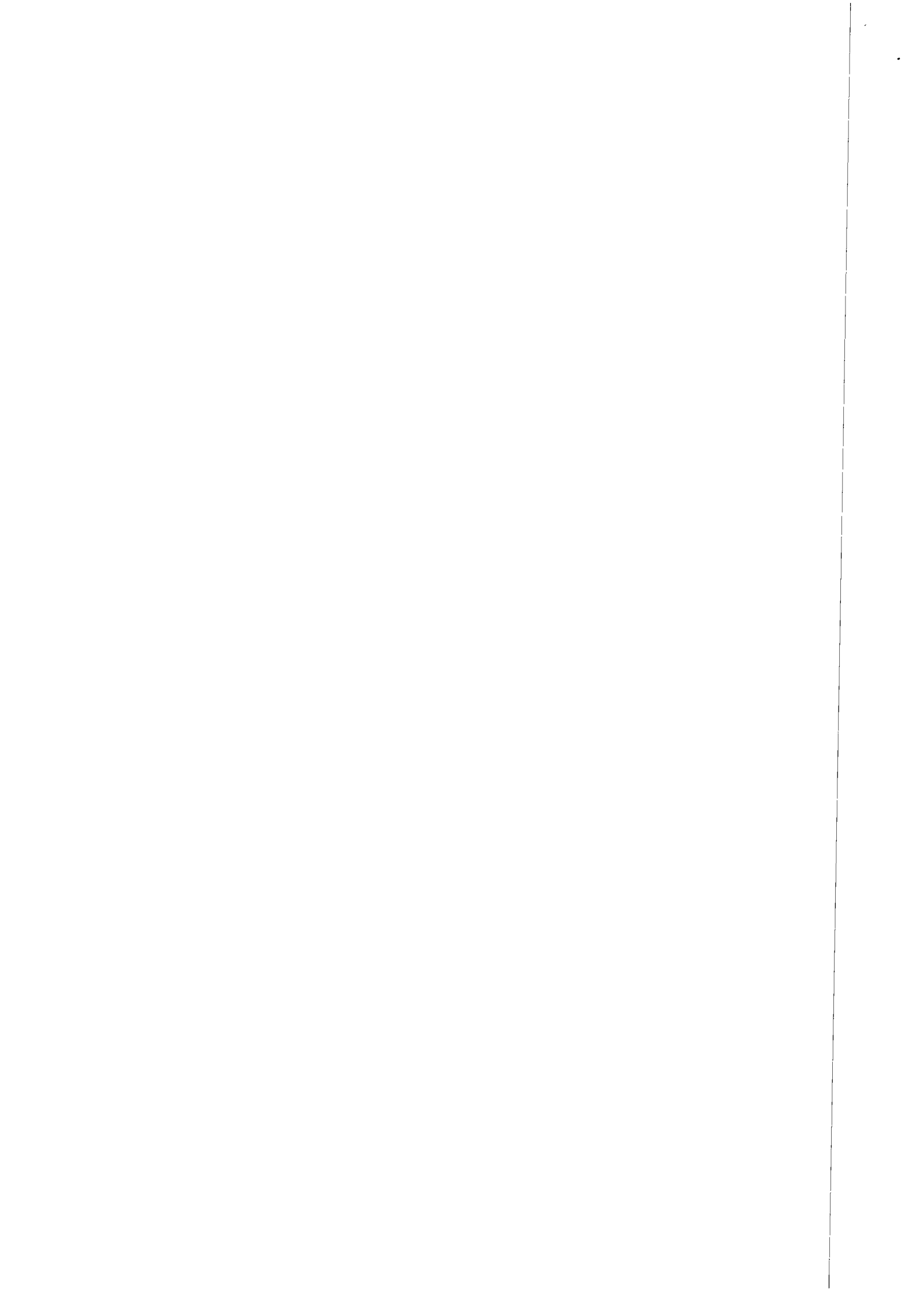


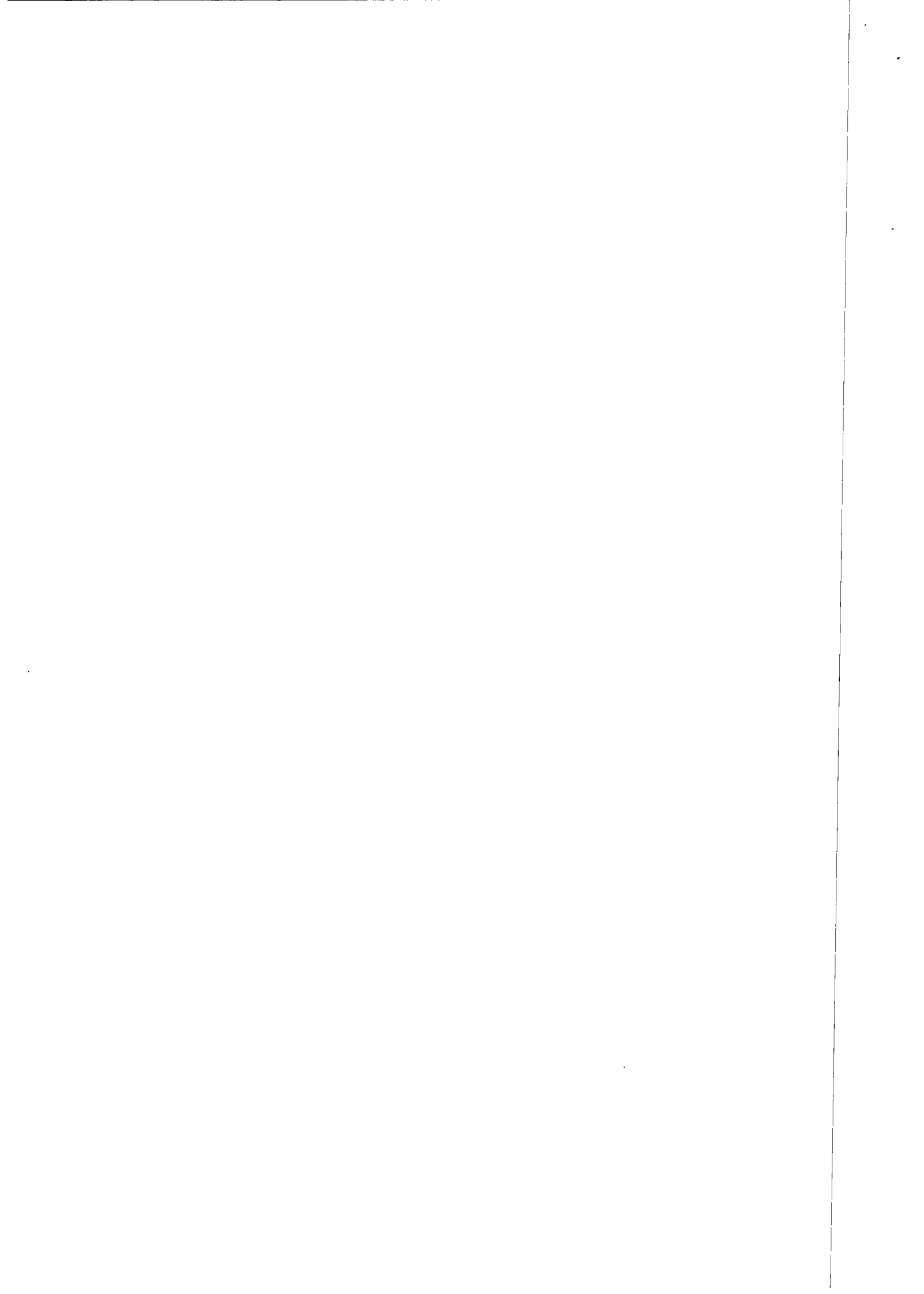
STATUS OF LOAN AGREEMENTS PENDING APPROVAL OR UNDER NEGOTIATION BETWEEN THE GOVERNMENT OF KENYA AND DEVELOPMENT PARTNERS AS AT 30TH SEPTEMBER 2019

| NO. | MINISTRY/MDA | SECTOR | PROJECT TITLE | DEVT PARTNER | TYPE OF FUNDING | CURRENCY | | | STATUS OF THE FINANCING AGREEMENT |
|-----|---|----------------|--|-------------------------|-----------------|-------------------|-----------------|--|--|
| | | | | | | FOREIGN CURRENCY | KENYA SHILLINGS | INTEREST RATE | |
| 1 | Ministry of Water, Sanitation & Irrigation | Water | Thwake Multi-purpose water Development Program | ADB | Loan | EUR 43.19 M | 4,923,660,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium = 0%-0.14%+0.8%+0.2% =-0.86% Per Annum | The loan agreement was signed. Legal opinion is required for the loan to be effective. We are waiting for feedback from the Attorney Generals Office |
| 2 | Ministry of Water, Sanitation & Irrigation | Water | Thwake Multi-purpose water Development Program | ADB | Loan | EUR 192.56M | 21,951,840,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium = 0%-0.14%+0.8%+0.2% =-0.86% Per Annum | The loan agreement was signed. Legal opinion is required for the loan to be effective. We are waiting for feedback from the Attorney Generals Office |
| 3 | Ministry of Energy/ KETRACO | Energy | Supplementary Financing for the Ethiopia-Kenya Electricity Highway Project | Africa Development Bank | Loan | Euros 26,310,000. | 3,022,140,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium = 0%-0.14%+0.8%+0.2% =-0.86% Per Annum | The loan agreement was signed. Legal opinion is required for the loan to be effective |
| 4 | Ministry of Water and Sanitation | Water | Nairobi Rivers Basin Rehabilitation and Restoration Program: Sewerage Improvement Project Phase II | Africa Development Bank | Loan | EUR 39,407,000 | 6,772,398,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium = 0%-0.14%+0.8%+0.2% =-0.86% Per Annum | The loan agreement was signed. Legal opinion is required for the loan to be effective |
| 5 | Ministry of Water and Sanitation | Water | Nairobi Rivers Basin Rehabilitation and Restoration Program: Sewerage Improvement Project Phase II | Africa Development Bank | Loan | UA 2,910,000 | 410,000,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium = 0%-0.14%+0.8%+0.2% =-0.86% Per Annum | The loan agreement was signed. Legal opinion is required for the loan to be effective |
| 6 | The National Treasury | Housing | Kenya mortgage Refinance Company Project | Africa Development Bank | Loan | EUR 90 Million | 10,260,000,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium = 0%-0.14%+0.8%+0.2% | The bank has submitted two copies of the loan agreement for signature by the Cabinet Secretary of the National Treasury |
| 7 | State Department of Transport and Infrastructure/ KENHA | Infrastructure | Kenol- Sagana- Marua Road Upgrading Project | ADB and GoK | Loan | UA 233.7 M | 33,015,000,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium (To be confirmed) | Negotiations between the Government of Kenya and the African Development Bank to held |
| 8 | State Department of Vocational Training | TIVET | Technical Vocational Education Training and Entrepreneurship Project | ADF | Loan | UA 26.9 M | 3,800,000,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium (To be confirmed) | Negotiations between the Government of Kenya and the African Development Bank to held |
| 9 | Ministry of Energy/ KPLC | Energy | Last Mile Connectivity Phase III | ADB | Loan | USD 100M | 10,000,000,000 | Base Rate (Euribor) +Funding Cost Margin+ Lending Margin + Maturity Premium (To be confirmed) | Negotiations between the Government of Kenya and the African Development Bank to held |



| MINISTRY/MDA NO. | SECTOR | PROJECT TITLE | DEVT PARTNER | TYPE OF FUNDING | CURRENCY | | | STATUS OF THE FINANCING AGREEMENT |
|------------------|--|--|------------------|--|--|-----------------|---|--|
| | | | | | FOREIGN CURRENCY | KENYA SHILLINGS | INTEREST RATE | |
| 10 | State Department of Infrastructure (KENHA) | Steel Bridges Project Phase II (7-Mile Flyover at Langata Road and Five Footbridges on Mombasa and Langata Road) | Government | Concessional Loan From ICO and Commercial Loan from BBVA | Euro 23,250,000 from ICO and Euro 13,889,111 from BBVA | 4,233,868,686 | 0.2 % for Concessional Loan and 2% for BBVA | The Draft Financing Agreements has been agreed and negotiated by both Parties. |
| 11 | Education | Youth Employment and Vocational Training in Kenya | KfW | Concessional loan | Euro. 20M | 2,280,000,000 | 1.3 % Per Annum | The Agreements have been cleared by the Attorney General for signature subject to resolution of land ownership issue of the Kiambu Institute of Science & Technology Negotiation on the project are expected to take place before December 2019 |
| 12 | Education | Promotion of Youth Employment and Vocational Training Project | KfW | Concessional loan | Euro. 12M | 1,368,000,000 | 1.3 % Per Annum | Negotiation on the project are expected to take place before December 2019 |
| 13 | Water, Sanitation & Irrigation | Development of the Water and Sanitation Sector - Water Sector Trust Fund, Phase IV | KfW | Concessional loan | Euro. 11 M | 1,234,000,000 | 1.3 % Per Annum | Negotiation on the project are expected to take place before December 2019. The KfW has forwarded the revised version which is under review and will be forwarded to the AG for clearance thereafter. |
| 14 | Water, Sanitation & Irrigation | Lake Nakuru Biodiversity Conservation Project | KfW | Concessional loan | Euro. 29 M | 3,306,000,000 | 1.3 % Per Annum | Negotiation on the project are expected to take place before December 2019. The KfW has forwarded the revised version which is under review and will be forwarded to the AG for clearance thereafter. |
| 15 | Water, Sanitation & Irrigation | Lake Nakuru Biodiversity Conservation Project | KfW | Concessional loan | Euro. 14 M | 1,596,000,000 | 1.3 % Per Annum | It entails shifting of 14 Mio. € loan IDA terms from project "Small Hydro Lake Victoria" in benefit of the project "Lake Nakuru Biodiversity Conservation Project". (IDA terms remain unchanged). |
| 16 | Water, Sanitation & Irrigation | Coastal Water Security and Climate Resilience Project | World Bank | IBRD loan | USD 120,000,000 | 12,000,000,000 | 0.75 % Per Annum | US D 80 million cancelled. Financing Agreement amended to reflect this. Forwarded to CS for consideration and signature. |
| 17 | National Treasury & Planning | Affordable Housing Finance Project | World Bank | IBRD loan | USD 250,000,000 | 25,000,000,000 | EURIBOR plus Fixed spread | The Project documents were cleared by Attorney General for signature. Already submitted to CS's office for consideration. |
| 18 | Water, Sanitation & Irrigation | Water Security and Climate Resilience Project | World Bank | IBRD loan | USD 143,000,000 | 14,300,000,000 | 0.75 % Per Annum | US D 70 million cancelled. Financing Agreement amended to reflect this. Forwarded to CS for consideration and signature. |
| 19 | Water, Sanitation & Irrigation | Lake Victoria Water and Sanitation (LVWATSAN) Project | 1. AFD 2. EIB | Concessional Loan | 1. 20,000,000 Euro 2. 35,000,000 Euro | 6,270,000,000 | 1.26 % Per Annum | The has been several rounds of exchange of letters. There are several outstanding Clauses and the teams are planning a round table negotiation in September 2019. |
| | MINISTRY/MDA | SECTOR | DEVT PARTNER | TYPE OF FUNDING | CURRENCY | | | |





| | | | | | | | | | |
|-----|--|--------------------|---|---|--------------------|-------------------|-----------------|---|---|
| 28 | Transport, Infrastructure, Urban Development & Housing & Public Works (Kenya National Highway Authority) | Infrastructure | Upgrading of Kitui - Mwingi-Kandwia Road : Lot 2 | China Exim Bank | Loan | 180.7 M USD | 18,070,000,000 | LIBOR + 300 b.p | The Agreement has been cleared by the AG for signature |
| 29 | Transport, Infrastructure, Urban Development & Housing & Public Works (Kenya National Highway Authority) | Infrastructure | Upgrading of Kandwia-Tseikuru-Usumi Road: Lot 3 | China Exim Bank | Loan | 126.6 M USD | 12,660,000,000 | LIBOR + 300 b.p | The Agreement has been cleared by the AG for signature |
| 30 | Water, Sanitation & Irrigation | Water | Mzima II Water Supply Project | China Exim | Loan | 293.4 M USD | 29,340,000,000 | LIBOR + 300 b.p | The Agreement has been cleared by the AG for signature |
| 31 | Water, Sanitation & Irrigation | Water | Upper Tana Natural Resource Management Programme (UTANRMP) Additional financing | International Fund for Agriculture Development (IFAD) | Loan | USD 12.38 M | 12,380,000,000 | No interest rate but has a service charge of 0.75 % | Has been forwarded to the Cabinet Secretary for consideration |
| 32 | East Africa Community and Regional Development (Coast Development | Health Sector | Malindi Integrated Social and Health Development Programme - Phase II | Italy Agency for Development Cooperation | Concessional Loan | Euro 6,395,373 | 729,072,522 | 0.3 % Per Annum | The Loan Agreement is under review by the National Treasury |
| 33 | Environment and Forestry | Environment Sector | Kajiado Integrated Waste Management Project | Italy Agency for Development Cooperation | Concessional Loan | Euro 20,500,000 | 2,337,000,000 | 1 % Per Annum | The Loan Agreement is under review by the National Treasury |
| 34 | Transport, Infrastructure, Urban Development & Education | Infrastructure | Samatar - Wajir road Project | Kuwait Fund, OPEC | Concessional Loan | USD 83 Million | 8,300,000,000 | 1.75 % Per Annum. 1 % Service Charge | Development partners do not want to be enjoined as tax agents in the financing agreement as required by the National Treasury/BFEA; We are yet to get draft |
| 35 | Education | Basic Education | Development of Schools Infrastructure in Nyamira County project | Kuwait Fund and GOK | Concessional loans | USD 14 million | 1,400,000,000 | 1.5 % Per Annum 1 % Service Charge | Development partners do not want to be enjoined as tax agents in the financing agreement as required by the National Treasury/BFEA; Cannot proceed due to Commercial contract signed. Loan Agreement pending clearance at the AG to be signed by CS, NT & Planning. |
| 36 | Transport, Infrastructure, Urban Development & | Infrastructure | Supply of Pedestrian Steel Bridges | Belgium | Loan | 24.9 Million Euro | 2,838,000,000 | 0 % Interest Rate. Insurance Premium - 12.64 % | Commercial contract signed. Loan Agreement pending clearance at the AG to be signed by CS, NT & Planning. |
| 37 | Health | Social | Upgrading Maternal and Newborn Care Units | Finland | Mixed Credit | Euro 20million | 2,280,000,000 | Nil | Negotiations yet to be started |
| | MINISTRY/MDA | SECTOR | PROJECT TITLE | DEVT PARTNER | TYPE OF FUNDING | CURRENCY | | INTEREST RATE | STATUS OF THE FINANCING AGREEMENT |
| NO. | | | | | | FOREIGN CURRENCY | KENYA SHILLINGS | | |



| | | | | | | | | | | |
|--------------|---|-----------------------|--|-----------------|-------------------|--------------------|------------------------|--|---|--|
| 38 | Trade, Industry & Cooperatives | Trade & Manufacturing | Mombasa Special Economic Zone | Japan | Consessional Loan | 37.09 Billion Yen | 35,977,300,000 | Interest Rate 0.1 % P.A. | Exchange of notes signed and the negotiations on the financing agreement ongoing. | |
| 39 | Transport, Infrastructure, Urban Development & Housing & Public Works | Infrastructure | Mombasa Gate Bridge | Japan | Consessional Loan | 48.80 Billion Yen | 47,336,000,000 | Interest Rate 0.1 % P.A. | Exchange of notes signed and the negotiations on the financing agreement ongoing. | |
| 40 | Transport, Infrastructure, Urban Development & Housing & Public Works | Infrastructure | ITS Phase II | South Korea | Consessional Loan | 100 Million USD | 10,000,000,000 | Interest Rate 0.1 % P.A. | Negotiations on the financing agreement ongoing. | |
| 41 | Transport, Infrastructure, Urban Development & Housing & Public Works | Infrastructure | BRT II | South Korea | Consessional Loan | 59 Million USD | 5,900,000,000 | Interest Rate 0.1 % P.A. | Negotiations on the financing agreement ongoing. | |
| 42 | Water, Sanitation & Irrigation | Irrigation | Drought Resilience Project in Northern Kenya | KFW | Consessional Loan | 8 Million Euro | 912,000,000 | Interest Rate 0.75 % P.A. Commitment Fees 0.25 % | The Loan Agreement was signed on 24th December 2019. The Legal Opinion is the only Condition Precedent that is pending | |
| 43 | Energy | Energy | Mnengai-Rongai Transmission Line | French Treasury | Mixed Credit | 52.54 Million Euro | 5,989,560,000 | Risk Premium -16.04 % Commitment Fees 0.5 % CIRR -0.95 % | The financial terms of the loan were reviewed by the National Treasury and it was established that the loan's concessionality is 27 % which is below the 35 % | |
| 44 | Energy | Energy | Olkaria Upgrade | KFW | Consessional Loan | 40 Million Euro | 4,560,000,000 | Variable interest rate based on the 6-month EURIBOR plus the Margin, calculated on an actual/360 basis. The variable interest rate, however, will be at least 0.00 % p. a. Commitment Fee: 0.25 % p.a. on the undisbursed Loan Amount. Management Fee: 0.50 % flat on the total Loan Amount; | The financial terms of the loan are under review by the National Treasury. | |
| TOTAL | | | | | | | 421,923,839,308 | | | |

