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The National Treasury and Economic
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Subject: MEMORANDA – THE PUBLIC DEBT LIMIT

INTRODUCTION

The Cabinet Secretary/National Treasury on 21st March 2023 through a Public Notice invited Public Participation and submission of Memoranda on the Public Finance Management **(PFM)** (National Government) (Amendment) Regulations, 2023 to amend Regulation 26(c) of the PFM (National Government) Regulations, 2015 by deleting subparagraph (c) and substituting with a new subparagraph to read:

(c) *the Cabinet Secretary shall at all times maintain public debt at a level not exceeding 55 percent of Gross Domestic Product in Present Value (PV) terms:*

The same amendments were published in 2022 but it appears that there was no change effected on Regulation 26(c) of the PFM (National Government) Regulations, 2015. Hence, the reason the same amendments are being sought again.

Inconsistency of the sought amendments with the provisions of the Constitution of Kenya 2010 and the Public Finance Management Act 2012

- 1. That**, Regulation 26(c) of the PFM (National Government) Regulations, 2015 is inconsistent with Article 220(1) of the Constitution of Kenya 2010 read with

sections 15(2)(c)&(d), 15(3), 50(2)&(3) of the PFM Act, 2012 that provide the borrowings should be limited to the budget as approved by parliament and allocation for loans approved by Parliament. **(Flow Chart 1)**

2. **That** further to **paragraph 1** above, the provisions of the Constitution 2010 and PFM Act, 2012 quoted therein contain controls that ensure borrowings (Public Debts) are within the budgetary provisions for sustainability.
3. **That**, the basis of maintaining public debt at a percentage of gross domestic product has enabled the Cabinet Secretary to heavily borrow outside the budget rendering the public debt unsustainable. Consequently, the government had to delay the March 2023 payment of the public/state officers' salaries and other obligations to meet the heavy public debt obligations.
4. **That** the Cabinet Secretary/National Treasury in the 2023 Medium Term Debt Management Strategy reported that based on 55% of the gross domestic product, the public debt limit was set at Ksh. 10,000 billion and at the end of December 2022 the public debt stock was Ksh. 9,145.9 billion.
5. **That**, the total borrowings (public debt) for the budget as approved by parliament and allocation of loans approved by Parliament for 2014/2015 to 2022/2023, nine **(9)** financial years aggregated to Ksh. 2,293,919,000,996.00. This forms the aggregate of loans authorized in the various Appropriation Acts for individual projects undertaken by various government entities. The amount of loan authorized per every project can only be changed by a supplementary appropriation Act. **(See Table 1 and the sampled borrowings by National Treasury, State Department of Energy, and Infrastructure Table 4,5&6)**
6. **That** the cabinet Secretary/National Treasury borrowed outside the budgetary provisions (Appropriation Act) Ksh. 4,481,725,000,004.00 in pursuit of the debt ceiling of 10 trillion (55% of the gross domestic product).

The figure was computed by subtracting from the public debt stock of Ksh. 9,145,900,000,000.00 as of December 2022, the outstanding debt as of 30th June 2014 of Ksh. 2,370,255,820,000.00 and budgeted debt aggregating to Ksh. 2,293,919,000,996.00 for 2014/2015 to 2022/2023, nine **(9)** financial years.

Domestic debt and Tax revenue fraud.

- 7. That**, based on the debt ceiling of Ksh. 10 trillion the Cabinet Secretary/National Treasury created outside the budget (unauthorized) domestic debt estimates aggregating to Ksh. 5,388,600,491,756.00 in 2014/2015 to 2022/2023 financial years through circumvention of the provisions of section 46(2) of the PFM 2012 which provide that within twenty-one days after the end of each month, the Cabinet Secretary shall publish in the Gazette a statement of actual revenues collected by category and net exchequer issues by the National Treasury. **(Table 2)**

- 8. That**, The Cabinet Secretary/National Treasury intentionally borrowed unlawfully domestic debts aggregating to Ksh. 5,388,600,491,756.00 to finance public activities instead of using tax revenue which was sufficient but schemed to repay the debt with tax revenue amounting to Ksh. 4,975,632,982,400.00 thus accorded the lenders a benefit of Ksh. 2,670,861,849,951.09 in terms of loan interest. This action left the Kenyan public indebted to approximately Ksh. 2,304,771,132,449.00. ***This beats any prudent public financial management and connotes collusion with financial institutions and state agencies to siphon out public resources. (Table 3).***

Key Findings

- 1.** The approval of the debt ceiling of 10 trillion provided the Cabinet Secretary/National Treasury with the authority to continue borrowing so long as the limit was not surpassed, thereby incurring an unsustainable debt of Ksh. 9,145.9 billion.
- 2.** The amount set aside for repayment of the public debt for the financial years 2014/2015 to 2022/2023 aggregated to Ksh. 7,074,687,776,160.00, while the gross development estimates for which debt is incurred aggregated to Ksh, 6,785,177,878,480.00 for the same period yet, debt stock amounted to Ksh. 9,145,900,000,000.00 as of December 2022. This would mean Kenyans incurred debts of approximately Ksh. 16,220,587,776,160.00. This appears Kenyans incurred Ksh. 9,435,409,897,680.00 more debts than the approved development expenditure.
- 3.** The approval of the Ksh. 10 trillion debt ceiling enabled the Cabinet Secretary/National Treasury to unlawfully borrow domestic debts of Ksh. 5,388,600,491,756.00.

Recommendations

- 1.** Public borrowing should only be within the budget as approved by Parliament.
- 2.** Public debt should be limited to the allocation of loans as approved by Parliament.
- 3.** Forensic auditing should be undertaken to establish the authenticity of the domestic debt of Ksh. Ksh. 5,388,600,491,756.00.
- 4.** Regulation 26(c) of the PFM (National Government) Regulations, 2015 should be repudiated.

Flow Chart 1

Constitution 2010 Provisions on borrowings (Public Debt)

1. **Article 214(2)** provides; “the public debt” means all financial obligations attendant to **loans** raised or guaranteed and securities issued or guaranteed by the national government.
2. **Article 220(1)** of the constitution provides that; Budgets of the national and county governments shall contain—
 - (a) estimates of revenue and expenditure, differentiating between recurrent and development expenditure.
 - (b) proposals for financing any anticipated deficit for the period to which they apply.
 - (c) proposals regarding borrowing and other forms of public liability that will increase public debt during the following year.

The PFM Act, 2012 provisions on borrowings (Public Debt)

3. **Section 15(2)(c)** of PFM Act 2012; “*over the medium term, the national government's borrowings shall be used only for **financing development expenditure** and **not for recurrent expenditure**”.*
4. **Section 15(2)(d)** of PFM Act 2012 public debt and obligations shall be maintained **at a sustainable level as approved by Parliament for the national government** and the county assembly for county government.
5. **Section 15(3)** of PFM Act 2012; for the purposes of subsection (2)(c); **short-term borrowing shall be restricted to the management of cash flows** and in case of a bank overdraft facility it shall not exceed five percent of the most recent audited national government revenue.
6. **Section 50(2)** of PFM Act 2012 The national government may borrow money in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament
7. **Section 50(3)** of PFM Act 2012; “*the national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament*”.

The PFM Regulations, 2015 provisions on borrowings (Public Debt)

8. Regulation 26(c) of PFM Regulations 2015, the national public debt **shall not exceed 50 percent of Gross Domestic Product (GDP)** in net present value terms;

Appropriation Acts – Development Expenditure Estimates containing Borrowings for the budget and allocation of loans as approved by Parliament.

Table 1

Financial Year	Gross Estimates	Amount financed by taxes	Amount financed by Debt
2014/2015	494,892,120,733.00	358,507,118,798.00	136,385,001,935.00
2015/2016	721,288,541,960.00	440,418,948,724.00	280,869,593,236.00
2016/2017	820,161,449,551.00	471,905,309,201.00	348,256,140,350.00
2017/2018	642,897,327,706.00	438,630,011,332.00	204,267,316,374.00
2018/2019	677,225,634,213.00	430,408,353,462.00	246,817,280,751.00
2019/2020	704,213,809,308.00	443,517,981,026.00	260,695,828,282.00
2020/2021	633,308,563,243.00	382,969,235,979.00	250,339,327,264.00
2021/2022	668,378,861,891.00	394,847,691,251.00	273,531,170,640.00
2022/2023	711,405,784,936.00	418,648,442,772.00	292,757,342,164.00
Total	6,073,772,093,541.00	3,779,853,092,545.00	2,293,919,000,996.00

Source of data, the Approved Development expenditure estimates

Unauthorized Domestic debts captured in the Gazetted Statement of Actual Revenue and Net exchequer Issues.

Table 2

Financial Year	Domestic Debts Actual Receipts as per the Statement of Actual Revenue and Net Exchequer Issues	Repayment of domestic debts from tax Revenue as per the Recurrent Appropriation Act
2014/2015	292,680,000,000.00	287,636,169,242.00
2015/2016	506,244,742,690.00	347,939,783,441.00
2016/2017	414,990,100,000.00	369,371,045,801.00
2017/2018	420,973,660,000.00	409,295,214,260.00
2018/2019	486,767,000,000.00	505,959,022,324.00
2019/2020	558,870,163,000.00	515,502,865,930.00
2020/2021	790,577,923,686.10	701,947,216,314.00
2021/2022	877,038,741,180.00	823,167,036,533.00
2022/2023	1,040,458,161,199.94	1,014,814,628,555.00
Total	5,388,600,491,756.04	4,975,632,982,400.00

Data source: Gazetted Statement of Actual Revenue and Net Exchequer Issues – Gazette Notice Nos. 1118 of 16/09/2022, 8735 of 22/07/2022, 7385 of 19/07/2022, 4939 of 17/07/2020, 6890 of 26/07/2019, 7464 of 20/07/2018, 7357 of 28/07/2017, 5681 of 22/07/2016 and 5385 of 24/07/2015

Repayment of principal domestic debt and Interest as captured under the recurrent expenditure estimates – Public Debt Account

Table 3

Financial Year	Appropriation Redemption Domestic Debt	Act	Appropriation Redemption Principal	Act	Appropriation Redemption Interest
2014/2015		287,636,169,242.09		150,000,900,000.00	137,635,269,242.09
2015/2016		347,939,783,441.00		187,263,324,920.00	160,676,458,521.00
2016/2017		369,371,045,801.00		172,104,225,000.00	197,266,820,801.00
2017/2018		409,295,214,260.00		194,052,522,032.00	215,242,692,228.00
2018/2019		505,959,022,324.00		220,352,450,865.00	285,606,571,459.00
2019/2020		515,502,865,930.00		213,690,535,723.00	301,812,330,207.00
2020/2021		701,947,216,314.00		361,955,031,754.00	339,992,184,560.00
2021/2022		823,167,036,533.00		343,944,241,474.00	479,222,795,059.00
2022/2023		1,014,814,628,555.00		461,407,900,681.00	553,406,727,874.00
Total		4,975,632,982,400.09		2,304,771,132,449.00	2,670,861,849,951.09

Sampled State Departments to Demonstrate Section 50(3) of the PFM Act 2012

Section 50(3) of the PFM Act 2012 provides that **"the national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament"**.

To demonstrate the above-quoted provision of the PFM Act, 2012, I sampled 2022/2023 Appropriation Acts for the National Treasury, The Ministry of Energy, and the State Department of Infrastructure and extract the lender, loan borrowed, and the project financed as shown below:

1) The National treasury

The approved development budget (Appropriation Act) for the 2022/2023 financial year was Ksh. 84,372,275,490.00 whereby tax revenue to finance the budget was estimated at Ksh. 48,141,644,165.00 and the deficit were to be financed by loans allocated by Parliament for Ksh. 36,230,631,325.00 to be borrowed from various approved lenders as shown by the table below:

Table 4

LENDER	PROJECT	LOAN ALLOCATION Ksh.	TAX REVENUE Ksh.
Government of Japan	Dongo Kundu Special Economic Zone	2,000,000,000.00	584,638,636.00
International Development Association (WORLD BANK/IMF) – Total amount Ksh. 18,808,410,000,00	PPP Project	2,372,070,000.00	
	KAH Project	7,730,000,000.00	
	FLLCoA	6,000,000,000.00	
	SAFER	3,000,000,000.00	
ADF (ADB/ADF)	KRMC	4,600,000,000.00	

2) The Ministry of Energy

The approved development budget (Appropriation Act) for the 2022/2023 financial year was Ksh. 81,171,855,000.00 whereby tax revenue to finance the budget was estimated at Ksh. 19,522,855,000.00 and the deficit is to be financed by loans allocated by Parliament for Ksh. 61,649,000,000.00 borrowed from various approved lenders as shown by the table below:

Table 5

LENDER	PROJECT	LOAN ALLOCATION Ksh.	TAX REVENUE Ksh.
Government of Japan Ksh. 9,168,000,000.00	Dongo Kundu	2,009,000,000	289,000,000
IDA (World Bank/IMF) Ksh. 15,238,000,000.00	Exploration &Drilling Menengai	1,500,000,000	0.00
European Investment Bank (EIB) Ksh. 3,100,000,000.00	E.A. Skills	400,000,000	0.00
Government of France Ksh. 6,293,000,000.00	Gilgil-Thika-Konza Transmission line	2,266,000,000	126,000,000
Government of Germany Ksh. 3,840,000,000.00	Eastern (Ethiopian-Kenya Interconnection)	5,751,000,000	0.00
Government of China Ksh. 15,616,000,000.00	Supplementary Ethiopia- Kenya	2,251,000,000	
Government of India Ksh. 440,000,000.00	Public facilities	658,000,000	3,869,000,000
OPEC Ksh. 301,000,000.00	Kamburu-Embu- Thika	4,508,000,000	119,000,000
Saudi Arabia Ksh. 123,000,000.00	Electricity Modernization	894,000,000	0.00
Abu Dhabi Fund Ksh. 129,000,000.00	K-OSAP KPLC	2,000,000,000	0.00
European Investment Bank (EIB) Ksh. 3,100,000,000.00	K-OSAP REA	1,950,000,000	0.00
Government of Spain Ksh. 933,000,000.00	KOSAP	1,800,000,000	0.00
African Union Ksh. 431,000,000.00	KP Transmission	2,220,000,000	1,200,000,000
ADB Ksh. 6,363,000,000.00	KP system Modernisation	3,874,000,000	0.00
BADEA Ksh, 105,000,000.00	REA Civil Works	343,000,000	0.00
	Loyaingalani-Marsabit	1,922,000,000	512,000,000
	OLKaria units 1,2,3	5,559,000,000	0.00
	Last Mile Connectivity	4,012,000,000	800,000,000
	Multi-National Kenya-TZ Power	1,100,000,000	166,000,000
	National system Control - Makindu	3,500,000,000	25,000,000
	Olkaria I and IV	1,600,000,000	0.00
	Olkaria Lesso Kisumu	1,600,000,000	100,000,000
	Rabai-Kilifi Transmission line	933,000,000	130,000,000
	Retrofitting of Mini-Grids	1,1193,000,000	0.00
	Bogoria Silali Geothermal Project	4,231,000,000	500,000,000

3) The Department of Infrastructure

The approved development budget (Appropriation Act) for the 2022/2023 financial year was Ksh. 149,655,567,854.00 whereby tax revenue to finance the budget was estimated at Ksh. 77,163,000,000.00 and the deficit is to be financed by loans allocated by Parliament for Ksh. 69,482,567,854.00 (excluding Ksh. 3,010,000,000.00 grants) borrowed from various approved lenders as shown by the table below:

Table 6

LENDER	PROJECT	LOAN ALLOCATION Ksh.	TAX REVENUE Ksh.
Government of Spain Ksh. 1,200,000,000.00	EA South Sudan Transport, Trade & Development	1,000,000,000.00	30,000,000.00
IDA (World Bank/IMF) Ksh. 17,242,000,000.00	EARTTDFP Kalobeiyei - Nadapal	1,350,000,000.00	120,000,000.00
European Investment Bank (EIB) Ksh. 1,500,000,000.00	EARTTDFP Lokitaung - Kalobeyei	450,000,000.00	210,000,000.00
Government of France Ksh. 426,000,000.00	SS-EARTTDFP Lokitaung - Lodwar	780,000,000.00	100,000,000.00
Government of Germany Ksh. 4,635,000,000.00	SS-EARTTDFP Kainuk Bridge	652,000,000.00	50,000,000.00
Government of China Ksh. 5,730,000,000.00	SS-EARTTDFP Lodwar - Loichangamatak	400,000,000.00	100,000,000.00
Government of Japan Ksh. 17,658,567,854.00	SS-EARTTDFP Loichangamatak - Lokichar	1,250,000,000.00	200,000,000.00
Government of South Korea Ksh. 1,986,000,000.00	SS-EARTTDFP - capacity building	1,150,000,000.00	710,000,000.00
African Development Bank (ADF) Ksh. 18,500,000,000.00	Dualling Msa – Mariakani Lot 1	500,000,000.00	150,000,000.00
BADEA Ksh. 605,000,000.00	Dualling Msa – Mariakani Lot 2	3,650,000,000.00	30,000,000.00
	Isabia – Makuyu - Kisii	2,000,000,000.00	50,000,000.00
	Kitale – Endebes - Suam	1,200,000,000.00	100,000,000.00
	Eldoret Town bypass	1,300,000,000.00	100,000,000.00
	Gilgil - Machinery	605,000,000.00	200,000,000.00
	Rd 2000 Western	485,000,000.00	150,000,000.00
	Rd 2000	250,000,000.00	450,000,000.00
	Mteza - Kabundani	500,000,000.00	60,000,000.00
	Kitele - Mopas	2,000,000,000.00	10,000,000.00
	Nairobi Western Bypass	5,230,000,000.00	90,000,000.00
	Mombasa Gate Bridge	9,658,567,854.00	40,000,000.00

Rural Roads Arid and Arid Lands	426,000,000.00	149,829,425.00
KIHBT – Centre of Excellence	420,000,000.00	20,000,000.00
Msa – Mtwapa Lot 1	2,000,000,000.00	50,000,000.00
Steel Bridge – Tmall & Msa-Langat	1,200,000,000.00	10,000,000.00
Dualling Kenol – Sagana Lot 1	5,650,000,000.00	150,000,000.00
Dualling Sagana- Marua Lot 2	5,850,000,000.00	150,000,000.00
Horn of Africa gateway	1,200,000,000.00	30,000,000.00
HOAGDP Isiolo - Kula Mawe	2,000,000,000.00	25,000,000.00
HOAGDP Kula Mawe - Modagashe	2,350,000,000.00	25,000,000.00
HOAGDP Wajir - Tarbaj	980,000,000.00	25,000,000.00
HOAGDP Tarbaj - Katulo	1,080,000,000.00	25,000,000.00
HOAGDP Katulo - Kobo	850,000,000.00	25,000,000.00
HOAGDP Kobo - Elwak	630,000,000.00	25,000,000.00
KeNHA – Technical Capacity	700,000,000.00	0,00
KURA – Technical Capacity	2,470,000,000.00	180,000,000.00
Bus Rapid Transit Line 5 - Nairobi	620,000,000.00	20,000,000.00
Nairobi ITS & Junction	1,366,000,000.00	15,000,000.00
Msa Special Economic Zone	2,500,000,000.00	10,000,000.00

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