

REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THIRTEENTH PARLIAMENT – SECOND SESSION

THE REPORT OF THE MEDIATION COMMITTEE ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 16 OF 2023)

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1.0 INTRODUCTION

1.1 Establishment of the Committee

1.1. The Mediation Committee on the Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2023) was constituted by Speaker of the National Assembly and Speaker of the Senate on 14th September, 2023 and 2nd October, 2023, respectively, pursuant to standing order 149 of the National Assembly Standing Orders and standing order 164 of the Senate Standing Orders.

The Committee membership was constituted as follows-

NO.	NAME	DESIGNATION
1)	Hon. Owen Baya, CBS, MP	Co-Chairperson
2)	Sen. Maureen Tabitha Mutinda, MP	Co-Chair person
3)	Hon. Omboko Milemba, MP	Member
4)	Hon. Millie Odhiambo Mabona, MP	Member
5)	Hon. Abdi Shurie, MP	Member
6)	Hon. Kwenya Thuku Zachary, MP	Member
7)	Hon. Joseph Makilap, MP	Member
8)	Hon. Kirwa Abraham Kipsang, MP	Member
9)	Sen. (Dr.) Ltumbesi Lelegwe, MP	Member
10)	Sen. (Dr.) Oburu Oginga, MP	Member
11)	Sen. Peris Pesi Tobiko, MP	Member
12)	Sen. Beth Kalunda Syengo, MP	Member
13)	Sen. Wahome Wamatinga, MP	Member
14)	Sen. Johnes Mwashushe Mwaruma	Member

1.2 Mandate of the Mediation Committee

The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, standing order 149 of Standing Orders of the National Assembly and standing order 164 of Standing Orders of the Senate which outlines the functions of the Committee as follows-

- i. To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;*
- ii. To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and,*
- iii. To attempt to develop a version of the Bill that both Houses will pass.*

The Committee was established to develop an agreed version of the Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2023). The version would then be presented to both Houses for approval pursuant to standing order 149(6) of the Standing Orders of the National Assembly and standing order 161 (1) of the Standing Orders of the Senate.

1.3 Committee Meetings and Methodology

The Committee held a total of two (2) sittings to deliberate on the Bill in accordance with the Constitution and relevant provisions of the Standing Orders of the Senate and the National Assembly.

During the first sitting, the Committee appointed Hon. Owen Baya, CBS, MP and Sen. Maureen Tabitha Mutinda, MP, as the co-chairs of the Committee pursuant to standing order 166 (4) of Standing Orders of the Senate and Standing Order 149(4) of Standing Orders of the National Assembly.

Appended to this report is a version of the Bill developed by the Committee for consideration by both Houses.

1.4 Acknowledgements

The Mediation Committee appreciates the offices of the Speakers and the Clerks of both Houses of Parliament for the support extended in the execution of its mandate.

The co-Chairpersons in particular, extend their appreciation to all the Members of the Committee for their patience, sacrifice, endurance and commitment to completing the assignment under tight schedule.

Finally, it is now my pleasant duty and privilege, on behalf of the Mediation Committee to table the report on the Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2023) and to recommend the adoption of the agreed version of the Bill to the Houses, pursuant to Article 113(2) of the Constitution and standing order 167(3) of the Standing Orders of the Senate, and standing order 150(3) of standing order of the National Assembly.

Hon. Owen Baya, CBS, MP., Committee Co-Chairperson

SIGNED

DATE:

Sen. Maureen Tabitha Mutinda, MP., Committee Co-Chairperson

SIGNED

DATE:

Pursuant to standing order 2323 (2) of the Senate Standing Orders, and standing order 199(4) of the National Assembly Standing Orders, the Mediation Committee adopted the report on the Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2023). The Members of the Committee hereby affix their signatures to this Report to affirm adoption the Report –

NO.	NAME	DESIGNATION	SIGNATURE
1)	Hon. Owen Baya, CBS, MP	Co-Chairperson	.....
2)	Sen. Maureen Tabitha Mutinda, MP	Co-Chair person	.....
3)	Hon. Omboko Milemba, MP	Member	.....
4)	Hon. Millie Odhiambo Mabona, MP	Member	.....
5)	Hon. Abdi Shurie, MP	Member	.....
6)	Hon. Kwenya Thuku Zachary, MP	Member	.....
7)	Hon. Joseph Makilap, MP	Member	.....
8)	Hon. Kirwa Abraham Kipsang, MP	Member	.....
9)	Sen. (Dr.) Ltumbesi Lelegwe, MP	Member	.....
10)	Sen. (Dr.) Oburu Oginga, MP	Member	.....
11)	Sen. Peris Pesi Tobiko, MP	Member	.....
12)	Sen. Beth Kalunda Syengo, MP	Member	.....
13)	Sen. Wahome Wamatinga, MP	Member	.....
14)	Sen. Johnes Mwashushe Mwaruma	Member	.....

2.0 Background

- 2.1. The Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2023) was published on 4th May, 2023. The overall objective of the PFM Amendment Bill was to amend the PFM Act No. 18 of 2012, in order to adjust the framework for monitoring public debt and borrowing, and to align the Act with the provisions of the Constitution relating to definition of public debt and financial obligations, amend the debt limit, provide for the Cabinet Secretary in charge of the National Treasury to submit an explanation to Parliament in case the public debt exceeds the debt threshold.
- 2.2. The Bill was read a First Time in the National Assembly on 6th June, 2023, and was considered and approved with amendments on 27th June, 2023. The National Assembly amendments were intended to ensure the debt limit addresses the changing macroeconomic conditions, promote transparency and accountability.
- 2.3. Pursuant to the standing order 142 of the National Assembly Standing Orders, the Bill was forwarded to the Senate for concurrence.
- 2.4. The Senate considered and passed the Bill with amendments on 29th August, 2023, and proposed further amendments to Clause six (6) of the Bill. The amendments by the Senate sought to-
 - a) Include the Senate in the oversight process of the implementation of the debt threshold;
 - b) Correct for cross referencing errors;
 - c) To ensure that any circumstances that may cause a breach of the debt limit will require the approval of Parliament; and,
 - d) That incase the debt threshold is exceeded, that a report on public debt status and borrowing is submitted by the National Government to both National Assembly and the Senate. This report would form the basis for the resolution by either the National Assembly or Senate when the debt threshold is exceeded.

- 2.5. Pursuant to standing order 46(1) and 164(c) of the Senate Standing Orders, the Speaker of the Senate conveyed a message to the Speaker of the National Assembly on the Senate consideration on the Bill, and the amendments approved by the Senate.

3.0 Consideration of Senate Amendments by the National Assembly and formation of the Mediation Committee

- 3.1. At the special sitting of the National Assembly held on 14th September, 2023, the National Assembly considered and rejected the amendments by the Senate to the Bill.
- 3.2. Pursuant to standing order 149 of the National Assembly Standing Orders, the Speaker of the National Assembly conveyed a message to the Speaker of the Senate on the resolutions by the National Assembly on the Bill. The Speaker, further, appointed seven Members of Parliament from the National Assembly to the Mediation Committee to consider the Bill.
- 3.3. On 2nd October, 2023, pursuant to standing order 166 of the Senate Standing Orders, the Speaker of the Senate conveyed a message to the National Assembly on the appointment of seven Senators to sit in the Mediation Committee.
- 3.4. Pursuant to Article 113 of the Constitution, the Mediation Committee was required to attempt to develop an amended version of the Bill that is agreeable to both Houses, within 30 days.

4.0 Consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No. 16) by the Mediation Committee

4.1. In its sitting held on 11th October, 2023, the Committee considered the contentious issues under Clause 6 as follows-

a) Amendment of paragraph 2B

The amendment by the Senate to provide that a parliamentary approval should be sought, before the debt threshold is exceeded in the case of exceptional circumstances.

Committee Observation

The Committee observed that it may be difficult for the National Treasury to foresee the exceptional circumstances under which the debt threshold may be exceeded for instance the depreciation of the exchange rate and national disasters all of which may be out of control of the National Treasury.

Committee resolution:

The Committee resolved to reject the amendment by the Senate.

b) Amendment of paragraph 2C

This was amendment by the Senate was a correction of cross-referencing errors.

Committee Observation

The Committee noted that the proposed amendment is a cleaning-up amendment correcting cross referencing.

Committee resolution

The Committee resolved to accept the amendments by the Senate.

c) Amendment to paragraph 2D

Whereas the National Assembly had proposed the report on the debt status and the borrowing undertaken by the national government, indicating the exceptional circumstances, shall be submitted to the National Assembly, the Senate had proposed that the report should be submitted to both Houses of Parliament.

Committee Observation

The Committee observed that already there are Constitutional and Public Finance Management Act, 2012 provisions, that required the submission of reports related to public debt to both Houses of Parliament as such the report referred to under paragraph 2D of the Bill should be in relation to the exceeding of the debt threshold under exceptional circumstance.

In addition, it was noted that the debt limit may be exceeded at any time within the financial year, thus, limiting the submission of the related report to 30th April, a deadline linked to budget making process, may cause a limitation to the timely submission of reports and inflexibility to oversight the public debt threshold.

Committee resolution

The Committee resolved that the paragraph be deleted and replaced with the following paragraph

That the Cabinet Secretary shall submit to Parliament a report on the breach of the debt threshold, indicating the exceptional circumstances, if any, provided for in subsection (2B).

d) Amendments to Paragraph 2E and 2F

Paragraphs 2E and 2F related to the process of consideration of the report submitted to Parliament whenever the debt limit has been exceeded.

Committee observation

The Committee observed that the amendments under paragraph 2E and 2F were tied to the nature of paragraph 2D of the Clause 6 of the Bill which, as revised, provided for either House of Parliament to receive and consider the report on the exceeding of the debt threshold.

Committee resolution

The Committee resolved that paragraph 2E and 2F be deleted.

5.0 Committee Recommendation

The Committee resolved to recommend that both Houses to approve the appended version of the Public Finance Management (Amendment) Bill (National Assembly Bills No. 16 of 2023).