MEMORANDUM ON THE 2022 BUDGET POLICY STATEMENT AND MEDIUM DEBT STRATEGY PAPER

15th December 2021

To: **Mr. Michael Sialai,**
Clerk of the National Assembly,
Main Parliament Building,
P.O. Box 41842-00100, Nairobi.

Hon. Kega Mathenge James Kanini,
Chairperson, Budget and Appropriations Committee, National Assembly.

This memorandum is prepared by ***The Institute for Social Accountability (TISA)***[1] *under the* ***Okoa Uchumi Campaign****. The Okoa Uchumi Campaign seeks to build citizen voice and demand into critical national monetary and fiscal prioritization areas where citizen voice is presently missing. The campaign target is women, youth and other vulnerable groups that bear the brunt of poor public debt governance through the deprivation of basic services and punitive taxation measures which reinforce the cycle of poverty. The campaign aims to link public debt/ national revenue decisions to every-day lives of citizens as a basis for building citizen demand. The campaign aims to bolster civil society campaigns for political accountability in public debt management, towards the sustainable resolution of Kenya's debt crisis, and the attainment of balanced budgets which support socio economic inclusion.*

1.0 Introduction

The Budget Policy Statement (BPS) is a government policy document that sets out the broad strategic priorities and policy goals to guide the National Government and the County Governments in preparing their budgets for the subsequent financial year and over the medium term. Additionally, the BPS is an important document in public debt management, and the Cabinet Secretary must ensure that the medium-term debt management strategy (MTDS) is aligned to the broad strategic priorities and policy goals set out in the BPS. The 2022 BPS together with the MTDS is being prepared when the Kenyan government is in the throes of the International Monetary Fund (IMF) supported fiscal consolidation program that the country was forced into following the rapid accumulation of expensive commercial and bilateral debt that has resulted in high public debt repayments. It is noteworthy, that the MTDS has not been published alongside the BPS. In past years the MTDS has not been subjected to public participation, contrary to Article 10 and 201 of the Constitution of Kenya.

This memorandum assesses the extent to which the BPS 2022 provides a sound basis for economic recovery specifically the extent to which;

i. The BPS provides sustainable debt recovery policies
ii. Complies with public finance management legal requirements
iii. The cabinet secretary national treasury has responded to transparency directives issues by Parliament in the 2021 budget making process.
iv. In response to questions raised by the Senate Committee of Finance, the memorandum makes additional recommendations to address accountability gaps in the management of public debt financed projects.

Overview of Compliance of BPS 2022

[1] **The Institute for Social Accountability (TISA)** was launched in Nairobi in 2008 to promote citizen empowerment and government accountability, at a moment of promise, when Kenya was charting a path to constitutional reform. Since the adoption of Kenya's 2010 Constitution, TISA has sought to advance the Constitution's central tenet: transforming the way power in Kenya is distributed and managed, chiefly through the devolution of government power from the national to the county (sub- national) level. The goal of social accountability is to empower citizens to demand sound delivery of services by holding their leaders to account through direct engagement. Thus, TISA's mission is to help Kenyans find their voice and agency to claim their rights to services; make the Kenyan government accountable for its duties and promises; and ultimately, make the constitution a lived experience.

We note that whereas the Constitution, the Public Finance Management (PFM) Act, 2012, the PFM National Government Regulations 2015 provide a clear framework for the prudent and transparent management of public resources, the National Treasury has not adhered to the fiscal responsibility principles set out in law as detailed below:

a) As in the past years the MTDS has not been published alongside the BPS and will therefore not be subjected to public participation in violation of the law.
b) Whereas a minimum of 30 percent of the national government's budget should be allocated to the development expenditure over the medium term, the BPS uses ministerial budget allocation to give an appearance of compliance, while not actually meeting this requirement.
c) Over the medium term, the National Government's borrowings are to be used only for the purpose of financing development expenditure and not for recurrent expenditure. Out of Ksh 846.1 billion projected borrowing, Ksh 667.7 billion will be allocated to development implying that Kshs. 178.4 will be used for recurrent purposes, which is against the law.
d) Public debt and obligations are to be maintained at a sustainable level as approved by Parliament for National Government. The PFM Act also requires that public debt and obligations remain at sustainable levels. The debt growth rate continues to be above the GDP growth rate as estimated by 2022 BPS and the commercial borrowing of Ksh.105.6 billion for the FY2022/23 add to debt unsustainability. This is also against the principle of prudent fiscal risks management.
e) On external financing, the Government proposes to continue to make use of non-concessional and commercial external borrowing arguably to finance development projects with high financial and economic returns. The Kenyan path is riskier as the current government has demonstrated preference for more expensive commercial loans.
f) Tax expenditures continue to be high, at an average of 500 billion annually. The National Treasury is required to maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 82 of the Act. Such waivers or variation must be authorized by an Act of Parliament. This data is not readily available even in parliament especially public debt financed public projects
g) There is need to have one harmonised cash transfer program to avoid duplication and double benefit for same households from different social programs.
h) The County Governments' Compliance with Fiscal Responsibility is very low and there is need for National Treasury to come up with measures to ensure compliance and come up with technical support programs to support counties whose capacity is low and sanction those that violate the law willingly.
i) The BPS has also not stated how it will address the pressures likely to come up due to double intake which will be occasioned by the CBC. Further, the BPS fails to respond to human resource needs in the education sector such as the high unemployment amongst teachers, the shortage of university lecturers, ongoing remuneration disputes in the sector and pending bills amounting over Ksh. 40 billion in the sector. The BPS needs to come out clearly to outline policies to resolve challenges in the sector. There is need to strengthen the Ministry of education and provide enough time and requisite resources to implement the CBC fully.

2.0 A review of BPS Policies for Debt Sustainability

The Okoa Uchumi Campaign report entitled, ***Kenya Debt Crisis: Unpacking Fiscal Consolidation 2021***[2] identifies significant asymmetries in the IMF supported fiscal consolidation and structural adjustment program that are already having dire consequences on the economy. These include the following: The rebasing of the economy that was not informed by the real economy; Kenyans being overtaxed; Monetary policy effectively subsidizing imports; The rapid build-up of public debt; and the fiscal consolidation policies and structural adjustment programs. The report makes recommendations to redress these asymmetries: Kenya needs to adopt increased domestic borrowing in its debt mix ratio away from commercial debt; There is a need to hold public officers who have mishandled public debt proceeds to account.

[2] https://resources.tisa.co.ke/2021/10/12/kenya-debt-crisis-unpacking-fiscal-consolidation/

This section reviews the extent to which the 2022 BPS responds to the above concerns. Table 2.1 gives a summary of the issues raised by Kenya Debt Crisis: Unpacking Fiscal Consolidation 2021 Report, related issues, the proposals in the 2022 BPS and makes observations on the same.

Table 2.1: 2021 Report Findings, Issues on the Findings and 2022 BPS Proposal

Okoa Uchumi Report Findings	Issues	BPS Proposal	Comments and Recommendations
The rebasing of the economy was not informed by the real economy, which is far less than the nominal GDP.	The National Treasury is using overstated data to inform its macroeconomic and public debt policy	In 2022 BPS, Nominal GDP is 13759.9 which will give 11.2 percent growth while that of real GDP is 6 percent growth	The real GDP and Nominal GDP seems not to be consistent. This is because real GDP should be equal Nominal GDP deflated with a GDP Deflator. Their growth rates therefore should be equal. This problem, therefore, persists in the 2022 BPS
Kenyans are overtaxed and any fiscal measure leading to the increase of taxes/tax rate will have no effect on tax revenue.	There is need to focus on ensuring tax compliance and collection, tax evasion, tax expenditures and corruption	The Government is in the process of developing National Tax Policy. Some of the tax reforms in the policy and 2022 BPS are: modernizing and simplifying tax laws.	Revenue performance will be underpinned by the on-going reforms in tax policy and revenue administration. Expected economic growth is to boost revenue. However, there is no attempt to address tax expenditures and the powers by Cabinet Secretary National Treasury in giving tax exemptions. KRA has cited tax expenditures as a major impediment to its ability to meet revenue targets. Tax expenditures are estimated at over Ksh 500 billion annually.
Monetary policy is effectively subsidizing imports.	Money supply increases in Kenya have been used to support the exchange rate leading to an overvaluation of the Kenyan currency. As a result, exports are not stimulated, and imports keep on rising resulting in a sustained and growing trade deficit. This deficit is in turn being financed through borrowing.	The official reserves requirement will continue to maintain reserves at minimum of 4.0 months of import cover. This is supported and expected to increase 4.8 as per the BPS. There is no attempt in the current BPS to attain equilibrium REER.	The overall balance of payment position will be expected to decline to a further deficit. The capital account balance will continue to be supported by external debt. Direct investment continues to record a net financial outflow.
Rapid build-up of public debt	There has been rapid build-up of public debt that threatens the country into a full-blown economic crisis.	BPS projects the fiscal deficit (including grants), to be at Ksh 846.1 billion (6.0 percent of GDP) in FY 2022/23, against 930 billion in the BPS 2021/22	This is conforming to the requirement of fiscal consolidation program that the stock of debt is reduced to reduce the risk of public debt exposure. However, from the past experience the target has never been met and therefore National Treasury needs to demonstrate the

Okoa Uchumi Report Findings	Issues	BPS Proposal	Comments and Recommendations
			mechanisms under which the consolidation objective will be achieved.
30:70 Development recurrent Expenditure requirement	Kenya's debt crisis has been precipitated by non-compliance and outright violation of public finance management requirements.	Overall nominal expenditure and net lending is projected at Ksh 3,324.4 billion. The expenditures comprise of recurrent of Ksh 2,201.0 billion (15.7 percent of GDP) and development of Ksh 711.8 billion (5.1 percent of GDP).	In adherence to fiscal responsibility principles, the National Treasury has calculated ratio of recurrent to development expenditure using total ministerial expenditure in order to conform to the PFM Act. According to BPS 2022 the allocation to development expenditure as a percentage of Ministerial total expenditure is 34% however as a percentage of the total national expenditure it is 22% and therefore does not conform to the PFM Act.
Foreign vs Domestic Borrowing. Kenya needs to adopt increased domestic borrowing in its debt mix ratio and away from commercial debt.	The only time a country requires foreign currency is when it requires foreign goods and services. Over reliance on foreign goods, services and currency is very risky. Hence, Kenya's strategy of debt mixes of 60:40 (External to Domestic) is risky.	The fiscal deficit will be financed by net external borrowing of Ksh 275.9 billion and net domestic borrowing of Ksh 570.2 billion This ratio is 32:68	As per the recommendation of the report the BPS proposes 32 percent foreign borrowing against 68 percent domestic borrowing. This is an attempt of the National Treasury to comply with the recommendation of borrowing internally than external.
Recurrent expenditure and entire of development expenditure is being financed from debt.	Borrowing should be used only for the purpose of financing development expenditure and not for recurrent expenditure	According to 2022 BPS recurrent expenditure is 2.2 trillion and development expenditure is 0.7 trillion for the National Government. Out of this 2.1trillion is ordinary revenue	Accordingly, 2022 BPS indicates that part of the recurrent expenditure and the entire development expenditure for the FY2022/23 will be financed through borrowing.
Kenya is going for Expensive Debt	This expensive debt does not only raise cost of debt but snowballs a debt crisis.	The 2022 BPS proposes a commercial borrowing of Ksh.105.6 billion commercial borrowing	The commercial borrowing of Ksh.105.6 billion for the FY2022/23 is less than Ksh. 475.3 billion commercial borrowing in 2021 BPS.
Public debt growth rate to be below the GDP growth rate	Persistent increase in budget deficit has made the debt to rise more rapidly than the GDP growth rate.	The real GDP growth rate projected at 5.7 percent while Fiscal Balance is estimated at 6 percent.	The debt growth rate continues to be above the GDP growth rate as estimated by 2022 BPS

The FY2022/23 budget is said to build on the Kenyan governments effort to support economic recovery and mitigate against the adverse effects of the COVID-19 pandemic. According to 2022 BPS, this will be done by prioritizing implementation of programs outlined in the Third Medium Term Plan (MTP III) of the Vision 2030, Economic Recovery Strategy and the "Big Four" Agenda. The Government will also continue with the fiscal consolidation plan by rationalizing expenditures and enhancing revenue mobilization. In this regard, MDAs will be encouraged to adopt efficiency in allocation of resources to reduce non-priority spending. This will be achieved through budget costing and reviewing the portfolio of externally funded projects to re-align with the Government policy priorities and macroeconomic policy framework.

From the Table 2.1, the economic decisions in Kenya are observed to be based on nominal GDP. These figures were rebased to 2016 prices which ought to have reduced the figures on nominal GDP. However, due to broadening of the database to bring some sectors initially not in the focus, like informal sectors, the figure increased taking the country into middle income level.

According to Section 77 of the Public Finance Management Act, 2012, powers to waive or vary tax, fees or charges is given to the Cabinet Secretary in charge of finance. The Cabinet Secretary may waive a national tax, a fee or charge imposed by the National Government and its entities in accordance with criteria prescribed in regulations. The National Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 82 of the Act. Such waivers or variation have to be authorized by an Act of Parliament. This data is not readily available even in parliament especially debt financed public projects

Kenya's real effective exchange rate (REER) continues to be on an appreciating trend and Kenya expected to continue with weak export performance. This is as the country uses its monetary policy to manage its exchange rate, arguably to safeguard against the risk of the exchange volatility. This will continue putting the country in a constant borrowing in order to pay for its import of goods and services and maintain the foreign reserves to the level as dictated by the fiscal consolidation program. With no attempt in the current BPS to attain equilibrium REER, exports are expected to decrease and imports to increase and current account deficit estimated by 2022 BPS to worsen to -6.1% of GDP.

In order to adhere to fiscal responsibility principles under the PFM Act, the National Treasury has been calculating the ratio of recurrent to development expenditures using total ministerial expenditure in order to conform to the PFM Act. This is wrong, the National Treasury ought to use the total National government budget which includes net lending. According to BPS 2022 the allocation to development expenditure as a percentage of Ministerial total expenditure is 34 percent however as a percentage of the total national expenditure it is 22 percent and therefore does not conform to the PFM Act.

For 40:60 ratio in reference to domestic vs foreign borrowing, the fiscal deficit (including grants), is projected at Ksh 846.1 billion (6.0 percent of GDP) in FY 2022/23. This fiscal deficit will be financed by net external borrowing of Ksh 275.9 billion (2.0 percent of GDP) and net domestic borrowing of Ksh 570.2 billion (4.0 percent of GDP). Government borrowing needs will be met through external and domestic funding sources. On external financing, the Government will continue to make access on non-concessional and commercial external borrowing arguably to finance development projects with high financial and economic returns. The Kenyan path is riskier as the current government has demonstrated preference for more expensive commercial loans.

Kenya's debt crisis has been precipitated by non-compliance and outright violation of public finance management requirements. For the 2022 BPS, recurrent expenditure is 2.2 trillion and development expenditure is 0.7 trillion for the National Government. Out of this 2.1Trillion is ordinary revenue implying that part of recurrent expenditure is yet again meant to be financed through borrowing.

Government arguably will continue to restrict growth in recurrent spending and double its effort in domestic resource mobilization. The Government is said also to cut down on non-priority expenditures such as hospitality, training, travel and freezing of employment in non-priority sectors in order to manage the public wage bill. Expenditures as a share of GDP are projected to decline from 25.0 percent in the FY 2021/22 to 23.7 percent in the FY 2022/23 and further to 22.2 percent in the FY 2024/25. However, in absolute terms, expected total budget will increase from that of FY 2021/22 pushed by the recurrent expenditure.

Revenue performance will be underpinned by the on-going reforms in tax policy and revenue administration. In addition, the economic recovery occasioned by implementation of priority programmes under the Economic Recovery Strategy, the "Big Four" Agenda and other priority programmes outlined in MTP III are expected to boost revenue. The Government purports to minimize tax expenditures and increase predictability in the tax system that will boost revenue performance. However, despite government statements tax expenditures persist at around 500B annually. There is a need for transparent disclosures of tax expenditures, especially considering the underperformance of revenues in recent years and the growing pressures on controlling the budget deficit.

The Government is in the process of developing a National Tax Policy Framework that aims to enhance administrative efficiency of the tax system, provide consistency and certainty in tax legislation and management of tax expenditure. The administrative reforms will be geared towards tax base expansion, strengthening compliance and enforcement functions, smart intelligence and investigation, and integrated border management. The tax base expansion programmes will be implemented through enhancing compliance from the informal sector, simplifying tax processes, enhancing tax payer education, use of Geographic Information System (GIS) for Block Management System, increase compliance by High-Net-Worth Individuals (HNWI), taxation of the digital economy, and strategic collaboration and partnerships for revenue mobilization. The compliance and enforcement function aims to ensure a holistic approach through centralized command and timely utilization of smart intelligence, which will be paramount in enhancing tax compliance and curbing corruption, fraud and tax evasion. This gives no reference to tax expenditures that is costing the government a forgone revenue of over Ksh. 500 billion annually. There is also no mention of ensuring Tax equity and Tax Justice in the national policy framework.

3.0 Other non-compliance in 2022 BPS

Table 3.1 analyses the various policies the BPS intends to implement in the medium term and their practicability which touches on the credibility to the budget that will be derived from the proposed policies. The policies set an ambitious implementation path without requisite resources to implement in some cases.

Table 3.1: Policies the BPS Intends to Implement in the Medium Term and their Practicability

Paragraph	policy as per BPS	Issues	Suggestion/ Recommendation
98	Construction of 25,965 affordable housing units in Starehe (3,360), Shauri Moyo (4,470), Kibera Zone B (4,435) and Mukuru, Meteorological site (13,700) is set for commencement	There is no significant budget increase to support the construction of the proposed housing units	The BPS need to demonstrate how the policy will be implemented especially showing that the resources to achieve the policy is budgeted for.
112	The Government will fast-track completion of the Nairobi Expressway Project to decongest Nairobi city, reduce the cost of doing business and promote competitiveness	There is need to assess the cost benefit analysis for the expressway project to ascertain the expected benefits.	The expressway in itself will not decongest the city on its own. There need to be a deliberate effort to deal with the whole transport system and corridors serving the city for meaningful decongestion to take place.
118	Government has programmed to boost power generation from 3,024 MW to over 6,700 MW by end of FY 2024/25	Most projects to ensure this is achieved are mostly funded through PPP which makes them too expensive thus making the cost of power to remain high	The BPS needs to indicate measures the government is taking to ensure there is progressive reduction of cost power which in turn will ensure reduction in cost of production thus attracting the most needed foreign direct investments for employment creation
134 to 137	Quality and Relevant Education for all Kenyans The BPS has highlighted the measures to be taken to	The BPS has not given details on sensitization to the public for acceptability of the CBC in the spirit of	There is need to strengthen the Ministry of education and provide requisite resources to implement the CBC fully.

Paragraph	policy as per BPS	Issues	Suggestion/ Recommendation
	transit to competency based curriculum (CBC).	public participation. In addition the BPS has not stated how government will address the issue of double intake to secondary in FY2022/23	
138 & 139	In Strengthening the Social Safety Nets , the government implements several safety net programs through Social Safety Nets Programmes (Inua Jamii), the Hunger Safety Net Programme and the National Council for Persons Living with Disabilities Fund	Social safety net programs are important to caution the vulnerable communities in a country. However, there is likely to be duplication and inefficiencies if different programs are implemented for the same objective	Need to have one harmonised program to avoid duplication and double benefit for same households from different social programs.
222 to 229	County Governments' Compliance with Fiscal Responsibility Principles	Most counties are not adhering to the fiscal responsibility principles	National Treasury need to come up with measures to ensure compliance and come up with technical support programs to support counties whose capacity is low and sanction those that bridge the law willingly.

In analysing the allocation in the 2022 BPS, Table 3.2 gives the outstanding concerns on the basis of allocation.

Table 3.2 : Analysis of Proposed Sector Allocation Vs Current Allocation

SN	Sector	Allocation 2021/22	Proposed Allocation FY2022/23	% Growth	Remarks
1	National Security	162.2	203.1	25.22	The sector will receive the highest increment of funds of approximately 25%. The BPS has not provided sufficient information as to whether there is any expected aggression from outside since this sector has Defence and National Intelligence Service. One would expect an increased allocation to the internal security agents since they will be directly involved in the management of elections.
2	General Economic and Commercial Affairs	20.6	24.9	20.87	The sector's proposed budget is proposed to grow by 20.9 % however the BPS has not indicated which new policies are earmarked for implementation.

SN	Sector	Allocation 2021/22	Proposed Allocation FY2022/23	% Growth	Remarks
3	Environment Protection, Water and Natural Resources	100.6	110.7	10.04	
4	Energy, Infrastructure and ICT	335.8	368.3	9.68	This being one of the sectors that is financed through foreign financing including borrowing there is need to provide more information on quantum of resources that will be foreign financed and the cost benefit analysis. Further, massive projects have been proposed for example construction of 38,489 social and affordable houses, 1,550 police and prison houses and 3,150 Civil Servants housing units without demonstrating how they will be financed.
5	Governance, Justice, Law and Order	217.3	231.9	6.72	This sector is important in ensuring justice law and order in the country. Kenya is scheduled to hold national elections in 2022. However, the sector has not highlighted any policy or programs that will be put in place to ensure that all systems for a credible electoral process will be put in place.
6	Health	121.1	126.4	4.38	The current administration has put a lot of emphasis on development of health care systems in the country. Under the Big Four Agenda the government was expected to provide Universal Health coverage to the entire population but more so to the indigent households. Despite the efforts there is no efforts to harmonize even the various health insurance schemes to enhance efficiency and probably bring more households on board to avoid double benefit. For example, Linda Mama, Edu Afya under ministry of education, among other ongoing insurance schemes could be merged to gain from economies of scale. Ministry of Health additionally need to be restructured to align itself with the current constitution and empower the County Government to address the service delivery of health care services being a fully devolved function.
7	Public Administration and	332.5	347.0	4.36	

SN	Sector	Allocation 2021/22	Proposed Allocation FY2022/23	% Growth	Remarks
	International Relations				
8	Education	504.0	525.9	4.35	The sector is expected to receive a marginal increase of funds to continue implementing its programs including CBC. Despite huge funding that the sector enjoys, employment of teachers has not been well addressed since majority of teachers are jobless. Additionally, some Public Universities including Nairobi, Moi, JKUAT among others are struggling with huge debts. According to the Education sector report of education University pending bills amount over Ksh. 40 Billion. The ministry of Education needs to institute reforms that will enable the Universities remain afloat. Additionally the sector has not stated how it will address the pressures likely to come up due to double intake which will be occasioned by the CBC
9	Social Protection, culture and Recreation	72.2	72.9	0.97	This sector plays a key role in ensuring that the Orphans and Vulnerable Children, the Elderly and persons with severe disability are assisted with cash transfers to support their livelihoods. There is need however to harmonise the various cash transfer program to ensure that efficiencies in the sector are achieved.
10	Agriculture, Rural & Urban Development	75.7	63.9	- 15.59	The allocation to the sector has fallen by 15.6% despite the sector being the major in contributing to employment and economic growth. There is need to demonstrate why the shift of policy despite the criticality of the sector.
	Total	**1,942.0**	**2,075.0**		

The security sector continues to have increased allocation of the total budget. The sector will receive the highest increment of funds of approximately 25%. The BPS has not provided sufficient information as to the need of this continuous growth in allocation. This is the same case with General Economic and Commercial Affairs. Lack of project identification in the BPS and especially those to be financed through public borrowing. Equally, some of reduction, especially the economy main sector, Agriculture, Rural & Urban Development, needs justifications before adoption.

4.0 Responses to Senate Finance Committee Questions

During our submissions to the Senate Finance Committee on the BPS on 8th December 2021, they raised two concerns with respect to public debt accountability which we hereby offer some preliminary thoughts.

4.1 How to ensure projects evaluation, costing and accountability prior to inclusion in the Budget: Is there a case for an independent body?

The government implements various development projects through various ministries departments and agencies (MDAs). Each MDA develops concept notes that are guided by Project Implementation Management guidelines developed by the National Treasury. The concept note is required to detail all aspects of the projects including cost, duration, financing options, beneficiaries, viability among other aspects. Each MDA before starting of any new projects requires the approval of National Treasury in writing before it's included in the budget. This is provided for administratively through National Treasury Circulars and guidelines.

National Treasury has a full-fledged department that is involved in day-to-day assessment of new projects and processes in accordance with the PIM guidelines. MDAs are expected to carry feasibility studies which accompany requests to such projects as part of the requirement for their approval. One of the areas of concern is if the National Treasury has the staffing and technical capacity to analyse projects in all aspects. Another is how to achieve accountability in the project identification process.

Accountability in the process can be achieved by a segregation of duties and appointment of a substantive directorate or authority empowered report directly to oversight institutions as a means of guaranteeing their independence from the office of the CS. The project evaluation directorate needs to be lean but strategically staffed to support the evaluation of different types of projects. Effective partnerships would allow the team to address more specialist project evaluations. project evaluation team but on a project-by-project basis because different projects will require

The current trend of financing projects through PPP has also been highlighted in the BPS as a possible fiscal risk as the government is the ultimate guarantor if the investor is not able to raise the expected revenue from such projects. For example, such a team will have been very important under the current ongoing Express Way which is financed through PPP in ensuring that the public are well informed on the costs and benefits from the project.

To ensure its accountability the evaluation body should be underpinned by robust requirements for transparency, participation, and accountability. There is need to link up this process with the existing Citizen Audit Accountability Framework under the office of the Auditor General.

The choice between a fully fledged authority or directorate may be informed by cost and best practice, but the principles to bear in mind are the segregation of roles, independence and accountability.

4.2 Parliament and Public Debt Financed Projects

As one the resolutions that the National Assembly passed on the 2020 BPS was to detail all debt clearly indicating the amount of concessional, semi-concessional and commercial loans, as well as clearly outlining the country's borrowing strategy. This information was to be accompanied by a list of specific projects that will benefit from the debt funds. However, the National Treasury has not provided the details in contravention to section 38(1)(iii) of the PFM Act which requires that the Cabinet Secretary to prepare a memorandum explaining how the resolutions adopted on the BPS have been taken into account.

Our informal inquires on the matter indicate that information on debt financed projects exists in a standalone system which is plugged to IFMIS. What this means is that it is possible to mine the data for each project by donor and its implementation status. This information can also be found in the respective MDA budget books and in the respective sector reports has some aspects. The system data however is not publicly available. It is our intention to petition for this information through the National Assembly.

5.0 Conclusion and Recommendations

It emerges that the BPS fails to comply the Public Finance Management in several regards, and if adopted as is will undermine the prudent and transparent management of public resources. We also note that the Treasury the Government has not adhered to the fiscal responsibility principles as set out in the statute as follows: has outrightly violated PFM requirements and failed to respond to Parliamentary resolutions. Finally, we note significant policy misalignments which would undermine the economic wellbeing of the country if not redressed. In view of the aforementioned we call for the following.

a. The National Treasury is using overstated data to inform its macroeconomic and public debt policy undermining debt realism and sustainability. **We call on parliament not to approve a higher debt ceiling until resolution of critical inconsistencies around the real GDP and nominal GDP indicators.**

b. A minim-um of 30 percent of the national government's budget allocated to the development expenditure over the medium term. **This provision can be achieved through reduction of unnecessary recurrent expenditure by government; reduce allocations to MDAs subject of Auditor General queries.**

c. Over the medium term, the National Government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure. Out Ksh 846.1 billion projected borrowing, Ksh 667.7 billion will be allocated to development. **We call on parliament to ensure the removal of all stalled projects from the budget and stop financing to all projects cited by the Auditor General in the present budget; stop all new infrastructure projects.**

d. Public debt and obligations shall be maintained at a sustainable level as approved by Parliament for National Government. The PFM Act also requires that public debt and obligations remain at sustainable levels. **We call on Parliament to publish Medium Term Debt Strategy for public debate to ensure it lays out a realistic and achievable plan for sustainable debt reduction.**

e. On external financing, the Kenyan path is riskier as the current government has demonstrated preference for more expensive commercial loans. Parliament needs to focus on the cost of borrowing and should not approve further any further Eurobond. **We call on parliament to commission an audit on the cost sustainability of Kenya's debt restructuring plan. We call on Parliament not to approve the BPS until the Treasury operationalizes the independence of the PDMO. We call on the CS Treasury to designate the Director of the PDMO to ensure segregation of duties in debt management.**

f. Tax expenditures continue to be high, at an average of 500B annually. The National Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 82 of the Act. **We call on Parliament not to approve the BPS until the CS Treasury makes information on all waivers available.**

g. We call for a review of debt sustainability policies. We call for robust stakeholder dialogue on Kenya's Debt Sustainability Mix and debt recovery policies which appear to be harming economic recovery.

h. We call for a review of the education sector policy priorities (especially support to CBC and public Universities) and a critical review of education sector reforms because present budget cuts threaten access and sustainability of education in the country.

i. We call for the proposed national tax policy to prioritize tax justice and equity and ensure robust stakeholder engagement.

j. We call for the harmonisation of cash transfer programs to avoid duplication and double benefit for same households from different social programs.

k. We call for the redoubling of efforts to strengthen County Governments' Compliance with Fiscal Responsibility. Strengthen CSO and public role through the Auditor General Citizen Audit Accountability Framework.

References

1. *Republic of Kenya, (2021). BPS 2022. Nairobi: Government Printers.*
2. *The Institute for Social Accountability, 2021. Fiscal Kenya Debt Crisis: Unpacking Fiscal Consolidation 2021. Nairobi*
3. *Republic of Kenya, (2015). Public Finance Management Act. Nairobi: Government Printers.*

cc: Hon. Amb. Ukur Yattani, EGH,
The Cabinet Secretary, National Treasury and Planning,
Harambee Avenue, Treasury Building,
P.O Box 30007-00100, Nairobi.

Dr. Julius Muia,
Principal Secretary, National Treasury.

Dr. Haron Sirima
Director Public Debt Management Office, National Treasury.

Mr. Albert Mwenda
Director Fiscal Budget, Fiscal and Economic Affairs, National Treasury

Dr. Patrick Njoroge,
Governor, Central Bank of Kenya,
Haile Selassie Avenue,
P.O. Box 60000-00200, Nairobi.

CPA. Dr. Margaret N. Nyakang'o
Controller of Budget,
Bima House, Harambee Avenue,
P.O. Box 35616-00200, Nairobi.

Ms. Nancy Gathungu,
Auditor General,
Office of the Auditor General,
Anniversary Towers, University Way,
P. O Box 30084 – 00100, Nairobi, Kenya

Dr. Jane Kiringai,
Chairperson, Commission on Revenue Allocation,
14 Riverside Drive, Grosvenor Suite 2nd Floor,
P.O. Box 1310 – 00200, Nairobi, Kenya.

Hon. Gladys Atieno Wanga Nyasuna,
Chairperson of the Finance and National Planning Committee, National Assembly,

Hon. Wandanyi James Opiyo,
Chairperson of the Public Accounts Committee, National Assembly

Hon.Nassir Abdullswamad Sheriff
Chairperson, Public Investment Committee- National Assembly

Hon. Kibiru Charles Reubenson,
Chairperson of the Finance and Budget Committee, Senate,

Dr. Habil Olaka,
Chief Executive Officer, Kenya Bankers Association,
13th Floor, International House, Mama Ngina Street, Nairobi.

Hon. Justice (Rtd) Paul Kariuki Kihara, EGH,
The Attorney General of the Republic of Kenya,
Office Of The Attorney General, Sheria House, Harambee Avenue
P.O. Box 40112-00100, Nairobi.

Dr. Rose Ngugi
Executive Director, Kenya Institute for Public Policy Research and Analysis (KIPPRA)
2nd Floor Bishops Garden Towers, Bishops Road
P.O. Box 56445-00200, Nairobi.

Archbishop (Rtd.) Eluid Wabukala EBS,
Chairperson, Ethics and Anticorruption Commission,
Intergrity Centre, Valley Road,
P.O. Box 61130-00200, Nairobi.