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STATE OF DEBT TRANSPARENCY IN KENYA

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1. EXECUTIVE SUMMARY

Over the past decade, Kenya has established a robust legal framework designed to improve the disclosure and management of public debt. Key legislation, including the Constitution of Kenya 2010 and the Public Finance Management Act (PFM Act) 2012, mandates the publication of critical debt reports such as the Medium-Term Debt Management Strategy (MTDS), Annual Debt Management Reports, and Monthly Debt Bulletins. Whereas the production of these documents is a marker of transparency, we recognize the importance of reviewing the quality of information therein. This is what our analysis sought to do. We did this by applying a checklist developed by National Democratic Institute (NDI) and Transparency International (TI) specifically for civil society organizations. In doing so, we also referred to other assessments such as the World Bank Heatmap, Public Expenditure and Financial Accountability (PEFA) framework, Open Budget Survey (OBS), United States Agency for International Development (USAID)'s Debt Transparency Scorecard, and Collaborative Africa Budget Reform Initiative Africa Debt Monitor (CABRI ADS).

Key strengths of Kenya's legal framework:

Kenya's legal framework provides a clear definition of public debt, and it outlines the specific roles and responsibilities of institutions involved in debt management. The government has made strides in publishing key debt reports and making this information accessible to the public, ensuring that stakeholders can review data on debt stock, borrowing plans, and repayment schedules. The Public Debt Management Office (PDMO) utilizes the Commonwealth Meridian Debt System to track public debt, a tool expected to enhance the accuracy of debt data management and reporting.

Kenya's commitment to transparency is further demonstrated by its regular publication of reports on both external and domestic debt, the country's creditors, and debt service obligations. The government also reports on the overall sustainability of public debt through its annual debt sustainability analyses.

Identified gaps:

Despite this progress, Kenya faces significant challenges in fully achieving transparency in public debt management. One of the primary concerns is the delayed and inconsistent publication of essential reports, particularly the Monthly Debt Bulletins, the External Debt Register and the External resources Handbook. This delay hampers public oversight and makes it difficult for civil society organizations, policymakers, and citizens to access information on the country's debt position.

Secondly, the government's reporting on contingent liabilities from Public-Private Partnerships (PPPs) is outdated, which poses fiscal risks, especially as Kenya increases its reliance on PPPs for infrastructure development.

Thirdly, there is a lack of disclosure of transaction-level data on individual loans. Details such as the specific terms and conditions of high-value loans, including those for large infrastructure projects like the Standard Gauge Railway (SGR), remain undisclosed. This lack of transparency has led to public concern and speculation about the potential risks and liabilities associated with these agreements, particularly in cases where loan contracts contain non-disclosure clauses.

To enhance transparency and support parliamentary oversight, we recommend:

1. Amending the PFM Act, 2012 to require mandatory parliamentary ratification of individual loan contracts for amounts above Ksh 1 billion.

2. That the National Treasury should improve the timeliness of key debt reports, particularly monthly bulletins, and publish them in accessible, machine-readable formats such as .csv or .json.

3. Disclosing transaction-level loan information: The government should provide detailed, transaction-level information on all new loans, including financial terms, repayment schedules, and any potential risks.

4. That the National Treasury should improve its reporting on contingent liabilities by regularly updating and publishing comprehensive reports on contingent liabilities, including those arising from PPP projects, to ensure proper documentation and management of fiscal risks.

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AFRODAD	-	African Forum and Network on Debt and Development
CABRI ADM	-	Collaborative Africa Budget Reform Initiative Africa Debt Monitor
CBK	-	Central Bank of Kenya
CoK	-	Constitution of Kenya
DeMPA	-	Debt Management Performance Assessment Tool
DMFAS	-	Debt Management and Financial Analysis System
EULA	-	End User Licensing Agreement
GDP		Gross Domestic Product
IBP	-	International Budget Partnership
IFMIS	-	Integrated Financial Management Information System
LIDCs		Low Income Developing Countries
MTDS		Medium Term Debt Strategy
NDI	-	National Democratic Institute
OBS		Open Budget Survey
PDMO	-	Public Debt Management Office
PEFA	-	Public Expenditure and Financial Accountability
PPG	-	Public and Publicly Guaranteed debts
PPPs	-	Public and Private Partnerships
SOEs	-	State Owned Enterprises
TI	-	Transparency International
UNCTAD	-	United Nations Trade and Development
USAID DTS	-	United States of Agency for International Development Debt Transparency Scorecard
WFD	-	Westminster Foundation for Democracy

1. BACKGROUND AND CONTEXT

Kenya's fiscal and macroeconomic landscape has undergone several transformative changes, but this has not been without challenges, among them the rapid accumulation of public debt. The total public and publicly guaranteed debt stock stood at Ksh 10.6 trillion–65.7 per cent of GDP–as of June 2024[(1)] compared to Ksh 1.5 trillion–43.1 per cent of GDP–in June 2011.[(2)] Despite the Constitutional requirement to promote prudence and responsibility in Kenya's public finance system,[(3)] there has been limited public benefit and economic development from the accumulated debt. Considering this and given that the burden of public borrowing should be shared equitably,[(4)] there are more concerns over the transparency of the conditionalities, purposes, and accountability for debts accumulated. This report assessed the state of debt transparency in Kenya.

Debt transparency requires availing data on debt and information on borrowing processes. Data on debt is transparent if all stakeholders can access debt statistics of an acceptable quality. Beyond readily available data on debt, information on borrowing operations is also critical. Information about the justification for borrowing, the terms and conditions of a loan, and whether the borrowed funds were used for the intended purpose should be made publicly available.[(5)] Whereas publication of documents on public debt points to increased transparency, it is critical to review the quality, timeliness and accessibility of information provided in these documents.

Despite the progress that has been made in debt transparency around the globe, there are existing gaps in the production of debt information by low-income countries (LICs). Notably, these gaps still exist at a time when many of these countries are facing high debt levels. The World Bank notes that nearly 40 percent of LICs have never published data on public debt. For the countries that produce and publish information on public debt, this data is limited to their central governments.[(6)] This limitation paints an unclear picture of these countries' level of indebtedness. One of the key recommendations from the World Bank report is the need for a sound public debt management legal framework.

Such a framework should provide for the regular disclosure of public debt information that is accessible by the public. The framework can either be a stand-alone law or can be part of a Public Finance Management (PFM) law. It should set out the roles of different institutions and set the borrowing limit. Moreover, such a framework should define mandatory reporting requirements including comprehensive reporting, and approval of key public debt documents by Parliament.[(7)] Kenya is a step ahead on this; the Collaborative Africa Budget Reform Initiative (CABRI) in its Africa Debt Monitor (ADM) Analysis reports that Kenya's legal framework on debt is adequate.

Kenya's legal instruments define different requirements on debt reporting that the Public Debt Management office (PDMO) has attempted to comply with. This is exemplified by two pieces of legislation, The Constitution of Kenya, 2010 and the Public Finance Management Act (PFM), 2012. The Constitution of Kenya, 2010 exemplifies a requirement on debt reporting under

Article 201 (2). This provision requires the national government to produce a report on government guarantees within two months after the end of each financial year, and this information should be published within the Annual Debt Management Report. On the other hand, the PFM Act 2012 in Section 64 requires PDMO to produce, publish and publicize the following reports.

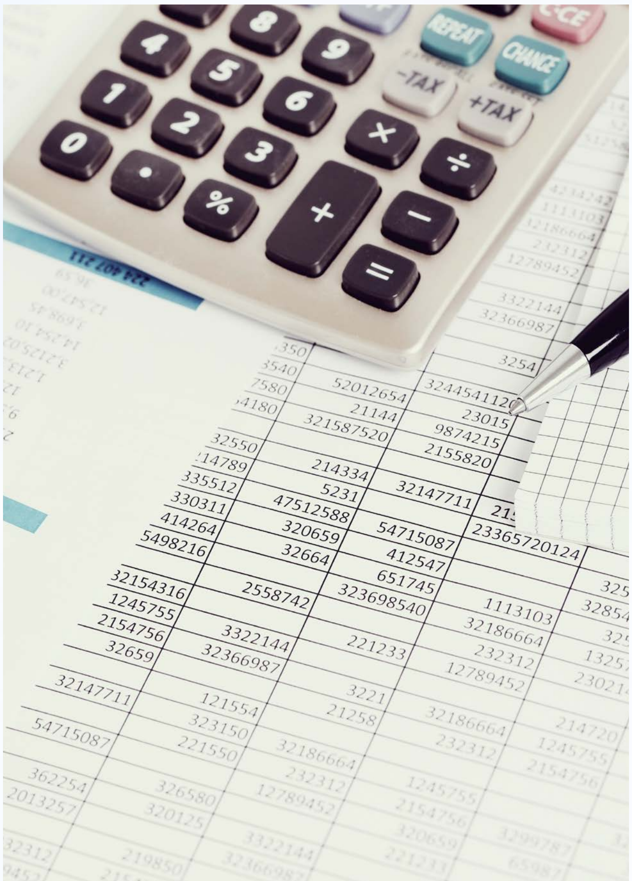
1. The Medium-Term Debt Management Strategy (MTDS) consistent with the Budget Policy Statement (BPS).

2. The borrowing plan for the Approved Annual Budget.

3. Statistical and analytical reports on debt and borrowing- The National Treasury produces various analytical reports including the Annual Debt Management report, Monthly Debt Bulletins, External Public Debt Register, External resource Estimates Handbook, and Guaranteed debt report.

Because of publication of these documents, the IMF considers Kenya to have a 'high standard' of debt transparency.

Whereas the Kenyan government's efforts for working towards transparency in public debt are commendable, it is critical to have a view of the quality of information availed in various publications on public debt. Our review was guided by both legal requirements on debt reporting as well as internationally established benchmarks for debt transparency. To undertake this, we applied the "*Civil Society Checklist for Debt Transparency and Accountability*" (hereafter referred to as 'the checklist') developed by the National Democratic Institute (NDI) and Transparency International (TI). This checklist provides a criteria for civil society organizations to assess gaps and opportunities in debt transparency, guided by a set of principles, sub-principles and practices.[8] Our review referred to other assessments such as the World Bank Heat-map Public Expenditure and Financial Accountability (PEFA), Open Budget Survey (OBS), United States Agency for International Development Debt Transparency Scorecard (USAID DTS), and Collaborative Africa Budget Reform Initiative Africa Debt Monitor (CABRI ADS) to enrich the study. Our review was however limited the transparency components of the checklist, since assessments of debt accountability and the role of oversight institutions have been undertaken in other publications.



1.1 About the Checklist

The checklist as developed by NDI and TI serves not only as a learning tool for Civil Society Organizations (CSOs), but also as a tool that can be used to assess gaps in transparency and accountability in public debt. The checklist is organized in five sections, which are further sub-divided into principles and /practices. Our assessment focuses on Section 1 and Section 3 of the tool (Table 1). Section 1 of the tool recognizes that a sound legal framework is the foundation for effective, transparent and accountable public debt management while Section 3 of the tool provides a checklist of requirements for disclosure on public debt.

Table 1: Debt Transparency Checklist- Principles and Sub-Principles

Section	Principle	Number of Practices
1	***The Public Debt legal framework provides for effective, transparent and accountable debt management*** i. The public debt legal framework provides clear and unambiguous definitions ii. The public debt framework establishes clear roles and competences iii. Includes clear legal or administrative consequences for any debt contracted in violation of the law.	15
3	Public debt is publicly disclosed in an accessible, timely and transparent manner.	13

Source: NDI and TI (2024)

2. FINDINGS FROM THE ASSESSMENT

2.1 Section One: Public debt management legal framework

This section examines three essential principles that a robust legal framework must incorporate to ensure effective, transparent, and accountable public debt management. The three foundations that should underpin the public debt legal framework include: first, that it provides for clear and unambiguous definitions; second, that it establishes clear roles and competences; and third, that it sets out provisions for strong transparency and accountability.

2.1.1 Principle One: The public debt legal framework provides for effective, transparent and accountable debt management.

The legal framework for public debt is the overarching instrument that guides the decisions, operations and implementation aspects of public debt, both in terms of contracting and management. A sound legal framework that ensures transparency and accountability is the first step in setting up the infrastructure for good public debt management.

2.1.1.1 Sub-Principle one: The public debt legal framework provides clear and unambiguous definitions

a. Definition of Public Debt and purpose of borrowing

Although public debt is defined differently across different jurisdictions, international standards recognize institutional and instrumental coverage as key aspects of its definition. Institutional coverage maintains that the definition of public debt must cover the entire public sector while instrumental coverage encompasses all government securities and other instruments including supplier's credit agreements, account payables and financial derivatives such as swaps.[9]

In Kenya, both the Constitution and the PFM Act, 2012 provide a comprehensive definition of public debt. Under Article 214(2) of the CoK 2010, public debt is defined as *"all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government"*. [10] It is important to note that despite this definition, there are financial obligations including pending bills, that are not considered as public debt.

In 2023, the PFM Act, 2012 was amended to align its definition of public debt to that of the Constitution. Section 15(2)(c) of the PFM Act 2012 provides for the purpose of borrowing which is to finance development expenditure and not for recurrent expenditure. Therefore, Kenya has aligned its definition of debt international standards.

b. Limit on government borrowing

In line with the checklist, this may include a debt ceiling (expressed as a percentage of Gross Domestic Product (GDP) or debt principal and interest payments as a percentage of government revenue) or other measures that track the debt burden.

Beyond defining what public debt is, the PFM Act, 2012 in Section 15 (d) requires the National Treasury to maintain public debt and obligation at a sustainable level. The PFM (National Government) Regulation 26(1) defines the debt limit. In exercise of the legislative authority vested upon it, Parliament, upon recommendation by the executive, has subjected these regulations to numerous amendments to raise the debt ceiling. The most recent amendment set the debt ceiling at 55 percent of the Gross Domestic Product in Present Value terms. The amendment also allowed the Cabinet Secretary of the National Treasury to exceed this threshold on condition that a report on the cause of such a breach alongside a remedial plan would be available to Parliament. Allowing the Cabinet Secretary to exceed the debt ceiling, however, weakens the legal provision on the debt ceiling for the national government's borrowing limit. The PFM Act, 2012 also limits county borrowing to 20 percent of the audited total revenue as approved by the county assembly.

c. Includes comprehensive coverage of borrowing from private and public sources, including reporting on implicit and explicit contingent liabilities

Kenya legal framework has an inadequate coverage of borrowing but has adequate provisions on reporting on explicit contingent liabilities. Neither the PFM Act, 2012 nor the PFM (National Government) Regulations, 2015 comprehensively define government securities. However, from a reading of Section 2 of the PFM Act, 2012 on the definition of 'short term borrowing', 'national security', and 'county security' the conclusion is that they include *Treasury Bills, bank-overdraft or other instrument to cover temporary cash shortfalls and is repayable within twelve months*".[11] The Act under the same section goes further to define external government security, external loan, and financial obligation. To operationalize these provisions, the Regulations lay out the process of issuing government securities. Regulation 197, for instance, focuses on the process related to issuance of domestic debt.

There are several legal provisions on reporting on explicit contingent liabilities in Kenya's legal framework. Article 213 (2) of the Constitution of Kenya, 2010 requires the government to publish a report on the guarantees it gave during each year. Moreover, the PFM Act, 2012 in Section 59 requires the Cabinet Secretary to the National Treasury to submit to Parliament, within fourteen days, a statement detailing the name and other particulars of the borrower, duration and the nature of the guarantee and a risk assessment in respect of a guarantee. The Act further requires a report on each guarantee to be submitted to the National Assembly within 7 days after it receives a request from Parliament. The National Treasury is also required to submit a report on all guarantees within two months at the end of each financial year.

The PFM Act, 2012 under Section 89(2) further requires the National Treasury to prepare a report, not later than four months after the end of each financial year, on the government's involvement or investment in, funding of all state corporations and government-linked corporations for the financial year. This report should include details of the loans made by the national government to the state corporation, the amount of any guarantee issued in respect of the state corporation, *and payments made or losses incurred by the national government to meet contingent liabilities in respect of guarantees.*

d. Includes comprehensive coverage of the entities that can contract loans (central government, local governments, and state-owned enterprises (SOEs))

The definition of public debt in Kenya's legal framework covers the entire public sector borrowing; that is borrowing by the national government, county governments and guarantees to SOEs.

2.1.1.2 The public debt framework establishes clear roles and competences

a. States the legislature's competence to ratify loan agreements – at least for any international borrowing – and approve guarantees, contingent liabilities and other key documents, such as the national borrowing plan or the debt strategy

A review of the PFM Act, 2012 established that Parliament does not have a legal mandate to ratify loan agreements, but parliamentary approval is needed before the National Treasury enters a guarantee. The absence of such a provision questions the country's democratic legitimacy. By not setting such checks and balances: the doctrine of separation of powers is not upheld; there is inadequate oversight over the executive's use of power; and the legislature's independence is questionable. Due to the inadequate parliamentary check over the national government's loan-raising activities, the National Assembly in 2022 proposed amendment to Section 50 of the PFM Act, 2012 to require the National Treasury to seek authorization from the National Treasury before executing any loan contract for amounts above Ksh 1 billion. The proposal bore no fruit and loan-raising by the national government is still largely undertaken by the National Treasury without approval by Parliament.

The National Assembly's proposal aligns with international best practices. The Westminster Foundation for Democracy (WFD) argues that one key element of a modern legal framework on public debt is a provision for Parliament to ratify any major loan agreement signed by the executive before it comes into effect. Involving Parliament in loan approval allows it to ascertain that economic appraisal, selection and costing of any public investment project was undertaken to justify funding a project through debt.[12] Countries such as Uganda, Malawi, Ethiopia and Benin require parliamentary ratification of loan agreements.[13]There are prior actions that lenders require borrowers to undertake before the granting of a loan. For the IMF to approve financing, for example, borrowers must ensure that they are set for success. Such prior actions include: implementing better fiscal revenue measures; clearing external arrears; and restructuring governance reforms.[14]

While we believe that parliamentary ratification of individual loan agreements is likely to strengthen the parliamentary role in public debt management, country examples do not show a clear relationship between individual loan approvals and favorable debt outcomes. Some jurisdictions with such a provision in their legal framework have a moderate risk of overall debt distress, while other countries with a similar provision are at high risk of debt distress.[15] Uganda is at a moderate risk of overall debt distress, and specific loan agreements are not enforceable until Parliament, through a resolution, approves the terms and conditions therein.[16] Conversely, Malawi's PFM's Act requires the National Assembly to authorize a loan agreement through an act of Parliament[17], yet the country is in debt distress. Similarly, Ethiopia is at high risk of debt distress while Benin's debt to GDP ratio has more than doubled in the last decade. Therefore, we cannot conclude with certainty that the risk of debt distress in Kenya will reduce with the introduction of such a provision.

The PFM (National Government) Regulations under section 204 requires Parliament upon recommendation by the Cabinet Secretary to the National Treasury to approve a draft loan guarantee in line with Section 58(2)(f) of the PFM Act, 2012, only if:

b. Includes the legislature's role to review the executive's plans for debt repayment and to hold the government accountable for decisions on whether to seek debt restructuring

Kenya's legal framework does not assign Parliament any role in the review of debt repayment and restructuring. Under Section 50 (8) of the PFM Act, 2012, the role of Parliament is limited to approving regulations by the Cabinet Secretary to National Treasury on a 'Sinking Fund. The redemption of government securities, and any incidental expenses to these securities, shall be made from this 'Sinking Fund'. These regulations are yet to be developed although a schedule of debt repayments is usually submitted to Parliament alongside the program-based budget. However, this schedule is not usually approved in the appropriations act or any other act of Parliament.

The Public Debt and Borrowing Policy in paragraph 85(a) mentions debt restructuring (that can take the form of debt security buy backs, switches and exchanges) as a strategy for managing costs and risks of debt. However, the policy is silent on the role of parliament in debt restructuring.

i. The guarantee is in the public interest.

ii. The borrower is in a strong financial position to repay the proposed loan, interest and other charges.

iii. The concession of the proposed loan is at the acceptable level in line with the borrowing strategy.

iv. The loan investment is geared towards stimulating the economic growth in a county.

v. All legal issues relating to financial agreements, tripartite signing and subsidiary agreements are fully addressed.

c. Specifies the authority to borrow, delegated from the legislature to the executive, and the eligible borrowing objectives

Kenya's legal framework adequately provides for clear roles and competencies in public debt management. Debt management is one of the core functions of the Cabinet Secretary to the National Treasury who may delegate daily operational decisions to the Public Debt Management Office. Section 12 (b) of the PFM Act, 2012 assigns the National Treasury the responsibility of managing the level and composition of public debt, national guarantees and other financial obligations of the national government. Section 49 of PFM Act, 2012, on the other hand, gives the Cabinet Secretary the authority to borrow on behalf of the national government, and to raise a loan only if the terms and conditions for the loan are set out in writing and in accordance with fiscal responsibility principles, and the financial objectives set out in the Budget Policy Statement and the Debt Management Strategy.

d. Clearly states the functions, responsibilities and roles of different government bodies in contracting and managing public debt, including the obligation to submit annual reports to Parliament on debt management activities

Key institutions in the management of public debt include: the National Assembly, the National Treasury, the Public Debt Management Office (PDMO), the Central Bank of Kenya, and the Office of the Auditor General. Their roles are summarized in Annex Table 1.

e. Defines the organization and responsibilities of a DMO, typically the only authorized body to contract or issue debt on behalf of the central government

The PFM Act, 2012 in Section 62 established the Public Debt Management Office (PDMO) while Section 63 enumerates the functions of the office that include debt management to minimize the costs and risks of debt, maintaining a reliable database of all loans and guarantees taken by both levels of government, to prepare and implement government borrowing plans, and to transact in derivative financial instruments, among others. The PFM Act, 2012 under Section 64 further presents the role of the Cabinet Secretary in PDMO; key among them development of policy and financial framework. The Cabinet Secretary may then delegate the day-to-day management of the office and operational decisions on borrowing and debt management. Kenya's Public Debt and Borrowing Policy provides detailed roles of the Front, Middle and Back Offices within the PDMO. This aligns with international best practice.

f. **Includes rules and procedures related to the debt authorization cycle**

The National Treasury is the only institution authorized to initiate loan contraction processes from reputable institutions or through issuance of government securities under Section 49 of the PFM Act, 2012 and PFM (National Government) Regulation 187 (1). Upon approval of projects/ programs to be funded through borrowing, the Cabinet Secretary shall constitute a negotiation committee for each external loan and grant, a government securities auction committee for issuance of domestic securities or a committee for issuance of government securities in the local or international bond market. Once negotiations are finalized, and legal clearance obtained from the Attorney General, the Cabinet Secretary will sign a loan agreement as explained Public Debt and Borrowing Policy paragraph 106.

g. **Requires scrutiny and/or approval for public debt that entails collateral, quasi-collateral, lender step-in rights, novel features or unusual risk levels**

There is no specific provision on scrutiny and/ or approval for public debt that requires a collateral, quasi-collateral, lender rights or any other elements of debt before acquisition in Kenya's legal framework.

2.1.1.3 The public debt legal framework establishes provisions for strong transparency and accountability.

a. **Provides specific oversight and audit measures, such as the ability of the SAI to undertake annual public debt audit**

Among the roles of the Office of the Auditor General is the production of an audit report within six months after the end of each financial year which shall include an audit of the public debt.

a. **Establishes the requirements related to the publication of debt management strategies and debt reporting**

Under Section 64 (2) of the PFM Act,2012 the PDMO is mandated to prepare various reports and submit them to the Cabinet Secretary and the Commission on Revenue Allocation. These reports include:

i. the Medium-Term Debt Management Strategy consistent with the Budget Policy Statement.

ii. the government borrowing plan for the approved Annual Budget.

iii. the statistical and analytical reports on debt and borrowing; and

iv. the annual performance reports of the Public Debt Management Office.

These reports shall then be published and publicized. Publicizing, in relation to a document, means to make known to the public, through the national or local media- the general nature of the document; and how and where it may be accessed and read by members of the public.[18]

The Cabinet Secretary to the National Treasury in Section 33(1) of the PFM Act, 2012 is then required to submit to Parliament, on or before 15th February in each year, the debt management strategy detailing the actual liability and potential liability in respect of loans and guarantees, and its plan on managing those liabilities. The submitted debt management strategy shall be aligned with the broad strategic objectives outlined in the Budget Policy Statement. The debt strategy shall include.

i. the total stock of debt as at the date of the statement.
ii. the sources of loans made to the national government and the nature of guarantees given by the national government.
iii. the principal risks associated with those loans and guarantees.
iv. the assumptions underlying the debt management strategy; and
v. an analysis of the sustainability of the amount of debt, both actual and potential.

c. Includes specific transparency requirements

The Constitutions of Kenya, 2010 in Chapter 12 outlines the principles of public finance, among them transparency and accountability in all public finance matters. Article 211, a provision under Chapter 12, explicitly mandates Parliament to prescribe terms on which the national government may borrow and impose reporting requirements.

The PFM Act, 2012 and PFM (National Government) regulations, 2015 on their part detail roles of the National Treasury including reporting on public debt and they set out requirements for public disclosure of public debt information. The Public Debt and Borrowing Policy, 2020 stresses the need for transparency and accountability in public debt management and includes provisions for audit on public debt and borrowing, controls of loans proceeds and mandatory conditions for debt contracting.

d. Includes clear legal or administrative consequences for any debt contracted in violation of the law

Article 226 of the Constitution of Kenya provides that a holder of a public office shall be personally liable for any loss arising from that use and shall make good the loss if s/he directs or approves the use of public funds contrary to law or instructions. The PFM Act, 2012 in Sections 196(2), 197 and 199 further provides for the prosecution of a public officer who, without lawful authority, issues public government securities or varies their terms and conditions, and issues guarantees or indemnities on behalf of the government, and issues securities for loans made to the government.

2.2 Section Three: Public debt disclosure

Section three of the checklist examines the requirements and standards for public debt disclosure and transparency. In implementing key legislative requirements regarding transparency in public debt, the government must be able to correctly record and monitor debt data and provide complete information about all debt management strategies, reporting, contracts and obligations, including currencies, maturities, lenders and repayment schedules. It is best practice for this information to be published in a single, easily accessible website for citizens, parliaments and anyone interested. This transparency allows lenders and credit rating agencies to have a complete picture of the country's debt obligations, making due diligence processes easier. Moreover, debt transparency eases planning, monitoring and analyzing debt restructuring processes and supports accountability for the use of contracted loans. This section's analysis refers to PEFA, OBS and the Commonwealth Secretariat's Handbook on Public Debt Transparency, World Bank's Public Debt Reports Heatmap, and the African Forum and Network for Debt and Development African Borrowing Charter

2.2.1 Principle Three: Public debt is publicly disclosed in an accessible, timely and transparent manner.

The World Bank defines transparency as the provision of reliable, relevant, and timely information while the International Budget Partnership (IBP) defines tenets of transparency to include public availability, comprehensiveness, and timeliness of government documents. Public Expenditure and Financial Accountability (PEFA)'s assessment of transparency evaluates whether PFM information is comprehensive, consistent, and accessible to users. In this section, we evaluate the quality of information published by the government of Kenya. The section is organized around thirteen (13) practices in NDI and TI's checklist.

2.2.1.1 System or methodology for recording and monitoring public debt

The Commonwealth Secretariat in its *Handbook on Public Debt Transparency* indicates that debt recording should be a function of the Back Office Department of the Debt Management Office (DMO). Just-in-time recording of debt data is preferred to ensure prompt recording of new borrowing, disbursements, debt service and other debt-related transactions.[19] In line with this best practice, PDMO's Back Office is responsible for debt recording and settlement.[20] NDI and TI argue that a system or methodology for monitoring debt reporting is needed to make publishing and analysis of debt-related information easy.

Kenya in the past has relied on the Commonwealth Secretariat Debt Recording and Management System (CS-CDRMS) (which has been in use since 1980) but is in process of migrating to the Commonwealth Meridian Debt System. The system has typical features that allow for recording, management and analysis of public and publicly guaranteed debt. PDMO in the FY 2023/24 Annual Debt Management Report indicates that its staff have been trained on the system and an End User Licensing Agreement (EULA) has been signed. In addition, PDMO lists data migration from the CS-DRMS system to Commonwealth Meridian as one of its core achievements during FY 2023/24. Because the system can be linked to IFMIS, PDMO recommends its integration in FY 204/25 with IFMIS and Internet Banking.

2.2.1.2 Easy-to-find and single location for public disclosure

NDI and TI consider presence of an easy-to-find and single location for public disclosure (ideally a website) that allows for easy searching of historical information on loans (such as maturity, repayment, cancellation or restructuring) as a key marker of transparency in public debt management.

Information on public debt in Kenya is accessible from two key websites: the National Treasury website[I] under the Public Debt Management tab and the Central Bank of Kenya (CBK) website[II] under the Government Finance Statistics tab. However, debt information is presented in different formats on the two websites. CBK presents the data in Excel files which makes it easier for users to analyze the data. The National Treasury reports its data as part of the analytical reports it produces, which are not in machine readable formats. Therefore, compiling data from the National Treasury publications is a daunting task. The International Budget Partnership (IBP) recommends data to be published in machine readable formats such as .csv, .xls/.xlsx, and .json to meet acceptable transparency standards.[21] Given there are usually disparities between CBK and National Treasury Data on debt, it would be important for the National Treasury to publish its data in machine readable format as a supporting document to its reports.

2.2.1.3 Information published includes data regarding debt indicators with all the underlying data and modes of calculation

Some of the recommended debt indicators include debt to revenue ratio, interest expense to revenue ratio, interest expense to total budget/expenditure ratio, external debt interest to exports ratio, gross borrowing to GDP ratio and debt composition ratio. Debt composition ratios are important to understand the structure of debt. In addition to having data on creditor composition (multilateral, bilateral, commercial loans, bonds), it would be important to include other metrics such as ratio of foreign-currency denominated debt to total debt, share of concessional debt in total debt and the average debt maturity.[22]

The government of Kenya has done well in publishing data on debt and has covered most of the debt indicators listed above in its Annual Public Debt Management Reports. The only missing indicator is interest expense as a percentage of total budget/expenditure.

I https://www.treasury.go.ke/public-debt-management/

II https://www.centralbank.go.ke/statistics/government-finance-statistics/

Figure 1: A table on some debt indicators published in FY 2022/23 the Annual Public Debt Management Report

	Jun-19	Jun-20	Jun-21	Jun-22	Jun-23
Total PPG debt stock	**5,808,622**	**6,693,338**	**7,696,634**	**8,634,909**	**10,278,673**
O/w External	3,023,139	3,515,812	3,999,541	4,305,835	5,446,561
O/w Domestic	2,785,483	3,177,526	3,697,093	4,329,074	4,832,113
% share of External debt	52.0	52.5	52.0	49.8	52.9
% share of Domestic debt	48.0	47.5	48.0	50.2	47.1
Nominal GDP	**9,367,317**	**10,175,226**	**11,304,100**	**12,752,164**	**14,521,624**
As percentage of GDP					
Total PPG debt stock	**62.0**	**65.8**	**68.1**	**67.7**	**70.8**
O/w External	32.3	34.6	35.4	33.7	38.2
O/w Domestic	29.7	31.2	32.7	33.9	33.3
PV of Debt to GDP	48.3	55.7	58.8	63.1	64.4
Annual Growth rate					
Total PPG debt stock	18.3	15.2	15.0	12.1	19.1
O/w External	24.3	16.3	13.8	7.5	28.9
O/w Domestic	12.4	14.1	16.4	17.1	11.6
Real GDP Growth	5.1	-0.3	7.6	4.8	5.3

**Provisional*

Source: *National Treasury and Central Bank of Kenya*

Source: FY 2022/23 Annual Public Debt Management Report

2.2.1.4 Publication(s) includes information on all sectors

In terms of coverage, government reports on public debt should cover debt information on all sectors including sovereign, subnational, state-owned enterprises (SOEs), Public Private Partnerships (PPPs), contingent liabilities and collaterals. Most reports contain data on public and publicly guaranteed debt (PPG). The government in the Annual Public Debt Management Report includes a statement of both guaranteed and non-guaranteed debt.

Notably, fiscal risks arising from PPPs are reported in separate documents by the PPP Unit of the National Treasury. However, the most recent publicly available statement was published in September 2021. This raise concerns over timeliness of the published information and why the government would not update the public on the PPPs projects it is currently undertaking. In addition, it would be important for this information to be included in the annual report on public debt for a more holistic view of the government's fiscal position and fiscal risks. This will be particularly important given the government's intention of increasing the number of projects funded under the PPP arrangement.

According to the International Monetary Fund (IMF) Kenya is yet to contract any collateralized external debt.[23] However, a leaked letter from the Office of the Auditor General had warned that Kenya would be forced to surrender operations at the Port of Mombasa to the Chinese Government in the event that it was unable to repay the debt incurred for the construction of the Mombasa-Nairobi Standard Gauge Railway (SGR). Both the Kenyan and the Chinese governments refuted this claim, but the public remains in the dark on the exact terms of the SGR loan. Citing non-disclosure clauses, the government of Kenya failed to release to the public SGR commercial contract despite court orders for the release of the terms therein.

2.2.1.5 Information published covers all debt instruments

Closely related to the indicator on debt ratios, this indicator evaluates comprehensiveness of published debt information (Box 2). On the enlisted indicators, Kenya has comprehensively reported on all of them except for instruments it is yet to utilize such as green bonds and financial derivatives. As noted above, information on PPP-related liabilities is not up-to-date and it is published separately, not as part of the Annual Public Debt Management Report.

Box 1: Debt Transparency Checklist[24]

Information published covers all debt instruments including:

a. *External loans and securities*
b. *Domestic loans and securities*
c. *Nontraditional debt instruments: special drawings rights allocations, currency and deposits, insurance, pension, standardized guarantee schemes, accounts payable and domestic arrears*
d. *Other debt instruments, such as indexed bonds*
e. *Instruments related to climate change, such as green bonds*
f. *Identification of collateralized debt*
g. *Data related to financial derivatives, such as futures, options and swaps*
h. *Guarantees*
i. *Debt owed by SOEs*
j. *Future financial commitments created as part of public-private partnerships*

2.2.1.6 Detailed breakdown of all the creditors – financial institutions, bilateral or private –and the debt volume owed to each

The PDMO reports sufficient details on debt owed to different creditors such as financial institutions, bilateral creditors and the amount owed to each. Information on external debt as published in the External Debt Handbook includes debt level data such as creditor name, agreement date, currency, outstanding amount, principal repaid, outstanding debt, and details of programs and projects funded through external resources. Except for the routine late publication of debt information, the published information is comprehensive enough.

Figure 2: Excerpt from the External Debt Register(25)

THE NATIONAL TREASURY
PUBLIC DEBT MANAGEMENT OFFICE
SUMMARY STATEMENT OF PUBLIC DEBT FOR 2022/2023 FY IN FOREIGN CURRENCY

CREDITOR NAME	CURRENCY	AMOUNT OUTSTANDING AS AT 30/06/2022 (FX) (A)	PRINCIPAL REPAID IN 2022/23 FY (FX) (B)	DRAW DOWNS DURING 2022/23 FY (FX) (C)	PRINCIPAL REFINANCED IN 2022/23 FY (FX) (D)	RESTRUCTURED DEBT IN 2022/23 FY (FX) (E)	AMOUNT OUTSTANDING AS AT 30/06/2023 (FX) (F)=(A-B+C-D+E)	AMOUNT OUTSTANDING AS AT 30/06/2023 (Ksh Equivalent)
1. PUBLIC DEBT CHARGED ON THE CONSOLIDATED FUND SERVICES (CFS)								
1.1 EXTERNAL LOANS								
1.1.1 Central Government								
Bilateral								1,248,570,217,754
Abu Dhabi Fund for Arab Econ Cooperation	AED	35,737,458.61	4,675,000.00	2,145,835.58	-	-	33,207,494.54	1,270,495,722
Agence Francaise De Development	EUR	650,389,926.64	67,046,585.05	34,958,986.71	-	-	618,302,331.07	94,588,818,060
	USD	39,589,985.95	1,179,897.97	53,776.75	-	-	38,458,874.84	5,403,673,061
DEUTSCHE BANK ESPANOLA	EUR	9,145,716.75	3,048,572.04	-	-	-	6,097,144.70	932,750,942
Exim Bank India	USD	63,604,579.53	7,327,642.26	3,879,565.30	-	-	60,156,502.56	8,453,402,287
Exim Bank of China	CNY	7,240,733,484.71	513,230,762.40	454,243,778.75	-	-	7,181,746,500.15	139,145,120,046
	USD	5,765,819,906.58	532,642,645.07	44,721,731.99	-	-	5,277,898,680.49	741,688,796,654
Government of Poland	USD	21,453,250.00	390,000.00	-	-	-	21,063,250.00	2,958,461,611
Government of Austria	EUR	2,647,058.82	176,470.58	-	-	-	2,470,588.24	377,954,294
Government of Belgium	EUR	74,244,254.22	772,667.00	3,021,582.59	-	-	76,493,169.81	11,702,038,174
Government of China	CNY	87,086,270.60	-	-	-	-	87,086,270.60	1,687,766,759
Government of Denmark	DKK	27,432,000.00	6,400,000.00	-	-	-	21,031,200.00	431,462,409
Government of Finland	EUR	7,128,721.41	2,376,240.44	-	-	-	4,752,480.97	727,041,668
Government of France	EUR	51,705,326.22	3,661,804.57	9,769,880.45	-	-	57,813,382.91	8,844,378,058
Government of Italy	EUR	7,770,855.86	74,761.44	2,733,814.69	-	-	10,429,916.16	1,595,584,220
Government of Japan	JPY	99,510,206.14	5,959,662.01	8,596,759.64	-	24,696.65	102,171,996.15	99,116,848,158
Government of Saudi Arabia	SAR	5,812,500.00	375,000.00	-	-	-	5,437,500.00	203,731,706
Government of United States of America	USD	10,685,287.19	2,155,174.09	-	-	-	8,530,113.06	1,198,861,343
Govt of Fed. Republic of Germany - GTZ	EUR	279,139,312.91	23,673,661.00	37,049,328.28	-	-	292,514,979.47	44,749,380,332
Instituto De Credito Kingdom Of Spain.	EUR	90,907,629.04	14,566,619.43	3,060,584.65	-	-	79,401,644.10	12,146,952,617
	USD	8,966,130.51	1,181,760.07	-	-	-	7,784,370.44	1,089,886,979
KBC BANK	EUR	47,164,129.14	8,850,561.00	12,059,371.41	-	-	50,372,941.34	7,706,126,126
Khalifa Fund for Enterprise Development	USD	-	-	-	-	-	-	-
Korea Economic Dev. Co-operation Fund	KRW	10,489,445,000.00	598,254,000.00	-	-	-	9,871,191,000.00	1,044,174,584
	USD	22,897,588.69	-	6,879,292.00	-	-	29,776,880.69	4,184,348,683
KUWAIT FUND FOR ARAB ECONOMIC DEV.	KWD	3,536,145.46	450,702.05	161,899.92	-	-	3,247,343.35	1,488,068,389
Saudi Development Fund	SAR	82,798,545.09	2,838,776.05	-	-	-	79,959,769.04	2,996,299,309

Similarly, domestic debt is disaggregated by financial institutions such as Central Bank of Kenya (CBK), Commercial Banks, residents, and non-financial institutions (such as insurance companies and pension funds)

Figure 3: Excerpt on domestic debt by creditor.

Table 5.4- 1: Outstanding Stock of Treasury Bills by Investor Category (Ksh Million)

Holder	Jun-19	Jun-20	Jun-21	Jun-22	Jun-23*
Banks	598,071	587,684	452,891	287,684	263,082
NBFIs					
Insurance companies	18,225	7,640	7,176	6,581	6,937
Pensions Funds (including NSSF)	170,298	161,007	144,434	167,554	166,420
Others	167,657	130,811	160,874	166,936	178,286
Total	**954,251**	**887,142**	**765,375**	**628,755**	**614,725**
As a percentage of the Total Outstanding Domestic Debt					
Banks	62.7	66.2	59.2	45.8	42.8
NBFIs					
Insurance companies	1.9	0.9	0.9	1	1.1
Pensions Funds (including NSSF)	17.8	18.1	18.9	26.6	27.1
Others	17.6	14.7	21	26.6	29.0
Total	**100**	**100**	100	**100**	**100**

**Provisional*
***Source:** Central Bank of Kenya*

2.2.1.7 The relevant debt information and figures are updated periodically: annually and/or quarterly

The World Bank in its Public Debt Reports Heatmap assesses timeliness of public debt information by looking at the frequency of publication. Kenya's PFM regulations require PDMO to publish and publicize statistical and analytical reports on debt and borrowing, as well as annual performance reports. While the regulations do not specify how frequently these publications should be produced, PDMO has been producing monthly debt bulletins and Annual Public Debt Management Report.

The monthly debt bulletins are meant to provide monthly debt data on total amount of public and publicly guaranteed debt, structure of both external and domestic debt by instrument, external debt service and domestic borrowing by the government. Suffice to note, there is always a lag in the publication of these crucial reports. For instance, a spot check on the website in August 2024, shows the most recent monthly bulletin contains debt data up to the month of April. This means that the public may not have up-to-date information on public debt. The National Treasury in the Quarterly Economic and Budgetary Review (QEBR) publishes some information on public debt and cites PDMO as the source of the data. By mid-August 2024, the FY 2023/24 quarter four QEBR was already out meaning that it would have been possible to have the July 2024 monthly debt bulletin published within the month of August 2024.

It is our considered view that there is room for improvement by publishing the monthly bulletins in a timelier manner, more so because the government does not produce quarterly reports on public debt. Such information as monthly debt repayments can only be accessed in the monthly bulletin creating the need for timely publication of this data. One way to ensure compliance is setting a timeline within which the statistical and analytical reports should be published. This is currently lacking in Kenya's legal framework.

2.2.1.8 Each new loan contraction is reported 30 days before and after the contract is signed

International best practice requires that once a loan contract has been signed, a copy of its should be shared with Debt Management Office (DMO) Front Office for entry into the debt management system. This permits central management of a debt database. [26]

The World Bank in its Heatmap rated Kenya low (red) for failure to publish information on newly contracted external debt. The National Treasury could therefore consider reporting newly contracted debt in the Monthly Debt Bulletin.

It is worth noting that in some cases creditors may support or inhibit publication of public debt contracts. For example, there are cases where non-disclosure or confidentiality clauses are included in a loan agreement and prevent debtor countries from disclosing information on these contracts. In Kenya for example, the government cited a non-disclosure clause (s) as the sole reason for not publicizing the Standard Gauge Railway (SGR) project loan agreements and commercial contracts. The government would later publish the loan (funding) agreement but indicated non-disclosure clauses barred it from publishing the commercial contracts. Nonetheless, Okoa Mombasa- a civil society group- published these contracts on their website but noted that they obtained the contracts from a 'third party' and not the government of Kenya. A review of the Construction of the Civil Works of Mombasa-Nairobi Standard Gauge Railway Project between Kenya Railways Corporation and China Road and Bridge Corporation indicates that the contract may not be the final contract because it included notes on deletion and inclusion of new clauses.

The government in its Public Debt and Borrowing Policy released in 2020 promises transparency and accountability in all borrowing which shall be guided by the Annual Borrowing Plan. However, the policy falls short of defining what transparency in contracting debt means.[27] While Kenya's legal framework does not explicitly require publication of loan contracts, it requires submission of quarterly reports on newly contracted debt. These reports are unavailable on both the National Assembly's and the National Treasury's website. This means these are either not submitted or the government chooses not to publish them. This is despite a repeated recommendation from the National Assembly's Public Accounts Committee for the National Treasury to prepare, publish and publicize up-to-date national debt registers every quarter.[28]

The only available information about new loan contracts is in the Annual Public Debt report. In the FY 2022/23 annual report, the National Treasury reports it contracted eighteen new loans, of which 8 were from multilateral lenders, six from bilateral creditors and four from commercial banks. The report, however, does not include specific details such as the name of the lender, the amount, and financial terms of the loan.

2.2.1.9 Reporting covers transaction-level (individual financial transactions) information on debt

Vasquez et al (2024) in their paper argue that as best practice legal frameworks on public debt transparency should provide for granular disclosure of borrowing operations to prevent information asymmetries from lack of disclosure.[29] NDI and TI in their checklist recommend inclusion of disaggregated information such as purpose of the debt, execution agency, lender name, maturity, amount borrowed, amount disbursed and amount to be disbursed. Kenya has been reporting this information in the External Loans Handbook.

The Central Bank of Kenya (CBK) being the agency responsible for issuing public debt has been reporting transaction level information on bills and bonds. For each issuance the CBK reports information such as the amount offered, bids received, performance rate, the accepted amount, purpose of the funds, market weighted average interest rate, and weighted average interest rate of accepted bids (see Figure 4). Consolidated data on all bills and bonds issuances, tenor, type of treasury bond, and amount allotted, rejected, and redeemed, and outstanding amount can be accessed on CBK's website under the Government Finance Statistics tab.

Similarly, the National Treasury reports transaction level data on external debt in two key documents; the External Public Debt Register and the External Resources Estimates Handbook. Whereas this data is available, the documents are hard to interact with given that the data is not in machine readable format. In addition, their release is hardly timely. For instance, the National Treasury published the FY 2023/24 version in January 2024, more than six months after beginning of the FY. Further, the National Treasury did not publish the External Resources Handbook for the FY 2022/23 on its website, therefore, we may not be able to tell what projects were financed through external resources this year.

The External Public Debt Register is released late into the year. The latest publication covering FY 2022/23 was released in July 2024, more than one year after the close of the fiscal year. This means that we have a lag of one year on available data on external debt stock. Whereas the information is comprehensive enough, it may not support meaningful discourse because of its untimeliness. Suffice to note, the register was published more than six months after the audit report for FY 2022/23 which could explain the Auditor-General's opinion that she could not ascertain the level of public debt in Kenya.

Figure 4: A snippet of CBK's report on Domestic Debt

A. RESULTS OF 91, 182 & 364 DAYS TREASURY BILLS ISSUES 2594/091, 2567/182 & 2521/364 DATED 09/09/2024

The auction outcome is summarised in the table below.

	91 DAYS	182 DAYS	364 DAYS	TOTAL
Due Date	**09/12/2024**	**10/03/2025**	**08/09/2025**	
Amount Offered (Kshs. M)	**4,000.00**	**10,000.00**	**10,000.00**	**24,000.00**
Bids Received (Kshs. M)	**23,206.53**	**10,166.13**	**5,568.34**	**38,941.00**
Performance Rate (%)	**580.16**	**101.66**	**55.68**	**162.25**
Total Amount Accepted (Kshs. M)	**21,220.98**	**10,127.80**	**5,559.07**	**36,907.85**
Of which: Competitive bids	9,334.40	8,385.45	3,133.55	**20,853.39**
: Non-competitive bids	11,886.57	1,742.36	2,425.53	**16,054.46**
Bid-to-Cover Ratio	**1.09**	**1.00**	**1.00**	**1.06**
Purpose / Application of Funds:				
Rollover / Redemptions	24,866.35	10,868.70	3,096.10	**38,831.15**
New Borrowing/Net Repayment	3,645.37	740.90	2,462.97	
Market Weighted Average Interest Rate	**15.7780%**	**16.6268%**	**16.8322%**	
Weighted Average Interest Rate of accepted bids	**15.7677%**	**16.6255%**	**16.8228%**	
Price per Kshs 100 at average interest rate	96.2176	92.3446	85.6335	

2.2.1.10 Disclosure includes strict analytical and monitoring processes for approval and implementation of resource-backed loans.

Kenya is yet to take any resource-backed loans; however, approval of all loan contracts remains with the Cabinet Secretary, the National Treasury and Economic Planning. Therefore, as the National Assembly recommended, it would be important to subject approval of loan contracts to Parliamentary oversight. This may require an amendment to the PFM Act, 2012 because the act does not explicitly require ratification of loan contracts by Parliament. The African Forum and Network on Debt and Development (AFRODAD) in the African Borrowing Charter advocates for Parliamentary oversight of official borrowings (for enhanced transparency and accountability, part of which is parliamentary ratification of loan contracts). [30] In principle therefore, Parliament's oversight role should be carried out in a manner that upholds legal provisions on principles of public finance on debt management including maintaining debt at sustainable levels and ensuring that the burden on public debt is shared equitably between the present and future generations.[31]

2.2.1.11 Any changes in the loan conditions and structure resulting from revisions and (re-) negotiations with the creditors are disclosed in a timely manner.

The National Treasury publishes a table on statement of public debt in foreign currency in the External Debt Register. The table has a column titled "restructured debt", but no further information is provided. In FY 2022/23 the government restructured Ksh. 24,199,011 owed to the Government of Japan. Whereas this is a small amount, no further details are provided on what motivated this restructuring. Notably, Kenya has not developed any guidelines on debt restructuring.

2.2.1.12 Debt data reconciled in the context of debt restructuring is fully disclosed

As discussed above, information on debt

restructuring is seemingly scanty. The World Bank recommends this disclosure to allow creditors to accurately price debt instruments and understand a borrower's debt sustainability.[32]

2.2.1.13 The central bank discloses information on any public debt transactions, such as repossessions, currency swaps and swaps.

The World Bank reports that low-income countries are starting to use central-bank repurchases and foreign-currency swaps to support external borrowing, a departure from the past where they have been utilized as monetary policy tools. The World Bank notes that these operations are not captured in government debt statistics.(33) Given that these operations are likely to result in debt-like obligations, their disclosure is important. The National Treasury in the Annual Public Debt Management notes liability management operations as one of the key functions of the public debt management office (PDMO), therefore, their reporting would be the responsibility of PDMO with support from CBK.

2.3 Traffic light system review of debt transparency in Kenya

NDI and TI propose a traffic light approach to their checklist with a view to identifying and prioritizing opportunities for improvement and to tailor advocacy to areas that require attention. Annex Table 2 presents our analysis.

3. CONCLUSION AND RECOMMENDATIONS

3.1 Conclusion

Kenya's legal framework for public debt management demonstrates noteworthy progress in promoting transparency particularly through well-established laws like the Constitution of Kenya 2010, the Public Finance Management (PFM Act) 2012, and the PFM (National Government) Regulations. In these legal instruments, there are provisions that: define public debt, delineate institutional roles, and mandate the publication of critical reports, such as the Medium-Term Debt Management Strategy (MTDS), Annual Debt Management Reports, and monthly debt bulletins. Such provisions lay a sturdy foundation for the government's public debt reporting efforts, earning Kenya recognition from global institutions like the IMF for maintaining a high standard of debt transparency.

Despite these advances, several challenges remain. The first area of concern is the inconsistency and delays in the publication of key reports, including the monthly debt bulletins, the External Resources Handbook and the External Debt Register. This lag impairs the ability of stakeholders, including Parliament, civil society organizations and the public, to engage in timely oversight and informed debate on Kenya's debt levels. Additionally, while Kenya does disclose a significant amount of debt information, including debt stock and creditor details, the failure to provide more granular, transaction-level data weakens transparency. For example, crucial details such as the specific terms and conditions of loan agreements, including those related to major projects remain undisclosed. This opacity has raised public concerns, especially considering controversies surrounding the potential risks and liabilities attached to high-profile loans.

The government's use of the Commonwealth Meridian Debt System to record and monitor debt is a positive step towards improving the accuracy and timeliness of debt data. However, there is still a need for more comprehensive reporting on certain aspects of public debt, such as contingent liabilities arising from Public-Private Partnerships (PPPs) and the use of non-traditional debt instruments like financial derivatives. Additionally, while Kenya has yet to take resource-backed loans, the framework for managing such loans remains underdeveloped, with no specific provisions for transparency in the approval and monitoring of these potentially high-risk financial obligations.

A primary concern is the limited role of Parliament in the loan approval process. Parliament does not have a legal mandate to ratify individual loan agreements. This absence of Parliamentary oversight at the loan contract level reduces accountability and weakens the checks and balances needed to ensure that borrowing decisions align with Kenya's long-term fiscal sustainability. Involving Parliament more directly in the approval of loan contracts, especially for high-value loans (as proposed by the National Assembly, loans above Ksh 1 billion), would enhance transparency and allow for greater scrutiny of the economic justifications behind borrowing decisions. Quarterly reports of newly contracted loans are also not publicly available.

3.2 RECOMMENDATIONS

To enhance transparency and to support Parliamentary oversight, we recommend:

1

Amendment to the PFM Act, 2012 to require mandatory parliamentary ratification of individual loan agreements above Ksh 1 billion. Increased Parliamentary involvement would enhance accountability and ensure that borrowing aligns with the country's fiscal and economic priorities.

2

The National Treasury should improve the timeliness of key debt reports, particularly monthly bulletins, and publish them in accessible, machine-readable formats such as .csv or .json. This will facilitate easier analysis and public access to up-to-date debt information

3

Disclose transaction-level loan data: The government should provide detailed, transaction-level information on all new loans, including financial terms, repayment schedules, and any potential risks. Greater transparency in loan contracts will improve public trust and enable more robust public oversight.

4

Enhance reporting on contingent liabilities: The government should regularly update and publish comprehensive reports on contingent liabilities, including those arising from PPP projects, to ensure proper documentation and management of those fiscal risks.

ANNEX TABLES

Annex Table 1: Key institutions and their mandate in public debt management in Kenya

Institution	Role
Parliament	o Enact laws governing public debt management. o Approve Annual Budget Estimates, BPS and MTDS o Set public debt ceiling and annual Government borrowing limit o Approve Government guarantees; and o Oversight of the executive arm of Government on public debt management
The Cabinet	o Public debt and borrowing policy. o Annual Budget Estimates, BPS (stating size of the fiscal deficit) o MTDS (outlines financing strategies for fiscal deficit) o Approval of new projects in accordance with the relevant laws.
Cabinet Secretary to the National Treasury	o Develop the policy and financial framework within which the PDMO operates. o Raise loans or grants on behalf of the National Government within or outside Kenya subject to relevant laws. o Execute loan documents or authorize any other person in writing to execute loan documents for borrowing by the National Government. o Issue National Government securities. o Enter into derivative financial transactions on behalf of the National Government o Guarantee a loan of a County Government or any other borrower with the approval of Parliament. o Delegate to the head of PDMO the operational decisions on borrowing and debt management and the day-to-day management of the PDMO o Ensure the PDMO has the resources and skills to manage the debt and borrowing according to international best practices for liability management. o Be accountable to Parliament for the work of the PDMO o Appoint advisers, agents and underwriters for raising loans and issuing and managing National Government securities

Institution	Role
	○ Enter into agreements with the advisers, agents and underwriters appointed on the role to be undertaken by them and remuneration to be paid. ○ Issue guidelines on amendment of National Government securities register. ○ Submit MTDS to Parliament on an annual basis ○ Make regulations on public debt management. ○ Approve government entity's intended borrowing programme.
Public Debt Management office	○ Raise funds through borrowing or grants to finance the budget deficit at minimum cost and prudent level of risk over the long-term ○ Manage the public debt portfolio to lower costs and risks in accordance with best practice ○ Maintaining the public debt records including the public debt register ○ Prepare public debt management reports. ○ Design and implement the MTDS. ○ Conduct periodic debt sustainability analysis. ○ Undertake investor relations on public debt management. ○ Promote the development of domestic markets for government debt securities. ○ Manage financial transactions on public debt and borrowing. ○ Support county governments and public entities on debt management and capacity development. ○ Appoint agents to provide technical advice or undertake administrative functions for the management of debts; and ○ Perform any other function as may be assigned by the Accounting Officer in accordance with the relevant laws.
Central Bank of Kenya	○ Acts as Fiscal Agent for the National Treasury in making external and domestic debt payment services. ○ Acts as registrar of Government domestic debt securities ○ Maintain bank accounts of public funds including Treasury Single Account ○ Advise the Government on public debt management. ○ Provide depository facilities for Government domestic debt securities.

Institution	Role
	o Provides clearing and settlement arrangements for trade in Government domestic debt instruments; and o May provide advance to the Exchequer Account in accordance with relevant laws.
Office of the Attorney General	o Give legal clearance and legal opinion on financial contracts, framework agreements and Memorandum of Understanding (MoUs) from the Attorney General as required by the relevant laws.
Ministries, Departments and Government Agencies (MDAs)	o Participate in the loan negotiation process for financing projects under their mandate; and o Comply with all relevant laws governing optimal utilization of proceeds from loans and grants to ensure value for money
Capital Market Authority	o Collaborate with PDMO in developing a robust and vibrant domestic debt market for Government securities
Auditor General	o Audit All public debt and borrowing in accordance with the law.

Source: Public Debt and Borrowing Policy

Annex Table 2: Traffic light review of debt transparency in Kenya

Legend:
Red: No element of the specific item is met
Orange: Some elements included in the specific item are met
Green: All the elements of the specific item are met

Section One: The public debt legal framework provides for effective, transparent and accountable debt management

Sub-principles	Traffic light
1.1 The public debt legal framework provides clear and unambiguous definitions	
Provides clear definitions of what constitutes public debt; ii)the nature of allowed instruments (including debt-like instruments) and; iii) the permitted purposes for borrowing.	
Indicates an annual limit on government borrowing.	
Includes comprehensive coverage of borrowing from private and public sources, including reporting on implicit and explicit contingent liabilities.	
1.2 The public debt framework establishes clear roles and competences	
States the legislature's competence to ratify loan agreements.	
Includes the legislature's role to review the executive's plans for debt repayment and to hold the government accountable for decisions on whether to seek debt restructuring.	
Specifies the authority to borrow, delegated from the legislature to the executive, and the eligible borrowing objectives.	
Clearly states the functions, responsibilities and roles of different government bodies in contracting and managing public debt.	

Defines the organization and responsibilities of a DMO, typically the only authorized body to contract or issue debt on behalf of the central government	
Includes rules and procedures related to the debt authorization cycle.	
Requires scrutiny and/or approval for public debt that entails collateral, quasi-collateral, lender step-in rights, novel features or unusual risk levels.	
1.3 The public debt legal framework establishes provisions for strong transparency and accountability	
Provides specific oversight and audit measures, such as the ability of the SAI to undertake annual public debt audits.	
Establishes the requirements related to the publication of debt management strategies and debt reporting.	
Includes specific transparency requirements.	
Includes clear legal or administrative consequences for any debt contracted in violation of the law.	

Section three: Public debt is disclosed in an accessible, timely and transparent manner

Practice	Traffic light
1. There is a system or methodology for recording and monitoring public debt that makes publishing and analysis of debt-related information easy.	
2. There is an easy-to-find and single location for public disclosure	
3. The information published includes data regarding debt indicators with all the underlying data and modes of calculation.	
4. Publication includes information on all sectors: sovereign, subnational, SOEs, PPPs, contingent liabilities and collaterals.	

5. Information published covers all debt instruments.	
6. There is a detailed breakdown of all the creditors – financial institutions, bilateral or private – and the debt volume owed to each	
7. The relevant debt information and figures are updated periodically: annually and/or quarterly	
8. Each new loan contraction is reported 30 days before and after the contract is signed.	
9. Reporting covers transaction-level (individual financial transactions) information on debt.	
10. Disclosure includes strict analytical and monitoring processes for approval and implementation of resource-backed loans	N/A
11. Any changes in the loan conditions and structure resulting from revisions and (re-) negotiations with the creditors are disclosed in a timely manner.	N/A
12. Debt data reconciled in the context of debt restructuring is fully disclosed.	N/A
13. The central bank discloses information on any public debt transactions, such as repossessions, currency swaps	N/A

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