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Our Ref: IPF/SBM/25/02-2026

February 25, 2025

Mr. Samuel Njoroge,
Clerk of the National Assembly,
P. O. Box 41842-00100,
Nairobi, Kenya.

RE: INSTITUTE OF PUBLIC FINANCE MEMORANDUM ON THE NATIONAL INFRASTRUCTURE BILL

Greetings from the Institute of Public Finance (IPF).

IPF is an independent, non-partisan, and non-profit think tank that advances the principles and practice of public finance management. With over a decade of experience, we support state and non-state actors at both national and county levels to improve public finance systems through credible evidence and technical assistance. In this note, the Institute submits its analysis, insights and proposals on the National Infrastructure Bill, 2026.

We begin by applauding the Finance and National Planning Committee of the National Assembly for giving the public the opportunity to air their views on this critical Bill which is of great significance to the development of the country. Before we discuss our submission in detail, we set the context.

1. Shroud of Limited Transparency at the Inception of the National Infrastructure Fund (NIF)

The NIF was conceived as a strategic, executive-led initiative reportedly approved by Cabinet in December 2025. Its principal objective was to shift Kenya away from conventional, debt-intensive sovereign borrowing for large-scale infrastructure projects and instead establish a specialized, corporate-structured investment vehicle capable of mobilizing alternative financing. In principle, this policy shift reflects an appreciation of the country's fiscal constraints and the need for innovative financing mechanisms.

However, from its inception, concerns emerged regarding the transparency and accountability framework underpinning the Fund's establishment. Notably, the decision to anchor the NIF under the Government Owned Enterprises Act, 2025 raised legitimate public apprehension. Structuring the Fund through this legislative route was perceived as circumventing robust parliamentary scrutiny at the formative stage and, consequently, weakening the safeguards of public oversight ordinarily associated with public finance institutions. This approach, at the very outset, created a deficit of public confidence and invited questions regarding governance safeguards and the true institutional character of the Fund.



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While the introduction of the NIF Bill before the National Assembly represents a commendable and necessary step toward strengthening transparency, it does not fully cure the foundational concerns that accompanied the Fund's establishment. The Bill indeed provides for governance structures, including a Board of Directors, an Audit Committee, defined roles for the Cabinet Secretary, and reporting obligations to Parliament, measures that we acknowledge and commend. Nevertheless, and as highlighted below, significant substantive concerns remain, particularly in relation to certain contentious provisions that warrant careful reconsideration to ensure alignment with constitutional principles of transparency and accountability.

2. Need for Clear and Precise Definitions within the Bill

A fundamental concern arising from the Bill is the absence of a clear and legally precise definition of what constitutes “**national infrastructure**.” While the Bill provides an indicative list of sectors, such as railway networks, airports, seaports, and other large-scale projects, it does not articulate the criteria or threshold that qualifies a project as “national infrastructure” in character or significance. A mere enumeration of examples, without a definitional framework, creates interpretive ambiguity and expands discretionary space beyond what is desirable in a statute governing substantial public resources.

The absence of definitional clarity presents both legal and fiscal risks. Without objective criteria, such as scale, strategic national importance, cross-county impact, contribution to economic productivity, or alignment with national development plans, the term “national infrastructure” may be susceptible to overly broad interpretation. In a context where large-scale projects have previously been launched with significant public expenditure but questionable economic viability or sustainability, this ambiguity could permit the inclusion of projects that do not meet rigorous national investment standards.

3. Legislative inconsistency on sources of funds

The Bill leaves significant ambiguity regarding the lawful sources of the Fund's capitalization and, in doing so, creates potential conflict with existing statutory frameworks. In particular, the proposal that the Fund be financed through proceeds from privatization is inconsistent with **Section 54 of the Privatization Act**, which expressly provides that privatization proceeds shall be paid into the Consolidated Fund. Redirecting such proceeds to the NIF without formally amending the parent Act would create a direct legal inconsistency and render the provision vulnerable to challenge. Beyond the legal conflict, privatization policy is anchored in macro-fiscal objectives, such as debt reduction, fiscal consolidation, and efficient asset management, objectives that are ordinarily achieved through the central budgetary framework rather than through earmarking mechanisms.

Further, the Bill indicates that the Fund may also receive allocations from the national budget. However, this raises additional concerns regarding alignment with the fiscal responsibility principles under **Section 15(2)(a)**



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of the Public Finance Management Act, which requires that at least 30% of the national budget be allocated to development expenditure. It is therefore unclear how allocations to the NIF would be treated within this framework, specifically whether such allocations would form part of the 30% development threshold or operate parallel to it. This creates policy uncertainty as to what constitutes development expenditure and risks distorting the existing fiscal architecture if not clearly delineated.

The Bill raises serious concerns regarding institutional duplication and functional overlap with existing statutory bodies. Several of the proposed Board's functions intersect with mandates already conferred upon established entities, thereby risking fragmentation and inefficiency within the public investment framework. For instance, responsibilities relating to road infrastructure development overlap with those of the Kenya National Highways Authority, which is statutorily mandated to develop and manage national road infrastructure. Similarly, the Fund's role in reviewing and screening large-scale projects for feasibility and viability prior to budget allocation, standardizing project identification processes, and developing policies and regulations to guide public investment closely mirrors the mandate of the Public Investment Management Unit (PIMU). Such duplication not only creates institutional ambiguity but also threatens to dilute accountability by dispersing responsibility across multiple bodies with substantially similar functions.

Additionally, there remains uncertainty as to the applicable overarching governance framework. While the Fund was initially referred to as being anchored under the Government Owned Enterprises Act, 2025, the Bill does not clearly articulate how this framework interfaces with public finance laws and parliamentary oversight mechanisms. The absence of harmonization between these legal regimes creates ambiguity and undermines coherence in public financial management. For a Fund of this scale and fiscal consequence, statutory clarity and legislative alignment are indispensable.

4. Concentration of Executive Power and the Need for a Robust Enforcement Framework

The Bill appears to confer extensive discretionary authority upon the Cabinet Secretary, particularly in the approval of infrastructure projects and policies of the Fund. Given the scale and fiscal significance of the NIF, such concentration of power warrants stronger parliamentary scrutiny and clearer statutory limits. Infrastructure prioritization and approval decisions carry long-term financial implications for the Republic and therefore should be subject to structured oversight mechanisms that ensure transparency and collective decision-making. Without clear checks, the governance architecture risks weakening accountability rather than strengthening it.

Equally concerning is the limited enforcement framework within the Bill. The NIF is designed to mobilize and manage substantial public resources, complex investment instruments, and long-term contractual arrangements. In such an environment, broad accountability principles alone are insufficient. Kenya's historical experience with procurement irregularities, conflicts of interest, misappropriation of funds, and abuse of office demonstrates that where large-scale capital projects are involved, risks are heightened. The absence of clearly



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articulated offences and penalty provisions tailored to the operational realities of the Fund creates a structural vulnerability, leaving enforcement to general statutes that may not adequately address the specific risks associated with the NIF.

We therefore recommend that:

1. The Bill harmonized with other legal frameworks to eliminate ambiguities and strengthen transparency, coherence, and public trust in the purpose and governance of the NIF.
2. Clear statutory limits be placed on the Cabinet Secretary's powers, with enhanced parliamentary oversight over infrastructure project approvals and policy frameworks developed by the Board.
3. The definitions within the Bill be strengthened to provide precise and objective criteria for what constitutes qualifying infrastructure.
4. Specific offences and proportionate penalties be incorporated into the Bill to ensure deterrence and personal accountability in the event of violations.

We are available to provide further information and discuss our recommendations on the proposed tax measures. Our specific proposals are in the annexed table.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Ndirangu', with a horizontal line underneath.

Daniel Ndirangu,
Chief Executive Officer,
Institute of Public Finance.



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IPF SUBMISSIONS ON THE NATIONAL INFRASTRUCTURE BILL, 2025

Clause	Description of the Clause	Proposal	Justification
Clause 2	Definitions	Add a clear definition of what constitutes National Infrastructure	For avoidance of the fund being employed to other infrastructural projects apart from those mentioned in the bill, it is necessary that an explicit definition of “National Infrastructure” be included, mentioning what it entails.
Clause 4(a)	4(a) The purpose of this fund is to scale up and accelerate development of catalytic national infrastructure including, national highway and railway networks, air and seaports, electricity generation, transmission and distribution, water reservoirs, irrigation and agribusiness infrastructure	As above, provide a definition of “Catalytic National Infrastructure”	For purposes of transparency and accountability to the public, the Bill should provide a clear and operational distinction between “infrastructure” and “catalytic infrastructure,” specifying the criteria that differentiate the two categories.
Clause 4(b)	4(b) To mobilize private capital and non-traditional sources of infrastructure finance including domestic funds and collective investment schemes, sovereign wealth funds, climate finance	Include the statement “In the most prudent manner and in accordance with the Privatization Act and PFM Act.”	With the requirement of the PFM Act 15(2), There ought to be an addition mentioning that it aims to mobilize funds in the most prudent manner that ensures fiscal sustainability, ensuring that such financing mechanisms minimize adverse impacts on the budget.
Clause 6 (1)	Composition of the board	Amend the proposal.	The bill should explicitly ensure at least one third of either gender is represented on the board in accordance with article 27 of the constitution. Kenya has progressively incorporated the two-thirds gender rule into various pieces of legislation establishing public



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Board of directors			bodies. Omitting it from this Bill would be a regression from that trend and would likely invite constitutional challenge. Courts have in the past nullified appointments to public bodies where the gender principle was not observed, which could expose the Fund's Board decisions to legal challenge and create operational uncertainty.
Clause 11 Role of the board	The clause enumerates the role of the Board	Amend the proposal. The Bill should amend Clause 11 to include an explicit obligation on the Board to consider equitable regional distribution of infrastructure investments as part of its strategic direction-setting function.	This would align the Fund with the equitable development principles in the Constitution, which speaks to reducing regional disparities and ensuring balanced development across Kenya.
Clause 16 Administrator of the fund Cap.412A	The Cabinet Secretary may designate a person to be the administrator of the fund in accordance with section 24(5) of the public finance management act.	Amend the proposal.	The use of the word ‘may’ suggests the appointment of an administrator is discretionary rather than mandatory. Adopt the proposal but change the word ‘may’ to ‘shall’. Furthermore, there is no specified qualification criteria for administrator in the bill as is the case for Chief Executive Officer and the board members. The bill should specify minimum qualifications for the person delegated as the fund’s administrator. This will ensure the fund has a clear identified administrator with explicit defined roles to avoid duplication of roles with the CEO and the board.
Clause 18	18. (1) The Board shall, prior to the commencement of a financial year, adopt an investment plan based on the national strategic objectives. (2) The investment plan shall be effective on the first day of	18 (1) Adopt the proposal and add mandatory minimum contents for the investment plan eg prioritization criteria. To enhance accountability, the Bill should ensure that	Enhances public oversight, improves transparency, investor confidence, and aligns with open government and accountability norms. Inserting a defined time not only improves transparency but also promotes accountability and public trust in the investment plan. Furthermore, ensuring that Parliament approves the plan promotes oversight and ensures effective participation in the utilisation of funds.



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	the financial year to which it applies. (3) The investment plan shall form the basis of annual performance contracts to be signed between the Cabinet Secretary and the Fund	the investment plan should be scrutinized and approved by Parliament. 18 (2) Adopt the proposal and add a defined requirement to publish the approved plan	
Clause 21	21. (1) The Board shall develop an Investment Policy for approval by Cabinet.	Add requirements for Annual and mid-term review and require publication of the approved Investment Policy as suggested in the above clauses.	Keeps policy responsive while retaining long-term direction and promoting accountability. Further, there is need that the policy is tabled in parliament and approved to make sure that the policy directions are in line with the national objectives and the priority areas in line with PFM. Lastly, adding Annual and mid-term review helps in addressing any shocks that may come up during implementation of the policy.
Clause 23 (1) & (2)	Feasibility studies by the Fund on investment projects to determine the commercial viability of the project.	Reject this proposal.	The Fund's role in reviewing and screening large-scale projects for feasibility and viability mirrors the mandate of the Public Investment Management Unit (PIMU). Such duplication not only creates institutional ambiguity but also threatens to dilute accountability by dispersing responsibility across multiple bodies with substantially similar functions.
Clause 24	24. (1) Role of the cabinet secretary in prescribing the standards and procedures for the identification and selection investment projects under this Act	Amend this proposal and instead Include Parliament oversight in the approval of the standards.	We should tame the powers of the Cabinet Secretary and require all procedures to be consistent with existing procurement, PPP and PFM frameworks not under discretion of the cabinet secretary. Alternatively, the cabinet secretary should table the prescribed standards and procedures for the identification and selection of investment to parliament for approval.
Clause 29 (a): Funds and Conflict with Other Legislation	The clause provides that the proceeds from privatization and disposal of government	Reject this Proposal	This proposal directly contradicts the framework established under section 54 of the Privatization Act 2025, which provides that proceeds from privatization are to be channeled into the Consolidated Fund. Redirecting privatization proceeds to the NIF



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	<p>assets shall include funds for the NIF.</p>		<p>through subsidiary legislation or an ordinary statutory clause would create legal conflict and undermine legislative coherence. In the absence of a formal amendment to the Privatization Act, such a provision would be legally untenable.</p> <p>Furthermore, privatization policy is anchored on specific macroeconomic objectives, including debt reduction, fiscal consolidation, and efficiency in public asset management. The rationale behind channeling proceeds to the Consolidated Fund is to allow the National Treasury to apply such resources toward debt servicing, deficit reduction, or other national priorities determined through the budgetary process. Diverting these proceeds directly to the NIF risks fragmenting fiscal policy and weakening coordinated debt management. At a time when fiscal sustainability and debt alleviation remain central national concerns, maintaining coherence between privatization policy and broader public finance objectives is imperative.</p> <p>Additionally, if the policy intention is indeed to earmark privatization proceeds for infrastructure development, such a shift requires deliberate legislative harmonization. This would necessitate a formal amendment to the Privatization Act, 2025 to align revenue allocation mechanisms and clarify the fiscal rationale. Absent such harmonization, embedding this provision within the NIF Bill would create statutory inconsistency and expose the law to legal challenge.</p>
<p>Clause 34: Investment of Surplus Funds</p>	<p>The Bill proposes that the Board with approval from the CS Treasury shall invest such surplus funds in government securities</p>	<p>The proposal should be rejected and reformulated to provide greater clarity and governance safeguards. In particular, the provision should</p>	<p>The proposal fails to define what constitutes “surplus funds,” thereby creating ambiguity in interpretation and implementation. Without a clear statutory definition tied to actuarial assessments or liquidity thresholds, the provision may expose the Fund to inconsistent or imprudent application as evidenced even with other funds such as the Affordable Housing Levy. Moreover, the</p>



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		<p>clearly define what constitutes “surplus funds,” and mandate the development of a comprehensive investment policy to guide decision-making.</p>	<p>requirement for prior approval of the Cabinet Secretary raises serious governance concerns. The Board owes fiduciary duties to the Fund and its beneficiaries, and its investment decisions should be guided by statutory principles and an approved investment policy, not discretionary executive control. Embedding ministerial approval at the operational level risks politicizing investment decisions, weakening institutional independence, and creating uncertainty in financial management.</p> <p>The revised clause should also expressly incorporate principles of prudence, transparency, accountability, and risk management to ensure sound financial stewardship. Further, instead of requiring case-by-case approval from the Cabinet Secretary, the law should provide that investments be undertaken in accordance with an approved and periodically reviewed Investment Policy Statement (IPS), thereby strengthening institutional autonomy while maintaining structured oversight.</p>
Part VII on the Miscellaneous Provision	-	<p>Part VII of the NIF Bill must be strengthened to include clear, comprehensive, and enforceable criminal and offences provisions in order to safeguard the integrity, transparency, and accountability of the Fund.</p> <p>Offences should therefore extend to:</p>	<p>Given the scale, sensitivity, and developmental significance of the NIF, a weak enforcement framework would undermine both its credibility and its operational effectiveness. Firstly, the NIF Bill establishes a mechanism intended to mobilize, manage, and ring-fence public finances for national infrastructure development. Such a Fund will inevitably handle substantial financial resources, long-term investment instruments, and complex contractual arrangements. In this context, the absence of detailed offences and penalty provisions creates a structural vulnerability.</p> <p>Secondly, Kenya’s historical experience with corruption, procurement irregularities, and mismanagement of public funds demonstrates that broad principles of accountability are insufficient without corresponding criminal liability. Where large capital projects</p>



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		<ul style="list-style-type: none"> • Misuse or misapplication of Fund resources. • Authorization of unlawful investments or expenditures. • Failure to disclose conflicts of interest. • Falsification or concealment of financial records. • Obstruction of audits, investigations, or parliamentary oversight. • Breach of statutory investment or procurement principles. 	<p>are involved, risks often arise in areas such as misappropriation of funds, conflict of interest, abuse of office, unlawful authorization of expenditure, manipulation of procurement processes, and failure to comply with fiduciary standards. If these acts are not explicitly criminalized within the framework of the NIF Bill, enforcement may be left to general statutes, which may not adequately capture the specific operational risks unique to the Fund.</p> <p>Thirdly, a strong offences regime serves both a punitive and preventive function. Clearly articulated offences, coupled with proportionate penalties, create deterrence. They send a strong institutional signal that violations of the Act, will attract personal liability. This strengthens institutional discipline and enhances public trust in the Fund.</p> <p>Fourthly, strengthening Part VII would align the NIF Bill with modern public finance governance standards, which require that any statutory body entrusted with significant financial authority operate under strict accountability frameworks.</p>
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*****End*****