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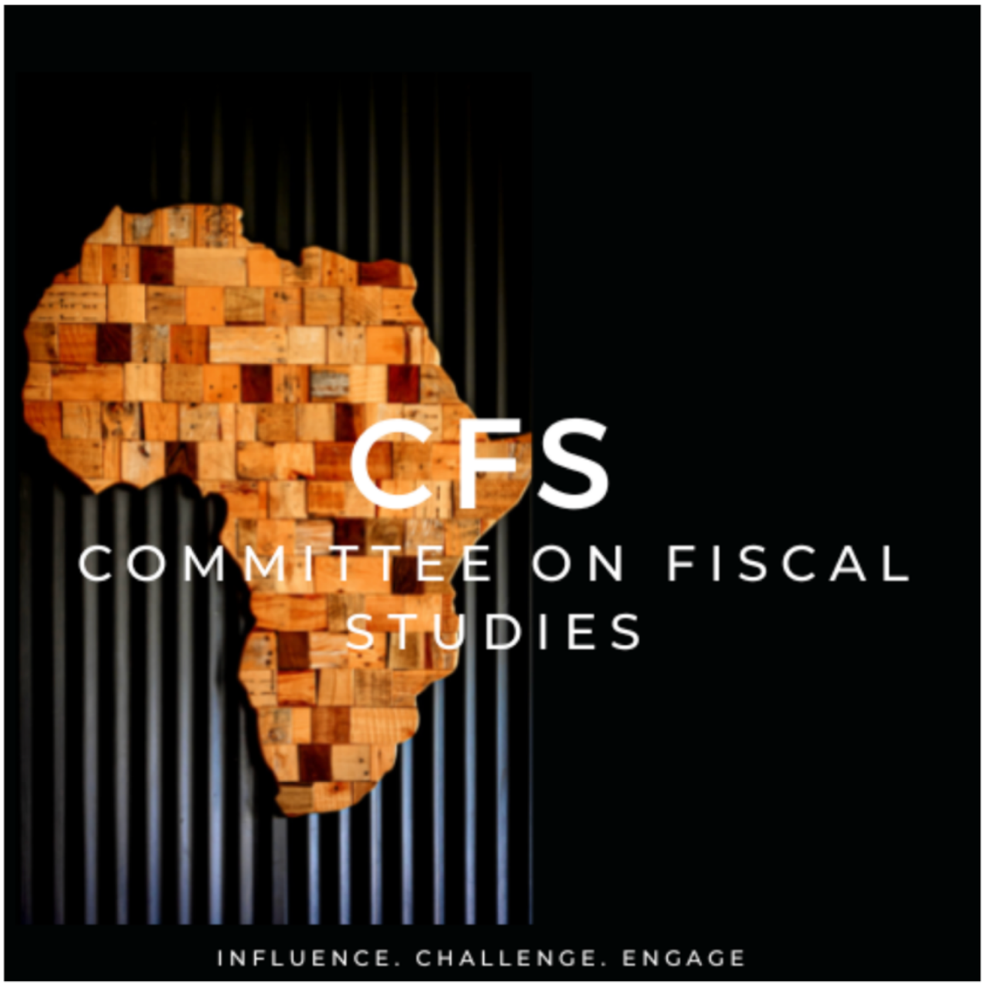
AN EVALUATION OF TRACING THE SOCIO-ECONOMIC IMPLICATION OF DEBT FROM CONTRACTING TO SPENDING TO AUDIT – KENYA



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An Evaluation of Tracing the Socio-Economic Implication of Debt from Contracting To Spending To Audit – Kenya

Robert Riitho Wagura

1. Introduction

"A national debt if it is not excessive will be to us a national blessing; it will be powerful cement of our union."

Alexander Hamilton[1]

In his address to the Speaker, House of Representatives communicated on 14th January 1790, Hamilton[2], addressed at large the concept of debt to a nation including its necessity and justification, advantages when used as a tool for economic progress as well as discussions on the ramifications of mismanagement up to and including the damage to public faith. It was Hamilton's position[3] that in countries where public debt was well funded, in so doing acquiring an adequate and stable value, there was opportunity for economic growth, contextually, within the trade and agrarian sector; as well as with respect to interest in money, where he opined that interest of money would be lowered by it. He continued that the same followed a ratio (quantity of money and quickness of circulation) and that the afore-stated circumstance would enable both the public and individuals to borrow on easier and cheaper terms. However, and in the same vein, Hamilton[4] was quick to caution that a default on public debt would be "a mortal wound to the Republic" and further likened the same to an existential threat that a country would face and further, that the same would "expose the country to destruction".

Closer home, the earliest records of Kenyan debt stood at Kshs. 503,554,000 as of September 1991[5] and which figure has since skyrocketed to Kshs. 8,206,739.71 (trillions) as of December 2021[6] in data released by Central Bank of Kenya. Kinuthia & Rugo (2020)[7] report that as at the end of June 2020, Kenya's public debt stood at 6.7 trillion Kenyan Shillings ($ 62 billion) which translated to around 66% of the nation's total wealth as estimated by Gross Domestic Product (G.D.P.). Kemboi & Kwamboka, 2021[8] further report that the rise in public debt is attributable to a change in the country's fiscal policy space and particularly the fact that in the 10

[1] Cowen D, , *Alexander Hamilton on Finance, credit, and debt* (Columbia University Press 2018)
[2] Hamilton A, 'Founders Online: Report Relative to a Provision for the Support of Public Credit ...' (*National Archives and Records Administration*) <https://founders.archives.gov/documents/Hamilton/01-06-02-0076-0002-0001> accessed 24 August 2023
[3] *Ibid*
[4] Geoghegan T and others, 'The Constitutional Case for Disarming the Debt Ceiling' (*The New Republic*, 25 August 2023) <https://newrepublic.com/article/169857/debt-ceiling-law-terminate-constitution> accessed 25 August 2023
[5] 'Public Debt' (*CBK*) <https://www.centralbank.go.ke/public-debt/> accessed 25 August 2023
[6] *Ibid*
[7] Kinuthia J and Rugo A, 'The State of Kenya's Public Debt: The Thin Line between a Rock and a Hard Place'
[8] Kemboi LK and Kwamboka V, 'Kenya's Public Debt Distress: Issues and Scenarios' (*https://ieakenya.or.ke*, 25 November 2021) <https://ieakenya.or.ke/blog/kenyas-public-debt-distress-issues-and-scenarios/> accessed 25 August 2023

year period prior to 2021, Kenya went on an expansionary fiscal policy driven by increased budgetary allocation and/or spending on infrastructural development.

They further report that since the 2013/14 financial year, Kenya's annual net borrowing has increased by Kshs. 685.72 billion, seeing an increase in debt stock by about 300%[9]. Kemboi & Kwamboka (2021) further report that the increased borrowing affected the country's debt to GDP ratio from around 44% to an estimated 79% of GDP as at end-2021, which increasing debt levels were driven by deficit, a situation worsened by the global Covid-19 pandemic[10]. Wandeda (2021)[11] acknowledged that whereas Kenya's public debt has skyrocketed in recent times, altogether public debt inflows are necessary for a boost of economic growth as well as economic stability, if well utilized. Kenya's debt is comprised of both domestic and eternal sources. Domestically, funds are sourced from treasury bills and bonds whereas externally, the eternally, the same are sourced from loans which may take the form of bilateral, multilateral or syndication as well as issuance of international sovereign bonds[12].

Kenya's debt ceiling currently sits at Kshs. 10 trillion[13] as of 7th July 2022 when the National Assembly voted to increase the same following a motion tabled by the Leader of Majority, Honourable Amos Kimunya, in, line with general provisions of Section 50 of the Public Finance Management Act, 2012. While debating the same, Honourable Kimunya led the motion by stating that it would be an impossibility to come up with a sound 2022/23 budget without raising the debt ceiling. The same was however opposed for the reason that the ultimate burden would fall back on the taxpayer, which burden as it was, was increasingly becoming insurmountable. Consequence of the increased and spiralling debt issue meant that as far back as 2022, the proverbial writing on the wall had begun for Kenya as debt repayment overtook recurrent expenditure, essentially taking away from necessities such as health sector[14]. The figures as at 2022 were such that repayments to foreign creditors rose 34.11 percent to Sh440.06 billion, while domestic debt costs were forecast to increase 11.65 percent to Sh919.06 billion in the year starting July compared to the 2022 estimates[15].

The net effect of unchecked borrowing that had been characterized by H.E. (Rtd. Pres.) Uhuru Muigai Kenyatta's regime is that the government of the day would have to borrow more in a bid to repay maturing debt as opposed to towards infrastructural development, further complicating and compounding dynamics when taking into consideration *inter alia* the country's

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[9] *Ibid*

[10] *Ibid*

[11] Wandeda D, 'A Snapshot of Kenya's Debt Profile and Dealing with the Debt' (*A snapshot of Kenya's debt profile and dealing with the debt | University of Nairobi*, 9 July 2021) <https://www.uonbi.ac.ke/news/snapshot-kenya%E2%80%99s-debt-profile-and-dealing-debt> accessed 25 August 2023

[12] 'Public Debt Management' (*The National Treasury - The National Treasury of Kenya*) <https://www.treasury.go.ke/public-debt-management/> accessed 25 August 2023

[13] Mutai E, 'MPs Increase Debt Ceiling to Sh10trn' (*Business Daily*, 7 June 2022) <https://www.businessdailyafrica.com/bd/economy/mps-increase-debt-ceiling-to-sh10-trillion--3841638> accessed 25 August 2023

[14] Mwaniki C, 'Next President to Spend Sh3.7bn Daily on Debts' (*Business Daily*, 6 April 2022) <https://www.businessdailyafrica.com/bd/economy/next-president-to-spend-sh3-7bn-daily-on-debts-3773958> accessed 25 August 2023

[15] *Ibid*

increasing poverty levels and high unemployment levels.[16] The numbers as projected a tall order to the 5th President of the Republic of Kenya, who had narrower fiscal space to balance debt repayment vis-à-vis election promises and implementation of his manifesto. Perhaps the most famous or infamous of public debt, widely publicized has been the Eurobond and its proceeds. To date, the government's accounting of Eurobond proceeds has been marred with inconsistencies[17]. Omondi & Anam (2022) report that there have been claims up to Kshs.120 billion was used to pay pending bills to road contractors, provide budget support, and even cover recurrent expenditure[18]. Administrator (2021) further reports that it is credibly believed that the costs in up to nine project's in the country's energy sector were unjustifiably inflated to justify the Eurobond subscription, showing overruns in the region of Kshs. 50 billion. Additionally, an unbudgeted item for the 2013/2014 financial year-- military modernization-- gobbled up another Kshs.62.8 billion[19].

Worryingly for Kenya is incongruence of facts on the same, the Eurobonds proceeds, as whereas the National Treasury reports indicated that Eurobond money was received and spent in the 2013/14 financial year, the same would be logically impossible given the fact that funds were received in the last week of 2013/2014 financial year with no drawdowns on the same until the first week of July, essentially making utility of the funds a 2014/15 financial year affair[20]. While still on the Eurobond issue[21], Rubadiri (2022) reports that when the then president of the Republic of Kenya, His Excellency (Retired) Pres. Uhuru Muigai Kenyatta gave his address from State House on 25th June 2014 to the effect that the country had received an initial Kshs. 174 billion, which amount would later increase to a Kshs. 250 billion sovereign bond, it was his pledge to the people that the funds were to be used prudently. Rubadiri (2022) reports that when the funds were disbursed from the Sovereign Bond Account to the National Exchequer Account, roughly Kshs. 196 billion was released to the Exchequer while the remainder, Kshs. 53 billion, went towards repayment of a syndicated loan that had been obtained in 2012[22].

However, the then government of the day was at pains to account for the funds. The intention behind taking out the sovereign bond had been to cushion the Kenyan economy by keeping government out of the local debt market with the projected outcome of lowering interest rates[23]. This was not to be as 2015 saw the interest rates rising to as high as 18% whilst the value of the Kenyan shilling against the Dollar plummeted from Kshs. 87 to Kshs. 102[24]. Muchai

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[16] *Ibid*

[17] Omondi F and Anam P (*TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC DEBT MANAGEMENT A FOCUS ON KENYA'S PAST EUROBONDS*, 2022) <https://tisa.co.ke/wp-content/uploads/2022/12/Eurobond-Study-Report.pdf> accessed 25 August 2023

[18] Adminstrator W, 'State Capture – Inside Kenya's Inability to Fight-Corruption' (*AfriCOG*, 15 September 2021) <https://africog.org/state-capture-inside-kenyas-inability-to-fight-corruption/> accessed 25 August 2023

[19] *Ibid*

[20]Omondi F and Anam P (*TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC DEBT MANAGEMENT A FOCUS ON KENYA'S PAST EUROBONDS*, 2022) <https://tisa.co.ke/wp-content/uploads/2022/12/Eurobond-Study-Report.pdf> accessed 25 August 2023

[21] Rubadiri V, 'The Eurobond Mystery, and Why the Ghosts Have Refused to Go Away' (*Citizen Digital*, 28 May 2022) <https://www.citizen.digital/news/the-eurobond-mystery-and-why-the-ghosts-have-refused-to-go-away-n299052> accessed 2 September 2023

[22] *Ibid*

[23] *Ibid*

[24] *Ibid*

(2023)[25] raises the point that Kenya, like many developing countries in its positions has gravitated towards private debt as the same undergo less scrutiny and are under less conditionalities when compared to debt source from multilateral financial institutions and traditional Paris Club lenders[26].

It is Muchai's (2023) position that because private debt is subjected to less accountability and transparency measures, with less conditions compared to concessional loans, the same are often prone to corruption and misappropriation of funds, especially in jurisdictions with weak legislative oversight on the borrowed funds/accounts[27]. Muchai (2023) points out the fact that increased repayment obligations especially for private debt, as was the case for Kenya in 2019 where Kshs. 761.4 billion, being half of the total tax revenue collected by the government went towards debt servicing, has resulted in the government being constrained to limit its expenditure on essential sectors including but not limited to the health, education and social protection sectors[28]. Muchai (2023) thus argues and concludes that the same has led to negative repercussions on the "ordinary mwananchi" and has undermined the realisation of fundamental social and economic rights outlined in Article 43 of the Constitution of Kenya, 2010[29].

2. Legal Basis for Public Debt in Kenya

The Constitution, under the Doctrine of "Supremacy of the Constitution" holds the highest legal authority within the said subject legal system, in effect making it the supreme governing power[30]. The same flows from the grundnorm theory[31] advanced by Hans Kelsen in his Pure Theory of Law. Kelsen posited that essentially, laws flowed from legal norms and as such and in a bid to avoid an endless quest of establishing the validity of each legal norm, it was imperative that there be a grundnorm (basic norm) from which each other legal norm flowed from[32]. The

[25] Muchai J, 'Kenya's Public Debt: Risky Borrowing and Economic Justice' (*The Elephant*, 23 June 2023) <https://www.theelephant.info/features/2023/06/22/kenyas-public-debt-risky-borrowing-and-economic-justice/> accessed 2 September 2023

[26] (*Club de Paris*) <https://clubdeparis.org/> accessed 4 September 2023 - The Paris Club is an informal group of official creditors whose role is to find coordinated and sustainable solutions to the payment difficulties experienced by debtor countries. As debtor countries undertake reforms to stabilize and restore their macroeconomic and financial situation, Paris Club creditors provide an appropriate debt treatment. Paris Club creditors provide debt treatments to debtor countries in the form of rescheduling, which is debt relief by postponement or, in the case of concessional rescheduling, reduction in debt service obligations during a defined period (flow treatment) or as of a set date (stock treatment).

[27] Muchai J, 'Kenya's Public Debt: Risky Borrowing and Economic Justice' (*The Elephant*, 23 June 2023) <https://www.theelephant.info/features/2023/06/22/kenyas-public-debt-risky-borrowing-and-economic-justice/> accessed 2 September 2023

[28] *Ibid*

[29] *Ibid*

[30] Rongoma B, 'The Doctrine of Supremacy of the Constitution' (*LinkedIn*, 2 May 2023) <https://www.linkedin.com/pulse/doctrine-supremacy-constitution-billy-rongoma/> accessed 4 September 2023

[31] Hopton TC (*Grundnorm and Constitution: The legitimacy of politics - mcgill law journal*, 1978) <https://lawjournal.mcgill.ca/wp-content/uploads/pdf/6042331-hopton.pdf> accessed 4 September 2023

[32] Jain K, 'Critical Analysis of the Concept of Grundnorm' (*Legal Service India - Law, Lawyers and Legal Resources*) <https://www.legalserviceindia.com/legal/article-2480-critical-analysis-of-the-concept-of-grundnorm.html> accessed 4 September 2023

Constitution of Kenya, 2010[33] promulgated on 27th August 2010 and particularly Article 201 establishes principles of public finance and the same are as below:

1. Openness and accountability, including public participation in financial matters;
2. The public finance system shall promote an equitable society and in particular fair sharing of the tax burden, equitable division of revenue raised at both county and national government level as well as an aim towards equitable development of the nation realised through measures such as making special provisions for marginalized and/or special groups of people/areas;
3. Equitable distribution of both burden and benefit associated with the use of resource and public borrowing between present and future generations;
4. Prudent and responsible use of public funds; and
5. Clear fiscal reporting and responsible financial management[34].

Article 201 of the Constitution of Kenya, 2010 thereafter lays down the basics upon which other pertinent articles are pegged on. For purposes of this paper, the same shall be limited to those both touching on operative/substantive establishment of public debt and connected purpose (Articles 202 to 227 and specifically Article 214). The paper shall also deal with establishment of authorities/entities that deal with public debt such as the Treasury of Kenya (Article 225), Office of the Controller of Budget (Article 228), Office of the Auditor-General (Article 229) and Central Bank of Kenya (Article 231). The paper shall also consider the involvement of the National Assembly and its oversight role with respect to national budget and/or public debt[35]

The Public Finance Management Act, 2012[36] assented into law on 24th July 2012 provides for "Parliament to provide for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; the different responsibilities of government entities and other bodies, and for connected purposes"[37]. The objects and purpose of the Act are to ensure proper and prudent management of public finances at both national and county level as well as a definition and determination of the public officers given responsibility of managing the said public resources as well as being accountable to the public over the same.[38] Part II of the Act in general establishes the respective Committees of the National Assembly as well as designating their roles. These Committees and/or Offices include: National Assembly Budget and Appropriations Committee (presently chaired by Hon. Samson Ndindi Nyoro)[39], Parliamentary Budget Office and the Office of the National Treasury[40].

[33] Aktech M, 'Institutional Reform in the New Constitution of Kenya' (*Institutional Reform in the New Constitution of Kenya | International Center for Transitional Justice*, 1 October 2010) <https://www.ictj.org/publication/institutional-reform-new-constitution-kenya> accessed 4 September 2023

[34] Article 201, Constitution of Kenya, 2010
[35] Articles 93, 94, 95, 211, 212 and 214 of the Constitution of Kenya, 2010
[36] Public Finance Management Act, Act No. 18 of 2012 Laws of Kenya
[37] *Ibid* - Recital
[38] Section 3, Public Finance Management Act, 2012
[39] 'BUDGET AND APPROPRIATIONS COMMITTEE' (*Parliament of Kenya*) <http://www.parliament.go.ke/index.php/the-national-assembly/committees/12/budget-an-appropriations-committee> accessed 4 September 2023
[40] Established under Article 225 of the Constitution of Kenya, 2010 as read with Section 11 of the Public Finance Management Act, 2012

Sections 17 and 18 of the Act[41] delineates the responsibilities of the National Treasury with respect to national public funds, chief among them administration of the Consolidated Fund (The National Exchequer), the Equalisation Fund and the Contingencies Fund.
Additionally, the National Treasury, as per Section 25 of the Act[42] is tasked with preparing the Budget Policy Statement for the Cabinet's approval. Concisely, the Statement entails an assessment of the country's current state of the economy, financial outlook with respect to Government revenues, expenditure and borrowing over both the next financial year and the medium term[43] as well as proposed expenditure limits and fiscal responsibility principles and financial objectives over the medium term including limits on total annual debt[44]. It is also the purview of the National Assembly to prepare a Budget Review and Outlook Paper no later than 30th September of each financial year, which shall include *inter alia:*

i. An evaluation of the actual fiscal performance in comparison to the budget appropriation for that year;
ii. Updated macro-economic and financial forecasts with sufficient information to show changes from the most recent Budget Policy Statement; and
iii. Highlighting any deviations from the financial deviations as well as providing reasons thereof[45].

Section 29 of the Act [46]authorizes the National Treasury to establish a framework within which the national government manages its cash transactions. Accordingly, every national government entity save for state corporations are required to present to the Treasury an annual cash plan, purpose whereof is to inform, in part, national expenditure. Additionally, the Act[47], in keeping with the obligation tasked upon National Treasury to manage cash utility at national level, empowers the Cabinet Secretary to, subject to specific conditions and as the case may be, limit or suspend national government expenditure if it is the considered view of the Cabinet Secretary that such constraints of the financial situation render such a limitation or suspension necessary.

With respect to public debt, the Cabinet Secretary is mandated to present a Report once every four months to Parliament on all loans made to national government, county government and national government entities[48]. Additionally, the Act[49] provides that the Cabinet Secretary is to present a report on the status of all loans as afore stated upon request by either House of Parliament if the said house is canvassing a matter related to public debt. With respect to the Report, the following ought to be captured as provided by law[50]:

i. Parties to the loan(s);

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[41] Public Finance Management Act, Act No. 18 of 2012 Laws of Kenya
[42] Public Finance Management Act, Act No. 18 of 2012 Laws of Kenya
[43] Section 25(4)(b) - Public Finance Management Act, Act No. 18 of 2012 Laws of Kenya
[44] Section 25(4)(d) - Public Finance Management Act, Act No. 18 of 2012 Laws of Kenya
[45] Section 26(1) – Public Finance Management Act, Act No. 18 of 2012 Laws of Kenya
[46] Public Finance Management Act, Act No. 18 of 2012 Laws of Kenya
[47] Section 29(3) – Public Finance Management Act, Act No. 18 Laws of Kenya
[48] Section 31(1) – Public Finance Management Act, Act No. 18 of 2012
[49] Section 31(2) – Public Finance Management Act, Act No. 18 of 2012
[50] Section 31(3)(a-e) – Public Finance Management Act, Act No. 18 of 2012

ii. Principal amount of the loan; and
iii. Terms and conditions applicable including but not limited to interest and charges payable in respect of the loan and terms of its repayment.

Additionally, the Cabinet Secretary is required to publish and publicise a Report giving details of the guarantees given by the national government during that year no later than two months after the end of each financial year[51]. While still at it, the Cabinet Secretary is expected to, on or before the 15th of February of each year, present a national government debt management strategy to parliament, which strategy is expected to line up with broad strategic priorities and policy goals as set out in the Budget Policy Statement[52]. It is the prerogative of the National Treasury and particularly the Public Debt Management Office[53] to generate the said strategy, aptly called the Medium Term Debt Management Strategy. The Public Debt Management Office for the time being is comprised of three Technical Departments, namely: Resource Mobilization, Debt Policy Strategy & Risk Management and Debt Recording & Settlement[54].

It is the Public Debt Management Office's objective to, among other things, minimizing the cost of public debt management and borrowing over the long-term taking account of risk and ensure the sharing and benefit of costs of public debt between the present and future generations in line with the provisions of Article 201, Constitution of Kenya 2010. The 2023 Medium Term Debt Strategy[55] of February 2023 on the current state of affairs gives the status of affairs as follows:

i. Kenya's present value of debt measures at 60% of G.D.P. (Growth Domestic Product) with domestic debt accounting for 33.2% and eternal making up the deficit 26.8% of GDP;
ii. Kenya's debt in terms of public and publically guaranteed debt in nominal terms as at December 2022 was **Kshs. 9,145.9 billion[56],** which position the Strategy paper puts as being under the statutory debt limit of **Kshs. 10,000 billion** set in accordance to the Public Finance Management (National Government) (Amended 2022) Regulations, 2015[57].
iii. In monetary figures, Total external debt ran up to **Kshs. 4,673.1 billion** while total domestic debt was at **Kshs, 4,472.8 billion.**

The Paper lists Kenya as a medium performer in terms of Debt Carrying Capacity (DCC) with high risk of debt distress, occasioned by the after effects of the global Covid-19 pandemic, further compounded high inflation rates and disruptions to the supply chain brought on by the Russia-Ukraine war[58].

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[51] Section 32(3) – Public Finance Management Act, Act No. 18 of 2012
[52] Sections 33(1) and (2) – Public Finance Management Act No. 18 of 2012
[53] (*Public debt management – the National Treasury*) <https://www.treasury.go.ke/public-debt-management/> accessed 15 September 2023
[54] *Ibid*
[55] (*2023 Medium Term Debt Management Strategy - treasury.go.ke*) <https://www.treasury.go.ke/wp-content/uploads/2023/06/Medium-Term-Debt-Management-Strategy-2023.pdf> accessed 15 September 2023
[56] *Ibid*
[57] *Ibid*
[58] *Ibid*

3. Utility of Public Debt in Kenya

Matiti (2013)[59] in her paper argues for the necessity of public debt by stating that governments need public debt to bridge the resource gap between receipt and expenditure further stating that whereas taxes generally provide the majority, the said revenue inevitably never quite enough. She further explores the relationship between public debt and economic growth by cautioning that domestic debt may have both positive and negative impact on economic growth in a country[60]. In this instance, economic growth is considered and measured in terms of an economy's capacity to produce goods and offer services measured over time. Matiti (2013) further defines economic growth to mean the manner in which players in an economy are able to access and thereafter utilise resources around them in ways that are valuable,[61]which viewpoint is limited to quantity and not manner of production of the said goods and services. She posits that robust public debt management aids positive growth of a given economy through mobilizing resources with low borrowing cost and limiting financial risk exposure[62]. She further explains that less developed economies stand to greatly benefit from public debt as the same is used to furnish expenditure. Contrariwise, she cautions that where public debt is mismanaged, it will lead to limiting the economy growth as servicing the same reduces available resources that would otherwise have been used in development infrastructure[63].

Closer home, I.P.F. Kenya[64] reports that Kenya's fiscal deficits have continued to increase over the years on account of excessive expenditure pressures vis-à-vis revenue shortfalls. The situation was further exacerbated by the outbreak of the global Covid-19 pandemic which in inexorably led to reprioritization and reallocation of resources, to other necessary action such as containment measures.[65] Such containment measures[66] including to limitation of movement of people, goods and curfews (territorial control method) had the net effect of decreasing government while increasing its expenditure. I.P.F. Kenya[67] further reports that Kenya, like most other developing countries, faces high competition for its public resources in her efforts to offer public services. Public expenditure in this instance invariably ends up outweighing public revenue. However, (I.P.F. Kenya)[68] clarifies, with specific reference to Kenya, that a large part of the afore-stated is the mismatch in Government expenditure vis-à-vis shortfalls in tax revenue targets. They further report on Government expenditure that the same is attributable to ever-growing public

[59] Matiti, C. (2013). The relationship between public debt and economic growth in Kenya. International Journal of Social Sciences and Project Planning Management, 1 (1), 65-86
[60] *Ibid*
[61] *Ibid*
[62] *Ibid*
[63] Matiti, C. (2013). The relationship between public debt and economic growth in Kenya. International Journal of Social Sciences and Project Planning Management, 1 (1), 65-86
[64] (*Kenya's Public Debt Profile*) <https://ipfkenya.or.ke/wp-content/uploads/2021/09/IPFK-Kenyas-Debt-Profile-Report-2.pdf> accessed 15 September 2023
[65] *Ibid*
[66] Médard C, '"The Disease of the Rich": Containment Measures and Cashing in on c...' (*Les Cahiers d'Afrique de l'Est / The East African Review*, 29 August 2022) <https://journals.openedition.org/eastafrica/1569> accessed 15 September 2023
[67] (*Kenya's Public Debt Profile*) <https://ipfkenya.or.ke/wp-content/uploads/2021/09/IPFK-Kenyas-Debt-Profile-Report-2.pdf> accessed 15 September 2023
[68] *Ibid*

wage together with expenditure on non-essential items including but not limited to training, advertisements and travel[69].

I.P.F. Kenya also further finds fault with government for what it terms as over-ambition or poor understanding of the tax base[70]. They report that since the 2016/17 financial year, government has consistently failed to achieve its revenue targets. Nevertheless, the government's ordinary revenue targets keep on growing with each subsequent year. As a result whereof (underperforming government revenues), government has been forced to perennially prepare supplementary budgets. They thus hypothesize that the missed revenue collections together with increased fiscal deficits have the likelihood of crowding out[71] development. Eboso (2018) states that corruption, whilst synonymous with Africa, poses a critical developmental challenge to Africa[72]. He further argues that corruption, then ranked third in severity of challenges faced in Kenya to poverty and unemployment, is likely to reduce private and public investment as well as reducing economic growth thus contributing to political instability and potentially leading to insecurity in the country[73]. He further reports that Kenya on average ranked the 23rd most corrupt country in the world between 1998 and 2017.

Eboso (2018) reports that public expenditure between 2004/05 and 2016/17 increased by around 631% with budgets in the trillions running since 2010 with the enactment of the present constitution. He further reports that whereas primary focus of expenditure pre-2010 was education, recent times have witnessed increases in expenditure in the transportation as well as in the energy and fuel sector[74]. However, his mainstay has been the increase in rate of corruption in relation to an increase in public expenditure with a correlation coefficient (r) of 0.6776[75]. Mukami et al., (2021) term the same as 'budgeted corruption'[76] – instances where procurement contracts involving large amounts of money awarded to obscure companies with links to the political elite of the country. They give the example of the US$10 million portable health clinics saga in 2016 where the Kenyan Ministry of Health paid in excess of US$10 million to private companies to deliver and install mobile health clinics (repurposed shipping containers expected to have been fit for purpose) for marginalized populations.[77] They further report that despite investigations spanning four years, no arrests were ever made as it was discovered that the obscure companies

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[69] *Ibid*
[70] *Ibid*
[71] The crowding out effect is an economic theory that argues that rising public sector spending drives down or even eliminates private sector spending. To spend more, the government needs added revenue. It obtains it by raising taxes or by borrowing through the sale of Treasury securities. Higher taxes can mean reduced income and spending by individuals and businesses. Treasury sales can increase interest rates and borrowing costs. That can reduce borrowing demand and spending. All told, these government activities are thought to result in the crowding out of spending by private individuals and companies. - Kenton W, 'What Is the Crowding out Effect Economic Theory?' (*Investopedia*) <https://www.investopedia.com/terms/c/crowdingouteffect.asp> accessed 15 September 2023
[72] Eboso JM, 'Government Expenditure and Public Sector Corruption in Kenya' (*UoN Digital Repository*, 2018) <http://erepository.uonbi.ac.ke/bitstream/handle/11295/157018/Eboso_Government%20Expenditure%20and%20Public%20Sector%20Corruption%20in%20Kenya.pdf?sequence=3> accessed 15 September 2023
[73] *Ibid*
[74] *Ibid*
[75] *Ibid*
[76] Mukami P and others, 'Kenya: Institutionalised Theft and the High Cost of "Budgeted Corruption"' (*The Elephant*, 13 August 2021) <https://www.theelephant.info/features/2021/08/13/kenya-institutionalised-theft-and-the-high-cost-of-budgeted-corruption/> accessed 15 September 2023
[77] *Ibid*

had ties with the then First Lady Margaret Kenyatta, two former parliamentarians and then current Member of Parliament.[78]

Mukami et al., (2021) note that the present anti-corruption corpus of laws has been left intentionally ambivalent as it allows for public officials to technically do business with government. They report that the threshold for conflict of interest is quite low as public officials are allowed to participate in private companies that win government contracts insofar as they (public officials) do not have a controlling stake in the said company(-ies)[79]. They further report on the state and extent of Kenya's corruption and forms that the same take. Examples thereof include "the middleman money" (where entities with no experience in a certain field are contracted by government to procure the requisite goods and/or services on its behalf), "blanket purchasing powers" (in relation to blanket purchase agreements) and "steering the software" in relation to the Integrated Financial Management System (IFMIS)[80].

Aidspan[81] likewise reports that KEMSA, one of the 102 countries that received funding from the Global Fund to Fight Covid-19, had their top officials suspended to pave way for authorities to investigate a controversial Kshs. 7.7 billion (US$ 71.3 million) tender for the procurement of PPE and misappropriation of the said funds. Ogina (2020) further reports that Kenya stood to miss out on accessing Kshs. 400 billion earmarked for it towards the fight against the global pandemic owing to the corruption scandals surrounding the top brass[82]. For context, Ogina (2020) reports that the government had only availed Kshs. 300 million towards the cause and had been banking on the World Bank's intervention, which itself had been caught up in its own questionable engagements[83]. Across board, various sectors of the economy have been directly affected by Kenya's ballooning public debt and the resultant obligations. Nganga (2021)[84] reports on budget cuts to institutions of higher learning during the 2021/22 financial year to the tune of US$ 120 million adopted a cost-cutting measure termed by the then Treasury Secretary Ukur Yattani "budget rationalisation".

AfSDJN (2023) further report on the state of Kenya's national coffers that the country was unable to pay its civil servants for the earlier part of the year 2023 as all funds collected in March 2023 went towards repayment of unusually heavy maturities to the tune of Kshs. 150 billion[85]. Current Finance Cabinet Secretary Prof Ndung'u faced the daunting task of explaining the

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[78] *Ibid*

[79] Mukami P and others, 'Kenya: Institutionalised Theft and the High Cost of "Budgeted Corruption"' (*The Elephant*, 13 August 2021) <https://www.theelephant.info/features/2021/08/13/kenya-institutionalised-theft-and-the-high-cost-of-budgeted-corruption/> accessed 15 September 2023

[80] *Ibid*

[81] (*Misuse of COVID-19 funds undermines the fight against COVID-19 pandemic*) <https://aidspan.org/?action=catelog_singlepost&id=11328> accessed 15 September 2023

[82] Ogina S, 'KEMSA Scandal: USAID, Global Fund Threaten to Withdraw Ksh.400b' (*Citizen Digital*, 20 August 2020) <https://www.citizen.digital/news/kemsa-scandal-usaid-global-fund-threaten-to-withdraw-ksh-400b-342697/> accessed 15 September 2023

[83] *Ibid*

[84] Nganga G, 'Gloomy Financial Outlook after Government Slashes Budget' (*University World News*, 18 February 2021) <https://www.universityworldnews.com/post.php?story=20210217082418279> accessed 18 September 2023

[85] AfSDJN, 'Seventy Seventh Sovereign Debt News Update: Kenya Unable to Pay Civil Servants amidst High Level of Debt Servicing' (*Afronomicslaw.org*, 11 April 2023) <https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/seventy-seventh-sovereign-debt-news-update> accessed 18 September 2023

country's financial constraints, caused in part, as he explains, by underperforming revenues and limited access to finance due to narrowing borrowing headroom.[86] Prof Ndung'u went on to explain that the country's current monthly wage bill is in the region of Kshs. 58 billion. He further explained that the Kenya's tax authority had fallen short of its collection targets by about Kshs. 67 billion which further compounded to the dire situation whereby counties were owed around Kshs. 92 billion in January, February and March 2023 equitable revenue share remittances with ministries, departments and agencies being owed around Kshs. 204 billion during the same period.[87] Resultantly, civil servants in the region were expected to grapple with delayed salaries with Treasury failing to give a definite answer of when funds for salaries would be released as at 23rd March 2023.[88]

The ripple effect of having the country's finances essentially disorganized on account of having expenditure reorganized, as I.P.F. Kenya (2018) put it are such the devolved government structure is fiscally affected. Parliament of Kenya[89] reports that when the Senate Committee on met the Controller of Budget (COB) CPA Dr. Margaret Nyakang'o,CBS over the status of pending bills in the counties, the Controller of Budget cited reasons for not settling the same as *inter alia* delays by National Treasury in disbursing funds to the spending entities in a timely manner, diversion of funds to other activities, delays in approving Supplementary Budgets and IFMIS related challenges with the system needing to be shut down. The same harkens back to the position held by I.P.F. Kenya[90] not just on the public debt in Kenya but general state of the economy thereof.

4. Conclusion

Public debt, while historically viewed as both a blessing and a curse, remains a critical tool for nations to bridge resource gaps and foster economic growth. The case of Kenya, as detailed in this paper, underscores the multifaceted nature of public debt. Starting from the historical perspective offered by figures like Alexander Hamilton to the current state of Kenya's debt, it is evident that prudent management of public debt is essential for economic progress. The legal and regulatory framework governing public debt in Kenya is robust, with the Constitution and various statutes outlining the responsibilities and processes involved. Yet, the real-world application of these guidelines, combined with external factors such as the global Covid-19 pandemic and geopolitical events, has posed challenges. The rise in Kenya's public debt, particularly in the last decade, driven by infrastructural development and compounded by issues like corruption, has had significant socio-economic implications. These ramifications extend from the national treasury to the common "mwananchi" (citizen), impacting fundamental social and economic rights.

Furthermore, the recent fiscal challenges faced by Kenya, including underperforming revenues and increasing expenditure pressures, underscore the need for a comprehensive and sustainable approach to public debt management. The balance between leveraging debt for

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[86] *Ibid*
[87] *Ibid*
[88] *Ibid*
[89] 'Controller of Budget Says Counties Owe Suppliers KSHS 159 Billion in Pending Bills.' (*Parliament of Kenya*) <http://www.parliament.go.ke/controller-budget-says-counties-owe-suppliers-kshs-159-billion-pending-bills> accessed 18 September 2023
[90] (*Kenya's Public Debt Profile*) <https://ipfkenya.or.ke/wp-content/uploads/2021/09/IPFK-Kenyas-Debt-Profile-Report-2.pdf> accessed 15 September 2023

development and ensuring future generations are not unduly burdened remains a central challenge. In summary, while public debt can be an engine of growth and development, its mismanagement can have dire socio-economic consequences. For Kenya, the journey of tracing the implications of debt from contracting to spending and auditing reveals a complex tapestry of opportunities, challenges, and lessons for the future.