



ADHR COMMENTS ON THE [DRAFT NATIONAL TAX POLICY](#)

Submitted to:
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Overview

Tax policies are not formulated to only provide businesses with predictability but also to give certainty to citizen taxpayers that spending will prioritise every citizens' progress towards enjoying their human rights and benefiting from internationally agreed goals for human development. Towards this effect, ADHR proposes the following insertions into the draft National Policy – an important precursor towards fostering the development of a strong tax state.

First proposal – inserting a new additional sentence in clause (x) to section 3.4 to read as follows:

3.4. Increase in tax compliance level

x. Enhance the visibility of the tax administration across the country [and put in place a system for collecting disaggregated tax data](#)

Second proposal – inserting the following new additional sentence to clause (ii) section 3.5 to read as follows:

3.5. Taxation of Emerging Digital Economy

ii. Put in place mechanisms to optimise revenue collection from the digital economy [and enhance visibility of digital transactions to minimise incidences of tech enabled illicit financial flow](#)

Third proposal - the government must recognise the growing debt problem and offer policy guidance in its proposed National Tax Policy. We propose the following new section and clauses to be inserted:

3.10 Borrowing

- i. To mitigate against external debt related shocks, there shall be no budget cuts on social spending
- ii. Government will facilitate timely, comprehensive, and transparent information sharing on public debt, its spending and maintain an open public registry of all external debt under negotiation

Legal Issues & recommendations to note as part of Chapter Two: Situational Analysis:

At the point of debt negotiations with private lenders, it is not always possible to provide all information to the public - firstly because of the privity of contract - a legal principle that the contractual terms are only for the parties to a contract and secondly, there may be material adverse clauses (MAC) that are being addressed between states - it is important for non-state actors to be involved at each phase of the debt contracting process- in so far as transparency relating to the debt process is concerned, The government should reflect on the need to have a minimum mandatory disclosure requirement for debt transactions with private lenders and reporting obligations at each stage of the debt contracting process.

For ADHR this fosters accountability to ensure that the contract that delivers the debt proceeds are not subject to assignment to another party in the event the debt is at risk. ADHR thinks it is very important to have minimum mandatory disclosure requirements to prevent hedging the debt. Having this will mitigate the challenges already identified in the policy.

ADHR proposes the following specific indicators to be part of mandatory minimum disclosure and reporting requirements:

1. Clarity on the complete range of actors involved -esp. when borrowing from private lenders - you may have a contract with a private lender who is a subsidiary to related hedge funds and may include assignment clauses. There can be illicit financial flows risks here as well as vulture activity.
2. Incentives should be clear, where given - esp. where the contractual provisions allow for debt-to-equity swaps since these can be abused.
3. The restructuring process that is envisaged. This is very helpful to mitigate against risk and ensuring all parties are treated fairly and equitably.
4. Other than the amount owed - the collateral or other security arrangement offered to secure the debt must be disclosed.
5. The identity of the guarantor and its relationship to the sovereign debtor must be disclosed.

6. The terms of subordination must be disclosed
7. Any collective action clauses that are contemplated must be disclosed.

The Committee of Fiscal Studies (CFS) is University of Nairobi's premier research think tank. Its objective is to influence a fair, sustainable and equitable social and economic future supported by a responsive fiscal system. CFS backs a people first political vision related to informing fiscal law and policy. In 2022, OSIEA funded CFS to set up the African Debt and Human Rights (ADHR) research cluster to support research, clarity and participation in fiscal policy making on debt and human rights. These observations are shared as part of ADHR's broader aims.