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**PUBLIC FINANCE MANAGEMENT (AMENDMENT) (No.2) BILL, 2020
(NATIONAL ASSEMBLY BILL No.23 OF 2020)**

RECOMMENDATIONS

Submitted to

CLERK OF THE NATIONAL ASSEMBLY

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By

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Background

The purpose of this Bill is to amend the Public Finance Management Act, 2012 in order to cushion micro, medium and small enterprises against the economic effects of the COVID-19 pandemic. The Bill proposes to make amendments to the Principal Act so as to enable the CS treasury to provide credit guarantees for medium, small and micro enterprises. Since the first case of COVID-19 was confirmed in Kenya on March 12th 2020, the Government has taken various measures in order to contain the virus. These measures have been introduced into a social and cultural context that determines gender norms. These gender norms are the basis upon which the roles that men and women play in society are determined. Men and women have been affected differently by the pandemic and the measures taken to contain it. Consequently, it is important to note that before the pandemic, women and girls were experiencing different forms of discrimination, and in response to this, Kenya has in place legal provisions aimed at promoting gender equality. Article 27(4) of the Constitution guarantees non-discrimination on the basis of gender. Prior to the pandemic, various statutory and policy provisions had been put in place to address the gender inequalities in access to resources and this includes the establishment of affirmative action funds and opportunities, such as Access to Government Procurement Opportunities (AGPO) and funds such as the Women Enterprise Fund. Further, most women work in the informal sector, and the MSMEs account for a large percentage of businesses where women involved in this sector, whether as proprietors or as employees. The proposed amendments aim to cushion these MSMEs from the negative economic impacts of the COVID-19 pandemic will thus have a positive impact on women's economic situation and is likely to contribute towards women's economic empowerment.

The COVID-19 pandemic is however a threat to the gains that Kenya has made in promoting gender equality and it has the potential of undoing much of the positive steps that have been taken to promote women's economic empowerment. Secondly, the pandemic is a threat multiplier for women, because it has the potential of worsening existing forms of gender inequalities and discrimination as well as increasing women's burden of home-based care for those infected with the corona virus. For this reason, it is important that specific measures are taken to address the gender dimensions of the COVID-19 pandemic, and in particular, to guard against the clawing back of the gains that Kenya has made towards gender equality and women's economic empowerment in particular. The COVID-19 pandemic has affected women run businesses in the following ways:

Closure of public spaces: The closure of public spaces have had negative economic impacts on many businesses. These closures have also meant that the working from home has been encouraged. This has seen the public sphere of life merging with the private sphere of life. This means that the physical space that has traditionally been a domestic space is now the same space where economic and income generating activities are happening. Some of the work carried out in the public sphere such are operating food kiosk could not be transferred home. Thus, for women, the merging of the public and private spheres of life means that there is loss of jobs as well as an increased burden of unpaid care work for them. The closure of schools has also contributed to this increased burden of unpaid care work. This is because traditionally, gender roles have been divided in such a way that women are expected to perform the reproductive roles within the home, which are meant to ensure social reproduction, while

men are expected to perform economic production activities outside the home. In reality however, both men and women will engage to some extent in both social reproduction and economic production. However, traditionally, much of the burden for social reproduction has been placed on women. Working from home means that women must perform both social reproduction and economic production, but at the same time, they must support the economic production activities performed by men within the same physical space. This increased burden on women means that they have less time to participate in income generating activities, and this is likely to have a negative impact on businesses that are run by women. Essentially, this means that while all businesses have been affected as a result of the COVID-19 pandemic, it is more likely that women run businesses suffer disproportionately as a result of the way in which gender roles are organized in our society. Hence, there is a need to target more support to women run small businesses, in order to ensure that they not only stay afloat during the pandemic, but that they are also able to recover and continue to operate upon return to normalcy.

Effects of social distancing measures- Due to social distancing measures, there are some jobs that are mainly performed by women which have been affected. For example, women who work as domestic workers, nannies and house managers have been affected and there is less work for them. Many families are opting not to use the services of this category of workers due to the social distancing requirement. This has affected both the individual workers, as well as the businesses that work in this area, such as the bureaus which link potential employers with potential workers. The effect is that while some women are not able to perform their usual income generating activities, other women are forced to perform this work within the home for no pay. This again contributes to the increased burden of work for women within the home, thus limiting the amount of time that they are able to spend performing income generating activities.

Care of COVID 19 patients at home: As the numbers of persons infected with the corona virus kept rising, the Government has rolled out the home-based isolation and care plan for Covid-19 patients who are asymptomatic. Among most communities in Kenya, the care of the sick and the vulnerable is a responsibility that is carried out by women. Therefore, this will not only increase the burden of care for the women but expose them to infection and more financial crisis as they have to finance the medical care of the sick. Most of the patients, at least 80%, are being taken care of at home, and statistics show that most of these patients are male. On the other hand, women are the primary givers; hence this indicates the gendered nature of the provision of home based care for COVID-19 patients.

New opportunities for women's work- The COVID-19 pandemic has created new business opportunities which women can harness and take advantage of. For example, the making of face masks and the manufacturing of hand sanitizer. It is important therefore to support women who are moving into these spaces and taking advantage of the new business opportunities that have been created. Incentives should be provided for women run businesses that contribute towards the containment of the pandemic. The extension of credit guarantee to women run businesses in order to support them as they take advantage of these new opportunities, and also effectively contribute to the fight against the COVID-19 pandemic.

Gender Based Violence- During the period when the country has been experiencing the COVID-19 pandemic, there have been increased cases of gender based violence, with a majority of the victims being women. GBV

generally has negative economic impacts, and will limit the extent to which victims are able to participate in income generating activities. Because women are more likely to become victims of GBV, it is important to put in place measures to guard against GBV and to limit its extent, and in turn, this will likely promote women's work by creating a conducive environment in which women can participate in income generating activities.

Rationale

In order to ensure that women run businesses are cushioned from the aforementioned effects of the COVID-19 pandemic, the African Women Studies Centre University of Nairobi has reviewed the draft Bill and makes the proposal for women run businesses to have at least 30% of the credit guarantees earmarked for them. This is because women run businesses have least access to finance and also they cannot afford collateral for credit. Thus, in these submissions, we recognize the need for earmarking at least 30% of the credit guarantees for women run businesses in order to address the financial/ credit access challenges that women -owned businesses face which has been exacerbated by the COVID-19 pandemic.

Clause	Regulation	Provisions of the Regulation	Rationale for Amendment & Recommendation	Proposed Amendment to the Regulation
<i>Proposals and recommendations on the Bill 2020</i>				
2	Interpretation	Definitions/ interpretation	It is important to take into account that these definitions seem to be targeting businesses which are formally constituted. However, many women run businesses operate within the informal sector, hence such businesses may not fit neatly into these definitions. Many women run informal businesses may not tick much of the formal criteria, such as the payment of most types of taxes and filing of tax reruns and having in place formal accounting systems that can be used to determine annual turn-over. These types of businesses may therefore be locked out of the support measures provided under this Act.	<i>Add definitions of the following:</i> <i>i. Formal enterprise</i> <i>ii. Informal business</i> <i>iii. women run businesses</i> <i>This will ensure that women owned businesses will still be eligible for credit guarantees from the state, pursuant to such guidelines as shall be established together with the CS in charge of gender</i>
Clause 4		Conditions that a borrower must fulfill in order to be eligible for extension of credit guarantee	Notably, women run businesses may not be able to meet these conditions with ease, given some of the challenges that they face. For example, sexual and gender based violence is a specific concern that many women face when seeking services such as the provision of permits and licenses	<i>Add a provision that the CS shall in consultation with the CS gender develop mechanisms to assist women run businesses to meet the eligibility criteria.</i> <i>Add a provision that at least 30% of credit guarantees will be earmarked for women run businesses</i>

<p>Clause 4</p>		<p>Also provides for regulations for the operation of a scheme established by the Cabinet Secretary for the partial mitigation of default risks for credit extended to micro, small or medium enterprises</p>	<p>These regulations need to take into account the unique gender dimensions in order to ensure that women run businesses are included in line with the constitutional provisions on gender equality and affirmative action.</p>	<p><i>Include a provision that the CS shall develop the regulations under this section in consultation with the CS Gender in order to ensure that the gender dimensions of the targeted enterprises are taken into account.</i></p> <p><i>Add a provision that at least 30% of such institutions shall be financial institutions which generally target women, such as some micro finance institutions which work directly with women and support the growth of women run businesses to ensure women also benefit. Institutions such as Women Enterprise Fund, Youth Enterprise Development Fund, Micro and Small Enterprises Authority, UWEZO Fund, NGAAF and women cooperatives such as United Women Sacco should be included as such institutions that shall be eligible to provide credit.</i></p> <p><i>Add a provision that the numbers of women run businesses which are included are in line with the constitutional principles on gender equality and affirmative action. Thus, the proportion of women run businesses which are included should not be less than 30% of the total number of enterprises included.</i></p>
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4 (8)	Regulations	Cabinet Secretary shall prescribe Regulations	These Acts are gender blind and so the regulations should ensure compliance with the constitutional provisions such as 27(3) for ensuring equal economic opportunities	<i>Add a new clause e(a) to read “The proportion of the loan guaranteed for micro and small and medium enterprises owned by vulnerable groups including women and persons with disabilities, including enterprises run by mothers or care-givers of persons with disabilities”</i>
5	59(A) 1	The Cabinet Secretary shall prepare a statement...	To ensure equitable access of economic resources to both men and women, it will be important to provide gender disaggregated data. This is important in identifying any existing gender gaps	<p><i>Add a provision that the statement in this section shall be developed in consultation with the CS gender.</i></p> <p><i>Add a provision that the statement in this section shall detail how women run businesses have been included and the specific measures that have</i></p>

				<p><i>been taken to ensure their inclusion in line with the constitutional principles of gender equality and affirmative action.</i></p> <p><i>Add a gender disaggregated so as to read “under section 58 (5) and a gender desegregated summary thereon.....”</i></p>
Memorandum of Objects and Reasons	Clause 5 of the Bill	Cabinet Secretary to submit a report on the credit guarantees.	The report prepared by the Cabinet Secretary for submission to parliament should be gender desegregated.	<p><i>Add gender desegregated between “a” and “report” so that it reads “a gender desegregated report”....</i></p> <p><i>CS should monitor crises and their effects on women run businesses.</i></p> <p><i>CS to provide sensitization and training on gender dimensions of enterprises.</i></p>

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