



PARLIAMENT OF UGANDA

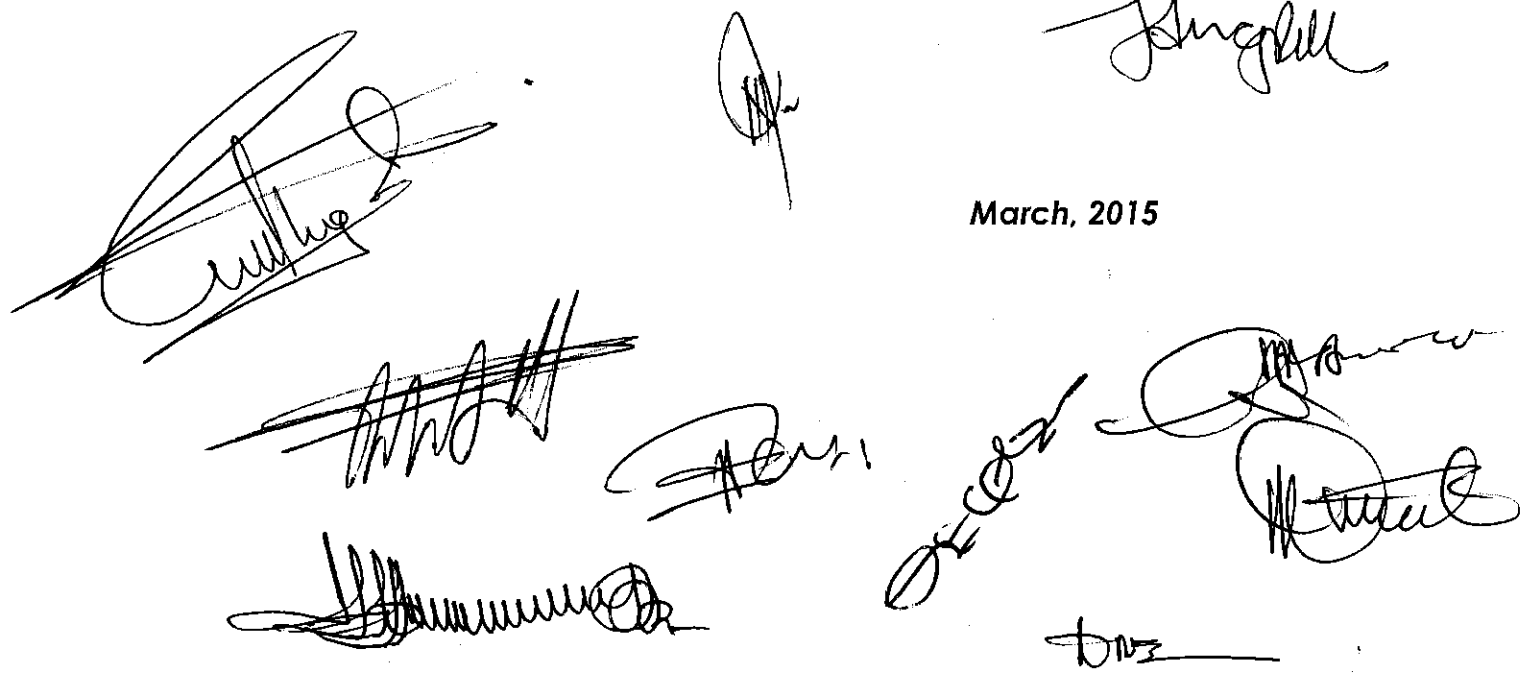
**REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC
DEVELOPMENT
ON**

THE RE-CONSIDERATION OF PUBLIC PRIVATE PARTNERSHIP BILL, 2012

OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDINGS
KAMPALA - UGANDA



March, 2015



THE PUBLIC PRIVATE PARTNERSHIP BILL, 2012

1.0 INTRODUCTION

Rt. Hon. Speaker and Hon. Members, permit me to present the report of the Committee of Finance, Planning and Economic Development on the Public Private Partnership Bill, 2012.

You will recall that the Bill was referred to the Committee on Finance, Planning and Economic Development on Tuesday 3rd March 2015 after the H.E The President returned it to Parliament for re-consideration in the latter dated 7th January 2015 addressed to the Rt. Hon. Speaker, in accordance with Article 91, Sub-section 3(b) of the Constitution of the Republic of Uganda which reads as follows;

The President shall, within thirty days after a bill is presented to him or her-

3 (b) return the Bill to Parliament with a request that the Bill or a particular provision of it be reconsidered by Parliament;¹

1.1 METHODOLOGY

In consideration of the Bill, the Committee;

1. Held an in house meeting on the 12th Thursday, 2015 to consider the Clause 26 (1), (7) and (8) as clearly pointed out by H.E the President in his letter to the Speaker;
2. Reviewed the following documents

- a) The Constitution of the Republic of Uganda
- b) The Public Private Partnership Bill, 2012

¹ Article 91 Sub-section 3 (b) of the Constitution Republic of Uganda

- c) The Amended Public Private Partnership, 2014
- d) Public Finance Management Act
- e) The Public Private Partnership Act of Ghana

2.0 CLAUSE 26 (1), (7) AND (8) PUBLIC PRIVATE PARTNERSHIP BILL, 2012

Rt. Hon. Speaker and Hon. Members, Clause 26 (1), (7) and (8) of the Public Private Partnership Bill 2012 of the returned Bill provides for Public Private Partnership Agreements.²

Clause 26 (1) provides that 'An Accounting Officer shall not sign a Public Private Partnership agreement without the approval of Parliament'

Clause 26(7) provides that 'The agreement shall only be amended or varied with the approval of the Parliament'.

Clause 26 (8) provides that 'Parliament shall not approve an amendment, or variation to a project agreement under sub-section (7) unless the agreement, if so amended or varied-

- a) The project continues to provide value for money;*
- b) The project continues to be affordable, where such amendment, variation or waiver has a financial implication;*
- c) The continued transfer of appropriate risks to the private party;*
- d) The continued provision of efficient and effective services to the public; and;*
- e) Continued protection and preservation of environment.*

3.0 CONCERNS OF THE PRESIDENT

3.1 APPROVAL OF AGREEMENTS AS PROVIDED FOR IN THE CONSTITUTION

Rt. Hon. Speaker, Article 119 Clause (5) of the Constitution of the Republic of Uganda provides that;

² Clause 26 of the Public Private Partnership Bill, 2014

The bottom of the page contains several handwritten signatures and scribbles. On the right side, there is a large signature that appears to be 'Schreyer'. Below it, there are several other signatures, some of which are heavily scribbled over. The signatures are in black ink and vary in style, some being more legible than others.

'Subject to the provisions of this Constitution, no agreement, contract, treaty, convention or document by whatever name called, to which Government is a party or in respect of which the Government has an interest, shall be concluded without legal advice from Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe'³.

The President in his letter noted that Clause 26 (1), (7) and (8) of the returned Public Private Partnership Bill 2012 will usurp the Constitutional mandate of the Attorney General to approve agreements in which Government is a party. His second concern was that parallel approval mechanism for PPP agreements will add another bureaucracy which will cause inordinate delays in implementation of infrastructural projects⁴.

3.2 DISINCENTIVE TO INVESTMENTS

The President further noted that the provisions in the Clause and the Sub-clauses as passed by Parliament hinder investors who may consider not investing in infrastructure projects in Uganda as their business decisions will be subjected to Parliamentary approval.

4.0 COMMITTEE OBSERVATIONS

a) The original Public Private Partnership Bill, 2012 Clause 18 (1) and (2) provided for the Public Private Partnership agreement as follows;

(1) 'The Minister shall, with the approval of Cabinet, by statutory instrument, prescribe the value of an agreement for which the approval of Cabinet is required before the agreement is signed by an accounting officer.'

³ Article 119 Subsection 5 of the Constitution Republic of Uganda

⁴ President's letter to the Speaker dated September 29 2014

The bottom of the page contains several handwritten signatures and initials. On the left, there is a large signature that appears to be 'C. Muhesi'. To its right are several other signatures, including one that looks like 'O. Oculu' and another that is partially legible as 'M. ...'. There are also some initials and scribbles scattered across the bottom right area.

(2) 'Where an agreement is of a value for which the approval of Cabinet is required before it is signed by the accounting officer, the accounting officer shall not sign the agreement without approval of Cabinet'.⁵

The Committee observed that this provision will safeguard Public Private Partnership agreements since the principle of collective responsibility shall prevail.

b) Public Private Partnership agreement as defined by the Public Private Partnership Bill, 2012 is a written contract recording the terms of the Public Private Partnership concluded between a contracting authority and a private party.⁶

It's therefore an agreement or concession between Government and private entities as a form of procurement and hence an Executive function.

c) Parliament is empowered under clause 13(2) to appropriate money for Public Private Partnerships⁷. The clause provides as follows;

13 (2) An accounting Officer shall not enter into an agreement that in any way binds the contracting authority to a future financial commitment or which results in a contingent liability, except where the future financial commitment or contingent liability is authorized by Parliament in the budget of the contracting authority."

The Committee observes that the clause empowers Parliament to approve future financial commitments and contingent liabilities that arise as a result of the Public Private Partnership agreement.

5.0 COMMITTEE RECOMMENDATIONS

Rt. Hon. Speaker, the committee recommends that;

a) For avoidance of doubt and to ensure transparency;

⁵ Clause 18 of the Original Public Private Partnership Bill, 2012

⁶ Clause 4 of the Public Private Partnership Bill, 2012(as amended by Parliament)

⁷ Clause 15 (2) of the Original Public Private Partnership Bill, 2012

- i. The relevant Minister shall lay before Parliament any Public Private Partnership agreement or agreements within one month after it has been signed for Parliamentary oversight.
- ii. All Public Private Partnerships agreements, amendment or variations thereto should as well be laid before Parliament within one month after the amendment or variation;
- iii. Ministries, Government Departments and Agencies should indicate in their budget framework papers to Parliament the respective Public Private Partnerships projects to formalize the appropriation of funds for the Public Private Partnerships projects;
- iv. Government should specify which Public Private Partnerships are co-founded by Government and the Public Private Partnerships that are wholly funded by investors.

b) Clause 26 of the Public Private Partnership Bill 2012 (as passed) by Parliament should be reconsidered and passed.

6.0 CONCLUSION

Rt. Hon. Speaker and Hon. Members, Parliament is empowered under Clause 13 (2) to appropriate funding under PPP which result into contingent liability. The Committee recommends that Clause 26 of the Public Private Partnership Bill 2012 should be reconsidered and the Committee will propose necessary amendments at appropriate time.

I beg to report

The bottom section of the page contains several handwritten signatures and initials. On the left, there is a large, stylized signature that appears to be 'Sushil Kumar' with a large circle around the 'S'. Below it are several other signatures, some of which are crossed out with multiple diagonal lines. On the right side, there are several more signatures, including one that looks like 'Jung Bahadur' and another that looks like 'Ramesh'. There are also some initials and scribbles scattered throughout this section.

PROPOSED AMENDMENTS

1. Substitute for clause 26 (1) and (2) , the following;

"(1) The Minister shall, with the approval of Cabinet, by statutory instrument, prescribe the value of an agreement for which the approval of Cabinet is required before the agreement is signed by an accounting officer"

"(2) Where an agreement is of a value for which the approval of Cabinet is required before it is signed by the accounting officer, the accounting officer shall not sign the agreement without the approval of Cabinet"

(3) An agreement shall be forwarded to cabinet for approval where the accounting officer confirms that;

(a) the best evaluated bid meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer;

(b) the contracting authority puts in place a management plan that explains the capacity, including the mechanisms and procedures of the contracting authority, to implement, manage, enforce, monitor and report on the project effectively; and

(c) satisfactory due diligence is carried out on the private party in relation to the competence and capacity of the private party to enter into the agreement.

2. In clause 26 (7) and (8) , replace the word "**Parliament**" with "**Cabinet**"

3. Insert new sub clause 26 (9) as follows;

(9) (a) The Minister shall, within one month after signing any agreement, lay before Parliament a copy of the agreement.

(b) Any amendment or variation made under subsection (10 shall be laid before parliament within one month of the amendment or variation.

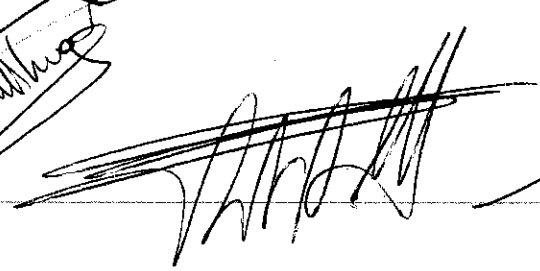

Justification:

(a) Clause 13(2) of the Public Private Partnership Bill adequately covers the need for Parliament to approve future financial

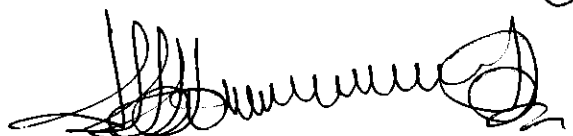
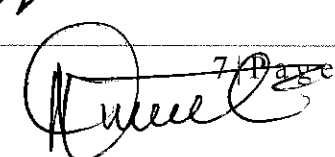
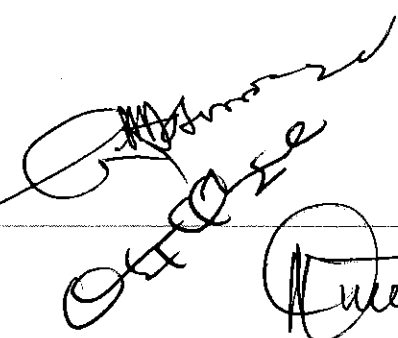
The bottom of the page contains several handwritten signatures and initials. On the left, there is a large signature that appears to be 'erwin'. In the center, there are several scribbled-out signatures. On the right, there are more legible signatures, including one that looks like 'John' and another that looks like 'Dennis'. There is also a circular stamp or mark on the right side.

commitments and contingent liabilities that arise as a result of the PPP agreement.

- (b) Under Clause 30(3), the Auditor General shall each year present a report to Parliament on each Public Private Partnership project.
- (c) Given that the approval of agreements is the preserve of the Attorney General and in order not to inundate Cabinet with requests for approval, the Minister shall set a threshold of projects for which Cabinet approval is required. This will ensure that larger projects and projects of strategic importance will only be signed after clearance by Cabinet.

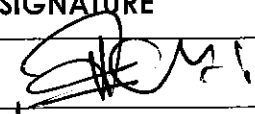
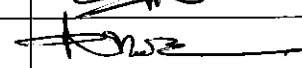
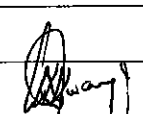
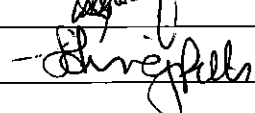
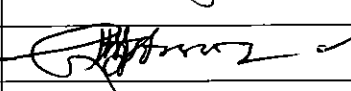
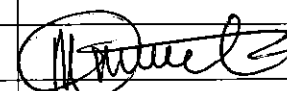
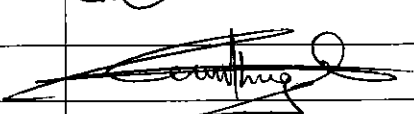
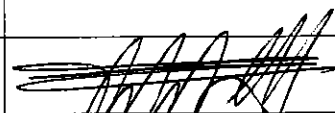
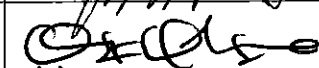


Schroder

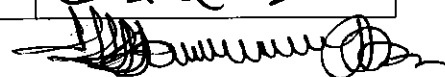


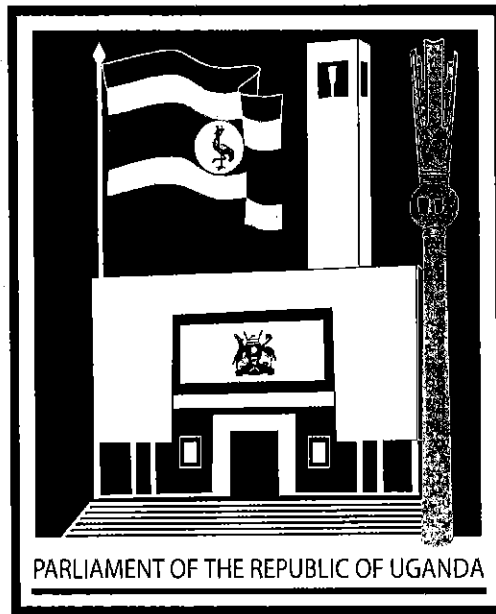
one

MEMBERS ON THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT WHO SIGNED THE REPORT

NO	NAME	CONSTITUENCY	SIGNATURE
1	Hon. Kasule Robert	Kyadondo	
2	Hon. Okello Anthony	Kioga	
3	Hon. Musasizi Henry	Rubanda East	
4	Hon. Kyoma Xavier	Ibanda North	
5	Hon. Akol Rose	Bukedea	
6	Hon. Sejjoba Isaac	Bukoto Mid-West	
7	Hon. Lwanga Timothy	Kyamuswa	
8	Hon. Adong Lily	Nwoya	
9	Hon. Katoto Hatwib	Katerera	
10	Hon. Lugolobi Amos	Ntenjeru South North	
11	Hon. Boona Ema	Mbarara	
12	Hon. Ayepa Micheal	Labwor	
13	Hon. Kakooza James	Kabula	
14	Hon. Mugabi Muzale	Buzanya	
15	Hon. Ekanya Geoffrey	Tororo	
16	Hon. Nandala Mafabi	Budadiri	
17	Hon. Odo Tayebwa	Bushenyi-Ishaka Muci	
18	Hon. Nsubuga Mathias	Bukoto South	
19	Hon. Akello Franca	Agago	
20	Hon. Akora Maxwell	Maruzi	
21	Hon. Ssasaga Isaiah	Budadiri	
22	Hon. Taaka Kevinah	Busia Municipality	
23	Hon. Sabiti Jack	Rukiiga	
24	Hon. Bagoole John	Luuka	
25	Hon. Capt. Lakot Susan	UPDF	

26 Hon. OCTAWA DAVID Agulu





A MINORITY REPORT

ON

THE RE- CONSIDERATION OF PUBLIC PRIVATE PARTNERSHIP

BILL, 2012

March, 2015

Page 1 of 9

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

A handwritten signature in black ink, featuring a large, stylized 'D' and a long horizontal stroke.

A handwritten signature in black ink, consisting of a few loops and a long horizontal stroke.

A handwritten signature in black ink, written vertically on the left margin of the page.

1.0 INTRODUCTION

On 18th July 2014 Parliament passed the Public Private Partnership Bill, 2012 and on the 29th September 2014 the president returned the Bill to House. Parliament re-considered the Bill and the 2nd December, 2014 passed the Bill again maintaining its stand on Clause 26. However on the 7th January, 2015 again the President returned the Bill for the second time in accordance with Article 91, sub-section 3(b) of the constitution of the republic of Uganda. This Parliament of Uganda debated the Public Private Partnership Bill, 2012 and passed **Clause 26** in the best interested of the citizens' development and good governance of Uganda in general. It is Parliament that is charged with representation, legislation, appropriation and oversight functions that protect the interests of present and future generations.

1.1 What are Public Private Partnerships (PPPs)?

A Public Private Partnership (PPP) may broadly be defined as a long-term contract between a private party and a government agency, for providing a public asset or service, in which the private party bears significant risk and management responsibility¹.

1.2 Do PPPs pose any Challenges/ limitations?

Public Private Partnerships pose limitations which include:

- a) Private financing could be viewed as a new form of backdoor borrowing i.e. a financial commitment that does not directly involve the State, but draws on the same resource base or otherwise holds potential implications for the State's finances and other interests. It is

¹ World Bank Institute, 2012. Public-Private Partnerships Reference Guide Version 1.0

- important to recognize that private financing does not constitute a new source of funding ultimately, the costs will be borne by the public²;
- b) Increased financing costs i.e. private companies typically pay higher interest rates than government entities to borrow money;
 - c) Greater possibility for unforeseen challenges i.e. there is a greater possibility for unforeseen issues to arise. Such issues could include disputes regarding certain terms in the contract as well as the private partner being acquired by another company or going out of business, effectively resulting in project schedule delays and additional costs to the government³;
 - d) Limits government's flexibility i.e. "lock in" certain government funding priorities based on operational needs determined at the time the contract is negotiated. This can make it difficult to change funding allocations to reflect changes in government priorities;
 - e) Poorly drafted agreements can be costly and difficult to correct. The legal and administrative costs associated with correction or renegotiation can easily eat up all the benefits that were supposed to accrue from a PPP contract.

1.3 HAS UGANDA HAD ANY PPPS?

Uganda has had examples of PPPs undertaken in Uganda which include:

- a) Bujajali Energy Limited (BEL) constructed and is to operate Bujagali dam;
- b) Umeme involved in electricity distribution concession regulated by the Electricity Regulatory Authority;
- c) Rift Valley Railways involved in a concession and operation of railway tracks and wagon ferries in Lake Victoria;

² Thomas P. DiNapoli, 2013. Private Financing of Public Infrastructure: Risks and Options for New York State. Office of the State Comptroller

³ Mac Taylor, 2012. Maximizing State Benefits from Public-Private Partnerships. Legislative Analyst's Office (LAO)

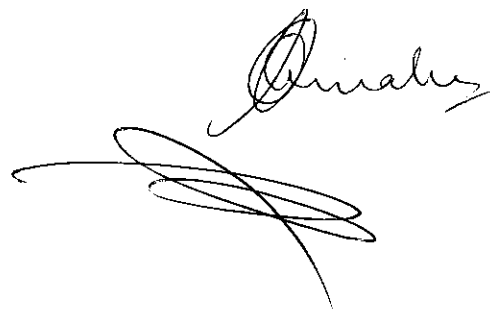
- d) Serena Hotel operated under a consortium comprised of Tourism Promotion Services (a division of the Aga Khan Fund for Economic Development), National Social Security Fund and Proparco (a French property investment company);
- e) Oil Palm Uganda Limited (OPUL), a consortium comprised of Wilmar, managers of the plantation and Bidco, responsible for processing and producing palm oil products;
- f) Street parking in Kampala which is operated by a private firm, Multiplex on behalf of Kampala Capital City Authority (KCCA);
- g) Collapsed Pioneer Easy bus which provided public transport in Kampala and was regulated by the KCCA;
- h) Uganda Taxi Operators and Drivers Association (UTODA) which manages the Old and New taxi parks in Kampala contracted by KCCA;
- i) Local governments all over Uganda also have contracts with several operators of public markets, abattoirs and other similar entities operated by private investors;
- j) Jinja and Nakasongola fuel storage tanks were refurbished, stocked and are operate by private investor; and
- k) Entebbe Handling Service (ENHAS) a private company provides consumer services at Entebbe international airport regulated by Civil Aviation Authority.

Hon. Members, What has been of such PPPs in regard to services provided to the citizens we represent here in this August House?

Fellow Hon. Members on the basis of the above information as opposition we dissent from the position from the majority members of the Committee.

2.0 DISSENT FROM THE COMMITTEE POSITION

Under rule no. 194(1), it states that a member dissenting from the opinion of a majority of a Committee may state in writing the reasons for his or her or their dissent, and the statement of reasons shall be appended to the report of the



Committee. Rule no. 194(2) provides that the Member dissenting from the opinion of the majority of the Committee shall be given time to present the minority report at the time of the consideration of the Committee report.

POINT OF DISSENT

1. Public Private Partnership is back-door borrowing.

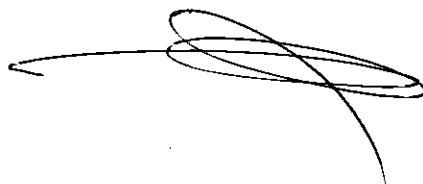
PPP projects indebts present and future generations, Consider an example of a road constructed and citizens have to pay the toll fee to use that road for 20 years but during agreeing on the PPP the cost of the project was inflated, then the flow of traffic reduces yet the investor must recover and what happens if the investor failed to recover?

Hon. Members, we have FRESH lessons from the Bujagali Power Project which is a PPP, whose cost has increased gradually and the cost of electricity has not reduced. Imagine what we are building for the future generations in terms of the long term costs and effects on the quality of service delivery. In the best practices of good governance, Parliament is mandated to safe guard the interests of present and future generations, hence Parliament must review terms on which securing external financing (back door borrowing) is based and that doesn't amount to signing the Contract.

Why should PPP project details not be reviewed by the Parliament yet we review all borrowing before the Attorney General organises the final signing of the agreement- what is to be hidden in those projects that we should not know the terms and conditions therein but have financial commitments to be re- paid by present and future generations?

2. Power of Government to borrow or lend, Article 159.

Sub clause (1) Subject to the provisions of this Constitution, Government may borrow from any source.



Sub clause (2) Government shall not borrow, guarantee, or raise a loan on behalf of itself or any other public institution, authority or person except as authorised by or under an Act of Parliament.

Sub clause (3) An Act of Parliament made under clause (2) of this article shall provide—

(a) that the terms and conditions of the loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of

Parliament; and

(b) that any monies received in respect of that loan shall be paid into the Consolidated Fund and form part of that fund or into some other public fund which is existing or is created for the purpose of the loan.

Sub clause (4) The President shall, at such times as Parliament may determine, cause to be presented to Parliament such information concerning any loan as is necessary to show—

(a) the extent of the total indebtedness by way of principal and accumulated interest;

(b) the provision made for servicing or repayment of the loan; and (c) the utilisation and performance of the loan.

Sub clause (5) Parliament may, by resolution, authorise the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.

Sub clause (6) An agreement entered into under clause (5) of this article shall be laid before

Parliament and shall not come into operation unless it has been approved by Parliament by resolution.

Sub clause (7) For the purposes of this article, the expression "loan" includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which—

(a) monies from the Consolidated Fund or any other public fund may be used for payment or repayment; or

(b) monies from any fund by whatever name called, established for the purposes of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.

Sub clause (8) Parliament may by law exempt any categories of loans from the provisions of clauses (2) and (3) of this article, subject to such conditions as Parliament may prescribe.

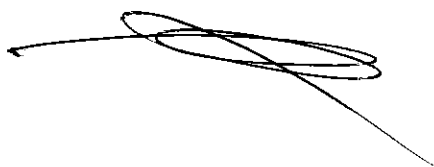
3. Rescinding on **clause 26(1) and (2)** as passed by the house **contravenes clause 6(2)** which states that "**An Accounting officer shall not enter into an agreement that in any way binds the contracting authority to future financial commitment or which results in a contingent liability, except where the future financial commitment or contingent liability is authorised by Parliament in the budget of the Contracting Authorities.**"

We should be the last to legislate Parliament from the duties it takes as a safe guard to avoiding costly indebteding to present and future citizens. Parliament cannot rescind on the position that empowers it to appropriate, which appropriation include for PPP projects. Currently appropriation is being done annually yet many PPP projects cover over five years and beyond. Parliament must at all times understand the projects that have financial commitments and indebt tax payers hence the role of parliament in reviewing the PPP projects before the Attorney General or the accounting officers signs any agreements.

4. **Violation and abuse of the Public Finance Management Act, 2015**

On the 23rd February 2015 the president assented to **the Public Finance Management Act, 2015**, therein the Act provides;

Section 43(1) provides that "**All expenditures to be incurred by the Government on projects which are externally financed, in a Financial Year shall be appropriated by Parliament**"



Section 43 (3) provides that "**where a Vote is to receive a loan or a grant for a proposed project, the Accounting Officer of the Vote shall, in the Budget of the vote, provide the costs and appraisal of the proposed project.**"

Section 45(5) provides that "**An Accounting Officer shall be responsible and personally accountable to Parliament for the activities of a vote.**"

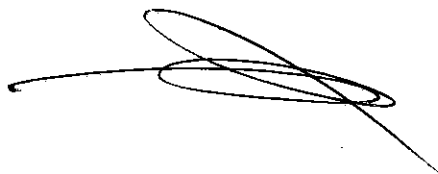
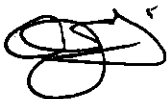
Section 36(5) provides that "**with the exception of a loan raised for the purpose of subsection (2)(b) or a loan raised through issuance of securities, the terms and conditions of a loan raised by the Minister shall be laid before Parliament and the loan shall not be enforceable except where it is approved by Parliament, by a resolution.**"

Clause 26 of the Public Private Partnership (PPP) Bill, 2012 that was passed by this Parliament is in line with the above sections of the Public Finance Management Act, 2015.

Hon. Members, PPPs seek to bring in external financing to the Budget that has financial cost implications to the present and future generations. Securing such external financing should be undertaken within the existing laws of the Country. Parliament and the President as the custodians of the laws must be observed and respect the already existing legislations.

3.0 RECOMMENDATIONS

1. As an institution charged with the main function as provided for by Article 79 of the Constitution of Uganda, we should make laws for peace, order, development and good governance of Uganda.
2. We should uphold the constitution of the republic of Uganda and all provisions therein and the Public Finance Management Act, 2015 especially in relation to any borrowing or loan- an open borrowing or backdoor borrowing (**external financing**) in relation to PPP projects.



3. The **clause 26** of the Public Private Partnerships Bill, 2012 as passed by Parliament be maintained and sent back to the President for assent without any changes to avoid violates the spirit captured in **clause 6(2)** that provides that "An Accounting officer shall not enter into an agreement that in any way binds the contracting authority to future financial commitment or which results in a contingent liability, except where the future financial commitment or contingent liability is authorised by Parliament in the budget of the Contracting Authorities."
4. The President should assent to the Public Private Partnerships Bill, 2012 including the **clause 26** as passed by Parliament in observance and respect of the Constitution of the Republic of Uganda which he swore to uphold and defend.
5. The Parliament and the President should respect and observe the **Public Finance Management Act, 2015** and maintain **clause 26** as passed by Parliament because it is in line with the existing laws and especially the recently assented to Public Finance Management Act, 2015.

4.0 CONCLUSIONS

It is our humble appeal that the house adopts the recommendations laid down in this Minority report for the Good Governance of this country and in respect of existing laws.

For God and My Country,

I beg to move.

