KENYA'S PUBLIC DEBT STATUS

2009

AN OVERVIEW OF THE CURRENT STATUS, INSIGHTS AND PUBLIC AWARENESS REPORT

A REPORT BY THE KENYA DEBT RELIEF NETWORK

(KENDREN)

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1.0 INTRODUCTION

Glossary and Acronyms

- ADB: African Development Bank
- ADF- African Development Fund
- AFRODAD - Africa Forum and Network on Debt and Development
- AIDS-Acquired Immune Deficiency Syndrome
- HIPC: Highly Impoverished Poor Countries
- HIV/AIDS: Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
- IBRD: International Bank of Reconstruction and Development
- IDA: International Development Assistance
- IFC: International Finance Corporation
- IFI's: International Financial Institutions
- IMF: International Monetary Fund
- KENDREN- Kenya Debt Relief Network
- KShs.-Kenya shillings
- MDGs: Millennium Development Goals
- NARC-National Rainbow Coalition
- NGOs: Non-Governmental Organizations
- ODA- Official/Overseas Development Assistance
- OPEC: Oil Producing and Exporting Countries
- UK: United Kingdom
- UN: United Nations
- USA: United States of America
- US$: United States of America Dollar
- US-United States
- USD-United States Dollars
- WB-World Bank

2.0 DEFINING DEBT

According to the Ministry of finance Kenya, website, a public debt is debt owed to both external and internal parties by Governments of independent countries. External Public Debt is debt owed to external creditors. These are; multilateral creditors for example IDA, ADB, WB, IMF and other IFI's. Bilateral creditors who are essentially other countries for example Japan, Italy, Germany, and Commercial creditors' essentially private institutions for example Standard Bank UK.

Domestic Public Debt on the other hand is mainly debt owed to holders of Government securities such as Treasury Bills and Treasury Bonds. In Kenya, Central Bank of Kenya issues domestic debt on behalf of the Government through the floating of the Treasury bills and Treasury bonds. It is therefore clear that, a Public debt either External or Domestic; hence, national debt is money or credit owed by any level of government. As the government draws its income from society as a whole through taxation. Therefore government debt can be seen as an indirect debt of the taxpayers. Government debt can be categorized as internal debt, owed to lenders within the country, and external debt, owed to foreign lenders. Governments usually borrow by issuing securities, government bonds and bills. Less credit worthy countries sometimes borrow directly from supranational institutions. Some consider all government liabilities, including future pension payments and payments for goods and services the government has contracted but not yet paid, as government debt.

Another common division of government debt is by duration. Short term debt is generally considered to be one year or less, long term is more than ten years. Medium term debt falls between these two boundaries.

The question arises as to why does the government borrow? It borrows for two reasons namely:

- When the projected revenue targets fall short of the projected expenditure
- The government also borrows to pay off maturing loans. This is typical with domestic debt.

In Kenya the law embedded in the constitution, empowers the Minister for Finance or any other person appointed by him in writing to borrow on behalf of the Government. According to the ministry of finance website it is stated that;

> On 16th June 1967, an Act of Parliament authorized the Government to raise Loans outside Kenya and to provide for the negotiation by the Government of credit facilities outside Kenya. Chapter 422 - External Loans and Credit Act, mandates the Minister of Finance, under agreement or other written instruments to borrow or obtain credit from sources outside the country. The Department of External Resources therefore acts on behalf of the minister to negotiate for additional funding from donors to support development initiatives.

The legal provisions that give the Authority are found in the constitution of Kenya as;

- External Loans and Credits Act, CAP 422
- Internal Loans Act, CAP 420
- Guaranteed Loans Act, CAP 461
- The IMF Act- Cap 467

Specifically the ministry of finance website states;

> To Identify, Negotiate and Secure External Resources; (Cap 422 Laws of Kenya, External Loans and Credits Act) By;
>
> 1. Soliciting funds from Development Partners while focusing on development priorities stipulated in current policy documents e.g ERS/IPERS and Vision 2030.
>
> 2. Involvement in all stages of project cycle development. The department participates in representation in project appraisal, formulation, implementation, monitoring and evaluation stages for all Donor Funded Projects.
>
> 3. Enhancing project implementation through tying release of funds to production of project work plans as inputs to the annual budget estimates.

In the recent past the website shows that the ministry has been able to secure the following;

Financial		Year	Donor		Commitments
2004	-	2005	Kshs.	45.9	Billion
2005	-	2006	Kshs.	56.8	Billion
2006	-	2007	Kshs.	58.6	Billion
2007	-	2008	Kshs.	81.7	Billion
2008	-	2009	Kshs.	80.3	Billion

From the above table it is clear that the figures have been increasing consistently, meaning that the debt too has been rising and this questions the issue of sustainability.

Understanding the structure of public debt and analyzing its risk requires one to:

- Assess the expected value of any public asset being constructed, at least in future tax terms if not in direct revenues. A choice must be made about its status as a public good — some public "assets" end up as public bads, such the Nyayo Pioneer project which never took off, the Turkwell Hydro electric plant which has never produced the expected mega watts that had been projected among other such projects.
- Determine whether any public debt is being used to finance consumption, which includes all social assistance and all military spending.
- Determine whether triple bottom line issues are likely to lead to failure or defaults of governments — say due to being overthrown
- Determine whether any of the debt being undertaken may be held to be odious debt, which permits it to be disavowed without any effect to a country's credit status. This includes any loans to purchase "assets" such as leaders' palaces, or the people's suppression or extermination. International law does not permit people to be held responsible for such debts — as they did not benefit in any way from the spending and had no control over it.
- Determine if any future entitlements are being created by expenditures — financing a public swimming pool for instance may create some right to recreation where it did not previously exist, by precedent and expectations.

Among the avenues that these loans are accessed from have included; Bilateral donors

Danish International Development Agency (DANIDA)
Government of Italy
Government of Spain
German Financial Cooperation (KFW-GER)
German Technical Cooperation (GTZ - GER)
French Development Agency (AFD-FRANCE)
Government of Saudi Arabia
United Arab Emirates (UAE)
Government of Japan
Government of China
Canadian International Development Agency(CIDA)
United States Agency for International Development (USAID)
Food and Agricultural Organization(FAO)
NETHERLANDS
Government of Finland
Belgium

Multilateral donors include;

International Development Association(IDA)
Global Environmental Trust Fund
European Development Fund (EEC)
European Investment Bank (EIB)
African Development Fund (ADF)
Swedish International Development Agency (SIDA)
Nordic Development Fund (NDF)
Bank of Arab Development in East Africa (BADEA)
Organization of Petroleum Exporting Countries (OPEC)
International Development Research Center (IDRC)
Clinton Foundation
United Nations Development Programme (UNDP)
United Nations Fund for Population Activities (UNFPA)
United Nations Environmental Programme (UNEP)
United Nation International Children Education Fund (UNICEF)
OXFAM - UK (United Kingdom)
International Fund for Agricultural Development(IFAD)
WFP (world food programme)
Global Fund
BADEA
OPEC

3.0 THE PROBLEM DEBT

Since 1963, cumulative debt in the successive governments of Kenyatta, Moi and Kibaki, has become massive debt as a silent majority watched hoping against hope that they would not be affected.

Pastor Martin Niemöller, elsewhere has described this phenomenon – 'the assumption of the ostrich position by collectively burying our heads in the sand as the fruit of inaction ripens'. Today in Kenya, after four decades of the debt burden which has given birth to poverty, insecurity, bad infrastructure, Poor health facilities, low education standards, unemployment, *Mungiki*, clashes, bad leadership, bad governance, and lack of accountability.

The issue is well captured in the presentation in Parliament by the previous Parliamentary Accounts Committee (PAC) Chairman Hon Omingo Magara,

"………we have a wonderful country called Kenya. This country is wonderful because it is willing to give us beautiful "bouncing babies" every year in terms of resources. We have fantastic babies in the Coast Province in the name of the coastal strip. This is a wonderful tourist attraction. We have wonderful climatic conditions which can allow you to put on a tie for 24 hours a week and throughout the year. People from other countries can also come to see our good vegetation and beautiful landscape. All these are wonderful resources of our country. In some sections of this country, you can grow everything. This affords us to be self-sufficient. Woe unto the Kenyan Republic; we suffer from a plague called graft. As a result of this, we have had wastage and misappropriation of resources to the extent that this country is reeling under a Kshs750 billion public debt. You then, as a Minister for Finance, pretend to go out there to negotiate for aid when you actually have no financial spine. This is because you are desperately begging with a bowl in your hands"

He further stressed the point by giving an analogy, ***The disease cannot be cured – free Kenya from the yoke of debt***

> "Even if you diagnose the cause of the disease that killed mother Kenya's children, you will not cure it. Great men like Hon. Dr. Kibunguchy who knows something about medicine knows what I am talking about. It is easier to do an autopsy on a corpse than on dry bones. Therefore, Kenya requires to build the capacity of the Public Accounts Committee. The Kenya National Assembly cannot also escape blame. I believe the Kenya National Audit Office is fairly new. We need to speed up our operations, so that we are also current in dealing with audit issues. We should address the issues at the Jomo Kenyatta International Airport (JKIA) before they gather dust; that is before the corpse rots and becomes dry bones. That is the only way in which Kenyan children will be freed from the yoke of public debt."

On the allocation of the monies to various ministries and on loan contractions he argued,

> "To find the solutions to the problems of this country in terms of efficiency, we must rate these people on the basis of economical, efficient and effective application of resources given to them. Your grandchildren and mine too, will be burdened by the yoke of debt. That debt is not disappearing soon. It is actually growing by the day simply because we have refused to be efficient, effective and economical in the application of our resources."

It is clear that, Kenya's extremely huge debt is a symptom of many years of unplanned borrowing and also evidence of many years of mismanagement of public money. The scandals facing the current regime are testimony of how public money has been mismanaged over the years, through fraud, looting, or collusion with fake companies here and abroad. However although poor governance and corruption have been blamed for economic woes in the country, debt has equally distorted the economy and complicated macroeconomic management. Over the years, the country has resorted to occasional debt rescheduling and expensive short term borrowing to finance government expenditure.

The irony of the borrowing is that the more the country has borrowed the more it has declined over time. The debt burden has denied Kenyans their social, economic and political rights and consequently impoverished them in many ways. Conditions imposed on Kenya are simply for ensuring that IMF and World Bank get back their monies, not necessarily for Kenya to lift itself out of poverty. This is so because lenders terms bring more problems than solutions and hence the debt burden continues to grow.

4.0 THE CONTEXT

A mention of public debt in Kenya is a mention of mismanaged funds and failed projects and as a result poverty and great suffering for the peoples. Many analysts have argued that the oil crisis of the 1970s, which saw oil prices skyrocket, is the main cause of the Debt crisis in most developing countries. It is argued that the huge earnings to the Organization of Petroleum Exporting Countries (OPEC) countries, were invested in American and rich European banks. But on the other hand developing countries borrowed huge sums of money largely to enable them import oil that was badly needed to support their industries. They also needed other investments to spur economic growth. The capital to finance these investments came from rich countries and international financial institutions.

Sadly instead of spending these funds wisely, successive regimes wasted money on grand and extravagant projects some projects remain incomplete, and examples include Nyayo Bus, Nyayo Pioneer Car, Turk well Hydroelectric Power Station, stalled police and other public housing projects.

The government also borrowed heavily internally from individuals, companies and banks by selling Treasury Bills and bonds. Huge government spending on luxuries continues to increase the internal and external debt. An example is the Kshs 878 million spent in the first two years of the Narc government on buying of top of the range limousines for senior public officials, there was also the case of Anglo leasing fraud estimated at about 4.2 billion, de la rule a money printing company, and lately the grand regency hotel sale, a hotel built with money stolen from tax payers through the infamous Goldenberg fraud.

In the 1980s and the years preceding, Kenya was among the major aid recipients in Africa, largely to put up infrastructure so as to integrate the large rural economy into the then emerging import substitution Kenyan economy. The 1990s witnessed a steady decline in development assistance to Kenya occasioned by a perception of poor governance and mismanagement of public resources and development assistance. Other factors include the end of the cold war and the collapse of the Soviet Union.

These led to a debt crisis in the country in the early 1990s which turned Kenya into a highly indebted nation. The debt problem was exacerbated by macroeconomic mismanagement in the 1990s such as the Goldenberg scandal which fleeced Kenyans over Kshs 500 million, leading to a reduction of donor inflows. The government thus resorted to occasional debt rescheduling and expensive short-term domestic borrowing to finance its expenditures.

The details of Kenya’s debt burden continue to be disheartening, as of August 2008 the public debt stood at Kshs 867 billion in a country with a population of 36 million people it would mean that:

- **Each Kenyan bears a debt tag of Kshs. 24,083.**
- **Each Kenyan paid Kshs. 4,055 this year to service the debt.**
- **The government spent nearly as much on debt servicing as on education.**
- **Repayment on debt interest is the first charge on the country’s tax revenues.**

Creditors blame Kenya’s economic woes on bad economic governance and corruption and hence the austerity measures that come with the loans they proffer for example PGRFs, SAPs, ESAPs and other Conditionalities. This Conditionalities in themselves have been seen to be obstacles,for example when the country is expected to reduce its teaching staff while at the same time it is expected to provide free basic education for all becomes a major hurdle, again the labour taskforce is expected to be halved while at the same time poverty levels are to be reduced, the fact is that the country's huge external debt is a major contributor to the widespread poverty in the country. A large portion of the country's revenue is used to service the debt leaving very little resources for development and to spur economic growth. Needless to say, the government's painstaking attempts to remain up-to date on the public debt obligations have impacted adversely on human rights and the sovereignty of the Nation.

Kenyans desperately need provision of basic social services in health, education, transport, agriculture and such vital services, yet the country's debt obligations surpass by far the budget allocated to these services thus rendering the projected economic growth and sustainable development to be yet another elusive goal (KENDREN, 2005).

5.0 WHY THE DEBT

In 2002, Kenya was ranked among the top five of the worlds most corrupt countries. More than $1 billion (Kshs 75 billion) was looted during retired President Daniel Moi's 24-year rule. Further, it is estimated that the big name politicians and public officials made an estimated $3 billion to $4 billion (Kshs 225 – 300 billion) worth of illegal gains. It has been argued that the debt crisis was worsened by lending nations and international financial institutions which gave money to the dictatorial regimes knowing very well that it was not being used for the benefit of the masses these external debts owed to foreign creditors have been termed "odious and/ illegitimate" it was loaned to illegitimate, military or tyrannical governments which used it for personal gains of the leadership and /or its associates. In other instances the regimes used the monies on institutions like the police or the military that were used to oppress the people, Kenya had its own Special Branch with torture chambers at Nyayo House. Its officers were used to silence any perceived opponents of the Moi regime.

6.0 CURRENT DEBT STATUS

According to the Monthly Economic Review August 2008[1] which highlights developments in the real sector, government budgeting operations, public debts and balance of payments developments;

The economy grew by 7% in 2007 compared with 6.4% in 2006.

Overall 12 months inflation increased from 26.5% in July 2008 to 27.6% in August 2008. This had been attributed to the higher prices of food items, mainly the prices of maize flour, rice, sugar among others as well as high fuel and electricity costs. We can also argue that the first quarter of the year was seriously disrupted by the post-election violence, which saw the reduction of productive processes. Similarly average annual inflation increased from 19.6% in July 2008 to 20.8% in August 2008.

Public and publicly guaranteed debt decreased by 0.4% in the first 2 months of the fiscal year 2008/09 to stand at Kshs 867.2 billion in August 2008 from Kshs 870.6 billion in June 2008. However total public debt fell from 42.8% of GDP in June 2008 to 41.7% in August 2008 following a faster growth in GDP. Specifically the external debt to GDP ratio from 21.6% in June 2008 to 20.7% in August 2008 while the domestic debt to GDP ratio fell from 21.1% to 21.0% during the period, i.e. government gross domestic debt increased from Kshs 430.6 billion in June 2008 to Kshs 450.4 billion in Oct 17th 2008 to 456.2 billion in December 2008 following planned domestic borrowing. Cumulative government expenditure on interest and other charges on domestic debt amounted to 10.6 billion for the period July 1st to Oct 17th 2008 compared with 11.3 billion in a similar period in the fiscal year 2007/08. The review insists that overall debt to GDP has been falling in the last 5 years which attests to the results of recent debt sustainability studies for Kenya which indicated that the debt is sustainable in the medium term, Which KENDREN does not find convincing.

The Kshs depicted mixed performance against major world currencies in August 2008, weakening against the $ US, and strengthening against the Sterling Pound, the Euro and the Japanese Yen. Against the$ US the shilling weakened to trade at an average of Kshs 67.68 per $ US in August 2008 compared with Kshs 66.70 per $US in July 2008.

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[1] Prepared by the Central Bank of Kenya starting with the June 1997 edition can be found at: http://www.centralbank.go.ke.

Therefore with the public debt stock standing at about KShs. 867.2 billion, which was serviced at about KShs 146 billion this year[2]. Out of this, 416.8 billion is external debt while 450.4 billion is internal[3]. It is this cumulative debt burden that has impoverished the people of Kenya and denied them their socio-economic rights and political sovereignty. As a result, two out of every three Kenyans are living in de-humanizing poverty.

Amazingly today, Kenyans are reeling under a debt burden that threatens to make the country unviable. It does not matter what party or coalition one belongs to. If the government does not lift the debt burden off the backs of Kenyans, this country will continue to wallow in poverty. Millions of Kenyans will derive no benefit.

KENDREN believes that the government's public debt is dangerously high. Although the debt burden has contracted from 81 per cent of the Gross Domestic Product (GDP) in 1998 to 38.8 per cent of GDP (June 2008)[4], it is still unsustainable. Kenya's declining economy cannot sustain the flow of repayment obligations arising out of a public debt of this magnitude.

This financial year alone, the government allocated Sh146 billion towards public debt repayments. In comparison, the national combined spending on education, health, agriculture and rural development and roads and public works amounted to Sh1 billion. Putting it more succinctly, the cost of servicing Kenya's public debt is equivalent to the governments combined spending on keeping Kenyans healthy, providing education, maintaining agricultural production and keeping public roads in a usable condition.

As it is, the country's public health care delivery system is moribund. The public education system is characterized by declining enrolments and massive school drop-out levels among the few who enroll.

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[2]Monthly Economic Review 2009 January, Prepared by the Central Bank of Kenya starting with the June 1997 edition can be found at: http://www.centralbank.go.ke

[3] Monthly Economic Review 2008 August, Prepared by the Central Bank of Kenya starting with the June 1997 edition can be found at: http://www.centralbank.go.ke

[4] IMF Country Report No. 08/337 October 2008

Agricultural production is declining, seriously undermining the economic viability of rural communities in the process. The public road network is in an advanced state of decay requiring monumental investment for repairs and rehabilitation. Stopping the chronic disintegration of public health, education, agriculture and roads will require the government to start spending colossal funds in these sectors than on repayment of the public debt.

The Government will have no option but to aggressively seek debt moratoria-preferably debt forgiveness or a radical restructuring of the public debt. Parliament should also prioritize the passing of a new law putting a ceiling on the public debt to no more than, say, 20 per cent of GDP as in Thailand and European Union member countries.

Sadly, none of the leaders has shed sufficient light on how he/she intends to liberate Kenyans from the onerous debt burden they now shoulder. In the absence of a clear policy focus in this area, the prognosis is very grim. At least 25 million members of the population or 65 per cent are unlikely to experience any improvement in their lives any time soon due to the heavy debt burden weighing down the economy. For this group, the pledges made by leaders about reviving the economy are likely to remain empty promises.

Parliament must as a matter of urgency challenge the Treasury and the Minister for Finance to make a definitive statement on the status and legitimacy of the External Public Debt as a matter of urgent national importance. Without transparency in this matter of national debts, there will be little point in continuing to maintain the fiction, now being put about by institutions such as the International Monetary Fund (IMF) and the World Bank (WB) , that the government of Kenya has the capacity or will to unravel this shameful system failure and corruption scandal. Kenyans must stop the abuse of borrowing powers by Treasury.

7.0 LEGISLATION AND THE DEBT QUESTION

One problem Kenya has to urgently deal with is that Treasury is not accountable to Parliament and has kept the contracting of bogus loans, underpinning the Anglo Leasing scandal, shielded from legislative scrutiny in breach of the External Loans and Credits Act which requires Parliament to be informed of such debt by the Minister of Finance. To date, for example, the detailed separate audits of the 18 security related contracts known as Anglo Leasing worth Ksh 56.33 billion, have never been tabled in Parliament.

But it is not just Parliament that has been kept in the dark. The Central Bank of Kenya has been side-stepped by the Treasury for decades as it borrows recklessly especially since the mid 1980s. During the Goldenberg Commission of Inquiry, it became clear that tens of billions of shillings were spirited out of the country as a result of Kamlesh Pattni's various export compensation and foreign exchange trading schemes during the early 1990s. Concerned that institutional loopholes might still exist in 2004, the Commission of Inquiry requested the Governor of Kenya's Central Bank, Andrew Mullei, to provide information about the CBK's procedures in handling GOK money. The May 11, 2004 letter is illuminating in its comments on foreign payments and the National Debt Office. As of that date the CBK was processing over US$550 million (Ksh 43 billion) annually in external payments on behalf of the GOK with a large proportion being debt service payments[5].

Section 31 of the Central Bank of Kenya Act states that the CBK shall administer any payment agreements entered into by Kenya, and the Bank shall be consulted by the Government in negotiating any payments agreement[6]. Nevertheless in practice, the CBK has been kept out of the loop. Indeed in 2004, the CBK was lobbying for amendments to the External Loans and Credit Act to compel the Government to consult the CBK in all external loans borrowing. The amendment has never been enacted[7].

[5] Mars Group website
[6] http://www.centralbank.go.ke
[7] Mars Group website

So, the situation in 2009 remains as it was in 2004. Although the Permanent Secretary for Finance, Mr. Joseph Kinyua, said that he issued a circular abolishing the use of promissory notes and to stop commercial credit agreements of the Anglo Leasing type, the Government does not have to consult with the CBK before it borrows money abroad. In fact the Government is not obliged to give full disclosure of external payment agreements it requires the CBK to administer. As regards external commercial public debt, the Central Bank is legally bound to pay without protest so long as the instructions given to the Bank by the Government are proper and there are sufficient funds to honour the transaction without querying the underlying transactions.

This is what happened during the entire Anglo Leasing series of payments of commitment fees, principal repayments and interest servicing from 1997 to date.

Even more frightening was the admission by the PS for Finance and other senior Treasury officials to civil society representatives that there are false entries in the country’s national external debt register. These were apparently inserted between 2001 and 2004 and cover the Anglo Leasing type 18 security related contracts. It would appear that despite having cleaned the external public debt register in 2001, after hiring Lazard Brothers the Government has in just 4 years loaded the external public debt register (and wananchi) with close to 1 billion dollars worth of fictitious credit and debts.

Unfortunately these debts are secured by irrevocable promissory notes and binding contracts, that make it extremely difficult for the Government Of Kenya to avoid making payments to what it has called ghosts. Even though the Controller and Auditor General found that not a shilling in credit was ever provided by these ghosts to justify issuing promissory notes.

It is clear that the public has no way of accessing loaning agreements reached between the government and lenders. But it is assumed that the government borrows for and on your and my behalf. Parliament seems to have no powers to tell what is in the public debt register. But surprisingly, the Parliament of Kenya has given corruption perpetrators an amnesty for corruption committed prior to May 2003. In the Statute Law (Miscellaneous

Amendments) Bill 2007, approved by Parliament on Thursday 6th September 2007 and moved by the Attorney-General and the Minister for Justice and Constitutional Affairs, was an amnesty provision that hitherto had attracted almost no public comment. The effect of this amendment is that the Kenya Anti Corruption Commission (KACC) cannot perform any of its functions in respect of corruption offences committed prior to May 2003. Grand Corruption perpetrators named in scandals such as Anglo Leasing, Ndungu, Goldenberg, Ken Ren Fertilizer and the Kroll Report will now have no case to answer to the Kenyan People and cannot be investigated by KACC.

By passing this amendment to the Anti Corruption and Economic Crimes Act, Parliament ensured that the perpetrators of Corruption prior to May 2003 can raise the proviso inserted in the Act as an absolute rock solid defense against KACC investigating or taking any other actions against them. Kenyans lost their chance to recover some of the billions of dollars stolen from them, and which we had been told KACC was investigating (in Kenya and abroad). **The final effect is an amnesty for any Corruption prior to May 2003. How and why was this done?** What Parliament did was to amend section 7 of the Anti Corruption and Economic Crimes Act of 2003 which sets out the powers and functions of the Kenya Anti Corruption Commission. Under this new law the KACC's powers were drastically curtailed as Parliament voted a proviso to the effect that "the powers of the Commission under this Act shall only relate to offences taking place after the commencement of the Act yet" The Anti Corruption and Economic Crimes Act came into force in May 2003. This legislative action is very significant in that it wipes the slate clean for those accused of involvement in grand corruption scandals such as the grabbing of public land (documented in detail in the Ndungu Commission on Irregularly Appropriated Land); the looting of over USD 1 billion from the economy because of the activities of Kamlesh Pattni and Goldenberg International Limited which is a toxic debt (documented ad nauseum in the Bosire Commission Report); Bogus Contractor's Pending Bills which are toxic and odious debts (said to be worth over USD 1 billion even by the Ministry of Finance); Fictitious Entries in the Public Debt Register (including all but 3 of the 18 Anglo Leasing contracts worth USD 777 million) and the persons around Ex-President Daniel Moi who are said to have amassed over USD2 billion (explosively revealed in the Kroll and Associates Report commissioned at public expense by his successor President Mwai Kibaki).

Kenyans are entitled to ask for an explanation from Members of Parliament regarding the forgiving of 43 years of economic crimes worth several hundred billion shillings by the insertion into our law of a mere 22 words strung together in one sentence. For one thing, the election of Mwai Kibaki in December 2002 was motivated by a desire to see an end to grand corruption and impunity. Opinion polls then showed negligible public support for amnesty for economic crimes. Prosecution and restitution were then popular and expected. Who would have thought that after all the money we have collectively poured into the various investigations by KACC (Ksh 1 billion plus per annum over 6 years) and other Commissions of Inquiry including hiring Kroll & Associates and the Ndungu and Goldenberg Commissions; Parliament would render each and every report an expensive waste of time. MPs in Kenya have a reserved reputation for greed (witness their brazen appropriation of Ksh 333 million worth of gratuities even in the face of public opposition and petitions) and clearly something has driven such legislative activity. KENDREN would hazard that this latest outrage arises from the personal difficulties in which Ex-President Moi recently found himself in.

Kenyans remember that Moi has argued for amnesty before. A similar effort to forgive all economic criminals for their acts prior to December 1st 1997 failed in July 2001, even after then President Moi made a personal appearance in Parliament to vote for amnesty for grand corruption and economic crimes. Even though he did not succeed, Mr. Moi was able to cut a deal with the new government of President Kibaki, which even described him as having useful political capital and an elder statesman. There was in short, a political deal or agreement between Moi and Kibaki, under which Mr. Moi would face no personal liability for his atrocious record, in exchange for his going into permanent retirement. The deal appears to have been reopened, as Kibaki found himself the target of grand corruption finger pointing especially after the USD 777 million Anglo Leasing corruption scandal.

Again all was going well, until the Kroll report (on the wealth of Moi's family and associates) appeared on a whistle-blowing website and was swiftly picked up by the Guardian of London. Suddenly, Kenyans were asking themselves the perfectly legitimate and reasonable question: could it be that this wealth (circa Kshs 130 billion) was accumulated at our expense? After all, we know what Presidents are paid!

8.0 DEBT SERVICING AND DEBT RELIEF

Debt servicing is simply paying back what a country owes. Governments make these payments using monies raised through taxes from wanainchi. Therefore, it is the people who are ultimately responsible for the payment of any debts a government takes. Debt relief refers to any action by a creditor that officially changes the terms previously agreed for payment of a debt. It includes lowering the amount repayable at a set period, extending or postponing the repayment period, and canceling the debt altogether, but with conditions.

The Paris club which brings together developed states that lend to the poor nations meets regularly with countries that owe them in order to agree on debt servicing and relief. In January 2004, the Paris Club met and decided that Kenya, could not qualify for debt relief. In April, President Mwai Kibaki called for debt relief to free Kshs 70 billion the country needed to fight poverty and improve the general welfare of its people. According to the ministry of finance website DSAs conducted in Kenya have shown that the debt is sustainable. The HIPC threshold ratios have equally shown the same. Kenya has gone to Paris Club three times for rescheduling 1994, 2000, and 2004 in 2000, Kenya rescheduled US$ 298 Million. The last was between 6 th – 16 th January 2004 US$ 350 Million was rescheduled for consolidation period of 3 years while US$ 65 Million for this Financial year. Japan rescheduled US$ 197.4 Million (56%). Kenya has been rescheduling under Hourston Terms.

9.0 DEBT SUSTAINABILITY

If a country can continue paying its loans without having to seek debt relief, taking other loans or rescheduling then it is considered to have sustainable debt. However debt sustainability moves from one size fits all approach to a country by country basis. That is, every country is analyzed according to its situation and takes consideration of the revenues generated by a country than relying on expected exports. For example in 2005 Kenya's debt was considered sustainable since its external debt of about Kshs 450 billion is not over 200 per cent of what the country generated as revenue estimated at Kshs 268 billion.

Debt sustainability however presumes no further debt relief. Further more it pays no attention to the eight Millennium Development Goals (MDGs), namely:

- Eradicating extreme poverty and hunger.
- Achieving universal primary education
- Promoting gender equality and empowering women
- Reducing child mortality
- Improving maternal health
- Combating HIV/AIDS, Malaria and other diseases
- Ensuring environmental sustainability
- Developing a global partnership for development.

Furthermore, the analyst of whether debt is sustainable or not happens to be the lender.

10.0 DEBT CANCELLATION

In December 2004, a minister in the government stated: "People are spending too much time talking about debt relief yet Africa is in a state of emergency. If you cancel the debt you empower the Africans and in so doing improve purchasing power. The debt should be cancelled now…"

Many civil society organizations (CSOs) responded by organizing debt cancellation campaigns in 2005. KENDREN has been doing the same as it is important to sensitize people on debt with a view to mobilizing and empowering them to pressure the external financiers to cancel debts through campaigns, peaceful street demonstrations and pressuring governments.

Poor internal borrowing plans, weak debt policies and systems are to blame for the debt crisis in many African countries. In Kenya, for instance, lack of clear information on how much was borrowed and for what purposes, clouds the debt crisis problem. Internal debt management is very crucial in preventing another debt crisis in case the current debt is cancelled. This is because a huge domestic debt affects the private sector through an increase in interest rates which make it difficult for borrowing. That is, as the government borrows more and more, it crowds out the private sector and other people from accessing money from banks which pushes interest rates to alarmingly high levels. This is similar to a situation where many people seeking to buy a scarce item tempt a trader to sell it expensively.

11.0 REFUSING TO PAY DEBT

Refusing to pay debt, especially monies taken by despotic rulers and which were not spent on the country's needs or interests has been suggested. Such debts are Odious and/ or illegitimate and the country should refuse to pay. Campaigners state that it is 'morally unjust' to pay since those who lend did so at their own risk. Odious debts fall with the regime and should not be passed on to the successor.

12.0 DEBT AND DEVELOPMENT IN KENYA

Every new born Kenyan inherits a debt burden of approximately Kshs 45,000, more than half the burden; about Kshs 25,000 is external debt whose recovery is endless. The debt burden is an endless vicious cycle, no matter how much one pays, or for how long. Individually or collectively these debts are paid through taxes (direct such as income tax, or indirect such as value added tax). This partly explains why Kenyans are taxed as high as 30 per cent of their salaries, and pay numerous other taxes, duties and rates to the government. But the question is,are these debt repayments worth it and especially for all the loans that did not help the country but only benefited a few powerful clique in power. KENDREN questions this and equally requests all Kenyans to do the same.

Kenya’s huge international debt is as a result of the governments plan to shift from domestic to international borrowing. That is, external debt increased due to money borrowed to finance projects, while some loans were used to settle domestic debts of finance budget deficits – a situation where money generated locally is not enough to meet government expenditure. Nonetheless, the country continued to suffer from rapid accumulated debt. Foreign countries (- bilateral lenders-) are owed about 60 per cent of Kenya’s external debt while international organizations and ad hoc lenders unions (- multilateral lenders -) are owed the remaining 40 per cent. The World Bank accounts for nearly 60 percent of the multilateral lenders funds Kenya owes while Germany is the leading bilateral lender with nearly 35 per cent.

13.0 CONCLUSION

It is evident that appropriate use of debt could lead to improved socio-economic growth and thus, better standards of living. To make debt effective there is need for far reaching reforms in the management of the public sector. However in most cases resources from debt have not been used as effectively, for example, projects financed by international loans have, due to lack of adequate or realistic planning, failed to generate sufficient resources to service the debt borrowed. Therefore socio-economic development is compromised since the government spends huge sums on loan repayments, hence reducing money it spends on education, health and other social amenities, which mainly target the poor, who comprise the majority of the population.

Studies on Kenya’s ability or inability to repay debts were conducted by the lender and without the domestic debt in mind. It has been argued that by ignoring the domestic debt the country’s external debt has had a negative impact on its economic growth. Further in 2005 a government report stated that sustainability of a country’s debt should be measured according to its ability to meet the MDGs. The report identified financial challenges of achieving MDGs, which could be overcome if the debt is cancelled thus freeing extra resources to finance MDGs.

In early 2006, some government ministers complained that debt servicing is a hindrance to the country’s efforts to achieve MDGs. They argued that the more the country continues to pay hefty amounts in debt servicing, the less likely it will be for the country to achieve MDGs by the 2015 deadline. The government should in a unified position, continue pressing for the debt cancellation.

Debt cancellation is considered necessary so that a government frees the money it spends on debt servicing to go to social sectors especially health, education and provisions of services such as water and sanitation, housing and investing in development. The international financial institutions (IFI’s) need to lend a helping hand to lift Kenya onto the path of economic growth. On the other hand some of the costs are that the country would have shown that once it gets a loan in future it may be unable to pay. Therefore once termed uncreditworthy future borrowing may be uncertain. But it is also clear that most of the debts Kenya is repaying today could be odious and/ illegitimate, further it has been argued that the World Bank and IMF supported the previous regime for close to two decades and hence helped the regime frustrate Kenyan people. Moreover it has been suggested that irresponsible lending by both of these institutions contributed to Kenya's current situation. Thus the lenders must bear responsibility since they loaned a despotic regime.

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