The National Debt Management Framework and Loan Contraction Process in Kenya

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We hope this report will contribute to the broader discussion and implementation of an effective debt management strategy.

Acronyms

DMO	Debt Management Office
DSA	Debt Sustainability Analysis
ERS	Economic Recovery Strategy
FLSTAP	Financial and Legal Sector Technical Assistance Project
GDP	Gross Domestic Product
HIPC	Highly Indebted Poor Country
IDA	International Development Association
IMF	International Monetary Fund
KENDREN	Kenya Debt Relief Network
KSh	Kenya Shilling
MEFMI	Macroeconomic and Financial Management Institute for Eastern and Southern Africa
OECD	Organisation for Economic Cooperation and Development
SIDA	Swedish International Development Agency
UNDP	United Nations Development Programme
USD	US Dollar

Executive Summary

For many years, Kenya's debt strategy has been ad-hoc and informal. It still is today although there are efforts to develop a formal national debt strategy. As a result there have been weaknesses both in the institutional arrangement and the legal framework guiding and governing loan contraction and debt management. As this study shows, institutions that deal with debt management are still spread across the Ministry of Finance and the Central Bank of Kenya. In addition, there other institutions such as the Department of Government Investments and Public Enterprises that still play significant functions in loan contraction. These and many others need to be coordinated and their functions harmonised.

In this respect we **recommend** that;

- The establishment of the Debt Management Office be speeded up so that all functions (front office, middle office and back office) and processes relating to loan contraction and debt management can be performed under one entity.
- Government fast-tracks the development of a national debt strategy in line with Kenya's development priorities. One of the glaring issues around debt management in Kenya is that there is no alignment between debt servicing and *Kenya Vision 2030.* This needs to be attended to as a matter of urgency.
- Debt management must be located within the broader reform of public finance management.
- Coordination must be strengthened between monetary and fiscal policies with debt management strategies.

The legal framework is still inadequate to deal with loan contraction and debt management. As shown in the study, the responsibility to borrow and negotiate loans still rests with the Minister of Finance. In most cases, the Minister is required only to present a report to Parliament. Most of the laws governing loan contraction don't require the Minister to seek approval from Parliament. This is despite the fact that constitutionally, Parliament has the overall approval for government transactions. However given the technical and complex nature of the budget process and the general lack of expertise in most parliaments, it is not surprising that the executive would dominate the legislature.

Under these circumstances, we **recommend** that;

- Most laws should be reviewed to give Parliament more power to exercise its oversight role in financial matters, most crucial of which are loan contraction and the use of public resources.
- Parliament improves its technical capacity and expertise on issues of public finance.
- The authority vested in the Minister ought to be reviewed. It is an anomaly that so much authority would be vested in one institution when its decisions affect all citizens.

- The process must be broadened to involve other stakeholders such as the private sector and civil society formations. Such interactions have already begun with sector hearings and input into the *Budget Outlook Paper*.
- Civil society formations and government institutionalise and formalise their relations. This is because there is still very little engagement between civil society and government on matters of the budget and debt management. Currently there is no legal basis for civil society participation in debt management but a number of groups have been advocating for debt cancellation and working closely with Parliament to analyse bills that deal with management of public resources. As the section on civil society shows, there is growing engagement between groups such as the Kenya Debt Relief Network, Actionaid, Catholic Economic Justice and Parliament.

Although the recent Debt Sustainability Analysis (DSA) found that debt is still sustainable; and very low in international standards; it is better to heed the concern of civil society groups that if not 'arrested' now, it can easily become unsustainable. Besides, DSA does not take into consideration contingent liabilities and private debt. When these are included in the DSA, the trends might shift towards distress. Also as the report by the Debt Management department shows, debt servicing is still increasing even though debt stock is still within acceptable thresholds.

It is **recommended** that;

- Government should move swiftly to implement its reform initiatives that it started since 2005. Some of these as the report shows are already implemented, but crucial ones such as the development of a national debt strategy are still yet to be developed.
- Government strengthen its relations with civil society and the private sector around loan contraction and debt management.

Introduction

Kenya's loan contraction process and debt management is one that was characterised for a number of years by weak institutional and legal frameworks. To a certain degree, it still suffers the same weaknesses. There is still no formal national debt strategy in place and this creates challenges not just for the future but for the past as well. Currently, what exist are ad-hoc management objectives and an informal debt strategy. Further compounding the situation is the weak coordination between debt management and monetary policy. Understaffing and staff turnover continue to pose serious challenges to debt management processes. And parliamentary oversight on loan contraction and transparency around debt management is still very weak. The Minister of Finance has the overall responsibility for loan negotiation and procurement.

However, there are government reform initiatives that seek to improve loan contraction and management of debt. For example, between 2006/7, government aimed to improve the 'efficiency and transparency' in the management of public debt by implementing the following reform initiatives: 'installed a fibre optic link between the Ministry of Finance and the Central Bank of Kenya to facilitate online sharing of data on a common CD-DRMS 2000+ platform'; undertaking a Debt Sustainability Analysis (DSA); began to develop a national debt strategy; and engaged a consulting firm (Crown Agents) to develop a structure for the Debt Management Office (DMO). Further, there are efforts to improve debt recording and reporting systems. There have been incentives to retain senior staff and have them committed to their tasks. The process around debt management is also being broadened to include other stakeholders so that this does not remain a preserve of a few. There is an attempt to align and coordinate fiscal and monetary policies with debt management. More importantly, this should be aligned to *Kenya Vision 2030* and other development strategies.

The legal framework is being reformed, strengthened and tightened. Institutional arrangements which were previously spread across departments, in particular, in the Ministry of Finance and the Central Bank of Kenya, are now being harmonised and arranged under one entity, the Debt Management Office to be modelled against international best practices. There is a plan by government to issue a sovereign bond in the international financial market. And in future, government plans to prepare and gazette External Debt Management Regulations; modernise public debt registry; initiate a periodical reporting of contracted loans to Parliament; and post the schedule of loans in the Treasury website, among other initiatives.[ii]

This study is thus an outline of the institutional arrangements that provide a framework for loan contraction and the management of public debt in Kenya. It looks at how functions are distributed among institutions such as the Treasury, the Debt Management Office, the Central Bank of Kenya, the Controller and the Auditor General, the External Resources Department and other relevant agencies.

Secondly, the study examines the legal framework and conducts an assessment of the laws that govern loan contraction and the management of debt. These include the Constitution of Kenya, the External Loans and Credit Act, the Internal Loans Act, the Guarantee Loans Act and the Central Bank of Kenya Act, among others.

Thirdly, the study examines the role of parliament in loan contraction and management of debt. In particular, what roles do committees such as the Fiscal Analysis Committee, the Public Accounts Committee among others, play? How effective are they? Finally the study evaluates the involvement of all stakeholders, in particular civil society in debt management.

This study was undertaken as a result of a United Nations Development Programme Regional Service Centre for Eastern and Southern Africa; and the Macroeconomic and Financial Management Institute for Eastern and Southern Africa survey; conducted in 2007 among 22 countries. The survey aimed at understanding the institutional structure that governs debt management; the legal framework around domestic and external borrowing; the role of parliament; the role of watchdog agencies such as the Auditor General, Attorney General, etc; as well as technical assistance that countries need to improve their effectiveness in debt management. The findings of that survey were presented at a workshop entitled “Beyond HIPCs: Strengthening National Debt Management Framework and Ensuring Accountability in the Loan Contraction Process” in December 2007, in South Africa[iii].

Some of the findings presented included: that the Ministry of Finance was responsible for loan contraction in at least 12 countries. The Central Bank shared this role with the Ministry of Finance in one country; and so did the Debt Management Office in another. Both; the Ministry of Finance and Central Bank jointly recorded external debt in six countries; however in four countries, the Ministry of Finance was solely responsible for recording external debt.

In seven countries, debt servicing was the responsibility of the Ministry of Finance and Central Bank, while in three countries it was the Ministry of Finance only that was responsible for debt servicing. And in one county, the Ministry of Finance together with the Debt Office were responsible for debt service. In six countries, the Debt Office is accountable to parliament, while in four countries, it is accountable to the Ministry of Finance. And in one country it is accountable to creditors. In all countries, no sector ministry could negotiate or acquire loans.

All countries, except one had internal and external laws governing loan contraction. Parliamentary oversight existed in at least seven countries. And only one country involved civil society in the debt management framework.[iv]

These broad trends provide the framework in which the Kenyan discussion is located. Although based on extensive literature review, interviews with the Treasury, civil society and a former member of the Kenyan Parliament further bolster arguments presented in this paper.

As with all research projects of this nature, securing interviews with government officials is always tricky and not guaranteed. This is the case with the Parliament of Kenya and the Central Bank. This limitation was however addressed through extensive interviews with officials from the Treasury as well as members of civil society, among other key respondents. The availability of many publications on the issue by government, think tanks, academics and civil society also made this endeavour a lot easier to manage.

There are five sections to this report. The first gives a brief background and context under which loan contraction and debt management take place. The second discusses the institutional arrangements. The third tackles the issue of laws that govern loan contraction. And the last two explore the roles played by Parliament and civil society.

Background and Context

Debt management varies from one country to the other. This is because in general African countries are very diverse in many ways: economic outlook, debt contexts, management processes and capacity to deliver services to citizens. However despite these differences, there are similarities. A study on 'Government Debt Management and Bond Markets in Africa by OECD' in 2007 showed some common trends.[v] For example, although GDP growth continues to be strong in Africa and macroeconomic conditions have improved, debt levels are still a problem; the levels are still high. There have also been improvements in average growth rate from 4% between 1998 to 5% and 6% in 2004. Foreign-currency debt still predominates as a result of the reliance on concessional multilateral and bilateral funding and rudimentary domestic markets' and local-currency debt is short-term. Further, institutional frameworks are weak in most countries. Although there are laws that govern debt contracting and servicing, the framework is not always clearly defined and this has implications on implementation. The legal requirements for transparency and accountability are limited; and the resources for debt management are constrained (staff capacity, skill levels, expertise, technological resources etc).

These challenges require African countries to develop national debt management strategies that are anchored on a good governance system and linked to the fiscal and monetary policies. For many countries, Kenya included, debt strategy is ad-hoc and this leads to unsustainable debt in future.

Like the countries above, Kenya faces similar challenges around managing its public debt: both domestic and external.[vi] Although this study is not interested primarily in analysing debt sustainability and Kenya's indebtedness, it suffices to state that there is a general agreement that Kenya's debt is low by international standards and that it is sustainable.[vii]

However, as we discuss later, civil society groups are not that optimistic about Kenya's debt sustainability. External debt stock and its servicing pose a threat to Kenya.[viii] According to a 2007 survey conducted by the Kenya Debt Relief Network (KENDREN), (a network of civil society organisations that work on debt, Kenya's public debt stock was KSh 752.49 billion in 2005. This was equivalent to 63% of the Gross Domestic Product (GDP). While the external debt stock had decreased from KSh 434 billion to KSh 406.3 billion, the domestic debt stock increased to KSh 346.1 billion from KSh 315.6 billion. The survey further states that the ratio of domestic debt in total debt increased to 46% at the end of March 2006 from 40% in October 2004 while the ratio of external debt in total debt declined to 54.0% from 60% in October 2005.[ix]

According to the Ministry of Finance's Department of Debt Management Annual Report (March 2008), Kenya's public and publicly guaranteed debt increased from KSh 789,076 million or 51.1% of the country's GDP in June 2006 to KSh 801,254 million or 43.8% of the GDP in June 2007. Domestic debt increased from KSh 357,839 million (23.2% of GDP) to KSh 404,690 million (22.1% of GDP). External debt declined from KSh 431,237 million (27.9% of GDP) to KSh 396,564 million (21.7% of GDP) during the same period.[x] However if expressed in US dollar terms, the report notes that external debt increased from USD 5,837 million to USD 5,958 million during the period.

In terms of composition of public debt, there was a significant shift with the share of domestic debt increasing to 50.5% of the total debt in June 2007 from 45.3% in June 2006. External debt dropped from 54.7% to 49.5% during the same period. This was due to appreciation of the Kenya Shilling and an increase in domestic borrowing.
And Kenya's debt service increased from KSh 44,320 million in 2005/6 to KSh 55,177 million in 2006/7. There was an increase in interest payments on domestic debt from KSh 31,445 million to KSh 36,860 million. External debt service increased from KSh 12,875 million to KSh 18,317 million. The increase in domestic interest payments was due to higher domestic debt stock while the rise in external payments was due to the end of the consolidation period for rescheduling of the Paris Club debt in 2004.[xi]

In terms of structure, source, type and composition, a greater proportion of external debt (close to 80%) has been from official sources; multilateral and bilateral. Historically, particularly in the 1970s, official debt was mainly from bilateral donors. However, since 1982, the structure changed to both multilateral and private. And according to the Ministry of Finance's 'Annual Debt Management Report (2006-2007)' published in March 2008, multilateral sources comprised 59.3% in June 2006 and 60.6% by June 2007. Bilateral sources constituted 35.9% in 2006 and 34.8% in 2007. Export credit was 4.5% in 2006 and still remained unchanged in 2007. And commercial banks constituted 0.3% in 2006 compared to 0.1% in 2007.

International Development Association (IDA) was by June 2007 still the main multilateral creditor to Kenya. IDA accounted for 48.1% in June 2007, while the African Development Bank Group accounted for 5.9%. And the European Investment Bank accounted for 2.5%. Among the bilateral sources, Japan was the largest contributor in June 2007, accounting for 16.9%, followed by France which accounted for 4.7%.

Germany was at 3.3% while Italy was at 1.8%. The rest lumped together comprised 16.7%. However our interviews with officials from Treasury revealed that the World Bank is now one of the first three multilateral sources for Kenya's external debt.[xii]

In terms of its currency denomination, Kenya's debt as of June 2008 was held in 12 different currencies. These were the Danish Kroner, Euro, Kenya Shilling, Kuwait Dinar, Sterling Pound, Saudi, Riyal, Swedish Kroner, Swiss Franc, US Dollar, Korean Won, Japanese Yen, and Chinese Yuan. According to Treasury, about 97% of the Kenyan debt is denominated in Euro, US Dollar, Japanese Yen and Sterling Pound. The Euro comprised 34%, while the USD comprised 32% and Sterling Pound was 6%.[xiii].

In terms of structure, external debt remained long-term according to the Treasury. The average maturity profile of external debt increased from 36.1 years to 40.8 years between June 2006 and June 2007.

Regarding domestic debt, Treasury bonds increased from KSh 218, 357 million in June 2006 to KSh 272, 200 million in June 2007. And Treasury bills decreased from KSh 94, 776 million to KSh 94, 422 million in June 2007. In terms of composition of domestic debt by instrument, Treasury Bonds accounted 67.3% while Treasury bills constituted 23.3%. The proportion of domestic debt held in long term stock also dropped from 0.3% to 0.2% during the period June 2007 to June 2007. There was a drop also in the proportions of other forms of domestic debt from 12.5% to 9.4%. For example, the Central Bank of Kenya overdraft decreased from KSh 5, 202 million to zero from June 2006 to June 2007.[xiv]

And as of June 2008, domestic debt was growing faster than external debt. Debt servicing was still on the increase in nominal terms but in comparison to the GDP, it was going down.[xv] Officials from Treasury still maintained that debt is still sustainable, even though it is rising in absolute terms.

The state of Kenya's indebtedness should be viewed against the country's development needs. KENDREN noted in 2007, that;

> 'Debt servicing has an immense human cost. The severity of the problem is reflected in the size of current debt relative to income, and the high service repayment that diverts resources away from such areas as education, health, social services and infrastructure.'[xvi]

It must be noted that by the end of July 2008, Kenya still did not have a formal national debt management strategy. There was an informal and ad-hoc strategy whose features included;

- Ensuring that the level and rate of growth of Kenya's public debt are sustainable over time;
- Government borrows mainly to cover its financial requirements;
- Government borrows as much as possible from external lenders on concessional terms while domestic borrowing is only used to cover the reaming resource gap; such concessional loans must have a grant element of 35%;

- External debt is long term in nature characterised by low interest rates and domestic debt is short term with higher interest rates;
- Seek more debt relief on a bilateral basis-hence an encouragement of debt for development swaps;
- Lengthening Treasury bond maturity to promote capital markets; and
- Ensuring that outstanding external debt is within limit authorised by Parliament

Although a number of reforms and debt management initiatives were being implemented; the lack of a national debt strategy coupled with a weak legal and institutional framework raised concerns among citizens and civil society formations that such a scenario was bound to be anti-developmental. The lack of a formal strategy created problems around the advocacy for debt cancellation. For example, where the debt came from and what it was used for, etc, are questions that a formal strategy should be able to answer. Advocacy without this information is not evidence-based. Civil society groups are also concerned that the amounts of money spent on debt servicing are at times more than what is spent in sectors such as education, health etc. This could be an indication that Kenya might fail to manage its debt adequately. There was concern also that there was not much involvement of citizens in debt management. Debt and loan contraction still remained a preserve of government, in particular the Ministry of Finance. Although Parliament played some oversight role, there was a sense that the executive dominated the budget process as well as other financial matters.

Institutional Framework for Debt Management[xvii]

It was only in 2005 that Kenya embarked on a five year reform programme to address fractures in the management of debt. The situation was characterised by weak institutional arrangements, scattered organisations, ad-hoc strategy and serious capacity challenges. There was no harmonisation between debt management and the fiscal as well as monetary framework. Hence there was lack of clarity around the roles of different agencies, particularly around domestic debt. Until recently, debt recording was not comprehensive and therefore very much questionable. More importantly, there was, and still is no alignment between debt management and development programmes.

Kenya's development framework or what is normally referred to as 'blueprint' is *Kenya Vision 2030*. This covers the period 2008-2030. It is anchored on three pillars: the economic; the social and the political. The principal aim of *Vision 2030* is to transform Kenya into a newly industrialising 'middle income country' delivering high quality services to its citizens by 2030. Developed through a consultative process, *Vision 2030* builds on the successful implementation of the *Economic Recovery Strategy for Wealth and Employment Creation* (ERS) which saw the country's GDP grow at the rate of 6.1% in 2006.[xviii] This development framework seeks to improve the quality of life of Kenyans through an economic development programme that will see GDP growth rate rise up to 10% per annum beginning in 2012. The framework also seeks to build a cohesive society existing justly in a clean and secure environment. Finally, the framework aims to achieve a democratic political system founded on the respect for the rule of law and one that protects the rights and freedoms of individual Kenyans.[xix]

This is a sound development blueprint. However what is surprising is that *Vision 2030* does not deal with issues of debt management or debt servicing. This is surprising given the Former Minister of Finance's foreword to the *Annual Public Debt Management Report* in March 2007. He wrote;

> 'Public debt continues to be a major challenge towards achievement of Millennium Development Goals. A significant proportion of the Government budget allocation is to service public debt, leaving inadequate financial resources for pro-poor development programmes. The need to strengthen public debt management is critical not only to lowering the cost of debt service to the Exchequer, but also to the development of Kenya's capital markets. Over the last two years, the Government experienced major lapses in systems and controls related to management of external supplier credit loan contracts. In response to these shortcomings, the Government took steps to develop effective institutional and legal framework for public debt management anchored on a public debt strategy consistent with the *Kenya Vision 2030.'*[xx]

Why there is lack of harmonisation between debt management strategies and *Kenya Vision 2030* is indicative of the ad-hoc nature of Kenya's management of debt. This raises many questions. For example; how will the state finance *Kenya Vision 2030* if it does not address issues of debt? Is it not that to realise Vision 2030, one of the requirements is the improvement of debt management framework and strategies. If this is not addressed, Vision 2030 is but a pipe-dream. *Kenya Vision 2030* realises that the three pillars and their sectors will require more financing than is currently provided. The question is how will these be financed if debt servicing is increasing as shown above?

It is for these reasons that *Kenya Vision 2030* should be grounded on sound fiscal and monetary policies that are very much linked to strategies to managing debt. And this raises the question of the institutional structure for loan contraction and management of debt.

Like in most countries, debt management is a foggy process. As some studies have shown, very little is known about policy makers or negotiators of debt; management of debt portfolio; availability of data and its access by the public; checks and balances; debt stock; among other crucial information.[xxi] In its *Medium Term Budget Strategy Paper* for 2006/7-2008/9, the Ministry of Finance states that 'debt management process is weak and the Debt Management Department has no functional "Middle Office" to carry out debt analysis to inform policy.' Hence in order to address this and build the capacity, the Ministry of Finance, with the help of the World Bank initiated a reform initiative that would establish a Debt Management Office whose functions would include;

- Acquisition of expertise to assist in drafting debt policy that is consistent with Kenya External Aid Policy;
- Designing annual debt management strategies;
- Drafting periodic analytical debt management reports;
- Undertaking risk management analysis, and;
- Carrying out debt portfolio analysis and review.[xxii]

The reason for these initiatives is because as the Ministry of Finance attests, for many years, public debt management in Kenya was characterised by weak institutional arrangements-with debt functions spread across departments mainly at the Ministry of Finance and the Central Bank.[xxiii] Institutions that play roles include the Department of Debt Management; the External Resources Department; the Department of Government Investments and Public Enterprises and the Accountant General. In addition, the Controller and Auditor General as well as the Parliament also play some limited roles. The Ministry of finance is however the principal agent to source, negotiate and acquire loans both internally and externally. Below is a description of the functions of different institutions.

Debt Management Department

The origins of this department can be traced back to 1985 when the Swedish International Development Agency (SIDA) together with the Commonwealth Secretariat supported a debt management project within the Ministry of Finance to build its capacity for debt management. A division was established in 1987 within the Fiscal and Monetary Affairs department. But by 2001, the division core function consisted mainly of recording external debt and determining concessionality of external proposals by calculating the 35% grant element. This was due to staff turnover. Improvements were made however in 2002 with the upgrading of the division into a department of debt management. Because of the weak operational function of this department as well as continued staff turnover, the Government in 2003, requested the World Bank to assist in study existing debt management strategies and make recommendations for Kenya. The World Bank and IMF in response prepared an *Assessment Report on Central Government Debt Management and Domestic Debt Market Development Program*.

In the World Bank report were recommendations such as the establishment of a Debt Management Office; and strengthening of domestic markets as is stipulated in the *World Bank/IMF Guidelines for Public Debt Reforms* (2001). In 2004, the Kenyan Government entered into an agreement with the World Bank to establish the DMO and strengthen domestic markets. This was to be financed and coordinated under the five year Financial and Legal Sector Technical Assistance Project (FLSTAP). The Commonwealth Secretariat and MEFMI were to be partners in the implementation of this project. And according to Treasury, two senior officials were seconded from the Central Bank of Kenya in 2004 to spearhead the reforms[xxiv].

Among some of the objectives and activities of this reform project were the establishment of a comprehensive and reliable public debt database, capacity building as well as the development of a national debt strategy. This entailed strengthening the functions of a back office; the consolidation of debt management functions that still today are spread across the ministry of finance and the Central Bank. In this respect, the DMO was to be created to consolidate all these functions. However by July 2008, this office was still not fully functional.[xxv] According to a 2008 Report, 'considerable progress has been achieved. There has been a drive towards attracting and training appropriate staff, developing a comprehensive debt database as well as operational manual and reorganisation of debt records. The same report notes that the back office has been strengthened and the middle office staff members are undergoing relevant training.

Meanwhile the Central Bank of Kenya and the External Resources Department still continue to perform the Front Office functions in internal and external debt operations respectively.[xxvi] However interviews with Treasury showed that the Debt Management Office has not operationalised the reforms that sought to create the Back Office, the Middle Office as well as the Front Office. In other words, although the Debt Office plays a key role, for it to be more effective some of its functions need to be operationalised.

External Resources Department

This department is responsible for sourcing external funding. It is responsible for negotiating and contracting loans. Further it monitors the disbursements of external loans and grants as well as liaises closely with other line ministries. The External Resources department is also responsible for the calculation of the 35% grant element in any loan that is extended to Kenya.[xxvii]

The Central Bank of Kenya

Perhaps the second key institution in debt management, the Central Bank of Kenya is responsible for managing public domestic debt on behalf of the Government of Kenya, in particular, Treasury. Some of its responsibilities include contracting domestic debt sale through sale of Treasury Bills and Bonds. It also extends overdraft facilities to Government; maintains the domestic debt register and makes payments for domestic debt. The Central Bank is the Government's Banker; therefore it is responsible for effecting payments to external creditors on behalf of government on instructions from the Treasury.

The Department of Government Investments and Public Enterprises

This department facilitates lending of donor funds to public enterprises. It monitors and also receives payments by public enterprises on behalf of government.

The Attorney General's Office

This body operates as the principal legal adviser to Government on legal matters on loan contraction. The Attorney General's office is also responsible for reviewing draft loan agreements to ensure that they conform to the legal framework. The Attorney General's office is provided for in article 26 of the Constitution of Kenya. Part of that section reads as follows;

> 'There shall be an Attorney-General whose office shall be an office in the public service. The Attorney-General shall be the principal legal adviser to the Government of Kenya.'[xxviii]

The Accountant General's Department

This office is responsible for cash management, in particular the use of the overdraft facility that the Central Bank of Kenya extends to Government.

The Auditor General and Controller's Office

This office has two functions: the audit and the control functions. Over the years however, the control function has been weakened by provisions in the *Exchequer and Audit Act*, which limit it only to issues of legality; approval from parliament. This does not require the Auditor General and Controller's office to satisfy itself that the expenditure in question is reasonable. And the audit function is undermined by late accounts preparation by government and at times shortage of staff. However the principal aim of this office is ensure that withdrawals from the Consolidated Fund have been approved by parliament; that money was spent as requested and is aligned with the authority given. Further the office undertakes periodic audits of public debt. Also, the Auditor General and Controller's Office is responsible for the issuance of authority to debit the Consolidated Fund Service account mainly to settle Government debt. This office is provided for in section 105 of the Constitution of Kenya[xxix]. Part of that section, for example, says;

> It shall be the duty of the Controller and Auditor-General-
>
> (a) To satisfy himself that any proposed withdrawal from the Consolidated Fund is authorised by law, and if so satisfied, to approve the withdrawal;
>
> (b) To satisfy himself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and
>
> (c) At least once in every year to audit and report on the public accounts of the Government of Kenya, the accounts of all officers and authorities of that Government, the accounts of all courts in Kenya (other than courts no part of the expenses of which are defrayed directly out of moneys provided by Parliament), the accounts of every Commission established by this Constitution and the accounts of the Clerk of the National Assembly

In addition to the above institutions that deal with debt issues, there are three inter-ministerial Executive Committees. The committees are;

- The Budget Steering Committee, chaired by the Minister of Finance to discuss national development issues including debt management policies. Members of the Committee include the Permanent Secretary to the Treasury, the Financial Secretary, the Permanent Secretary to the Ministry of Planning and National Development and officials from the Central Bank.
- The Debt Management Committee, chaired by the Permanent Secretary to the Treasury to analyse recommendations from the Debt Management Technical Working Group. The Committee also advises the Budget Steering Committee on matters of government's external and domestic debt. Its members are the same as the Budget Steering Committee plus a representative from the Attorney General's office.[xxx]

- Debt Management Technical Working Group, chaired by the head of the Debt Management Department, to advise the Debt Management Committee on issues of public debt. Its members come from all departments that deal with debt issues.

As the discussion above shows, debt management is still spread across various institutions despite the establishment of the Debt Management Office, whose objective was to coordinate and consolidate debt management functions under one unit. A speedy activation of all functions of the Debt Management Office is a pre-requisite if debt management is to be effective. Even with the new structure in place, the discretionary authority for loan contraction is still vested in the Ministry of Finance. This authority is immense and may compromise developmental needs of the nation. The Minister is given this authority by the legal framework that currently exists in Kenya to manage loan contraction and debt. Below is a discussion of the legal framework.

The Legal Framework

The Republic of Kenya has a well detailed legal framework governing public finance and mobilisation of revenue. This also includes the allocation and use of public resources. The Constitution of Kenya provides the basis. In addition are laws, Acts of Parliament as well as financial regulations and procedures. But as is shown later, the legal framework is at times outdated; it is weak especially with regards to the budget process and loan contraction. For example, there is no legal requirement for information to be released before the budget vote in parliament. And in some cases, the legislation lacks detail. Other weaknesses include the 'archaic provisions for financial management and inadequate requirements for reporting on expenditure and extra-budgetary funds'.[xxxi]

The Constitution

In particular articles 48 and 99-100 are explicit on public finance management. Section 48, for example, provides for the introduction of money bills into parliament. It is made clear in section 48 that only the President through a minister can present money bills to parliament on matters of;

- Imposition of and increase of taxation or rates;
- Imposition of a charge on the Consolidated Fund, or any other Government Fund;
- Composition or remission of debt.

Further section 48 provides that the National Assembly can not proceed on a motion or an amendment which would make provisions for any of the purposes stated above. In other words the National Assembly can not increase taxation proposals or budgetary allocations. This assumes that the National Assembly can decrease taxation proposals or budgetary allocations. And indeed in the history of the Kenyan Parliament, there have been cases where reductions have been undertaken by members of parliament.[xxxii]

Sections 99-105 is all dedicated to finance. Section 99 for example, provides for the establishment of a Consolidated Fund and other government funds for the purpose of depositing all the moneys raised for government purposes. For any withdrawal to be made, it should be guided by the Constitution, an Act of Parliament and a vote on account.

Section 100 provides for the preparation of the estimates by the Minister of Finance and presentation to parliament. On approval by Parliament, the Minister may prepare an Appropriation Bill which then authorises withdrawals from the Consolidated Fund. Section 100 further provides for Vote on Account. Parliament gives approval for 50% of budget pending debate and approval before the Appropriation Act comes into effect. However according to legal minds, Standing Orders of the National Assembly particularly 142 (6) provide that this be done at the end of parliamentary day; on June 26. The result is that this provision ‘enables Government substantial access to the resources even before Parliament can debate on the estimates’. This means that even if parliament had wished to influence the estimates, it can not do so due to limited time. Thus parliament according to this provision can not influence budget allocations effectively.

It is section 103 that talks in particular about debt. According to this section, debt is a Constitutional charge-on the Consolidated Fund. Part of the section reads;

> ‘For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.’[xxxiii]

However as analysts have argued, the Constitution does not oblige the Minister of Finance to seek approval of parliament on conditions for contracting debt. The External Loans and Credit Act (discussed below) provides only for the Minister to report periodically on outstanding amounts to parliament.[xxxiv]

In addition to the Constitution of Kenya, there are other laws that govern public finance. Chief of these are:

Exchequer and Audit Act-CAP 412

This Act was enacted in 1995 and provides that the Minister of Finance has management of the Consolidated Fund. The Minister is also given authority to supervise, control and give direction to all matters relating to finance. This Act is concerned primarily with the administration of public finance. The Act has remained unchanged even though it predates the Constitution. Some have argued that it has been overtaken by events. Hence It was amended by introducing the Public Audit Bill (2003), and later passed into an Act in December 2003[xxxv]; and the *Government Financial Management Bill* (2003) which was later passed in 2004 and came into operation in November 2005[xxxvi]. These two Acts are meant to improve the audit function as well as the very management of public finance.

Internal Loans Act-CAP 420

This law authorises the Government of Kenya to borrow money from the domestic market. Part of the Act reads;

> 'The Government may borrow from time to time in Kenya currency sums of money in such amounts and on such terms and conditions as to interest, repayment or otherwise as the Minister may determine, in any of the following manner:-by the issue of Government securities; by advances from the Central Bank as provided for under the provisions of the Central Bank of Kenya Act; by bank overdraft on the exchequer account or any other account; by any other loan or credit evidenced by instrument in writing'.

The Act however does not oblige the Minister of Finance to report to parliament the purpose for which the debt is required for. The Minister is also not obliged to report on its use. The Act is not clear on the approval process; it seems to assume that there is a blanket authority given through authorisation of a deficit budget and the approval of the Minister's financing plans.[xxxvii]

External Loans and Credit Act-CAP 422

This piece of legislation provides authority to borrow externally to finance approved estimates. It also provides that parliament be provided with detailed reports including the parties involved, circumstances surrounding the transaction, the amount of transaction and the currency involved, attendant terms and conditions attached to the loan. The Act states that;

> ' As soon as practicable after a loan has been arranged or credit obtained under this Act, the Minister shall lay before the National Assembly a report on the transaction specifying the parties, the circumstances giving rise to the transaction, the amount or value of the transaction, the currency in which the amount or value is expressed, the terms and conditions as to interest and repayment or payment and the aggregate of the capital sums borrowed and the credit obtained under this Act up to the date of the report.'[xxxviii]

According to this Act, 'all sums borrowed…shall be expended only upon the purposes for which provision is made in the estimates of expenditure approved by Parliament'. Further, the Act limits the total sum of external debt to KSh 500 billion. What is clear though is that according to this Act, the Minister only has to report to Parliament. There is no platform for stakeholders' participation. The Minister has all the authority. This needs to be revisited as it amounts to an anomaly.

The Guarantee (Loans) Act-CAP 461

This Act provides for the Government of Kenya to guarantee all loans that are borrowed by enterprises. This Act limits guaranteed loans at KSh 80 billion. All payments made under the Act must be sanctioned by the Attorney General and have budgetary provisions with prior approval by Parliament.[xxxix] Also all government guarantees must be authorised by Parliament. According to this Act, the Minister does not just report to

Parliament, there is a requirement for parliamentary approval for guarantees and payments thereof. [xl]

The Central Bank of Kenya Act-CAP 491

This Act establishes the Central Bank of Kenya and authorises it to deal with monetary policy as well as manage domestic debt. The Act also limits direct borrowing by Government on the overdraft facility. The Act also gives authority to the Bank to act as a banker and adviser to, and as fiscal agent of the Government. Part of the Act reads;

> 'The Bank shall administer any payments agreement entered into by Kenya, and the Bank shall be consulted by the Government in negotiating any payments agreements.'[xli]

There are other laws that govern revenue matters such as Customs and Excise Act, Value Added Tax Act, Income Tax Act, the Kenya Revenue Act and the Public Procurement and Disposal Act, 2005 among others.

The legal framework as shown above gives government authority to tax, borrow and spend. What the law of the land; the Constitution does not do is 'prescribe principles and values to government in discharging its responsibilities'[xlii]. As Betty Maina argues, there is a presumption that government will behave responsibly. And yet this is not the case in Kenya in particular and the world over in general. The legal framework is not adequate in the management of debt and the process leading to indebtedness. The framework is also 'weak on the duties and obligations of the various actors or institutions involved in the contraction process other than government'[xliii]. The framework is silent on implementation. According to KENDREN and other critics, these 'loopholes have provided the conduit through which money borrowed is siphoned'.[xliv]

The current weakness of the legal framework is that it puts so much responsibility for loan contraction on government. The question is what recourse do citizens have if governments embark on irresponsible borrowing? Although parliament has oversight over the executive, it is recommended that parliament be strengthened to exercise its duties. Further, the legal framework does not provide for the participation of civil society. Finally, even though the legal framework has put in place ceilings of borrowing from both external and domestic markets, it still has to address issues of conditions attached to borrowing, the purpose of borrowing and stakeholders' participation in the contraction process. It might be useful to review all Acts dealing with public finance and debt in line with development needs of the country, in particular with *Kenya Vision 2030*.

The Role of Parliament in Loan Contraction and Debt Management[xlv]

The above section on the legal framework spells out the role of parliament in the management of debt. This section therefore presents a summary of the roles played by Parliament. In short, Parliament enacts laws that deal with debt management and loan contraction.

However, as shown above, the Ministry of Finance has immense authority when it comes to loan contraction and debt management. This leaves Parliament without a direct role especially with regards to external debt. The *External Loans and Credit Act*, discussed above gives authority on government to negotiate the terms and conditions of loans. Parliament therefore has a limited role in both loan contraction and management of external debt. What Parliament can do is to amend the Act to allow for more stakeholder involvement in the processes.

Parliament is the law-making body of government and is required by the Constitution of Kenya to have the overall approval of borrowing as well as reporting of appropriation by the Minister of Finance. But as in most countries, budgeting is a process that is still dominated by professional bureaucrats, mainly from the Treasury. In most cases the executive is in control even though constitutionally the Parliament ought to pass the budget. Part of the problem is that parliamentarians are not skilled enough and lack expertise to analyse and scrutinise the budget.[xlvi] However, in the Kenyan case, it is worth-noting that there is an effort to establish a budget office in Parliament to deal with budgeting matters. There are also Committees that are directly linked to the use and management of public finance. These include the Public Accounts Committee; the Committee of the Whole House; the Public Investment Committee and Ad Hoc Committees and Departmental Committees.

The Public Accounts Committee for example, scrutinises reports from government ministries, departments and local authorities to see if expenditure limits are complied with. Further Parliament sets the limits or ceiling for borrowing as stipulated by the *External Loans and Credit Act* and the *Central Bank of Kenya Act*. In addition, the *Guarantees Loans Act* stipulates that no guarantees can be made by Government without prior approval by Parliament.

However as stated above, parliament plays very little role in the budget process, partly due to the limited time members of parliament are given to debate the budget. Parliament is involved briefly in the discussion on *Budget Strategy Paper* which mainly sets sector ceilings with Treasury in May. The Budget is normally read in June and this leaves very little time to influence it.

And as was discussed earlier, Parliament can not increase tax, waive or forgive debt or even increase allocations. Further Parliament can 'not compel the executive to report on budget rationale, compliance and outcomes'[xlvii]. According to a former parliamentarian who served in Parliament from 1997 to 2007 and also served in the PAC from 1999-2002, Parliament has little influence in debt management. However, recently, the Parliament has become assertive.[xlviii] There are new reforms and initiatives to strengthen the oversight role of Parliament. The Fiscal Analysis and Appropriation Committee which was established in 2006 will engage with budget formulation in the earliest possible stages. This will address issues relating to budget compliance and alignment to developments needs of the country. Further, a Fiscal Analysis Office is to be established in Parliament to assist Parliament on fiscal and budgetary matters pending the passing of the *Fiscal Management Bill* which if passed will see Parliament approve all transactions made by Government.

Parliament needs to create a 'mechanism for public access to parliamentary reports; develop mechanisms to enforce timeframes and establishing a technical team to support the House on various matters'[xlix]. There is need to improve its capacity for independent fiscal research and analysis. More often members of parliament are concerned about the allocation of resources to their constituencies more than the actual scrutiny of the budget.

The Role of Civil Society in Loan Contraction and Debt Management

Although there is no legal basis or provision for the participation of civil society in the budget process, there have been informal and ad-hoc engagements between civil society and government. This engagement is not direct and remains very much limited. However according to Treasury officials, in the last two or so years, the Department of Debt Management and the Ministry of Finance have been disseminating information particularly through its website. This information has been useful to civil society groups[l]. As part of the department's reforms, there is a willingness to involve civil society, mainly to raise awareness for the public around key issues such as debt and the budget as well as dissemination of information.

In addition, the introduction of the Medium Term Expenditure Framework has seen meaningful engagement between civil society and the legislature. The MTEF has provided a platform for citizens, research institutes, professional groups and other formations to have their say and voice 'regarding priorities for spending'[li]. According to Nyamunga (2007) and Treasury officials, every year, sector hearings provide the platform for formal participation of civil society and other formations of citizens. In these meetings, sectors present their past achievements and spending plans against policy priorities. These hearings are normally advertised and are open. However, particular specialised organisations are invited. These meetings take place after the publication of the *Budget Outlook Paper* and before the finalisation of sector allocations in the *Budget Strategy Paper*. Input from sector hearings is taken into account during the finalisation of sector and ministries' allocations[lii]. There have been concerns from civil society that these sectors are limited because they happen late in the process and are always held in Nairobi. This means that most of non-city dwellers are left out.[liii]

The budget process and its language are also very technical matters and very few groups have the expertise to engage at that level. There is a need therefore to demystify the budget process so that there are more voices included in the process. And on the part of civil society, there is need to integrate the budget process into advocacy work. This way, the information will be passed down to grassroots organisations and other networks. As one civil society member observed;

> 'Civil society campaigns are always emotive; they lack the technical understanding of the issues involved. For example, there are very few groups that even know the laws that govern loan contraction and debt management in Kenya'.[liv]

A number of groups thus need a lot of training and capacity building on legal frameworks. An interface needs to be created between what the law says and permits and what is actually being done in debt management.

It is only through a participation in the budget process that civil society can also influence debt management strategies. For example, civil society has a different interpretation of the Debt Sustainability Analysis. According to one civil society member, for example, it is expected that Government's position on DSA would be that debt is still sustainable and is likely to remain so in the foreseeable future. This is because of the economic management model that is taken from the IMF and World Bank. But from a civil society view, the confidence of government that debt is sustainable is questionable given that DSA itself is not fully encompassing, for example, it does not take into account contingent liabilities, domestic debt as well as private debt[lv].

Secondly, for a populous country like Kenya, civil society argues that it does not make sense to spend 20% of the budget on servicing debt and very little on sectors such as health, education, etc. According to civil society, there are disparities between allocations of resources among ministries when juxtaposed against what is spent on debt service. In other words, there is no alignment between *Kenya Vision 2030* and amounts spent on managing debt.[lvi]

Such powerful inputs can help institutions involved in the management of debt to become more effective and more participatory. Hence a formalisation of relations ought to be developed between government and citizens' groups. Already there are groups that are involved informally with Parliament as well as with the budgetary process. These are groups such as Actionaid Kenya, KENDREN and the Catholic Economic Justice among others. These have been involved in campaigns to cancel debt. Further, these groups have made submissions to Parliamentary committees on the analysis of bills.

KENDREN, for example, is a coalition of many networks and serves as a Kenyan affiliate of the African Forum and Network on Debt and Development. Among some of the network's activities particularly around debt management have been;

- Engagement with Treasury on the restructuring of the Dept Management Office as well as the External Resources Department. The view of civil society is that the External Resources Department must be annexed to the DMO. And if this can not be done, civil society prefers that the DMO be a stand alone entity, within the Ministry of Finance. Their view is that the current office is not independent. Civil society groups have also rallied around KENDREN to lobby for the opening up of the DMO to other stakeholders such as the private sector, research institutes and civil society.
- Engaging with Parliament by building a Parliamentary debt group. This group works on issues of debt. KENDREN also sponsored a members Bill on opening the Debt Register. The Bill was defeated though. KENDREN also does analysis which is then taken up Parliament. The new members of Parliament are keen on working with civil society groups. In this respect, KENDREN is organising a

Parliamentary workshop on debt and economic governance. This is because civil society is of the view also that Parliament has been less effective on matters of debt management. It easily submits to the executive. However given the political developments in Kenya, there has been a new drive to make Parliament assertive; hence as stated above, there is a Fiscal Analysis and Budget Office to be established in Parliament.

- Holding Conferences that provide a platform to engage the general citizenry and inform on matters of debt in Kenya. KENDREN's view is that citizens must know that debt management goes beyond figures; it is a policy issue. As a result there is a need to select best scenarios from best practices across the world.

Actionaid Kenya has also been involved in debt issues. For example, the organisation will be 'leading a Kenya CSO delegation to Ghana in September on a *Global Forum on Debt and Aid effectiveness*'. The organisation has a full unit and an officer working on Aid and Debt issues. In addition to publications, the organisation has made presentations in several fora locally and abroad.[lvii]

Despite this informal engagement, civil society groups still feel that Government has remained rigid and non-transparent to citizens. These groups argue that government officials still view themselves as 'big boys doing big stuff'.[lviii] However, these groups also reckon that as a result of competencies and energies found in civil society, there has been a shift in attitudes by government. The informal processes discussed above have led to groups accessing information which previously they could not as well as work with those in government deal with complex issues that need advocacy by citizens. As an example, these groups cite whistle-blowing.

These groups also see a lot of spaces for civil society involvement, for example, on debt management, budget and resource allocation, sector hearings etc. What might be useful would be for civil society and government to formalise these relations and institutionalise them. A stakeholder convening could suggest draft legislation around formalising relations between government and civil society.

Conclusion and Recommendations

This report shows that Kenya's debt stock; both external and domestic is still within acceptable thresholds at least according to a recent DSA. However as civil society groups warn, there is a need to be cautious and improve the debt management strategy in ways that align it with Kenya's development priorities entrenched in *Kenya Vision 2030*. In addition, debt servicing is increasing and the cost on social services is high. An alignment with development priorities will mean more resources are used in sectors such as health, education among others than is currently the case where a significant amount is spent on debt servicing. This entails developing a national debt strategy. As was discussed, the lack of a national debt strategy poses challenges for the management of debt, and if not addressed, it might have negative impacts on debt sustainability. In addition, the next DSA should take into account contingent liabilities and private debt in order to have a comprehensive view of debt sustainability. Government's reform initiatives around public fiscal management ought to be the framework within which debt management is practiced.

The institutional arrangement is still weak and fragmented. Functions of front, middle and back offices are still spread across departments in the Ministry of Finance and Central Bank of Kenya. This weakens the effectiveness of the management strategy. The establishment of a Debt Management Office should be fast-tracked so that debt management functions can be under one entity. This office needs to be strengthened and its staff capacitated. The inadequate legal framework also needs updating and more details. Some of the laws governing loan contraction and debt management need to be reviewed to make Parliament more assertive and power to approve all government transactions. Currently, the Minister of Finance has overall authority to negotiate and procure loans. The Minister need only report to Parliament except for guaranteed debt where government can not make any guarantees without Parliamentary approval. Parliament also lacks requisite expertise to scrutinise budgetary and other financial matters. Current reforms in Parliament must be consolidated for better involvement in debt management.

The same challenges that Parliament faces are also found in civil society. As a matter of fact, there is no legal provision for the participation of civil society in loan contraction and debt management. However, there are informal interactions between civil society and government on the budget and debt matters. These need to be strengthened. The foundation is set through sector hearings and input into Budget Outlook Papers.

In conclusion, the report makes the following *recommendations*;

- The establishment of the Debt Management Office must be intensified to operationalise all its functions,
- Government should fast-track the development of a national debt strategy in line with Kenya's development priorities, in particular *Kenya Vision 2030,*
- Debt management must be located within the broader reform of public finance management,
- Strengthening of the coordination between debt management strategy with monetary and fiscal policies,
- A review of laws to give Parliament more power to exercise its oversight role in financial matters,
- Improvement of Parliament's technical capacity and expertise on issues of public finance,
- A review of the powers accorded to the Minister of Finance,
- Broadening of the loan contraction process and debt management to involve other stakeholders,
- Formalisation of interactions between civil society formations and government,
- Intensification of government's implementation of its reform initiatives.

End Notes

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[ii] For these reform initiatives and others see; Ministry of Finance (2008) *Annual Public Debt Management Report (July 2006-June 2007)*: Department of Debt Management: Nairobi, P. 35.

[iii] UNDP (2007) Report of the Workshop: *Beyond HIPCs; Strengthening National Debt Management Framework and Ensuring Accountability in the Loan Contraction Process*: Kopanong Hotel: Benoni, 10-11 December.

[iv] For detailed findings, see UNDP & MEFMI (2007) *Report: Survey on National Debt Management and Loan Contraction Process*. November.

[v] See Hans Blommestein & Greg Horman (2007) *Government Debt Management and Bond Markets in Africa*. OECD.

[vi] For detailed discussion of Kenya's debt, the following publications are informative: Annual Debt Management Reports, July 2005-June 2006; and July 2006-June 2007; KENDREN (2007) *The State of Kenya's Public Debt (2006-2007): Overview, Issues and Steps*; Nyamunga JB (2007) *External Debt Management and Development Process in Kenya: Institutional Advocacy Issues*. KENDREN; Kiama Kaara (2007) *Monuments of Shame*. KENDREN; Republic of Kenya (May 2006) *The Medium Term Budget Strategy Paper: 2006/7-2008/9;* Republic of Kenya (January 2006) *Budget Outlook Paper: 2006/7-2008/9*. See also The Republic of Uganda (December 2007) *Debt Strategy*. Ministry of Finance and Economic Development.

[vii] According to a DSA conducted in May 2007 by government jointly with Debt Research International (DRI), IMF and MEFMI, indicators on debt sustainability continue to be within recommended thresholds.

[viii] KENDREN (2007) *The State of Kenya's Public Debt (2006-2007): Overview, Issues and Next Steps.* Nairobi: KENDREN.

[ix] Ibid, see also Central Bureau of Statistics (2006) *Kenya Monthly Economic Review* , May.

[x] Ministry of Finance (2008) *Annual Debt Management Report: July 2006-June 2007.*

[xi] Ibid.

[xii] Interview with officials from Treasury; Nairobi: Treasury Building, 29th July 2008. This was also mentioned by an official from the African Development Bank in Nairobi; informal discussion with Odero Walter Owuor, La Mada Hotel: 29th July 2008.

[xiii] Ministry of Finance (2008) opcit, p.9

[xiv] Ibid, p. 14.

[xv] Interview with staff from Treasury, opcit.

[xvi] Nyamunga, JB (2007) *External Debt Management and Development Process in Kenya*, opcit, p.4

[xvii] Information on the various institutions responsible for debt management is based on interviews with officials from Treasury, in particular, the Debt Management Department; interviews with civil society; interviews with a former Member of Parliament who served in the Public Accounts Committee till November 2007; review of literature, for example, Nyamunga, JB (2007) KENDREN (2007); Republic of Kenya (2008, 2007).

[xviii] Republic of Kenya (2007) *Kenya Vision 2030*

[xix] Ibid

[xx] Kimunya, A (2007) 'Foreword' in *Annual Public Debt Management Report (2006-2007).* Ministry of Finance.

[xxi] See for example, KENDREN 2007, opcit.

[xxii] Republic of Kenya (2006) *The Medium Term Budget Strategy Paper (2006/7-2008/9*). Ministry of Finance (May).

[xxiii] Ministry of Finance (2007) *Annual Public Debt Management Report (June 2005-June 2006*)

[xxiv] Republic of Kenya (2006) opcit.

[xxv] Interview with officials from Treasury, opcit.

[xxvi] Ministry of Finance (2008), opcit, p. 34.

[xxvii] Ibid.

[xxviii] *Constitution of Kenya*, adopted in 1963 and amended in 1999.

[xxix] Ibid.

[xxx] Most of the information on this section comes from Nyamunga, JB (2007) opcit.
[xxxi] See Fiscal Transparency Kenya, research paper by Njeru Kirira and Sam Mwale.
[xxxii] See discussion by Betty Maina (2003) *Public Finance Management in Kenya: A Review of the Draft Bill of the Constitution of Kenya Review Commission*. Center for Law and Research: Nairobi.
[xxxiii] Constitution of Kenya, opcit.
[xxxiv] *The External Loans and Credit Act* (CAP 422).
[xxxv] *The Public Audit Act*, 2003, www.kenyalaw.org
[xxxvi] Email correspondence with Kiama Kaara of KENDREN, as well as email correspondence with Joseph Wambua of Treasury; 12th August 2008. See also *The Government Management Act*, 2004, www.kenyalaw.org
[xxxvii] Maina, B (2003) opcit, p.7.
[xxxviii] *The External Loans and Credit Act*, opcit.
[xxxix] Ministry of Finance (2007) opcit, p. 22.
[xl] *The Gaurantees (Loans) Act*, CAP 461.
[xli] *The Central Bank of Kenya Act,* CAP 491
[xlii] Maina (2003), opcit.
[xliii] KENDREN (2007), opcit, p.20
[xliv] Ibid.
[xlv] This section would have benefited from Parliament, had we managed to interview the Chair Person of the Public Accounts Committee. For the record, our local partner in Kenya, Transparency International Kenya tried many times to secure an interview. It was reported that the Chair Person could not meet the research team due to his busy schedule during the time fieldwork was being conducted.
[xlvi] Interview with an official from the African Development Bank Group, one of Kenya's creditors, 29th July 2008: Hotel La Mada. For weaknesses of Parliaments, see also Conference Report by AFRODAD (2006) *Aid and Debt Management and Role of Parliamentarians,* www.eurodad.org/whatsnew.articles.aspx?id=420, accessed 12 July 2008.
[xlvii] Nyamunga, J. B (2007) opcit, P. 17.
[xlviii] Interview with Honorable Jimmy Nuru Angwenyi; former MP for Kitutu Chache constituency. Hon. Angwenyi served in Parliament between 1997 and 2007. He also served as Assistant Minister-Office of the President (1998-1999) and also served in the Public Investment Committee (2003-2007). Hon Angwenyi is now a member of African Parliamentarians Network Against Corruption (APNAC): 29th and 30 July 2008, Hotel La Mada
[xlix] Nyamunga, J. B (2007) opcit.
[l] Interview with Treasury officials, opcit.
[li] Nyamunga, J. B (2007) opcit.
[lii] ibid.
[liii] ibid.
[liv] Interview with a civil society member, Nairobi, 30 July 2008
[lv] This point was also made by economists at Treasury during interviews. They also argued that what is emerging around fiscal sustainability are some elements of distress especially if borrowing is continued at the same levels or increased. Hence to mitigate this, they argued that as part of the development of a national debt strategy would be a DSA that also looks at domestic debt, to also include private debt and contingent liabilities.
[lvi] Interview with Kiama Kaara: KENDREN, 30 July 2008, EcoNews: Nairobi.
[lvii] Email correspondence with Kenyatta Maita; Advocacy Manager; Actionaid Kenya, August 12, 2008. The Principal researcher also visited Actionaid Kenya offices on July 30th 2008.
[lviii] Interview with a civil society member; 30th July 2008, Nairobi.