

Public Expenditure Management, Governance and Fiscal Transparency:

Joint Statement by Development Partners at the Kenya Consultative Group Meeting

24th – 25th November 2003, Nairobi, Kenya

Development partners welcome the efforts already made by the new Government in establishing good governance practices. The good progress in anti-corruption legislation and developing a legal sector reform programme has yet to be matched, however, in the area of public financial management. An open and transparent budget process is one of the defining features of a mature and fully functioning democracy. At the same time, an improved budget system should provide greater focus to economic recovery and poverty reduction priorities whilst at the same time providing a platform for budget support from development partners. Against this background, we encourage the Government to urgently establish a more rational budget timetable to be complemented by an action programme in public financial management reforms.

Recent developments

Good governance, particularly the fight against corruption, the efficient and fair administration of justice, decentralisation and community empowerment were central pledges of the NARC campaign manifesto. Kenyans voted primarily for these key changes, recognising their fundamental contribution to poverty reduction and economic growth. At the same time, the incoming Government immediately recognised that making the budget process more responsive to national priorities and eliminating waste in public expenditure management would be essential to deliver their programme.

The Public Expenditure Review (PER) carried out in 2003 highlighted that trends in public expenditure management were not consistent with the objective of achieving high and sustained growth of the economy and reduced levels of poverty. The commitment to public expenditure management reform as a central component of the Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) is therefore strongly welcomed by development partners.

The creation of a new department of Governance and Ethics in the Office of the President, and the Ministry of Justice and Constitutional Affairs, with strong leadership, provide key focal points to co-ordinate reforms across the various institutions in this highly inter-connected sector. Encouraging progress was also made on: early enactment (in May 2003) of two key pieces of legislation, the Anti-Corruption and Economic Crimes Act; and The Public Officers' Ethics Act: reviews of contracts relating to jobs undertaken for government and for which payments are pending; the ongoing enquiry into the Goldenberg affair; and the recommencement of the Constitutional Review process in April 2003. More recently senior officials including the President have

declared their wealth. The movement towards a comprehensive legal and judicial sector reform programme, meanwhile, is another welcome development. An enquiry has been conducted into corruption in judiciary and action has been initiated against identified judges. The Government has elaborated a Short Term Priority Programme (STTP) in legal sector reform, as it completes preparation of a medium term reform strategy.

The NARC government has consistently recognized and restated its commitment to decentralise power to achieve stronger local government to ensure that services are delivered effectively and efficiently to communities. As outlined in the budget speech, the Government is committed to increasing the capacity of Local Government irrespective of the outcome of the constitutional reform process.

Key challenges

In public expenditure the 2003 PER identified a number of problems. It observed that allocations do not reflect policy priorities, for example in the health sector where allocations for curative health remain extremely high and allocations for preventative expenditure low; that investment expenditure has continued in long-term decline as a proportion of GDP; that wage expenditure continues to grow (and now absorbs over 9% of GDP); that pending bills continue; and that expenditure reporting and audit continue to face delays. Moreover, the MTEF has serious shortcomings as the government's basic tool for planned and predictable allocation of scarce resources according to policy priorities. In particular: the MTEF does not have legal and political underpinning; it does not allocate all the resources available to Government; MTEF budget planning in line Ministries is weak; the medium term planning elements of the MTEF are largely ignored such that it has become in reality only a one year budget.

At the institutional level, the budget process is hampered by the absence of an institutionally recognised annual PER process that is integrated into the budget timetable to provide more bottom-up analytical inputs. More generally, coordination problems between key departments in the Ministry of Finance and the Ministry of Planning and National Development highlight the need for more decisive leadership in establishing and managing the budget timetable.

Despite the Government's commitment to transparency and controlling corruption, the public procurement process continues to be a source of concern. The new Government has not been immune to allegations of corruption in this area, and while these cases are still under investigation and are yet to be resolved, this only serves to highlight the urgent need to provide greater clarity and a reinforced institutional framework for public procurement. If enacted, the Public Procurement and Disposal of Assets Bill currently before Parliament would provide the reinforced framework to improve this.

While progress in addressing issues in the wider governance agenda has been good, the Government cannot afford to appear to be complacent in fighting corruption. It is of particular importance that there is clear and transparent follow up in areas where corruption has been clearly identified. The Government's reaction to the Ringera Report

on corruption in the judiciary was commendable, but the report should be published so that decisions are taken against a background of public knowledge, understanding and scrutiny. At the same time, there has been no tangible reaction to the Kiptoon report on pending bills in the Ministry of Roads, Housing and Public Works. It must be stressed that in order to re-establish Kenya's governance credentials, the Government must be seen to follow up these issues with complete impartiality, and without reference to political allegiance. Development partners look forward to the publication and eventual further action on these, along with the forthcoming report from the Harambee Task Force findings.

Progress on the constitutional reform process meanwhile, is a test of the Government's commitment to provide a firm basis for enhancing the governance environment in Kenya. Development partners urge the Government to complete the constitutional reform process without further delay.

Priority actions

Develop a more rational, transparent and inclusive budget process. The urgent focus should be to outline and follow a budget timetable that harmonises the PER process with the MTEF budget process for 2004/05. Such a timetable appears in the Government's May 2003 Letter of Development Policy but there are concerns about how far it has been adopted in practice. It is essential that leadership of the budget process be clarified. At the same time, this should be complemented by establishing strong coordination and management arrangements between the various departments in the Ministry of Finance and the Ministry of Planning and National Development that have lead responsibility for designing and implementing the MTEF. This should ensure that budget allocations for the next FY reflect priority poverty reduction programmes of the ERS, based on an analysis of cost effectiveness and the impact of such expenditures in the Public Expenditure Review. More fundamental reforms to the MTEF process will need to be considered over the medium term in the light of the ongoing MTEF review. These should include measures to promote participation in the budget process by empowering communities through greater transparency (e.g. posting school budgets in classrooms etc.)

Finalise and begin implementation of an ambitious programme of reforms in public financial management. This should begin with the finalisation of the Action Plan for Enhanced Financial Management in the Public Sector with a detailed timetable for implementation in line with the recommendations of the Public Expenditure Management Assessment and Action Plan that was finalised in consultation with Government in May 2003. Immediate implementation of short-term priorities should follow. It should be further underpinned by the early enactment of the Government Financial Management Bill, the Public Procurement and Disposal of Assets Bill and the Public Audit Bill.

Progress in legal and judicial reforms is vital to restore public and investor confidence and underpin the ERS growth agenda. It is vital that the legal sector reform continues to make progress in view of its importance in underpinning the ERS

growth agenda and the overall commitment to increased transparency and accountability. At the same time, the legal sector reform programme must be clearly costed and mainstreamed within the MTEF process. More generally, access to justice, particularly by the poorest and most vulnerable, also needs to be increased and legal provisions harmonised and consolidated. Of particular importance is the reform of the commercial laws of Kenya, including the Companies Act, the opening of new courts and developing alternative dispute mechanisms as highlighted in the ERS and STPP. This should incorporate traditional justice, scaling up of paralegal support and improved legal aid schemes, and look into the administration of justice with a view to making it more user friendly, in language and process.

Local Government should be prepared for its anticipated new responsibilities under the decentralisation chapter of the constitutional reform process. As the government defines its detailed decentralisation policy substantial work needs to be undertaken to boost Local Government's capacity to manage participatory development processes and adhere to sound financial accountability principles. Particular attention should be paid to budgeting issues, and revenue enhancement.

Donor harmonisation

Development partners welcome this renewed commitment to governance and public financial management issues and stand ready to support government-led reforms in this critical sector. Development partners are coordinating their support through technical coordination groups that include each of the main donors active in these areas i.e. the Public Expenditure Management and the Legal Sector Reform groups. In addition, development partners participate in the technical working group and steering committee established for the management of the PER. These arrangements provide a means for coordinated dialogue on the PER and the avoidance of duplication in programmes of support for Government reforms. They will be strengthened if the Government also establishes joint forums for the implementation of its Action Plan for Enhanced Financial Management in the Public Sector and the emerging sector wide strategy for legal and judicial reform.

As the Government's programmes in these areas are defined in more detail development partners will, where possible, consider support through basket funding arrangements.

One area where particular attention is required to strengthen harmonisation is in the area of public expenditure management diagnostics. This should ideally be based upon the monitoring and review of the Government's own Action Plan for Enhanced Financial Management.