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In winding up the two-year project under this grant _____, the Committee on Fiscal Studies under the leadership of Dr Lyla Latif organised a one-day conference on **THE ISSUE OF DEBT, THE QUESTION OF THE ECONOMIC SITUATION IN KENYA HELD on 29th September 2023 FROM 9.00 A.M. AT THE HERON HOTEL, NAIROBI.**

35 people from different work backgrounds, including lawyers, civil society, economists, and the media amongst others were in attendance. The meeting was hybrid (both physical and online)- we had an online presentation.

Note: The methodology for this reporting is descriptive as the conference was more of a panel discussion on experiences in sovereign debt and human rights. Hon. Okiya Omtatah's presentation will be of key significance in this report as his presentation was on sovereign debt in Kenya, what it is, its overall importance for the country and why every citizen must be involved. Overall, key action points will be bulleted.

Conference presenters (name and affiliation)

1. Keynote speaker
 - Hon. Okiya Omtatah, Senator, Busia County
2. Reflection on keynote
 - Mr. Bosire Nyamori- CFS, University of Nairobi
3. Speakers
 - Victor Gbessemehlan – Public Finance
 - Winnie Gloria – Policy Analyst, Kenya Association of Manufacturers
 - Winnie Magento – Economist and PFM Practitioner
 - Julius Kimulu - CFS
4. Peter Mwangi Murithi – Partner and Head Dispute Resolution & IP Law Dept, MPL Advocates.
5. Dr. Parita Shah – University of Nairobi
6. Banu Khan – FSD
7. Dr. Rogers Manana –Civil Aviation Authority

Objectives of the Conference

The conference was organized to have a comprehensive discussion on the relationship between sovereign debt and broader societal issues, and their impact on human rights. To this end the participants:

- engaged directly in the discussion by asking questions and making contributions on the issue of debt sustainability.
- established a nexus between debt sustainability issues and human rights.
- discussed the debt situation in the larger East African countries and compare the same to Kenya's situation.
- Learned about ways that the government can reverse the already dire debt situation.

Morning Session

Ms. Joan Atim called the conference to order at 9:30 AM and Dr. Lyla Latif gave opening remarks welcoming everyone to the conference and introduced the key subject matter of debt and how important it is to the stability of the country. She then invited the keynote speaker, Hon. Okiya Omtatah to make his remarks.

Okiya Omtatah – Keynote speaker: Sovereign Debt and Human Rights, why the conversation matters.

Hon. Okiya Omtatah made his speech and pointed out the following main issues:

- He started by giving a distinction between public debt and sovereign debt – the former is the deficit that occurs when the government's expenditure exceeds revenues, while the latter is external debt owed by the government.
- Giving the legal framework for sovereignty debt, its acquisition and its use.
- He also discussed the Appropriation Act- The purpose of which is to enable citizens to know the country's debt since independence. Additionally, he stated that Article 221 (6) of the Constitution of Kenya which underpins that the estimates of expenditure of all arms of government should be contained in the Appropriation Act.
- He stressed the unconstitutionality of the current budget of the Kenyan government which only deals with expenditure and does not include the estimated revenue.
- He further stressed the need for citizens to hold the government accountable under Chapter 12 of the Constitution (Public Finance) as it stipulates how a constitutional Treasury should be constituted and mandated.
- There is a design problem in the implementation current implementation of Chapter 12 of the Constitution – that is the county governors control the county assemblies, hence, limiting oversight. Every citizen must, he said concern themselves with Chapter 12 of the Constitution and stated that scholars should audit the constitution.

Mr Bosire Nyamori reflected on the keynote and noted the dire need by the citizenry and the government to address the debt situation to prevent spillover effects such as skyrocketing cost of living.

The conference was adjourned for a Tea Break.

Mid-Morning Session

The members convened again at 11.18 and Ms. Joan Atim welcomed everyone back. A thirty-minute interactive activity sign language session was done- with Mr. Abdul Wahhab teaching the participants sign language.

Presentations: Debt Sustainability (Concerns and Solutions)

Mr. Omar Mohammed (Chair of the session). He introduced the speakers-

Mr Victor (online speaker)- on Redefining Africa's financial landscape and fostering sustainable development. In summation, he made the following points;

- There is a need for robust domestic resource mobilization to ease down on the issue of debt and improve debt servicing.
- Political regulations can hinder the efficiency of taxes and revenue collection.
- Sustainable national growth requires collaboration between the government, civil societies, the citizenry and the non-government actors. The Tax system is key to this collaboration.
- Collaboration between international development corporations and local authorities is vital in attaining sustainable development in Africa.
- Climate change policies should be implemented as they align with sustainable development goals
- The government should ensure that there is transparency and equitable resource distribution to instil confidence in the members of the public.

Winnie Gloria. Her presentation was titled: A Focus on Kenya. She made the following observations:

- Kenya's external debt as of 30th June 2023 stands at about Kenya Shillings 10.25 trillion, which is above the national debt ceiling (set at Kenya Shillings 10 trillion.)
- In 2020, Kenya's debt distress was revised from moderate to high level by the World Bank.
- In 2021, Kenya's policy performance was revised from strong to medium by the World Bank.
- Some of the measures for debt sustainability are; external debt to GDP ratio, exports and total public debt as a percentage of GDP.
- Many policy frameworks govern external borrowing, such as the Constitution of Kenya, PFM Regulations and MTDS.
- There are gaps in these legal and policy frameworks in the efforts towards debt sustainability, such as delays in report publishing by the Office of Auditor General, and lack of accountability from the Office of Controller of Budget.
- Kenya has the potential to service its debts, but financial loopholes have to be bypassed.
- Her presentation was backed by data as demonstrated in the paper she published with CFS.

Winnie Mageto, whose focal point was East Africa. Her presentation covered the following key points;

- All East African countries, have a moderate debt-carrying capacity however Rwanda's debt-carrying capacity is ranked as strong.

- All East African countries are in a moderate debt distress risk but Kenya is under a high debt distress risk. Ghana has already defaulted on its debt obligations and the country has already been declared bankrupt.
- External debt is the highest debt composition among the East African countries.
- East African countries have sufficient laws governing public debt, but there is poor adherence to the same.
- Some of the measures that can improve debt sustainability include fiscal consolidation, concessional financing, medium-term revenue mobilization and the G20 debt suspension initiative.

Mr Peter Mwangi took to the dais to present on the place of Alternative Dispute Resolution (ADR) in Debt Disputes. Some of the key takeaway points from his presentation were;

- ADR means settling conflicts alternatively, other than going to courts and tribunals; giving merits and demerits of each form of ADR and what best suits debt-related disputes. Specifically negotiations and mediation (which involves a third party).
- Governments can utilise negotiation in debt disputes to arrive at solutions such as debt restructuring.
- Governments can opt for arbitration to settle debt disputes, but its confidentiality and high cost undermine its efficiency compared to negotiation. With mediation, it could also be conditional.
- He stated that parties have to agree and have an arbitration clause in their contracts.

Ms Joan Atim adjourned the session for a lunch break.

Afternoon Session

Roundtable: Addressing the Elephant in the Room

Members gathered back in the conference room at 2:25 PM and Ms. Joan Atim welcomed everyone. Ms. Amina Abdulrahman as chair of the session introduced the session and invited Dr. Parita Shah for her reflections on the subject matter.

Dr. Shah discussed how the debt situation can be salvaged and made the following points;

- Current debt- 10.25 trillion shillings (about \$71 billion)
- Why debt? Weak fiscal management, weak frameworks
- High public spending, loan repayment, expensive finance
- Currency fluctuation
- Too many projects (white elephant)
- To salvage the situation she proposes a future in green bonds- SD. GB- debt security issued to raise capital to support climate-related environmental Projects,
 - Why GB- Paris Agreement (2015)-limit 2°C above pre-industrial level
- Globally – from 2007 to 2022, over 93% of GB exponential growth
- There is a need to invest in future green bonds to secure environmental benefits from debt securities. She stated that in Kenya, green bonds have been underutilised as only one has been issued so far: to ACORN Holdings.

- Kenya can utilize ideas such as the Panda bond in China by using the locally available biodiversity.

Ms Banu Khan also took a gender perspective on the issue of debt and focused on austerity measures to ease the debt situation in Kenya. Her main points were;

- The debt situation in Kenya can be viewed from a gender perspective because the adverse effects spill over to women mostly.
- There is a need for the government to adopt austerity measures to be more debt-sustainable. Such measures include cutting down on subsidies and reducing government expenditure.
- Some of the negative effects of the debt situation in Kenya on women and girls are early marriages, child labour and an increment in domestic violence.
- When social functions like health and education are affected by debt, it is women who pay the highest price.

Dr. Rogers Manana reflected on whether Kenya uses the borrowed money for the intended purposes.

- In laying the foundation, Dr. Manana, stated that Kenya depends on debt financing to meet its budget deficit.
- The public debt is composed of both external and internal borrowing and the external sources include institutions like IMF, World Bank, and donor countries such as China and France. Internal debt is mainly obtained from the sale of treasury bills and bonds.
- He further discussed the legal and institutional framework of debt which is: Constitution of Kenya of 2010, Public Finance Management Act 2012, Public Finance Management Regulations 2016, National Treasury, Central Bank of Kenya, Parliament, Kenya Revenue Authority and Cabinet
- On what causes this debt burden he stated that among others, the over-reliance on foreign debt, ineffective fiscal policies, Corruption, Imports and high levels of spending.
- The above in effects brings about, lack of sovereignty, misappropriation of Government priorities, depreciation of local currency, crowding out of the private sector in the limited fiscal market and a diminished ability to respond to other fundamental issues.
- He thus proposed the following as a cure to this: Fiscal consolidation, review of monetary policies, cap of supplementary budgets, independent review of National Treasury data, and adherence to the guiding principles on borrowing.
- He concluded by arguing government to strive to maintain sustainable public debt levels, encourage domestic production amongst others.

Mr. Julius Kimulu also addressed the issue of Bilateral Investment Treaties and Sovereign Debt. His takeaway points were that;

- During debt negotiations, the international investors are prioritized at the expense of Kenya, so that when the debt becomes unsustainable, the former are shielded from adverse effects.
- The Argentina case is an example that investor countries put the destination countries at a disadvantage should bilateral treaties fail to work.

Compendium Launch

- Ms. Joan Atim led the compendium launch, in which she explained the three-month project she took under CFS on the link between tax and human rights. She encouraged participants to read the same share their ideas and further express their views. The contributions could be used to further enhance the compendium and probably produce volume 2. She then called upon Dr Lyla Latif to formally launch the same.

Closing Remarks

Mr. Bosire Nyamori gave closing remarks, giving a background of the two-year grant work the CFS did and the conference being a final stub and the work. He thanked the speakers and participants for their one-day commitment and told everyone the conversation still continues.

The conference was adjourned at 4:10 PM.

Overall Recommendations and Action Points

- Kenya's current debt levels are unsustainable the appetite for borrowing is quite excessive and without regard to the law. Kenya can reverse the current debt crisis
- Many human rights issues are arising due to the debt situation, such as increased domestic abuse, and low affordability of social amenities and this must be addressed.
- There are sufficient laws governing sovereign debt issues, but there is poor implementation of the same, more call to action in this regard.
- There are solutions to the debt unsustainability, such as green bonds, fiscal consolidation and adherence to borrowing principles.
- Members agreed to consolidate all recommendations and contribute to a paper. Dr. Lyla agreed to take the lead on this. Upon completion share with the necessary authorities.

Accompanying documents

- The conference programme and concept
- Attendance list (morning and evening sessions)
- Pictures
- Budget and expenditure report (excel document)
- Receipts

Prepared by:

The Rapporteur for the Conference



Joan A. Atim

Vice Chair, Committee on Fiscal Studies, University of Nairobi