

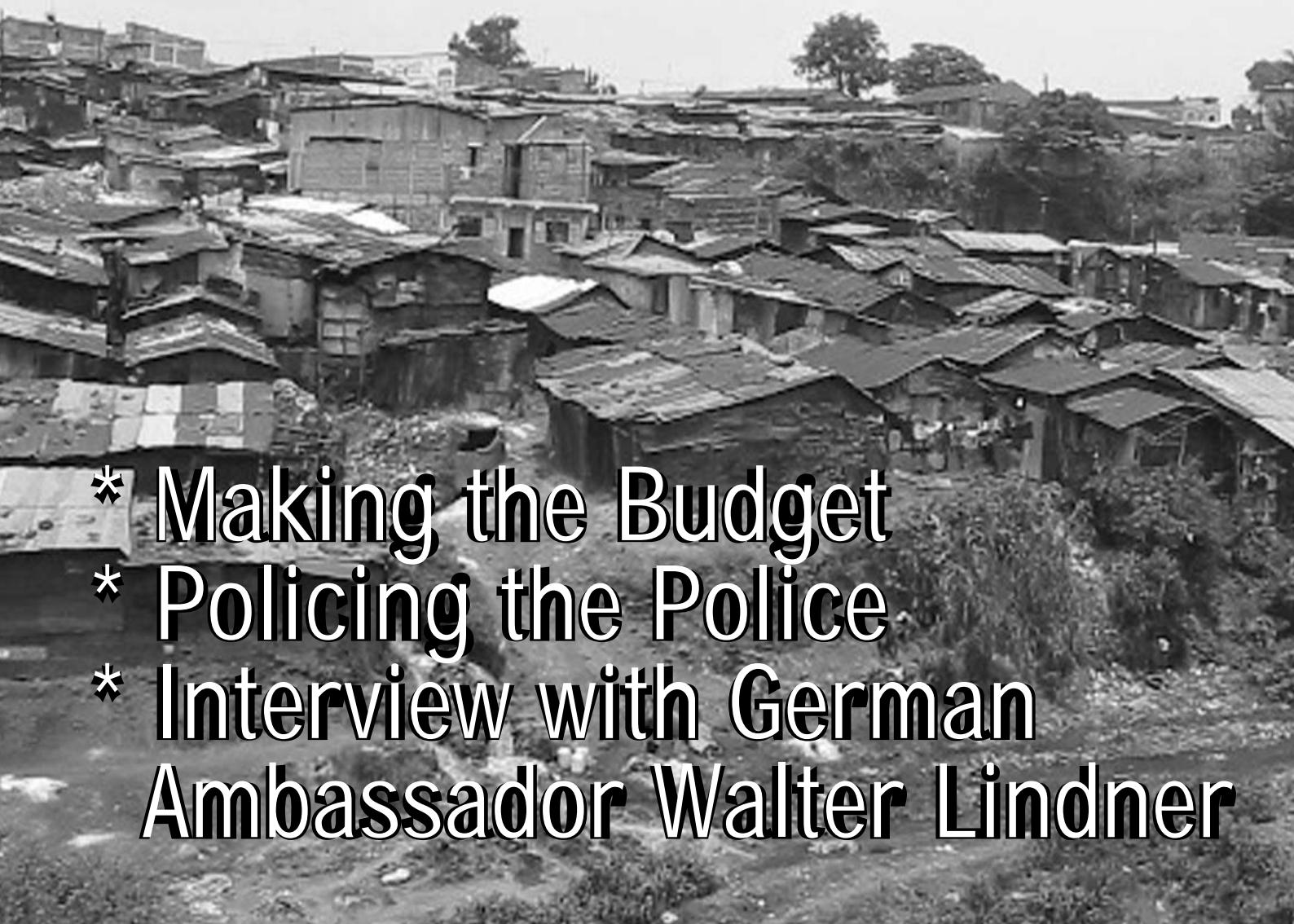
KatibaNews

Towards a new constitutional dispensation in Kenya

MARCH 2009

Issue NO. 3.09

Making the other half live Is a Welfare State possible in Kenya?



- * Making the Budget
- * Policing the Police
- * Interview with German Ambassador Walter Lindner

ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

The Media Development Association (MDA) is an alumnus of graduates of University of Nairobi's School of Journalism. It was formed in 1994 to provide journalists with a forum for exchanging ideas on how best to safeguard the integrity of their profession and to facilitate the training of media practitioners who play an increasingly crucial role in shaping the destiny of the country.

The MDA is dedicated to helping communicators come to terms with the issues that affect their profession and to respond to them as a group. The members believe in their ability to positively influence the conduct and thinking of their colleagues.

The MDA aims at:

- Bringing together journalists to entrench friendship and increase professional cohesion; Providing a forum through which journalists can discuss the problems they face in their world and find ways of solving them;
- Organising exhibitions in journalism-related areas such as photography;
- Organising seminars, workshops, lectures and other activities to discuss development

issues and their link to journalism;

- Carrying out research on issues relevant to journalism;
- Organizing tours and excursions in and outside Kenya to widen journalists' knowledge of their operating environment;
- Publishing magazines for journalists, and any other publications that are relevant to the promotion of quality journalism;
- Encouraging and assist members to join journalists' associations locally and internationally;
- Creating a forum through which visiting journalists from other countries can interact with their Kenyan counterparts;
- Helping to promote journalism in rural areas particularly through the training of rural-based correspondents;
- Advancing the training of journalists in specialised areas of communication;
- Create a resource centre for use by journalists;
- Reinforcing the values of peace, democracy and freedom in society through the press;
- Upholding the ideals of a free press.

Activities of MDA include:

- Advocacy and lobbying;
- Promoting journalism exchange programmes;
- Hosting dinner talks;
- Lobbying for support of journalism training institutions;
- Initiating the setting up of a Media Centre which will host research and recreation facilities;
- Working for the development of a news network;
- Providing incentives in terms of awards to outstanding journalists and journalism students;
- Inviting renowned journalists and other speakers to Kenya;
- Networking and linking up with other journalists' organisations locally and abroad.

This newsletter is meant to:

- 1 Give critical analysis of democracy and governance issues in Kenya.
- 2 Inform and educate readers on the ongoing Constitution Review Process.

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Making the Budget Should Parliament have a role?

With President Mwai Kibaki's recent return of the Fiscal Management Bill, 2008 to Parliament, hopes of the people's involvement in making of the Budget seem to have been dashed. Our correspondent analyses the importance of decentralising the Budget and making the process as participatory as possible.

By Dedan Wachira

The budget is the most important economic policy tool of the government. It is a blueprint for a nation's social and economic policies as well as a compilation of income and expenditure. It is a fundamental indicator of what the government proposes to do and what objectives it pursues. It presents the government's financial plans for an upcoming period, usually of one year, and is a comprehensive statement of a nation's priorities.

The major functions of the budget are allocation of resources, distribution of wealth and income, and stabilisation of the economy. The economic stabilisation function of the budget should be balanced against the need to ensure adequacy of resources to guarantee delivery and development of essential services.

The budget is an ongoing integrated set of governance activities that shape financial planning. The budget makes broad economic choices, which reflect public policy priorities. The budget development process is typically the domain of the Executive. Legislatures can exert considerable influence over the budget through the amendment process. Proactive budget committees can seek public input into the budget planning cycle.

In sum, there are several preconditions for effective



Finance Minister, Hon. Uhuru Kenyatta

performance of parliamentary budget function. These are appropriate constitutional and legal framework for parliament to operate in an unhindered and independent fashion; provision of financial, material and human resources to parliament. Parliamentary oversight of the execution of the budget should be entrusted to a Committee in which the opposition is represented; Parliament should receive accurate information from the Executive and other public entities; and the need to strengthen the capacity of MPs and parliamentary staff to analyse the budget, scrutinize reports and understand general economic issues. Capacity building initiatives are required. Allocation of budgets should be based on clearly articulated Strategic Plans formulated by Government departments similar to South Africa.

Improving the role of parliament must of necessity involve provision of information and enhanced budget transparency. The information provided must be timely, accurate and useful. This may include disaggregated draft budgets and budget implementation data. It is necessary to build the capacity of budget related parliamentary committees and provide independent research capacity.

This Bill establishes a Parliamentary Committee with the sole responsibility of addressing matters relating to the budget which shall be supported by the Parliamentary Office of Fiscal Analysis. Parliament will have to fight the assumption that the budget is an exclusive mandate of the Executive.

[Memorandum on the Fiscal Analysis Bill, 2008](#)

President Kibaki returned the Fiscal Management Bill to Parliament in February, 2009. Having passed the Bill in December 2008, MPs were eagerly awaiting the Presidential Assent to facilitate implementation of the Bill. The Bill proposed to make the Budget making process inclusive, equitable, transparent and accountable. The Memorandum opined that in observance of the doctrine of separation of powers, Parliament

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should not get involved in the management of public resources. The Bill was sponsored by Hon Elias Mbau as a Private Member's Bill. The chairman of Parliament's Fiscal Analysis Committee, Hon. Otieno Ogindo, welcomed the President's recommendations stating that the Committee accepted the proposals. Hon Ogindo said the Bill should be prioritised for debate and adoption as the law is overdue for enactment. The President was in agreement with MPs on clauses of the proposed law but raised questions on sections that attempt to claw powers from the Executive.

In reference to a clause in the proposed Budget Office, the Memorandum stated that although the function is advisory in nature, it is an unnecessary intrusion into the mandate of the Executive, which should have the power to determine its own organisational structure independent of Parliament. The MPs have largely placed a ceremonial role in budget approval hence the enthusiasm for the enactment of the Bill which will assist to curb the Executive's wasteful spending and expand Parliament's oversight role.

Analysis of the Fiscal Management Bill, 2008

The need for improvement of the role of the National Assembly in fiscal policy formulation and management is long overdue. Lack of adequate funds for the operations and maintenance of approved infrastructural projects, delayed completion of projects, lack of control over project designs and selection, and poor management and implementation process have bedevilled the public financial sector due to the absence of a clear role for Parliament in the budget process and exclusive formulation and implementation of the budget by the Executive.

The Constitution requires the Minister of Finance to prepare and lay in Parliament annual estimates of

revenue and expenditure. The Constitution, however, does not set out procedural provisions that would bind the Minister to revenue and expenditure programme approved by Parliament. The Minister can choose to spend money on any item or purpose which he or she prefers; can defer or suspend expenditure on items in the budget; can introduce new expenditure items after the budget is approved and can incur expenditure and incur debt before getting the approval of the National Assembly.

The Fiscal Management Bill has the impetus of providing regulation and oversight on the national budget process including establishment of a Parliamentary Fiscal Analysis Office and a Parliamentary Committee on Fiscal Analysis and Appropriation Committee.

The Bill overhauls parliamentary infrastructure on formulation and implementation of the national budget, redraws the balance of power between the Legislature and the Executive and provides parliament with analytical capacity. The Bill provides a window through which Parliament can contribute to the budgetary process. Parliament needs a secretariat to help in the analysis of fiscal matters which will develop the capacity of MPs to interrogate and evaluate public expenditure.

Such analysis will include preparation of abridged and easy to read versions of voluminous documents which the Minister is required to submit to Parliament. The Bill will assist Parliament to exercise its oversight powers. Parliament's power and strength to scrutinise the actions and functions of the Executive will be consolidated.

Current Budget-making process

An aspect of good governance requires that reforms should encompass empowering existing structures and institutions. The

present framework does not avail opportunities to MPs to influence the budget process. Though the Ministry of Finance has initiated budget hearing process, aligned its budget to a Medium Term Expenditure Framework and facilitated expansion of the role of the Departmental Committee on Finance, Planning and Trade in the budget process, these reforms are based on policy with no elaborate and binding framework to ensure effective participation of MPs in the budget process. The Bill creates a broad based framework.

The spirit of the Bill is enshrined on strengthening the role of parliament as an institution and its ability to effectively represent the electorate by holding the Executive accountable. The extent to which the Minister of Finance can be held accountable to explain on the expenditures is limited under the existing legislative regime.

Overview of the Bill

The objectives of the Fiscal Management Bill, 2008 are:

- Establishing of a prudent and open management of public financing framework, which is to be achieved through adherence to prudent fiscal management that will compel the Government to balance its books of accounts and to lay them open for scrutiny and also redirect public finances towards production oriented results.
- Strengthening the capacity of Parliament to oversee the process of the Government's fiscal policy plans. The Government will be required to publish a budget statement of intent and objectives at least two and a half months in prior to the reading of the annual budget. The Bill establishes a Fiscal Analysis and Appropriation Committee backed by the Parliamentary Office of Fiscal Analysis.

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c) The Bill seeks to provide a predictable fiscal environment. The Government is required to publish the budget statements of intent and objectives, the Annual Budget, the semi-annual economic and fiscal report, and the pre-election economic and fiscal report.

Principles of prudent fiscal management

Clause 4 of the Bill envisions the principles of prudent fiscal management, where the government total debts are reduced to sustainable levels by ensuring that the government recurrent expenditures in any financial year is less than the recurrent revenue in that year.

Other principles include prudent debt management to ensure the national debt is maintained at sustainable levels, shielding the economy from future shocks through risk mitigation and ensuring sustainability of guaranteed loans, pension obligations and pending bills, maintenance of a sustainable and rationalised wage policy, predictability in policies and stable tax rates, Effective, transparent and accountable budget process and preference for productive expenditure over consumptive expenditure.

Where the Minister wishes to deviate from these principles, he or she must seek the approval of the National Assembly and furnish the reasons for the deviation, the Government's plan of action and duration for the deviation. A large portion of national expenditure is spent on consumptive expenditure while neglecting investment in infrastructural projects like construction of roads and other amenities. The Bill attempts to inculcate sound economic principles by opening up how consumptive and productive expenditure should be allocated.

The Bill requires that a budget statement of intent be prepared and presented before Parliament not later than 31st March each year. The statement should contain estimates of revenue for the current year and each of the two preceding years, estimates of expenditure, estimates of capital expenditure, proposals for deficit financing, borrowing intentions, identify fiscal risks and contingent liabilities, statement of measurable objectives and policy objectives for budget decisions, among other categories of information. There is need to create a clear distinction in the Bill between the statement of intent and objectives and the fiscal strategy paper.

The Permanent Secretary in charge of preparing the budget statement will be required 'to sign a statement of responsibility stating that the Ministry applied its best professional judgment in preparing the estimates'. Public servants are responsible to Parliament through their Ministers.

Approval of Estimates by the National Assembly

The Bill requires the Minister to lay before Parliament annual estimates of revenue and expenditure for the next financial year not later than 20th June and present the Government's fiscal strategy paper after presentation of the budget. The Minister will be required to consider the comments and recommendations of the Fiscal Analysis and Appropriations Committee and by Departmental Committees of estimates falling under their jurisdiction.

Fiscal Analysis and Appropriations Committee

The Fiscal Analysis and Appropriation Committee will consist of eight MPs from parties forming government and seven MPs from opposition parties. The Chairperson will be drawn from an opposition party.

Parliamentary Office of Fiscal Analysis

The Parliamentary Office of Fiscal Analysis will serve as the technical arm of the Fiscal Analysis and Appropriation Committee. The Office will provide skills and expertise to the Committee and will be an office in the Parliamentary Service Commission.

The Minister of Finance is supported by competent staff to help in technical and advisory roles. The need for such back up among the MPs is over due. The arrangement will strike a balance in competence between the Executive and Parliament.

Economic and Fiscal Reports

The Minister of Finance is required under the Bill to publish a number of reports and documents. These reports are the Budget Statement of Intent and Objectives, the semi-annual economic and fiscal policy statement, the annual statement of tax policy changes, the pre-election economic and fiscal economic report, the periodic reports explaining deviations from principles of fiscal prudence, the annual estimates of revenue and expenditure, the Supplementary estimates, and the fiscal strategy report.

The Ministry will be required to prepare and submit to Parliament the budget statement of intent by 31st March each year and a semi-annual economic and fiscal performance report. The former is intended to show the Ministry's intentions for the forthcoming budget in terms of revenues, expenditure allocations and policy objectives while the budget statement will show breakdowns of expenditures by vote and the proposals for the financing of any deficits. The semi-annual economic and fiscal performance report evaluates the mid term

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Policing the Police

Over the years, Police in Kenya have been engaged in a love-hate relationship with the people they serve. While citizens complain that the Police abuse their powers, the Police complain that they work under very difficult conditions and the citizens do not make it easier for them. We look at what ails the police force in the country and what current reforms proposals recommend.

By Macharia Nderitu

The police as law enforcers are mandated to ensure that the rule of law is implemented uniformly and equally to all citizens. Since the mid 1980's, public trust for the police in Kenya has gradually eroded. This has been triggered by perceived widespread corruption among police officers, impunity, extra judicial killings by police, torture of suspects and opaque internal disciplinary procedures among the police.

The police have been at the nexus of the most serious problems facing Kenyan society: rampant government corruption, unacceptably high levels of crime, interethnic violence, and vigilantism. Efforts by committed police officers to initiate reforms have barely succeeded. They have often placed the demands of the ruling party and of powerful individuals ahead of the rule of law and the needs of Kenyans.

In the service of powerful interests, the police have established a record of extrajudicial killings, torture, arbitrary detention, suppression of dissent, and fomenting ethnic violence. The Police is one of the government agencies that interact with the public the most and one which the public expects first-rate performance. Granted, the Kenya Police Force is in dire need for reform. Gradual reforms have been made since 2003 but they do not seem sufficiently wide ranging.

Police reforms must be designed to ensure that institutional arrangements and management systems assure police accountability and adherence to the rule of law, prior to implementation of targeted reforms. Programmes to enhance specific police operational capacities, to provide forum for engagement between the police and the community, to train police personnel on principles of human rights, and to increase the pay of the constabulary continue to be focal areas.

The Kenya Police force is established under the Police Act, Chapter 84 Laws of Kenya. The Force is headed by the Commissioner of Police appointed by the President under the Constitution. The functions of the police under the Act are maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders and the enforcement of all laws and regulations.

In executing this mandate, the police face certain challenges that hamper service delivery. One of the Government initiatives to improve service delivery by the Police is the Governance, Justice, Law and Order

Sector Wide Reform Programme. Some of the challenges identified under the programme are delayed response to scenes of crime, very low rate of prevention and detection of crime, poor management of scenes of crime, understaffed police service with a police population ratio of 1: 1150, lack of Human Resources Management policy and systems, lack of autonomy, poor terms and conditions of service, poor attitude and culture of impunity, lack of adequate resources and long and bureaucratic procurement processes in securing security equipment. As an example, the procurement for the Forensic Laboratories for the police has been going on since 2003 and it is yet to be completed despite its importance and urgency.

According to the Police Strategic Plan (2004-2008), the reforms in the police force should at contributing to national stability. To deliver the necessary performance, the police force will be reformed so that it is characterized by a more customer focused service, the highest possible level of efficiency and effectiveness, integrity, impartiality and respect of all citizens, professionalism in service delivery, a

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A guard of honour by the uniformed forces.

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diverse workforce representative of all service professions, consistent and effective use of science and technology, an ability to work in partnership with other agencies, contributing to community and public safety and attractive terms and conditions of work.

What ails the Police in Kenya?

Some of the endemic causes of public mistrust and dismal performance of the police have been identified as wide spread corruption within the police force. The police have consistently been ranked the most corrupt public institution in Kenya. There is a deeply entrenched patronage system within the force that ensures that the promotion of officers is not strictly on merit. This has led to abuse and opacity of promotion and reward mechanisms in the police.

The Service lacks clear accountability and oversight mechanisms. For example, complaints against the police are investigated and prosecuted by police officers without any external or independent oversight. The police are affected by low morale and pay. The increase of police remuneration was among the first agenda of the NARC Government in 2003 when the salaries of the constabulary was doubled.

There is apparent political interference with the functioning of the police. The police must be independent and professional to ensure they render efficient services to the public. The police lack of essential equipment and tools including motor vehicles for rapid response. The Government has made tremendous efforts to equip the police and provide housing for police officers. The Force has increased the number of recruits per year in order to reduce the police: population ratio.

Extra Judicial killings and the Police

The Report of the UN Special Rapporteur on Extra Judicial Killings

Professor Philip Alston, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, issued one of the UN's strongest indictments of Kenya's culture of impunity. The report followed a 10-day investigation into the alleged killing of more than 1,000 gang members, insurgents, petty criminals and political protestors since 2007.

Professor Alston visited Kenya on the invitation of the Government in February, 2009. In his statement after concluding the visit, Prof Alston stated that he had received overwhelming testimony that there existed in Kenya a systematic, widespread and well-planned strategy to execute individuals. The final report of the Rapporteur will be presented to the United Nations Human Rights Council later in the year.

Prof Alston was critical of the Commissioner of Police who was appointed by President Mwai Kibaki from the Kenya Army five years ago. He stated that the Commissioner had failed to respond adequately to any of the allegations of extrajudicial killings, and refused to answer basic questions such as the size of the police force concluding that the Commissioner's immediate dismissal should be the first step in police reforms.

The Report further recommended the removal of Hon Amos Wako, the Attorney General. The tenure Hon Wako was been marked by unchecked high-level corruption including the Goldenberg and Anglo

Leasing Cases. Prof Alston said that the Attorney General is the embodiment in Kenya of the phenomenon of impunity.

President Kibaki, who has a record of refusing to censure those close to him, regardless of the offence, also came in for strong criticism. Prof Alston stated that his silence on the issue of extrajudicial executions is conspicuous and problematic. In its response, the Government, through the office of the Government Spokesman stated that it was inconceivable that the Report could have been prepared within the 10 days that the Rapporteur was in the country. He added that the period was not sufficient to conduct comprehensive and accurate research on the matter.

The Waki Report and Police reforms

The Commission of Inquiry on Post Election Violence chaired by Justice Philip Waki was set up to probe the violence that erupted immediately after the December, 2007 General Elections. Its objectives included evaluation the role of the Police in the post election violence and make specific recommendations on police reforms in Kenya. The Commission made four specific recommendations in regard to police reforms.

- a. The Commission recommended comprehensive reform of the Kenya Police Service and the Administration police. The reform measures should include:
 - I. An audit of the police management structure, policies, practices and procedures of the Kenya Police and the Administration Police.
 - II. Public consultation process on the nature and process of police reform to ensure public and stakeholder participation.
 - III. Capacity building of the Police Service including through international experience.
 - IV. Revision of the Police Act and the development of a modern Code of Conduct.
 - V. Establishment of a Police Service Commission. The Commission will deal with disciplinary, recruitment, remuneration and promotion issues within the police force to ensure accountability, professionalism and independence.

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The wrong arm of the law!

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- b. The Commission recommended the establishment of an Independent Police Conduct Authority through legislation with powers and authority to investigate police conduct and provide civilian oversight. The independence of the Authority is paramount and inspire public confidence. This will be done through:
 - I. Reviewing the current police complaints, investigation and disciplinary processes in the police force.
 - II. Incorporation of international best practices on police oversight and accountability.
 - III. The Authority shall have power to investigate public complaints against the police and investigate police conduct on its own motion. The Authority shall be chaired by a person qualified to be appointed a Judge of the High Court.
 - IV. Police will be obligated to report serious policing violations to the Authority including allegations of corruption, death in police custody, serious injury of suspects and police related shootings.
 - V. The Authority shall have powers to recommend changes on policing rules and policies.
- c. The Administration Police should be integrated into the Kenya Police Service thereby creating a single policing entity. The command, responsibility and accountability for the integrated police service will vest in the Commissioner of Police. This will assist in delineating the functions of the police from the Provincial Administration. The Police will similarly be insulated from Executive interference thereby ensuring professionalism in the Service.
- d. The reform efforts of the Police should be coordinated by the Policing Reform Group. The Group will work alongside but independent of the Kenya Police and the Administration Police. The Group will be made up of four experts who have experience in strategic auditing, transformational change and policing and should complete its mandate within 6 months. The Group will recommend appropriate changes to facilitate increased efficiency and accountability in the police.

Enhanced accountability: Towards a Police Oversight Board

The police are charged with the role of maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders, and the enforcement of all laws and regulations with which it is charged. In

order to carry out its functions, the law has granted the police broad discretionary powers, and the right to carry and use firearms.

The law, however, has neither established sufficient mechanisms to protect the police from illegitimate influence in the performance of their duties nor established sufficient mechanisms to hold the police accountable for their actions. The unaccountability of the police to the law and the public has had its consequences. First, the public perception of the police is largely negative. The public perceive the police to be corrupt, brutal, trigger-happy and in some instances, that the police are themselves criminal.

Second, the efficiency and professionalism of the police force has been compromised and thirdly, the ability of the police to manage crime and ensure citizen safety has come under question. Kenya should establish an accessible, accountable and independent mechanism that will address complaints against the Police as recommended by the Waki Commission.

The Judiciary and Police accountability

The judiciary is the organ that is charged with the duty of protecting the rights of suspects. In the recent past, the High Court has issued judgements that seek to protect the rights of persons charged by police in court. For example, the Constitution requires that an accused person should not be held in custody for more than 24 hours or 14 days where he is charged with a capital offence. If persons are held in custody for more than 24 hours and no explanation is proffered by the Police, the High Court has ruled that such extended detention amounts to a violation of the right to liberty and the court should forthwith release the suspect. Earlier, the High Court had ruled that accused entitled to provision of witness statements to the accused and his counsel as of right as part of the facilities they require for preparation of the trial.

Courts do not act unless there is a complaint filed before them to determine relating to the violation of the rights of a victim by the Police. This means that unless there is a litigant or an accused persons, courts will rarely make pronouncements on violations of rights or otherwise. The judiciary must uphold its

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performance of the economy in the financial year and shows predictions and forecasts for the remainder of the financial year.

Authority to Obtain Information

Availability of accurate, consumable and timely information is the cornerstone of effective parliamentary involvement in the budget process. Effective parliamentary involvement requires a legal framework that enables parliament to amend the budget, to monitor its implementation and hold the government to account and availability of factual information.

Budget documentation availed needs to be sufficient and accessible during pre-budget, presentation and at the implementation stages to enable the public and parliament to monitor basis budget performance on a continuous basis and provide timely feedback to allow corrective and remedial measures.

This must be backed by independent research and analytical capacity through parliamentary budget offices and research department; timely presentation of the budget and building parliament's institutional capacity to handle the budget.

The Bill confers power on the Permanent Secretary to the Treasury to obtain information from any person serving in a public institution for the purposes of preparing reports required under the Bill. A penalty for failure to give requested information is a fine not exceeding one million shillings or an imprisonment not exceeding three years.

The primary source of information is accurate updates of actual expenditure and revenue against approved budget. Gaining information to closely monitor budget implementation should information demand that parliament makes of government. Technology

exists to provide the information online and in real time.

Monthly or quarterly information would prove valuable contribution to better matching plans and implementation. Parliament needs to utilise information technology and communication capabilities to effectively engage in the budget process especially in accessing timely and relevant information.

Gaps in the Bill and suggestions for improvement

Definition of the Budget

The budget is defined in the Bill as 'the process by which estimates of Government revenue and expenditure are set'. This definition does not capture the objectives and rationale of the budget process. The definition must encompass all the stages of budget making.

Parliament as a site for Public Expenditure

Parliament, through the Parliamentary Service Commission, is a major consumer of public finances. The Bill imposes the obligation of prudent fiscal management on the Parliamentary Service Commission. This is illusory since the principles are designed with the Executive in mind and seek to influence policy behaviour around the national budget making process.

The Bill does not clarify the accountability question of a Parliament with the command to establish its own wage and welfare bill. This assumes there will be an MP willing to raise the query in the first place. The need for fiscal prudence extends to other public finances managed by MPs such as the Constituency Development Fund, the Constituency AIDS Control Committees and Constituency Bursary Funds.

Appropriate mechanisms for holding Parliament, and by extension MPs accountable, need to be established in the Bill. Parliamentary oversight should be modelled in a manner that respects the principles of separation of power. There is need for clarity on the unit of planning adopted in the Bill, whether it is the constituency or the district in light of the shift of allocating development funds using the constituency as the unit of development planning.

One method of enhancing accountability is creation of an office of Parliamentary Ombudsman like in the United Kingdom. The office would scrutinise and oversee the plans, programmes and expenditure profiles of the Parliamentary Service Commission as an independent office and check against excess.

The relationship of Parliament and the Executive in regard to control of Fiscal Policy

The Bill obligates the Minister to consider the views of Parliamentary Departmental Committees in formulation of subsequent economic and budgetary policies and programmes and incorporate the comments and recommendations.

The wording creates intention to incorporate the views of Committees. The formulation of the economic and budgetary policies and programmes is a collective ministerial effort under the collective responsibility doctrine.

The clause confers on Parliament the role of initiating and making budgets. The Bill does not say what happens if its 'comments' and 'recommendations' are ignored, or even routinely ignored. In a competitive democracy, governments in power are inclined towards fulfilling the electorate promises contained in their election

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The glass is still half empty

Katiba News Managing Editor, Stephen Ndegwa, spoke to the German Ambassador, Mr Walter Lindner, who leaves the country in June this year. The Ambassador recounts his experiences and suggests ways of getting the country firmly back on the track of prosperity and stability.

KN: How has your perception and attitude of Kenya changed over your three-year stay in the country as Ambassador?

Lindner: I came in 2006 when the country was in an election year. It was basically a period of transition for the country and there was widespread euphoria for change. People had become disappointed as a result of incidents like the highly polarised referendum on the Constitution and the raid on *The Standard* newspapers.

Consequently, Kenyans looked forward to the general elections as the panacea to the failed dream of the National Rainbow Coalition Government. Unfortunately, the 2007 Election was a cataclysmic anti-climax after the disputed presidential results ended up in unprecedented violence. This will always be the hallmark of my stay in Kenya. Nevertheless, I hope this crisis will serve as a reminder to all Kenyans that there is no alternative to democracy.

KN: Had you foreseen the 2007 post-election violence and what would you say were the main triggers?

Lindner: Both the Kriegler and Waki reports have sufficiently summarised what went wrong. There are definitely the main issues of land, tribalism and the stalled Constitution review process. What was most shocking to me was that nobody seemed to anticipate the magnitude of the violence. Kenya has always been an island of peace in a very volatile region and

this is a major blot to this image.

KN: Do you think there is likelihood of a repeat of this kind of violence in subsequent polls and how would you suggest we arrest the before it is too late?

Lindner: The country's political leadership must embrace former UN Secretary General Kofi Annan's recommendations as stipulated in Agenda Four of the National Dialogue and Reconciliation Accord. Most of all, every Kenyan has to be conscious of the potential for violence that exists in the country and avoid falling prey to the politicians' tribal politics particularly during elections.

KN: How would you rate the performance of the Grand Coalition government since it was formed one year ago? Do you think the coalition will hold until the 2012 polls?

Lindner: The coalition can hold up to the next polls and hope it does. Already it has recorded some achievements including restarting the process towards a new Constitution, reconstituting the Electoral Commission of Kenya, implementation of some recommendations of the Waki Report. Also, some crucial Bills have been passed. However, the negative developments threaten to overshadow the good work so far. For instance, there are still no concrete steps taken in the fight against corruption.



German Ambassador, Walter Lindner

No suspects have been arraigned before the courts on the oil and maize scams and it is back to business as usual. Corruption has damaged Kenya's image as a prime destination for both tourism and investment. Secondly, impunity seems to be so entrenched in the national psyche. The recent murder of two human rights crusaders from the Oscar Foundation shows the extent that impunity has been entrenched in the country. Kenya also needs urgent Police and Judiciary reforms. But there is no alternative to the Grand Coalition. If you take this away the country could revert to polarisation and a return to the violence that we witnessed after the 2007 polls.

KN: Related to the above, what is your view of the performance of the 10th Parliament?

Lindner: From the outset, there were a lot of expectations on its performance. As a hands-on Ambassador I can say there is a

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general feeling of disappointment and unrest among most Kenyans. For example, people feel betrayed that their MPs have refused to pay taxes on their salaries. In addition, old political fights seem to be coming up again as politicians start repositioning themselves for the 2012 General Election. It is important that MPs focus on delivery of much needed services to Kenyans and avoid political squabbling.

KN: Any lessons on running a Coalition Government from Germany that Kenyans can learn from?

Lindner: A Grand Coalition is not a very attractive model as it is a game of give and take. Politicians have to compromise their political ideals in the implementation of their respective party manifestos. However, the good news is that the big projects get done since there is minimal opposition. What Kenya needs is an internal conflict resolution mechanism so that politicians do not keep running to Kofi Annan to solve their differences. In fact, the Accord contains clauses on resolving emerging crisis.

KN: Please comment on the state and speed of reforms in the country.

Lindner: The reform process is still too slow and the pace must now be speeded up. The momentum that was present one year ago is getting lost and Kenya seems to be falling back to pre-crisis mode. Most urgent are the Police and Judiciary reforms in order to inculcate a culture of the rule of law among all citizens.

KN: What would you say plagues the Constitution review process and what do you recommend as the way forward in successfully concluding the exercise within the time frame proposed in the Accord?

Lindner: I believe Kenya has 90 per cent of the Constitution as contained in the Bomas Draft. Therefore, it is possible have a new Constitution within the stipulated period. The lack of constitutional reforms gives a negative impression that the country is unable to govern itself. Ultimately, the political class has the biggest responsibility in winding up this process. Indeed, the post-election violence should serve as the major motivating factor in urgently undertaking this exercise.

KN: Corruption seems a mainstay of Kenya's leadership. How can we end this menace?

Lindner: Kenya may not have higher corruption levels than other countries in the continent but a free Press in the country has done a commendable job of exposing corruption in the public sector. The only difference between corruption in Kenya and other countries is that the latter have zero tolerance for the vice both in the society and in governance. Kenya needs strong institutions in fighting corruption in order to record concrete results in this area. In addition, big fish must be prosecuted rather than engaging in endless commissions to unearth what is already contained elsewhere as evidence.

KN: Please rate Kenya's Judiciary in its role of dispensing justice to all without fear or favour.

Lindner: The Judiciary in Kenya is still old-fashioned both in its outlook and operations. For example, there is a dearth of computerisation, excess bureaucracy and irregularities, which has led to piling up of court cases. The Judiciary must find ways and means of expediting cases and seek for alternative ways of dispensing justice particularly to petty offenders. The Minister of Justice Ms Martha Karua has already come up with ideas that need to be implemented.

KN: The Government recently enacted the Communications Amendment Bill (now Act) 2008 into law. What do you think is the impact of this Act on both the freedom of the media and expression?

Lindner: First, the opposition of the Bill by MPs is not genuine since they were supposed to be in Parliament during all the three readings. However, some clauses that infringe on basic freedoms of expression need to be amended. This is just about 10 per cent of the Act as was suggested by the media houses and other stakeholders.

But the media must also be cognizant of the fact that media freedom comes with responsibilities and must guard against overstepping their mandate.

KN: How would you respond to the view held by some African leaders that multipartyism is not suited for the continent given its perennial intra and inter-ethnic conflicts?

Lindner: No doubt that multipartyism has been found to be the best democratic mode of governance the world over. In a globalised world, democracy is the winning model. Dictatorships are fast diminishing and the rule of the majority is becoming universal.

KN: Is the idea of an African Union viable?

Lindner: Regional cooperation is a long and difficult process but is the best guarantee for global peace. The European Union now has 27 countries after starting off with a membership of six countries after the Second World War. I cannot speak for African countries. They must decide which way to go in their quest for stability and progress for their people. **KN**

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manifesto. Parliamentary power under the Bill 'to comment and recommend' may occasion overlaps and cause fights over the control of fiscal policy.

The Executive cannot completely be bound by the Bill in relation to fiscal planning and management. There are certain dynamics that dictate the government activities, including guesswork, for example, on possible climatic conditions that will obtain during the financial year or the average international oil prices. These economic fundamentals may change from one financial year to the next.

Disaggregating Budget allocations to District level

The Bill requires that the budget be decomposed into district allocations. The political connotation is that districts in Kenya are ethnically based, hence administratively inclined and not economic units ready to benefit from the monetary allocations.

It is not clear how large infrastructure programmes are to be categorised. For example, an expensive infrastructural project located and constructed in a district may not necessarily be for the sole benefit of the residents of that district. If the logic is to be pushed to a conclusion, then both revenue and expenditure estimates - and not just expenditure estimates- should be published for every district.

Pre-election fiscal economic report
The Minister of Finance is under an obligation to publishing a pre-election fiscal economic report. This would ensure, presumably, that the Government seeks re-election based on its record. The incentive on the part of Government to 'doctor' such a report is irresistible. The reports should reflect on both pre-and-post election allocation and expenditure of public resources. There is need to secure funds from misuse during the election periods

and reports would form the basis of auditing public expenditure before and after elections.

Scrutinising security contracts

Defence and security estimates should be opened up for scrutiny by Parliament. As a first measure the Fiscal Analysis and Appropriations Committee should be able to scrutinize expenditure plans and programmes and determine their classification. An appropriate departmental committee can handle with the accountability issues.

Members of such Committees can take an appropriate oaths or affirmation not to disclose information which may genuinely prejudice the security of the state. This should extend to amending the law to require parliamentary approval for the Minister of Finance to incur national debts to finance such contracts.

Constitutional provisions relating to public expenditure

There is need for constitutional reform in regard to provisions which impact on the budget process to create more room for parliamentary involvement in the process. The Constitution restricts Parliament to endorsing budget estimates without involvement in the budget making process.

The Constitution should integrate the role of parliament in formulation, legislation, implementation and audit of the budget. Other aspects would be enhanced independence of the Controller and Auditor General, parliamentary involvement in approving allocations to the regions formed under devolution,

parliamentary control of its calendar, an enhanced integrity framework for Government officers and Ministers, and the right to access information from government. The Controller and Auditor-General should be put under Parliament. No audit report has been released in relation to the financial years 2004 to 2007. Timely completion of audits promotes value for money for expenditure incurred.

Strengthening the sanctions in the Bill

Parliament should have the power to deal with errant members including the right to expel a member on grounds such as abuse of office of MP or Minister. The Bill exposes the frustration of MPs at the hands of an Executive that is reluctant to provide information. Parliament should deal with Cabinet Ministers, who are unwilling, reluctant or negligent in their parliamentary work.

There is need to devise appropriate sanctions for acts and omissions perpetrated by Ministers. There is need to include a clause on budget impoundment where a Ministry or Department will not be allocated additional funds unless they account for the budgetary allocation in the previous financial year or unless any audit queries raised by the

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The hot seat: Former Finance Minister Hon. Amos Kimunya

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constitutional duty and ensure the rights of accused persons are respected.

Investigation and prosecution in Kenya is conducted by the Police. This means that the evidence produced in court is gathered and analyzed by the police. Where the police have an interest in the outcome of a particular case, for example where a suspect is a police officer, there is likelihood that the police will interfere with the investigation process thereby leading to acquittal.

The weaknesses of the judiciary, including the backlog in cases and slow determination of cases has contributed to the perception that the State is not interested in prosecuting and punishing offending police officers. The office of the Attorney General must take lead and prosecute offending police officers. At present, no law defines what constitutes torture or inhuman and degrading treatment which impedes victims from seeking redress.

Conclusion

The Police Force's Draft Strategic Plan acknowledges that a culture of impunity exists. It creates an environment where perpetrators can continue to break the law, safe in the knowledge that they will never face arrest, prosecution or punishment. It is not surprising that impunity is endemic within the force. Complaints against the police are dealt with through internal mechanisms that are completely closed to the public. Most times, complaints made will be made disappear.

The external mechanisms, which include Parliament, the courts, commissions of inquiry and national human rights commissions, have not

been very effective either. Kenyans have seen the police and Government officials deny obvious allegations of impropriety or criminality within the force. The Police Draft Strategic Plan acknowledges that there are officers who owe their positions to patronage of powerful persons.

Police reforms must be led by officers who are the epitome of democratic and accountable policing to ensure the process is not fatally undermined. Real reform happens when the people being changed take ownership of the transformation. The process adopted is just as important as the outcome. The approach used must reflect the values of transparency, accountability, integrity and professionalism that will make the force a service.

Creating space for participation confers legitimacy to the entire process, and allows good officers who have hitherto been condemned for the sins of a few, to become the champions of change. They are at the forefront of guarding our democratic ideals and must themselves espouse the same if these ideals are to be entrenched in society.

KN

BUDGET

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Controller and Auditor-General and Parliament have been satisfactorily answered and explained.

Harmonisation of laws relating to public finance

There is need to harmonize the laws relating to public finance. All these laws should be realigned with the Bill to create a clear set of statutes governing the budget process from formulation to audit and evaluation. The Bill should be harmonised with the provisions of Public Procurement and Disposal of Assets Act to improve fiscal prudence. One method would be to require an analysis of public procurement by the Minister for Finance every year.

This will enable members of Parliament to analyse if the public is getting value for money and assist the Controller and Auditor General to undertake proper value for money audit. The essence is

practically demonstrated by the efficacy of the Minister for Finance in analyzing policy and estimates but poor in giving accountability reports after incurring expenditure.

Donor policy

The government is developing a donor policy in regard to projects which are implemented using funds sourced from donors and development partners. The policy paper is under consideration by the Cabinet. This policy paper has the impetus of creating accountability mechanisms of how the donor funds are spent by the Government. The accountability and disclosure mechanisms established by the Bill should address the question of donor funds.

Availing MPs with information

The fulfilment of the Bill's objectives relies primarily on the publication of reports by the Government and the laying of this information before the

House. The information required to be published under the Bill is substantial. The capacity to analyze information will rely on the Parliamentary Office of Fiscal Analysis. There is a risk that the Bill lays the ground for a war between the Parliamentary and Treasury bureaucrats. Moreover, the information required is repetitive and may serve to obfuscate rather than clarify Government policy and action. The Bill should be reconciled with the Officials Secrets Act. A reconciliatory approach may be handled through the Freedom of Information Bill, which will create a more comprehensive access to public information framework.

Fiscal Analysis and Appropriations Committee

The Constitution allows the President to form the Government without a clear role for political

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Making the other half live Is a Welfare State possible in Kenya?



A palatial house in one of the plush estates in Kenya.

It is said that the poor will always be with us. But for the majority of them, it is a situation that they find themselves in as a result of sheer lack of opportunity. With the ongoing financial crisis both overseas and locally, things are bound to get even worse. We look at whether Kenya has the resources to offer basic needs to the masses.

By Katiba News correspondent

Awelfare state has been defined as a government model in which the state assumes primary responsibility for the welfare of its citizens. This responsibility in theory ought to be comprehensive, because all aspects of welfare are considered and universally applied to citizens as a 'right'. Welfare states can also mean the creation of a 'safety net' of minimum standards of varying forms of welfare.

In many welfare states, especially in Europe, welfare is not actually provided by the state, but by a combination of independent, voluntary, mutualist and government services. The functional provider of benefits and services may be a central or state

government, a state-sponsored company or agency, a private corporation, a charity or another form of non-profit organization. However, this phenomenon has been more appropriately termed a welfare society.

A welfare state is simply defined as the concept of government in which the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for life.

A fundamental feature of the welfare state is social

insurance, a provision common to most advanced industrialized countries for example the, National Insurance in the United Kingdom and Old-Age, Survivors, Disability, and Health Insurance in the United States. Such insurance is financed by compulsory contributions and is intended to provide benefits to persons and families during periods of greatest need. It is widely recognized, however, that in practice these cash benefits fall considerably short of the levels intended by the designers of the plans. The welfare state also includes public provision of basic education, health services, and housing at a subsidized low cost or for free.

History of the Welfare State

Modern welfare states developed through a gradual process beginning in the late 19th century and continuing through the 20th Century. They differed from previous schemes of poverty relief due to their relatively universal coverage. The development of social insurance in Germany under Chancellor Bismarck in the 1870s was particularly influential. Some schemes, like those in Scandinavia, were based largely in the development of autonomous, mutualist provision of benefits. Others were founded on state provision. The term was not, however, applied to all states offering social protection. The sociologist T.H. Marshall identified the welfare state as a distinctive combination of democracy, welfare and capitalism.

During the Great Depression, the welfare was seen as an alternative 'middle way' between communism and capitalism. In the period following the Second World War, many countries in Europe moved from partial or selective provision of social services to relatively comprehensive coverage of the population.

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In 1942, the Social Insurance and Allied Services was created by Sir William Beveridge in order to aid those who were in need of help, or were living in abject poverty. Sir William Beveridge worked as a volunteer for the poor, and set up national insurance. He stated that all people of working age should pay a weekly national insurance contribution.

In return, benefits would be paid to people who were sick, unemployed, retired or widowed. The basic assumptions of the report were the National Health Service, which provided free health care to the UK. The Universal Child Benefit was a scheme to give benefits to parents, encouraging people to have children by enabling them to feed and support a family. This was particularly beneficial after the Second World War when the population of the United Kingdom declined. The impact of the Beveridge report was huge and 600,000 copies were distributed.

The Report recommended that the Government should find ways of tackling Want, Disease, Ignorance, Squalor and Idleness. He proposed that the government should provide adequate income to people, adequate health care, adequate education, adequate housing and adequate employment. Before 1939, health care had to be paid for through a vast network of friendly societies, trade unions and other insurance companies which counted the vast majority of the UK working population as members. These friendly societies provided insurance for sickness, unemployment and

invalidity, therefore providing people with an income when they were unable to work.

Types of Welfare States

There are two ways of organising a welfare State:

1. The state is concerned with directing the resources to the people in need. This requires a bureaucratic control over the people concerned, with a maximum of interference in their lives to establish who are in need and minimize cheating. The unintended result is that there is a sharp divide between the receivers and the producers of social welfare, the producers tending to dismiss the whole idea of social welfare because they will not receive any benefits. This model is dominant in the US.
2. The state distributes welfare with minimal bureaucratic interference to all people who fulfil an

easily established criteria for example having children, or receiving medical treatment. This requires high taxation, which is channelled back to the taxpayers with minimum expenses for bureaucratic personnel. The result is that there is a broad support for the system since most people will receive benefits from the welfare scheme. This model is dominant in Scandinavia.

The downside

There are some criticisms which have been advanced against the welfare state. These include:-

- 1) The welfare state makes citizens dependent and less inclined to work thereby slowing economic development and personal initiative. Studies indicate there is no association between economic performance and welfare expenditure in developed countries.
- 2) Welfare is theft of property or labour. By taxing the producers who toil for their wealth to provide for the poor, the welfare system results in coerced theft of labour and property by the Government.
- 3) Welfare state allegedly provides its dependents with a similar level of income to the minimum wage thereby breeding grounds for fraud and economic inactivity that are common in the United Kingdom and France. Some conservatives in the UK claim that the welfare state has produced a generation of dependents who, instead of working, rely solely upon the state for income and support; even though assistance is only legally available to those unable to work.
- 4) The welfare state results in high taxes. This is usually true, as evidenced by places like Denmark (tax level at 50.4 per cent of GDP in 2002) and Sweden (tax level at 50.2 per cent of GDP in 2002). Such high taxes do not necessarily mean less income for the nation overall, since the state taxes go directly to the people it is taxed from.
- 5) The welfare state is the belief that welfare services provided by the state are more expensive and less efficient than if the same services are provided by private businesses. Any social policy based on such concepts as justice or fairness would result in an economy

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A view of Kibera slums, famed as the largest informal settlement in Africa.

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which is inefficient. Things which are supplied free at the point of consumption are subject to artificially high demand, whereas resources would be more properly allocated if provision reflected the cost.

6) The critique from anarchists posits that all states and governments are undesirable and unnecessary. Most anarchists believe that while social welfare gives a certain level of independence from the market and individual capitalists, it creates dependence to the state, which is the institution that, according to this view, supports and protects capitalism in the first place.

Challenges in administration

Some of the difficulties that have been identified in administration of welfare programme are:

- Determining the desirable level of provision of services by the state. States normally have competing interests for the limited resources available. Determining the levels of funding which is appropriate for the welfare programme is a challenge.
- Ensuring that the system of personal benefits and contributions meets the needs of individuals and families while at the same time offering sufficient incentives for productive work. The implementation of a welfare programme must not serve as a disincentive for personal initiative and hard work.
- Ensuring efficiency in the operation of state monopolies and bureaucracies. The administration of the welfare schemes must be efficient and as cost effective as possible to ensure that most resources committed to the scheme are actually spent on welfare.

Wealth disparities

Kenya is one of the most unequal societies in the world. According to the 2007 study by the Society for International Development, the richest Kenyans control almost a half of the country's wealth while the poorest Kenyans own less than one per cent of the national income. The 10 per cent richest households control 42 per cent of the national income with 10 per cent of the poorest households controlling less than one per cent.

The doctor/patient ratio for central Province is 1:20, 700 while in North Eastern Province it is 1:120, 000. The difference in life expectancy between persons living in Nyanza Province and those living in Central Province was 19 years as at 2006. One of

the contributing factors for wealth disparity is the land tenure system. Most of Kenyan population depends on agriculture. Lack of access to land means that most Kenyans do not have access to the resource that can assist them to produce food for their consumption as well as earn a living from farming activities.

Impact of global financial crisis

The capital market has been adversely affected due to mass departure of foreign investors and lack of disposable income among Kenyans to invest due to the rising cost of living. This has precipitated a bear run in which the stock market prices have been plummeting for more than eight months. The run on the Nairobi Stock Exchange has been further worsened by the collapse of two brokerage houses in a period of two years.

This has led to diminished faith of the investing public on the management and Governance of the Exchange. Indeed, the Board of the Capital Markets Authority, the market regulator, was disbanded and a new Chairman appointed. The capital market is seen as the barometer of the economic performance of any country.

In its 2008 budget proposals, the Government had planned to float a Sovereign Bond in the international market in the current financial year to raise part of its budget deficit and finance infrastructure. The Government has

announced that the plan has now been shelved due to the poor performance of the international finance markets. Indeed, the World Bank and International Monetary Fund have announced the necessity to provide emergency funding to vulnerable developing nations due to lower export levels and reduced foreign exchange flows. Funding from bilateral donors has also reduced.

Calculating the cost

Provision for welfare in Kenya is being implemented on pilot basis in some parts of the Arid and Semi Arid Lands areas. A national wide programme would require enormous resources which the Government may not afford at the moment due to the looming financial crisis. Already, the Government has announced a gaping budget deficit due to low revenue collection as a result of a slowing economy. Stringent measures are being implemented to conserve the available scarce resources.

However, in the long term, the inability of the Government to finance a welfare scheme can largely be blamed on entrenched corruption which results in enormous loss of public resources and poor finance managerial systems in the public sector. For example, the recently announced subsidised flour has been unavailable to the majority of Kenyans despite the Government insisting that the flour is widely available. This is symptomatic of poor government planning.

The Government must create an enabling environment for rapid economic growth to enable it create a welfare state. Already, the taxation levels in Kenya are too high compared to the level of service delivery by the Government. Further increase in taxation to fund a welfare state would stifle the inflow of investments thereby occasioning job losses. The implementation of a welfare state must be supported by the necessary political will which is obviously lacking at the moment and a well designed anti corruption framework that will ensure transparent and accountable implementation mechanisms for the

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parties. Presently, the Cabinet draws membership from all political parties. This scenario has affected the formation of parliamentary committees. The Controller and Auditor General is mandated under the Constitution to obtain information but this provision has largely been ignored by public officials who decline to supply the office with the information requested.

The Bill lays a framework for parliamentary involvement in budget making, evaluation and implementation. The Bill avails MPs with information they need to scrutinise the budget. MPs must be given sufficient time to study information supplied. These functions will be realised through the Departmental Committees, the Fiscal

Analysis and Appropriations Committee and the Office of Fiscal Analysis.

The Bill provides guidelines on how to effectively involve Parliament in fiscal matters. The emphasis in budgetary preparation, presentation and analysis has always been on legality and cost effectiveness. The Minister for finance scrupulously abides by the law and he or she is able to avoid accountability.

Standing Orders and the Bill

The New Standing Orders of the House have been modelled on the Bill. The Standing Orders recognize the relationship between the Fiscal Analysis and Appropriation Committee, the Public Accounts Committee, the Public Investments Committee and the Departmental

Committee on Finance, Planning and Trade.

The Orders reform the Committee of Ways and Means and the Committee of Supply and create budgetary roles for the Departmental Committees. The Orders recognize the role of Fiscal Analysis that is essential in providing timely information to MPs. There will be need to rationalise the mandates given to the Committees to ensure the roles are related and can be effectively carried out by Committees, including the possibility of increasing the number of Committees. The Statements required to be tabled by the Minister under the Bill are also required under the Standing Orders. **KN**

TOWARDS A WELFARE STATE

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scheme. The efforts to establish a National Health Scheme were scuttled due to the perceived large expenses involved in establishing such a scheme. However, if a pilot scheme had been launched and the resources required assessed, it is possible that the scheme would be functional by now.

Entrenching basic needs as a right

The Draft Constitution has made provision in the Bill of Rights for Kenyans to enjoy economic, social and cultural rights. These rights include the rights to health, food, housing, clean and healthy environment. The adoption of the Constitution will facilitate the right of Kenyans to seek redress when and if the Government will in future fail to provide these rights. By including the rights in the Constitution, the Government will be obligated to progressively make financial, human resource and other preparations to ensure that all Kenyans enjoy the rights. The rights will be justifiable in the courts. The courts have the responsibility of defining the scope and determining the enforceability of the rights.

Lessons from Germany

The welfare state was started by Chancellor Otto von Bismarck in the 1880s when he

established obligatory health, accident and old-age and disability insurance programmes. These principles have guided the development of social policy development to date. After its inception and until World War I, the social insurance was limited to blue collar workers. This changed during the 1920s, when German social policy embarked on an expansionist course. Unemployment insurance was added in 1927 as a benefit. Health care and old age provisions were further expanded during the Nazi era.

After the Second World War, in 1957, when then-Chancellor Konrad Adenauer, another conservative, proposed the Pension Reform Law, that was designed with the goal of sharing the wealth

of Germany with the retirees who had contributed during their working lives. The 1980s brought bad news, as rising unemployment, slowing growth and rising contribution rates began to exert pressure on the system. In 1990, when the two German States were reunited and East Germans began to participate in the system, expenditures shot up and the massive loss of jobs in the East meant workers were paying less into the system but demanding more. The system's financing model increasingly looked unsustainable.

Apparently taken aback by the intensity of the protests in 2005, the Chancellor was forced to modify the wide ranging reforms due to the political implications as some of the MPs from his party had rebelled against the reforms. The chancellor insisted that wide-ranging and sometimes painful reforms are the only way that the country's welfare state would survive. In 2006, a new Chancellor was elected. With the economic crisis in Europe in 2008, the welfare system must be further reformed to respond to the changed economic circumstances. **KN**

THE KONRAD ADENAUER FOUNDATION IN KENYA

Konrad-Adenauer-Stiftung is a German political Foundation which was founded in 1955. The Foundation is named after the first Federal Chancellor, Prime Minister and Head of Federal Government of the then West Germany after World War II. Konrad Adenauer set the pace for peace, economic and social welfare and democratic development in Germany.

The ideals that guided its formation are also closely linked to our work in Germany as well as abroad. For 50 years, the Foundation has followed the principles of democracy, rule of law, human rights, sustainable development and social market economy.

In Kenya, the Foundation has been operating since 1974. The Foundation's work in this country is guided by the understanding that democracy and good governance should not only be viewed from a national level, but also the participation of people in political decisions as well as political progress from the grass roots level.

Our aims

Our main focus is to build and strengthen the institutions that are instrumental in sustaining democracy. This includes:

Securing of the constitutional state and of free and fair elections;

Protection of human rights;

Supporting the development of stable and democratic political parties of the Centre;

Decentralisation and delegation of power to lower levels;

Further integration both inside (marginalised regions in the North/North Eastern parts) and outside the country (EAC, NEPAD); and

Development of an active civil society participating in the political, social and economic development of the country.

Our programmes

Among other activities we currently support:

Working with political parties to identify their aims and chart their development so that democratic institutions, including fair political competition and a parliamentary system, are regarded as the cornerstones for the future development in Kenya.

Dialogue and capacity building for young leaders for the development of the country. Therefore, we organise and arrange workshops and seminars in which we help young leaders to clarify their aims and strategies.

Reform of local governance and strengthening the activities of residents' associations. These voluntary associations of citizens seek to educate their members on their political rights and of opportunities for participation in local politics. They provide a bridge between the ordinary citizen and local authorities, and monitor the latter's activities with special focus on the utilisation of devolved funds.

Introduction of civic education to schools and colleges. We train teachers of history and government in civic education. In addition, we participate in the composition of a new curriculum on civic education.

Our principle is: Dialogue and Partnership for Freedom, Democracy and Justice.

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