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Strengthening Accountability and Oversight Of Key Parliamentary Committees in Kenya

REPORT ON THE WORKSHOP FOR SELECT COMMITTEES DEALING IN FINANCE

Safari Park Hotel
Nairobi, Kenya
May 03-04, 2001

With support from the World Bank Institute and in cooperation with the Parliamentary Centre (Canada)

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ON

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OF KEY PARLIAMENTARY COMMITTEES IN KENYA”**

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INTRODUCTION

In Parliamentary democracy, the Committee System assumes great importance since Parliament, by its very nature cannot have complete oversight over government and all its activities.

Modern legislatures have therefore created among other devices, Committees through which they strive to achieve effective surveillance over the Executive arm of the government. Committees enable members of the public to participate in the legislative and governance processes by either appearing before the Committees or sending memoranda to air their views on the government and give suggestions on how operations of government could be improved.

The Kenya National Assembly recognizes the important contribution that Committees make to the role and functions of Parliament in the scrutiny of Public Policy and activities.

The principal purpose of Parliamentary Committees is to perform functions for which Parliament in its corporate form is not well fitted; i.e. finding out facts of the case, examining witnesses, sifting information and drawing up reasonable conclusions. Committees in a way take Parliament to the people and allow direct contact with members of the public by a section of the House when engaged on study visits or inspection tours.

In respect of their formal proceedings, Committees are an extension of the House, emitted in their inquiry by the extent of the authority delegated to them but governed to a large extent in their proceedings by the same procedures and practices as those that prevail in the House, by which they are appointed.

Public Accounts Committee, like other Financial Committees, namely, the Public Investments Committee and the Departmental Committee on Finance, Planning and Trade are mandated by the House to examine the accounts voted by the House to meet public expenditure and of such other accounts laid before the House as the particular Committee may think fit. They also in the case of Public Investments Committee

examine reports if any, of the Controller and Auditor-General and the Auditor-General (Corporations) on public investments.

The reports and recommendations of the Committees are expected to be supported by evidence adduced. Their verdict should not be contrary to the weight of evidence. The Committees are not at liberty to entertain any proposition or go into any inquiry which does not come within the direct mandate for which they were appointed.

Since the commencement of the Eighth Parliament, Departmental Committees have been very active. When a Bill has been read a First Time, it is referred to the relevant Departmental Committee for thorough scrutiny after which the Committee makes a report to the House. The mandate of Departmental Committees are wide and cover virtually every aspect of the work and activities of each Ministry and government Departments.

The National Assembly (Powers and privileges) Act. Cap 6, Laws of Kenya, confers similar and adequate powers, privileges and immunities as those that prevail for the House. Such powers and privileges are also conferred by the Standing Orders of the House.

Consequently, committees have the legal empowerment to order the attendance of witnesses, the production of papers and records. Where any person is ordered to attend or to give evidence declines to answer any question put to him on the pretext that it is of a private nature and not affecting the subject of inquiry, the Chairman of such Committee reports such refusal to the Speaker who would decide on the action to be taken.

Parliamentary Committees should be endowed with adequate resources to be able to address their mandate adequately. On the other hand, most of the scrutiny of government expenditure by the Committees is always done on past events rather than current issues. This does not help much in the prevention of possible embezzlement of public funds by those public officers entrusted with the custody of such funds. The Executive also does sometimes take too long to respond to recommendations of Parliamentary Committees; as a result, some public officers tend to misappropriate funds entrusted to them since there are no prompt punitive measures taken against them to deter recurrence of such incidents.

That improper use of public resources impoverishes a nation needs no explanation. Hence, firm measures leading to proper allocation and utilization of resources need to be put in place and maintained if the poverty levels have to be reduced.

Welcoming Remarks by the Chairperson

The Hon. Simeon Mkalla, M.P., Chairman of Finance, Planning and Trade, welcomed the Deputy Speaker, the Resource Persons, the Hon. Members and the participants to the three day Workshop on strengthening the accountability, and oversight of the key Finance Committees of the Kenyan Parliament.

He stressed the critical and vital strategic importance of the Workshop, which aims to enhance the capacity of the members in dealing with the complex financial issues. He expressed the hope that Members will through discussions with the foreign resource persons get an insight into workings, and organization of the equivalent committees of other parliaments.

Thereafter he invited the Hon. Joab H.O. Omino, M.P., Deputy Speaker of the Kenya National Assembly to address and formally open the Workshop.

Speech by the Deputy Speaker

The Hon. Deputy Speaker once again welcomed the participants to the Workshop and expressed the appreciation of the Kenyan Parliament particularly to the Parliamentary Centre of Canada for the continued support and assistance so far rendered for the strengthening the operations of the Committees and Parliament in General. He pointed that the Kenya Parliament was still not well fitted for comprehensive Committee work, which is increasingly becoming the workplace of MP's rather than in the plenary sessions.

He went further and said that the current Departmental Committees were an extension of the previous General Purposes Committees which were first established in 1979. The mandate of the Committees is to consider and scrutinize bills referred to them after the First Reading in the House, and to a report back to the House. In addition the Committees are also charged with the responsibility of examining virtually every aspect of the work and activities of each Government Ministry and Department.

However, he said that the Committees have identified several weaknesses in their operations which include scarcity of human and financial resources; inadequate time for deliberation of the Committee reports and recommendations by the House; post-mortem scrutiny of past issues rather than current issues; the inordinately long time taken by the executive to implement or even respond to the Committees recommendations; and finally the apathy exhibited by the Members in the Committees technical aspects.

The Hon. Deputy Speaker therefore challenged the participants to come up with innovative ways of making the Committees more effective, efficient and relevant.

He concluded by stating that the onus of making the committees function was the square responsibility of all Members.

Thereafter he declared the Workshop officially opened.

PARLIAMENT AND GOOD GOVERNANCE

Presentation by Mr. Rick Stapenhurst, Public Sector Management Specialist

Mr. R. Stapenhurst in his presentation said that there is a revolution in governance and that all over the world governments, leaders and people were grappling with issues of authority, legitimacy and power of which the most significant aspects of this governance revolution are:

- Growing demands for democracy, human rights and public participation in decision making.
- Global pressures to enhance state effectiveness to while downsizing the state.
- Loss of governing capacity in many countries.
- Diminished national policy-making emerge in the face of globalization.
- Worldwide debate about the appropriate balance between the state, civil society and the market place.

As a result state institutions have to redefine their roles and to improve performance.

He stressed that Parliament is a vital democratic institution serving as a bridge between state and society by carrying out its legislative, oversight and representative functions in way that strengthens the good governance values of accountability, transparency and participation.

He stated that balance ecology of governance demands that there should be accountability, transparency and participation, which is vital criterion for citizenship and another precondition for effective accountability.

He further illustrated that an unbalanced ecology is characterized by a state dominating both the legislature and judiciary, closed and exclusive governance and marginalised parliamentarians.

He challenged parliaments to assert their power by playing a crucial role in good governance by ensuring that state institutions are accountable, transparent and participatory in their decision making process.

Parliament should participate fully in the budgetary process with the Finance Committees to have a key role in the budget preparation and monitoring implementation. This can also be realised when the following obstacles are rectified – executive's lack of cooperation, inexperience of some Members and the inadequate research and information services for Members.

THE ROLE OF PARLIAMENT IN THE BUDGET PROCESS

The Role of Finance Committee and the Budget Cycle - The Ghanaian Experience

Presentation by Hon. Steve Arkoli, MP – Ghana

The Member started by saying that the Finance is chaired by a Chairman and a Vice-Chairman both of who are appointed by the Committee of Selection from the Majority party.

He said that in accordance with Order 169 of the Standing Orders of parliament, all bills, loans, inquiries, petitions and other matters relating to finance and the economy generally are referred to the Committee by the House for consideration and report.

Mr. Arkoli pointed out two features of the of Ghana's public finance that deserve comment. One concerns the role of Ministry of Finance (The Treasury) and the second the role of Parliament. Parliament possesses the ultimate authority in financial affairs, and its failure to act - to provide for revenue and to vote appropriations – would soon bring the machinery of state to a grinding stop. Nevertheless, in practice, the control of Parliament is more formal than real. The reasons of this condition are that Parliament's initiative in financial matters, as in other fields of study, is taken by the Executive (Cabinet) and Parliament may only criticize and attempt to alter what is proposed by Government

The Member explained that the national budget is the financial programme of the country for the fiscal year under consideration and it refers to the summary totals of appropriation, receipts, expenditures, accounts, surplus or deficit, gross and new lending, total expenditures and total budget deficit or surplus. The budget document is in a book prepared annually by the Ministry of Finance, in which the President transmits to Parliament his budget message and summarizes new legislative procedures, budget estimates and appropriation requests. Also published with the Budget documents is the budget appendix, which provides detailed estimates, explanations, and draft Appropriation Bill, Ministry by Ministry and account by account for the consideration of Parliament.

He said that the National Budget is recognized as an instrument for the effective implementation of the national development strategy. Apart from this, he pointed out that it should be said that one of the challenges of public administration is to ensure consistency in actual practice among national objectives, socio-economic development plans and budgetary support for the programmes and projects that comprise ministerial and departmental operation.

He explained that most budget activities recur annually and become known as budget process. The budget system gives meaning and direction to the process by establishing policies, procedures and other criteria for each step of the process. The demands placed on the system can best be understood by reviewing the major steps in the process. The first part of the process begins with the issuance of guidelines to Ministries, Departments and Agencies (MDAs); including District Assemblies, specifying the input requirements and expenditure ceilings. This is based on the determination of the applicable expenditure, revenue and debt ceilings. Based on the macro-economic projections based in the socio-economic development plan, these ceilings represent the

maximum expenditure for current and capital expenditure, known in MTEF language as Personnel Costs, Services and Investment Expenditure.

Revenues are projected using macro-economic models that take into account-estimated gross national product, employment, price levels and other pertinent variables related to general economic conditions. The results are cross-checked with micro-estimates prepared by the IRS, CEPS, the VAT Service with respect to revenue estimates from these agencies. Borrowings are estimated, keeping in mind the constraints imposed by the Budgetary ceilings. The completion of feasibility studies for public investment projects and their readiness for submission to institutions likewise, represent a constraint on borrowing levels for the incoming years. The projected revenues and estimated borrowing for the year constitute totality of funds available for expenditure. A series of meetings are held between the MDAs and the Ministry of Finance to explain issues and agree on micro-economic policies, indicators and expenditure levels.

However, Mr. Arkoli said that Parliament is usually not involved at this stage of the cycle. It must be noted however that the Finance Committee is increasingly getting concerned now of its non-involvement at this stage, since it is the stage that shapes the future of the economy. The national budget has major impact on the overall level of economic activity. Since it determines the circular flow of economic activity that is dependent on levels of aggregate demand in an economy, as influenced by private investment levels of exports and imports, consumer spendings and government spending and investment. The national budget also affects aggregate demand levels of inflation and what this does to investment intentions and the performance of the monetary system. It is for those reasons that in a workshop organized for the Economic Committees of Parliament and the officials of the Ministry of Finance in 1998, the most vigorous discussion and sharpest debate was aimed at semi-annual economic update and performance of the economy.

In the presentation of the Budget, known as the Financial Policy Statement, the Minister of Finance reviews the national economy and also informs the House of all tax proposals for the ensuing year. A debate ensues on the general principles underlying the Government's financial policy statement. In the meantime, the financial bills arising from the Financial Policy Statement are referred to the Finance Committee for consideration and report. Standing Order 155 provides that the Committee, just like any other Parliamentary Committee shall have such powers, rights and privileges as are vested in the High Court of Justice, enforcing the attendance of witnesses and examining them on oath; compelling the production of documents etc. Therefore, within this contest the Finance Committee examines the Financial Bills arising from the Budget statement. It makes recommendations and proposes amendments where necessary in a report to the House. On the basis of the reports, the Bills are taken through the rest of the stages by plenary. If the Committee finds that some of the Bills are urgent, warranting that they are taken through all the stages on the same day as the statement is presented, it shall so recommend in its report to the House.

Meanwhile, the estimates of the Ministries, Departments and Agencies (MDAs) are referred to the various Select Committees and the Finance Committee for consideration and report. Each Committee is expected to discuss the aspect of the Budget related to Ministry/Department or Agency for which it is responsible. At this stage, the budget estimates are subjected to critical analysis on a non-partisan basis. With this procedure, meetings are held between the Committees and the technical men of the MDAs as well

as the schedule officers of the Ministry of Finance to discuss the policy issues and also to agree on the expenditure levels. Constitutionally, Parliament cannot vary the allotment of MDAs' funds upwards because it would have to propose the source of funding for the increased expenditure and this is forbidden. Parliament can however cut expenditure and also reallocate funds to MDAs.

It must be emphasized here that the budget hearings by the Committees give MPs the opportunity to have an in-depth knowledge of the structure of the budget, the proposed programmes, the rationale for prioritization of expenditure as well as the source of revenue to meet these expenditures.

The Committees on completion of their hearings present their reports to the House for consideration and approval. The practice is that each Minister moves the motion for the approval of a specific sum of money to meet expenditure of his/her sector Ministry and presents justification thereto. This is followed by the submission of each Committee's report on each MDA, then debate ensues. After this, the Question is put on the estimates of each MDA, then the approved estimates are collated for the drafting of the Appropriation Bill, which is presented to the House by the Minister of Finance.

Once the Appropriation Bill has been passed it is the constitutional duty of Parliament through the Finance Committee and the Select Committees and the Public Accounts Committee to monitor the expenditure patterns to ensure that spending is in conformity with stated Government goals and objectives. To this end the Finance Committee and for that matter Parliament is expected to be availed of the mid-year review of the state of the economy for scrutiny. Quarterly performance reports of MDAs are also supposed to be presented to the Finance Committee and the respective subject matter Committees for scrutiny.

As described above and in line with improvements being observed in its procedures' in 1998 for example at the workshop at which the Finance Committee interacted with the Ministry in November before the finalization of the 1999 budget, the Finance Committee pulled together a full compendium of all the motions moved in thirteen parliamentary committees with respect to 1998 budget, presenting this as the backdrop for a wide-ranging review of relations between MPs and the executive. This was in real sense, a direct effort at assessing and implementing accountability for the Ministry of Finance.

The Budget Process: The South African Experience

Mr. Warren Krafchik – International Budget Project

Mr. Russel Andrew Wildeman
Budget Information Services (BIS) IDASA, South Africa

Mr. Krafchik stated that whereas the budget process was restricted to well-endowed interest groups i.e. private sector in the apartheid system, budget preparation in the independent South Africa is meant to address inadequacies in the new South African Society.

The budget making has constitutional backing and 55% of the budget is legally allocated for delivery of social services in the provinces. To address social inequality which had bedeviled South Africa in the past, the independent constitution created Finance and

Fiscal Commission whose main function is advise parliament on the division of revenue to the National and provincial governments. The Commission provides avenues to all stakeholders to make proposals and participate in budget making.

The Commission has broadened Members' view of the budget making and has tremendously improved Members' input in the budget. Coupled with the Finance and Fiscal Commission are the research facilities for the Members which are guaranteed by the Constitution.

Mr. Wildeman stated that Medium Term Expenditure Framework (MTEF) focuses on medium term planning instead of annualized planning. MTEF also encompasses decentralized planning and has output indicators on the implementation of the budget.

During the draft stage of the budget in South Africa, provision has been made for early input by Committees through the summons of relevant departments and reports made thereof.

Lack of input by Parliament in the preparation of the budget in Kenya has raised concern among the MPs who now feel they are used for rubber stamping the executive proposals and decision.

After the presentation of the budget, the Finance Committee in South Africa is allocated seven days for open hearings. The hearing days allow the public and any other interested parties to make suggestions on the budget proposals.

Mr. Wildeman noted that the following shortfalls bedevil budget execution in South Africa.

- (a) Lack of common language of budget presentation between the Legislative and the Executive. Most members of parliament find it difficult to comprehend economic and fiscal terminology used in the budget presentation. This largely contributes to their lack of contribution and interest in the budget debate.
- (b) Lack of adequate research facilities. This has led to outstanding of research works from bodies outside the Legislature.
- (c) Timing of the Budget proposals – Parliament should be given adequate time to study the budget in order for Members to make meaningful contributions.
- (d) Lack of amendment powers on the budget, especially on taxation has made Members to lose morale on the entire budget process.

The Budget Process: The Western Cape Provincial Parliament Experience

Ms. Tasneem Essop, MPP and Chairperson, Association of Public Accounts Committees (APAC)

Ms. Tasneem Essop, MPP stressed that Members should keep asking questions all the concerned authorities in order to uncover information contained in the budget preparations with a view to ensuring effective delivery of service.

She called for active participation by Departmental Committees on the budgetary matters and advised that good relations with government departments should be promoted, as adversarial relations will result in inadequate achievements.

The meeting heard that there was need to revise the budget format and in particular the legislative provisions and Standing Orders in order to promote basic systems for analyzing the budget.

For the recently introduced MTEF, she counselled that Members should be keen on performance indicators to be able to appraise the outcomes of the budget and the way forward for better delivery of services.

HOLDING GOVERNMENT ACCOUNTABLE

Parliamentary Accountability and Oversight: The Case of Kenya

Presentation by Hon. Musikari Kombo, MP
Kenya National Assembly

Hon. Musikari Kombo, MP pointed out that Parliaments throughout the democratic world are engaged in making laws and polices, providing funds to carry them out and overseeing how well these are implemented.

In Kenya, we have had a parliamentary democracy since independence in 1963. But for long periods, the executive has always had excessive powers over the Legislature and the Judiciary.

The House plays its accountability and oversight roles through a number of ways, for instance through motions, questions and its various Committees.

He pointed out that the implementation of the recommendations of Committees has always been the weakest link in the chain. It is like the executive just uses these Committees to relieve public pressure on it and then ignores their reports. It is like Parliament has its say but at the end of it all, the executive has its way.

On Departmental Committees, he said that there has been a dramatic change in the role of Parliament in public affairs since 1999 when eight Departmental Committees became active. This followed a tour of Canada by Members to observe how similar team there work.

These Committees are:

1. Agriculture, Lands and Natural Resources
2. Energy, Communications and Public Works
3. Education, Research and Technology
4. Health, Housing, Labour and Social Welfare
5. Administration, National Security and Local Authorities
6. Finance, Planning and Trade
7. Administration of Justice and Legal Affairs
8. Defense and Foreign Relations

Unlike the watchdog Committees which examine overall government expenditure and investment, the Departmental Committees deal with specific government departments and ministries. They also scrutinise and review all legislation after First Reading, of course with the exemption under Standing Order 101A(4).

Because they have powers to summon Ministers and chief executives of government corporations before them, these Committees are playing an increasing role in instilling discipline in the management of public affairs. In fact they have the capacity to prevent mismanagement of public funds before it happens and thus are useful in the fight against corruption.

On the whole, therefore, they have made Parliament's supervisory role more powerful and defined. Through hearings, field trips and investigations, they inquire into how

effectively the executive branch is implementing policies which Parliament has passed and provided funding for.

He pointed out that one of the biggest problem of Committees is lack of adequate information to perform their roles. This problem is made worse by the that fact the executive branch normally enjoys superior access to information and often has incentives not to share that knowledge, especially if it reflects poorly on the executive.

The Oversight Committees have no doubt helped to make Parliament more powerful and responsive to the needs of the nation and the people. But they can still be made better.

He stated that the law be changed so that Committees not only comment on appointments but have the power to vet and approve appointments in their specific areas.

THE IMPORTANCE OF PUBLIC ACCOUNTS COMMITTEE

Ms. Tasneem Essop, MPP and Chairperson, Association of Public Accounts Committees (APAC)

Public Accounts Committee (PAC) basically examines the accounts of the government Ministries/Departments and reports on them. While in some Parliaments, the PAC may initiate an inquiry others may not.

Other than examining the accounts of the government, the Committee should also concern itself with change in the basic financial systems for better delivery of service to the public and minimal wastage of resources.

Where legislation has spelt out penalties and/or sanctions for officials who breach financial regulations and policies, the Committees have been efficient in performance of duties. This is the case with South Africa, where the Public Finance Management Act provides for proper management of public resources and sanctions for violation of same.

In order for PAC to be effective in its oversight role, the following conditions should prevail:

- (i) There should be strong media to highlight the Committee's reports.
- (ii) There should be active civil society which will ensure that weaknesses are identified and put pressure on the government to implement recommendations.
- (iii) There should be networking with Committees in other Parliaments in order to develop new basic financial systems and share experience on how to fight financial malpractices.
- (iv) Submission of accounts should be timely and sanctions should be provided for any delay.
- (v) The Committee should have a strong Chair, well trained staff including researchers and be open to the public.

WRAP UP

The Workshop resolved that in order to strengthen accountability and oversight of Parliamentary Committees, the following steps must be taken:

(i) Concrete measures including formation of implementation Committees should be taken to ensure that recommendations made by Parliamentary Committees are implemented.

(ii) Access to information from the Executive should be facilitated including engagement of researchers.

(iii) Capacity building for Members and members of staff should be facilitated.

(iv) The Committees should be encouraged to be proactive and deal with current issues.

LIST OF PARTICIPANTS

Members of Parliament

Public Accounts Committee

1. Hon. Mwai Kibaki, M.P. - Chairman
2. Hon. Samuel L. Poghiso, M.P.
3. Hon. Eric T. Morogo, M.P.
4. Hon. Raphael K. Arap Kitur, M.P.
5. Hon. (Col.) (Rtd.) Ronald J. Kiluta, M.P.
6. Hon. Adan M. Noor, M.P.
7. Hon. Capt. (Rtd.) E. M. Ntwiga, M.P.
8. Hon. David Mwiraria, M.P.
9. Hon. Joshua O. Ojodeh, M.P.
10. Hon. B. S. Wanjala, M.P.
11. Hon. Beth W. Mugo, M.P.

Public Investments Committee

12. Hon. Ochillo Ayacko, M.P. - Chairman
13. Hon. Mwangi Githiomi, M.P.
14. Hon. Abubakar A. M. Badawy, M.P.
15. Hon. Sayyid M. Amin, M.P.
16. Hon. David N. Kombe, M.P.
17. Hon. Isaack I. Shaban, M.P.
18. Hon. Geoffrey M. Parpai, M.P.
19. Hon. Wafula Wamunyinyi, M.P.
20. Hon. John M. Katuku, M.P.
21. Hon. Grace M. Mwewa, M.P.
22. Hon. Justin B. N. Muturi, M.P.

Departmental Committee on Finance, Planning and Trade

23. Hon. S. M. Mkalla, M.P. - Chairman
24. Hon. Jimmy Angwenyi, M.P.
25. Hon. Mohamed A. Galgallo, M.P.
26. Hon. Peter O. Odoyo, M.P.
27. Hon. Soita P. Shitanda, M.P.
28. Hon. Onesmus M. Mboko, M.P.
29. Hon. Adan W. Keynan, M.P.
30. Hon. David Mwiraria, M.P.
31. Hon. Samuel K. Kiminza, M.P.
32. Hon. Adan M. Noor, M.P.
33. Hon. John N. Michuki, M.P.

Host/Presiding Officer

- Hon. K. F. X. Ole Kaparo, M.P. Speaker of the National Assembly
Hon. J. H. O. Omino, M.P. Deputy Speaker

Resource Persons

Ms. Tasneem Essop, MPP,
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Hon. Steve Akorli, MP,
Parliament of Ghana.

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| 4. | Ms. C. M. Mwambua | - | Ag. Principal Clerk Assistant |
| 5. | Mr. Michael R. Sialai | - | Clerk Assistant I |
| 6. | Mr. Andrew M. Mwendwa | - | Clerk Assistant II |
| 7. | Mr. David K. Ziah | - | Clerk Assistant II |
| 8. | Ms. Mary J. Chesire | - | Clerk Assistant III |
| 9. | Mrs. S. M. Kioko | - | Clerk Assistant III |
| 10. | Mrs. Florence Abonyo | - | Clerk Assistant III |

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| 3. | Mrs. A. Nanyama | - | Secretariat |

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