

Kenya's Legislative Quagmire in Attaining Sustainable Development Goal 1

Introduction

The social pillar of the Government of Kenya's long-term economic blueprint – Vision 2030 – underscores the Government's commitment to eliminate poverty by 2030. To this end, the **Poverty Eradication Authority Bill (No. 13 of 2020)** was published on May 22nd 2020 (the "Bill") to provide an institutional framework which ensures the participation of all Kenyans in poverty reduction and economic growth. The Bill also aims to provide a coordinated national economic empowerment and poverty eradication agenda ensuring inclusive economic growth and good governance in Kenya. Further, the Bill seeks to establish mechanisms to support sustained long-term reduction of poverty in Kenya.

The Bill proposes to establish a Poverty Eradication Fund which would consolidate four existing funds including the Youth Enterprise Development Fund established under the Youth Enterprise Development Fund Order, 2007 (the "Youth Fund"), the Youth Employment and Enterprise Fund established under the Public Finance Management (Uwezo Fund) Regulations 2014 (the "Uwezo Fund"); the Women Enterprise Fund established under the Government Financial Management (Women Enterprise Fund) Regulations, 2007 (the "Women Fund"); and the National Government Affirmative Action Fund established under the Public Finance Management (National Government Affirmative Action Fund) Regulations of 2016 (the "Affirmative Action Fund").

Previous Efforts to Merge the Funds

In 2019, the Government of Kenya had sought to establish the Biashara Kenya Fund through the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 published as Legal Notice 78/2019 on June 13th, 2019. As with the Poverty Eradication Fund, the Biashara Kenya Fund was intended to collapse the Uwezo, Women and Youth Funds. The Biashara Fund Regulations list their objectives as, amongst other things, the expansion of access of finances in promotion of women, youth and persons with disability enterprises or groups and micro, small and medium enterprises or groups and MSMEs for economic growth towards the realisation of the goals of Vision 2030.

All amounts remaining in the three funds were to be paid into the National Exchequer Account for the credit of the national government and any outstanding loans between the fund beneficiaries and the fund would convert into loans between the Biashara Fund Kenya and the beneficiary. Simultaneously, the Youth Enterprise Fund, the Uwezo Fund, and the Women Enterprise Fund were purported to be wound down on May 31st, 2019 vide various revocation regulations promulgated under the Public Finance Management Act.

While the different versions of Bills, Regulations and Acts of Parliament litter the legislative landscape, the clock continues to tick in the race to achieve Sustainable Development Goal 1 and end poverty in all its forms everywhere.

As part of the winding up process, the employees serving in the respective funds were to be given the option of serving in the Biashara Kenya Fund or be redeployed in the public service. It is notable that, unlike the Poverty Eradication Bill, the Biashara Fund Regulations did not seek to fold the Affirmative Action Fund which women, youth, persons with disabilities, children and the elderly as may be organised into a savings and credit co-operative or similar organisation.

The efforts to operationalise the Biashara Fund Kenya fizzled when the Parliamentary Committee on Delegated Legislation challenged the implementation of the Fund in its report dated July 25th, 2019. The Committee observed that the Biashara Fund Regulations ought to have been made through a substantive Act of Parliament instead of through regulations under the Public Finance Management Act so as to facilitate the implementation of a legal framework for the management, control, regulation and operations of a policy matter. For these and other reasons, the Committee recommended the annulment of the Regulations that sought to revoke the existence of the three funds.

To further obfuscate matters, the Kenya Uwezo Fund Bill, No. 42 of 2019 was published on June 17th 2019 – a mere three days after the publication of the Biashara Fund Regulations. The Uwezo Bill had the similar objective of consolidating the Uwezo, Women and Youth funds into a single fund but did not progress beyond the first parliamentary reading.

It is against this background that the Poverty Eradication Authority Bill seeks to establish the Poverty Eradication Authority under a substantive Act of Parliament as recommended by the Committee.

Defining Poverty

Section 2 of the Poverty Eradication Bill defines “Poverty” as the “...inadequacy of income and deprivation of basic needs and rights”.

While this definition does not elucidate what constitutes “basic needs and rights”, guidance may be drawn from the Kenya National Bureau of Standards *Basic Report on Well-being In Kenya, March 2018*, (the KNBS Report).

The Report categorized poverty into three broad groups with the poverty line drawn at Ksh 5,995 (approximately US\$60) per adult per month or US\$1,90 per day.

Based on the KNBS Report, *Food Poor* households are those whose adult equivalent food consumption expenditure per person per month fell below Ksh 1,954

in rural areas and Ksh 2,551 in urban areas. *Overall Poor* households are those whose overall consumption expenditure fell below Ksh 3,252 and Ksh 5,995 in rural and urban areas, respectively, per person per month. Finally, *Hard-Core / Extreme Poor* households are those that cannot not afford to meet their basic food requirements with all their total expenditure (food and non-food).

What Percentage of Kenyans are classified as poor?

According to the KNBS Report, while the welfare of Kenyans had shown significant improvement since 2005, there remained 16.4 Million citizens in 2015/16 that were deemed to be living below the poverty line.

The percentage of Food Poor Kenyans was estimated at approximately 32% of the Kenyan population while the Hard Core Poor Kenyans constituted approximately 8.6% of the population with 15% of these being in Turkana County. Overall, 84% of the total hard-core poor are found in rural Kenya.

What is the Poverty Eradication Authority’s Mandate?

It is envisaged that the Authority will, amongst other things, formulate a national poverty eradication plan which would be reviewed every five years, and coordinate with governmental and non-governmental actors in undertaking poverty eradication programmes. The Authority will also advise both national and county governments on poverty alleviation programmes as well as promote research on poverty reduction while fostering innovative and entrepreneurial initiatives on poverty reduction.

The Authority is also empowered to review all poverty alleviation programmes in the country, conduct assessments of the programmes implemented and prepare reports for both levels of government, as well as set targets for poverty reduction for both national and county governments.

The Authority is also expected to act as Trustee of money and other property vested in it and use such property in a manner that promotes the purposes of the Authority, receive any grants, gifts, donations or endowments and make legitimate disbursements. Finally the Authority will be required to relate with CBOs, NGOs, donor agencies and other major stakeholders in order to facilitate the development of their capabilities.

What is the Scope of the Poverty Eradication Fund?

The Poverty Eradication Fund is established under Section 27 of the Bill and while it is not explicitly stated what the Funds should be utilised for, this can be inferred from the powers of the Authority which include acting “...as Trustee of money and other property vested in it and use such property in a manner that promotes the purposes of the Authority, receive any grants, gifts, donations or endowments and make legitimate disbursements.”

It is therefore presumed that the intention is to utilise a significant portion of the Fund towards legitimate disbursements. Unlike other enabling legislation for similar funds, the Bill does not address whether the Fund will lend directly to targeted beneficiaries or lend to financial intermediaries for on-lending and it is hoped that this will be clarified in subsequent versions of the Bill.

How will the Poverty Eradication Fund be Capitalised?

The Second Schedule of the Bill provides that the initial capital of the Fund shall be the consolidated funds of Uwezo Fund, the Youth Fund and the Women Enterprise Fund. As noted at the outset, the Bill seeks to revoke the regulations establishing the Affirmative Action Fund but fails to allocate its monies to the Poverty Eradication Fund.

Kenya’s Budget Statement for the FY 2020/2021 delivered on June 11th, 2020, allocated monies to the four funds as follows:

- Kes 359 Million to the Youth Fund;
- Kes 82 Million to the Uwezo Fund;
- Kes 150 Million to the Women Fund; and
- Kes 2,1 Billion to the Affirmative Action Fund.

It would therefore be expected that the above allocations totalling close to Kes 2,7 Billion would be transferred to the Poverty Eradication Fund if the enabling legislation were passed in the course of the coming financial year.

What other recent initiatives have been in place?

Other notable measures include the budgetary allocation of Kes 2,1 Billion towards the Kenya Youth Empowerment Project for the upcoming financial year.

The Project is a joint initiative of the Government and the World Bank to increase access to youth-targeted temporary employment programmes and to improve youth employability with one of the components of the programme being to finance labour-intensive projects that provide income opportunities to participating youth.

It is also notable that SME Credit Guarantee Scheme has now been allocated Kes 3 Billion to operationalise the Scheme. This aimed at de-risking lending to MSMEs and enable the provision of affordable credit in an efficient and structured manner.

Equalisation Fund Bill, No. 43 of 2019 published on June 18th, 2019 seeks to create a framework for the administration of the Equalisation Fund established under Article 204 of the Constitution of Kenya financed with 0.5% of all revenue collected by the national government and targeted at marginalised communities which have historically been unable to fully participate in the integrated social and economic life of Kenya as a whole.

Finally, other statutory instruments such as the Energy Act, 2019 and the Mining Act 2016 envisage that private sector earnings in the form of royalties should be payable to the communities where the activities occur. These include 5% of geothermal royalties and 10% of mining royalties under the Energy Act and Mining Act respectively.

While the different versions of Bills, Regulations and Acts of Parliament litter the legislative landscape, the clock continues to tick in the race to achieve Sustainable Development Goal 1 and end poverty in all its forms everywhere. It is therefore hoped that these myriad initiatives will eventually converge into a decisively coherent framework and begin to yield tangible results towards for Kenyans.

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