

Budget Deficits in Kenya: The Impact of Foreign aid on Sovereignty

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‘The best way of learning to be an independent sovereign state is to be an independent sovereign state’¹

Abstract

A national budget needs funding with the sources being either domestic or foreign. Foreign sources of funding seem to dominate the Kenyan context. This paper argues that a country with a national budget dependent on foreign aid can be held hostage by the holders of the purse strings. Further, that this dependency has a negative impact on Kenya’s economic sovereignty. It is this impact that is of relevance to this paper. In this spirit the paper critically analyses Kenya’s borrowing trend with a special focus on foreign aid, defines by use of a working definition the importance of economic sovereignty, explores how this borrowing trend affects Kenya’s economic sovereignty and offers solutions on regaining of Kenya’s economic sovereignty.

Keywords: foreign aid, budget deficits and economic sovereignty.

I. Introduction

Kenya, like most nations in the world, has a promulgated national budget. The ability to manage foreign aid is linked to the management of the economy as a whole. The budget thus is intrinsically interwoven with foreign aid. The Constitution of Kenya provides broad principles of public finance² with the Public

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¹ Freeman I, *Seeds of revolution: A collection of axioms, passages and proverbs Volume 1*, iUniverse, Bloomington, 2014, 544.

² Chapter 12, *Constitution of Kenya* (2010).

Finance Management Act³ setting out the rules of how the National and County Governments can raise and spend money. This acts as a guide to the budget making process in Kenya. It should be noted that the budget is not merely a list of government's expenditure but the government's national economic policy document for the next financial year.⁴ The document puts forward what the government expects for the following financial year in terms of expenditure on its economic projects and social programmes and how to raise the money needed to fund all these.⁵

Of special interest to this paper is how the government is able to finance the budget and how it is able to meet the budget deficit.⁶ This paper begins by studying foreign aid in Kenya by developing a working definition of foreign aid. It then traces Kenya's history with foreign aid in a bid to examine the state of our national debts. By defining foreign aid and studying the apparent borrowing trend, section 4 of the paper seeks to explore the extent of reliance placed on foreign aid and the reasons behind this reliance. It is after this discussion that section 5 defines economic sovereignty. This leads to a difficult question, analysed in section 6; does our borrowing affect our economic sovereignty? Ultimately, this paper assesses whether the 'sovereign republic of Kenya' is truly as sovereign as it claims to be and proposes recommendations to that effect.

II. Foreign Aid Defined

It would be rather suicidal for this paper to fail to define foreign aid for it is on the grounds of this definition that the paper lays out its case. Given the context of this paper, the writer seeks to develop a working definition by combining concessional loans, foreign direct investments, donor aid, bonds and, grants for the reason that all are resources that flow into a country irrespective of whether they are paid or not.⁷

³ *Public Finance Management Act* (Act No 18 of 2012).

⁴ Riro J, 'Kenya Budget 2014/2015: Why you should read it', Fie Consult, 11 June 2014 – <<https://fieconsult.wordpress.com/2014/06/11/kenya-budget-20142015-why-you-should-read-it/>> on 2 February 2016.

⁵ Riro J, 'Kenya Budget 2014/2015: Why you should read it' – <<https://fieconsult.wordpress.com/2014/06/11/kenya-budget-20142015-why-you-should-read-it/>> on 2 February 2016.

⁶ Black J, Hashimzade N, Myles G, *A Dictionary of Economics*, 4ed, Oxford University Press, Oxford, 2012.

⁷ Traditionally the analysis of foreign aid has always used official development data (ODA) which measures the aid flows that arrive in a recipient country irrespective of whether a part, if any, is to

The standard definition of foreign aid comes from the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD), which defines foreign aid as financial flows, technical assistance, and commodities that are designed to promote economic development and welfare as their main objective (thus excluding aid for military or other non-development purposes) and provided as either grants or subsidized loans.⁸

Foreign aid therefore has three essential elements; it is developmental or charitable, is non-commercial and lastly it is concessional.⁹ This explains why loans are treated as foreign aid if they contain a 'growth element'.¹⁰ In the main, foreign aid is divided into three categories; emergency aid/calamity aid, concessional loans and grants.¹¹ Emergency aid is that which is mobilized in response to calamities.¹² Concessional loans, also known as soft loans, are those that have no interest or are below the market rate of interest and have typically longer grace periods.¹³ Grants are financial awards given by a state or local government that the grantor does not expect to be repaid.¹⁴

Foreign aid can further be categorized according to the parties involved: bilateral aid and multilateral aid. Bilateral aid refers to aid from one single government to another government while multilateral aid is aid provided by a group of countries or an institution representing a group of countries such as the World Bank.¹⁵

Foreign direct investments are best defined as investments made by a company or individual in one country in business interests in another country, in the form of either establishing business operations or acquiring business assets in the other country, such as ownership or controlling interest in a foreign com-

be repaid. See more here: Djankov S, Montalvo J, Reynal-Querol M, 'The curse of aid' The World Bank (2005), 5.

⁸ Radelet S, 'A primer on foreign aid' *Center for Global Development, Working Paper 92*, (2006), 5.

⁹ Kumar M, 'Foreign aid: Meaning and types' Economics discussion, 2015, – <<http://www.economicdiscussion.net/foreign-aid/foreign-aid-meaning-and-types/11832>> on 17 July 2016.

¹⁰ Kumar M, 'Foreign aid: Meaning and types' – <<http://www.economicdiscussion.net/foreign-aid/foreign-aid-meaning-and-types/11832>> on 17 July 2016.

¹¹ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, Vancouver: Douglas & McIntyre, Vancouver, 2009, 14.

¹² Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 14.

¹³ Investopedia, 'Definition of soft loan' – <<http://www.investopedia.com/terms/s/softloan.asp>> on 17 July 2016.

¹⁴ Investopedia, 'Definition of government grant' – <<http://www.investopedia.com/terms/g/government-grant.asp>> on 17 July 2016.

¹⁵ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 14. See more here: Radelet S, 'A primer on foreign aid' *Center for Global development* (2006), 5.

pany.¹⁶ A local example would be China's state-controlled Jichuan group that purchased a 20 percent stake in Tiomin Kenya operating in the mining sector.¹⁷

A bond is a debt investment in which an investor lends money to an entity (typically a government), which borrows the funds for a defined period of time at a variable or fixed interest rate.¹⁸ A brief explanation of how it works is as follows: a sovereign country must first acquire a reputable rating that will guide the potential investors on the risk involved.¹⁹ The country must then attract potential investors, that is, those who are willing to lend it money.²⁰ Finally the country needs to make a compelling case on its credibility and intention to pay after finalizing on the loan terms agreed upon such as the length and maturity of bonds, cost and the currency that will be used.²¹ On completion of this, the Government is able to secure a bond. A local illustration would be the Eurobond,²² in which Kenya managed to raise 250 billion Ksh, described as the biggest bond ever issued by an African country with the exception of South Africa.

Bearing this in mind, a succinct definition of 'foreign aid' would therefore be: *the transfer of goods, established interests, technical and financial assistance from one entity to a sovereign state regardless of whether it is paid or not.*

III. Kenya's History with Foreign Aid: The Fiscal Calamity that is Our Budget Deficits and National Debts

'Our ignorance of history causes us to slander our times'.²³ It is with this in mind that this section seeks to delve into the history of Kenya and foreign aid.

¹⁶ Investopedia, 'Definition of foreign direct investment' – <<http://www.investopedia.com/terms/f/fdi.asp>> on 17 July 2016.

¹⁷ Mounde A, 'Chinese premier's visit heralds' good tidings, but all that glitters is not gold' Daily Nation, 8 May 2014 – <<http://www.nation.co.ke/oped/Letters/Chinese-premier-s-visit-heralds-good-tidings-/440806-2308168-o5q4kp/index.html>> on 18 July 2016.

¹⁸ Definition of bond, – <<http://www.investopedia.com/terms/b/bond.asp>> on 10 August 2016.

¹⁹ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 61.

²⁰ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 61.

²¹ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 61.

²² The term Eurobond is a misnomer that can be misleading as it has nothing to do with Europe or its currency but is a bond issued in a currency other than that of the country issued. In this instance the government through Central Bank of Kenya (CBK) gave the private investors a 'piece of paper' called bond, in exchange for assurance on the payment of the \$2 billion cash together with interest once it matures at the Irish Stock Market. See also: Ndii D, 'Eurobond billions: Curious incident of a dog in the night-time' Daily Nation, 4 December 2015.

²³ A quote attributed to Gustave Flaubert found in a letter to Georges Sand, 8 September 1871. See more here: Letters CLI-CC – <<http://www.online-literature.com/gustave-flaubert/sand-flaubert-letters/4/>> on 1 August 2016.

This history is of essence, as it will enable us to trace if there is indeed a trend of debt. The term ‘budget deficit’, as on numerous accounts referred to in this paper, means the excess of a government’s total expenditure over its income, which has to be met by borrowing thus increasing the government’s debt.²⁴

Around 1980, foreign aid began to have a resounding force in Kenya.²⁵ With the rise of the Cold War, the western alliances were keen to establish their influence by resorting to the use of foreign aid as an influential bargaining tool.²⁶ The year 1980 marked a grave economic crisis in Kenya with a huge government deficit, a fall in the prices of coffee and an increase in the price of oil.²⁷ It was therefore no surprise when the government right off the reel resorted to foreign aid to try and salvage the frail economy.²⁸ The effects of this would be far reaching, as the debt would have to be repaid. It is imperative to note that the foreign aid enabled the government to maintain the façade of a strong and healthy economy so as to avoid diminution of power. This move proved to be ineffective as it led to further political woes given that economic fragility was inextricably linked to political fragility.²⁹ President Moi’s administration desperately turned to the International Monetary Fund.³⁰ In addition to several bilateral grants and loans, the IMF provided Kenya with a \$700 million loan.³¹

Kenya’s political woes steadily increased after the attempted coup in 1982 with President Moi tightening his authoritarian reigns.³² The rigging of the 1988 general elections³³ caused a lot of political turbulence with the opposition blam-

²⁴ Black J, Hashimzade N and Myles G, *A Dictionary of Economics*, 4ed, Oxford University Press, Oxford, 2012.

²⁵ Bakke E, ‘Foreign aid to Kenya’ Harvard Model Congress, San Francisco, 2015, 2.

²⁶ Bakke E, ‘Foreign aid to Kenya’ 2.

²⁷ Kenya’s financial turmoil journey is traced back to 1974 where Kenya began having major payment difficulties. Bakke E, ‘Foreign aid to Kenya’ 2.

²⁸ Bakke E, ‘Foreign aid to Kenya’ 2.

²⁹ It is paramount to note that the guise did not permanently work out its effects triggering the 1982 attempted coup. One of the reasons for the uprising was the economic woes due to corruption and mismanagement. See more here: ‘President of Kenya announces crushing of the attempted coup’ The New York Times, 2 August 1982 – <<http://www.nytimes.com/1982/08/02/world/president-of-kenya-announces-crushing-of-attempted-coup.html?pagewanted=all>> on 3 August 2016.

³⁰ Bakke E, ‘Foreign aid to Kenya’ 2.

³¹ Bakke E, ‘Foreign aid to Kenya’ 2.

³² Cheeseman N and Branch D, ‘From cold war to M-Pesa, events that shaped our history’ Daily Nation, 13 May 2013.

³³ The blatant rigging by the government prompted contemptuous comments such as the one famously uttered by the then infuriated Vice President Mwai Kibaki. ‘*Even rigging requires some level of intelligence*’. See here: Omari E, Controversial queue-voting planted the seeds of dissent, Daily Nation, 1 September 2014.

ing the government of being belligerent.³⁴ The *saba saba* protesters were shamefully dispersed with the government attempting to quell the opposition.³⁵ In addition, ethnic clashes during the 1992 and 1997 elections, which were allegedly instigated by Kenya African National Union supporters (the ruling party at the time), led to further resentment.³⁶ All this, together with the repeal of Section 2A, cumulatively led to the return of competitive politics.³⁷ Owing to the dearth of money needed to fund the election campaigns, Kenya resorted to begging for more aid.³⁸ The West was reluctant to grant aid due to the political turmoil with the Moi administration resorting to hiring a lobby firm, allegedly paying nearly Ksh 200 million so as to improve Kenya's image abroad.³⁹ A year later, Kenya would soon restore its relations, and continue to receive foreign aid.⁴⁰ Perhaps in hindsight, this is what set the pace for government borrowing.

Twenty four years later, President Moi conceded to Mwai Kibaki. With the new regime came renewed hope.⁴¹ There were novel pledges of an effective economic recovery programme that sought to step up the fight against increased unemployment.⁴² Indeed, there was economic growth with Kenya recording an average growth rate of 7.1 percent during Kibaki's term.⁴³ Foreign aid also increased in equal measure with the United States granting a weighty portion of the 5 billion dollar fund to Kenya.⁴⁴ In addition, Kenya received 100 million dollars for the Overseas Contingency Operation, as part of the global war on terror.⁴⁵ It was therefore hardly a surprise that the public debt stood at Ksh 1.1 trillion in June 2010.⁴⁶

³⁴ The government was held culpable of the many political assassinations, with special attention to the death of Robert Ouko, a prominent minister whose cause of death was pathetically scripted by the government. See here: Otieno D, Moses Njue: The ex-state pathologist whose truth cost him a job and helped win it back, Daily Nation, 28 April 2015.

³⁵ Cheeseman N and Branch D, 'From cold war to M-Pesa, events that shaped our history' Daily Nation.

³⁶ Cheeseman N and Branch D, 'From cold war to M-Pesa, events that shaped our history' Daily Nation.

³⁷ Cheeseman N and Branch D, 'From cold war to M-Pesa, events that shaped our history' Daily Nation.

³⁸ Cheeseman N and Branch D, 'From cold war to M-Pesa, events that shaped our history' Daily Nation.

³⁹ Kelly K, Trump chief campaigner lobbied for Moi government in US, Daily Nation, 4 August 2016.

⁴⁰ Kelly K, Trump chief campaigner lobbied for Moi government in US, Daily Nation.

⁴¹ Shaping change- strategies of development and transformation, – <<http://bti2006.bertelsmann-transformation-index.de/73.0.html?L=1>> on 11 August 2016.

⁴² Shaping change- strategies of development and transformation, – <<http://bti2006.bertelsmann-transformation-index.de/73.0.html?L=1>> on 11 August 2016.

⁴³ Bakke E, 'Foreign aid to Kenya' 4.

⁴⁴ Bakke E, 'Foreign aid to Kenya' 4.

⁴⁵ Bakke E, 'Foreign aid to Kenya' 4.

⁴⁶ Kariuki J, 'A third of public revenue goes to pay off debt, experts say' Daily Nation, 12 November 2015.

In the fiscal year 2015/2016,⁴⁷ Kenya unveiled her most ambitious national budget yet which stood at Ksh 2.2 trillion on 11 June 2015.⁴⁸ This budget was nearly 30 percent more than that of the previous year (2014/2015),⁴⁹ which was 1.7 trillion.⁵⁰

In the 2014/ 2015 budget the government aimed to raise Ksh 1.18 trillion in revenues locally through taxes and non-tax revenues so as to finance 69.4 percent of the budget.⁵¹ Simple calculation would reveal that this meant the government would be left to cater for the 30.6 percent.⁵² The total expenditure net worth at the time of the budget reading was estimated to reach Ksh 1,581 billion.⁵³

The authenticity of these numbers is an issue that this paper would not like to dwell on.⁵⁴ Of key interest is the caveat that was issued by John Mbadia, a member of the parliamentary Budget and Appropriations Committee concerning the government's plausible argument which this paper will briefly examine, 'In coming up with the revenue collection target, the government expects the general economy to grow by 7 per cent or more, but this is not possible because of the current harsh economic conditions partly caused by insecurity'.⁵⁵

Judging from the failure of Kenya Revenue Authority (KRA) to meet its projected revenue target collection of Ksh 881 billion, experts predicted an even tougher financial year with the two main foreign exchange earners; tourism and agriculture facing harsh economic conditions.⁵⁶ The government expected the growth rate to increase from 5.8 percent to 6.4 percent in 2014.⁵⁷ True to the analysts' prediction the economy grew by only 5.3 percent⁵⁸ causing an increase in the public debt and budget deficit. In its monthly economic review for December 2014, the Central Bank of Kenya (CBK) stated that the total external debt owed by the central government was Ksh 1.13 trillion, which had increased by Ksh. 84.6 billion, and had been largely driven by exchange rate revaluations

⁴⁷ Which is of interest as the paper was written and compiled between January and August 2016.

⁴⁸ Budget statement for the Fiscal Year 2015/ 2016 for the National Treasury on 11 June 2015.

⁴⁹ Budget statement for the Fiscal Year 2014/ 2015 for the National Treasury on 11 June 2014.

⁵⁰ Budget statement for the Fiscal Year 2014/ 2015 for the National Treasury on 11 June 2014.

⁵¹ Budget statement for the Fiscal Year 2014/ 2015 for the National Treasury on 11 June 2014, para 54.

⁵² Budget statement for the Fiscal Year 2014/ 2015 for the National Treasury on 11 June 2014, para 62.

⁵³ Budget statement for the Fiscal Year 2014/ 2015 for the National Treasury on 11 June 2014, para 57.

⁵⁴ It is in the best interest of this paper to concentrate not on the numbers but the trend.

⁵⁵ Otieno J, 'How will Kenya finance its \$20 billion budget?' *The East African*, 14 June 2014.

⁵⁶ Otieno J, 'How will Kenya finance its \$20 billion budget?' *The East African*.

⁵⁷ Otieno J, 'How will Kenya finance its \$20 billion budget?' *The East African*.

⁵⁸ The World Bank website – <<http://www.worldbank.org/en/country/kenya/overview>> on 6 February 2016.

due to the depreciation⁵⁹ of the Kenyan shilling against the dollar.⁶⁰ It was in the same fiscal year that Kenya borrowed Ksh 327 billion from China to build the Standard Gauge Railway and reopened a successful Eurobond⁶¹ It had in June, that same year, successfully raised Ksh 175 billion through a Eurobond sale.⁶² It is pertinent to note that of the Ksh 175 billion, Ksh 53.2 billion was used to pay off a syndicate loan that was due in August⁶³ in what this paper considers the ‘vicious cycle of borrowing’: the use of borrowed money to fill in a financial chasm.⁶⁴

Foreign direct investments by countries have also been on a steadfast increase with countries such as China and United States seemingly competing.⁶⁵ It was therefore rightfully suspected that President Obama’s visit was incidental to his mission. These claims would soon prove to be more than true.⁶⁶ Agreements totalling to about Ksh. 1.2 trillion were struck meaning that American investors would have a stake in the Lamu Port, an oil pipeline, power plants, urban commuter trains, highways and various projects in the health and tourism sector.⁶⁷ China was quick to reassert itself with a gift of Ksh. 1.8 billion to refurbish Kasarani stadium.⁶⁸ The power play between countries is one that prompts the question: what do the countries have to gain from their investments?

Although later on the paper seems to emphasise the negative impact of borrowing, the reader should not conclude that external borrowing fails to have benefit to the country. In a bid to examine every facet of this borrowing argument, this paper will briefly study the dangers of internal borrowing and the benefit of external borrowing. The first benefit accrued to external borrowing is that it helps fill in the budget deficit and enhance economic growth. Out of the many foreign sources of debt, the outsourcing of money in the form of bonds is the

⁵⁹ Depreciation of currency means where there is a fall of the value of a currency in a floating exchange rate. This means that if initially 1 dollar was equal to Ksh. 80, 1 dollar will instead be equal to Ksh. 106. See more here: – <<http://www.economicshelp.org/blog/355/trade/devaluation-and-depreciation-definition/>> on 8 February 2016.

⁶⁰ Mwaniki C, ‘Kenya’s dollar-denominated debt rises in six months’ *Business Daily*, 13 April 2015.

⁶¹ See here: Welhiye M, ‘Eurobond: Meaning, benefits and risks’ *Standard News*, 1 July 2014.

⁶² Masinde J, ‘Kenya’s heavy borrowing pushed interest rates up’ *Daily Nation*, 11 July 2015.

⁶³ Ngirachu J, ‘Sh53bn of Eurobond cash used to pay off bank loan, MPs told’ *Daily Nation*, 22 October 2015.

⁶⁴ Its cynical nature is illustrated where the government resorts to borrowing to repay its borrowing and further borrowing to repay that borrowing. All which leads to a cycle.

⁶⁵ Guguyu O, ‘Kenya risks souring ties with partners over projects’ *Daily Nation*, 29 August 2015.

⁶⁶ Guguyu O, ‘Kenya risks souring ties with partners over projects’ *Daily Nation*.

⁶⁷ Guguyu O, ‘Kenya risks souring ties with partners over projects’ *Daily Nation*.

⁶⁸ Guguyu O, ‘Kenya risks souring ties with partners over projects’ *Daily Nation*.

most preferred as compared to outsourcing from institutions such as the World Bank, International Monetary Fund (IMF), aid flows or concessional loans from friendly countries.⁶⁹ This is because these sources tend to have conditions attached that prevent the independent action of a country.⁷⁰ One of the greatest risks in external borrowing is the ‘original sin doctrine’. This doctrine expounded by Hausmann who felt the Christian doctrine of ancestral sin to be a fitting metaphor, stated that, ‘It seemed to be a huge, persistent problem that all emerging markets were born with, and had remarkable problems getting rid of’.⁷¹

Simply explained, this doctrine warns against the dangers of borrowing in foreign currency when you lack sufficient earnings in that currency to service the debt in your local currency.⁷² This means if the Kenyan Shilling depreciates at any point before servicing our foreign debts, the government will have to collect more taxes to translate into dollars or engage in the vicious cycle of borrowing from other creditors to repay the loan.

Alternatively, the government may engage in internal borrowing. The government in 2015/16 expected to finance Ksh. 229 billion from domestic markets⁷³ making the total domestic debt owed by Kenya to stand at 1.26 trillion.⁷⁴ While domestic market borrowing may absolve the government from the aforementioned risks of external borrowing, it also has its disadvantages. The main risk is the increase in interest rates. Government borrowing becomes more secure since the chances of defaulting are minimal. Further, the treasury is usually willing to borrow at any interest rates causing the rates to soar resulting in the banks channelling the funds to the risk-free market rather than the real economy.⁷⁵ The less the money in circulation, the higher the cost- push inflation which ends up having a negative ‘crowding out’ on the private sector.

The general risk with all forms of borrowing is the misappropriation of money which is our economic malady. With the Eurobond constantly hitting

⁶⁹ Wehliye M, ‘Eurobond: Meaning, benefits and risks’ Standard News.

⁷⁰ Wehliye M, ‘Eurobond: Meaning, benefits and risks’ Standard News.

⁷¹ Wigglesworth R, ‘Markets: The road to redemption’ *The Financial Times*, 31 January 2013 – <<http://www.ft.com/intl/cms/s/0/613c7dac-6adf-11e2-9670-00144feab49a.html#axzz40tzPCb9y>> on 8 February 2016.

⁷² Wehliye M, ‘Eurobond: Meaning, benefits and risks’ Standard News.

⁷³ Masinde J, ‘Kenya’s heavy borrowing pushed interest rates up’ *Daily Nation*.

⁷⁴ Medium Term Debt Strategy 2013-2016, Ministry of Finance and Economic Affairs March, 2013.

⁷⁵ Wehliye M, ‘Eurobond: Meaning, benefits and risks’ Standard News.

the news as well as corruption scandals,⁷⁶ the opinion that Kenya may soon have a fiscal calamity cannot be ruled out.⁷⁷ The phrase, ‘there are three kind of lies. Lies, damned lies and statistics’⁷⁸ seems to be the case here as ‘chameleon like’ reports⁷⁹ on government spending continue to beguile the public. That though, is another realm that this paper does not seek to delve in.

It should be noted, however, that the treasury breathed optimism by stating that Kenya’s public debt is manageable and in line with its debt sustainability levels.⁸⁰ Further the government seems to apply concept of re-financing which is a norm among governments. From the summarised facts in this section, we can see that the rationale of borrowing carries risks. There is a slim line between the Scylla of foreign aid and the Charybdis of falling victim to the ‘vicious cycle of borrowing’.⁸¹ What is certain though, is that payment of debt is inescapable.

‘History does not repeat itself but it often rhymes’.⁸²

Our current fiscal situation cannot be dismissed as a mere coincidence. There is certainly a lot of rhyming going on. A chief question arises: what is the importance of foreign aid to Kenya? Does it help sustain our economic growth? This section seeks to answer these questions by examining whether foreign aid affects all sectors.

The benefits incurred from foreign aid have been immense. Infrastructure has recorded significant improvement with the construction of Thika Super-

⁷⁶ See here: Kegoro G, ‘Waiguru saga has damaged government claim in the fight against graft; what next?’ Daily Nation, 21 February 2016.

Ndemo B ‘We are shooting ourselves in the foot over Eurobond matter’ Daily Nation, 20 February 2016.

⁷⁷ According to a poll conducted between November 7 and 14, 2015. 54percent of Kenyans believe their economic status has worsened. See more here : – < allafrica.com/stories/201512080688.html> on 17 January 2016.

⁷⁸ The origin of the phrase is as clear as mud with some attributing it to Benjamin Disraeli. See more here: Paul F, ‘Truth, Damn Truth, and Statistics’ 16 *Journal of Statistics Education*, 2(2008), para. 5 – <www.amstat.org/publications/jse/v16n2/velleman.html> on 17 January 2016.

⁷⁹ Maina K, ‘Eurobond saga gives us reason to doubt official explanations’ Daily Nation, 30 January 2016.

⁸⁰ ‘Kenya’s domestic debt at Sh. 1.32t’ Daily Nation, 23 July 2014.

⁸¹ The phrase is derived from a Greek mythology. Both Scylla and Charybdis were situated on opposite sides of the Strait of Messina. The main character Odysseus is forced to navigate between Scylla who is a six headed monster and Charybdis which is an enormous whirlpool that threatens to swallow the entire ship. It is this that illustrates the predicament. See more here: Homer, *The Odyssey*, Hackett Publishing Company, 1997, Indiana, Book XII.

⁸² Cannon C, ‘Putting words into Mark Twain’s mouth’ Real clear politics, 10 December 2012 – <http://www.realclearpolitics.com/articles/2012/12/10/fake_twain_quotes_and_other_hazards_of_twitter_116376-full.html> on 20 July 2016.

highway, Nairobi eastern bypass, Nairobi southern bypass and Standard Gauge Railway, which are just but a few.⁸³ Foreign aid has also promoted the health sector and education sector.⁸⁴ This is proof that aid certainly can and does work.⁸⁵

IV. 'Economic sovereignty'

'Of all the rights that can belong to a nation, sovereignty is, doubtless, the most precious, and that which other nations ought the most scrupulously to respect'.⁸⁶

The Constitution of Kenya 2010, which is the most supreme law of Kenya,⁸⁷ recognises the principle of sovereignty of the people by stating that Kenya is a sovereign republic.⁸⁸ A question thus arises: what does 'sovereign republic' imply? To answer this question succinctly we need to comprehend the concept of sovereignty. Sovereignty, is similar to the proverbial blind man's elephant due to its varied interpretations.⁸⁹

With different conceptions and the literature available, it is not surprising that there has been no consensus on the definition of sovereignty; that the concept is viewed as a grey area. This paper lacks the tools to adequately cover this concept. In addition the concept, as observed, has 'been used not only in different senses by different people or in different senses at different times by the same people but in different senses by the same person in different succession'.⁹⁰

⁸³ Mwende J, 'How Chinese build roads in Kenya' Business review, 23 January 2016 – <<http://www.constructionkenya.com/1011/china-to-build-roads/>> on 12 August 2016.

⁸⁴ India donated a high calibre radiotherapy machine to Kenya's largest referral hospital. See here: Namunane B, 'India to help Kenya build key cancer centre' Daily Nation, 12 July 2016.

⁸⁵ Tucker C, 'Corruption and Human Security: Prepare for the Rainy Day or be Prepared to Drain the Swamp' 1 *International Journal of Sustainable Human Security* 1(2013), 4.

⁸⁶ Vattel E, *The law of nations, or, principles of the law of nature, applied to the conduct and affairs of nations and sovereigns, with three early essays on the origin and nature of natural law and on luxury, Book II*, translated version edited and with an Introduction by Béla Kapossy and Richard Whitmore, Indianapolis Liberty Fund, 2008, Chapter IV.

⁸⁷ Article 2(1), *Constitution of Kenya* (2010).

⁸⁸ Article 4(1), *Constitution of Kenya* (2010).

⁸⁹ 'There exists perhaps no conception or meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon.' Oppenheim L and Roxburgh R, *International Law: A treatise, Volume 1*, Longmans Green, London, 1906, 129.

⁹⁰ A.F Pollard made this point about the balance of power (sovereignty). See Pollard A.F, 'The balance of power' 2 *Journal of the British Institute of International Affairs* (1923), 51-64. Cited in Fowler M and

For this reason, the reader must use the paper's working definition of sovereignty solely from the paper's context. The author does concede that it may not be an objective nor a universally acceptable definition but is of great relevance to the paper and is limited to the periphery of this paper.

To define sovereignty, we need to first define what a state is. According to the Montevideo Convention on the Rights and Duties of States, for a state to be defined as one in International Law, it needs to fulfil four elements namely; have a permanent population, a defined territory, one government and the capacity to enter into relations with other states.⁹¹ These elements also form the *de facto* basis of sovereignty and recognition thus necessitating the need to combine them. This paper argues that the state is an agent of the people's sovereign will.

Permanent population means people who have settled down. The Constitution under Article 1(1) states that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this constitution.⁹² The people are, in summary, what the paper refers to as the 'constitutional empire' and whose will should control all spheres of the government including the economy.

The second element is the existence of an established territory. This is illustrated explicitly in the Constitution which states under Article 5 that Kenya consists of the territory and territorial waters comprising Kenya on the effective date, and any additional territory and territorial waters as defined by an Act of Parliament.⁹³ The establishment of whether a state is a territory is a question of fact. One that the Kenyan Constitution has further gone ahead to state in the law making it *de jure*.

Territory is closely concomitant with recognition. Recognition is a discretionary unilateral act exercised by the government of a state officially acknowledging the existence of another state or government.⁹⁴ This leads to the third element which is government. Its definition as expounded in the Black's Law Dictionary is a government of the people of a single state or nation, united as a community by what is termed the 'social compact,' and possessing complete and

Bunck J, *Law, power, and the sovereign state the evolution and application of the concept of sovereignty*, Pennstate University Press, Pennsylvania, 1995, 4.

⁹¹ Article 1, *Montevideo Convention on the Rights and Duties of States*, signed on 26 December 1933.

⁹² Article 1(1), *Constitution of Kenya* (2010).

⁹³ Article 5, *Constitution of Kenya* (2010).

⁹⁴ Bledsoe RL and Boczek B, *Principles of public international law*, 4 ed, Oxford University Press, Oxford, 1990, 44-45.

perfect supremacy over persons and things, so far as they can be made the lawful objects of government.⁹⁵ This section will apply the above definition.

As it is established from the people's will, the government therefore provides opportunity of the people to exercise their right of expressing their will. It is enshrined under Article 1(2) of the Constitution which states that the people may exercise their sovereign power either directly or through their democratically elected representatives. This process is accomplished through free and fair elections applying political equality- one man one vote- which is a fundamental principle. It is through the people's vote that they monitor and influence officials' while in office.⁹⁶ Elections are at the heart of the practical means by which people assert their sovereignty⁹⁷ and should be free, fair and frequent enough.

The final element is the capacity to enter into relations with other countries. This all depends on the aforementioned elements. A nation that has achieved sovereign status is thought to be entitled to a substantial degree of deference from other sovereigns meaning that it is recognized to be a legitimate independent government open for business round the globe.⁹⁸

Having asserted that Kenya indeed meets the criteria of a political sovereign entity, it is paramount to question if it is similarly economically sovereign. It is only when states begin to function as politically independent and sovereign entities that they conceive one of the most important attributes of state sovereignty is economic sovereignty.⁹⁹ Without this, political sovereignty is a myth. Economic sovereignty entails the coining and control of currency, overseeing and regulation of markets, contribution of funds to international institutions engaged in trade and finance, lending money to other states and having the capacity to take on enterprising roles with regional and global non-state actors.¹⁰⁰

It not only applies internationally but also within the country. This implies that a country needs to assert its control over the economic activities of both

⁹⁵ Black H, *Black's law dictionary, Revised fourth edition*, West Publishing, Minnesota, 1968, 1176.

⁹⁶ See here, '*The concepts and fundamental principles of democracy*,' - <www.civiced.org/pdfs/books/ElementsOfDemocracy/Elements_Subsection3.pdf> on 9 September, 2015.

⁹⁷ See here, '*The Concepts and Fundamental Principles of Democracy*,' - <www.civiced.org/pdfs/books/ElementsOfDemocracy/Elements_Subsection3.pdf> on 9 September, 2015.

⁹⁸ Fowler M and Bunck J, *Law, power, and the sovereign state the evolution and application of the concept of sovereignty*, 12.

⁹⁹ Subedi S, 'Evolution and principles of international economic law' *University of London International* (2006), 22.

¹⁰⁰ Fowler M and Bunck J, *Law, power, and the sovereign state the evolution and application of the concept of sovereignty*, 12.

juridical and natural persons within a country, whether they are nationals of that country or they are foreigners.¹⁰¹ A government may be able to assert its control locally through implementation of monetary policies, regulation of markets, licencing of businesses, regulation of property, setting up of regulatory boards, protection of consumers, punishment of economic crimes and privatisation of state corporations. Article 43 lists economic and social rights entitled to every person.¹⁰² Further, Article 40 guarantees the protection of the right to property¹⁰³ with the Constitution emphasising that the state can only deprive a person of property in the circumstances mentioned.¹⁰⁴

The state has enacted laws that enable it to exercise internal economic sovereignty. An illustration is the Consumer Protection Act which aims at subscribing punishment to businesses that are deliberately incongruous with the regulations set on proper pricing and the sale of standard goods.¹⁰⁵ The government further has some regulatory bodies such as Kenya Bureau of Standards whose onus is to enforce standardization on standards, testing and quality assurance.¹⁰⁶ The government regulates the market by ensuring fair play among the stake holders through the Competition Act.¹⁰⁷ Effective management of public finances by the national and county government ensures that its monetary policies are observed through the Public Finance Management Act.¹⁰⁸ The Anti-corruption and Economic crimes Act outlines the offences that amount to economic crimes and prescribes the execution of the set stipulation¹⁰⁹ with the licencing of businesses and privatisation of corporations provided by the Privatization Act.¹¹⁰ This statutes asseverate Kenya's internal economic sovereignty beyond question. The essential inquiry will be whether Kenya is externally economic sovereign. Despite meeting the above four elements of a state which are ultimately linked to sovereignty, meaning that Kenya is recognised as a sovereign state, it is in the writer's view though that Kenya has questionable economic sovereignty.

As mentioned earlier on, the concept of political sovereignty becomes fictitious if there lacks economic autonomy. If a country does not control its own

¹⁰¹ Subedi S, 'Evolution and principles of international economic law' 23.

¹⁰² Article 43, *Constitution of Kenya* (2010).

¹⁰³ Article 40(1), *Constitution of Kenya* (2010).

¹⁰⁴ Article 40(3), *Constitution of Kenya* (2010).

¹⁰⁵ *Consumer Protection Act* (Act No. 46 of 2012).

¹⁰⁶ Section 4(1) (b), *Standards Act* (Act No. 496 of 1974).

¹⁰⁷ *Competition Act* (Act No. 12 of 2010).

¹⁰⁸ *Public Finance Management Act* (Act No. 18 of 2012).

¹⁰⁹ *Anti-Corruption and Economic Crimes Act* (Act No. 65 of 2003).

¹¹⁰ *Privatization Act* (Act No. 2 of 2005).

economy, if it is penetrated by too much foreign capital, then it cannot be free from the tutelage of the country it is dependent on.¹¹¹ Much less a country is unable to make its will prevail if it clashes with the powerful interests of the dominating country.¹¹² It is with this background that there has been a revolution geared towards economic liberation illustrating that economic sovereignty is increasingly gaining importance. Recently, 23 June 2016 British citizens voted to leave the European Union with an overwhelming 52 percent leave vote prompting the famous line 'Brexit'.¹¹³ So important was the vote to the British citizens that 24 June 2016 was labelled as 'Independence Day for Britain'.¹¹⁴ At the heart of the historic vote was the need to assert Britain's economic sovereignty. Proponents of the leave campaign whose slogan was 'take back control' argued that the threat posed by the European Economic Community (EEC) to Britain's sovereignty was linked to economic prosperity and growth.¹¹⁵ Membership of the EEC would mean acceptance of its common external tariff and this would in turn mean that Britain would have to share its preferential commonwealth trade with the community, as well as make difficult adjustments to its agricultural industries.¹¹⁶

Further they would have to abide by the regulations and mandates of member states some of which injured foreign commercial interests.¹¹⁷ The lifting of these rules would go a long way in encouraging foreign trade therefore boosting economic sovereignty. The vote illustrated that majority of the British people were, among other things, keen on an economically sovereign nation.¹¹⁸

In line with the discussion herein, the working definition of economic sovereignty is the *ability of citizens, through the state which acts as an agent, to freely exercise their sovereign will by independently controlling their resources.*

¹¹¹ Guevara C, 'A speech on political sovereignty and economic independence', The Che reader, 2005 <<https://www.marxists.org/archive/guevara/1960/03/20.htm>> on 16 November 2016.

¹¹² Guevara C, 'A speech on political sovereignty and economic independence', The Che reader, 2005

¹¹³ Hunt A and Wheeler B, 'Brexit. All you need to know about the UK leaving EU' BBC News, 10 November 2016.

¹¹⁴ Ellison J, 'Sovereignty, Brexit and the reason Britain joined in the first place' Queen May university of London, 17 June 2016.

¹¹⁵ Ellison J, 'Sovereignty, Brexit and the reason Britain joined in the first place'.

¹¹⁶ Ellison J, 'Sovereignty, Brexit and the reason Britain joined in the first place'.

¹¹⁷ Blanco A, 'Lessons from Brexit: More sovereignty, more trade,' Forbes, 29 August 2016.

¹¹⁸ It has been argued that the argument on economic sovereignty was minor with the main concern of the voters being immigration. However, the reader should note that the major principle behind this historic vote was that decisions about Britain should be made in Britain which is basically regaining control on all affairs including its economy. See here: Bennett A, 'Did Britain really vote Brexit to cut immigration?' The Telegraph news, 29 June 2016.

V. The Effects of Foreign Aid on Kenya's Economic Sovereignty

With the well-established reliance on foreign aid, this section intends to elucidate the critical connection between foreign aid and economic sovereignty by listing some established negative effects.

i. Leads to imposed conditions

Aid proponents support the imposition of conditions arguing that the rules and regulations ultimately determine its success or failure.¹¹⁹ Donors have tended to tie aid to three things.¹²⁰ First, it is often tied to procurement.¹²¹ Countries that take aid have to spend it on specific goods and services which originated from the donor countries, or a group selected by them.¹²² This practice tends to result in donor producers overcharging recipients due to their increased market power and prohibiting recipients from being able to purchase goods cheaper elsewhere.¹²³ Domestic producers find it in their interests to try and secure a position where their products are related to the tied aid.¹²⁴ An example of a donor with such conditions is the United States. It requires about 75percent of its aid to be spent on products from American companies.¹²⁵

This extends to staff as well in the form of technical assistance: Donors employ their own citizens even when suitable candidates for the job exist in the poor country.¹²⁶ Technical assistance is activities that provide certain skills or technical knowledge to developing countries.¹²⁷ In fact, technical assistance is worse than other forms of tied aid because donors usually require these technicians to be from the donor country.¹²⁸ What follows is recipients handing the aid back to consultants in the donor country that may or may not understand the local problems.¹²⁹ The building of the Standard Gauge Railway by China has seen

¹¹⁹ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 35.

¹²⁰ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 35.

¹²¹ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 35.

¹²² Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 35.

¹²³ Williamson C, 'Exploring the failure of foreign aid: The role of incentives and information' *Economics Department Appalachian State University* (2009), 5.

¹²⁴ Williamson C, 'Exploring the failure of foreign aid: The role of incentives and information', 5.

¹²⁵ Williamson C, 'Exploring the failure of foreign aid: The role of incentives and information', 5.

¹²⁶ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 36.

¹²⁷ Williamson C, 'Exploring the failure of foreign aid: The role of incentives and information', 5.

¹²⁸ Williamson C, 'Exploring the failure of foreign aid: The role of incentives and information', 5.

¹²⁹ Williamson C, 'Exploring the failure of foreign aid: The role of incentives and information', 5.

the increase of complaints from locals.¹³⁰ Despite the Chinese company working on the railway employing 20,000 locals compared to 2,000 Chinese nationals, the Kenyan employees speak of destitute living conditions while the Chinese nationals live in luxury.¹³¹ While the writer does not contend the obvious need for variations in housing situations due to purely economic decisions it is saddening that locals do not have sanitation facilities, are subjected to harsh conditions and exploitation on their own land.¹³² A clear illustration of subjugation of ‘sovereign’ Kenya by foreign nations.

Second, the donor can reserve the right to preselect the sector and/or project that their aid would support.¹³³ An example is China’s gift of Ksh. 1.8 billion to refurbish Kasarani stadium.¹³⁴ Third, aid flows only as long as the recipient country agrees to a set of economic and political policies.¹³⁵ On paper, conditionalities made sense.¹³⁶ Donors placed restrictions on the use of aid, and the recipients would adhere.¹³⁷ In practice, however, conditionalities have failed miserably.¹³⁸ Paramount was their failure to constrain corruption and bad governance.¹³⁹ Due to multiple donor agencies, incentives for one to be held accountable for aid failures are weak, and so, no one agency is held responsible.¹⁴⁰ This enables the misappropriation of money with donor countries focusing on aid disbursements instead of measures of success.¹⁴¹

In 2004, the British envoy to Kenya, Sir Edward Clay, complained about rampant corruption in the country, commenting that Kenya’s corrupt ministers were ‘eating like gluttons’ and vomiting on the shoes of the foreign donors.¹⁴² In February 2005, when he was prompted to make a public apology for his statements given the political maelstrom his earlier comments had made, he apolo-

¹³⁰ Kariuki N, ‘Employees complain of poor working and living conditions’ *Daily Nation*, 26 April 2015.

¹³¹ Kuo L, ‘Kenyan ail workers are protesting against their Chinese employer for a raise—to \$5 a day’ *Quartz Africa*, 3 August 2016 – <<http://qz.com/749177/kenyan-rail-workers-are-protesting-against-their-chinese-employer-for-a-raise-to-5-a-day/>> on 10 August 2016.

¹³² Kuo L, ‘Kenyan ail workers are protesting against their Chinese employer for a raise—to \$5 a day’ *Quartz Africa*, 3 August 2016.

¹³³ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 36.

¹³⁴ Guguyu O, ‘Kenya risks souring ties with partners over projects’ *Daily Nation*.

¹³⁵ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 36.

¹³⁶ Williamson C, ‘Exploring the failure of foreign aid: The role of incentives and information’, 6.

¹³⁷ Williamson C, ‘Exploring the failure of foreign aid: The role of incentives and information’, 6.

¹³⁸ Williamson C, ‘Exploring the failure of foreign aid: The role of incentives and information’, 6.

¹³⁹ Williamson C, ‘Exploring the failure of foreign aid: The role of incentives and information’, 6.

¹⁴⁰ Williamson C, ‘Exploring the failure of foreign aid: The role of incentives and information’, 6.

¹⁴¹ Williamson C, ‘Exploring the failure of foreign aid: The role of incentives and information’, 6.

¹⁴² ‘Feet of clay’ *The Economist* – <<http://www.economist.com/node/3654706>> on 13 August 2016.

gized – saying he was sorry for the ‘moderation’ of his language, for underestimating the scale of the looting and for failing to speak out earlier.¹⁴³ Foreign aid accelerates the chances of corruption. The fungibility of donor aid makes it easier to misappropriate.¹⁴⁴ In deed most of the Kenyan scandals involving gargantuan sums of money have originated from foreign aid with the latest one as of the time of writing, being the Euro bond. Perhaps it is such instances that prompted a witty remark from Paul Rosenstein-Rodin, the Deputy Director of the World Bank Economics Department, ‘when the World Bank thinks it is financing an electric power station, it is really financing a brothel’.¹⁴⁵

This section illustrates the negative impact of imposed conditions. Further in cases where the conditions have innocent intentions, they lack implementation furthering corruption. This has a negative impact on Kenya’s economic sovereignty. Perhaps, more effective conditions would be of relevance.

ii. The ‘rent-seeking’ behaviour by those in power undermines governance and rule of law

Economic rent, in mainstream economics, refers to an extra payment made to or for a factor of production in excess of the amount needed to bring that factor into production.¹⁴⁶ Economic rent is paid when there is a low supply of the factor of production while the demand is high and is therefore an opportunity cost that a consumer is willing to spend.

Factors of production, on the other hand, is an economic term that refers to inputs used in the production of goods and services in order to make an economic profit.¹⁴⁷ It includes land, labour, capital and entrepreneurship.¹⁴⁸ An opportunity cost is a benefit, profit or value of something that must be given up to acquire/ achieve something else.¹⁴⁹

¹⁴³ ‘Feet of clay’ *The Economist* – <<http://www.economist.com/node/3654706>> on 13 August 2016.

¹⁴⁴ Money is considered to be fungible as it interchangeable and perfectly replaceable.

¹⁴⁵ ‘Memphis Barker: Don’t give up on foreign aid’ *The Gulf Today*, 22 September 2012 – <<http://gulftoday.ae/portal/8c7b1225-f7d7-4e46-8578-e7d749ef98b3.aspx>> on 13 August 2016.

¹⁴⁶ Ikeda S, ‘Rent-seeking: A primer’ *Foundation for Economic Education*, 1 November 2003 – <<http://fee.org/articles/rent-seeking-a-primer/>> on 12 August 2016.

¹⁴⁷ ‘Definition of factors of production’ *Investopedia* – <<http://www.investopedia.com/terms/f/factors-production.asp>> on 12 August 2016.

¹⁴⁸ ‘Definition of factors of production’ *Investopedia* – <<http://www.investopedia.com/terms/f/factors-production.asp>> on 12 August 2016.

¹⁴⁹ ‘Definition of an opportunity cost’ *Business dictionary* – <<http://www.businessdictionary.com/definition/opportunity-cost.html>> on 12 August 2016.

It is pertinent for the reader to understand the context of rent so as to comprehend the meaning of rent seeking. Rent-seeking, a theory advanced by Gordon Tullock, refers to the use of resources for the purpose of obtaining rents for people where the rents themselves come from some activity that has negative social value.¹⁵⁰ This implies the use of resources of a company, an organisation or an individual to obtain economic gain from others without reciprocating any benefits to the society through wealth creation.¹⁵¹

An individual or firm is said to ‘seek rent’ when they attempt to obtain a right to preferential treatment through political means for personal financial gain and to the detriment of competitors. For example, a business that attempts to acquire a special import license that permits only them to supply a critical raw material or good in a particular market. That’s as far as private actors are concerned. The government also plays a crucial role in the creation of rents hence motivating competition among firms or individuals to acquire rents which are mainly in the form of market restrictions such as taxes and tariffs as well as potential revenues in the form of subsidies and the awarding of public procurement contracts (tenders).¹⁵²

Rent seeking, as opposed to profit seeking, is largely considered a waste of resources since the motive isn’t to maximize profits through cheaper, superior products but to win the competition for rents.¹⁵³ The competition for rents has been described as a lobbying process in which the government is pressured into imposing protective tariffs. The competition for rents (rent seeking or privilege seeking) can also involve the illegal payment of bribes for political favours, an act that is referred to in the literature as ‘corruption’. Corruption as a form of rent-seeking becomes particularly important when assessing the relationship between foreign aid and rent-seeking in developing countries.¹⁵⁴

What is the interplay between rent-seeking and governance? According to the principle of human action advanced by Ludwig von Mises, man acts in order to improve his situation as he sees it.¹⁵⁵ This translates to mean that man, who

¹⁵⁰ Tullock G, ‘The Welfare Costs of Tariffs, Monopolies and Theft’ 5 *Western Economic Journal*, (1967), 224–232. The phrase ‘rent seeking’ was coined BY Krueger A, ‘The Political Economy of the Rent-Seeking Society’ 64 *American Economic Review* (1974), 291–303.

¹⁵¹ ‘Definition of Rent-seeking’ – < <http://www.investopedia.com/terms/r/rentseeking.asp>> on 10 August 2016.

¹⁵² Tullock G, ‘The Welfare Costs of Tariffs, Monopolies and Theft’, 224–232.

¹⁵³ Lambsdorff J, ‘Corruption and rent-seeking’ 113(2) *Public choice Journal*, (2002), 101-102.

¹⁵⁴ Tullock G, ‘The Welfare Costs of Tariffs, Monopolies and Theft’, 224–232.

¹⁵⁵ ‘Liberalism by Ludwig von Mises 1927’ Foundation for Economic Education, 28 October 2015

is viewed as a rational being has the capacity to make a choice. It is from the choices that actions follow with the consequences depending on the ‘rules of the game’.¹⁵⁶ If these rules say that it is okay to use *political means*—the government’s authority to initiate violent aggression and fraud—to contrive rents by preventing others from competing with you or by forcibly taking the wealth of others, people will naturally tend to spend valuable resources trying to gain access to them.¹⁵⁷ This in turn drains the economy as productive money is wasted in the process of rent-seeking.

In addition, wealth is not created as there is merely transfer from one party to another. This only benefits those who have acquired rents by political power. Over time there is a surge in the numbers of ordinary citizens trying to acquire political power either to gain advantages over the less powerful or as redress against the mounting advantages and political powers of others.¹⁵⁸ The political powers too are resolved to retain their power. With their privileges, the powerful can plainly violate the law. In fact the rule of law is totally disregarded. This in turn disrupts the status quo as the powerful have incentives to spend the resources to enrich themselves creating civil wars, physical conflict and authoritarian regimes.¹⁵⁹ Foreign aid facilitates rent-seeking as it provides the financial resources. This is why foreign aid has been argued to be inextricably interwoven with rent-seeking. Kenya has been the victim of rent-seekers with such ignominious scandals as the Goldenberg and Triton scandals leading to the misappropriation of millions,¹⁶⁰ an ironical instance of foreign aid helping everyone with the exception of those who need it most.

iii. Weakening of democratic institutions through lack of transparency

The writer posits that foreign aid has a negative impact on democratic institutions. A further examination of rent-seeking, as earlier discussed, reveals that the public choice is limited. The confidentiality of some of the agreements ratified by the ‘caucus without a name’ exclude the public. It is indeed true to state that though one can never walk into a room and find a golden plague reading that ‘the establishment is meeting’ one will know when the establishment

<https://fee.org/resources/liberalism-by-ludwig-von-mises/> on 12 August 2016.

¹⁵⁶ Ikeda S, ‘Rent-seeking: A primer’.

¹⁵⁷ Ikeda S, ‘Rent-seeking: A primer’.

¹⁵⁸ Ikeda S, ‘Rent-seeking: A primer’.

¹⁵⁹ Tucker C, ‘Corruption and Human Security: Prepare for the Rainy Day or be Prepared to Drain the Swamp’, 4.

¹⁶⁰ ‘Welcome to Kenya, the land of the rent seekers’ Standard News, 20 January 2009.

has met.¹⁶¹ The headlines will suddenly wake us up to the fact that Kenya is debuting in the international sovereign bond market.¹⁶² In fact, the government had made attempts to secretly pay off the judgement debt obtained by Anglo leasing companies in international courts arguing it was placing our credibility in jeopardy.¹⁶³ Had it not been for the press, Kenyans would probably have been left to discuss an accomplished deal.¹⁶⁴ What is perhaps more ironic is that most members of parliament, who it should be noted are the constitutional empire's representatives, were in the dark.¹⁶⁵ So confidential was the matter, that documents distributed during the meeting would be carted away by the treasury team in order to block any 'media leakage'.¹⁶⁶ A salient question therefore arises: what is democratic about decisions made behind closed doors that even the citizens are unaware of and cannot offer their opinions on and yet these same issues have such an adverse effect on their sovereignty? It's out rightly anti-democratic.

iv. *Weakening of economic growth in Kenya*

This section examines the adverse effects of foreign aid unpredictability on the economy. As per the government budget of the fiscal year 2015/ 2016, the government had a 16.4percent budget deficit which translates to Ksh. 149.6 billion through external aid and Ksh. 190.8 billion financed by domestic borrowing.¹⁶⁷ Suppose the government had planned for Ksh. 149.6 billion but there was reasonable, unavoidable delay. The economy would steadily drop. This is not a creation of the mind as it has indeed happened in the past. Kenya has experienced major standoffs with the donor community, which has sometimes led to aid freezes.¹⁶⁸ As a result, foreign aid disbursements were short-lived due to the continued uneasiness among the donors at Kenya's implementation of aid conditionalities.¹⁶⁹ For example, the World Bank in July 1982 did not release the

¹⁶¹ Yongo C, 'Public pressure, temptation of power and unconstitutional actions in the war against terrorism in Kenya: suggesting a link' 1 *Strathmore Law Review Journal*, 1(2015), 59.

¹⁶² Ndiu D, 'Eurobond billions: Curious incident of a dog in the night-time' Daily Nation, 4 December 2015.

¹⁶³ Ngirachu J, 'Treasury tried to quietly pay off Anglo Leasing firms' Daily Nation, 4 May 2014.

¹⁶⁴ Ngirachu J, 'Treasury tried to quietly pay off Anglo Leasing firms' Daily Nation, 4 May 2014.

¹⁶⁵ Ngirachu J, 'Treasury tried to quietly pay off Anglo Leasing firms' Daily Nation, 4 May 2014.

¹⁶⁶ Ngirachu J, 'Treasury tried to quietly pay off Anglo Leasing firms' Daily Nation, 4 May 2014.

¹⁶⁷ Budget statement for the Fiscal Year 2014/ 2015 by Rotich Henry Cabinet Secretary for the National Treasury on 11 June 2014, para. 62.

¹⁶⁸ Ojiambo E, Oduor J, Mburu T and Wawire N, 'Aid unpredictability and Economic Growth in Kenya' *African Development Bank Group*, (2015), 8.

¹⁶⁹ Ojiambo E, Oduor J, Mburu T and Wawire N, 'Aid unpredictability and Economic Growth in

second tranche of US\$50 million on the basis that Kenya was lax in undertaking policy reforms.¹⁷⁰ The resumption of funding in 1984 was partly attributable to the humanitarian gesture of providing large volumes of food aid in response to the devastating drought that year.¹⁷¹ Further freezes were experienced in 1992 and 1997.¹⁷² It should not be lost to the reader that this period (1980's to 2002) was typified by slow economic growth.¹⁷³

While the writer does not seek to blame the donors for the delay, the timely flow of aid is important as countries that are dependent on aid become vulnerable when funds are committed and scheduled, but not disbursed on time, or when there is insufficient information about donors' intentions to disburse.¹⁷⁴ In this respect, the Paris Declaration of 2005 commits donors to 'provide reliable indicative commitments of aid over a multi-year framework, and disburse aid in a timely and predictable fashion according to agreed schedules'.¹⁷⁵

Foreign aid also chokes off the export sector.¹⁷⁶ Foreign aid leads to an influx of foreign currency into the domestic economy. The foreign currency is converted in to the domestic currency. With the increase in demand comes the increase in the domestic currency (appreciation of the real exchange rate), meaning that exports become more expensive per unit of foreign currency. This implies that a unit of foreign currency buys fewer units of domestic goods and services and export competitiveness suffers. Foreign aid can therefore be said to have an 'anti-export' bias with this phenomenon popularly referred to as the 'Dutch Disease'.¹⁷⁷

Kenya', 8.

¹⁷⁰ Ojiambo E *et al*, 'Aid unpredictability and Economic Growth in Kenya', 8.

¹⁷¹ Ojiambo E *et al*, 'Aid unpredictability and Economic Growth in Kenya', 8.

¹⁷² Ojiambo E *et al*, 'Aid unpredictability and Economic Growth in Kenya', 8.

¹⁷³ Ojiambo E *et al*, 'Aid unpredictability and Economic Growth in Kenya', 8.

¹⁷⁴ Ojiambo E *et al*, 'Aid unpredictability and Economic Growth in Kenya', 7.

¹⁷⁵ Ojiambo E *et al*, 'Aid unpredictability and Economic Growth in Kenya', 7.

¹⁷⁶ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 52.

¹⁷⁷ The Dutch Disease: describes a phenomenon that occurred in the Netherlands in the 1960s. A boom in natural gas exports resulted in a rapid inflow of foreign currency that led to the appreciation of the Guilder (the domestic currency then). This hit the export market severely. See here: Munemo J, Bandyopadhyay S and Basistha, 'A Foreign Aid and Export Performance: A Panel Data Analysis of Developing Countries' *Federal Reserve Bank of St. Louis Working Paper Series*, 2007, 2.

v. *Foreign aid may negatively affect judicial independence*

Article 160(1) of the Constitution is dedicated to provisions concerning the independence of the judiciary.¹⁷⁸ With time, donors have increasingly identified judicial independence as an important pillar in the advancement of democracy. This section will focus on incumbent led democracy promotion which is the most common strategy by donors with the funding of civil society and opposition more infrequent.¹⁷⁹ An understanding of the ways in which a donor government may promote judicial independence is therefore paramount. A donor government may either require recipient governments to engage in judicial reform through conditions attached to economic aid. Alternatively, they may encourage judicial reform by designing specific aid projects that guide the recipient public sector in their implementation. As illustrated most donors channel the funds to incumbent governments who further distribute the money to the judiciary. It is from this that studies have observed an electoral cycle.¹⁸⁰

Studies reveal that the alignment between donors and incumbents on the conditions hold but weaken during election times irrespective of the outcomes.¹⁸¹ The electoral cycle shapes the incumbent government incentives to implement judicial review. The change in attention directed to the judiciary suggests that foreign aid increases judicial independence unless judicial review becomes politically costly. As costs of judicial independence increase, which occurs when incumbents stand for re-election, incumbents withdraw their support from externally funded judicial reform activities, or increase control over the judiciary branch to maintain their position of power. This incentive sharpens when elections are more closely contested.¹⁸²

Further, the courts act as veto powers in policy making therefore can declare some policies illegal. It is this attribute that makes a judiciary an attractive avenue for dispute resolutions therefore offering investors security. With the lack of guidelines on the implementation of money, its control falls solely on the hands of the incumbent government.¹⁸³

It is therefore not surprising that in situations where the citizens cast votes to either re-elect the incumbent government or elect a new government the in-

¹⁷⁸ Article 160(1), *Constitution of Kenya* (2010).

¹⁷⁹ Dietrich S, Wright J and Ariotti M, 'Foreign aid and judicial independence' 6 April 2015.

¹⁸⁰ Dietrich S, Wright J and Ariotti M, 'Foreign aid and judicial independence' 6 April 2015.

¹⁸¹ Dietrich S, Wright J and Ariotti M, 'Foreign aid and judicial independence' 6 April 2015.

¹⁸² Dietrich S, Wright J and Ariotti M, 'Foreign aid and judicial independence' 6 April 2015.

¹⁸³ Dietrich S, Wright J and Ariotti M, 'Foreign aid and judicial independence' 6 April 2015.

cumbent employs strategies to slow down the process of strengthening the judiciary. Additionally, the courts have the powers to directly influence the political balance during elections by exposing electoral malpractices instigated by the executive, condemn the harassment of political opposition or civil society or listen and decide electoral petitions. The real prospect of losing of the election acts as an accelerating incentive to stymie investment in judicial independence.¹⁸⁴

In Kenya, the Supreme Court under Article 163(3a) has exclusive jurisdiction to determine disputes arising from presidential elections.¹⁸⁵ It will therefore be important to note the influence in the oncoming 2017 elections as it is not new that the executive has attempted to compromise the independence of the judiciary.¹⁸⁶ In a statement released by the judiciary, it was noted that despite the national budget steadily increasing over time, its total allocation including that of donor funds was reduced from a request of Ksh 24 billion to an allocation of Ksh16.1 billion.¹⁸⁷ A cut that was more severe than one on any other institutions across the board.

As illustrated, judicial independence is key to democracy which is an important component of economic sovereignty. It not only weakens a country's credibility thus affecting its ability to transact in internal economic activities by decreasing economic growth but also fails to act in the best interests of the people.

VI. Conclusion and Recommendations

It would be detrimental for this paper to only state the effects of borrowing on our sovereignty and fail to offer solutions. A nation can have the best policies in the world but without the right financial tools to implement it, the agenda is regarded as impotent.¹⁸⁸ It is these solutions that offer hope.

i. Building of institutions and restoring authority to already existing ones

The efficacious analysis has revealed weak institutions that encourage corruption and rent-seeking which are clear and consistent violations of the rule of law. The impunity among the powerful is stimulated by the weakened institutions whose power is just but a mere conception, existing only in theory. One of the

¹⁸⁴ Dietrich S, Wright J and Ariotti M, 'Foreign aid and judicial independence' 6 April 2015.

¹⁸⁵ Article 163(3a), *Constitution of Kenya* (2010).

¹⁸⁶ Menya W, 'JSC meets on Monday to discuss Rev Samuel Kobia's abrupt resignation' Daily Nation, 28 March 2015.

¹⁸⁷ Office of the Chief Justice of Kenya, 'Statement on the financial prognosis of the judiciary' 1.

¹⁸⁸ Moyo D, *Dead aid: why aid is not working and how there is a better way for Africa*, 57.

findings postulated by this paper is public choice. The public, seeing that they are all rational beings, not only have the intellect to abstract right and wrong choices but also have the will to act. The public, however, needs incentives and disincentives to influence their actions. The willingness is not the only pre requisite for one must be willing and able to perform the acts.

Ability means the creation of an enabling environment by the implementation of reforms aiming to improve institutions such as the courts and the Kenya Anti-Corruption Commission and strengthening of the judiciary. Ability implies undertaking institutional reforms. Once the will and capacity are enabled progress will certainly follow. Perhaps the knowledge that someone is watching prompt a person to act in their best behaviour.

ii. Employment of more Kenyan citizens

It would be ironical for the government to finance and pay salaries of nationals belonging to another country while its own are equally skilled yet unemployed. The government should ensure that foreign companies are not spared when implementing labour laws, and that they must comply with regulations on the numbers of local employees. It would also be helpful for the government to offer trainings to the foreign donors so as to familiarise themselves with the local Labour law. Dispute issues such as payment below the minimum wage and unfair terminations should be promptly settled.

iii. Increasing of the trade surplus

Trade contributes to economic growth by increasing the amount of goods and services that a country can export. The amount of goods and services depend on the productivity of the current workforce. An increase in productivity therefore translates into an increase in amount of goods and services produced. Productivity increases as a result of increasing the skill levels of the workforce or improvement in technology which allows production per unit worker to increase. Since a trade surplus occurs when the exports are more than the imports, increased productivity is essential.

Further, trade policies such as introduction of tariffs and quotas will also help in the creation of an enabling environment for local businesses by regulating imports. Increased trade surplus will translate to decreased dependence on foreign aid.

iv. *Focus on foreign aid that will have long term gain*

The government should follow up closely on the long-term effects of the foreign aid. It is critical to analyse the effect the donor aid will have. Ill and misinformed actions such as binge investing so as to assert the political will should be avoided. There will also be a need to fund shortfalls in the financing sector with more domestic sources. Perhaps the government needs to reduce its public wage bill and expenditure so as to be able to cater trim the colossal budgets. Investments financed with foreign aid should be duly maintained. ‘Cutting of ribbons’ should not be their last duty.

v. *Encouraging of transparency*

The secrecy of some agreements is questionable since some of the implications are too grave to dismiss. The press which acts as a significant reference guide, with the power of influencing public opinion should at the very least be informed. While the author concedes that some agreements may be too confidential to reveal, this section opines that the media should be vocal in reporting violations of the law. The government should consider establishing a database of all donor agreements that the government signs. Further the government should summarise these agreements into a simple and clear format that can be circulated to the public. This site will provide an avenue where the public is regularly informed of the economy’s progress. The awareness would enable the public to be vocal and express their views on economic policies. Further, institutions such as the judiciary and the office of the Attorney General should diligently exercise an oversight role over such agreements by use of mechanisms such as judicial review.

In conclusion, this is not an attempt to earn a place in the pantheon of Kenyan academics. Rather it is an attempt whose analysis has revealed that foreign aid, despite its effectiveness and benefits, has adverse effects on our economic sovereignty. By outlining the effects, it is clear that foreign aid is unsustainable for our economic growth. The writer does concede that resorting to foreign aid may seem to be an inevitable act considering Kenya is a developing nation. It is therefore paramount that Kenya opts to reduce its reliance of foreign aid to finance the budget deficits. Seemingly, one cannot defend national sovereignty with flags, cheap rhetoric and advertising campaigns. We need forces.¹⁸⁹ Until then, economic sovereignty will remain just but a myth.

¹⁸⁹ Flanagan T, *Harper’s Team: Behind the scenes in the Conservative Rise to power*, McGill Queen’s University press, Montreal, 2009, 246.