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1. Introduction
The subject of this paper is the economic reform in the context of political transition. The subject matter of the paper is cogently summarized by Wacira Maina as follows,

"In two short months, nearly the whole of the economic reform program has come to brief on constitutional grounds: the court has plausibly argued, even though inadequately reasoned out, that the prosecutorial and investigatory powers granted to the Kenya Anti-Corruption Authority, KACA, are unconstitutional, that the establishment of the Roads Board violates the separation of powers established in the constitution, and parliament, using constitutionally granted powers has legislated to impose price controls on lending and is threatening to halt the civil service retrenchment on constitutional and political grounds. In this context, it is no longer plausible to argue that economic reform and not constitutional reform is the priority for Kenya and her development partners."1

The overarching theme of the paper is that both the economic and constitutional reform paralysis are manifestations of an underlying political economy of ethno-regional inequality, which undermines broad based political ownership of pro-growth policy and institutional reforms, and has allowed progressive encroachment on domestic policy space by the Bretton Woods institutions. The paper argues that the fundamental imperative is one of re-domesticating the economic reform initiative, and makes a case for a domestically negotiated transitional economic reform programme.

∗ The views in this paper have been enriched by informal discussions with many colleagues foremost among them Wachira Maina, John Githongo, Sam Mwale, Betty Maina, Erastus Wamugo and Njuguna Ndung'u. I thank them all.

1 In an unpublished commentary titled “The Constitution that came in from the cold: Why Donors should consider constitutional issues in pushing economic reform.”

The paper is organized in six sections as follows. The second section following this introduction reviews recent economic performance. Section 3 presents an analysis, unusually candid, of the political economy of ethnic inequality. Section 4 provides an analytical review of economic reform from the 1970s to the present. Section 5 critiques the current reform programme and Section 6 concludes.

2. Economic Overview
Economic performance over the last decade has been hostage to the political transition from single to multi-party political system. Political violence (the so called "ethnic clashes") , the aid embargo imposed in November 1991, and fiscal excesses in the run-up to the 1992 multiparty elections resulted in the economy stagnating in 1992 and 1993 , the budget deficit rising from 2.5% to 7% of GDP and an inflationary surge from a 18% over 60% at its peak in mid 1993. The economy recovered thereafter, and growth was approaching 5 %, but the recovery was again undermined by a tourism slump and erosion of business confidence precipitated by the resurgence of political violence in the run-up to the 1997 elections. But unlike the post 1992 elections, President Moi's re-election in 1997 for his final constitutional term immediately triggered off succession politics, precipitated further political uncertainty. Despite his frequent pronouncements to the effect that he intends to retire at the end of his constitutional term limit, doubts persist, as he is perceived to be beholden to an insecure political elite that has not been able to find a successor it can trust.

The year 2000 was without doubt, the most difficult year for the Kenyan economy in recent memory. Provisional estimates from CBK, the economy grew by a 0.5 percent in the 12 months to November 2000. Given that the statistical error
margin in GDP estimates is quite large, this is really a face saving way of saying zero or negative growth. More significantly, last year was the fourth year of falling economic growth rate, the longest such spell since independence. Economic growth declined from 4.6% in 1996 to 2.3% in '97, further to 1.8% in '98, further still to 1.4% in '99 and, as I said before, to possibly zero or negative growth last year.

2. The Political Economy of Kenya's Ethno-regional Inequality

Gross economic inequality is the principal universal cause of political conflict and civil strife, more so if, as is invariably the case, it mirrors a country’s social cleavages of social class, race, religion and tribe. In a democracy, the balance or imbalance of power reflects the combination of economic status of distinct groups and demographics. The perception that one or more groups commands permanent economic and demographic advantage creates a pathology of fear, fear of political, economic and ultimately cultural domination. Vulnerability becomes the lens through which the disadvantaged groups interpret liberalization—whether it is democratization, economic liberalization, or liberalization of the airwaves.

In Kenya, economic inequality manifests itself more in the incidence of poverty and vulnerability, than in the level of incomes. Average household incomes in North Eastern province and Central Province are about the same but the incidence of poverty in North Eastern is double that of Central. The poverty incidence in the least developed regions, rural Nyansa and rural Coast province is over 60%, double that of rural Central province (32%), the most developed region. That said, Central province is an outlier, being the only region well below the 52% national average.

Although the causes of underdevelopment vary from region to region, the overarching explanation of the regional pattern of development is a historical policy bias established by the colonial administration, namely, defining economic potential by agroecological zones. The policy bias is articulated, in very plain language, in paragraph 133 of seminal Sessional Paper No. 10 of 1965, under the subheading "Provincial Balance and Social Inertia" as follows,

One of the problems is to decide how much priority we should give in investing in less developed provinces. To make the economy as a whole grow as fast as possible, development money should be invested where it will yield the largest increase in net output. This approach will clearly favour the development of areas having abundant natural resources, good land and rainfall, transport and power facilities, and people receptive and active in development. (pg. 46)

This convoluted economic logic defines the Kikuyu and Central Rift highlands as high potential, the Lake Basin and Ukambani lowlands medium potential, and the rangeland (ASAL) 70% of the country as practically useless. The green rolling hills of Kericho have tremendous tea growing potential, but for tropical fruits - mangoes, pineapple, papaya--it is a low potential area. Conversely, Machakos and Kitui are high potential fruit potential, and zero tea potential.

Agriculture presently contributes just over half of our GDP, 26% directly, and 27% indirectly through backward and forward linkages to the other sectors. The livestock sector accounts for about half of the direct contribution, the bulk of it from traditional pastoralism in the rangelands. We have ten times as many cattle as Botswana, who earn 70 million dollars a year from livestock exports, which indicates that our unexploited livestock export potential exceeds our combined earnings from tea and coffee. Yet we have invested in over 40 smallholder tea factories since independence, but not only have we not invested
in a single meat processing factory, Kenya Meat Commission, a World War II relic, is dead.

The notion that areas with abundant natural resources, good land, rainfall and infrastructure yield the highest return to additional investment still rules our policy thinking today and it is wrong, in theory and in fact. In theory, it flies in the face of a well known principle of economics known as the law of diminishing returns, which states that the more capital you have the less you get from an additional shilling of investment. This is why capital typically flows from more developed to less developed countries in search of higher returns. In economics we measure productivity by value added per worker. Since pastorists are far fewer than crop farmers, and livestock output is equal to crop output, it follows that value added per pastoralist is still higher than value added per crop farmer, in other words pastoralism is more productive than modern crop agriculture.

**The Impact Of Economic Liberalization On Ethno-Regional Inequality**

The stylized economic reform prescriptions of the World Bank and IMF have three fundamental objectives. First, to allign the country’s economy to its international comparative advantage. Secondly, to reduce or eliminate the state’s role in direct economic activity, that is, competition with the private sector. Third, to instil fiscal discipline, that is, to make Government’s live within their means, which invariably translates to cut-backs in social spending. In Kenya, as indeed in other countries with geo-ethnic disparities, the cost benefit analysis of economic reform has an ethno-regional character. Although the discourse on liberalization acknowledges winners and losers, the engagement with donors seldom confronts the racial or ethnic dimensions. In most African countries, Kenya included, this discourse is not part of the formal public policy discourse, as for instance, the affirmative action discourse in the U.S., the black empowerment discourse in South Africa, or the indigenous Malay empowerment discourse in Malaysia.

The pre-liberalization rural economic base comprised of an export sector (coffee, tea, horticulture and pyrethrum), an import substitution sector (cereals, sugar, tobacco, rice), and the livestock sector (dairy and meat products) which, as argued above, is potentially an export sector. The Mt. Kenya region (the so called GEMA community) and the central Rift Valley predominate in the export sector, while western Kenya (Luo Nyanza, Western Province) and the rest of highland Rift Valley predominate the import substitution sector. The import substituting regions have borne the brunt of trade liberalization more than the export sector regions. As noted already, the incidence of poverty in Central Province, which has the largest and most diversified export base, is the only one well below the national average, but even more significant, it is the only region where the incidence of poverty did not increase.

Similarly, the withdrawal of the State from direct economic activity, and cut backs of social spending (and cost sharing) has different implications for different regions. Simply put, some regions, and therefore tribes, are better placed to “fend for themselves” than others. Persistent historical regional disparities in education attainment translate into disadvantage in a competitive labour market. Thus, disadvantaged groups have perceived public sector employment as a legitimate means of catching up. Across the board cut backs in public health spending impact more negatively in regions with high incidence of disease: households in malaria prone Nyanza spend on average twice as much on health than households in relatively malaria free Central Province.3 Liberalization of the media, predisposes private investment into regions with large markets, which translates into unequal access to information, voice and cultural expression.

**4. Analytical Overview of Reform Programmes**

The imminent collapse of yet another IMF/World Bank sponsored reform programme, will bring to seven the tally of failed programmes. Under the first ever IMF programme, adopted in the wake of the 1973 oil shock, the Government committed to lift interest, exchange rate and price controls it imposed in response to shock. Once the shock receded, the Government reneged on the undertaking and kept the controls. Three more stabilization programmes collapsed in rapid succession between 1979 and 1982, all on account of the

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3 Welfare Monitoring Survey, 1994 reported household medical expenses at Ksh. 180 in Central and Ksh. 360 in Nyanza per household per month.
Government’s failure or inability to meet the programmes’ fiscal and monetary targets. The programmes between 1983 and 1990 were concluded reasonably successfully, although not without impasses and backtracking in between. The fifth programme collapsed in 1991, precipitating the aid freeze imposed by the donor consultative group in November of that year, and the sixth one in the run-up to the 1997 elections. Why do these programmes collapse? Is it that both the Government and the World Bank/IMF are incapable of learning from experience?

The Politics of Economic Reform

The collapse of the first programme was precipitated by the rent seeking and patronage opportunities created by economic controls. Once controls, exchange controls in particular were imposed, some people, both public and private sector, quickly recognized and exploited these opportunities. Their retention was justified on the import substitution industrialization programme adopted at independence (notwithstanding that it had been doing quite well in the pre-1973 liberal regime). The 1979-82 programmes were triggered by the 1979 oil shock, but the shock caught the Government paralyzed by power struggle between the Kenyatta elite and a then very insecure President Moi, which manifested itself in a near total collapse of fiscal discipline. Annual budget deficits jumped from under 3% of GDP to a peak 10.5 in 1980/81 while inflation hit an unprecedented 20%. President Moi only managed to consolidate his government in the aftermath of the coup attempt in August 1982. Not surprisingly, the Government successfully implemented a drastic IMF programme, and at the same time, embarked on a comprehensive reform initiative which culminated in Sessional Paper No. 1 of 1986 "Economic Management for Renewed Growth. The unintended consequence of the coup attempt was that it dispensed President Moi a period of broad based political legitimacy—a political honeymoon so to speak—that lasted until the massively rigged 1988 general elections. As pressure for political reform accelerated, the reform impetus faltered, then collapsed during the 1990-92 transition to multi-party politics.

The lesson from experience is thus clear. The political will to implement economic reforms is governed by a dynamic political cost-benefit analysis. This is also borne out by the experience of the transition to multi-party politics. Confronted by the biggest political challenge since the 1982 coup attempt, the Government abandoned the reform programme because it needed economic control as an instrument of political control, but it could not have anticipated that the donors would impose an aid embargo, as this was unprecedented. Once aid was frozen, the Government quickly re-evaluated its strategy and decided to accede to multi-party politics, in other words, that taking its chances in an election with donor money, was a superior strategy to trying to maintain political control with dwindling resources for political patronage. In December 1991, a few weeks after the imposition of the aid embargo, President Moi did a major about-turn and endorsed the repeal of Section 2A to usher in multi-party politics. This was a miscalculation on KANU’s part, because with the exception of the U.S., the most influential donors (World Bank, IMF, Britain and Japan) were more concerned about economic reform than multi-party politics.

Aid was not restored as anticipated, and the Government was looking at the prospect of going into the election in a stagnant economy, in effect, with a dissaffected populace and no campaign finance.

One of the unintended consequences of the aid freeze was to provide justification for the approval of a clever proposal, rejected by the Treasury a few years earlier, that claimed it could remit to the Government a lot of foreign exchange by buying from the black market gold and diamonds trafficked through the country from the Congo and Angola and exporting them legally, if only the exporter was granted compensation at a premium in the black market dollar prices. And so Goldenberg was born. From a macroeconomic perspective, whether or not gold and diamonds changed hands is largely immaterial. What the Government was doing through Goldenberg was to defend the fixed exchange rate and foreign exchange controls, by buying foreign exchange at a premium in the black market to boost reserves and finance imports. Had it floated the shilling and lifted exchange controls instead, as it was compelled to do in order to restore aid after the elections, the shilling would have depreciated to the level that would have restored external balance. Where did the political will to implement the “big bang” financial liberalization after the elections come from? KANU had won the election, the opposition was in disarray, and the Goldenberg monetary overhang (excess...
money) posed a more serious political threat than the conditions of the IMF programme.

The Donor Predicament: Samaritans Dilemma And Principal-Agent Problems

Leveraging reforms on economic and political conditionality donors exposes donors to two incentive compatibility problems, which we refer to as the Samaritans dilemma, and the principal-agent problem. The Samaritans dilemma is a moral predicament, of whether to punish an intransigent Government by withholding aid, when this runs the risk of hurting the intended beneficiaries of aid more than it does the government. A principal-agent problem arises when it is impossible, or very costly for a principal to observe his or her agent's effort, and consequently, to distinguish between consequences of agent's actions and of factors outside the agent's control.

In the last few months, several critical components of the reform programme have been repudiated by parliament and the courts on constitutional grounds. The "contracts" (i.e aid conditionality) between the donors (the principal) and the Government (the agent) requires the Government (i.e the executive) to "table" legislation in Parliament, or to put a state corporation on sale. This principal-agent problem is readily apparent. It is virtually impossible for the IMF (the principal) to ascertain whether parliament and the courts acted independently or at the behest of the executive.

How can these predicaments be resolved? The Samaritan's dilemma has no simple solution. Over the last decade, the donors have tried to resolve the samaritan's dilemma by channelling their grant aid through NGOs. Thus far, casual observation suggests that this approach has worked reasonably well in the case of emergency aid. In the case of development aid, its effectiveness, and more importantly its sustainability is questionable, on two grounds. First, NGO development work targets poverty alleviation and social investment (health, education, sanitation), but poverty has increased and the social indicators have worsened. This observation is of course subject to the counterfactual critique, the argument that the situation would be even worse if the aid had continued to go through the Government or was withheld altogether. Second, Government responds to the diversion of aid to NGOs by reducing its development spending and diverting the tax savings for prestige projects, such as executive jets and the airports to park them in. In effect, the donors end up financing, indirectly, the same wasteful Government spending that prompted the diversion of aid to NGOs.

The principal-agent problem is essentially one of programme design. Two features have predisposed the recent programmes to failure. The first feature is the erosion of domestic ownership. In theory, the Bretton Woods institutions underwrite economic reform programmes that are owned by the Government, in other words, that the Government has secured the political mandate to implement them, including borrowing abroad, through the country's institutionalized policy processes. In practice, we know of course that the policy packages originate in Washington. In recent years, the programmes have become more intrusive. The package now comes with the policies, the instruments (such as PRSPs and MTEFs) and institutions (anti-corruption bodies, revenue authorities, road boards etc), and I am tempted to add managers (dream teams and international experts).

The second feature is "big bang" implementation, which is built into the programme by means of cross-cutting conditionality. This means that when one component, a critical privatization or civil service retrenchment for instance, runs into difficulties, the whole programme collapses. This feature elicits two types of behavior which undermine the programme. First, when one component runs into difficulties, the stakes are such that the programme managers have to shift all their attention to it. By the time it is back on track, other components are behind schedule. Analogously, it makes the programme easier for anti-reform elements to derail, because, like a chain, the programme is as strong as its weakest link.

The experience from the 1980s illustrates the relevance of this critique. As I pointed out earlier, the relatively successful reform episode in the mid- to late 80s was preceded by a domestic policy process which culminated in the adoption of Sessional Paper No 1 of 1986 on Economic Management for Renewed Growth. The Sessional Paper was prepared with minimal donor involvement, was extensively debated in Government and in parliament before it was
adopted. As regards implementation, the adjustment programmes were designed and negotiated on a sector by sector basis. It is noteworthy that the World Bank’s adoption of this approach was informed by its own evaluation of the widespread failure of “big bang” programmes. There would be two or three concurrent World Bank sector adjustment loans with sector specific conditionalities and an IMF programme leveraged on its traditional mandate, fiscal and monetary policy targets. This meant that if, as was often the case, the agricultural sector adjustment programme ran into difficulties (over maize movement controls), only the agricultural sector adjustment loan that was suspended. In this way, the Government had the incentive to continue implementing reforms in the other sectors, and adhering to the fiscal and monetary targets under the IMF programme.

As only the second long term strategy document (after the African Socialism paper of 1965) and the first under President Moi’s Government (his manifesto so to speak), and an envisaged lifespan of up to year 2000, its interesting and insightful to highlight some of the key elements of Sessional Paper No. 1.

First, Para. 133 of the African Socialism paper cited earlier was emphatically abrogated. The third of seven goals is stated as “rising productivity in all parts of the economy” (pg. 104). The agroecological pecking order--high, medium and ASAL--remained, but the economic potential of ASAL and economic interests of pastoralists featured prominently,

This area supports 20 per cent of the country’s people and half its livestock. Arid and semi-arid lands (ASAL) have fragile environments, subject to degradation as more people move into them from the over-crowded lands of medium and high potential. Yet, these lands represent a potentially important resource which, if managed carefully, can help serve the income, employment and food self-sufficiency goals of this Sessional Paper...Links between ASAL regions and higher potential areas can be intensified through a programme under which ASAL herders produce immature animals for fattening in the high potential areas ((Pg. 84-85).

Second, the Government did not envisage a complete withdrawal of the state from the production--it stated unequivocally that "Kenya’s economy is and will remain a mixed economy." (pg 23).

Third, although the Government envisaged a gradual movement towards market determined interest rates, it signalled apprehension about its capacity for fiscal discipline consistent with market interest rate regime as follows,

It is difficult to predict how interest rates will move in a system such as outlined here...the size of the budget deficit and thus the need for Government finance will be important in determining the level of interest rates; the larger the fiscal deficit, the higher will be demand for credit from the Government, causing upward pressure on interest rates, and vice versa (pg. 37).

There are many more examples, but these illustrate the essence of domestic ownership, a political agenda (abrogating Para. 133), firm convictions (mixed economy) and appreciation of the risks (fiscal indiscipline).

5. A Critique of the Current Reform Programme

The advent of multi-party politics, brought about a dramatic, and uncontemplated change in the character of Government. Kikuyus and luos, including some of the key architects of Sessional Paper No. 1, defected en masse, shifting the theatre of political bargaining from the Executive, to an erstwhile rubber stamp parliament. The post-1992 reforms, going well beyond what was contemplated in the Sessional Paper, proceeded without having been subjected to broad-based domestic validation. I argue in this section that some of issues on which the reforms have faltered are legitimate contests that have sound theoretical and or factual reasons.

Macroeconomic Management

The most critical macroeconomic management issue today is how to reduce both the stock and interest cost of the Government’s short term domestic debt to a manageable and sustainable level. The key elements of the macroeconomic component of the reform programme ought to be the fiscal, monetary and financial sector policies to address the debt. A related issue is the implementation of the Donde Bill, which, in all likehood, will come into force by in March/April. I am of the view, which I’ve argued elsewhere, that there are sound economic and strategic reasons for regulating, not just the commercial bank spread, but also rethinking the T-bill rate setting mechanism. This is obviously a controversial view that will be very unpalatable
to the World Bank and IMF, so I will expound a little.

First, other than ideological dogma, there is no theoretical or factual basis to show that free market interest rate regimes are superior, in terms of economic growth and financial development, than properly regulated regimes. Contrary to the conventional wisdom, high financial interest rates do not promote saving. Growth and a sound financial system are more important for saving, and inordinately high interest rates undermine both. What then, is a properly regulated regime? As a rule of thumb, the policy objective is to have the lowest positive real interest rates that achieve the monetary authority's inflation target. In turn, the inflation target is not an end in itself, it should be informed by the trade-off between low inflation(high interest rates) on growth.

Secondly, there is, a prudential case for regulating commercial bank interest rates. From a prudential regulation perspective, the essential distinction is between commercial banks, and non-deposit taking intermediaries, for example, SACCOs, which intermediate share capital, or microfinance and development finance institutions, which on-lend credit lines. Frequent bank failure undermines the public's confidence in the banking system. It also raises the cost of deposit insurance, in the same way that high accident rates has pushed up motor vehicle insurance premiums. For these reasons, a sound banking system is characterized by banks which lend very conservatively. In our case, interest rate liberalization encouraged commercial banks, particularly the small ones to make riskier loans. In my view, regulating interest rates will improve the stability of the banking system by circumscribing the risk exposure that banks will be willing to take. This is not to say that riskier borrowers should be denied credit, but rather, that policy should encourage the development of non-deposit taking intermediaries to cater for riskier borrowers.

Third, there is a compelling case for rethinking the benchmark rate setting mechanism. The current system, where the weekly T-bill auction establishes the benchmark rate, dominated as it is by a few large players, is susceptible to manipulation. By this I do not mean that banks and fund managers meet to conspire. Rather, because the players have a fairly good information on each other's liquidity position, as well as the state of the Government's finances, the sum total of each players independent strategic action is to behave as if they are colluding, a phenomena referred to in industrial economics as "non-cooperative collusion".

The T-bill rate, being the benchmark "risk free" ought to be lower than commercial bank deposit rates. The fact that T-bill rates have been persistently higher than the average deposit rates is clear indication the market is not "informationally efficient." In an efficient market, individuals would shift from bank deposits to T-bills thus driving T-bill rates down, and deposit rates up, until the risk adjusted returns are equated. In this way, the equilibrium T-bill rate will equate the supply of T-bills and portfolio preferences, that is, the amount of risk free assets that people want to hold in their financial asset portfolios. It should be readily apparent that a depressed economy should exert downward pressure on the T-bill rate. Why? Because, at a given T-bill rate, a decline in the return to real investment(as reflected in the NSE index) is a relative increase in the risk adjusted return of holding T-bills.

Civil Service and Public Expenditure Reform

It is the experience of civil service reform everywhere that the early benefits do not accrue from retrenched, but rather from efficiency improvements. In fact, in our case, the share of the wage bill (35% of expenditure) is quite reasonable. The problem, as the table below shows, is the crowding out of non-wage and development expenditures by debt service. The debt service share has increased more than four-fold since the 1970s, from 9% to over 40%, squeezing recurrent expenditure share from 64% to 50%, and the development share from 27% to 7%. The increase in debt service share from 27% in the 80s to 42% in the 90s is accounted for almost exclusively by short term domestic debt stock, 90-day T-bills primarily, and the attendant rise in interest rates.4 A reasonable public expenditure rationalization, by rule of thumb, should have as its medium term target, 60% recurrent expenditure (40% wage and 20% non-wage), 20% development, and 20% debt service,

4 Note however, that the distinction between domestic and foreign short term debt in the context of a liberalized capital account is a false dichotomy. A third of the Treasury bill stock represents short term capital inflows.
within an overall expenditure ceiling of 25% of GDP. It is readily apparent that, even in the medium term, the most critical public expenditure reform imperative is to reduce debt service, and not the wage bill. In fact, the combination of staff reduction by natural attrition (retirement without replacement) and a modest phased retrenchment should be sufficient to achieve the appropriate staffing levels.

Beyond that, civil service reform, as indeed any organizational re-engineering is a very management intensive undertaking. In effect, the primary focus of the first phase of the civil service reform programme should have been on managerial capacity building, rather than on retrenchment.

The imperative for improving public financial management is one that is difficult to overstate. Corruption and wasteful spending of the little money left over from paying salaries and debt service. The current levels of non-wage recurrent expenditures translate to Ksh. 1000 per person, or about Ksh. 6000 per household per year. This is not as little as it looks at first, since personnel-teachers, health workers, policemen etc--are the main input into Government service delivery. To illustrate, suppose 20%, Ksh. 1200, went to primary school non-wage expenditure. Allowing for reasonable administrative non-wage expenditures, say 10%, this translates to about Ksh. 20,000 per class of 40 children nationwide for books and learning materials, in other words, free universal primary education.

Three of the financial accountability initiatives envisaged in the reform programme, KACA, the Roads Board and the Ethics bill, have hit a constitutional barrier. A fourth one, the introduction of financial controllers in line ministries who are accountable to the Treasury would appear to be an encroachment on the constitutional mandate of the Controller and Auditor General. The amendments to the Finance Bill by the Finance Committee reversed some of the reforms in the budget (transfer of collection of Catering Levy from the Catering Levy Trustees to the Kenya Revenue Authority, and introduced one of own (abolished independent post-shipment import inspection). A retrospective interpretation of these setbacks is that the Executive lacks the political will to enforce financial discipline and fight corruption. That might well be true, but as I argued earlier, ascertaining whether the courts and parliament are acting independently, as they should, or at the behest of the Executive, or its simply poor draftmanship, is virtually impossible.

The bigger picture is one of institutions of governance that are are evolving, and in the right direction. Ultimately, financial accountability is predicated on citizens ability to judge value for money and to penalize Governments' that do not deliver value for money. This begs the question whether the resources and effort would not be better spent reinforcing this process, as opposed to institutional inflation. Such might include broadening the Auditor General's constitutional mandate to include continuous "value for money" audits, and giving parliament the power to surcharge accounting officers who spend money wastefully (on expensive cars and unnecessary office refurbishments for instance).

There is an emerging consensus in the civil society anti-corruption discourse that any effort to address corruption outside of the context of transitional justice is doomed to fail. In this view, the end of KACA’s externally driven prosecutorial zeal was a matter of when and how, not if. In the last two months, independent anti-
corruption authorities, the KACA model, have run into constitutional difficulties in South Africa and Thailand. This is to say that the issue of past economic crimes is one that Kenyans alone must resolve in the context of the constitutional reform process.  

5. Conclusion: Re-domesticating the Economic Reform Initiative

The economic reform model of the last decade has, as the saying goes, reached its sell by date. The "model" can be characterized as an opportunistic game where reform agents--both domestic and external--have taken advantage of political and economic crises to push reform well beyond the limits of the domestic consensus. The model faces two related obstacles. First, the political dynamics of President Moi's constitutional term limit. Second, an increasingly assertive legislature. Both are definitive elements of the transition to democracy. The fundamental challenge then, is one of re-domesticating the economic reform initiative to fit into this reality. Preparing a Sessional Paper focusing on economic policy and management over the next three years (2001-03) might be a good place to start. The paper might be titled "Economic Reform in the Constitutional Transition" and would culminate in the passing of an Economic Reform Bill in the next few months. The choice of period is significant: spanning the election period would guarantee ownership by the incumbent and incoming Government, and by Government I mean both executive and parliament. In terms of securing its implementation, the Bill (or an amendment to the constitutional review act) would provide for expanded economic change management team, giving it temporary security of tenure over the transition period.

More fundamentally, both the economic and constitutional reform imperative are hostage by our inability to find palatable language with which to conduct the uncomfortable discourses of ethno-regional inequality and transitional justice. The appropriate metaphor, I believe is the popular parlance of level playing fields. The gradient of the playing field, let's say a football pitch, is not the issue if one team is in boots and shin guards, and the other is barefoot, and the fans on both sides are armed to the teeth. When we played break time football in primary school (on a very uneven pitch), we began by arranging evenly matched teams and since not every boy had shoes, the game was played without shoes.

5 The South African case is insightful. The Heath Unit as its called was set by President Mandela and headed by high court judge, Justice Heath, with the both investigative and judicial authority. Like KACA, it has been challenged in court, and declared to be in breach of the constitutional principle of separation of powers, but unlike KACA, the Unit was an overwhelming success during Mandela's tenure. At the time of the challenge, the Unit was pursuing a defence contract investigation involving key ANC politicians. A possible explanation is that the law establishing it requires Justice Heath to obtain consent to investigate from the President. In effect, it is arguable that the unit owed its success to President Mandela's political support and judgement, as opposed to its independence.