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THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS, 2020

ANALYSIS AND RECOMMENDATIONS

Submitted to

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1. INTRODUCTION

The Public Finance Management (Biashara Kenya Fund) Regulations, 2020 (hereafter BKFR) are made pursuant to section 24(4)[1] of the Public Finance Management Act (No.18 of 2012). Section 7 of the Regulations provide the object and purpose of the Fund with the target group being women, youth and persons with disability (PWDs).

The Biashara Kenya Fund (BKF) seeks to merge the already existing funds with similar purpose namely Women enterprise Fund (WEF), Youth Enterprise Development Fund (YEDF) and UWEZO Fund. The purpose of this Brief is therefore to establish:

i. Whether the BKF incorporates all the objectives of the three other Funds;
ii. Whether the BKF is a substantial improvement to the three other Funds;
iii. Challenges in the implementation of the WEF, YEDF, and Uwezo Funds;
iv. Whether the challenges noted in (iiii) above will be surmounted through the institutionalization of the BKF; and lastly;
v. Whether the BKF is generally a progressive move for the women of Kenya.

To respond to the above questions, the method adopted was:

i. Firstlyto analyse the three Funds together with the BKF based on select parameters;
ii. Secondly, to analyse the BKFR to establish their cogency, extent to which they enable the cause of the beneficiary categories of women, youth and persons with disability (PWDs);
iii. Lastly, to respond specifically to question (v) in bold above.

It is instructive to note that the BKF is not a unique venture but is just but one of the models that exist particularly in developing countries[2] for the purpose of providing indigent persons in their beneficiary categories of choice with funding, in order to enable them to improve their livelihood.

[1] "The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly."

[2] See among others the cases of India - https://savvywomen.tomorrowmakers.com/wise/government-schemes-can-help-women-entrepreneurs-india-grow-their-small-businesses-article and https://www.fundsforngos.org/gender-2/nirnaya-womens-fund-india/ [accessed on 10.07.2020] Brazil - https://www.caf.com/en/currently/news/2019/03/funds-to-expand-credit-access-for-brazilian-women-owned-smes/ [accessed 10.07.2020]

The funds are provided either by governments or non-governmental organisations or in some cases both.

2. COMPARISON BETWEEN THE YOUTH ENTERPRISE DEVELOPMENT FUND (YEDF), UWEZO FUND, THE WOMEN ENTERPRISE FUND AND THE PROPOSED BIASHARA KENYA FUND

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
1.	**Formation**	• It was established in 2007 as a state corporation under the ministry of public service. • Was a flagship project under the social pillar of the vision 2030	• Launched on 8th Sept 2013 by Pres. Uhuru Kenyatta • Created through Legal No. 21 of the PFMA, 2014 • Published on 21st Feb 2014	Formed in August 2007 as a semi-autonomous Government Agency in the ministry of Public Service, Youth and Gender affairs	Proposed for establishment under PFMA, 2012 and will be cited under Public Finance Management (Biashara Kenya Fund) Regulations, 2020	Like the UWEZO FUND, the Biashara Fund is anchored on the PFMA that introduces proposals that enhance credibility and accountability in the fund management
2.	**Mandate**	• Provide loans and market support to youth-owned enterprises • Create a linkage of youth-owned enterprises with large enterprises. • Provide entrepreneurship training & mentorship to youth-owned firms.	• Expand access to finance for youth & women • Promote businesses of women & youth towards the realization of vision 2030 • Generate gainful self-employment for them • Model an alternative community Development	• Provide accessible and affordable credit to support women start-ups and expand businesses for employment creation • Anchored on the realization of SDG 5-Gender Equality & Women Empowerment.	• Expand access to finances for women, youths and PWDs enterprises, groups and SMEs. • Provide loans to credible financial institutions for on-lending to youths, PWDs and women • Provide loan directly to the women, youth and PDWs enterprises • Attract and facilitate investments in SMEs infrastructures for the	• Biashara fund amalgamates all the mandates of YEDF, UWEZO FUND AND WEF. • It also introduces other mandates such as international trade linkages critical in advancing the agendas for the youths, women

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
		• Provide business development services to youth-owned enterprises • Facilitate youth to obtain jobs abroad • Provide trading premises and worksites	Funding		benefits of youths, women and PWDs • Support micro, SMEs owned by the youths, women and PWDs develop linkages with large enterprises • Facilitates marketing of products & services of youth, women and PWDs enterprises on different markets • Facilitates capacity building for beneficiaries of the funds • Promote, facilitate and develop access to government procurement opportunities for the women, youth and PWDs • Facilitate mainstreaming of youth, PWDs and women agenda in international trade	and PWDs.
3.	**Source of Funding**	• Revolving fund with initial amount appropriated amounting to	• Revolving fund with initial amount appropriated amounting to 6B • Income-generated	• Appropriation from the government of Kenya of KSH.5.5B since	• Monies appropriated by Parliament for the Fund. Initial shall be 2B • Income-generated from the proceeds of the Fund	Biashara Fund has broadened the sources of Fund with the inclusion of the provision

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
		4B • Income-generated from the proceeds of the Fund	from the proceeds of the Fund	inception • Income generated from the proceeds of the Fund making total disbursements amount to KSH. 16.9B	• Income from investments made by the Fund • Grants, donations, bequests or other gifts made to the Fund.	allowing fund managers to make investments and grants/donations. Other sources will also contribute to the Fund as long as the CS approves. The proposed initial appropriation is the lowest compared to the other funds at 2B
4.	**Products**	• Group loans Kshs. 50,000 to 400,000 • Individual loans Kshs. 25,000 to 200,000 • Business expansion loans Kshs. 100,000 to 2 million • Greenhouse loans Kshs. 357,344 to 430,000 • Poultry incubator loans Kshs. 198,000 • LPO financing	• Group loans Kshs. 50,000 to 500,000	• Tuinuke loan: Interest-free loan with 5% admin. fee and 1-month grace period • LPO Financing • Bid bond financing/Tender security	• Loans to persons/groups advanced at 6% per annum on reducing balance. • Loans to financial intermediaries advanced at 3% per annum, reducing balancing to lend to women, youth and PWDs. • The intermediaries can then lend a maximum of 3M at a maximum interest of 10% per annum.	• It can offer a wide range of innovative products, especially because of the involvement of financial intermediaries. • The products will be the most expensive because of the 6 % loan to individuals/group s and the proposed maximum on-

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
		Kshs. 500,000 to 20 million.				lending interest rate of 10 % for the financial intermediaries.
5.	**How is the Fund Administered?**	• The Youth Fund has regional offices all the 47 counties across the country & 2 officers in every constituency. • The officers can be found in district youth offices in every constituency	Through Constituency Uwezo Fund Management Committees (CUFMC)	Administered through credit loan officers situated in regional centres of the formerly eight provinces Partnerships with SACCOs to offer the JIIMARISHE loans at with an on-lending rate of 8% per annum	• Will be administered through the Fund's platform as developed by the secretariat • Great emphasis on the involvement of financial intermediaries because of success stories of the WEF	Mirrors the strategies adopted by the WEF which has so far registered the best results yet
6.	**The mechanism for Target Audience to know about the Fund**	• Online: Visit YEDF Website • Publicized through both print and electronic media	• Online: Visit the Uwezo Fund Website • Visit constituency offices for the CUFMC prequalification • Publicized by MPs and through print and electronic media	• Online: WEF website • Through regional offices situated in the former eight provincial centres • Popularized by social development assistants in each division and	**(To be established upon implement of Fund)**	**(To be established upon implement of Fund)**

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
				WEF officers at the constituency level		
7.	**Ease of Access to Fund by Target Group**	Difficult for the youth groups to access the funds because of offices in counties as opposed to constituencies No innovative mobile products	• Easy to access in all the 290 constituencies after meeting selection criteria • Political patronage might, however, influence the decision to award the loans.	• Easily accessible through its robust ICT unrestricted including M-PESA platforms • Through the 13 SACCOs that partner with WEF	**(To be established upon implement of Fund)**	**(To be established upon implement of Fund)**
8.	**Repayment of loans by loanees**	• High default rates because of the poor capacity building among the youths on undertaking business ventures and bookkeeping. • Poor accountability of the funds contributes to	• Six months grace period • Attracts an interest of between 0% and a maximum of 1 % • Repayable in eight monthly instalments • Only 3% admission fee • Default rate stands at over 60%	• The loan repayment rate stands at 97% because of efficient management • Membership guarantees and collateral provided (financial intermediaries contribute to high repayment	**(To be established upon implement of Fund)**	**(To be established upon implement of Fund)**

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
		colossal failures.		rates		
9.	**Eligibility**	• A group must possess a valid registration certificate from a relevant government body. • A group has to have members that exceed 5. • The group should have at least 70% of its members within the youth bracket (18 to 34 years), and 100% of the leaders should be youth. • A group must have a joint bank account with at least three signatories. (where the money will be	• Only women, youths and PWDs • Youths must be between 18 to 35 years • Women must be above 18 years • Offered to a group of 9 to 15 members • Groups must be registered with the department of social service or registrar of societies • Minutes of group meetings must be provided • Groups must be based/operate within communities • Bank account in the name of registered groups/ bank statements needed • Preference is given to groups with over six months of existence	**<u>Constituency Women Enterprise Scheme (CWES)</u>** • Registered self-help group with ten or more members • Should have either 100% women or 70% women and 30%, men • Women must hold all leadership positions and accounts signatories • A bank account in a financial institution with at least three months of existence • WEF officers must train groups in business management	a) Groups must be registered with the department of social services, Cooperatives or the Registrar of Societies and; i. At least seventy percent of the membership is aged between 18 and 35 years; ii. At least seventy percent of the membership is composed of women aged eighteen years and above; iii. At least seventy percent of the membership is composed of persons with disabilities aged eighteen years and above. Cap. 499 Cap. 29 No. 17 of 2015 Cap. 490 b) Enterprise owned by women, youth or PWDs, should be registered under the Names Act, Partnerships Act,	A bit more flexible than the others as it allows individuals to borrow the loans when they meet the eligibility criteria. It even allows for unregistered businesses to access the funds unlike the other funds

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
		deposited) Copy of certified valid group registration certificate and list of membership • Copies of IDs for ALL the members • A signed undertaking by the group to pay loans guaranteed to its members • Group minutes nominating/authorizing an applicant to a particular round of the loan • Duly completed YEDF loan application form • bank account details	• Evidence of monthly Chama contribution	skills before a loan application **<u>LPO Financing</u>** • 100% women composition or 70% women and 30% men in-group/company • The relevant government body must register company/group • Valid LPO duly signed/stamped by procuring entity • A one-off administration fee of 5% of the loan amount • The maximum amount available for the loan is KSH. 2 million • Tenure of 90 days	Companies Act or Co-operatives Act; c) For unregistered business, the person shall have a business permit and a P. I. N issued by the Kenya Revenue Authority. d) For a natural person, the person shall demonstrate that they are running an enterprise or intend to start an enterprise. **e)** Women, youths and PWDS enterprises shall be given preference while processing loans by the Fund.	

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
10.	**Challenges in implementation**	• Lack of clear guidelines such as the ones anchored in the PFMA allowing room for misappropriations and corruption • Political patronage and interests in the funds • High default rates	• Difficult for many groups to meet the prequalification criteria • High rates of default • Based on the last auditor's report, grave concerns are; I. Missing records of loans disbursed and groups listed affecting accountability for about 3.9B II. No debtors' ledgers detailing loans issued since disbursement and repayment details/ recovery of loans II. Over 60% of the recipient groups have defaulted on the repayments within the stipulated time	• Inadequate field personnel with few regional officers covering several constituencies. • Many field officers and social development assistants are voluntary. • Illiteracy among women borrowers for a sizeable proportion of women in the groups**.**	**(To be established upon implement of Fund)**	**(To be established upon implement of Fund)**

S/NO.	PARAMETER	YEDF	UWEZO FUND	WEF	BIASHARA KENYA FUND	REMARKS VIZ BIASHARA FUND
			since inception. V. No comprehensive ageing analysis or loan listing for outstanding amounts			
11.	**General Chatter from the Public**	• Individuals within a group cannot apply for the loans • Political patronage also highly rewarded • Limited amounts disbursed to the groups	• Political patronage rewarded majorly by the constituted committees • It takes too much time to receive the funds • Amounts capped at KSH. 500,000 for the 9 to 15 members viewed as too little • Assessment of the CUFMC can lead to disbursement of significantly lower amounts	• Amounts disbursed is too little for the groups • High rates of competition from other enterprises at times affect their business and thus opportunities to repay		

3. ANALYSIS OF THE BKF WITH RESPECT TO YEDF, UWEZO AND WEF FUNDS BASED ON THE PRECEDING TABLE

i. The administration of the BKF is proposed to be housed in the Ministry for the time being responsible for gender affairs. On the other hand the administration of the Access to Government Procurement Opportunities (AGPO) policy is housed at the National Treasury. The objectives of the BKF and AGPO are similar and thus it would be prudent that they are housed in the same Ministry to avoid incoherencies in approaches, logic and implementation.

ii. The proposed mandate and objectives of the Biashara Kenya Fund merges all the objectives of YEDF, UWEZO, and WEF funds as espoused by its expanded mandate. Further, it includes other key objectives that were previously overlooked by the other funds which are key in the furtherance of the youth, women and PWDs agenda in the country. An example of the expanded objectives includes attracting and facilitating investments in SMEs infrastructures for the benefits of youths, women and PWDs.

iii. The BKF offers some improvements on the three other funds on a number of metrics, including the sources of funds, products offered to the youths, women, and PWDs, criteria for eligibility among others. It mirrors the best practices drawn from the WEF, which performed much better compared to the YEDF and Uwezo funds. For instance:

   a) It proposes to continue with the approach of engaging third party financial institutions in the lending process and allowing for such institutions to advance credit to the targeted groups.
   b) It is also anchored on accountability and transparency in the management of the funds with punitive measures proposed for those who misappropriate the fund.
   c) Unlike the three other funds, it is slightly more flexible as it allows individuals within groups to borrow loans where they meet the eligibility criteria. The BKF even allows for unregistered businesses to access funds unlike the other three Funds.

iv. Regarding the challenges noted in the implementation of WEF, YEDF and UWEZO funds, the clauses of the BKFR do not come out clearly withthe appropriate remedies to address them at the outset. This includes:

   a) The fact that the BKF has limited funds available compared to the other three Funds; Although the BKF expands the sources of funds, its initial appropriation of

2B is significantly lower compared to the amounts that were appropriated in the three other Funds. Questions arise as to why the resources currently being allocated to the three other Funds cannot instead be channelled to BKF in order to bolster its amounts.Indeed the financial rationale for allocating only 2B as seed money to the BKF which is supposed to collapse the other three into one is not clear.

b) The criteria to be used for subsequent allocation of funds in the budget of other financial years is not specified.

v. The BKF proposal to advance the credit at an interest rate capped at 6% and an on-lending interest rate to financial institutions at 3% , which would be advanced to lenders at a rate capped at 10%, makes the BKF more expensive especially to those who used YEDF advanced at zero percent interest. Though the proposals are significant for the survival of the revolving fund, it might defeat the purpose of the fund especially given the current economic situation where many micro and SMEs are struggling with the need to keep their businesses afloat.

4. LEGAL ANALYSIS OF THE BIASHARA KENYA FUND REGULATIONS

i. Mode of Establishment

It goes without saying that an Act of Parliament gives greater strength to an entity as opposed to that created through regulations by a Cabinet Secretary. To disestablish the Biashara Kenya Fund is easier where it exists courtesy of Regulations that are made under the aegis of a Cabinet Secretary as opposed to an Act of Parliament made by the assembly of legislators. When there is a change in regime following elections, decisions made by Cabinet Secretaries can be easily changed to align with the objectives of the incoming government. This point is for noting so that where an opportunity is presented for the BKRF to be converted into an Act of Parliament the same is pursued vigorously. For now, it may be prudent to take advantage of the existing opportunity under the Public Finance Management Act.

ii. Citation

There is need to reflect on what message is conveyed by the word ‘Biashara’ as the name of the Fund. Will the intended recipients think that they are included or excluded based on their interpretation of the name. For those who are not already business persons, will they feel that they fall within the ambit of the Fund? Answering this question is important because it goes towards setting the Fund on a right footing from the beginning. In order to arrive at a determination as to its suitability, the name could be pre-tested on the relevant target groups using an appropriate sampling method.

iii. Interpretation

a) **Persons with disability as a term is not defined**. This is very important given the varying interpretations that emerged post the 2013 General Elections with arguments arising as to whether the individuals nominated under this category actually had a disability. It is therefore important to avoid ambiguity from the start to avoid any stalling in disbursements to deserving persons.

b) In addition, there is **no mention of intersex persons**, now a recognised category in Kenya. The question of whether those who identify themselves as intersex fall within the ambit of the Biashara Kenya Fund (BKF) needs to be addressed.

c) Vulnerability as a status has not been defined in the BKF so that distinction can be drawn between persons who are deserving in the beneficiary categories and those not falling within the target group. For instance, is it intended that wealthy women, young persons or persons with disability be beneficiaries of the BKF? It is important that this question be answered so that the target groups are well defined.

d) One of the positive things about the definition of 'enterprise' in the interpretation section is the inclusion of informal businesses as coming under the purview of the BKF. However, while the participation of medium, micro and small[3] enterprises is provided for it is clear from their definition that they are formal outfits of which the majority of persons from the beneficiary categories may be unable to own or be participants of given the pecuniary brackets applicable and number of employees involved. There is a real danger therefore of enterprises owned by persons who are not vulnerable being given preference compared to the actual intended persons. In fact, Regulation 14(3)(b) provides that preference will be given to persons within the beneficiary categories with enterprises.

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[3] "small enterprise" means a firm, trade, service, industry or a business activity—
(a) whose annual turnover ranges between two million and ten million shillings; and
(b) which employs between ten and fifty people; and
(c) whose total assets and financial investments is between ten million and fifty million shillings;

e) There is need for more to be done to ensure the identity of the beneficiaries of the BKF as there exist several reports of beneficiary categories of the Access to Government Procurement Opportunites (AGPO) simply acting as a front for well-established business men in the shadows because they of themselves do not have the necessary requirements to be eligible for the fund. This frustrates the real intent of AGPO and every effort must be made to ensure that this is not repeated with the BKF by making it unequivocal about how the BKF will reach the actual intended beneficiaries in ways that do not predispose them to being exploited by wealthier individuals. Thus the eligibility criteria must be practically attainable for the intended beneficiaries to make it unnecessary for them to seek patrons or be taken advantage of.

iv. Part II – Establishment of the Fund

a) Regulation 6 of the BKRF provides that the initial capital of the BKRF will be Ksh 2B but **does not set out a time frame for when monies will first be put into the BKRF**. It is essential that a time frame is included in this provision e.g. as soon as the Regulations come into force or in the immediate next budget upon the Regulations coming into Force. This will provide a basis for holding Government accountable and avoid a situation where certain Funds have been established by Acts of Parliament and not been put in funds to date e.g. the Compensation of Victims of Terrorism Fund established at Section 49 of the Prevention of Terrorism Act.

b) The Object and Purpose of the Fund as outlined in Regulation 7 are quite comprehensive as they focus on the various facets required to empower the beneficiaries i.e. lending money, training and capacity building, marketing of services and products, research, market surveys and facilitation of access to opportunities such as AGPO.

v. Part II – Management of the Fund

a) Regulation 8 of the Regulations provide for the composition of an Advisory Board to be set up to manage the BKF. In particular, it would be important that among the four persons appointed under Section 8(f) the selection be made from among the beneficiary categories of women, youth and PWDs. This is to enable enhanced cogency in the articulation of the issues at hand by persons who have first-hand experience of the various imperatives.

Notably, the BKFR provides for an Administrator of the Fund i.e. the Principal Secretary in the relevant State Department as well as a Chief Executive Officer but does not designate either as the Secretary of the Advisory Board. The duties to be performed by the Administrator of the Fund are akin to those performed by Chief Executive Officers so there is a possibility for grey areas to emerge with respect to the role of the Administrator and the Chief Executive Officer that can cause paralysis in decision-making thus crippling the BKF.

b) Regulation 9(1)(b) provides the fields in which the chairperson of the Advisory Board may be knowledgeable about. Among others engineering is listed. It is unclear how engineering enhances the ability of a chairperson under these circumstances in any peculiar way beyond the disciplines of sociology, history, medicine or any others. It is quite oddly placed and needs to be deleted.

c) Regulation 13(1) provides the eligibility criteria for women, youth and PWDs to apply for the BKF. The criteria as set out in Regulation 13(1)(a) appears to be quite inclusive roping in persons and entities that are registered and those that operate informally. However, Regulation 13(2) provides that preference will be given to the persons in the beneficiary categories with enterprises. This creates a confusion because in the Objects and Purpose of the Fund section the BKF is meant to benefit these very categories. It is not clear whether Regulation 13(2) means that the BKF is open to persons other than the identified beneficiary categories. There is need for clarification and alignment. If the BKF is meant only for the beneficiary categories, Regulation 13(2) ought to be deleted otherwise it is obsolete. This anomaly is again repeated in Regulation 14(3)(b) to name but some sections where this recurs.

d) Regulation 14(3)(c) provides the following as one of the criteria for evaluation of the eligibility of applicants for loans: *"…applicable loan threshold for each category of applicant based on theratio of the maximum amount applied for to the annual turn-over of theapplicant's business or projected annual turn-over for start-ups;".*

To achieve this criteria presupposes the existence of formality in one's enterprise because to determine this criteria requires calculation of certain parameters. Clearly, one would need to have a bank account that would be used as evidence of what is claimed as well as book keeping mechanisms. While this may be achievable for formally registered enterprises, the same cannot be said of informal enterprises. Available information in the media indicates that whereas the ease with which one can open a bank account today has improved tremendously, the same cannot be said of maintaining an account. Equally, the book keeping practice among most traders in the informal sphere is almost non-existent. The feedback from the public when Kenya Revenue Authority introduced the Turnover Tax and Presumptive Tax in early 2020 provides good insights as to the ability of small traders to comply with the requirements in Regulation 14(3)(c). To establish the extent to which this section will be a hindrance rather than facilitator for the beneficiary categories to access loans requires a primary study.Indeed this one section in these Regulations has the capacity to replicate the weaknesses found in the YEDF, Uwezo and WEF where the intended beneficiaries are unable to access the funds because of the hurdles already indicated above.

e) Regulation 14(3)(f) requires the loan recipient to sign an undertaking that they shall use the money received only for the purposes stated until full repayment of the loan. Given the vicissitudes of life, adhering to this strictly may not be achievable whether for small traders or medium enterprises. The impact of issues such as COVID-19, locusts, a depressed economy, etc. provides lessons for how persons within the beneficiary categories may be constrained to veer off the agreed path when faced with undue hardship. All efforts must therefore be made to increase the possibility of the majority to be able to adhere to the said undertaking if only because it presents a viable way of lifting the loan recipient out of poverty. Again, there is need for further study on the factors that militate against loan recipients from utilising their loans for the stated purpose and hence being unable to repay them.

f) Regulation 16(1) sets out the interest rate at which the loan will be advanced i.e. 6% per annum. It would be useful to understand the basis for the figure 6%. As already stated in (f) above, some of the unprecedented challenges being experienced as a result of the COVID-19 pandemic and a depressed economy means that previously held assumptions must also change. It would be prudent that if interest must be charged at all, that this is left to the discretion of the Advisory Board and Administrator so that a rate that was favourable at a certain point in time does not become unfavourable subsequently with no avenue to make quick changes. It is also instructive to note that there are jurisdictions that give interest free loans to their citizens in order to actually assist them to get out of poverty.

g) Regulation 23(1&2) set out conditions for financial intermediaries with respect to on-lend funds to the beneficiary categories. This includes capping of the amount to any borrower at Ksh 3 million as well as a maximum rate of interest at 10%. It would be useful to understand the basis for these prescriptions and given the constantly emerging exigencies and emergencies on the national landscape, such precise figures are best left out of the Regulations and left to the Advisory Board and the Administrator to advise about from time to time.

h) Regulation 26 creates Offences and Penalties for any person who misappropriates any funds or assets of the Fund with a minimum term of five years imprisonment or a fine not exceeding ten million shillings or to both. Given the issues already raised above about the requirement for adherence to the purpose and terms of the loan, it is clear that many will be jailed. Before arriving at these extremely punitive measures for persons within the beneficiary categories, it is important that the BKF mandates the Advisory Board to develop mechanisms for ensuring that persons eligible for the loan are monitored closely and well trained to avoid a situation where they have to eventually face stiff penalties that will be counterproductive for persons who are already in need. Certainly, jail time for persons who are already poor and disenfranchised at many levels would be quite counterproductive and will lead to deepening of the crises.

5. CONCLUSION

Based on the analyses contained in both Section 3 and 4 of this Brief, it is clear that the BKF is a mixed bag with respect to whether it progresses the women's agenda in the area of economic empowerment. It contains clauses that are both an advancement and a deceleration compared to the other existing funds. The drawbacks need to be articulated clearly before the relevant organs so that the Regulations are improved and any debilitating clauses modified or removed altogether. It would indeed be unwise to carry the impediments of the three other funds combined and lump them on the BKF without first addressing the root causes.

6. RECOMMENDATIONS

i. The clear contradictions and weaknesses in the BKFR as outlined in Sections 3 and 4 ought to be addressed urgently otherwise the utility of these Regulations to the beneficiary categories would be rendered nugatory;

ii. For the purposes of informing further and future efforts with regard to the BKF, it would be essential that a primary study covering all the 47 Counties be commissioned with the aim of establishing truths on various important parameters before the BKF is rolled out. This would provide actual bases for any action(s) taken thereafter. This should be accompanied by a comparative study of other similar funds in other jurisdictions. This will avoid repetition of mistakes that may have been made in the conceptualisation and implementation of the three existing funds as well as provide a formula that would greatly improve the experiences of the beneficiary categories in Kenya. To be clear, a matrix of the challenges faced ought to be prepared with concomitant solutions for how to avoid or overcome the challenges in the BKF clearly indicated. Clearly, a BKF that is not well conceptualised nor well implemented would only lead to a shrinking of options for the vulnerable persons in the beneficiary categories. However, a fund that is well run, even if modest and available only to a smaller section of women, is a better option because one by one persons from the beneficiary categories eventually get lifted out of poverty.

iii. It would be prudent that the three other funds namely YEDF, UWEZO and WEF are phased out over a period such as two years so that persons who are already have loans from them can repay them and enable these Funds to hand over clean books of account to the BKF. Meanwhile, should the BKF formally commence within the said two years, it should handle only new cases of persons desirous of borrowing loans. Indeed any fresh requests for those who repay their loans in the other three loans should be directed to the BKF. The research referred to (i) can be undertaken at the earliest within the said two years.

iv. The Kshs. 2 Billion is a very small amount to initiate the Fund as compared to the combined sum of the other three funds which is about Ksh 10 Billion. However, this can be added during the implementation period after the transition since the other funds will still be on and gradually winding up.

v. The process for applying for the loans should be friendly to women of various categories including rural/urban, mothers of PWDs as well as PWDs (PLWDs) and the youth.

vi. National Council for PWDs, representatives for National Youth Council, women's organizations identified through a consultative process by women's organizations and Ministry for Gender Affairs should be in the management of the Biashara Fund.

Submitted by:

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