



**THE HIPC CLINIC OF
THE
COMMONWEALTH
SECRETARIAT
IN THE
LAW DEVELOPMENT SECTION
OF THE
LEGAL AND CONSTITUTIONAL AFFAIRS
DIVISION**

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LEGAL REFERRAL SERVICE (LEGAL DEBT CLINIC)



- Legal Debt Clinic of Commonwealth Secretariat
- Observations and recommendations
- Status of debt and litigation scenarios in HIPC countries
- The Way Forward - FRL
- Role of the Legal Debt Clinic in implementing FRL

LEGAL REFERRAL SERVICE (LEGAL DEBT CLINIC)



- **Seminars**
 - African and Caribbean Region on “Debt Negotiation and Renegotiation”
- **Bilateral Meetings**
 - Zambia and Cameroon
- **Partnership**
 - Pole Dette
 - African Development Bank
 - UK Law Firms

OBSERVATIONS



- **Attorney General's Office**
- **Building Capacity**
 - **Legal Aspects in Loan Agreements**
 - **Negotiation Team**
 - **Debt Management**
- **Domestic Debt**
- **Debt Sustainability**

OBSERVATIONS (2)



- **Litigation should remain last resort**
- **Avoid resources lost in litigation**
- **Debt Negotiation is a MUST**
- **Restructuring debt to avoid debt unsustainability (DMS)**
- **Develop domestic capital market**
- **Long term goal- MDGs**

LEGAL DEVELOPMENT



- **Legal changes**
 - **Government Borrowing Powers**
 - **Ministries individually**
 - **Constitutional provisions**
 - **Loan Agreements**
 - **Courts decisions**
 - **Institutional Framework, DMOs...**
 - **Fiscal Responsibility Laws (FRL)**

LEGAL DEVELOPMENTS (2)



- **Fiscal Responsibility Laws**
 - Set fiscal policies
 - Fiscal rules
 - Prudent borrowing
 - Transparency
 - Budget control / State control
 - Institutional Framework

FISCAL RESPONSIBILITY LAWS (2)



- **Means to achieve Sustainable Debt**
 - Good Institutions with Good Government
 - Responsible for fiscal management
 - Ensuring long term macro economic stability
 - Institutional framework binds the Govt to follow a prudent fiscal policy
 - Higher Level Legislation will formalise the observance of fiscal discipline
 - Sustainable fiscal deficit, revenue forecasts and spending loans affordable
 - Govt accountability to people
- **Countries**
 - New Zealand, Canada, India, UK, South Africa, Brazil, Nigeria, etc

FISCAL RESPONSIBILITY LAWS



CONDITIONS FOR EFFECTIVENESS

- Definition of terms
- Transparency
- Adequacy
- Consistency
 - All levels of Government
- Simplicity /Flexibility
- Enforceability

FISCAL RESPONSIBILITY LAWS (3)



- **Fiscal Policies and Rules**
 - Annual debt strategy to Medium term
 - » 3 year borrowing cap
 - » Comprehensive review of project proposals
 - Project Identification, Appraisal and Approval
 - » Monitoring performance of all project loans through reports
 - » Sources of contracting loan IDA & ADB – why other sources
 - » Cap on guarantee fees
 - » Loan Negotiating Team

FISCAL RESPONSIBILITY LAWS (4)



Legal and Institutional Framework

- **National Debt Management Committee**
 - » Policy Analysis Team
 - » Technical Team
 - » Loan negotiating Team
- **Central Banks**
- **Ministry of Finance**
- **The Cabinet**

FISCAL RESPONSIBILITY LAWS (5)



- **Fiscal policy rules**
 - Balanced budget, Expenditure ceilings; Govt will not commit itself to spend more money that it has
- **Fiscal Procedural rules**
 - Medium term budget planning, pay-go requirement; stop irresponsibly raising loans
- **Transparency standard**
 - Accrual based accounting, reporting system
- **Surveillance mechanism**
 - Independent institution / Fiscal Council to overlook conduct of fiscal policy

DOMESTIC DEBT



- **For financing government projects or for monetary purposes**
- **Any problems? Which ones?**
- **Cost of borrowing**
- **Legal Debt Clinic to investigate**

Devi

Thanks you