



**ECONOMIC POLICY  
FRAMEWORK  
INSTRUCTING THE  
DRAFTING OF  
COUNTY REVENUE  
LEGISLATION**

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## ABBREVIATIONS

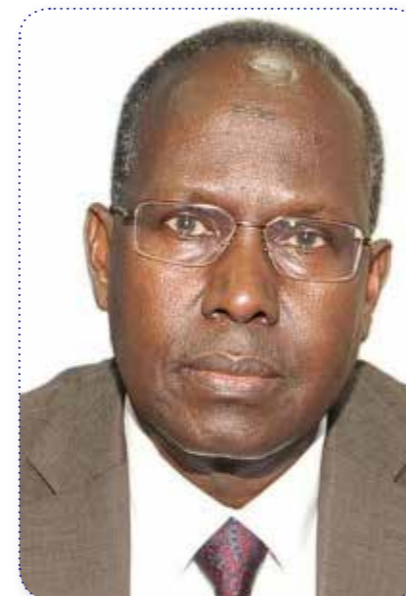
ACP	AFRICAN CARIBBEAN AND PACIFIC	MSE	MICRO AND SMALL ENTERPRISE
AGOA	AFRICAN GROWTH AND OPPORTUNITY ACT	NASEP	NATIONAL AGRICULTURAL SECTOR EXTENSION PROGRAMME
BMOs	BUSINESS MEMBERSHIP ORGANIZATIONS	NEMA	NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
BPS	BUDGET POLICY STATEMENT	PFM	FINANCIAL MANAGEMENT ACT 2012
BRICS	BRAZIL RUSSIA INDIA CHINA & SOUTH AFRICA	PPP	PUBLIC PRIVATE PARTNERSHIPS
CDF	CONSTITUENCY DEVELOPMENT FUND	PSDS	PRIVATE SECTOR DEVELOPMENT STRATEGY
CET	COMMON EXTERNAL TARIFF	RMLF	ROAD MAINTENANCE LEVY FUND
CFSP	COUNTY FISCAL STRATEGY PAPER	R&D	RESEARCH AND DEVELOPMENT
CIDP	COUNTY INTEGRATED DEVELOPMENT PLAN	SADC	SOUTHERN AFRICA DEVELOPMENT COOPERATION
COMESA	COMMON MARKET FOR EASTERN, SOUTHERN AND CENTRAL AFRICA	SAP	SINGLE BUSINESS PERMIT
CRA	COMMISSION ON REVENUE ALLOCATION	SAPS	STRUCTURAL ADJUSTMENT PROGRAMMES
DFRD	DISTRICT FOCUS FOR RURAL DEVELOPMENT	SEZ	SPECIAL ECONOMIC ZONES
EAC	EAST AFRICAN COMMUNITY	SME	SMALL AND MEDIUM-ENTERPRISE
EPA	ECONOMIC PARTNERSHIP AGREEMENT	SNA	SYSTEM OF NATIONAL ACCOUNTS (2008 SNA)
EPC	EXPORT PROMOTION COUNCIL	ST&I	SCIENCE, TECHNOLOGY & INNOVATION
EU	EUROPEAN UNION	SRDP	SPECIAL RURAL DEVELOPMENT PROGRAMMES
FGM	FEMALE GENITAL MUTILATION	USA	UNITED STATES OF AMERICA
GDP	GROSS DOMESTIC PRODUCT	WTO	WORLD TRADE ORGANIZATION
IBEC	INTERGOVERNMENTAL ECONOMIC AND BUDGET COORDINATION		
ICT	INFORMATION COMMUNICATION TECHNOLOGY		
KEBS	KENYA BUREAU OF STANDARDS		
KIE	KENYA INDUSTRIAL ESTATES		
KENAS	KENYA NATIONAL ACCREDITATION SERVICE		
KEPHIS	KENYA PLANT HEALTH INSPECTORATE SERVICES		
KLRC	KENYA LAW REFORM COMMISSION		
LA	LOCAL AUTHORITIES		
LATF	LOCAL AUTHORITIES TRANSFER FUND		
MENA	MIDDLE EAST AND NORTH AFRICA		
MSMEs	MICRO, SMALL AND MEDIUM ENTERPRISES		
MTP II	MEDIUM TERM PLAN II		

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## FOREWORD



Two years into devolution, county governments are up and running. As counties undertake service delivery of devolved functions in areas such as health, early childhood education and agriculture, opportunities for business in regional and international trade continue to emerge.

The emerging businesses have great potential to generate revenue for counties as stipulated in Article 209 of the Kenyan Constitution. As counties seek to regulate businesses, legislation developed should seek to ensure that they do not stifle businesses which are susceptible to economic, legal and social challenges. Businesses need consistent and predictable environments with respect to taxation policies as they make profit while at the same time generate revenue for county governments. Consequently when developing legislation and policies on revenue generation and as part of public participation, businesses should be consulted.

Consequently these guidelines, aims to equip legal drafters of county revenue laws with additional knowledge to enable them develop effective revenue legislation for taxation. It also seeks to support county governments to develop policies and fiscal regimes for taxes that fall under their mandate. Ultimately the goal of devolution will be achieved since counties will adequately finance their operations from revenue contributions of businesses and deliver superior levels of service. Equally businesses will tap in to superior services that will make them thrive and realise returns on investment.

**Micah Cheserem**  
**Chairman**

COMMISSION ON REVENUE ALLOCATION

## PREFACE



For the last three years, since devolution was introduced, businesses have sought to understand and work closely with county governments in the new framework of devolution. Though the goals were clear from the onset, the process leading to the goals has evolved with time. Of particular concern to the private sector has been the levies and charges imposed by county governments. It has not been very clear to counties that they should not raise revenue solely from the private sector or that any levies and charges imposed should correspond to services rendered by the county in return. To make matters worse, a number of counties have been collecting these levies unlawfully, without enacting the proper legislation.

The impact of the multiplication and duplication of these levies has led to an avalanche of negative consequences for business. That is why we drew up a plan to work with the Commission on Revenue Allocation to help counties draft and enact the requisite

revenue laws. We also encouraged county officials to come up with a rationale for the charges by drawing up a proper tariff policy. The endorsement of the bills needs a public participation act in place targeting the right stakeholders for each piece of legislation and we have been very keen to see that this law is passed in the various county assemblies. In this project, we restricted ourselves to five laws, namely, the revenue administration act, the finance act, the rating act, the public participation act and the trade licensing act. However, more legislation is needed to reduce the impact of county levies and charges. The Economic Policy Framework Instructing the Drafting of county Revenue Legislation is therefore important in guiding counties as they come up with Revenue laws and in drawing up tariff policies.

We have worked closely with partners such as the Kenya National Chamber of Commerce and Industry, who gave us a lot of support especially during the national forum held in Maanzoni in 2014. They too share our pain as they represent a fair share of the private sector. We also acknowledge the role played by the Commission on Revenue allocation. Without their support, this whole project would never have taken off the ground.

**Pradeep Paunrana**  
**Chairman**

Kenya Association of Manufacturers

## ACKNOWLEDGMENTS



This Economic Policy Framework delves into the economic aspects that should be taken into account when drafting county revenue legislation. It is an important document for counties to consult so that their laws and regulations are crafted in keeping with the Constitution. I wish to acknowledge all our partners in this project who helped us see the project from start to finish.

I would like to thank Kenya Association of Manufacturers for their role in this endeavour. They have been instrumental not only in preparing the document but also in the implementation of the whole project across the 47 counties. Their support has seen the development of the five draft county revenue bills for all counties. What remains to be done is for these bills to be passed into law.

The Business Advocacy Fund (BAF) provided the financial and technical support required in the project. I am grateful to Mr. Clive Davis, the BAF Fund Manager, for without his support this whole project would not have been successful. I would like to acknowledge Mr. Duncan Waiguchu, who drew up the guide and other consultants worked with us to draft the county revenue laws for each of the counties. The work done by Willis Otieno of Legis Policy Consultants, Kiragu Wachira, Lawrence Madialo of PAMC and V.A. Nyamodi & Company Advocates (VANCO) will leave a lasting legacy in our counties and country. We are grateful for their contribution.

I also wish to thank the commissioners and my team here at CRA who reviewed the publication before print and gave very insightful feedback based on their extensive experience working with counties on revenue issues.

**George Ooko**  
**Chief Executive officer and Commission Secretary**  
COMMISSION ON REVENUE ALLOCATION

## EXECUTIVE SUMMARY

Since independence, Kenya has been creating and refining programs that collectively helped to shape the current devolved system of government. Some of the programs that have influenced this system are District Focus for Rural Development (DFRD) and Special Rural Development Program (SRDP). Kenya has also experimented with devolved funding systems such as Local Authority Transfer Fund (LATF) and Constituency Development Fund (CDF). These programs helped define and shape the current devolved system in Kenya.

Similarly, the former Local Authority administrations provided an equally important learning experience of financing development through levies, license/permit fees, charges for services rendered and cess on agricultural producers. Another lesson learnt is that the former Local Authorities provided administrative structures including a host of revenue by-laws, which provided for smoother transition from the Local Authorities to county governments.

The new Constitution legalized the formation of the 47 counties, each with its own government as spelt out in the county governments Act 2012. The Constitution also created elaborate structures to ensure the full implementation and success of devolution. To this end, county governments have executive and legislative authority, including the accompanying mandates and powers, to raise specific revenue from the residents, formulate policies, develop economic plans, make budget and create enabling governance structures.

However, county governments are experiencing transitional challenges among them,

- i. Lack of adequate technical capacity to execute the devolved level mandate
- ii. Debts inherited from former Local Authorities which have impacted negatively on county budgets
- iii. Transition uncertainties which hinder seamless service delivery at county levels
- iv. Lack of policy guidance to inform the drafting of county legislations,
- v. A large number of semi, non- semi and unskilled staff from the former Local Authorities which inflates the wage bill among others.

A number of recommendations have been made to address the above issues. Some of the recommendations include legal, regulatory and administrative measures needed to clarify, rationalize, simplify and unify counties' revenue raising regime in counties.

The purpose of this guide is to assist county governments prepare revenue laws and fiscal policies that are in conformity with the principles of the Constitution and other laws. The objectives are

- To guide counties in reviewing the various county revenue Laws and ensure that they are consistent with national goals and policy framework,
- Ensure that the revenue laws do not lead to double taxation or do not levy burdensome fees and charges that challenge survival of businesses in the counties

- that the laws do not create uncertainty in the business environment, and
- That are not a hindrance to inter-county flow of trade or contradict existing international and regional trade policy

The guide is also intended to support a county government's legislative capacity and add impetus to national aims of providing a better system of regulation and legislation through the process of public participation as well as adopt and implement tariffs and pricing policies in the provision of public services.

## THE OBJECTIVES AND THE STRUCTURE OF THE PAPER

### BACKGROUND

The objective of this paper is to support county governments to develop basic revenue legislations to establish legal and administrative frameworks for county taxation mechanisms as provided for in Chapter 12 of the Constitution on Public Finance, in particular Article 209 (3) which deal with county government powers to raise revenue

The paper is also intended to assist county governments to develop fiscal policies such as Tariff Policy provided for in the county government Act 2012 (87 &120), Public Participation Policy stipulated under Article 35 and 196 (1) of the Constitution, the Public Finance Management Act (section 125) and county government Act 2012, as well as policies related to business licensing and levying of fees and charges that fall under their mandate, for example, property and entertainment taxes, as well as fees and charges levied for services provided.

The basic county government revenue raising fiscal policy guidelines discussed in section 2 of the paper are;

- i) Revenue Administration policy
- ii) Property Rating policy
- iii) Trade Licensing policy
- iv) Entertainment Tax policy proposals
- v) Public Participation policy.

The paper is one of many background papers intended to aid legal drafters of county revenue laws during their interactions with county policy makers. It is compiled from extensive consultations with stakeholders and Business Membership Organizations (BMO) lead by KAM, the outcome of the national conference on 'Doing Business in the counties' held in 2014 and review of various legal documents dealing with county governments. The document also borrows heavy from national and county policy papers including county Integrated Development Plans (CIDP), county Fiscal Strategy Papers and county Finance bills. It is also aligned with Medium Term Paper II, 2013-2017 and sectoral policy papers on trade industrialization and agriculture

### STRUCTURE

**Section 1 - Economic Policy Framework:** This section outlines overall national policy framework and the role of county governments in policy implementation, revenue collection policy, service delivery and their place in economic development. The section comprises of five parts.

Part 1 deals with overall economic performance of the country, challenges of economic development in relation to regional and international factors, the place of devolution in the regional and global economic agenda as well as challenges that county governments are facing since the election of the county governments in March 2013 after the promulgation of the Constitution of Kenya and the first general election.

Part 2 discusses the foundation of Kenya's economic development – Vision 2030 and the role of county governments in achieving national socio - economic goals.

Parts 3 deal with county governments 'policy making process and revenue generation mandate as provided for in the Constitution and other laws.

The last part of this Section looks at developmental potential in major sectors of the economy and how county governments can influence and promote economic development through appropriate and targeted policy framework as well as provide efficient public service.

**Section 2 – Economic Fiscal policy framework:** - This section discusses specific background policy aspects dealing with basic county revenue bills which are subject to this paper. These are discussed in part 7-12 covering;

- Revenue Administration policy framework,
- Property rating policy framework,
- Trade licensing policy,
- Entertainment Tax policy,
- Tariff policy, and
- Public Participation



## SECTION 1: ECONOMIC POLICY FRAMEWORK

### BACKGROUND

In 2010, Kenyans enacted a new Constitution, which established a system of devolved government with 47 county governments. The operations of the county governments started soon after the March 2013 elections, which included the election of county governors, deputy governors and county representatives.

These 47 new county governments are now in charge of overseeing certain devolved functions – such as the provision of health care, pre-primary education, agriculture, and maintenance of local roads— which were previously the responsibility of national government. The distribution of functions to the counties is outlined in the Fourth Schedule of the Constitution.

Within counties, major towns and urban areas which are a key part of Kenya's national development program are supposed to be managed by independent boards answerable to the county governments as provided for under the Urban Areas and Cities Act, 2011<sup>1</sup> and Article 84 of the Constitution. Furthermore, the Constitution created a number of Constitutional commissions and independent offices whose functions have strong impact on the implementation of national and county economic development policies, programs and projects.

To finance devolved services, county governments receive a share of national revenues and also raise revenue from other local sources such as taxes on property, licensing levy on economic activities and entertainment tax presently, using the former local authority's by-laws and the repealed Local Government Act.

The role of the CRA in Article 216 provides that it makes recommendations on matters concerning the financing of and financial matters of the county in addition to Revenue Allocation. This document is aimed at recommending a similar picture and way forward when counties are developing policies on Revenue Issues.

<sup>1</sup> Refer to the Urban Areas and Cities Act on the functions, composition and the formation of the Boards

## 1. ECONOMIC OUTLOOKS

### 1.1 Overview

Kenya's economy is recorded to have grown by 5.3% in 2014, compared to a growth of 5.7% in 2013<sup>2</sup>. This growth was mainly driven by an increase in private consumption and a rapid growth in capital investment<sup>3</sup>. Growth on the supply side of the economy was driven by agriculture, forestry and fishing; construction; wholesale and retail trade; education; and finance and insurance. However, accommodation and food services (hotels and restaurants) sector contracted for the second year in a row due to security concerns.

Since the launch of Kenya Vision 2030 in 2008, the Kenyan economy has weathered a number of internal and external shocks. For example, the country was buffeted by multiple shocks including post-election violence, drought, global financial and economic crisis, and rising commodity prices. The global crisis also caused a slowdown in the growth of the sub-region which constitutes the main market for Kenya's exports. At the same time, the drought adversely affected agriculture and resulted in reduced production as well as increased use of expensive generation of electricity from thermal sources.<sup>4</sup>

Thus the county governments came into being, when these factors were already in place dictating economic trends and needed to be addressed.

### 1.2 Economic performance<sup>5</sup>

Kenya's economic growth continues to perform below the 10 % growth rate envisaged in the economic pillar of the Vision 2030 it has been in positive growth over the last decade. Even though it suffered a serious downturn after the 2007/8 political turbulence, growth has since resumed.

Although, Kenya's economy has strong and stable foundation driven by the private sector, it is very sensitive to internal political events as demonstrated by the trend in economic growth in 2002, 2007 and 2013 election periods<sup>6</sup> see chart 1. In 2002, the economy registered a growth of 0.4%, but it steadily rose to 7% in 2007 after which it declined again to 1.7% in 2008 due to post election violence during the period. In 2012, the economy grew by 4.6% before rising slightly to 5.7% in 2013. In 2014, real Gross Domestic Product grew by 5.3 %. Over the medium term, growth is expected to pick up to about 6.5% projections for 2015/16.

<sup>2</sup> Economic survey 2015

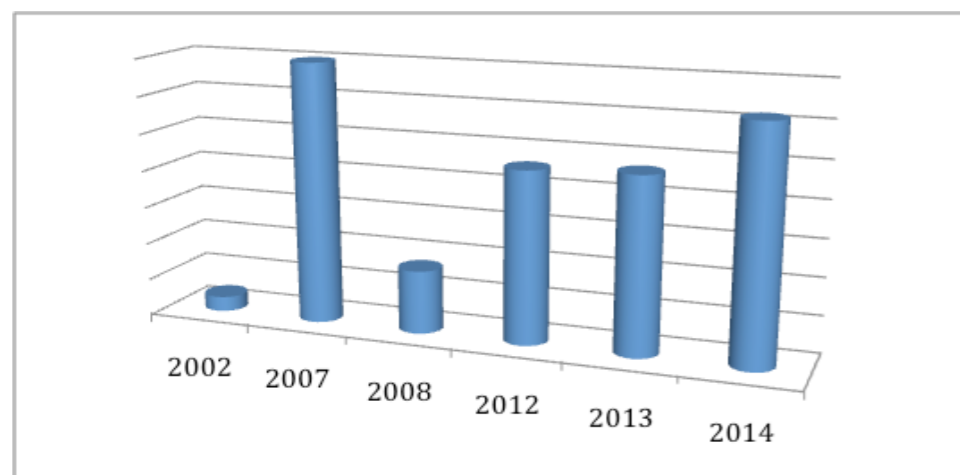
<sup>3</sup> Mainly expansion in ICT and Building & Construction sectors

<sup>4</sup> Economic survey KNBS of Statistics

<sup>5</sup> The assessment of the economy is based on the new revised national accounts system - 2008 SNA guidelines released by KNBS in September 2014.

<sup>6</sup> Economic Survey 2012 KNBS

Chart 1: Economic growth trend 2002 - 2014 <sup>7</sup>



Source: Economic survey 2013

### 1.3 Projected growth

The government projected growth for the current Medium Term Plan will continue gathering momentum from about 5.3% in 2014 to 8.7 per cent in 2015 and reach 10.1 per cent in 2017<sup>8</sup> and will be driven by agriculture, industry and services – mainly tourism and ICT sector as shown in the table below

Table 1: Real GDP and sectoral growth targets 2013-2017 <sup>9</sup>

	2012	2013	2014	2015 <sup>10</sup>	2016	2017
GDP growth	4.6	5.7	5.3	7.2	8.7	9.1
Agriculture	3.8	5.1	6.5	6.8	7.1	7.2
Industry	4.5	6.0	7.6	8.6	10.1	10.2
Services	4.8	6.5	7.3	9.4	10.0	10.1

Source: Partly Extracted from Devolution and Planning Department Strategic plan 2013-2017

The leading export products are basic commodities which include tea, coffee, horticulture, and articles of manufacture such as apparel and clothing accessories, collectively accounting for over 52% of total domestic export earnings. Kenya's major export markets are EU –largely commodity exports, and the East African Community countries – mainly manufactured items. Asia lead by China and India is the main import market contributing over 60% of Kenya's import bill

<sup>7</sup> The graph demonstrates the sensitivity of the economy to political tensions especially during the election period.

<sup>8</sup> KIPRA modeling

<sup>9</sup> State Department of Devolution and National planning - Strategic plan 2013-2017

<sup>10</sup> Projections for the years 2015 to 2017 is based on KIPRA projections -

## 2. NATIONAL ECONOMIC POLICY FRAMEWORK

### a) Historical perspective

Kenya's economic policy framework can be traced back to the Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya. The Paper emphasized rapid economic development and social progress for all Kenyan's. It placed emphasis on promotion and protection of domestic industries based on what was referred to as import substitution policy. The policy was a key influence on the development of the country's trade regime over the first two decades of independence.

The second major phase in the evolution of economic policy in Kenya was through the Structural Adjustment Programs (SAPs) introduced by Sessional Paper No.1 of 1986 on Economic Management for Renewed Growth. It emphasized a change from reliance on import substitution and protectionism towards a policy that led to industries being encouraged to manufacture for export with reform programs aimed at improving efficiency, stimulating private investment and increasing the sector's foreign exchange earnings. It also meant economic liberalization bringing to an end the central role of the public sector institutions which had hitherto managed and coordinated trade distribution networks and related trade facilitation and promotion activities.

The current economic policy is guided by the provisions of the new Constitution 2010 which recognizes the concurrent jurisdiction of the national and county governments in relation to trade matters. The policy is founded on economic, social and political rights of the citizens as provided for under the constitution. These rights are enshrined in the Kenya Vision 2030 policy blue print which envisages a middle income society by 2030. Under this foundation, the County Governments shall be the centre for development and service delivery while the National Government shall support and provide national policy direction and guidance

The policy is also guided by market-driven principles of liberalization under the World Trade Organization (WTO), economic liberalization that began in the early 1990s and led to lowering of tariffs and reduction of non-tariff barriers in Kenya's export markets thereby improving market access for Kenya's products<sup>11</sup> At domestic level, liberalization greatly increased economic activities and opened up the economy to competition and innovations.

Liberalization also coincided with increased efforts in regional economic integration initiatives that resulted in the re-establishment of the East African Community (EAC),

<sup>11</sup> The ministry of State for Foreign Affairs and International trade –Department of International Trade

<sup>12</sup> Refer to Constitutional and Legislative Policy Instructing the Drafting of County Revenue Laws in Kenya by Prof Ben Sihanya for a detailed legal perspective on Multi-lateral agreements

Common Market for Eastern and Southern Africa COMESA) and the Inter-governmental Authority on Development (IGAD). These initiatives have since developed into the EAC Common Market and a mega trading block consisting of the EAC, COMESA and SADC is under negotiation.

In addition to the global and regional trade initiatives, the national economic policy is further influenced by commodity legislation, regulations, policy documents and programs contained in other various laws under the administration of several government ministries, departments and regulatory public institutions.

### b) National Goals

The goals of national economic development policy are employment creation, poverty reduction and economic development. In turn, these goals are the basis for the formulation of the National economic development policy and planning process as enshrined in Vision 2030

The thrust of the national economic development policy is to improve business environment and elaborate the role of county governments and private sector in trade and investment promotion. The policy recognizes and encourages public-private partnership<sup>12</sup> in implementing various programs and activities described in the Medium Term Plan II 2013-2017. It is also intended to create an enabling environment for trade and investment to thrive by addressing trade development and regulatory challenges, including markets; trade licensing, fair trade practices; local tourism and cooperative societies.

### c) Vision 2030 framework

The national government in collaboration with private sector, civil society, development partners and other stakeholders developed the Kenya Vision 2030 as the country's new development blueprint covering the period 2008 to 2030. The Vision aims to transform Kenya into a newly industrializing, middle-income country, providing a high quality life to all its citizens by the year 2030<sup>13</sup>

Kenya Vision 2030 identified six priority sectors with high potential of spurring the country's economic growth and development. The sectors are: tourism, agriculture and livestock, wholesale and retail trade, manufacturing, business process outsourcing/IT Enabled Services (ITES) and financial services.

<sup>13</sup> During the plan period the government intends to operationalize the Private public partinshership Act 2013.

The Vision is based on three pillars: the economic, the social and the political. The economic pillar aims to improve the prosperity of all Kenyans through an economic development program, covering all regions of Kenya, and aiming to achieve an average growth rate of 10% per annum by 2017 and then sustain it up to 2030. The social pillar seeks to build a just and cohesive society with social equity in a clean and secure environment. The political pillar aims to realize a democratic political system founded on issue-based politics that respects the rule of law, and protects the rights and freedoms of every individual in Kenyan society.

### d) Vision 2030 and Medium Term Plan II- 2013-2017

The Kenya Vision 2030 is to be implemented in successive five-year medium plans with the First Medium Term Plan 2008-2012 and the Second Medium Term plan 2013-2017. The Vision and Second Medium Term Plan provide a range of investment opportunities for both international and domestic private sector investors.

The second Medium Term Plan outlines policies designed to implement devolution, accelerate growth, reduce poverty, transform the structure of the economy and create more quality jobs, as the country prepares to achieve middle income status by 2030.

Table 1 lists key areas to be implemented by the National government in conjunction with the county governments during the planned period

**Table 1: Priority areas – MTP II- 2013- 2017**

Sector	Priority Activities
Infrastructure	The Second MTP builds on successes of the First MTP. New investments will include cheaper and adequate electricity; local and regional rail and road networks that provide safe, efficient and cost effective transport; adequate water for households and industry; affordable quality housing and sustainable environmental management.
Industrialization	The Kenyan economy is still reliant primarily on agriculture and services. The growing consumer demand for manufactured goods has been met mainly by imports. The government will facilitate growth of the manufacturing sector; make agriculture competitive and diversify the economy for employment creation. The government will also support local entrepreneurs

Sector	Priority Activities
	<p>to increase their share in local and external markets through better supply chain and making local enterprises more price-competitive in order to serve a growing local, regional and continental market.</p> <p>To transform the economy, the industrial sector growth needs to expand steadily from 6.0 per cent in 2013 to 10.2 per cent in 2017. The government will focus on an export led growth strategy through the establishment of Special Economic Zones (SEZs)<sup>14</sup>, industrial clusters, and Small and Medium Enterprises (SME) parks. In addition, the government will support growth in the mining industry by creating enabling policy, legal and institutional framework for investment and maximization of benefits from exploitation of Kenya’s natural resources especially oil, natural gas, coal, and other minerals. The construction and building sector will benefit from continued infrastructure spending with expansion of roads, ports, rail and power plants. Kenya will also continue to aggressively exploit market opportunities through regional integration, and exploit export opportunities in African states outside the East African Community (EAC), Common Markets for Eastern and Southern Africa (COMESA) and the global market.</p>
Trade and commerce	<p>The country will focus on expanding trade to increase its share in the fast expanding regional and other emerging markets. Trade in the broader region will be backed by joint infrastructural investments with neighboring countries. During the plan period, the government will facilitate research in business development and entrepreneurship under a new entity called “Biashara Kenya” to provide funding and leverage investment from local banks. This will develop capacity and productivity of local manufacturing geared to competitively priced quality exports to Africa and the global market.</p>

Sector	Priority Activities
Investment to support growth	<p>The strategies in the Second MTP are designed to increase investment to GDP ratio by investing prudently in key sectors. Land reforms and registration will be undertaken to make land a productive asset. In addition, new initiatives will be undertaken to encourage the financial sector mobilize savings and improve resource allocation to key growth sectors.</p>
Competitiveness and Rebalancing Growth	<p>To make Kenya globally competitive, the government will increase investment in expansion, development and modernization of roads, rail, ports, ICT and telecommunications in order to make Kenya a top logistics hub. In addition, priority will be given to development of the Lamu Port, Southern Sudan and Ethiopia Transport (LAPSSET) corridor and the oil, gas and other mineral resources sector to spur higher economic growth. Priority will also be given to implementing the National ICT Master Plan (2012-2017). The Public Private Partnership (PPP) Act will be operationalised to facilitate private sector investment in infrastructure in order to enhance efficiency and competitiveness of the economy.</p>
Arts, Sports and Culture	<p>The aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries. Investment will be made to position creative arts, cultural heritage and sports as major sources of employment and income earning opportunities especially for the youth. The strategy will be to identify and nurture talents, support its commercialization and provide necessary infrastructure at national and county levels.</p>
Agricultural Sector	<p>Priority will be given to the implementation of the fertilizer cost reduction strategy, expansion of land under irrigation through construction of the High Grand Falls Dam and implementation of other irrigation projects across the country, increase the access of Kenya’s livestock products to regional and international markets, support extension services, and establishment of greenhouses and agro processing plants in counties. In addition, the national government will continue to actively promote</p>

<sup>14</sup> Policy framework and the accompanying legislation is yet to be developed.

Sector	Priority Activities
	value addition in farm products and to increase exports of agricultural and livestock products.
Service Sector	Services sector is expected to grow from about 6.5 per cent in 2013 to about 10 per cent by 2017. The sector will benefit from sustained growth in tourism, ICT, and related businesses such as Business Process Outsourcing (BPOs), and expansion of regional trade and transport services. In addition, the financial sector is expected to expand rapidly as business confidence improves and as new strategies to boost savings are implemented. The establishment of the Financial Services Center during the plan period is expected to further improve the sector's growth, and to attract more local and international firms in the sector.
Foreign direct investment	Foreign direct investment is expected to increase especially following the recent discovery of oil, gas, rare earth minerals and coal. In addition, the country will maximize its geographical comparative advantage through implementation of the LAPSSET corridor project, modernization of the Port of Mombasa, construction of a standard gauge railway from Mombasa to Malaba, and expansion of Jomo Kenyatta International Airport to serve as the regional airport hub. Construction of the Ethiopia power interconnectivity line, to source cheaper hydropower, and completion of the Olkaria IV by 2014 and other geothermal energy projects are also expected to boost growth through supply of cheaper and reliable power.
Business Process Outsourcing (BPO) and IT-Enabled Services (ITES)	The growth strategy will benefit from exploitation of "green growth" opportunities such as the use of carbon credits (especially in reforested catchment towers), clean energy use in geothermal, hydro, wind and solar power, the promotion of natural products initiatives, promotion of resource efficiency and clean production systems.  During the plan period, the 47 counties are also expected to attract investment and emerge as regional growth hubs.

Sector	Priority Activities
Domestic trade	The growth in the global business outsourcing industry has opened a new window for Kenya to exploit a new growth area for the Business Process Outsourcing (BPO) and IT Enabled Services (ITES). The Kenya Vision 2030 identified BPO as a priority sector under Economic Pillar to create jobs and contribute to GDP. To achieve this goal, the government is implementing various initiatives that include improving universal access to ICTs, promotion of the BPO/ITES, capacity building, development of digital content, roll out of E-government services and promotion of ICT based industries among others.  The Flagship programs on domestic trade covered in Vision 2030 include: Distribution and Wholesale Trade; Retail Trade and Informal Trade, which are devolved functions under Schedule 4 of the Constitution.

Source: 2nd Medium Term Plan 2013-2017, State department for Devolution and National Development

## 2.1 National transformation policy

The second Medium Term Plan 2013-2017 (MTP II) lays emphasis on 'enablers' that will facilitate growth and transformation of the economy, social sectors, and political and governance systems. The Enablers of foundations for national transformation contained in MTP II are; infrastructure; ICT; science, technology and innovation; land reforms; public sector reforms; labor and employment; national values and ethics; ending drought emergencies; security, peace building and conflict resolution.<sup>15</sup>

## 2.2 County governments and transformation policy

In order to integrate national government Medium Term Policy into county policy framework, counties should make efforts to incorporate the policy into the County Integrated Development Plan (CIDP) and the County Fiscal policy papers (CFP).

For example, counties should strive to incorporate flagship projects and programs under the Economic pillar spelt out in the Medium term Plan II, which include; tourism, agriculture, livestock and fisheries; wholesale, retail and international trade and manufacturing.

<sup>15</sup> Medium Term Plan II – Ministry of State for Planning, National Development and Vision 2030

In the Social Pillar, priority sectors include; education policy framework; health care; forestry and wildlife; environment, water and sanitation; population, urbanization and housing; gender, vulnerable groups and youth; culture and national heritage; emergency and disaster response programs. Counties should also consider prioritizing programs and projects under social pillars when formulating their development plans.

#### **a) Industrialization Policy**

The Kenya industrialization Policy framework 2012- 2030 whose theme is “Transforming Kenya into a Global Competitive Regional Industrial Hub” is to align Kenya Vision 2030, which aspires to transform Kenya into a middle income industrializing country, to a globally competitive and prosperous nation, offering a high quality of life to all its citizens in a secure and healthy environment.

The policy focuses on value addition for both primary and high valued goods, and linkages between industrial subsectors and other productive sectors to drive the industrialization process and aims at providing strategic direction for sector growth and development. The main objective is to enable the industrial sector to attain and sustain an annual growth rate of 15% and make Kenya the most competitive and preferred location for trade and investment in Africa leading to high level of employment and wealth creation.

The strategy used to achieve this is to encourage export oriented production and value addition. The broad intervention measures include prioritizing the development of industrial sectors into three areas as follows;

- Labor intensive sectors – agro processing, textiles and clothing, leather and leather goods,
- Medium to high technology sectors – iron & steel, machine tools, farm implements and pharmaceuticals
- Advanced manufacturing technologies – biotechnology and nanotechnology.

The policy is aligned to the Constitution and encourages regional dispersal of industries as a basis for equity and economic empowerment of the counties especially in;

- Exploiting and processing of natural and agricultural resources for export
- Fast tracking the establishment of Special Economic Zones (SEZs), industrial zones and SME parks in line with Vision 2030
- Develop appropriate incentive packages for establishment and dispersion of industries across counties
- Promote the establishment of industrial, science and technology parks.

#### **2.3 National ICT policy framework**

ICT is a critical tool for expanding human skills and rests largely on a system of producing, distributing and utilizing information and knowledge that in turn plays a great role in driving productivity and economic prosperity.

Kenya is a leading example in electronic cash transfer through mobile telephony platform as a result of which micro-credits and savings are being raised using ICT platform.

The country is currently connected to the international broadband highway through SEACOM, TEAMS, EASSY, and LION cables. All major towns in the country and county headquarters are now connected through the National Optic Fibre Backbone Infrastructure (NOFBI) and government Common Core Network (GCCN). Demand for internet and data services has been rising with internet subscription increasing over the last 10 years and this has enhanced business activities and created job opportunities.

Several government ministries have developed online systems geared towards improving service delivery. These systems include: the re-engineered Integrated Financial Management Information System (IFMIS), county Revenue Collection System, application of public service jobs online, status tracking of ID and passports, public examination results and candidate selection into secondary schools, online submission of tax returns, online custom declaration, electronic reporting of corruption, and a business licensing e-registry.

The ambitious Konza Techno City is to be implemented using Business Process Outsourcing (BPO) concept, Internet Enabled Services (ITES), software development, data centers, disaster recovery centers, call centers and light assembly manufacturing all of which will apply ICT.

Other initiatives in the sector included: establishment of digital villages, digitalizing government records and providing connectivity to government, learning and social Institutions; software development and film production; and establishment of an open data portal.

#### **2.4 County Governments and ICT policy**

It is expected that county governments will embrace ICT not only to enhance efficiency in revenue collection and improving public service delivery but also in the following ways

- Establish Data Centres designed to ensure strategic public data security and cost-effective;
- Support food security through development of digital land management system, GIS, mapping of farm productivity, forecasting, digital meteorological systems, and market information systems, e-farming, farm produce management systems, agricultural information systems,

remote sensing, population management systems, and health and nutrition information systems;

- Commercial and industry development through setting up of digital villages to provide opportunities in Business Process Outsourcing (BPO)
- Development of e-commerce to enable entrepreneurs obtain skills to sell their products/ services over the internet.
- Setting up of county ICT Incubation hubs to empower the youth with necessary training and work experience to develop market-ready ICT services and products.

## 2.5 Standards and Technical Regulations Policy

Standards play an important role in ensuring public safety and security, health and environmental protection as well as quality of products in the market. Kenyan standards are formulated through consensus by relevant stakeholders. The national government has ensured that competent authorities are in place to undertake standardization, inspection, testing and certification, which currently are not devolved functions. They include the following certification, testing and inspection agencies.

### a) The Kenya Bureau of Standards (KEBS)

The Kenya Bureau of Standards (KEBS) is a statutory body established by the Standards Act (Cap 496). Its mandate includes the preparation of standards relating to products, measurements, materials, and processes; certification of industrial products; assistance in quality controls; and dissemination of information relating to standards. Kenya standards are formulated, through consensus with the public, by technical committees comprising experts representing various interests, including producers, consumers, technologists, research organizations, and testing organizations. In principle, products covered by technical regulations must be inspected in their country of origin prior to their import. Locally produced goods are monitored regularly through visits to factories according to annual, quarterly, and monthly plans based on product risk and previous records of inspections and tests.

County governments will need to develop capacity to complement the KEBS and enhance inspection of products to combat illicit trade.

### b) Kenya Plant Health Inspectorate Services (KEPHIS)

The Kenya Plant Health Inspectorate Service (KEPHIS) coordinates all matters relating to plant health and quality control of agricultural inputs and produce under the Plant Protection Act, Chapter 324, the Suppression of Noxious Weeds Act, Cap 325, and the Agricultural Produce (Export) Act, Chapter 319. KEPHIS issues a phytosanitary certificate after verifying that a shipment of plants, seeds, and fruit other than canned or bottled fruit meets entry requirements.

### c) Weights and Measures Department

The Department of Weights and Measures ensures the use of accurate weighing and measuring equipment in trade transactions encourages fair trade practices and protects the consumer in order to enhance social economic development. This is to adhere to the six United Nations Principles underlying the policy of consumer protection that state as follows:-

- The right to physical safety from dangerous goods and services
- The right to economic safety from offences or malpractices which deny consumers optimum benefits within economic resources
- The right to such information as is necessary in order to make informed choices according to individuals wishes and needs
- The right to available and effective redress
- The right to consumer education
- The right to form consumer group of organizations to be consulted and to have their views represented in decision making processes.

### d) Public Health

The Public Health Department is responsible for ensuring food, drugs, and chemical substances comply with health and safety standards, under the Public Health Act Cap 242, and the Food, Drugs and Chemical Substances Act Cap 254.

### e) Veterinary services

The Department of Veterinary Services is responsible for permits for imports of live animals, animal products, and “biological” substances. The department issues health clearance certificates where inspection shows animals are healthy and all accompanying health certificates are in order. The Meat Control Act provides standards for storage and transport of meat and of animals for slaughter, and for the manufacture of meat products.

### f) National Environment Management Authority (NEMA)

The National Environment Management Authority (NEMA), was established under the Environmental Management and Co-ordination Act No. 8 of 1999 (EMCA) as the principal instrument of government for the implementation of all policies relating to environment. The supreme objective underlying the enactment of EMCA 1999 was to bring harmony in the management of the country’s environment. Without a NEMA license, no license of operation within a county will be issued e.g. building permit will be not issued to any planned development.

### **g) Public Accounting Standard Board**

It is anticipated that the application of the requirements of International Public Sector Accounting Standards (IPSAS) will enhance the accountability and transparency of financial reports prepared by governments and their agencies. A financial reporting system supported by strong governance, high quality standards, and a sound regulatory framework is key to economic development. High quality reporting standards greatly increase the confidence of investors and the public in financial and non financial information thereby contributing to a country's economic growth and financial stability. For the public sector, adoption of accounting standards such as IPSAS would lead to high quality financial reporting which would enable better decision making.

In particular, the government would be able to make better informed decisions on resource allocation thereby increasing transparency and accountability.

The institutions highlighted above will work with county governments to ensure quality, public safety and health and environmental standards are maintained. Counties are however expected to develop their own capacities and facilities to enhance the work of the institutions.

### **2.6 Public private partnerships (PPP)**

The Public Private Partnerships Act 2013 was enacted to provide for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the government through concession or other contractual arrangements.

Public Private Partnerships<sup>16</sup> are effective mechanisms for development activities, especially infrastructure projects in counties, Research and development (R&D) activities, joint venture projects, and capacity building and financing arrangements.

Through PPP, policy strategies such as SEZs, industrial clustering and development of SMEs incubation facilities can be achieved.

By embracing a PPP strategy, county governments stand to increase revenue base and promote employment and create source private funds for development and enhance efficiency in public projects management.

<sup>16</sup> For a legal perspective on PPPs Refer to the Public Private Partnership Act 2013. The PPP concept provides opportunities for county governments to tap into private funds and investment in public infrastructure for efficiency and revenue enhancement.

### **2.7 International and regional economic policy**

The overall policy on international trade is to pursue more open, competitive and export oriented policies that are compatible with multilateral, regional and bilateral trade commitments. The National policy is anchored on the principles<sup>17</sup> and objectives of the WTO. The policy is to gradually reduce tariff and non-tariff barriers and progressive liberalization of trade in services.

International policy formulation is a function of the national government and is anchored on liberalization and globalization of the economy driven by the concept of global competitiveness.

International policy covers areas such as; effective participation in negotiations, analysis and implementation of multilateral and regional/bilateral agreements, policy mainstreaming or domestication of technical standards; trade facilitation, including tariff structures and customs regimes; support to regional agreements and human resource development, all of which have a close bearing to the economic activities in the counties.

County economic policy orientation should mainly focus on business development and activities aimed at improving the entire business climate in particular the supply side of international trade (export trade). Among the key constraints limiting export growth include lack of supply capacity, inadequate technology to meet standards and the generally high-cost business environment. Other issues in export development include capacity with respect to business management skill; access to trade finance; and trade promotion in the productive sub-sectors, including at the institutional and enterprise levels.

### **2.8 International and Regional Trade Relations**

Kenya is a member of the East African Community (EAC), Common Market for East and Southern Africa (COMESA), Intergovernmental Authority on Development (IGAD) and Indian Ocean Rim-Association of Regional Cooperation (IOR-ARC)<sup>18</sup>, and is negotiating a tripartite agreement that brings together the three trading blocks of the EAC, COMESA and SADC.

In addition there are three multilateral trade agreements to which Kenya is a signatory. These are WTO agreement, EU/ ACP Economic Partnership Agreement (ACP/EU/EPAs), and AGOA<sup>19</sup> agreement. It is the responsibility of both the government and the private sector to ensure that the benefits and opportunities accruing from these agreements are realized for economic development of the country. County governments, when enacting revenue laws, should be alive to these agreements; the laws as envisaged in the Constitution should not hinder movement

<sup>17</sup> The WTO fundamental principles of the Most Favored Nation (MFN), National Treatment, Prohibition of Quantitative Restrictions (QRs), Tariff Bindings/Commitments and Transparency.

<sup>18</sup> The agreement is about sharing of deep sea natural resources including fishing and deep sea oil exploration among the nations bordering the Indian Ocean.

<sup>19</sup> Is an agreement for 16 countries in Africa South of Sahara and the United States of America covering trade and economic cooperation.



of goods and services and should comply with regional and international trade agreements, conventions and treaties.

**a) East African Community (EAC)**

Kenya, Tanzania, Uganda, Rwanda and Burundi form the East African Community. The EAC trading block brings the five countries together on issues of economic, social and political cooperation.

A three-band Common External Tariff (CET) on EAC imports originating in third countries was agreed upon in the context of the EAC Custom Union (CU) Protocol including the sensitive list comprising of goods that are charged tariffs higher than the maximum CET of 25%. The EAC customs protocol also provides for elimination of non-tariff barriers, provision covers on rules of origin, dumping, subsidies and countervailing duties, settlement of disputes, securities and other restrictions to trade, competition, duty draw backs and remission of taxes, customs co-operations, re-exportation of goods and harmonization of trade documentation and procedures.

While the EAC integration has expanded the market for goods through adoption of CET, the market for some business segments previously operating under Export Processing Zones (EPZ) programs have been impacted negatively as the markets which were previously available for export have been transformed into domestic market. Therefore, exports into these markets do not qualify for duty exemptions privileges on raw materials imported for export processing purposes

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**b) The Common Market for East and Southern Africa (COMESA)**

Kenya is a member of COMESA that brings together 19 countries that form an economic bloc. Fourteen of the COMESA Member States have joined the COMESA Free Trade Area (FTA) to which Kenya belongs. As such, it exchanges free-trade preferences with 14 COMESA FTA member countries, as compared to tariff preferences exchanged with non-FTA COMESA members.

The COMESA Customs Union was launched in June 2009 and member states adopted COMESA Common External Tariff (CET) structure of a three-band category of 0% on raw materials and capital goods, 10% for intermediate goods and 25% for finished goods, with a provision for flexibility on policy space. The COMESA CET is to be implemented in a three year transition period. The COMESA Customs Union is a deeper form of regional integration whose underlying benefits include; the creation of a larger market of over 420 million people, attraction of more investors and induced economies of scale and enhanced welfare for the population arising from reduced consumer prices.

The main exports to COMESA include manufactured goods, fuel and lubricants and machinery and other equipment. The expanded market has enabled Kenya to diversify exports particularly in the area of manufactured goods and trade in services. In addition, in the air transport sector, the national carrier has expanded its services to the region.

Member states have identified four initial sectors for liberalization. These sectors are tourism, communication, financial services and transport. The region therefore offers opportunities for strong growth in this sector.

**c) Intergovernmental Authority on Development (IGAD)**

IGAD has been transformed into a Regional Economic Cooperation (REC) and its mandate expanded from drought and desertification to include an economic and trade agenda. Its developments will impact on regional trade arrangements with Kenya especially in Arid and Semi-arid areas (ASAL).

**d) EAC/COMESA/SADC Tripartite Free Trade Area (TFTA)**

The Tripartite Summit of Heads of State and governments launched the Tripartite Free Trade Area negotiations in June 2011. The negotiations were concluded in 2014. The tripartite Agreement is intended to harmonize the EAC, COMESA and SADC trade regimes leading to formation of a Tripartite Free Trade Area (TFTA).

**e) African Growth and Opportunity Act (AGOA) 2000**

Kenya, along with other beneficiary sub-Saharan African countries, has benefited from preferential trade arrangement provided by USA through the African Growth and Opportunity Act. The beneficiary countries have to meet eligibility criteria set out in the Act which includes establishment of a market based economy and issues of good governance. This trading program was initially expected to expire in 2015. However, during 10th AGOA forum held in Lusaka, June 2011, the parties agreed to the extension of the program to 2025.

The program gives Kenya and other beneficiary sub-Saharan African countries opportunities to export over 6,000 product lines to the United States duty free and quota free. However, Kenya has only been able to export a few products specifically textiles and handicraft due to demand and supply side constraints.

#### **f) Economic Partnership Agreements (EPAs)**

Kenya together with the other EAC Partner States is negotiating a new trading arrangement with the EU (EPA) as a successor to the Cotonou Partnership Agreement (successor to the Lome Convention). In conformity with WTO provisions the new trading arrangement will replace the non-reciprocal trade preferences arrangement offered to Kenya and other African Caribbean and Pacific (ACP) countries under the Cotonou Partnership Agreement. The primary objectives of the EPAs are to foster sustainable development, integrate the ACP states into the world economy and fully comply with prevailing WTO rules.

### **2.9 Benefits of dual international agreements**

As discussed above, Kenya is a member of the WTO, EU/ ACP Partnership agreement, and subscribe to programs and economic activities such as cross border trade and transit cargo through partner states. It has also signed a host of bilateral and unilateral agreements.

Such active participation in global trade is considered useful to the Country and is intended to achieve the following primary objectives;

- i) To seize trading opportunities arising from rules, concessions and commitments by trading partners
- ii) To effectively exercise Kenya's trading rights in the export market, particularly when confronted with restrictive action which can take many forms – trade remedies, discriminatory standards, dumping, trade embargo, trade disputes
- iii) To fully conform to trade obligations, to utilize such obligations as a way of enhancing the stability and transparency of her trade regime, and to devise and execute development policies within the framework of these obligations
- iv) To define and pursue her trade and development interests in trade negotiations, and ensure that her concerns are fully reflected in future international negotiations agenda.

Furthermore, active participation requires a considerable strengthening of national institutional infrastructure that is supportive to these objectives; county governments being major interested parties.

### **2.10 Role of county government in promoting international trade**

There is a shared importance attached to having institutions and infrastructure, which supports development of markets; encouraging information flows about market opportunities, building confidence between buyers and sellers, and allowing speedy and low cost distribution of goods or provision of services. All these efforts on the development of infrastructure are deemed to assist both international and domestic economic activities.

The new devolved system brought with it new challenges and opportunities involving the role of county governments as the movers/facilitators of production, trading and investment in the country. County governments will need therefore, to develop institutional structures to work alongside the national government especially on the supply side to promote Kenya's export trade, and also to participate in the negotiation processes.

To benefit from regional integration, counties should;

- i) Get involved in existing cross-border committees at the border points to promote legitimate cross-border trade, encourage regional cultural exchanges and promote dialog among communities on either side of the border to avoid conflict in sharing of resources. The cross-border committees comprise of representatives from both sides of the border and should be activated where they have been dormant like along the Ethiopian and Somali borders points.
- ii) Work closely with the state departments responsible for Foreign Affairs and International trade, and the State Department for East African Cooperation, Commerce and Tourism to involve counties in regional and multilateral trade negotiations since counties are not only implementers of negotiated outcomes but also are responsible for the supply side of Kenya's export trade.
- iii) Counties endowed with natural resources which constitute international trade such as oil, minerals or agricultural commodities such as horticulture, tea, coffee or livestock should form inter-county blocks to promote speed development of such resources as well as to lobby for differential treatment of their counties. This can go a long way in reducing undue political agitation and resolve disputes as well as promote national cohesion under Vision 2030 – political pillar.

### **2.11 Challenges to economic development**

#### **a) Global influence to economic performance**

The slow economic growth in USA, the BRICS countries and the Eurozone economies since 2008, which provide Kenya export and tourism markets, affected the Kenyan economy since 2007. Although China and India are steadily replacing Europe as the region's major trading

partners, the recent declining growth in these countries may not ameliorate the situation faced by Kenya and the Eastern African block in general. Other major challenges include limited export products and lack of competitiveness of Kenya's products at international markets due to constraints on the supply side of export markets.<sup>20</sup>

## b) National challenges

At the political level, Kenya has not only overhauled its form of government by implementing the 2010 Constitution, but also gone through a delicate political transition - a transition that culminated with the March 2013 elections. Kenya's new system of checks and balances means that management of public resources is now more transparent and subject to more accountability. These changes, if well managed, should support overall economic stability.

**Economic stability:** The Constitution recognizes the challenges posed to Kenya by inadequate national cohesion. It therefore provides for a set of values and principles to be adhered to in order to avoid unnecessary political divisions in the country. A cohesive and stable political environment translates into economic stability of counties.

**Climate change:** Kenya, like other developing countries faces challenges emanating from global climate change even though the country has contributed little to the cause. The results are droughts, erratic rain and floods and their impact on human lives as well as productive sectors of the economy. Furthermore, it leads to resource reallocation from development projects to addressing emergencies and disasters caused by climate change.

**Youth unemployment:** The exponential growth of the youth, inadequate skills and mismatch between educational curricula and industry skills demand have resulted in high levels of youth unemployment, which is another challenge. The consequence of this is idleness among the youth, increasing crime rate, alcohol, drugs and substance abuse.

**Gender parity:** Gender gap remains a challenge as reflected in inadequate allocation of resources, unequal gender participation in decision-making processes including peace building, gender violence and harmful cultural practices such as FGM which deny women enjoyment of their rights.

Empowering of women, promoting sustainable development and protecting the most vulnerable and marginalized from devastating effects of multiple predicaments remain a challenge in the country.

**Resource allocation:** As for service delivery and resource allocation, the issue of the high wage bill is a major challenge especially for county governments. The unsustainable wage bill at 12% of GDP in 2013 as compared to the best practice of 7% or less will continue to exert pressure on resources and therefore reducing funding for development.<sup>21</sup>

**Public Procurement issues:** Efficient management of resources is a major challenge. Procurement of services and equipment by the county governments still poses a challenge. There is lack of understanding or ignorance of the Public Procurement and Disposal Act, 2005, the Privatization Act and the Public Private Partnership Act by the officers tasked to expend allocated resources for public consumption<sup>22</sup>. Issues of public waste of public funds and corruption are undermining efficient utilization of development resources.

## c) Transitional Challenges

County governments are experiencing transitional fiscal challenges related to the implementation of the devolved government such as lack of technical capacity to execute the devolved level mandate and Transition uncertainties which hinder seamless service delivery exuberated by lack of adequate resources. Counties are also facing a lack of proper interpretation of the Constitution and devolution laws thereby creating uncertainty, public confidence and political tensions

## d) Interventions to address the Challenges

It is against this background that the county governments should boldly reflect on the right policies that will not only drive local economy, but also those that promote overall inclusiveness of Kenyans to participate in the policy making and legislative process.

Consequently, counties must work with the structures provided for in the Constitution and other laws in order to realize the fruits of devolution and capture public confidence. In particular counties will need to work with the Commission on Revenue allocation (CRA) whose mandate is oversee fiscal responsibility of county governments, define and enhance revenue sources of county governments and to deal with financial matter concerning county governments. Counties will equally benefit if they work with other constitutionally established organs of State in order to meet the challenges of economic development and service delivery.

<sup>20</sup> Constraints include, lack of R&D Cost of production and unfavorable business environment.

<sup>21</sup> Ministry of State for Planning, National Development and Vision 2030 Strategy plane 2013-2017

<sup>22</sup> Public Procurement Act deals with disbursement of public funds, Privatization Act the disposal of public assets while the PPP Act 2013 deals raising funds from the private sector to provide public goods.

Further, county governments will need to focus on the following intervention measures;

- a) Improving the policy environment by allowing public participation and consultation, promoting investment and encouraging value addition in the productive sectors of the economy.
- b) Upgrading the business infrastructure by reforming laws and regulations carried over from the former Local Authorities and improving the performance of existing physical infrastructure and public utilities.
- c) Ensure automation of the revenue collection measures to enhance efficiency in the administration, management and collection of revenue.
- d) It is envisaged that as counties begin to implement their CIDP, work on their appropriate legal and regulatory framework, and develop into centers of development, their economic policies will be anchored on Vision 2030, be guided by international best practices in economic policy formulation and at the same time, adhere to the dynamics of regional and global business trends.

It is further hoped that counties will place more emphasis on the need to embrace conducive investment climate, mainstream Micro, Small and Medium Enterprises (MSMEs) in regional and global trade in view of their critical role in job creation, poverty reduction and economic development.

County government policy documents should take cognizance of the Constitution and the country's commitments under multilateral, regional and bilateral agreements. In particular, the EAC and COMESA regional integration agenda should inform the formulation of county economic policy.

## 3. COUNTY GOVERNMENTS: REVENUE GENERATION AND POLICY FRAMEWORK

### 3.1 Introduction

The success or failure of county governments will depend on two critical factors i.e. political and economic factors.

#### Political factors

Political issues are addressed through sound economic planning to defuse socio-economic issues in the devolved regions. For example, Kenya in her economic planning process is attempting to undertake two difficult processes simultaneously – national development and equitable distribution of development and resources. This is a difficult balancing act, especially when some counties feel that some regions are developing faster than others or when political sentiment is such that residents of economically privileged counties feel that wealth generated in their counties should remain there, and not be shared or they deserve a higher percentage than others

#### Economic factors

The main element in the economic factor is the fiscal decentralization i.e., how resources are raised and spent in order to achieve national goals. Critical economic issues revolve around;

The main element in the economic factor is the fiscal decentralization i.e., how resources are raised and spent in order to achieve national goals. Critical economic issues revolve around;

- How the national government and county governments relating to each other when it comes to sharing of resources. Important institutions of the Constitution such as the C.O.G, CRA & IBEC have been established to address this issue.
- The Constitution has addressed the issue of taxation between national government and county governments<sup>23</sup>(See table 2)
- The issue of revenues sharing between the national government, the county governments and between the counties themselves is the Constitutional mandate of the Commission on Revenue Allocation.
- IBEC deals with the issue of coordination between national and county governments to address disputes relating to regions that generate more wealth than others.

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<sup>23</sup> Refer to Article 209(3)

### 3.2 county government and Taxation

The Constitution under Article 207 mandates county governments to establish a Revenue Fund, into which shall be paid all money raised or received by or on behalf of county governments, except money reasonably excluded by an act of Parliament. The money shall be withdrawn from the Revenue Fund of a county government only as authorized by an appropriation by legislation of the county Assemblies but should be approved by the Controller of Budget. All revenue raised locally is included as county revenue to be paid in the Revenue Fund.

#### a) Devolved Functions of county governments

Sector	Activities
1. Agriculture,	(a) crop and animal husbandry (b) livestock sale yards (c) county abattoirs (d) plant and animal disease control; and (e) fisheries
2. County health services,	a) county health facilities and pharmacies (b) ambulance services (c) promotion of primary health care (d) licensing and control of undertakings that sell food to the public (e) veterinary services (excluding regulation of the profession) (f) cemeteries, funeral parlors and crematoria; and (g) Refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising	
4. Cultural activities, public entertainment and public amenities	(a) betting, casinos and other forms of gambling (b) racing (c) liquor licensing (d) cinemas (e) video shows and hiring (f) libraries (g) museums (h) sports and cultural activities and facilities; and (i) County parks, beaches and recreation facilities.

Table 2 Functions devolved to County Governments under schedule 4 part 2

Sector	Activities
5. County transport	(a) County roads (b) street lighting (c) traffic and parking (d) public road transport; and (e) Ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
6. Animal control and welfare	(a) licensing of dogs; (b) facilities for the accommodation, care and burial of animals
7. Trade development and regulation	(a) markets (b) trade licenses (excluding regulation of professions); (c) fair trading practices; (d) Local tourism; and (e) Cooperative societies.
8. County planning and development of	(a)statistics; (b) land survey and mapping; , (c) boundaries and fencing; (d) housing; and (e) electricity, gas and energy regulation
9. Pre-primary education, village polytechnics, home craft centres and childcare facilities	
10. Implementation of specific national government policies on natural resources and environmental conservation, (a) soil and water conservation b) Forestry.	

Sector	Activities
11. County public works and services	(a) Storm water management systems in built-up areas, (b) Water and sanitation services.
12. Fire fighting services and disaster management	
13. Control of drugs and pornography.	
14. Ensuring and coordinating participation of communities and locations in governance at the local level and assisting communities and locations to develop administrative capacity for the effective exercise of the functions and powers and participation in governance at local level	

### b) County Governments Sources of Funds

Raising revenue at sub-national level is a function of fiscal decentralization. So far, it has generated mixed reactions and interpretations, considering that the former local authorities and government officers had some powers to raise revenue in what constitute counties today.

Currently, county governments receive funding from the following sources as provided for under Chapter 12 of the Constitution:

- i) The equitable share provided for under Article 202
- ii) In Article 209(3), a county may impose;
  - (a) Property rates;
  - (b) Entertainment taxes; and
  - (c) Any other tax that it is authorized by an Act of Parliament.
- iii) The national and county governments may impose charges for the services they provide (Article 209(5)).

Article 209 (5) provide that “The taxation and other revenue-raising powers of a county shall

not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labor”.

### 3.3 Revenue Enhancement

Although revenue enhancement traditional focuses on effective mobilization of existing local revenue source as in paragraph 4.4 above, enhancement is a multi-faceted approach that should incorporate identification of untapped revenues, streamlining expenses improving efficiencies and enhanced financial management.

Records maintained by the former LATF program for the period 2009/10 shows that former local authorities derived most of the own revenues from property rates as shown in Table 3 below. Property rates was a major source of own revenue, accounting for 23.9% of the total revenue fiscal year 2009/2010 followed by other sources at 18.3% which may include; building approval fees, advertising fees, court fines conservancy fees, charges for change of land use, hire of venue and facilities, fire inspection fees, and single business permit at 16.8%.<sup>25</sup>

**Table 3: Revenue Collected by Former Local Authorities for period 2009/10**

Property rates	23.9%
Single Business permits	18.3%
other fees	16.8%
Vehicle parking fees	13.6%
Market fees	6.9%
Cess receipts	6.7%
Game park fees	6.6%
House rents	3.6%
Plot rents	2.1%
Water and sewage charges	1.5%

Source: CRA- extracted from 2009/10 LATF Annual Report.

### Causes and Indicators of low revenue generation.

An analysis of past revenue generated by Counties, suggests that efforts to increase revenues have been implemented through stop-gap measures, rather than through holistic revenue enhancement strategies based on any fiscal policy. This has disregarded important elements such as efficient billing systems, tax payer education, and capacity characterized by large number of unskilled staff who applies ineffective enforcement methods to enhance collection of revenue.

<sup>25</sup> This information was extracted from CRA documents based on the analysis of LATF Annual report 2009/10

The rationale for county government revenue enhancement emanate from potential fiscal stress resulting from loss or decline of own local revenue sources and spending constraints. It can also be caused by unsound fiscal policies.

Fiscal stress can be cyclical or structural; with the former emanating from fluctuations in economic conditions leading to erosion of tax base and rising unemployment while the latter emanates from institutional factors including both formal and informal rules and practices of the enforcement agencies.<sup>26</sup>

Fiscal stress may also emanate from the gap between the needs and expectations of citizens for services and the ability' and willingness of tax payers to support those services; and cuts in revenues emanating from changes in the resource base such as slowdown in revenue growth and tax limitations.<sup>27</sup>

Indicators of fiscal stress include low per capita income and tax base conditions, higher ratio of operating expenditure to debt, a high operating deficit and a high proportion of people without access to services.<sup>28</sup> The indicators may also include higher tax rates than the population can afford and the inability' to maintain the given level of public service.<sup>29</sup>

### 3.4 Planning and Policy Formulation by Counties

County governments are required to incorporate national policy and enabling fiscal environment for economic transformation under Vision 2030 into their budgeting process and implement programs and projects indicated in their County Integrated Development plans (CIDP), county Fiscal Strategy papers and Finance bills.<sup>30</sup>

#### Legal requirements

The main pieces of legislation relevant for public financial management at county level are: the Public Financial Management Act 2012 (PFM); the Urban and Cities Act and the County Governments Act 2012.

The PFM Act 2012 provides guidelines on the budget process at both national and county levels while the County Governments Act 2012 sets out principles of public involvement in the planning process. These provisions ensure a close link between fiscal policy formulation, planning and budget preparation.

Policy makers in counties develop their policy papers from a number of sources and package them to suit their development needs and priorities in line with Vision 2030 and the national medium term framework. These are:

- i) Vision 2030 - 3 pillars as the foundation for county development planning process. As discussed above, Vision 2030 lays the economic, social and political foundation of the county<sup>31</sup>
- ii) Medium Term Policy Frame work – current MTP II -2013 – 2017. This is a five year development plan by the national government. It aids county governments to identify priority programs, and projects the national government intend to allocate development resources.
- iii) National budget statements – national government short term development priorities
- iv) National government sector policy statements and sessional papers – national government sectoral policies such as policy on agriculture and livestock developed by line ministries- short and long-term projects and programs
- v) Regional development authority strategic development plans – such as Lake Basin Development Authority, Tana and Athi Development Authority. This helps counties identify with inter-counties development projects and programs which are cross-cutting.
- vi) National inspection, regulatory, research and development agencies such as the Coffee Board, EPC, Kenya Investment Authority and others. These government agents exercise their public mandate in counties and their programmes usually have implications to county development plans.
- vii) County profiles documents produced by the Ministry of Devolution and National planning to help counties prepare their enabling policy papers. County profiles contain county specific data on the geographic, resources, economic and social data of the counties.
- viii) County Integrated Development Plans – These are county vision papers showing county resources, exploitation methodologies, development potential, challenges and future prospects. They inform the development of county medium term strategy papers.
- ix) County Medium term strategy paper – showing county development needs and resource planning for the next five years – 2013 – 2017.
- x) County Fiscal Strategy papers. They are short term development plans which inform the preparation of the annual budget. The county Treasury is mandated to prepare the county Fiscal Strategy Paper, which should be aligned to the national objectives as stipulated in the National Budget Policy Statement (PFM Act, Article 117) as well as reflect county priorities
- xi) County Finance bills – Finance bill that authorizes the county government to levy taxes/fees and charges and withdraw funds from the county Revenue Fund.

<sup>26</sup> Rakabe, 2010

<sup>27</sup> Forrester and Spindler, 1990

<sup>30</sup> Refer to The county governments Act

<sup>31</sup> Refer to Kenya's Vision 2030 part 3 and 5.

These documents provide basic information required to prepare county Integrated Development Plans (CIDPs) as required under the Constitution and under the Public Finance Management Act (2012). Under the law, county budgeting is to be guided by CIDPs and the County Fiscal Strategy paper and a strict budgeting cycle is mandatory. (See table 3)

Mandatory Date	Activity to be undertaken
August 30th	The county treasury releases a circular to all departments informing them that the budget process is beginning, so that they prepare their requests for funding. This circular is also important for the public and it should contain some details of how the public can participate in the budget process prior to the tabling of the budget to the county assembly.
September 1st	Counties prepare and table a county development plan to the county assembly for approval. The plan must be made public within seven days.
September 1st to February 15th	County government departments undertake consultation with the public and other stakeholders. Views from the public should feed into the preparation of the county Budget Review and Outlook paper (CBROP).
January 1st	The Commission on Revenue Allocation (CRA) submits its recommendations for the division of revenue between national and county governments to Parliament, national and county governments.
15th February	The Division of Revenue and County Allocation of Revenue bills go to Parliament.
February 28th	Deadline for the County Fiscal Strategy Paper to be tabled in each county assembly
March 16th	Deadline for passing the Division of Revenue and County Allocation of Revenue bills by Parliament.
30th April	The County Executive (the Governor and the people he has appointed to the County Executive Committee) prepares and submits budget estimates (proposed spending plan) to the county assembly for discussion, amendment and approval. The county assembly can then debate and change the budget proposal anytime between April 30 and June 30.
May	This is the period when the county budget committee is likely to hold public hearings on the budget.
June	A county Finance bill is tabled in the county assembly.
30th June	This is the end of the financial year, and the deadline for the County Appropriations bill to be passed by the county assemblies to authorize spending for the new budget year.

Mandatory Date	Activity to be undertaken
October 30th	County governments publish an implementation report on the first quarter of budget implementation (July-September) not more than 30 days after the end of the first quarter. The national government has until November 15th to do the same.



## 4. TARIFF POLICY FRAMEWORK

Tariff policy is a policy of the levying fees, rates or taxes for services provided by the county government and that complies with the section 120 of the county government Act 2012.

### 4.1 Introduction

One of the primary functions of a county government is to provide services to the resident within its county area. The financing of services is made possible by levying taxes in different forms such as fees, charges, business licenses and cuss levied on producers of agricultural produce. Tariffs represent charges levied by the county government on consumers for the consumption of services provided. Tariffs are calculated based on the nature of service being provided. They may be set in a manner so as to recover the full cost of the service being provided or recover part of the costs or bring about a surplus that can be utilized to subsidize other non-economical services.

### 4.2. Objectives

The objective of a tariff policy is to ensure that:

- a) tariffs of the county government comply with legislation prevailing at the time of implementation
- b) County government services are financially sustainable, affordable and equitable
- c) The needs of the indigent, aged and disabled are taken into consideration.
- d) There is consistency in how the tariffs are applied throughout the county
- e) The policy is drawn in line with principles as outlined in the County Government Act 2012.

### 4.3. Principles of Tariff Formulation

In terms of Section 120(3) of the county government Act, 2012 the following principles should be taken into account when formulating a Tariff Policy;d)There is consistency in how the tariffs a

- a) Users of county services should be treated equitably in the application of tariffs, fees, levies or charges
- b) The amount individual users pay for services should generally be in proportion to their use of that service
- c) Poor households shall have access to at least basic services through-

- Tariffs that cover only operating and maintenance costs
  - Special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service
  - Any other direct or indirect method of subsidies of tariffs for poor households.
- (d) Tariffs shall reflect the costs reasonably associated with rendering a service, including capital, operating, maintenance, administration and replacement costs, and interest charges
  - (e) Tariffs shall be set at levels that facilitate financial sustainability of a service, taking into account subsidy from sources other than the service concerned
  - (f) Provision may be made in appropriate circumstances for a surcharge on the tariff for a service
  - (g) Provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users
  - (h) Promotion of the economic, efficient, effective and sustainable use of resources, the recycling of waste and other appropriate environmental objective
  - (I) Full disclosure of the subsidies on tariffs for poor households and other categories of users
  - j) Section 120 (4) :- A tariff policy may differentiate categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination
  - k) Section 120 (5):- A county government may make laws and regulations to give effect to the implementation and enforcement of tariff policies

### 4.4. Classification and Pricing Strategies of Services

For the purpose of pricing strategy services are categorized into; trading, rate, general and housing services which are discussed below:

#### a) Trading Services

These include services whereby consumption is measurable and can be accurately apportioned to an individual consumer. Trading services are managed like business enterprises and therefore operate on the basis of breakeven or profit /loss concept. The tariffs for these services are budgeted for in such a way that a breakeven situation in the provision of the service is realized. Examples of such services include provision of water. Whereby a consumer pays for water consumed which is measurable due to the presence of a water meter. This can also apply to irrigation water services, whereby the price charged is based on the amount of water consumed by a resident.

<sup>29</sup> Medium term Plan 2013-2017

The pricing strategy for this category of services is to recover the full cost of rendering a service to the community. For this purpose full costs includes:-

- Direct operating costs e.g. salaries, allowances including overtime, materials used, repairs and maintenance, general expenses and plant and vehicle hire
- Depreciation / capital charges based on usage, life of buildings, plant and equipment and infrastructure used
- Financing outlays which include loan service costs
- Allocated costs that include costs allocated through support services

### **b) Rates and General Services**

This type of service is further classified into 3 categories i.e. economic, subsidized and community services.

### **c) Economic Services**

These are services for which tariffs are fixed in such a way that the full cost of providing the service is recovered without incurring a surplus or deficit e.g. commercial and industrial refuse removal. It is possible for county governments to measure the cost of providing this service based on the quantity of commercial or industrial waste being disposed. The consumption of an economic service can be measured or determined with reasonable accuracy and apportioned to an individual consumer. Whilst they are also managed like businesses, tariffs for these services are normally determined in such a way that user charges cover the cost of providing the service.

These costs can be determined as follows:-

- Full cost of providing services as explained
- The rate per unit is based on projected usage.

Specific strategies for sector development should involve: provision of a robust health infrastructure network; and improving the quality of health service delivery to the highest standards and promotion of partnerships with the private sector. In addition, the County Governments will provide access to those excluded from health care due to financial reasons.

- i) Maintenance of graves and garden of remembrance ( cremations)
- ii) Housing rentals
- iii) Rentals for the use of county halls and other premises subject to the provision set out by the responsible department, for example;

- If the county managers is satisfied that the halls or premises are required for non-profit making purposes and for the provision of a service to the community, the county manager may waive a certain percentage of the applicable rental charge.
- The county manager shall determine whether an indemnity or guarantee must be lodged for the rental of county halls, premises and sports fields and in so determining shall be guided by the likelihood of sustaining damages as a result of the use of the facilities concerned

- iv) Building plans fees
- v) Cleaning of stands
- vi) Electricity, water , sewerage: new connection fees
- vii) Sales of livestock and plants.

### **d) Subsidized Services**

Consumption of these services can be determined reasonably accurately and can be apportioned to individuals and consumers. However, if tariffs calculations were to be based on the real cost of consumption, nobody would be able to pay for the service. Therefore, user charge is payable for using a service, but the tariff is much lower than the real cost of providing the service. These services include firefighting, approval of building plans and construction of buildings, leasing of county government facilities, selling of burial sites and certain town planning functions. An applicable tariff shall be paid for their intended use. For example;

- i) Burials and cemeteries
- ii) Rental for the use of county sports facilities

### **Community Services**

PCommunity services are those for which the costs cannot be accurately determined, that is, establishing the consumption cost for an individual or apportioning the cost to an individual consumer is impossible. These services are typically financed through property rates revenue streams. They include; the operation and maintenance of parks and recreation facilities, provision and maintenance of roads and storm water drainage systems, establishment, management and maintenance of cemeteries and traffic regulation.

In addition to the above services domestic refuse and sewage removal is also a community service provided directly to all residents and for which costs form part of a balanced budget.

The county government also provides support services such as committee services, records and archives, financial management accounting and stores, occupational health and human resources management, which are financed through property rates. No tariffs shall be levied for use of;

- i) County library services
- ii) Disposal of garden refuse at the county tip site

#### **Housing and Hostel Services:-**

These are usually grouped into three categories, namely, letting schemes, selling schemes and hostels. All income and expenditure transactions in respect of such schemes fall into this category and the objective of the service is to be economic i.e. the operating income should cover the operating expenditure. In addition, services are normally carried out on an agency basis as they are not county government services.

### **4 .5. Policy proposals**

#### **i) A minimum amount of basic services must be free.**

- a) The county government subscribes to the policy that all poor households are entitled to a minimum amount of free basic services. A basic service is a service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety of the environment. These services include:
  - Clean water
  - Domestic wastewater and sewage removal
  - Domestic refuse removal
  - County health service.
- b) The county government realizes that in order to achieve its goal, a minimum amount of basic services should be free to the poor, whilst tariffs for services above the minimum level of consumption will have to be increased. These increases are necessary to make good any shortfall resulting from free services and to ensure a balanced budget on the trading account. In order to ensure affordable services, county governments should introduce a stepped tariff structure in which consumers who use more of a service will pay progressively more for the higher consumption than those who consume less of a service.

#### **ii) Keeping tariffs affordable**

The county government should be aware of the economic situation of the residents within a county. Therefore, it should undertake to keep tariffs affordable as much as possible. The county government should ensure that;

- Services are delivered at an appropriate level
- Efficiency improvements are actively pursued across county government's operations
- A performance management system is introduced to ensure that plans that are devised are actually implemented, that resources are obtained as economically as possible, used efficiently and effectively and that appropriate service delivery mechanisms are used
- Any non-core functions are phased out as soon as possible without depriving the community of services that contribute to the quality of life of people.
- Any service that is provided and for which there is little demand, shall be priced at the actual cost of providing it, and which requires a county government to maintain significant infrastructure and other facilities, are phased out, except where the county government is by law required to provide such a service.

#### **iii) The “Consumer must pay principle”.**

With regard to the minimum amount of free basic services for all, the county government should ensure that consumers pay an amount for services that they use and can afford. Where it is possible to measure the consumption of services, the county government should install systems that are capable of measuring the amount/rate of consumption, e.g. water meter. county tariffs policy should include all relevant cost factors.

#### **iv) Redistribution / Cross subsidization**

It is a fact that some members of the community are better able to afford to pay for the services that they use and have the benefit of, than others. The budget of the county government is an important device in ensuring redistribution costs for services rendered within a community. Those that pay higher property rates based on the value of their properties, in fact subsidize those who pay less tax. Similarly, the county government uses the trading surplus it realizes on the trading account to bring relief with regard to property tax rates. Likewise the county government should ensure that cross-subsidization occurs between and within services to further contribute to its redistribution objectives.

#### **v) Promoting economic competitiveness and development**

The size of property rates and service charges levied to local businesses is a significant business overhead for any business enterprise. The overheads of a business influence the price of goods and services sold, and therefore its profitability and chances of survival. The county government should ensure that county tariff rates presented to local businesses are fair and business friendly. To ensure fairness toward local business county governments, when determining tariffs, will take into account the desire:

- To promote local economic competitiveness
- To promote local economic development and growth.

#### vi) Ensuring financial sustainability of service delivery

Financial sustainability of an enterprise is achieved when it is financed in a manner that ensures adequate funding to sustain the operations. The tariff for a service must therefore be sufficient to cover the cost of initial capital expenditure required and interest thereon, managing and operating a service and maintaining, repairing and replacing physical assets used in service provision.

However, sustainability does not only mean that the price of the service must include all the relevant cost elements, it also means that charges to be levied must be collected. County governments should therefore adopt and apply an efficient credit control and debt collection policy to ensure that property rates and service charges are fully recovered.

### 4.6. Tariff determination

#### Calculation of tariff for major services

In order to determine tariffs which must be charged for the supply of major services, county governments should identify all the costs involved in providing a service. Cost items should include the following;

- a) Cost of bulk purchases in the case of water
- b) Distribution costs
- c) Distribution losses attributed to wastage in the case of water
- d) Depreciation expenses in case of assets
- e) Maintenance of infrastructure and other fixed assets.
- f) The intended surplus to be generated for the financial year, such surplus can be applied:
  - i) as an appropriation to capital services; and / or
  - ii) generally in relief of rates and general services
- g) The cost of free services offered to the poor as well as essential services, such as street lighting, refuse removal and water services.
- h) Administration and service cost, including:
  - i. Service charges levied by other departments such as finance, human resources and legal services.
  - ii. Reasonable general overheads, such as costs associated with the office of the county manager.
  - iii. Adequate contributions to the provisions for debts and obsolescence of stock.

- iv. All other ordinary operating expenses associated with the service concerned including, in the case of an electricity service, the cost of providing street lighting in a county area.

#### Water consumption tariff

- a) As a general principle, water consumption should be charged as fixed charge and consumption based tariff and this has to be approved by the county assembly in the Finance bill.
- b) Categories of water consumption and charges should include the following;
  - i) A fixed availability fee shall be charged to all vacant unimproved stands where such a service is available and services can be connected to the main supply
  - ii) All domestic water consumption on improved stands may be charged a fixed availability charge of water consumed per month. Thereafter a stepped tariff per kiloliter as determined by a county government from time to time shall be applicable on metered water consumption
  - iii) All business and industrial consumer may be charge a fixed availability charged and a stepped tariff per kilolitre consumed may apply
  - iv) Institutional consumers which include schools, institution of higher learning, hospitals, government buildings, places of worship, sporting clubs and other organizations. These consumers may be charge a fixed availability charge and a stepped tariff per kiloliter consumed may apply
  - v) The metered domestic consumers and the poor shall receive the first few fixed kilolitres of water consumed free of charge, a stepped tariff per kilolitres shall apply on consumption exceeding the stepped tariff per kilolitre and no fixed or basic charge shall apply on this category
  - vi) As water is a very scarce resource, consumption can be restricted during dry seasons to certain levels and a penalty shall be imposed if the consumer consumes more than the restricted levels
  - vii) Consumer deposits shall be determined according to the counties consumer deposit policy.
- c) Termination of services is to be done by letter, e-mail, fax or standard disconnection form. If this is not done then the disconnection date of the water supply may be taken as the date of termination or date on which new connection is registered
- d) Customers connected to their private boreholes shall be charged a fixed availability charge.

#### Sanitation and sewage services tariff

- a) Sewage and sanitation services should be charged in more or less the same way as water services, that is based on fixed charge and consumption based tariff and this has to be approved by the county assembly in the Finance bill.

- b) Categories of usage and charges shall be:
  - i) A basic or availability charge shall be charged per month for every serviced stand including those customers using water from their own boreholes or other resources. On full water borne sewerage service, all consumers may be charge on a monthly basis a basic charged on the type of service point or the zoning of the property irrespective of their permitted or intended use or otherwise determined plus consumption of water
  - ii) For such tank and septic tank system, consumer shall be charged a tariff based on the number of kilolitre of sewerage waste removed
  - iii) A fixed monthly charge shall be charge based on the consumption of water.
- c) Termination of services is to be done by letter, e-mail, fax or standard disconnection form. If this is not done then the disconnection date of the water supply may be taken as the date of termination or date on which a new water connection is registered.

#### **Solid waste removal tariff**

- a) The categories of refuse removal users as set out below shall be charged at the applicable tariffs, as approved by a county assembly in the Finance bill
- b) A separate fixed monthly refuse removal charge shall apply to each of the following categories of users, based on costs of service concerned:
  - i) Domestic users (number of times per week removal)
  - ii) Business (number of times weekly removal).
  - iii) Business (daily removal)
  - iv) Compacted waste
  - v) Industrial (bulk consumers).

#### **Sundry tariff**

- a) All sundry tariff shall be approved by the county government in the Finance bill, and, shall, then be deemed appropriate by the county, be subsidized by the property rates and general revenues, particularly when tariffs will prove uneconomical when charged to cover the cost of the service concerned, or when the cost cannot accurately be determined, or when a tariff is designed purely to regulate rather than finance the use of a particular service
- b) Regulatory or punitive charges and tariffs - shall be determined as appropriate in the Finance bill
  - i) Fines for lost or overdue library books
  - ii) Advertising sign fees
  - iii) Pound fees
  - iv) Electricity, water: disconnection and reconnection fees

- v) Penalty and other charges imposed in terms of the approved policy on credit control and debt collection
- vi) Penalty charges for the submission of dishonored, stale, post-dated or otherwise unacceptable cheques and unpaid debit orders.
- c) Market- related rentals shall be levied as the lease of county properties.

#### **4.7 Tariff Determination Process**

- a) The county government will be expected to review its tariffs during the preparation of the annual budget in accordance with the policy stated above. Proposed tariffs will be presented to the community for consultations and resolutions.
- b) The county secretary will then cause to be conspicuously displayed at a place installed for this purpose at all offices of the county government as well as at such other places within the county area as she / he may determine a notice. The notice must state:
  - The general purpose of the resolution
  - The date on which the determination or amendment comes into operation
  - The date on which the notice is displayed
  - That any person who desires to object to such determination or amendment must do so in writing within a specified period after the date on which the notice was displayed
  - That any person who cannot write may come during office hours to a place where a staff member of the county government named in the notice, will assist that person to transcribe her / his objection.
- c) If no objection is lodged within the period stated in the notice the determination or amendment will come into operation on the date determined by a county government. Where an objection is lodged, the county government will consider every objection
- d) The county government may after it has considered all objections, confirm amend, or withdraw the determination or amendment and may determine another, on the date on which the determination or amendment will come into operation
- e) After the county government has considered the objections it will again give notice of the determination, amendment or date as determined above and will also publish it as determined by the county government

#### **4.8. Conclusion**

The terms of the tariff policy is that once it is adopted, it would, in accordance to the county government Act 2012 section 120, be placed in a conspicuous public notice board or on the county website or both. In addition this policy will be reviewed annually and adopted by county governments before the budgets are finalized.

## 5. REVENUE ADMINISTRATION BILL - POLICY FRAMEWORK

services, promoting income generation, encouraging wealth creation, and pursuing economic wellbeing of residents. To achieve these objectives, the county governments prepare annual policy statements showing programs to be undertaken during the period and how they are to be financed all within a time line dictated by the Public Finance Management Act, 2012. The programs are spelt out in a budget documents referred to as Finance bill which is then presented to the county assembly for enactment into law authorizing counties to collect taxes from various sources and to spend money on service delivery and development. The Public Finance Management Act, 2012 and the County Government Act, 2012 provide guidelines on how counties are to levy, manage and collect taxes from citizens.

This revenue administration policy guideline is intended to highlight some of the issues counties should consider when drafting revenue laws required to enable them impose taxes on citizens.

### 5.1 Background to revenue Administration Policy

#### a) Taxation systems

International practices show that Tax systems perform differing functions in economic development and in providing services to the public, depending on the responsibilities expected of the enacting government. County governments for example, depend mostly on property taxes, entertainment tax, licensing of business activities and fees and charges on services rendered, while national governments depend on corporate taxes, income taxes and customs duty charged on importation of goods.

County governments are required to keep their expenditures within budgetary limits, determined by their own revenues augmented by payments received from national government, though in some circumstances they can borrow money with express guarantee of the national treasury. The national government, however, can borrow or even create money; it does not have to raise enough from its tax system to balance its budget.

Similarly, county governments can use tax system as a fiscal policy tool, to influence indirect consequences in the county economy - it can influence decisions to work, save, and invest, and these decisions affect other people as well.

Taxation is also the basic instrument of fiscal policy. In concert with its control over the money supply (that is, its monetary policy), the government aims to maintain the stability of the economy. In times of depression, for example, taxes may be lowered and budget deficits incurred so that consumers will have money to buy goods and investors will have capital to put into industry, thus stimulating production. In prosperous times, tax

increases may be needed to hold down or prevent inflation, or if the government prefers to control inflation through interest rates, taxes may be cut for political or other reasons.

Tax and expenditure policies reveal the fundamental ideology of a government, its political system and development goals being pursued.

#### b) Principles of Taxation policy

The Constitution in Article 201 states the following;

“The following principles shall guide all aspects of public finance in the Republic—

- (a) there shall be openness and accountability, including public participation in financial matters;
- (b) the public finance system shall promote an equitable society, and in particular—
  - (i) the burden of taxation shall be shared fairly;
  - (ii) revenue raised nationally shall be shared equitably among national and county governments; and
  - (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- (d) public money shall be used in a prudent and responsible way; and
- (e) financial management shall be responsible, and fiscal reporting shall be clear.”

#### ART.202.(1) - Equitable share of National resources

- 1) Revenue raised nationally shall be shared equitably among national and county governments.
- (2) County governments may be given additional allocations from the national government’s share of revenue, either conditionally or unconditionally”.

Section 161 of Public Finance Management Act, 2012 provides that county governments shall ensure that tax imposition or any other revenue raising measure shall conform to Article 209 (5) of the Constitution or any other legislation; and that before imposing any tax or revenue raising measure under Article 209, the county shall seek views of the Cabinet Secretary to the National Treasury and the Commission on Revenue Allocation.

According to the Institute of Economic Affairs <sup>33</sup>, this principle compare well with the work of the 18th century Scottish economist Adam Smith of which most countries derive their notion of what constitutes good taxation system. Adam Smith identified four basic principles of a good tax system as fairness, clarity, certainty, convenience and efficiency.

<sup>33</sup> Devolution in Kenya; prospects ,Challenges and Future – Institute of Economic Affairs 2010

### **i) Fairness**

Any tax must be fair - that is, citizens should be taxed in proportion to their abilities to pay. A tax is considered fair if those who have the means to pay are assessed either in proportion to their capacity to pay or, depending on the situation, in proportion to what they receive from the government. Both “ability to pay” and “benefits received”, therefore, are criteria of fairness.

When government services confer identifiable personal benefits on some individuals and not on others, and when it is feasible to expect the users to bear a reasonable part of the cost, financing the benefits, at least partly, by taxing the people who benefit is considered fair.

Taxation in accordance with appropriately applied standards of ability to pay or of benefits received is said to meet the requirements of vertical equity (because such taxation exacts different amounts from people in different situations). Just as important is horizontal equity - the principle that people who are equally able to pay and who benefit equally should be taxed equally.

### **ii) Clarity and Certainty**

The application of a tax should be clear and certain. This principle has often been ignored by counties revenue administrators so that what is evident is application of uncertain and arbitrary revenue management and collection system, where the public have lost confidence.

### **iii) Convenience**

Taxes should be easy to calculate and collect. Compliance with revenue laws increases dramatically where a system of revenue payments has been simplified using modern technology.

### **iv) Efficiency**

A good system should be structured so that it can be administered efficiently and economically. Taxes that are costly or difficult to administer divert resources to non-productive uses and diminish confidence in both the levy and the government. Worse still, waste can also be created by excessive tax rates; economic efforts are then shunted from high- into low-yielding activities, from productive enterprises into tax shelters, and from open, above-board transactions into hidden, off-the-record participation in the underground economy. When this happens, the important principle of tax neutrality - which implies that a tax should not cause people to change their economic behavior - is violated.

## **5.2 Rationale for revenue raising policy**

In designing tax systems, counties should consider three basic indicators of taxpayers:

- Wealth or ability to pay:
- What people own
- What they spend and what they earn.

Historically, agriculture, as the fundamental basis of the subsistence economy, became the earliest lucrative tax base. Thus, among major revenue sources, the property tax on land and its produce is the oldest of modern taxes and therefore the importance attached to property and cess tax for agricultural produce by county governments.

Effect of taxation on the tax payers.

a) High tax rates may result in lower profits and dividends for businesses or it may broadly reduce incomes of owners of property and businesses. To the extent that businesses compensate for tax by raising prices of products, the tax burden may simply be shifted to consumers. The trickle effect is that high taxes reduce profit margins, increases overheads on businesses and therefore hold down wages. The bigger picture is that high tax rates affects incomes and employment opportunities and in the long run creates disincentives to trade and investment.

- b) County governments should be concerned with the vertical pattern of their tax burden when levying fees and charges, that is,
- Is the tax progressive - does it fall proportionately more heavily on the rich than on the poor?
  - Is the tax burden proportional - does it burden everyone to the same degree in relation to tax paying ability?
  - Is the tax regressive taxation - does it place a relatively heavier burden on the poor?

Generally progressive tax structure is considered desirable for two reasons. First, a progressive tax is considered more equitable (because the wealthy have more ability to pay). Second, extremes of wealth and poverty are considered injurious to the economic and social well-being of a society, and a progressive tax structure tends to moderate such extremes.

## **5.3 Revenue Raising Principles**

### **a) Policy development**

As a general rule, the revenue raising principle should state its objective - promote the wellbeing of the community as effectively and efficiently as possible through the following measures;<sup>34</sup>

<sup>34</sup> Adapted from the report on working committee on regulatory Measures for Business Activities in Kenya; Review of Business Licenses and Fees in Kenya – National treasury 2007

- i) Sustainable financial management:** Ensure that services and infrastructure are provided by the county government without any unplanned increases in taxation, or unplanned disruptions or reductions to services or quality thereof
- ii) Evaluate and set priorities:** County Governments should identify through corporate and operational planning processes:
  - The services they will provide (based on priority areas for county government services identified by the community).
  - How the services will be delivered.
  - How much the services cost and how they will be funded
- iii) Focus on core functions:** Focus on providing core public services that include roads, drainage, water, sewerage, community recreation, public buildings, environmental health, waste management and libraries, that no other entities, either private or public, are likely to provide or maintain
- iv) Identify costs of service delivery:** Understand the capital requirements for the community and the costs for operation and maintenance of essential community infrastructure. Effective asset management plans are critical
- v) Determine least cost of supply:** Revenue requirements should reflect the most cost-effective ways of delivering county services
- vi) Recover costs:** Rates and the pricing of services should aim to recover the costs for the services provided. If this is not the case, county governments should at least know the actual costs of services and the extent to which they are subsidized
- vii) Borrow prudently for infrastructure:** County Governments can finance infrastructure through accumulated savings, through borrowings or a combination of these two funding sources or through PPP initiatives. Prudent borrowings for infrastructure can smooth out large or lump sum payments over a number of years.
- viii) Be responsible and accountable:** Establish mechanisms to ensure that decisions on revenue raising and expenditure are applied consistently and accountably by the county public service and agencies
- ix) Demonstrate openness and transparency:** Ensure that matters such as revenue raising, budgets, expenditure and performance are incorporated into County's' Public Participation policy and plans (e.g. Budget and economic forum)
- x) Negotiate external funding with the national government and its agencies or with the private sector institutions:** County Governments are often involved in the provision of services on behalf of national government agencies. An understanding of and evidence to support the costs associated with the delivery of those services will assist counties with their negotiations with the National government and other agencies for grants and subsidies arrangements.

## **b) Revenue raising policy (excluding grants)**

Revenue raising policy should clearly indicate the sources of funding, how the funds are to be raised and effect to taxpayers and the community at large.

## **c) Rates and charges on property**

Article 209(3) allows county governments to levy rates and charges on ratable land and to levy a utility charge on any land it provides a service whether or not the land is ratable. All land is ratable unless it is exempt. Exemptions include;

- Land occupied by the state or a government entity, including county government, unless the occupation is by way of lease from someone other than the state, government entity or county government.  
land allocated under an Act for recreational or sporting purposes
- Land owned by a community organization used for the protection of children, accommodation of students or educational facilities aimed at improving employment or leisure opportunities.
- Levy general rates (including differential general rates) on residential or commercial properties

## **d) Utility charges**

County governments may make and levy utility charges to cover the costs of providing services such as waste management, provision of water and sewerage sanitation county governments may also levy a utility charge on any land it provides a service, whether or not the land is ratable. However, the amount of a utility charge must relate to the costs of providing the service. In particular, a utility charge for a water service must be charged by either measuring consumption through a water meter or by estimating the water consumption. The rationale for the fees and charges should be defined in tariff policy.

## **c) Charges for services or facilities**

County governments may charge for a service or a facility it owns and may wish to use revenue generated to fund other operations or the provision of services. In doing so it will reduce the level of revenue required to be generated from ratepayers. An example would be the hiring of a county hall or an item of plant and equipment to a community resident.

## **d) Cost-recovery fees for statutory services**

County governments can fix a cost-recovery fee by legislation by county assemblies. The fees are intended for particular statutory 'services' such as:

<sup>36</sup> Adapted from the report on working committee on regulatory Measures for Business Activities in Kenya; Review of Business Licenses and Fees in Kenya – National treasury 2007



- Application fees for the issue or renewal of a license permit, registration or approval, seizing property or animals
- A cost-recovery fee must not be more than the cost of providing the service or taking the action for which the fee is charged
- County governments should maintain a register of its cost-recovery fees. The register must be open for inspection.

#### 5.4 Justification for raising Revenue

Understand what county government services and infrastructure the community wants, uses, and is willing to pay.

The expectations of residents in relation to the level and range of county government services and infrastructure and community understanding of the cost of their provision may influence how much revenue a county government can raise and the services it can afford to provide.

##### ***Willingness and ability to pay***

Willingness to pay may be influenced by any of the following factors:

The value residents and businesses place on paying for consumption of services

- Community needs and demands for services (quantity and quality)
- Services (scope and level) provided by the county government
- Community perceptions of the ‘value for money’ of services that are provided
- Community perceptions about who should pay for services
- Increases in costs in providing services (e.g. through increased labor costs) and subsequent increases in county government charges
- The level of understanding amongst residents and businesses about costs and charging arrangements associated with county government services
- Local political influences e.g. member of county assembly and/or prospective member of county assembly policies on levies and charges.

##### ***Capacity of land to generate income***

County governments cannot set rates, levies and charges on the basis of what it believes individuals or organizations can afford to pay. It can take into account the valuation of the land, the capacity of the land to generate income and the cost of delivering services to that land.

County governments can also decide to offer concessions and hardship remissions or rebates to certain categories of ratepayers (e.g. pensioners or disabled persons, infant industry). In

determining the type and level of concessions and remissions to implement, it may consider generally available demographic and other information such as census data.

##### ***Impact of charges on residents and businesses***

Charges for county government’s services may affect the consumption of those services by residents and businesses. For example, charging residents the actual cost of the water may reduce water consumption.

#### **b) Identify revenue needs—planning, budgeting and service delivery**

Revenue needs of county governments must be considered in the overall corporate and asset planning, budgeting and management cycles within county’s operations.

Revenue needs should be determine on the basis of:

- Service delivery and infrastructure needs of communities in a county
- Costs of delivering services and infrastructure (in the short, medium and long term) including operation and maintenance costs, depreciation and replacement costs
- Regulatory requirements on the supply and charging of county government services and infrastructure
- Current and likely future trends in county’s input costs such as labor, materials and energy
- Revenue projections (in the short, medium and long term) from grant funding and own source revenue
- Ability and willingness of residents and commercial and other entities to pay for county government services
- Current and likely future trends impacting on county government’s area or regions e.g. population, economy, climate change. The critical point is to plan and deliver within a budget that is incorporated within a sustainable, long term financial model.

#### **5.5 Revenue Collection Policy Framework**

In the process of selecting the model of revenue collection county governments should carefully cost effectiveness. The objectives of the strategy should be to reduce the cost of administration and maximize revenue collection. It should be governed by the existing legal framework, for example the tendering process in case of an outsourced system should comply with the Public Procurement and Disposal Act, 2005 and any other law and policy.

##### ***Outsourcing tax collection***

This is an arrangement where revenue collection is outsourced to private firms, market associations, cooperatives and farmers organizations or any other entity with capacity to

collect revenue on behalf of county governments. A case in point is Mwanza local authority in Tanzania entered into a revenue collection arrangement with a private firm in 1996 through the tendering process for collection of different taxes such as property tax, market fees, cuss, forestry levies, bus stands and parking fees. A study carried out later concluded that outsourcing tax collection offers no quick fix solution as far as increase of government revenue or reducing tax administrative problems.<sup>35</sup>

The study showed that, while collection had increased and become more predictable the authority experienced substantial problems with corruption and exceptionally high profit margins for the private collector at the expense of accomplishing reasonable returns for the local government. The study however notes that when appropriately managed and monitored, outsourced revenue collection may establish a foundation for more effective and efficient revenue administration. For example, establishment of a semi-autonomous agency such as KRA can prove to be an effective collector of revenue.

### **Benefits and costs of outsourcing revenue**

#### **Revenue enhancement and predictability:**

Outsourcing of revenue collection function has the potential of improved tax compliance and better enforcement mechanism. The overall effect is high revenue collection, predictability and revenue enhancement.

- The contract between the county government and the collecting agent should clearly specify the amount that is expected within a given period
- Through proper monitoring and efficiency on the part of the collecting agent, there is a high chance that targets will be met. This allows county governments to have more predictable planning.
- County government outsourcing tax collection especially the problematic areas leaves them with only enforcement role, they can play this role better
- There is also predictability on the collection of taxes and the fact that process will not be hindered by internal problems in county governments.
- Automation of tax administration system may improve revenue collection, efficiency and compliance if the right software is selected.

#### **Cost effectiveness and reallocation of county government staff:**

There is shifting of burden from county government to the private revenue collectors. The staff who are charged with the role of tax collection should be reassigned other tasks or laid off reducing the cost of administration.

County government staff will be released and allocated to departments which are understaffed, reducing the need for county government to hire new staff. The fact that some revenue sources are seasonal means that county governments do not have to retain staff even when they are not needed.

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**Less political interference/objectivity** in the collection of taxes, where some revenue payers may be exempted from paying taxes due to their connections. The county government will not be burdened with roles of capacity building such as training of the revenue collectors as this role will have been shifted to the private agents.

County governments will not be required to install costly revenue collection systems, this role will be shifted to the agent

**Payment:** Methods used by county governments to collect service fees and utility charges (and other revenue such as rents) from residents may include but not limited to:

- Over-the-counter payments at county governments offices
- Electronic funds transfer
- Payroll deductions (for county employees)
- Direct debits
- Mobile money

Counties should conduct an assessment to determine the effectiveness of these methods and develop an appropriate policy.

**Debt collection:** County governments should establish effective debt collection systems, taking into account the costs associated with their administration. They may want to consider the following

- Whether and how societal relationships impact on the payment of county fees, charges and rents and on debt collection systems
- The potential lack of security over debts
- Potential inequities e.g. if a small number of residents are contributing a disproportionately high amount of revenue.
- Use of fiscal policy tools such as waivers or rebates as incentives.

## **5.6 Community engagement and education**

Community understanding of the relationships between services provided and infrastructure, the county's planning and budgetary processes can lead to more informed discussions between the county government and the public about what county government services and infrastructure are most valued and needed.

<sup>35</sup> Helde, F; Katera, L and Ngalewa, E., 2010

### ***Rates, fees and charges***

County governments are likely to have greater tax compliance and timely payment of rates, fees and charges if they:

- Engage effectively with residents
- Provide factual, easy to understand information about the costs of services and infrastructure
- Explain the basis on which rates (or levies) and charges have been set.

### ***Community use of County Government services***

If county governments are concerned that services or infrastructure are at risk because of overuse of county services or resources or vandalism of county infrastructure, they should consider whether targeted community education and/or different service charging arrangements may help to manage the problem.

## **6. PROPERTY RATING POLICY FRAMEWORKS**

### ***i) Introduction***

The Constitution empowers counties to levy property taxes among other taxes. In line with this, they are required to develop and adopt a rates policy consistent with section 120 of County Government Act. The policy is supposed to guide counties in levying rates on ratable property in their areas of jurisdiction.

Property rates are the most reliable source of revenue for counties.

### ***ii) Objectives of a property rate policy***

- a) To ensure that all ratepayers within a specific category are treated equally and reasonably
- b) Ensure that all rates levied are affordable. In dealing with poor/indigent ratepayers the county will provide relief measures through exemptions, reductions or rebates.
- c) Rates are levied in accordance with the market value of the property as determined through a valuation.
- d) The rates will be based on the value of all ratable property
- e) In order to minimize major shocks to certain ratepayers, market values in the new valuation roll or tariffs determined by county may be phased in over the entire periods
- f) To adhere to legal requirements
- g) Valuation roll to be updated

### ***iii) Guiding Principles***

The following principles will ensure that the counties treat persons liable for rates equitably

- i) Ratepayers with similar properties should pay similar levels of rates
- ii) The ability of ratepayers to pay their rates should be taken into account
- i) The determination of the tariffs and the levying of rates must allow the county to promote local, social and economic development
- ii) In determining and revising tariffs and rates the county should involve the stakeholders

### ***iv) Strategic focus***

In determining rates, exemptions, rebates and reductions, County governments should consider the following:

- i) The impact of rates on the community
- ii) The impact of rates on business
- iii) The county Integrated Development Plan (CIDP) and Fiscal Strategy Paper
- iv) The impact of rates on the local and national economy
- v) The impact of the new rating system on poor residential households and agricultural communities

- vi) When determining rates on properties, the effects of rates on the poor should be taken into account, and also include appropriate measures in order to alleviate the rates burden on them.
- vii) In developing or amending the property rates, counties ought to commit to a process of stakeholders' participation as envisaged in the Constitution, the County Government Act, 2012, Urban and Cities Act, County Public Participation Act among other legal frameworks.
- viii) The county governments should engage interested parties and structures, such as ratepayer organizations, directly in the process of public participation.

**v) Annual operating budget and policy reviews**

The county government on an annually basis consider the levying of rates during the budget process and, if necessary, amend its rates taking into account public comments and inputs.

In determining the level of increases or reduction in rates, the criteria to be applied include the following:

- (a) The inflation rate as indicated by the consumer price index;
- (b) Take into consideration the medium term budget growth factors

**vi) Categories of ratable properties**

The categories of property should be determined according to actual use of the property

The following categories of property for purposes of rating:

- i) Residential properties
- ii) Industrial properties
- iii) Business and commercial properties
- iv) Farm properties use
  - state-owned properties
  - Privately owned towns serviced by the owner, for example, Magadi
  - mining and quarries
  - vacant land

County governments may determine other categories as it may from time to time identify criteria for exemptions, reductions and rebates should be clearly set out. A register of properties should be kept and updated regularly. The frequency of valuation should be stipulated.

## 7. ENTERTAINMENT TAX POLICY FRAMEWORK

### 7.1 Definition

Entertainment is any activity which provides a diversion or permits people to amuse themselves in their leisure time, and may also provide fun, enjoyment and laughter. People may create their own entertainment, such as when they spontaneously invent a game; participate actively in an activity they find entertaining, such as when they play sport as a hobby; or consume an entertainment product passively, such as when they attend a theatrical or musical performance. It also includes elements of cultural activities.

An important aspect of entertainment is the **audience**, which turns a private recreation or leisure activity into entertainment. The audience may have a passive role, as in the case of persons watching a play, or a television show, or the audience role may be active, as in the case of games, where the participant/audience roles may be routinely reversed.

### 7.2 Entertainment Industry in the counties

Entertainment activities in counties include amusement parks which entertain paying guests with rides, such as roller coasters, train rides, water rides, and dark rides, as well as other events and associated attractions. The most prevalent form of entertainment is tied to enjoyment places such as bars where audience is entertained by live music and performing art, football fields and in tourist hotels where gambling and betting takes place.

Types of entertainment activities	
<p><b>Exhibition entertainment</b></p> <ul style="list-style-type: none"> <li>Amusement parks</li> <li>Art exhibits</li> <li>Fairs</li> <li>Funfair</li> <li>Museums</li> <li>Theme parks</li> <li>Trade shows</li> <li>Travelling exhibition</li> </ul>	<p><b>Live entertainment</b></p> <ul style="list-style-type: none"> <li>Amusement parks</li> <li>Art exhibits</li> <li>Fairs</li> <li>Funfair</li> <li>Museums</li> <li>Theme parks</li> <li>Trade shows</li> <li>Travelling exhibition</li> </ul>
Mass media entertainment industry	
<p><b>Live Entertainment</b></p> <ul style="list-style-type: none"> <li>• Musical theatre</li> <li>• Performance art</li> <li>• Comedy</li> <li>• Sports</li> </ul>	<p><b>Film</b></p> <ul style="list-style-type: none"> <li>• Film studios</li> <li>• Movie theaters / cinemas</li> <li>• Acting</li> </ul>

Mass media entertainment industry	
<b>Broadcasting</b> <ul style="list-style-type: none"> <li>• Television</li> <li>• Television programs</li> <li>• Reality television</li> <li>• Radio programs</li> </ul>	<b>Music industry</b> <ul style="list-style-type: none"> <li>• Composers and songwriters</li> <li>• Singers and musicians</li> <li>• Orchestras</li> <li>• Concert hall</li> </ul>
<b>Fashion industry</b> <ul style="list-style-type: none"> <li>• Modeling</li> <li>• Theme parks</li> <li>• Discotheques</li> </ul>	Video Game SMS content
Electronic entertainment	
<b>Music industry</b> <ul style="list-style-type: none"> <li>• Composers and songwriters</li> <li>• Singers and musicians</li> <li>• Orchestras</li> <li>• Concert halls</li> </ul>	

Many of these activities, except for gaming and betting, the film industry and the media, are not regulated although county governments collect revenue from time to time using the repealed local government laws.

### 7.3 Regulation Controls in the Sector

The practice in entertainment business often involves legislations related to many fields such as employment, contract matters, torts, labor, bankruptcy, immigration, security interests, agency, intellectual property (trademarks, copyright, and the so-called “Right of Publicity”), right of privacy, defamation, clearance of rights, product placement, advertising, criminal law, tax law, international law (especially private international law), and insurance law.

This is because entertainment activities overlap with others and has the capacity to cross over different media of communication. Furthermore entertainment industry has demonstrated a seemingly unlimited potential for creative re-mix which ensures continuity and longevity of many themes, images, and structures.

For this reason, entertainment laws cover an area of law which involves media of all types (TV, film, music, publishing, advertising, Internet & news media, etc.), and stretches over various legal fields, including but not limited to corporate, finance, intellectual property, publicity and privacy. For example, advertisement is used to persuade the audience to consume certain package of entertainment (product placement) through various means while the government will collect tax from that product as well as regulate its operations for public safety and security.

The national government formulates policies and legislations to regulate the sub-sector while county governments implement the policies through their own legislations. Both national and county governments charge license fees for entertainment activities such as trade shows, exhibitions and outdoor advertising, to mention just a few.

### County Entertainment Bill

The bill should provide a clear focus on the promotion of statutory objectives which must be addressed when licensing entertainment activities and have undertaken the necessary protection of local residents whose lives can be influenced by disturbance and anti-social behavior associated with the behavior of some people visiting licensed entertainment. These should include the following;

- The introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers’ expectations
- Greater choice for consumers, including tourists, about where, when and how they spend their leisure time
- Encouragement of more family friendly premises where younger children can be free to go with family
- Further development within communities of the county’s rich culture of live music, dancing and theatre, both in rural areas and in towns and cities
- Regeneration of areas that need increased investment and employment opportunities that a thriving and safe night-time economy can bring.

### 7.4. Conclusions

Entertainment sub-sector including advertising constitutes a large portion of service industry which is a major driver of the economy. It has the potential for employment creation especially youth employment, and wealth creation in counties. To that extent entertainment industry can be a major source of revenue for counties because;

- The economic activities involved are numerous
- Entertainment activities cut across other professional activities and provide linkages with other service industries
- It offers plenty of opportunities for innovation to the youth
- Is private sector driven with less government controls.

It is suggested that counties prepare modalities, policies and legislative processes to tap the potential in entertainment subsector alongside that of tourism promotion.

## 8. TRADE LICENSING POLICY FRAMEWORK

The aim of business licensing is to enable county governments manage social and economic activities or social behavior in the society, administration, control or regulation of economic activities, and collect revenue to provide public services. In doing this, county governments should ensure that licensing policies create good environment that do not increase the cost of operating business through stringent and cumbersome procedures, regulations and punitive enforcement methods.

This section discusses some of the guidelines counties can apply to administer economic activities through licensing without necessarily increasing the cost of doing business, while at the same time reduce the cost of enforcement and increase revenue collection.

### General rule

As a general rule the licensing authority must prepare and publish a statement of its licensing policy every time an adjustment on fees and charges or fiscal policy is varied. The policy must be published before the authority carries out any licensing function in relation to applications made under the law. This rule is based on the principles laid out in public participation and tariff policies discussed above.

### 8.1 Principles of Trade Regulation and Licensing

- (1) County Governments shall ensure that business regulation—
  - (a) Create a conducive and enabling environment for doing business;
  - (b) Is informed by the need to promote environmental protection; and ensure public safety, security and health.
- (2) Subject to subsection (1) when implementing regulatory requirements, the following principles must be adhered to—
  - (a) Transparency
  - (b) Cost effectiveness. The cost of license should be commensurate
  - (c) Licensing not for revenue collection
  - (d) Proportionality. To consider provisions on orderliness/planning
  - (e) Consistency and Equity

### Fiscal policy

The tax and fiscal incentives, disincentives or fees may include:

- (a) tax rebates on trade activities and services that promote trade;
- (b) tax disincentives to deter unfavorable business practices
- (c) User fees to ensure that those who are engaged in business pay proper value for products and services rendered.

### 8.2 Criteria based on internationally accepted Business Licensing Principles

- i) Licenses shall not be used to determine commercial quality that is better decided in the market. (This principle is violated severally by SBP licensing regime)
- ii) License fees should be fixed and should reflect only costs for processing and keeping

documents while application fees are kept at bare minimum of recovering the cost of paper. (This may not be possible to comply with due to the high cost of administration of the licensing regime)

- iii) Duplication of information and licenses shall be entirely eliminated. Public agencies that require information shall share information among themselves, rather than imposing burdens on private businesses to give same information each time an application for license is made. Licensing should be established as one-level authorization permits. In other words, in order to get a license, business should not be forced to receive other permitting documents nor should the application be subjected to other agencies (requires comprehensive reforms at national and county level due to many licenses and permits at both levels of governments)
- iv) Business licensing should have only a regulatory function and be applied only to activities that can pose danger to safety health or environment. All other activities should be not licensed. (The basis for licensing by county government is basically control and regulation with heavy leverage for revenue generation)
- v) Danger factors (characteristics of a business activity that can undermine safety and pose risks for health and environment) should be clearly assessed and formulated in the legal text. The licensing regime should focus on minimizing these danger factors. (This is a function of inspection agencies who are many thereby inconveniencing business operators)
- vi) Exhaustive lists of requirements should be formulated and adopted as regulations and named licensing conditions or standards
- vii) Licenses and inspections should be adjusted to the size and nature of occupation. Smaller/simpler occupations should receive less scrutiny, lowering compliance costs and allowing regulators to focus their energy on more complex ones
- viii) For regulated activities with established licensing conditions, presumptive requirements (investments or know-how that have to be in place for the enterprise to function in compliance with the given regulations) must be separated from operational requirements (rules of operation)
- ix) The county Trade Licensing Act should specify regulated areas must state the exhaustive list of business activities to be licensed in such specified areas. (Counties are now issuing licenses for urban and rural areas which are different from those in major towns. This needs to be reflected in law).
- x) Rationalization of Single Business Permits shall not reduce health, safety, or environmental protection, but shall aim to achieve these goals more efficiently and effectively
- xi) The business licensing principles have been incorporated in all the decisions and recommendations including legal texts.

### 8.3 Criteria based on Legality, Necessity, Business-friendly, Effectiveness of a License <sup>36</sup>

Licensing principles should consider the legal, effectiveness, necessity and business friendliness of each business license. (I.e. is the license being issued legal, necessary or business friendly?) The answer to these questions should reflect the concern to businesses and must be incorporated in the legal text.

- i) **“Legality”** is determined by the relevant legislation governing a license including the statutory expression for it and fees charged for purchasing the license
- ii) **“Necessity”** is based on the viewpoints of government officials implementing licenses. This section also contains the official “objective” or purpose of the license. Occasionally this section describes some of the administrative requirements for receiving the license
- iii) **“Business friendliness”** is based on views of public participation as expressed in the county consultative forum and stakeholders submissions, and then assessed by the county Executive and the county Assembly before the enactment of the licensing law.
- iv) **“Budgetary effect”** reflects the fees imposed by the license under review
- v) **“Efficiency”** is a factor which arises in view of difficulties of obtaining a license. Effective and efficient licensing procedures will help to reduce the cost of doing business, making it an attractive investment destination.

## 9. SECTOR DEVELOPMENT STRATEGY

Kenya Vision 2030 identified six priority sectors with high potential of spurring the country’s economic growth and development. The sectors are: tourism, agriculture and livestock, wholesale and retail trade, manufacturing, business process outsourcing/IT Enabled Services (ITES) and financial services<sup>37</sup>. Oil and mineral resources has been introduced as seventh sector in the Second MTP. These sectors are expected to drive achievement of 10% GDP growth targeted by 2017.

This section highlights how each sector contributes to the development of counties and in promoting national goals in line with Vision 2030 and the transformation agenda as well as how the sectors support county revenue generation.

The section is divided into two sectors- productive sectors and non-productive sectors

### 9.1 Productive sectors

#### a) Agriculture, Livestock and Fisheries sector

The government strategy for the development and transformation of agriculture, livestock and fisheries sector is outlined in Vision 2030 with a key policy of value addition of products before they reach the market. Development of competitive agro-industries is crucial for generating employment and income opportunities.

The sector has the potential to provide employment for rural population not only in farming, but also in off-farm activities such as handling, packaging, processing, transporting and marketing of food and agricultural products. Agro-industries also enhance the quality of and the demand for farm products.

#### *Challenges*

The sector is facing a number of challenges that impacted on its development. Some of the key challenges include:

- Low adoption of technology and un-coordinated Research and Development (R&D)
- Security concerns/ cattle rustling, resource based conflicts
- Regional and international barriers to trade
- Global economic recession
- Conversion of agricultural land to other competing land uses; and
- Unreliable weather patterns and effects of climate change

#### *Priority activities*

Counties consider the sector as a priority and are channeling good proportion of resources to the sector so as to ensure food production to feed the population, generate income and reduce incidences of poverty. Specific activities in the sector supported by counties include;

<sup>36</sup> Based on the working Committee report on review of licenses and fees- national treasury 2007-

<sup>37</sup> Medium term Plan 2013-2017

- i) Enhancing productivity in agriculture, livestock and fisheries, and promoting investment in value addition
- ii) Prioritize food security initiatives through enhanced production mechanisms targeting: disease control and surveillance, farm input subsidies, extension services, water and soil conservation, warehouses for cereals and industrial activities such as milk cooling plants and abattoirs
- iii) Support to smallholders to mitigate, transfer and cope with risk associated with food production, marketing and enabling environmental risks which have been limiting investment in agricultural sector due to lack of timely information
- iv) Extension services such as farm development and management activities (demonstrations, field days farmer group trainings); Abattoirs and slaughter house refurbishment, rehabilitation of cattle dips; construction of fish ponds; greenhouses construction; purchase of vaccines, serums, fertilizers, certified seeds, breeding stock and live animals; promotion of emerging livestock (rabbits and quails); technology dissemination and marketing infrastructure

### **Opportunities**

Opportunities exist in adopting climate-smart agriculture such as harnessing farm waste as source of organic fertilizer, and use of bio-fertilizer that does not contribute to harmful emissions, better weather forecasting/early warning systems, growing resilient food crops, managing post harvest losses and crop insurance. County governments should lay more emphasis on greater youth involvement in income generating ventures in the agriculture, livestock and fisheries sector.

### **Revenue implication**

A well developed Agricultural sector generates a lot of benefits for counties such as more income and jobs to the residents, encourage backward and forward linkages to other productive sectors, use of locally produced raw materials and promotion of value addition. These portend future revenue for counties and contribute to poverty reduction.

## **b) Trade, Tourism and Cooperative Development**

### **i) Trade subsector**

The Trade sector includes wholesale and retail sub sectors and plays a major role in the Kenyan economy. The sub-sector accounts for 15.7% of GDP and 10% of formal employment in 2012. The distribution and wholesale particularly in agricultural produce have remained largely informal and characterized by inefficient and fragmented supply chain. The firms engaging in distribution and wholesale of agricultural produce also have weak business associations.

### **Challenges**

Among the challenges that impede growth of trade include:

- Weak business regulatory framework
- High cost of doing business
- Fragmented and informal trade sector
- Infrastructure - majority of MSMEs operate from temporary business premises/work sites, inefficient distribution value chains and inadequate utilities such as, water, energy
- Inadequate Business Development Support Services (BDS) including business/ trade information, consultancy, counseling and aftercare services
- Limited access to trade finance for MSEs - access to affordable trade finance is crucial to the growth of trade sector
- Influx of counterfeit goods
- Stringent technical requirements/Rules of Origin in export markets
- Inadequate capacity to develop new products, innovation, inventions and value addition on produced goods
- Non-tariffs barriers
- Minimal market and product diversification
- Duplicity of roles by national agencies and departments

### **ii) Manufacturing subsector**

The overall goal for the sector is to increase its contribution to the Gross Domestic Product (GDP) by at least 10% per annum and propel Kenya towards becoming Africa's industrial hub. The sector has a high potential of employment creation; provides stimulus for growth of the agricultural sector and offers significant potential for investment

The structure of Kenya's manufacturing sector comprises of micro, small, medium and large industries classified mainly by employment levels and capital investment. The medium and large industries constitute less than 5 per cent of the total number of enterprises but contribute over 60 per cent to the manufacturing sector GDP contribution. Similarly, the micro and small enterprises comprise about 95 per cent of total industries but contribute only about 20 per cent to the manufacturing sector GDP contribution.<sup>38</sup>

### **Challenges to the manufacturing subsector**

- a. Lack of Industrial land: non-availability of suitable land has hampered the timely implementation of projects and programs such as CIDCs, SME parks, industrial clusters among others. Similarly, FDI inflows are constrained by the high cost of land. The National Land Commission will establish land banks for industrial development.
- b. Devolution under the Constitution: Since the Constitution has created a devolved system of governance, flagship projects and other programs outlined in the second MTP will be implemented at county level. This calls for closer collaboration between

<sup>38</sup> Refer to KAM Manufacturing survey 2012



- the national and county governments and capacity building at the local level to ensure success in implementation of flagship projects.
- c. Access to financial services for industrial development: Access to long term financing is limited and this has inhibited the competitiveness and growth of the manufacturing sector
  - d. Market Access: Most of Kenya's manufactured products face stiff competition in the local, regional and global market due to high cost of production (high energy costs, inadequate and inefficient road network, port and rail infrastructure, slow movement of cargo), non-compliance to international standards and non-tariff barriers.
  - e. Counterfeit, dumping and substandard goods: The importation of counterfeit, sub-standard, and subsidized goods into the country has continued to impact negatively on locally produced products.

### iii) Micro, Small and Medium Enterprises (MSMEs)

Vision 2030 recognizes MSMEs' as the engine of growth especially in rural areas and the source of innovations, but market imperfections and institutional weaknesses impede their growth According to Private Sector Development Strategy (PSDS) document, the subsector accounts for 75% of jobs opportunities and contributes about 18% to the GDP.<sup>39</sup>

The government will implement the MSE Act 2012 to ensure a vibrant Micro and Small Enterprise (MSE) sector for employment and wealth creation. MSE Baseline and informal sector surveys will be undertaken to provide accurate profile of the sector in terms of all its facets. In addition, MSE Centres of Excellence will be established in all counties for promoting product development and marketing of MSE products. The centers will also avail common usage of equipments which are more often expensive for MSEs to procure and undertake incubation programs<sup>40</sup>.

In conjunction with other devolved functions such as agriculture, county public works and planning, county governments can play critical roles in supporting MSME sector. Under the devolved governance structure, MSMEs are not only significant in employment creation but also in revenue generation.

Many counties have developed specific intervention measure to promote trade and enterprise development. These include;

- Addressing access to credit constraints through various credit schemes both at national and county level
- Deepening ongoing structural and governance reforms
- Reducing the cost of doing business and improving security in order to encourage investment, economic growth, expansion of employment opportunities and poverty reduction
- Support in establishment of Industrial parks
- Development of wholesale markets and construction/rehabilitation of retail markets

### v) Local Tourism Development

The tourism sector remains vital for continued growth of the Kenyan economy. The sector is based on a wide array of natural assets particularly; abundant wildlife living in their natural eco-systems in game-parks and game reserves across the country, over 500 km long all-year warm sandy coastal beaches, a rich and diverse cultural heritage and products and a robust and thriving business hub that attracts many regional and international business travelers.

In addition to promotional aspects, counties are investing in the development of tourism infrastructure, including upgrading airstrips to asphalt status, constructing tourism-class accommodation facilities such other support facilities as health centers, water and sanitation facilities and recreational facilities to promote domestic tourism.

### Challenges

The critical issues and challenges affecting the sector's performance include:

- Security concerns, negative travel advisories and effects from global economic performance especially with regard to key source markets
- Untapped product diversity as Kenya's tourism continues to be based on a narrow product range that includes, beach and safari holidays
- Declining product quality due to lack of provision of unique and diverse experiences at the beach and a lack of investment incentives to spur new developments.
- The Safari product is facing challenges that include weak product monitoring standards, poor regulation and control of developments in wildlife areas and migration corridors.
- Inadequate standards and regulations and tourism infrastructure
- Inadequate bed capacity and poor distribution of facilities across regions
- Poaching; and Human wildlife conflict
- Poor infrastructure

## 9.2 Non Productive Sectors

These sectors fall under the Social Pillar of Vision 2030 and they include; education and training, health, environment, water and sanitation, population, urbanization and housing; and gender, youth and vulnerable groups. Under the second MTP, sports, culture and arts have been included as an addition. The Second MTP will focus on implementation of policies, program and projects in each of these sectors to ensure that they contribute towards prosperity and building a just and cohesive society that enjoys equitable social development in a clean and secure environment.

### a) Planning, Lands and Housing sector

Given the current demographic trends, Kenya will be a predominantly urban country by 2030.

<sup>39</sup> Ministry of Industrialization – Private Sector Development strategy Paper 2008

<sup>40</sup> Medium term Plan II 2013-2017 on SME Flagship programs

Following the current population trends, more than half of our nation’s population is likely to be residing in urban areas at that time. The country will therefore need to plan for decent and high quality urban livelihoods for the population.

The 2020 Vision for housing and urbanization<sup>41</sup> calls for “an adequately and decently housed nation in a sustainable environment. In addition, the initiative for high quality urban planning is envisaged. Kenya’s cities and towns are poorly planned and that must change. There is an acute need, therefore, for an effective capacity for regional and urban development planning starting with adequate housing for those now living in slums. Furthermore, there should be better development of and access to affordable and adequate housing for the rest of the population, enhanced access to adequate finance for developers and buyers, and targeted key reforms to unlock the potential of the housing sector through private public partnerships (PPP concept). The National urban planning and development campaign should start with major cities and towns. But rural settlements will be catered for as well. This calls for a rapid build-up of urban planning an implementation capacity, as envisaged in Vision 2030.

### **Counties Revenue implication**

Some activities for revenue generation and service provision are;

- Issuance of occupation certificates
- Enforcement of building code and other related laws
- Survey of county and allotted properties and profiling of informal settlements,
- Repair and maintenance county rental housing estates
- Issuance of development and construction permits
- Preparation of a valuation roll.

### **b) Health Services**

Health services are a devolved function to counties. Allocation of resources is based on increased need for service delivery systems, medical supplies, integrated health outreaches and mobile clinic programs, ambulance services and upgrading health. Other services in the sector include;

- Investing in quality and accessible healthcare
- Rehabilitation of county health facilities and pharmacies
- Provision of prompt ambulance services
- Promotion of primary health care
- Cemeteries, funeral parlors and crematoria services
- Epidemiology and disease control activities.

Specific strategies for sector development should involve: provision of a robust health infrastructure network; and improving the quality of health service delivery to the highest standards and promotion of partnerships with the private sector. In addition, the county governments will provide access to those excluded from health care due to financial reasons.

### **Challenges**

- Inadequate requisite infrastructure for comprehensive basic health care (model health facilities) and level 4 health facilities including inadequate emergency transportation
- Shortage of essential medicines and medical supplies
- Low doctor and nurse ration to population
- Prevalence of HIV/AIDS, TB and Malaria and Increased morbidity and mortality associated with HIV/AIDS;
- Rise of cancer; hypertension, heart diseases and diabetes
- Lack or inadequacy of a rapid referral system
- Inequitable distribution of the available human resource coupled with shortages of skill mix and understaffed public health facilities
- High cost of health care and financing; and low coverage of health insurance

### **Revenue implication**

Provision of health services is a cost sharing as well as cost recovery service in which case some consumers of services can afford to pay while others are poor. In order to sustain health services counties need to establish efficient systems of administering revenue generated and develop an indigent policy to determine who can afford to pay and for what diseases.

### **c) County Public Services:**

Under MTP II priority is given to the development of the capacity of all county governments, improve policy coordination and implementation in order to get the full benefits of devolution. The counties on their part should work towards transforming the county public service to be more professional, independent from political influence, accountable and provide efficient and quality services. This should be guided by the principles in the Constitution which bind all public officers to embrace efficiency, human rights, integrity transparency, accountability and sustainable development.

#### **Challenges**

County public service is faced with enormous challenges with unsustainable wage bill and many untrained staff being the major ones. Others include:

- high expectations of citizens on public service delivery
- Inadequacy of some specialized skills and incentives necessary for implementation of Vision 2030 projects
- Inadequate linkage between, budgeting, planning and results
- Inadequate budgetary support for public sector reforms
- Weak monitoring and evaluation of public sector reforms

### **d) Water, Sanitation and Environment**

The overall goal of Environment, Water and Sanitation sector is to attain a “clean, secure and sustainable environment” by 2030. This sector forms critical linkages with the main productive sectors namely agriculture, tourism, manufacturing and energy. These sectors

<sup>41</sup> Ministry of State for Public works Strategy Plan 2008-2012 - Urban planning Strategy paper 2020

are heavily dependent on use of natural resources that are derived from the environment. Environmental issues are also closely linked to other sectors of the economy such as development planning, population dynamics, finance, public health and sanitation, and trade.

The 2030 vision for water and sanitation is to ensure that improved water and sanitation are available and accessible to all. The goal for 2017 under MTP II is to increase both access to safe water and sanitation in both rural and urban areas beyond present levels. To promote agricultural productivity, the area under irrigation and drainage will need to be increased. Specific strategies will be introduced to raise the standards of overall water, resource management, storage and harvesting capability.

### **Challenges**

- Climate-related extreme weather events such as droughts, floods and landslides
- Increased waste generation and unsustainable disposal particularly in urban areas
- Degradation of water catchments due to human settlement, agricultural activities and encroachments
- Unsustainable land management practices that threatens the quality of the environment goods and services
- Increased human wildlife conflicts affecting conservation and community livelihoods;
- Poaching and trade in wildlife trophies
- Increased competition and conflicts of natural resources
- Inappropriate disposal of solid waste
- Over reliance on non-renewable source of energy; and
- Low levels of research and development and funding

### **Revenue implication**

Priority in allocating resource under this sector supports the following activities which in turn provide revenue in form of user fees;

- i) Investing in the development and expansion of water infrastructure, improving drainage systems, enhancing sewerage services and employing technology in waste disposal and management in order to improve the state of the environment in the county.
- ii) Interventions in environmental management activities that provide, clean, healthy, secure and sustainable environment such as;
  - Enhancing the capacity and infrastructure for garbage collection, transportation and disposal.
  - Provision of a regular supply of clean water
  - Construction of water pipelines and civil works like weirs, low cost dams and water pans
  - Drilling and equipping of boreholes, construction of water tanks
  - Construction of public sanitation blocks.
- iii) Development of integrated solid waste management system that includes equipment for separation, recycling, composting and electricity generation.

## **SECTION 2: ECONOMIC FISCAL POLICY GUIDELINES TO DRAFTING COUNTY REVENUE LEGISLATIONS**

### **BACKGROUND TO POLICY FRAMEWORK**

The purpose of this section is to provide explanatory material about the revenue raising Laws that may be adapted by county government; Property, Trade Licenses, Revenue Administration and Finance Laws, Entertainment Law and Public Participation Law and further, the section highlights the actions required by county governments to implement any county legislation that is enacted. It deals with policy framework proposals to guide counties when drafting revenue laws.

This is in line with the principles of good practise expected of the county governments under the Chapter 12 of the Constitution, Public Finance Management Act and the county governments Act. The principles cover the following;

**Legal basis for collecting money from the public:** A clear legal basis and power to raise county revenue must be established and explained to the tax payer.

**Transparency:** This demands that county government identify the legislative basis of any fee for service and tax and specify the amount or calculation of the tax or fee for service. A policy stating the modalities of such identification should be developed prior to enactment of a law

**Consultations:** The rate payer and the stakeholders must be consulted before a law is enacted. For example increases in fees and taxes should not be made without adequate consultation. A policy on how the consultations are carried out in accordance to the Constitution and County Governments Act, 2012 and also to provide for dispute resolution mechanism to minimize crippling court injunctions.

**Cost benefit analysis (information):** It is useful to provide information about how much revenue will be raised and the cost of doing so. It is also important that taxpayers know what the revenue will be used for.

**Impact on business:** Fees and taxes need to be used to support business and not make it more difficult for business or to provide services to the public. The effect on business of increases to fees and taxes should be considered as well as the effect of any new taxes or fees for service.

## 10. PUBLIC PARTICIPATION POLICY

### 10.1 Objectives of public participation process

Public participation is based on the belief that those who are affected by a government decision have a right to be involved in the decision-making process and the promise that the public opinions and contributions will ultimately influence the decision making process.

It recognizes and communicates the needs and interests of all participants, including decision makers and seeks out and facilitates the involvement of those potentially affected by or interested in a decision.

Further, public participation seeks input from participants in designing how they participate and provides participants with the information they need to participate in a useful and meaningful manner. Public participation also communicates to participants how their input affects decisions made.

### 10.2. Guiding principles

The guiding principles of public participation include the following;

- i) Provide meaningful information in a way that targeted individuals and groups understand
- ii) Information should be provided in advance, within a reasonable time
- iii) Mutual consultation and dialogue as well as exchange of views
- iv) There should be transparency in engagement
- v) Inclusivity, where all that are affected or have an interest are included, vulnerable groups and marginalized need to be considered too
- vi) There should be no coercion
- vii) It should be cost effective - there should be value for money
- viii) There should be objective engagement and non-politicization of issues
- ix) There should be clear mechanisms where the people's concerns, grievances and suggestions are responded to adequately.

### 10.3. Legal aspects of public participation

#### *Constitutional requirements*

Public participation is one of the fundamental principles in the Constitution. There are various constitutional provisions that provide for public participation, some of which are;

- i) **Article 35** of the Constitution: which grants individuals the right to information, it enables the public to know about their development rights and projects from which they are supposed to benefit
- ii) **Article 196 (1) (b)** – where county assemblies are supposed to facilitate public participation in the legislative and other business of the assembly.

#### *Specific Legislative requirements*

When preparing the fiscal strategy paper the county treasury will seek the views of the public, interested person, groups and any other forum established by legislation.

Public Finance Management Act 125: The county Executive Committee member for finance shall ensure that there is public participation in the budget process.

The county government Act 2012 section 87– provides for citizen participation and access to information

### 10.4. Benefits of public participation

Public participation process is an effective tool for countering undue expectation from the public with regard to policy decisions, projects and programs as well as the way county revenue is spent and allocated. Other benefits of the process are;

- Providing opportunities to stakeholders to voice their concerns and their opinions to county governments
- Lending credibility to decision making process
- Changing behavior patterns of leaders – the understanding that the people affected by their decision must be consulted before hand

## SECTION 3: 11.OBSERVATIONS

### Business Enterprises, major revenue source

The business community is at the heart of the development process in counties. Driven by the quest for profits, they invest in new ideas and facilities that strengthen the foundation of economic growth and prosperity. They provide opportunities for employment where people apply their talents and improve their situations, goods and services needed to sustain life and improve living standards. Most importantly, the business community is a major source of tax revenues, contributing to public funding for health, education, and other social amenities. A good trade and investment climate facilitates growth and development of enterprises which are critical actors in the quest for growth and poverty reduction. Removing inefficient, unnecessary, unfriendly and cumbersome licensing procedures should be a priority for county governments.

Therefore, county governments ought to craft strategies to develop regulatory reforms/ or rationalize their business licensing regimes for business activities so as to increase trade and investment, thereby creating wealth. In doing this, they should consult widely with all stakeholders through the process of public participation.

The overall goal of the Private Sector Development Strategy (PSDS)<sup>43</sup> is to enhance private sector growth and competitiveness so as to contribute to wealth and employment creation. One of the five goals of PSDS is to facilitate growth through greater trade expansion. Trade facilitation will therefore increase Kenya's prospects to be a globally competitive and prosperous nation.

Rationalization of business licensing regime and revenue collection enforcement procedures will assist in efforts by county governments to improve on the business environment and enhance their position as investment destination both regionally and internationally, while at the same time create friendly environment for business to thrive.

This should reduce opportunities for corruption, lower cost of doing business, and expansion of investment. It will also lead to initiation of new investments, new employment opportunities, reduced crime, higher economic growth rate, higher tax base, more revenue for social services, and lesser dependence on licensing revenue.

### 11.1 RECOMMENDATIONS

#### a) Streamline Business Licenses

Businesses across the country are very critical of the SBP and express deep concerns about many of the activities regulated under the SBP, and in particular the way the SBP licensing regime is being implemented and enforced differently in different counties. To address this concern, it is recommended that SBP regime be streamlined within a new county registration to make it friendlier to business. The benefits accruing from streamlined business

environment will reduce opportunities for corruption, lower the cost of doing business, and encourage existing investments to expand. It will also lead to initiation of new investments, new employment opportunities, reduced crime, a higher economic growth rate, a higher tax base, more revenue for social services, and less dependence on licensing revenue.

Streamlining will ensure that the original principles of the single business permit are resuscitated by adoption of a uniform business licensing code to cover all licenses in all counties.

#### b). Rationalize, reform or harmonize existing legislation

Many counties are currently formulating their own revenue legislations and moving away from the former local authorities legislative regimes. As they do this, it would be necessary to rationalize reform or harmonize existing pieces of legislations for better administration of revenue collection as well as provide conducive environment for trade and investment promotion. Counties should be assisted to simplify and clearly define in law the many licenses, fees and charges to eliminate confusion and ease administrative and enforcement burden. This will also make fees payable predictable and specific, and reduce the cost of doing business.

This can be achieved through strict application of business licensing criteria based on internationally accepted principles and criteria based on legality, necessity, business-friendliness, effectiveness and efficiency of compliance.

#### c) Cross-county Commerce

Traders and transporters are charged a fees or a cess twice as they cross from one county to another. Counties are known to put up barriers on roads and to charge additional cess on transportation of agricultural, forestry, and fishery products as well as produce of other description. This creates a problem of double taxation and offends the legal requirement that counties should not interfere with cross county commerce. Road blocks/barriers for collecting cess purposes is an issue of revenue sharing between neighbouring counties and infringe on the free movement of commerce. This should be resolved by the Council of Governors for a legal solution.

#### d) Licenses/Permits issued by national government

This category of licenses falls under the repealed Local Authority Service Charge Act and the Cities and Urban areas Act. They include a variety of licenses such as travelling wholesaler's license, license of halls (music halls, public halls, concert rooms, and public billiard), neon light license, registration of cowsheds, registration of dairy men, plumber's license, drain layers license, license of ice-cream makers and vendors, license for milk surveyors, registration of dairy premises and registration of milk shops. They also include outside advertising and branding. These licenses are levied basically for control and regulation purposes and some of them are characterized by quality/safety standards, specifications, testing and regular inspection to safeguard public health, safety and environment. Both county and national governments are responsible for regulating and issuing permits/licenses and collecting revenue separately.

<sup>43</sup> PSDS program, under the Ministry of State for Industrialization and Enterprise Development was developed in 2008 to promote private sector Development to meet Vision 2030.

Issues of concern arising from this are that the national government collects revenues on devolved services and business operators are taxed twice without requisite services. It is recommended that;

- i) Issues of multiple inspections and double issuance of permits and licenses by national and county governments be resolved by the IBEC. An impact assessment of the magnitude of this issued should be done so as to inform future decision
- ii) Counties apply safeguards in their new law- (e.g. remove discretionary powers of the licensing officers, apply uniform laws across all counties to address confusion when enforcing revenue laws.

**e) Informal Business Activities in the Counties.**

Recent development in distributive trade shows an increase in informal hawking activities in major towns and rural areas, sometimes even by foreigners. This can potentially become a security risk and even public safety, especially if the county government rationale for licensing such activities is purely revenue. Strict regulations and controls are necessary.

Similarly an observation in major supermarkets reveals new home made ready-to-eat food items such as Chapati, Githeri and bread made of flour other than wheat, cakes, spirits, and soft drinks etc. which have not been tested and whose standards may not be easily verified. These economic activities need to be controlled like all others for purposes of public health and safety; the producers/manufacturers are captured in county accounting system for statistical purposes, and also help track emerging economic activities. Similarly, the activities of foreigners should be checked for security reasons and to some extent to protect infant industries.

County governments need to control and regulate these activities and if possible develop schedules of restricted goods in the new revenue laws.

**f) Inter county relations and commerce**

During the Doing Business in counties Conference in 2014 held at Maanzoni Lodge, a number of critical issues relating to inter counties relations and commerce were raised. We sample some of these issues and make the following recommendations;

- i) Resolutions of the Council of governors and IBEC are entrenched in the new county laws in order to ensure implementation. Likewise, IBEC should have the legal mandate to mediate conflicts between counties on issues that are not national in nature, for example conflict of revenue collection between Nyamira and Kisii in Keroka town
- ii) Create a Business Development & Regulatory Forum at the IBEC Secretariat to liaise with regulators at national level and county government licensing authorities to act as a consultative advisory and arbitration forum to address conflict between counties and business licensing concerns by private sector and county government revenue flows.

This forum will ensure that reforms recommended above are implemented and will also play the role of gate keeper

- iii) Parliament should enact the National Trade Policy bill to create and give legal effect to the Business Development and Regulatory Forum as well as provide national direction on business licensing policy. This law is expected to address critical issues of cross-county licensing/ revenue flow conflicts between neighboring counties mushrooming licenses imposed by counties, cross border trade licenses. It will also address county government licenses, fees and charges and associated reforms
- iv) Counties can enact a new inter-county Relations Law which spells out how a county relates with the neighboring counties, how they share common natural resources and how they confront disaster and emergency situations

## **12. ANNEXES**

### **ANNEX 1. LIST OF REFERENCES**

1. Report of the Working Committee on Regulatory Reforms for Business Activity in Kenya; Review of Business Licenses and Fees in Kenya – GOK
2. The Commission on Revenue Allocation Act, 2011
3. Devolution in Kenya; prospects, Opportunities and future Institute of Economic Affairs (IEA) ( 2012)
4. Kenya Economic report; Creating an Enabling Environment for Stimulating Investment for Competitive and Sustainable counties Nairobi, Institute of economic Affairs ( 2013)
5. The Public Finance Management Act 2012
6. The Constitution of Kenya
7. The County Government Act, 2014
8. Kenya Vision 2030
9. Medium Term Plan 2013 – 2017
10. County governments policy documents - (CIDP, CFSP, Finance bills)
11. Draft national trade policy -2012
12. National Trade bill 2014
13. The EAC Trade Policy Review 2012, WTO.
14. East African Community Common Market Protocol, 2010.
15. East African Community Customs Market Union, 2005.

### ***Consultative Discussions***

- i. National Conference on Doing Business in the counties in 2014
- ii. Meeting with BMOs representatives
- iii. Consultative meeting with the KNCCI
- iv. Meeting with Ministry of Devolution and Planning – Business Regulatory and Reforms Unit (BRRU)
- v. Meeting with Ministry of Industrialization and Enterprise Development