AGRICULTURE SECTOR NETWORK

The voice of Kenyan agriculture

RATIONALIZING THE AGRICULTURE PRODUCE CESS AND OTHER MARKET-RELATED LEVIES IN KENYA REPORT

April 2024

SUPPORTED BY:

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

AEA	Agricultural Employers Association
AFA	Agriculture and Food Authority
AFFA	Agriculture, Fisheries, and Food Authority
AG	Attorney General
AGRA	The Alliance for a Green Revolution in Africa
AHDB	The Agriculture and Horticulture Development Board
AKEFEMA	The Association of Kenya Feed Manufacturers
APC	Agriculture Produce Cess
APMC	Agriculture Produce Marketing Committee
ASNET	The Agriculture Sector Network
ASOK	The Avocado Society of Kenya
ASTGS	Agricultural Sector Transformation and Growth Strategy
BAF	Business Advocacy Fund
BETA	Bottom-up Economic Transformation Agenda
BMOs	Business Membership Organizations
CAP-F	Country Agribusiness Partnership Framework
CASK	Commercial Aquaculture Society of Kenya
CECM	County Executive Committee Member
CGA	Cereals Growers Association
CIDP	County Integrated Development Plan
CIP	International Potato Centre
CoG	The Council of Governors
CRA	Commission on Revenue Allocation
CS	Cabinet Secretary
EAGC	Eastern Africa Grain Council
EATTA	East African Tea Trade Association
FDI	Foreign Direct Investment
FPEAK	The Fresh Produce Exporters Association of Kenya
FY	Financial Year
GAIN	The Global Alliance for Improved Nutrition
GDP	Gross Domestic Product
IBEC	Intergovernmental Budget and Economic Council
IGRTC	The Intergovernmental Relations Technical Committee
ILRI	International Livestock Research Institute
ITWC	Inter-Agency Technical Working Committee

KCA	Kenya Camel Association
KCDMS	Kenya Crops and Dairy Market Systems
KCPA	Kenya Coffee Producers' Association
KEMLEIC	Kenya Meat and Livestock Exporters' Industry Council
KENAFA	Kenya National FisherFolk Association
KENAFF	Kenya National Farmers' Federation
KFC	Kenya Flower Council
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KLRC	Kenya Law Reform Commission
KRB	Kenya Roads Board
Kshs.	Kenya Shillings
KTA	Kenya Transporters' Association
KTGA	The Kenya Tea Growers' Association
LA	Local Authority
LNGG	Lake Naivasha Growers Group
MESPT	Micro Enterprise Support Programme Trust
MITI	Ministry of Industry, Trade and Investment
MOALD	Ministry of Agriculture and Livestock Development
MOALFC	Ministry of Agriculture, Livestock, Fisheries and Cooperatives
MOU	Memorandum of Understanding
MSMEs	Micro, Small and Medium Enterprises
NGO	Non-Governmental Organization
NPCK	The National Potato Council of Kenya
NT	National Treasury
OPCS	Office of the Prime Cabinet Secretary
OSR	Own Source Revenue
PETS	The Presidential Economic Transformation Secretariat
RETRAK	Retailers Trade Association of Kenya
SMEs	Small and Medium Enterprises
SOCAA	Society of Crop Agribusiness Advisors of Kenya
STAK	The Seed Trade Association of Kenya
SUCAM	Sugar Campaign for Change
UK	United Kingdom
USAID	United States Agency for International Development
VAT	Value Added Tax

EXECUTIVE SUMMARY

Over the years, food markets have faced numerous challenges associated with the distribution of agricultural inputs and products. The retail price one pays for vegetables, animal products, cereals, fruits and other items is influenced by a composite of factors such as input costs, transportation costs, cess tax and market levies, all of which collectively contribute to over 50% of the total cost of a meal. These levies, despite their significance to revenue collection, have been employed to the detriment of producers, traders, processors and consumers.

Agricultural Produce Cess (APC) is a tax imposed by County Governments on tradable commodities crossing county borders in a bid to raise revenue. Similarly, market cess or landing fees is imposed on agricultural inputs and commodities to raise revenue for destination counties where crops are landed, processed or sold. Apart from these, agricultural inputs and branded vehicles face additional charges when moving between counties, resulting in multiple taxation. There is also growing concern over the lack of transparency and accountability in the utilization of these levies. The intended goal of improving physical infrastructure and enhancing farm productivity remains elusive, as there is little evidence to prove that the funds collected are reinvested in the agricultural sector.

Prior to the enactment of the Constitution in 2010, the collection of produce cess in Kenya was governed by the Agriculture Act (Cap. 318) of the country's laws. This Act granted local authorities power to impose cess in consultation with and the consent of the Minister in charge of Local Government. The establishment of 47 County Governments marked a significant shift in the governance structure, and the Constitution now allows both the National and County Governments to impose taxes. However, the legal foundation for cess is not well established. This has prompted various stakeholders to advocate for policy reforms. The ongoing dialogue, which is coordinated by the Agriculture Sector Network (ASNET), underscores the urgency to reform the structure and application of cess and market levy systems to ensure fair and equitable taxation that promotes sustainable agricultural development and benefits all stakeholders involved.

Experiences from cess systems in other jurisdictions such as India, Australia and the United Kingdom, demonstrate the direct benefits of levies to both the payers and the broader community. These countries have adopted taxation policies that favour agricultural stakeholders by implementing minimum turnover thresholds before taxation, capping tax rates and providing specific exemptions to cushion producers from over taxation. Thus, Kenya could draw valuable insights from these practices to reform cess collection and usage.

By fostering transparency, accountability, and evidence-based decision-making in the cess and market levy policies, the Government of Kenya can create an enabling environment that facilitates agricultural productivity, stimulates investment and ensures food security for its citizens.

INTRODUCTION

Background

Over the years, food markets have faced numerous challenges linked to the distribution of agricultural inputs and products. The retail price one pays for vegetables, animal products, cereals, fruits and other items is influenced by a composite of factors such as input costs, transportation costs and distribution levies, cess tax, brokers' fees and market levies, all of which collectively contribute to over 50% of the total cost of a meal. These levies, despite their significance for revenue collection in Kenya, have been employed to the detriment of producers, traders, processors and consumers.

The Agriculture Produce Cess (APC), also known as cess fees, is a tax imposed by County Governments on tradable commodities crossing county borders to raise revenue for the origin counties. The cess is applied to commercially produced or supplied agricultural inputs and products like cereals, livestock, vegetables, fish, fruits, coffee, tea and flowers. It is levied based on the product's weight, packaging (e.g., per sack), or the carrying capacity of the transporting vehicle.

Counties typically levy cess on goods produced within their jurisdiction. If agricultural goods' cess is paid in one county, some waive additional charges for goods passing through. However, evidence of cess payment in the county of origin is required.

Similarly, market cess, or landing fees, is imposed on agricultural inputs and commodities to raise revenue for destination counties where crops and livestock are landed, processed or sold.

Apart from these, agricultural inputs and branded vehicles face additional cess charges when moving between counties. Additionally, there are undeclared charges like parking, branding, and advertisement costs, which contribute to multiple taxation, thus adding to the financial burden during transit. These levies vary across counties.

The Agriculture Sector Network (ASNET), in partnership with its members, has been working to review levies to establish what has been done by the membership on the subject. The review aimed to provide a working document that would form a basis for advocacy by the ASNET membership on the subject of agricultural produce cess and other market associated levies as they engage the County and National Government.

With support from the CGIAR Initiative on National Policies and Strategies through collaboration with the International Livestock Research Institute (ILRI), various agriculture private sector stakeholders under the coordination of ASNET, initiated efforts to conduct a deep dive on APC and other market levies. ASNET also launched an advocacy process on the same.

About ASNET

The Agriculture Sector Network is the umbrella body of the agricultural sector in Kenya formed through a partnership comprising the Kenya Private Sector Alliance (KEPSA), Kenya National Chamber of Commerce and Industry (KNCCI), Kenya Association of Manufacturers (KAM) and the SDG Partnership Platform of the United Nations, with support from the defunct Business Advocacy Fund (BAF), Elgon Kenya Limited, other like-minded business associations, private sector partners and other stakeholders. It was launched in February 2020 at a Safari Park Declaration.

ASNET's key role is to coordinate agriculture sector actors in Kenya through various mechanisms to engage in policy advocacy and value chain development that promote increased productivity, competitiveness and attract investments into the agriculture sector. The network endeavors to be the lead entity in advocacy for a competitive and enabling business environment for the sector at county, national, regional, continental and global levels. This is envisaged to be achieved through strong partnerships with the National and County Governments, plus development partners and other stakeholders, to revolutionize the agricultural sector leading to growth, inclusive wealth and ultimately the creation of jobs.

ASNET's membership comprises business associations, corporates, MSMEs, academia, private research institutions, NGOs, finance institutions, and apex farmer organizations. The network's vision is to be the most influential agriculture private sector actors' umbrella body, voice and champion for transformation. Its strategic objectives include:

- To lead in high level advocacy for competitive and enabling environment for the agriculture sector at county, national, continental and global levels.
- To implement the ASTGS and other private sector-initiated interventions and growth strategies for value chain development in partnership with National and County Governments, plus other development partners.
- To mainstream finance, trade and investments into the sector.

- To ensure capacity building of BMOs in the sector.
- To promote capacity building, research, knowledge sharing and strategic support for the advancement of successful enterprises.
- To engage partnerships or memberships with aligned strategic organizations at national, continental and global levels in order to advance the agenda of benchmarking, and build a competitive advantage in the sector.

ASNET is supported by various governing organs including a board of trustees, board of directors, a council, and the technical advisory group within which are housed various thematic committees. The governing organs are supported by a secretariat led by a chief executive officer. There is also a project steering committee that supports the secretariat in projects management.

The network is involved in the promotion of a policy and business enabling environment with the Government of Kenya through a Memorandum of Understanding (MOU) with the Ministry of Agriculture and Livestock Development (MoALD) that was signed in June 2021. The MOU provides a framework for private sector engagement in increasing agricultural production, export development and trade opportunities, and the creation of a business-enabling environment.

ASNET has been entrusted with the implementation of the Agriculture Produce and Other Markets Cess Review, in partnership with the CGIAR Initiative on National Policies and Strategies of the International Livestock Research Institute (ILRI). It has been involved in a range of activities including review of existing documentation, and organizing meetings and workshops with key stakeholders from both the public and private sectors.

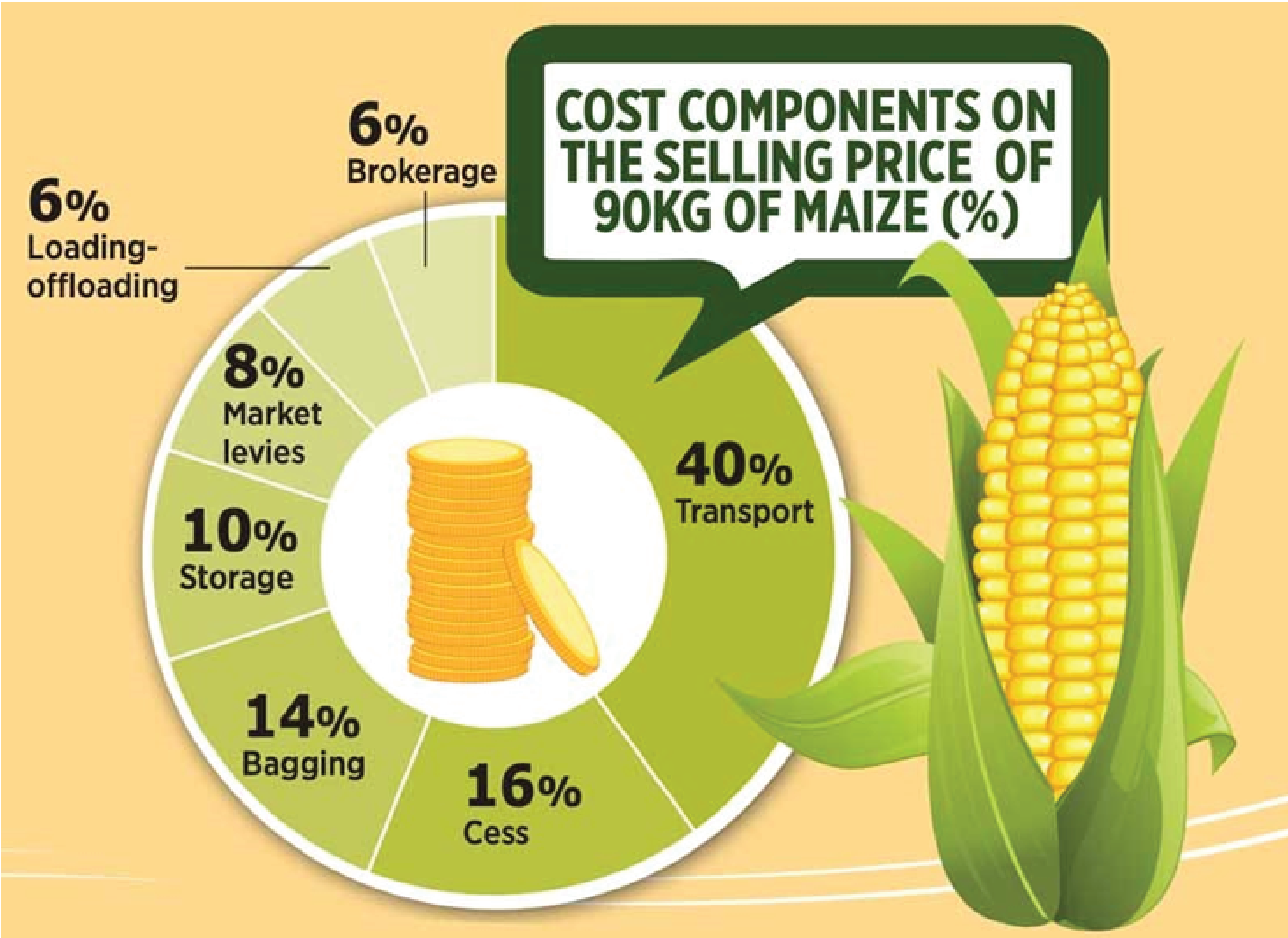
ASNET is the voice of the agricultural sector in Kenya and has brought all stakeholders under one platform to advocate for policy reforms, and develop the capacity of farmers and traders. By bringing together diverse stakeholders across the agriculture value chains, the network is playing a vital role in promoting collaboration, knowledge sharing and resource mobilization for sustainable growth of the sector. Indeed, ASNET's coordination efforts and partnerships with like-minded organizations highlights its commitment towards driving policy reforms, fostering innovation, and creating an enabling environment for sustainable agricultural development in Kenya.

THE BURDEN OF CESS

The agricultural sector is the backbone of Kenya's economy, contributing approximately 21.17% in 2022 (KNBS Economic Survey, 2023) of the country's Gross Domestic Product (GDP). The sector employs more than 40% of the total population and 70% of the rural population, and accounts for more than 50% of the country's export earnings.

Over the years, food markets have faced numerous challenges. To understand the cost of preparing a meal in Kenya, it is essential to grasp the cost framework associated with the distribution of agricultural products. The retail price one pays for vegetables, cereals, fruits, and other items is influenced by an array of costs associated with the distribution of agricultural products. These include transportation costs from the farm to the market, cess tax, brokers' fees, and market levies, all of which collectively contribute to over 50% of the total cost of a meal .

Figure 1: What makes up the selling price of 90kg of maize?



[1]USAID, (2023), Agriculture, Food and Water Security: Factsheet
[2]Senga, (2021), The cost of putting food on the table: the taxing nature of cess fees in Kenya
Source: *https://medium.com/@shipsenga/the-cost-of-putting-food-on-the-table-the-taxing-nature-of-cess-fees-in-kenya-93bbefcbc0e6*

It is important to understand that the Kenyan economy is tax-based, hence the need for the government to raise revenue for economic development. Cess is a levy on tradable agricultural produce imposed previously by local authorities (LAs) on the basis of the Agriculture Act (Cap 318) and the Local Government Act (Cap 265). Implementation of cess before devolution was supported by its incorporation in agricultural sector policies and legislation. In consultation with the Minister, local authorities could impose cess on any tradable agricultural produce. LA bylaws required any person within or outside an area to pay or deduct from amount payable to the seller an equal amount of the required cess and remit it to the respective LA. Cess was intended as an earmarked levy to support improvement of production and distribution of taxed agricultural produce. Eighty percent (80%) of the cess collection was used in maintaining roads and other services related to sectors in which it was levied. The remaining 20% was credited to the general accounts of LAs .

The Agriculture Produce Cess and Other Market-Related Levies

The Agriculture Produce Cess (APC) is a tax levied on tradable commodities by County Governments with the intention of raising revenue for the origin counties where the crops are grown. Cess is applied to agricultural and fishing products that are commercially produced or supplied, such as maize, milk, cattle, vegetables, fish, fruits, coffee, tea and flowers.

[3]Agolla, V., O., (2024), Doing business in Kenya: Need for review of cess on agricultural produce to unlock sector

The unit used to levy the cess is based on the weight of the product, the package or container (e.g., per sack of the product), or the carrying capacity of the motor vehicle used for transportation. Cess is collected either at the source of the products or during transportation at designated County or National Government roads. Typically, counties levy cess fees on products or goods produced or extracted within their jurisdiction. The funds are expected to be used to improve physical infrastructure such as roads and other assets that contribute to the enhancement of agricultural production services and facilitate marketing and distribution of these commodities.

Market cess (landing fees) are fees that are imposed by County Governments on agricultural commodities with similar intention of raising revenue for the destination counties where the crops are landed, processed or sold. Inputs such as seed are also subjected to cess charges, where movement of seed from one county to another are subject to this taxation. This is coupled with fees charged on branded vehicles. These funds have been assumed to bear the same functionality as APC.

Unfortunately, in both cases, these charges are not necessarily ploughed back to the sector in proportion to the amounts collected to meet the intended purposes of the County Governments.

In addition, cess accounts for a rather small proportion of County Governments' own-source revenue. In FY 2016/17, collections by counties amounted to Kshs. 1.2 billion, equivalent to 3.5% of aggregate OSR. In FY 2015/16, Kshs. 1.3 billion was collected, which equaled 3.6% of total OSR. This excludes Kshs. 106.8 million in coffee cess collected by KRB that was subsequently released to 30 counties from which it was generated . In general, low cess collections may be indicative of leakages or poor compliance, especially given the levy's weak connection with specific services. It may also signify negative yields resulting from high administration costs.

Legislative Gaps

While the Constitution provides a clear taxation framework, there have been contentious areas. One such area is the collection of agriculture produce cess. The repeal of the Agriculture Act (Cap. 318) in January 2013 through the enactment of the Agriculture, Fisheries and Food Authority (AFFA) Act (No. 13 of 2013) added to the complexity. During the transitional period until September 2013, counties continued to impose cess under the Public Finance Management Act, 2012. Subsequently, most counties incorporated cess charges into their legal systems through statutes passed by their respective county assemblies.

[4]The National Treasury, (2019), National Policy to Support Enhancement of County Government's Own Revenue Source. Government of Kenya

The legal foundation for cess is not well-established. While the Constitution provides guidelines on taxation powers for both National and County Governments, there have been contentious areas and a lack of clear alignment regarding cess. The absence of harmonized legislation has led to high and multiple charges, plus multiple collection points, thus increasing costs for producers and traders, which eventually has a negative impact on the competitiveness of the agricultural sector. The use of different units of measurement by different counties for levying fees, such as tonnage, package size, vehicle type and number of trips has created trade barriers within the country.

In the current Kenyan context, the county financial bills, where the agricultural cess and market levies are domiciled, have been used as the safest way for introducing new charges as opposed to addressing the agricultural issues through structured and harmonized laws and legal provisions that guarantee the longevity of the application. Each county has the discretion to determine the rate and/or computational formula for the fees based on the prevailing laws and regulations. Usually, the rates charged may be in the form of a numeric value or percentage with no clear justification of the process used to determine the values applied. Whatever the case, the computation of the final amount payable is based on the volume and/or value of the tradable commodity.

Key Challenges and Ambiguities Surrounding the Administration of Cess by County Governments

There is lack of understanding about the actual cost of revenue administration at the county level, hindering the development of efficient collection strategies. This deficiency, coupled with revenue losses during cess and other levy collections, underscores the need for a more streamlined and comprehensive approach to revenue administration within counties. Overall, addressing these issues is crucial for fostering economic growth and reducing the burden on stakeholders in the agriculture sector.

While appreciating the importance of the devolved system of governance that requires counties to have internal abilities to raise revenue so as to be able to bring services closer to the citizens, the persistent concern about these fees is that they are unnecessarily high, and change without due notice, thus making doing business unpredictable. The determination and calculation of cess charges lacks clear policies and legislation. The formula for setting cess remains unknown, and there are significant variations in rates across counties and agricultural commodities.

[3] https://fpeak.org/wp-content/uploads/2019/07/Agriculture-Fisheries-and-Food-Authority-Act-No.-13-of-2013.pdf

Another challenge is undeclared charges such as parking fees, branding charges and advertisement costs, among others, which have been considered by various industry stakeholders as multiple taxation, where the same product is charged more than once by different jurisdictions while on transit across from the counties of origin to its final destination. For example, branded seed companies' vehicles pay Kshs. 20,000-50,000 depending on capacity. This increases distribution costs by 0.8% and production costs by 0.2% for every 1% increase in cess, thus reducing seed affordability . In addition, landing fees/market cess is charged on commodities depending on the destination market. This increases marketing costs, thus raising consumer prices and reducing food affordability.

These levies, despite their significance to revenue collection have been employed to the detriment of producers, traders, processors and consumers. They continue to proliferate as each county has the discretion to determine the rates and formulas for these fees, often lacking clear justification for their determination, as per the provisions of county finance bills.

Even though the payment of cess is done mostly by commodity traders, the burden is still passed on to farmers as traders discount the cess charges on the final farm gate price. This practice ends up reducing producer incomes and is a threat to the sustainability of agricultural production in Kenya.

It is unfortunate that erection of barriers on roads (including along key transport corridors and highways), disguised as points of cess collection, have become a common phenomenon all over the country. Cess fees for products moving between counties, and not recognizing permits issued by other counties, leads to double taxation and inflated transportation costs, resulting in higher product prices. The 'barrier' method of cess administration disrupts free flow of goods between counties, and may also contribute to high administration and overall economic costs. The practice by counties of stationing revenue clerks on barricades along transportation routes also leads to unnecessary delays.

Cess is collected both at source (e.g. at farm gate in the case of agricultural produce and at production point in the case of manufactured goods). It is also collected at the point of exit from the county. However, some counties do not charge additional cess for the goods to be transported through their territory. Instead, the transporter must provide evidence of having paid cess in the county of origin. Nonetheless, the transporter or trader is still required to pay market fees to access or sell the goods in the destination market, which is referred to as market levy.

[6]Ogada, M.J., et al., (2018), The Burden of Produce Cess and Other Market Charges on Kenya's Agriculture. Africa Journal of Economics Review Vol. 06, Issue 2

Hence, it is clear that cess significantly contributes to increasing the overall cost of doing business, and restricts the trade of agricultural products, thus affecting market competitiveness. It may actually not improve the economy as intended. Cess collection across county borders means that final consumers are likely to suffer higher commodity prices, despite the fact that producers are the ones liable to make payments.

In practice, reinvestment of these levies is meant to improve physical infrastructure, thus facilitating marketing and distribution of agricultural commodities, and enhancing farm productivity. However, there is no evidence that such charges collected through APC and market cess get reinvested in the agricultural sector as intended. These have not only resulted in denial of market access, but have also significantly contributed to increasing the cost of doing business in the country.

Reforms have yet to address the numerous and fragmented pieces of legislation, including on many supporting institutions. Authorities estimate that some 130 acts govern the agricultural sector . It is therefore imperative that sector players and all concerned policy making organs consider condensing these into fewer than 10, without undermining their completeness.

The national policy on Agriculture Produce Cess remains unclear and there is, therefore, a vacuum in policy guidelines for the collection and utilization of APC, even at county level. Thus, reforms in Agriculture Produce Cess including taxation and levies will not only help in ensuring that movement of farm produce from the farm to markets are freed up by eliminating the time spent and costs incurred, but also lift the burden on value chain players hence contribute to making agriculture more competitive and sustainable.

[7]Future Agricultures. Agricultural Development Issues in Kenya https://www.future-agricultures.org/wp-content/uploads/pdf-archive/FAC_Documents-Development_Issues_Kenya-Oct_08.pdf

ADVOCACY ACTIVITIES

The Agriculture Sector Network initiated an advocacy process on the administration of the Agriculture Produce Cess and other market levies, a concern that was brought to the attention of the umbrella body by various Business Member Organizations. The Network has been dedicated to addressing issues surrounding the APC and other market-related levies in Kenya and has held a series of meetings and events. It has been advocating for policy reforms through policy dialogue, consultations, and engagement with relevant government bodies. Since June 2023, several consultative forums have been held. Key events comprise the following:

- The Agriculture Produce and Other Market Cess Review Workshop.
- Agriculture Stakeholders Workshop on Produce and Other Market Cess Review.
- Consultative Breakfast Meeting on Produce Cess and Other Market Levies.
- Consultative Technical Workshop on Produce Cess and Other Market Levies.
- Legal Experts Virtual Meeting.
- National Dialogue on the Proposed Policy to Address the Burden of Cess and Other Market-Related Levies.
- Legal Technical Workshop on APC and Other Market-Related Levies.
- Workshop with Senate Committee Members to Discuss APC and Other Market-Related Levies

Review of Existing Documentation on APC

With support from the CGIAR Initiative on National Policies and Strategies through collaboration with the International Livestock Research Institute (ILRI), ASNET conducted a review of existing documentation on the issue of APC and other market levies in order to establish what had been done by various members on the subject. The review was intended to provide a working document that would form the basis for advocacy by the ASNET membership on this issue, even as they engaged the County and National Government.

ASNET then consolidated all the past work on APC and other market levies and made clear recommendations that would enhance business competitiveness. Several consultative forums have been held since then.

The Agriculture Produce and Other Market Cess Review Workshop

In order to consolidate the private sector position and build initial consensus on recommendations for advocacy, ASNET organized a workshop on 27-28 July 2023. During this event, the draft position paper developed from the findings they had gathered from the review of previous work done and engagement with various stakeholders was presented. The paper was reviewed during the event. In order to ensure inclusivity and buy-in from all the stakeholders, a road map of activities was developed. In addition, a sub-committee was formed to reconvene and develop a list of stakeholders who needed to be involved in all future consultations. The team also developed and agreed on a plan whose activities ran from July to November 2023.

ASNET workshop to consolidate Private Sector position

Sub-Committee Meeting on Stakeholder Mapping

On 23 August 2023, about a month later, ASNET convened a meeting for the sub-committee which was appointed during the previous workshop to conduct a stakeholders' analysis. The team developed a list of all the institutions that participated in the initial meeting and identified a long list of additional stakeholders who should be incorporated into the process. The members were then each assigned a list of stakeholders. They were tasked to introduce the subject matter to them and extend an invitation to the next sensitization meeting. A stakeholder matrix was used to prioritize the additional stakeholders. The team was also requested to select some specific value chains with priority focus on seeds, fertilizer, maize, onions and cereals. The aim was to quantify the impact of cess using available data.

Sub-Commitee for Stakeholder analysis.

Agriculture Stakeholders Workshop on Produce and Other Market Cess Review

A workshop for private sector players was held on 12 September 2023, with support from the CGIAR Initiative on National Policies and Strategies, through collaboration with ILRI, and USAID Feed the Future Kenya Crops and Dairy Market Systems (KCDMS). The half-day event brought together key agricultural stakeholders from the private sector. Participants were drawn from KAM, KENAFF, CASK, STAK, RETRAK, AKEFEMA, KTGA, USAID, RTI International, AGRA, ASOK, CGA, EATTA, EAGC, NCPK, KFC, KCPK, LNGG, AEA, FPEAK, CKL Africa, Elgon Kenya, United Grain Miller's Association, Agro Processors Association of Kenya, Women Farmers Association of Kenya, Quality & Conformity International, Micro and Small Enterprises Authority, Agriculture Media Society, SUCAM, AAKGrow, Vegpro Group, Kenya National FisherFolk Association (KENAFA), Kenya Livestock Marketing Council, Aquaculture Association of Kenya, Kenya Tourism Federation, Kenya Transporters Association and the Kenya Coffee Platform, among others. Efforts were initiated to conduct a deep dive into the issue of APC and other market levies. The aim of the event was to build consensus on the work that had been done by the consultant. The Position Paper was also shared and discussed. It was also decided that the next step would involve consultations with public sector officials.

Consultative Breakfast Meeting on Produce Cess and Other Market Levies

Another consultative meeting was held the following day on 13 Septem ber 2023. Participants were drawn from the Warehouse Receipt System Council, the Presidential Economic Transformation Secretariat (PETS), Council of Economic Advisors under the Office of the President, Council of Governors, the Commission on Revenue Allocation, MESPT, Tegemeo Institute, ILRI, KTGA, USAID KCDMS, State Department of Trade and the Ministry of Agriculture.

The aim was to update participants on the activities that ASNET had implemented and to bring them on board. Sensitization on the challenges surrounding cess and other market levies was conducted, and both the public and private sector agreed that there was a problem with the policy framework on cess. It was decided that legal experts from the government and private sector would hold a meeting to discuss the issues raised. It was also agreed that a workshop be held later on to build consensus.

Consultative Technical Workshop on Produce Cess and Other Market Levies

After the breakfast meeting, a consultative technical workshop was organized on 28-29 September 2023. The aim was to further translate the draft Position Paper which had been compiled by Agile Consulting into a Policy instrument and chart a way forward. Participants were drawn from the Council of Governors, Presidential Economic Transformation Secretariat (PETS), Commission on Revenue Allocation (CRA), Council of Economic Advisors, Ministry of Trade, Ministry of Agriculture, Cereal Growers Association, AGRA, Cereal Millers Association, Seed Trade Association of Kenya, Lake Naivasha Growers Group, GAIN, Kenya Transporters Association and Agile Consulting.

Participants attending the Consultative Technical Workshop

Legal Experts Virtual Meeting

The Legal team held a planning meeting on 5 October 2023 where the following issues were addressed: a schedule of key stakeholders to be included and who would participate in the Legal Technical Workshop on APC and other market-related levies; possible dates for the legal experts' retreat and a tentative program of activities. The team also agreed to consolidate and share the legal instruments and policy documents that will be used during the workshop. Earlier, the same group had met at the PETS offices to discuss various legal and policy issues related to produce cess and other market levies.

National Dialogue on the Proposed Policy to Address the Burden of Cess and Other Market-Related Levies

With support from the CGIAR Initiative on National Policies and Strategies through collaboration with the International Livestock Research Institute (ILRI), ASNET organized a National Dialogue on 20 December 2023. The objective of the event was to discuss and address the challenges posed by cess in the agricultural sector. Participants comprised government representatives under the coordination of the State Department of Trade and private sector stakeholders. Delegates discussed the recommendations made in the Position Paper and proposed that cess/fees, if any, should be paid at source and ploughed back into the agricultural sector, and that it should be proportional to the service offered and be justified by the cost of administration and collection of the cess/-fees. Other recommendations comprised the following: harmonization and standardization of cess fees and laws; development of a legal document outlining the products subject to cess/fees for presentation to county officers and governments; collaboration with the Council of Governors to garner their support for discussions on cess fee amendments; and advocating for the abolition of market cess.

National Dialogue Stakeholders

Legal Technical Workshop on APC and Other Market-Related Levies

Participants in the Legal Technical Workshop convening

The Legal Technical Workshop which took place on 11-16 February 2024, was held in collaboration with the Ministry of Investments, Trade and Industry and the President Economic Transformation Secretariat, with support from AGRA and GAIN. Participants comprised key public and private sector players. They were drawn from the Council of Governors, IGRTC, the trade and agricultural departments of County Governments and the private sector. The objective of the meeting was to discuss various legal and policy issues relating to produce cess and other market levies. The team conducted an overview of the existing legal and legislative challenges of agriculture produce cess and other market-related levies, and delved into the gaps in the existing policy and

legislative framework. They developed a road map on the policy and legislative framework on cess and other market-related levies that will be used to guide the process. An Inter-Agency Technical Working Committee (ITWC) was proposed to lead the process of developing a Policy and Bill on the APC and other market-related levies. Among the recommendations made was that the ministry take over the process of transforming the advocacy process on administration of APC into a legal and regulatory process.

Senate Committee Members Convening with ASNET, Partners on APC

This event took place on 22-23 March 2024, with support from the CGIAR Initiative on National Policies and Strategies, through collaboration with ILRI. Participants, who were drawn from various sectors of the agricultural industry, convened to meet the Senate Standing Committee on Agriculture, Fisheries, and Blue Economy and the Committee on Delegated Legislation for an intensive two-day workshop aimed at addressing critical issues surrounding APC and associated market levies. It provided an opportunity for members of the committees to engage in constructive dialogue, share insights, and collaborate on potential solutions to enhance the efficiency and effectiveness of administration of the agriculture produce cess and market-related levies in the counties. Presentations were made by stakeholders from ASNET, GAIN, AGRA, ILRI, PETS and the Ministry of Trade.

During the workshop, participants highlighted the critical role of agricultural policy reform in fostering sustainable development and improving livelihoods, and the importance of addressing cess-related issues in ensuring food affordability and accessibility. Members of the Senate Standing Committee on Agriculture, Fisheries and the Blue Economy highlighted the role of their team in providing legislative oversight and policy guidance to promote sustainable agriculture development. They reaffirmed the committee's commitment to working closely with stakeholders to identify challenges and explore viable solutions.

The team underscored the two available options – either taking the memorandum or the legislative proposal route. A Policy on APC will be drafted by the Inter Agency Technical Committee, constituted by the Principal Secretary of Trade and Investments in the Ministry of Investments, Trade and Industry. It is envisaged that a clear policy framework on APC and Other Market Levies administration will not only further improve the business environment, but also lower the cost of production as well as reduce the cost of major food items, hence improve food security in Kenya.

PROPOSED BEST PRACTICES

Agricultural tax through the imposition of cess is a common practice in several countries. Overall, countries have relied on agriculture as a key sector to provide resources to develop their economies, and have been using tax revenues from the sector to support industrial development. Some similarities and differences have been described on different systems of cess practiced across countries. Examples were drawn from Tanzania, Uganda, Burundi, Australia, India and the United Kingdom (UK).

Understanding the design and impact of such taxation regimes is important for evaluating their impacts.

Case studies

Tanzania

In Tanzania, agricultural levying is implemented through the Local Government Finance Act which caps the levying rate at 0-5% of the farm gate price of the commodity. This has seen cess rates varying at 5% from 2007 to 2009; 3% in 2010 and 3-5% in 2011. Local authorities consider cess as part of their overall revenue and there is no direct ploughing back of such collections to the agriculture sector. However, though a portion of overall revenue is used for ward and village level development activities in different sectors. Agricultural produce cess contributes only 2% of the total revenue of all local government authorities in the country, and an average of 24% of aggregate own source revenue .

Burundi

In Burundi, inputs for agricultural and livestock activities are taxed at a rate of 7%. The country also imposes a coffee cess, although the exact rates are unclear .

Uganda

In Uganda, taxation rates differ between commodities and between districts, thereby distorting markets and prices . Agricultural taxation by local governments have been characterized by leakages in revenue, negative impacts on income distribution and negative impacts on economic growth due to distortion in relative prices of goods and services. The same study also showed that flat rate taxation was regressive because it disproportionately burdened the small-scale traders.

[8] Government of Tanzania, (2014) Study on Produce Cess Taxation System in Tanzania by Agricultural Council of Tanzania
[9] World Bank, (2015), Burundi Coffee Sector Competitiveness Support Project (P151869)
[10] WTO, (2013), Trade policy review East African Community

India

India is known for its thriving agriculture, which plays a crucial role in the country's economy and supports the lives of millions. In India, there is a well-developed three-tier taxation structure that is based between the central, state and local governments. The federal government does not levy income tax on agriculture; these taxes are imposed and collected by the state government. Legislative powers including taxation, are distributed between the Parliament and the State Legislature.

Tax incentives like tax holidays are common, and they help companies offset the cost of doing business for example, inadequate public infrastructure . India also has the Agriculture Produce Marketing Committee (APMC) established under the Agricultural Produce Marketing Committee Acts of the states pursuant to the model State Agricultural Produce Marketing (Development and Regulation) Act (Government of India, 2003) which provides for the following:

- Single-point levy of market fee in the entire marketing process in the country, including inter-state trade; the market fee collection should be commensurate with services and facilities offered to the seller and buyer. Under this provision, the States charge a marketing fee of between 1-2% on an *ad valorem* basis, with the proportion varying depending on the commodity.
- Levying cess on primary agricultural produce and not on processed commodities; but user charges can be levied based on the use of the services and of infrastructure.
- Tax simplification. This provision makes the State-level taxation and fees paid on agricultural produce across the States uniform.
- Public-private partnership for integrated agriculture infrastructural development and management.
- Creation of market committee funds which caters for market establishment, market services and infrastructural development expenses only .

[11] Bahiigwa, G., Ellis, F., Fjeldstad, O., & Iversen, V. (2004), Uganda Rural Taxation Study. Final Report. Economic Policy Research Center (Uganda) Overseas Development Group (UK), and Chr. Michelsen Institute (Norway)
[12] Organization for Economic Cooperation and Development, 2014
[13] Government of India, (2013), Agriculture Marketing to Promote Reforms

Australia

In Australia, the levy is determined by industry actors who identify the specific need that the levy would address then they would present a proposal to the members through the government department. Producers/value chain actors may pay more than one type of levy aimed at addressing a particular need in the industry. Some of the levies are:

- Grain levies determined as the farm-gate value of the produce as a net of themarketing costs like storage, handling and transportation .
- Beef production levy charged at the abattoir, and if the carcass is condemned or rejected as unfit for human consumption or if the family consumes the carcass, then the levy is not paid.
- Cattle and livestock transaction levy paid on each transaction where ownership changes.

Poultry industry levies which include: a) Egg promotion levy payable on commercial egg production only. The producer pays the levy to the seller who submits the returns; b) Laying chickens levy payable on chicken hatched in a hatchery. The producer pays the levy through the proprietor of the hatchery where the laying chickens were hatched. Levies are not paid if fewer than 1,000 chickens were hatched at the hatchery in the levy (financial) year or if laying chickens die or are destroyed within 48 hours of hatching ; c) Meat chickens levy payable on meat chickens hatched in a hatchery; d) Horse disease response levy paid to raise monies expended in a response to an emergency animal disease outbreak affecting horses.

United Kingdom

There are five statutory agriculture and horticulture levy bodies representing different agricultural commodity sectors. The bodies are funded by farmers and growers who in turn receive services like research and development, market information, marketing and trade development. The AHDB is managed independently of the commercial industry and government, and it allows for segregation of funds collected from each commodity sector.

Funds raised from each commodity sector are used to benefit only that sector from which the funds were raised. Levying is on primary producers and further up the supply chain, except for horticulture where levying is only on primary producers. Producers pay the bulk of the levy. The levy payment is based on a certain turnover threshold (£50,000) below which no levy is charged .

[14] Government of Australia, (2016b), Grain Trade Australia: Australian Grain Industry – Code of practice technical guide document No. 13, 2016
[15] Government of Australia, (2017), Laying chicken levy
[16] Van der Veen, (2007), Exploring agricultural taxation in Europe. LEI, The Hague

Best Practices

Systems in the non-African states, similar to the example of Tanzania, seem to have direct benefits to the levy payer and the community at large. The grain levy, for example in Australia, targets the promotion of the interests of the grain industry. The same applies to beef, poultry and other levies. The targeting of cess collections to provision of services for the specific value chain payers is a direct way of stakeholders financing their own public good services.

The taxation systems in these states present principles and practices which Kenya could benchmark to reforms cess collection and use. The countries studied have developed and implemented taxation policies that are favorable to agricultural stakeholders.

Agricultural producers are cushioned from over taxation by setting minimum thresholds of turnover before attracting tax, by capping taxation minimum and maximum rates and by implementing specified exemptions. Agricultural taxpayers participate actively in determining levies and rates and also how the collections are utilized. In addition, the practices satisfy the good taxation principles as proposed by the World Bank, i.e., non-distortionary for markets, equity, efficient to administer and not resulting in tax avoidance.

India practices single-point levying which means that the administration and enforcement of the taxes is efficient. Thus, there is minimal tax evasion and/or avoidance. Moreover, fees cannot be levied for a second time under any name including cess, user charge or service charge. In addition, the practice of tax capping prevents tax-evasive behaviour. The same applies in the United Kingdom which has a minimum turnover before taxation. However, the capping range must be narrow enough to minimize non-uniformity and market distortion.

PROPOSED POLICY STRUCTURE

In reviewing legislation, the team studied a range of documents (See Appendix II for details). A few of these are highlighted below.

National Legislation

The Constitution

Article 209 (3) stipulates that a County Government may impose property rates, entertainment taxes and any other tax that it is authorized to impose by an Act of Parliament. Article 209 states that Parliament can authorize counties to impose a tax, which implies that a new county tax can be initiated by the National Government as well as through county legislation.

The Tea Act, 2020

The object and purpose of the Tea Act is to establish the Tea Board of Kenya to develop, promote and regulate development of the tea industry and promote accountability in the sector by promptly paying tea farmers and by giving them more power in the running of tea factories. The Act under section 3 establishes the Tea Board of Kenya charged with the responsibility of among others, advising County Governments on agricultural cess and fees as stipulated under section 5(1)(s). It also stipulates that fees imposed by a County Government shall not be prejudicial to national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.

The Crops Act, 2013

The Crops Act of 2013 states that a County Government may impose fees for development of agricultural crops, issuance of trade licenses to any person trading in scheduled crops and issuance of licenses for cooperative societies dealing with scheduled crops within the county. Section 17(3) provides that "fees imposed by a County Government shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services and capital." It is therefore clear that county levies on crops should be modelled in a manner that is not unfair to the farmer, and at the same time does not affect the national economic policies, especially on exports.

Agriculture and Food Authority (AFA) Act

This provides that the Authority shall, in consultation with County Governments, perform the function of advising the National and County Governments on agricultural levies for purposes of planning, and enhancing harmony and equity in the sector.

Selected County Legislation

Nakuru County Flowers Service Charge Act

Section 4(1) provides that the County Government shall collect a charge of 1% of gross sale on flower services within the county, while Section 4(2) states that the proceeds of the charge collected will be used for infrastructural development of the area. In Section 12, the authorized officer shall ensure that the charge on flower service from the county on transit to other counties is collected at barriers set up at the points of entry as per regulations made by the Executive Committee Member, and shall ensure that all the amounts collected are accounted for and remitted to the County Government.

Meru County Tea Cess Act

The Act provides for the introduction of the Tea Cess and usage and management of the cess. It states that the cess shall be deducted from the green leaf proceeds of each grower registered to a tea factory. The amount shall be determined by the County Executive Member for finance in consultation with the County Executive Member for agriculture, and approved by the County Executive; and shall not exceed 1% of the green leaf payment.

Kakamega County Agricultural Produce Act

Part III of the Act provides for payment of cess. Section 6(1) states that "the cess imposed under this Act shall be payable by the agricultural producer to the County Government through the processing plant at the time when the plant takes delivery of the produce." Section 8 states that, "The authorized officer shall ensure that cess on agricultural produce from the county on transit to other counties is collected at barriers set up at the points of entry, and shall ensure that all the amounts collected are accounted for and remitted to the County Government."

Busia County Cess Act, 2017

Section 6 provides for payment of the cess, levy and charges. These will be made at the place of production or at any other place as may be designated by the Executive Committee Member. In the case of products brought into the county from outside, payment will be made at the place of delivery of the product or as may be designated by the Executive Committee Member. Section 8 provides that the money collected as cess charges shall be used for the maintenance of county roads.

Bungoma County Agriculture Produce Act

Section 5(1) provides that APC shall not be levied on agricultural products that are declared essential. Subsection 2 stipulates that the County Executive Committee Member (CECM), in consultation with the CECM in charge of agriculture, may review, declare and publish essential produce that in his or her opinion are necessary for purposes of this Act. Section 11(4) provides that payment of cess shall not apply to agricultural products not produced in the county that are on transit through the county on national trunk roads and to which cess has already been paid in another county.

County Finance Acts

The County Finance Acts are expected to set the revenue raising measures by County Governments in a particular year as stipulated under Section 132 of the Public Finance Management Act, 2012. Article 210 of the Constitution provides that "no tax or licensing fees may be imposed, waived or varied except as provided by legislation". In that regard, County Governments are expected to enact enabling county revenue legislation before enacting the County Finance Acts to anchor their taxes, fees and charges.

Policy Review

Vision 2030

Kenya's Vision 2030 forms the primary basis for evaluation of the country's economic policy and promotes community empowerment through increased efficiency and impact of devolved funds. It is proposed that this can be achieved by increasing the amount, efficiency and impact of devolved funds and by increasing public participation and the voices of the poorest members of local communities so that development issues of concern to such members can be channelled into public policy.

Vision 2030 is anchored on three key pillars, namely: economic, social and political. Given that all of the country's policies are to be informed by Vision 2030, it is of utmost significance that the county revenue legislation be drafted in ways that implement and promote the country's long-term development blueprint.

County governments are required to incorporate national policy and an enabling fiscal environment for economic transformation into their budgeting process and implement programs indicated in their County Integrated Development Plans (CIDPs), County Fiscal Strategy papers and Finance bills.

National Trade Policy

In order for agriculture to play a pivotal role in trade development, coordination between the National and County Governments is crucial. The National Trade Policy, therefore, envisions a situation where activities of the National and County Governments are steered under a coherent framework that reflects the new constitutional dispensation to avoid institutional-related constraints in the process of promoting trade in agriculture and agro-processed products.

National Policy to Support Enhancement of County Own Source Revenue, February 2019

This policy was approved by the Cabinet on 14 August 2018. It was occasioned by the need to address the under-performance of County Governments' Own Source Revenue (OSR) caused by challenges in collection and administration of decentralized taxes, fees and charges. The purpose of the policy is to assist counties to optimize OSR by setting up a standardized policy, legal and institutional framework for local revenue raising measures.

This policy discourages imposition of cess except where it applies to agricultural produce. That notwithstanding, counties intending to impose cess should develop supportive legislative frameworks indicating that the levy is for infrastructure development and that a percentage of collections will be ploughed back into the sectors from which it was generated. The policy also requires counties to develop a Tariff and Pricing Policy justifying the rationale for levying fees and charges as stipulated under Sec 120 of the County Governments Act.

Agriculture Policy

Marketing of agricultural produce often attracts several forms of taxation including levies, Value Added Tax, cess, export tariffs and import duties. The imposition of levies across counties at numerous produce inspection stations greatly hinders movement of agricultural products to urban markets and reduces their competitiveness, both locally and internationally.

The policy highlights the need to promote and facilitate agricultural trade and marketing of high-quality agricultural products and expects the two levels of governments to ensure that roadblocks are controlled and gazetted to eliminate illegal taxation of agricultural produce, and to continually monitor, evaluate and regulate levies and taxes charged on such products.

The Policy Structure

Thematic Area	Policy Issue	Policy Objectives	Policy Statement
Thematic area 1: Policy, Legal & Regulatory Framework	Lack of a uniform and enabling national policy and legal framework for charging and collection of cess and other market-related levies by County Governments.	1. Govern the collection of cess and market-related levies by County Governments. 2. Align cess and other market-related levy collection policies with national economic development goals and policies to ensure coherence and synergy between county and national objectives.	Government is dedicated to creating a comprehensive and enabling national policy, legislative, regulatory and institutional structure to streamline the imposition, collection and utilization of cess and other market-related levies by County Governments. This is to ensure fairness, transparency, predictability and efficiency in revenue collection processes across all counties.

Thematic Area	Policy Issue	Policy Objectives	Policy Statement
		3. Ensure that cess and other market-related levies are based on services delivered by County Governments. 4. Enhance transparency, predictability and accountability in the cess collection process, including publication of collection procedures, rates, and utilization of funds.	
Thematic Area 2: Intergovernmental Cooperation Mechanisms	Limited intergovernmental engagement under the existing structures of intergovernmental coordination in matters touching on cess and other market-related levies.	Enhance intergovernmental cooperation	1. Government is committed to ensuring effective cooperation, coordination and collaboration between different organs in addressing the issue of cess, distribution fees and other market-related levies. 2. Government recognizes the importance of cooperation between National Government, County Governments, CRA, IGRTC, CoG, IBEC and other intergovernmental agencies, and the role they play independently and collectively and addressing the challenges of coordinating cess and other market-related levies.

Thematic Area	Policy Issue	Policy Objectives	Policy Statement
			3. Government acknowledges the need for a supportive framework that clarifies institutional roles, and how they interact to facilitate attainment of overarching national goals in empowering farmers, ensuring a positive business environment and enabling overall economic development.
Thematic Area 3: Capacity Building	To promote and conduct effective capacity building programs in the counties to necessitate a good understanding of the law and how it can be applied. This involves: 1.Unbundling cess and other market-related levies. 2. Standardization. 3. Establishing parameters for determination of cess and other market-related levies.	1. Promoting clarity and understanding on cess and other market-related charges. 2. Providing uniform standards, norms, guidelines and practices in the application of cess and other market-related levies. 3. Elimination of arbitrary charges based on unjustifiable and non- scientific methods of determining amount of cess and levies chargeable.	1. Government is committed to improving awareness and understanding of cess and other market-related levies and their application with a view to promoting inter-county trade, enhancing free flow of goods and services; and making Kenya competitive in attracting Foreign Direct Investment (FDI). 2. Government will work with counties and other stakeholders to develop the necessary policy instruments to enhance uniformity and standardization in the use of cess and other market-related levies. 3.Government, in consultation with stakeholders, will promote the use of scientific approaches in determining cess and other market-related levies.

RECOMMENDATIONS & THE WAY FORWARD

While reiterating the need for government to raise revenue for economic development as being a globally acceptable practice by law, there is need to consider the net impact of tax regimes especially when the taxes have a negative impact on the majority of the population (mainly consumers and producers who bear the cost). This is particularly important in Kenya where agriculture serves as the backbone of the country's economy. Careful and strategic assessment of these charge provisions is paramount. It is crucial to strike a balance between revenue generation for County Governments and supporting the growth and competitiveness of the agricultural sector.

The burden of the cess and market-related levies has prompted various stakeholders to address the Government of Kenya and advocate for policy reforms. This ongoing dialogue process, which is coordinated by ASNET, underscores the urgency of reforming the structure and application of the system to ensure fair and equitable taxation that promotes sustainable agricultural development and benefits all stakeholders involved.

Given the substantial impact of these cess regimes on consumers and producers in the vital agricultural sector, it is crucial that the country promotes an efficient and transparent system that bolsters growth of the sector. Therefore, the Government of Kenya should develop a policy and reform legislation to rationalize the levels of cess, and regulatory licenses and permits in partnership with the private sector. This will serve to create a harmonized and non-distorted market environment. The proposed policy measures are essential for achieving fairness, equity, and effectiveness in the taxation of agricultural commodities and services.

Proposed Policy Actions

In line with these recommendations, the following policy actions should be taken:

- Develop and enact a national legislation to harmonize collection of cess and othermarket levies in the counties in line with Article 209(5). Although counties have legislated on charges and levies as empowered by Article 185(2), these are in conflict and irregular. To ¬¬¬¬¬ the county-level laws, there is need for a national law to put in place standards and uniformity to avoid prejudicing national economic interests, economic activities across county boundaries, and the mobility of goods, services, capital and labour.
- Address inconsistencies in current laws through amendments to align the laws with the assignment of functions between the National and County Governments as provided in the Constitution of Kenya. This will streamline policies and practices at the County Governments on developmental and regulatory responsibilities in the agricultural sector, with the National Government refraining from levying charges for functions that have been delegated to the counties. It will foster better governance and resource management at the local level.

RECOMMENDATIONS & THE WAY FORWARD

- Address inconsistencies in current laws through amendments to align the laws with the assignment of functions between the National and County Governments as provided in the Constitution of Kenya. This will streamline policies and practices at the County Governments on developmental and regulatory responsibilities in the agricultural sector, with the National Government refraining from levying charges for functions that have been delegated to the counties. It will foster better governance and resource management at the local level.
- Establish a single point of cess collection within the value chain, preferably in the county of origin or destination, in order to streamline the taxation process and reduce transaction costs.
- Base cess charges on the actual services provided to cess-payers, while determining business and regulatory license fees according to the real cost of services rendered. This approach promotes fairness and prevents overcharging.
- Charging should only be done at the county level. The National Government and its agencies should leave developmental and regulatory aspects of the agricultural sector to County Governments and should therefore not levy charges for functions in agriculture that have been devolved to these governments.
- Hold consultations with the Intergovernmental Budget and Economic Council (IBEC) and the Council of Governors to build consensus and align with the policy.
- Ensure proper public participation during the county and national legislative process for cess, thus guaranteeing that County Governments uphold the values of accountability and transparency in the administration of cess collections. Public input is essential for building trust and ensuring that cess revenues are effectively utilized for the benefit of the agricultural sector and its stakeholders.
- Capacity strengthening to improve administration of revenues including cess and mechanisms for accountability at county level should be instituted.

The Way Forward

Even as discussions on the issue of APC and other market levies and how they impact the country's trade policy goals are ongoing, there is need to recognize the potential of these levies to generate revenue for County Governments. However, it is equally important to ensure they are implemented efficiently and do not stifle agricultural productivity and market competitiveness. If the cumbersome and more restrictive double taxation and licensing regime is not in the best interest of the country, then there is need to take a bold step of eliminating the bottlenecks in order to make it more effective.

Studies conducted by private sector organizations and academia have revealed that businesses in Kenya, especially those engaged in trade and supply of goods or services across counties, are subjected to multiple taxation in relation to cess, distribution and branding of vehicles. The multiple taxation has resulted in increased cost of living and cost of doing business, thus slowing business growth and employment creation.

In order to find a permanent and workable solution to the issue of double taxation, several consultation forums, coordinated by ASNET, have been held, more so on the issue of cess and other market-related levies. These dialogues have resulted in the development of a private sector-led position paper which strongly advocates for strengthening public-private sector dialogue in eliminating restrictive trade policies and practices resulting in multiple licenses which hinder free movement of goods and services throughout the country. Engaging in frequent stakeholder consultations helps in crafting inclusive and less combative solutions. Engagement with businesses, workers, unions and civil society, brings on board diverse perspectives and fuels better outcomes.

By fostering transparency, accountability, and evidence-based decision-making in cess and other market levies policy, the Government of Kenya can create an enabling environment that facilitates agricultural productivity, stimulates investment, and ensures food security for its citizens.

Appendix I: Proposed Roadmap for the Development of the National Policy, Legislative, and Regulatory Framework on Cess and Other Market-Related Levies

S/No	Activity	Description	Recommended Days & Dates	Output	Responsibility
1.	Establish an Interagency Technical Working Committee on the development of a national framework on cess and other related market levies	Identify key stakeholders to form the committee to a maximum of 29 pax.	19th February 2024 Letters to be sent out	Interagency committee established by 23rd February 2024	SDT PETS (list of nominees)
2.	a) ITWC to review the position paper by ASNET and existing policy and legal framework at both County and National level b) Development and presentation of the zero draft policy and legislation	a) Constitution b) National policies and Legislation c) County policies and Legislation	7-day working retreat 28th February-8th March 2024	Drafting instructions developed	ITWC
3.	a) Incorporation of comments and presentation of 1st draft policy and legal instrument b) Presentation of the first draft to stakeholders and concurrence from the SDT	a) Guidelines b) National policy on cess and other market related levies in country c) National cess and other market related levies Bill, 2024	7-day retreat (4 days incorporating comments, 1-day presentation and seeking concurrence, and 1 day incorporating comments to develop 2nd draft). 18th-26th March 2024	2nd draft	ITWC

S/No	Activity	Description	Recommended Days & Dates	Output	Responsibility
4.	Public participation on the 2nd draft (media's publication to be 14 days before)	Consultative forums in 6 regions	3-day workshop 15th-17th April 2024	Consolidate comments from public participation	ITWC SDT (Publication)
5.	a) Incorporating comments from public participation b) Presentation of the third draft to the ITWC and key stakeholders (CoG, IGRTC, AG, KLRC, CRA and State Department Trade) NT and Agriculture	3rd drafts	5-day working retreat 29th April-3rd May 2024	Validated draft is the 4th draft	ITWC
6.	Validation of the fourth draft to the stakeholders for concurrence	4th drafts validated	1-day workshop 16th May 2024	Validation report	ITWC
7.	Development of draft five and a Cabinet memo	Cabinet memo and final drafts	3 days 20th-22nd May 2024	Final drafts Cab memo to be sent by 24th May 2024	PETS ITWC AG and NT (Cab memo)
8.	Parliamentary engagement for buy-in (for sensitization, lobby and advocacy)	National cess and other market levies Bill 2024	3rd June 2024	Report	PETS AG SDT KLRC OPCS

S/No	Activity	Description	Recommended Days & Dates	Output	Responsibility
9.	Presentation of the Bill to Parliament for buy-in	The Policy and the National Cess and Other Market Levies Bill 2024	3-day retreat 11th-13th June 2024	Report	PETS ITWC Parliament OPCS
10.	Parliamentary passage of Bill process concluded	1st-3rd reading concluded	2nd July 2024	Bill approved	Parliament
11.	Bill forwarded to the President for assent	Bill assented	3rd July 2024	Bill enacted	AG Parliament Presidency

Appendix II: List of Legislations and Policies for Review

Legislations for review

1. National Legislation
    a) Crops Act
    b) Agriculture and Food Authority Act
    c) Tea Act
    d) Livestock Produce Cess Act
    e) Dairy Industry Act
    f) Horticulture Act
2. All county legislation on cess and other market levies
3. County Finance Acts
4. County Governments Revenue Raising Process Bill

Policies for review

1. BETA manifesto
2. Vision 2030
3. National Policy on Enhancement of County Own Source Revenue
4. Trade Policy
5. Agriculture Policy

Appendix III: List of Interagency Stakeholders

Public Sector Partners

1. Ministry of Industry, Trade and Investment (MITI)
2. Ministry of Agriculture and Livestock Development (MoALD)
3. Agriculture and Food Authority (AFA)
4. Council of Governors CoG)
5. Kenya Law Reform Commission (KLRC)
6. Attorney General (AG)
7. Intergovernmental Relations Technical Committee (IGRTC)
8. Commission on Revenue Allocation (CRA)
9. National Treasury (NT)
10. Presidential Economic Transformation Secretariat (PETS)
11. Office of the Prime Cabinet Secretary (OPCS)
12. Kenya Institute for Public Policy Research and Analysis (KIPPRA)
13. County Governments

Other Partners

1. Global Alliance for Improved Nutrition (GAIN)
2. CGIAR/International Livestock Research Institute (ILRI)
3. International Potato Centre (CIP)
4. Alliance for a Green Revolution in Africa (AGRA)
5. United States Agency for International Development (USAID)
6. RTI International

Private Sector

1. The Agriculture Sector Network (ASNET)
2. Kenya Association of Manufacturers (KAM)
3. Cereals Growers Association (CGA)
4. Eastern Africa Grain Council (EAGC)
5. The Seed Trade Association of Kenya (STAK)
6. The Retail Trade Association of Kenya (RETRAK)
7. Elgon Kenya Limited
8. Kenya National Farmers' Federation (KENAFF)
9. Kenya Tea Growers Association (KTGA)
10. Lake Naivasha Growers Group (LNGG)
11. National Potato Council of Kenya (NPCK)
12. Commercial Aquaculture Society of Kenya (CASK)
13. AAK-Grow/CropLife Kenya
14. The Association of Kenya Feed Manufacturers (AKEFEMA)
15. Kenya Meat and Livestock Exporters' Industry Council (KEMLEIC)
16. Kenya Coffee Producers' Association (KCPA)
17. Society of Crop Agribusiness Advisors of Kenya (SOCAA)
18. Kenya Transporters' Association (KTA)
19. The Avocado Society of Kenya (ASOK)
20. Kenya Camel Association (KCA)
21. Agro-Processors Association of Kenya (APAK)
22. Syngenta Foundation
23. Agricultural Employers Association (AEA)
24. Sugar Campaign for Change (SUCAM)
25. East African Tea Trade Association (EATTA)
26. Kenya National FisherFolk Association (KENAFA)

AGRICULTURE SECTOR NETWORK
The voice of Kenyan agriculture

P.O. Box 46826 -00100
Nairobi, Kenya
Office Tel No: +254 112386224
info@asnet.or.ke
www.asnet.or.ke