

# Rationalizing the agriculture produce cess and other market-related levies in Kenya



INITIATIVE ON  
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and Strategies

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# 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
KAM	Kenya Association of Manufacturers
KCA	Kenya Camel Association
KCDMS	Kenya Crops and Dairy Market Systems
KCPA	Kenya Coffee Producers' Association
KEMLEIC	Kenya Meat and Livestock Exporters' Industry Council
KENAFSA	Kenya National FisherFolk Association
KENAFF	Kenya National Farmers' Federation
KFC	Kenya Flower Council
KIPPRRA	Kenya Institute for Public Policy Research and Analysis
KLRC	Kenya Law Reform Commission
KRB	Kenya Roads Board
KSh	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
SOCOA	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. However, despite their significance to revenue collection, these levies have been employed to the detriment of producers, traders, processors, and consumers, exacerbating the already high cost of living and hindering economic growth. The situation demands urgent policy reforms to address these issues and stimulate economic growth.

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

Before 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 the power to impose cess in consultation with and with 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 urgent policy reforms. The ongoing dialogue, coordinated by the Agriculture Sector Network (ASNET), underscores the pressing need 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. These reforms promise a more efficient and equitable agricultural sector, instilling hope and optimism among all stakeholders.

# 1. Introduction

## 1.1 Background

The Agriculture Produce Cess (APC), also known as cess fees, is tax county governments impose 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 regardless of levies charged at the county of origin. Other undeclared charges, like parking, branding, and advertisement costs, are also imposed, contributing to multiple taxation, thus adding to the financial burden during transit. These levies vary across counties.

In partnership with its members, the Agriculture Sector Network (ASNET) has been working to review levies to establish what the membership has done on the subject. The review aims to provide a working document that would form a basis for advocacy by the ASNET membership on agricultural produce cess and other market-associated levies as they engage the county and national governments.

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

### 1.1.1 About ASNET

The Agriculture Sector Network (ASNET) is the umbrella body of Kenya's agricultural sector. It was 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. ASNET plays a crucial role in advocating for policy reforms and coordinating dialogue among various stakeholders in the agricultural sector. It was launched in February 2020 at a Safari Park Declaration.

ASNET's key role is coordinating agriculture sector actors in Kenya through various mechanisms to engage in policy advocacy and value chain development that promote increased productivity and 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 agriculture sector at the county, national, regional, continental, and global levels. This is envisaged through solid partnerships with the national and county governments, development partners, and other stakeholders to revolutionize the agricultural sector, leading to growth, inclusive wealth, and ultimately creating 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 a competitive and enabling environment for the agriculture sector at the 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 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, a board of directors, a council, and the technical advisory group, which houses various thematic committees. The governing organs are supported by a secretariat led by a chief executive officer. A project steering committee also supports the secretariat in project management.

The network promotes 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) signed in June 2021. The MOU provides a framework for private sector engagement to increase agricultural production, export development, and trade opportunities and create a business-enabling environment.

ASNET has been entrusted with implementing 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 various activities, including reviewing existing documentation and organizing meetings and workshops with key public and private stakeholders.

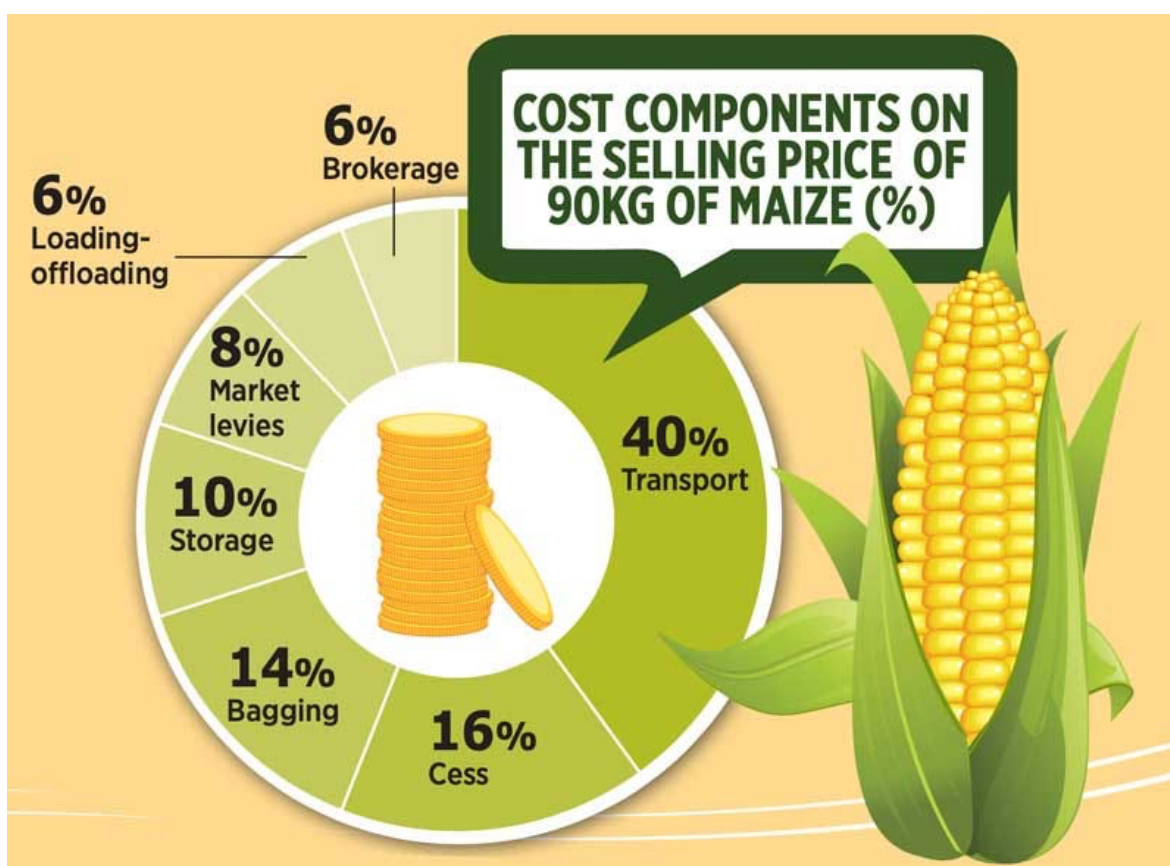
ASNET is the voice of Kenya's agricultural sector. It has brought all stakeholders under one platform to advocate for policy reforms and develop the capacity of farmers and traders. The network promotes collaboration, knowledge sharing, and resource mobilization for sustainable sector growth by bringing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

## 2. The burden of cess

The agricultural sector is the backbone of Kenya's economy, contributing approximately 21.17% (KNBS Economic Survey, 2023) of the country's Gross Domestic Product (GDP) in 2022. The sector employs more than 40% of the total population and 70% of the rural population, accounting for more than 50% of the country's export earnings.<sup>1</sup>

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. Retail prices pay for vegetables, cereals, fruits, and other items and are influenced by various costs related to 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.<sup>2</sup>

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



Source: <https://medium.com/@shipsenga/the-cost-of-putting-food-on-the-table-the-taxing-nature-of-cess-fees-in-kenya-93bbefcbc0e6>

It is essential 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) based on the Agriculture Act (Cap 318) and the Local Government Act (Cap 265). The implementation of cess before devolution was supported by its incorporation into agricultural sector policies and legislation. Local authorities could impose cess on tradable agricultural produce in consultation with the Minister. LA bylaws require any person within or outside an area to pay or deduct from the 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 the improvement of production and distribution of taxed agricultural produce. Eighty

<sup>1</sup> USAID, (2023), Agriculture, Food and Water Security: Factsheet

<sup>2</sup> Senga, (2021), The cost of putting food on the table: The taxing nature of cess fees in Kenya.

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<sup>3</sup>.

## 2.1 The agriculture produce cess and other market-related levies

The Agriculture Produce Cess (APC) is a tax levied on tradable commodities by county governments to raise 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.



*Agricultural produce. Photo by: Allan Muturi/Lightwave photography*

The unit used to levy the cess is based on the product's weight, 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 on 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 imposed by county governments on agricultural commodities with the 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 the movement of seed from one county to another is 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 county government's intended purposes.

In addition, cess accounts for a relatively small proportion of county governments' own-source revenue. In the financial year (FY) 2016/17, collections by counties amounted to KSh 1.2 billion, equivalent to 3.5% of aggregate Own Source Revenue (OSR). In FY 2015/16, KSh 1.3 billion was collected, which equaled 3.6% of total OSR. This excludes KSh 106.8 million in coffee cess collected by the Kenya Roads Board (KRB), which was subsequently released to 30 counties from which it was generated.<sup>4</sup> Low cess collections may indicate leakages or poor compliance, especially given the levy's weak connection with specific services. They may also signify negative yields resulting from high administration costs.

<sup>3</sup> Agolla, V., O. 2024. Doing business in Kenya: Need for review of cess on agricultural produce to unlock sector.

<sup>4</sup> The National Treasury, (2019), National Policy to Support Enhancement of County Government's Own Revenue Source. Government of Kenya

## 2.2 Legislative gaps



While the Constitution provides a clear taxation framework, there have been contentious areas. One such area is the collection of agricultural 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)<sup>5</sup> added to the complexity. During the transitional period until September 2013, counties continued to impose cess under the Public Finance Management Act of 2012. Subsequently, most counties incorporated cess charges into their legal systems through statutes passed by their respective county assemblies.

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 precise alignment regarding cess. The absence of harmonized legislation has led to high and multiple charges, plus numerous collection points, thus increasing costs for producers and traders, eventually hurting the agricultural sector's competitiveness. Different counties' use of different units of measurement 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.

## 2.3 Key challenges and ambiguities surrounding the administration of cess by county governments

There is a 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. 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 revenue-raising abilities to bring services closer to 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 lack clear policies and legislation. The formula for setting cess remains unknown, and rates vary significantly across counties and agricultural commodities.

Another challenge is undeclared charges such as parking fees, branding charges, and advertisement costs, among others, which various industry stakeholders have considered 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 destination. For example, branded seed companies' vehicles pay KSh 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<sup>6</sup>. In addition, landing fees/market cess are 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.

<sup>5</sup> <https://fpeak.org/wp-content/uploads/2019/07/Agriculture-Fisheries-and-Food-Authority-Act-No.-13-of-2013.pdf>

<sup>6</sup> Ogada, M.J., et al. 2018. The burden of produce cess and other market charges on Kenya's agriculture. *Africa Journal of Economics Review*. 6, 2.

Even though commodity traders mostly pay cess, the burden is still passed on to farmers as traders discount the cess charges on the final farm gate price. This practice reduces producer incomes and threatens the sustainability of agricultural production in Kenya.

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

Cess is collected at the source (e.g., at the farm gate in the case of agricultural produce and at the production point in the case of manufactured goods). It is also collected at the end of the exit from the county. However, some counties do not charge additional cess for transporting goods 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, referred to as market levy.

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 not improve the economy as intended. Cess collection across county borders means that final consumers are likely to suffer higher commodity prices even though 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 the 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<sup>7</sup>Therefore, it is imperative that sector players and all concerned policy-making organs consider condensing these into fewer than ten without undermining their completeness.

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

<sup>7</sup> 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](https://www.future-agricultures.org/wp-content/uploads/pdf-archive/FAC_Documents-Development_Issues_Kenya-Oct_08.pdf)

## 3. Advocacy activities

The Agriculture Sector Network initiated an advocacy process on the administration of the Agriculture Produce Cess and other market levies. This concern 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 several meetings and events. It has advocated 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:



*Participants of the agriculture produce and other market cess review workshop at Naivasha. Photo by: Winnie Muya, ASNET*

- 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 expert's 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

### 3.1 Review of existing documentation on APC

With support from the CGIAR Initiative on National Policies and Strategies and in collaboration with the International Livestock Research Institute (ILRI), ASNET conducted a review of existing documentation on APC and other market levies to establish what various members had done 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 governments.

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

#### The Agriculture Produce and Other Market Cess Review Workshop

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 was developed based on the findings gathered from the review of previous work done, and engagement with various stakeholders was presented. The paper was reviewed during the event. A road map of activities was developed to ensure inclusivity and stakeholders' buy-in. In addition, a sub-committee was formed to reconvene and create 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.

### 3.2 Sub-committee meeting on stakeholder mapping



*Subcommittee members on stakeholder mapping. Photo by: Winnie Muya - ASNET*

On 23 August 2023, about a month later, ASNET convened a meeting for the sub-committee 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 a priority focus on seeds, fertilizer, maize, onions, and cereals. The aim was to quantify the impact of cess using available data.

### 3.3 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 vital 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, Argo 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 the consultant had done. The Position Paper was also shared and discussed. It was also decided that the next step would involve consultations with public sector officials.



*Agriculture stakeholders workshop on produce and other market cess review. Photo by: Winnie Muya - ASNET*

### 3.4 Consultative breakfast meeting on produce cess and other market levies

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



*Stakeholders at the consultative breakfast meeting. Photo by: Winnie Muya - ASNET*

The aim was to update participants on the activities that ASNET had implemented and to bring them on board.

Sensitization to the challenges surrounding cess and other market levies was conducted, and both the public and private sectors

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 to build consensus.

### 3.5 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 of the consultative technical workshop on produce cess and other market levies. Photo by: Winnie Muya - ASNET*

### 3.6 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.

### 3.7 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 event's objective 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.



*Participants of the legal technical workshop on APC and other market-related levies. Photo by: Winnie Muya- ASNET*

### 3.8 Legal technical workshop on APC and other market-related levies

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, county governments' trade and agricultural departments, and the private sector. The objective of the meeting was to discuss various legal and policy issues relating to produce cess and other market-related 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 of 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 the administration of APC into a legal and regulatory process.

### 3.9 Senate committee members convening with ASNET, partners on APC



*Senate committee members convening with ASNET, partners on APC. Photo by: Winnie Muya- ASNET*

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 the 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, improving livelihoods, and addressing cess-related issues to ensure 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 options—taking the memorandum or the legislative proposal route. The Inter-Agency Technical Committee will draft a Policy on APC, 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 and reduce the cost of major food items, hence improving food security in Kenya.

# 4. Proposed best practices

Agricultural tax through the imposition of cess is a common practice in several countries. Overall, governments 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 in 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 essential for evaluating their impacts.

## 4.1 Case studies

### 4.1.1 Tanzania

In Tanzania, agricultural levying is implemented through the Local Government Finance Act, which caps the levying rate at 0-5% of the commodity's farm gate price. Cess rates have been varying at 5% from 2007 to 2009, 3% in 2010, and 3-5% in 2011. Local authorities consider cess part of their overall revenue and there is no direct ploughing back of such collections to the agriculture sector. However, a portion of overall revenue is used for the wards 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<sup>8</sup>.

### 4.1.2 Burundi

In Burundi, inputs for agricultural and livestock activities are taxed at 7%. The country also imposes a coffee cess, although the exact rates are unclear.<sup>9</sup>

### 4.1.3 Uganda

In Uganda, taxation rates differ between commodities and districts, distorting markets and prices.<sup>10</sup> Agricultural taxation by local governments has 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 small-scale traders.<sup>11</sup>

### 4.1.4 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, a well-developed three-tier taxation structure is based on the central, state, and local governments. The federal government does not levy income tax on agriculture; the state government imposes and collects these taxes. 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.<sup>12</sup> 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 market fee levy in the country's entire marketing process, 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 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 infrastructure.

<sup>8</sup> Government of Tanzania, (2014) Study on Produce Cess Taxation System in Tanzania by Agricultural Council of Tanzania

<sup>9</sup> World Bank, (2015), Burundi Coffee Sector Competitiveness Support Project (P151869)

<sup>10</sup> WTO, (2013), Trade policy review East African Community

<sup>11</sup> Bahiigwa, G., Ellis, F., Fjeldstad, O., and Iversen, V. (2004), Uganda Rural Taxation Study. Final Report. Economic Policy Research Center (Uganda) Overseas Development Group (UK), and Chr. Michelsen Institute (Norway)

<sup>12</sup> Organization for Economic Cooperation and Development, 2014

- Tax simplification. This provision uniformizes State-level taxation and fees paid on agricultural produce.
- Public-private partnership for integrated agriculture infrastructural development and management.
- Creation of market committee funds that cater to market establishment, market services, and infrastructural development expenses only<sup>13</sup>.

#### 4.1.5 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 the marketing costs like storage, handling, and transportation<sup>14</sup>.
- Beef production levy is 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 include a) An egg promotion levy payable to 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 hatchery proprietor, where the laying chickens are 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.<sup>15</sup> c) Meat chickens levy payable on meat chickens hatched in a hatchery; d) Horse disease response levy paid to raise monies expended in response to an animal disease outbreak affecting horses.

#### 4.1.6 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 receive services like research and development, market information, marketing, and trade development. The AHDB is managed independently of the commercial industry and government, allowing for the segregation of funds collected from each commodity sector.

Funds raised from each commodity sector benefit only that sector. Levying applies to primary producers and further up the supply chain, except for horticulture, where it applies only to primary producers. Producers pay the bulk of the levy. The levy payment is based on a certain turnover threshold (GBP 50,000), below which no levy is charged.<sup>16</sup>

## 4.2 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 instance, in Australia, targets the promotion of the interests of the grain industry. The same applies to beef, poultry, and other levies. Targeting cess collections to provide services for the specific value chain payers is a direct way for stakeholders to finance their public good services.

The taxation systems in these states not only present principles and practices that Kenya could benchmark to reform cess collection and use but have also led to the development and implementation of favorable taxation policies for agricultural stakeholders. These policies have proven beneficial in various ways, providing a strong case for their adoption in Kenya.

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 sound taxation principles proposed by the World Bank, i.e., non-distortionary for markets, equity, efficient to administer, and not resulting in tax avoidance.

<sup>13</sup> Government of India, (2013), Agriculture Marketing to Promote Reforms

<sup>14</sup> Government of Australia, (2016b), Grain Trade Australia: Australian Grain Industry – Code of practice technical guide document No. 13, 2016

<sup>15</sup> Government of Australia, (2017), Laying chicken levy

<sup>16</sup> Van der Veen, (2007), Exploring agricultural taxation in Europe. LEI, The Hague

India's practice of single-point levying, which ensures efficient tax administration, is a model of security and trust. This approach minimizes tax evasion and avoidance, as fees cannot be levied for a second time under any name, including cess, user charge, or service charge. The practice of tax capping further deters tax-evasive behaviour. The United Kingdom also follows a similar model, with a minimum turnover before taxation. However, it's important to note that the capping range must be narrow enough to minimize non-uniformity and market distortion, ensuring the system's efficiency and trustworthiness.

# 5. Proposed policy structure

The powers to impose taxes and charges are enshrined in the Constitution under Articles 209 and 210 to the national and county governments. Though devolution has empowered counties powers to collect revenue at the county level, they have experienced challenges because they have not enacted legislation to facilitate the collection of revenues. The rationale for collecting cess is that it is meant for the development and benefit of the county and is therefore collected to improve infrastructure and facilitate economic growth.

The cess, a levy on agricultural produce, was initially collected under section 201 of the repealed Local Government Act Cap 256 and section 192 A of the repealed Agriculture Act to form part of the local authority revenue. The constitutionality of cess was determined in the case of the Cereal Growers Association and Hugo Wood vs. county governments of Narok, Nairobi, Nyeri, and eight others. The Court held that it was unconstitutional for county governments to impose and levy agricultural cess and related taxes without any supporting legislation.

The team studied various documents in reviewing legislation (See Appendix II for details). Below are highlighted a few of these.

## 5.1 National Legislation

### 5.1.1 The Constitution

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

### 5.1.2 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 the 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.

### 5.1.3 The Crops Act, 2013

The Crops Act of 2013 states that a county Government may impose fees for the 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 reasonably modeled to benefit the farmer and, at the same time, not affect the national economic policies, especially on exports.

### 5.1.4 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.

## 5.2 Selected county legislation

### 5.2.1 Nakuru County Flowers Service Charge Act

Section 4(1) provides that the county government shall collect a charge of 1% of gross sales on flower services within the county. In contrast, Section 4(2) states that the proceeds of the charge collected will be used for the 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.

### 5.2.2 Meru County Tea Cess Act

The Act provides for introducing the Tea Cess and using and managing it. 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. It shall not exceed 1% of the green leaf payment.

### 5.2.3 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.”

### 5.2.4 Busia County Cess Act, 2017

Section 6 provides for payment of the cess, levy, and charges. These will be done at the place of production or any other place 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 chosen by the Executive Committee Member. Section 8 provides that the money collected as cess charges shall be used to maintain county roads.

### 5.2.5 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 their opinion, is 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.

### 5.2.6 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.

# 6. Policy review

## 6.1 Vision 2030

Kenya's Vision 2030 forms the primary basis for evaluating 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 channeled into public policy.

Vision 2030 is anchored on three key economic, social, and political pillars. Given that Vision 2030 will inform all the country's policies, it is of utmost significance that the county revenue legislation be drafted to implement and promote its 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.

## 6.2 National Trade Policy

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.

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

The Cabinet approved this policy on 14 August 2018. It was occasioned by the need to address the underperformance of county governments' Own Source Revenue (OSR) caused by challenges in collecting and administering decentralized taxes, fees, and charges. The policy aims to assist counties in optimizing OSR by setting up a standardized policy and the legal and institutional framework for local revenue-raising measures.

This policy discourages the imposition of cess except for 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.

## 6.4 Agriculture Policy

The 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 hinders the movement of agricultural products to urban markets and reduces their competitiveness, both locally and internationally.

This policy highlights the need to promote and facilitate agricultural trade and the marketing of high-quality agricultural products. It expects the two levels of government 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.

## 6.5 The policy structure

Thematic area	Policy issue	Policy objectives	Policy statement
<b>Thematic Area 1: Policy, Legal, and Regulatory Framework</b>	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.	<p>Govern the collection of cess and market-related levies by county governments.</p> <p>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.</p> <p>Ensure that cess and other market-related levies are based on services delivered by county governments.</p> <p>Enhance transparency, predictability, and accountability in the cess collection process, including publication of collection procedures, rates, and funds utilization.</p>	<p>The 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 ensures fairness, transparency, predictability, and efficiency in revenue collection processes across all counties.</p>
<b>Thematic Area 2: Intergovernmental Cooperation Mechanisms</b>	Limited intergovernmental engagement under the existing structures of intergovernmental coordination in matters touching on cess and other market-related levies.	Enhance intergovernmental cooperation.	<p>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.</p> <p>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.</p> <p>The government acknowledges the need for a supportive framework that clarifies institutional roles and how they interact to facilitate the attainment of overarching national goals in empowering farmers, ensuring a positive business environment, and enabling overall economic development.</p>

**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:  
Unbundling cess and other market-related levies.  
Standardization.  
Establishing parameters for determination of cess and other market-related levies.

Promoting clarity and understanding on cess and other market-related charges.  
Providing uniform standards, norms, guidelines, and practices when applying cess and other market-related levies.  
Eliminating arbitrary charges based on unjustifiable and non-scientific methods of determining the amount of cess and levies chargeable.

Government is committed to improving awareness and understanding of cess and other market-related levies and their application to promote inter-county trade, enhancing free flow of goods and services; and making Kenya competitive in attracting Foreign Direct Investment (FDI).  
Government will work with counties and other stakeholders to develop the necessary policy instruments to enhance uniformity and standardization in using cess and other market-related levies.  
In consultation with stakeholders, the government will promote the use of scientific approaches in determining cess and other market-related levies.

# 7. Recommendations and the way forward

While reiterating the need for the government to raise revenue for economic development is a globally acceptable practice by law, there is a need to consider the net impact of tax regimes, especially when the taxes hurt most of the population (mainly consumers and producers who bear the cost). This is particularly important in Kenya, where agriculture is 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 ASNET coordinates, 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 the 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 taxing agricultural commodities and services.

## 7.1 Proposed policy actions

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

- Develop and enact a national legislation to harmonize the collection of cess and other market 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 harmonize 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. It will address multiple taxation, distribution across counties, and vehicle branding challenges.
- 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 delegated to the counties. It will foster better governance and resource management at the local level.
- Implement a nationally applicable capping mechanism on the minimum and maximum charging rates to ensure uniformity and market stability while preventing undue burdens on stakeholders.
- Establish a single point of cess collection within the value chain, preferably in the county of origin or destination, 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 actual 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 not levy charges for functions in agriculture that have been devolved to these governments.
- Consult with the Intergovernmental Budget and Economic Council (IBEC) and the Council of Governors to build consensus and align with 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 to benefit the agricultural sector and its stakeholders.
- Strengthening capacity to improve revenue administration, including cess and mechanisms for accountability at the county level, should be instituted.
- Invest part of the agricultural levies and cess collected back into the agricultural sector, with well-defined guidelines on how to do this to enhance accountability.

## 7.2 The way forward

Even as discussions continue on the issue of APC and other market levies and how they impact the country's trade policy goals, there is a need to recognize the potential of these levies to generate revenue for county governments. However, ensuring they are implemented efficiently and do not stifle agricultural productivity and market competitiveness is equally important. Suppose the cumbersome and more restrictive double taxation and licensing regime is not in the country's best interest. In that case, there is a need to take a bold step of eliminating the bottlenecks 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.

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 developing a private sector-led position paper that strongly advocates for strengthening public-private sector dialogue to eliminate restrictive trade policies and practices, resulting in multiple licenses that hinder the 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.

# 8. Appendices

## 8.1 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 and 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	19 <sup>th</sup> February 2024 Letters to be sent out	Interagency committee established by 23 <sup>rd</sup> February 2024	SDT PETS (list of nominees)
2	ITWC to review the position paper by ASNET and existing policy and legal framework at both county and national level  Development and presentation of the zero draft policy and legislation	Constitution National policies and legislation County policies and legislation	7-day working retreat  28 <sup>th</sup> February-8 <sup>th</sup> March 2024	Drafting instructions developed	ITWC
3	Incorporation of comments and presentation of 1 <sup>st</sup> draft policy and legal instrument  Presentation of the first draft to stakeholders and concurrence from the SDT	Guidelines National policy on cess and other market-related levies in the country 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 2 <sup>nd</sup> draft)  18 <sup>th</sup> -26 <sup>th</sup> March 2024	2 <sup>nd</sup> draft	ITWC
4	Public participation on the 2 <sup>nd</sup> draft (media's publication to be 14 days before)	Consultative forums in 6 regions	3-day workshop  15 <sup>th</sup> -17 <sup>th</sup> April 2024	Consolidate comments from public participation	ITWC SDT (Publication)
5	Incorporating comments from public participation  Presentation of the third draft to the ITWC and key stakeholders (CoG, IGRTC, AG, KLRC, CRA, and State Department Trade) NT and Agriculture	3 <sup>rd</sup> drafts	5-day working retreat  29 <sup>th</sup> April-3 <sup>rd</sup> May 2024	The validated draft is the 4 <sup>th</sup> draft.	ITWC
6	Validation of the fourth draft to the stakeholders for concurrence	4 <sup>th</sup> drafts validated	1-day workshop  16 <sup>th</sup> May 2024	Validation report	ITWC

<b>7</b>	Development of draft five and a Cabinet memo	Cabinet memo and final drafts	3 days 20 <sup>th</sup> -22 <sup>nd</sup> May 2024	Final drafts Cab memo to be sent by 24 <sup>th</sup> May 2024	PETS ITWC AG and NT (Cab memo)
<b>8</b>	Parliamentary engagement for buy-in (for sensitization, lobbying and advocacy)	National cess and other market levies Bill 2024	3 <sup>rd</sup> June 2024	Report	PETS AG SDT KLRC OPCS
<b>9</b>	Presentation of the Bill to Parliament for buy-in	The Policy and the National Cess and other market Levies Bill 2024	3-day retreat 11 <sup>th</sup> -13 <sup>th</sup> June 2024	Report	PETS ITWC Parliament OPCS
<b>10</b>	Parliamentary passage of Bill process concluded	1 <sup>st</sup> -3 <sup>rd</sup> reading concluded	2 <sup>nd</sup> July 2024	Bill approved	Parliament
<b>11</b>	Bill forwarded it to the President for assent	Bill assented	3 <sup>rd</sup> July 2024	Bill enacted	AG Parliament Presidency

## 8.2 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 Government Revenue Raising Process Bill

### Policies for review

5. BETA manifesto
6. Vision 2030
7. National Policy on Enhancement of County Own Source Revenue
8. Trade Policy
9. Agriculture Policy

### 8.3 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 (KIPPPRA)
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)



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