



# Analysis of Policy Environment for Women's Economic Empowerment

Kenya



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## Abbreviations

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<b>AfDB</b>	African Development Bank
<b>AGPO</b>	Access to Government Procurement Opportunities
<b>BPfA</b>	Beijing Platform for Action
<b>CEDAW</b>	Convention for the Elimination of All Forms of Discrimination Against Women
<b>CFSP</b>	County Fiscal Strategy Paper
<b>CSO</b>	Civil Society Organisation
<b>DGIS</b>	Directoraat-Generaal Internationale Samenwerking (Directorate-General for International Cooperation under the Dutch Ministry of Foreign Affairs)
<b>DTCIDC</b>	Danish Trade Council for International Development and Cooperation
<b>EIGE</b>	European Institute for Gender Equality
<b>EOWE</b>	Enhancing Opportunities for Women's Enterprises
<b>FGM/C</b>	Female Genital Mutilation/Cutting
<b>FLOW</b>	Funding Leadership and Opportunities for Women
<b>FIDA</b>	Federation of Women Lawyers
<b>HBF</b>	Heinrich Boll Foundation
<b>ICPD PoA</b>	International Conference on Population and Development Program of Action
<b>IFC</b>	International Finance Corporation
<b>IT</b>	Information Technology
<b>KEBS</b>	Kenya Bureau of Standards
<b>KIBT</b>	Kenya Institute for Business Training
<b>KIRDI</b>	Kenya Industrial Research and Development Institute
<b>KNASP</b>	Kenya National AIDS Strategic Plan
<b>KNBS</b>	Kenya National Bureau of Statistics
<b>Ksh</b>	Kenyan shilling
<b>NGEC</b>	National Gender Equality Commission
<b>PFM</b>	Public Finance Management
<b>SDG</b>	Sustainable Development Goal
<b>SIDA</b>	Swedish International Development Agency
<b>SME</b>	Small and Medium-sized Enterprise
<b>SMEA</b>	Small Micro Enterprise Authority
<b>SMS</b>	Short Message Service
<b>SNV</b>	Netherlands Development Organisation
<b>UNDP</b>	United Nations Development Programme
<b>USAID</b>	United States Agency for International Development
<b>WEE</b>	Women's Economic Empowerment
<b>WEF</b>	Women Enterprise Fund
<b>YEDF</b>	Youth Enterprise Development Fund

# Contents

		<i>SUMMARY</i>	05
<i>CHAPTER 1</i> Background	06	<i>CHAPTER 2</i> Methodology	07
<i>CHAPTER 3</i> Introduction: Women's Economic Empowerment in Kenya	07	<i>CHAPTER 4</i> Institutional and Policy Frameworks for Women's Economic Empowerment	08
<i>CHAPTER 5</i> Public Participation in Relation to WEE	11	<i>CHAPTER 6</i> Access to Land and Other Productive Resources	13
<i>CHAPTER 7</i> Catalytic Funds	15	<i>CHAPTER 8</i> National Gender Equality Commission	18
<i>CHAPTER 9</i> National Policy on Gender	19	<i>CHAPTER 10</i> Private Sector	20
<i>CHAPTER 11</i> Access to Justice	21	<i>CHAPTER 12</i> Devolution and WEE in Baringo, Marsabit and Kitui Counties	21
<i>CHAPTER 13</i> Conclusion	24	<i>CHAPTER 14</i> Recommendations	25

## Summary

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This report sought to examine the policy and legal frameworks that are relevant to women's economic empowerment (WEE) at National and County Government levels through identifying opportunities, gaps and constraints within the enabling environment for growth and prosperity of women entrepreneurship. The study was conducted under the [Enhancing Opportunities for Women's Enterprises \(EOWE\)](#) programme, a 5-year women's economic empowerment programme funded by the Department of Social Affairs of the Ministry of Foreign Affairs of The Netherlands under the '[Funding Leadership Opportunities for Women' \(FLOW\)](#) framework. The programme aims to increase women's economic participation and self-reliance in Kenya by catalysing a conducive national and local environment for female entrepreneurship.

The study found that nationally, a robust policy and legislative framework for women's economic empowerment exists as evidenced by recent policy evolutions such as: the Constitution of Kenya, introduction of complementary legislations such as the Matrimonial Property Act, and the implementation of various catalytic funds and programmes such as Uwezo Fund, the Women Enterprise Fund (WEF), the Youth Enterprise Development Fund (YEDF) and the Access to Government Procurement Opportunities (AGPO) initiative.

Nonetheless, despite the existence of these policy and legislative frameworks, several challenges to women's economic empowerment still abound. These include: the non-implementation of the 2/3 Gender Principle with national and county level elective and appointive institutions; and the lack of appropriate policy frameworks to support women's economic empowerment within County Governments (in spite of the various programmes currently being implemented by this level of Government); and limited programming and implementation capacity of County Governments.

Moreover, the institutional and policy arrangements do not primarily challenge gendered power relations, a key objective of gender equality and women empowerment. Certainly, more emphasis needs to be placed on addressing the underlying structural issues (such as improving women access to innovative and sustainable finance, improving ease of doing business and access to markets for women, and improving women participation and representation in leadership and public finance management) that drive inequality and impede women's economic empowerment.

The present programmatic approaches have much focus on the practical and immediate needs (that do not allow women to move out of the confines of gender roles), rather than strategic needs that allow women access to decision-making and power which have the potential to transform present gender relations.

The study recommends need to: harmonise the mandates of the various catalytic funds in order to reduce administrative costs and possibly reach more women; improvement of coordination mechanisms between County and National Government (and the Private Sector); decentralisation of the functions of national level institutions such as the Kenya Bureau of Standards (KEBS) and the Small Micro Enterprise Authority (SMEA) to county levels; County Governments to develop policies that enshrine current programmatic investments to ensure sustainability amidst volatile political environments; and the need to improve access to information (that will spur women participation) and gender responsive budgeting.

The study also recommends that civil society organisations (CSOs) lobby and advocate for the review of procurement guidelines in order to protect the AGPO programme against abuses; identify, empower and support WEE champions within counties, conduct gender sensitive reviews of current policies; galvanise current women groups for strategic influence on women's economic empowerment; partner with the private sector to mainstream women's economic empowerment within private sector initiatives that promote increased financial inclusion for women, and pursue partnerships opportunities of working with national and county legislatures, the Council of Governors, and other relevant government departments with the aim of enhancing their capacity on gender equality and women's economic empowerment.

## I Background

Support for the empowerment of women can be seen through different initiatives by the Government of Kenya. Tracing back these efforts since 2002, demonstrable effort is visible in respective policy and programmatic initiatives. These include: The National Policy on Gender and Development (2000); Sessional Paper No.2 of 2006 on Gender Equity and Development; Economic Recovery Strategy (2003 – 2007); the Medium-Term Expenditure Framework; the Kenya Joint Assistance Strategy, Vision 2030, the Millennium Development Goals and the Sustainable Development Goals (SDGs) amongst others.

At respective sectoral levels, there exists various gender responsive policy initiatives, including: Adolescent Reproductive Health and Development Policy and Plan of Action (2005-2015), Gender and Education Policy (2007), Kenya National AIDS Strategic Plan (KNASP), Presidential Directive on Affirmative Action, National Policy for the Abandonment of FGM/C amongst others. More recently, the Government has provided policy leadership through different activities that have advanced women's empowerment as well as working towards gender equality, and these are: the Women's Enterprise Fund<sup>1</sup>, the Uwezo Fund<sup>2</sup>, the Youth Enterprise Development Fund<sup>3</sup>, and the Access to Government Procurement Opportunities<sup>4</sup> (AGPO).

In as far as the constitution is concerned; demonstrable effort has been made towards gender equality. To this end, the introduction of the 2/3 gender rule, to specifically create room for inclusion of women in leadership spaces. Besides this initiative, the Government has enacted laws to counter cultural attitudes that are barriers to gender equality and women empowerment. This is demonstrable through, legislations such as the Matrimonial Property Act (2013)<sup>5</sup> and Marriage Act (2014)<sup>6</sup>. Indeed, efforts towards gender equality and women's economic empowerment can also be seen through private sector involvement through initiatives that seek to promote access to credit and financial inclusion for women.



📷 Woman preparing her goods at the market.

The analysis will pay specific attention to the current policy and institutional arrangements that address women's empowerment by examining the extent to which these institutional and legal frameworks, policies, legislations and programmes are supportive to women's economic empowerment. The paper will analyse the constraints presented by these policies and legislations regarding supporting women and women-led small and medium-sized enterprises (SMEs), assessing the institutional mechanisms put in place for implementation of these policies both at National and County Government level. It summarises the overall institutional framework supporting the initiatives around women's economic empowerment-teasing out specific polices and programme initiatives. Finally, then draws conclusions and makes recommendations on alternative approaches.

<sup>1</sup> <http://www.wef.co.ke/index.php/about-us/wef-profile/our-mission#>

<sup>2</sup> <http://uwezo.go.ke/about-uwezo-fund>

<sup>3</sup> <http://www.youthfund.go.ke/About>

<sup>4</sup> <http://agpo.go.ke/pages/about-agpo>

<sup>5</sup> Provides for rights and responsibilities of spouses in relation to matrimonial property. Specific focus is paid to section 7 which provides that ownership of matrimonial property vests in the spouses according to contribution of each spouse towards its acquisition. The Act marks a positive departure from the previous regime by recognizing both monetary and non-monetary contribution. Supportive roles such as child care and domestic work are now legally recognized at the dissolution of marriage and during the division of matrimonial property. These were roles that ordinarily were not considered as contribution towards acquisition of matrimonial property.

<sup>6</sup> A comprehensive law consolidating various laws governing religious, customary, and civil marriages and divorces in the country. The legislation affords parties to any form of marriage equal rights, stating "[p]arties to a marriage have equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage." (*Id.* § 3.)

## 2 Methodology

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The data, information and evidence for was drawn complementarily from literature sourced through inter-library searches, access to specific journal papers, academic and non-academic reports, government documents, donor reports, legal publications such as laws and decrees. In addition, to understand the policy environment within County Governments, field visits were carried out to three counties - Baringo, Kitui and Marsabit where key informant interviews were conducted with various County Government officials, representatives of local civil society organisations, and loan officers from the different catalytic funds available to women and youth. Key informant interviews were also conducted nationally with administrators of the various catalytic funds. A dissemination and validation of findings workshop drawing participants from civil society organisations (CSOs), the private sector, the Women Enterprise Fund, government departments (national), and independent commissions e.g. National Gender and Equality Commission (NGEC) was also held. Feedback from the validation workshop and reviews from SNV EOWE staff was incorporated in the development of a final analysis report.

## 3 Introduction: Women's economic empowerment in Kenya

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The conversation of the promotion of women's economic empowerment has gained traction over the last three decades yet; progress in promoting women empowerment at country and local levels has been hampered by various constraints (Dejene, 2007). The gaps between women and men on economic participation and political empowerment remain wide (World Economic Forum, 2016). Women in Kenya have been marginalised as far back as the pre-colonial era. The prevalence of a patriarchal system ensured that women were kept in the periphery not only from the realms of the political sphere but also with regard to their effective participation in economic development (Amadi, 2015).

Although Kenya compares favorably with other countries within and outside of Africa (UNDP, 2016), it still lags in as far as gender equality and empowerment of women is concerned. In an analysis covering 144 countries, the 2016 World Economic Forum 'Closing the Gender Gap' report ranks Kenya 48<sup>th</sup> with regard to Economic Participation and Opportunity, 116<sup>th</sup> on Education Attainment, 83<sup>rd</sup> on Health and Survival, and 64<sup>th</sup> with regards to reducing gender gaps related to Political Empowerment. Overall, the country ranks 63<sup>rd</sup> characterised by women's estimated earned income decreasing wage equality improving and women's share of legislators, senior officials, and managers as well as professional and technical workers also recording an upward trend<sup>7</sup>.

The entrenchment of gender inequality and women disempowerment can also be linked to broader institutional inefficiencies. Weaker policy and institutional frameworks with much attention being paid to practical gender needs rather than strategic gender needs have contributed to the little achievement in the fight for gender equality and women empowerment. Until 2010, when the new constitution was put in place, the only observable efforts to push for gender equality and women empowerment was through Kenya's participation to many key conventions on the status of women (Ellis 2007).

The push for gender equality and indeed women's economic empowerment should not only involve developing policy and institutional frameworks. Such a singular approach would be too simplistic and will downplay the complex workings of power relations that underpin gender inequality and women disempowerment. The push for gender equality and women's economic empowerment should therefore also involve continuous rigorous and critical review of the existing frameworks with the view of coming up with alternative ways of enhancing strategic and potentially transformative choices for women.

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<sup>7</sup> For more details, please see: <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=KEN>

## 4

# Institutional and policy frameworks for women's economic empowerment

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## 4.1 Constitution

The country's Constitution, passed in 2010, provides a powerful framework for addressing gender equality. It marked a new beginning for women's rights in Kenya; seeking to remedy the traditional exclusion of women and promote their full involvement in every aspect of growth and development. The Constitution of Kenya is the single most important step in entrenching gender equality in Kenya's political and economic agenda.

The Constitution recognizes economic and social rights including the right to property, housing, a clean environment, health and education among others<sup>8</sup>. The full implementation of the affirmative action principle in line with Article 27 (8) of the Constitution will go a long way in ensuring full realisation of gender equality in Kenya.

The Constitution stipulates that no more than two-thirds of any appointed or elected body can be of the same gender, and, to ensure further gender balance, included a provision stating that each of Kenya's 47 counties elect a women's representative. This was part of a landmark push in the Constitution to allow for women's rights, and included provisions prohibiting all forms of discrimination against women, making additional provisions for women's land rights and property rights, including after divorce. It is the premise for affirmative action to achieve gender parity in politics and leadership.

Arguably, the endorsement of the Constitution significantly increased room for women to be engaged in leadership specifically in Governmental and County Assembly positions. The Constitution considers the marginalisation of women by making specific provisions that create room for women to make progress in: land ownership, access to and ownership of productive resources such as land, leadership in politics as well as the private sector.

The Constitution also addresses some of the barriers that are created in customary law. To this end, it stipulates: "any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid. The state shall put in place affirmative action programmes for minorities and marginalised groups with respect to governance, education, economic opportunity, employment and other such factors. The Constitution provides for the elimination of gender discrimination in law, customs and practices related to land and property in Kenya".

## 4.2 Two Third Gender Principle

The preamble to the Constitution recognises the aspirations of all Kenyans for a government based on essential values of human rights, equality, freedom, democracy, social justice and the rule of law. Equal participation of the gender in leadership and governance is an important step towards ensuring gender equality in many other facets. It is only by having real power through participation in decision making and policy formulation that sex equality can be achieved.

The Constitution of Kenya recognises women, youth, persons with disabilities and ethnic minorities as special groups deserving of constitutional protection. To this end, it espouses the rights of women as being equal in law to men, and entitled to enjoy equal opportunities in the political, social and economic spheres. Article 81 (b) which refers to the general principles of Kenya's electoral system states 'the electoral system shall comply with the following principle - (b) not more than two-thirds of the members of elective public bodies shall be of the same gender. Article 27 goes further to obligate the Government to develop and pass policies and laws, including affirmative action programmes and policies to address the past discrimination that women have faced. The Government is required to develop policies and laws to ensure that, not more than two-thirds of elective or appointive bodies shall be of the same sex. Despite Article 177 ensuring that Articles 81(b) and 27 (8) of the Constitution are complied with at the county level through the nomination of special seat members, the same is not guaranteed at the National Assembly and the Senate. Despite the Constitution stipulating the minimum number of women in leadership positions, it has not been implemented.

This principle demands that in elective and appointive bodies, both male and female must have at least one third representation. Affirmative action through the two thirds gender principle was meant to boost the representation

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<sup>8</sup> The Constitution of Kenya – Bill of Rights: <http://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms>

of women who had historically been marginalised in governance. Article 27(8) places a duty on the State to, **'take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender'**.

The participation of women in legislative process shows a slow progress towards equality of the two genders. In fact, there was no Kenyan woman representative in the first Parliament and it was not until the second General election in 1969 that the first woman got elected as a Member of Parliament. The 10<sup>th</sup> Parliament (2008-2013), which was the last before the country embraced a bicameral system under the Constitution, women parliamentarians comprised 9.8 percent of House membership. Currently there is 19 percent women representation in National Assembly, boosted mainly by the 47 seats reserved for women's representatives.

A glaring disparity exists at county level where out of the 1,450 ward representative positions, only 82 (6 percent) of the elected candidates were women in the 2013 general elections. There is a yawning gap in terms of the substantive implementation of the equality provision. For instance, a recent gender audit<sup>9</sup> reveals that only 16 out of 47 counties satisfy the two thirds gender rule in the county executives. Further, out of 47 county speakers, only three are women.

Nationally, women occupy 33 per cent of President Kenyatta's Cabinet up from 12.5 percent the previous elections, while 37 percent are principal secretaries. The judiciary, argued to be doing better, comprises 29 per cent at the Supreme Court, 31 percent at the Appeals Court, and 49 percent from 40 percent at lower level Courts (Tripp et al, 2014).

It is notable, however, that that this the highest number achieved since independence (HBF, 2015). At face value these numbers show promising gains-specifically in the representation of women in leadership and more broadly in the fight for gender equality. Yet, this conceals the perceived and real challenges in ensuring women representation at lower levels of the administrative and development chain<sup>10</sup>. Only 32 percent of the Kenyan population think that implementation of provisions on inclusion of marginalised persons is a priority (Otieno, 2016). Thus, it is little surprise that no progress has been on implementation of the provision.

To distill these statistics further, lack of implementation of the provision can be explained by two things. The first, being Kenya's electoral system being embedded in a largely patriarchal society. Women have been excluded from effectively participating in politics because of the violence and intimidation during the campaign process (HBF, 2015). More than this, elections require significant capital both social and financial, yet women have for a long time been excluded from access to these resources. The effect of this exclusion is men having advantage over women in as far competing for electoral positions is concerned. The second, being lack of sufficient political goodwill to implement the two third provision.

While the Constitution created a legal framework for women's increased participation, the framing of the implementation was problematic-since the discourse took the shape of "when women win, men lose." (Tripp et al, 2014). Political empowerment of women is important because politics has an important role to play in creating conditions for transformative change (Kabeer, 1999). Moreover, economic empowerment is shaped by context specific factors and can only be understood and achieved once the political, historical, socio-cultural and economic context in understood.

#### **4.3 Gender Policy and Sessional Paper No. 2 of 2006**

The Gender Policy 2011 provides the framework for the state to address gender imbalances and inequality. It mandates the Government to address gender inequalities strategically through established institutional frameworks. The Sessional Paper No. 2 2006 on Gender Equality and Development provided a framework for the operationalisation of gender mainstreaming in policy, planning and programming in Kenya.

The Government developed a Gender Mainstreaming Implementation Plan of Action for the National Policy on Gender. Both the National Policy and the Sessional Paper No. 2 of 2006 recognise that it is the right of women,

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<sup>9</sup>Federation of Women Lawyers (FIDA) Kenya, 'Key gains and challenges: A gender Audit of Kenya's 2013 Election process' (2014). Available at: [http://www.fidakenya.org/dr7/sites/default/files/ELECTIONS%20GENDER%20AUDIT%202013\\_0.pdf](http://www.fidakenya.org/dr7/sites/default/files/ELECTIONS%20GENDER%20AUDIT%202013_0.pdf)

<sup>10</sup> For this study, it was not possible to get the actual representation of women within county development and budget committees. However, all respondents reported massive under-representation of women below the constitutional threshold in appointive bodies within county organs and structures.



 Sarah Wanjiku packing her vegetables for sale.

men, girls and boys to participate in and benefit equally from development initiatives. The Sessional Paper seeks to link the Gender and Development Policy with other Sector policies, for example, engendering of the Agricultural Sector Development Strategy-2010. It outlines strategies of implementing programmes in the macro-economic framework, law and administration of justice, education, health, agriculture, environment, and information communication technology. Through the Plan of Action for the National Policy on Gender and Development, the specific thematic activities which have been identified and prioritised include the need to: identify, map out and prioritise gender issues in the sector Ministries and state corporations, review proposed activities and harmonise with sector realities, building of relevant capacities to mainstream gender, identify linkages and networks, coordinate sector implementation of gender strategic activities, produce gender mainstreaming sector reports and profile gender issues in all sectors.<sup>11</sup>

The framework is robust as it makes provision for gender budgeting, and it recognises that equality, women's economic empowerment, human rights, development and a condition for social justice. It is hinged on Kenya's commitment to the Beijing Platform for Action (BPfA), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Conference on Population and Development Program of Action (ICPD PoA) and the former Millennium Development Goals, and its successor Sustainable Development Goals (SDGs), all of which Kenya signed, for their potential as mutually supporting processes for the advancement of gender equality and women's economic empowerment.

To eradicate poverty and improve the economic status of women the Government of Kenya put in place a number of measures aimed at empowering women and increasing their participation in the country's development in all sectors.

#### 4.4 Vision 2030

The strategy presents comprehensive social interventions aimed at improving the quality of life of all Kenyans. The vision classifies interventions in the social pillar into six broad areas of focus. These include education, health, water and sanitation, environment, housing and urbanisation, and gender, youth and vulnerable groups. It has the following WEE relevant flagship projects under the sector for Gender Youth and Vulnerable Groups: The Women Enterprise Fund, Gender Mainstreaming, Affirmative Action Policy, Gender Disaggregated data, Youth Empowerment Centers, Youth Enterprise Development Fund. Vision 2030 is important as many other Government (both national and county) policies and institutional arrangements are founded on its aspirations.

Some of the relevant gender goals of the Vision 2013 Medium Term Plan include: Increase earned incomes by Kenyan women, increase number of women in Parliament from 7 percent to 30 percent and fully implement 30 percent representation in all decision-making levels. The medium-term strategies to achieve these goals include: increasing employment opportunities, promoting affirmative action, increasing social amenities, and, and encouraging wholesome family units that promote social values and norms. A critical strength of the Vision 2030 medium term plan, is that it highlights time bound specific measurable goals to be achieved. This not only makes progress measurable, but allows for monitoring and evaluation of specific programme initiatives.

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<sup>11</sup> These mandates and responsibilities are also progressively being carried out by the independent National Gender and Equality Commission (NGEC).

## 5 Public participation in relation to WEE

Public participation is a principle that has been given prominence in the Constitution of Kenya 2010. The people's sovereign power can be expressed through direct participation or indirectly through elected representatives. Article 10 (2) of the Constitution provides that public participation is a national value and principle of governance. The principle of public participation is echoed across the Constitution. The public is expected to participate and be involved in the legislative and other business of Parliament and its committees. One of the objects of devolution is to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them.

Participation should imbue all public affairs and be promoted by both State and Non-State Actors acting in public interest. The Constitution particularly sets key requirement for Parliament and the County Assemblies to provide frameworks for public participation in legislative processes. This emphasis for the people's representatives to ensure public participation underscores the fact that the election of representatives does not negate the need for people to continuously be involved in governance processes. This could be established through administrative and/or legislative frameworks/guidelines. Parliament and County Assemblies are required to enact legislation on participation and develop procedural guidelines for people to exercise this right.

From the constitutional, legislative, regulatory and practical perspectives, citizen participation is a two-way process where the Government provides opportunities for citizen involvement in governance and the citizens choose whether or not to utilise these opportunities. The citizens may participate in: the identification of community needs, development planning for the county; county budget preparation and validation; implementation of development projects at the local level and in the actual monitoring and evaluation of projects or programmes being implemented through public funds in the county.



Public participation can advance women's economic empowerment

Public participation can advance women's economic empowerment. In respect to the EOWE, this could be in two main areas; a) The Public Finance Management (PFM) Act, 2012 provides for public participation in public financial management and b) the formulation of the County Fiscal Strategy Papers, County Budget Estimates; County Integrated Development Plans.

### 5.1 The Public Finance Management Act

On the requirement of equity, equality and gender the PFM Act notes that proposals of stakeholders in the county shall be considered during development planning. The County Executive Committee is expected to hold consultations on any key policy issue, ensure equity, and have special seats catering for marginalised groups, including women.

There are specific clauses that require public participation in the financial management process. These are outlined in Section 207 of the PFM Act. Most importantly, counties must provide forums that will allow people to come together to discuss provisions in the Act.

### 5.2 County Government Act

The Constitution of Kenya (Article 220) recognises the need for proper plans and budgets that are developed in a participatory manner. Schedule Four of the Constitution of Kenya gives the responsibility of county planning and development to the County Governments. Similarly, planning is elaborately provided for in both the County Government Act, 2012 and the Public Finance Management Act, 2012 as the basis for all county budgeting.

Section 113 of the County Government Act makes public participation in county planning processes compulsory. It stipulates the principles of public participation which include timely access to information and reasonable access to planning and policy making process. Section 91 requires the County Government to facilitate the establishment of modalities, and platforms for citizen participation e.g. town hall meetings, IT based technologies and establishment of citizen fora at county and decentralised units as well as establish mechanisms to facilitate public communication and access to information using media with the widest public outreach such as utilise platforms

such as social media, websites, mobile phones and SMS, community media, public noticeboards. The County Government and key stakeholders should enhance awareness, engagement and participation of public on key county processes such as county planning and budget-making process, identifying and prioritising county projects, participation in development of County Integrated Development Plans, policy making and oversight on accountability. The constitution guarantee equality and non-discrimination regardless of bias factors such as ethnicity, race, colour, religion, sex, age, genetic information, or disability.

The County Government Act, 2012 provides various types of plans at the county level. In addition, the PFM Act requires every County Government to prepare a development plan that includes strategic priorities for the medium term; a description of how the County Government is responding to changes in the financial and economic environment, programmes to be delivered and a summary budget among other requirements.

Whereas there have been efforts to inform the public about the PFM Act by other institutions such as the Commission for Revenue Allocation, Kenya National Audit Office, Office of the Controller of Budget, and Ministry of Finance, there is still need for intensive civic education on the financial management processes envisaged under the PFM Act.

### **5.3 County planning and budgeting**

#### **5.3.1 The County Integrated Development Plan**

Each county is required to develop a five-year county integrated development plan with clear goals and objectives, an implementation plan with clear outcomes, provisions for monitoring and evaluation; and clear reporting mechanisms. The County Integrated Development Plan shall inform the counties' budget based on the annual development objectives and priorities. Each County Integrated Development Plan shall provide clear input, output and outcome performance indicators including:

1. Percentage of households with access to basic services as stipulated by article 43 of the constitution;
2. Percentage of a county's capital budget spent on capital projects for a particular financial year;
3. The number of jobs created through any local development initiatives including capital projects and;
4. Financial viability of the integrated development plan;
5. Include the County Sectoral and Spatial Plans.

Public participation in county planning is mandatory and should be facilitated through information communication technology based platforms, town hall meetings, budget preparation and validation, notice boards, development project sites as avenues for participation of peoples' representatives and citizen at county and decentralised units.

#### **5.3.2 The County Fiscal Strategy Paper**

The PFM Act 2012 requires all County Governments to table a County Fiscal Strategy Paper (CFSP) by 28th February in their respective County Assemblies. The County Treasury in preparing this paper must align it with the national objectives in the Budget Policy Statement. Similarly, in preparing the CFSP, the County Treasury must specify the broad strategic priorities and policy goals that will guide the County Government in preparing its budget for the coming financial year and over the medium term. The County Treasury must also include in its CFSP the financial outlook with respect to County Government revenues, expenditures and borrowing for the coming financial year and over the medium term.

## 6 Access to land and other productive resources

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There have been progressive laws and policies that give effect to the Constitution of Kenya and facilitate women's access to, control over and ownership of land in Kenya and attempt at a holistic approach to land administration and adjudication. These include the National Land Policy 2009, National Land Housing Policy, 2004, Land Act No. 6 of 2012, the Land Registration Act No. 3 of 2012, National Land Commission Act No. 5 of 2012 and the Matrimonial Property Act No. 49 of 2013.

### 6.1 National Land Policy

The National Land Policy (2009) aims to protect and give effect to rights over land by promoting positive land reforms for the improvement of the livelihoods of Kenyans through the establishment of accountable and transparent laws, institutions and systems dealing with land.

The policy is guided by the principles of equitable access to land, intra and inter-generational equity, gender equity and transparent and democratic governance of land, among others.

The policy required the Government to put in place appropriate laws to ensure effective protection of women's rights to land and related resources, repeal bad laws that discriminate against women in relation to land, enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources. It also required the Government to make provisions for joint spousal registration and documentation of land rights and for joint spousal consent to land disposals, applicable for all forms of tenure, and secure inheritance rights of unmarried daughters in line with the practices of the respective communities<sup>12</sup>. The Government is expected to carry out public education campaigns to encourage the abandonment of cultural practices that prevent women from inheriting family land and ensure the representation of women in institutions dealing with land at all levels.

### 6.2 Land Act 2012

The Act creates statutory rights to spouses and any other persons who seek to carry out land transactions. Before any land transaction is approved, spousal consent must be given.

- ❖ Section 2 defines the matrimonial home as property owned or leased by one or both spouses and occupied by the spouses as their family home;
- ❖ Section 79 (3) of the Act provides that a charge on a matrimonial home is valid only if there is an executed consent from the spouse of the charger. This gives room for women to be consulted and their consent obtained in writing in case of transactions involving the matrimonial home or property;
- ❖ Section 107 (7) provides for interested parties in a compulsory acquisition case to include any person whose interests appear in the land registry and the spouse or spouses of any such person as well as any person occupying the land and the spouse or spouses of such person. This ensures the inclusion of married women as an interested party when matrimonial property is compulsorily acquired;
- ❖ Section 134 (4) further states that a woman representative nominated by a local women's organisation as prescribed by the County Government shall sit in the sub-county committee which is responsible for identifying beneficiaries of the National and County Government settlement schemes.

### 6.3 Land Registration Act 2012

The Act provides for joint ownership of land between spouses, joint spousal registration of land and for joint spousal consent to land disposal, applicable for all forms of land tenure.

- ❖ Section 28 provides for overriding interest on all registered land that affects dealings on the land, including spousal rights over matrimonial property;
- ❖ Section 93 (1) provides that, subject to the law on matrimonial property, if a spouse obtains land for the co-ownership and use of both spouses or all the spouses, there shall be a presumption that the spouses shall hold the land as joint tenants and the Registrar shall register the spouses as joint tenants. This protects women's rights to land within marriages;

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<sup>12</sup> Both requirements of the policy have been achieved through enactment of the Matrimonial Property and the Marriage Acts.

- ❖ Section 93 (2) provides that where land is held in the name of one spouse only and the other spouse contributed their labour to the productivity, upkeep and improvement of the land, then the spouse acquires an interest in the land and will be recognised as a joint owner. This also facilitates recognition of women's contribution to acquisition and improvement of matrimonial property;
- ❖ Section 93 (3) places a responsibility on the lender, transferee and buyers of land or interest in land to obtain spousal consent for the sale/disposition of matrimonial property.

#### 6.4 National Land Commission Act 2012

The composition of the membership of the National Land Commission must follow the two-thirds gender rule as stated under Article 27 (8) of the Constitution.

- ❖ Section 7 of the Act provides for the membership of the National Land Commission, comprising of ten (10) members inclusive of the Chairperson, Vice-Chairperson, seven Commissioners and the Chief Executive Officer. Three of the members are women;
- ❖ Section 18 provides for the establishment and composition of the County Land Management Board and subsection (6) requires that the appointment of the members shall consider the national values and reflect gender equity and ethnic diversity within that county. This allows for inclusion of women into the boards.

#### 6.5 National Housing Policy 2004

The Policy makes provisions for housing programmes for vulnerable groups including the poor, women, children in difficult circumstances, the handicapped, the elderly and displaced persons. It mandates the Government to create credit institutions and lending mechanisms that will be accessible to all vulnerable groups, particularly the women, the handicapped and the displaced. It mandates the Government to encourage vulnerable groups to participate actively in housing by strengthening relations with Community-Based Organisations and by promoting the formation of self-help groups.



Peninah counting money at Mpesa shop after selling her produce to a large scale trader.

#### 6.6 Matrimonial Property Act 2014

Very few women own land in their names. Indeed, it is estimated that Kenyan women own 1% of registered land titles and 5% of registered titles in joint names. This is despite the fact that women directly provide over 70% and between 80-90% in producing cash crop and subsistence farming respectively.<sup>13</sup> The coming into force of the Matrimonial Property Act is a positive development towards women's empowerment.

The Matrimonial Property Act also provides for presumption of joint and equal ownership where property is registered in the names of both spouses. The Act expressly acknowledges indirect or non-monetary contribution (section 2).

<sup>13</sup> African Development Bank 'Kenya Country Gender Profile' p. 12.

## 7 Catalytic funds

### 7.1 Women Enterprise Fund

The Women Enterprise Fund (WEF) was established in 2007 and launched in 2009. Its establishment was part of the government's commitment to gender equality - as stipulated in the Sustainable Development Goal number five, "Achieve gender equality and empower all women and girls". The fund is a flagship project under the social pillar Vision 2030. Its mission is to mobilise resources for sustainable access to affordable financial and business support services to economically empower Kenyan women. It is a semi-autonomous government agency domiciled within the Ministry of Devolution and Planning. The overarching objective driving the fund is to reduce gender inequality in entrepreneurship through supporting women by creating opportunities, developing capacity and infrastructure. To this end, the fund also disburses micro-credit to marginalised women who have little or no access to: education, training and social capital.

#### The Mandate of WEF:

- ❖ Provision of affordable and accessible credit to women, and women-owned SMEs;
- ❖ Capacity building of female entrepreneurs and their organisations;
- ❖ Support of domestic and international marketing of goods produces by women-owned enterprises;
- ❖ Facilitate marketing of products and services of women enterprises in both domestic and international markets.

The programme specifically targets women in the periphery - those who have been financially marginalised and have no access to credit. At inception, the programme was designed in such a way that credit access was made possible to all 290 constituencies and with the passing of time, the programme was designed to take into account good loan repayment and demand.

A shortcoming of the WEF is that it provides limited amounts of loans and therefore the women who benefit from it are never able to transcend specific levels of poverty. For example, a study conducted in Vihiga County by Ijaza et al 2014, demonstrates how some women used the microcredit for other purposes other than starting or expanding an existing business. Some of these women argued that the amounts were too small to allow them to invest in bigger business ventures that required higher capital. Small amounts of loans keep women on traditional gender role based businesses, such as hairdressing, catering, or tailoring.

**To date the Women Enterprise Fund has reached 647,116 female entrepreneurs**

#### The Process

One of the benefits of the WEF is that unlike other microfinance institution is has simplified the application process to reduce the barrier of complex financial application forms. The WEF has also reduced the bureaucracy surrounding the application forms, by having the loans approved at the local community level. They also reduce the language barrier through working with local volunteers who understood the local dialect and everyday lives of the people in specific communities. Loan repayment was also made easier through using Mobile Money Transfer options.

To date, the WEF has expanded women's access to financial resources and economic opportunities because since its inception the fund has reached 647,116 female entrepreneurs, and loan repayments have been effective - this stands at 92% (see Commonwealth Secretariat 2016). Working in partnership with local organisations like Hand in Hand East Africa, women have been trained on skills such as record keeping and financial literacy. The fund has helped these women diversify their businesses. To this end, a study by Commonwealth Secretariat revealed that 900 women entrepreneurs under WEF have changed and added new products to their existing product line<sup>14</sup>. The programme proposes to expand its operations in multiple ways through: increasing product offering, financial training, delivery channels - to improve access to services and promotion of women-owned Savings and Credit Co-operatives Societies. While these initiatives can be lauded, they are in themselves insufficient to empower women or to attain gender equality. Improvements to the WEF should also be contextualised within the existing socio-economic and policy framework to ensure better targeting of women (within groups) as well as women as individuals.

<sup>14</sup> It was not possible to determine sectoral investments of the WEF as the data is inconsistent. However, the WEF management is now collecting this data and the sectoral investments may be possible to evaluate in future.

## 7.2 Uwezo Fund

The Uwezo Fund was launched in 2013 and enacted through a Legal Notice No. 21 of the Public Finance Management Act, 2014<sup>15</sup>. The Uwezo Fund seeks to expand access to finances and promote enterprises run by women, youth and persons living with disability at the constituency level. It also provides mentorship opportunities to enable the beneficiaries take advantage of the 30% government procurement preference through its Capacity Building Programme. Uwezo Fund, therefore, is an avenue for incubating enterprises, catalysing innovation, promoting industry, creating employment, and growing the economy.

The Uwezo Fund adopts a hybrid concept of the table banking and revolving funds, designed to ensure that women, youth and persons with disabilities are able to employ availed resources for credit, while similarly promoting and sustaining a savings culture.

### Objectives of the Uwezo Fund:

- ❖ To expand access to finances in promotion of youth and women business;
- ❖ To generate gainful self-employment for youth and women;
- ❖ To model an alternative framework in funding community development.

### Management of the Uwezo Fund

At the national level, the fund is managed by an oversight board while at the constituency level, it is managed by the Constituency Uwezo Fund Management Committee. Apart from oversight, the board provides overall management and design. The board is supported by the secretariat. At the constituency level, there are Constituency Uwezo Fund Committees with membership from various wards and government representatives. These committees comprise representatives of Women, Youth and person with disability oversee implementation of the fund and is guided by the 2/3 gender rule.

### Programme design

1. Step 1: Ensure that you meet the eligibility criteria;
2. Step 2: Fill in an application form (available from the Constituency Uwezo Fund Management Committee office, Constituency Development Fund Offices or download form);
3. Step 3: Submit the application form together with relevant documents to the Constituency Uwezo Fund Management Committee office;
4. Step 4: Await notification from the Committee.

### Eligible amount

- a. For administration of the Fund:
  - ❖ The access by eligible groups of the Fund, shall be on a first come first served basis, subject to assessment and approval of the loan, provided that the Committee shall ensure equitable distribution of funds in the wards;
  - ❖ Eligible qualifying amounts for a group shall be a minimum of fifty thousand (50,000) and a maximum of five hundred thousand (500,000) Kenyan shillings (Kshs) at any one time.
- b. In determining the total amount a group is eligible to receive, the following criteria shall be applied:
  1. The length of time the group has been in existence;
  2. The total amount contributed by the group;
  3. The current status of contribution and;
  4. The proposed business plan for the loan applied.

The eligible amount shall be three times the group savings BUT it shall not be:

1. Below Kshs 50,000 (Minimum);
2. More than the amount applied for in the application form and;
3. More than Kshs 500,000 (Maximum).

### Effectiveness of the Uwezo Fund

While the fund is seen to target youth, it is also notable that it targets women and perform a similar role to WEF. Yet it is argued here that the fund would be more useful if it served the specific category of youth since even within that category there exists challenges of marginalisation attributable to class, gender and other divisions. The

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<sup>15</sup> Accessed Uwezo Fund Website: [www.uwezo.go.ke](http://www.uwezo.go.ke)

Uwezo Fund has also been criticised as highly inaccessible because of the stringent regulations and requirements (See Onger et al 2016). According to the Business Daily, "majority of the groups that received soft loans from the government's Kshs 5 billion Uwezo Fund to promote their enterprises have defaulted on paying back the amounts within stipulated time." (Bwayo, 2016). In addition, the management of the fund could be strengthened if more support were available to support young entrepreneurs at local level.

### 7.3 Youth Enterprise Development Fund

The Youth Enterprise Development Fund (YEDF) was established in year 2006 with the sole purpose of reducing unemployment among the youth who account for over 61% of the unemployed in the country. The target of the fund is young people within the age bracket of 18 to 35 years who number 13 million. The Fund was gazetted on 8th December 2006 and then transformed into a State Corporation on 11th May 2007. The Fund's strategic focus is on enterprise development as a key strategy that will increase economic opportunities for, and participation by Kenyan youth in nation building.

#### Main Achievements of the YEDF

The YEDF has given Kshs 11.7 billion loans to 886,313 youth enterprises across the country since its inception.

Some 364,368 youth have been trained in entrepreneurship since 2006. Another 5,666 young entrepreneurs have been facilitated to market their products both locally and abroad through trade fairs. The YEDF has also helped 20,976 youth secure jobs abroad through the Youth Employment Scheme Abroad program.

#### Effectiveness of the YEDF

- i. 60 per cent repayment rate reported by the YEDF management organ is very low compared to 95-97 per cent for commercial bank loans, an indication that the loans the fund advances are at high risk of getting lost;
- ii. Requirements for collateral further alienate deserving young women entrepreneurs;
- iii. Kenya needs long term strategies to enable youth (especially young women) access more rewarding and productive work. The YEDF would should also have been anchored on a Youth Employment Policy (which the state needs to introduce);
- iv. There is also a tendency to treat youth as a homogeneous group, which could end up isolating some young people who cannot fulfil YEDF requirements such as business plan development, a registered group and an existing bank account. The rules should be more flexible and needs-based in order to benefit some of the needy and illiterate youth who require more rigorous training and support to succeed.

### 7.4 Access to government procurement opportunities

Efforts to empower women through facilitating participation in government procurement can be seen in the establishment of Access to Government Procurement Opportunities (AGPO). In 2013, President Uhuru Kenyatta pledged that 30 percent, of all government procurement be reserved for women, youth and persons with disabilities. Its development was hinged on specific instruments, namely: the Preference and Reservations Regulations 2011, the Public Procurement and Disposal (Preference And Reservations) (Amendment) Regulations-2013, the Constitution of Kenya 2010 Article 227 on the fair equitable, transparent and cost-effective public procurement of goods and services, the Constitution of Kenya 2010 Article 55 on affirmative action, the Public Procurement and Disposal Act, 2005, and the Public Procurement and Disposal Regulations, 2006.

The directive has been argued to increase access to women, youth and persons with disability who lack necessary qualifications, capability, experience, capital and other resources (Amadi, 2015).

#### Effectiveness of AGPO

- i. The programme while is argued reduce barriers of access, is a web based process as application forms are to be downloaded from the internet. Marginalised women without access to electricity and indeed internet services are excluded from this service, implying that the initiative does little to include marginalised women participation (and empowerment thereof);
- ii. The requirements to participate can also be argued to be prohibitive. Women are required to have the following: National Identity Card/Passport, Business Registration Certificate/Certificate of Incorporation, CR12 for Limited Company from Registrar of Business Names, Partnership Deed for partnership business, Tax compliance certificate, and National Construction Authority Letter/Certificate for construction category. Most of the marginalised women conducting small business get excluded from effectively participating in this initiative since the procurement requirements are technical and require some level of education. Yet, research indicates that, Kenyan women entrepreneurs have lower education levels as compared to men (For example, Cutura, 2006). Indeed, even as the gender gap in primary education in

Kenya has decreased in recent years, the gap remains high at secondary and tertiary education levels (ibid). This implies reduced chances that women will have the knowledge needed to participate and win procurement tenders;

- iii. The other subtle barrier is the significant capital outlay required-because many women still lack access to capital as a resource. The primary source of information for these groups on what is to be awarded is the tender notices placed in the newspapers - yet very few women have access to these (Gatere and Shale, 2014);
- iv. The programme is also open to abuse especially with regard to other companies (not qualifying for preferences) may use entities under this scheme as a front or proxy for their own interests. There are also no specific limitations against sub-contracting etc.

### 7.5 Discernable results of catalytic funds

It is not immediately discernable what the results of these funds have been with regard to actual women's economic empowerment. The various funds only measure success through: amounts of money disbursed, number of women trained, and the relative repayment rate. Specific empowerment outcomes are neither quantified nor measured consistently by the catalytic funds. The absence of a central coordination mechanism within the parent Ministry, also means that the different catalytic funds do not harmonise their targeting, capacity building plans and data (even when the beneficiaries are similar/the same).

## 8 National Gender Equality Commission

The National Gender Equality Commission (NGEC) is a constitutional commission established by an Act of Parliament in August 2011, as a successor commission to the Kenya National Human Rights Commission following Article 59 of the Constitution. NGEC derives its mandate from Articles 27, 43, and Chapter Fifteen of the Constitution; and section 8 of NGEC Act (Cap. 15) of 2011, with the objectives of promoting gender equality and freedom from discrimination (These articles are discussed below in an analysis of the Constitution). The overarching objective is to reduce gender inequalities and the discrimination against all; women, men, persons with disabilities, the youth, children, the elderly, minorities and marginalised communities.

The structure of the commission is one that has six departments. Important to this paper is the Gender and Women department whose main responsibility is mainstreaming issues of gender and women in national and county policies, laws and administrative rules as well as private and public sector. Its other areas of focus include: monitoring of compliance of gender mainstreaming in all public and private institutions in regards to National laws, Regional and International Conventions and Treaties. To this end, the commission conducts audits on private and public sector and disseminating the findings as well as advising the relevant stakeholders. It also promotes gender responsive budgeting.

The critical role in as far as enhancing women empowerment and increasing gender equality is concerned, is its role of gender mainstreaming. Through this function NGEC ensures

that the concerns of women and men form an integral dimension of the design of all policies, laws and administrative procedures, in all political, economic and societal aspects. While it is vital to have NGEC as a body that ensures that gender is mainstreamed across policies and programme initiatives, it's effectiveness in promoting the agenda of women empowerment and gender equality has been limited by the administrative, technical capacity



📷 Women livestock traders, Laikipia.

and financial constraints it faces. This is specifically evident in the failure to implement the two third gender rule- a critical achievement that would advance women empowerment.

Some of the limitations as outlined in their strategy document include:

- i. inadequate financial resources for operational work;
- ii. inadequate human resources;
- iii. limited presence/visibility in the counties;
- iv. low level of awareness by the public on the mandate and role of NGEC.

The key challenges as outlined in the annual report include:

- i. lack of a legal framework to enforce equity and inclusion related constitutional provisions e.g. two thirds gender rule; five percent progressive recruitment and representations of people with disabilities;
- ii. low brand visibility of the Commission;
- iii. inadequate number of commissioners as specified in the law to step up oversight function of the Commission;
- iv. inadequate funding to deliver on the complex mandate particularly to facilitate operationalisation of the devolution strategy of the Commission;
- v. amounts of effort required to translate affirmative action into quality leadership.

Ultimately the effectiveness of the Commission is limited to the extent it mitigates these weaknesses and maximises its key strengths which are goodwill from government, a clear mandate, a robust policy regulatory framework, independence and skilled professional staff.

## 9 National Policy on Gender

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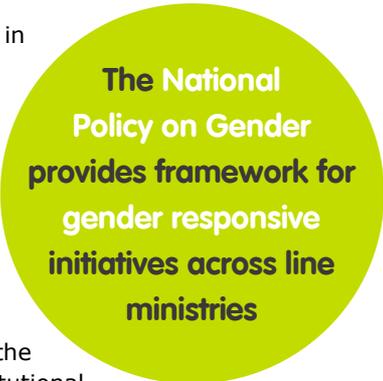
The National Policy on Gender and Development, 2000 outlines a policy approach on gender mainstreaming and empowerment of women. To this end, the policy states that it is the right of women, men, girls and boys to participate in and benefit equally from the development process. The policy provides a framework for mainstreaming gender within the different sectors and line ministries involved in development.

### The policy objectives:

- ❖ Increase coverage, effectiveness and efficiency of interventions;
- ❖ Promote equity and equality of women and men;
- ❖ Provide quantitative and qualitative information on the influence of gender on diverse sectoral issues;
- ❖ Support line ministries and state corporations on how to undertake gender responsive planning, implementation and evaluation of policies, programmes and projects;
- ❖ Provide capacity building supported by knowledge sharing and research on gender issues.

### Strategies to achieve objectives:

- ❖ Strengthening the institutional procedures which ensure that the needs of women and men, girls and boys are all met equitably with a view assuring vulnerability reduction of provision services in all sectors;
- ❖ Formulating measures to ensure that gender-specific vulnerabilities and capacities of men and women are systematically identified and addressed;
- ❖ Institutionalise data collection to ensure that data on beneficiaries is disaggregated by sex;
- ❖ Review and enhance existing strategies for capacity building in gender mainstreaming as part of institutional development ;
- ❖ Ensure that reporting and accountability mechanisms for activities and results in gender mainstreaming are put in place. This includes performance evaluations, budget allocation analysis and actions to enable the full participation of women and men on an equal and meaningful basis in development activities of the Ministry of Gender, Children and Social;
- ❖ Establish gender research and documentation center to systematically collect, analyse, disseminate and utilise gender related information to all line ministries and external partners.



**The National  
Policy on Gender  
provides framework for  
gender responsive  
initiatives across line  
ministries**

The policy provides the overall framework for supporting gender responsive initiatives across respective line ministries. Besides outlining the overall objectives of the policy, the document further illustrates the 'how to achieve'. Through a strategy aimed at institutional strengthening. A specific strength of this policy is the emphasis of sex-disaggregated data. Sex disaggregated data fosters progress for gender equality since what is measured is not only valued but, also acted on. The policy provides for gender budgeting, an indication of the goodwill intended to achieve gender equality.

## 10 Private sector

The Private sector forms part of the institutions that support women led SMEs. Financial support is provided by commercial Banks, Non-Governmental Organisations, Microfinance Institutions, and Savings and Credit Co-operatives Societies among others. These institutions offer varied financial products with the objective of including women in mainstream financial services and empowering them economically in any sector. One immediate example is, Barclays bank who set aside money to specifically support women in business. They extended their support and partnered with the government to offer financial support to women and youth who won public contracts under the Access to Government Procurement Opportunities Initiative.

The proponents of micro-lending (specifically by private sectors) argue that it as a cost-effective way of building an entrepreneurial culture, enhancing domestic economic capacity, reducing poverty and unemployment, promoting rural growth and enhancing women empowerment. Yet, opponents argue that this form of micro-lending offers marginal increase in income and assets that only serve to enhance the well-being and economic security of the poor. Indeed, the contention is that this increase is too little to affect the pervasively entrenched political and economic relations that sustain inequality and disempowerment.



Female trader preparing her maize for the market.

The loans offered by micro-lenders in these sectors are often expensive, and in most cases, do not reach the poorest of the poor (See Onyuma and Shem 2005, Waweru and Sprakman 2012).

While the private sector targets women and claims to empower them, the extent to which it does this is questionable—especially since they are largely profit oriented. Their choice of women as targets is because they are better credit risks compared to men (Pitt and Khandker 1998, Wilson 2008), implying that the private sector agenda is not so much about women’s empowerment and gender equality.

In addition, while there is an overall understanding within the private sector of the importance of gender equality in the supply chain from a social and brand perspective, its impact on key business drivers like agriculture productivity still needs a tighter analysis for specific contexts. Most companies would not object to adding gender equality as a cross-cutting element of their extension work, financial services or other business development services. However, investing resources to specifically target women in a differentiated manner requires more buy-in.

## 11 Access to justice

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Women in Kenya find difficulty in accessing justice and this has an effect towards achievement of gender equality and women's economic empowerment. Access to justice ensures smoother business operations (Cutura 2006). Besides women are barred from access to justice due to institutional inefficiencies, courts are costly, time consuming and often involve long bureaucratic processes (see Mwobobia 2012). Other barriers include the fact that women are more limited in education as compared to men. With limited education, these women may not be aware of the justice system and in cases where they are, there is poor understanding and knowledge of the law. These limitations imply less likelihood that women will be able to seek legal redress where needed.

## 12 Devolution and WEE in Baringo, Marsabit and Kitui Counties

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### 12.1 Policy and institutional architecture for WEE at county levels

The County Governments provide broad recognition and commitment to women's economic empowerment and enterprise development as is recognised in key County Government documents. Specifically, all County Integrated Development Plans reviewed from Kitui, Marsabit and Baringo give recognition to women's empowerment. Specific Annual Development Plans of these counties also give recognition to the women's empowerment and enterprise development themes. However, all three counties have no specific policy, legislative or strategic directives on women's economic empowerment specifically. Nonetheless, the counties noted that their interventions are anchored on national and global level policy and legislative provisions, visions and strategy papers such as:

- i. Vision 2030;
- ii. The Agriculture Master Plan;
- iii. Agriculture Sector Development Strategy;
- iv. The Sustainable Development Goals - All Counties (specifically Goals 1 and 2);
- v. The Access to Government Procurement Opportunities (AGPO);
- vi. The Constitution of Kenya and the various provisions (e.g. the 2/3 Gender Rule);
- vii. Various Acts of Parliament e.g. the Devolved Government Act, Public Finance Management Act.

There are significant legislative considerations for women's economic empowerment and enterprise development currently underway. For instance, the Baringo County Assembly is currently debating the Baringo Women's Economic Empowerment Bill. All three counties are also finalising development of their Agriculture Sector Policies.

### 12.2 County Government programmes and initiatives for WEE

Despite lacking specific policy, strategy and legislative directions on women's economic empowerment and enterprise development, the counties are implementing a number of key programmatic interventions on women's economic empowerment and enterprise development. These include:

#### Baringo County

- i. The county has established Loan Scheme Fund that goes towards SMEs development. Through the programme, women in business have undergone trainings on entrepreneurial skills and those in groups are able to access up to Ksh 100,000;
- ii. Green house project initiated since the 2013/14 financial year targeting women. Since 2013, over 35 women groups have benefited, undergone capacity building trainings on greenhouse farming;
- iii. Aquaculture project that enhance fish farming: The County Government helps the group to construct the fish ponds, stock them and issue the fishing gears to the benefiting groups;
- iv. Improved poultry project that focuses on up scaling the indigenous poultry keeping. The county issues one-day chicks and incubators to benefiting groups. These groups undergo capacity training on poultry farming before they receive the chicks. Most of the benefiting groups again are women groups in Baringo;
- v. Promotion of fruits (afriuation): mangoes, avocados, paw paws, bananas seedlings etc. are issued to organised groups mostly women groups. Through this project, women have received trainings on kitchen

gardening too. This is geared to promote women groups entrepreneurship while also improving households nutritional statuses;

- vi. Energy saving programme where women receive the energy saving *jikos*<sup>16</sup> to save on use of fuel and deforestation effects. This contributes to reviving home economics where women no longer have to worry for search of firewood and instead save time to participate in businesses and other productive activities that may result in earned incomes;
- vii. Promotion of cooperative development where people in the county are encouraged to join or form cooperatives to pool resources together. To date, majority of vibrant cooperatives are women owned. This enhances their access to collateral at reduced interest rates and in turn encourages their participation in businesses;
- viii. Capacity building initiatives targeting SME in the county. Training is offered on business skills, mobile banking and building marketing networks. Most of the beneficiaries are women.

### **Marsabit County**

- i. Marsabit County Enterprise Fund that was launched recently that targets women and youth as main beneficiaries. A series of capacity building trainings on entrepreneurial skills had been carried out in 18 out of 20 wards to sensitise women and youth on the need to apply for the funds and venture in businesses;
- ii. The county in partnership with UNDP rolled out from 2014 a women and youth mentorship programme that offers computer literacy skills at no cost. Since then, the programme has had two graduations and out of which more than 70% of these were women;
- iii. The county has constructed sixteen market stalls in the entire county where women are able to carry on their businesses from. The market stalls cushion against extreme weather conditions, and are strategically located to ensure better access to markets for a majority of the population. Although this programme did not specifically target women entrepreneurs, majority of the stall occupants are reported to be women;
- iv. Capacity building programme on business skills, table banking, livestock and cereal production and milk value addition that target women;
- v. The county has entered in Public Private Partnerships with USAID, UNDP, PACIDA and banking institutions like Equity Bank, KCB, Cooperative Bank, Family Bank to build capacities of women and youth particularly with business management skills, mobile banking and value addition initiatives all aimed at empowering particularly the women and youth in businesses.

### **Kitui County**

- i. Socio-economic strengthening programme: targeting women and people with disabilities specifically through provision of chicken, goats and other goods in kind;
- ii. Capacity building initiatives: especially to promote women and youth participation in programmes such as AGPO;
- iii. Agriculture Extension: The county is offering agriculture extension services targeting farmers (presumably mostly women) in the various sub-counties and wards. The county has also supplied cluster irrigation pumps and other equipment to various women groups involved in farming;
- iv. Increasing Market Access Programme through construction of market stalls. To date, the county has constructed 7 market stalls in the various sub-counties;
- v. Construction of Honey Processing Factories: To date the county has constructed 16 factories which have been handed over to various cooperatives. The county has in addition supplied these cooperatives with various equipment and organised further training in honey harvesting and processing, branding, marketing, standardisation and quality assurance. Most the cooperatives are women owned and led;
- vi. Exposing women entrepreneurs to opportunities: for example, through participation in trade fairs such as the Kampala East Africa Nguvu Kazi Exhibitions.

## **12.3 Implementation challenges**

The counties continue to experience several challenges which dampen the attainment of the strategic goals for women's economic empowerment and enterprise development. These include:

1. Timely access to financial resources hence affect; projects/programme implementation, payment for recurrent expenditures at subsequent levels - specifically for projects that promote women's economic empowerment in the agriculture sector;
2. Inadequate technical staff to provide effective technical and supervisory services;

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<sup>16</sup> Jiko is the Swahili word for cooking stove.



 Member of a producer group.

3. Inadequate funds to offer subsidies;
4. Inadequate transport facilities for projects implementation, supervision and monitoring;
5. Low adoption of new technologies due to low resource base and literacy among women farmers;
6. Non-clarity on policy interpretation by both National and County Governments for both agriculture and water sectors;
7. High investments cost for enterprise development projects challenging projects challenging within resource constrained settings where other priorities such as sinking boreholes in Kitui take preference.

#### **12.4 Women leadership and representation**

Women leadership and representation in the counties presents a mixed picture of achievement and failures to meet the constitutional 2/3 gender threshold. While significant and indeed impressive progress has been achieved in ensuring compliance at County Assembly and Executive levels e.g. in composition of County Executive Committee Members and Chief Officers where both Baringo, Marsabit and Kitui Counties are compliant, performance at lower levels of government and governance is woefully inadequate. Although actual figures of representation were not available, all counties indicated a less than 1/3 representation of women in Ward Development Committees.

#### **12.5 Women public participation in public finance management**

Baringo, Kitui and Marsabit Counties have put in place a number of processes and platforms for effective public participation. These include the establishment of decentralised structures to the Ward and Sub-County levels and the appointment of the Ward and Sub-County Administrators. This has effectively enabled the citizens to attend public forums on development projects at these two levels.

The counties have also passed key public participation legislations that include the Baringo County Public Participation Act, 2014 and the Marsabit County Civic Education and Public Participation Act, 2015. However, not all individuals have the same opportunities to contribute to budget processes. Specifically, women are consistently under-represented in County Government agencies that formulate, approve, and implement county budgets. In addition, women in the County Governments tend to be assigned to "soft" or "social" County Assembly committees and portfolios, and tend to be excluded and/or under-represented from ministries and committees (such as Ministry of Finance and County Assembly budget teams) where key budget decisions are made.

Moreover, even when women are present in these forums their involvement may be limited. The difficulties elected and nominated women representatives in the County Assembly face result in gender discrimination. In the same breadth, cultural norms also lead to women representatives frequently being excluded from budget discussions, denied access to relevant budget documents and financial statements, lacked detailed information about the budget, and led to their funding requests de-prioritised in comparison with requests made by male representatives. Access to information is also a key concern for women in civil society groups. In addition to problems in accessing government information, an even greater issue is that the County Governments do not produce the sex-disaggregated data that is needed for a true picture of the gender implications of budgets to emerge.

## 13 Conclusion

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The institutional and policy framework supporting gender equality and women's empowerment can be argued to be fairly robust. Key strengths to this framework include the demonstrable efforts towards mainstreaming gender equality and creating room for women's economic empowerment across various sectors (one example is the Agricultural Development Strategy). While stronger inter-sector coordination can be put in place, it is commendable that such a gender mainstreaming strategy is already in place. This strategy could be strengthened further by training the key gender focal points on aspects of gender analysis, mainstreaming, budgeting and monitoring.

The overall policy and institutional framework is strengthened by the fact that gender equality and women empowerment are issues addressed in the Constitution. The only downfall with the existing Constitution, as highlighted in this paper, is the lack of political goodwill to implement the two third gender rule. Indeed, failure to implement the two-thirds gender rule compounds the already existing barriers that women face. It undermines the little gains made towards gender equality and women empowerment and it denies women the space to potentially make transformative changes.

A review of the policies and institutional arrangements demonstrates that there is no consideration of the structural issues of gender inequality and women empowerment. Certainly, more emphasis needs to be placed on addressing the underlying structural issues that drive inequality and impede women's economic empowerment. The present programmatic approaches have much focus on the practical needs that do not allow women to move out of the confines of gender roles, rather than strategic needs that allow women access to decision-making and power which have the potential to transform present gender relations.

The gap with the present institutional and policy arrangements is that it considers women as a homogenous block without existing differences within. Moreover, the policy frameworks not pay attention to the other barriers that hinder gender equality and women's economic empowerment such as, class divisions, or different education levels amongst women themselves, or age - where younger women are likely to face different kinds of exclusion or discrimination.

In addition, while the overall policy development process is argued to be participatory process, the review conducted questioned the extent to which local women's knowledge is included in this process. In this regard, the policies revealed a poor understanding of the multiple, varied, and complex issues facing women.

The present institutional and policy arrangements do not primarily challenge gendered power relations, a key objective of gender equality and women empowerment. While the WEF offers to give women loans, little research has gone into establishing the gendered dynamics shaping equality and empowerment in households. Such dynamics include: questions of: control of loans in the households, triple burden on women - for example how women's already heavy work burdens are affected by their involvement in micro-enterprise. So while women have access to loans, there is hardly any mechanism to ensure that women control these resources.

It was also noted that the Constitution grounds the importance of equity in planning and budgeting, yet, research indicates that gender budgeting does not take place in all sectors (see also SID 2012). A good example is the agriculture sector where women contribute 60 to 80 per cent of labor in household and reproductive activities-yet there is little consideration if any, in the budget drawing process. Budget to push for gender equality in agriculture is minimal even as statistics are tilted with adverse burdens on women as compared to men.

## 14 Recommendations

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### 14.1 Recommendations for National and County Governments

#### 14.1.1 Harmonise mandates of various funds

The Uwezo Fund and WEF both focus on women implying ineffective use of resources. Moreover, this duplication disallows the opportunity of addressing specific group challenges and barriers. Coupled with the various private sector and County Government initiatives, these uncoordinated mechanisms may contribute to the risk of over-financing and placing women entrepreneurs and their groups in a vicious cycle of debt. There is need to review the policy and legal framework to delineate the mandates of the funds and eliminate the risks of duplication.

A major consideration may include coordinating all three catalytic funds (Uwezo Fund, WEF and YEDF) within a single framework at local levels. This could potentially reduce administrative costs while increasing financial opportunities for more women. Framing the proposal to harmonise coordination of the funds as a 'win' for more women may change the political incentives and open a window of opportunity for successful policy reform.

#### 14.1.2 Improve coordination

Other than being administered at county levels by specific officers (who are employees of the various management entities) the catalytic funds entirely fail to recognise the County Governments and their structures. They make no provisions for intergovernmental coordination and also lack any linkage to county planning structures.

The existence of the various national initiatives such as the WEF and Uwezo Fund are good and commendable measures towards enhancing economic opportunities for women entrepreneurs. However, various operational and coordination challenges at county and national levels are likely to prevent these funds from effectively contributing to women's economic empowerment. These challenges include: lack of transportation and facilitation for loan officers at County level, a lack of synergy in coordinating capacity enhancement efforts by the various affirmative action (National and County Government) and private sector initiatives targeting women entrepreneurs.

A tri-partite coordinating mechanism between National and County Governments on one hand and the private sector on the other hand should be constituted at County levels to address capacity building strategies, and share information which would greatly enhance effectiveness of the various mechanisms currently instituted for women's economic empowerment.

#### 14.1.3 Administratively decentralise national level institutions to county Level

A major challenge faced by County Governments in promoting women's economic empowerment is their limited capacity with relation to research and development, standardisation, skills in enterprise development, access to vital statistics, and ability to deliver targeted business trainings. To ameliorate these gaps it would be important if some of the national institutions with mandates in promoting business and entrepreneurship had their functions administratively decentralised (perhaps through de-concentration) to support County Governments with these capabilities. Such institutions include the Kenya Industrial Research and Development Institute (KIRDI), the Kenya Bureau of Standards (KEBS), the Kenya Institute for Business Training (KIBT), the Small and Micro Enterprise Authority (SMEA), and the Kenya National Bureau of Statistics (KNBS).

#### 14.1.4 County Governments need to improve targeting within current programmes

Although it is commendable that County Governments are implementing various programmes that empower women and women entrepreneurs, the targeting and selection of beneficiaries for current initiatives is somewhat haphazard. Moreover, the assumption that women are major beneficiaries in projects such as construction of market stalls is serious invalid. Increasing efficiencies and data on specific target women and women entrepreneurs would enable County Governments effectively redirect scarce resources to those who most need the support in addition to allowing them the capability to be able to capture, document and report upon the transformative impacts of these initiatives on women entrepreneurs.

#### 14.1.5 Enshrine current programmes within policies and strategies

With political considerations being a crucial factor in establishment and rollout of current county programmes and devoid of an enabling legislative and institutional frameworks to promote women's economic empowerment within counties, there is a real risk that current promising initiatives may be lost during electoral cycles. There is therefore

a need for the County Governments to work at enshrining current initiatives in county legislation, policies etc. to improve sustainability. With this inclusion, promising programmes and interventions are likely to survive volatile electoral cycles. Moreover, technocrats who work with County Government departments may use this grounding in policy to influence elected leaders to uphold such programmatic interventions.

#### **14.1.6 County Governments should improve access to information**

County Governments should adopt an open governance policy especially through proactive disclosure of information to enhance meaningful participation. This should promote sharing of information through use of accessible channels of communication such as county websites, transparency boards, bulk SMS, local newsletters, local or community radio, television, *barazas*<sup>17</sup> and any other media. County Governments should provide timely information and sufficient notice for forthcoming meetings; and provide information in formats that are accessible to a wide group of people including persons with disabilities. This includes the translation of information to local language where necessary for wider reach. Most importantly, counties should develop tools and mechanisms that ensure effective participation and engagement of women. Such a strategy can be employed to some of the women groups currently targeted under the various women's economic empowerment programmes and initiatives being implemented by the County Governments.

#### **14.1.7 National and County Governments need to develop gender responsive budgets**

Gender neutrality of budgets does not imply that budgets will not have significantly different impacts on women and men of different economic/social groups. A gender neutral approach means ignoring the gender impact of policy because it does not take into account the different positions women and men occupy in the economy and in society. Gender sensitive budgets seek to reduce gender gaps and inequalities. They are intended to break down, or disaggregate, the Government's entire budget according to its impact on different groups of women and men with cognisance being taken of the society's underpinning gender relations, roles and opportunities to access and control resources. Gender sensitive budgets are therefore fundamentally about mainstreaming gender issues and ensuring that these issues are integrated into all national and county policies, plans and programmes rather than regarding women as a special "interest group" to be catered for separately.

In as far as the approach to budgets is concerned; gender responsive budgets should not only be factored in each sector, but must also be factored in the initial design of development projects and plans such as the County Integrated Development Plans, Annual Development Plans, sector strategy documents etc. by specifying the needs of men and women at the onset. This will involve investment in a rigorous analysis of the gender dynamics and allocation of funds accordingly.

#### **14.1.8 Empower women beyond providing financial support**

Current women's economic empowerment efforts have extensively focused on providing financial facilities to women. Other ways should include providing more than just credit facilities to women. Women in SMEs should benefit through innovative financial approaches that include packages offering them health insurance or weather insurance in the cases where they practice farming. Certainly access to credit should be complemented by other initiatives that address gender dynamics within the household. These could involve initiatives that increase control of resources, as well as those that enhance the strategic choices available to women.

### **14.2 Recommendations for Civil Society Organisations**

#### **14.2.1 Advocate for review public procurement guidelines to safeguard abuses of AGPO**

Because women are disadvantaged in as far as access to public procurement is concerned, public procurement policies can be shaped to provide valuable market opportunities for women led SMEs if they stipulate sourcing from women owned SMEs.

To avoid abuses by firms that have received preferences or set-asides, limitations must be placed on their ability to subcontract work and assign or transfer their contracts to other firms. Without these limitations, there is the potential for firms that are eligible for preferential treatment to act as fronts for those that are not, which undermines the socioeconomic goals of the preferential procurement programmes. Policy reform goals should include:

- i. **Introduce subcontracting limitation:** Require the recipient to perform at least 50% of the work in house;

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<sup>17</sup> Baraza is the Kiswahili word for forum or council.

- ii. **Subcontracting limitation:** Require the recipient to perform at least 50% of the cost of manufacturing the supplies (not including the cost of materials). In the case of a non-manufacturer, require the recipient to provide supplies that have been manufactured by certified women-owned businesses;
- iii. **Anti-assignment provision:** Require the recipient to obtain written consent from the responsible procuring entity before the recipient can assign or transfer the contract to another firm.

#### **14.2.2 Identify, empower and support WEE champions within counties**

To ensure that County Governments champion and promote WEE within their sectoral plans and mandates, it would be important for local and national level CSOs to identify, empower and support WEE champions within the County Executive and Assemblies. Empowerment can take the forms of providing legislative drafting and analysis support, providing and sharing information and statistics etc. It is only through working with such champions at county levels that the women's economic empowerment agenda can get significant traction at county level.

#### **14.2.3 Conduct gender-sensitive reviews of current policies**

Policies framed in gender-neutral terms impact differently on women and men as both women and men play different roles in the economy and in society. Good policymaking therefore requires understanding both the likely differential gender impacts and how policies might generally be better designed to achieve outcomes which meet the needs of women and men and girls and boys of different economic categories equitably. Ignoring the specific roles played by women in the economy and in society and their needs, undermines the efficiency of certain public policies.

CSOs should support the gender-sensitive reviews of existing legislation in the areas of family law, land law, labour and employment law, and customary law in order to identify and remove (through appropriate lobbying and advocacy) ongoing gender discrimination that hampers women's economic empowerment.

#### **14.2.4 Galvanise current groups for strategic influence on WEE**

Because there is a working relationship with women groups as a way of accessing women, this existing platform could be strengthened (these groups can form the right structure to build social capital and create stronger networks amongst women in SMEs) to promote the interests of women, and push these interests to include the marginalised voices of women in national and county policy and programme initiatives.

There is little engagement of women in the policy formulation process and leveraging already formed groups could be a helpful way of galvanising marginalised voices - in policy formulation.

#### **14.2.5 Partner with County Governments and private sector to mainstream WEE**

The capacity of County and National Government to practically mainstream gender equality in their operations, programmes businesses and in supply chains is still a work in progress, in need of external support - particularly at the community and vulnerable groups levels. Broad based multi-stakeholder platform and forums can play a key role in overcoming this challenge.

# ANNEXES

## ANNEX 1. Budget and public finance management cycle

**AUGUST 30.** This is the first major event in the budget calendar. The Cabinet Secretary and the County Executive Member for Finance at the national and county levels respectively must issue a circular to all government departments advising them on how to prepare their budget requests for the year. The circular should also contain the budget formulation calendar for the year, including opportunities for public participation.

**SEPTEMBER 1.** Counties must prepare and table the Annual Development Plan in the County Assembly by this date. The plan must be made public within 7 days. The Annual Development Plan is meant to be the key planning document that guides the budget-making process for the next year. It is a one-year extract of the five year County Integrated Development Plan, which every county must also produce.

**OCTOBER 21.** After cabinet approval, the national and county Budget Review and Outlook Papers must be tabled in the national and county assemblies. These documents serve three purposes: they review the previous year's budget performance (year-end review), they update current year economic expectations (for inflation, growth, etc.), and they propose a distribution of the coming year's budget across key sectors like health and education (this distribution is known as the "provisional ceilings" for each sector).

**JANUARY 1.** This is the latest date by which the Commission on Revenue Allocation submits its recommendations for how much should be distributed to each level of government (national and county) through the annual division of revenue process. These recommendations are meant to inform the Division of Revenue and County Allocation of Revenue Bills tabled annually in Parliament by February 15.

**FEBRUARY 15/28.** After the BROP provides the provisional ceilings for each sector, both levels of government are expected to organise sector hearings. These hearings give sectors an opportunity to discuss and decide on their priorities for the coming year, and to bid for additional resources from the budget. The public is expected to participate in these discussions and give its views on which sectors should receive more funding and for what. The final decision about the total size of the budget and the distribution of funds across each sector is set in the national Budget Policy Statement (tabled in the National Assembly by February 15, to be approved within two weeks) and the County Fiscal Strategy Paper (tabled in the county assemblies by February 28, to be approved within two weeks). These papers are meant to be accompanied by the Debt Management Strategy Papers at both levels, because setting the total size of the budget means setting the deficit and has implications for debt management. As noted above, the National Assembly also receives the Division of Revenue Bill by February 15.

**APRIL 30.** The national and county budget estimates are tabled on this date in the respective assemblies. This is the detailed budget at programme level (which is below the level of ministries). At this stage, the total budget and sector distribution should not be changed, but funds may be moved around between programmes. At both levels of government, assemblies have two months to make these changes.

**MAY.** This is likely when the national and county assembly budget committees will begin to hold public hearings on the budget estimates, a legal requirement.

**JUNE 30.** End of the financial year. By this date, the national and county Appropriation Bills should be approved by assemblies at both levels. These bills authorise the Government to spend against the budget from July 1.

**OCTOBER 31.** Executives at both levels of government are required to publish quarterly budget implementation reports and table these in their respective assemblies. Counties must produce these within one month of the end of the quarter, while the National Government has 45 days. The 1st quarter county implementation report should be produced by October 31. The other reports are to be produced as below:

1. **NOVEMBER 15.** National Government publishes 1st quarter implementation report.
2. **JANUARY 31.** Counties publish 2nd quarter implementation report.
3. **FEBRUARY 15.** National Government publishes 2nd quarter implementation report.
4. **APRIL 30.** Counties publish 3rd quarter implementation report.
5. **MAY 15.** National Government publishes 3rd quarter implementation report.
6. **JULY 31.** Counties publish 4th quarter implementation report.
7. **AUGUST 15.** National Government publishes 4th quarter implementation report.

**DECEMBER 31.** The Auditor should produce and publish an audit report on the previous financial year within six months of its close (six months after June 30).

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