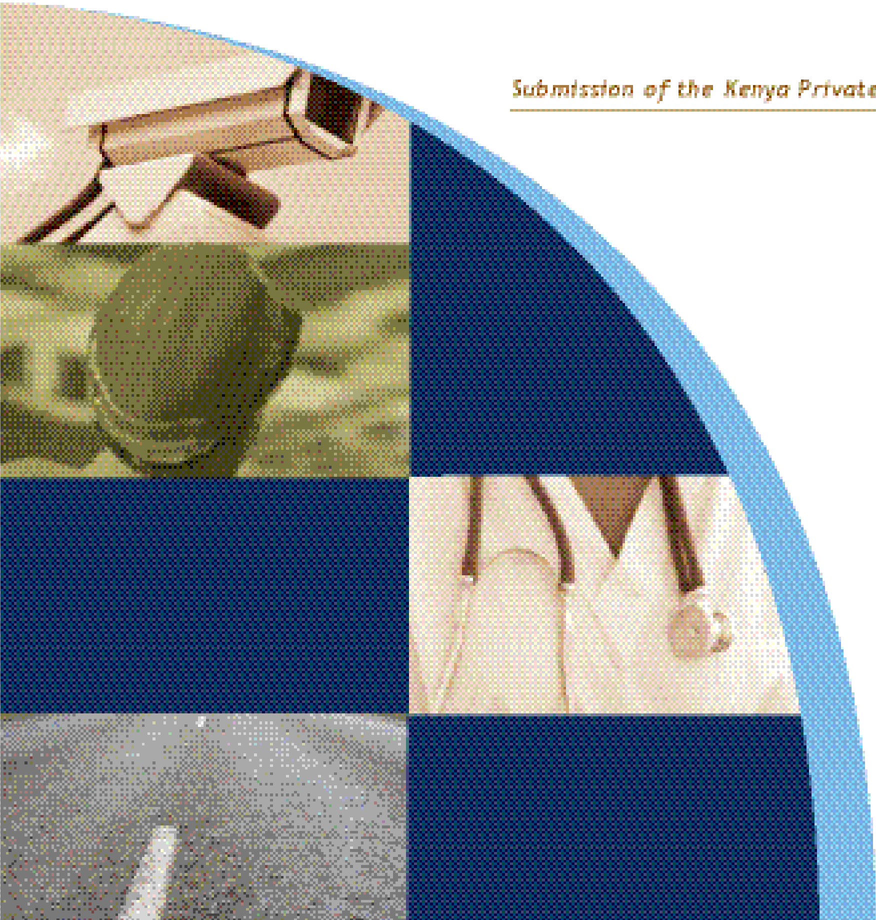
Realising the Potential of the Private Sector in Kenya

Submission of the Kenya Private Sector Alliance



Preface

The National Business Agenda is a product of some Business Membership Organisations (BMOs) most of them affiliated to the Kenya Private Sector Alliance (KEPSA). It has been developed to serve as a joint platform for the articulation of key concerns of the business sector in Kenya that require urgent action by government in order to deepen the private sector and enable it to play its key role in wealth and employment creation.

The organisations who have contributed to its development are the

American Chamber of Commerce of Kenya (ACCK), Association of Micro Finance Institutions (AMFI), Computer Society of Kenya (CSK), East Africa Tea Trade Association, Federation of Kenya Employers (FKE), Fresh Produce Exporters Association of Kenya (FPEAK), Kenya BPO and Contact Centre Society, Kenya Flower Council (KFC), Kenya Association of Manufacturers (KAM), Kenya ICT Federation (KIF), Kenya International Freight & Warehousing Association (KIFWA), Kenya National Chamber of Commerce and Industry (KNCCI), Kenya National Federation of Agricultural Producers (KENFAP), Kenya National Federation of Jua Kali Associations (KNFJKA), Kenya Security Industry Association (KESIA), Kenya Shippers Council (KSC), Kenya Tourism Federation (KTF), Telecommunications Service Providers of Kenya (TESPOK), Health Sector Federation (HSF), MSE Sector Federation and Kenya Private Sector Alliance (KEPSA).

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THE NATIONAL BUSINESS AGENDA

Prepared and submitted by
Constituent business organisations affiliated to the
Kenya Private Sector Alliance

(See full list on page 37)

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Table of Contents

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(Kepsa)

Foreword

The Voice of Business must be heard at the heart of every effort by Government to transform the economy and deliver on the promise of a better life for all Kenyans. It is only business that creates wealth and jobs for everyone in a sustainable manner.

This makes it imperative that Government should support business by creating an enabling environment for enterprises to thrive and grow, thereby generating jobs and wealth that can pay for necessary government services such as schools, security, roads, hospitals and other related public services enjoyed by all without discrimination.

We like to call it growing thriving and competitive businesses. It means recognising that Kenya's development lies in creating an environment for its businesses to become more competitive, and to provide more opportunities for businesses to do well.

The Kenya Government has in various statements and documents recognised the centrality of the private sector in the delivery of its development aspirations and has sought, through various initiatives, to improve the performance of the sector in order to enable it to play its role. The latest of these initiatives is captured in the Private Sector Development Strategy (PSDS) launched in 2007 and the Vision 2030 launched just a few months ago.

The private sector is of the opinion that the Government would find it useful to receive from business an indication of the areas for priority action on which to apply energy and effort in ensuring that enterprises play their core role of wealth and employment creation. The National Business Agenda highlights the core of this.

A common theme that underpins our recommendations to Government is ensuring that Kenyan firms are 'competitive' enough to meet the challenges of operating in an open and liberalised economy. If Kenya is to develop a competitive edge in the face of globalisation, action is needed on a wide range of fronts, including the provision of required infrastructure, transformation of agriculture into high value business, and cutting red tape among other key requirements.

Business has a crucial role to play in helping government identify pro-growth, pro-business, and pro-employment initiatives. To this end, we wish to submit the National Business Agenda as our proposals for enabling Government realise this goal.

We remain willing to partner with Government in delivering a better business environment that would unleash the latent potential of the Kenyan business sector of all sizes across all sectors.

The business community is grateful to the Kenya Association of Manufacturers for leading our efforts in the preparation for this first NBA and ably providing the secretariat services.

I commend the NBA to you to help us all chart the path to a more competitive Kenya. •

Vimal Shah
Chairman, Kenya Association of Manufacturers

About the NBA

Vision 2030 acknowledges that the private sector will play a crucial role in virtually all sectors of the economy towards economic growth and poverty reduction. In this regard, Vision 2030 does take cognisance of the fact that the Government will have to provide an enabling environment for the private sector to thrive and support economic development. Reduced cost of production for the private sector will lead to affordable cost of living and reduce pressure on government to increase salaries as witnessed in the recent past.

Through the NBA, the private sector is positioning itself to play its rightful role of engaging Government in the realisation of Vision 2030 – first in identification of key priority areas, and secondly in working in partnership with Government to find practical solutions to issues. This calls for better organisation of the private sector to develop strategies that will deliver on the aspirations of Vision 2030.

In this regard, national business membership organisations in Kenya are proud to present the first National Business Agenda (NBA). The NBA is an initiative of the business community that brings out in one voice, a public statement of most important policy and other issues currently affecting Kenya's business community. We invite Government and other appointed/elected leaders to take note of the NBA and to actively join forces in search of solutions to these issues in order to strengthen the private sector in Kenya.

The development of the NBA has been a consultative and representative undertaking. It involved 20 business organisations representing a cross section of Kenyan enterprises from various sectors. While the NBA might not be exhaustive, it nevertheless identifies the critical issues that require urgent attention from Government in partnership with the business community.

The NBA is a living document and will be continuously refined and updated to reflect progress and changing times. It will become the platform for private sector advocacy and public-private partnership dialogue.

The Kenya Association of Manufacturers is very pleased to have offered secretariat services for the development of this first NBA on behalf of the Kenya Private Sector Alliance and remains willing to work with other business associations in following up on the issues raised herein as part of our joint advocacy agenda.

12 Priority Challenges
for deepening the private sector in Kenya

This NBA identifies key challenges currently facing the Business Community in Kenya and proposes actions to create a more conducive environment for increased investment, jobs and wealth creation.

The Priority Challenges are:

1. Provision of improved and adequate physical infrastructure;
2. Fighting crime and insecurity;
3. Achieving meaningful and less burdensome business regulation;
4. Ensuring that labour market regulations incentivise creation and expansion of employment;
5. Expanding external trade trhough improved facilitation and market access;
6. Creation of a tax regime and tax administration conducive to business growth;
7. Transformation of Micro and Small Enterprise (MSE) Sector for sustained growth;
8. Revitalisation and transformation of Agriculture;
9. protection of Intellectual Property Rights (IPR) and dealing with counterfeits and piracy;
10. Unleash ICT potential to drive innovation and growth;
11. Building an Effective and Efficient Public Service
12. Enhanced government/Private Sector engagement and coordination.

The Business Agenda...

A country's competitiveness is a composite result of the country's institutions, policies and factors that determine productivity. Therefore, a thrust for competitiveness is both the responsibility of firms as well as the government where these firms are located. The discharge of the necessary government actions in regulating the economy and delivery of public service is critical for competitiveness. A country needs a critical mass of enabling physical infrastructure and a supportive investment climate for business to thrive and grow.

Kenya has recognised the centrality of business and the private sector in delivering the developmental and growth objectives of government. The accelerated growth experienced since 2003 has confirmed that Kenyan enterprises can seize the opportunities created by Government policy for wealth and employment creation to achieve their own growth objectives.

The key challenge for Government is to create and sustain the environment and conditions in which Kenyan businesses can transform themselves into growing competitive enterprises that prosper in an open economy. The priority for government is to review the business environment and tackle underlying weaknesses that are holding back the full strength of Kenyan business from being unleashed.

To ensure our prosperity AND harmony as a nation:-

- We share in the aspirations for rapid growth sustained over the medium and longer term by increasing the productive capacity of the economy; and
- Ensuring that such growth is widely shared within KENYA towards redressing our existing inequalities.

To deliver such growth over the next five years, the private sector will require:-

- Our productivity and labour absorption needs to rise relative to the current level in order to expand opportunities for more Kenyans. Our productivity should rise relative to our key competitors especially in export markets.
- Reduction of operating costs arising out of an unfavourable business operating environment. Such burdens arising out of infrastructure challenges, insecurity and bribery cost Kenyan firms more than 20% of sales annually.
- Transformation of our small holder agriculture into high value businesses.
- A growth in business, with an increase in survival and transformation of small business into vibrant growing competitive businesses.
- Increase in regional and global market share of Kenya's value added exports.
- A safe and secure environment that promotes economic activity.

This agenda sets out some essentials if Kenyan business is to flourish. It sets out in greater detail what the Government must do to help make this a reality.

1. Fix and improve Physical Infrastructure

The provision of productive public physical infrastructure is among the top priority issues for the private sector. Infrastructure is critical in lowering the cost of doing business. Our recommendations include the following:-

1) Implement a policy framework for public private partnerships for infrastructure development.

- **Roads:**
  - The business community urges expeditious completion of ongoing works and continuous maintenance of the rest of the national trunk and feeder road network. Specifically, we urge that Government rehabilitates and / or reconstructs all class A, B and C Roads by 2010 and all key national and international highways constructed to dual carriageway status by 2015.
  - A maintenance plan that ensures repairs on roads are undertaken within 48 hours should be prepared and implemented by 2009.
  - Government should prioritise roads that have direct impact on businesses e.g. industrial zone roads and feeder roads in agriculturally productive areas. The roads in Nairobi's Industrial Area and particularly Enterprise Road are of immediate concern.
  - In order to ensure a quick recovery in tourism, we need to have major repairs and resurfacing of the roads leading to and within the parks and rehabilitation of the airstrips within the National Reserves and Parks.
- **Ports & Railways:**
  - There is need for continuous improvement of Kenya's ports and

railway lines to sustain international competitiveness.

- The Port of Mombasa should operate on a 24-hour basis, aim to reduce dwell time for containers and cargo at the Port to not more than 12 hours by the end of 2010, and adopt modern and electronic systems of clearance.
- The container terminal needs expansion and goods clearance process quickened.

Energy:

Besides roads, the other main infrastructural constraint is energy cost, reliability, quality and capacity. We have noted improvements in recent years. However, many firms still experience loss arising out of electricity failures and many rely on self-supply and generators.

With increased economic growth, Kenya needs additional energy supplies urgently as well as:-

- Improve on cost, quality, reliability and capacity to attract investors and increase productivity.
- Government should stick to the set plan on getting additional power to the grid.
- Ensure that the Low Cost Power Master Plan is followed through and reviewed by relevant stakeholders. While the target for generation capacity in the LCPDP is 1500MW by 2010, with anticipated growth in the economy and especially the ICT sector we feel this should be revised to 2000MW.
- Formulate policies to spur fast growth in alternative sources of power too by encouraging private sector participation, in order to avoid overdependence on hydroelectric and thermal sources.
- Make the promotion of energy efficiency and use of energy efficient equipment both at industrial and domestic level a key priority.
- The challenge of unpredictable electric energy tariff costs, especially with the fuel cost component remaining volatile, should be given priority with a view of attaining a stable tariff regime.

2. Fighting crime and insecurity

Crime is a big cost to business. In 2007, 33% of Kenyan firms reported crime as a serious obstacle with losses of up to 4% of sales. Kenyan firms spend 3% of annual sales on security services and a significant amount informally on protection rings to avoid crime and arson. Crime affects decisions on location and business operation hours. In this regard, our key recommendations include:

- Business needs Government's commitment on provision of security and fighting crime.
- Commitment to increase resources for criminal justice system and ensuring compliance with the law.
- Improved use of intelligence in crime prevention.
- Establish the Metropolitan Police, retrain and equip the police adequately.
- Government to invest sufficient resources to improve the quality of security services.
- Government to encourage joint patrols in industrial and business areas, between police and private security firms in order to improve rapid response and deterrence on crime.
- Consideration should be made for provision of motor bikes to Police units in crime prone areas for effective patrolling in designated areas. Private sector is willing to assist.

- Government should step up and invigorate the community policing programme.
- Business urges continued commitment to the provision of security throughout the country, improvement of the quality and capacity of the police and other security forces, and vigilance over our borders.
- Security enhancement in key distribution corridors should be heightened following the post-election violence.
- Consider creation of Nairobi Metropolitan Police Commission.
- Seek a sustainable solution to the security problem in the country.
- Strengthen the Tourist Police Unit by providing proper equipment and personnel.

3. Achieve meaningful and less burdensome **business regulation**

The current business regulatory framework imposes high transaction costs on businesses. The multiplicity as well as the administrative burden of regulations increases costs to businesses. The focus now should be on:

- Expediting the rationalization of the more than 600 superfluous licenses that still remain. All those that do not serve health, safety, and environmental protection purpose should be repealed.
- Despite elimination, we have seen introduction of new licenses all of which undermine the Government's licensing reform programme. A cap should be placed on new licenses and levies.
- Strengthen the Business Regulatory Unit (BRRU) to play its intended role as a gatekeeper with adequate legislative proposals.
- Government should establish Standing Working Group for regulatory reforms. Such a working group should include private sector representatives.
- Local government should also be encouraged to creatively find other sources of income and rely less on licence fees.
- In the case of Environmental Regulations, there is need to streamline the regulation making process in ensuring stakeholder involvement, proper implementation mechanisms, reduction of the number and cost of licenses, trimming down the burden of compliance, and enhancing the capacity of National Environment Management Agency (NEMA).
- Develop economic instruments and incentives as a tool for environmental management; explore economic incentives such as duty waivers or tax rebates for businesses that comply particularly those that more than meet requirements of the law.
- Strengthen NEMA as the Designated National Authority (DNA) to exploit the huge opportunity for "Clean Development Mechanism (CDM) projects" also referred to as "Carbon Trading" in Kenya.
- The Government to put in place firm measures to protect ecologically fragile ecosystems such as the Mara and other key tourist areas from developmental activities that have long-term negative effects. In particular, there must be Management Plans developed for all such areas before further development is instituted.

4. Ensure that **Labour Market Regulations** incentivise creation and expansion of employment

Labour market regulations are an important factor in determining employment expansion and absorption within the economy. For a country with large unemployment like Kenya, it is particularly critical to ensure that labour market regulations do not hamper the absorption of the youth into the labour market.

In order to ensure the competitiveness of Kenya's businesses, it is important that we make sure that the existing and any new labour laws do not add to the cost of doing business. The private sector is of the opinion that the implementation of some of the provisions in the recently enacted labour laws will not only create a hostile environment between employers and workers but will also drastically increase the cost of doing business in Kenya.

Rigidity in the labour market discourages creation of jobs in the formal sector and confines even more of the workforce to the vulnerability of the informal sector. This is not the choice the Kenyan economy should be making at this time.

- The business community has requested the Government to reopen debate on these new legislations in order to redress the noted rigidities and a review of the labour laws to be inclusively expedited. Such review should target identified sections of the new labour laws that are not only difficult to implement but have serious financial implications that make businesses uncompetitive.
- Establishment of a mechanism to promote closer collaboration between training institutions of higher learning and private sector in order to offer demand-driven curricula that targets not only Kenya but also the East African region by end of 2008.
- Conduct an updated manpower survey so as to establish appropriate supply and demand levels in human resources. The last manpower survey conducted 20 years ago is obsolete. The current mismatch of skills causes unnecessary unemployment leading to low productivity. This exercise should commence before mid 2009.
- Implement the decision to ensure that wage awards are in line with increased labour productivity. Wage guidelines should be more explicit on the proportion of wages for compensation arising from cost of living indices and productivity so that compensation of wages should be at half the rise in cost of living indices during the period under review, with any further compensation being based on improved productivity.

5. Expand External Trade through improved facilitation and Market Access

Issues relating to trade facilitation are important in determining the efficiency, delivery and cost of goods and services in an economy. The recommendations of Kenya's private sector are as follows:-

- Speedy operationalisation of monitoring and dispute resolution mechanisms Non-tariff barriers (NTBs).
- Appoint a Trade Commissioner and able negotiators in trade agreements supported by adequate Government Machinery and commercial attaches.
- Reduce the number of required documents and processing time taken at entry points.
- Enhance capacity of the ports to handle increasing cargo levels and improve throughput.
- Improve coordination of all agencies involved in trade facilitation in order to reduce time taken to complete processes for import and export of goods and services.
- Eliminate delays related to weighbridge procedures, police roadblocks and related barriers by the end of 2008. Weighbridges should be privatised or outsourced.
- Government to put in place the necessary frameworks to facilitate growth in services e.g. agreements that promote the free movement of professionals and services in the region and internationally.
- Establish a sustainable source of destination marketing funds to be channelled through the Kenya Tourist Board. Such funds should have a bearing on the earnings attributed to the sector.
- Ensure key border posts operate on a 24-hour basis in the tourism circuit.
- Within the EAC, ensure key border posts operate on a 24-hour basis on both sides and establish a one-stop custom post at the border posts in the short term by end of 2009.
- Customs to establish a Customs Advisory Committee to inform on customs trends that impact on Customs operations, give feedback and strengthen ties between the department and the Ministry of Trade.

6. Create tax regime and tax administration conducive to business growth

Kenyan businesses find taxes and levies high and the administrative burden irksome. In 2007, 50% of Kenyan firms interviewed during the Investment Climate Assessment report find taxes a severe problem. Taxes and levies charged in Kenya include the corporate tax (30%), Standards Levy, Social Security contributions, Single Business Permit, Industrial Training levy, vehicle tax, land rates, taxes on financial transactions, VAT and Stamp duty. The cumulative burden is nearly 51% of profit! In addition to this there are various licenses and permits given by various departments which also attract payments. Many departments and agencies increasingly view this as additional sources of revenue thus compounding the burden faced by business. The recommendations of the private sector with this regard are:-

- Reviewed and rationalise the excessive number of taxes, charges and levies that businesses are subjected to.
- Government to commit to reduce the business tax burden-level.
- Reduce the complexity of forms and time taken to file tax returns e.g. by introducing electronic filing. The focus should be a move towards a tax system that emphasizes simplification and reduction of administrative tax burdens.
- Increase fund allocations and expedite VAT and Excise duty refunds process. No refund should remain pending for a period exceeding 180 days. KRA should start paying interest on further delayed refund claims.

- A permanent National Budget Steering Committee incorporating major players in the Private Sector should be formed, aimed at opening up an inclusive budget making process.
- Provide for Export Horticulture Incentive Scheme akin to the EPZ (Export Processing Zones) and MUB (Manufacturing Under Bond).
- Spearhead the resolution of the anomalies noted in the EAC Common External Tariff to ensure proper classification of raw materials and finished goods in the Common External Tariff (CET). Unilateral application of the EAC Common External Tariff should not be allowed among the Partner States.
- Rationalise the Pre-shipment Verification of Conformity (PVOC) programme or phase it out all together.

7. Development and Transformation of **Micro and Small Enterprises** (MSEs)

Micro, Small and Medium Enterprises (MSMEs) remain the most critical sector for employment creation. Previous support has not yielded necessary results in transformation and emergence of growth oriented enterprises. Legal and infrastructural support is needed to facilitate long term growth and sustainability of this critical sector.

In this regard, special attention and focus is required to ensure that the sector is mainstreamed in Government Planning and Development. Our recommendations centre on:

- Securing Government's commitment to support the MSME sector in terms of Business Development Services, credit and market access.
- Need for a business regulatory framework that facilitates compliance with requirement for formalization of sector.
- All thematic areas in the *Sessional Paper No. 2 of 2005 on Micro and Small Enterprises Development and Employment Creation* should be implemented and an MSE Council formed to co-ordinate the sector.
- Commitment to demonstrating the centrality of the sector by providing a Government oversight responsibility to a specific Ministry and a one-stop Agency for Small Business Growth. In previous times, the MSE support and ownership has straddled two ministries namely Ministry of Labour and Ministry of Trade & Industry; and now also the Ministry of Industrialisation. It is important to locate Government support and incentives in most appropriate ministry.
- Set-up a one-stop agency for the promotion of MSE development. This would ensure better coordination, coherence and consistency of policies and regulations impinging on MSEs. The Sessional Paper No.2 of 2005, which became the MSE Bill in November 2007, needs to be enacted into the MSE Act.
- There is need for the Government to provide a financial scheme for MSE. The scheme should set the lending ceilings and interest rates, as well as provide a guarantee scheme for leading MSE sector development / industry development.

8. Revitalisation and transformation of Agriculture

Agriculture continues to play an important role in the Kenyan economy in terms of feeding the nation, support to industrialization, employment creation, and foreign trade. Our recommendations include:

- Review the agriculture policy and harmonise legal and institutional frameworks.
- Strengthen and harness the role of smallholder farmers through the development of strong farmers' institutions and associations.
- Government to enforce legislation that caps bank and financial institutions lending at 17% of their total lending to agriculture.
- Government to increase funding to Agricultural Finance Corporation (AFC) and to ensure that the bulk of those resources go to smallholder farmers.
- Enforce current policies on the utilisation of land resources. Continued subdivision of agriculturally productive land makes it non-viable.
- Issuance of land ownership certificates to be speeded up in most parts of the country.
- Adoption of irrigated agriculture to be speeded up in order to exploit the additional over 300,000 hectares that is available for irrigation but is currently unexploited.
- In adopting bio-fuels as alternative sources of energy, there is need to target Arid and Semi-arid Land (ASAL) areas and other marginal lands to promote the cultivation of high-demand cash crops such as Jatropha, thus leaving the high potential agricultural land free for food production to enhance food security.
- Streamline distribution channels for improved seed varieties to reach smallholder farmers and to minimise chances of adulteration of the same by unethical stockists. Government should establish surveillance mechanisms to ensure that stockists who adulterate inputs are struck off its eligible stockists lists.
- Empower the National Cereals and Produce Board (NCPB) to import fertilisers in order to break the cartels which exploit farmers.
- The Government should work out ways of making tractors and diesel affordable and accessible to farmers.

- Government support in exploring emerging markets e.g. flower growers would like Government support in exploring new and underdeveloped cut flower markets (i.e. USA, Japan, Korea, Singapore, and the UAE) as well in direct marketing.
- The Government should set up a one-stop investment centre, which ensures that all necessary paperwork is processed quickly and an investment permit issued within 10 days. In addition, investors should be given a tax holiday and access to long-term loans (over 10 years) at a 7% interest rate.
- Construct proper markets in cities and towns to enable farmers to sell their produce.

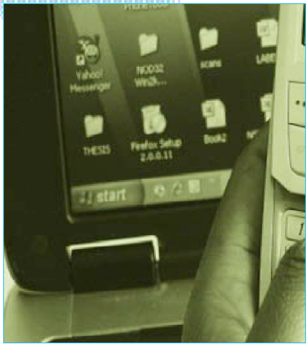
9. Protection of Intellectual Property Rights and dealing with Counterfeits and Piracy

There is need to enforce intellectual property rights, curb abuse on counterfeits and dealing with piracy. Many Kenyan firms have experienced reduced market share due to the movement of fake products in the channels of commerce. Of great threat is the counterfeit trade in pharmaceutical and food products. The Kenya IT industry, projected to be a major contributor of taxes and jobs, is threatened by piracy.

Recommendations on the issue include:

- The Anti-Counterfeit legislation should be enacted and implemented in the shortest time possible.
- Improve capacity of public institutions charged with enforcement of the anti-counterfeit measures. There should be consolidation and strengthening of institutions that deal with counterfeit goods and IPR infringement.
- The government should carry out public awareness campaigns on the harmful effects of counterfeit goods.
- Curb diversion of transit goods.
- Strengthen and modernise laws on intellectual property rights.

10. Unleash ICT Potential to Drive Innovation and Growth



ICT is the single most effective stimulus to economic growth as it contributes around 3% points to economic growth in emerging and developed economies. Our recommendations include:

A continuous National ICT policy process must be in place, with associated mechanisms that ensure rapid implementation as called for by the global economy. Kenya needs to enact the National Innovation Policy.

The national innovation system will align private sector, public sector and academia, often through indispensable international alliances. ICT with its innovative power boosts global competitiveness by supporting efficient trading, outsourcing and production processes and tends to lock out businesses that are unable to participate in the digital economy. This is already shown in the international tourism industry. ICT enables innovation by supporting advanced design and production processes. It is also an innovation enabler in its own right, by building a digital society where public services and private sector have aligned their processes. At the moment, the slow implementation of E-government constitutes a disjoint between noble policy objectives and business processes in public, private sector and academia. There is a lack of alignment between higher education and Private sector The potential contributions to innovation by higher education are not being realised.

- The newly revamped Science, Technology and Innovation (STI) Commission should be chaired by the Prime Minister's Office. This is in recognition of the important role that science, technology and innovation plays towards socio-economic development.
- A continuous National ICT policy process must be in place, with associated mechanisms that ensure rapid implementation as called for by the global economy.
- ICT enables and drives innovation and competitiveness and helps modernize education.

Key Recommendations include:

- Kenya needs to enact the National Innovation Policy.
- The newly revamped Science, Technology and Innovation (STI) Commission should be chaired by the Prime Minister's Office. This is in recognition of the important role that science, technology and innovation plays towards socio-economic development.
- A continuous National ICT policy process must be in place, with associated mechanisms that ensure rapid implementation as called for by the global economy.
- The National ICT policy must be organised as a continuous process with measures in place for fast implementation and strong results monitoring instruments.
- Market segments where Kenya's ICT sector has competitive advantage must be supported by policy, fiscal and Government-backed financial incentives. These segments include: Business Process Outsourcing (BPO) and software development.
- Regulatory and Fiscal incentives must be introduced to support innovation in the SMEs sector, enabled by ICT.
- The Higher Education reform programme (National Strategy for University Education) should be enacted to promote alignment of private sector in academia and stimulate innovation.
- Access to internet, combined with promoting availability of education content must be introduced at primary and secondary school level.
- Development of laboratories for ICT companies in the SMEs sector must be built with Government support, to empower capacity to innovate and to stimulate productivity in Business Process Outsourcing and software development.
- Completion of the consolidated ICT Legal and Institutional Framework.
- Strengthen the new Kenya ICT Board with a view to promoting industry capacity, standards, quality and innovation.
- Develop the BPO Sector by ensuring the provision of adequate financial resources for marketing Kenya as an outsourcing destination. A budget of not less than US £ 2 million is needed to make an impact.
- Constitute a Public Private Partnership between the Government and Kenya BPO Society through formation of a 6-man standing committee to jointly develop policies and strategy for the industry.
- Capacity building of personnel to work in the ICT industry. A deliberate capacity building of not less than 10,000 trained youth within the next one year, to work in call centres and data centres, using international benchmarked training courses.
- Put in place E-Legislation for data protection and E-Transactions in call centres and data centres.

11. Building Efficient Public Service

For Kenya to become a globally competitive economy, it needs an efficient, world class public service that is results driven. Key business recommendations are:-

- Government to continually commit to public sector reform in order to bring about greater efficiency and productivity in the public sector.
- Ensure public service is result-oriented and enforce Performance Contracting by including penalties for non-delivery of targets.
- Introduce and entrench commercial principles in public management for major spending departments.
- Rationalise and re-orient investment promotion and trade facilitation agencies.
- Government to invest and promote urban development and overhaul urban authorities and municipalities to enable them deliver services and deal with urban growth and expansion.
- Automate Government services to reduce rent seeking opportunities in pursuit of services.

Rationale for Prioritising Issues in the National Business Agenda

The Government through Vision 2030 acknowledges that the private sector will play a crucial role in virtually all sectors of the economy towards economic growth and poverty reduction. In this regard, Vision 2030 is cognisant that the Government will have to provide an enabling environment for the private sector to thrive and support economic development.

The NBA has identified 14 key issues that are hindering growth of the private sector and contribution to Vision 2030. We expound here below in detail on each of the priority issue focusing on the challenges and way forward.

1. FIX AND IMPROVE PHYSICAL INFRASTRUCTURE

This is perhaps the most important issue for private sector that needs urgent attention. Currently, the quality and cost of the physical infrastructure imposes the highest cost on businesses. The state of roads; cost, reliability and quality of energy; reliability of water supply; affordability and reliability of ICT services; efficient ports, and working transport system are all quite crucial in lowering the cost of doing business.

Roads: Government's plan to fix this great problem are appreciated and we have noted improvements on some roads and the on-going work on others. However, the situation remains dire and the whole road network requires urgent action. We also note the work that has been done in gravelling and opening up rural connectivity realised in class D and E roads.

However the State of our major Class A, B and C highways and roads that connect provinces and districts is atrocious.

Some of the priority roads include trunk /arterial roads in Western Kenya, Nakuru-Mau Summit-Kericho-Kisumu road and Nakuru–Eldoret road. Besides the international highways, it is critical to address the state of Class C roads that connect major towns and traverse district and provincial boundaries.

There is also need to work on feeder and rural access roads that access agricultural areas, upgrade all the main roads, and rehabilitate roads in major industrial areas in all the major cities and towns namely Nairobi, Kisumu, Mombasa, Nakuru, Eldoret, Kisumu and Thika.

Ports & Railways: We have noted marked improvements on Port operations. However, we need continuous improvements to sustain the same while working on international competitiveness. In particular, the Port of Mombasa should operate on a 24-hour basis to reduce congestion and delays. While appreciating the concessioning of the railway network, we note that it is operating below expectations and trust that the new investors in Rift Valley Railways (RVR) will improve the quality of services. We need to ensure quick capacity enhancement of railway lines to reduce the pressure on roads.

Energy: Besides roads, the other main infrastructural constraint is energy cost, reliability, quality and capacity. We have noted improvements in recent years that have reduced the business community's reliance on self-supply and generators. However, the quality of the power still leaves a lot to be desired. In addition, the business community is concerned that the national installed capacity is unable to provide sufficient energy for consumers who have already paid but not been hooked up. There are also too many taxes levied on power supply. This makes Kenya less competitive in comparison to other countries at its development stage.

To this end, we stress the need for Government to stick to the set plan on getting additional power on the national grid. We also need to ensure that the Low Cost Power Master Plan is followed and reviewed by relevant stakeholders. Alternative sources of power need to be intensified too to avoid overdependence on hydroelectric sources. Unnecessary taxes should be eliminated.

Information Communication Technology (ICT): ICT costs in Kenya are quite high compared to our competing countries. In order to reduce cost and in-built efficiency, we would like to see faster completion of the undersea fibre optic cable, review of excise tax and improved regulation of ICT services. Similarly, a consolidated ICT legal and institutional framework and national ICT master plan should be enacted. The Kenya ICT Board should also be strengthened to promote industry capacity, standards, quality and innovation. Other important considerations include finalization and adoption of "The Electronic Transactions Bill"; Others include rolling out of computer literacy for schools countrywide; Harmonisation of airtime costs within the region; Reduction and harmonisation of taxation in the telecommunications sector.

Transport Policy: Nairobi City has serious congestion and parking problems which have increased the cost of doing business through increased fuel consumption and idle time. We recommend that a national transport policy be put in place as a matter of priority to address the various transport concerns, including the need to come up with efficient public transport services in the cities.

Tourism Infrastructure Support: The Tourism sector has played a major role in the economic turn-round over the last quartet. However, the sector has recently suffered, and was the most hit by the post-election crisis. To ensure a quick recovery, we need to have major repairs and resurfacing of roads leading to and rehabilitation of airstrips within the National Reserves and Parks.

2. FIGHT CRIME AND INSECURITY

Insecurity places a great burden on businesses. Apart from loss of life and property, businesses have to invest additional resources to supply security within their premises and homes. The situation was worsened by the eruption of post-election violence. The re-emergence of outlawed militia in several parts of the country poses a serious threat to business operations. Investment cannot thrive under violence and instability. We urge the government to seek a sustainable solution to the security problem and militias in the country.

We expect that the Government will invest sufficient resources to improve the quality of security services. Sustained improvement in security will have a direct impact on economic activity.

The Business community urges continued commitment to the provision of security throughout the country, continued commitment to improvement of the quality and capacity of the police and other security forces and vigilance over our borders. We need security enhancement in the key distribution corridors heightened by the post-election violence. Improvements in public infrastructure and national penetration of the same would increase access and information flow in all areas of Kenya leading to better security and support to businesses hence create jobs and economic opportunities. Now that we have a full Ministry in charge of Nairobi Metropolitan, Government should consider creation of Nairobi Metropolitan Police Commission.

3. ACHIEVE MEANINGFUL BUSINESS REGULATION

The current business regulatory framework imposes high transaction costs on businesses through the high number of licenses required as well as the administrative burden imposed by regulators. We note with appreciation that the Government has already repealed close to 700 superfluous license requirements – eliminating about 350 and simplifying almost an equal number. However more than 600 licenses still remain and need to be expeditiously rationalised.

Despite these noble intentions, the municipal council officials still harass businesses on the same. There are still numerous demands for cess, wholesale travelling licenses, and branded vehicles license among others despite having been eliminated. We also have seen introduction of new by-laws by Local Authorities that do not resonate with existing Acts. In addition, we are increasingly seeing introduction of new licenses, which are not only cumbersome but also a burden to comply with. All these water down the Government's licensing rationalisation programme. Hence, a cap should be placed on new licenses and levies. The Business Regulatory Reform Unit (BRRU) should be strengthened and empowered to play its role as a gatekeeper on licenses.

The business community is particularly irked by the conduct of officials of local authorities whose enforcement of regulations is accompanied by uncivil behaviour such as harassment of businesspeople, breeding rent seeking avenues. Despite assurances that this would cease, many experience continued physical harassment.

We do appreciate the application of quality standards regulations, which is important for Kenyan products to penetrate the international trade. However, the motive is increasingly shifting from regulation to revenue generation. The recently introduced KEBs "Standardisation Mark" while well intended, is unjustifiably costly. Charging Ksh 20,000 per product/process is unreasonable. This is in addition to the KEBs Standards Levy of 0.2% and the Industrial Levy. These charges need to be reviewed. The contractual arrangements of the Pre-export Verification of Conformity (PVOC) programme, which has imposed huge costs to business, ends in 2008. This programme should be rationalised or phased out all together. If it must be retained, it should only apply to finished goods and should exempt raw materials, machinery, and spare parts imported for direct consumption by licensed manufacturers.

The Case of Environmental Regulations:

A clean and healthy environment is important for all. In this regard there is need to take care of the environment for present and future generations. While appreciating the need to protect environment, the key concern for business is the multiplicity of regulations whose cost and uncoordinated implementation has tended to harm investment. The business community would like to see reasonable regulations, involvement of private sector in their development, structured implementation, and negotiated compliance.

The introduction of regulations without laying the ground for smooth implementation has made it difficult for business to comply, leading to harassment by regulatory officials. Licenses and the respective charges are too high and seem to be driven by revenue collection motive rather than regulatory function. For some, the frequency of demands is too high. The capacity of NEMA to adequately advise and guide private sector in the implementation is also lacking.

Government needs to streamline the regulation making process and ensure stakeholder involvement and proper implementation mechanisms. Government should also review the number and cost of licenses to reduce the burden of compliance and enhance capacity of NEMA.

Industry players need to develop environmental economic instruments and incentives as a tool for environment management; explore economic incentives (duty waivers or tax rebates) as provided for under Section 57 of the Environmental Management and Coordination Act (EMCA, 1999) for those that comply and especially those that more than meet the requirements of the law.

Further, there is a huge opportunity for “Clean Development Mechanism (CDM) projects” also referred to as “Carbon Trading” in Kenya that remains unexploited. As the Designated National Authority (DNA), NEMA needs to be strengthened to handle this.

The introduction of an excise duty on plastics, though well-intended, is not likely to achieve its objective. The revenue raised from the tax is likely to disappear in the general Government kitty. Instead, we propose its replacement with a “green levy” whose proceeds should go directly to fund activities to clean the environment and/or recycling of post-consumer plastics.

Special consideration could be given to the horticulture industry where plastics are imported for expansive covering of greenhouses. Such plastics are currently being recycled. In addition, flower sleeves and fresh produce packaging materials produced for export should be excluded both from the excise duty and local standard requirement since they’re intended for different markets with different requirements, and there are mechanisms for their traceability out of the country.

The move by Government to develop an Environment Policy is most welcome. We expect to see a policy that promotes environmental management without harming investment and encourages afforestation from 1.8% to 10% cover.

- The Government should put in place firm measures to protect ecologically fragile ecosystems such as the Mara and other key tourist areas in order to protect them from developmental activities that have long-term negative effects. In particular, there must be Management Plans developed for all such areas before further development is instituted.

4. REVIEW LABOUR MARKET REGULATIONS

In order to ensure the competitiveness of Kenya's private sector, it is important to make sure that the existing and any new labour laws do not add to the cost of doing business.

Unfortunately, the new Labour laws come with increased welfare costs to employers with regard to maternity leave, paternity leave, and conversion of casual labour where now casual workers will get full benefits like regular employees.

Due to lack of implementation structures, the operationalization of the new labour laws is not possible. Hence implementation must be stayed since industry may not comply. A good example is the implementation framework for the Work Injury Benefits Act 2007.

The new labour laws especially sections 74-79 of the Employment Act 2007 create stringent administrative and management obligations to employers. This need not be the case. Such self supervision is expensive and will lead to investors opting for trading rather than manufacturing which will result in Kenya becoming a net trading economy with employment diminishing.

It is therefore prudent that the government considers incentives to cushion employers against the negative cost implications of implementation of the new laws and / or defer implementation until discussions are held among stakeholders. Any legislative measures that increase the cost of doing business will be counter-productive.

Additionally, the concept of wage guidelines needs to be removed. Any wage increase must be pegged on productivity. Employers cannot afford paying automatic wage increases without a corresponding increase in productivity. It is pertinent that a system of wage increase be designed based on productivity.

The Ministry of Labour should also be able to fund adequate representation of private sector in ILO tripartite meetings as required under the ILO Constitution Article 13 Section 2(A), which provides for Financial and Budgetary arrangements.

The Department of Industrial Training (DIT) levy is useful in supporting employee skills improvement. However, in order to make the scheme more relevant and useful, we need to agree on the best levy charges for each sector tied to benefits, and refund modes that will not tie up much needed capital.

The present training levy order defines an employee to include even casuals and it does not allow unionized staff to benefit. We need to rethink this definition since it is not viable for an employer to pay the levy on a casual worker who leaves the workplace after a short while. Further, the provisions need to allow unionized workers who in fact are craftsmen to benefit.

We recommend that approvals for training be accessed at Provincial level. Most employers outside Nairobi find it expensive to seek approvals from outside the capital city.

The across-the-board payment of DIT levy at 50/= per head is harmful to some while too soft on others. It is punitive business-wise to those with more than 1,000 employees, especially those in agri-based industries. This defeats the government's objective of creating employment and discouraging mechanization of labour at commercial farms.

The DIT needs to be independent. The current fragmented organization of the D.I.T across a number of Ministries has resulted in a lack of coherent policy and failure to develop national standards, equivalence of qualifications and arrangements to ensure increased quality provision.

Further, there is a mismatch between the skills of those successfully completing Technical and Vocational Education and Training (TIVET) programmes and labour market demands. In some areas of the economy there is an over-supply of skills and shortage in others. The low usage of TIVET by employers raises questions about the quality of and relevance of programmes that are offered. In addition, TIVET lacks the information on which to base decisions in key areas. Thus, there is need to conduct a skills audit of the industry.

This will check the prevailing labour market imbalances where there are insufficient numbers of artisans and craft workers and too many unskilled workers in the national labour force. The few available are not even equipped in modern technologies.

The skills balance needs to be designed in a manner as to equip the country to meet economic challenges and should reflect the range and balance of skills that the ILO recommends for developing economies.

5. IMPROVE TRADE FACILITATION AND MARKET ACCESS

Kenya has done fairly well in regional trade. This has been the case especially in Comesa and EAC were we have posted the largest share of intra-regional trade. However, the country still needs to enact and implement fast Non-Tariff Barriers (NTB) monitoring and resolution mechanisms.

Coupled with this is the need for Kenya

to invest in a Trade Commissioner and top-notch technical officers /negotiators and other government machinery that understands and is able to deliver on trade issues. Undoubtedly, the future of our market access in the regional and international arena will depend on the quality and outcome of our negotiations in trade agreements.

External trade procedures impose significant costs on businesses, thus compromising the ability of Kenya's suppliers to meet the demands of buyers. The importing process takes up to 37 days while exporting takes 29 days. This needs to be reduced by decreasing the number of required documents, processes and their processing time especially at the Port.

Improved coordination of all agencies involved in trade facilitation would improve the flow of goods out of the port. To augment this, we also need to have aggressive export promotion activities in order to expand our export growth.

Kenya should also expand its trade in services. To realise this fully, the business community urges the government to put in place the necessary frameworks to facilitate growth in services. Such include the conclusion of double taxation treaties with all the countries with which Kenya has strong business ties, as well as agreements that promote the free movement of professionals and services in the region and internationally.

6. CREATE TAX AND TAX ADMINISTRATION CONDUCIVE TO BUSINESS GROWTH

Kenya remains amongst the most heavily taxed economies in the world with 43% of businesses in the country finding tax administration a major constraint. The Government thus should increasingly focus on making taxes less burdensome on business and simple to administer.

The number of taxes, charges and levies that businesses pay should be reviewed including on key inputs such as Import Declaration Fees (IDF), Pre Export Verification of Conformity (PVOC) charges, fuel, electricity and telecommunications services.

The number of taxes not withstanding, there is need to reduce the complexity of forms and time taken to file returns e.g. by introducing electronic filing. Complex processes impose administrative burdens on taxpayers leading to tax avoidance and high enforcement cost on part of government! The focus should be a move towards a tax system that emphasises simplification and reduction of the administrative burden.

Tax claims and outstanding refunds of sums owed to business have continued to increase, thus tying up crucial capital for businesses. We want to see improvement on VAT and excise duty refunds that take too long to effect. Government should introduce a policy of paying interest to taxpayers on delayed payment of refund claims beyond 30 days as it can be noted that whilst KRA charges interest on late payments, businesses do not get interest on delayed refunds from KRA. While we appreciate Government's good gesture in allocating more funds for VAT refunds, a lot needs to be done in expediting claim refunds. This policy is already in place in Tanzania and Uganda.

In addition to the above, Kenya needs to move expeditiously to spearhead the resolution of the anomalies noted in the EAC Common External Tariff to ensure proper classification of products. The Government should set up a permanent inter-ministerial Budget committee to handle various tariff anomalies, especially as regards harmonisation and rationalisation of EAC customs Union. Furthermore, provisions to allow for changes in the protocol should be followed to avoid unilateral decisions in violation of the protocol and imposition of non-tariff barriers by Partner States.

7. DEVELOPMENTOF MICRO AND SMALL ENTERPRISES

The MSE sector is very critical for employment and wealth creation. Previous support has not yielded necessary results in transformation and emergence of growth oriented enterprises. Legal and infrastructural support is thus needed to facilitate long term growth and sustainability of the MSME sector.

All thematic areas in Sessional Paper NO 2 of 2005 on Micro and Small Enterprises Development and employment creation should be implemented and an MSE Council formed to co-ordinate the sector as recommended.

Previously, the MSE Sector has been torn between two ministries i.e. Labour and Trade & Industry and now the Ministry of Industrialisation. According to the private sector, MSE development and regulation should be anchored in the Ministry of Industrialisation and not straddle between different Ministries, as has been the case.

There is need for the government to provide a guarantee scheme for MSEs. This is very important for most MSE do not have adequate security.

The management structure of MSE is at a very primitive stage or not modernized in most cases. It is therefore necessary for capacity building to change this situation. This can be achieved in three ways:

- **Management reform itself:** Provide technical and financial assistance for modern management system such as transfer from family business or small informal business to a formal business.
- **Create new business:** Provide financial support and other incentives to assist in new business creation.
- **Technology Development:** Provide material, testing facilities and tools, equipments, researchers and experts as advisors, technical matching services, and human resource matching services.

In order to strengthen management infrastructure of MSE's, the following is noted:

- **Management Resources** – create MSE centres and provide Business Development Services (BDS) to improve management of MSEs in technical, financial, marketing, and training area. Provide tools for training of managers and employees in the area of technology, accounting, and management. Tools to assist in export development, energy savings and environmental management to also be provided.
- **Cooperatives** – Establish cooperative units by integrating MSEs and then transforming them into a normal cooperative or limited company, e.g. the KTDA model.
- **Labour Issues** – protect and manage the labour market by focusing on training for employees, encouraging improvement of capability, and promote the stability of the labour market.
- **Fair Trade and trade fairness** – MSE have a handicap on trading with large companies. There is need for clear laws and regulations to govern trade between large companies and MSE in support industries.
- **Business Development Services** – There is a need to develop and/or strengthen the BDS industry to support MSE development. Establish a local support industry and create strong linkage and ties with large, leading manufacturers and multinational companies in Kenya to promote outsourcing from large to companies to MSEs.
- **Government Procurement** – Enforce the 25% government procurement for MSEs.

It is important that an enabling environment be established to protect MSEs. This will include prevention of bankruptcy, disaster and social-economic structure adjustment. Protection will entail provision of legal representation and arbitration services through the chamber of commerce; and prevention through emergency government finance scheme. An insurance scheme for natural disasters and accidents is also needed.

There is currently little, if any, data and information for more focused and effective monitoring and comparison of the evolving capabilities and potential of MSEs in various sectors and industries. Benchmarks would constitute a solid input for the consideration of policy framers as well as for emulation by those in the lower tiers of suppliers. Data and information for monitoring and benchmarking purposes have to be obtained in an objective, systematic, periodic, and statistically robust manner. A pilot project for such remedial exercise is proposed.

MSEs should be encouraged to make the most cost-effective use of new technologies in production, marketing and networking. There is need to build up the ICT and e-commerce capabilities and potential of the MSEs, thus enhancing productivity and competitiveness on the supply side.

An enabling policy and institutional environment are key to MSE development. However, because of their limited scale of operations, the cost of participation and capacity building are relatively more disproportionate for MSEs, compared with those shouldered by large firms. At the same time by default or by accident, changes and adjustments in the policy, regulatory and institutional frameworks have not always empowered MSEs. The sector is often constrained by opaque discretion, overbearing regulations, and expensive delay.

8 SUPPORT FOR AGRICULTURE AND RELATED ISSUES

Agriculture continues to play an important role to Kenyan economy in terms of feeding the nation, support to industrialization, employment creation, and foreign trade. There is an urgent need to review the policy and harmonize legal and institutional framework.

There is thus a need to strengthen and harness role of smallholder farmers through development of strong farmers' institutions and associations, and support the formation of farmers' networks, which links the farmer to the national federation.

Access to Credit

- The Government needs to enforce legislation that restricts banks and financial institutions to lending only 17% of their total lending to agriculture.
- Government to increase funding to Agricultural Finance Corporation (AFC) and to ensure that the bulk of those resources go to the smallholder farmers;

Land Use

- Continued sub-division of agriculturally productive land makes it unproductive and its full potential minimized.
- Issuance of land ownership certificates to be speeded up in most parts of the country.
- Adoption of irrigated agriculture to be speeded up in order to exploit the additional over 300,000 hectares that is available for irrigation but is currently unexploited.
- In adopting bio-fuels as an alternative source of energy, there is need to target ASAL areas and other marginal lands to promote Jatropha growing, thus leaving the high potential agricultural land free for food production to enhance food security.

Access to farm inputs by smallholder farmers

- Streamline the distribution channels for improved seed varieties to reach the smallholder farmer and to minimize chances of adulteration of the same by government appointed unethical stockists. The Government is requested to establish surveillance mechanisms to ensure that stockists who adulterate inputs are struck off eligible stockists lists.
- Reduce the costs of fertiliser to smallholder farmer by streamlining importation processes to remove cartels that over-exploit the farmer by

over-charging. The Government to empower the National Cereals and Produce Board to import fertilisers in order to break these cartels along the various value chains.

- Kenya's smallholder agriculture is not fully mechanised and purchases of farm machinery have remained low, reducing from 1,500 pieces per year twenty years ago to the current 300 pieces per year. The Government should explore possibilities of hosting Indian or Eastern world farm machinery exhibitions where farmers can interact with manufacturers of cheaper farm machinery implements.
- Land preparation: The tractors used in preparation of land have had their taxes waived by the government but the parts when imported separately are heavily taxed. The diesel used on tractors is also heavily taxed. The Government needs to work out ways of making these inputs affordable and accessible to farmers.
- Quality standards: The agricultural sector faces standardisation problems when it comes to packaging and pricing.
- There is need to create a link between research institutions and farmers in order to improve productivity. Farmers should be sensitised on the importance of research so that they can finance it. Research should be demand driven.

Horticulture Industry:

- **The Brand Kenya Initiative:** This is a commendable and crucial step towards promotion of Kenya's export trade. There's need to enjoin the Kenya Flower Council and Fresh Produce Exporters Association in planning and implementation of this initiative at all levels i.e. local, regional, and international.
- **International Promotions Through Ministry of Trade and Ministry of Foreign Affairs.** A request for government support and participation in the promotion of Kenya's horticulture in major international markets such as Holland, UK, Germany, Eastern Europe, Japan and the USA. Such promotions also focus on rebuilding the image of the country in view of the post election crisis.
- **Government Support in Exploring Emerging Markets:** Flower growers would like Government support in exploration of new and underdeveloped cut flower markets (i.e. USA, Japan, Korea, Singapore, and the UAE) as well in direct marketing.
- **Incentive Scheme for Horticulture:** Kenya can learn from Ethiopia and Uganda where among the incentives offered by the Government to potential investors through a one-stop shop is setting aside land for use, contract signing in two weeks, electricity connection, and construction of access road. The one-stop investment centre ensures that all necessary paperwork is processed quickly and an investment permit issued within 10 days. In addition, the grower is given a tax holiday and access to long-term loans (over 10 years) at a 7% interest rate.

- **Review of Local Government taxes, levies and fees:** Local Government should resolve confusion and contradiction brought about by the exemption of export horticulture from Cess through the Agricultural Produce Cess (Adoptive By-Laws) Order, 1988 issued under Legal Notice No. 202 of 20th May 1995, and section 148 of the Local Government Act, through which Local Authorities continue to demand Horticulture Cess.
- **Strategic Environment Assessment (SEA):** The Ministry of Environment needs to support envisaged growth and expansion of the sector with a SEA to guide future developments. At the same time, consult with industry to develop standards that facilitate rather than retard growth.

9. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AND DEALING WITH COUNTERFEITS AND PIRACY

There is need to ensure respect for properties, curb abuse on counterfeits and dealing with piracy. Counterfeiters and piracy reduce earning of creative Kenya businesses, compromise the health of consumers, deny government revenue, and harm the credibility of Government assurances on quality and safety of products as provided by certifying bodies like the Kenya Bureau of Standards. It is critical that the Government address all these manifestations of the infringement of intellectual property.

Counterfeiting and piracy are widespread in East Africa and affect markets of Kenyan products and innovations. Both have led to the reduction in size of some business and relocation of others. The Business community estimates that it loses more than Ksh 20bn annually to this illicit crime and it is estimated that Government loses more than Ksh 35bn because of this. The threat to the health of Kenyans posed by counterfeit drugs currently estimated at more than 30% of the drugs in the market, cannot be over emphasized.

Counterfeiting is a criminal activity. It must receive due attention from government authorities as those who engage in counterfeiting engage in other criminal activities. To this end, the business community urges the finalisation and enactment of the Anti Counterfeits Legislation and implementation of the same once enacted. This will be facilitated by the improvement of capacity of public institutions charged with enforcement of the anti counterfeit measures. In addition, there is need for public campaigns on the harmful effects of counterfeit goods e.g. drugs, food additives and public destruction of counterfeit drugs and goods; and curbing diversion of transit goods.

10. UNLEASH ICT POTENTIAL TO DRIVE INNOVATION AND GROWTH

ICT is the single most effective stimulus to economic growth. It contributes around 3% points to economic growth in emerging and developed economies.

ICT with its innovative power boosts global competitiveness by supporting efficient trading, outsourcing and production processes and tends to lock out businesses that are unable to participate in the digital economy. This is already shown in the international tourism industry.

ICT enables innovation by supporting advanced design and production processes. It is also an innovation enabler in its own right, by building a digital society where public services and private sector have aligned their processes. Presently, the slow implementation of E-government constitutes a disjoint between noble policy objectives and business processes in public, private sector and academia. There is a lack of alignment between higher education and private sector. The potential contributions to innovation by higher education are not being realised.

ICT enables and drives innovation and competitiveness and helps modernize education.

Kenya's National ICT policy must be organised as a continuous process with measures in place for fast implementation and strong results monitoring instruments. In addition, a national innovation policy must be developed, to harness national economic strengths and address weaknesses, and to respond to international challenges and opportunities particularly in food production, energy management and ICT's for rural development.

Access to internet, combined with promoting availability of education content, must be introduced at primary and secondary school level. For robust competition, there is need for regulation to effectively manage and ensure fair competition in this sector. The interconnection cost is very high. Consider driving it downwards in order for the consumers benefit.

Regulatory and Fiscal incentives must be introduced to support innovation enabled by ICT. This will include consolidation of ICT activities under one roof – Ministry of Information and Communications; finalisation and enactment of the Electronic Transactions Bill and harmonization of taxation regime within the telecommunication sector.

Government Agencies like KIRDI, KIPI, KEBS should be revamped to support the ICT industry. This would result in better incubation and commercialization of projects. Improved management of Intellectual Property Rights and standards coordination and implementation.

All BPO and call centres should be regulated through policy as outlined by Vision 2030. Coordination of BPO SMEs for acquisition of international projects should be supported by the ICT board.

11. BUILDING EFFICIENT PUBLIC SERVICE AND ENHANCED GOVERNMENT/PRIVATE SECTOR ENGAGEMENT AND COORDINATION

Most businesses are located in urban areas. However, the management of our urban authorities and conduct of their affairs does not create a very conducive environment. The relationship between the urban governments and the business community is underpinned by a desire on the part of the former to maximize revenue collection. The business community expects that the Government will invest and promote urban development that overhauls and modernises urban authorities and municipalities to deliver services and deal with urban growth and expansion. Associated with the above has been unreliable water supply. Some water and sewerage companies are facing a lot of interference from the municipal council hence affecting their operations. In order to improve on service delivery we need to de link all water services providers from the local authorities.

For Kenya to become a globally competitive economy, it needs efficient, world class public services. Business requires a public service that is efficient and results driven.

Kenya's development policies and strategies have, in the recent past, focused strongly on the technical elements of developmental problems or initiatives, without due regard for the institutional framework within which they are to be implemented. Indeed, it is now widely accepted that dysfunctional institutions lie at the core of poor implementation of otherwise, very good policies developed previously. The Government has in the past created institutions, most of which had a bloated workforce that undermined their efficiency in service delivery. At the same time, there is evidence of mistrust and misconception between the Public Sector officers and Private Sector operators that consequently, has affected the development of mutual synergies. On the positive side, Kenya has certain relevant institutions within which development initiatives could be carried out. There are also reform initiatives within the Public Sector that will culminate in efficiency of service delivery.

- Business expects continued commitment to public sector reform to bring about greater efficiency and productivity in the public sector.
- Government should ensure that the public service has a Results focus and a service delivery culture.
- Enforce Performance Contracts by including penalties for non-delivery of targets.
- Introduction and entrenchment of commercial principles in public management in major spending departments.
- Commitment to partnership with the private sector.
- Rationalisation and re-orientation of investment promotion and trade facilitation agencies.

Conclusion

This NBA has identified key areas that need to be addressed to reduce cost of doing business and improving on competitiveness of private sector. The private sector urges the Government to incorporate these issues in its policy documents and to agree to their implementation.

We realise that investment climate issues can be quite dynamic and therefore priorities are likely to change with time. In this regard, the private sector aims to periodically revise and update the NBA – the target to review the document on an annual basis. As indicated above we are looking for a structured dialogue with Government at all levels.

The expectation of the private sector is that Government will remain committed to greater involvement of private sector in planning and implementation of its strategies and policies. Sustained collaboration between public and private sectors will definitely hasten economic growth and fight against poverty. This NBA should not only inform the Government plans, but should also be applied as a guide to prioritisation of areas to focus on improving the investment climate.

Kepsa Member Associations /Sectors

American Chamber of Commerce of Kenya (ACCK)

Association of Consulting Engineers of Kenya (ACEK)

Association of Kenya Insurers (AKI)

Association of Micro Finance Institutions (AMFI)

Association of Professional Societies of East Africa (APSEA)

Computer Society of Kenya (CSK)

Courier Industry Association of Kenya (CIAK)

Eastern Africa Association (EAA)

East Africa Tea Trade Association

Federation of Kenya Employers (FKE)

Fresh Produce Exporters Association of Kenya (FPEAK)

Institute of Certified Public Accountants of Kenya (ICPAK)

Institute of Quantity Surveyors of Kenya (IQSK)

Institution of Engineers of Kenya (IEK)

Kenya Alliance of Resident Associations (KARA)

Kenya Association of Manufacturers (KAM)

Kenya Association of Young Entrepreneurs (KAYE)

Kenya Auto Bazaar Association (KABA)

Kenya Bankers Association (KBA)

Kenya Booksellers and Stationers Association (KBSA)

Kenya Chamber of Mines (KCM)

Kenya ICT Federation (KIF)

Kenya Flower Council

Kenya Institute of Supplies Management (KISM)

Kenya Int. Freight & Warehouse Association (KIFWA)

Kenya Livestock Producers Association (KLPA)

Kenya National Chamber of Commerce and Industry (KNCCI)

Kenya National Federation of Agricultural Producers (KENFAP)

Kenya National Federation of Cooperatives (KNFC)

Kenya Private Developers Association (KPDA)

Kenya Publishers Association (KPA)

Kenya Security Industry Association (KSIA)

Kenya Tourism Federation (KTF)

Kenya Vehicle Manufacturers Association (KVMA)

Kenya Water Industry Association (KWIA)

Health Sector Federation (HSF)

Marketing Society of Kenya (MSK)

Media Owners Association (MOA)

Motorist Association of Kenya (MAK)

MSE Sector Federation

Nairobi Stock Exchange (NSE)

National Association for Technology Transfer and Entrepreneurial Training(NATTET)

Outdoor Advertising Association (OAA)

Private Independent International Schools Association (PIISA)

PSV Owners Welfare Association of Kenya (POWAK)