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MINISTRY OF INDUSTRY, TRADE AND CO-
OPERATIVES

STATE DEPARTMENT FOR CO-OPERATIVES

CO-OPERATIVE POLICY

Promoting Co-operative Societies for
Industrialization

2019

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ACRONYMS AND ABBREVIATIONS

ADR	-	Alternative Dispute Resolution
AFA	-	Agricultural and Food Authority
BPO	-	Business Process Out-sourcing
CAK	-	Co-operative Alliance of Kenya
CIC	-	Co-operative Insurance Company
CoG	-	Council of Governors
CoK	-	Constitution of Kenya (2010)
CSA	-	Co-operative Societies Act
ECCOS	-	Ethics Commission for Co-operative Societies
GDP	-	Gross Domestic Product
HIV/AIDS	-	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICA	-	International Co-operative Alliance
ICT	-	Information and Communication Technology
KIE	-	Kenya Industrial Estates
KIPPRA	-	Kenya Institute of Public Policy and Research
KNBS	-	Kenya National Bureau of Statistics
KNHRC	-	Kenya National Human Rights Commission
KRA	-	Kenya Revenue Authority
KUSCCO	-	Kenya Union of Savings and Credit Co-operatives
KV2030	-	Kenya Vision 2030
LTD	-	Limited
M&E	-	Monitoring and Evaluation
MIS	-	Management Information System
MFA	-	Ministry of Foreign Affairs
NACHU	-	National Co-operative Housing Union
NACOs	-	National Co-operative Organizations
NPS	-	National Payment System
NT	-	National Treasury
NTSA	-	National Transport and Safety Authority
PPP	-	Public Private Partnerships
SACCOs	-	Savings and Credit Co-operatives
SASRA	-	SACCO Societies Regulatory Authority
SDC	-	State Department for Co-operatives
SDH	-	State Department for Housing
SLO	-	State Law Office
UN	-	United Nations
WOCCU	-	World Council of Credit Unions

PREFACE

The executive order No. 1/2018 of June 2018 on the organization of the Government of the Republic of Kenya conferred the State Department for Co-operatives with the mandate of formulating co-operative policies. In view of this mandate, the State Department has formulated this Co-operative Development Policy as recognition of the changing environment in which co-operatives shall be regulated and supervised. The policy brings in focus the unique role that will be played by the County Governments as envisaged in the Constitution of Kenya 2010 (COK, 2010), which recognises co-operative societies as a devolved function.

As mass movements, the National Government recognises the unique role that co-operatives shall continue to play to bring about equitable growth and development of our people. The National Government shall therefore actively take up its role of capacity building the County Governments to ensure uniform growth of the movement in the country.

This policy promotes the view that co-operatives are private business organizations. In order to become responsible corporate citizens, co-operatives will be expected to promote good governance practices that will ensure their sustainable growth and development. In this respect the policy, proposes a new structure that promotes integration and enhances self-regulation. The new structure also increases the visibility of the Kenya movement within the region and internationally by strengthening the Federations and the Apex organization. On its part the National Government shall ensure that only economically viable co-operatives are registered.

In preparing this policy, the State Department of Co-operatives held consultative fora with stakeholders taking into account the diversity of their perspectives and activities. It is our view that the implementation of the policy will require similar cooperation from stakeholders.

Lastly, I acknowledge and thank all persons and organizations that participated in preparation of this policy and in particular, Ministries Departments and Agencies, the Council of Governors, Inter-Governmental Relations Technical Committee, and Kenya Law Reform Commission. We also acknowledge the contributions from, Co-operative Alliance of Kenya, Kenya Institute of Public Policy Research and Analysis, National Co-operative Housing Union, Kenya Rural and Savings and Credit Cooperatives Societies Union, Green Growth Africa and the International Co-operative Alliance-Africa. Special mention goes to Kenya Rural Savings and Credit Societies Union for their role in mobilizing and ensuring participation of its membership. I do register our gratitude to the National Co-operative Business Association Co-operative League of the United States of America (NCBA CLUSA) for their unreserved commitment in facilitating and supporting the policy review process. Lastly I acknowledge the staff from the State Department of Co-operatives and counties who worked tirelessly to ensure completion of this policy.

Ali Noor Ismail, CBS

Principal Secretary, State Department for Co-operatives

FOREWORD

The Government of Kenya recognizes the co-operative movement as a critical player in pursuit of its national, social and economic objectives, of rapid economic growth, equitable and sustainable development. This policy paper anchored on the theme, “Promoting Co-operative Societies for Industrialization” aims at transforming co-operatives into vibrant social and commercial entities.

The policy identifies contemporary challenges that inhibit the growth of the co-operative societies and explores a paradigm shift establishing a more proactive engagement between the national government, county governments, the co-operative movement and other stakeholders in addressing these challenges. It also seeks to rationalize the role of national and county governments in co-operative development in line with the CoK, 2010 and national development goals set out in Kenya Vision 2030. The national government affirms its commitment to uphold the sanctity of the co-operative principles and values as a way of safeguarding while ensuring that the interests of the general membership are safeguarded.

The CoK, 2010 devolved co-operatives function to the counties. Since 2013 when the devolved system was implemented, challenges have emerged in the management and supervision of the co-operatives that call for closer cooperation between the national and the county governments. This cooperation has been difficult to achieve in existing legal and regulatory framework currently in operation. The formulation of this policy is the first step towards establishing an appropriate and supportive legal and institutional framework to support the growth and development of the co-operative development in the country. It is also our view that in adopting this policy, the growth of the co-operative movement in the country shall be uniform as we exploit the different economic opportunities available in all parts of this country.

The policy places co-operative societies at the forefront of mobilizing savings, enhancing agricultural productivity and value addition, provision of decent and affordable housing, fighting poverty and promoting the involvement of youth and women in wealth creation and empowerment. It provides a framework for mobilizing financial and technical assistance for co-operative development, encouraging Public Private Partnerships (PPPs) in the area of value-addition, marketing of co-operative goods and services; and the promotion of co-operative education, training and research.

By adopting the theme “Promoting Co-operative Societies for Industrialization” the policy positions the co-operative movement to act as a strong vehicle for the implementation of Kenya Vision 2030 on industrialization. Value addition, especially in the agricultural sector is therefore, a key target of the policy. The establishment expansion of the Small and Medium Enterprise Fund to include cooperatives offers an opportunity to inject social venture capital in the development of co-operative societies. The national government will work closely with the county governments to formulate appropriate regulations for the Fund.

Lastly, it is no longer in doubt that the national government recognises co-operatives as private organizations. This however, puts enormous responsibility on the leadership of the movement to impress good governance practices that reflect the expectations of not only the National and County Governments but also those of their members. The National Government shall work closely with the County Governments and the Co-operative Alliance of Kenya (CAK) among other stakeholders to promote a truly autonomous and independent co-operative movement in this country.

Hon. Peter Munya, MGH

Cabinet Secretary

Ministry of Industry, Trade and Co-operatives

EXECUTIVE SUMMARY

Chapter One: Introduction

This policy paper presents a framework aimed at accelerating the growth of Kenya's co-operative sector in a dynamic and competitive global environment. It replaces Sessional Paper No. 6 of 1997, on "Co-operatives in a Liberalized Economic Environment". The policy highlights the historical background of the co-operative sector worldwide and more specifically in Kenya and explains why it remains an important contributor towards industrialization and economic development of the country as expounded in Kenya Vision 2030. The objective of this policy is to promote sustainable and competitive co-operative societies for an enhanced role in industrialisation and improved social economic development. It identifies the challenges facing the co-operative movement including legal framework, low market access, technology adoption and ever evolving governance issues.

Chapter Two: Situational Analysis

Globally co-operatives are seen as a business model that provides economic, social and environmental sustainability. By the end of 2016, there were 18,573 registered co-operative societies with a total membership of 14 million citizens. These co-operatives were active in financial intermediation, agricultural produce marketing and processing as well as provision of decent and affordable shelter. We expect Kenyan co-operatives to promote green investments especially in such sectors as transport, housing, wholesale and retail trade. However, the sector has faced a number of issues that have affected their operations. This chapter analyses the cooperative movement status and flags out its achievements and challenges in the sector.

1. Legal and regulatory reforms

Being cognisant of the devolved system of government, the policy lays the ground for the review of the legal and regulatory framework to facilitate the growth and development of the co-operative movement. The policy is life to the fact that co-operatives are private institutions that play an important role in public mobilization to stimulate economic growth. The National and County governments' role remains facilitative in nature.

2. Co-operative structure

This policy brings out the definition of co-operatives with the underlying principles and values. It also flags out the ethical values of honesty, openness, social responsibility and

caring for others. While retaining the four-tier system to support the growth of the movement, the policy replaces the tier previously known as National Co-operative Organisation (NACO) with the federation as a way of enhancing self-regulation within the movement. The new structure seeks to empower the apex organisation CAK, to play its rightful role of advocacy for the co-operative movement.

3. Co-operative governance

The policy proposes measures that will enhance co-operative board effectiveness with a clear separation between the roles of the management and the board. It also recognizes the importance of delegates vis-à-vis the rights of individual members and responds to the need to stratify the co-operative societies for ease of regulation and supervision.

The government recognises the need the need to strengthen enforcement and therefore proposes to restructure SASRA to allow it regulate all financial cooperatives. It will also create a Cooperative Regulatory Authority for non-financial cooperatives. The cooperative tribunal will be streamlined and strengthened including mainstreaming of ADR mechanisms.

4. Co-operative Financing and investment

The co-operative movement has mobilised over 48% of national savings (IMF, World Bank Economic Outlook 2014). Likewise, the World Bank estimates that co-operatives financed 90% of housing stock in Kenya in 2016 (World Bank, 2017). On this basis, the policy proposes to strengthen the SACCOs in areas of savings mobilisation, investment and credit management. The policy also addresses the general credit management in producer co-operatives emphasizing on borrowers' education to reduce delinquency. Co-operatives have been identified as important vehicles for providing decent and affordable shelter.

The policy proposes areas of emerging financial opportunities for SACCOs, which include:

- a) Participation in National Payment System
- b) Agency banking
- c) Share trading

5. Co-operative Production, value addition and marketing

Agriculture remains the backbone of Kenya's economy. Co-operatives shall continue playing an important role in the various agricultural value-chains by:

- a) Channelling farm inputs to improve production
- b) Providing market linkages for the agricultural produce.
- c) Facilitating post-harvest management of agricultural produce by facilitating transportation and improved storage technologies.

This policy further lays the ground and emphasis on co-operatives to adopt value addition to their raw produce. The National and County governments will support this by among other things;

- a) Facilitating investment in bulk storage facilities.
- b) Mobilizing initial capital.
- c) Laying the foundation for the participation of social venture capitalists in the value addition programme.

6. Education, training and research

Education and training is a crucial factor in the growth and development of the co-operative movement. The policy addresses the problem of funding education and training in the movement. The quality of co-operative education and training has been identified as a challenge.

The policy identifies Co-operative University of Kenya as the Centre of Excellence in Co-operative Education and Training. In addition, the policy recognises other institutions of higher learning offering cooperative education and training. The government will work with all institutions to promote co-operative research. To augment this effort, the national government shall establish a national data and information centre for co-operatives to among other functions help capacity build the information management of co-operatives in the counties.

ICT

The national and county governments shall work closely with the co-operative movement in mainstreaming the use of ICT. This will include formulating an appropriate legal framework that will promote the use of ICT in co-operative business across the country. In addition, the national government shall facilitate the development of e-coop platform to enhance service delivery to co-operative societies.

8. Cross cutting issues.

It is acknowledged that the youth, women and persons with disability are not fully integrated in co-operative activities. This may be due to attitude, lack of interest or existing ownership structures. This policy introduces innovative ways through which special groups will be mainstreamed in co-operative operations. Formation of worker co-operatives is one such strategy.

Chapter Three: Policy Interventions

This chapter identifies interventions for all the thematic areas indicated in the situational analyses.

Key among these is the complete review of the current laws to reflect the devolved nature of cooperatives. It also lays ground for total review of governance enforcement structures by reviewing the role of Commissioner for Cooperative Development.

There are also clear recommendations on cooperative financing and investments and funding education and training activities. The role of youth and women participation is highlighted.

Chapter Four: Policy Implementation

This chapter lays out the framework of implementation of the policy bearing in mind the provisions of the CoK, 2010 and appropriate laws. Most specifically, it proposes the establishment of an inter-governmental stakeholder-led co-ordinating unit as a reference point for areas of collaboration or dispute resolution between the national and county governments in the course of implementing the policy. It further proposes the restructuring and strengthening of the existing government agencies including SASRA and the Tribunal. The role of ECCOS will be redefined and turned into a regulatory authority for cooperatives. It also recognises the importance of alternative dispute resolution mechanism. Importantly, the policy lays out its inbuilt monitoring and evaluation framework.

CHAPTER ONE: INTRODUCTION

1.1 Background

Co-operatives have played a significant role in socio-economic development of nations for centuries and are a reminder to the international community that it is possible to pursue both economic viability and social responsibility. It is against this background that the United Nations (UN) declared the year 2012 the International Year of Co-operatives.

The International Co-operative Alliance (ICA) Blue print (The 2020 Vision) anticipates co-operatives as a business model that will provide economic, social and environmental sustainability and be the fastest growing form of enterprise. Its five (5) pillars of participation, sustainability, identity, capital and legal framework drive this. The ICA Africa Co-operative Development Strategy 2017-2020 recognizes co-operatives as a critical vehicle towards poverty alleviation and development in Africa. As co-operatives in Africa strive to support human development, they face various challenges such as low human resource capacity, weak economic base, extensive financial dependency from external sources, lack of internal capacity and poor governance.

The strategy recognizes the sector as having high potential for facilitating financial growth and can therefore be transformed to lead social and economic development in Africa.

This policy provides a conducive environment for identification and creation of synergies between the co-operative movement and other development agencies in promoting social development agenda at national and county levels, thus leading to accelerated contributions to the country's development agenda in selected areas. Kenyan co-operatives are expected to lead in facilitating green investments to support economic growth in a clean, resilient, and sustainable manner and promote innovative and high quality services in areas where the economy is experiencing challenges and wastages in sectors such as transport, housing, wholesale and retail trade and agriculture

1.2 Co-operatives in post-independence Kenya

The objectives that guide Kenya's development agenda were first established in the Sessional Paper No. 10 of 1965 on "African Socialism and its Application to Planning in Kenya." This paper promoted "Kenyanisation" in all spheres of the economy through the following objectives:

- a) Political equality
- b) Social justice
- c) Human dignity including freedom of conscience
- d) Freedom from want, diseases and exploitation
- e) Equal opportunities
- f) High and growing per capita incomes, equitably distributed

One of the outcomes of the Sessional Paper, 1965 was the enactment of the Co-operative Societies Act No. 39 of 1966. This accelerated the formation of co-operatives that facilitated the transfer of land to indigenous Kenyans, marketing of agricultural produce, and financial institutions to support the co-operative movement

Session Paper No. 1 of 1970 was the 1st Co-operative Development Policy, in which government sought to consolidate the gains made in the co-operative movement. The policy was reviewed in 1975 when the government specifically recognised the importance of co-operatives as vital organs for mobilizing material, human, and financial resources for national development. It reiterated the Government's commitment to expanding co-operative activities in all spheres of social and economic development. A key milestone at this stage was the establishment of the Ministry of Co-operative Development.

The second co-operative policy was Session Paper No. 4 of 1987, whose theme was "Renewed Growth through the Co-operative Movement". This policy reiterated the Government's commitment to enhancing the participation of Kenyans in the economy through co-operatives. The Government recognized the private nature of co-operatives and adopted an advisory role.

The Session Paper No. 6 of 1997 on "Co-operatives in a Liberalised Economic Environment", was the third co-operative policy. In this policy, the Government reviewed its involvement in the management of co-operatives and provided a legislative framework under which co-operatives could operate in a competitive economic environment. This led to the enactment of the Co-operative Societies Act No. 12 of 1997 that gave greater powers to the members of the cooperative movement. The Act was however amended in 2004, to restore some powers to the government to intervene in the management of cooperatives when necessary. In addition, the

rapid growth of financial co-operatives offering front office services necessitated the enactment of the SACCO Societies Act of 2008 to regulate the financial aspects.

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1.3 Co-operatives in the Devolved System of Governance

The Constitution of Kenya 2010 (CoK 2010) brought about fundamental changes in the management of public affairs. The CoK 2010 created two levels of Government: namely the National Government and the 47 County Governments. One of the objects of devolution is to promote social and economic development and provision of proximate easily accessible services throughout Kenya (Article 174). In doing so all actors will be guided by the principles and values as espoused in Article 10 of the Constitution.

These values and principles include:

- a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people
- b) Human dignity, equity, social justice, inclusiveness, equality and protection of the marginalised
- c) Good governance, integrity, transparency and accountability and
- d) Sustainable development

The values and principles are the cornerstone for a pragmatic approach to development that espouses political equality, social justice and human dignity as opposed to quick material gains for the country,

1.4 Co-operative Identity

The ICA defines a co-operative as “an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise”.

Co-operative identity includes the co-operative principles and values. National policy and legal frameworks are guided by these principles and values, including most significantly, protecting and fostering the autonomy of co-operatives. As part of the international co-operative movement, all co-operatives in Kenya conduct their business in accordance with internationally shared co-operative principles and values.

1.5 Co-operative Principles

These are guidelines through which co-operatives put their values into practice, they include:

- a) Open and voluntary membership

Membership in a co-operative is open and voluntary to all persons who wish to benefit and are willing to accept the corresponding responsibilities without gender, racial, social, religious or political discrimination.

b) Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic Members have an equal voice, which is commonly referred to as “one member one vote”.

c) Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

d) Autonomy and Independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

e) Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

f) Cooperation amongst co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

- g) Concern for the community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

1.6 Co-operative Values and Ethical Beliefs

The co-operative principles above are based on the following co-operative values:

- a) Self-help
- b) Self-responsibility
- c) Democracy
- d) Equality
- e) Equity
- f) Solidarity

Co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

All co-operatives operate within these principles and values and will be required to include a statement of conformity with the principles in their annual audited financial statements.

1.7 Justification for Policy Review

This policy has been necessitated by the changing socio-economic and political environment, innovations, emerging trends and national development priorities and challenges. The CoK, 2010 has introduced two levels of governance; National and County Governments. The Fourth Schedule of the CoK, 2010 assigns the management of co-operative societies to the county governments. It is imperative therefore, that the policy is aligned to the devolved system of governance to allow for operationalization of the function in the counties.

The policy is aligned to the national development priorities among them, the Kenya Vision 2030 blueprint which is based on three pillars namely; the economic, the social and the political pillars covering the period 2008 to 2030.

International development programmes such as the Sustainable Development Goals (SDGs), Africa Union Agenda 2063, ICA Blueprint 'Vision 2020', International Co-operative Alliance (ICA), Africa Co-operative Development Strategy 2017-2020, and World Council of Credit Unions (WOCCU) prudential guidelines and strategies are also important in the development of the Co-operative Movement in Kenya.

The national and county governments appreciate co-operative societies' immense potential for wealth and employment creation, environmental management, social inclusion and integration. Co-operatives play a major role in the development of agriculture, financial services, housing, trade, manufacturing, transport, among other sectors of Kenya's economy. Therefore, this policy will create a favourable environment for realizing improved efficiency and profitability of co-operatives. Special emphasis will be placed on capital formation and the transformation of agricultural commodity co-operatives from raw material dealers into competitive value addition entities.

1.8 Objectives

The main objective of this policy is to create and facilitate an environment that promotes sustainable and competitive co-operative societies to support industrialization in a devolved system of Governance. The specific objectives of the policy are to:

- a) Align the co-operative function with the CoK, 2010.
- b) Align the implementation of Kenya Vision 2030, and other national and international initiatives.
- c) Promote sustainable competitive co-operative enterprise in Kenya
- d) Promote new ventures, partnerships and financing opportunities in the co-operatives sector in Kenya.
- e) Establish an institutional framework for enhancement of cooperation, consultation and coordination of co-operatives management that provides for self-regulatory mechanisms within the sector.
- f) Promote housing and agricultural based-co-operatives in order to enhance provision of affordable housing and food security in Kenya.
- g) Develop the capacity of co-operatives through training, research and use of modern technology in the sector
- h) Mainstream issues related to climate change, special interest groups and human rights in co-operatives.

1.9 Theme of the Policy

The theme for the policy is, "Promoting Co-operative Societies for Industrialisation". This presents a rallying call for co-operatives to take the responsibility and lead in the industrialization of the country as envisaged in Kenya Vision 2030. It is based on the realization that there are many benefits that will accrue through a well-structured co-operative system. The benefits include: equitable distribution of wealth, job creation especially in rural

areas, savings mobilization, decent and affordable shelter and access to education and health care, increased producer prices for raw materials, market systems development, indigenization of the economy, and the growth of exports, amongst others. In addition, the co-operative sector plays an important role in value addition through increasing business development services and adopting ICT and other appropriate technologies.

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CHAPTER TWO: SITUATION ANALYSIS

2.1. Introduction

This chapter discusses the current co-operative landscape and identifies the gaps that the policy intends to address.

2.2. General Perspective

Co-operatives globally play an important role in Agriculture, Forestry, Finance, Consumer/Retail, Insurance, Housing, Health, Industrial, and General Utilities among others. The ICA (2018 Monitor) reported that the top 300 co-operative societies were operating in insurance 32%, agriculture 35% wholesale and retail 19%, banking and finance 8%, industry and utility 2%, health, education and social care 2% and other sectors 2%. The same report indicates that these societies had collective revenues of over USD 2 trillion.

Kenya ranks number 7 in the world and number 1 in Africa in terms of co-operative development. By the year 2017, we had 22,913 registered co-operative societies cutting across almost all sectors of the Kenyan economy both formal and informal. By the end of 2017, these co-operatives had mobilized savings to the tune of Kshs. 730 billion, advanced over Kshs. 700 billion to their members and controlled assets worth more the Kshs 1 trillion. It is estimated that 63% of Kenya's population participates directly or indirectly in co-operative based societies contributing about 31% of the total Gross Domestic Product (GDP). The benefits that have accrued to Kenyans through co-operative societies include employment and wealth creation. Other than being engaged in the traditional areas of agricultural production, processing and marketing, the strength of co-operatives can now be felt in finance, real estate, manufacturing and mining sectors.

Co-operatives have been strong in financing education, agriculture, housing, transport, health and commercial societies. In addition, co-operatives are at the heart of rural economies in the country where smallholder agriculture is the mainstay of communities. Cash crop farming especially coffee, sisal, sugarcane, rice, macadamia, cashew nuts, cotton, and pyrethrum are largely carried out by smallholder farmers. The opportunities available for co-operatives include financial intermediation, farm inputs supply, and storage and marketing of produce.

2.3. Policy, Legal and Regulatory Framework

The current legal and regulatory framework for the co-operative movement in Kenya is anchored on the following legislations, rules and regulations.

- a. The Cooperatives Societies Act Cap 490.
- b. The Co-operatives Societies Rules 2008
- c. The Sacco Societies Act 2008
- d. The Sacco Societies Regulations 2010
- e. The Sessional paper number 6 of 1997.

The Cooperative Societies Act provides for the registration, incorporation, governance and supervision of all cooperative societies. The Act provides for three tier structure being the primary cooperatives, secondary and apex. The SACCOs Act, 2008 was enacted to deal with licensing, supervision and regulation of Savings and Credit Cooperative Societies (SACCOs) with unique business model of financial mediation through deposit mobilization and advancement of credit to their members. The Co-operatives Societies Rules 2008 and the SACCO Societies Regulations 2010 operationalize the above laws.

These legislations do not conform to the devolved system of governance as envisaged in the COK 2010. The CoK, 2010 establishes a devolved structure of government consisting of the national and county governments, which are distinct but inter-dependent conducting their mutual relations on the basis of cooperation and consultations. The Constitution further enshrines devolution of power as one of the national values and principles of governance.

On the functions of each level of government, the Fourth Schedule thereto allocates specific functions to each level of government. In particular, Part 1 assigns the national government policy formulation functions and capacity building and technical assistance to the counties, while Part 2 assigns the function of development and regulation of co-operative societies to the county governments.

The current legislation and regulations in the co-operative societies sector provides for the governance and structures of the sector and how they operate. The legislations provide for;

- a. The registration of cooperative societies,
- b. Rights and liabilities of members,
- c. Duties of co-operative societies,
- d. Amalgamation and division of co-operative societies,
- e. Rights and obligation of co-operatives
- f. Leadership qualifications,
- g. Financial and reporting requirement through elected officials with full time employees
- h. Liquidation of co-operative societies

In this regard, this policy aims to address the legislative gaps to align the cooperative laws and policies within the sector to the devolved system of governance.

2.4. Functions of the State Department for Co-operatives

Although cooperative function is not in the national government, through the cooperative laws in the pre-CoK, 2010, the State Department for Co-operatives provides the following services to co-operatives societies;

- a. Registration of of cooperative societies
- b. Approval of amended by laws
- c. Inquiries
- d. Approval of borrowing powers
- e. Issue of surcharge orders
- f. Issue of demand notices
- g. Appointment of remittance recovery agents
- h. Registration of audits
- i. Cooperative Policy Development
- j. Filing of wealth declaration forms for cooperatives leaders/managers
- k. Negotiation of international protocol papers
- l. Capacity building to the counties
- m. Liquidations

Arbitration of co-operatives disputes is currently offered by the Co-operative Tribunal which is under the Judiciary which faces capacity challenges in handling all the disputes filed.

Due to lack of a clearly coordinated regulatory regime, some co-operative societies' leaders have taken advantage of the situation to approach the different levels of government in pursuit of their personal interests and usually at the expense of accountability. It is therefore necessary for the Law to clarify on the areas of interaction between the National and County Governments with the different categories of societies.

2.5. Sectoral Co-Operative Performance Review

2.5.1. Agricultural Based Co-operatives

The agricultural sector in Kenya has in relative terms performed poorly in the last one decade as compared to other sectors and in particular, related to manufacturing and industrial sector. By the end of 2017 there were 5055 agro-based marketing co-operatives in Kenya. These Co-operatives were mainly involved in coffee, dairy, pyrethrum, livestock, cereals and cotton

production and marketing. They had a combined turnover of Kshs.14 billion and an asset base of Kshs. 481billion in 2017.

The performance of agro-based cooperatives has been hampered by delayed payment to farmers, poor marketing channels for agricultural produce including lack of value addition, poor farm input supply systems, lack of credit facilities and general lack of managerial capacity. This has led to stagnation in the growth and development of these cooperatives.

In addition, majority of agro-co-operatives were promoted and registered in response to a donor funded program and many tend to fold up once the program ends.

There has been total collapse of co-operative unions meant to support primary cooperatives by aggregating goods and services to attain economies of scale. The services offered by the unions included; bulk sourcing and distribution of farm inputs, storage, pooled transport, book-keeping, marketing.

2.5.2. Financial and Investment Co-operatives

2.5.2.1. SACCOs

The primary objective of SACCOs is to enable members to save regularly to create a pool of funds from which they can obtain credit facilities on softer terms than is otherwise available in the open market. By 2017, we had 13200 SACCOs in the country out of which 176 were offering front office services. Together they had accumulated savings and deposits of over KES 430 Billion, Kshs. 441 Billion in loans and Kshs 601billion in assets and had a membership of about 5 million persons.

Despite this notable success, the SACCOs are unable to accumulate savings and deposits fast enough in order to satisfy their members appetite for credit. Many of them now rely heavily on loans from commercial banks to satisfy their members desire thus defeating the very purpose of coming together. This problem is further compounded by the emergence of e-platforms offering access to quick loans. We are thus moving away from developing a savings culture to cultivating a borrowing culture. Specific measures shall be developed to build trust of members in their SACCOs and encourage them to save.

In order to pay high interest rates to their members, many SACCOs have now resorted to introducing financial products that they are not adequately equipped to manage. Using their members as a captive market, many SACCOs are charging interest on loans that are unsustainable and have now enslaved the members. SACCOs will therefore be encouraged to review their dividend and interest policies to reflect the dictum that cooperatives are an association of persons as opposed to association of capital for companies.

2.5.2.2. Diaspora Co-operatives

The Kenyan Diaspora Policy launched in 2014 recognizes the need to mainstream the Diaspora into our national development process. The state department for co-operatives registered the 1st Diaspora based SACCO in 2012 for Kenyans based in the USA. In support of this Policy however, the State department for co-operatives in collaboration and support of the ministry of foreign affairs promoted and registered sixteen SACCOs as at the end of 2016 with the aim of mobilizing savings.

While the initial move was to mobilize the Diaspora to form SACCOs, it is emerging that the Diaspora needs are more than what can be facilitated by SACCOs. The Government will review this position with a view to coming up with an appropriate framework to facilitate the participation of the Diaspora in consumption of development programs by the Diaspora not limited to savings as is the current scenario.

2.5.2.3. Sharia Compliant Co-operatives.

The Government recognizes financial inclusion as an important pillar of social economic development in the country. In line with this, the SDC has been promoting Sharia compliant co-operatives as a means of increasing and promoting financial inclusion in Muslim communities. This program will be expanded to cover all regions of the country while encouraging conventional co-operatives to offer Sharia compliant products and services.

2.5.2.4. Investment Co-operatives

The government wishes to see increased investments in housing, med-care, clean and renewable energy, infrastructure and manufacturing. Kenyans are an industrious people who as individuals and groups have greatly invested in these areas. The impact of such investment would be greatly multiplied if a greater number of Kenyans were mobilised to participate. Previous attempts to mobilise Kenyans through cooperatives to save money for investments was hijacked by self-seekers who promised quick returns to the investors. The result was the proliferation of societies that operated like pyramid schemes.

This forced the ministry to stop the promotion and registration of investment co-operatives in total. Due to changed circumstances, the government shall be reviewing this policy direction to reflect the dynamic business environment and accommodate investors in Diaspora whose savings desires cannot be accommodated in the SACCO model. Cooperative societies that will be engaged in the process of mobilising savings purely for purposes of engaging in

investments shall now be known as savings and investment cooperatives (SICOs). Such cooperatives will not be allowed to advance credit to their members.

2.5.2.5. Co-operative Financing

The Fin Access Household Survey Report 2016 indicates that loans generated by co-operatives contributed 45.9% of all loans from financial institutions directed to land and housing. Co-operatives also contributed 36% of all loans directed towards education, 21.5% to agricultural activities and 17.1% towards business ventures. By the end of 2017, co-operatives had over Kshs. 700 billion as outstanding loans and advances extended to members. These loans are mainly financed through share contributions, internal reserves and deposits raised from co-operative members.

While some co-operatives have used this model to great prosperity, the majority, whose membership is unable to internally raise adequate savings, have been unable to register any meaningful growth. To this end many co-operatives are laden with loans that they are unable to service. On the other hand, the funding from the government and donor community is increasingly becoming less as competing priorities emerge.

Even as financial institutions seek for collateral to secure loans borrowed by co-operative societies, the common practice has been for the same financial institutions to guarantee regular payment by way of hypothecation of the members produce for marketing co-operatives and the deduction schedule for SACCOS. This practice has resulted in distributing the burden of debt repayment to all members of the society irrespective as to whether they are beneficiaries of the loan or not. While co-operative societies as body corporates have the capacity to enter into any contract including creating debt, the responsibility of the individual members of the society is limited to the individual shares and not their produce or deposits. The practice of hypothecation has tended to encourage lenders not to seriously evaluate the business case of society borrowing while relying on member earnings or payroll deductions for society cash flow projections. The same lenders have tended to continue to recovering loans from members' funds instead of realising the secured assets in case of default.

The co-operative bank of Kenya continues to be the dominant financial institution in the co-operative sector where they enjoy monopoly like status. With liberalization however, other financial institutions moved into the sector to offer competition. SACCOS also have been able to grow and are now a substantial segment of the financial sector. The figures given above on the contribution of cooperative in different sectors is illustrative.

It is expected that SACCOs will continue to compete with the co-operative bank of Kenya over the same space despite their inability to raise funds through the national financial networks. Co-operatives are unable to be integrated in the national payment system without risking members' savings and deposits.

At the same time cooperatives have limited access to cheap finance thus limiting their ability to fund the growth of cooperative activities including agriculture, value addition and housing.

2.5.2.6. Co-operative Investments

Whenever members invest in co-operative societies they expect returns and appreciation of their investment. Co-operative societies assets are acquired through direct member contribution, borrowed funds or from accumulated reserves. Once acquired, such assets which are domiciled in the society general account are usually considered society investments and fail to recognise individual effort of the members. Quite often we forget that members have to surrender part of their produce in order to pay of society loans. It is therefore very common to see the share capital of a member in a coffee society being reflected as kshs 20/- when for over 30 years the same farmers' proceeds were used to acquire factories and other assets for the society.

To date non-financial cooperatives have accumulated assets worth kshs 481 billion and deposits of 303 billion.

This practice has not only tended to kill industry among the members in promoting society investments but it also goes against the cooperative value of equity among members. It has therefore discouraged members from investing in their co-operative societies since there appears to be no capital appreciation for their investments that would differentiate an old member from a new member. This scenario has created disharmony in many societies where new members use society assets acquired by the old members without any form of compensation to the old members.

2.5.2.7. Housing Co-operatives

The right to housing is acknowledged in many international instruments and in Article 43 of the Constitution of Kenya (2010). Kenya had a housing backlog of two million units as at end of 2016. The annual housing demand is 300,000 units in rural areas and 214,000 units in urban areas while the actual annual supply is only 50,000 in urban areas. Co-operatives play a crucial role in the provision of affordable shelter and bridging the gap in housing finance

market. The co-operative movement is expected to deliver 25% of the annual housing demand in the country.

There are 1,980 housing/investment co-operatives with an asset base of Ksh.31billion. Available statistics indicate that co-operatives account for 90% of housing stock in Kenya.

Many of these societies however can be categorised as land buying since that is all they do.

Access to affordable decent housing is still constrained by a number of factors. These include limited access to long term funding such as mortgages, low household disposable income, poor saving culture by majority of Kenyans, and limited infrastructure development for new housing schemes.

2.5.2.8. Transport Co-operatives

Public service transport in Kenya is of immense economic importance. It is primarily a **private sector driven industry**, and impacts positively, directly and indirectly on the lives of many people through wealth and employment creation. It is an attractive avenue for small scale investors looking for quick returns. Such is also an attractive avenue for anyone wishing to disrupt the industry. To streamline the operations of the sector, the government directed that operators would either be limited companies or cooperatives. For ease of management and operation, many small operators chose the cooperative model as opposed to the company model.

Based on the success stories portrayed by the few transport based Savings and Credit Co-operative Societies, many of these new transport cooperatives were registered as SACCOs. The registration of these SACCO societies in the transport sector has however not brought about the anticipated changes. Despite making savings in their SACCOs, many of the members of these societies still operate their *Matatu* business as individuals thus defeating the government policy on transport.

2.5.2.9. Consumer Co-operatives

Consumers' co-operatives are organized to obtain their requirements of consumer goods and services on terms of greatest advantage to members. They undertake the production and processing of consumer goods, wholesaling and retailing of goods and services mainly for their members. We have 192 registered consumer co-operatives majority of which are dormant. The active consumer co-operatives are mainly found in urban areas and are mostly

engaged in food catering services. Past efforts by co-operatives to run consumer retail shops have failed due to lack of appropriate skills in managing such businesses and low capital outlays.

The best-known and most successful consumer co-operative in this country was Kenya Farmers Association offering affordable farm inputs to its members. The government will promote the formation of such cooperatives in each county to facilitate the acquisition and distribution of farm inputs and take advantage of the commodity exchange (COMMEX) program.

The government will also build capacity in the management of retail business in order to improve the survival rate of other types of consumer cooperatives.

2.5.2.10. Industrial Co-operatives

Over time the government has promoted industrial cooperatives as vehicles of developing indigenous entrepreneurs and managers. These cooperatives are mainly focused on building and construction, small-scale industries, large scale industries in the formal sector and handicraft and *jua kali* artisans in the informal sector.

The country continues to witness a large number of graduates coming out of the youth polytechnics and other technical training institutions. Previous government efforts to promote industrialization through initiatives like the Kenya Industrial Estates suffered low uptake despite the formation of cooperatives to handle them.

On the other hand, standardisation of products and development of marketing channels continues to hamper the growth of the *jua kali* sector in the country.

2.5.2.11. Co-operative Movement Structure

The co-operative movement in Kenya operates on a four-tier structure where societies are classified as either primary, union, national or apex. From the outset, this structure was meant to:

- a) Provide a viable economic units capable of providing the services to members;
- b) Facilitate proper integration and modernization of the economy;
- c) Exploit the economies of scale to ensure the highest possible returns to members;
- d) Align each co-operative sub-sector with a national co-operative organization to coordinate activities of its affiliates nationally and internationally; and

- e) Have a strong apex organization to lobby and articulate the interests and concerns of the co-operative movement at County, National and International levels.

At the lowest level of the structure are the primary co-operatives that are formed by individual persons usually as a single purpose or single product enterprise. In order to enhance economies of scale, the Government encouraged the formation of unions that operated at district or sector specific level. These unions have their membership drawn from primary co-operatives, and are instrumental in the provision of either specialised services or goods to their affiliates. At the third level are the national co-operative organizations (NACOs) usually specialised vehicles that offer sector driven services to affiliated primary co-operative societies and unions. At the apex is the Co-operative Alliance of Kenya that is meant to be the custodian of the cooperative principles and values in the country.

This structure as it exists today cannot effectively serve the movement in the current economic environment. The second and third tier levels have basically collapsed or changed into organisations that are not co-operative in nature or simply collapsed themselves into one single tier. Many district co-operative unions have since collapsed while the sector specific unions like KUSCCO and NACHU have moved up the ladder and are now recognised as NACOs. The Co-operative Bank and Co-operative Insurance Company have since ceased being co-operative organisations and are represented in the co-operative movement by the holding co-operatives that own them.

Most importantly, the linkages between different levels are no longer discernible. Apart from the primary level where membership is clear, all other levels seem to be competing for affiliation from the primary co-operatives. This tends to create friction within the movement especially where the functions of the different secondary organizations appear to be overlapping. The unions where they exist, NACOs and even the Apex organization seem to be engaged in businesses that are in direct competition with each other and sometimes with the affiliate primary cooperatives. This has not only created conflict within the movement but also causes fatigue among the different players in the sector resulting in the weakening of some co-operative organizations that are key to the growth of the movement.

To facilitate growth within the movement, sector specific co-operatives shall be promoted at national level. They will be known as **Federations**, thus differentiating them from unions at county level. The Federations once established shall offer services to their affiliates in matters of advocacy, market research and promotion, and promote sector specific standards and regulations. Such will include:

- a) Ensuring that all affiliates societies keep proper records and books of accounts;
- b) Provide a platform for the advancement of ICT and innovations for its affiliates;
- c) Provide education and training to affiliated societies;
- d) Establish and enforce a code of ethics for affiliates/subsidiaries;
- e) Affiliate with other local, regional and international bodies for the benefit of its affiliates;
- f) Develop and enforce such standards that shall be necessary for the advancement of the affiliates;

Engage in any business to promote the interests of its affiliates as long as the business is not in competition with the affiliates.

The Co-operative Alliance of Kenya shall remain the Apex organization. Membership to the apex body shall be restricted to the Co-operative Federations. However secondary co-operatives that are not sector specific and cannot therefore affiliate to any federation, shall affiliate directly to CAK whether they are county or National based. The apex may admit any organization or society as an associate member without voting rights for the purposes of promoting the interest of co-operative movement in the country. The role of CAK will include:

- a) Advocacy, spokesman of the movement, and promotion of the movement's interests;
- b) Promote cooperation, collaboration and linkages among co-operative and stakeholders through networks at local, regional and international levels;
- c) Promote the development of the co-operative movement and advise the Government at national and county levels on co-operative matters;
- d) Custodian and champion of the co-operative principles and values, and promotion of self-regulation within the movement;
- e) Affiliate with regional and international co-operative organizations for the benefit of the Kenyan movement;

It is worthwhile to emphasise that co-operatives are private organizations, jointly owned and democratically controlled enterprises. Therefore, the structure of the organization of the movement shall always guarantee adequate member control. In the process of engaging in new businesses, institutions have emerged within the cooperative structure that have confused the situation even further.

2.5.2.12. Co-operative Companies

To meet the legal requirements and standards set by the regulators in different sectors, co-operative organizations have been forced to form companies that allow them to compete effectively in their respective sectors. These companies are able to raise capital from the members of the public either through the initial public offering or by private placement. Unfortunately, when forming these companies, the ownership structure is not clearly spelt out leading to the listing of current co-operative board members as directors of the company in their individual capacities rather than as trustees. Situations have arisen where directors of such companies have refused to hand-over the company to the newly elected board members whenever there is a change in board composition in the co-operative society, thereby exposing the assets of the co-operative to risk of loss. Co-operative members in some cases are not informed of the performance of these companies and hence they end up of not benefiting from their returns.

2.5.2.13. Holding Co-operatives

For strategic reasons co-operative societies have formed holding co-operatives for the sole purpose of investing in the stocks of other organisations (companies or co-operatives). Such co-operatives do not produce goods or services. The existing holding co-operatives are Co-op Holding Co-operative Society Ltd and Co-operative Insurance Services Ltd (CIS), which own Co-operative Bank of Kenya Ltd and CIC Ltd respectively. These co-operatives have ensured that interests of the co-operatives are fully represented in the management of these companies and their focus in the co-operative movement is entrenched in the mission and strategic objectives. While it is anticipated that such type of co-operatives will continue to be formed as the need arises, care will be taken to ensure that such organizations remain true to their mission.

2.5.3. Dual Registration of Co-operatives

In order to meet market obligations, some co-operative societies have operated on dual registration regimes as both co-operatives and companies. While this practice has served its purpose operationally, it has caused regulatory challenges and sometimes infringed of members' rights of participating in decision-making. It has not been uncommon for such organisations to try and exploit the benefits of either of the regulatory regime whenever it was convenient to the directors. It must be recognised that the underlying principles between a

company and a co-operative are basically different. While co-operatives are associations of persons, where the personal participation of the member in the business process is important, a company is an association of capital. Since co-operatives can now register companies, the purpose of dual registration is no longer necessary.

2.5.4. Co-operative Governance and Enforcement

Through various legal interventions the national government has encouraged good corporate governance practices in the co-operative movement. This has resulted in substantial gains in the development of co-operative leadership and governance. However, incidences of poor governance are still experienced in some co-operative institutions, which have led to misapplication and mismanagement of resources, and cases of collapse of co-operative institutions. This has been brought about by ineffective leadership, micro-management of the societies by the boards, unethical business practices, and inadequate application of good financial management and lack of effective member participation.

The management of co-operative societies is vested in the duly elected committees and employees that are expected to perform their duties prudently and diligently on behalf of the members to whom they stand accountable and responsible.

Poor governance is one of the greatest challenges to the management, stability, sustainability and growth of the cooperatives sector in Kenya. Bad governance and corruption have negatively affected the operations and revenues of the cooperatives. Co-operatives as private enterprises offering public good require mechanisms that promote good governance for transparency and accountability to secure public confidence in their operations. The Ethics Commission for Co-operative Societies (ECCOS) is currently established as an unincorporated body in the State Department for Co-operatives. It ensures governance structures that support enforcement are put in place. The Commission as currently constituted has not effectively discharged their mandate..

2.6. Institutions Framework Enforce Governance In Cooperatives:

The commissioner for cooperative development who continues to play an ambivalent role of regulator and promoter. The capacity of the commissioner to provide effective regulation has been impacted by dwindling numbers of officers.

SASRA is established under the SACCO Act 2008 to oversee the prudential regulation and supervision of deposit taking SACCOs. This is in line with internationally accepted principle requiring financial institutions to be subjected to prudential regulations and standards. The

Government, National or County cannot be an effective regulator since they are closely linked to the management of these societies. For us to grow the sector, it is important that all SACCO societies are effectively regulated. SASRA will be strengthened for this purpose.

Co-operatives as private enterprises offering public good require mechanisms that promote good governance for transparency and accountability to secure public confidence in their operations. The Ethics Commission for Co-operative Societies (ECCOS) is currently established as an un-incorporated body in the State Department for Co-operatives. It ensures governance structures that support enforcement are put in place. The Commission as currently constituted has not effectively discharged their mandate. There is need to strengthen ECCOS to play its role effectively through policy and legislative support

The Cooperative Tribunal is established to settle cooperative disputes under the CSA. Following promulgation of the CoK 2010 the Tribunal became part of the Kenyan judicial system and is administered as such. However the operations of the Tribunal continue to be a circuit court with limited number of professional officers manning it. This position hampers the effectiveness of the institution in dispensing justice to the cooperative movement as it limits its level of decentralization the counties. The constitution 2010 encourages ADR mechanisms and this will be promoted to complement the role played by the tribunal.

The management of co-operative societies is vested in duly elected committees and employees that are expected to perform their duties prudently and diligently on behalf of and for the members to whom they stand accountable and responsible. Poor governance is one of the greatest challenges to the management, stability, sustainability and growth of the cooperatives sector in Kenya. Bad governance and corruption have negatively affected the operations and revenues of the cooperatives.

The current situation in the governance of cooperatives have challenges due to poor public participation, gender insensitivity, responsibility overlaps between board and management, lack of member vetting mechanisms and poor adherence to budgetary discipline including incapacity in financial management. The other challenges are unethical practices, weak alternative dispute resolution and tribunal mechanisms, poor or lack of monitoring and evaluation mechanisms, and lack of ICT and cyber crimes prevention strategies. Furthermore, there are many Primary Co-operative enterprises without Co-operative Unions at County level but are only affiliated to their respective national unions and CAK. Other primary Co-operatives do not have any union at all but are affiliated directly to CAK. Lastly, most of the

co-operative unions were based on the defunct district boundaries that have since changed drastically in the devolved system.

The situation is therefore weak in the governance of cooperatives as far as observance and compliance of the above as practiced in most primary and secondary cooperatives. Now that cooperatives are a devolved function in the present constitutional dispensation, the national government will be expected to help the counties address the issues of lack of capacity, policy, legislative and regulation development for enforcement of good cooperatives governance.

2.7. Education, Training and Research

Education, training, and research is one of the seven co-operative principles whose objective is to empower the membership and build the capacity of the co-operative leadership, management and employees to enable them carry out their respective roles effectively. Education and training has been proliferated due to lack of proper guidelines/curriculum in the sector leading to lack of standardized material being disseminated to co-operative leaders and members. The transformation of Cooperative College of Kenya into a University has created a vacuum in standardized training that conforms to the needs of the cooperatives sector.

Lack of professionalism in the co-operative movement has been a critical gap that has affected service delivery to members. In addition, creativity and innovation which are critical factors in the growth and development of any business organization have not been adopted by many co-operative enterprises. Cases have been observed where co-operatives have become a target of all manner of service providers hence disrupting service delivery. In order to inculcate professionalism and set standards in service delivery in the co-operative movement, there is need to establish a professional body for co-operative practitioners to standardize education and training.

County governments are responsible for development and regulation of cooperatives which include training, and promotion. Since the advent of devolution, the counties have not been able to perform this responsibility since the function has not been fully operationalized at the counties due to policy and legal instruments having not been aligned to the CoK, 2010.

County governments are also expected to promote and support formation of sector-based Co-operative unions at county level to enhance their ability and capacity for lobbying and advocacy. However, The national government has the responsibility to develop mechanism to capacity build the county officers to enable them discharge their mandate once the function is operationalized at the county level.

Research and development is a function of the National Government. The sector lacks credible data or data resource center which hampers research, policy formulation and training. Continuous research on emerging applicable technologies and issues is critical in propelling the co-operative movement towards undertaking industrial activities. This is because evidence-based research is essential for innovations and inventions. Absence of research and development has resulted to co-operative enterprises lagging behind limiting their competitiveness and product range. The National needs to develop mechanism to fund research and development in the sector.

2.8. ICT in Co-operatives Societies

The majority of co-operative societies in Kenya are still using manual paper-based systems. In addition, many co-operatives societies lack trained and experienced ICT personnel to deliver ICT solutions that can make co-operative societies competitive and sustainable. The co-operative movement in embracing ICT will be more efficient and effective in their service delivery, and would expand their market reach. Cooperatives are operating IT systems without proper cybersecurity measures which makes it easy targets for tech-savvy people to defraud them.

It is recognised that installation of ICT solutions and the maintenance of the attendant software licenses normally require heavy capital investments. Start-up co-operative societies and the small and medium ones, are unable to raise such capital and therefore cannot invest in ICT solutions.

2.9. Cross cutting issues

New initiatives and innovative ventures are required for co-operative societies to expand into emerging high growth areas and partnerships. The co-operative sector will be supported to reach a greater number of people. The traditional areas in which the co-operative movement has always performed have been outlined in previous chapters in this document. However, opportunities for growth and sustainability of the co-operative movement will be further realised by leveraging on the following growth areas: youth and women, special interest groups, environment, health, ICT and new forms of co-operatives.

2.9.1. Worker-Owned and Youth involvement in co-operatives

The worker-owned co-operative concept is based on a commitment to solidarity and on democratic methods for organization and management. It demonstrates an alternative to the

'business as usual' mantra of shareholder-owned companies. The mission is not to earn money but rather to create wealth within a society through entrepreneurial development and job creation. Such worker co-operatives promote employment creation, skills and knowledge development, and easy access to affordable finance. The model can be used to engage youth in various entrepreneurial activities. The Mondragon co-operative model of Spain best represents such worker-owned co-operatives.

Youth represents 35% of the country's population. The youth tend to be attracted to newer models of collective engagements that promise them quick gains. With the youth unemployment rate at 80%, co-operatives provide opportunity for youth to engage in productive activities. Co-operatives can contribute to the development of practical skills for entrepreneurship, which is a key contributor to employment. There is an opportunity to harness this large number of underutilised energy through directed entrepreneurship skills and apprenticeship programmes backed by funding through co-operatives.

2.9.2. Gender mainstreaming in co-operatives

It is estimated that in Kenya women account for 30% of the members of the co-operative movement and only 9% of leaders in co-operatives. There are however significant regional differences in membership which range from about 10% in North Eastern region to 40% in Nairobi (ILO 2012)

There is recognition among development experts that women are central participants in the socio-economic development process. There is a growing consensus that women's greater involvement in all aspects of development programmes is extremely important for the rational utilization of development resources which has hitherto remained under estimated and neglected.

Through co-operatives women are able to respond to both practical and strategic needs as they are provided with opportunities to access common production resources (such as credit, land, marketing facilities, infrastructure, tools, and technology), which increase their income. By forming themselves into co-operatives, women can also benefit from economies of scale and improve their access to open market.

2.9.3. Climate change

Co-operatives under the principal of the concern for the community should be in the forefront in mitigating against climate change. However, cases have been noted, where many co-operatives are polluters to the environment especially agricultural co-operatives. Co-

operatives are expected to play a leading role in protection of environment and adaption of green technologies.

2.9.4. HIV/AIDS

The HIV/AIDS pandemic classified as a national disaster has far reaching potential to impact on the business of co-operatives. Its therefore imperative to proactively carry out continuous HIV/AIDS advocacy and awareness.

DRAFT LIMITED CIRCULATION

CHAPTER THREE: POLICY INTERVENTIONS

3. Introduction

This chapter provides Policy interventions to issues raised in previous chapters.

The Constitution of Kenya 2010 (CoK, 2010) establishes a devolved structure of government consisting of the National and County Governments, which are distinct but inter-dependent, and conducts their mutual relations on the basis of co-operation and consultations.

Therefore, the interventions prescribed here below will be implemented by both levels of Government in accordance to Article 186 and the Fourth Schedule of CoK, 2010, the specific functions that have been assigned to each level of government and the Transition Authority Legal Notice No 137, of 2013.

3.1. Review of the legal and regulatory framework

Policy Objective: To align the legal and regulatory framework to the Constitution of Kenya 2010 and address the dynamic business environment.

Interventions:

- a) Review the Co-operative Societies Act, Sacco Societies Act, to include the following areas;
 - i. Review powers of the commissioner for cooperative development and related offices in regulating the movement and enforcement of the law;
 - ii. Facilitate the formulation of county specific legislation and regulations in line with the National policy;
 - iii. Establish the Cooperative Societies Regulatory Authority to oversee regulation in non-SACCO co-operatives;
 - iv. Develop a regulatory framework for non-financial co-operative societies;
 - v. Develop appropriate legal and regulatory framework to facilitate inter borrowing among co-operative societies;
 - vi. Develop a legal and regulatory framework for co-operative societies to raise capital using capital market instruments, and the establishment of a secondary market for co-operative securities;
 - vii. Develop financial market conduct regulations to cater for the financial co-operative societies;

- viii. Establish an institutional framework for facilitating co-operative self-regulation through its structures;
 - ix. Legislate on the role of the boards and the management of co-operative societies;
 - x. Prohibit dual registration of cooperatives and companies
 - xi. Provide for the operations of holding cooperatives and registration of companies,
 - xii. Provide a framework for the co-operative sector shared services platform;
 - xiii. Provide legislation for establishment of a central liquidity facility for financial co-operative societies, as a platform for their participation in the national payment system; and
- b) Establish and support intergovernmental sectoral forums to discuss and resolve issues in the co-operatives sector for harmonious relations and growth in the co-operative movement in accordance with the CoK, 2010 and legislation,

3.2. Co-operative production, value addition and marketing

Policy objective: To promote co-operative production, value addition and marketing in order to improve returns to members

Interventions:

- a) Facilitate creation of credit schemes and revolving funds accessible to the co-operative sector;
- b) Facilitate information sharing and effective dissemination of quality standards in the co-operatives sector;
- c) Review and streamline marketing linkages in all value chains in order to increase production;
- d) Ensure that co-operatives are recognized under commodity exchange programme(COMEX);
- e) Create an enabling environment for co-operatives to engage in Public Private Partnerships (PPPs) and Business Process Out-sourcing (BPO) with established manufacturers in order to eject new capital and enable technology transfer;
- f) Facilitate Cooperatives to engage in production, value addition and marketing of their products/services;
- g) Facilitate Cooperative societies to invest in bulk storage facilities;

- h) Develop legal framework to promote contract farming in Cooperatives; and
- i) Facilitate risk management in Cooperative societies.

3.3. Co-operative finance and investment

Policy objective: To enhance financial deepening and investments through co-operatives,

Interventions:

- a) Develop appropriate legal and regulatory framework to facilitate inter borrowing between and among financial cooperative enterprises
- b) Develop a legal and regulatory framework for cooperative enterprises to raise capital using capital market instruments, and the establishment of a secondary market for cooperative securities
- c) Facilitate the establishment and operationalization of a central liquidity facility for financial cooperative enterprises, as a platform for their participation in the national payment system
- d) Incentivize cooperative enterprises to participate in government securities
- e) Promote the growth of financial cooperatives
- f) Develop uniquely designed financial market conduct regulations to cater for the financial cooperative enterprises
- g) Ensure that credit information sharing (CIS) is incorporated in the cooperatives' legislation
- h) Integrate financial cooperatives in the provision of Islamic financial products
- i) Establish the Co-operative Development Fund;

3.4. Co-operative Movement Structure

Policy objective: To enhance efficiency in regulation and co-ordination of co-operative activities

Interventions:

- a) Implement a new co-operatives structure that constitutes primary, unions, federations and the Apex to enhance co-operation, consultation and coordination of co-operative activities;
- b) Restructure CAK to respond to the needs of the new structure;
- c) Promote cooperative federations in all value chains;
- d) Develop regulations to ensure adequate member control of the movement
- e) Promote and establish County chapters of the CAK;
- f) To streamline registration process of co-operatives to reflect the main business activity;

- g) The Commissioner for Co-operatives to maintain a register of all co-operative owned companies and develop regulations to guide their operations;
- h) Develop guidelines and procedures to be followed in the formation and operations of the holding co-operatives;
- i) Promote consumer and industrial co-operatives;
- j) Prohibit dual registration of organizations as both co-operatives and companies; and
- k) Promote and develop guidelines and procedures to be followed in the formation and operations of the Savings and Investments Co-operatives (SICOs).

3.5. Co-operative governance and enforcement

Policy objective. Establish institutional and regulatory framework for effective governance of cooperatives at the four tier levels, which provides for self-regulatory mechanism within the sector.

Interventions

- a) Strengthen Regulatory institutions to effectively promote and enforce ethical governance within cooperative organisations
- b) Develop regulations that guide the graduated levels of growth and development of co-operative societies including vetting and tenure of leadership
- c) Formulate guidelines for co-operatives to participate in community concerns and preservation of environment for sustainable development
- d) Reform the Co-operative Tribunal to enhance access and timely dispensation of justice to co-operators;
- e) Promote application of alternative dispute resolution mechanisms in cooperatives;
- f)

3.6. Co-operative Education, Training and Research

Policy objective: To provide reliable data and information and to empower co-operative officials and members with relevant skills and competences

- a) Promote the establishment of co-operative research in all co-operative institutions, colleges, universities and platforms;
- b) Establish linkages with all institutions of higher learning offering cooperative training;
- c) Promote the development of a uniform co-operative curriculum for use in learning institutions;

- d) Enhance collaboration between County Governments and the National government for capacity building in the co-operative sector;
- e) Anchor cooperative learning centres within county learning institutions;
- f) Integrate the co-operatives data and statistics into the National data through the Kenya National Bureau of Statistics;
- g) Facilitate establishment of National Co-operative Information and Research Centre; and
- h) Prescribe a minimum percentage of a co-operative revenue to be set aside for the purpose of education, training and research;

3.7. Information Communication Technology in Co-operatives

Policy objective: To promote adoption of ICT in Co-operative.

Interventions:

- a) Facilitate the development of shared e-coop platform to enhance service delivery to co-operative societies;
- b) Support and develop capacity of co-operatives to embrace modern technology, ICT and use shared platforms;
- c) Promote the need for investment in ICT and robust Management Information Systems (MIS) that are capable of increasing efficiencies in service provision as well as mitigating against cyber security threats.

3.8. Cross cutting initiatives

Policy objective: To mainstream emerging and cutting issues in co-operatives.

Interventions:

- a) Support the development of environmental policies for cooperatives;
- b) Support youth initiatives both at the County and National levels through sensitization to participate in the leadership of existing co-operative societies;
- c) Promote gender responsiveness in the movement and encourage women to become members and participate equitably at all levels especially in leadership and employment in co-operatives; and
- d) Promote formation of youth and worker-owned co-operatives to offer services to institutions and individuals;

CHAPTER FOUR: INSTITUTIONAL IMPLEMENTATION FRAMEWORK

4.1 Introduction

The enactment of Kenya Constitution (2010) brought about fundamental changes in the management of Government affairs by creating two levels of Government: The National Government and the County Governments. This change in the country's governance structure has therefore occasioned a change in the manner the National Government will involve itself in the management of co-operatives by making co-operative societies a devolved function as per the Fourth Schedule of the Constitution. This policy puts forth the interventions that:

- a) Respect the devolution of power as one of the national values and principles of governance under Article 10;
- b) Recognise the transfer of power between levels of government under Article;
- c) Acknowledge the assignment of the function of national policy development to the National Government; and the function of trade development and regulation of co-operative societies to County Governments;
- d) Recognise the role of National Government in execution of the function of capacity building and technical support to the counties;
- e) Appreciate the jurisdictional variations for co-operative societies, some of which are national and cross-county in their institutional and operational frameworks and will require regulation under the national legislative framework while others are county-based and can be effectively regulated within county legislative frameworks as envisaged in Article 191;
- f) Acknowledge the need to have uniform national norms and standards applicable for the supervision of co-operative societies and the responsibility of the National Government to develop such norms and standards;
- g) Recognise the principal of inter-governmental relationship based on consultation and cooperation between the National and County Governments in the growth and development of co-operatives; and

Acknowledges that co-operatives are private organizations that deal with public good and the role of Government shall be limited to ensuring the existence of an environment that nurtures a dynamic and vibrant movement.

4.2 Role of National Government

Arising from the constitutional mandate of the National Government to spearhead policy formulation, capacity building and ensuring standardization and uniformity, the National Government and its agencies shall be responsible for:

- a) Formulation of National policy and legal framework for the development and growth of the co-operatives sector;
- b) Registration and cancellation of co-operative societies;
- c) Maintain a register of approved audit firms in the co-operative sector;
- d) Formulation and enforcement of management standards for co-operative societies,
- e) Develop and coordinate Inter-Governmental Relations mechanism in the co-operative sector;
- f) Carrying out inquiries, inspections and investigations into the affairs of co-operatives and enforcement of Surcharges;
- g) Provide oversight over Apex, Federations, and Cross-County Co-operative Organizations;
- h) Promotion of good governance and ethics on co-operative societies;
- i) Formulation and regulation co-operative education and training standards;
- j) Carrying out capacity building to the county Governments;
- k) Promoting public private partnership, joint ventures and facilitate regional and international co-operative relations; and
- l) Establishment and maintenance a research and information centre for co-operatives.

4.3 Role of County Governments

The role of County Governments in supervision and management of co-operatives will be to:

- a) Formulate county specific co-operative legislation and regulation in line with the National policy;
- b) Promote and facilitate registration of co-operatives;
- c) Provisionally register County specific cooperatives;
- d) Provide audit services and enforce of audit requirements and standards;
- e) Carry out inspections into the affairs of county co-operatives;

- f) Promote and facilitate co-operative societies engaged in value addition, support adoption of appropriate technology by co-operatives, and facilitate market information sharing;
- g) Collect and collate data on all cooperative activities in the County
- h) Establish and maintain County co-operative information centres;
- i) Ensure compliance with co-operative legislation;
- j) Facilitate collaboration and linkages with co-operatives and stakeholders for the benefit of the movement;
- k) Promote good governance in the management of the co-operative societies within their jurisdiction;
- l) Support and strengthen growth, revival and restructuring programmes;
- m) Uphold the principles of inclusivity in co-operative societies;
- n) Provide co-operative advisory services;
- o) Enforcement of management standards in the cooperative societies;
- p) Promote co-operative research, development and data collection on county co-operative societies; and
- q) Promote co-operative ventures and innovation for county co-operative societies.
- r) Facilitate and process applications for registration of co-operatives

4.4 SACCO Societies Regulatory Authority (SASRA)

SASRA is established under the SACCO Act 2008 to oversee the prudential regulation and supervision of deposit taking SACCOs. This is in line with internationally accepted principle requiring deposit-taking financial institutions to be subjected to prudential regulations and standards.

To avoid duplicity in the regulatory regime of financial cooperatives and allow for smooth transition of SACCO societies as they expand their services from back office to front office operations, the role of SASRA will be expanded.

4.5 Co-operative Societies Regulatory Authority

To enhance regulation of cooperative societies other than SACCOs, the Cooperative Societies Regulatory Authority shall be established.

4.6 Co-operatives Tribunal

The Co-operative Tribunal is established under the Co-operative Societies Act Cap 490 to arbitrate and resolve disputes in the co-operative movement. In line with the Kenya

Constitution (2010) the tribunal has been consolidated in the structure of the Judiciary. Despite this move, it is expected that the tribunal will continue to serve the interest of the movement and the ministry at large and it will not be turned into just another instrument of the judiciary. The structure of the tribunal should reflect this reality.

In addition to the Tribunal, the Government shall promote the Alternative (Amicable) Dispute Resolution mechanism as the first line action in resolving disputes in co-operatives. The Constitution of Kenya 2010 recognises ADR as an effective dispute resolution mechanism since they are cheaper, less confrontational, rules and procedures are flexible thus favouring reconciliation and recognises possible future relationships of the parties concerned.

4.7 Role of Other State Agencies

This policy is cognizant of the existence of other state agencies responsible for the implementation of other National Government policies and legislations. These state agencies shall be critical in the successful and seamless implementation of this policy, particularly with regard to strategies that directly or indirectly overlap across the various sectors.

This policy therefore draws from the fundamental pillars enshrined in the Vision 2030 and the state actors therein; and premised on the underlying principles of governance by various state agencies under the Constitution; and respects the existing or future national sectoral policies and legislations with direct or indirect impact on the co-operative movement.

Whereas the implementation of this policy shall be domiciled in the state department responsible for co-operatives, adequate budgetary allocations shall be availed by the National Treasury.

The National Government shall create an enabling environment for effective co-ordination among the various state agencies and actors in the implementation of this policy. Other national policies and legislations shall concurrently acknowledge and incorporate components of this policy that are aligned to their mandate. In this regard:

- a) National Government will create an inter-governmental co-ordination unit within the state department responsible for co-operatives to ensure seamless implementation of this policy; and
- b) The National Treasury shall provide adequate budgetary allocations necessary for implementation of the policy.

4.8 Non State Actors

The policy recognises the role of non-state stakeholders involved in co-operative development. The Government shall ensure that collaboration between the co-operative movement and non-state stakeholders is within existing legal provisions as well as the co-operative values and principles.

The Government will profile and streamline engagement with non-state stakeholders and develop a mechanism that will provide the framework for engagement with different non-state stakeholders.

4.9 Inter-Governmental Coordinating Unit

There will be an agency established within the structure consisting of officials from the National and County Governments to coordinate the Policy implementation. This unit will also Promote harmonization and/or linkages between the movement, the National Government and County Governments through periodic forums by:

- a. Providing mechanisms for the apex body to create visibility through round table engagement with the Council of Governors (CoG) and appropriate forums of the National Government;
- b. Encouraging formal and recognized engagement of the movement in key structures through which the Government promotes its social and economic agendas; and
- c. Creating gainful partnerships between the co-operative movement, National Government through its Ministries, Departments and Agencies, Council of Governors structures, individual County Governments, and other stakeholders.

4.10 MONITORING AND EVALUATION

Monitoring and evaluation (M&E) will be an integral part of the implementation of this policy. M&E will provide the Government, working together with the co-operative movement and other stakeholders, continuous data on progress in implementing the policy and ensure any emerging issues are responded to appropriately. Reporting will provide the necessary feedback and enable appraisal of the implementation strategy.

A results-based framework will be put in place for periodic assessment and evaluation of achievements and gains made in the implementation of the policy. A Policy Implementation Advisory Board will be established to guide the process over a three-year period.

The Government will promote compliance with the national, regional and other global initiatives by ensuring enhanced country reporting to the ICA using established indicators. These steps include:

- a) Developing a Result Based M&E framework for the policy;
- b) Establishing and commissioning the Policy Implementation Advisory Board;
- c) Developing mechanisms for disseminating information and informing subsequent reviews, changes and interventions to keep the processes alive; and
- d) Instituting mechanisms for shared country reporting to ICA using the established indicators.

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