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Enhancing Mobilization of Own Source Revenue in Nairobi City County: Issues and Opportunities

ENHANCING MOBILIZATION OF OWN SOURCE REVENUE IN NAIROBI CITY COUNTY: ISSUES & OPPORTUNITIES

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ABBREVIATIONS

APSEA	Association of Professional of East Africa
CBEF	Nairobi County Budget and Economic Forum
CEC	County Executive Committee Member
CFSP	County Fiscal Strategy Paper
CK	Constitution of Kenya
CoG	Council of Governors
CRA	Commission on Revenue Allocation
CRA	County Revenue Automation Conference
CSOs	Civil Society Organizations
EATGN	East Africa Tax & Governance Network
e-CP	electronic platform for construction permits
ICPAK	Institute of Certified Public Accountants of Kenya
ICT	Information and Communications Technology
IEA	Institute of Economic Affairs - Kenya
IFMIS	Integrated Financial Management Systems
KAM	Kenya Association of Manufacturers
KARA	Kenya Alliance of Resident Associations
KENASVIT	Kenya National Alliance of Street Vendors and Informal Traders
KEPSA	Kenya Private Sector Alliance
KMPDB	Kenya Medical Practitioners and Dentist Board
KRA	Kenya Revenue Authority
LAIFOMS	Local Authority integrated financial operation management system
LSK	Law Society of Kenya
MOA	Matatu Owners Association
NCA	National Construction Authority
NCC	Nairobi City County
NEMA	National Environmental Management Authority
NTA	National Taxpayers Association
OSR	Own source revenue
PFM	Public Finance Management
SBP	Single Business Permit
TISA	The Institute for Social Accountability
UBP	Unified Business Permit

EXECUTIVE SUMMARY

This paper seeks to understand the challenges and opportunities of enhancing local revenue mobilization in Nairobi City County. It notes that local revenue is an important revenue source for the County given its expanding budgetary and service delivery needs. Furthermore, Nairobi County has little influence on the revenue it receives as transfers from the national government and that in cases of delays, local revenue is always a good fall back. Besides, local revenue is critical in fostering accountability and fiscal discipline in the county.

To answer the question of whether Nairobi has adequate capacity to generate sufficient and sustainable local revenue, this study first reviewed literature primarily from Nairobi County budget documents and revenue legislations. Additionally, we also interviewed key informants from the national government agencies, Nairobi County, business groups, professional bodies and civil society organizations. This study revealed that even though Nairobi's local revenue collection increased nominally between 2013/14 and 2015/16 it consistently fell short of realizing targets.

This paper further noted that Nairobi lacks as a foundation, a comprehensive policy and legislation underpinning its revenue regime. As a consequence, this affects revenue mobilization for example, on property rates which accounts for nearly 30% of local revenue whose legislation is outdated. It also revealed that despite a generally progressive revenue structure, attendant regulatory charges and multiple approvals often result in increased cost of doing business, disproportionately affecting the poor. In general this paper shows that service delivery is not commensurate to fees and charges paid, largely attributed to unwillingness to pay taxes and fees. Low compliance level was also blamed on lack of taxpayers' education campaigns and other participatory initiatives by the county. On the supply side, this study noted that the County lacks requisite personnel capacity in revenue collection and administration compounded by weak enforcement mechanism and fragmented revenue system. Related to this, the study shows that Nairobi lacks up to date database of tax bases thus making it difficult to undertake revenue forecasting and monitoring.

It is recommended that for Nairobi to enhance local revenue mobilization, it should expedite updating and strengthening of its legal framework for county revenue administration and collection. For increased compliance levels, the county should proactively engage taxpayers, simplify tax legislations and explore partnership for better engagement. By and large, tax payers willingness to pay is driven by better service delivery. For efficient revenue collection, comprehensive revenue automation is paramount coupled with better administrative capacity and cost effective collection practices.

1

INTRODUCTION

Many African sub national governments and administrations have struggled to keep up pace with the capacity to deliver services and in turn improve the welfare of its residents amid rapid urbanization and other socioeconomic dynamics. Part of the challenge especially for local governments is dependency on transfers from central governments. Often Own Source Revenue (OSR) especially for local governments in developing countries constitute a small proportion of their total revenue due to limited taxing powers.

As a result, most local governments are characterized by a huge number of revenue instruments used for revenue mobilization often without due regard to their economic distortion and distribution effects (Fjelstad and Semboja, 2000 and Bardhan and Mookherjee, 2002). In addition, these local governments revenue systems are invariably complicated, non transparent and costly to administer¹

Beyond this, other factors as noted by Brosio, (2000) and Venables, (2010) conspire to make local governments dependent on transfers including: ineffective revenue mobilization capacity, weak administration structures, local politics that oppose local revenue collection; and corruption among others.

Given the above scenario, many sub-national governments have undergone reforms in the last decade geared towards changing the design of their local revenue system. For some countries like Kenya, these reforms led to the adoption of fiscal decentralization² system in 2010. In this system, county governments (sub national units) which came to effect in 2013 have been assigned more enhanced revenue raising powers relative to those of the defunct local authorities, with some limitation. This notwithstanding and despite institutional changes, there is still a general pressure from all County Governments in Kenya for more resources to meet budget and service delivery needs.

Nairobi City County, the focus for this study, is no different and indeed its budgetary pressure is heightened by the fact that it has a huge inherited debt portfolio to service, additional administrative

been clamoring for increase in transfers from the National Government to supplement its OSR in running its operations and in service provision. However, Nairobi like all other counties has very little direct influence on the national transfer especially after the revenue distribution formulae has been approved. As a result the room for wriggle is with OSR albeit the limited revenue raising powers.

So, the question is whether Nairobi has adequate capacity to generate sufficient and sustainable OSR. Furthermore, unlike transfers whose disbursement has consistently been delayed³ due to legal and bureaucratic hurdles resulting to operational challenges; OSR is often the fall back. Thus, as a stable revenue source, OSR is important for devolution to succeed.

Following from the above, OSR is additionally critical to Nairobi and indeed all county governments in many ways, three stand out.

First, when residents are obligated to pay taxes or user charges this inherently creates a relation with the county government, commonly referred to as a social contract. This is important because it has the potential to foster administrative and political accountability⁴.

Secondly, although the reality is that most county governments will for a long time continue to be heavily dependent on national transfers, OSR is still an indispensable revenue stream. In particular, this is most important for Nairobi, one of the few counties whose OSR has invariably constituted on average a half of its total revenue.

Thirdly, reliance on OSR imposes fiscal discipline on sub national governments. What this means is that, sub national governments like Nairobi County feel that a greater share of OSR will be used to finance expenditure and as a result this puts pressure for them to inherently try to keep their expenditure in check. The question then is, to what extent can Nairobi City County (NCC) optimize its potential for enhanced mobilization of its OSR given its narrow tax base.

The rest of the paper is organized as follows. The first subsection after the introduction section looks at local revenue trends and performance as additional contextual information preceded by study objectives. The methodology section is what follows paving way to study findings based on four thematic areas around revenue regime, administration and management. In the tail end, we have conclusions and recommendations that draw from the findings.

1.1 Objective

Generally this study seeks to examine how Nairobi City County (NCC) Government can improve mobilization of its own source revenue.

Specific Objectives

- To assess the sources and performance of key own source revenue streams in NCC
- To understand the challenges and opportunities of own source revenue mobilization in NCC
- To draw recommendation for improvement in own source revenue mobilization

Research questions

Below is a list of some research questions that this study seeks to answers:

- Does lack of a clear legal basis affect revenue collection?
- Is Nairobi raising more because it is a city and largest county economy or is it because it has made more effort to raise funds (more efficient)?
- What can Nairobi do to optimize collection of revenue from property tax/land rates vis a vis the legal gaps and resistance by political class?
- Is the public being engaged on revenue raising matters and decisions?
- How is suspicion and mistrust from the residents contributing to low compliance levels?
- Do revenue administrative and management constraints impact on revenue collection?

1.2 Local Revenue Trends and Performance

The local revenue system in Nairobi City County is characterized by a narrow revenue base like all the other county governments. As provided for in article 209 (3) of the Constitution of Kenya, county governments are empowered to impose two taxes, property and entertainment and any other tax as may be authorized by law. These taxes are supplemented by numerous licenses, fees and charges imposed for regulatory purposes, for services provision or to cover administrative costs as provided for in Article 209(4). Furthermore, guidelines on how counties are to levy, manage and collect taxes from residents are provided in the Public Finance Management Act, 2012 and the County Government Acts, 2011.

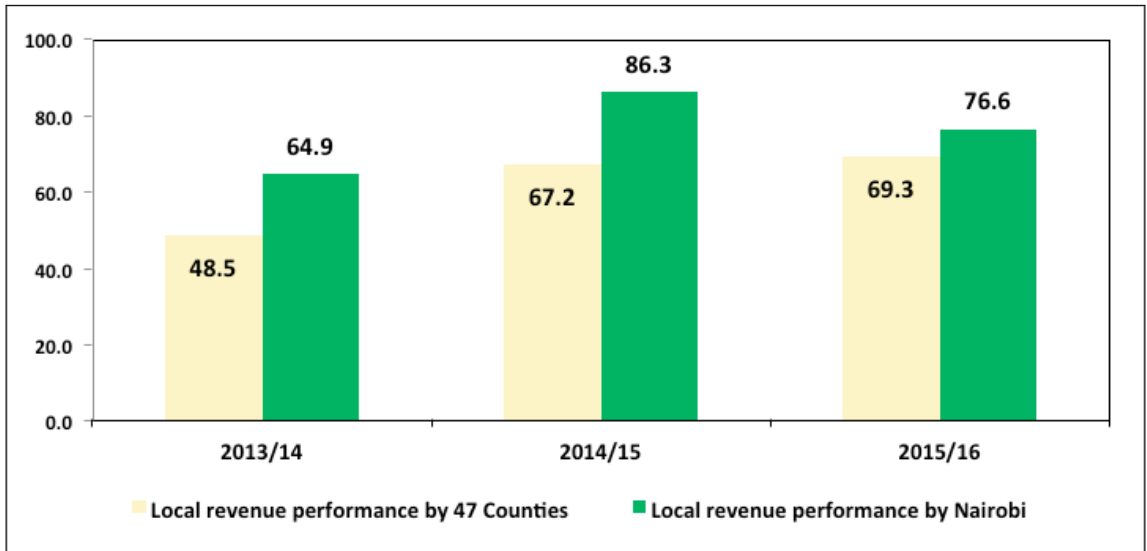
1.2.1 Local Revenue Trends

Nairobi County collected Ksh 10 billion in 2013/14 which increased nominally to Ksh 11.5 billion in 2014/15, representing a growth of 14.7%. This was followed by a further increase to Ksh 11.7 billion in 2015/16, albeit marginal. Despite this growth in revenue collection, it is important to note that Nairobi like majority of the counties has consistently fallen short of realizing revenue targets for the period 2013/14-2015/16.

The good news however is that the gap has been narrowing. As seen in figure 1 revenue performance improved from 64.9% in 2013/14 to 86.3% in 2014/15 but dropped considerably by 10 percentage points in 2015/16.

Notably too, is that across the three financial years Nairobi’s local revenue performance was better than that of the 47 county governments. What explains better revenue performance among other factors is perhaps a combination of general improvement in revenue collection and modest revenue targets in 2014/15 and in 2015/16.

Figure1: Comparison of Local Revenue Performance for the 47 Counties Vs Nairobi County (%)



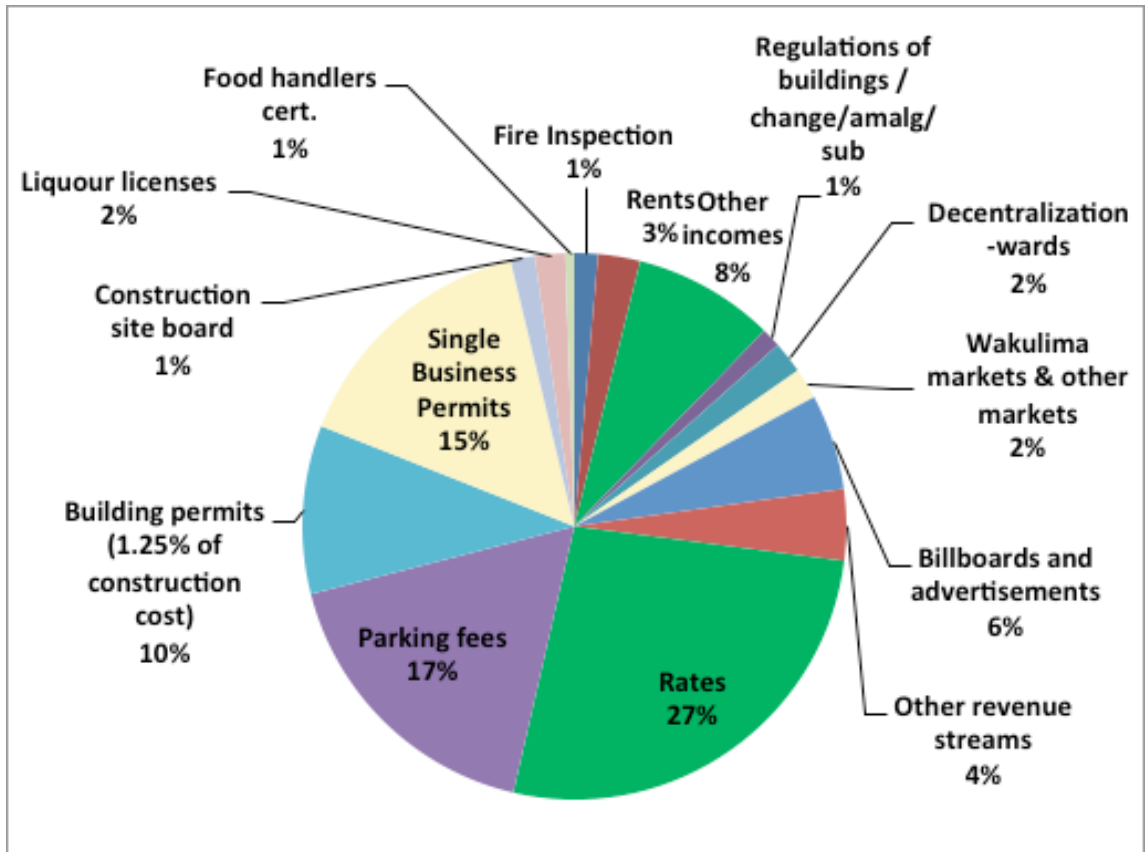
Source: Various Issues of Annual Budget Implementation Reports by the OCoB

As much as revenue collection for the three financial years increased nominally, this does not fully reflect its potential and neither does the growth reflect efficiency improvements. The Nairobi County Fiscal Strategy Paper 2016 notes unrealistic revenue projections and administrative constraints such as inadequate staff and weak enforcement mechanisms as some of the other factors attributed to below potential performance of OSR.

1.2.2 Composition of Own Source Revenue

A look at the figure 2 reveals the typical composition of local revenue in Nairobi. Using 2015/16 example, it is clear that the largest source of own source revenue, accounting for 27% is land rates. The other top five sources in order of their contribution to the local revenue are namely: parking fees (17%), single business permit (15%), building permits (10%) and billboards and advertisements (6%). The rest are market user fees, licenses, certificates for things like fire and income from other small revenue streams.

Figure 2: Typical Composition of Local Revenue (2015/16)



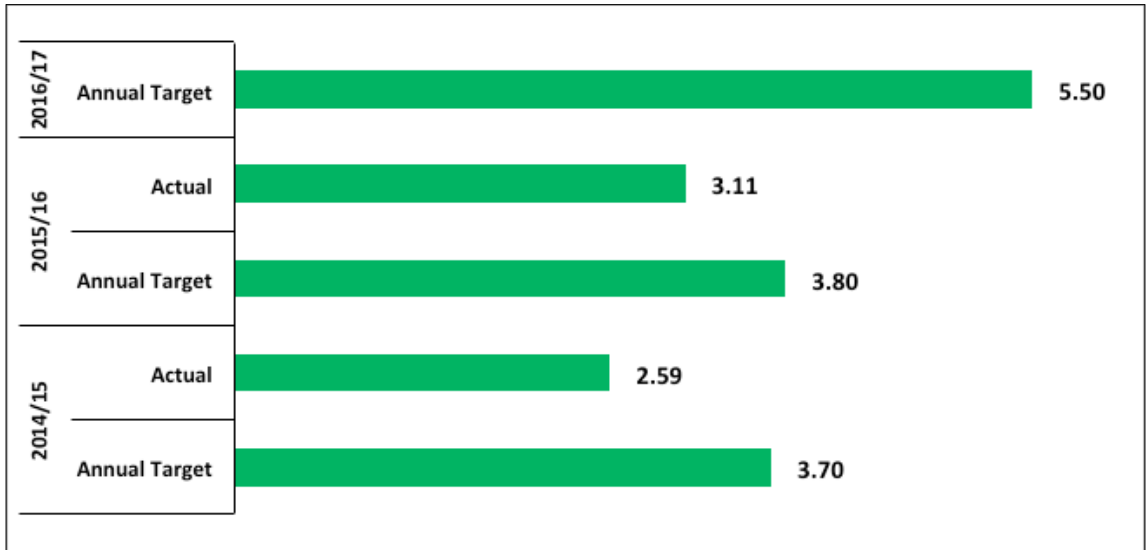
Source: Nairobi County Budget Review and Outlook Paper 2016

Property Rates

Property rates (land rates) in Kenya are still underpinned by the National Rating Act (Cap 267) and Valuation for Rating Act (Cap 266) of the defunct local authorities. This legal basis will be replaced as soon as the current Nairobi City County Valuation and Rating Bill, 2015 is enacted. As provided for in National Rating Act (CAP 267), property rates in Kenya and for that matter Nairobi are levied on the value of land unlike in most African countries where these rates are based on the value of property. The current rate is 25% of the value of land (unimproved site value) per annum down from 34% as provided for in the County Finance Act, 2016. In Nairobi, this rate applies uniformly for the different classes of property/land (residential plot, commercial or agricultural plot). One of the outstanding challenges with property rates is that these valuations are outdated (done in 1982) and therefore do not reflect the correct market value of land which the new proposed Bill seeks to address as soon as it is enacted.

It is important to point out that this rate applies to all rateable property/land with the exception of public land, land reserved for things like roads, parks or used for public religious functions, public hospitals, charity institutions and so on.

Figure 3: Performance of Property Rates (Ksh billion)



Property rates is a major source of local revenue with a lot of potential, being visible and immobile, contributing 10-30% in African countries (Fjeldstad, 2004, Bahl and Smoke, 2003). Figure 2 confirms experiences from other countries, importance of property rates in revenue mobilization at the sub national level.

As the largest revenue stream in Nairobi, revenue realized from property rates increased in absolute terms from Ksh 2.59 billion in 2014/15 to Ksh 3.11 billion in 2015/16, representing a growth of 20% (See figure 3). This is despite missing the target in each of the two financial years by 30% and 18% respectively. Reduction of rate payable from 34% to 25% may in part be attributed to overall improvement in performance of revenue collected from property rates.

Trade Licenses/Single Business Permit

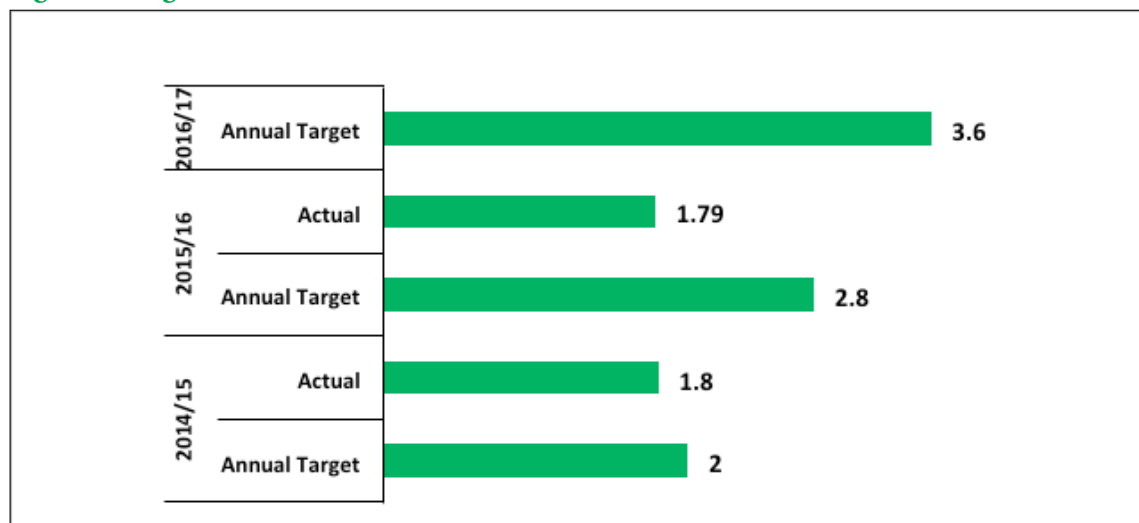
Trade licenses are levied on businesses and trade including professionals such as accountants and lawyers for purposes of granting or renewing permit for regulating conduct of a business or trade. This fee is paid annually based on the nature of business, the size and location and it is set every year through the County Finance Act.

Trade licenses are one of the sub national government revenue instruments that has undergone significant reforms. In the late 1990 trade license in Kenya was consolidated into a Single Business Permit system, in essence streamlining the system and ease of doing business. It was further rationalized through recommendation of Working Committee on Regulatory Reforms for Business Activity in Kenya by reduction of fees categories from 16 to 10.

To its credit, Nairobi has gone another step further and introduced what is now called a “Unified Business Permit (UBP)” which consolidates all the requirements for running a business within the

County. Its intention is to alleviate time spent acquiring different business related licenses from different offices. According to NCC, it is a one-stop source whereby, after acquiring your UBP, one will have paid for a Single Business Permit, fire Clearance Certificate, Advertising Signage (300mm by 600 mm or less), Health Certificate, and Food Hygiene⁵. The first two licenses are mandatory for every business but the latter two are dependent on whether the nature of business is handling food/edibles.

Figure 4: Single Business Permit Performance (Ksh billion)



Revenue from SBP in 2015/16 contributed to 15% of total own source revenue in Nairobi, another equally important revenue stream for the county. What was collected between 2014/15 and 2015/16 reduced marginally by 1.6% from Ksh 1.8 billion to Ksh 1.79 billion respectively. Whereas performance of SBP in 2014/15 was about 91%, it dropped significantly in the following year to 63% largely on account of ambitious targets and resistance to pay by traders.

User Charges and Fees

User charges are a revenue source linked to specific services and vary based on the amount of service consumed, for example, water bill will vary with volume of water consumed. In some cases user charges will also vary by the type of consumer, for example, charges for garbage collection may be different for residential and commercial or industrial establishment (Heady, 2002). Fees on the other hand are transactional based (for example, fees of a fixed amount for birth registration certificates, parking service for vehicles and so on). As such, user charges and fees unlike taxes must of law be related to the service provided.

Notably, the main purpose of user fees is to encourage efficient use of resources within the public sectors but not to generate revenue (Bahl et al., 2003). Furthermore, given that user charges are used as mechanism for linking payment to service delivery they act as a good indicator of willingness to pay when properly designed (Fjeldstad et al., 2005).

⁵Sourced from Nairobi City County Website via www.nairobi.go.ke

Given the linkage between payment and delivery of service, Article 120 of the County Government Act, 2012 provides various principles to guide tariffs and pricing policy of public service. It is expected that when Counties are designing their user charges and fees structure including the amount of fees and charges to be levied, they will be required to factor various principles. These principles include: equity considerations, cost recovery, fees and charges levied should not be too high to discourage economic activity and also that counties should ensure that the amount paid for services should generally be in proportion to the use of that service.

Parking fees as an example of user charges and fees is one of the most critical revenue streams for NCC. In 2015/16, parking fees constituted 17% of NCC total own source revenue, the second largest revenue stream after property rates. This notwithstanding, the amount of revenue collected out of parking fees in 2014/15 (Ksh 2.02 billion) and in 2015/16 (Ksh 2.04 billion) increased by a mere 1%. Despite a considerable potential, marginal increase in revenue collection from parking fees was undermined largely by collusion from revenue collectors and overall leakages.

2

METHODOLOGY

This study focus area was Nairobi City County. To answer the research questions noted earlier, particularly in regard to understanding the challenges and opportunities for enhancement of local revenue this study relied on both primary and secondary data.

2.1 Data Types and Sources

For an understanding of the picture of local revenue trends we used mostly secondary information, from Nairobi County. This information was sourced from various budget documents for the period 2013/14 to 2016/17, namely: County Budget Estimates, various issues of the County Fiscal Strategy Paper (CFSP), and the County Finance Bills.

We further assessed growth of total OSR and its breakdown as well as its performance by comparing projections and actual revenue collected. For this, we used county budget implementation reports from the Office of the Controller of Budget.

The analysis of local revenue trends and performance was preceded by a review of the policy and legal framework around the different local revenue streams for Nairobi. Most of the legislations we reviewed were largely sourced online and particular from the Nairobi City County website. In general we also reviewed relevant literature of sub-national governments regionally and their efforts towards enhancement of local revenue.

For a better understanding of research questions we complemented secondary data with primary information. Given the arena of local revenue mobilization in Nairobi County and the limited resources at our disposal, we purposively selected key informants categorized into three groups, namely:

1. Nairobi County Officers from the Treasury Department (particularly Revenue section) and revenue collecting agents,
2. Tax payers from key professional groups, business groups/associations, civil society organizations and residents associations as listed below
 - Private Sector/Business groups– Kenya Association of Manufacturers (KAM) Kenya Private Sector Alliance (KEPSA), Kenya Property Developers Association, Kenya Alliance of Residents Association (KARA), Hoteliers (restaurants, hotels and Casinos, Traders Association (supermarkets, etc) KENASVIT, Small and Medium Enterprise Authority; Liquor traders, matatu/taxis association, KBA, etc
 - Professional bodies : Law Society of Kenya (LSK), Kenya Medical Practitioners and Dentist Board; ICPAK
 - CSOs/Academia/Research organizations – TISA and NTA
3. Agencies both state (CRA, KRA, Council of Governors) and non state (World Bank) that have provided different forms of support and technical assistance to the County of Nairobi.

We administered questionnaires for each of the three categories of respondents (see attached in the annex). To better manage the process we developed an interview schedule that we used to seek appointment with interviewees. The information we sought using these questionnaires revolved around four thematic areas of revenue mobilization: *(i) legal basis and framework for the revenue system, (ii) the structure and design of revenue regime in Nairobi (iii) tax payers' participation in formulation and influence in revenue legislation, and (iv) revenue administration and collection practices.*

2.2 Scope and Limitations

We anticipated obtaining information from the NCC and in particular their Revenue Department as primary informants. We were however not successful. The information that we sought was mainly on challenges the County is facing in revenue mobilization as well as opportunities in respect to legislative framework of local revenue, revenue administration, revenue structure and design, automation and collection practices.

Fortunately, we had a chance to attend a workshop organized by The Institute of Social Accountability (TISA) as the conveners of the Nairobi County Budget and Economic Forum to discuss among other things, the County's revenue performance. In this meeting, the IEA representative during plenary interacted with a number of officers from the County and capitalized on this opportunity for quick informal interviews. In addition some of the questions we had for the NCC were answered during presentation by NCC and through plenary discussions. After this workshop the IEA tried to get in touch with two revenue officers we had identified for further

interview but again this was not successful. Another opportunity also presented itself, where an IEA representative attended a similar workshop, this time round discussing trade licenses. By and large, despite not getting a chance to interview NCC officers, the two workshops were good proxies and information obtained was adequate for purposes of this study.

Other than NCC, we were also not successful in interviewing a few business and professional bodies and some CSOs we had identified. This is despite having written to them letters with study objectives, accompanied by the questionnaire and upon making numerous follow up. All the same whatever information, we managed to obtain at the end from the other informants was sufficient to complement secondary information in response to this study's research questions and objectives.

3

FINDINGS

3.1 Policy and Legal Framework for Revenue Collection

Policy and legal framework is a paramount and foundational aspect of understanding OSR collection system. It is what underpins the local revenue structure and design for any sub-national government.

On the point noted above, the National Treasury reports that one of the overriding challenges with regard to mobilization and sustainability of OSR for county governments including Nairobi is that they have not yet developed a clear revenue policy and legislative framework. To fill this gap, many counties resulted to using annual County Finance Acts as the main legislation to provide for revenue collection, that is, imposition of taxes (for example, introduction of new taxes), charges and fees and other revenue raising measures. This is contrary to what the law provides as County Finance legislation are supposed to allow for amendments of taxes, charges and fees. As a result, this led to legal disputes in a number of county governments⁶.

Furthermore, county governments lack adequate legislative framework to effect imposition of tax and fees, their waiver or variation as per Article 201(1) of the Constitution as indicated by CRA and National Treasury.

In particular, Nairobi was also reported not to have updated most of its revenue related laws as it was still operating from inherited laws of the defunct local authorities. The case in point is legislation on property rates as was mentioned earlier. For example, Nairobi has to date not updated its valuation rolls that were prepared in 1982 and yet property valuation is supposed to be done every 10 years complemented by supplementary valuation rolls as and when necessary. There are indeed a number of other revenue streams, notably trading license, entertainment tax whose legislations are before the County Assembly or do not have any updated legislation at all.

⁶For example, Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR via <http://kenyalaw.org/caselaw/cases/view/97000/>

In fact most respondents concurred that Nairobi like most counties lacks a comprehensive policy and legal framework to manage and optimize local revenue mobilization. On this point, one of informant representing a professional body was of the view that the ‘big bang’ transition to devolved government as opposed to the envisaged gradual and phased transition is partly to blame for the lack of a comprehensive policy and legal framework underpinning own source revenue system in Nairobi and indeed for the rest of the other counties.

Respondents mentioned that there were various efforts, some on-going, towards redressing the foregoing challenges:

- The National Treasury in conjunction with other players, the Ministry of Planning and Devolution, a number of national agencies and the Council of Governors (CoG) have developed a draft national policy to support enhancement of county governments own source revenue. It is currently being subjected to public consultation. Once completed this will be of benefit to all the county governments.
- In addition to the policy and legal framework on revenue mobilization, the National Treasury, has also come up with a Process Bill to assist county governments with principles of justifying increase in tax rates, introduction of new tax levies, waivers and so on.
- The Commission on Revenue Allocation (CRA) in partnership with the Council of Governors, Kenya Law Reform Commission with support from Development partners⁷ has developed county model laws⁸. These models are being used by county governments as a guide in drafting revenue related laws. Some of the county revenue related draft laws include County Revenue Administration Bill, County Rating Bill (for property rates), County Trade Licensing Bill; Model County Finance Bill, County Tariff Policy and so on.
- In relation to the point above, CRA working with Kenya Association of Manufacturers brought together county government by clusters for training on an understanding and customization of county model laws

Most of the initiatives mentioned above are for the benefit of all the county governments. Despite having some legal gaps in its revenue administration and collection regime, Nairobi County has not sought any direct technical assistance from the National Treasury or any agency such as CRA.

3.1.1 Level of Awareness by Tax Payers of The Legal Framework for Revenue

It was not easy to gauge awareness and understanding of Nairobi’s revenue legal framework from respondents. The first test was to check whether they could list taxes, fees and user charges levied by NCC. Most of them managed to do so with ease, mentioning especially those taxes/fees in line with their trade. For example, all the professional bodies, traders associations and resident associations indicated that their members are well aware of single business permits, parking fees, property rates and other small revenue streams including fees charged for making alterations to their business premises. Liquor licenses and building permits were the other key revenue streams listed by a few respondents.

⁷Kenya Accountable Devolution Programme of the World Bank, UK’s Department for International Development and the Australian Department of Foreign Affairs and Trade

⁸Refer to Commission on Revenue Allocation (CRA) Model County Revenue Legislation Handbook (May 2014)

In general, as much as majority of respondents easily listed a few revenue instruments levied by NCC their level of awareness and understanding of the legal framework is low. What some respondents noted was that the legal framework is not clear and that NCC has not cascaded it down to the taxpayers. For one of the informants, their main point of interaction on revenue legislation was limited to the County Finance Bill. In fact, some said that the legal framework is not public knowledge. Furthermore, some mentioned that part of the reason for the low levels of awareness was due to lack of proactive engagement of taxpayers by NCC akin to the KRA taxpayers' education campaigns. Despite most of the legislations posted on NCC website, others faulted lack of better communication for low levels of awareness.

Figure 5: Awareness levels of NCC Revenue Legislations

Generally most of the respondents, professional bodies, traders associations, business groups and resident associations noted that their members were able to list a few taxes, fees and charges they pay to the County, often those that are in line of their trade.

However, awareness levels of the legislations that underpin the revenue sources they are able to list is low and even lower in terms of the content. The respondents who have interacted with legislations generally see them as complex to the average person. It was reported that most of taxpayers know the tax rates or the amount of charge/fees for a service consumed/transaction undertaken. For example, traders know the amount they are supposed to pay as trade license, the same applies for fees paid by a profession, etc but majority were not be aware of other provisions of the legislations such as penalty fees in case of default.

3.2 Revenue Structure and Design

One of the overriding principles that county government should adhere to in their revenue structure and design (revenue regime) is that the revenue raising powers therein should not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital and labour⁹. The design and structure of local revenue system is important because it determines the extent to which a tax or fee is fair, that is, based on taxpayer's ability to pay.

The other equally critical characteristic of a good revenue system is whether there is emphasis on cost effectiveness, that is, the structure should be administered efficiently and economically. What this means is that, the cost of administration should reasonably be proportional to revenue collection and that compliance cost should be kept relatively low. Other considerations are that the system should not impose a burden to taxpayers (should be progressive as opposed to regressive), and overtime it should be relatively stable and predictable to facilitate implementation of sound fiscal practices. Besides, the revenue regime can be judged on the principles of simplicity and neutrality (causing minimal distortions or change in behavior by taxpayers).

⁹Article 209 (5) of the Constitution of Kenya Department of Foreign Affairs and Trade

This section individually looks at key revenue streams in reference to the foregoing principles.

3.2.1 Land Rates and other Revenue from property

Land rates, are based on unimproved site value of land and were reduced from 34% to 25%¹⁰. Despite this substantial reduction, it is reported that the County is only doing 50% of rateable property as the default rate is high. Perhaps this is corroborated by some respondents who were of the view that the rate, despite its reduction was still high. The other notable reason for the high default rate as noted by informant was linked to the poor service provision especially in regard to supporting infrastructure and security.

Land rates are generally progressive but there are attendant multiple levies and approvals from both the national and county government that end up increasing the cost of doing business. This is one of the primary complaints from those involved in property development. Granted, the nature of construction and property development requires stringent regulation for safety and assessment for compliance with environmental laws. However, developers and investors through Kenya Private Sector Alliance (KEPSA) have lobbied for multiple levies charged by government agencies such as National Environmental Management Authority (NEMA) and National Construction Authority (NCA) to be scrapped as county governments were charging similar fees¹¹. Their concern is that, these levies were contributing to increased construction costs (for example, for projects valued at Ksh 5 million and above are required to pay 0.5% of total value), that is construction levy and NEMA levy (environmental experts registration fees).

In addition, contractors are required to register with and obtain a compliance certificate from the NCA before any construction is done as per the NCA Act, 2011 and its regulations of 2014. The upshot of this is to ensure that construction professional standards are observed. This process takes on average one week and costs another 0.5% of the warehouse value¹².

Indeed the County of Nairobi levies are a raft of charges on technical review of applications for property and certification as well as renewals. Besides, it has also revised charges for evaluation of building plans and permits varied by different classification/size of premises at largely 0.5% of proposed construction cost. Furthermore, there are specific charges for land valuation including flat search fee of Ksh 1,000, statutory inspection fee of Ksh 7,500 per visit and exemption inspection fee of Ksh 10,000 per visit

By and large, the foregoing scenario where the County government of Nairobi set costs and grants development permissions and the national government through its agencies also levy charges for permits, not only leads to multiple approvals but also contributes to increasing total construction costs inevitably making the process regressive.

¹⁰Nairobi City County Finance Act 2015

¹¹Standard newspaper 16th February 2017

¹²Doing Business in Kenya 2016

3.2.2 Trade Licenses/ Single Business Permits

As earlier mentioned business licenses in Kenya are based on the nature of business, size and location. It is important to note that, generally SBP is increasingly becoming a revenue source despite its primary purpose being regulatory. Secondly, there seems to be no standardization of SBP across counties which may lead to distortion of business environment.

In particular, respondents mainly traders and professional groups shared some concerns regarding the SBP regime, namely:

- The tariff structure is progressive, with smaller businesses (merchant shops- Ksh 4,000) paying less tax than larger ones (mega-supermarket; 50-100 employees -Ksh 80,000)¹³ but some respondents complained that this consolidation where they have to pay for fire clearance certificate ended up placing disproportionate burden to small traders.
- Equity considerations: small traders complained about high cost of doing business given multiple licenses they have to pay. Furthermore, lack of differentiation of UBP by location, for example, up market vis a vis informal settlement was also cited as unfair.
- Some informants reported that there were cases where County Revenue Officers abused arbitrary powers in determining fees to be paid by business. For example, Matatu Sacco Offices complained that fees charged should not be based on the physical size of the offices and number of equipment such as computers but should be standardized as the nature of business is the same.
- Case of double taxation: It was also noted that unlike lawyers, medical practitioners pay single business permit to the County in addition to licensing and registration fees it pays to their regulators, something that they view as punitive . The situation is exacerbated by the fact that if a clinic has for example a lab and a pharmacy, it pays separate licenses to their respective regulatory boards as opposed to a standardized fee for uniformity. However, this argument was countered by an expert who indicated that it does not amount to double taxation. To the expert, such professional bodies paying to their regulatory boards were akin to a member of a sports club paying membership fees. The expert noted that they still ought to pay to the NCC as they are receiving a service to run their businesses.

Figure 6: Calls for Clarity on requirement for professional bodies to pay SBP

One of the respondents called for clarity on why those who are offering professional services should pay for their operation. According to them, there is a provision in the Finance Act 2013, which mandated professionals to obtain single business permits. This matter was subject of a judicial review way back in 2000 and the High Court in Nairobi ruled that enforcing this requirement would be in contravention of the Second Schedule of the Trade Licensing Act cap 497. The Court ruled that the requirement for professionals to obtain an additional license on top of the license paid to their respective regulator, amounted to double jeopardy of payment of two parallel licenses in respect of a professional practice.

¹³Nairobi County Finance Acts 2015

3.2.3 Other charges and fees

Most of the fees and charges including parking fees, market fees and others were inherited from the former local authorities, but are now charged at relatively higher rates. Due to the need to increase OSR, most Counties including Nairobi proposed to increase fees and charges without regard to the burden this imposed on residents. In some case these amendments were done without proper consultation. This section discusses parking fees as an example.

Parking fees

Players in the *matatu*¹⁵ sector understood the general design and structure of parking fees that they are expected to pay as was reported. For instance, they pay seasonal parking ticket based on the capacity of vehicle (14 seater, 33 seater and 51 seater). They however, mentioned two major complaints about this structure that somewhat discouraged payment. The first is that, the space provided was not commensurate to what they pay and the fact that most of it has been turned into a terminus. The second, is the service they receive and often complained of harassment by officers from Nairobi County as well as hefty penalties charged where vehicles are not only impounded in case of delay in payment but released upon payment of requisite fees and penalty fees. Furthermore, they reiterated that they had to pay parking fees even on the days when the parking space was not used.

3.3 Participation in County Revenue Legislative Processes

Forum for public engagement and participation is an important platform for information sharing and opportunity for citizen to exercise their voice and demand accountability from duty bearers (Fjeldstad and Heggstad, 2012). This section sought to know whether taxpayers had participated in any county revenue legislative processes. The results were mixed.

Some taxpayers especially service professional bodies had participated directly in workshops discussing revenue matters in Nairobi. Others had participated indirectly through umbrella bodies such as Association of Professional of East Africa (APSEA). The type of engagement was mixed, some attended workshops, made verbal contribution as well as submitted written memos, others only attended workshops and contributed from the floor. In some cases a few submitted written memos via email and hand delivery to County offices. For example, the subject for some of the discussions was based on: Nairobi City County Finance Bill, Nairobi County Valuation and Rating Bill, 2015, Plastic Bags Bill, Nairobi County Budget Estimates and so on. Furthermore, one of the respondents mentioned that they also engaged on revenue matters through other platforms such as Nairobi County Budget and Economic Forum (CBEF).

On the question of whether NCC had held a taxpayers education or campaign drive to sensitize taxpayers on the revenue regime, none of the respondents had ever heard or attended such a forum. NCC however noted that they were working together with CBEF to firm up a framework to guide public participation.

¹⁵Public transport (passenger) vehicles

3.4 Revenue Administration and Collection Practices

The system of revenue collection and administration is a very important function in any government and at whatever level. Nairobi County admits that they face a number of challenges regarding the entire process of revenue collection, from assessment of tax, fees and charges; billing; payment and receipting; enforcement; auditing; reporting and oversight. This section does not necessarily look at each of these processes in details but provides responses on some of them.

3.4.1 Revenue Potential Analysis and Forecasting

Nairobi has not undertaken any study to assess and analyze its revenue potential. Such a study is critical to informing the County on how to broaden tax base and strengthen efficiency and effectiveness in revenue mobilization. In this respect, the World Bank noted that in partnership with CRA it is currently doing some work to estimate county revenue potential for use to guide policy discussion between the two levels of government. Related to this, CRA noted that the EU had undertaken a study on Counties' OSR that was yet to be shared in which the study identified issues for Nairobi.

On matters revenue forecasting, local revenue performance shows that the gap between revenue targets and actual collection over the period 2013/14-2015/16 had narrowed. Part of the reason for this improvement, revenue collection notwithstanding, was ambitious revenue targets in 2013/14, that were tempered in the subsequent two financial years. It is however important to point out that revision of revenue projections was not based on evidence or a scientific process, but sometimes external pressure for the Revenue Department to provide optimistic projections. This situation was constrained further by the fact that NCC currently does not have requisite capacity to undertake revenue forecasting.

3.4.2 Personnel in Revenue Administration

On personnel in revenue collection and administration, NCC acknowledged that it was constrained in terms of numbers and capacity to cover all revenue streams. It attributed this constrain to low revenue collection. In fact, from the perspective of some respondents what NCC had done was to deploy more of revenue enforcers without skills in areas like revenue potential assessment, forecasting, and cost of collection assessment, revenue management and administration and so on. In addition the County noted that logistics on revenue collection were exacerbated by lack of adequate vehicles and working tools although some respondents countered this. For them, revenue collection should be informed by a cost-benefit analysis, and therefore maintaining vehicles and other tools may exert an unnecessary cost especially if what is collected is not commensurate.

Institutional arrangements and role overlaps in NCC were also seen to contribute to challenges in revenue collection and management. Given that revenue collection is decentralized to some department for instance; collection of user fees from Health Department with little report to the

CEC Finance was being abused leading to spending revenue at source, which is against PFM Act, 2012.

Furthermore, the County noted that one of the factors that adversely affected revenue collection was low morale (de-motivation) especially by revenue collectors who were recruited by the County. The latter earned disproportionately lower salary compared to their counterparts inherited from the defunct local authorities. Related to this point, CRA reported that most counties including Nairobi were unable to attract and retain requisite personnel needs to maximize on their revenue potential.

3.4.3 Impact of Technology and Automation in Revenue Collection Operations

The role of automation in revenue enhancement cannot be over emphasized especially in terms of efficiency gains and sealing leakages. Controller of Budget and CRA reports shows that majority of counties were using fragmented ICT systems in revenue collection and management, for example LAIFOMS, IFMIS and other systems. This lack of integration meant that they were not able to generate standardized reports and facilitate monitoring and oversight. Nairobi may be leading the pack in terms of automation and electronic payment platforms. For example, by early 2016 media reports noted that 31% of all payments for services such as land rates, SBP, parking fees, markets rates and so on were in the Jambo Pay platform electronic systems. It is likely that by the end of 2016 this went up to 50% or more. Besides, Nairobi is currently implementing an electronic platform for construction permits (e-CP).

The progress on automation notwithstanding, the system for revenue collection was yet to be fully integrated. System fragmentation may give rise for revenue sometimes to be used at source, as reported by the Controller of Budget and is often susceptible to leakages.

Moreover, the County acknowledged lack of accurate and in some cases complete lack of data to aid in revenue collection and administration. In fact most of the county records have been in manual form dating back from colonial times thus accuracy is not guaranteed. For example, rate payers' database is poorly maintained hindering efficient billing and revenue collection. The same applies to SBP; as there is lack of automated registers of businesses. Dearth in data on tax bases undoubtedly makes it difficult to determine compliance and come up with realistic revenue targets, as earlier mentioned.

It is noteworthy that automation will help to eliminate the challenge of county revenue officials handling cash, which contributes to revenue leakages. In fact, majority of respondents noted that their preferred mode of payment of taxes and fees was through mobile and electronic platforms in support of automation. Overall automation was seen by many as the means to curbing rent seeking behavior.

In recognition of the importance of automation in enhancement of revenue mobilization efforts by institutions including CRA, AHADI and the World Bank, a conference¹⁶ bringing various

¹⁶County Revenue Automation Conference (CRA-C 2015) themed 'ICT in Counties: The Game Changer'. This conference was held at the Great Rift Valley Lodge – Naivasha, from 14th to 17th July 2015

Counties representatives to share on ways to leverage technology was acknowledged.

3.4.4 Revenue Collection Practices of Nairobi County.

Nairobi is reported to operate at 45% - 50% of its revenue collection capacity. Among other things such as automation, the choice of revenue collection practices that NCC chooses is critical in boosting its collection capacity. There is a whole range of revenue collection practices including use of outsourced agencies (private, semi-privates agents) or cases where a County collects taxes themselves, which is most prevalent for NCC.

Studies, notably by Fjeldstad and Heggstad (2012) show that evidence is inconclusive as to whether outsourcing has led to better revenue administration performance compared to when tax collection remains a function of local government officials.

One respondent noted that NCC had experienced difficulties in collecting some taxes including property rates and SBP yet some of these taxpayers are members of business associations or residents associations. On this basis, the informant advised that, for example, residents association has a good knowledge of their members and that NCC should consider an agency arrangement with such like associations to collect certain revenue on their behalf at a small fee. One of the examples cited was collection of property rates from members of resident associations. Success in such arrangements was pegged on certain factors, such as revenue transparency (data on revenue potential), strength of NCC revenue collection authority and political commitments as noted by various studies.

3.4.5 Revenue Compliance and Enforcement

Media reports reveal that County governments are facing resistance and in some cases demonstrations from taxpayers as a result of high rates and fees. NCC admitted that there were certain areas (volatile areas) especially in the informal settlement where their tax collectors met resistance from traders and hostile reception of their collectors.

According to County Revenue Baseline Study (2015)¹⁷ about, 86% of all county governments reported resistance in compliance. Virtually all the respondents insisted that without seeing a direct link between what they pay and service delivery, they would resist compliance. For example, matatu operators, traders and hawkers expected the County to provide secure worksites and amenities like toilets. Those paying land rates expected proper support infrastructure (roads, sewerage, etc). Improvement of service delivery (value for money) according to majority of respondents is an incentive to compliance.

“....NCC should focus on service delivery with the same zeal they do when it comes to revenue collection. Money collected should translate to service delivery....A participant during CBEF workshop on Nairobi County Revenue Performance, April 2017”

¹⁷By the Office of the Controller of Budget

On a different point, they also expected better service devoid of harassment in cases of delay in payment, clarity of information on where taxpayers should go to seek justice for example, when their wares have been confiscated and so on. Most respondents felt that compliance levels would improve if NCC initiated efforts to educate the public on county tax policy.

Separately, enforcement was viewed to be weak due to poor administrative capacity and personnel in some positions to cover all revenue streams and the entire city. Respondents were not sure whether a KRA equivalent of debt collection unit to follow up on defaulters was functional. Externally, NCC acknowledged lengthy and bureaucratic processes in enforcement of the legal framework. This was sometimes exacerbated by political interference where residents were sometimes urged by politicians not to pay taxes often for political mileage and expediency.

4

CONCLUSIONS

This study shows that there are clear issues or challenges but at the same time opportunities in enhancing OSR mobilization in the County of Nairobi. Despite limited revenue raising powers, OSR is critical to meeting budgetary and service delivery needs of Nairobi. Besides, OSR creates a social contract between residents and the county government; cushions the County from delays in disbursement of transfers from the national government and is critical for instilling fiscal discipline

One of the foundational challenges was that Nairobi does not have an up to date and comprehensive legal basis for revenue mobilization and management. This is evident not only for its largest revenue stream property rates which accounts for nearly 30% of total local revenue, but also for other revenue sources including entertainment tax and trading licenses. Conversely, the NCC has an opportunity to leverage on the various efforts by the national government and agencies such as CRA towards supporting county governments in development of policy and legal framework to underpin their revenue system. For example, it has an opportunity to adopt and customize county revenue model laws for development of entertainment tax legislation.

The other major challenges are related to weak administrative capacity to administer and manage revenue collection in terms of inadequate staff capacity and enforcement mechanisms, lack of comprehensive automation of revenue collection as well as capacity to undertake revenue forecasting. This situation is exacerbated by the fact that collection practices do not factor collection and compliance costs. It is also important to note that the study established compliance levels especially on a number of revenue instruments, including property rates and single business permits to be low due to a revenue structure and design that is not friendly to taxpayers. Equally given that NCC engagement with the public for taxpayers' education does not exist, this contributes to worsening compliance as was noted in this study. Bottom line for many as established in the study was that tax payment and willingness to pay was significantly dependent on reciprocal improvement in service delivery by the County of Nairobi.

Despite the above constraints there are obvious opportunities that Nairobi County can leverage to optimize local revenue mobilization. Overall there is a strong political will for devolution to

succeed and development partners are willing to provide support in this regard. Equally evidence suggests that some of the revenue instruments, particularly property tax have real potential for growth.

5

RECOMMENDATIONS

Update and strengthen the policy and legal framework for county revenue administration and collection

It is clear as was noted in the findings county governments including Nairobi should first and as a foundation put measures in place to establish a comprehensive policy and legal framework within which their revenue system should operate. Some of the initial actions include ensuring that it has a clear basis for raising revenue by developing revenue bills that are currently missing including entertainment tax legislation. They should leverage on the already developed county revenue models for adoption and customization. In addition, they should implore on the County Assembly to expedite enactment of county revenue Bills before them including the Nairobi City County Valuation and Rating Bill, 2015. After all, if Nairobi gets it rights, it will set the pace for the other counties to follow suit.

Undoubtedly for property rates, the current land valuations are more than 30 years out of date, meaning that the County of Nairobi is already missing out on significant revenue collection as the current law does not provide for up to date valuation and recording of property in new rolls. Revenue collection from property rates will indeed have to be complemented by on one hand, county interventions such as ensuring up to date registration and regularization of property. On the other hand, the national level interventions including development of national land registry and digitization of land titles calls for close collaboration.

Of course this process should be guided by the soon to be published National Policy to support enhancement of county governments own source revenue by the National Treasury. This is important as it will go a long way to ensure Nairobi county laws do not contravene or prejudice national economic policies and economic activities.

Enhance compliance and enforcement mechanism

Nairobi County should adopt a mix of approaches to enhance revenue compliance levels as highlighted below:

- In order to deter resistance by taxpayers, NCC should first focus on improving service delivery before any consideration of increasing or revising tax rates, fees and charges as this will incentivize taxpayers to comply. This will also build trust and credibility from the perspective of taxpayers.
- Tied to the point above, NCC should be transparent on revenue collections, overall revenue performance and how the public is going to benefit.
- Administrative reforms and training in line with improved customer relations by tax collectors and establishment of feedback mechanisms should be institutionalized. For example, NCC should borrow a leaf from KRA and regularly collect views from tax payers to gauge satisfaction levels and provide convenient platforms for feedback such as suggestion box at bus/matatu terminus.
- Public education and awareness on revenue structure and design, amount of fees required, procedure, and where to pay is important information that the NCC should share with taxpayers for improved compliance. NCC should emulate KRA on tax payers' campaigns/forums and also explore partnerships with business or residents associations such as KARA and MOA for a structured framework for engagement.
- Strengthen administration capacity to undertake enforcement and at the same time enhance functionality of NCC debt collection unit.

Initiate and strengthen public participation in revenue matters

NCC should proactively engage more with taxpayers in all county revenue matters, including legislations through better communication and publicity of all important documents in advance of meetings. For example, the County should simplify tax legislations and requirements and enhance overall revenue transparency as this is important in creating awareness and credibility amongst taxpayers.

NCC should equally explore partnerships for better engagement with taxpayers given that it does not have the capacity to do some things. For example, it should consider business groups or residents associations such as MOA and KARA. The latter has a structured framework for engagement governed by Neighborhood Association Engagement Act which the NCC can leverage on. It is also important to note that these bodies know how to engage their members and thus serve as useful mouthpieces and information dissemination platforms.

Enhance automation in revenue collection

Nairobi should focus on progressively ensuring that they have a comprehensive revenue automation that factors every revenue stream. This is key to facilitate monitoring and computation of revenue collection on a daily basis. Besides this will also address rent seeking behavior. For example, with a comprehensive automation, the county of Nairobi should be able to have a database of the all businesses and their location and with this they are able to send tax collectors to specific businesses. This will facilitate continuous gathering and maintenance of accurate database of revenue sources and customers and hence ability to establish revenue potential but at the same time this information can be used for purposes of timely issuance of bills and demand notices once defaulters are identified.

Despite efforts towards e-payment systems, for the county to realize improved revenue collection there is need for an integrated system that connects all revenue collection sources thus minimizing corruption and loopholes and also making it easier to pay and collect revenues.

Furthermore county revenue collectors should be trained regularly on new automated payment system and at the same time the county should invest in taxpayer education for increased uptake and compliance levels. By and large, this will create an environment for improved revenue transparency, seal leakages, and redress rent seeking.

Revenue collection practices

Nairobi should factor collection and compliance costs in various revenue instruments in their revenue collection practices. This will in turn guide them in how they collect and whether to engage in an agency arrangement/approach for maximum benefits. For example, NCC could partner with bodies such as KARA who can collect property rates on behalf of its members in particular areas and remit these collections to NCC for a small commission based on the agreement between the two parties. Furthermore there is room for other arrangement including partnering with the private sector to devise innovative mechanisms of increasing revenue collection and service delivery or with national agencies such as the Kenya Revenue Authority.

Strengthen revenue administrative capacity

NCC staff is not well trained to undertake revenue administration and collection. As a result the County should initiate regular training forum for staff in revenue administration as well as deploy qualified staff to cover all revenue streams. For example, training on revenue forecasting capacity is important and NCC may consider collaboration with KRA and Treasury to learn how national revenue projection is done.

Corruption and collusion by revenue collectors was noted as a challenge. NCC should therefore restructure their revenue management model down to the sub county and ward levels as well as adopt a rotation approach for revenue collectors to dismantle cartels. Furthermore, the Finance

Department should take full control of all revenue collection policies to among other things address the anomaly of spending revenue at source.

REFERENCES

1. Bahl, R. & Smoke, P. (eds) (2003) *Restructuring Local Government Finance in Developing Countries. Lessons from South Africa* (Cheltenham: Edward Elgar).
2. Bahl, R., Smoke, P. & Solomon, D. (2003) 'Overview of the Local Government Revenue System' (Chapter 3, pp. 71–93), in R. Bahl & P. Smoke (eds) *Restructuring Local Government Finance in Developing Countries. Lessons from South Africa* (Cheltenham: Edward Elgar).
3. Bardhan P. and Mookherjee, D. (2002) *Corruption and Decentralization of Infrastructure in Developing Countries*, mimeo, University of California, Berkeley and Boston University
4. Bird, R. (2010) 'Subnational Taxation in Developing Countries: A Review of the Literature.' Policy Research Working Paper 5450. (Washington D.C.: World Bank).
5. Brosio, G. (2000) 'Decentralization in Africa', paper prepared for the Africa Department, International Monetary Fund. Washington DC.
6. CRA Kenya (2014) *Model County Revenue Legislation Handbook* in collaboration with Kenya law Reform Commission and Council of Governors
7. Devas and Kelly R. (2001) 'Regulation or Revenues? An Analysis of Local Business Licenses, with a Case Study of the Single Business Permit Reform in Kenya.' *Public Administration and Development*, 21:381-391
8. Fjeldstad O and Kari H. (2012) *Local Government revenue mobilization in Anglophone Africa: CMI Working Paper 2012:6* Chr. Michelsen Institute
9. Fjeldstad, O.-H. et al. (2004). 'Local Government Finances and Financial Management in Tanzania. Observations from Six Councils, 2000–2003', REPOA Special Paper No. 16 (Dar es Salaam: Research on Poverty Alleviation (REPOA)).
10. Fjeldstad, O.-H. & Semboja, J. (2000) 'Dilemmas of Fiscal Decentralisation. A Study of Local Government Taxation in Tanzania', *Forum for Development Studies*, Vol. 27, No. 1, pp. 7–41.
12. Office of the Controller of Budget (2013/14-2016/17) *Annual County Budget Implementation Review Reports various issues*.
13. Nairobi City County Budget Estimates, various issues (2014/15, 2015/16 and 2016/17) via www.nairobi.go.ke
14. Nairobi City County (2016) *Nairobi County Annual Development Plan 2017* via www.nairobi.go.ke
15. Nairobi City County (2016) *County Budget Review and Outlook Paper* via www.nairobi.go.ke
16. Nairobi City County (2017) *County Fiscal Strategy Paper Financial Year 2017/18* via www.nairobi.go.ke
17. Nairobi City County Valuation and Rating Bill Consultation Draft, 20 March 2015 via www.nairobi.go.ke

18. Nairobi City County Finance Act, Various issues (2013, 2014 and 2015) via www.nairobi.go.ke
19. Republic of Kenya (2010) Constitution of Kenya, 2010. Government Printer, Nairobi
20. Republic of Kenya (2012). The Public Finance Management Act, 2012. Government Printer, Nairobi.
21. Venables, A. J., (2010). Resource Rents; When to Spend and How to Save, in Decentralization, local taxation and citizenship in Senegal. *Development and Change*. Vol.37 (4): pp.821–46
22. Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR via <http://kenyalaw.org/caselaw/cases/view/97000/>

ANNEX 1: Set of Questionnaires

QUESTIONNAIRE FOR NAIROBI COUNTY (REVENUE DEPARTMENT) and OTHER NATIONAL GOVERNMENT AGENCIES

Policy and Legal framework

1. Is the entire revenue structure of Nairobi County adequately covered by a legal framework?
2. Is there a revenue stream (e.g. entertainment tax, parking fee, etc) without a legal basis? Please list.
3. Does the lack of a legal framework/basis for the listed revenue streams affect overall revenue administration and performance if any and how?

For Treasury (National Government) – what is the status of development of national policy guidelines on enhancement of OSR (review of all existing revenue legislations, and drafting of National Framework legislation on OSR.

Revenue Structure and Design

1. How would you rate it (revenue structure and design) in terms of simplicity- Are taxes, levies and charges in conformity with principles of taxation especially equity, simplicity and neutrality?
2. Does the revenue structure and design encourage or discourage tax compliance and in turn tax collection? How, explain with examples
3. Does the county possess adequate administrative capacity in revenue design e.g how can revenue design of charges on trading services be made more attractive?
4. Does the revenue structure and design encourage or discourage compliance by taxpayers?
5. What informs formulation of revenue structure and design? Is there use of evidence for assessing revenue structures, potential of raising revenue and so on?

Revenue administration and collection system

1. Does Nairobi County have sufficient staff to administer and collect revenue?
 - a. Is the staff adequately trained?
 - b. Does the county have the capacity for revenue forecasting – how is this done, the basis for this
2. Enforcement mechanisms and internal control management: does the County have a debt collection unit (that follow taxpayers who have defaulted or delayed in paying tax/fees for recovery)?
3. What is the revenue collection practices of Nairobi (use of outsourced agencies vs collection by own officers, use of technology, etc) and how does it affect optimal realization of revenue?.. what revenue streams are collected by the County, what is outsourced? Has outsourcing led to

better revenue administration performance compared to collection by the County?

4. Impact of technology on efficiency in revenue collection operations. Is revenue collection automated, manual or mixed and how effective is the system in sealing revenue leakages?
5. What are some of the political and administrative constraints facing OSR mobilization?
6. Consultations and cooperation between the national government and county governments on revenue administration..lack of cooperation leads to duplication of taxes and inconsistencies between taxes imposed

Recommendation

- What reforms do you suggest?

QUESTIONNAIRE FOR TAXPAYERS

Policy and legal framework of revenue structure in Nairobi

1. What are your members' understanding and knowledge of legislation(s) underpinning revenue structure in Nairobi?
2. Do you know the penalties and resolution mechanism governing specific revenue streams?
3. Level of awareness by tax payers of the legal framework for revenue

Revenue Structure and Design

1. Do your members understand the structure and design of taxes/fees especially those in your line of trade in terms of the tax rate/fee charged, tax base, of who to pay tax, penalties and so on?
2. Knowledge of taxes, fees to pay
3. Does the structure encourage or discourage tax compliance and indeed tax collection? How, explain with example(s).

Participation in County revenue legislative processes

1. Have you or your members ever participated in any workshop /forum that is discussing revenue matters/measures for Nairobi?
2. Beyond participation or attendance of meetings/workshops/public hearings, have you ever submitted any written brief/memo, as an individual/institution especially as input the County Finance Bill or any other revenue Bill?
3. As a taxpayer (individually/institution) what would you like changed to make the revenue structure and design friendly?

Revenue Administration and Collection System

1. Has Nairobi County ever organized a Taxpayers' education campaigns? Have you or your members heard or are you aware of this?
2. In reference to QN1 above, have you or your members ever participated in any taxpayers' education and campaigns. If yes, what was your impression?
3. Generally, how would you rate services from revenue collectors (credibility of revenue administration)?
4. How would you (your members) rate the different payment modalities instituted by the County in terms of functionality, convenience and efficiency – which is your preferred payment modality
5. Are there things or factors that makes you and your members unwilling to pay your tax
6. What makes you or your members not comply with tax payment

Recommendations for improvement or enhancement of revenue collection

- What would you suggest should be done to improve revenue collection for Nairobi

DEVELOPMENT PARTNERS' QUESTIONNAIRE

1. Are you providing support or any technical assistance towards enhancement of local revenue/ own source revenue in Nairobi City County. If in any of the following, please elaborate:
 - o Development of revenue legislation
 - o Revenue structure and design
 - o Revenue administration and collection system
 - o Capacity building for public participation in hearings of Nairobi County Finance Bill
 - o Others
2. In reference to the issue of policy and legal framework underpinning county OSR, and related to number one, are you in any way involved in supporting the development of national policy guidelines on enhancement of OSR ?
3. What do you think, either as an individual/expert or based on studies done are the challenges and opportunities for enhancement of revenue collection in Nairobi
4. What do you recommend for the county to do to enhance revenue collection in the short to medium and to long term?
5. Any other useful addition/comment you may want to make.

ANNEX 2: List of Interviewees

Name	Organisation
Annet Majoni	The Institute of Social Accountability (TISA)
Elias Wakhisi	Institute of Certified Public Accountants of Kenya (ICPAK)
Gabriel Kivuti	Nairobi County Budget and Economic Forum (CBEF)
Henry Ochieng	Kenya Alliance of Residents Association (KARA)
Itoto Echakara	Law Society of Kenya (LSK)
James Katule	Commission on Revenue Allocation (CRA)
Jared Osoro	Kenya Bankers Association
Kwache Anthony	Kenya National Alliance of Street Vendors and Informal Traders
Leah Nganga	Kenya Private Sector Alliance (KEPSA)
Julius Malombe	National Treasury
Moses Kajubi	World Bank Kenya
Phillip Kamwaro	Kenya Medical Practitioners and Dentist Board
Simon Kimutai	Matatu Owners Association
Wambui Mbarire	Retail Traders Association of Kenya



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