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# Professional Services in Kenya: Constraints and Opportunities for Trade

## 1.0 Introduction and Overview

Professional services are becoming increasingly important in the production of goods and services. Thus, the fundamental transformation of the mode of production involving the substitution of service inputs for material inputs has seen world employment and output in professional services grow faster than in the entire economy since the 1950s (Noyelle, 1989). The USA and UK are world leaders in the area of professional business services, with the former dominating. The dominance of the USA is, however, being eroded gradually as the rate of growth outside the USA is faster than inside.

Under the General Agreement on Trade in Services (GATS) the category of services termed "professional services" is restricted to services produced by skilled personnel and typically subject to licensing. In general, professional services are those covered under the following broad categories: Legal services; Accounting, Auditing and Bookkeeping services; Taxation services; Architectural services; Engineering services; Integrated engineering services; Urban planning and landscape architectural services; Medical and Dental services; Veterinary services; services provided by midwives, nurses, physiotherapists; and other services (WTO, 1998b). Professional services are divided into "accredited" professional services which have potential of being facilitated by mutual recognition agreements (MRAs) of qualifications among World Trade Organization (WTO) member countries and non-accredited business services (WTO,1998a). Accredited professional services include architectural and engineering services, accountancy, and legal services while non-accredited professional services include such business services as marketing, advertising and consultancy.

In terms of orientation, professional services can be, in addition, divided into two. One category comprises of those professional services that are business-oriented. These include advertising, market research, accounting and audit, legal services, architectural and engineering services, electronic data processing and computer software. The other category is made up of professional services that are consumer–oriented, including such services as health and educational professional services provided by doctors, nurses, veterinarians, and teachers, among others.

Kenya's professional services sector is more developed than those of the neighbouring economies largely because of her relatively larger public outlays on education, particularly on higher education. As Table 1 shows the adult literacy level, education index and public expenditure on education in Kenya are higher than the sub-Saharan African average. This is an important explanation of the large number of Kenyan professionals working not only in the country but also in many countries of Africa and in international markets.

**Table 1: Education Performance in selected countries of Africa**

| | Sub-Saharan Africa | Kenya | Uganda | Tanzania | Zimbabwe | South Africa |
|---|---|---|---|---|---|---|
| 1. Adult literacy rate (1997) | 58.5 | 79.3 | 64.0 | 71.6 | 90.9 | 84.0 |
| 2. Education index (1997) | 0.54 | 0.69 | 0.56 | 0.59 | 0.83 | 0.87 |
| 3. Public education expenditure as % of GNP (1993-96) | 5.4 | 6.6 | 2.6 | - | - | 7.9 |
| 4. Expenditure in higher education as % of all levels (1993-96) | - | 15.8 | - | - | 17.3 | 14.3 |

Source: UNDP (1999), *Human Development Report 1999*, Oxford University Press.

Enrolment at the tertiary level of education in Kenya stands at 4% of the relevant population, half of which is at the university level. The relatively high expenditure on university education has led to a situation where the ratio of technicians to professionals is skewed in favour of the professionals (Republic of Kenya, 1997). There is also an overproduction of graduates in the arts in comparison with engineering and other practical science disciplines. Kenya has a large number of first degree holders, the minimum educational entry point for most professions, but still lacks enough post-graduates (Republic of Kenya, 1997). This deficiency is evidenced by competition for post graduates among universities and research institutions.

While Kenya's demand and supply of professionals is not well documented, there is evidence that in the last two decades, the country has been producing more skilled personnel, in certain professional categories, than the absorptive capacity of the economy. Some of the categories were there is excess supply of professionals include liberal arts, teachers, veterinary doctors, agricultural scientists, and food technologists. This is also gradually affecting engineering, architectural, accountancy and legal professions. This is evident from the increasing number of professionals in these categories, who are either unemployed or under-employed. With the ongoing downsizing of the civil service, the restructuring and privatization of state parastatals, and the increasing need for private enterprises in both the goods and services subsectors to restructure and cut costs, the competition for the limited professional opportunities in the private sector is expected to intensify domestically and regionally. However, for Kenyans to effectively take advantage of the opportunities that exist in the regional market, constraints that are hindering their movements across national border must be dealt with in a coordinated and comprehensive framework.

**Table 2: Professional Services in Kenya, number of establishments* and employees****

| | 1970 | | 1980 | | 1990 | | 19 |
|---|---|---|---|---|---|---|---|
| Professional Services | Establishments | Employees | Establishments | Employees | Establishment | Employees | Establishments |
| Agricultural Service | - | 20313 | 238 | 27115 | 54 | 19387 | 25 |
| Booking & Travel Agencies | - | - | 38 | 452 | 59 | 1067 | 4 |
| Legal Services | 331[a] | 649 | 95 | 957 | 58 | 870 | 17 |
| Accounting, Auditing & Book-Keeping Services | - | 723 | 195 | 2085 | 258 | 4330 | 50 |
| Data Processing and Tabulating Services | - | - | 7 | 136 | 6 | 272 | 1 |
| Engineering, Architectural and technical services | - | 1328 | 181 | 4018 | 254 | 6780 | 50 |
| Advertising Services | - | 289 | 30 | 279 | 9 | 360 | 2 |
| Business Services | - | 2854 | 349 | 13769 | 427 | 19224 | 86 |
| Education Services | - | 58418 | 1632 | 147596 | 2374 | 236560 | 281 |
| Research and Scientific Institutes | - | 772 | 16 | 1735 | 74 | 2885 | 5 |
| Medical, dental & other health services | - | 17153 | 334 | 41344 | 433 | 58536 | 73 |
| Veterinary Services | - | - | 6 | 28 | 11 | 854 | |
| Business, professional & labour associations | - | 280 | 47 | 40 | 75 | 863 | 23 |
| Religious organizations | - | 2701 | 406 | 460 | 502 | 6160 | 93 |
| Other social and related community services | 3367b | 93 | 23 | 305 | 58 | 877 | |
| Photographic Services | - | 500 | 120 | 405 | 72 | 501 | 3 |
| Government services, including defense and public administration | 1678c | 42505 | 171 | 77961 | 1041 | 124925 | |
| Law and order (security services) | - | 27707 | - | 38087 | - | 59283 | |
| Total | 5376 | 176285 | 3888 | 361132 | 5765 | 543734 | 718 |
| Total wage employment | 644,500 | | 1,005,800 | | 1409600 | | 1,55 |
| Share of Professional services sector in Kenya's wage total employment | 27.35 | | 35.9 | | 38.57 | | 3 |

* Employees include casual workers, part-time workers directors and partners serving on regular basic salary contracts. Self employed personal and family workers who do not receive regular wages or salaries are excluded

**The number of establishments exclude Central Government (but include public bodies of nature), private households and dormant establishments. Establishments are not firms as there may be more than one establishment in a firm. Only the modern sector is included in the enumeration of establishments. a: number refers to technical legal services; b: number refers to social services; c: number refers to all administrative services.

Source: Republic of Kenya, *Statistical Abstract*, (various years)

Professional services are becoming increasingly important in Kenya's economy as demonstrated by their contribution to wage employment (Table 2). As the table shows professional services including business services and government services accounted for about 38% of the country's total wage employment in 1995, up from 27% in 1970. Of course not all employees recorded in Table 2 are professionals as defined under the GATS since low-skilled people are also included. Tables 3 and 4 present a more accurate picture of the number of actual professionals working in Kenya currently. Kenya is estimated to have about 140,000 professionals currently, with most of them being concentrated in the medical, teaching, accounting and management professions (Table 3).

**Table 3: The Current Number of Professionals in Kenya.**

| Type of Profession | Total Number | Citizens | Non-Citizens | % of non-citizens in total |
|---|---|---|---|---|
| Architects, Engineers and Surveyors | 7,566 | 7,086 | 480 | 6.3 |
| Doctors, Dentists, Pharmacists and Veterinarians | 7,453 | 7,371 | 82 | 1.1 |
| Nurses and other paramedical staff | 28,454 | 28,317 | 137 | 0.5 |
| Chemists, Physicists, Biologists, Zoologists & Agronomists | 9,428 | 9,395 | 33 | 0.4 |
| Statisticians, Mathematicians, Systems analysts & Economists | 1,511 | 1,509 | 2 | 0.1 |
| Aircraft and ship officers | 349 | 239 | 110 | 31.5 |
| Lawyers and Jurists | 736 | 735 | 1 | 0.1 |
| Teachers and lecturers with University degrees | 29,481 | 28,445 | 1036 | 3.6 |
| Curators and related scientists | 2,671 | 2,658 | 13 | 0.5 |
| Minister of religion and other social cultural workers | 7,539 | 6,607 | 931 | 12.3 |
| General managers and salaried directors | 13,854 | 12,280 | 1,574 | 11.4 |
| Qualified accountants and auditors | 9,462 | 9,182 | 280 | 3.0 |
| Other qualified personnel | 25,096 | 24,810 | 286 | 1.1 |
| Total | 143,613 | 138,644 | 4,969 | 3.5 |

Source: EU/EPC, Export Supply Capacity Study, cited in APSEA's letter to the Director of External trade.

As Table 2 shows, employment in professional services has grown at a faster rate, since 1980, than the growth of employment in the entire economy, enabling the share of this services sector in total wage employment to grow at an average annual rate of 0.4% between 1980 and 1995. The table shows that, in terms of employment, data processing and tabulating services is the most dynamic professional services sub-sector, after veterinary services. It is perhaps in recognition of this growth that the government, in the *Development Plan 1997-2001*, identified information technology and other professional services as some of the services with significant potential to earn Kenya foreign exchange and generate employment. Other fast growing professional services include business, professional and labour associations (an indication that self-regulation among professions in Kenya has been increasing rapidly), social and related community services, booking and travel agencies and accounting, auditing and book-keeping services.

**Table 4: Number Medical Personnel Registered in Kenya, 1970, 1998**

| Type of Medical professional | 1970 | 1980 | 1990 | 1995 | 1998 |
|---|---|---|---|---|---|
| Doctors | 1437 | 1691 | 3357 | 3855 | 4282 |

| | | | | | |
|---|---|---|---|---|---|
| Dentists | 87 | 162 | 596 | 655 | 715 |
| Pharmacists | 170 | 60 | 443 | 1357 | 1629 |
| Pharmaceutical Technologist | - | 299 | 604 | 885 | 1137 |
| Registered nurses | 3452 | 6692 | 5441 | 6920 | 8336 |
| Enrolled nurses | 4182 | 8722 | 17734 | 22347 | 25803 |
| Clinical Officers | - | 1681 | 2630 | 2950 | 4007 |
| Public health officers | - | - | 585 | 480 | 728 |
| Public health technicians | - | - | 2528 | 3815 | 4728 |
| Total | 9328 | 19307 | 33918 | 43764 | 51365 |

Source: Republic of Kenya, *Economic Survey*, (various years) and Republic of Kenya, *Statistical Abstract*, (various years).

Structurally, Kenya's services sector in general and professional services sub-sector in particular, are substantially dominated by foreign firms. Due to the official government policy of attracting foreign investment in all sectors of the economy, for most of the post independence period, coupled with lack of strong and direct government support for indigenous service firms, Kenya's services sector has remained fairly open to foreigners. Indeed there was considerable implicit bias against small domestically–owned service firms as public procurement and large consumers tended to prefer services from large multi-national corporations (Ikiara et al., 1994), leaving indigenous firms to provide services to the small African business sector and co-operatives which lacked strong demand, particularly for professional services. This has created considerable dissatisfaction among indigenous service providers who complain that the government and multinational enterprises in the country discriminate against them.

Foreign dominance of Kenya's professional services sector was already visible at independence, when British and Asian owned firms dominated the domestic scene. Currently, foreign presence varies widely across professions as Table 3 demonstrates. It is very high among aircraft and ship professionals, where 31.5% of all are foreign. Foreign presence is also high in the religious and social cultural profession and among general managers and salaried doctors (Table 3). The large foreign firms have benefited from ready access to government and parastatal contracts as well as from the NGOs and multilateral and bilateral donors and institutions that prefer legal, accounting and auditing and other professional services from the well established globally recognized international service providers.

The most significant way in which Kenya has limited access to her professional services market is the citizenship requirements in the case of some professional services such as legal services and the requirement of work permits for foreigners. The requirement for foreign professionals to acquire the Kenyan professional qualifications as a condition for entry and the discretionary powers given to the registration boards with regard to the recognition of foreign qualifications in some of the professions and the consequent uncertainty faced by applicant professional are other barriers to the entry of foreign professionals into the Kenyan market.

Firms recruiting foreigners are required to show necessity and their inability to obtain the required skills locally before a work permit could be issued to the foreign worker. While some services sectors such as legal and distributive trade have strong restriction against foreigners, two-thirds of the large services firms surveyed in the CAPAS study in 1994 had employed some foreign personnel. However, these foreign firms complained that the employment of expatriates and recruitment of foreign directors were restricted through professional association's restrictions on entry through such requirements as passing of locally set professional examinations or acquisition of a certain minimum level of experience or period of internship. These restrictions, however, also applied to the indigenous professionals so that there were hardly any national treatment restriction on foreign professional service providers.

Registration and licensing of professionals in Kenya is carried out by the relevant statutory boards, which draw membership from the government and professional associations. In general, it is these boards which are responsible for the regulation of professional services in the country. Depending on the profession, professional associations have a varying degree of input into professional regulation. Most of these associations enforce codes of conduct among the members. Conditions of entry into various professions are usually closely influenced by the rules governing membership of various professional associations in the country. About 24 Professional Societies in Kenya are members of the Association of Professional Societies in Eastern Africa (APSEA), which is represented in the country's National Committee on World Trade Organization (NCWTO).

With regard to trade, the CAPAS study showed that Kenya had considerable competitive advantage in the export of labour–intensive services.

Specifically, as a result of aggressive investment in general and specialized education in the last three decades, Kenya has acquired an edge in the regional market for professional services. This is shown by the fact that Kenyan professionals are today working in many countries in the region, including South Africa, Botswana, Swaziland, Lesotho, Zambia, Malawi, Tanzania, Uganda, Namibia, Europe and the USA. It is estimated that about 700 Kenyan doctors work in South Africa alone. Increasingly, some countries like Botswana are advertising employment opportunities for various skilled personnel in the Kenyan newspapers. In some cases interviews for such jobs are conducted in Kenya through professional firms such as Hawkins Associates Ltd.

In one recent advertisement in the Kenyan press for public service appointments in Botswana, a wide rage of professional posts were listed including water engineer, consultant forensic pathologist, housing officer, urban planners, roads engineers, principal special education officer, industrial training officers, psychologists, meteorologists, tourist officers, archivist, biomedical officer, systems analysts (Daily Nation, July 30th, 1999, p. 43). These advertisements for professional opportunities at the regional level have been especially facilitated by regional publications such as *The East African*, published by Kenya's Nation Newspapers.

The export of professional services requires extensive temporary migration of workers, which remains highly controlled and controversial as a result of opposition from many developed countries. This is an area that will need more attention globally to create a more enabling environment for migration of various skills of labour. Since she stands to gain immensely from freer movement of skills. Kenya should spearheaded this focusing of global attention.

The following sections of the paper describe the individual professional services in Kenya focusing on the size and structure of the services sector, the regulatory framework, the level and direction of exports and imports, the competitiveness of the sector in the regional and international markets, the constraints to exports and imports and the measures that need to be undertaken to enhance trade in services. Impediments to the expansion of the domestic production capacity of each of the professional services, in addition, receive prominent attention.

## 2.0 PROFESSIONAL MEDICAL SERVICES

Medical services are the most important consumer-oriented professional services as human beings cannot do without them. It is not surprising, therefore, that medical professionals account for about 36% of all professionals in Kenya currently. The number of doctors, dentists and pharmacists alone accounted for almost 5% of all the professionals in the country in 1998. Table 4 present details of the distribution of medical professionals in Kenya. In 1998, nurses (registered and enrolled) made up about 66.5% of all the medical professionals in the country while doctors made up 8%. On top of the 51,365 medical personnel that were registered by 1998, a total of 7,521 students were undergoing medical training.

Recognizing the critical role of medical services, the Kenyan government allocates a relatively high proportion of its resources into this services sector. It is only education that receives a higher share of government revenue than the health sector. During the 1997/98 financial year, for instance, the Kenyan government spent 9% of its revenue in the provision of health services. Inspite of this, health facilities are still inadequate largely because the number of medical personnel is growing at a faster rate than the facilities. For example, while number of health institutions grew by only 1.9% from 4,069 in 1997 to 4,145 in 1998, the number of registered personnel expanded by 6.0% over the same period (Republic of Kenya, 1999).

In this section of the paper, the remaining discussion concentrates on doctors only. The discussion is based on an interview conducted with an official of the Kenya Medical Association (KMA). The professional organization for doctors n the country.

## 2.1 Size and Structure

As already indicated, Kenya has slightly over 4000 doctors currently. Since membership to the professional association is not mandatory for registration, only about half of these doctors are members of KMA, with only about 1,000 of the members paying for the membership. A source at the KMA estimates that about a quarter of all the doctors supplying medical services in the country are foreign, mainly from India and Pakistan

While many doctors continue to work in government medical institutions, especially as consultants, and as lecturers in public universities most of these also run private clinics where supply their professional services and receive fees. Most of these clinics are small, usually two-room outfits -run by an individual professional with a skeleton staff of two or three people. Cases of doctors teaming up in partnership to establish large medical institutions are very rare. There is one example, nevertheless, in which 20 or so doctors are involved in Avenue Health Care ltd.

## 2.2 Entry Conditions and Other regulations

Like the case for other professional services in Kenya, doctors must be registered by the Kenya Medical and Dentists Registration Board. For this registration, Kenyans are required to complete 6 years of University education and a one year internship in one of the large hospitals, principally Kenyatta National Hospital and Aga Khan Hospital. The internship does not involve any professional examination but requires world under supervision. Doctors with foreign qualifications are required to sit a professional examination administered by the Board before they are registered to supply services in Kenya. Kenyan doctors who wish to supply their services in foreign markets are also required to pass professional examinations.

It is the Board that has the legal power to discipline errant doctors. Two thirds of the Board members are appointed by the government, including the chairman, a factor that reduces the independence of the Boards decisions. The Kenya Medical Association, which is not represented in the Board, would like to see the proportion of the elected Board members increased from the current level of one-third. KMA's this, merely serves as a welfare association and is not adequately recognized by the government.

Despite the requirement to sit a locally administered professional exam, the entry conditions for foreign doctors are rather relaxed. Since the country does not have enough doctors, hospitals seeking permits for foreign doctors obtain then easily. Private foreign health institutions, moreover, have a preference for foreign doctors especially those from their countries. It is for this reason, that MP Shah and Aga Khan hospitals have a high proportion of Asian doctors and Nairobi hospital has many while doctors.

## 2.3 **Trade**

Kenya does not have enough doctors. The demand for their services is therefore very high especially in public hospitals. The problem is hat an increasingly large proportion of the Kenyan doctors is going to work in South Africa, Botswana, Swaziland and other parts of the world largely because of low salaries in Kenya and lack of adequate facilities such as hospitals and equipment with which doctors can work with. Rough estimates indicate that about 700 Kenyan doctors are working in South Africa alone. Most of these are employed as the establishment of commercial presence is not easy. Access into the European and American markets is highly, restricted by the requirement to pass professional exams and tight migration and initial entry regulations.

By virtue of the fact that many Kenyan doctors are working in foreign countries, Kenya can be said to be exporting a substantial amount of through the movement of natural persons medical services. Data actual flows in monetary terms are lacking, unfortunately. Consumption abroad or the movement of consumers to where the medical services are available is another mode through which Kenyan doctors export services. Owing tot he high quality of medical services in Kenya and their competitiveness, patients from the neighbouring countries notably Uganda and Tanzania, frequently visit Kenya to consume doctor's services. The actual magnitude of this mode of service export supply is also not known. The main competition for the Kenya doctors as far as this mode of supply is concerned is India. The cost of medical services in India is very low in comparison with Europe and America and yet the quality of the services is high.

Lack of recognition for Kenyan qualifications in some of the external markets, especially in Europe and USA, and stringent initial entry and migration conditions the most serious obstacles to the growth of Kenya's medical services exports. Another impediment is lack of market information. With regard to neighbouring and regional markets, the comfort in Kenya relative to these other countries has prevented Kenyan doctors from exporting more of their services. That doctors wishing to export their services have to work in the public sectors of the recipient countries before establishing private practices has also discouraged many Kenyan doctors from seeking jobs outside the country.

Kenya imports medical services largely through the foreign doctors who work in the country, the foreign health, institutions that have been established in the country foreign dominated medical insurance or managed health care and through the movement of Kenyans to seek medical attention in

India, UK, USA, and other parts of the world; Movement of Consumers, especially the rich ones, was quite substantial a few years ago as Kenya lacked the equipment for complicated surgery such as heart and renal problem. These are now available at reasonably cheap costs at the Kenyatta National Hospital. Sources at the Kenya Medical Association point out that and the main avenue through which Kenya is losing most of the medical money is through the managed health care system which is dominated by foreign firms. Doctors in Mombasa, in fact, recently complained bitterly about the domination of medical services by the African Air Resque (AAR) and the Aga Khan hospital. There is absolutely no legislation to check against such foreign domination.

One of the main factors behind the foreign domination of the medical insurance services is the inefficiency and limited scope of the public National Hospital Insurance Fund (NHIF).
The entry of foreign doctors into the Kenyan medical services sector is facilitated by a number of factors. Principal among these is the relative case in the issuance of work permits as it is officially acknowledged that the country lacks enough doctors. Preference of foreign hospitals and other health institutions with a commercial presence in Kenya for foreign doctors has also facilitated the entry of foreign doctors into the Kenyan market. This has been the case especially for Indian and Pakistan doctors who receive preferential employment opportunities in some of the country's leading foreign-owned hospital. The Kenyan doctors resent this as it diminishes opportunity for them in the leading urban areas, forcing them to move into the rural areas.

## 2.4 C**onstraints to Domestic Production Capacity**

Even though the quality of medical services available in Kenya is high in comparison with the neighbouring countries, a number of constraints hinder greater expansion of the domestic production capacity. The first, and perhaps the most serious, of these constraints is the lack of adequate facilities (hospital and equipment) with which doctors can work with and their poor maintenance. This has made the working conditions for doctors, especially in the rural areas, to become so bad that most of them have left government service. The effects of poor working conditions have been aggravated by poor remuneration. A source at the KMA talked about a study that has found the medical profession to be the most poorly remunerated of the professions in Kenya. Poor pay has forced doctors to resort wither to private clinics or seek employment in other countries. The doctors that remain in public service have low morale and lack incentives for professional development.

Medical professionals have suggested that availability of easier loans could go a long way in assisting them to establish hospitals and other facilities. This would improve the situation from the current one where small clinics of doubtful hygiene and professional standards have sprouted all over the country.

Difficulties associated with initial establishment are another significant obstacle to the development of medical services capacity in Kenya. It is difficult to survive in the competitive environment existing in the private medical services sector without a solid reputation, reputation that can only be nurtured through a torturous public service.
Finally, the high quality training that has been producing high class doctors is threatened by the quarter system of intake which is based on ethnic considerations rather than merit. It is also threatened by the increasing commercialization of the university educational programmes which is allowing less qualified people to join medical and other professional training. This is compounded by lack of legal recognition for the KMA which could have served to protect the medical professional integrity.

## 2.5 **Way Forward**

The obstacles identified in the preceding paragraphs have to be dealt with if the Kenyan medical profession is to grow. Specifically, as much as foreign doctors are welcome into the country their levels and the degree of control of the services sector ought to be rationalized. Foreigners should not be allowed to dominate any medical services to enable Kenyans to develop local capacity. Even the already established foreign health institutions should be required to employ a certain proportion of local doctors to facilitate technological transfer and create employment for Kenyans. The Kenyan negotiators at the GATS should push for the recognition of the Kenyan medical qualifications all over the world as a way of securing market access for the country's professionals. They should, in addition, push for the easing of obstacles hindering a freer movement of natural persons. Consideration should be given to easing lending terms to doctors to facilitate the establishment of hospitals and other facilities. Finally, KMA should be accorded legal recognition.

## 3.0 ARCHITECTURAL AND ENGINEERING SERVICES.

In the classification of GATS for services, architectural, quantity surveying and engineering services fall under "Construction and Related Engineering Services". Surveying services are discussed separately in a previous section 4.0. This section analyses architectural and engineering service sector in Kenya. While architects provide blueprints and designs for buildings and other structures, engineers provide planning, design, construction and management services for building structures, installations, and engineering works and industrial processes (WTO, 1998a). Being involved in all stages of any project, consulting engineers offer a wide range of services, most of which overlap with the services offered by other professionals. Architectural and engineering services are accredited professional services.

### 3.1 Size And Structure.

Globally, small firms dominate service provision especially in the case of architectural services (WTO, 1988a). In some cases, nevertheless, architectural and engineering functions may be combined in one big construction company as demand for architectural and engineering services is closely related to demand for construction and to overall industrial investment and economic growth. The dominance of small firms in the global architectural and engineering services sector is also evident in Kenya, where small firms and sole practitioners are the majority. There are partnerships between Kenyan and foreign architects although the practice is not prevalent. Associations between local and foreign professionals (who are not registered in the country) are the more common type of institution through which Kenyan architects work with foreign counterparts. Even though membership to the Architectural Association of Kenya (AAK), the professional association drawing membership from architects, engineers, landscape architects, quantity surveyors and town planners is not mandatory, membership to AAK is a good indicator of the size of these professions particularly architecture and quantity surveying. Currently, there are 295 architects who are members of the AAK. Fifteen (15) of these are foreign. In addition, there are a total of 215 (12 of which are foreign) quantity surveyors who are members of the AAK. Also belonging to the AAK are 33 engineers (1 of which is foreign), 56 town planners and 11 landscape architects all Kenyan nationals. Only few engineers are members of the AAK. The register of the Engineers Registration Board (ERB) shows that a total of 1,779 engineers were registered and living by the end of 1998. Sources in the engineering profession estimate that about 100 of these registered engineers are foreign. Membership to the Institution of Engineers of Kenya (IEK) is also not mandatory although it was before.

### 3.2 Entry Conditions And Other Regulations

To become a registered architect or quantity surveyor in Kenya, one must be registered by the board of registration of architects and quantity surveyors (BORAQS) after satisfying the conditions specified in CAP 525 [1] of the country's laws. The applicant wishing to be registered as an architect for example, must be a graduate from a recognised university, that is, at least four years of university education in the relevant subject matter, must have practised for at least two years under a registered architect, and must pass the professional examinations administered by BORAQS. These requirements are not only similar to those prevailing in most other countries of the world but they are also the same for nationals and for foreigners. The foreigner must, however, be a graduate of a university recognized by BORAQS or a member of an association accredited by the Commonwealth Association of Architects (CAA) and/or the International Union of Architects (IUA). These institutions accredit institutions of higher learning, a procedure that facilitates recognition of professional qualifications. In Kenya the University of Nairobi and Jomo Kenyatta University of Agriculture and Technology are accredited although the status of the former university came under threat last year and is going to be reviewed this year. The registration procedure for engineers is very similar to that for architects, the only difference being that the minimum pupilage under a registered engineer required is three years and that there is a professional interview administered by the Institution of Engineers of Kenya (IEK) and the engineers registration board (ERB) instead of a professional examination. ERB evaluates the adequacy of foreign qualifications before engineers can be registered to provide services in the Kenyan market.

The government, through BORAQS, and ERB is the main regulator for architectural, quantity survey and engineering service sectors. Regulation is necessary not only for the maintenance of service quality and therefore the protection of consumers, but also for public health and safety reasons. The AAK's role is essentially to co-ordinate the activities of member professions; set the standards of professional education, training and practice; market the services offered by member professions; establish and accredit professional development programmes; liase with regulatory agencies on registration and licensing of professions; facilitate research and disseminate information; and establish a code of conduct for members. Even though the AAK is not recognized by the government but not as a statutory body by the government, it is represented in the BORAQS. The same is true for the EK which nominates three of the seven ERB members. The IEK is responsible for professional training and development, policing the industry, disciplining members and advising the government among other functions.

The AAK has lodged a request with the government for an Act of Parliament that empowers it to discipline errant members. The Kenya association of building contractors (KABSEC) has also expressed its need for such empowerment. In fact, most professional associations have made similar demands, a signal that there is need for institutional strengthening for the purpose of self-regulation of professions in the country.

Unlike the legal profession the architectural and engineering services are very open to foreign professionals. Both nationals and foreigners face the same entry and operational conditions. This reflects the global situation whereby unlike other accredited professional services, architectural and engineering services are subject to fewer restrictive regulations (WTO 1998). Unlike the legal profession, moreover, the architectural and engineering professions hardly adhere to the pricing schedules legislated in CAPs 525 and 530, leaving the pricing of these services, even by foreign service suppliers, fully liberalised .

3.3 **TRADE**

Even though the bulk of architectural and engineering services are traded through commercial presence and the movement of natural persons, advanced telecommunication systems are making cross-border trade in these services increasingly important. Blueprints and designs are increasingly being transmitted electronically and consulting done on-line. Kenyan architects surveyors, and engineers are exporting their services. Thus, Kenyans in these professions are working in such countries as Dubai, Namibia, Swaziland, Zimbabwe, Botswana, South Africa, Eastern African countries, Rwanda and many other countries. Most of these professionals are working for the governments of these countries, an indication that the regional demand for these services is high. The main mode of service export is commercial presence although the movement of natural persons and cross-border trade are increasing in importance. Data on the actual trade flows in professional services in Kenya are lacking.

The supply of these services in Kenya exceeds national demand, according to the estimates of professionals. Kenya, therefore will increasingly have to turn to he external markets to absorb her surplus professional services. According to the professionals we talked to, the competency and competitiveness of the Kenyan architects, quantity surveyors and engineers the external markets is high, save for the declining quality of graduate professionals from the University of Nairobi. In spite of this level of competence, there are constraints impeding the growth of Kenyan of architectural surveying and engineering services exports. The main constraint cited by the professionals is the level of bureaucracy and entry restrictiveness existing in regional countries which constitute the main market for Kenyan professionals. In some of the markets the ease of access available in Kenya is not reciprocated. An example is given of Tanzania which requires a payment of $15,000 from any foreign architect who wishes to provide services there. This is a substantial barrier to this market. In the case of engineering services, access, into the Tanzanian market is equally restricted, for the foreigner has to pay for the work permit and forms partnerships with locals. Inadequate information about the external markets is the other obstacle cited by professionals as constraining Kenya's export of architectural and engineering services. This constraints is, however, not as serious as the bureaucratic procedures. Failure to translate the existing linkages between the Kenyan professional associations and the sub-regional, regional and international counterparts into tangible and workable programmes of action constitute, additionally, a substantial barrier to the export of architectural and engineering services from the country. Closely related to this is the failure of these professional associations to influence decisions pertinent to their professions.

Kenya, in spite of having surplus architectural and engineering professionals, imports architectural and engineering services, particularly from South Africa, Europe and China, the latter in the form of aid packages. The tendency of foreign embassies and multinational firms to prefer foreign architects and engineers to local professionals has also been noted. While the foreign architects are required to associate or work with local registered architects the foreign engineers do not need this. They are issued with temporary licenses. The professionals in Kenya are of the opinion that the level of importation from South Africa is alarming and therefore undesirable. There is also a feeling that the Kenyan government should involve professionals in the negotiations for aid packages to ensure that the professional services tied to aid flows are only those that cannot be supplied by Kenyan professionals. The Kenyan professionals feel that the quality of imported services is similar to the locally available services and that there is hardly any area of the professions that Kenya lacks technical capacity in. It is therefore clear that the Kenyan market for architectural and engineering services is very liberal and open to foreign professionals, as there are hardly any extra market access and national treatment limitations imposed on the foreigners. There is also fair and easy recognition of professional qualifications from other countries. That Kenya has not committed these services under GATS in spite of their liberalisation constitutes a missed opportunity. The country could demonstrate its spirit of giving by committing these services without much effects on the local professionals.

Commercial presence is the main mode of supply for imported services. Nevertheless, the temporary movement of professionals facilitated by temporary licensing and other measures, together with cross-border supply are increasing in significance. One of the obstacles facing foreign architects wishing to supply services in the Kenyan market for a short period is the requirement for forming associations with locally registered professionals. This is not the same in the engineering profession as temporary licenses are issued to foreign professionals so long as the registration board is satisfied with their qualifications. Even in the engineering profession, however, the discretionary powers given to the ERB are associated with uncertainty about their decisions on professional qualifications, a factor that could present substantial barriers. The only other impediment to the importation of architectural and engineering services into Kenya is the stiff local competition.

### 3.4 Constraints To Domestic Production Capacity

Even though data on the output of architectural and engineering services are lacking, leading professionals we talked to estimate that the current level of economic development in Kenya is unable to absorb all the available services in the country: The supply of architectural and engineering services, therefore, exceeds domestic demand at the present level of economic growth. Both demand and supply side factors limit the growth to architectural and engineering services in Kenya. Principal among these is inadequate demand for the services in the domestic market largely as a result of ignorance, negative attitude or lack of appreciation of the importance of the services. Many people in the country simply undertake projects without the inputs of engineers, architects and quantity surveyors or with the input of technicians and other non-professionals rather than that of professionals. There, in addition, seems to be a widespread perception of architectural and engineering services as being expensive and unaffordable. The persistent poor economic performance in the last two or so decades has also adversely affected demand for architectural and engineering services. There is, moreover, a feeling among professionals, especially the engineers, that there are too many foreign service providers in the Kenyan market a fact that reduces the demand for services provided by the nationals. The other constraints operate on the supply side. These include the declining quality of services due to the existence of quacks in the professions as a result of improper and inadequate control of the professions by the government, and an inappropriate civil service structure. In government ministries engineers and architects are often made to do other work than what they are trained to do and/or report to people who are not in their professions. Exclusion of professionals such as architects and engineers in planning committees of government ministries, in addition, adversely affects the quality of services supplied. The erosion of the corporate image, ushered in by the process of structural adjustment, to pave the way for small consulting engineering firms is another constraint on the supply side as it has adversely affected the quality of services and taken away opportunity for a ‘referral’ type of training and transfer of technology. Inadequate legal empowerment of professional associations has meant that they cannot effectively take part in the discipline of errant members. This has contributed to the deterioration of the quality of professional services supplied.

While engineering professionals in Kenya do not see any need for further liberalisation of the national market and, indeed, feel that the market needs to be closed to a beneficial level, the architects feel that further but controlled liberalisation could enhance the exchange of technology and is thus desirable.

### Regional and International Networking

The professional associations for architects and engineers in Kenya are affiliated to many sub-regionals, regional and international associations for the purpose of exchange of ideas and other forms of professional development. Thus, AAK is affiliated to the African union of Architects (AUA), the Commonwealth Association of Architects (CAA), the International of Architects (IUA), Union and CASLE, among others while the IEK is affiliated to the Commonwealth Engineering Council (CEC), Africa Association of Engineering (AAE), and the World Engineering Association (WEA), among others. These associations do not only serve as the main sources of information for the professionals but also facilitate and promote the mutual recognition of professional qualifications and reciprocity among the member institutions. These associations, in addition, provide guidelines on accreditation policy, continuing education policy, registration and licensing policy and other policy aimed at professional development.

A problem noted as far as networking is concerned is the failure of the associations to translate linkages into concrete programmes of action, weak implementation of decisions and inability to influence decisions favourable to the professions. These weaknesses have to be addressed urgently if networking among professional associations is going to have any tangible benefits.

### 3.5 Way Forward.

For to expand architectural and engineering services produced in Kenya to grow and their export to expand, it is imperative that the constraints identified in the preceding sections be addressed urgently. These are the constraints impeding the growth of the domestic production capacity, the growth of service exports and the effectiveness of regional and international professional associations. To boost domestic production capacity of architectural and engineering services, both demand related and supply related obstacles, as identified previously, will need to be eased or removed entirely. To facilitate faster growth of services exports accreditation arrangements between Kenyan and other country association and governments will need to be extended. Government support in securing export markets and availing trade information will also be critical, as will be negotiations for less restrictiveness in some markets (for instance, restrictions associated with visa and work permits). In particular, Kenya should negotiate with Tanzania and similarly restrictive countries to ensure reciprocal market access and national treatment conditions. Kenya should also spearhead discussions within the frameworks of the EAC and COMESA trade groupings to ensure that services trade receives adequate attention and that Kenyan professionals' access into the regional markets is enhanced.

Sub-regional and regional professional associations and governments should create strong institutions that could negotiate for the continent as a block rather than for individual countries. This is the only way by which African countries will have influence on the WTO and GATs activities and decisions.

## 4.0 SURVEYING SERVICES

### 4.1 Entry conditions and Regulatory structure.

All surveying professionals intending to offer professional services in the country are expected to apply for membership to the Institution of Surveyors of Kenya (ISK). Even though each application is considered individually, there are no mutual recognition agreements (MRAs). Even qualified foreigners are not exempted from the membership requirements. In addition, foreign valuers must have resided and worked in Kenya for at least two years before they can be registered and licensed as professionals. Under the old East African Community (EAC) arrangement, surveyors in Kenya, Uganda and Tanzania who were "Certified Land Surveyor of East Africa" could provide services in any of the countries. The only requirement was that they had to study the law of the country they wished to practice in, without which they could not be allowed to provide cadastral survey services.

The procedure and conditions for the Licensing and registration of surveyors, valuers, and real estate agents are spelt out in three separate legislation:, viz.– Cap 299 for land surveyors, Cap 532 for valuers and Cap 533 for estate agents. Under these Acts cadastral services are heavily regulated while non-cadastral ones such as survey work on roads and buildings are not. Any qualified domestic and foreign professional can provide the non-cadastral surveying services freely. Land surveying, for purposes of issuing title deeds is one example of the cadastral surveying services that are closely regulated and largely closed for foreign surveyors. This regulatory differential between cadastral and non-cadastral surveying services exists in East Africa and in most of the African countries.

### 4.2 **Trade in Survey Services**

Export of surveying services from Kenya is very low because of the existing restrictions on the provision of non-cadastral services in the region. Officials of ISK estimate that only about 5 Kenyan surveying companies regularly work outside Kenya (mode 4 supply), mainly in Uganda, Tanzania, Malawi and Zambia. Some donor agencies financing engineering projects in the region often contract surveyors from Kenya based on previous work experience with them in Kenya. This has enabled Kenyan based surveyors to supply some limited survey services in the neighbouring countries. In the case of valuation services, there is virtually no exports in the region because valuation is entirely cadastral.

The Kenyan surveying professionals are generally opposed to a liberalized entry of foreign surveyors arguing that available local professionals can adequately serve the domestic market. While the Institution of Surveyors of Kenya is largely in favour of retaining existing restrictions on the operations of foreign surveyors it would like removal of barriers on trade in all forms of surveying services at the regional level. Consolidation and liberalization at the regional level would gradually prepare the region for a more globally liberalized trade in surveying services.

ISK is affiliated to both regional and international organizations such as the Commonwealth Association of Surveying and Land Economy (CASLE) and the International Association of Surveyors (FIG), for purpose of exchanging professional ideas.

## 5.0 LEGAL SERVICES

### 5.1 Size, Structure and Regulation

The legal services sector in Kenya consists of about 3,000 qualified lawyers, with a negligible number of foreign lawyers. The Kenyan legal services sector is dominated by small firms and sole practitioners with some of the largest partnerships having about 15 lawyers. There are currently no Kenyan legal professionals or firms involved in integrated international partnerships or in networks. Currently, exports of legal services are largely in form of services provided to resident foreign companies and individuals.

Licensing of lawyers in Kenya is the responsibility of an independent statutory body, the Council of Legal Education. Three members of the council are from the Law Society of Kenya (LSK), the legal professional association in the country, which looks at the interests of the legal practitioners in the country, including professional conduct and discipline of the members. Membership to the LSK is a requirement before one is licensed to offer legal services in Kenya. To qualify to be a member of LSK, one needs a degree in law from a recognized university and a certificate from the Kenya School of Law, an institution of the Council of Legal Education. Each applicant's case is evaluated individually, a process which costs time and creates uncertainty to the applicants. There is, however, no discrimination between Kenyan nationals and foreigners with regard to qualifications and other requirements. The restrictiveness of entry into the Kenyan legal profession by foreign legal professionals is brought into sharp focus by the small number of foreign lawyers practicing in the country, only two currently according to the LSK.

The 1989 amendment to the Advocates Act effectively barred foreigners from accessing the country's legal services market. All legal services including court representation, legal advice or counseling, and notarial activities are completely closed to foreigners following that amendment. While anyone who was ordinarily resident in Kenya could be admitted into the legal profession as long as he/she was qualified, the 1989 amendment requires that only Kenyan citizens are allowed to act as professional lawyers in the country. An important rationale for the amendment of the Advocates Act was the desire to protect Kenyan legal practitioners especially in view of the fact that multinational firms had shown great preference for overseas legal firms. The other rationale for the amendment was retaliation as foreign legal services markets are closed to Kenyan lawyers especially the profession of advocate and notarial services. Kenya is not among the 47 WTO member countries, which have made commitments with respect to legal services.

Regulation of the legal services sector in the country is carried out jointly by the Council of Legal Education and the LSK. The LSK is the visible regulator while the council is invisible. The LSK receives and acts on complaints from aggrieved clients, and disciplines errant members. Its disciplinary committee is chaired by the country's Attorney General. LSK elects members into the committee and hosts the committee's secretariat.

### 5.2 Trade in Legal Services

Exports of legal services from Kenya are currently insignificant. There is, however, potential for substantial increase when the treaty establishing the East African Community (EAC) is signed in October 1999. There are currently a few Kenyan lawyers who provide legal services in the neighbouring countries of Uganda and Tanzania, from time to time. There are others working in the southern African region, mainly in Lesotho, Swaziland and Botswana. They are usually not licensed to provide services in these countries but are contracted to work for the government, which is not restricted in the region. Legal services that are more commonly exported include all legal services except litigation. These include leases, patents, and conveyancing. The Tanzania legal services market is still quite open to foreigners, as ordinary residence is still the only requirement for the licensing of legal professionals. The regulatory regime in Uganda resembles the Kenyan one, in general terms. The comparative advantage of Kenya within the East African region lies in its larger pool of qualified legal professionals, which is about three times more compared to Uganda and Tanzania.

To facilitate trade in legal services within the East African region a meeting of Attorney Generals, held in 1997 under the auspices of the EAC, reached an agreement that all lawyers in East Africa be allowed to practice freely in any of the countries, with mutual recognition of qualifications, a move that is largely supported by the legal professions in the three countries.

The mode of supply used in the export of legal services is primarily cross-border (mode 1) and movement of consumers (mode 2). Since most legal services such as the transmission of legal documents and advice can be delivered electronically, technological development in the telecommunications sector including growth of the internet and electronic commerce are creating efficient and accessible avenues for cross-border trade in legal services (WTO, 1998c). The movement of natural persons (mode 4) is also an important mode of supply of legal services There is no supply via commercial presence (mode 5) as yet because this is usually difficult and costly (WTO, 1998c).

Several constraints were cited as hindering the export of legal services from Kenya. These are:

(i). Nationality requirements and/or reciprocity requirements to access foreign markets;
(ii). the low level of social services (such as education and medical services) in some of the southern African countries preventing some Kenyan lawyers from taking up the many contracts available from the governments in the region;
(iii). and lack of information about job opportunities outside the country, and
(iv). language barriers with regard to such potential markets as Rwanda.

There are hardly any legal services imported into Kenya due to the existing regulations. Stringent professional and nationality requirements have impeded participation and thus competitiveness in the country's legal services sector. Entry requirements should be relaxed to allow a stronger competitive environment and therefore quality service delivery to consumers, faster and greater transfer of know-how to the Kenyan legal professionals, and enhancement of the confidence with which foreign investors view the Kenyan market in general. It should be noted that some countries view the establishment of foreign lawyers in any country as an indicator of the security and predictability of that country's local business environment (WTO, 1998c), an important determinant of foreign investment flows.

The LSK is a member of some regional and international legal organizations, which facilitate the exchange of ideas. These include the East African Law Society which deals with regional issues, including cross-border legal practice, the African Bar Association; and the International Bar Associations, (IBA) which offers fraternity and information on the global legal profession. Members of the IBA and the International Union of Lawyers (UIA), the other international organization of the civil Latin legal tradition, are divided over the issue of legal services liberalization (WTO, 1998c), a factor that accounts for the fact that most countries have restrictive practices with regard to the delivery of legal services to protect their legal services sectors

### 5.3 Constraints facing domestic delivery of legal services

The delivery of legal services within the country is constrained by a number of factors. First, the Kenya School of Law, through which all legal professionals must pass, has a limited capacity so that intake into the school cannot be expanded significantly without compromising quality. There are therefore delays before potential professionals are admitted into the school. Secondly, due to poor economic performance over most of the 1990's, the demand for legal services has been considerably depressed.

Thirdly, the Kenyan legal profession has remained rather conservative, a factor that has limited the degree of dynamic and modernization in the sector. Consequently an increasing number of legal practitioners combine to compete for the traditional legal services which are not growing rapidly enough.

## 6.0 ACCOUNTANCY SERVICES

Accountancy services are generally taken to include accounting and auditing services, insolvency services, tax advice, investment services, and management consulting. Accountancy services are producer services that are important not only for the production of goods and other services but also in the enforcement of prudential and other financial regulatory requirements. Thus, a large proportion of the demand for accountancy services is derived largely from mandatory legal requirements such as financial reporting and taxation.

In the area of international trade in accountancy services, an issue of global concern is the widespread application of local qualification and licensing requirements ostensibly to protect consumers, promote domestic business and local employment, manage foreign exchange and preserve cultural identity (WTO, 1998b). The question engaging the minds of many is whether these regulations, which are major barriers to foreign accountancy professionals, are necessary.

### 6.1 Size and Structure

Accounting is one of the largest professional service sectors in Kenya today. The Institute of Certified Public Accountants of Kenya (ICPAK) estimates that there about 3,000 fully qualified professionals in this area, with about two-thirds of them being registered members of the ICPAK. It is also estimated that the Kenyan accountancy services sector has more than 700 firms at the moment. Kenya has a much larger pool of accountancy professionals compared with Uganda and Tanzania whose registered members are around 300 and 1200, respectively. The accountancy profession in Kenya, is heavily dominated by the world's "Big Five" accountancy firms, which are strongly represented in the country. The Institute of Certified Public Accountants of Kenya (ICPAK) estimates that these five multinationals control about 90-95% of the large private and public sector consultancies. This dominance of multinational consultancy and management firms is extended to the other African countries, Uganda and Tanzania.

It should be noted that the local branches of these multinationals are owned and managed by Kenyan nationals. For instance, the local branch of PriceWaterhouse Coopers, the global leader in accountancy, is owned and managed by 15 Kenyan partners, employs about 400 staff and has a capital base of Kshs 600 million[1]. Another member of the "Big Five", Bellhouse Mwangi Ernst & Young, has a total workforce of 187 in Kenya,33.7% of which are qualified professionals (including 9 partners) and another 31.6% of whom are professional trainers. Only two members of this work force are foreign.

Except for the local branch of Peat Marwick, which is closely integrated with the parent company, the other local branches of multinational accountancy firms merely benefit from the brand name and standardized operations but are otherwise locally controlled. The local branches contribute an annual fee tot he parent companies to cover the central cost associated with training and other activities related

[1] Daily Nation, August 17, 1999.

to professional development. The local branches benefit immensely from networking with other associates of the same multinational firms.

Public sector institutions and the large private sector enterprises have been blamed for favouring the large firms, arguing that the smaller local firms lack capacity to handle large professional contracts. This discrimination against small local professional service providers permeates all sectors, eroding the basis for real and fair competition for accounting professional jobs in the country.

### 6.2 Regulations for Entry into Accountancy Profession

By November 1998, Kenya had made no WTO commitments with respect to the accounting, auditing and book keeping services that Kenya, like most other African countries, made only the minimum commitments required to gain assent into the WTO.

The first major steps to restrict entry into accountancy profession were taken in 1989. Since then one must be a registered member of ICPAK before he/she can offer professional accountancy services or be a partner in an accountancy firm. Registration is handled by the Registration of Accountants Board. In (RAB) order to become a member of ICPAK, one must be a holder of Chartered Public Accountants qualifications, having passed the examinations which are set and administered in Kenya. Local professional trainees who are employed by the large firms are routinely dismissed if they fail to acquire that CPA within the set period. Applicants with qualification from recognized professional bodies can be exempted from the requirement to have the local CPA qualification.

The ICPAK is the country's accounting standards making body. It not only disciplines its errant members but enforces accounting standards. The institute introduced the international accounting standards (IAS) into the Kenyan market last year. These standards are expected to be enforced this year by KPAK, the Central Bank of Kenya, and the Capital Markets Authority. ICPAK has been accused by the small accounting firms of failing to take disciplinary action on the "Big Five" and pour policing of the profession, in general.[2]

### 6.3 Trade in accountancy Services

In terms of exports, accountancy business from Kenya is high as the multinational accountancy firms, largely owned and controlled by Kenyan professionals, control a large share of the East African market. Through networking with other associations of the same parent company, Kenyan branches or partnerships of multinational firms are able to export a substantial amount of accountancy services, not only to foreign firms with a commercial presence in the country but also to clients in the region. The conclusion of a mutual recognition agreement (MRA) of qualifications in the area of auditing between Kenya, Uganda and Tanzania is likely to facilitate expansion of regional trade in accounting services.

International Federation of Accountants (IFAC), the International Accountancy Standards Committee (IASC), and the Eastern, Central and Southern African Federation of Accountants (ESCAFA) are some of the international and regional organizations that facilitate trade and maintain standards of accountancy services. ICPAK is affliated or associated with these organizations.

[2] The Financial Standard, August 10, 1999.

## 6.4 Constraints Facing Production and Export of Services

The accountancy profession in Kenya, through ICPAK, has identified the bottlenecks that hinder the export of services. These include an implicit prejudice against professionals from developing countries on the basis of undefined "quality" reasons, non-tariff barriers to entry into developed countries' markets, legal jurisdictional issues that hinder the enforcement of discipline across borders and absence of globally recognized professional standards. To promote trade in accountancy services, ICPAK would prefer reciprocal market access conditions and recommends that countries should enter into MRAs until global professional standards are adopted.

According to the Kenyan professionals interviewed, constraints facing the Kenyan accountancy profession today include official interference with the work of the Registration of Accountants Board, inadequate policing of the profession, limited, domestic demand for accountancy services owing to the small size of the economy, inadequate funding for accountancy research, education and training that is not keeping pace with information technology, low educational requirements for entry into the profession in comparison with world standards, inadequate levels of financial information disclosure, lack of control by ICPAK over the formal training of accountants due to the existence of many non-accredited training institutions in the country, and an accountancy training syllabus which places too much emphasis on traditional financial accounting approaches with no internship or practical training components.

According to ICPAK, accountancy services in the country should be regulated to a certain degree in order to safeguard consumer interests. The professional association supports corporate or other forms of practice so long as there are limitations to protect consumer interest. It also supports conditional multi-disciplinary partnerships or practices. The association is, however, against what it terms as "absentee partners" arguing that such partners would discourage incorporation of Kenyan professionals into the large multinational accounting and auditing firms.

## 7.0 CONSULTANCY SERVICES

Management consulting in Kenya has experienced a rather slow growth in comparison with some other professional services such as accounting, architecture and engineering. Foreign firms such as PriceWaterhouse Coopers, Deloitte and Touche, Hawkins and Associates account for a large proportion of management consulting services in the country. Like in the case of accounting and auditing services, these multinational firms heavily dominate management consulting services, with indigenous firms accounting for a small share. A detailed analysis of the sector is limited by lack of comprehensive data.

Kenya's domestic capacity in the supply of consultancy services is constrained by the existing unfair competition in which foreign consulting firms receive preference in the award of government contracts, lack of effective policy support, negative government attitude, inability of the small firms to attract and retain sufficient qualified staff due to cash-flow problems, inadequate experience in consultancy work, low managerial skills and a low level of professionalism (Ikiara et al., 1994).

One way in which developing countries like Kenya could develop their consulting professions is through the promotion of joint ventures between foreign and local consulting firms with the objective of facilitating transfer of technology and technical training. It may be necessary for the country to commit areas of consultancy services in which it does not have capacity under the Articles of GATS

Kenya could, in addition, seek financial and technical assistance to develop local capacity in areas of consulting that are deficient.

## 8.0 ADVERTISING AND MARKETING RESEARCH SERVICES

Marketing services include advertising, promotion, marketing research, distribution and warehousing, and media services. In this section of the paper, however, we will focus on advertising and marketing research only due to time and data constraints.

Advertising and marketing research are professional services that are becoming increasingly important in Kenya as companies, faced with serious domestic, regional and international competition, turn to firms providing these services for solutions to their problems. The declining performance of manufacturing and services firms, the main consumers of advertising and marketing research services in Kenya, over the past few years as a result of deteriorating infrastructure, civil unrest associated with the push for democratization, corruption and its adverse effects, and stiff competition as a result of liberalization since 1993, has forced these firms to seek advertising and marketing research services in a bid to increase sales and profits and retain their market shares. Thus, while other firms have suffered, advertising and marketing research firms have experienced growth in billings as a result of the suffering of others.

Advertising and marketing research services make consuming firms more competitive. In recognition of this, multinational corporations in Kenya, local banks, local oil companies, manufacturers, and media houses are consuming an increasing amount of these professional services every year. Companies that have grown in size and scope to the extent that they have lost direct touch with their customers have particular demand for advertising and marketing research services. Most of the small and medium sized companies in Kenya hardly consume these services, however, particularly marketing research as they deem them to be expensive.

### 8.1 Size and structure

There are close to 15 advertising firms and a similar number of marketing research firms in Kenya, according to sources in the industry. In terms of turnover, however, the advertising industry is much bigger than marketing research. Thus, while the annual turnover in the marketing research industry is estimated at close to Kshs 300 million, one advertising firm only could easily gross that amount. In terms of contribution to employment, advertising is again much bigger than marketing research, with the former having about 50 employees per firm. In marketing research, there are close to 200 employees, and many temporary field workers close to half of the 200 or so permanent employees of the marketing research sector are professionals, having a university degree and some research experience.

There is a high degree of market concentration in both advertising and marketing research industries. In marketing research, for instance, it is estimated that the largest firm Research International, control about 50% of the market and total sector employment. The few indigenous firms there are small and control an insignificant share of the market. Likewise in advertising a few big agencies control a big share of the market.

In both advertising and marketing research there is an extremely high domination by foreign firms, particularly so in advertising where almost all of the advertising agencies are affiliated to international agencies using South Africa as their continental head office. Most of the value-added to advertising products, therefore, benefits the advanced countries and South Africa. Global leaders in both marketing research and advertising such as AC Nielsen and McCan-Erickson are represented in the Kenyan market. Even though most of the foreign owned firms are headed by foreigners and have foreign senior management, advertising and research experts, they employ many Kenyan professionals.

## 8.2 Entry Regulations

Advertising and marketing research are among the non-accredited professional services. Perhaps because of this, the rather stringent entry conditions existing in legal services are absent in these service sectors. All that a foreign or Kenyan firm applying for a commercial permit to provide advertising and marketing research services need show are the curriculum vitae of the professionals who will be involved and pay Kshs 10,000, renewable annually.

There are no professional qualifications that must be attained prior to entry into these professions. Neither is entry into the professional association, the Marketing Society of Kenya (MSK), mandatory. The quality of advertising and marketing research services supplied is, in addition, not the responsibility of a specific regulatory agency but several agencies such as the Kenya Bureau of standards.

The Association of Professional Advertisers (APA), the association for marketing researchers which is still at its formative stages, and the MSK are, however, promoting professionalism in marketing through the enforcement of codes of conduct, facilitation of marketing education, arbitration in disputes involving their members and networking among the service providers and their clients. The MSK is, in particular, crucial in the promotion of marketing professionalism as membership to it is highly valued as its annual course on marketing. The society has a membership of about 400 among the leading manufacturing, banking, oil, media, advertising, marketing research, and other companies.

There are absolutely no advantages that local firms have over foreign ones as all face the same minimal requirements. Acquisition of work permits in Kenya has become increasingly less stringent, a factor that has seen many firms importing foreign experts in advertising and research. Foreign firms involved in the supply of advertising and marketing research services in Kenya, in fact, have substantial advantage over the locally owned and run firms. This advantage arises from the fact that most large consumers of advertising and marketing research services are local affiliates of multinational corporation and other foreign owned firms. These tend to prefer buying advertising and marketing research services from firms (usually local affiliates of other multinationals) their parent companies deal with or have dealt with before and which they trust. There is, thus, substantial networking among foreign firms which substantially closes the market for locally owned firms.

## 8.3 External Trade in advertising and marketing research services.

There is substantial export of advertising and marketing research services from Kenya although actual levels are unavailable. Industry sources indicate that most of the firms involved in the provision of advertising and marketing research services, including locally owned ones, export some of the services to the regional and even international markets. Services exports go into most of the African countries, although countries like Tanzania have a restrictive regime, which impedes better performance.

Foreign and local marketing research firms are exporting a substantial volume of services into the regional markets as a result of the locational advantage Nairobi has. Nairobi is the headquarters of many regional and international organizations, which consume a substantial amount of research services. These organizations contract mostly the foreign, but also the few existing local firms, to provide research services not only in the country but also other countries in the region such as Uganda, Democratic Republic of Congo, Ethiopia and others. Another advantage that marketing research firms located in Kenya enjoy with respect to the export market is lack of research professionals in most African countries. On account of a superior education system, Kenya has a significant advantage over other African countries in terms of the supply of professionals. There is a huge demand for professionals in most of the African countries.

The principal mode of supply for the export of marketing research services is movement of natural persons. as most marketing research is custom-made, thus requiring interaction between the client and the service supplier. This has been substantially eased by the introduction of the East African pass. This pass has made the movement of personnel within East Africa much easier. The leading, marketing research agency in Kenya, Research International however, produces market research for sale to customers. This is easily done through cross-border trade and consumption abroad.

Since the Kenyan market is dominated by foreign marketing research companies which have established commercial presence, the country imports a substantial amount of marketing research services. There is also a substantial amount of service export as these local branches of foreign firms employ many Kenyan professionals.

In advertising, Kenya imports more services than she exports as most advertising products have value added in New York and in South Africa. Only minimal local value is added in Kenya. The leading advertising firms, moreover, are branches of the global giants headquartered in New York. The main mode of importation of advertising services into Kenya is therefore commercial presence. The country, nevertheless, exports some of the advertising products made or completed in Kenya. In advertising, cross-border trade is an increasingly important mode of supply although commercial presence and the movement of natural persons are more significant. Locally owned advertising firms would have a difficult task of penetrating the services market both locally and externally as this market is controlled by the American giants. These giants have offices all over the world, including Kenya, and control the global advertising outlays of other multinational firms such as Coca-cola. It is largely for this reason that only one advertising agency in Kenya is 100% indigenous; local firms realize that they have to be affiliated to the US giants if they have to penetrate the market.

Even though there is substantial demand for advertising and marketing research services in the export markets, some obstacles prevent Kenyan firms from fully exploiting this potential. First and foremost, are the constraints to domestic production capacity. These will be discussed in detail in section 7.4. Secondly, there are substantial barriers to entry into some markets, notably Tanzania, as a result of an expensive permit even for short-term visits. Thirdly, there is lack of adequate market information on the export markets. Fourthly, there is serious competition for the export markets from foreign service suppliers who possess enormous advantages over the local firms. This constraint is particularly challenging to local advertising agencies on account of the grip US advertising agencies have on the global market. Finally, language constitutes a significant barrier to some very potential markets like the Democratic Republic of Congo.

## 8.4 Constraints to Domestic Production Capacity

As noted already, advertising and marketing research services in Kenya are highly dominated by foreign firms. Although Kenya has a large pool of highly educated and qualified professionals, these have not succeeded in establishing firms due to a number of constraints, on both the supply and demand side. Obstacles on the supply side include:

- Inadequate competence among the Kenyans, especially the Africans, since marketing research is a young and growing profession.
- Entry into advertising by locals is constrained by high investment costs.
- Lack of proper and well coordinated training of marketing professionals and a mechanism for vetting foreign qualifications.
- Lack of support from the government, particularly in granting some gradual protection to enable growth of local capacity.
- Inadequate access to a wider market that would induce greater efficiency and scale economies
- Contracts between marketing research firms and clients are often highly restrictive. For instance, subcontracting is not allowed for service providers as a way of protecting the confidentially of client information. The clients, in addition, often bar the marketing firm from providing services to their competitors. At times the clients do research into sensitive and confidential issues themselves.
- Long term and exclusive contracts between service suppliers and their clients, which is quite common to stave off competition, affects the production capacity of both these contracted service firms and other non-contracted service firms.

Constraints affecting demand for advertising and marketing research services include:

- Serious and, at times, unfair competition from multinationals who receive preferential treatment from multinational and other foreign clients.
- Inadequate/insignificant demand by local firms who view the services as being expensive
- The small size of the domestic economy which has been rather stagnant
- Ignorance about the usefulness of these services especially marketing research which is intangible.
- Unwillingness of most clients to pay for consultancy and proposals, leading to wastage of time and resources in the event that service provision is not contracted, following the submission of the requested proposal.

## 9.0 Impediments to competitiveness and export of professional Services in Kenya

The preceding sections of the paper have highlighted obstacles facing individual professional services in Kenya. Most of these were echoed at a workshop held in Nairobi (June, 1997) whose theme was "Increasing Services Exports under the GATS" (APSEA's letter to Director of External Trade). The workshop participants identified inadequate telecommunications infrastructure, lack of an enabling environment for the establishment of competitive services firms, inadequate public sector support, lack of financial support, and the lack of a positive image for Kenyan services abroad as the constraints hindering professional services exports from Kenya. Tax policies, especially the introduction of Value Added Tax (VAT) on all professional services in the early 1990s, was also reducing demand for these services and dampening growth.

In its interactions with member associations the Association of Professional Societies in East Africa (APSEA) has, in addition, identified the following impediments to enhanced competitiveness of the Kenyan professional service providers, both in the regional and international markets:

(i.) inadequate professional capacity building and, therefore, a low skill level, lack of technical capacity, lack of professional culture and inadequate promotion and poor pricing of services;
(ii.) inadequate capacity for regional and international networking, leading to insufficient access to essential market information;
(iii.) a weak base in process and information technology with adverse effects on quality of services provided;
(iv.) an adverse macro-economic environment, particularly high interest rates and fluctuating exchange rates;
(v.) poor work and business ethics which impact negatively on fair competition;
(vi.) failure of the government and professionals to take advantage of WTO's transitional arrangements as a result of inadequate awareness; and
(vii.) inadequate involvement of the private sector in the WTO activities.

Apart from constraints (iv) and (vii), all the others are closely related to and could be solved by widening and improving the efficiency of the telecommunications infrastructure. The privatization of the giant Kenya Posts and Telecommunications Corporation, launched on July 1, 1999 WTO commitments made by Kenya on basic telecommunications are expected to improve the efficiency and competitiveness of service delivery within and outside the country. Increased efficiency of the telecommunications sub-sector has the potential of revolutionizing the production and export of not only professional services but also many other services including cross-border supply of services.

## 10.0 Professional Associations' Position Regarding the Liberalization of Professional Services under WTO

Our interviews with various professional associations and other available information indicate that professionals in Kenya are generally opposed to the wholesale liberalization of professional services under WTO. They would prefer that liberalization is gradual and orderly, in order to protect the domestic professionals' services from unfair competition from foreign professionals. Following presentations by professional associations tot he relevant government institutions and the membership of APSEA in the national committee on the WTO, Kenya's communication prepared for the Third WTO Ministerial Conference to be held in South (US) in November this year requests for negotiations on professional services to proceed on a profession-by-profession basis.

Most professionals feel that some regulation of the professional services sub-sectors is still desirable due to inequality in development level among countries, to protect both consumers and the domestic providers of professional services. They also argue that since each profession is unique, a sectional approach to liberalization should be pursued and that mutual recognition agreements (MRAs) should not be made in any profession without adequate consultations with all stakeholders in the country.

Other misgivings voiced by professionals in Kenya over the liberalization of professional services include blocked access into the developed countries' markets via undefined "quality" requirements and consumer prejudice against services from developing countries, doubts about the enforceability of professional discipline on "absentee" partners on account of legal jurisdictional issues, and the eligibility of foreign professionals holding qualifications that are not recognized in the host country, in providing services in that host country.

Kenyan professionals' preference for cautious liberalization can, to some extent, be pursued within the WTO agreement. The "right of members to regulate, and to introduce new regulations, on the supply of services within their territories" is explicitly stated in the preamble to the General Agreement on Trade in Services (GATS). In essence, therefore, the GATS is able to accommodate members who are not ready for wholesale liberalization.

The interests of the services producers and domestic consumers will need to be balanced as the country weight its options. Liberalization, it should be noted, does not engender only consumption but also production benefits. The benefits of liberalization include a wider consumer choice and therefore higher living standards, enhanced efficiency among domestic producers and faster economic growth as well as an attractive environment for foreign investment. This would, in turn,facilitate technology transfer and development of managerial skills. Empirical evidence indicates that countries with more open markets achieved much higher growth rates, between 1963 and 1992, relative to the isolationist counterparts.[3]

[3] Greenaway et al., (1989) and IMF's *World Economic Outlook*, as quoted in a position paper sent out by the International Federation of Accountants (IFAC) to its member bodies for comments. The position paper was dated 24 May 1999.

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**Appendix Table 1**

The 24 professional associations members of APSEA the Institute of Certified Public Accountants of Kenya; Association of Consulting Engineers of Kenya; Institute of Clerks of Works, Kenya; Kenya Institute of Building; Law Society of Kenya; Association of Land Surveyors of Kenya; Institute of Certified Public Secretaries of Kenya; Association of Radiographers of Kenya; Architectural Association of Kenya; The Chartered Institute of Management Accountants, Kenya center; Kenya Institute of Food Science and Technology; Kenya Dental Association; Pharmaceutical society of Kenya; Kenya Medical Association; Institution of Surveyors of Kenya; Association of Surgeons of East Africa; Kenya Cardiac Society; Incorporate Brewers'. Guild (East Africa Section); Chartered Institute of Arbitrators (Kenya Branch); Geological Society of Kenya; Kenya Association of Radiologists; Kenya Society of Physiotherapists; National Nurses Association of Kenya; and Kenya Veterinary Association.