Business Environment Reform Facility

Kenya Investment Climate Reform Scoping Report

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BE RF Business Environment Reform Facility

Department for International Development

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Acronyms	
BERF	Business Environment Reform Facility
BRICK	Building a Resilient Investment Climate in Kenya
BAF	Business Advocacy Fund
BEDU	Business Environment Delivery Unit
CIPE	Centre for Private Enterprise
DFID-KENYA	Department for International Development Kenya
DCED	Donor Committee on Enterprise Development
EPC	Export Promotion Council of Kenya
EPZ	Export Processing Zone
EPZA	Export Processing Zone Authority
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GoK	Government of Kenya
GVA	Gross Value Added
KAM	Kenya Association of Manufacturers
KNCCI	Kenya Chamber of Commerce and Industry
KITP	Kenya Industrial Transformation Programme
KNTP	Kenya's National Trade Policy
KEPSA	Kenyan Private Sector Alliance
ICA	Investment Climate Assessment

Acronyms	
ICT	Information Communication Technology
IFC	International Finance Corporation
ITP	Industrial Transformation Programme
MDA	Ministries, Departments and Agencies
MIIT	Ministry of Industry, Investment and Trade
MTP	Medium Term Plan
PPD	Public Private Dialogue
SEZ	Special Economic Zone
TMEA	Trade Mark East Africa

Executive Summary

This report presents the findings of an Investment Climate Reform Scoping Mission carried out over the period 12th April to 28th April 2016 for the Business Environment Reform Facility (BERF).

The report sets out a set of recommendations on how BERF could work with DFID-Kenya and its development partners on Business Environment Reform (BER) issues.

1.1 BRICK High Level Road Map

Objective (section 3.1)

The objective of this area of work was provide DFID Kenya with a BRICK '2' High level Road Map with the view to supporting the development of a business case for a Building a Resilient Investment Climate in Kenya (BRICK) successor programme.

Discussions with DFID at the start of the mission confirmed this to mean what BER activities should DFID be supporting, and what would be impactful and provide best value. Phase1 has therefore focused on the key principles for future BER support providing an outline of an options framework and a short list of options.

Key findings (sections 3.2 to 3.6)

The Scoping Report finds that reforming the investment climate, and creating jobs for young people in particular, is at the heart of the Government of Kenya's ambitions. Maintaining macroeconomic stability and enhancing security is a core component of the 2016 Budget Statement, alongside investing in key sectors and infrastructure and skills development. Meanwhile, the Industrial Transformation Programme (ITP) outlines key enablers to increase investment and raise competitiveness. Progress has been made in establishing a Business Environment Delivery Unit (BEDU) in the Ministry of Industrialisation and the passing of legislation and processes to reduce the time, steps and costs associated with doing business. There is also some display, despite being nascent, of Government, especially at the Ministry of Industrialisation, being increasingly able and willing to base their business environment reforms on evidence and dialogue and consultation with the private sector. This, however, is largely dependent on the existence of champions and is not embedded within policy and project management processes. In the Counties, the quantity and quality of consultation and dialogue differ significantly and it is here that perhaps the largest opportunities exist for business environment reform.

Main conclusions (section 3.7 and 3.8)

BRICK has performed well against its log frame. However, there is less evidence that demonstrates the contribution of BRICK, or other investment climate reform programmes in Kenya, to income generation or job creation among particular target groups. However, there is now strong momentum for reform, and significant opportunities at the County level which would benefit from further support from donors. DFID has built significant experience, expertise and relationships in the reform space, especially on the supply side. There are also significant apparent gaps in supporting business environment reforms that are important for DFID Kenya's target group.

Given the broad range of options facing DFID Kenya, BERF can support DFID Kenya in more formally identifying and assessing the options for future programming. This phase of work will require close consultation with the Government of Kenya, including at the County level, and other donors. The longer term objective of this support would, if justified by the evidence, be to support DFID Kenya in the development of a Business Case for a successor programme to BRICK.

Recommendations (section 3.8 and 6.2)

This scoping report has set out the key principles to be considered in the design of future programme. In particular:

- ✓ Having a clear target group of beneficiaries, principally the poor, women and young people, and design activities based on improving the systems these beneficiaries operate in as well the systems in which business environment reforms are made.
- ✓ Flexibility in responding to emerging issues and opportunities and the changing momentum for reform on the supply and demand side of the market for business environment reform.
- ✓ Seek to facilitate and catalyse change through stimulating the demand for reform through more avenues.
- ✓ Include public private dialogue, consultation and advocacy as a core component in any future business environment programme.

There are a broad range of options facing DFID Kenya in determining future investment climate support and this scoping report has set out an options framework for consideration. <u>It is recommended that BERF provide advisory support to DFID Kenya in assessing options for future programming and its design.</u>

1.2 Cultural Economy Diagnostic Assessment

Objective (section 4.1)

The scope of work was to provide DFID Kenya and the Government of Kenya (GoK) with a Cultural Economy Business Environment Reform (BER) diagnostic assessment (**section 3**).

The scope of work identified the development of a cultural strategy and action plan as an output from BERF Phase 2. Discussions with the Permanent Secretary of the Department of culture confirmed that this task would be led by the Presidential Task Force on the cultural economy.

Key findings (sections 4.2 and 4.3)

Policy interest in the cultural, or creative, economy in Kenya is growing, in particular with regard to the employment opportunities the sector potentially offers to Kenya's youth both in main cities and across counties.

The private sector, the main agent of action in the cultural economy, is fragmented and associative action has been scattered, and often confined to sub-sector interests. Recent progress has been made with the creation of the informal Creative Economy Working Group by private sector actors, the formation of a Kenya Private Sector Alliance (KEPSA) roundtable focused on the creative economy, and the setting up of a Creative Economy Taskforce by government. Public-private dialogue is limited and government is uncertain if policy directions followed thus far are in the best interest of the sector as whole.

The British Council has expressed interest in widening its intervention in the Kenya creative economy to more policy issues, and could potentially become a key partner to government for holistically developing the creative economy. It can draw in it global technical resources and its Creative Industries Unit to support GoK in its efforts to improve the business environment.

Main conclusions (section 4.4)

The primary area for BERF support emerging from this scoping work is supporting the Department of Culture in undertaking a public-private sector dialogue process. The aim is to consult across the industry sub-sectors, including strong participation from County stakeholders. Central to this assessment will be the prioritisation of reforms.

The key short-term business environment priority for government is get the sector organised for dialogue with government to be able to shape a coherent and effective policy. A key concern of government is ensuring they gain a holistic vision of the sector, and not just those of special interest groups.

Recommendations (section 6.3)

There is strong government interest in better organising the sector for stakeholder dialogue so as to improve policy formulation and this is identified as an area for immediate BERF support.

1.3 Industrialisation and Export Development Diagnostic Assessment

Objective (section 5.1)

The scope of work was to provide DFID Kenya and the GoK with a diagnostic assessment of BER issues in relation to the Government's industrialisation and export strategy and assess the support that could be provided to MIIT in promoting the BER reform agenda.

Key findings (sections 5.2 and 5.3)

Kenya's Industrial Transformation Programme is anchored within the Ministry of Industry, Investments and Trade (MIIT). The ITP in particular notes a number of business environment issues: (i) unfair competition from counterfeit products, tax avoidance, illicit imports and dumping, (ii) the need to further develop and enforce local content requirements (iii) fees paid on imported raw materials reducing competitiveness, and (iv) the impact of high regulation of the tea market constraining value addition in the sector.

Main conclusions (section 5.4)

MIIT is keen on solidifying gains made in the last year and was able to articulate some key issues to address going forward. There is an opportunity for BERF to support the next stage of business environment reforms being lead by MIIT. Specifically BER priority issues identified by MIIT include (i) harmonisation of an extensive listing of licenses, fees and approvals that have proved to be a hindrance in doing business including cross boarder trading, and (ii) County-National Dialogue in addressing BER issues.

The development of a comprehensive Kenya National Export Strategy will be one of the most important short term deliverables for MIIT. This new export strategy needs to reflect the BER constraints impacting on exporters and continue private sector dialogue to prioritise reforms.

The adoption of the National Export Strategy will necessitate a review of all relevant legislation to ensure conformity with national development aspirations and the adopted export strategy.

Recommendations (section 6.3)

It is recommended that BERF provide TA to the Ministry of Industrialisation to assist in the technical review and prioritisation of the National and County level BER reforms that act as a constraint on County economic development.

In addition it is recommended that BERF provide TA to the trade division of the Ministry to assist in identifying priority sector BER issues to be incorporated in the Ministry's refreshed National Export Strategy and taking forward the County level BER agenda.

1.4 Phase 2 Summary Recommendations

The table below summarises at a more detailed level the recommended support to be provided through BERF in Phase 2.

Table E.1: Draft Recommendations for BERF support in Phase 2

Scoping review areas	Description of BER support activity	BERF product area
Area A: Developing a BRICK successor programme		
A1. Review of Phase 1 scoping	Assess relevance of the BER design principles set out in Phase 1 to future programming	Activity B
A2. National and County dialogue	Facilitating the process of dialogue with MDAs on current BER initiatives and areas for support and donor coordination	Activity B
A3 Successor programme options analysis	Consideration of the range of options for a BER programme	Activity B
A4 Business case advice	Ongoing advice on the development of the programme components	Activity B
A5: Theory of Change	Providing assistance to the decisions of BRICK2 on its Theory of Change, Log Frame and M&E framework	Activity A
Area B: Cultural economy BER agenda		
A1 Stakeholder mapping	Working with the Department of Culture and private sector bodies to fully map stakeholders and develop the PPD engagement plan	Activity B
A2 PPD	Design and delivery of PPD process	Activity E and B
A3 Road map of BER issues	Write up of findings from the PPD for submission to the PS at the department of Culture	Activity B
Area C: Industrialisation and export development BER agenda		
A1. Support to the Ministry of Industry Regulatory Unit	TA support to the regulatory unit to worth with GoK on County level BER agenda and Business Environment Act	Activity B and C
A2. PPD and regulatory process development	Embedding PPD processes for BER focused on MDAs	Activity E and B
A3 Specific TA on export development	Responding to GoK's need to refresh the National Export Strategy with a focus on BER related issues.	Activity B

2. Introduction

2.1 Purpose of the report

This report presents the findings of an Investment Climate Reform Scoping Mission carried out over the period 12th April to 28th April 2016. The scoping team comprised of i) Kram Sadiq (Team Leader), ii) Robert Karanja (industrialisation and export development adviser), iii) Yarri Kamara (cultural economy advisor), and iv) James Lloyd as a business environment reform adviser.

The report sets out a set of recommendations on how BERF could work with DFID-Kenya and its development partners on Business Environment Reform (BER) issues. It also sets out identified short-term BER opportunities that would prepare the ground for a successor to DFID's current BER programme, Business Resilient Investment Climate Kenya (BRICK).

The recommended support is considered to be a measured but meaningful proposal to provide additional support to DFID-Kenya and the Government of Kenya (GoK) over the next year. This would cover the period until a successor BRICK programme is approved.

2.2 Scope of work

The objectives of the scope of work are to provide support to DFID Kenya and the Government of Kenya in informing the BRICK 2 business case, as well as strategies on how to implement BER reforms in the cultural economy and industrialisation and export strategies.

The objectives for Phase 1 are to:

- Area A: Provide DFID Kenya with a BRICK 2 High level Road Map with the view to supporting a business case for BRICK successor programme.
- Area B: Provide DFID Kenya and the GoK with a Cultural Economy BER diagnostic assessment.
- Area C: Provide DFID Kenya and the GoK diagnostic assessment of BER issues in relation to the Government's industrialisation and export strategy.

The full scope of work for the scoping mission is contained in Annex A.

2.3 Timing

The extension of the scoping mission field work from the originally planned end date of 22nd April was due to a Cabinet Office retreat which required the attendance of key stakeholders to be consulted as part of this review (primarily permanent secretaries in the Ministry of Industry).

In addition a close out mission discussion with DFID-Kenya country team took place on 28th April. This was delayed from the 22nd April due to the Country Office preparing for, and participating in, a visit by the UK Secretary of State.

2.4 Background

The Government of Kenya is demonstrating progress in implementing business environment reforms. This is evidenced at a number of levels with Kenya the third fasting reformer last year. The Government has also produced an industrialisation road map (the Kenya Industrialisation Transformation Programme) that provides the outline of a strategy for enhanced growth. This indentifies critical constraints in the business environment that will influence its success in increasing locally processed goods and exports. There is also a growing awareness in government of in ensuring the right frameworks are in place to make Kenya more investable.

Whilst significant progress has been made there remains a significant agenda ahead and there are many political factors that need to be recognised in promoting business environment reform:

- **New government**: the election next year provides some uncertainty over the reform agenda and intervention. However, currently there is an opportunity to work with a Government keen to build on the recent success of its business reform agenda;
- **Devolution**: the role of County level administration in the governance and shaping of the business environment is both an opportunity and risk;
- **Youth agenda**: given the high proportion of young people in Kenya policies that support youth employment and opportunities are high on the agenda. The cultural economy is increasingly recognised as having a role to play here;
- **Informal sector**: the informal sector is major contributor to employment generation. There is a need to consider appropriate business reform policies that balance these opportunities with the concerns of formal enterprises; and
- **Business advocacy**: the dialogue between government and the private sector is improving, but there is a recognition that more needs to be undertaken at National, County and local levels.

The demand from the GoK is for support in taking this reform agenda forward.

2.5 Structure of document

In the rest of this scoping report, we outline the findings of the scoping mission review.

- **Section 2:** sets out the findings of the review of the current BRICK programme and the implications for any successor DFID-Kenya BER programme;
- **Section 3**: presents the findings from the diagnostic assessment of the cultural and creative economy;
- **Section 4:** details the review of activity in developing the country's industrial base and export capacity;
- **Section 5:** recommendations for Phase 2 support from BERF to DFID-Kenya and its development partners; and

- **Section 6:** summary on the mission findings.

Annex A: TORs

Annex B: Key Meetings and Stakeholders

3. Area A: BRICK High Level Road Map Diagnostic Assessment

3.1 Introduction

Kenya has achieved middle income status and is now poised at an important juncture of its economic history. Without a dramatic increase in formal private sector activity and productivity gains the economy is unlikely to provide quality, productive employment and income generating opportunities to the estimated 9 million people joining the labour market in the next decade.

This Scoping Report is the output of Area A of Phase 1, as outlined in the ToR, Annex A of the Business Environment Reform Facility's (BERF) support to DFID Kenya. It seeks to inform DFID Kenya's high level and initial consideration of options for a successor programme to the International Finance Corporation's (IFC) implemented Building a Resilient Investment Climate in Kenya (BRICK) programme.[1] In doing this the Scoping Report provides high level answers to the following questions:

- **What are the Government of Kenya's priorities in investment climate reform and what initiatives are ongoing?**
- **What are the key issues constraining the growth and operation of firms in Kenya?**
- **What evidence is there of which approaches work well and which approaches work less well in achieving investment climate reforms in Kenya?**
- **Based on findings to the above questions, what options are available for DFID's future support to investment climate reform in Kenya, and main issues to be considered?**

In answering these questions, we align our definitions of the investment climate and the business environment to those adopted by the Donor Committee for Enterprise Development (DCED), of which DFID is a participant. The DCED defines the business environment as a "complex of policy, legal, institutional, and regulatory conditions that govern business activities. It is a sub-set of the investment climate and includes the administration and enforcement mechanisms established to implement government policy, as well as the institutional arrangements that influence the way key actors operate (e.g., government agencies, regulatory authorities and business membership organisations, civil society organisations, trade unions, etc.)".[2]

The Scoping Report finds that reforming the investment climate, and creating jobs for young people in particular, is at the heart of the Government of Kenya's ambitions. Maintaining macroeconomic stability and enhancing security is a core component of the 2016 Budget

[1] At the time of writing the BRICK 2016 Annual Review and the World Bank/IFC Mid Term Review of the Kenya Investment Climate Programme (KICP) Phase Two (II) were not available to the consultants.

[2] Supporting Business Environment Reforms: Practical Guidance for Development Agencies (2008), Donor Committee for Enterprise Development

Statement, alongside investing in key sectors and infrastructure and skills development. Meanwhile, the Industrial Transformation Programme (ITP) outlines key enablers to increase investment and raise competitiveness. Progress has been made in establishing a Business Environment Delivery Unit (BEDU) in the Ministry of Industrialisation and the passing of legislation and processes to reduce the time, steps and costs associated with doing business. There is also some display, despite being nascent, of Government, especially at the Ministry of Industrialisation, being increasingly able and willing to base their business environment reforms on evidence and dialogue and consultation with the private sector. This, however, is largely dependent on the existence of champions and is not embedded within policy and project management processes. In the Counties, the quantity and quality of consultation and dialogue differ significantly and it is here that perhaps the largest opportunities exist for business environment reform.

Despite these ambitions and initiatives however, the business environment continues to impart significant costs and risks on businesses. The latest Investment Climate Assessment (ICA) and Enterprise Survey suggest that constraints relating to the business environment, in particular informal payments, impart significant costs and risks on the private sector. This constrains the growth and operation of firms in the formal and informal sectors, as well as the quality and quantity of investment. Existing business environment reform initiatives, such as those relating to the Doing Business indicators, demonstrate the political support for reform and present an opportunity to build and strengthen these initiatives to deliver important changes to businesses through both National and County level reforms.

It was beyond the scope and resources of this assignment to analyse the evidence and identify the efficiency and effectiveness of BRICK, Trade Mark East Africa (TMEA) and the Business Advocacy Fund (BAF) in achieving impact through investment climate reform. Based on discussions with experts, Kenya's achievement of middle income status and our assessment of Kenya's political economy, DFID Kenya now have the opportunity to consider a number of important and inter related questions when appraising options for future support to investment climate reform.

The Scoping Report concludes that given the broad range of options facing DFID Kenya, BERF can support DFID Kenya in more formally identifying and assessing the options for future programming. This phase of work will require close consultation with the Government of Kenya, including at the County level, and other donors. The longer term objective of this support would, if justified by the evidence, be to support DFID Kenya in the development of a Business Case for a successor programme to BRICK.

3.2 Macro-economic context

Kenya has experienced a period of rapid economic growth over the last 5 years. This, and the new methodology for calculating GDP, has resulted in Kenya achieving middle income status3. However global factors that influence the performance of the Kenyan economy, including the adjustment of monetary policy in industrialised countries, the end of the commodity boom and the rebalancing of the Chinese economy, are now in full force4. Despite these, the economic outlook remains generally positive, economic growth is expected to remain around 6per cent to 2017. The resilience of the economy in the face of strong international pressures can be attributed to the decline in oil prices, good agricultural performance and supportive monetary policy, innovation in high growth sectors and ongoing infrastructure and energy projects. Risks to the outlook include security threats, the rebalancing of the Chinese economy and subdued prices for tea and coffee.

One of the main issues facing the future prosperity of Kenya and equity surrounds the creation of good quality and highly productive employment and income generation opportunities over the long term. The majority of Kenyans, particularly young Kenyans, are engaged in unproductive employment in the informal sector. Between 2012 and 2014 an annual average of 632,000 jobs were created in the informal sector, while only 76,000 jobs were created in the formal sector across the services, industry and agricultural sectors[5]. Over the next 10 years an estimated 9 million Kenyans will enter the labour market. Under the current economic trajectory, many of these are likely to find jobs in small informal micro or household enterprises. This will constrain productivity gains and enhances in equity over the long term.

The performance of Kenya's exports has languished over the past 5 years[6]. While the volume of agricultural exports grew slowly from 2011 to 2014, the volume of manufactured goods for export fell significantly from 2011 to 2014. Meanwhile the total value of exports to leading destinations has decreased from US$ 850 mn in 2011 to around US$ 700 mn in 2014, while the contribution of exports to non-traditional export markets such as Asia and Australia has increased.

Kenya is well positioned to take advantage of the expected rebound in economic growth and commodity prices. Recent research by the International Monetary Fund suggests that in middle income sub-Saharan African economies, such as Kenya, a reduction in income inequality, through the provision of jobs and income generation among the poor for example, has a corresponding positive impact on economic growth especially where the infrastructure and educational attainment gaps are smaller[7]. However Kenya's ability to take full advantage of this opportunity, and importantly provide quality employment opportunities, will largely be

[3] Regional Economic Outlook: Sub Saharan Africa (Oct 2015), International Monetary Fund

[4] World Economic Outlook (Jan 2016), International Monetary Fund

[5] Kenya Economic Update (Mar 2016), World Bank

[6] Kenya Economic Survey (2015), Kenya Bureau of Statistics

[7] Regional Economic Outlook: Sub Saharan Africa (Oct 2015), International Monetary Fund

dependent on the quality of its investment climate and subsequent improvements in competitiveness.

3.3 High level government priorities and strategies

The Government of Kenya has a raft of strategic documents outlining the future path of Kenya. These include the Vision 2030, the Medium Term Plan (MTP), the ITP and the National Export Strategy.

Vision 2030 contains three pillars. The economic pillar aims to achieve middle income status by 2030. Lower middle income status was achieved in 2014 after recalculating total economic output in the economy. The economic pillar aims to achieve an average annual economic growth rate of 10per cent to 2030. While the social pillar aims to create just, equitable and cohesive social development, the political pillar aims to realise an issue based, people centred, results orientated and accountable democratic system, and includes the devolution of power to Counties. Each pillar relates, to some extent, to investment climate reform. The synergies between investment climate reform and the economic pillar are clear. Less clear but still relevant are the opportunities in the political pillar to consider how investment climate reform can best be facilitated through exploiting opportunities for issue based, people centred and accountable systems of government at both the national and County levels.

The Vision 2030 is backed by the MTP. The current MTP 2013-2017[8] prioritises accelerated economic growth, higher living standards and increased job creation, for the young people in particular, commercialised agriculture, more diversified exports and an improved manufacturing sector. These areas of focus were considered necessary to address the challenges of poverty, joblessness and inequality. The MTP included the minerals sector as a priority sector for the first time, in addition to tourism, agriculture, trade, manufacturing, information communication technology (ICT) and financial services. The MTP also outlines several policy, legal and institutional (business environment) reforms to be made across the lifetime of the MTP, by priority sectors. However, there is little acknowledgement of how the business environment imparts costs and risks on businesses and can contributes to increased equity, job creation and poverty reduction.

The medium term Budget Policy Statement[9] provides an indication of the Government's priorities over the medium term. The economic transformation agenda is high on the list of priorities. This focuses on creating an conducive investment climate for job creation, stated to prioritise macro-economic stability, security, skills, and health, while investing in sectoral transformation and infrastructure. While employment and growth are at the top of the Government's medium term agenda, there is little acknowledgement of other investment

[8] The Second Medium Term Plan (2013-2017), Government of the Republic of Kenya

[9] Medium Term Budget Policy Statement (Feb 2016): Sustaining Prosperity in a Volatile Global Economy, Government of the Republic of Kenya

climate constraints in the Budget Policy Statement, especially those relating to the business environment (as defined by the DCED).

3.4 Existing private sector development strategies

The ITP[10] aims to focus on key enablers to achieve the objectives of Vision 2030. At the outcome level the ITP aims to:

- ✓ Increase the contribution of manufacturing to 15per cent of GDP;
- ✓ Create 1 million jobs;
- ✓ Increase the stock of FDI inflows by 500per cent; and,
- ✓ Achieve a top 50 place in the ease of Doing Business rankings.

Under Pillar 1, the ITP aims to focus on growing global export engines in areas such as tea, coffee, agro processing, textiles, leather and horticulture, while also building a food processing hub under Pillar 2. Pillar 3 includes a local content strategy in the construction and oil and gas services. Pillar 4 will work to enhance non industrial job creating sectors such as ICT, tourism and wholesale and retail. The development of SME is included under Pillar 5, where model factories and support to rising stars will help to launch Kenya's SME sector in both national and international markets.

The ITP has a strong focus on the investment climate. Key activities, or enablers, to which DFID's future support could further contribute, include:

- ✓ Improving the ease of doing business;
- ✓ Building a network of competitive industrial zones (SEZ);
- ✓ Industrial skills development;
- ✓ Attracting local and foreign investment;
- ✓ Creating an industrial development fund; and,
- ✓ Driving results through a dedicated BEDU.

Kenya's National Trade Policy (NTP)[11] articulates the Government's aspirations for poverty eradication and sustainable economic development through expanded markets, income generation and distribution, increased employment and competitiveness. Micro, small and medium sized enterprises are mainstreamed into the NTP to promote poverty reduction. The policy focuses on the development of national and international trade, enhancing equality in participation, and the pursuit of national, regional and global trade treaties, efficient and

[10] Kenya's Industrial Transformation Programme (2015), Ministry of Industrialisation and Enterprise Development

[11] National Trade Policy (2016), Republic of Kenya

prudent resource mobilisation, a coordinated approach to formulation and implementation of trade policies and strengthened capacities to engage in trade negotiations. Importantly for future support for business environment reform in Kenya, the NTP aims to provide an enabling environment with a view to nurturing and developing a private sector that can compete at the international level. This will require both the availability and more productive employment of factors of production (total factor productivity) to deliver efficiency driven development.

3.5 Priority initiatives in business environment reform

The Government of Kenya, in its drive to deliver economic prosperity and political reform under Vision 2030, is undertaking several business environment reform initiatives. These display the current level of political momentum for reform and provide entry points for future support. Many of these have been supported by BRICK, although to differing degrees of success.

The most significant of these reforms is the devolution of powers to the County Governments which is enshrined in Kenya's Constitution[12]. Kenya's decentralisation is among the most rapid and ambitious devolution processes going on in the world. The primary objective of devolution is to devolve power, resources and representation down to the local level. Devolution allows the Counties to establish Investment Promotion Boards. These present opportunities for DFID Kenya to support institutional development, systems strengthening and the stimulation of the demand for reform at the County level. Machakos has established an Inward Investment Board, this will, among others, "…constantly and consistently review the County's investment climate and make recommendations to the County Government on how to improve the investment climate[13]."

With tax rates and tax administration often cited as a 'severe' or 'very severe' constraints to the growth and operation of firms in Kenya, the devolution of certain revenue generating powers is also of particular interest. This is of further relevance due to the current push from the Kenya Revenue Authority and the Counties to widen the tax base and increase internally generated revenue.

The revised Public Finance Management Act[14] (2015) allows the County Executives to make pronouncements of the revenue raising measures for each County government. Most recently for example, certain County Governments and the Kenya Tourism Board are now both enforcing a bed tax. Under the Act, the revenue generating measures are, in addition to others, to be considered in relation to their impact on development, investment, employment and economic growth. To support this process, the Act allows for the establishment of County Budget and Economic Forums which will include representations from professionals, businesses, women and persons with disabilities, among others. This provides an important

[12] Constitution of Kenya (2010), National Council for Law Reporting

[13] Machakos Inward Promotion Board (2016), http://machakosinvest.com/our-services.html

[14] The Public Finance Management Act Revised Edition (2015), National Council for Law Reporting

opportunity to embed evidence based policy, consultation and dialogue in the processes of County Governments, thereby delivering an improved business environment. BAF has apparently successfully established Governor's Roundtables in 36 Counties, and there may be space to supplement the advocacy work of BAF in the Counties.

The ITP defines its business environment reform priorities in terms of the creation of SEZ, the creation of a dedicated BEDU and achieving improvements in the Doing Business rankings. The specific goal of the ITP is for Kenya to achieve a top 50 ranking in the Doing Business Report by 2020. Progress has been made in this area. In 2016 Kenya's ranking leapt from 129th place to 108th place, largely due to reforms in Getting Credit and Getting Electricity. Kenya was the third fastest reformer in 2016. Legislation passed in 2015 includes the:

- ✓ Business Registration Service Act[15];
- ✓ The Insolvency Act[16];
- ✓ The Special Economic Zones Act[17]; and,
- ✓ The Companies Act[18].

The BEDU, and the priority of reforming the business environment, represent an opportunity for DFID to continue to support business environment reforms that have a practical and broad impact on businesses and contribute to job creation and income generation. While progress against the Doing Business indicators focus the attention of policy makers and will contribute to economic growth and poverty reduction, increased focus could be given to a broader range of business environment reforms. These may include reforms that lead to increases in standing in the Global Competitiveness Index[19], as well as those that disproportionately benefit DFID Kenya's target group (the poor and marginalised communities).

The BEDU will continue its work, the emphasis of GoK is moving increasingly towards sub national doing business reforms and indicators, harmonising laws that govern business activity and continuing with existing efforts in cadastral mapping. Each of these face particular constraints to implementation and would benefit from further investigation in considering future programming.

The creation of SEZ and the SEZ Authority was also backed by legislation in 2015. The Government plans to establish the first zones in 2016. The SEZ policy aims to provide a boost

[15] The Business Registration Services Act (2015), The Government Printer, Nairobi

[16] The Insolvency Act (2015), The Government Printer, Nairobi

[17] The Special Economic Zones Bill (2015), Kenya Gazette Supplement

[18] The Companies Act (2015), The Government Printer, Nairobi

[19] The impact of investment climate reform in Africa: How has 'Doing Business' reform promoted broader competitiveness? (2015), World Bank

to the manufacturing sector in Kenya, which will benefit from tax incentives and licensing processes that encourage investment. These include exemption on VAT, reduced corporate tax rates for a defined period, access to quality infrastructure and one stop shops for licenses. Initial SEZ will be established in Mombasa, Lamu and Kisumu, however challenges are being faced in implementing the regulations.

The Micro and Small Enterprises Act[20] established the Micro and Small Enterprises Authority in 2012. The Authority's primary objective is to spark industrial revolution by undertaking policy reforms and implementing targeted programmes and activities with the MSE Sector, with a view to creating a least 80per cent of the jobs of the 1 million jobs annually promised by Government. The MSE Authority aims to:

- ✓ Create a conducive working environment for MSE;
- ✓ Enhance MSEs access to markets;
- ✓ Provide suitable facilities and funding or MSE;
- ✓ Enhance entrepreneurial skills in the sector;
- ✓ Develop and promote gender equality in the sector; and,
- ✓ Establish and implement legal, regulatory and operational mechanisms for the MSE sector.

The MSE Authority therefore has a strong remit in the area of business environment reform, including in the registration of associations representing micro and small enterprises and increasing the competitiveness of informal MSE. Given the large contribution of informal firms to job creation and total employment, supporting the MSE Authority provides an opportunity for DFID to support income generation and job creation opportunities for large numbers of Kenyans.

The relationships between the private and public sector, which can support effective business environment reforms, have rebounded since the 1990s. However there is little evidence that these relationships or public private dialogue are embedded or prioritised across Government policy or project management processes. For example, the Ministry of Industrialisation currently has champions for reform in a proactive and reform minded Principal Secretary (Julius Korir) and Cabinet Secretary (Hon. Adan Mohamad). While these represent windows of opportunity for any future programme, for sustainability these practices would benefit from being pushed down to more technocratic levels.

Nairobi City Council engages with the private sector through a monthly roundtable, however representation from micro enterprises and the informal sector is apparently limited. The

[20] The Micro and Small Enterprises Act (2013), National Council for Law Reporting

quantity and quality of dialogue and consultation among other County's differs significantly. The Governor of Machakos engages with the private sector regularly, while the Governor of Mombasa has apparently only engaged with the private sector once in three years.

Representation by the private sector to Government is generally viewed as sporadic and fragmented with:

- ✓ Large companies often lobbying alone;
- ✓ Capture of agendas in associations by powerful groups within these; and,
- ✓ Significant gaps in representation and consultation by Government of the informal sector, and associations representing women and young people.

The Kenyan Private Sector Alliance (KEPSA), which has been supported by TMEA, BAF and BRICK and is an umbrella organisation, has made some progress in engaging in public private dialogue platforms on a regular basis. Initiatives include the Presidential Roundtable, Ministerial Stakeholder Forums and the Speakers Roundtable. Our discussions suggest that KEPSA could play its role as an umbrella organisation more effectively by advocating more on cross cutting issues that effecting businesses across Kenya. The sustainability and quality of dialogue, and importantly the associations themselves, is harmed by a combination of factors including advocacy skills, the value attached by businesses to advocacy, governance in associations and competition from donors in supporting these high level institutions and delivering results.

3.6 Investment climate reform, economic growth and poverty in Kenya

Kenya's investment climate has benefitted from a number of diagnostic assessments. At the highest level these include the ICA[21], the Enterprise Survey[22], for which results for two relevant modules on micro enterprises and informal firms have not yet been released, the Doing Business reports[23], a Report on the Implementation of the Investment Policy Review[24] and the Global Competitiveness Index[25]. Given the delay in IFC finalising the modules for the Enterprise Survey, the ICA is considered the most relevant in identifying investment climate reform priorities. However the latest ICA was released in 2009 based on fieldwork conducted in 2007. Since then significant progress has been made in business environment reforms. One of the main values of ICA comes in their frequency. Kenya would benefit from more frequent ICA, or alternative diagnostic assessments.

[21] An Assessment of the Investment Climate in Kenya (2009), World Bank

[22] Kenya Country Profile (2013), Enterprise Surveys, World Bank

[23] Doing Business: Economy Profile Kenya (2016), World Bank

[24] Report on the Implementation of the Investment Policy Review (2013), UNCTAD

[25] The Global Competitiveness Report 2015-2016 (2015), World Economic Forum

Assessing the impact of Kenya's investment climate on the growth and operation of firms is a large and complex area of study, partly due to how different constraints affect firms with different characteristics across Kenya. This section pulls together the available relevant evidence relating to micro enterprises and informal firms in particular due to their contribution to employment, and combines these with the results of our discussions with experts. It seeks to identify key themes and stories in investment climate reform in Kenya that are important in generating economic growth, but also income generation or job creation among the poor. The evidence suggests that, of all investment climate constraints, constraints relating to the business environment impart the most significant constraints to enhancing productive economic activity, income generation and job creation.

Costs emanating from the business environment, especially informal costs, remain severe

The evidence, and our discussions with experts, suggests that constraints relating to the business environment, especially the legal and regulatory regime, and the informal costs associated with it, is still partly responsible for many of the constraints firms face on a daily basis[26]. Progress has recently been made in simplifying the licenses required to open a business (down to apparently two days), on electronic construction permits, electronic single business permits and property registration.

Despite this progress, high tax rates and the number of cumbersome and costly procedures, in addition to delays and requests for informal payments, encourage informality. Despite recent reforms, many micro enterprises in particular are not apparently aware of how recent reforms have reduced the costs and time associated with formalising. Firms that choose informality face challenges in growing and increasing productivity due to constraints relating to accessing credit and new markets, especially export markets. Meanwhile the Enterprise Survey found that, among formal firms, practices in the informal sector and corruption were the most frequently cited main obstacle to business activity. This is true across small and medium enterprises in particular.

Indirect costs are high in Kenya when compared to comparator countries and reduce the potential to develop an internationally competitive economy. The ICA found that indirect costs amount to 20per cent of sales; these mostly arose from costs associated with electricity and bribes. These costs differ across sectors and the size of firms. Bribes particularly affect domestic small and medium sized enterprises and non-exporters. The Enterprise survey found that the percentage of firms expected to give bribes to get a construction permit or an import license is significantly above the sub-Saharan African average, this is likely to reduce as electronic permits systems are implemented.

The Global Competitiveness Report identified corruption as the most problematic issue facing businesses. Our discussions with investment promotion authorities, suggests that

[26] Kenya Investment Climate Programme: Reducing Regulatory Costs and Risks to Businesses, World Bank

corruption in the issuance of licenses and permits for foreign investment is having a detrimental effect on the green growth agenda through reducing the quality of investment.

The benefits arising from recent investments in infrastructure, such as Mombassa Port, will be constrained if the legal and regulatory framework is not reformed to lower the formal and informal costs and risks facing businesses. KenTrade's Electronic Single Window is a good example of an initiative to address this. However, the unwillingness of all institutions to participate in the Window provides an indication of the incentives at work in business environment reform.

Tax rates are the most frequently cited severe or very severe constraint

Tax rates, especially corporation tax at 30per cent of profits, are high when compared to comparator countries, and was the most frequently cited severe or very severe investment climate reform constraint in the ICA (58per cent). This, alongside tax administration costs, will likely increase in severity as revenue generating powers are increasingly exercised at the County level. For example, some Counties have imposed a tax on trade between Counties which is likely to increase both the formal and informal costs associated with economic activity. The Enterprise Survey found that the percentage of firms stating that they were expected to give bribes in meetings with tax inspectors is above the sub-Saharan African average.

For high growth and high productivity businesses the constraints differ

The ICA investigated the constraints to high growth and high productivity businesses. This is especially relevant when considering the severity of the different constraints as the Government implements the ITP. Among high growth businesses the top ranked constraints were transport, informal competition, crime and electricity. Meanwhile highly productive businesses cited tax rates, transport, crime and electricity as the top ranked constraints. The availability of skills was only reported as a severe of very severe constraint by 3per cent of all firms participating in the ICA.

Informal micro enterprises face significant hassle from Government activity

With an estimated 80per cent of manufacturing employment generated by micro enterprises in Kenya, those with less than 5 employees, this sector of businesses is particularly relevant to the implementation of the ITP and DFID's future support to investment climate reform in Kenya. The ICA surveyed 124 micro enterprises in Kenya, 75per cent of these were in the manufacturing sector. There are degrees of formality, only 27per cent of micro enterprises were registered for tax purposes. These were defined as formal firms.

Formally registered microenterprises, those registered for tax, find the burden of tax administration and regulatory requirements to be a major constraint. While formal micro enterprises report around 80per cent of income to tax officials, informal enterprises only report around 20per cent of income. This suggests that other factors, such as the minimum capital requirements, determine the decision to remain informal.

Micro enterprises are visited by tax officials as much as small and medium sized enterprises. Close to 80per cent of micro enterprises are visited by tax officials each year. Micro enterprises that choose informality are visited once every three to four days by tax officials, compared to formal micro enterprises that are visited once every three to four months. The incidence of requests for informal payments from business owners during these visits is high, 15per cent among formal micro enterprise and 44per cent among informal micro enterprises. Meanwhile the median number of visits by tax officials to informal micro enterprises in Kenya, at around 97, is significantly higher than Namibia (2), Tanzania (4) and Uganda (4).

Only across two constraints, access to finance and access to land, do more informal than formal micro enterprises rank the constraints to be major or severe. Access to finance was considered to be a major or severe constraint by significantly more microenterprises across both formal and informal sectors compared to small or medium sized firms covered in the ICA. Many micro enterprises finance new investments and working capital with retained earnings.

The links between business environment reform and poverty in Kenya are largely theoretical

There is little evidence that directly links business environment reform to a reduction in poverty in Kenya. There is no open source material, either through the BRICK annual reviews or BAF documentation that provides estimates of the outreach of impact delivered through their business environment reforms. DFID's recent Rapid Research Assessment[27] cited only one study relating to Kenya. This found that women in Kenya face more severe legal, regulatory and administrative barriers to starting and running a business than their male counterparts and that reducing these would disproportionately benefit women. The Rapid Research Assessment investigated the links or channels through which business environment reform contributes to poverty reduction. Two main channels were identified.

- ✓ The way business environment reform effects firm behaviour and generates increased employment and incomes for the poor through:
  - The simplification of business registration and licensing processes;
  - Tax policies and administrative reform;
  - Labour laws and administration systems; and,
  - Land titles and land administration reform.
- ✓ The way in which business environment reform improves economic growth and how this trickles down to the target group.

In order to deliver outcomes against the Operational Plan any future investment climate reform programme will benefit from i) a broad agenda for regulatory reform than enhances investment as well as ii) a clear target group and a clear understanding of the constraints

[27] Business Environment and Poverty Rapid Evidence Assessment (2015), Department for International Development

emanating from the business environment that disproportionately influence firm behaviour among these group. The 2013 report on inequality in Kenya could provide a useful starring point[28], as well as the yet unpublished modules of the 2013 Enterprise Survey. Not with standing existing resources, prioritising a target group and addressing the constraints they face would require either or both:

- ✓ A large scale diagnostic assessment and sufficient support from Government and the private sector in delivering specific reforms; or,
- ✓ An institutional approach to business environment reform that promotes working with and through local actors representing the target group on the demand and the supply sides to prioritise and deliver business environment reforms that are effective in delivering impact.

Our discussions with experts have identified target business environment reform areas that may be considered priorities in delivering important changes to DFID's likely future target groups. These include:

- ✓ Reforming the business environment for agricultural inputs and land to generate impact for the rural poor, including improving seed certification and compliance and support to the Competition Authority;
- ✓ Lowering the costs and risks from the business environment that impact on both formal and informal micro enterprises, especially in the manufacturing sector and through tax administration, tax reform and informal payments;
- ✓ Focussing support to reform in Counties with a high incidence of poverty and a willingness to reform the business environment; and
- ✓ Enhancing the benefits of formalisation (market access and access to finance) to enhance productivity gains, income generation and the creation of quality jobs.

However, despite these opportunities, our understanding of the political economy of business environment reform in Kenya suggests that many areas of business environment reform suffer from strong vested interests. These may include the role of statutory authorities in the supply of agricultural inputs or incentives around issuing land titles, informal payments in licensing and permits and tax administration and tax rates. If DFID Kenya was to solely focus on pursuing reforms in areas that have strong potential in reducing poverty with a supply side approach, ie. without working through local institutions and actors on both sides of the business environment reform market to generate practical approaches to reform, it is unlikely that the required impact or value for money would be delivered. With MDA displaying an increased willingness to engage and with strong momentum for reform, there is now potential to not only consider what business environment reforms are important but also how business environment reform can best be supported.

3.7 A framework for business environment reform programmes in Kenya

There are a number of donor programmes active in the business environment space in Kenya. This includes DFID's BRICK programme, TMEA and BAF. It was beyond the scope

[28] Exploring Kenya's Inequality: Pulling Apart or Pulling Together (2013), Kenya National Bureau of Statistics and Society for International Development

of this assignment to review the evidence base, and assess the efficiency and effectiveness of these business environment reform programmes. However, all programmes stated concerns relating to duplication of effort.

A 2010 review of approaches to business environment reform in Kenya[29] investigated six questions to be considered in reform programming. These questions were based on the DCED's thirteen good practice principles in business environment reform programming[30].

While there are many factors that determine the success of business environment reform programmes, we apply this framework of six questions to BRICK in the subsequent section. The success of a programme can only really be determined against what it planned to deliver (efficiency). Despite this we believe that the DCED framework provides a useful framework under which to assess the effectiveness of programmes.

With Kenya now a middle income country, future support to business environment reform would benefit from a closer alignment to DFID's Operational Plan as well as aiming to provide DFID Kenya space in which it may phase back support to business environment reform over the long term. In order to address this priority, we add to the list of 6 considerations DCED's Principle 5: the extent to which programmes strengthen the role of and capacity of key stakeholders. Our framework then includes the following questions.

- ✓ The extent to which agencies adopt systemic approaches to reform.
- ✓ The extent to which agencies respond to local demands.
- ✓ The extent to which programmes stimulate demand for reform.
- ✓ The extent to which agencies understand the political economy of reform and respond to it.
- ✓ The extent to which programmes focus on private sector needs through public private dialogue.
- ✓ The extent to which programmes strengthen the role of and capacity of key stakeholders.
- ✓ The extent to which the agencies participate in donor coordination mechanisms.

3.8 The short list of options for DFID's future investment in business environment reform

BRICK has performed well against its log frame. As this Scoping Report has stated however, there is less evidence that demonstrates the contribution of BRICK, or other investment climate reform programmes in Kenya, to income generation or job creation among particular target groups. However, there is now strong momentum for reform, and significant opportunities at the County level which would benefit from further support from donors. DFID has built significant experience, expertise and relationships in the reform space, especially on the supply side. There are also significant apparent gaps in supporting business environment reforms that are important for DFID Kenya's target group. Our first recommendation therefore is that the consideration of options for a successor programme should include:

[29] Review of Donor Supported Business Environment Reform Programmes and Practices in Kenya (2010), The Donor Committee for Enterprise Development

[30] Supporting Business Environment Reforms: Practical Guidance for Development Agencies (2008), Donor Committee for Enterprise Development

- ✓ Having a clear target group of beneficiaries, principally the poor, women and young people, and design activities based on improving the systems these beneficiaries operate in as well the systems in which business environment reforms are made.

BRICK was designed as a technical assistance programme to specific areas of reform. This has generated some consistency in the approach and most likely the delivery of efficiencies. However this has also restricted the ability of BRICK to respond efficiently to emerging issues and opportunities. Meanwhile, BRICK has perhaps faced challenges in responding efficiently to the devolution of functions and powers to the Counties, and associated opportunities and issues. This leads to our second recommendation, that DFID Kenya consider:

- ✓ Flexibility in responding to emerging issues and opportunities and the changing momentum for reform on the supply and demand side of the market for business environment reform.

Stimulating the demand for reform, not only on particular issues, but across the reform space at different levels, supports institutional development, local ownership of local solutions and the sustainability of a strengthened system. There is significant evidence of BRICK working with MDA to enhance the supply of reform, especially in the strong results in the Doing Business rankings, SEZ and the establishment of the BEDU. There is perhaps less evidence of BRICK engaging with a broad range of businesses, and their representatives, to facilitate and catalyse the demand for reform. This may have reduced the effectiveness of BRICK in delivering large scale impact among a target group. Our third recommendation therefore is that DFID Kenya:

- ✓ Seek to facilitate and catalyse change through stimulating the demand for reform through more avenues than analytical exercises.

Often business environment reform programmes, or their partners, encounter strong vested interests in what is in essence a political transaction. Understanding and being responsive to the political economy of business environment reforms, at different levels, allows programmes to tackle sensitive issues appropriately, or leave them for another day. This can be supported by promoting local ownership and adopting more institutional approaches to business environment reform. BRICK's engagement in seeds, for example, did come up against strong vested interests, meanwhile activities at the County level were sometimes delayed. These experiences have however allowed BRICK to gain a strong, first hand understanding of the political economy of reform. Our fourth recommendation for considering options for future programming is therefore to:

- ✓ Base programming on a strong understanding of political economy structures and dynamics, and continue to assess how these dynamics are changing as the programme progresses.

Public private dialogue can strengthen the delivery of the aforementioned recommendations. Public private dialogue can support the prioritisation of reforms, the design of local solutions to local problems and the monitoring of implementation and supporting of evaluation. Public private dialogue can also serve to enhance transparency and accountability, this is especially relevant as devolution progresses and is included under the political pillar of

Vision 2030. BRICK did support KEPSA in establishing a number of platforms, however there is little evidence of these being pushed down to generate more inclusive dialogue. BAF is working to stimulate the demand for public private dialogue, however there is space to support public private dialogue in MDA, especially at the County level, as well as having a greater focus on sustaining both the quantity and quality public private dialogue. Our following recommendation, which includes the caveat of enhancing donor coordination for sustainability and efficiencies, is to:

- ✓ Include public private dialogue, consultation and advocacy as a core component in any future business environment programme.

A recent shift in focus in DFID business environment reform programmes has seen a greater focus on strengthening systems; that is the role and capacity of key stakeholders which determine the quantity and quality of business environment reforms. BRICK's focus on building the supply of reform and the current political momentum for reform has exploited both hidden and existing incentives for reform, especially in central Government. BRICK has also strengthened the technical capacity of MDA to deliver reform. However, this has perhaps not been joined up with building relationships with other stakeholders and strengthening their technical capacity and exploiting their incentives for reform. With Kenya now a middle income country, future support should focus around leaving a strengthened system that can continue to deliver business environment reforms. This leads to our recommendation that:

- ✓ Future programming consider the system for business environment reform, and work to strengthen the role and capacities of key stakeholders.

Many of our conversations with stakeholders indicate the significant level of interest and involvement by donor agencies in supporting business environment reform. This can lead to duplication of effort, and at its worse a race to the bottom in achieving business environment reforms without considering the role and capacity of key stakeholders and leaving behind a strengthened system. DFID has a significant role in and experience of business environment reform in Kenya. DFID Kenya is well placed to enhance donor coordination in the reform space. This may include harnessing agreement on not only what business environment reforms are important, but also how support to business environment reform can most effectively be delivered. The DCED report on reform in Kenya is a useful illustration of efforts to enhance coordination. This leads to our final consideration, that DFID Kenya:

- ✓ Consider the activities of other donors and seek to leverage donor investment in the reform space in achievement of the above considerations.

These BRICK 2 high level road may considerations are broadly assessed against a range of options DFID Kenya may consider appropriate in the following table. These options include a do nothing option, as well as an option to continue with a Phase 2 of BRICK.

A proposed short list of options for DFID's future support to investment climate reform in Kenya							
Option	**Systemic change to target group in Country Plan**	**Responsive to opportunities for change**	**Facilitative, through enhancing the demand for reform**	**Exploits DFID experience and expertise**	**Sensitive to political economy**	**Encourages public private dialogue**	**Enhances donor coordination**
1. Stop supporting investment climate reform in Kenya	None	None	None	None	None	None	None
2. Continue with BRICK2 approach to investment climate reform	Medium	Low	Low	Medium	Medium	Low	Medium
3. Flexible TA for BER in MDA at local, County and national level	Medium	High	Low	Medium	Medium	Low	Medium
4. Responsive PPD programme at local, County and national level	Medium	High	High	High	High	High	Medium
5. Combination of options 3 and 4	High	High	High	High	High	High	High

Initial feedback from DFID

In the scoping mission close out discussion with DFID it was confirmed that a substantial focus of future support could be on the harder to reach countries than was the case in the initial IFC/BRICK programme. The selection of these counties will be important and the process of assessing which could benefit from support.

DFID also noted that alternative delivery methods will be an important part of the options analysis. This should consider the comparative advantage of different development partners to implement BER components in addition to the IFC. Part of this assessment will involve considering that future support can translate into institutional change such that the capacity to reform is enhanced (the supply side). That is the focus moves away from solely focusing on reform champions.

At the same the injection of views on alternative approach to simulating the demand for reform will be valuable in the development of a BRICK successor programme.

Co-operation with other donors was stressed by the DFID team to ensure that experiences are shared and future programming in the BER space understood. This includes not only the Danish BAF programme and TMEA, but also other bodies such at CIPE. At the same time the three lead industry bodies of KEPSA, KAM and KNCCI will be of vital importance in the design of future BER interventions.

4. Area B Cultural Economy Diagnostic Assessment

4.1 Introduction

This section presents a rapid diagnosis of the business and policy environment of the cultural economy in Kenya and identifies areas for potential business environment (BE) reform intervention under DFID's Business Environment Reform Facility (BERF).

The scope of work under Phase 1 was to undertake a diagnostic review to identify potential areas of support on BE reform that the BERF could provide to the Kenyan government in developing and implementing a cultural economy strategy and action plan. This assessment aims to inform support over the short term (Phase 2) and potentially the longer term (as part of a Phase 3) in the form of technical assistance to government and/or government partners.

It should be highlighted at the outset that consultations with the government (Principal Secretary for Culture, Joe Okudo) revealed that GoK's immediate need was for support in developing industry dialogue. A Presidential Task Force has been charged with developing a cultural economy strategy and action plan. This part of the ToR for this diagnostic assessment is therefore not directly addressed in this report.

The approach to this diagnostic assessment consisted of meetings with key stakeholders and document review (details in Annex B).

4.2 Background

The terms "cultural" and "creative" economies or industries are used interchangeably. In the Kenyan policy discourse, the terms tend to refer to the following sub-sectors: artistic crafts, audiovisual (including film, television, video games and multimedia), cultural heritage, design, festivals, music, performing arts, publishing, radio, and visual arts. Advertising, architecture and software are generally not included, contrary to common practice in the UK.

Policy interest in the cultural, or creative economy in Kenya is growing, in particular with regard to the employment opportunities the sector potentially offers to Kenya's youth both in main cities and in counties.

After a long period of disinterest, public interest in promoting culture and the cultural economy is gaining momentum. The 2010 Constitution recognises culture "as the foundation of the nation" and commits the state to promoting cultural expressions. Following a general 2009 Culture and Heritage policy, other policy or strategy instruments dealing more directly with the cultural economy have been drafted, though few have been adopted and implemented (see Table 3.1). Today, the administration's interest in the cultural economy has piqued in part because of electoral promises on youth employment.

Table 3.1 Existing creative economy policy and strategy documents

Document	Sector scope	Status	Lead department	Highlight
Cultural Economy				
Draft Policy framework for the promotion of cultural and creative industries in Kenya	All	Early draft proposed by private sector	Culture	Policy statements addressed at both national and County level

Table 3.1 Existing creative economy policy and strategy documents

Document	Sector scope	Status	Lead department	Highlight
East Africa Community Creative and Cultural Industries Bill, 2015	All	Stakeholder consultations held in August 2015		Seeks to create an EAC Creative and Cultural Industries Development Council and set up a development fund
National Culture Bill	All	Preliminary draft	Culture	Setting up National Council for Culture and Arts
Traditional knowledge and traditional cultural expressions Bill	Tangible and intangible heritage	Draft	Attorney General	Protection of IP rights of traditional cultural expressions
National Music Policy, 2015	Music	Approved Aug 2015	Culture	
Copyright Act, 2001 and implementing regulations 2004, amendments in 2012 and 2014	All	Currently being updated		
National Film Policy 2015	Film	Not yet approved	Culture. Previously ICT	
Creative Economy Roadmap proposal: “Development of a road map to position the local creative industries as a catalyst for a Kenyan knowledge society”, 2012	All	Unclear	Information and Communication	Produced by IBM team of consultants following 4-week diagnosis
National Policy on Culture and Heritage, 2009	All	Approved	Culture	
Other relevant documents				
Kenya’s Industrial Transformation Programme, 2015	Indirectly fashion	Final	Industrialisation and Enterprise Development	Establishing textile and leather clusters. Creative hubs not included, but potentially could be developed (eg. film & animation hub)
Tourism strategy 2016-2020	Heritage, festivals	Being drafted	Tourism	Interest in developing heritage tourism in all counties. Festivals could also feed into events (“MICE”) tourism.
Tourism Act, 2012				

Source: Author’s compilation

The cultural economy has for a long time been driven largely by private sector actors, with or without donor support. Some sub-sectors – in particular music, TV & film, designer fashion – have found economic models that have allowed them to survive and to some extent flourish, despite absence of clear policy. With respect to other African countries, there is a relatively strong presence (in Nairobi) of cultural activity structured as business, as opposed to non-profit entities. The private sector is currently a repository of information (value chain studies, sector strategies, etc.) and ideas (testing financial models); government and policy needs to find a way of drawing on this wealth of information to move forward.

Box: Examples of some recent private sector activity

Equity Bank has set up a Ksh 100 million loan fund with funding from the African Development Bank for the fashion sector.

Heva Fund, set up by an artist's collective The Nest, is experimenting models for private low cost financing for cultural start-ups followed by growth finance, using instruments such as equity investment, convertible debt or matching funds, to help cultural business move beyond the start-up phase and benefit from scale economies.

The Creative Economy Working Group organised a national Creative Economy Conference in February 2015, during which industry players presented a wide array of perspectives on policy issues affecting the sector, such as intellectual property rights, infrastructure for digital content, and training for the industry. The report should be released in May 2016.

The government is making considerable efforts to improve the general business environment in Kenya. It has recently established a Business Environment Delivery Unit in the Ministry of Industrialisation and is passing legislation and processes to reduce the time, steps and costs associated with doing business. The ITP outlines key enablers to increase investment and raise competitiveness, in sectors including textile and apparel, leather, IT and tourism. There is an opportunity to extend a BE focus to the cultural economy.

- **Cultural economy has difficulty finding an institutional home in government**: The Ministry of Sports, Culture and the Arts (MoSCA) was created in 2013. Before then, mandates for 'cultural economy', and some sub-sectors such as film or heritage, have lain with diverse cabinet departments including information and communication. The current marriage of sports and culture tends to disfavour culture, with sports getting the bulk of attention and funding. There is a similar tension between culture and tourism, which have obvious synergies, especially with the drive to increase cultural tourism assets and locations to underpin the tourism offer and encourage more domestic tourism.
- **Business advocacy capacity and Public/Private sector dialogue:** Associative action amongst industry players has been scattered, and often confined to sub-sector interests. Recent efforts to get the sector speaking together as a whole have emerged, with the

creation of an informal Creative Economy Working Group (15 private sector members) and a roundtable within KEPSA focused on the creative economy. Public-private dialogue however is still limited and unorganised, although some individual artists have been communicating quite vocally with high-level members of government, including the president, and some members of parliament on their own initiative have formed a committee investigating issues in the music sector. Meanwhile the government has recently put together a Creative Economy Taskforce (different from the working group mentioned above), with 20 hand-picked members.

- **Devolution and County-level governance**: Devolution has created a space for counties to engage in the cultural economy. Most have not done this, as funding goes to other primary and manufacturing sectors given greater priority. County governments, however, that see the positive externalities from the cultural economy are taking pragmatic action. For example, Nairobi County, keen on the short-term employment and income-generation opportunities that large concerts or film shoots generate, is ready to and has provided support through cost avoidance, waiving various County fees and charges. The Machakos County governor, a former film industry player, is also trying to attract concerts and local film production to his County.
- **Election calendar:** General elections are scheduled for August 2017.The current administration is keen to get some quick wins in the cultural economy before the elections. However long-term policy initiatives may get hampered by electoral activity.

4.3 Cultural economy BER issues

The key objective the government seeks to pursue through the cultural economy is generating employment for youth, both in the big cities (Nairobi, Mombasa, Kisumu) and in other counties, and also including disadvantaged youth in urban settings (slums). Other broader government objectives include the fight against radicalisation (again youth-focused) and contributing to national reconciliation and cohesion.

Action in the cultural economy can be aligned to government ambition in other areas. For instance, the 2013-2017 Medium Term Plan (MTP)[31] prioritises accelerated economic growth, higher living standards and increased job creation, for youth in particular, commercialised agriculture, more diversified exports and an improved manufacturing sector. Priority sectors in the MTP include tourism, trade, and information communication technology (ICT). The industrialisation strategy, ITP, focuses on sectors that can potentially have strong synergies with certain cultural economy sub sector – textiles, apparel and leather, IT and tourism. Plans to develop integrated textile and leather clusters in Naivasha and Machakos respectively, if done right, could also boost the fashion industry. As for IT, the current focus is on business process outsourcing; adding or redirecting focus to the digital content industry (including animation and gaming) would allow Kenya to better exploit existing potential in the cultural economy. The ITP also aims at building a network of competitive industrial parks or zones.

[31] The Second Medium Term Plan (2013-2017), Government of the Republic of Kenya

The feasibility and potential benefits of developing creative clusters, such as around the Riverwood film industry, animation hubs, film location hubs, etc should be explored. Finally, for tourism, the current Tourism Minister is keen to engage in County-level business environment reforms which could create also opportunities for the cultural economy.

The key short-term business environment priority for government is to get the sector organised for dialogue with government to be able to shape a coherent effective policy. The government is feeling hampered by the cacophony coming from the sector, and is unsure whether previous dispersive policy initiatives respond to the needs and best interests of the creative economy as whole.

A range of existing policy and strategy documents is presented in Table 3.2; a lot of these have yet to be approved and implemented.

The table below summarises the key non-governmental players intervening in the business environment space in the CE.

Table 3.2 Activity in the BER space

Who	Type	Description
Creative Economy Working Group	Private	Informal group of private sector players created end 2014. Aim: increase cohesion among sector and promote dialogue with government. Organised National Creative Economy Conference in February 2015 (report not yet released). Produced draft creative economy strategy inspired by UNESCO 2005 Convention and have shared this with Ministry of Culture
Sports, Arts and Culture Roundtable at Kenya Private Sector Association (KEPSA)	Private	Created in 2015. Lobby for sector's business interests. Music and fashion interests have been quite vocal so far
The Nest/Heva Fund	Private	Value chain analysis (craft, fashion & apparel, music), experimenting innovative funding models, lobbying
British Council		Creative entrepreneurship and cultural skills training in collaboration with Nesta. Has been very active delivering on-ground programmes with/for creative industry players. Keen to engage a bit more on policy level, playing the role of interlocker between industry and government
Ford Foundation	Donor	Gave impetus for the creation of the Creative Economy Working Group. High-level dialogue with Deputy President on creative economy
Hivos	Donor	Providing funding to Heva Fund
CKU	Donor	Danish cultural development cooperation arm. Funded value chain studies by the Nest. Ending programme in Kenya in June 2016
UNESCO – Unesco Institute for Statistics Cluster Office	Donor	Support on statistical framework for culture

Source: Author's compilation

Discussions with government and industry players identified a number of BE constraints to the development of the sector:

- Insufficient dialogue and coordination: Informant interviews indicate that while significant sub-sector dialogue is taking place, even this can be quite fragmented. For instance, the film sector has 5 film associations that are yet to be federated under an umbrella organisation. Cross-sector dialogue, looking at the cultural economy as whole, is limited, and public-private dialogue at such level is very recent and still limited, essentially through the Creative Economy Working Group and the creative economy roundtable on KEPSA (see Table 4.2). Looking beyond stakeholder dialogue, to policy formulation and implementation, industry players feel that greater inter-ministerial coordination (in particular between departments in charge of: culture, tourism, ICT, trade, industry, foreign affairs and finance) is needed for more effective government action. Some players have suggested a Creative Economy Authority sitting at the Office of the Deputy President would make such coordination easier, including with initiatives such as "Brand Kenya". There is also a sentiment of insufficient institutional learning and knowledge management within government. While reliable quantitative data on the cultural economy may be lacking, a lot of other information exists: the challenge is joining up the dots and ensuring greater continuity in policy action.
- Insecure investment environment due to copyright infringement: A 2012 World Intellectual Property Organisation (WIPO) report estimates annual losses due to copyright infringement through piracy at USD300m). While some industry informants feel that the existing copyright laws are satisfactory, difficulties highlighted include:
    - The speed at which technology is changing makes it hard for even good laws to keep pace
    - Enforcement is weak due to 1) lack of knowledge and capacity of enforcers (police, etc.); 2) lack of knowledge of copyright holders of procedures and support available to pursue those infringing their copyright; 3) corruption in cases of copyright infringement

  Some players feel that there is also a need to innovate and adapt copyright frameworks to better suit distinctly local models of creative production, e.g. the Riverwood video industry operating on a cooperative production model, could significantly increase its revenue generation if the appropriate copyright and business models are found. There is a Riverwood Ensemble initiative working with pirates (those associated with piracy business) organised as the Entertainment Dealers Association of Kenya to put in place distribution systems fairer to artists and producers.

  Recently there have been several capacity-development and awareness-raising initiatives on copyright issues (WIPO pilot project, Harvard University-ran copyright course, etc.) and Kenyan bloggers are also active on interrogating these issues (e.g. IP in Kenya blog).

- Inadequate incentives framework for investment: This is an issue in particular for film locations and for live music performance, events that have high potential for significant employment and/or revenue generation. An incentives scheme to attract large international film locations to Kenya has been drafted and was approved in June 2015, but is not yet operational. Tax rebates and other incentives have to date been negotiated on a case-by-case basis, which does not provide potential investors with clear visibility and often investors have found better conditions in South Africa or Morocco. The ambition of the Kenya Film Commission is to have an incentive scheme that attracts at least three big budget foreign productions per year. There may still be a need to benchmarking the incentives scheme against South African and Moroccan schemes, to ensure greater competitiveness. It may also still be necessary to harmonise licensing fees across counties for those fees under their purview – one report notes that fees for daily shoots can vary from Ksh 7,000 (USD70) per day in Nairobi to Ksh100,000 (USD1000) in Malindi (Kenya Film Commission, 2013)

There are also duty exonerations for importing film equipment to support local film production. However, currently industry players, especially the smaller ones, are finding it difficult to benefit from this incentive due to various difficulties – e.g., complicated security vetting to quality for exoneration, lack of knowledge of customs officials unable to identify what qualified as film equipment.

For live music performances, as mentioned earlier, some County governments offer waivers on licenses and charges for large concerts, though this currently occurs on an *adhoc* basis. Industry players claim that the cost of organising concerts in Kenya is higher than in neighbouring countries.

In absence of public funding, other cultural economy sub-sectors would also like to see various incentives put in place, e.g. the publishing sector would like to see incentives that address the high cost of printing in Kenya, which has led to a lot of printing being done in China today; all sectors would like to see tax rebate incentives to encourage donation to the arts from corporate sponsors.

- **Evidence on what business environment changes work**. Across the world, evidence-based policy research on the cultural economy is weak, and this type of research in Kenya is hampered by the paucity of data on the contribution of the cultural economy, or sub-sectors, to GDP/GVA and employment. There have been recent attempts to produce quantitative data on the cultural economy, though sometimes it is difficult to judge the robustness of the data, and definitions of what sub-sectors and types of functions are included can vary widely

The box below highlights a recent measure that informants feel has had an impact on stimulating the TV sector in particular.

Box: Local content requirements in TV and radio - high impact measure?

Local content laws: though not strictly implemented nor enforced have stimulated activity in the TV and film sectors, and to some extent generated interest in the theatre sector as people look for avenues to create content. Broadcasters have until 2018 to reach 60per cent local content broadcasting. Citizen TV leads the rest of the 15 licensed Kenyan TV Stations as the ratio of its local content to that of the total content stands at 38 per cent. The station enjoys a huge patronage from the inhabitants of the largest east African economy, a feat clearly demonstrated in October 2014 when it boasted of 1.42 million viewers per 30-minute time block, a 162 percentage point gap over the next station. The migration to digital TV, which has happened more or less concurrently has further increased demand for local content as the number of local channels has seen a substantial jump. The increased demand for local content also has to some extent stimulated demand in the theatre sector.

Side events on the creative economy, including fashion and craft beadwork, are being organised by Kenyan actors at the General UNCTAD 14 conference that will hosted in Nairobi in July. These events may provide further evidence on business environment reforms that have worked.

The 2009 WIPO study on copyright-based industries estimated the contribution of core copyright-based industries[32] to GDP at 2.3per cent (2007 figures); these industries were estimated to employ 23,000 people. The 2014 economic survey data from the National Bureau of Statistics estimates employment in the “arts, entertainment and heritage” category at 6700 jobs, of which 2300 in the film and TV sector. A 2013 Kenya Film Commission study gives varying estimates of income generated by the film and TV sector ranging from Ksh 3 to 6 billion (USD 30 to 60 million) and places employment at just under 5000 jobs in 2011.

Given the diversity of cultural economy sub-sectors, business environment reform is likely to impact different sub-sectors to differing extents. It is possible to characterise sub-sectors by the potential they have to generate impact on certain criteria list in table 3.3, and to use this as a rough indicator of the potential impact of business environment reform focused on specific sub-sectors.

[32] Press and literature; music, theatrical productions, opera; motion pictures and video; radio and television: photography; software and databases; visual and graphic arts; advertising; copyright collecting societies.

Table 4.3: Potential impact of sub-sectors on specific criteria

Sub-sector	Pro-poor	Youth	Women	Synergy with tourism	Economic performance
Film, TV	**Low - medium** Tends to employ urban-based, well-educated. Large shoots can generate significant skilled and non-skilled short- term jobs	**High** Strong youth participation	**Low – medium** Women tend to be weakly represented in sector across SSA	**Medium** Boost to business tourism if Kenya established as shooting location.	**High** TV in particular attracting local and foreign investment. If copyright infringement curbed, revenues could increase significantly
Music	**Low** Tends to be urban-based Skewed incomes prevalent in sector due to “star” system, as well as revenue models with mobile networks	**High** Very strong youth participation and engagement with music	**Low-medium** Women tend to be weakly represented in sector across SSA	**Low - medium** High profile festivals could attract tourism	**High potential** Live music attracting foreign investors (e.g. Blanket and Wines festival). Strong presence of mobile network operators
Crafts	**High** Low-income groups and rural populations strongly involved in crafts	**Low – medium** Youth not always picking up traditional craft skills. But stronger presence in modern design	**High** Women strongly present, especially in activities such as beadwork, sisal weaving, leather	**High** Tourists key market for crafts	**Medium to high**
Designer fashion	**Medium - high** If fashion integrates local crafts, textiles and raw materials	**High** High youth participation	**High** Women well represented in fashion sector in SSA	**Low – medium** Tourists could be key market for uniquely Kenya branded fashions, but main markets	**Medium to high** Local production costs can be high due to costs of input.

				are probably regional and diaspora	Vertical integration with local textile hubs would give boost
Cultural heritage	**Low - medium** If sites are developed outside major cities, eg. Turkana. But also risk of exclusionary tendencies of “tourist enclaves”	**Unknown**	**Unknown**	**High** Intricately linked to tourism, and likely to be covered under new tourism strategy	**Low to medium** Infrastructure and skills probably still lacking
Books and publishing	**Low** Activity mostly urban-based	**Unknown**	**Medium?** In developed countries, women tend to outnumber men in publishing	**Low**	**Low to medium** High costs of local production and limited local market (illiteracy, weak reading culture) outside cities) though potential for regional exports
Gaming and digital content	**Low** Activity mostly urban-based	**High** Cultural tech activity is very youth-driven	**Low – medium?**	**Low**	**High** Fastest growing CE sector in world. Strong potential for export (Kenya already exporting animation services)
Visual Arts	**Low** Activity mostly urban-based	**Unknown**	**Unknown**	**Low**	**Low to medium**

4.4 BERF support

Industry dialogue

The main government request, which converges with one key constraint identified in interviews with industry players, is support for structuring public-private dialogue with the view of organising the sector and better improving policy dialogue. From this dialogue, specific business environment reform actions might emerge. The main BERF activity area thus emerging from this scoping work is private sector dialogue. Phase 2 should focus on this activity.

The government would like to undertake broad stakeholder analysis, including strong participation from County stakeholders. Part of the stakeholder analysis will involve a needs assessment which will serve to reassess current policies, and to what extent they respond to needs. One government concern is getting a holistic vision of the sector, and not just those of special interest groups.

Pending outcomes of the PPD process the other activities presented in this section could be planned for Phase 3.

The electoral calendar presents a risk for reform, notably for the continuity of policy action. The government's request that is focused on organising stakeholder dialogue, through which other areas for business environment reform may be identified, should however be feasible to implement. The challenge will be ensuring that outcomes from such dialogue are translated into action and ensuring information retention for policy continuity post-election. For this stakeholder engagement to be successful there is probably also a need to support government on information flow and retention, and knowledge management for better and continuous policy formulation.

Developing the evidence base

On other interventions, the ToR for this Scoping Mission already mentioned future activity in on researching the evidence base of business environment reform for the cultural economy. While this is certainly a gap in the policy arena, it is not clear that government at this point in time would be able to make use of general research in this area. More specific focused research, in particular in the film and music sectors which are emerging as strategic sub-sectors for investment, might be easier to action. For example:

- Benchmarking incentives for film locations in Kenya against those in South Africa and Morocco
- Research on best practices on syndication for audiovisual programming to support export of Kenyan audiovisual content
- Benchmarking national and local fees and charges related to concerts within and outside Kenya

The government has also expressed its intention to collect baseline data[33] on the cultural economy and institutionalise such data collection by integrating cultural economy indicators in the annual economic survey undertaken by the National Bureau of Statistics. It appears that UNESCO will provide assistance on this aspect through training cultural statisticians. This information will help inform the development of the sector policy and action plan.

Wider activity

Given the relative neglect of the cultural economy until recently, the sector also faces several non-business environment related constraints, of which training and education is a major one. The British Council has been intervening on these issues and its expertise can continue to bring added value with its significant expertise on creative industries. The government has expressed interest in having members of its recently formed Creative Economy Taskforce undertake study tours to the UK to learn from the UK creative economy experience.

The view of the British Council is that Kenya has the foundation for becoming a dynamic place for Creative Economy investment. It has good universities/education, investors, and a growing number of supportive backers for creative and content-industry start-ups. The capital city is growing its small creative hubs and networks (for example The Nest, GoDown Arts Centre, Pawa 254). They view these hubs as key to the emergence of creative technologies and businesses. With a growing middle class, Nairobi is now a leader in mobile and new technologies that are all contributing to a strengthening creative economy. Mombasa, Kisumu, and other urban centres too, and the non-urban regions all have some extremely interesting offers, like Turkana on the history of mankind, Lamu on indian and Arab culture in Africa, and so on in other regions.

The British Council has expressed interest in widening its intervention in the Kenya creative economy to more policy issues, and could potentially become a key partner to government for holistically developing the creative economy. It is worth remembering that creative industries, and in particular cultural industries (film, music, performing arts, visual arts) are not conventional industries. Cultural expression feeds the creative economy, and thus the foundations for such cultural expression need to be in place (artistic education, professional arts training, etc) and this may call for investment in less commercial parts of the cultural economy. The long-term impact of BERF engagement in the cultural economy thus depends on having a coherent overall strategy in place for commercial and less commercial aspects of the cultural economy. The British Council could thus play a good complementary role to DFID BERF support. Further, the British Council can draw in it global technical resources and its Creative Industries Unit to support GoK's in its efforts to improve the business environment.

[33] A 2012 mapping study undertaken by the African Cultural Regeneration Institute is deemed not rigorous enough and it does not provide any data on the economic contribution of cultural economy sectors.

5. Area C: Export Development Diagnostic Assessment

5.1 Introduction

This section provides a diagnostic assessment of the Government of Kenya's (GoK) Industrialisation Transformation Programme and Export Strategy and sets out the potential areas of support that BERF could provide to GoK.

The diagnostic assessment considers the following questions:

- **What is the government's thinking on industrialisation/export, and priority areas for business environment regulatory reform?**
- **What is the evidence base on business regulatory constraints to promote export-led industrial sector development?**
- **Is there any strong evidence on what business environment changes work (in promoting exports, value-added and impact on the poor)?**
- **Who (donors, programmes, government agencies) is active in the BER space in promoting international trade?**
- **What are the gaps or opportunities for BERF/DFID to provide support?**

The assessment has been undertaken in close consultation with both DFID Kenya and the Principal Secretaries of Industrialisation and International Trade respectively within the Ministry of Industry, Investment and Trade (MIIT).

These two departmental divisions are the focal points within the Ministry of Industry, Investments and Trade (MIIT).

5.2 Background context

The Republic of Kenya is led by the Jubilee Coalition, a grouping of political parties that formed a coalition prior to the 2013 General Elections that led to Jubilee winning the Election in a closely fought battle over the now opposition led CORD Coalition. The Jubilee manifesto that brought together the diverse political views has a number of overarching themes related to industrial development, exports and jobs growth:

- Developing **Special Industrial Parks and clusters** in the counties that will target young people and women who start small businesses that provides access to electricity, water, capital equipment and clean sanitary environments and improved access roads. This will boost growth at the County level and help to stem rural-urban migration, itself a significant strain on Kenya's major towns. The establishment of the Special Industrial Parks has been overtaken by the Special Economic Zones (SEZ) agenda which has been supported by the IFC/World Bank Group and is an area of focus for the Government of Kenya.
- Providing training services and creating market for **locally produced goods and services** internally, regionally and internationally. This is very much in line with

supporting Kenya's agenda to grow exports into the EAC Community. Uganda continues to remain as the number one destination for Kenyan exports and the rest of the EAC continues to experience steady growth.

- The Coalition Government was very deliberate in supporting the **policy of purchasing locally manufactured goods and services** in its procurement plan. Whether this objective has actually been met remains a matter of opinion but it is evident that Kenya still imports a large number of goods and the country continues to run a huge import bill that is growing year on year.
- A contextual review of the Women's Enterprise Fund to **assist women entrepreneurs** seeking large contracts and business. The Women's Enterprise Fund has been operational for over ten years and has been credited with providing support to women entrepreneurs across the country with low interest loans for use on growing their businesses.
- The coalition promised to transform the Youth Enterprise Development Fund to support the growth of **youth led enterprises** in the country. However, despite a positive start in setting up the Youth Enterprise Development Fund, it was recently in the news for all the wrong reasons with allegations of massive fraud and misappropriation of resources.

In 2015 GoK embarked on drafting an industrialisation road map, and this is a core document outlining the approach and priorities for industrial change. In addition the existing National Export Strategy (2007) has been prioritised for revision.

A reshuffling of Government in early 2016 has resulted in the redesign of certain Ministries within Government. The Ministry of Industrialisation and Enterprise Development is now known as the Ministry of Industry, Investment and Trade (MITT).

This institutional change has led to a reinvigorated business environment and trade strategy effort. This is being led by the following individuals:

- The Ministry of Industry, Investment and Trade (MITT) is led by CS Aden Mohammed who is supported by two Principal Secretaries – PS Julius Korir in Industrialisation and PS. Dr. Chris Kiptoo in International Trade.
- PS Julius Korir leads GoK's roll out of the Kenya Industrial Transformation Programme that was launched in July 2015.
- PS Dr. Chris Kiptoo leads Kenya's efforts around International Trade and he is therefore responsible for the development of Kenya's New Export Strategy and its implementation.

The next section examines the Kenya Industrial Transformation Programme and the existing Export Strategy in turn and draws out the cross cutting issues in relation to the BER agenda.

5.3 Industrial development strategies

Kenya Industrial Transformation Programme

Kenya's Industrial Transformation Programme (ITP) is anchored within the Ministry of Industry, Investments and Trade (MIIT).

For Kenya to achieve its expected economic growth of 7 percent as predicted by the National Treasury, the country must focus on quick wins. The Treasury, in its budget review, has named exports promotion with a focus on expanding regional markets, commodity exchanges and special export zones as some of the sureties to steady growth over the next few years. ITP aspires to grow the share of Kenya's manufacturing sector from the current 10 per cent to 15 per cent in the medium term.

The Plan focuses on Kenya's comparative and competitive advantage, in particular, labour intensive sectors earmarked for accelerating growth. Through enhanced job creation, infrastructure development, skills and technology transfer. Kenya's economic growth has traditionally been consumption led and there is a need to expand the manufacturing to ensure the growth is industry led. ITP aims to make this happen.

Table 5.1: KITP Strategic Pillars

Pillars	Objectives
Pillar 1: Grow Kenya's global export engines:	Targets the tea, coffee, horticulture, agro processing, textile, apparel and leather sectors with the aim of value addition leading to increase in value and volume of exports.
Pillar 2: Build a food processing hub:	Enhances the development of agro and fish processing.
Pillar 3: Build local content for resource and infrastructure investment:	Focuses on expansion of construction services and materials including cement, steel for infrastructure projects. The pillar also provides a framework within which local content is encouraged in the oil and gas sector.
Pillar 4: Enhance non-industrial job creating sectors:	Provides for job and wealth creation through ICT enabled services, tourism, wholesale and retail sectors.
Pillar 5: Develop Kenyan SMEs by supporting rising stars and building capabilities with model factories:	Focuses on developing SMEs and building best practice manufacturing capabilities through model factories.

To achieve the ambitious objectives of KITP, five enablers have been identified as follows:

- **Enabler 1:** Ease of doing business reforms and reach the global top 50 by 2020;
- **Enabler 2:** Build a network of competitive industrial parks with sector appropriate incentives and supporting infrastructure;

- **Enabler 3:** Invest in industrial skills by enhancing the capacity of institutions to up-skill Kenyans and in particular the youth;
- **Enabler 4:** Attract local capital and FDI by marketing priority flagship projects to anchor investors and establishing a one-stop shop to facilitate investment; and
- **Enabler 5:** Create an industrial development fund that will respond quickly to investment opportunities in priority areas and accelerate the development of the required infrastructure for sector priority projects.

KITP has also taken a holistic view in identifying key challenges to industrialisation in Kenya and has identified land, skills, access to markets, quality of inputs and logistics costs that hamper industrial development. Many of these relate to the BE and subject to review by the government and its ambition to radically improve its ease of doing business ranking.

The KITP in particular notes the following business environment issues: (i) Kenya struggles with unfair competition from counterfeit products, tax avoidance, illicit imports and dumping, (ii) there is need to further develop and enforce local content requirements (iii) additional fees paid on imported raw materials reduce competitiveness, and (iv) high regulation of the tea market constrains value addition in the sector.

Kenya's current regulatory environment is littered with costly rules and duplicate mandates that make it difficult for businesses to thrive. The country is likely to benefit from a review of overlapping licensing, permits, levies and certificates by National and County regulatory bodies. The review would pave the way for continuing regulatory reforms for business activity in Kenya. The proposed one stop shop approach planned by GoK through the Business Regulatory Reforms Authority will enhance service delivery. Many Kenyans will freely admit that complex compliance also facilitates the spread of corruption and is one of the vectors in which corruption becomes a real cost to business.

Towards a New Export Strategy

In the last 15 years, Kenya has pursued an export-led growth strategy. With the advent of liberalisation and subsequently globalization, the focus of trade policy was to move the Kenyan economy towards a more open trade regime with increased market access.

However, Kenya's exports, which are generally agro-based, have underperformed over the last two decades due to various factors. Kenya has concentrated on a narrow range of export products. Unfortunately, the performance of these exports has not been impressive in the recent past and it is widely acknowledged that there is need to diversify export promotion efforts to include non-traditional exports that have a huge potential for growth.

In recent years, growth in imports has outstripped exports, thus leading to deterioration in external trade balance and current account. For example, Kenya Exports to the East African region have consistently under-performed for the past three years (KNBS Economic Survey 2015). Kenya's manufacturing sectors has stagnated at around 10 per cent since independence contributing to the slow export growth.

In the past, export promotion initiatives in Kenya have concentrated on a few traditional exports, mainly coffee and tea. Unfortunately, the performance of these exports has not been impressive in the recent past and it is widely acknowledged that there is need to diversify export promotion efforts to bring on board non-traditional exports that have a huge potential for growth. However, these goals will only be realised through a sustainable export-led strategy. The National Export Strategy will be a roadmap to this end.

The following are key BER issues that will be touched upon in the development of a new export strategy:

- The adoption of the National Export Strategy will necessitate a review of all relevant legislation to ensure conformity with national development aspirations and the adopted export strategy.
- The National Export Strategy will provide an opportunity to consider the issue of exports holistically and review of any relevant legislation on the basis of the comprehensive policy in order to remove any contradictions or vacuum, as the National Export strategy would act as the central framework guiding exports in Kenya. This will include streamlining the existing institutional framework to avoid duplication of efforts and overlaps across existing agencies involved in export promotion and facilitation at the national level and while facilitating coordination with County governments.
- The strategy will also help in consolidating all the Government initiatives and provide a coherent strategy of guiding exports in Kenya. The National Export Strategy will be an instrument to aid in harmonizing the disparate export related strategies and policy pronouncements to the macro strategies in place and would enable a holistic approach to export development both in the medium term to long-term.

5.4 Ministry of Industry BER priorities

During the scoping mission the team had the opportunity of engaging with both the Principal Secretaries of Industrialisation and International Trade respectively. The following are details of specific requests as provided by both Principal Secretaries and aligned to these are specific areas within which BERF may be able to work with both their offices given the BERF mandate and framework.

Industrialisation agenda

The PS, Industrialisation the Ministry was positive about the support received to date from both the IFC and GOK on BER related issues. The PS indicated that it made most sense for the Ministry to look at the 10 key World Bank indicators on the Ease of Doing Business index and decided to approach each one of these indicators and prepare a plan of action to improve Kenya's ranking.

As a result, MIIT has made tremendous progress in 2015 on some of these indicators and the plan going forward in 2016 is work on the systemic issues. It has been able to successfully introduce three new Business laws including a new Companies Law, Insolvency, and Business Registration Acts, all of which have passed through parliament. A movement to a more coherent national investment policy and development of a number of other important policies such as the development of the SEZ law and development of an advance pricing agreement mechanism are other notable achievements for the programme.

Some of the successes that the PS was able to attribute to the IFC programme (supported through DFID's BRICK programme) included in Table 5.2:

Table 5.2: BER progress under the IFC programme

Reform areas	Progress
E-government	The programme has helped to establish the e-Citizen's portal that has over 1.5 million registered users, handles 8,000 transactions daily and has collected over US$ 23 million by the end of 2015.
County level business environment reform	At sub-national level the programme supports efforts in six counties, and will implement the sub-national Doing Business Survey across 11 counties this year, the vast majority of the effort has focused on the introduction of automated, construction permit systems and single business permits that has seen improvements in revenues collected, reduction of time taken, and increase in compliance across four pilot counties.
Agri-business	In the agribusiness sector, success has been marked by the implementation of a warehouse receipts system (supported by a law on warehouse receipts) and a pilot which has already disbursed over US$ 38 million of financing. Further development of the system has the potential to increase trade in agricultural commodities and deliver reduced post-harvest losses for low-income farmers.
Trade logistics	On trade logistics, significant progress has been made on the Electronic Single Window (eSW) and e-payment system, which is currently being deployed across 15 trade related agencies. By December 2015 a reported 36,600 import declaration forms and over 13,200 permits were processed with the collection of around KSH 498 billion passing through the system.

Thus although the programme has had a relatively short implementation period, it has facilitated Kenya's emergence as the third most improved reformer globally in the Doing Business 2016 report, a 21 country jump from the previous report. Overall the programme has been able to plug into the Government's reform agenda, in a flexible and demand driven manner, developing sustained buy-in at senior levels of government, both at national and sub-national level and across other agencies. The introduction of the reform champions' component is expected to solidify and deepen these changes further.

BER priority areas to support the industrialisation agenda

The PS is keen on solidifying gains made in the last year and was able to articulate some key issues to address going forward. Some of these issues, such as those around land reform, can be defined as macro issues that are well beyond the scope of either BERF or a follow on

BRICK programme. However, the issue of land is recognised consistently as a hindrance to Kenya attaining real gains in the Industrial Transformation Programme and as a result perhaps an agency such as the World Bank could look at land reforms as a long term area of support to the GoK if this hurdle is ever to be overcome.

Specifically BER priority issues include:

- Harmonization exercise: that will seek to review an extensive listing of licenses, fees and approvals that have proved to be a hindrance in doing business. This can be achieved through the enactment of a Business Environment Act that will encompass an omnibus of laws in a menu format that one can pick and choose as applicable. Therefore, the issue of businesses having to comply with a multitude of regulatory issues will become obsolete.
- Cross boarder trading: A key priority from the PS's perspective also includes navigating the issue of trading across borders. Currently each County is working independently and applying various cess taxes to Agricultural produce travelling across County borders which has been detrimental to producers based in one County who have to ferry produce across counties for either processing or export. The Cut Flower industry has been hardest hit by these cess taxes as most producers are based in Nakuru County and have to traverse at least 3 counties before they get their goods to the Airport in Nairobi for export to European markets.
- County-National Dialogue: In line with addressing the issue of trading across borders is developing an effective mechanism in which dialogue can happen between County and National Government in addressing BER issues. Currently there seems to be little dialogue and as a result businesses are facing a multitude of hurdles. An effective County and National Government Dialogue would go a long way in addressing BER issues across the board and this would enhance Kenya's ability in building a more responsive Business Environment.

The PS was very clear on the fact that in his view KAM and its members present a great opportunity in addressing BER issues in Kenya as they have a footprint throughout the country and across various key sectors of the economy.

KAM has been in existence since 1959 and represents well over 75 per cent of all manufacturers in Kenya. These manufacturers are involved in many diverse sectors including: Food, Beverages & Tobacco, Metal & Allied, Leather & Footwear, Chemical & Allied, Textile & Apparel, Plastics & Rubber, Paper & Paperboard, Wood Products & Furniture, Pharmaceutical & Medical Equipment, Motor Vehicle & Accessories, Energy, Electrical & Electronics, Building & Construction, Service & Consultancy, Fresh Produce and Multinationals.

The KAM profile presents a great opportunity for BERF to work with KAM as an anchor institution in addressing BER issues facing the manufacturing sector in Kenya and by doing so supporting the challenges as highlighted. KAM has already done some excellent work around identifying 5 key pillars around which manufacturing can be supported in Kenya and by doing so propel ITP to the next level. BERF would be well served to build on the work already done and planned by KAM in addressing BER issues in Kenya.

Export development agenda

The PS stated that the development of a comprehensive Kenya National Export Strategy will be one of the most important deliverables during his tenure. Kenya's exports have been flat for well over 10 years and as a result the import bill continues to grow exponentially year on year while exports have stagnated. This has led to a skewed balance of payments and increasing pressure on the Kenya Shilling against major world currencies.

The priority sectors for development include; Agro products (coffee, tea, horticulture), leather, textiles and apparel. Value addition is a key pillar especially as far as tea and coffee are concerned. Kenya currently exports low value unprocessed coffee and tea which is processed in external markets resulting in a lost value addition opportunity for Kenya.

There are also several discussions around the provision of competitive energy costs which will reduce production costs, improved connectivity, improved access to credit, improved cargo clearance procedures at border posts and the port and the establishment of trade information portals to improve access to tariff information, standards requirements and improved linkages between small and large firms in the promotion of Kenyan exports. The establishment of an SEZ framework is a key focus and to date has been heavily supported by the IFC/World Bank Group.

FDI in the Kenya Manufacturing sector has often been designed to pursue market seeking objectives. The SEZ provides the regulatory and institutional framework to venture into a more ambitious FDI attraction strategy that targets export oriented FDI which will help anchor Kenya as a manufacturing hub in Africa.

Kenya may consider targeting FDI in sectors where local manufacturers can actively play a significant supply role. FDI also presents subcontracting and joint venture opportunities that would enable knowledge and technology transfer with Kenyan firms. Export oriented FDI would make a great platform in enhancing Kenya's exports. Any incentives provided by GOK within the SEZ framework would provide sub contract and business partnership opportunities that would promote the growth of Kenya's manufacturing sector and the enhancement of value added exports.

BER priority areas to support the export development agenda

The Kenya National Export Strategy concept note identifies key sectors in which Kenya continues to hold a competitive advantage and that could be further developed to help grow the country's export base. The PS stated that the key challenge facing Kenya's exports is the fact that the country has a very limited export basket (few products available for export in volume and value) and an even smaller export market (Kenya exports to few countries in the world). Therefore, the proposed new export strategy should look at addressing these two key issues – an increase in volume and value will go a long way in growing Kenya's exports.

This new export strategy needs to reflect the BER constraints impacting on exporters and continue private sector dialogue to prioritise reforms. This is a potential area of support that could be provided by BERF.

6. Phase 2 Recommendations

6.1 Introduction

This scoping mission has consulted with the Government of Kenya, DFID and other development partners to determine the most appropriate form of BERF support to promote BER in Kenya.

Based on this scoping assessment the following recommendations are made for Phase 2 support to be delivered over the period May to September 2016. This section summarises the key recommendations, tasks and resource requirements. An indicative budget will be provided based on approval of this report.

6.2 Area A: BRICK High Level Road Map

This report has outlined a set of BER principles relevant to any successor programme to BRICK and has established an options framework for consideration (the high level road map).

The experience of the BRICK programme coupled with the strong momentum for reform and the number of current and planned donor initiatives, justify further engagements before making a decision on DFID's future support to investment climate reform in Kenya. BERF's support will be increasingly focussed, adding further value to the operations of DFID Kenya and broader efforts towards investment climate reform in Kenya.

In taking this high level road map forward (the principles and options) support could be particularly focussed towards supporting DFID Kenya in the following work streams in an advisory TA capacity:

- ✓ determining the relevance of the principles and options stated in this report to both DFID Kenya and to any successor programme;
- ✓ building on the scoping mission engagement with the Government including at the County level, and with other donors to further identify reform priorities and assess how DFID can best support investment climate reform given the considerations in the report, the momentum for reform and on-going initiatives;
- ✓ conducting an appraisal of the list of options for a successor programme; and,
- ✓ advising on the drafting a Business Case for future support to investment climate reform in Kenya, to include developing a Theory of Change and an active learning framework.

BERF support will benefit from an increased level of engagement with the DFID Country Office. This level of engagement will support the Country office, but DFID-Kenya will own the decision making process.

6.3 Area B: Cultural economy

Policy interest in the cultural, or creative economy in Kenya is growing, in particular with regard to the employment opportunities the sector potentially offers to Kenya's youth both in main cities and in counties. The private sector, main in the cultural economy, is fragmented and associative action has been scattered and often confined to sub-sector interests. There is strong government interest in better organising the sector through stakeholder dialogue so as to improve policy formulation and this is recommended as an area for immediate BERF support.

Informant interviews also highlight other areas for business environment intervention, notably putting in place effective incentive measures for a range of cultural economy sectors, be it import duty exonerations on film equipment or tax rebates for foreign film locations in the film sector, or cost avoidance of fees and charges for large concerts in the music sector. This and other areas of potential BERF intervention can be determined based on the findings from the stakeholder dialogue process.

The recommended next steps in Phase 2 for this activity area are:

- ✓ Take stock of all current existing knowledge and policy related to the cultural economy in Kenya.
- ✓ Liaise with Department of Culture (within the Ministry of Sports, Arts and Culture) to organise stakeholder consultation workshop, building on what already exists.
- ✓ Support government and partners in improving the structure for permanent dialogue and better coordination of policy intervention.
- ✓ Advise government on improving knowledge management and institutional learning,

6.4 Area C: Industrialisation and export development

Following discussions with both the Principal Secretaries of Industrialisation and International Trade, KAM and other sector players, BERF potentially has a role to play in a number of areas to support the next stage of business environment reforms. Support from BERF will go some way in strengthening the work of the MIIT in becoming a more effective Ministry within the GoK.

The focus of support should be on (i) the provision of technical assistance to the Ministry of Industrialisation to assist in the technical review and prioritisation of County level BER reforms that act as a constraint on country economic development, and (ii) provide technical assistance to the trade division of the Ministry to assist in identifying BER issues for priority exports sectors to be incorporated in the Ministry's revised export strategy.

Specifically Phase 2 support would encompass:

1. ITP BER agenda

The following are the priority areas we identified for support under this component:

- ✓ Both the National and County Governments are keen on improving the ability of the devolved units to provide effective service delivery to business through the harmonisation of licensing/fees/approvals across the board. We propose that BERF consider providing TA to the PS, Industrialisation that will undertake an expert review of the business regulatory framework across the counties. MIIT is commencing on a benchmarking exercise that will initially work with a pilot of 13 counties starting in June 2016 and we recommend BERF provide TA support to this stream of work.

- ✓ Along the same lines as the harmonization of the various licenses and fees at both National and County level, the PS, Industrialisation is seeking to prepare a draft Business Environment Act which will encompass an omnibus of laws that will be designed to improve the regulatory framework at County level to attract manufacturing and other investment to the counties. We recommend BERF provide TA support to the PS, Industrialisation in the drafting of the Business Environment Act.

BERF TA as outlined above will address the immediate needs as articulated by the PS, Industrialisation and will also improve the National/County Government dialogue by improving the capacity of County Governments to review duplicate charges, streamline permits, and enhance service delivery to provide essential services (including access to roads, manufacturing premises (zones), garbage collection and access to water).

We would recommend working directly with KAM on highlighting specific BER issues that face their membership on a daily basis.

2. Export development BER agenda

BERF may not be best placed or designed to support the development of a comprehensive Kenya National Export Strategy document however BERF can provide important support as follows:

- ✓ Provide TA to articulate BER issues around the Export Strategy and particularly around the key clusters/sectors with triangulation around those issues that may prevail at the County level.
- ✓ Provide TA to develop a more comprehensive and refined Export Strategy concept note that takes into account the issues highlighted by the PS above.

PS Kiptoo, stated that Kenya National Export Strategy Concept Note is not a fully inclusive document as it was mostly prepared by the Export Promotion Council of Kenya (EPC) and may therefore not encompass the view of other key stakeholders including Ken Invest and the Export Processing Zones Authority (EPZA).

This presents a clear entry point for BERF to consider providing support to PS, International Trade. The PS strongly is of the view that a more comprehensive Export Strategy Concept Note will be required that will review a number of critical areas within the Export Strategy. This will need input from KenInvest that will provide a link between Investment Promotion and Export Market Development and requires clarity over the role of EPZA and potentially SEZ's in Kenya's Export Strategy. It will also provide more in-depth analysis and review around cluster/sectors and in a sense develop strategies around the key clusters that would look at value chain issues, infrastructure, the role of the Counties in promoting exports and so on.

Engagement

BERF is designed to provide innovative stakeholder engagement and therefore going forward BERF's engagement with MIIT can facilitate the following.

- ✓ Initiate a public and private sector consultation process on BE priority areas for reform. KAM presents an excellent focal point for this process.
- ✓ Hold a BE strategy and action planning workshop(s) with key stakeholders.
- ✓ Deliver a presentation to GoK and more specifically The Ministry of Industry, Investment and Trade (MIIT) and other reform champions.

6.5 Summary of BERF services

Based on the scoping stage discussions outlined in this report and the recommendations set out above, Table 6.1 sets out a BERF Phase 2 support programme to DFID-KENYAenya and GoK.

Table 6.1: Draft Recommendations of BERF support for Phase 2

Scoping review areas	Description of BER support activity	BERF product area
Area A: Developing a BRICK successor programme		
A1. Review of Phase 1 scoping	Assess relevance of the BER design principles set out in Phase 1 to future programming	Activity B
A2. National and County dialogue	Facilitating the process of dialogue with MDAs on current BER initiatives and areas for support and donor coordination	Activity B
A3 Successor programme options analysis	Consideration of the range of options for a BER programme	Activity B
A4 Business case advice	Ongoing advice on the development of the programme components	Activity B
A5: Theory of Change	Providing assistance to the decisions of BRICK2 on its Theory of Change, Log Frame and M&E framework	Activity A
Area B: Cultural economy BER agenda		
B1 Stakeholder mapping	Working with the Department of Culture and private sector bodies to fully map stakeholders and develop the PPD engagement plan	Activity B
B2 PPD	Design and delivery of PPD process	Activity E and B
B3 Road map of BER issues	Write up of findings from the PPD for submission to the PS at the Department of Culture	Activity B
Area C: Industrialisation and export development BER agenda		
C1. Support to the Ministry of Industry Regulatory Unit	TA support to the regulatory unit to work with GoK on County level BER agenda and Business Environment Act	Activity B and C
C2. PPD and regulatory process development	Embedding PPD processes for BER focused on MDAs	Activity E and B
C3 Specific TA on export development	Responding to GoK's need to refresh the National Export Strategy with a focus on BER related issues.	Activity B

Table 6.1: Draft Recommendations of BERF support for Phase 2		
Scoping review areas	Description of BER support activity	BERF product area

6.6 Phase 2 Work plan

Phase 2 support is to be delivered over the period May to September 2016. The proposed work plan is set out in Figure 6.2 below.

Table 6.2 Draft Recommendations of BERF support for Phase 2

Scoping review areas	Description of BER support activity	May	June	July	Aug	Sep
Area A: Developing a BRICK successor programme						
A1. Review of Phase 1 scoping	Assess relevance of the BER design principles set out in Phase 1 to future programming		XXXX			
A2. National and County dialogue	Facilitating the process of dialogue with MDAs on current BER initiatives and areas for support and donor coordination			XXXX		
A3 Successor programme options analysis	Consideration of the range of options for a BER programme			XXXX	XXXXX	
A4 Business case development	Ongoing advice on the development of the programme components				XXXXX	X XXX
A5: Theory of Change	Providing assistance to the decisions of BRICK2 on its Theory of Change, Log Frame and M&E framework			XXXX		XXXX
Area B: Cultural economy BER agenda						
A1 Stakeholder mapping	Working with the Department of Culture and private sector bodies to map stakeholders and develop the PPD engagement plan	XXXX				
A2 PPD	Design and delivery of PPD process		XXXXX			
A3 Road map of BER issues	Write up of findings from the PPD for submission to the PS at the department of Culture			XXXXX		
Area C: Industrialisation and Export Development BER agenda						

A1. Support to the Ministry of Industry Regulatory Unit	TA support to the regulatory unit to worth with GOK on County level BER agenda and Business Environment Act	XXXX	XXXX	XXXX	XXXX	XXXXX
A2. PPD and regulatory process development	PPD processes for BER focused on MDAs		XXXX		XXXX	
A3 Specific TA on policy, legal and regulatory issues	Responding to GOK's need to refresh the National Export Strategy with a focus on BER related issues.		XXXX	XXXXX	XXXXX	XXXXX

7. Summary

This scoping mission review has consulted with DFID-KENYA PSD team, key stakeholders in government and a selected number of other stakeholders in order to gauge (i) the current BER agenda across government, and (ii) to understand existing support being provided by DFID-Kenya and its future BE programming.

The momentum for reform at the national level is very strong, especially in areas relating to the Doing Business index which is included as a goal under the ITP. There remains space to support these efforts with perhaps the greatest opportunity exists at the County level. Counties now have significant power in determining the attractiveness of the business environment, yet little experience or knowledge of this area.

There is also some display of Government, especially at the Ministry of Industrialisation, being more able and willing to base their business environment reforms on evidence and dialogue and consultation with the private sector. This, however, is largely dependent on the existence of champions and is not embedded within policy and project management processes. In the Counties, the quantity and quality of consultation and dialogue differ significantly.

Despite these ambitions and initiatives however, the business environment continues to impart significant costs and risks on businesses. The latest Investment Climate Assessment (ICA) and Enterprise Survey suggest that constraints relating to the business environment, in particular informal payments, impart significant costs and risks on the private sector.

This leads is to the overall conclusion that there is a timely opportunity for BERF to work with a Government committed to taking its BER agenda to a new level and assist in developing more effective and inclusive reforms. Engaging with GoK would also provide valuable learning opportunities to share across DFID's priority countries.

To this end the allocation of BERF resources being recommended in Phase 2 has been structured to provide:

- design support to DFID-Kenya to guide future BER programming given the BRICK programme is due to end in April 2017 and the SUED Country level programme is commencing; and
- bespoke TA support on BER issues to assist GoK in delivering its Industrialisation Transformation Programme and the preparation of a revised Export Strategy.

Further the provision of support in Phase 2 will enable BERF to consider the requirements of DFID-Kenya and GoK beyond September. This is particularly relevant to provide support to the Ministry of Industry and to the County level.

Appendix 1 Terms of Reference

Annex B Table B1: Key Meetings and stakeholders:

Date	Organisation	Persons Attending
April 12, 2016	BERF Scoping Team	Kram Sadiq, Yarri Kamara, James Lloyd
April 12, 2016	DFID Kenya	Adrian Green – Senior Private Sector Development Advisor Dennis Kwena – Private Sector Development Advisor
April 14, 2016	Business Advocacy Fund	Clive Davis – Fund Manager Kariuki Waweru – Advocacy Manager
April 14, 2016	Innovation Norway	Jane Save Ndungo – Senior Market Advisor Rita Brokstad – Director, Regional Office East Africa
April 15, 2016	DAI BRICS Programme	Andiwo Obondoh – Programme Manager Richard Munuhe – Senior Grants Manager
April 18, 2016	Nairobi County	Anna Othoro – County Executive Committee, Trade, Industrialisation, Co-operative Development & Tourism.
April 18, 2016	TradeMark East Africa	Lisa Karanja, Director, Business Competitiveness Waturi Matu, Director, Business Environment
April 20, 2016	IFC – Investment Climate Team	Frank Twagira – Programme Manager, Kenya

Date	Organisation	Persons Attending
April 20, 2016	Export Promotion Council of Kenya	Charles Tumbo – Manager, Trade Information & Business Services
April 21, 2016	Ministry of Industry, Investment & Trade	Julius Korir, Principal Secretary, Industrialisation
April 21, 2016	IFC – SEZ Team	Sarah Ochieng – Programme Manager, SEZ Lim Pao Li – SEZ Consultant to the World Bank/IFC
April 22, 2016	Kenya Association of Manufacturers	Emmanuel Alenga – Tax & Research Officer
April 25, 2016	Ministry of Industry, Investment & Trade.	Dr. Chris Kiptoo, Principal Secretary, International Trade Adrian Green – DFID Kenya Dennis Kwena – DFID Kenya Anna Gibson – DFID Kenya

Annex B Table B2: Cultural economy consultation list

Name	Organisation/business	Sub-sector
Interviews		
14 April 2016		
Rocca Gutteridge, Head of Arts	British Council	
18 April 2016		
Joy Mboya, Director Judy Ogana, Manager	GoDown Arts/Creative Economy Working Group	All
Elizabeth Maina, Programme manager	CKU	All
Aida Mbowa, Artistic Director	Maisha Film Labs	Film
19 April 2016		
Timothy Owase Caroling Njoroge, Production manager Befly Bisem	Kenya Film Commission	Film
Rosemary Okello-Orlale, Programme officer	Ford Foundation	All
George Gachara, Director Njoki Ngumo, Liaisons manager	The Nest/Heva Fund	Fashion, craft & design, music
20 April 2016		
Joe Okudo, Principal Secretary, State Department of Arts and Culture	MoSCA	All
Breakfast roundtable – 20 April 2016		
Ann McCreath	Kiko Romeo	Fashion
Angela Wachuka	Kwani Trust	Publishing
Silvia Tonui	Africa Retold	Fashion
David Muriithi	Kenya Copyright Board	All
Sam Maina	Good Times Africa	Music
Lynnete Ngigi	Kuona Trust	Visual Arts
Nanjira Sambuli	iHub	Digital content
Dorothy Ghettuba	Spielworks Media	TV & film
Njogu Kimani	Academic	All
Aghan Odero	Kenya Cultural Centre	Performing arts
Tony Reilly, Director	British Council	All
Rocca Gutteridge, Head of Arts Kenya	British Council	All

Annex C Table: List of documents

Document list
Business Environment and Poverty Rapid Evidence Assessment (2015), Department for International Development
Constitution of Kenya (2010), National Council for Law Reporting
Doing Business: Economy Profile Kenya (2016), World Bank
Exploring Kenya's Inequality: Pulling Apart or Pulling Together (2013), Kenya National Bureau of Statistics and Society for International Development
Kenya Country Profile (2013), Enterprise Surveys, World Bank
Kenya Economic Update (Mar 2016), World Bank
Kenya Economic Survey (2015), Kenya Bureau of Statistics
Kenya's Industrial Transformation Programme (2015), Ministry of Industrialisation and Enterprise Development
Kenya Investment Climate Programme: Reducing Regulatory Costs and Risks to Businesses, World Bank
Medium Term Budget Policy Statement (Feb 2016): Sustaining Prosperity in a Volatile Global Economy, Government of the Republic of Kenya
Machakos Inward Promotion Board (2016), http://machakosinvest.com/our-services.html
National Trade Policy (2016), Republic of Kenya
Operational Plan 2011-2015 (Updated June 2012), Department for International Development
Review of Donor Supported Business Environment Reform Programmes and Practices in Kenya (2010), The Donor Committee for Enterprise Development
Regional Economic Outlook: Sub Saharan Africa (Oct 2015), International Monetary Fund
Report on the Implementation of the Investment Policy Review (2013), UNCTAD

Supporting Business Environment Reforms: Practical Guidance for Development Agencies (2008), Donor Committee for Enterprise Development
The Business Registration Services Act (2015), The Government Printer, Nairobi
The Companies Act (2015), The Government Printer, Nairobi
The Insolvency Act (2015), The Government Printer, Nairobi
The Micro and Small Enterprises Act (2013), National Council for Law Reporting
The Public Finance Management Act Revised Edition (2015), National Council for Law Reporting
The Special Economic Zones Bill (2015), Kenya Gazette Supplement
[1]The impact of investment climate reform in Africa: How has 'Doing Business' reform promoted broader competitiveness? (2015), World Bank
The Global Competitiveness Report 2015-2016 (2015), World Economic Forum
Supporting Business Environment Reforms: Practical Guidance for Development Agencies (2008), Donor Committee for Enterprise Development
The Second Medium Term Plan (2013-2017), Government of the Republic of Kenya
World Economic Outlook (Jan 2016), International Monetary Fund

Contact us

Name Surname
Sector name
T +44 (0)20 [0000 0000]
E name.surname@kpmg.com

Name Surname
Sector name
T +44 (0)20 [0000 0000]
E name.surname@kpmg.com

Name Surname
Sector name
T +44 (0)20 [0000 0000]
E name.surname@kpmg.com

www.kpmg.com