Business Environment Reform Facility

Creative Economy Business Environment Reform, Kenya, (Main Report)

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Business Environment Reform Facility

Department for International Development

About Business Environment Reform Facility (BERF)

BERF is funded by the UK Department for International Development (DFID) under the Business Environment for Economic Development (BEED) Programme. BERF is a central facility responding to demand from the DFID's priority Country Offices and stakeholders to initiate, improve and scale up business environment reform programmes. BERF is managed by a consortium led by KPMG LLP. The programme started in January 2016 and will finish in January 2019.

We provide expert advice, analysis of lessons learned, policy research about what works and what doesn't and develop innovative new approaches to involving businesses and consumers in investment climate reform.

BERF has a strong emphasis on strengthening the business environment for women and girls, as well as for young adults more generally. It is also aiming to improve the relationship between business and the physical environment including where relevant through linkage to climate change analysis. BERF recognises the need for appropriate political economy analysis in order to underpin business environment reform processes and interventions.

About this Report

Research for this study was conducted by Kennedy Manyala between August and September 2016.

Department for International Development

Acronyms

ACTIF	African Cotton & Textiles Industries Federation
AFAD	Association of Fashion Designers
AGOA	Africa Growth and Opportunity Act
BERF	Business Environment Reform Facility
BRICK	Building a Resilient Investment Climate in Kenya
BC	British Council
BAF	Business Advocacy Fund
BAK	Bloggers Association of Kenya
BEDU	Business Environment Delivery Unit
CEWG	Creative Economy Working Group
CIPE	Centre for Private Enterprise
CMO	Collective Management Organisations
DFID	Department for International Development
DCED	Donor Committee on Enterprise Development
DFS	Department of Film Services
GDP	Gross Domestic Product
IDF	Import Declaration Fee
IPOK	Intellectual Property Organisation of Kenya
ITP	Industrial Transformation Programme
KCA	Kenya Chefs Association
KECOBO	Kenya Copyright Board
KEGSAF	Kenya Gospel and Secular Artists Federation
KEPSA	Kenya Private Sector Alliance

KNLS	Kenya National Library Services
KAMP	Kenya Association of Music Producers
KFPA	Kenya Film Producers Association
KFCB	Kenya Film Classification Board
KFC	Kenya Film Corporation
KFTPA	Kenya Film & Television Producers Association
KNCCI	Kenya National Chamber of Commerce and Industry
KNFA	Kenya National Film Association
KVAN	Kenya Visual Artists Networks
MCSK	Music Copyright Society of Kenya
MI&ED	Ministry of Industrialisation and Enterprise Development
MoSCA	Ministry of Sports, Culture and the Arts
NMK	National Museum of Kenya
NMB	National Music Board
NMP	National Music Policy
PPD	Public Private Dialogue
PPMC	Permanent Presidential Music Commission
PRISK	Performers Rights Society of Kenya
SDCA	State Department of Culture and the Arts
TASK	The Artists Society of Kenya
TKATCE	Traditional Knowledge and Traditional Cultural Expressions
UNCTAD	United Nations Conference on Trade and Development

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Executive Summary

Purpose of the Report

The purpose of this Business Environment Reform Facility (BERF) report is to highlight the business environment challenges that hinder growth and development in Kenya's creative economy, their root causes and subsequent recommendations for reforms.

The report presents recommendations for action as stated and agreed by the creative economy stakeholders consulted during this assignment. It intends to provide practical guidance to the Ministry of Sports, Culture and the Arts (MoSCA), the UK Department for International Development (DFID) and the British Council who will be the main implementer of the creative industry Public Private Dialogue (PPD) roadmap, to plan and enhance their support for business environment reforms in Kenya's creative economy sector with the objective of improving economic growth, job creation, and poverty reduction.

The Creative Economy in Kenya

Creative economy is described in term of cultural assets in which creativity is applied to generate economic growth and development. It involves economic, cultural and social assets as they interact with technology and intellectual property to produce a vibrant economy. Creative industry, on the other hand, can be defined as "cycles of assembling, production and distribution of goods and services that use ideas and intellectual capital as the primary inputs". The "creative economy" would therefore embody the universe of economic activities that underpin the industry in Kenya. Kenya's rich cultural heritage needs to be harnessed to contribute to national development. Any economic activities that would efficiently do this are regarded as part of "cultural economy".[1]

In the period 2007-2009, the creative economy in Kenya was worth approximately Ksh.85 billion, or 5.3% of GDP. This is significant notwithstanding the challenges faced by this sector. With appropriate institutional, policy and regulatory reforms among other private sector related reforms, the government believes the creative industry in Kenya could become a key catalyst to economic growth and development by doubling its contribution to the GDP to 10% by 2020 on a sustained manner.[2] For this reason, policy interest in the creative economy in Kenya is growing, in particular with regards to the employment opportunities the sector potentially offers to Kenya's youth in the cities and counties.

1 In Kenya, the government prefers the term CREATIVE ECONOMY as it is more inclusive and robust. The private sector/stakeholders are also comfortable with the definition as that describes the sector in its entirety.

2 Ministry of Information and Communication Report, 2012
(Njogu.K, (2015) Creative Industries and Role in the Transformation of Society. Jahazi Vol. 2 Issue 1)
(Nyarikiet. Al (2009): Economic Contribution of Copyright-Based Industries in Kenya).

BERF Support to DFID Kenya

BERF. funded by the UK Department for International Development (DFID), is a central facility responding to demand from DFID's priority Country Offices and stakeholders to initiate, improve and scale up business environment reform (BER) programmes.

Under this facility, a scoping mission was undertaken in June-July 2016 to provide DFID Kenya and the Government of Kenya (GoK) with a creative economy BER diagnostic assessment. A key finding of the scoping mission was the need to undertake a broad based stakeholder analysis of the sector, including strong participation from county stakeholders.[3] One of the needs of MoSCA was to gain a broad based view on issues in the sector, and not just focus on issues specific to particular interest groups. To this end, a PPD with stakeholders in the cultural economy was prioritised and the second phase of BERF support aimed to provide advisory support to undertake this work. This report and the accompanying roadmap is based on findings from the PPD, literature review and stakeholder consultation.

Recommendations

The BERF Creative Economy Roadmap (to be read in conjunction with this report) and section 5 of this report presents recommendations made during the PPD Workshop, which were reached after due deliberation among the stakeholders and are ranked in order of ease of implementation.

A. Recommendation to the private sector and development partners

1) Establish the Creative Economy Apex Body for PPD within the next 6 months to institute an all-inclusive institutional, policy and regulatory reform in order to improve the investment climate and business operating environment for the creative economy.

B. Recommendation to the development partners, private sector and government

2) Develop systems for enterprise development and entrepreneurship for the creative economy.

C. Recommendation to the government

3) Develop infrastructure facilities for use by the creative economy entrepreneurs.

This report concludes that success in catalysing the creative economy's growth relies on eliminating constraints and making private sector business environment conducive. This success is embedded in the PPD structures that the government and the private sector will form through the proposed apex body and their engagement. The PPD roadmap attached as a separate document highlights the key actions that, if implemented, will trigger growth and development in the creative economy of Kenya.

[3] Through discussions with the Principal Secretary (PS), Arts and Culture at MoSCA

1. Introduction

1.1 Objective of the Assignment

The main objective of this assignment is to identify the creative economy business environment challenges through in-depth stakeholder interviews, desk research, and Public Private Dialogue (PPD) processes. Through this objective, the assignment assesses the needs and priorities of the sector, makes recommendations, and draws up a roadmap to guide the implementation of the recommendations set out after the PPD workshop.

1.2 Definition of the Creative Economy in Kenya

In Kenya, both the government and the creative economy private sector subscribe to the United Nations Conference on Trade and Development (UNCTAD) definition and description of creative economy that involves an assortment of creative industries, which comprise of the creation, production, marketing and distribution of products, and services resulting from human creativity. The creative economy further comprise of various knowledge-based economic activities involving tangible products and intangible intellectual assets, with economic and culture value, creative content and market objectives. These include the performing arts, the motion picture (film) and recording industries, books, journal and newspaper publishing, software games industry, music and theatre production, photography, commercial art, advertising, radio, television, and cable broadcasting industry.

The creative economy in Kenya is seen as a growing sector for economic growth and development. In the period 2007-2009, the sector's earnings was approximately Ksh. 85 billion (£631 million), representing 5.3% of GDP. This is significant, notwithstanding the various challenges the industry faced. With appropriate institutional, policy and regulatory reforms among other private sector related reforms, the government believes that creative industry in Kenya could become a key catalyst to economic growth and development by doubling its contribution to the GDP to 10% by 2020 in a sustained manner.[4] Given the socio-economic activities' structure of the economy, it is envisaged that the creative economy would become a lead employer in both formal and informal sectors of the national economy, overtaking tourism and agriculture.[5] For this reason, policy interest in the creative economy in Kenya is growing, particularly with regards to the employment opportunities the sector potentially offers to Kenya's youth in the main cities and counties.

1.3 BERF support to DFID Kenya

BERF is funded by the UK Department for International Development (DFID) under the Business Environment for Economic Development (BEED) Programme. BERF is a central facility responding to demand from the DFID's priority country offices and stakeholders to

4 *(*Ministry of Information and Communication (MoIC) Report, 2012*)*
5 Nyariki et.al (2009): Economic Contribution of Copyright-Based Industries in Kenya

initiate, improve and scale up business environment reform (BER) programmes. BERF is managed by a consortium led by KPMG LLP.

Under the facility, a scoping mission was undertaken in June-July 2016 to provide DFID Kenya and the Government of Kenya (GoK) with a creative economy BER diagnostic assessment. One of the key findings was the need to undertake a broad based stakeholder analysis of the sector, including strong participation from county stakeholders.[6] One of the needs of the Ministry of Sports, Culture and the Arts (MoSCA) was to gain a broad based view on issues in the sector, and not just focus on issues specific to particular interest groups. To this end, PPD with cultural economy stakeholders was prioritised and the second phase of BERF support aimed to provide advisory support to undertake this work. This report and the accompanying roadmap is based on findings from the PPD, literature review and stakeholder consultation.

1.4 The PPD Process for the Creative Economy

A PPD workshop on the creative economy was held on 29th to 30th September 2016 at the Kenya Cultural Centre (KCC), Nairobi, and was organised and hosted by the MoSCA in collaboration with the private sector representation through the Creative Economy Working Group (CEWG). The BERF consultant contributed significantly to this PPD process with support from the British Council (BC).

The event had 650 participants from the creative industry drawn from 13 associations (see appendix 2) and 42 participants from the MoSCA and other government agencies associated with the creative economy. The Principal Secretary, Mr. Joe Okudo, chaired the PPD workshop planning and preparation processes while the BERF Consultant, Mr. Kennedy Manyala, provided technical assistance in terms of PPD advisory, PPD workshop programme design and rapporteuring with support from BC Head of Arts, Ms. Rocca Gutteridge. The workshop brought the creative industry practitioners together to deliberate on how the business environment of the creative economy can be improved and expanded in order to stimulate faster growth and development. A core motivation for the process was to accelerate reforms in the investment climate and improve the enabling environment for business in the creative economy.

The workshop was organised around five thematic segments. The thematic areas (to be seen as priority) include public private sector engagement mechanisms and the institutional, policy and regulatory challenges. Other secondary areas were based on the market structural challenges, namely access to funding, limited entrepreneurship skills in the industry, and creative industry infrastructural space challenges.

[6] From discussions with the Principal Secretary (PS), Arts and Culture at MoSCA

1.5 Structure of the Report

The structure of the remainder of this report is as follows:

Section 2 includes literature review on the business environment and also the in-depth interviews with their respective outcomes.

Section3 discusses the overview of business environment challenges of the creative economy, analysed by institutional, policy and the regulatory environment and challenges.

Section 4 presents an in-depth analysis of key business environment challenges of the creative economy's main industries, namely the arts and crafts Industry, the music industry, the film industry, and lastly the fashion and design industry. The report also presents individual recommendations for each industry in the creative economy.

Section 5 presents overall recommendations made during the PPD workshop. The roadmap is developed from these recommendations.

Section 6 discusses steps to establish the Creative Economy Apex Body

Section 7 Conclusions.

2. Primary and Secondary Analysis

2.1 Findings from Literature Review

The consultant undertook desk review to identify earlier research that had been done on the creative industry in Kenya and within the region. The review considered definitional issues and scope, business environment challenges and the recommendations that have been made for policy prescriptions to revamp the industry. Information from the desk review have been further validated during the in-depth interviews with various stakeholders.

2.1.1 Literature Review Challenges Facing the Business Environment of the Creative Industry

Various studies (referenced as part of literature review for this assignment) have examined challenges that are embedded and affect efficient operations of businesses in various sub-sectors of the creative industry and general challenges that affect the entire investment climate and business operating environment. These reports have shown the inadequacy of the policy environment in delivering a robust and growing creative industry capable of employing thousands of women and youth. Instead, policy and regulatory positions have made the investment climate and business environment unfriendly for the industry players. Moreover, anecdotal evidence suggests that limited market for creative industry goods and services is due to lack government and public audience appreciation of local creative industry products.

Studies conducted in the past by Heva Fund and Hivos (2014), the BC (2013), Jahazi Publications (2015), Nzuki. W (2011) and Ndua. C (2011), on a range of the creative industry development dynamics also focused on analysing challenges the industry faces in implementing policies in the creative industry in Kenya. The studies made use of the policy analysis framework which focused on the interrelation and influence of the context, content, process and the actors in the policy development and implementation as precursor of policy success or failure. The studies also considered the creative industry market dynamics with a view to identify growth challenges and make recommend lasting solutions for the industry.

Based on the literature review, challenges faced in the business environment of the creative industry can be summarised as follows:

- **Lack of capital:** The industry suffers from a lack of funds to enable proper investments in the sector. Access to start-up funds is difficult due to low income level and lack of network especially among women and youth in the industry. The available commercial bank loans are more often out of reach due to high interest rates and industry is also seen as a high risk segment to be accorded with commercial loans;
- **Lack of entrepreneurial skills:** Various studies indicate that there is a massive dearth of business or entrepreneurial skills in the creative industry. Micro, small and medium sized enterprises (MSMEs) and small and medium sized enterprises (SMEs) constitute the majority of businesses in the creative industry and as such, are characterised by limited or lack of skills to sustain business survival. The studies recommend that skills development

programmes and vocational training courses are needed as a matter of urgency to help the industry's businesses grow. The creative industries should be linked with institutions of higher learning with the view to broaden the understanding of how to run small businesses as well as general knowledge;

- **Lack of industry cohesiveness and weak associations for collective bargaining:** The creative industry in Kenya lack cohesiveness, leadership and engagement platforms to champion policy advocacy. Literature reveals that as much as the two sectors would like to engage, there are no proper PPD platforms for policy advocacy, or for the public sector to interact with the private sector;
- **Lack of infrastructure and institutions:** This includes inadequate institutional support and lack of exhibition spaces, culture and arts centres among other infrastructures;
- **Insufficient understanding of Intellectual Property Rights (IPRs):** There is a lack of knowledge and understanding of the copyright laws within the industry and how the creative industry entrepreneurs can use them to protect their creative work from rampant piracy. Sihanya. B et al's *Study on Intellectual Property in Kenya* (2009) revealed that new developments especially in the Information and Communications Technology (ICT) sector have made the fight against piracy even more difficult. They further state that new ICT based systems for enforcement need to be adopted by the Kenya Copyright Board (KECOBO) to eliminate piracy menace and also recommend participatory policy reviews to follow likewise;

  Endogenous growth theories propose that growth originates from within a system and focuses on education, training and development of new technologies as major factors that determine the growth of an economy. New endogenous theories suggest that a country's long-term growth rate could be influenced by government policies, among others, the protection of intellectual property (IP) (Idris, 2002*).* On the same note, Thompson and Rushing (1999) affirmed that IP regime is important in influencing the behaviour of the entrepreneur in encouraging innovation, applying the innovation, introducing it to the economy and marketing the product in an innovative way (Thompson and Rushing, 1999). Patents are necessary to enable innovators to recoup their sunk costs of research and development. This is because these firms incur huge and hard to recoup sunk costs (Tabarrok, 2002). Patents act as an incentive to innovate by delaying the arrival of imitators, thus giving the innovators' firms' time to recoup their sunk costs through monopoly pricing (*Maskin, 1991 and Henderson, 2002 in Tabarrok, 2002*);
- **Limited market access:** From the literature review, it is evident that markets and access of markets have been major challenges for the entrepreneurs in the creative industry. Similarly, local markets are not well developed due lack of consumer appreciation.

The studies conclude that the challenges facing the creative industry can be ameliorated through a number of interventions namely:

- Build strong creative industry engagement platforms for PPD. Studies recommend strengthening of associations, bringing various industry sub-sector stakeholders together through institutional capacity building initiatives;
- Initiate massive entrepreneurship and enterprise development programmes for the creative industry. The studies suggest provision of practical business skills education to women and youth in all areas relevant for the industry. Without proper training in business skills, initiatives will start and fold within a few months. Investing in education and skills enhancement is crucial;
- The government should initiate an all-inclusive policy reform process with the creative industry's private sector. The studies recommend that a participatory process will help deliver a conducive investment climate and business operating environment for the creative industry;
- The government and the private sector should come up with innovative ways of funding the creative industry's economic activities in order to spur growth and development;
- Initiate the creative industry competitiveness agenda by introducing productivity enhancement programmes through the use of ICT. The boom of digital technology and fast internet speeds can open up the industry to the region and abroad. For example, within the film industry, affordable consumer software have now made editing and distributing movies online through YouTube (or other sites) relatively cheap. By making technology available to youth, the creative sector can flourish; developing Kenya as a brand to sell internationally. The studies further suggest other measures like entrenchment of the indigenous Kenyan identity throughout the creative industry, which can help sell products/ideas throughout the industry, the Kenyan voice will instil their creative industries with a unique identity, distinguishing them from the rest of the world.

2.1.2 Literature Review on the Music Industry's Business Environment

The following common challenges affecting the music industry's business environment have been identified by both The Kenya Association of Music Producers (KAMP) in a report published by KECOBO, and a study commissioned by BC in 2014:

- Limited entrepreneurial abilities in almost all stakeholders in the music industry;
- Lack of cohesiveness in the industry including in existing associations such that the industry cannot effectively engage with the government;
- Need for financing or a fund to spur growth and development in the entire creative industry;
- Heavy import duty levied on studio equipment such as microphones, mixers, instruments and lack of quality control mechanism resulting in compromised quality of productions;
- A definitive lack of qualified, dedicated music business agents to engage in marketing, promotion and overall development of music productions and the industry as a whole;

- An apparent lack of direct policies that ensure effective implementation of mechanisms to protect, promote and empower music production institutions; and
- The problem of piracy on the music industry.

2.1.3 Literature Review on the Fashion and Design Industry's Business Environment

The following challenges facing the fashion and design industry were identified in various reports a)The Kenyan Textile and Fashion Design Industry (KTFD) report on the role of fashion designers and small tailors in the fibre to fashion value chain (2015), b)The African Cotton & Textile Industries Federation (ACTIF) policy research study on the Kenyan Textile Industry (2013), and c)The Ministry of Industrialisation and Enterprise Development publication on the Kenya Apparel & Textile Industry (2015):

- Lack of policy coherence and institutional alignment;
- Low level of value addition and a disconnect between the apparel sector and the rest of the value chain in the industry. Poor coordination among the various players in the value chain-textile wholesalers, retailers, and fashion designers, etc.;
- Low entrepreneurial skills in the industry;
- Supply side constraints with regards to quality and price of fabrics, with a focus on afro-centric cloth and garments;
- Lack of funding from both the government and the industry. Access to credit and finance is difficult more so for MSMEs that characterise this industry;
- Weak business environment characterised by harsh regulations and heavy licensing fees, and no infrastructural facilities or space for SME operators in the industry;
- High cost of production and built-in systemic inefficiencies like the use of old and outdated machinery. The quality of yarn and fabrics produced in Kenya is poor for the world market;
- Lack of market readiness and unfair competition from good quality second hand imported garments. Kenya is a sophisticated market for fashion wear (very westernised) with limited ethnic and traditional wear, however Kenyan designers are not integrated in the domestic textile and clothing value-chain. Also they have great difficulty entering the formal retail trade;

2.1.4 Business Environment Challenges for the Film Industry

The following common challenges facing the film industry in Kenya have been identified by reports including a) J.R Edwards (2008) on-*Building a Self-Sustaining Film Industry in Kenya*, and b) KECOBO Copyright News*, Issue. 13 on the Kenya Film Industry*:

- Limited financing, mainly lack of commercial loans for film producers;
- Shortage of technical skills in the film industry e.g. on editing, graphics making, and sound recording;

- Infiltration of low cost and pirated DVDs and unlicensed video halls;
- Illegal downloads of film;
- Insecure and poor public transport, and traffic affecting cinema attendance;
- The poor regulatory framework in East Africa mean that people can still watch films illegally on the internet. A case in point, after the Kenya Film Classification Board (KFCB) banned *The Wolf of Wall Street*, approximately 2 – 3 million DVDs were purchased.

2.1.5 Business Environment Challenges for the Arts and Crafts Industry

The Ubunifu (2016) report that focused on six main categories of the creative industry, namely literary arts, performing arts, visual arts and crafts, media arts and cultural heritage and design, highlighted the business environment challenges as follows:

- Limited or lack of infrastructure to support sub-sectors;
- Lack of funding;
- Low entrepreneurial and business skills;
- No existing engagement platforms between the government agencies and the creative industry private sector. The situation is worsened by little or inconsistent engagement between industry players and weak associations across the creative industry.

2.1.6 Conclusion

From the literature, it is recognised that research on the creative industry in Kenya have been limited to date. Literature available demonstrate that growth in the creative economy has been impeded by an assortment of challenges similar to those across the sub-sectors identified above, as a result of policy lapses, enforcement and absence in certain areas. The review also shows that weak private sector has been detrimental to the industry's growth and development.

It is observed that the process of policy formulation and development in the creative industry in Kenya takes place at the top bureaucratic level and thereafter policies are cascaded to the bottom for implementation. The policy formulation and development process excludes major actors who are important at the implementation stage. The entire process lacks consultation and public participation for example, the *National Policy on Culture and Heritage* (2009) lacked stakeholder participation. This lead to low levels of participation during the policy development process and ownership of the policy by stakeholders. This situation is replicated in other scenarios, which has contributed to apathy towards policy implementations. The review also takes cognizance of the weak market structures and the dearth of entrepreneurial abilities, which indeed has impeded growth of business in the creative industry. We also take note of the fact that the funding of business activities within the industry have proved difficult, as the only existing source is commercial with high interest rates.

2.2 Findings from Stakeholder Interviews

A qualitative research was conducted in during August to September 2016 as part of this study. In-depth interviews with key informants from the creative industry were held in order to validate results from the literature review on the business environment challenges in the industry and to explore the sub-sector challenges based on the new perspective of informants. During the exercise, a total of 12 respondents were drawn from the four creative industry sub-sectors using the purposive sampling technique.[7]

2.2.1 Brief Descriptive Analysis of Interview Outcomes

1) Arts and craft industry

From the interviews, about 30% of respondents cite piracy as a major problem in the arts and crafts industry compared to 35% who stated that lack of entrepreneurial skills among industry members was the major challenge. 25% agreed that regulatory instruments were big challenges to the sector, highlighting weak copyright laws, enforceability problem and a weak KECOBO. The remaining 10% mentioned other challenges as- lack of funds and absence of well-developed markets. On recommendations, 25% respondents put the development of art and craft infrastructures (arts and craft galleries, cultural centres, heritage houses etc.) as an immediate area that requires intervention in order to spur activity. 30% expect the government to spur activity through establishing a fund for the industry, while 30% responded that there is need to upscale entrepreneurial culture and upgrade skills in the industry. The remaining 15% recommended that regulatory frameworks that characterised the policy environment should be improved.

2) Music Industry

In the music industry, 20% identified policy and regulatory matters as detrimental to sub-sectors' growth. They highlighted the weak enforcement of copyright laws and the lack of IP awareness in the industry. 30% stated that low entrepreneurial skills remained a challenge while 20% decried the lack of funding. 20% strongly noted that the music industry lacks cohesiveness and platforms for engaging themselves and the government. The remaining 10% were distributed to challenges like limited infrastructures for music development and low music industry funding. Funding seemingly featured less of a challenge to music industry. According to respondents, if the 60% local content rule (60% local content rule refers to the rule requiring local media stations to play 60% local music) can be implemented to the latter, the industry players will make more income and therefore invest more in technology for music development. The funding problem in the industry is mentioned in the National Music Policy (NMP) in 2012. It is envisaged by the industry that funding will help the sub-sector grow once disbursed.

On recommendations, 30% of the respondents desired that there should be a policy and regulatory review with a focus on strengthening KECOBO, conducting comprehensive

[7] List of stakeholders consulted in Appendix 2

campaign and awareness, dealing with rampant piracy and enforcing the 60% local content rule for the music industry. Similarly, 35% recommended that the government should work with development partners to put in place a robust enterprise development and entrepreneurship programme for the industry as this would improve levels of managerial skills in the sub-sector. 25% wanted the problem of music industry cohesiveness and lack of engagement platforms addressed in order to engage with the government.

3) The Film Industry

The film industry is the most advanced of all the sub-sectors in the Kenyan creative industry by local standards, in that the sector has firms that are more organised and are able to attract finance from commercial banks. The firms are also able to market both locally and abroad to a certain extent amid other challenges. However, growth has been impeded by a number of challenges. During the in-depth interviews, 30% of the respondents identified taxation as a key challenge and an impediment to growth. One respondent stated, "*The taxation in the sub-sector lacks clarity and transparency on duty exemptions. Also, the zero-rating exemption scheme by the government is clouded with secrecy and there is selective application of the same on film equipment.*" 25% of the respondents considered the regulatory regime as complex and encouraging corruption. The respondents highlighted cost of compliance, confusion with the laws and implementing agencies, and lastly weak copyright laws, as challenges. They also mentioned the flooding of the local market with foreign content as a major challenge. Further, 25% stated that the film industry lacks film development infrastructures, sites and much-needed funds to support investment in film. 10% identified the problem of cohesiveness and lack of stronger association, while the remaining 10% considered limited business skills and training, no appropriate film schools as key challenges for the film industry.

30% of the respondents highlighted the need to review the taxation regime for the film industry so that clarity, simplification and transparency can prevail. Also under regulations, the respondents want KECOBO to be strengthened so that enforcement can be effective to the extent that piracy is reduced and controls of foreign contents coming into the country are in place. Another 25% recommended that the film industry needs to have stronger associations and engagement platforms where industry issues can be articulated and approach to the government is coherent. They believe that the lack of such structures has affected coordination and led to cartels emerging in the sub-sector instead. 15% stated that the government should set up a film training school to bolster the industry's human resource. 25% of the respondents recommended that the central government in partnership with the private sector, county governments and development partners to work together to support the industry in developing film industry infrastructures, which include filming sites, among others. Lastly 5% stated that the music industry needs specialised funding i.e., film fund to support start-ups and other firms that have no access to commercial credit.

4) Fashion and Design In-depth Analysis Report

The fashion and design industry is one of the up-coming sub-sectors in the creative industry. During in-depth interviews, approximately 40% of the industry identified a weak policy framework as the main problem for the sub-sector. The policy related constraints identified by respondents were: high energy cost per unit, high labour cost and the associated taxes especially the newly imputed (45%) total imported duty plus the 2.25% import declaration fee (IDF). 20% stated that market problems were serious challenges to the industry's growth. Some of the market related challenges include: uncompetitive practices emerging from the export processing zone (EPZ) who are allowed to sell in the local market, import of second hand clothes, lack of market infrastructures such as selling space, malls and supermarkets. 20% identified limited or lack of entrepreneurial skills as a challenge in the sub-sector while the remaining 20% noted that funding has been a major challenge.

In response to recommendations on the identified challenges, 30% of the respondents want the government to work with the private sector to develop the fashion and design industry value chain in order for the sub-sector to thrive. Among the suggestions under this are: build strong business links within the chain, value chain financing and governance. Similarly, another 30% recommended putting in place some market support systems and infrastructures like low rental work stations for both producing and selling. 25% recommended that the government facilitate enterprise development coupled with business management skills training and business financing. Finally, the remaining 15% recommended for policy reforms in the textile and apparel industry in Kenya.

2.3 Conclusion

From the in-depth interviews and literature review, it is found that the creative industry sub-sector players have a good understanding of the challenges that affect the investment climate and business operating environment, and what interventions whether be it policy or otherwise, are required in order to spur growth and development. These challenges can be summarised broadly into the following categories:

- Policy and regulatory constraints;
- Weak private sector associations and absence of engagement platforms;
- Limited enterprise development and entrepreneurship;
- Market access and infrastructures constraints; and
- Funding constraints.

Recommendations to the above challenges have been prescribed and further articulated in section 3 of this report. Further, recommendations from the literature review, in-depth interviews with key informants and the others emanating from the PPD workshop are aggregated to form final recommendations in this report from which a roadmap is drawn.

3. Business Environment Challenges Affecting the Creative Economy

3.1 Introduction to the Creative Economy Business Environment

The creative economy private sector operates in a complex business environment defined by both the standard regulations concerning businesses, as well as issues related to intellectual property rights and taxation. The policies and legislation governing these fields, in other words, the regulatory framework, should facilitate artistic creation, cultural diversity, and business activities in the creative economy. To guarantee better institutional, policy and regulatory frameworks, stakeholders must understand the existing frameworks, their respective roles in the creative economy, and their impact on the business environment in which they operate.

3.1.1 Institutional Systems and Arrangements

This section describes the institutional arrangements in the public sector that mandate to govern the creative economy's operating space. Their operations affect the creative economy either positively or negatively. In Kenya, the MoSCA was established and given the mandate to manage and coordinate sports, cultural and arts initiatives and activities. The ministry is tasked with the development of sports and the arts as industries for wealth and employment creation, and as tools for national cohesion of the Kenyan society.

The State Department of Culture and the Arts (SDCA) within MoSCA is headed by the Principal Secretary. The SDCA set the creative economy's policy agenda. Its role is to promote national cohesion through cultural interactions and preservation as presented through the arts among other components of expressions. The SDCA functions are:

- Development of fine, creative and performing arts;
- Development of the film industry;
- Film development policy and promotion of local content, historical sites management;
- Management of national museums and monuments;
- National archives/public records management;
- National culture promotion and policy; and
- National heritage policy and management; and promotion of library services and conservation of music.

The SDCA is supported by other institutions, formed by various acts of parliament and legislations to help the ministry achieve its policy objectives. These institutions are: KFCB, Kenya Film Commission (KFC), NMK, Kenya National Library Services (KNLS), Permanent Presidential Music Commission (PMC), and KCC. These institutions fulfil specific mandates as prescribed in the various acts forming them and interact with the creative economy's private sector on a day-to-day basis.

3.1.2 Policy and Regulatory Frameworks

The creative economy's policy environment is characterised by one main policy known as *The Culture and National Heritage Policy of 2009*. This policy came into being after decades without an appropriate policy governing the sector. With the growing creative economy dynamics and demand for policy, the government came up with the policy to guide developments in the sector and deal with challenges posed by modernisation, free trade, democracy, good governance and the need to respect human rights, as well as balancing the diversity of cultural expression with economic and sustainable development.

The NMP was formulated and promulgated in June 2012. The need for a national policy on music and the arts was informed by the recognition that music creates a rich and varied world, which increases the range of human choices and nurtures human capacities and values, thus the mainspring for sustainable growth and development for communities and the nation.

In terms of the regulatory frameworks, the central law that governs and regulates the creative economy is the *Copyright Act, No. 12*, 2001. It allows companies to invest in talent knowing they can make a financial return. The law allows musicians, writers, designers, crafters, film directors, and songwriters to make a living with their talents. It forms the basis of financial flows that support investment in the whole of the wider creative economy, from studios, performance spaces, fashion collection, film, to the digital music services that develop new technology to deliver content and products to consumers. The administration and proper management of the copyright law is key to the creative economy's growth and development.

In addition to that, a recent addition is the *Traditional Knowledge and Traditional Cultural Expression Bill*, 2013, that aims to provide a framework for the protection and promotion of traditional knowledge and cultural expressions. Under this bill and the performance of the functions and exercise of powers under this bill, every person dealing with matters relating to traditional knowledge or cultural expressions shall be guided by the national values and principles of governance set out in article 10 of the constitution. This makes two broad distinctions: 1) Traditional Knowledge and 2) Traditional Culture Expressions (folklore).

3.2 The Institutional, Policy and Regulatory Challenges

When institutions, policy and regulations are required to spur growth and development, their organisation need to be well thought out and must be flexible and highly participatory in order to respond to all situations they seek to manage. To this extent, it is noted that the following challenges affect the environment.

3.2.1 Institutional Framework Challenges to the Creative Economy's Business Environment.

- **Unpredictable institutional stability:** From government publications and reports analysed, it is noted that the ministry under which the creative economy falls has changed several times, often resulting in different titles and responsibilities. Consequently, some of the creative economy industries that ought to have been administrated under the

MoSCA are administrated under different ministries, which do not understand the creative economy's dynamics. This causes confusion even for simple institutional impact analysis on the industry;

- **Lack of institutional clarity:** A number of public sector units within the creative economy tend to perform overlapping functions. This can increase the cost of doing business to the industry. A case in point is the conflicting licensing functions of KFC and the KFCB. The institutions are structurally weak and therefore not effective in executing their mandate.

3.2.2 Policy and Regulatory Frameworks' Challenges to the Business Environment

- *The Culture and National Heritage Policy 2009* has not been updated to reflect the new constitution promulgated in 2010. The policy consistently refers to the old order of public administration. The policy is completely outdated against the current growth and development dynamics of the creative economy;
- The policy lacks public participation as required by the constitution and as a result, the *Culture and National Heritage Policy* lacks ownership from stakeholders, thus making it difficult to implement;
- The NMP is simply a replica of the *Culture and National Heritage Policy*. On the same breath, the music policy lacks sub-sector stakeholder participation, and hence has limited ownership;
- The NMP proposes the establishment of a National Music Board, however the functions of the board as articulated in policy is in conflict with part of Permanent Presidential Music Commission (PPMC). PPMC is not in support of the policy in its present form, thus presents more confusion to the creative economy private sector;
- **Instability of the laws in the creative industry:** While the *Traditional Knowledge and Traditional Cultural Expressions (TK&TCE) Act 2013* remains in force, the MoSCA was pushing for a new bill called the *National Culture and the Arts Bill 2014*. According to the ministry, the *TK&TCE Act 2013* is weak on institutional frameworks that are essential for the industry's support systems and growth. The creative economy's private sector believe that the institutions can be formed independently of a new bill, and that any weaknesses of the *TK&TCE Act 2013* can be addressed through amendments to the act. There are considerable overlaps in the contents of the proposed *National Culture Bill 2014*.[8] and the *TK&TCE Act 2013*. The bill assumes several protection functions, which are the preserve of KECOBO, generating another major source of conflict and confusion.

[8] Note that the National Culture Bill 2014 was called back from Parliament early this year for review by stakeholders and also discuss the TK &TCE Act 2013 with a view to making amendments

4. Analysis of the Sub-sectors of the Creative Economy

4.1 Introduction

This section reflects the in-depth interviews with key informants of the creative economy. It draws on existing literature on the creative economy. The section also includes information generated from the county's creative economy stakeholders' forums and the sub-sector breakout session during the PPD Workshop. The main creative economy industries presented in this section are the arts and crafts industry, the music industry, the film industry and the fashion and design industry. This section discusses the current business environment of each sub-sector and presents the challenges and recommendations as stated by the members. The recommendations herein were aggregated and discussed in the PPD Workshop from which three-point recommendations were arrived at.

4.2 The Arts and Crafts Industry

The arts and craft industry has been described as the sleeping giant of the creative economy. The industry employs many women and youth, and has the potential to employ more. The main components of the industry include wood and stone curving industries, visual and graphic art industries, performing art, and the emerging creative art industries such as storytelling, poetry and paintings. The main source of income for artists is the sale of their work. Many are skilled in the art of 'selling' and many work for commission, with some undertaking large-scale, sculptural pieces or murals for the public realm. The expansion of shopping malls is providing lucrative opportunities in this field. However, with reliance on an art audience market that is mainly uneducated in viewing and understanding contemporary visual arts, there is reluctance in this market segment to deviate from what is known and sellable. This reduces economic risk but perhaps miss opportunities for higher value added production, which could attract more national and international attention.

Nonetheless, evidence shows that there is growing interest in work that combines and crosses over between art forms and different media. New trends are being set by organisations such as The Nest Arts Company Ltd dissolving the boundaries between different media, bringing music into the contemporary visual arts, raising the standards of debate and promoting critical thinking. The increasing attention being paid to contemporary African writing and the development of platforms such as the journal *Kwani* are also cited as important for visual arts.

4.2.1 Business Environment for Arts and Craft Industry

Apart from the MoSCA, there is no agency that specifically mandates to administrate and manage the arts and crafts industry. The lack of policy for the industry is evident from the inaction or lack of activity in the government to support the infrastructural requirements of the industry. In terms of the regulatory frameworks for the industry, the operations relating to arts and crafts are governed under IP laws administrated through the *Copyright Act No 12*, 2001. The arts and crafts industry is characterised by numerous unregistered MSMEs and start-ups that work informally and as a subsistence economy. The market structures are not well organised. Formal market structures are few and beyond the reach of most of these MSMEs and start-ups. Finally, according to the 2016 report on *The Status of the Creative Economy in East Africa*, the creative art and crafts business environment is characterised by low entrepreneurial skills, low productivity, and low survival rate of the start-ups.

4.2.2 Business Environment Challenges

- **Lack of policy dedicated to the arts and crafts industry:** The lack of policy means that the government does not consider arts and crafts as an industry that can play a meaningful role in national economic development. This in their part means no strategic direction for the nation as an arts and crafts destination;
- **IP framework:** There is an IP framework in the legal realms and within the reach of arts and visual arts entrepreneurs. However, lack of awareness, knowledge and limited application of the IP framework provision has restricted the sub-sector's expansion and by extension, formalisation of the many players in the sector. The registration process for IP protection and other requirements in order to get legal protection is cumbersome and lengthy. It takes 3 years for an application for substantive examination of artistic work that borders industrial work. After the examination, it takes 18 months for the work to be registered by the Kenya Industrial Property Institute (KIPI). For copyright protection, from the time of application, it takes a minimum of 7 days for an artistic work to be registered by KECOBO;
- **Copyright laws, reprimand systems and enforcement:** According to the stakeholders, enforcement of the copyright laws by KECOBO is weak;
- **Rampant piracy:** the challenge for artisans and visual artists in Kenya is piracy and theft of creative arts and visual arts. The artisans and visual artists need an effective method to deal with consistent theft of their creative work and ideas;
- **Identity and recognition of content:** there is no well-known or existing local content policy in Kenya that can support market development in the arts and visual arts sub-sector;
- **Limited entrepreneurial skills**: According to key stakeholders in the arts and crafts industry, majority of artisans lack technical business skills that can sustain their businesses;
- **Market structural challenges:** Despite the availability of digital technology in Kenya, the arts and visual arts industry has not embraced it. Application of ICT and allied services are not widely evident in the sub-sector. There is need to develop more audience for the arts and visual arts consumer market to work. In terms of local audience, the market is almost non-existent, thus requires a massive awareness campaign.

4.2.3 Recommendations for Improving the Business Environment

During the In-depth interviews with key informants and the sub-sector break out session of the PPD Workshop the following recommendations were made in attempt to form a better business-operating environment.

- **Develop an online portal for information:** The arts and crafts industry recommends for the development of an online portal that documents everything going on in the arts and crafts industry, where event organisers and artists can upload their information from around the country;
- **Conduct an awareness campaign on IP registration:** The arts and crafts industry recommends for an awareness campaign on the registration of artwork of any form with IP authority and KECOBO;
- **Introduce art in schools:** During the PPD Workshop the Performing Arts Group (this was a sub-group within the art sub-sector during the PPD) recommended to the government to introduce art in schools' curriculum in order to build skills, interest and culture as early as possible;
- **Set up an endowment fund:** The industry recommends that the government set up an endowment fund, artist development centres or at least one known centre. The government should also develop training programmes on business skills to increase the industry's productivity;
- **Support drafting of laws to regulate payments between broadcasting houses and the industry associations:** The industry recommends the government to support the drafting of some regulations or policy directing broadcasting houses to pay royalties to the Performers Rights Society of Kenya (PRiSK) to pay actors;
- **Restore or reclaim social halls for development of talent:** The industry requested the government to continue the process of reclaiming all the public social halls so that the artists can have space to develop talent;
- **The government should institute a university that can offer a degree on culinary art:** During the PPD Workshop, the Kenya Chefs Association (KCA), which is part of the arts and crafts industry, recommended the government to set up a university that can offer a Bachelor of Arts degree in Culinary Arts. They stated that there is no university offering a degree in culinary arts currently. They explained that the institutions offering studies in culinary arts, offer diploma courses only and that includes Utalli College which is an UN-WTO recognised institution. The association further requested that during implementation of the recommendation, the KCA should be involved in the development of the culinary arts curriculum to ensure quality in practice and standards;
- **Establish arts and crafts galleries:** According to the stakeholders, there are no publicly owned arts and crafts galleries. The existing galleries are privately owned and are

expensive for local artists to display their work. The arts and crafts industry recommends the government to establish public galleries at strategic counties and a national art and crafts gallery in Nairobi where artists can display and market their work;

- **Limited entrepreneurial skills:** According to key stakeholders in the arts and crafts industry, majority of artisans lack technical business skills that can sustain their businesses;
- **Challenges in developing the market:** It is observed that despite the availability of digital technology in Kenya, the arts and visual arts industry has not embraced it. Application of ICT and allied services is not hugely evident in the sub-sector. There is need to develop more audience for arts and visual arts consumer market to work. In terms of local audience, the market is very small, thus requiring a massive awareness campaign to enable it to grow.

4.3 The Music Industry in Kenya

The music industry in Kenya is diverse and vibrant, and ranges from traditional to contemporary music and is comprised of music creators, music arrangers and performers of the work of music arts. Further, the industry includes sound, audio-visual recordings and record companies, managers comprising of music trainers, publishers, promoters and distributors.

4.3.1 The Business Environment for the Music Industry in Kenya

The music industry's business operating environment is characterised by a complex institutional, policy and regulatory systems that support but at the same time constrain growth and development in the music industry. Further, the market environment in which the industry operates is similarly complex, characterised by new technologies that are in use to produce, store and market music amid rising piracy. In terms of institutional, policy and regulatory frameworks, the music industry is confronted with a dysfunctional *Culture and National Heritage Policy of 2009*. In 2012, the government introduced the NMP whose implementation is yet to take effect. Other institutions that support the music industry include the PPMC. In terms of regulatory frameworks, the music industry is regulated through the copyright laws of Kenya.

Section (2) of the *Kenya Copyright Act 82* defines musical work as "any musical work, irrespective of musical quality, and includes works composed for musical accompaniment." Copyright in musical works relates to the lyrics or musical composition and sound recording. Lyrics are protected just as literary works. Act 2(1) of the *Berne Convention for the Protection of Literary and Artistic Works 1886* provides copyright for protection of musical composition with or without words. This encompasses music in the widest sense. Related, a sound recording is defined in section (2) of the *Kenya Copyright Act*, as: *"any exclusively aural fixation of the sounds of a performance or of other sounds, or of a representation of sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds* *are embodied but does not include a fixation of sounds and images, such as the sound track of an audio-visual work."*

The market is characterised by emerging digitalisation of almost every activity from production to distribution of musical works. For example in distribution, e-commerce technology tends to play a great role in distribution services. However, it has by and large, affected both the economic and moral rights of the copyright owners. The ease of which music can be produced, published, transmitted and copied over the internet has created massive challenges in copyright protection and promotion. The industry has established licensed Collective Management Organisations (CMOs). In the framework of CMOs, copyright owners authorise CMOs to monitor the use of their works, negotiate with prospective users, give licenses against appropriate conditions, collect remuneration (royalties) and distribute them among the copyright owners. In the music industry, one such CMO is the Music Copyright Society of Kenya (MCSK). The MCSK is the largest registered collecting society with 680 members. It has a repertoire of over 20,000 musical works. However, non-members are permitted to form other collecting societies as they deem fit.

4.3.2 Business Environment Challenges

During the interviews and the PPD Workshop, music industry stakeholders identified the following challenges affecting their day-to-day business activity:

- **Weak enforcement of copyright laws:** according to the industry, enforcement of copyright laws is very poor. Despite the introduction of stricter penalties and civil remedies for infringement in the *Copyright Act*, 2001, the industry still faces various obstacles in the enforcement of copyright. These obstacles include, but are not limited to, weak structures and limited funding of KECOBO; lack of copyright knowledge by the music industry practitioners, which leads to abuse and corruption among the copyright law enforcers. Some of the major copyright challenges being experienced in the music industry include:
  - Electronic copying and transmission of music using unauthorised transferring digital music into CDs and DVDs.
  - Illegitimate uploading of music on websites without consent of the copyright owner. Here, the infringer may copy from a traditional source like CD, DVD; or transfer from another internet site.
- **Ineffective government response to date:** For a long time, copyright has been considered by the government and especially prosecutorial agencies as a personal and private affair to be pursued by the copyright owners. The main agency charged with the prosecution of copyright infringement, the police, regard copyright infringement less serious than other crimes such as murder, theft, etc.;
- **Internet technology challenges:** Because of the borderless nature of the internet, serious challenges with regards to copyright protection and enforcement have been

experienced. This has affected the music industry's sale of its music products as most music is loaded and downloaded through the internet for free;

- **Ignorance of copyright laws and infringement:** It is worth noting that there is a general lack of awareness regarding copyright and the meaning of infringement. Indeed, many law enforcement officials say that it makes no sense for a copyright owner to complain when their musical works have been pirated while still in the shop and stores, sometimes the enforcers themselves may be in practice of this act unknowingly so;
- **Infringement, piracy challenges and loss of revenue:** Due to massive piracy in the industry orchestrated by the weak enforcement of copyright laws, copyright owners do not benefit economically from their works;
- **Lack of entrepreneurial skills:** The majority of the music industry practitioners lack basic business skills that enable them run their music businesses successfully and professionally.

4.3.3 Recommendations on Improving the Business Environment for the Music Industry

The music industry stakeholders made the following recommendations for action in order to improve the business environment:

- **Review the NMP:** The NMP 2012 should be reviewed in order for the policy to conform to the other policies within the creative industry to avoid conflict and confusion. Further, they recommended that members of the music industry should participate in the review process;
- **Strengthen KECOBO:** The music industry requested the government to strengthen KECOBO by increasing its budgetary allocation in order for the institution to perform its functions effectively. They further recommended that the enforcement section of KECOBO be strengthened by employing dedicated law enforcement officers who are fully accountable to KECOBO. The industry believes that a strong KECOBO is key to the success of the industry;
- **The *National Music Bill 2016*:** During the PPD Workshop, the music industry stakeholders recommended that the *National Music Bill 2016* prepared by the PPMC be reviewed again by all stakeholders in the industry. The industry reiterated that getting stakeholders buy-in and commitment to the bill is essential for the delivery of what the bill intends to achieve for the music industry. The industry then recommended that upon completion of the review of the bill, the contents and proposals therein namely the establishment of the NMC, The Music Fund and the Music Tribunal be implemented to the latter;
- **Enforce the 60% Local Music Content Rule:** According to the industry, the 60% local music content rule for the local media houses to play local music in their stations has not

been enforced as expected. The industry requested the government to negotiate with the media houses over the rule and implement the agreements forthwith;

- **Introduce modern dance category in schools:** The industry recommended that modern dance should be introduced in schools and popularise dance as a career and as a potential source of livelihood, in order to build the music industry;
- **Creative Economy Apex Body:** The music industry supported and recommended for the formation of an apex body for the entire creative industry and recommended further for the strengthening of smaller and upcoming associations such as Kenya Gospel and Secular Artists Federation (KEGSAF), Music Alliance of Kenya among others for better dialogue;
- Introduce mandatory business skills training before allowing access to music licences and business funds.

4.4 The Film Industry in Kenya

The film industry is an important vehicle for social, cultural, political and economic development. A well-nurtured film industry can be a major source of employment and an effective tool and platform for people to express their culture. The GoK will therefore see films not only as a tool for information and entertainment, but also as a powerful communication instrument for national integration, for social and economic development, and for the exploitation, preservation and further enrichment of cultural heritage. The film industry in Kenya is comprised of local film producers, foreign film and video producers, film and video producer support service providers, film funding companies and investment companies, film distributors and film and television commercials producers.

4.4.1 The Business Environment for the Film Industry in Kenya

The film industry's business environment in Kenya is characterised by a number of institutional, policy and regulatory systems that govern the industry. Similarly, there are market related issues that have affected the development of the industry. In terms of institutional, policy and regulatory frameworks, the *National Film Policy 2011* was developed by the former Ministry of Information and Communication. The mandate to implement the policy was given to the KFC. The film policy aims to provide a platform by which Kenya will develop a sense of identity and understanding, to communicate with each other and the rest of the world. The policy seeks to facilitate sustained development of the Kenya film industry to meet international standards.

In the regulatory space, the KFCB regulates the film industry. The KFCB is a state corporation mandated by *Films and Stage Plays Act Cap 222 of Laws of Kenya* to regulate the creation, broadcasting, possession, distribution and exhibition of films in the country with a view to promote national values and morality. The *Films and Stage Plays Act* empowers KFCB to regulate by classification, the films, television and radio programmes aired to the public in Kenya. KFCB also classifies all non-programme material such as commercials, infomercials, documentaries, programme promotions and listings, community service announcements and station identifications. KFCB also ensure that content which contain scenes or language intended for adult audience are not aired before the watershed period (time between 10pm to 12.00 midnight).

4.4.2 Business Environment Challenges

While engaging the film industry stakeholders through interviews, and reviewing and analysing secondary information, a number of business environment challenges affecting the industry emerged. These are:

- **Taxation regime:** The film industry stakeholders expressed difficulties with the taxation regime as applied to the industry. The industry discussed the lack of clarity and transparency on the duty exemption clause and its application on imported film equipment e.g., declaration of tax exemption on camera imports has not worked at all. They stated that the customs officers often dispute the kind of cameras which can come under the zero-rate exemption clause;
- **Regulatory regime and cost of compliance:** The industry expressed difficulties in filming due to the multi-licensing regime in Kenya. The law requires that in order to film all local filming/producers, private production companies and individuals must submit their applications through a local agent, which is expensive for up-coming film producers. Further, to obtain a license, the firm/individual/director must submit a copy of the script and story synopsis to the Film Licensing Officer with a non-refundable fee of Ksh. 30,000 (£ 223). Other licensing fees the industry faces are as follows:

Documentaries, dramas, short features or ads and stills	Ksh.5,000 (£37)
Full length feature films and reality TV shows	Ksh.15,000 (£112)
Daily filming fee	Ksh. 1,000 (£7.5)
Per actor	Ksh. 2,000 (£15)
Registration of agency	Ksh. 12,000(£89)
Annual agency fee	Ksh. 12,000 (£89)

- Further, the establishment of county governments has increased the cost of compliance. For example, in Nairobi County, a film producer will pay Ksh. 15,000 per day/per street. An equivalent amount is charged by other county governments and may rise depending on how much time the producer takes on designated sites. In Kajiado County the cost is Ksh. 150,000(£1,112) per day to film;
- **Weak enforcement of copyright laws:** The film industry has decried the inability of government agencies to enforce copyright laws. The industry loses a lot of revenue due to constant piracy in content and associated rights. The industry reasons that KFCB and KECOBO do not have sufficient resources to help police the scourge of piracy. Corruption is also mentioned as a vital ingredient of weak enforcement. Weak laws are similarly cited as a pertinent cause of weak enforcement;

- **Limited number of cinema theatres in the country:** The industry states that there have been limited investments in cinema theatres in the country. The industry explained that some of the existing theatres have been turned into venues for other purposes rather than for the screening of films. There is also is low demand for local movies due to poor marketing structures and promotion;
- **Flooding of local market with foreign content:** The industry observes that there is uncontrolled availability of foreign content in the market that out competes local content from the market;
- **Film industry associations are not cohesive:** During the PPD Workshop, the industry stated that the sector's existing associations are fragmented and do not engage with the government cohesively on any policy or regulatory issues affecting the industry.

4.4.3 Recommendations on Improving the Business Environment for the Music Industry.

During the PPD Workshop, the film industry stakeholders made the following recommendations in order to restore and improve the industry's performance:

- **Review of the *National Film Policy 2011*:** The film industry recommends a review of the *National Film Policy 2011* so that it is compatible with the current challenges affecting the film industry. The review process should also be participatory;
- **The government should strengthen KECOBO:** The film industry recommends strengthening KECOBO through increased funding in order to invest in new and advanced technology that can detect pirated materials at major entry points in the country. This will reduce incidence of piracy;
- **Establish an apex body for the entire industry:** The film industry recommends the establishment of an apex body that can help stakeholders engage with the government on all matters concerning policy and industry development and link with the other sub-sectors of the creative industry;
- **Develop film training schools:** The industry recommends establishing more private film training schools to compliment government efforts;
- **Set up a film fund:** During the PPD plenary discussions and contributions, the industry recommends the government to establish a film fund to complement the existing private sector's effort of funding film production and marketing the country. The industry mentioned HEVA Fund as a leading private sector finance company funding film production in Kenya;
- **Removal of import duty on production materials:** The industry acknowledged that the government had announced initiatives concerning the removal of import duty. However, this has not been implemented as the industry still pays full duty on imported filming equipment. The industry requests the Ministry to follow up on what has impeded the

implementation of the duty exemption policy announcement on imported film production equipment.

4.5 The Fashion and Design Industry in Kenya

The fashion and design industry in Kenya is anticipating strong growth in the next 10 years, as confirmed in the recent Hivos Study Report, 2015[9] on the Kenyan textile and fashion industry. Kenya's fashion and design sector has the potential to play a key role in the movement further into middle-income status and in serving as a source of gainful employment for its fast growing labour force, as stated in the Kenya's Industrial Transformation Programme 2015. In the national accounting systems, the fashion and design industry is categorised under textile and clothing (T&C). The T&C sector contributes a modest 0.6% to the GDP, but earns 7% of the total export earnings with potential to contribute much more.[10] The industry's value chain is composed of garment factories, design workshops operators both small and large, artisans, contractors, such as tailors, finishers, pattern cutters, intermediary argents, importers of apparel; outlet market providers, such as boutique operators and clothing line owners.

4.5.1 Business Environment for the Fashion and Design Industry

The fashion and design industry's business environment cannot be discussed independently of the T&C sector. According to the Kenya's Industrial Transformation Programme (ITP), the Ministry of Industrialisation and Enterprise Development (MI&ED) identified the T&C sector as one of the drivers of Kenya's Industrialisation. The sector currently comprises of 22 large foreign owned companies operating in the EPZs, 170 medium and large companies, 8 ginneries, 8 spinners, 15 weaving and knitting companies, 9 accessories manufacturers and over 75,000 micro and small companies, including fashion designers and tailoring units. It spans the Fiber to Fashion (F2F) value-chain (cotton cultivation, ginning, spinning, weaving, knitting, dyeing and finishing, garment and accessories manufacturing). The institutional, policy and regulatory frameworks facing the industry is administrated through MI&ED. Despite the industry being accommodated in industrialisation policies and a target of industrial transformation, the industry still face systemic challenges.

4.5.2 Business Environment Challenges

- **Uncompetitive policy regime in the industry:** In Kenya, most of the textile and apparel manufacturing and trade thrive under the institution of the Africa Growth and Opportunity Act (AGOA) and all the manufacturing work happens at the EPZs where there are almost no participating local entrepreneurs. The recent announcement by the Cabinet Secretary confirms that EPZ will now be allowed to offload 20% of their finished output in the local market, and will truly crowd out local entrepreneurs in fashion design and manufacturing as these firms in the EPZs operate under special tax incentives such as:

[9] https://hivos.org/sites/default/files/fashionomics_report
[10] Hivos

- 10 year corporate income tax holiday and a 25% tax rate for a further 10 years thereafter (except for EPZ commercial enterprises);
- 10 year withholding tax holiday on dividends and other remittances to non-resident parties (except for EPZ commercial license enterprises);
- Perpetual exemption from VAT and customs import duty on inputs – raw materials, machinery, office equipment, certain petroleum fuel for boilers and generators, building materials, and other supplies. VAT exemption also applies to local purchases of goods and services supplied by companies in the Kenyan customs territory or domestic market. Motor vehicles which do not remain within the zone, are not eligible for tax exemption;
- Perpetual exemption from payment of stamp duty on legal instruments;
- 100% investment deduction on new investment in EPZ buildings and machinery, applicable over 20 years.

- **High-energy costs per unit:** The industry similarly alludes to high frequency of power outages/ power cuts or interruptions that are unannounced. According to the Association of Fashion Designers (AFAD), and also the *Kenya Apparel & Textile Report* (2014), the industry, face a daily rate of US$ 16-18 cents per unit compared to its nearest competitors namely Ethiopia at US$ 2.5- 4 cents per unit or kWh and Vietnam whose energy cost is reported at US$ 8 cents per unit or kWh;
- **High labour costs per unit:** The sub-sector faces high labour costs which in turn escalates costs of production thus consequently making their final products uncompetitive in the local market compared to imported clothing. According to the Hivos report on Kenya's textile and fashion industry and the *ITC Report* (2014) the average labour cost in Kenya is US$ 110-150 per month compared to Ethiopia which is at US$ 50-80 per month, while Vietnam stands at US$ 180-200 per month;
- **Taxation regime:** According to stakeholders, the entrepreneurs pay 42% in import duty. This has made the running of these businesses uncompetitive. The stakeholders have expressed desire to engage with the Kenya Revenue Authority and the Ministry of Finance to discuss proposals on how to reduce the tax burden. Unfortunately, there is no appropriate platform for dialogue;
- Importation of second hand clothes *(*known in local dialect as *Mitumba).* The industry explained that large import of second hand clothing of good quality and competitive prices stands as a major challenge to the fashion and design industry. The industry further explains that most of these products are illegally imported in Kenya, and as such official import figures are unavailable. Nonetheless, the import of second hand clothing is an impediment to growth of the fashion and design industry as a whole. In spite of the above, second hand clothes are popular since they are cheap, durable, and benefit many business consumers who wear and trade in them;

- **Limited space to market and sell:** Most of the fashion designers are SMEs. They lack space to market and trade their apparel products. There are insufficient stand-alone-local designers' shops, which could help solve the issue. While new malls have emerged and could provide space, most of their spaces are expensive for the SMEs fashion and design practitioners to afford;
- **Limited market outlets:** The industry states that there are limited formal market outlets, namely Nakumatt, Uchumi, Nivas, Tuskys and Ukwala, large local supermarket chains and other regional level supermarkets operating in major cities of Kenya. Although such supermarkets cover large shopping space, most of them carry limited garment collections. If they do, these comprise of mostly imported garments. However, they have substantial product offering for home-textiles, which are manufactured locally.

4.5.3 Recommendations on Improving the Business Environment for the Fashion and Design Industry

- **Promote the fashion and design value chain:** The industry during the PPD Workshop recommended that the government should help integrate the industry and support the value chains within the fashion and design industry to grow;
- **Invest in fashion and design infrastructures:** The fashion and design industry recommended that under the SMEs development programme, the government should set up workshops and equipment to allow such SMEs the opportunity to design and improve their work. The industry sees this as an opportunity to trigger growth within the sector;
- **Set up strong association for fashion designers:** The industry recommended the setting up of associations that can collaborate with Kenya Association of Manufacturers (KAM), Kenya Private Sector Alliance (KEPSA) and Kenya National Chamber of Commerce, and other interest groups to advocate for better policies that will bring costs down;
- **Enhance the visibility of Kenyan designers and their design capabilities locally, regionally and abroad:** The industry recommended that this can be done through the establishment of national fashion and design exhibitions week nationally and by counties. The industry similarly recommended the government should initiate networks through Kenyan embassies abroad to run a Kenyan week of fashion and design exhibitions;
- The government should provide should provide affordable workstations and space within the Kenya Business Training Institute and Kenya Industrial Research and Development Institute for entrepreneurs in the industry, so that work can thrive with limited interference by the county council officials.

5. Workshop Recommendations to Government, Private Sector and Development Partners

This section presents the combined creative economy recommendations emerging from a PPD hosted by MoSCA and CEWG. The recommendations are consensus-based and are consistent with the individual sub-sector recommendations on what should be done to turn around the entire creative economy. The recommendations as presented revolve around the key pillars of private sector development namely: inculcating the culture of PPD, improving the investment climate and the business environment, enterprise development and entrepreneurship. The recommendations are made and allocated to the institutions that can best implement them either individually or in partnerships.

For purposes of drawing a roadmap for implementation in the next phase, all the creative industry sub-sector recommendations and PPD workshop nine-point recommendations have been collapsed into three key recommendations for the ease of planning the next phase of BERF. The recommendations are ordered based on their importance and priority in terms of implementation sequence.

Recommendation to the private sector and development partners

1) Establish the Creative Economy Apex Body for PPD within the next 6 months to institute an all-inclusive institutional, policy and regulatory reform in order to improve the investment climate and business operating environment for the creative industry.

   The PPD Workshop on creative economy unanimously recommended for the immediate establishment of an apex body by membership that will drive the creative economy's private sector development agenda. The apex body with support from BC will set up PPD platforms from which the creative economy's private sector would engage with the government on all matters of institutions, policies and regulations, and initiate reforms from such platforms. Key action points under these recommendations include:

- Working with the government and BC to implement institutional, policy and regulatory reforms with the objective of improving the investment climate and business operating environment for the creative economy;
- Working with the government to oversee the establishment of the National Council for Culture and the Arts as recommended on the *National Culture and the Arts Bill 2014*;
- Working with the government and like-minded development partners to oversee the establishment of the development fund for the entire creative economy;
- Coordinating and working with stakeholders to up-scale the industry's image, profile and increase recognition of the creative industry in the national economy;
- Coordinating the development processes with county and national government on the infrastructure requirements of the creative economy;

- Providing the PPD platforms with different kinds by sub-sector forums and establish engagement structures that allow the government to engage with the creative economy's private sector efficiently;
- Supporting the development and capacity building of the creative industry sub-sector associations as competent advocacy units for members.

Recommendation to the development partners, private sector and government

2) Develop systems for enterprise development and entrepreneurship for the creative economy

   The PPD workshop recommended that the MoSCA through the state department for culture and the arts, in partnership with BC and any other development partner, should immediately develop systems and frameworks for enterprise development within the creative economy, and initiate skills development programmes especially on business and financial management in order to build entrepreneurship abilities of the creative economy. Key activities under this recommendation are:

- Develop a curriculum for business skill training for the SMEs, MSMEs and start-ups;
- Develop SMEs, MSMEs and start-up business incubation centres and boot camps for the creative economy's private sector in at least the three major cities in Kenya;
- Initiate mobile mentorship programmes to support the up-coming entrepreneurs in the creative economy;
- Develop robust ICT platform in the creative industry: embark on immediate streamlining and setting up of ICT platforms to improve on the creative economy's operational efficiency, communication and improved productivity;
- Initiate market development programmes that bring industry members to market. Such will include: product development and branding, marketing and market access initiatives locally and abroad. Further, the workshop tasked the government to partner with the industry's apex body which is yet to be formed, on generating a market information systems portal for the entire creative economy;
- The government through MoSCA and the industry to develop physical creative economy promotional programmes to enable access to the local, regional and international markets.

Recommendation to the Government

3) Develop infrastructural facilities for use by the creative economy entrepreneurs

   The workshop endorsed the ministry's plan to repossess and reclaim all land and spaces belonging to the creative economy and refurbish the old ones, and build new ones to trigger creative industry activities throughout the country. It is envisaged that this will provide artists with performance space among other activities surrounding the creative industries.

The workshop recommended the government to develop a creative economy development master plan that defines required infrastructures for the creative economy, and form partnerships with development partners to deliver:

- State of the art theatres, community cultural centres, regional cultural and art centres, public galleries in counties or at least three major cities in the country; and
- Partner with private sector to develop film production training schools, fully equipped music production centres, creative arts technology parks and ready-to-use fully equipped workshops for renting by up-coming entrepreneurs in the creative industry.

To deal with the perennial problem of funding, the workshop recommended the government to proceed and set up a development fund for the creative economy to promote concessional lending.

6. Establishing the Creative Economy Apex Body

6.1 Introduction

The purpose of this section is to provide a critique and offer strategic review of the creative economy PPD development processes. This section presents the consultants' views based on the observations, literature review, in-depth interviews and finally the PPD interactions during the workshop. The challenges that could affect well-functioning PPD processes are discussed, and solutions based on our understanding and case studies are presented.

6.2 Need for a PPD framework in the Creative Industry

This report states that the establishment of an apex body for the creative industry is plausible and crucial in generating cohesiveness and organisation necessary for industrial growth and development. The apex body, once established, will be expected to initiate PPD platforms for engagement. A well-established PPD platform will be beneficial to the creative industry by expanding participation of a wide variety of actors and projecting their views to the government. PPD creates a foundation for market-friendly policies that deepen economic reform and enhance national competitiveness. It has many applications, typically geared towards improving the investment climate, removing constraints to development, or formulating industry-specific policies. A well-developed PPD process encourages and builds the culture of accountability, openness and transparency in both the private sector and government. The PPD process has demonstrated that the creative industry in Kenya suffers from a lack of transparency and trust between the government and the private sector. It is envisaged that with the operation of the proposed apex body, credible PPD processes will be set up to serve the industry.

6.3 Challenges to setting up a creative economy apex body

The proposal to establish a creative economy apex body at the initial stages were met with conflicting opinions and positions from the government and the industry, as presented at the CEWG. During the discussions and joint PPD planning deliberations, the government expressed through the SDCA that they are not supportive of the formation of a creative industry apex body. The SDCA stated that the Ministry preferred to work with KEPSA platforms to engage with the industry, and further argued that KEPSA had already developed platforms where engagements and dialogues could take place. The Ministry reiterated that KEPSA had the necessary infrastructure for dialogue and that the government have been working closely with KEPSA as the private sector's apex body. The CEWG, on the other hand, believe that the creative industry needs its own apex body that understands the industry, including their challenges, opportunities, threats and operational weaknesses. The industry stated categorically that KEPSA lacked understanding of the industry, and have not represented the creative industry's interests effectively, a view that was acknowledged and shared by many stakeholders during county and national engagements.

Informed by an understanding of KEPSA's operations and the creative industry's status, the consultant recommended the establishment of an apex body for the creative industry. The decision was also informed by the status of the industry, profile of the industry, size and the level of development. With these in consideration, the CEWG agree that an apex body for the industry should be formed. This position was later endorsed by all stakeholders during the PPD workshop.

While the industry stakeholders approved the establishment of a creative industry PPD platform through the apex body, a number of challenges exist which might prevent the apex body from functioning to its optimum level.

- **No existing apex body:** The industry has practically been relying on the CEWG for advocacy work. The CEWG operates on a voluntary basis for the industry and lacks institutional capacity to conduct credible PPD platforms to the high standards expected. Further, the CEWG is not registered at the Registrar of Societies, and hence lack legal standing.

  This report proposes that a secretariat be established, registered by the CEWG. The CEWG would be the secretariat's governing council, and should provide at least two board members to the secretariat. The secretariat must be registered at the registrar of societies in accordance with Societies Act Chapter (108) of the Laws of Kenya.

The CEWG

The CEWG entered discourse in 2013, with the aim of contributing to a policy framework for Kenyan creative industries, as well as related, diverse activities that could help aggregate and bring focus to Kenyan creative industries.

The overall goal of the CEWG is to see Kenya's creative industry integrated into the national development agenda, supported and developed consistently and strategically by stakeholders at all levels of government – national and county.

The CEWG comprises of 10 Kenyan cultural organisations interested in growth and development.

- **Weak institutions in the industry:** The creative industry consists of weak sub-sectoral associations, which are initiated and driven by individuals in business. Successful PPD platforms and processes require strong and working associations in an industry or sector. For example, in the manufacturing sector, the KAM have been effective due to links with strong associations in the manufacturing sector that support their apex body. In the creative industry, the association lack both human and technical capacity to effectively understand and negotiate policy issues.

  The report recommends that the apex body, once established, should establish an institutional strengthening programme for associations in the industry. The goal would be to accelerate the development of various sub-sector associations in the creative industry by strengthening capacities, and thus enabling more effective operation and sustainability of these organisations in the medium to long term, providing better services to their members and reinforcing PPD. Main areas for capacity strengthening include membership management, management, fund-raising, and policy advocacy.

- **Limited data on the industry:** The creative industry lack credible data for industry planning and policy development. An effective PPD processes require credible data in order to generate and provide evidence for effecting policies

  The government together with the industry should form a technical committee on creative industry statistics. The process is to be led by MoSCA in conjunction with the Kenya National Bureau of Statistics. Tasks should involve re-classification of all the sub-sectors of the creative industry, defining of key performing indicators, data collection process as well as reporting methodology and systems.

- **A lack of policy management and direction from the highest levels of government:** Observations and analysis show that there is a lack of clarity and coherence amongst implementing agencies and the private sector. The agencies have been criticised for generating bills that are either inappropriate or contradict other agencies' authority. A glaring example is that PPMC wrote a bill to regulate the music industry, despite the fact that it is a competitor in the music industry.

  This report recommends that any new PPD platform would require clarity and coherence in government policy operations. This is important in guiding the formation of various PPD platforms for effective advocacy. The same clarity, organisation and coherence would be required of the private sector.

6.4 Proposed functions of the apex body

PPD platforms have proven their ability in delivering results. For example, the Kenya Private Sector Alliance have effectively used PPD platforms to influence policy reforms, and consequently have improved the business environment in Kenya. For example, a high level KAM PPD engagement in 2008 led to improvements in the business-licensing regime. In one engagement reviewing 1,325 licenses, the PPD platform eliminated 424 licenses and simplified 607 licenses, whilst retaining 294 licenses.

The proposed apex body would act as a bridge between the central and county governments and the creative industry's private sector. The apex body will be at the core of creating and building an enabling business environment by:

- Presenting to the relevant authorities- ministries, parastatals and other government agencies, the obstacles that their member enterprises face, advocating for appropriate policy, regulatory or infrastructure improvement;

- Aligning unorganised enterprises into the organised industry by asserting the need of registration as a condition of business ownership, and also voice demand for improvements in public services delivery;
- Disseminating information and channelling feedback on policy regulation to their members, and provide a supportive constitution for successful implementation of policy and regulation;
- Representing entrepreneurs disadvantaged by gender, remote location or ethnic minority discrimination;
- Initiating creative industry standards, resolving industry conflicts internally and therefore strengthening the creative industry's private sector without need for government intervention or court litigations;

The establishment of a successful apex body, however, will take considerable time to develop. The new body will need to achieve legitimacy with its membership, government and development partners.

7. Conclusion

This report records the creative industry's desire to resolve or address their business environment challenges. The report has sought to identify the challenges affecting the creative industry, drawing on desk research, in-depth interviews and the PPD process between government and the creative industry private sector.

The PPD Workshop, the first one of its kind for the industry, demonstrated the commitment of the government and the creative industry to take up initiatives to grow the sector. The process benefited from support from the BC through consistent participation and advice.

The report presents recommendations. The consultants completed a separate PPD workshop road map report as separate report. It is hoped and envisaged that timely implementation of the roadmap will be helpful in catalysing growth and development in various industries of the creative economy.

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Appendix 2 Terms of Reference

1. Overview

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 government is making considerable efforts to improve the general business environment in Kenya. There is an opportunity to extend the current BE focus to the cultural economy. In doing this there are number of aspects to take into account:

i. **Cultural economy has difficulty finding an institutional home in government**: MoSCA was created in 2013. Before then, mandates for 'cultural economy', and some sub-sectors such as film or heritage, have resided with diverse cabinet departments including information and communication.

ii. **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 CWEG. (15 private sector members) and a roundtable within KEPSA focused on the creative economy. Meanwhile the government has recently established a creative economy taskforce (different from the working group mentioned above) with 20 hand-picked members.

iii. **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 that see the positive externalities from the cultural economy are taking pragmatic action.

iv. **Cultural economy contribution**: For instance, the ITP also aims at building a network of competitive industrial parks or zones. The feasibility and potential benefits of developing creative clusters, such as around the Riverwood film industry, animation hubs, film location hubs, etc. could 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.

- As part of the scoping mission (Phase 1) one to one stakeholder meetings were undertaken and a roundtable was held with a cross section of sector representatives. The stakeholder engagement highlighted a number of areas for business environment intervention. In particular, 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 was identified as critical. The discussions also highlighted the private sector as being fragmented and associative action being scattered, and often confined to sub-sector interests;

- The roundtable stakeholder discussion was facilitated by the BC. The BC expressed interest in widening its intervention in the Kenya creative economy to more policy issues, and could potentially become a key partner to government in developing the creative economy. This could involve support from its creative industries unit;
- Discussions with the Principal Secretary, Arts and Culture at MoSCA confirmed that the development of the cultural economy was a growing priority for government. The ministry recognised the need to undertake a broad based stakeholder analysis, including strong participation from county stakeholders. The intent of the ministry is to gain a holistic view of issues for the sector, and not just those of special interest groups. To this end the Principal Secretary has prioritised PPD with cultural economy stakeholders and was seeking advisory support to undertake this work. Completion of the dialogue process over the summer is viewed as critical by the Principal Secretary to inform the work of the Government's Cultural Economy Task Force.

2. Objectives

i. To work with the MoSCA in undertaking an inclusive dialogue with the private sector, and

ii. To produce a cultural economy BER issues report roadmap based on the PPD workshop and supporting secondary analysis.

3. Link with BER/investment/jobs/poverty (ToC) and beneficiaries

- The PPD and resultant BER findings will inform further work and provide guidance to the DFID Building a Reliable Investment Climate in Kenya (BRICK) programme as well as the GoK in designing BRICK 2 and strategies for implementing BER within the cultural economy which will in turn impact upon the theory of change for BERF. Client and beneficiaries;
- The client is DFID Kenya, with support provided directly to the Government of Kenya. This technical assistance will be provided directly to the MoSCA and private sector representative bodies. Wider beneficiaries are private sector stakeholders and the urban and rural poor of Kenya (in particular women and young people), who will benefit from job creation and income growth in the cultural economy, and other donors active in the sector. The work will be undertaken with regard to the Gender Act and explicitly consider gender issues in the approach to PPD and recommendations on interventions that flow from the technical assistance. This assignment provides expert external assistance and does not replace the work of DFID civil servants.

4. Scope

- The focus for BERF support emerging from the Phase 1 scoping work is to support the department of culture (within the MoSCA) in undertaking a PPD process. There is strong government interest in better organizing the sector through stakeholder dialogue so as to improve policy formulation and BERF support would facilitate this;

- The cultural economy in Kenya spans a number of sub-sectors from film through to music, traditional crafts and cultural sites to fashion. In the fast growing digital sector Kenya is already exporting animation services;
- 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;
- It is critical that the consultation is inclusive across the industry sub-sectors, informal enterprises and considering opportunities for women, young people and rural/urban poor. The PPD process should include strong participation from county stakeholders to enable the prioritization of business environment reforms for the sector. The work will be undertaken directly with industry counterparts in the MoSCA, DFID-Kenya and the BC.

The scope of work for Phase 2 BERF support is:

1) Work with Department of Culture (within the MoSCA) to prepare for and undertake a stakeholder PPD consultation workshop. This will be a structured conference with cross sector plenary session and sub-sector workshops. Champions have been identified in Phase 1 (some of whom participated in a round table discussion). However, it is important that partners are reviewed to ensure good representation, in particular from outside Nairobi.

1) Produce a PPD workshop report on the identified BER cultural economy issues (cross cutting and sub-sector specific) and priority issues. This will amongst other issues examine business environment reforms that:

    a. would facilitate private sector investment into cultural economy sub-sectors (recognizing the constraints to public sector funding for the sector);

    b. enable greater participation of the private sector in the management or ownership of state assets or activities in the cultural economy; and

    c. have particularly strong distributional (women, young people) and pro-poor benefits (rural and urban poor).

2) Follow up dialogue and secondary analysis to inform the BER workshop report.

3) Support government and partners in improving the structure for permanent dialogue and better coordination of policy intervention (including on-going national and county level dialogue). This will include examining the opportunity to identify sub-national pilots to take the agenda forward outside of the capital.

5. Method

The consultant will work with counterparts in the MoSCA and report directly to the PS for Arts and Culture Joe Okudo. The consultant will also liaise with the BC's lead on the cultural economy Rocca Gutteridge (Head of Arts).

The methodology for conducting the PPD will be guided by BERF's approach to stakeholder dialogue.

The following tasks will be carried out:

i. Meet PS Arts and Culture to discuss PPD scope process and timeline for the PPD process.

ii. Work with the Department of Culture, apex sector bodies and the BC Bloggers Association of Kenyato review and expand on the stakeholder analysis undertaken in the scoping review.

iii. Discuss and establish the approach to the PPD Cultural Economy workshop process and capturing and analysis of the proceedings (working with the Communications director at MoSCA).

iv. Participate in the PPD workshop (main and sub-sector level breakouts).

v. Provide a write-up of PPD workshop BER findings at a sector and sub-sector level.

vi. Follow up key BER issues through ancillary discussions with stakeholders.

vii. Report to PS Arts and Culture/MoSCA on BER findings and prioritization of BER issues.

6. Deliverables

The main deliverable will be a Cultural Economy Business Environment Reform roadmap report for MoSCA. This report will be based on the findings of the PPD cultural economy conference (with sub-sector workshops) with supporting secondary analysis and stakeholder interviews. This will incorporate recommendations for how PPD is embedded across the sector and incorporated in the developing sector policy (being facilitated through the government's new task force).

As outlined earlier it is vital that stakeholder participation reflects urban and rural areas and more marginalized businesses and people within the sector.

Appendix 3 List of Stakeholders Interviewed

Stakeholder Interviewed	Industry Segment	Dates of Interview
Mr. Joe Okudo Principal Secretary State Department of Culture and the Arts	Government	Several times
Mwaniki Mageria Balozi Productions Ltd Riverwood Ensemble	Film Industry	17th August 2016 Time: 4-5pm
Mr. George Gachara CeoHeva Fund Nairobi	Film production and Creative Economy Financing	15th, 16th August 2016 and 27th 28th September 2016
Prof. Kimani Njogu Twaweza Ltd' Chairman Creative Economy Working Group	Culture	16th August 2016 Time: 9.00am
Rosemary OrlaleOkello Programme Officer Ford Foundation	Development Partner Financing the Creative Economy Sector	19th August 2016 Time: 3pm
Joy Mboya Director Go-Down Art Centre Member Creative Economy Working Group	Art and Music	19th August 2016 Time: 4-5.30pm
Judy Ogana General Manager Go-Down Art Centre	Art and Music	19th August 2016 Time: 4-5.30pm
Hellen Ogutu Association of Fashion Designers of Kenya	Fashion and Design Industry	18th August 2016 at 4.00pm
Raphtone Artist Gospel Singer	Music Industry	26th September 2016 Time: 3.00pm
Joe Mucheru MEDIAVISION	Film Industry	19th August 2016 Time: 12.00 noon
Rocca Gutteridge Director Creative Arts British Council	Development Partners	Several times

Appendix 4 Creative Industry Business Associations Present at the PPD Workshop

1) AFAD – Association of Fashion Designers

4) KAPM – Kenya Association of Music Producers

5) KEGSAF – Kenya Gospel and Secular Artists Federation

6) PRISCK – Performing Rights Society of Kenya

7) MCSK – Music Copyright Society of Kenya

8) MAK – Music Alliance of Kenya

9) BAK – Bloggers Association of Kenya

10) MPA – Music Producers Association

11) AG – Actors Guild

12) DJA – Disc Jockeys Association

13) TASK – The Artists Society of Kenya

14) FIA – Film Industry Association

15) FFK – Film Federation of Kenya

Appendix 5 Links and Websites

The Godown Arts Centre

http://www.thegodownartscentre.com

Sanaa Sacco

http://www.sanaasacco.com

The Circle Art Agency, Nairobi

http://www.circleartagency.com

KUONA Trust Centre for Visual Arts in Kenya

http://kuonatrust.org

Ford Foundation, Eastern Africa Regional Office

http://www.fordfoundation.org/regions/eastern-africa

Hivos Regional Office for East Africa

http://east-africa.hivos.org

The Nairobi Arts Centre

http://www.artyparty.co.ke

Ministry of Sports, Culture and the Arts

http://www.minspoca.go.ke

Ministry of Information, Communication and Technology

http://www.information.go.ke

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