

THE BUSINESS



ADVOCACY FUND

Supporting Private Public Dialogue



annual report
2008



The Business Advocacy Fund
is supported by
the Danish Government

statement from

the danish ambassador

The Business Advocacy Fund is part of a wider private sector development programme agreed with the Government of Kenya – the Business Sector Programme Support (BSPS). The BSPS supports GoK’s Private Sector Development Strategy (PSDS) and Vision 2030 and has a five year budget of DKK 155 million (US\$32 million).

Denmark’s support to private sector development in Kenya is led by our Government vision that private sector development leads to economic growth and employment creation. It will be able to deliver these only if there is a corresponding business friendly regulatory environment that creates the incentives and the confidence to invest. We are pleased to acknowledge the Government of Kenya’s commitment to creating such an enabling business climate.

A business friendly environment does not come about by itself. Only if business membership organisations (BMOs) are actively engaged in policy preparation and formulation will this be achieved. The BAF empowers all kinds of business organisations to make their voice heard and thus take part in securing a stable and conducive business climate. 2008 showed how important it is that the business community takes up this role.

The Business Advocacy Fund was launched in November 2006. The Fund has KSh 100 million available to support BMOs. I am pleased to see the fund being committed and disbursed to a wide range of advocacy projects representing a broad spectrum of business environment issues.

We look forward to seeing these projects resulting in tangible improvements in business regulation and enforcement.

Bo Jensen, Ambassador
ROYAL DANISH EMBASSY



statement from the chair

The private sector is seen as the engine of economic growth, job creation and poverty alleviation – and so requires a friendly and cost competitive business climate. But it is government action that determines the enabling environment. So the private and public sectors need to engage in effective dialogue.

In its second year BAF has supported important private sector advocacy projects. The increase in dialogue and engagement is visible. The results and achievements are encouraging. There is evidence of new mechanisms (for instance, the Prime Minister’s Round Table) being created to facilitate more public private dialogue. But we know there are many more policy reforms necessary to transform the Kenyan economy into the powerhouse it should be. BAF recognises that private sector BMOs need more support to translate this potential into policies that will, ultimately, make a difference to our shared goal of poverty alleviation. We would welcome therefore more applications.

On behalf of the Board I would like to thank DANIDA for its continued support of the Fund. I would also like to thank the Government of Kenya – our perception is that the Government is becoming more responsive. Finally, I would like to thank the Board and the staff for their support, dedication and hard work.

Betty Maina
CHAIR



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summary

Introduction

In 2008 the Business Advocacy Fund has built on the groundwork established since it was launched in November 2006 resulting in almost 100 active dialogues and consultations in 2008 by the business membership organisations (BMOs) that it has supported. As you will read in the project briefs and case studies on the following pages, and can see reflected in some of the press stories shown on the back cover, these have already resulted in concrete successes across a wide range of areas where the public and private sectors intersect. We believe that the Fund is playing a role in establishing a more consultative approach by the Government of Kenya and more constructive engagement with the private sector. Indeed, BMOs that have been supported say that this new approach, based on dialogue, is improving their relationship with government.

The achievements so far are a demonstration of what can be achieved through public private dialogue but, notwithstanding substantive market reform in the 1990s and trade licensing reforms in 2005/6, the business climate is still restrictive, and the Fund is currently only achieving a small, but significant, part of its potential.

It is clear that private sector advocacy in Kenya is in its infancy. To ensure that BMOs make their case most effectively, the Fund has a vital

role to play in building advocacy capacity. The dramatic expansion of this can be seen through much wider take up of the Fund's training programmes. This bodes well for the Fund's expanding influence and future projects it is bringing through its pipeline.

During 2009, we aim to build on these foundations. We plan to support more BMOs to undertake more advocacy projects and, in addition, we hope to be able to assist BMOs who have ideas for improving their sustainability and reducing reliance on donors, through providing services that will attract members or that will earn income.

The Fund in figures

The Fund engaged with a total of 68 BMOs during the year, considered 16 project applications, and approved 14 proposals from 14 BMOs worth KSh 38 million.



Whilst only two projects were completed during the year, several projects have already achieved changes in public policy. Indeed, supported BMOs claim 12 changes in public policy and many of these are described in this annual report. BMOs have also been successful in securing coverage in the press and media for their activities, with 124 articles in the press, 71 broadcasts on the radio and 57 broadcasts on TV.

	2007	2008
Project applications by volume	13	16
Project applications by value	KSh 34 m	KSh 33 m
Approvals by number of projects	11	14
Approvals by value	KSh 29 m	KSh 38 m
Disbursements by value	KSh 17 m	KSh 18 m
BMOs supported	7	14
Projects completed	1	2
Participants in training programmes	64	142
Active dialogues and consultations by supported BMOs	33	92
Policy proposals published by supported BMOs	8	10
Alliances & partnerships developed	9	75
Number of articles in the press	65	124
Policy changes	1	12

highlights: project briefs and case studies

In 2008 BAF began to see clear results from its work in the form of policy changes achieved by the BMOs that it is supporting. The following project briefs and case studies highlight successes in 2008. BMOs are already achieving significant changes at local and national government level as well as working internationally to improve the environment for Kenyan businesses.

Project briefs

- **Kenya Association of Manufacturers (KAM):** successfully lobbied for the enactment of the Anti-Counterfeit Act 2008 to protect consumers and manufacturers alike. Implementation and enforcement will follow in 2009.
- **Kenya Private Sector Alliance (KEPSA):** led a private sector initiative to prepare a National Business Agenda setting out 12 essentials for an improved business climate. This has been submitted to the Prime Minister's Round Table created in 2008. With financial support from BAF, two meetings have been held, resulting in identifying responsibility within government for action (with report back on progress) and better coordination of private sector advocacy by individual sectoral BMOs. The meetings have resulted in the following quick wins:
 - **KAM's** tax reform project successfully led the campaign to reduce VAT on electricity bills from 16% to 12%.

- **KAM and the Fresh Produce Exporters' Association of Kenya (FPEAK):** lobbied for amendment of the 120% rate of tax introduced in 2008 on plastics. This has been revised to a 50% levy on plastics of 30 microns and above (shopping bags). A 0% rate applies to 10 microns and above as long as it is for export and 20 microns and above if it is for industrial use.

- **FPEAK:** successfully petitioned the Horticultural Crops Development Authority (HCDA) to waive HCDA export cess. The potential saving for horticultural producers is KSh 90m per year. The Draft Gazette Notice is now at the Attorney General's Chambers for legal opinion and enactment.
- **FPEAK:** successfully petitioned the Ministry of Water and Irrigation to implement a provision in the Water Act 2002 allowing for a part-refund on water abstraction fees where a company has developed its own water storage. Horticulture producers with such facilities can now get a rebate of 10% of their water fees - a noticeable reduction in their costs given the importance of irrigation to the sector.
- **FPEAK:** working with other East and Southern Africa (ESA) BMOs, FPEAK was instrumental in successfully negotiating Kenya's inclusion as a signatory to a new interim Economic Partnership Agreement

between the European Union and sixteen ESA countries, the key achievement being the non-interruption of Kenya's horticulture exports to Europe.

- **FPEAK:** successfully lobbied for KenyaGAP, a local standard for horticultural production that is benchmarked to GLOBALGAP, an internationally recognized market standard. Kenya Bureau of Standards (KEBS) recognises its certificate as a quality mark equivalent to the KEBS mark of quality.

Case Studies

More order in the Matatu sector

Kenya's private mini-buses - matatus - transport the large majority of Kenyans around the country, as private vehicle ownership is low and alternative forms of transport such as trains and regulated bus companies are largely nonexistent. However, the matatu industry is notorious for its lack of self regulation and for not adhering to basic traffic laws. Consequently, the industry is an attractive opportunity for criminal behaviour and corrupt practices on the part of enforcement agencies; all of which is ultimately paid for by the travelling public.

The Matatu Owners' Association (MOA) is the largest BMO in the sector and represents 30 per cent of those who own and operate matatus. Its actions have a strong and growing influence across the industry.



highlights: project briefs and case studies

With financial backing from BAF and considerable mentoring support from the Fund Manager, MOA has used an earlier discussion document – the National Road Safety Action Plan – to initiate a dialogue with Government to introduce basic, enforceable regulations to the industry. MOA expects that these changes will improve conditions for passengers, enhance safety and reduce levels of extortion and other criminal activity.

Initially, MOA sought from the Ministry of Local Government (MoLG) the joint policing of bus termini by its officials and the local council officials. This change of policy has been agreed and MOA is in the process of implementing the logistics of enforcement with Nairobi City Council, Inspectorate Department. MOA is also working with MoLG to extend the implementation of self regulation of bus termini to other regions of the country.

MOA is also advocating “instant ticketing” with a ticket issued by a police officer and the driver then given 14 days to pay. Currently for minor traffic offences, offenders are arrested and taken to the nearest police station where either a fine is paid or bail is posted with the offender appearing in court the next day. The Ministry of Transport has agreed this policy change which will require an amendment to the Traffic Act. MOA is lobbying the Ministry to introduce the amendment and is also lobbying MPs to inform them on this pending proposal.

A fair deal for potato farmers

Potatoes are purchased in bags by brokers at the farm gate. The size of these bags varies from 130 kg to 280 kg – the variation arising from transport cess charged by the bag. The price of potatoes is also calculated by the bag. Traders generally force producers to overfill their bags. Consequently, producers and small farmers in particular do not receive a fair price for their produce.

In 2005, the Ministry of Agriculture agreed to standardise the size at 110 kg, but omitted to specify who would enforce this and neither the Ministry of Agriculture nor the Ministry of Local Government accepted responsibility. The result has been that everyone has ignored the requirement and farmers have remained obliged to sell their potatoes in extended bags.

Since 2006, these predominantly small producers have been represented by the Kenya Potato Farmers Association (KENAPOFA), a small association with limited resources. However, KENAPOFA has successfully lobbied the Ministry of Local Government to require all Local Authorities to enforce the maximum size and weight of bags in which potatoes can be bought. KENAPOFA has publicised this policy around the country and obtained assistance to have standard bags manufactured and distributed. KENAPOFA officials are now recognised enforcement officers.

KENAPOFA is actively monitoring compliance. Despite vigorous opposition from brokers and traders, often with the threat of violence, producers are now selling their potatoes for uniform prices in bags of 110 kg.

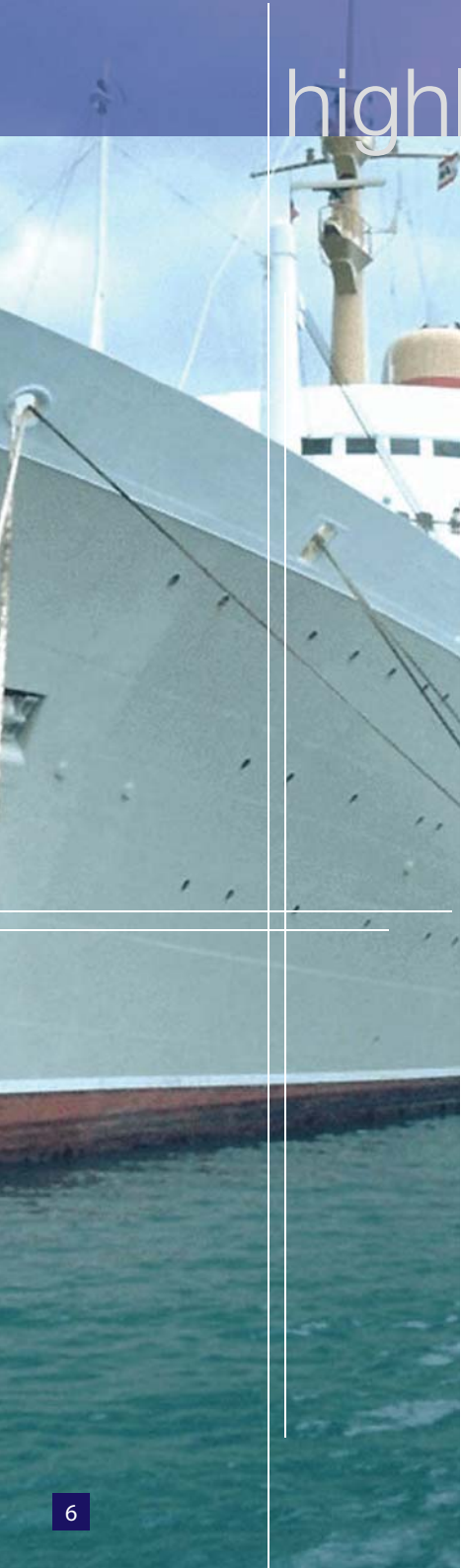
Open source software a cheaper option for government bodies

The Linux Professionals’ Association of Kenya (LPAK) advocated that the Public Procurement Oversight Authority (PPOA), enforce public procurement policies. Although the Public Procurement & Disposal Act 2005 states that tendering documents should not refer to a particular trade mark, patent, producer or service provider, government software tender documents typically specify that the software should be a particular branded product. This prevents local free and open source software (FOSS) providers from bidding.

LPAK has engaged the PPOA and the Kenya ICT board. LPAK has shown that the Act is regularly flouted thereby discriminating against FOSS providers. The PPOA has accepted LPAK’s position and taken steps with government procurement officers, to ensure future tenders all comply with the Act.

LPAK is working with the PPOA to develop proposals to assist government procurement bodies when tendering for software.

highlights: case studies and capacity building



LPAK's success was attributed to showing that using FOSS can lead to large savings for software purchasers. The Minister for Information, Communications & Technology has since directed that all government bodies ensure that 50 per cent of their future budgets for software is spent on locally provided FOSS.

Lowering transport costs

The Kenya Shippers' Council (KSC) provides cargo owners with a voice to advocate for a more reliable logistics environment. The cost of transport is a key contributor to competitiveness.

KSC succeeded in persuading the Port of Mombasa to operate 24/7. The Ministry of Transport has agreed to open four land border crossings 24/7 (with two more to start shortly). This has reduced ship turnaround time from 13 days to 8.7 days as well as reducing delays at border crossings.

In a separate development, KSC has successfully worked with Kenya Ports Authority and Kenya Revenue Authority in the harmonisation of automated systems, Kilindini Waterfront Automated Terminal Operating Systems (KWATOS) and Simba (2005) at Mombasa that links the movement of goods to the tax collection process.

KSC has also succeeded in reducing the number of times a truck needs to be weighed in the Northern Corridor from five, each taking

up to a day, to just one and in reducing the number of police roadblocks from 47 to 15 (the target is nine). The police are working towards a coordinated system to meet defined security checks to reduce the time at each roadblock. Impact is yet to be measured, but KSC expects that these efficiencies will improve vehicle utilisation and lower transport costs as well as allowing firms relying on regular deliveries to reduce inventories.

Building business friendly public private relationships

The Fund supported the Kitale branch of the Kenya National Chamber of Commerce & Industry in Western Kenya advocate the issue of administration of the Single Business Permit (SBP) charge by the two local authorities: Kitale Municipal Council and Nzoia County Council. The Chamber's members complained that local authority officials had increased the SBP charges unilaterally, and without approval from the Ministry of Local Government, resulting in harassment and a higher cost of doing business, particularly for small businesses.

The Chamber engaged both councils and facilitated a dialogue with its members. Agreement with the two Local Authorities was reached quickly and the two councils agreed to charge businesses at the previous SBP rates.

This represents a big win for a local business association on an issue of local importance. It is

also a significant win in the national context in that the lessons learned can be shared with all other branches of the Chamber. In the case of Kitale Chamber, the dialogue resulted not only in a restoration of a working relationship with the two councils, but also the withdrawal of two court cases between the parties.

Building an advocacy legacy

The two years that BAF has been in operation have seen increased recognition of the value of the private sector's role in developing effective public policy. These are new developments for both policy makers and BMOs seeking to influence them. That is why BAF is making considerable efforts to assist BMOs to develop the skills to advocate effectively as well as providing grants towards the cost of advocacy projects.

While the changes in policy we are seeing are key measures of BAF's success, through its materials, mentoring and courses BAF is reaching out to BMOs that previously have had neither the skills nor experience to consider using advocacy to improve the business environment in which their members operate. Ultimately this should not only make it more efficient to do business in Kenya, but leave a legacy of advocacy skills among the staff and organisations with which BAF works.

BAF supports BMOs with information, training programmes and mentoring support. Six

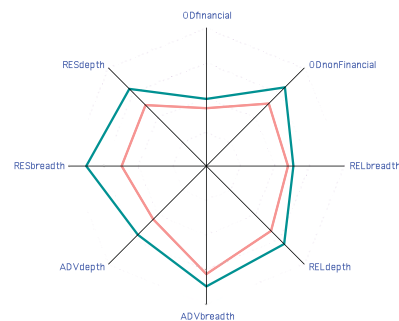
advocacy competence and four institutional competence training programmes were run during the year, with 142 participants from 59 BMOs and five participants from the Government of Kenya and other government bodies. Two BMOs requested that BAF deliver in-house courses for them and we were delighted to do so.

BAF provided considerable support in the form of one to one coaching to assist individual BMOs turn thoughts about issues into concept notes and then to progress to detailed application forms. In addition, BAF is increasingly providing support with implementation as the project portfolio grows.

To complement the handbooks provided to all training programme participants, there is a range of 36 fact sheets available from the website.

BAF aims to assess the 'advocacy competence' of all BMOs before providing support, partly to identify their development needs, but also to demonstrate the improvement in their competence. The figure shows the baseline

Advocacy competence: baseline & 12 months later

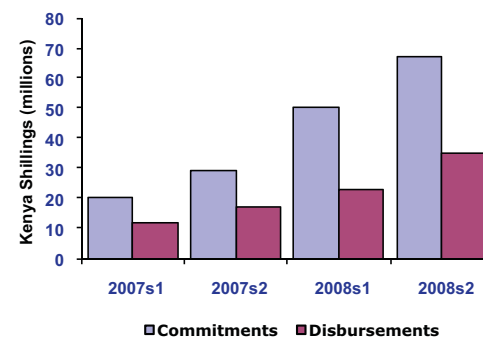


position (for 38 BMOs) and the 12 month profile (for 10 BMOs). As can be seen, the Fund's support is having a positive effect on BMOs' competence, particularly in research and advocacy skills.

Financial report

The Fund has a total of KSh 106 million available to give as grants to BMOs. In 2008, it committed KSh 38m taking total commitments to KSh 67m. It disbursed KSh 18m taking total disbursements to KSh 35m. The chart shows cumulative grant commitments and grant disbursements for six monthly periods.

Grants to BMOs



Capacity building and fund administration are budgeted separately from the grant fund. Based on commitments, some 45 per cent of the total expenditure has been offered in grants, with a further 29 per cent covering the

cost of capacity building and just 26 per cent being spent on fund administration.

Governance

The Board, which represents the private and public sectors, approves policies governing the management of the fund and approves grant applications. The chair is Betty Maina (KAM); the other members are Hezekiah Okeyo (Ministry of Industrialization), Johnstone Nyagah (KNCCI), Bill Lay (KEPSA) and Kim Kristmoen (DANIDA).

Fund management is provided by a partnership of Coffey International Development Ltd and Irwin Grayson Associates. BAF is managed on a day to day basis by the Fund Manager, Clive Davis, and his committed and hard working team of Ruth Gathee, Eunice Kiondo and Phillip Okello.



