

THE BUSINESS



ADVOCACY FUND

Supporting Private Public Dialogue

Annual Report 2017



**MINISTRY OF FOREIGN AFFAIRS
OF DENMARK**
Danida

THE BUSINESS ADVOCACY FUND

Since its inception in 2006, BAF has supported business membership organisations (BMOs) to engage in effective private-public dialogue and to advocate reform of public policy to improve the business environment in Kenya.

2017 was a transitional year for BAF. It marked the first complete year of the third phase of support to BMOs engaging in private-public dialogue.

Through the year, advocacy activities were significantly hampered by the elections as the legislatures at both national and county levels were dissolved. The executive at both levels was similarly affected as campaigns and an extended election period (following a rerun of the presidential election) took centre stage.

In spite of the prevailing circumstances and the disruption to the momentum of advocacy, some results were achieved and opportunities for private-public dialogue both at the national and county level created. In his inauguration speech on 18 November 2017, President Uhuru Kenyatta outlined four priority areas for his second term that have been christened the Big Four Agenda. These are enhancing manufacturing, food security and nutrition, universal health coverage and affordable housing.

This report highlights some advocacy wins in the broad areas touching on the Big Four.

During the year, a total of 27 advocacy grants were approved. Supported BMOs initiated 183 dialogues while 34 policy changes were achieved.





ADVOCACY SUCCESSES

Relief for manufacturers of pest control products - Agrochemicals' Association of Kenya (AgroAK)

The enactment of the VAT Act 2013 changed the tax status of agricultural pest control products from Zero Rated Exempt. This brought about a discrepancy between local manufacturers and importers of these products, as the exempt status meant local manufacturers were unable to recover VAT they had paid on their inputs. The higher cost of raw materials and other inputs was passed on to farmers with increased prices of locally manufactured products. However, the status quo of importers of finished and packaged products remained unchanged, according them a price advantage in the market, as their products were not liable to any import or excise duty.

In 2016, the Agrochemical Association of Kenya (AgroAK) embarked on a comprehensive study of the impact of the changed taxation regime. The aim of the study was to furnish the association with evidence upon which they would base their proposals on taxation of the industry to government and advocate for return of a level playing field.

During development of the Finance Bill 2017 budget, the government invited interested parties to make their submissions and comments on the proposals. AgroAK made compelling submissions which outlined the challenges facing the pest control products manufacturing sub-sector, agriculture and the economy as a whole. They proposed the adoption of zero rating of all inputs and raw materials used in manufacturing, whether locally produced or imported, and zero rating of finished agricultural pest control products.

When the Finance Act No. 15 of 2017 was published, agricultural pest control products had been reclassified to zero rating and all inputs used in manufacturing these products, whether locally produced or imported, had been included in the zero rating status. This change is expected to support the success of the government's Food Nutrition and Security agenda and prevent further job losses in supporting sectors.





Lobbying for comprehensive legislation of the health sector - Kenya Health Professionals' Society (KHPS)

Devolution brought changes to the management of the health sector as aspects of it would be managed by the central government and others by county governments. This necessitated a review of the regulations in the sector.

The Ministry of Health (MoH) drafted a Health Bill, 2015 in which it sought to consolidate all Acts related to health. However, the Kenya Health Professionals' Society (KHPS), a coalition of the sector's professional associations, raised concerns that the MoH had not undertaken adequate stakeholder engagement. KHPS received BAF support through the National Nurses' Association of Kenya (NNAK) to engage with the MoH in the development of an appropriate Health Bill.

KHPS sought to have a Bill that would provide a legal mechanism for the devolution and management of accessible, equitable, cost-effective and efficient health services. It also sought to have health professionals regulated under the new Bill through the creation of an oversight authority.

KHPS was able to share their views on the proposed Bill with the Ministry of Health, and the Parliamentary Committees on Health. Subsequently, the Health Act, 2017 was enacted and addressed several key concerns of KHPS. The purpose of the Health Act, 2017 is to establish a unified health system, coordinate the inter-relationship between the national government and county government health systems, provide for regulation of healthcare services, healthcare service providers, health products and health technologies.

As a result of the advocacy by KHPS, there is now a clear separation of the roles and responsibilities of both levels of government (national and county) as well as an intergovernmental coordination mechanism. The Health Act provides for the formation of an oversight body of all professionals working in the sector, and their representation in various boards formed under the Health Act. In addition, the Health Act provides for separate regulation of drugs through the Kenya Food and Drug Authority.

Further advocacy may be required to support the implementation of the Health Act through the development of subsidiary laws and regulations.



Resolving music copyright tariffs - Pubs' and Restaurants' Association of Kenya (PERAK) and Kenya Association of Hotelkeepers and Caterers (KAHC)

The Copyright Act, 2001 provides for the protection of copyright for all original literary and academic works, art and music. It also provides through the Kenya Copyright Board (KECOBO), the licensing of Collective Management Organisations (CMOs) to collect royalties from copyright material users on behalf of the copyright owners, and to distribute those royalties to them. In Kenya, there are three CMOs that are licensed to collect royalties for performers, writers and producers of music.

The liability to pay music royalties typically falls on businesses who play broadcast music. For a long time, they were subjected to paying copyright tariffs to the three CMOs at different rates. Businesses represented by the Pubs' and Restaurants' Association of Kenya (PERAK) and the Kenya Association of Hotelkeepers and Caterers (KAHC) and Matatu Owners' Association (MOA) among others, argued that, while their members recognised their liability and were willing to pay royalties, they were not willing to pay three times.

PERAK and KAHC received BAF support to engage with the KECOBO to resolve this issue. They developed an industry position and, as a result, KECOBO gazetted a joint Collection Society Tariff through a Legal Notice No. 57 of 2017. PERAK and KAHC were happy with the gazetting of a joint tariff, as they would no longer be subjected to three separate invoices. However, they raised alarm that the gazetted tariffs were not what was agreed with KECOBO.

KAHC and PERAK engaged KECOBO further leading to the suspension of the gazetted tariffs and agreed to support negotiations between the businesses and the CMOs. These negotiations led to the signing of a Memorandum of Understanding (MoU) in August, 2017 between businesses (KAHC and PERAK) and the three CMOs. The MoU stipulated that the tariffs would be set at either 20% of the Single Business Permit or 30% of the Liquor Licence, depending on the nature of the business. These rates, businesses argued, met the basic principles of taxation as they were equitable, certain, proportional and would be more convenient to comply with.

KAHC and PERAK have been monitoring the implementation of the MoU and have publicised through a media campaign the agreed tariffs to ensure that all stakeholders are aware of the new tariff structure.



Supporting land reforms in Kenya - Institution of Surveyors of Kenya (ISK)

Historically, land is one of the most contentious issues in Kenya. The enactment of a suitable regulatory framework, and subsequent implementation, was seen as the best way to resolve some of the long standing land issues in the country.

Following the enactment of the Constitution of Kenya, 2010, ISK sought BAF support to engage government on the development and enactment of the following Land Laws: The National Land Commission Act No.5 of 2012; the Land Act No.6 of 2012; and the Land Registration Act No.3 of 2012. Once these laws were enacted, ISK received further BAF support to lobby for the enactment of the Land Laws (Amendment) Act 2016 to address identified gaps.

The enactment of the Land Laws provides for a comprehensive land administration system in Kenya that is consistent with the principles of the National Land Policy and the Constitution of Kenya. The key principles of the National Land Policy include equitable access to land; transparent and cost-effective administration of land; and, sustainable and productive management of land resources.

After the enactment of all the Land Acts, ISK received further BAF support to propose changes to regulations to support the implementation. As a result of ISK's advocacy, the following regulations were gazetted:

- The Land Registration (Registration Units) Order, 2017
- The Land Registration (General) Regulations, 2017
- The Land Regulations, 2017
- The Land (Extension and Renewal of Leases) Rules, 2017
- The Land (Conversion of Land) Rules, 2017
- The Land (Assessment of Just Compensation) Rules, 2017
- The Land (Allocation of Public Land) Regulations, 2017

These regulations put in place the instruments to implement the various Land Laws. Once these regulations are fully implemented it is expected that there will be a simpler, faster and more efficient process of land registration and transaction.





The Nairobi City County Non-Motorised Transport Policy - Kenya Alliance of Resident Associations

Non-motorised transport includes walking, bicycles and tricycles, the use of wheelbarrows and carts, animal transport (horses, camels, donkeys, mules and oxen) and animal-drawn carriages.

In Nairobi County close to 50% of residents get around using non-motorised transport. Transport infrastructure in the County has in the past however prioritised motorists over non-motorised transport.

According to the Kenya Alliance of Resident Associations (KARA), in 2015 about 74% of the road accident deaths reported were of nonmotorised transport users. Congested roads and an ever reducing quality of air due to exhaust gases are also growing concerns for residents in the County affecting the quality of life of residents.

In 2015, KARA, the Nairobi County Government and the United Nations Environment Programme (UNEP) developed and launched a Non-Motorised Transport Policy. However, the County Assembly did not adopt the policy.

The policy aims to align, prioritise and coordinate non-motorised infrastructure development and maintenance in Nairobi. It will further support the implementation of the Integrated National Transport Policy, 2012.

The Integrated National Transport Policy expected county governments to provide and maintain footpaths for pedestrians, cycle paths, and footbridges for non-motorised transport including ramps for the physically challenged.

KARA received BAF support to partner with the County's Transport department to engage the County Assembly to adopt the policy. Through KARA's efforts, it adopted the policy in July 2017 as sessional paper No. 1 of 2017 on The Non-Motorised Transport policy.

KARA, expects the County government to create amenities aimed at providing an integrated and inclusive transport network with the policy now approved. Furthermore, the County should also put in place regulations on non-motorised transport infrastructure and regulation in Nairobi. Developments resulting from the policy will foster green growth in Nairobi County.



Partnership to develop suitable Physiotherapy Regulations - Kenya Society of Physiotherapists (KSP) with the Ministry of Health

Regulation of the professions in the healthcare sector is critical to ensuring health and safety of the general public. In the health sector, untrained and unqualified people masquerading as physiotherapists, can worsen individuals' ailments by offering harmful advice and treatment.

In Kenya, physiotherapy was an unregulated profession implying that anyone regardless of their background could set up a physiotherapy practice. Kenya Society of Physiotherapists (KSP) sought to remedy this for both the safety of patients and the standing of the profession.

Initially, KSP with BAF support, lobbied successfully for the enactment of a Physiotherapy (PT) Act, 2014. The PT Act established the Physiotherapy Council of Kenya (PCK) to regulate training and practice of physiotherapy. The Ministry of Health also gazetted the council members, allotting two representatives of KSP to the council.

Subsequently KSP in collaboration with the PCK sought further BAF support to develop regulations as advised by the Ministry of Health. These regulations included registration and licensing; forms and fees; private practice; training and accreditation; professional code of conduct; and curriculum and course content.

KSP and PCK were able to develop appropriate regulations which were gazetted by the Ministry of Health as the Physiotherapy Rules, 2017, Legal Notice No. 239.

These rules provide for: the formation of the training, education standards, licensing and registration committee of the PCK; registration and licensing of physiotherapists by a registrar; the mechanism to accredit training institutions; accreditation of continuous professional development programmes; and guidelines and operations of the disciplinary committee.

KSP and PCK subsequently received further BAF support to develop the core curriculum for diploma and bachelor degrees in physiotherapy. They have also agreed jointly to develop clinical guidelines to manage patient conditions in line with international best practice.

CAPACITY BUILDING

Since its inception BAF sought to support BMOs to improve their advocacy and organisational skills by offering training, coaching and mentoring to BMO boards and secretariats. Improving the competence of BMOs should eventually lead to better management within the organisations and advocacy success.

In 2017, BAF initiated a comprehensive revision and expansion of its training programme and materials. The new training programme has been divided into a foundation unit, introduction to advocacy and dialogue, followed by 18 training units grouped into seven modules.

In total, 49 training programmes were delivered to a total of 300 participants from 93 organisations with some participants attending multiple courses.

RESEARCH AND POLICY ADVISERS

In 2017 the Fund designed a Research and Policy Advisers (RPAs) programme. This followed the realisation that many BMOs continued to struggle to undertake research, develop compelling and evidence-based policy positions and engage in dialogue to reform public policy.

BAF intended to bridge this gap by the appointment of a group of Research & Policy Advisers (RPAs) who will provide advice and support to BMOs.

RPAs would be appointed for a period of a year. After a brief period of intensive, training, BAF intends to attach RPAs to a number of BMOs to undertake specific assignments. The assignments will focus on providing support in business advocacy activities undertaken by BMOs. It is intended that the RPAs' assignments and placements will be concurrent and mentoring will be provided from the BAF team as required throughout the assignment period. Four RPAs were hired in the last quarter of 2017 and were in training up to the end of the year.





MEDIA AWARENESS

Journalists' policy breakfasts

Since 2015, BAF has supported the Strathmore Business School (SBS) to facilitate a series of policy breakfast meetings for Journalists. These are interactive sessions between business journalists and key policy makers and business leaders to enhance understanding, knowledge and reporting on the business environment. This has led to more informed stories around topics covered and has enriched journalists' networks. In 2017, there were 7 such breakfast meetings featuring 10 policymakers with some of the breakfast meetings having two speakers.

The speakers featured at the breakfast included Eng. David Mwangi, an Energy Consultant and the former Head of Planning and Research at Kenya Power and Lighting Company, who discussed "Energy needs in the Era of Climate Change"; Betty Maina, the Principal Secretary at the State Department of East African Affairs who addressed "The Progress of EAC Integration"; Mohammed Guleid, Isiolo Deputy Governor, discussed "Progress of Devolution in Kenya and its Benefit" while Eric Mibuari of the Cognitive Services Unit at IBM Research, spoke on "The Digital Economy: Threats and Opportunities". Dr Chris Kirubi, the Brand Kenya Chairman discussed "Why the Future Is Kenya: The real story of Kenya's Economy"; Kiprono Kitony, Chairman of the Kenya National Chamber of Commerce and Industry and John Ngumi, an investment banker and financial services expert, spoke on "Private Sector Resilience and the 2017 Elections"; Dr Julius Muia, Director General Vision 2030 and Veronica Muthoni Okoth, Director, Economic Pillar, Vision 2030 addressed "Moving on from Elections 2017 to Vision 2030 and the Economy". Lastly, Dr Korir Sing'oei, Legal Advisor of the Executive Office of the Deputy President, spoke about "Addressing national development challenges through the open government partnership".

Media Awards

BAF sought to partner with the Media Council of Kenya through sponsoring the 2017 Annual Journalism Excellence Awards' business reporting and environmental reporting categories. This partnership is to promote balanced, accurate, articulate and well evidenced reporting and possibly create a business environment reporting category.

The winners in the business reporting category for radio and television respectively were Baraka FM's Diana Wanyonyi and NTV's Zeynab Wandati and Robert Gichira. The former's winning entry illustrated how an innovation in rural Kenya made it easy for villagers to access money. The latter pair were awarded for a story on the sugar industry which has in recent years experienced a steady decline to the detriment of farmers and other stakeholder in the sector.

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2017 IN FIGURES

	2016 July to Dec	2017 Jan to Dec
Total project Approvals	107.5m	210m
Advocacy approvals by number of projects	24	27
Advocacy approvals by value	105m	144m
Advocacy disbursements by value	17.8m	70m
BMOS supported	19	37
Projects completed	-	6
Sustainability projects approved	-	3
Sustainability projects approvals by value	-	12m
Capacity building expenditure	2m	10m
Participants in training programmes	100	300
Dialogues started by supported BMOS	79	183
Consultations with government	73	184
Policy proposals published by supported BMOS	10	4
Alliances & partnerships developed	20	11
Number of articles in the press	17	53
Policy changes	3	30

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