

THE BUSINESS



ADVOCACY FUND

Supporting Private Public Dialogue

Annual Report 2018



**MINISTRY OF FOREIGN AFFAIRS
OF DENMARK**

Danida

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Business Advocacy Fund

Since 2006, The Royal Danish Embassy – DANIDA, has supported the Business Advocacy Fund (BAF). The Fund supports business membership organisations to engage in dialogue, advocacy and facilitates collaboration between private and public sectors. It promotes our priorities of green growth, human rights and equality.

We are proud of the fact that since its launch, BAF has supported more than 200 BMOs to engage in 2,279 dialogues, submit 238 policy proposals to government and secured 253 policy reforms.

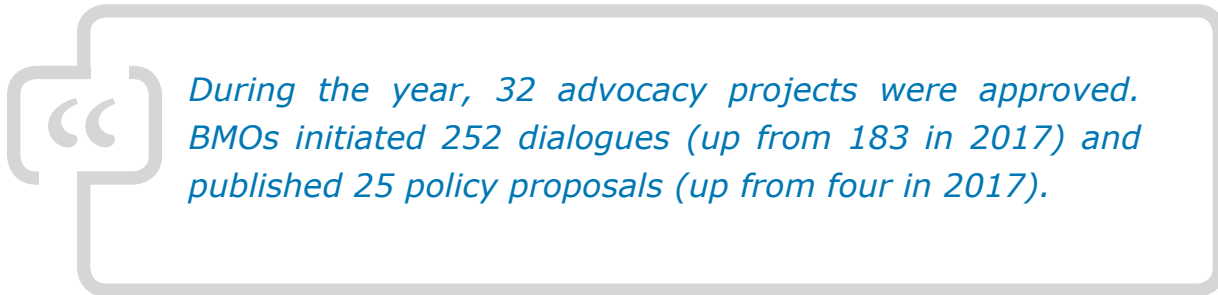
We believe that if the policy reforms that BMO's have achieved, with BAF support, are implemented they will have a transformative impact on Kenya's economy.


Henrik Larsen
Deputy Ambassador
Embassy of Denmark, Kenya

Introduction

Since the inception of the Business Advocacy Fund (BAF) in 2006, business membership organisations (BMOs) have been successful in advocating more than 250 policy reforms leading to the creation or protection of thousands of jobs and improvements in livelihoods.

The third phase of the Business Advocacy Fund (BAF) began in July 2016. The year 2017 was an election year with considerable political turbulence and reduced advocacy activity. 2018 saw not only a return to business as usual in government, with cabinet appointments at both the National and County level largely filled, but also a revival and indeed an increase in dialogue and advocacy activities.



This report highlights BAF's support in 2018 to BMOs and other not-for-profit organisations engaging in dialogue and advocacy. The projects highlighted are just a sample of the medium to long term efforts of the hard work by BMOs to make a positive difference to the environment – in many cases intended to develop Kenya's green growth agenda or

Introduction (continued)

support human rights. As well as supporting BMOs directly with funding and advice, BAF continued to innovate.

- We completed the revision of all of our training materials and now offer a much more comprehensive suite of courses intended to cover all aspects of dialogue and advocacy;
- we established a new service in which Research & Policy Advisers provide additional support to BMOs to undertake research, develop policy positions and then seek to influence policy makers;
- and we launched a new portal, dialogKenya, intended to make it easier for BMOs and others to access appropriate information, guidance and opinion.



As a result, mechanisms that bring together business and policy makers to work together to address business issues are now commonplace. We intend to build on these strong foundations during 2019.

BAF3 in Figures

	2016 July - Dec	2017 Jan - Dec	2018 Jan - Dec
Total board approvals	95m	210m	180m
Advocacy approvals by number of projects	24	27	32
Advocacy approvals by value	105m	144m	157m
Advocacy disbursements by value	18m	70m	70m
BMOs supported	19	37	36
Projects completed	-	6	19
Sustainability projects approved	-	3	7
Sustainability projects approvals by value	-	12m	-
Sustainability project disbursements	-	-	12m
Capacity building expenditure	2m	10m	14m
Participants in training programmes	100	300	406
Dialogues started by supported BMOs	79	183	252
Consultations with government	73	184	187
Policy proposals published by supported BMOs	7	4	25
Alliances & partnerships developed	20	11	15
Number of articles in the press	17	53	44
Policy changes	3	30	19

*All currency is Kenya shillings



Advocacy Success Stories

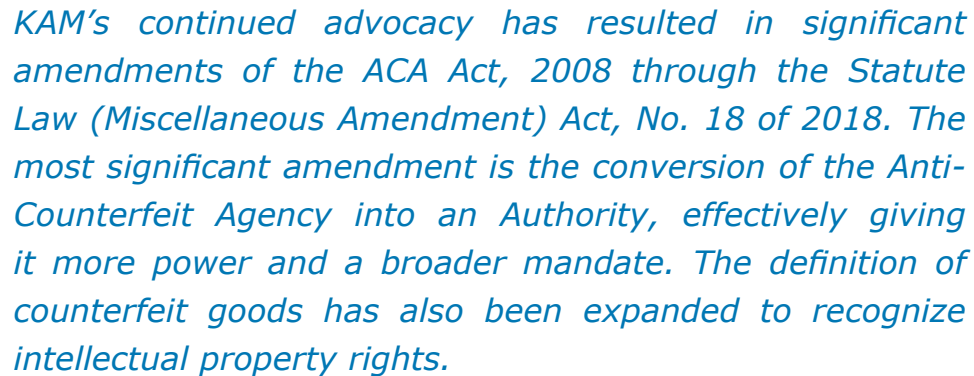
Kenya Association of Manufacturers curbs counterfeit trade

In 2008, KAM identified counterfeit goods as one of the biggest threats to growth in the manufacturing sector. BAF viewed this issue as one that compromised the rights of Kenyans to safe products. KAM successfully advocated the enactment of the Anti-Counterfeit Act, 2008 which led to the establishment of the Anti-Counterfeit Agency in 2010. In 2014, KAM found there had not been a significant reduction in the prevalence of counterfeit goods in the market so, in collaboration with the National Council on the Administration of Justice, KAM consolidated all the relevant laws on illicit trade into one judicial reference book titled, 'Enforcement Manual to Combat Illicit Trade in Kenya'.

The manual provides background information on illicit trade and its various forms and serves as a point of reference and guide for law enforcement and the public in tackling cases. In 2015, efforts were made to ensure key law enforcement

Kenya Association of Manufacturers curbs counterfeit trade (continued)

agencies including investigators, judicial officers and prosecutors not only have the manual, but are well versed in it, to improve their effectiveness and prosecution of illicit trade cases. The judiciary acknowledged the illicit trade manual was effective in assisting them to adjudicate illicit trade cases and requested the private sector to consider developing additional manuals for other core sectors, governed by cross-cutting legislation, such as the Companies Act.



KAM's continued advocacy has resulted in significant amendments of the ACA Act, 2008 through the Statute Law (Miscellaneous Amendment) Act, No. 18 of 2018. The most significant amendment is the conversion of the Anti-Counterfeit Agency into an Authority, effectively giving it more power and a broader mandate. The definition of counterfeit goods has also been expanded to recognize intellectual property rights.

In addition, the Office of the President has recognised the fight against illicit trade to be an important economic agenda for the country, resulting in a Presidential directive to establish a Multi-Agency Team comprised of the State Department of Trade, the Anti-Counterfeit Authority, Kenya Revenue Authority, Kenya Bureau of Standards, Kenya Copyright Board and the Pharmacy and Poisons Board, all of whom play a vital role in the fight against illicit trade.

Kenya Association of Manufacturers curbs counterfeit trade (continued)

The Ministry of Industry, Trade and Cooperatives (MITC) further gazetted an Inter-Agency Anti-Illicit Trade Executive Forum (IAT-TEF) and Technical Working Group (IAT-TWG) (Kenya Gazette Notice No. 7270) whose role is to lead the fight against illicit trade in the country. KAM's effective and continuous advocacy has led to the appointment of the KAM CEO as Vice Chair and Co-chair of the IA-TEF and IA-TWG respectively.

The operations of the Multi-Agency Team have seen numerous seizures of counterfeit and sub-standard goods at the point of entry as well as at warehouse locations across the country.

Counterfeit goods often do not meet the required standards of production and are often more likely to utilise materials which have not been checked for safety, reducing the prevalence of counterfeit goods may ultimately reduce pollution from the use and disposal of these products thereby boosting Kenya's green growth agenda.



Curbing counterfeits now will lead to an enabling environment that increases investor confidence to invest in the country and generate employment, wealth creation and innovative manufacturing.

Kenya National Chamber of Commerce and Industry (Vihiga County) advocates revenue raising legislation



Devolved governance became a reality in Kenya in 2013, with the election of county governments. It soon became apparent that the widespread increase and variation of county taxes and levies was unconstitutional.

Article 210 of the Constitution of Kenya provides that “No tax or licensing fee may be imposed, waived or varied except as provided by legislation”.

In 2014, the private sector, led by KAM collaborated with the Commission on Revenue Allocation (CRA), the Council of Governors (CoG) and the Kenya Law Reform Commission (KLRC) to develop enabling county revenue legislation to support counties meet the constitutional requirement.

Kenya National Chamber of Commerce and Industry (Vihiga County) advocates revenue raising legislation (continued)

They developed county revenue legislation covering: revenue administration; property rates; trade licensing (to continue the application of the Single Business Permit system); Agricultural Produce Cess Bill (for some county governments); public participation; and prepared a model County Finance Bill and the County Tariff Policy.

The proposed laws were then shared with each county and posted on CRA's website while a circular was published specifying the need for revenue raising laws. Despite the availability of the bills, counties largely ignored the circular issued by CRA and chose to continue enacting Finance Bills without the requisite supporting revenue raising legislation. In Vihiga County, KNCCI Vihiga branch expressed concerns that the County's Finance Act 2015 was enacted illegally as it lacked the backing of revenue raising legislation. In 2016, KNCCI Vihiga received BAF support to advocate review of the laws and ensure that the 2017/18 Finance Act met the constitutional requirements and provided transparency on the taxes, levies and fees charged by the county.



Kenya National Chamber of Commerce and Industry (Vihiga County) advocates revenue raising legislation
(continued)

KNCCI Vihiga successfully advocated the enactment of:

- *The Vihiga County Finance Act, 2017*
- *The Vihiga County Trade Licensing Act, 2017*
- *The Vihiga Rating Act, 2017*

In addition, in March 2018, Vihiga County approved a waiver of application fees while renewing the Single Business Permit – in line with the Trade Licensing Act, 2017.

These successes resulted in the participation of KNCCI Vihiga in the policy making process in the county and in recognition of their efforts the former CEO of the KNCCI Vihiga was appointed to be the County Executive for Trade, Industry, Tourism and Entrepreneurship. These changes have also resulted in a clear and predictable business environment for county traders; a steady and predictable revenue source for the county; and reprieve for traders in the payment of renewal fees of KShs. 500 over and above the Single Business permit fee.

These changes, and continued engagement between the county and KNCCI should ultimately improve the business enabling environment in the county thus retaining, and growing jobs and incomes while protecting economic rights of Vihiga's residents. The citizen's right to participate in policy formulation in the county was also enhanced by this project.

Shippers' Council of East Africa seeks more effective logistics

In 2008, BAF supported the then Kenya Shippers' Council (KSC) to undertake "an analytical study of transport and logistics costs and their cause and effect on the competitiveness of Kenyan shippers". This resulted in policy recommendations to address infrastructural issues at the Mombasa port, railway, pipeline, weighbridges and bypasses along the northern transportation corridor and issues at the border posts.



Shippers' Council of East Africa seeks more effective logistics (continued)

In 2017, BAF supported two further studies to understand better the logistical issues faced by SCEA members. One reviewed Kenya's air freight policy, regulatory framework and operational procedures to determine their suitability and to identify inefficiencies, costs and competitiveness in air freight. The study revealed airfreight users could benefit from further consolidation of operational procedures within the sector.

The other resulted in the publication of an updated Logistics Performance Survey, 2016 which helped SCEA prioritise eight policy issues: education of shippers to enhance compliance with existing regulations; optimisation of 24/7 operations at ports, borders and weighbridges; implementation of national and regional single windows; establishment and implementation of comprehensive risk management; enhance coordination amongst border agencies; implementation of electronic cargo tracking systems; increased investment in port infrastructure; and fast track upgrading of railway infrastructure.

The Logistics Performance Survey identified challenges still faced by the sector, as well as recognizing improvements resulting from earlier lobbying. For example, continued improvements in road infrastructure, enhanced automation of weighbridges and a reduction in the number of police checks have resulted in lower costs along the northern transport corridor.

Shippers' Council of East Africa seeks more effective logistics (continued)



The cost of road freight from Mombasa to Nairobi declined from \$1,300 in 2011 to an average of \$879 in 2016; truck turnaround time was 40 per cent better in 2016 at 26 hours compared to 2014. The cost from Mombasa to Kampala also declined by one third from \$3,400 in 2011 to \$2,237 in 2016, while turnaround time fell to 11 days, also 40 per cent better than that recorded in 2014.

The cost of rail freight also saw a steady decline. For example, the charges from Mombasa to Kampala fell from \$2,400 per container in 2014 to \$700 per container in 2016, although challenges with capacity and inefficiency continue.

The government therefore fast-tracked use of the newly completed Standard Gauge Railway (SGR) to transfer cargo bound for the local market to the Inland Container Depot in Embakasi (ICDE).

Shippers' Council of East Africa seeks more effective logistics (continued)



While use of SGR has eased congestion on the lower part of the northern corridor and facilitated faster movement of cargo for some owners, a different bottleneck has been created as the last mile infrastructure out of ICDE is insufficient. In addition, the return of empty containers to the depot has not been adequately addressed and this poses another challenge for cargo owners.

SCEA recognises the green growth potential, environmental and economic benefits, of using rail to haul cargo including reducing the number of trucks on the road and therefore reduced carbon emissions, reduced wear of the road infrastructure, reduced congestion and fewer accidents and reduced costs for business as competition has grown in cargo transfer services. SCEA however believes more can be done to improve the efficient transfer of cargo and is working with the government through various, relevant Ministries, Departments and Agencies to improve the last mile and general freight process across East Africa.

Kenya Alliance of Resident Associations and solid waste management



In 2014, the Kenya Alliance of Resident Associations (KARA) successfully advocated the enactment of the Nairobi Solid Waste Management Act, 2015. Subsequently, KARA in partnership with the Nairobi County Government developed the Nairobi Solid Waste Management Regulations, however these regulations had not been gazetted by the end of 2018.

In 2017, KARA in collaboration with the Kenya Association of Manufacturers (KAM) approached BAF to support the development of appropriate solid waste management policies and bills for 11 counties: Mombasa, Nakuru, Kisumu,

Kenya Alliance of Resident Associations and solid waste management (continued)



Uasin Gishu, Nyeri, Kisii, Meru, Kitui, Kajiado, Machakos and Kiambu. KARA and KAM then partnered with the National Environment Management Authority (NEMA) to implement this project.

They developed and agreed on model solid waste management policies and bills and developed a joint policy position for each county. They then submitted their proposals to all 11 counties and, as a result, five counties (Mombasa, Kisumu, Kisii, Meru and Nakuru) agreed to adopt the proposed policies and bills, although they have not yet been enacted. BAF continues to support the process towards the enactment of appropriate solid waste management policies and bills for these 11 counties. Specifically, KARA will seek to support them to ensure adequate public participation in line with county frameworks on public participation.

Kenya Alliance of Resident Associations and solid waste management (continued)

KARA sees this advocacy as an opportunity to:

- reduce public and environmental health risks emanating from poor management of solid waste;
- incorporate a circular energy model in counties thus facilitating the increase in waste recycling and energy generation;
- create green employment opportunities and incomes for various players along the value chain especially for women and youth.



Kenya Alliance of Resident Associations and solid waste management (continued)

A key achievement so far is that KARA is now recognised as a thought leader in the management of solid waste. As a result, KARA has been approached by many more counties requesting that they collaborate in the development of an appropriate regulatory framework to manage solid waste. KARA has not only been recognised by the Ministry of Environment as a key player in the sector, but also has been invited to make input into the development of a suitable National Sustainable Solid Waste Management Policy, with BAF support. In addition, KARA has been nominated to be a member of the UN Habitat Assembly to be held every four years, specifically advising on the policy framework on solid waste management.

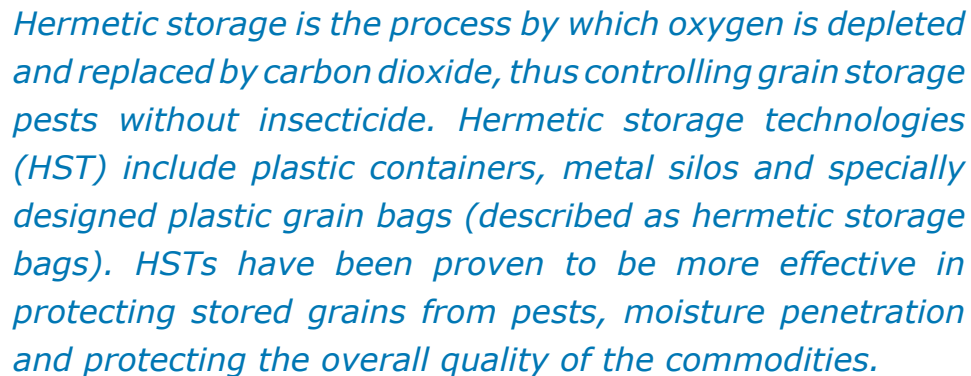
KARA hopes that the gazetting of these policies and bills and the subsequent implementation will result in a clean and safe environment as envisaged in the National Solid Waste Management Strategy. This is in line with the right to a clean and healthy environment in the constitution of Kenya, and the right to the highest attainable standards of health, including reasonable standards of sanitation. In addition, this advocacy supports the achievement of the Sustainable Development Goal 12 on reducing waste generation through prevention, reduction, recycling and reuse by 2030.



East African Grain Council setting standards for hermetic storage

It is globally acknowledged that post-harvest losses hinder the achievement of food security, a significant human rights concern. In Kenya, it is estimated that 20-30 per cent of the country's grain produce is lost within six months of harvesting. Inadequate post-harvest handling presents food quality and food safety risks, increasing the risk of spoilage and aflatoxin contamination, and presenting a public health concern.

Although there are several methods of preserving grain, it was determined from a market survey undertaken by EAGC that hermetic storage is the most sustainable and effective method of grain storage.



Hermetic storage is the process by which oxygen is depleted and replaced by carbon dioxide, thus controlling grain storage pests without insecticide. Hermetic storage technologies (HST) include plastic containers, metal silos and specially designed plastic grain bags (described as hermetic storage bags). HSTs have been proven to be more effective in protecting stored grains from pests, moisture penetration and protecting the overall quality of the commodities.

East African Grain Council setting standards for hermetic storage (continued)

When a further market survey was carried out, it was realized that although farmers generally favoured hermetic storage, there were varying results across the country as the quality of hermetic storage technologies varied widely. Following this survey, a committee was formed that included EAGC and the Kenya Bureau of Standards (KEBS) to develop standards for hermetic storage technologies as neither the EAC nor COMESA regions have established standards.

The objective was to provide clear guidance on product specifications for HSTs. This could potentially attract new entrants into the HST space and provide useful competition, ultimately benefiting end-users, that is, the farmers, through more affordable but superior quality HSTs. The use of quality HSTs will almost eliminate the need for chemical pesticides and fumigants to protect stored commodities. Reduced use of these chemicals will lead to a reduction of harmful effects of chemical fumigation on the environment supporting Kenya's green growth aspirations. The standards will support the manufacture of sustainable storage technologies that can potentially be used for several crop seasons, thus reducing the need for purchase and disposal of bags after every crop season.



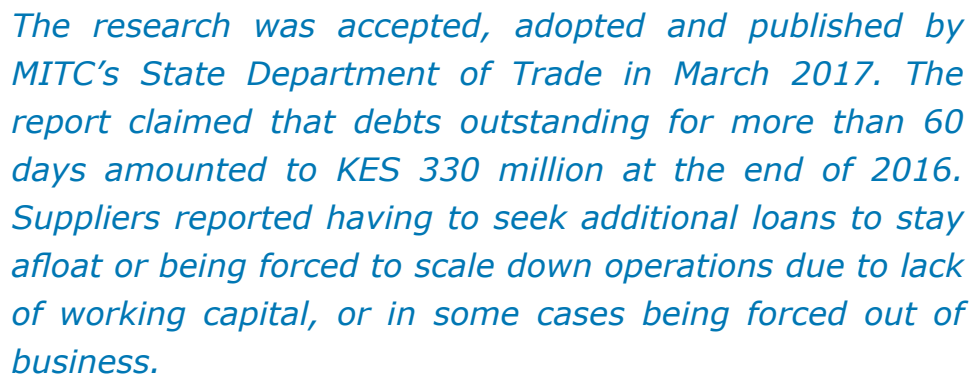
Retail Trade Association of Kenya promoting prompt payment

In 2016, following complaints of delayed payments to suppliers by major supermarkets chains and unfair trade practices, the Ministry of Industry, Trade and Cooperatives (MITC) formed a National Sector Working Group (NSWG). Members included the Retail Trade Association of Kenya (RETRAK) and the Association of Kenya Suppliers (AKS).



Retail Trade Association of Kenya promoting prompt payment (continued)

At that time, Kenya Association of Manufacturers (KAM) in collaboration with MITC, RETRAK and AKS sought BAF support to conduct research to understand the extent of the problem and subsequently to develop an appropriate mechanism to address the delayed payments and unfair trade practices in the sector.



The research was accepted, adopted and published by MITC's State Department of Trade in March 2017. The report claimed that debts outstanding for more than 60 days amounted to KES 330 million at the end of 2016. Suppliers reported having to seek additional loans to stay afloat or being forced to scale down operations due to lack of working capital, or in some cases being forced out of business.

The recommendations outlined in the report, adopted by the key stakeholders, were to develop a Retail Trade Sector Prompt Payment regulation and a Retail Trade Sector Code of Practice (CoP). RETRAK sought further BAF support to develop both the regulations and the CoP. The CoP has been finalised (and signed by all the stakeholders in January 2019) and draft regulations prepared. The State Department of Trade together with RETRAK, KAM and AKS further commissioned a review of legislative frameworks for possible legislation in which to anchor the regulations. The Competition Act, 2010 and the Trade Development Bill were identified as options and talks are now underway on how to anchor the draft regulations in the Competition Act.

Research and Policy Advisers

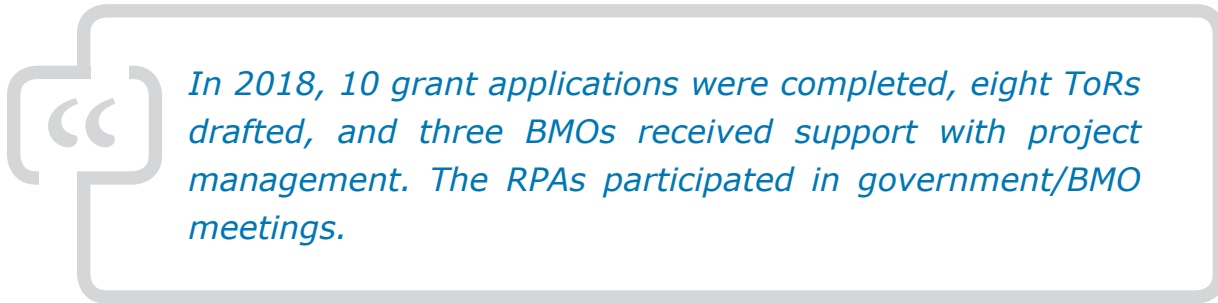


In 2017, BAF designed a Research and Policy Adviser (RPA) programme following the realisation that many BMOs continued to struggle to undertake research, develop compelling and evidence-based policy positions, and engage in dialogue to reform public policy. Four RPAs were selected and trained by the fund and began to provide support to selected BMOs in early 2018.

During 2018, 42 BMOs benefitted from RPA support, resulting in two research reports and 25 policy position papers.

Research and Policy Advisers (continued)

The RPAs provided further support to BMOs such as articulation of advocacy issues and grant applications to BAF, review of documents such as research reports, drafting of policy instruments, drafting of terms of reference for consultants as well as project management.



The RPA programme has proven a vital addition to the Fund providing necessary support on advocacy and is an avenue through which talented professionals can be identified and developed for careers in public policy and advocacy.

Media and Awareness

The media plays a crucial role in agenda setting. Accurate, balanced and impartial reporting can inform policy makers and the public. Well informed business journalists and writers can spur broader discussion about the need to improve the business climate.



Journalists' policy breakfasts

Starting in 2015, BAF commissioned 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 and green growth.

In 2018, SBS facilitated five policy breakfasts with a total of eight speakers and an average of 40 attendees per event, of whom 60 per cent were regular participants. An evaluation revealed a 90 per cent satisfaction rate with the guest speakers selected and the quality of discussions.

An unintended consequence is that the breakfasts have garnered coverage in the dailies and on television. Journalists have also added the speakers to their networks following the events and have contacted them for further insight on the topics discussed at the forums.

Bursaries for journalists

As an experiment to explore whether it is possible to support journalists to undertake more serious investigation, in 2018, BAF commissioned Aga Khan University Graduate School of Media and Communications to manage a project to offer bursaries to journalists on a competitive basis. Grants are provided for reporting by journalists seeking to publish (in print, on air, or online) in-depth, impactful journalism about the most important issues affecting Kenya's private sector, with an eye toward stories around green growth. Applicants must articulate clearly an idea that involves in-depth explanatory, or accountability reporting, and shows creativity and originality.

The project was launched in the last quarter of 2018 with a call for applications that drew 11 proposals, of which four fellows were selected. Three were funded and produced stories.



Knowledge Portal - DialogKenya.info

In 2017, BAF set out to establish a knowledge portal, independent of the BAF website. DialogKenya.info is promoted to BMOs, Ministries, Departments and Agencies (MDAs), Research institutions (RIs,) academics, consultants, journalists and others as a source of information and opinion about the policy process, and policy reform, related to the business enabling environment.

DialogKenya.info was launched at the end of 2018. It offers a range of information, guidance and opinion. The information section features advocacy issues pursued by BMOs and includes documents that support or result from these, such as policy positions, reports, policies, Bills and Acts. There is also a wide range of other information that will generally be helpful to BMOs as they seek to develop their own policy positions. The guidance section provides access to short factsheets, longer handbooks and suggestions for further reading to support users wanting to develop their knowledge and skill in dialogue and advocacy. The opinion section is an attempt to spur the conversation around the enabling environment for business issues and green growth. Users and others are kept informed through twitter.

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"A key pillar for economic transformation agenda for the government is improving business environment in Kenya. BAF has been a strong partner in advancing this agenda through support to BMOs in virtually all sectors advocating policy, legal and regulatory reforms. It has greatly contributed to improving our ranking in [the World Bank's] Doing Business from 101 in 2008 to 61 in 2019."

Dr Geoffery Mwau

*Director General, Accounting Services & Quality Assurance
National Treasury*

The Business Advocacy Fund

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