

Background Working Paper 1

Framework for a Baseline Study of Kenya's Creative Industries

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Framework for a Baseline Study of Kenya's Creative Industries

Introduction

The *UNESCO Creative Economy 2013 Special Edition: Widening Local Development Pathways* underlines the role of culture as a driver and enabler of inclusive development, led by the growth of the creative economy in general and especially the creative and cultural industries. These industries, which are recognized not only for their economic value but also increasingly and importantly for their role in generating new creative ideas or technologies and their non-monetized social benefits, are of particular significance in Africa because of the opportunities they open for job creation, individual freedom and societal confidence. It is, therefore, opportune for Kenya to pay attention to the long ignored culture and art space.

It is encouraging that more governments are starting to appreciate that cultural diversity, creativity and innovation can be at the core of equitable economies. Consequently, various protocols which position culture as a vector for development have been drawn up and signed to by governments, Kenya included (notably, the 2005 Convention on Protection of Cultural Diversity and Expressions). And many state parties to these conventions have then advanced to bring these under their national legislative frameworks. For example, the Constitution of Kenya underlines the role of culture in national development, with artistic expression constitutionally protected (Article 11). Additionally, Articles 10, 33, 34 and 44 underline the centrality of free expression for individual and collective advancement. Furthermore, Kenya's Vision 2030 recognizes the role of innovation in achieving the economic and social pillars.

Subsequently, the creative economy (also referred to as creative and cultural industries) has become an important element in policy discussions. However, a consistent and sustained approach or coherent framework towards the promotion of creativity in Kenya is lacking. This is partially due to paucity of data and a weak policy and legislative framework in support of the sector. Creative industries are at play in other sectors of society including agriculture and tourism. However, the information about the sector is scattered. There is no single source which provides reliable evidence about the sector in Kenya. This paucity of data is a consequence of many factors including problems of definition and challenges of classification at the Kenya National Bureau of Statistics. Yet, accurate and reliable information is crucial for systematic engagement of the sector, the ability to build a business case, motivation for additional resources for the sector and monitoring and evaluation purposes.

The baseline study would be key in answering the following questions:

- (i) How should the sector be defined?
- (ii) What is its economic contribution?
- (iii) What other societal contributions is it making?

- (iv) What is the importance of the various sub-sectors?
- (v) Which strategic issues should be addressed by national and county governments?
- (vi) How should the sector be promoted and funded?
- (vii) Which policies and legislations have a bearing on the sector and how should they be engage?

It is for this reason that a baseline study of the sector ought to be undertaken by the Government of Kenya. Previously, interventions related to the sector have been ad hoc, minimalist and focused on tradition rather than on culture as a dynamic process of being. Additionally, they have been undertaken by corporates and civil society institutions for their own strategic reasons specific to their mandates. A comprehensive study, spearheaded by the Government of Kenya, is urgently needed. This framework for assessing the environment of the creative sector has been developed by the Creative Economy Working Group (CEWG) and is designed to contribute to the envisaged baseline study.

OBJECTIVES

Key objectives of the baseline study could include:

- (a) Defining and scoping the creative economy in Kenya
- (b) Identifying the strength and opportunities for the creative industries sector in Kenya
- (c) Identifying strategic issues-facing sub-sectors of the creative industries and how they can be ameliorated
- (d) Recommending specific actions for the advancement of the creative sector in Kenya

The creative industries have, over the last decade, emerged as an important and dynamic sector in the country, especially with the liberalization of the media and the accelerated growth of information and communication technology (ICT) generally. As the *Ubunifu: Status of the Creative Economy in East Africa* Report (2016) shows ‘a growing middle class presents a great opportunity for artistes to develop bigger local audiences and customers for their artistic products. However, most artistes lack the business acumen, management skills and legal knowledge to manage their careers in a manner that makes their artistic careers sustainable.’ This skills deficit can be addressed through strategic interventions.

By blending knowledge, creativity and innovation, free expression and access to information, the sector is making critical contributions to economic growth and social development. It not only creates employment opportunities and secures livelihoods, but also drives innovation in other sectors of society, such as tourism, agriculture and financial services. Countries such as United Kingdom, Australia, the United States of America, Singapore, Denmark, Canada and Hong Kong have invested substantially in the sector and are reaping the benefits. It is no wonder that cultural and creative industries in these countries have had a tremendous impact on the economic, political, social, cultural, and technological domains and are propelling the arts, commerce and

technology. (see, for example , https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523024/Creative_Industries_Economic_Estimates_January_2016_Updated_201605.pdf).

Kenya can benefit from the robustness of creative industries but only if the investment is holistic and purposeful. A baseline study would be a critical phase in starting to build a strong rationale for investing in the sector.

COMMENT: *The baseline study should interrogate how the creative sector has benefitted from media liberalization and growth of information communication technology in order to suggest further opportunities for the sector. It should also identify the existing skills deficit and how, within the context of technological advances, it can be addressed.*

Defining the Sector

But what is the creative sector in Kenya? According to the UNCTAD Report (2008) ‘creative industries are those industries (which) constitute a complex and heterogeneous field that ranges from artisan products, to visual and performing arts, the recording industry, cinema and audiovisual media as well as multimedia including digital art to publishing and entertainment and represent one of the most dynamic sectors in the global and trading system.’

In order to delineate and examine creative industries in detail, it is important to categorize them according to the primary reason for their existence. In Kenya, the creative economy framework has the following subsectors, according to the IBM Corporation Report (2012), using the UNCTAD categorization:

- (a) Cultural Expression and Assets: Arts, crafts, events
- (b) Performing arts: live music, theatre, dance, opera, circus, puppetry
- (c) Audio-visuals: film, television, radio, other broadcasting channels
- (d) New Media: software, video, games, digitized creative content
- (e) Creative services: architectural, advertising, cultural and recreational events
- (f) Design: interior, fashion, jewellery, toys
- (g) Publishing and Printed media: books, press and other publications
- (h) Visual arts: painting, sculpture, photography, antiques
- (i) Cultural sites: archeological sites, museums, libraries, exhibitions

However, in a meeting convened by the CEWG in 2015, Kenyan participants contributed the following towards the definition of the sector. Clearly, a harmonized and localized articulation is needed.

VISUAL ARTS	PERFORMANCE, CEREMONIES CELEBRATIONS	CRAFTS & CURIOS	PUBLISHING	DESIGN	DIGITAL/ NEW MEDIA	AUDIO VISUAL/ INTER-ACTIVE	CULTURAL HERITAGE	FASHION/ Textiles & Clothing
Sculpture	Dance	Carvings	Books	Architecture	Photography	Film	Museums	Make up
Painting	Music	Bead work	Literature	Advertising	Animation	Animation	Monuments	Perfumes
Installation	Poetry	Weaving	Journalism/ Reporting	Interior Design	Information Technology Innovations	TV	Antiques	Body art/cosmetics
Photography	Puppetry	Pottery	Cartooning	Graphic	Software Development	Radio	Language	Clothes
Cartoons	Deejaying	Glass work	Illustration		Gaming	Podcasting	Culinary arts	Modelling
Illustration	Mceeing		Magazines		Internet Governace		Traditional Knowledge systems	Accessories
Graffiti	Story telling		Newspapers					
	Acrobatics		Journals					
	Festivals/ Fairs							
	Theatre							

COMMENT: *Baseline should come up with a Kenyan articulation of the definition and categorization of the cultural and creative industries drawn from the practice in the sector.*

EQUITABLE SHARE -OF BENEFITS FROM SECTOR

There is no doubt that media and advertising agencies and their clients are a primary source of work for graphic designers, writers, film and music producers. But the benefits accruing from this business interaction is lopsided. In an article titled ‘Advertising Spend in Kenya’, by David Herbling (*Posted Monday, March 2 2015 at 10:26*) and drawing data from media monitoring firm Reelforge, Safaricom is quoted as leading the list of big spenders with an Sh8.5bn advertising budget in 2014. Consumer goods firm Reckitt Benckiser was second with Sh2.9bn followed by non-profit organisation Population Services (PS), which spent Sh2.8bn on media campaigns, Samsung (Sh2.1bn), East African Breweries Ltd (Sh2.09bn) and Unilever (Sh1.9bn). Reelforge said the increase in spending was partly linked to an increase in rate cards. Although Reelforge concedes that the actual figures may be different because of factors such as discounts and premium charged by the various media houses, the lopsided nature of the business environment cannot be contested.

COMMENT: *The baseline should provide quantitative information on the financial and spending patterns within the creative sector. How much are artists actually getting compared to other players? How can the benefits be more equitably shared?*

SECTOR ECONOMIC CONTRIBUTION

Australia has taken cultural and creative industries seriously, thanks to Paul Keating's Labour Government and its commitment to build a Creative Nation (see <http://pandora.nla.gov.au/pan/21336/200310110000/www.nla.gov.au/creative.nation/contents.html>). The Creative Nation was an ambitious project in which Keating committed substantial resources over four years to the arts and cultural industries in Australia. The project changed the way Australians saw themselves, and their place in the world. It defined culture" as "that which gives us a sense of ourselves", thus broadening the concept to include a wide range of human expressions and experiences. Furthermore, the policy document reframed the cultural industries in economic terms. In doing so, it changed the language used to talk about Australia, its culture, its artistic expressions by substantially dignifying it in the national psyche. Kenya can learn from the Creative Nation project.

The creative sector has continued to be recognized as a key sector of economic development but its precise contribution to the national economy is yet to be fully appreciated. According to Nyariki (2007) creative industries contribute 5.23% of Kenya's GDP and 3.2% of the national work force (62,000 people) which compares generally with other sectors of the main economy such as fisheries at 5.4% and manufacturing at 6.2%. But a review of these figures is already due – as the various subsectors of the creative industries are slowly but surely mapped – the disaggregated figures being to give a more refined picture of the contribution of the creative industries as a whole. The contribution of the subsectors is not fully understood.

Fashion and Textile

Due to the rising production costs of fabrics in Asia, Sub-Saharan Africa is likely to be the next frontier and Kenya stands a good chance of leading the way because of its fashion and design talent as well as a large and entrepreneurial work force. *The Kenya Textile and Fashion Industry: The role of fashion designers and small tailors in the fibre to fashion value chain Report*¹ recognizes the potential of the industry. Currently, the textile and clothing sector contributes 0.6% to the GDP and accounts for 6% of the manufacturing sector because its potential is yet to be tapped. The Report captures a number of challenges facing the fashion and clothing industry which require urgent resolution.

These challenges include:

- Lack of policy coherence and institutional alignment
- Low level of value addition and a disconnect between the textile sector and the rest of the value chain segments

¹ This study was commissioned by Equity Bank, HIVOS and the Association of Fashion Designers of Kenya in order to understand the Clothing to Fashion Value chain and the impediments to sustainably integrating local fashion designers and small tailoring houses into the domestic retail platform, as well as the opportunities in regional and international markets.

- Supply side constraints with regard to quality and price of fabrics, with focus on afro-centric cloth and garments
- Weak business environment
- High cost of production and built-in systemic inefficiencies
- Lack of market readiness
- High cost and difficulties to access credit and finance
- Limited funding available for SMEs
- Lack of visibility of the Kenya's design capabilities and absence on the formal retail platform
- Illicit imports and negative impact of second hand clothing trade
- Lack of a clear national policy on fashion and textile

The growth of the fashion sector would benefit immensely through a reinvigoration of the cotton industry. The Cotton Policy (2005) and the Cotton Bill (2005) spell out interventions that can be undertaken, rather urgently, in reviving the sector. As a chain industry – from production to garment – it depends on a wide range of stakeholders who must play their role to make the garments available, affordable and distributable.

COMMENT: *The baseline would address these challenges in the textile and fashion sector through a value chain analysis from cotton production to the sale of garments. Case studies would be beneficial.*

Film and Television

The Film Industry in Kenya is regulated under various laws and legislations. In addition to the Constitution of Kenya, important Acts of Parliament for the sector include *the Film and Stage Plays Act, Chapter 222, the Kenya Broadcasting Corporation Act of 1988, and the Kenya Information and Communications Act of 2008 (Amended vide KICA 2013) and the Kenya Film Commission Order No. 147 of 2015* (a legal notice made by the President of Kenya under the *State Corporations Act (Cap 446 of the Laws of Kenya)* expanding the mandate of the Kenya Film Commission to include archiving, establishment of incubators and a Film Fund). The Commission being the first parastatal to undergo the reform process in line with the Jubilee Manifesto. Another guiding legislation is the *Kenya Information and Communications (Amendment) Act of 2013*. These legislations guide the sector and provide the requisite framework. For effect, they should be read alongside other statutes such as the Copyright Act (Cap. 130, Laws of Kenya), VAT Act 2013 and Finance Act 2015.

There is need to build knowledge around the sector but research and documentation about film in Kenya are weak. Harnessing of this knowledge is taking place outside of government support. For example, in the documentary *History of Film in Kenya 1909-2009 (Winner of the 2010 Kalasha Film and Television Award)*, viewers are treated to 100 years of the film making experience in Kenya and the contribution of various players in the industry. Further, Jean

Hartley captures the contribution of wildlife film makers in her book *Africa's Big Five and Other Wildlife Film Makers* (Twaweza Communications, 2010).

It is important to know where Kenyans are watching films and what are they watching. In an *Audience Consumer Trends Survey* Report commissioned by the Kenya Film Commission in 2010 found that with regard to going to the Cinema to watch a movie, majority of the respondents visit the cinema less often (46.9%) or have never even visited at all (34%). Only 8.9% visit the cinema once a month. The percentage of those who never visit the cinema increased when they were asked how often they visit cinemas to watch locally produced movies.

It was further noted during the Survey that visiting cinemas halls to watch movies was largely an urban phenomenon with most of the rural populace settling more for mobile cinemas or informal cinemas. The factors that influenced cinema going as mentioned by the respondents were: The title of the movie (27.7%), actors in the movie (25.8%), recommendations from friends (16.5%) and the cost being charged to watch the movie (13%) among other responses.

Concerning local content, the Survey found it notable that slightly less than half of the urban population (40%) watches movies with local content less often while 18% have never watched it before. The reasons attributed to why majority are not watching locally produced movies were: lack of awareness (28.3%), unavailability of locally produced movies (25.8%), prices charged for those movies (11.4%) and poor quality of locally produced movies (19.1%).

Nonetheless, the film sector continues to grow, thanks to a number of incentives favorable to the industry. We will briefly discuss some of these incentives before delving into the challenges:

Value Added Tax (VAT)

The VAT Act 2013 following amendments through the Finance Act 2015 provides for exemption of “*goods imported or locally purchased for use by the local film producers and local filming agents subject to approval by the Cabinet Secretary to the National Treasury*”. The Act further provides for the exemption of “*services imported or procured locally for use by local film producers or local film agents certified by the Kenya Film Commission subject to approval by the Cabinet Secretary for the National Treasury*”. This means that film producers importing equipment and services into the country and those purchasing the same locally are not be subject to VAT on these purchases. This translates into a 16% reduction in the cost of purchasing these equipment.

COMMENT: *The baseline study should explore how the VAT Act is actually experienced on the ground by film producers. Is it working or not, and if not why? What has been the impact of this concession to film businesses? Has it translated to more jobs? More film products made and consumed?*

Income Tax

The Finance Act 2015 amended the Income Tax Act (ITA) by inserting a paragraph under Section 35(I)(A) that reads “*subsection (1) shall not apply to payments made by filming agents and film producers approved by the Kenya Film Commission to actors and crew members approved for purposes of para (g) and (h)*”. The Finance Act 2015 also introduced paragraph 1(dd) under Part I of the Second Schedule to the ITA, to read as “*provided that in the case of a building in use for the training of film producers, actors or crew, the rate of deduction shall be one hundred percent*”. This legislation has the effect of guaranteeing that a) Payments to producers, actors and crew will not be subject to Withholding Tax (WHT) and b) investments in buildings and equipment will get 100% deduction for tax purposes hence reducing tax payable by the investors on income from filming activities.

COMMENT: *The baseline study should explore how the Income Tax Act is actually experienced on the ground by film producers. Is it working or not, and if not why? What has been the impact of this concession to film businesses? Has it translated to more jobs? More film products made and consumed*

Rebates from Government

In the budget statement of June 2015 the Cabinet Secretary Finance undertook to grant rebates to film producers carrying out production in Kenya.. Countries in competition with Kenya, such as South Africa, have successfully implemented rebate and other incentive schemes that target Foreign Film Producers (FFPs). In the scheme, the FFP’s are able to close their budgets (raise required financing) with the help of local taxes refunded to them by the tax authority.

Broadly, it could be claimed that the benefits from the rebates will encourage big budget local and international film and video productions in Kenya to grow the economy, advancing intensive hiring of local technical crew and equipment, increasing in-country film budget spend by providing one stop shop film ready environment. The result would be an impressive industry But is this the case?

COMMENT: *What problem is being solved by the rebates? What are their expected outcomes ?*

Policy and Practical Issues

There are however a number of issues that have policy and practical implications for the sector.

1. Promoting the Recognition of the Importance of the Film and TV Industry to Kenya

The contribution of the film and TV industry cuts across various sectors and has had such a significant multiplier effect making it a significant contributor and economic pillar. The Film and TV industry contributes significantly as well to revenues in the Tourism and Transport industry. The domino effect of a vibrant film industry is yet to be fully appreciated by policy makers.

2. Draft Film Policy & Film Bill

Significant steps are currently being made to reform the policy and regulatory framework of the Kenyan Film and TV industry through the proposed Film Policy and Bill. It is expected that these pieces of legislation will strengthen and enhance the regulatory framework to make it more comprehensive, consistent and flexible for Film and TV industry development.

3. Reducing the Cost of Film Production

Local filmmakers have raised concerns on the high costs of film production. This is in regards to both the cost of equipment purchase, hire or import, and the cost of employing competent film professionals.

Due to the lack of a one-stop shop, there is also a long and tedious process in authorizing film activities in the country which is often a challenge to new and upcoming film makers as well as international film makers. This is due to the fact that in addition to the film license, there are various other levies at the County level, immigration, Kenya Wildlife Services etc. with some counties levying very high fees.

COMMENT: *Baseline should identify the various levies and explore how they can be merged to reduce bureaucracy. What would be the effect of providing these services under Huduma Centres?*

We are aware that the Commission has been exploring ways in which the high cost of film equipment, film production; and film making processes can be reduced in partnership with other Government agencies such as the Kenya Revenue Authority (KRA), Immigration Department, Department of Film Services (DFS), Kenya Film Classification Board (KFCB), and County Governments among others.

COMMENT: *What is the experience of state and public institutions in the creative sector negotiating space, and working with other related agencies? What are the coordinating mechanisms for the sector?*

4. Promoting the Development of Local content

The number of locally produced films has been increasing over the years and it is important to know the number and types of films being produced, especially by Riverwood, as well as how they are received. The quality of these films generally needs to improve so as to capture both the local and international market.

COMMENT: *What is the Riverwood Business Model? What challenges do Riverwood producers and artists face? How can these be addressed?*

5. Limited skilled film professionals

Kenya does not have an adequate pool of trained film professionals in areas such as script writing, directing, acting and production among others. The main concentration of many media training institutions is in journalism or video production. These courses have many times been theory based meaning that a large percentage of graduates have not been production ready. We

are aware that The Kenya Film Commission under their MOU with the Communications Authority of Kenya is implementing Capacity Building workshops across the country. Further that the Commission is participating in a Taskforce established to operationalize the Kenya Film School under the Department of Film Services.

COMMENT: *How can challenge of skill sets be best -addressed? What would be the role of the Kenya Film Commission? How about the Department of Film Services? How will these roles relate to the Film School? How about tertiary institutions in the country? The baseline should map out film capacity development needs and which institutions can address them in order to create a vibrant industry.*

6. Promoting screen culture

Though Kenyans watch films, the screen culture is not deeply rooted. It is therefore often difficult for filmmakers to market their film products locally as this particular type of art is yet to be appreciated to the level where many film makers can earn a comfortable living from it. It is important to know the effect of the digital revolution and the consumption of film through DVDs, the Internet, personal devices, Pay TV, web series and forth on screen culture.

7. Adequate film archiving

This is a key challenge to the film industry in Kenya as a whole. The film material on Kenya is scattered in different places from the museums to the Archives to private collections. It is therefore not easy to access Kenya's history on film and in film making. We understand that the mandate of the Commission has been expanded to mitigate this challenge.

8. Promoting Information on film

The film industry in Kenya has the potential to contribute in excess of Kshs.40 billion to the economy. However film statistics are not easily available due to the number of different organizations involved in various aspects of this industry. Some of the authorities involved in film licensing, activities or tax remittance own different facets of information on the film industry. It is therefore difficult to consolidate this information for economic planning purposes.

KFC is in the process of establishing a clear process for continuous data collection and dissemination. It will establish linkages with data sourcing organizations that include Industry Associations, DFS, Communications Authority of Kenya, KFCB, Export Processing Zone (EPZ), KRA, Immigration Department and Kenya National Bureau of Statistics (KNBS).

COMMENT: *Enrich baseline with in depth case studies in creative sector by providing resources to procure high caliber researchers.*

Music

The music sector is vibrant and it is estimated, for example, that revenues generated by Safaricom's *Skiza* Tunes could be up to Kshs 6 billion annually (Chinasa Udeala, 360 Music Publishing, Kenya). However, it is beset by a number of challenges and the industry would like them addressed rather urgently. There already exists a Music Policy but the legislative

framework is weak. This has led to denial of musicians' benefits through piracy, taxation, and underpayment of royalties. The industry is seeking for a law that would promote the growth and development of the Kenyan music industry. Currently, there are no legal provisions in the Kenyan Statute books that seek to specifically promote music.

The industry would like to have:

- (a) An **Award Scheme** to recognize and reward excellence in all genres of music and dance and further provide incentives to investors in the Local Music Industry. The system of recognition awards plays a big role in motivating artists. Elsewhere, cash awards are given alongside plaques and certificates. These assist the artists in developing their trade.
- (b) **Trade unions and other associations:** These would represent and defend the interests of their members and to give them the opportunity to advise public authorities on suitable measures for stimulating artistic activities and ensuring their protection and development.
- (c) **Music Kenya:** There is a proposal to transition the Permanent Presidential Music Commission (PPMC) into a statutory body with a new name, "**Music Kenya**". This body would operate as a music information centre amongst other things.
- (d) **Inventories:** The national inventory of institutions concerned with folk music are important for inclusion in regional and global registers of folklore institutions. The sector believes that the Government out to create identification and recording systems (collection, cataloguing, and transcription) or develop those that already exist by way of handbooks, collecting guides; model catalogues etc. This would help synergize and coordinate the classification systems used by different institutions.
- (e) **Local Content:** The industry would like to see the enforcement of legislation on local content. The sector would also want to see enhancement of local cohesion and integration by the Government ensuring that community local and vernacular broadcasting stations play at least 30% other Kenyan vernacular music. Moreover, industry would like to see the National Government put mechanisms, both legal and facilitative, aimed at promoting the playing of Kenyan music in public institutions and places, including the national carrier (Kenya Airways), public offices, airports and public places.
- (f) **Incentives:** To incentivize the industry, the Government is being urged to put in place measures to provide tax concessions towards music industry as a whole. This could also include giving tax incentives to advertisement agencies and media houses that make commercials on local products using local talent.
- (g) **The Music Industry Development Fund:** Industry would like to see the establishment of a Music Trust Fund in order to boost the amount of financing available for investment in the music industry. This would help artists create quality Kenyan music and give Kenyan talent the tools necessary to fully develop their creative and business skills.
- (h) **The National Music Board is also proposed.** It would be in charge of the music industry development and coordination.

- (i) **The National Music Tribunal would be** responsible for dispute resolution in the music industry.
- (j) Industry feels that the **Copyright Act has weaknesses**. The Copyright Act (Cap. 130, Laws of Kenya) is essentially in place for the protection of copyright, prohibition of piracy and other forms of copyright infringement, to provide a framework for collective management of copyright (collection and distribution of royalties) and oversight. A failure to enforce the Copyright Act or to facilitate its enforcement therefore leads to failure to protect IP right and exposure of a copyright holder to unmitigated losses.

COMMENT: *The baseline study ought to look at the concerns raised and the institutional mechanisms being proposed by the sector. How do these relate to other sectors? It should also present sector case studies with quantitative and qualitative information and suggest strategic direction for the music sector. The Copyright Act has implications throughout the sector. A close examination of this Act and how it is serving/not serving practitioners is necessary.*

- General Enforcement: Create an enabling environment for writers, authors, composers, arrangers, publishers, producers of sound recording, performers and other music practitioners through the enforcement of legislation relating to copyright and the enactment of legislation aimed at promoting music creativity in the country.
- Payment of Royalties. Reinforce the existing legislation to provide for more effective regime for payment of royalties due to artists by the broadcasting houses, digital and other platforms.

Combating Piracy and other forms of copyright infringement:

- Enhance structures in place for effective investigation, regulation and prosecution of offenders involved in piracy and other copyright infringement.
- Enhance the capacity to combat unauthorized commercial use of copyrighted works and ensure the application of best international practices in combating irregularities and illegal exploitation within the music sector.

Copyright and the Digital Age:

- Ensure that laws on internet use are in line with emerging technological trends as regards copyright and intellectual property
- Work with Internet Service Providers to ensure that online piracy is minimized
- Take measures to ensure that an efficient digital copyright licensing system including supporting the administration of the private copying levy within the existing, new and emerging technology advancements

International Conventions:

- Domesticating international conventions on protection of literary and artistic works.

- Take measures to enforce international protection of the rights of artists/musicians under the terms of existing conventions and in particular of the Berne Convention for the protection of Literary and Artistic Works (Berne Convention), the Universal Copyright Convention (UCC) and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), WPPT, Beijing Treaty on Audiovisual Performances, WIPO and take all necessary steps to extend the field of application, scope and effectiveness of those instruments.

COMMENT: *The baseline should explore how creative commons operates in the Kenya context and its place in the promotion, enjoyment and protection of local Kenyan cultural assets. It should also examine the domestication of conventions signed to by Kenya.*

Generally, the baseline study should examine these issues strategically in order to come up with recommendations that would support the industries without creating unnecessary bottlenecks.

Language

Language reflects culture and is influenced and shaped by it. It is part of culture and at the symbolic level represents people by carrying their historical and cultural experiences, their approach to life and overall interpretation of the world. Language and culture are interwoven and, like flesh and blood in living organisms, are inseparable. Therefore, the Ministry of Sports, Arts and Culture is at the core of language issues, although the Languages of Kenya Policy and Bill are being developed by the Ministry of ICT.

Broadly, the Policy and Bill are in furtherance of the Constitution of Kenya Articles 7, 10, 11, 35, 44, 53, 54, 55, 56, 59 and 159 and the Fourth Schedule Section 5 on promotion of official and local languages. Moreover, Articles 6(2), 21(3), 27(4), 46 (1) b, 57 and 232 also rely on the proper handling of the linguistic diversity of Kenya.

COMMENT: *The baseline should capture how the languages of Kenya are contributing to the creative sector and how this can be enhanced. It should also tell us how many languages are spoken by ethnic groups in Kenya because they are not 42 as is often stated.*

Policy Formulation and Review

Kenya does not have a comprehensive creative economy policy for the development of the creative industries *per se*. There are, nonetheless, policies related to some of the sectors but no overarching policy exists about knowledge, creativity and innovation (which underpin the cultural and creative economy). Therefore interventions and programmes are not harmonized or coordinated. The baseline study will need to assess the current gaps in the creative industry policy and legal framework. In doing so, researchers will need to determine what key stakeholders desire from the state, private sector and communities. Further, the baseline will need to identify potential areas critical for the development of the sector and the capabilities that ought to be built. The role of creative economy in the knowledge and wider economy will need to be explored. Knowledge has become a crucial factor of production not only within those industries which are typically associated with knowledge economy but also in other industries such as agriculture.

Current Legislative Environment for the Creative Industries Sector

Legislation	Status	Gap and Way forward
Kenya National Culture Policy	Policy launched in 2009 and revised to align with Constitution. More revision needed to cater for SDGs	<ul style="list-style-type: none"> • Draft National Culture Bill available awaiting presentation to cabinet. Sets up National Culture and Arts Council • Need to engage counties to plan for culture and arts and diversify activities
The National Museums and Heritage Act	Passed as law in 2006 and revised in 2009	Reviewed to align with Constitution and the National Culture Policy (revised)
National Heritage Policy	Draft available	National Heritage Bill
The National Sports Act	Passed into law in 2013	Comprehensive implementation of the Act is yet to be undertaken
The National Policy on Traditional Knowledge, and Cultural Expressions	Policy and Bill available	Bill focuses on IPR of traditional seeds, plants and expression. Would need examination on how it relates to Culture Bill
Draft Music Policy	Developed in 2010 Draft Bill available	<ul style="list-style-type: none"> • Discussion ongoing
Draft Film Policy	Developed in 2008 and harmonised in 2015.	<ul style="list-style-type: none"> • Needs to be drafted as a Bill and subsequently into an Act of Parliament • Bill needed urgently
Draft Language Policy and Bill	Draft Policy and Bill available with Ministry of ICT	Finalize Bill and start implementing it.
The Arts Policy	Has not been developed	We need to decide how to move this forward
Creative Economy Policy	Framework for promotion of cultural and creative industries in progress	There is need for an all inclusive creative economy policy for the implementation of Articles 7,10,33,34, and 44 of constitution and implementation of 2005 UNESCO Convention
Kenya Cultural Centre Act	Exists	Needs to be reviewed to align to constitution

Institutions in the Creative Economy

There are a number of institutions in government, private sector and civil society involved in the cultural and creative industries. Practitioners have set up think tanks, networks and associations

to address issues of policy, legislation, capacity development, financial needs, and infrastructure. There are also development partners funding and supporting the sector.

COMMENT: *It would be important to know how these institutions relate to each other. Furthermore, considering the Constitution of Kenya how will the various government agencies be restructured?*

Other Possible Areas of Study

There are other areas which the baseline study could capture:

1. What attitudes do Kenyans have towards the creative sector generally? Why do they hold those attitudes?
2. How are the various institutions functioning? What coordinating mechanisms exist?

The policy and legislative framework for the creative sector is emerging. However, there seems to be lack of coherence at the executive level in terms of the direction the sector needs to take. The pace of finalizing the sector's core documents is too slow. The sector is also quite suspicious of government and the engagement is very cautious. There is need to build confidence within agencies and institutions in order to move forward.