The impact of BMO advocacy

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THE BUSINESS ADVOCACY FUND
Supporting Private Public Dialogue

MINISTRY OF FOREIGN AFFAIRS
OF DENMARK
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The impact of BMO advocacy

Introduction

The Business Advocacy Fund, funded by the Danish International Development Agency, was established in 2006 with the aim of catalysing a better business environment in Kenya through supporting business membership organisations and others to identify policies, laws and regulations that constrained business. It provides funding, training and mentoring to BMOs to research issues, develop proposals for policy reforms and to engage with Government to advocate these improvements. When changes are enacted, BAF provides further support to BMOs to monitor delivery of the changes in practice and assess whether member businesses' respond positively to the new environment.

BAF itself has assessed the impact of many of the projects that it has supported and many of the individual project assessments are available publicly. To reach a wider audience, however, BAF has also published summaries of those impact assessments. This is the third such report and reflects on projects supported between 2016 and 2020 during which time BAF supported 48 BMOs with 108 grants totalling around $2.9m delivering 114 reforms. This report assesses the impact from nine of those grants.

County revenue raising legislation

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”. Counties were therefore expected to put in place enabling county legislation before enacting their annual County Finance Bills, though many failed to do so.

In 2014, Kenya Association of Manufacturers engaged the Commission on Revenue Allocation (CRA), the Council of Governors (CoG) and the Kenya Law Reform Commission (KLRC) to coordinate the development of enabling county revenue legislation to support counties to meet the constitutional requirement. Together, they developed model revenue legislation covering County Revenue Administration, County Rating (for property rates), County Trade Licensing (for the application of the Single Business Permit system), County Agricultural Produce Cess (for some county governments) and County Public Participation. They also prepared a model County Finance Bill and County Tariff Policy.

Photo: Juozas Cernius

In July 2015, CRA distributed a circular to county governments reminding them that, prior to the enactment of finance legislation which would impose taxes, levies or fees, they were required to have enacted legislation specifically to allow for the imposition of those taxes and fees as required by the Constitution. The model laws were shared with them and, in addition, posted on CRA’s website. Nevertheless, counties largely ignored the circular and continued to enact finance acts without the requisite supporting revenue raising legislation. Vihiga County was typical. In 2015, the county enacted the Vihiga County Finance (VCF) Act, 2015. However, members of the Vihiga chapter of the Kenya National Chamber of Commerce & industry (KNCCI) raised concerns about the act’s legality in the absence of the enabling legislation.

Vihiga Chamber received BAF support to advocate the enactment of the appropriate revenue-raising laws. In 2016, KNCCI Vihiga engaged the county government in a bid to ensure that the 2017/18 Finance Act – and all future finance acts – met the constitutional requirements and thus provided transparency on the taxes, levies and fees charged by the county.

Outcome

The Chamber successfully advocated the enactment of the Vihiga County Finance Act, 2017, the Vihiga County Trade Licensing Act, 2017 and the Vihiga Rating Act, 2017. In addition, in March 2018, Vihiga County approved a waiver of application fees while renewing the Single Business Permit (SBP), in line with the Trade Licensing Act, 2017.

Impact

Businesses in Vihiga benefited both directly and indirectly from the changes:

- Updated SBP schedule agreed by key stakeholders contributed to a reduction in the cost of doing business. The County government scrapped additional renewal charges on business licences and reduced the annual fees by KES 500 per permit. Small traders are the biggest beneficiaries. There were reductions in other charges such as:
    - Traders in the county are charged annually between KES 2,000 and KES 30,000 for a single business permit. This was reformed to vary the charge depending on location and type of business meaning that businesses in remote areas paid lower fees.
    - Daily licence fees charged for buses and matatus were changed to monthly and annual licences to improve on levels of accountability, included in the County Finance Act, 2018, and resulted in a reduction in fees from KES 50,000 to KES 15,000.
- Predictable charges: businesses benefited as rates and levies are now stipulated in law and are thus predictable and businesses are able to budget for them.
- Improved public private dialogue: a healthy working relationship between the County Government and the Chamber members has emerged thus avoiding civil unrest. For example, Vihiga Chamber helped avert a planned strike by motorcycle (boda-boda) operators concerned about enforcement of traffic rules.
- Improvement of the efficiency of county services: the creation of a mobile payment option for the payment of fees and levies, in line with business demands, has resulted in fewer revenue leakage loopholes.

County revenue collection for the 2016/17 financial year amounted to KES 100 million – perceived to be low due to evasion, avoidance and poor enforcement. Following the reforms, in 2017/18, County revenue collection rose to KES 144 million, a significant increase. Vihiga Chamber links the rise in revenue to the simplification brought about by their efforts.

Modernising energy policy

The Petroleum Institute of East Africa (PIEA) is the professional body for the oil and gas industry in the region. PIEA's mission is to provide a forum to share expertise and excellence in the oil industry, promote professionalism and free enterprise in the petroleum business and harmonise standards and practices.

The electricity, petroleum and renewable energy sectors were regulated by the National Energy Policy of 2004. But, by 2015, the sector had grown massively resulting in a complicated framework of policy, legislation and regulation. Consequently, the then Ministry of Energy & Petroleum recognised the need for policy reform aimed at streamlining petroleum exploration, development and production. This led to the discussion of successive energy policy drafts at national level.

PIEA was concerned, however, that the Ministry's final draft did not sufficiently address its concerns and sought BAF support to lobby policy makers to adopt policy proposals that they considered more relevant to the needs of the sector. Specifically, PIEA sought policy guidelines that would provide direction for infrastructure development, local content, transparency and accountability, modern, cleaner quality affordable energy, deeper private sector participation and security of supply.

It later developed comprehensive proposals and organised consultative meetings with its members and other private sector stakeholders. It made presentations and discussed them with the Ministry of Energy and Petroleum, the Policy Technical Committee led by the Energy Regulatory Commission and the Parliamentary Energy Committee. It further used the media, both print and electronic, to communicate its policy proposals more widely.

PIEA additionally advocated a review of the LPG regulations to address emerging issues in the LPG business. Previous regulations required that gas cylinder valves were universal to allow people to use and exchange cylinders from different gas companies – giving consumers more flexibility – but leading to several problems, chief among them, illegal refilling and lack of servicing resulting in reduced safety. Indeed, this arrangement made it all too easy for rogue traders to enter the sector without making any investment in gas cylinders.

With nudging from PIEA, the Ministry drafted two acts, developed in tandem, to streamline the petroleum and energy operations given the advanced nature of oil exploration in Kenya. The Energy Act 2019 was created to consolidate the four laws relating to energy: Energy Act No. 12 of 2006, Geothermal Resources Act No. 12 revised 2012, the Kenya Nuclear Electricity Board Order No. 131 of 2012 and the Petroleum (Exploration and Production) Act, Cap. 308. This consolidated and aligned all aspects of regulation under the Energy and Petroleum Regulatory Authority (EPRA) – the successor to the Energy Regulatory Commission – responsible for the regulation and licensing of the electric power, renewable and petroleum sub sectors.

Outcome

A final draft of the Energy Policy 2018 was agreed by the technical committee and tabled in the cabinet though it still (at the end of 2020) awaits approval. However, the Energy Act and the Petroleum Act were promulgated in 2019 and many aspects of the policy were implemented from early 2020 including approval of the LPG Regulations.

Photo: Juozas Cernius

Impact

While the Energy policy is yet to be approved, the Energy Act and the Petroleum Act are now being implemented. Perhaps more importantly, the Petroleum (Liquefied Petroleum Gas) Regulations, 2019 abolished the mandatory cylinder exchange pool and allowed LPG gas marketing companies to enter into their own agreements. Gas cylinders are now owned by the brand owners who ensure they are maintained and safe for households to use.

Perverse impact of taxation

The VAT Act, 2013, reclassified pest control products which had till this time been zero-rated for VAT to exempt and, additionally, introduced VAT at 16 per cent on all the ingredients, including imported ingredients, used in the processing and manufacturing of pest control products (PCP). As previously, VAT was also incurred on other inputs such as packaging materials and transport. However, the change to exempt status for the finished product meant that the input tax could not be claimed back. Furthermore, the carrier materials, solvents and emulsifiers attracted a 10 per cent import duty and a 25 per cent excise duty. This made locally manufactured pesticides much more expensive for the end user compared to importing ready formulated and packaged products which were exempt from excise and import taxes.

Photo: Agrochemicals Association of Kenya

The Agrochemicals Association of Kenya (AAK), with BAF support, sought to persuade the National Treasury to return the VAT exemption back to zero rating, which they argued would ensure the survival of domestic manufacturers and make them competitive once again. AAK gathered evidence on the impact of the taxation framework and assessed global best practice in the taxation of pest control products. They used that research to inform their policy proposals with a target to influence the 2016 budget.

As the research was underway, the National Assembly advertised for input by the public on the forthcoming Finance Bill 2017. AAK submitted their proposal citing the reclassification in the VAT Act, 2013 as a cause of substantial cost increases with a consequent reduction in competitiveness. Specifically, AAK requested the government to zero-rate all finished agricultural PCPs and all inputs and raw materials supplied to the manufacturers of PCPs upon recommendation by the Cabinet Secretary for Agriculture. As a result, AAK was invited to make a presentation to the Finance and Budget Committee of the National Assembly as they were meeting to review the proposed amendments to the Finance Bill.

Outcome

AAK successfully convinced the committee to amend the bill to zero rate agricultural PCPs and all the inputs. This was adopted and assented in the Finance Act 2017, effective from early April 2017.

However, a drafting error in the act resulted in inputs being classified as both zero-rated and exempt, hampering its implementation as some inputs were also used in other industries. AAK engaged the Ministry of Agriculture and the Pest Control Products Board to agree and distinguish inputs used for local manufacturing and packaging of pesticides to be zero-rated. In early 2018, Treasury agreed to the list of inputs to be zero-rated.

Impact

The impact of the change of VAT status in 2013 led to a significant decline in sales of agrochemical products. Indeed, sales fell by 87 per cent over two years, leading to loss of revenue of KES 175 million and a consequent loss of corporation tax, estimated at KES 5 million assuming an average 10 per cent profit on total revenue.

The key results from this reform are reduced cost of raw materials and, by extension, a reduction in cost of locally manufactured pesticides leading to a reduction in imported pesticides as well as greater affordability for farmers and potentially a higher level of tax revenue as the industry increases its profitability.

Warehouse receipts raise farmer incomes

Trade in staple food commodities, particularly cereals and pulses, in Kenya has largely been unstructured. Players in the sector are mainly smallholder farmers with inadequate capital and who are generally less efficient producers with limited access to good storage facilities that could minimise post-harvest losses. These farmers are often pressed to sell their produce immediately after harvest, when prices are lowest, to meet their financial needs.

Photo: Juozas Cernius

The Eastern African Grain Council (EAGC) proposed a solution through the creation of an effective Warehouse Receipt System (WRS). In a WRS, a farmer deposits non-perishable goods, such as grain, coffee or cotton, at a warehouse and receives in exchange a 'warehouse receipt'. The receipt provides evidence that specified commodities of a stated quantity and quality have been deposited in a warehouse and are stored in a protected environment, thus reducing post-harvest losses and allowing the farmer to choose the best time to sell. This enables the farmer to sell the goods at better prices, rather than being forced to sell when everyone else is selling and, in advance of selling, to access credit secured against the warehouse receipt. In 2008, in a demonstration project, EAGC established a warehouse in Kenya and implemented a receipt system, promoted and regulated under the law of contract, with several legally binding contracts in place between EAGC, banks, insurers and warehouse operators. Whilst this worked on a small scale, it became evident that scaling up would require legislation and EAGC started to lobby the Ministry of Agriculture.

In 2010, a committee set up by Ministry proposed the establishment of a state corporation to regulate WRS and to begin to lay the foundation for a more ambitious commodity exchange.

EAGC, representing the private sector, successfully lobbied against establishing such a corporation and, together with the Ministry, was appointed co-chair of a WRS task force to develop a suitable regulatory framework. By 2013, the task force had developed a draft WRS Bill that proposed a hybrid public private model regulated independently. However, this draft Bill did not make it to Parliament. In 2015, a WRS Bill, drastically different to the draft of the task force, was tabled in Parliament.

This prompted EAGC, with BAF support, to advocate considerable revision of the Bill. A revised Bill was then tabled in the Senate in October 2016 but not passed before the August 2017 elections thereby expiring with the dissolution of Senate. Whilst waiting for the bill to be reintroduced after the election, EAGC worked on the development of the regulations that would be needed to operationalize the Act. The parliamentary process was revived in 2018 with the new Parliament, with EAGC as the lead private sector representative. The Bill was finally adopted in June 2019 as the Warehouse Receipt System Act, 2019.

Impact

The legislation is expected to deliver:

- An increase in WRS finance: As of 2015, there were 10 certified warehouses with over 60,000 tonnes capacity and loans worth $3.5 million provided by five participating banks. There is now considerable interest from major banks including the Kenya Commercial Bank, Barclays Bank, Stanbic Bank and Unaitas Savings & Credit Cooperative Society Limited. WRS lending eliminates much of the risk to the banks due to its structure and processes and thus makes it easier for farmers to access affordable credit.
- Increased earnings for farmers: A cost-benefit analysis undertaken by EAGC in 2015 estimated that if all their members were to utilise WRS, they would increase their gross margins by 50 per cent and their net margins by at least 15 per cent.
- Reduction in post-harvest losses: Farmers are expected to experience a drop in post-harvest losses from 20 per cent of total grain to 10 per cent, partly due to the aggregation model and partly due to storage in better conditions.
- Higher incomes for women: The majority of farmers in Kenya are women with some observers estimating the proportion to be as high as 80 per cent. The WRS legislation is expected to catalyse lending to (women) farmers and thus help to stimulate increased production as they will be able to invest in better inputs and increase acreage which would, in turn, create economies of scale and development of the grain sector, lifting over 108,000 women farmers out of poverty.
- Improved warehouse operations: EAGC warehouse certification has improved warehouse management practices. This is attributed to mentoring in relation to quality management, grain handling and storage practices. Grain sourced from certified warehouses is of better quality as evidenced by buyers' feedback.
- Reduced transaction costs for grain buyers: The grain off-takers affiliated to farmer aggregation centres will benefit from reduced costs through improved quality and easier logistics.
- Innovation by service providers: Banks can now provide easy access to finance as well as the ability to settle payments using modern banking infrastructure.

Improving consistency in the courts

Starting in 2013, the Kenya Association of Manufacturers (KAM), with BAF support, engaged the judiciary with an objective of improving the judicial processes that affected businesses and, in particular, aiming for more consistency in judicial decisions. KAM partnered with the National Council on the Administration of Justice to develop an Illicit Trade Manual to help improve the judicial processes in relation to such cases.

In 2014, KAM, with a further BAF grant, partnered with the Kenya Magistrates and Judges Association (KMJA) to host the Annual General Conference for Judges and Magistrates, during which they made a presentation on illicit trade. The manual was successfully launched in March 2015. Following the conference, KAM concluded that more needed to be done to tackle issues related to the quality of judgements made on commercial cases.

KAM perceived that court decisions in commercial disputes, apparently with similar circumstances, were subjective and inconsistent in the interpretation of the law by Judges and Magistrates and, furthermore, that there were erratic judgements especially in cases regarding taxes, trademarks and product standards. KAM proposed the creation of a commercial law guidebook, known as a bench book, to be available as a quick reference on laws and good practice for commercial cases. The bench book was intended to help Judges and Magistrates, law practitioners and stakeholders in the administration of justice to access information regarding the law and the judicial processes as well as suggest alternative approaches and best practices for dispute resolution.

In April 2015, KAM, in partnership with the KMJA, received BAF support to develop the Commercial Bench Book. Through KAM's efforts, a technical committee was formed comprising Judges, Magistrates and experts from organisations such as the Kenya Revenue Authority, Kenya Bureau of Standards, Kenya Industrial Property Institute and the Anti-Counterfeit Agency.

KAM's main contribution to the development of the guidebook was hosting the different fora and contributing the industry perspective to commercial law in Kenya. There were six focus group meetings where the Judiciary and the private sector engaged on matters of administration of justice across the country. The final guidebook was released and published in December 2016.

Impact

- The Judiciary values KAM's position on issues due to the success of the Commercial law bench book. Moreover, other countries now want to emulate Kenya's approach. There have for example been requests from Nigeria and Malawi for copies to share with their judicial officers.
- On the regional front, KAM plans now to start a similar process at the East African Community via the East African Magistrates' and Judges' Association where they plan to share the bench book as best practice and aim to influence the judiciary across the EAC
- Regular use of the bench book and its use in training judicial officers will lead to more timely resolution of disputes, more predictability in the application of the law and greater consistency in the interpretation of the law. These factors will build confidence in the judicial system.
- With the bench book, investors now understand how court processes work and raises the country's attractiveness for foreign direct investment.

The Isiolo Sales Yard Act

Farmers regard livestock markets as important because they circumvent brokers and buyers roaming around looking for livestock and bargaining with each seller individually without the seller having any real idea of the value of their livestock. Selling via auction leads to greater transparency and improved incomes for farmers. However, many of the markets needed improved management.

The Kenya Livestock Marketing Council (KLMC) thus started lobbying for reform of the management of the Isiolo County livestock markets in 2010. Specifically, KLMC, with BAF support, engaged 16 Local Government Authorities in the arid and semi-arid lands of Kenya to develop partnership agreements intended to lead to better management of livestock markets and sales yards across the country.

KLMC succeeded in implementing public private partnership agreements in 37 markets across 15 (that is, 94 per cent of the targeted) Local Government Authorities. Under the agreements, the yards were co-managed by Livestock Marketing Associations (LMAs) on behalf of the then District Livestock Marketing Councils – the local branches of KLMC – and the local municipal councils.

Photo: ACDI/ VOCA/ USAIDKenya

With the advent of devolution, the management of livestock markets was devolved to the counties. Additionally, Article 207 of the 2010 constitution called for the establishment of a county revenue fund into which all county funds were to be deposited.

In 2014, KLMC sought BAF support to partner with its county branches (renamed County Livestock Marketing Councils) and 13 county governments to amend the model County Livestock Sale Yard Bill, as proposed by the Kenya Law Reform Commission.

As a result, the model Bill was amended to allow the participation of local communities through LMAs in the maintenance, repair and collection of revenue in livestock markets. Cess collected from the markets would be shared using a pre-agreed formula and LMAs would use their share to maintain the markets.

In Isiolo County, the County Director of Veterinary Services and KLMC worked together to develop a draft Bill. The draft included a requirement of the Director of Vet Services to chair a committee overseeing livestock sales yards in the county. The Bill was amended to include input resulting from public participation and was then debated and passed in November 2016. Governor Godana Doyo Adhi assented to the Act in December 2016 making Isiolo the first of the 13 arid and semi-arid counties to pass the Act. Draft regulations were ready by August 2017.

Potential outcomes

Though the act had still not been effected by the first quarter of year 2020, many sellers at the Isiolo markets were clear that the Act was needed:

- The LMA needed to be empowered to be able to position the Isiolo markets strongly amongst competing markets in neighbouring counties.
- Co-management will bring transparency to the revenue collection process of the county.
- Veterinary officers are meant to attend all market days in all markets and carry out inspections and then treat, quarantine or cull sick animals and thus reducing the spread of livestock disease.
- Co-management will ensure that market facilities are well maintained, so that for example repairs are undertaken promptly. There are pending repairs, such as at the Isiolo market, where the loading ramp is not working.
- The act will allow more engagement with the community and diversify the economic activities in the market. Oldonyiro market is already an example of this dynamism as people sell other goods in the market during livestock auctions.

If Isiolo county implements the Sales Yard Act, it can expect to see higher revenue from livestock auction cess and this will in turn affect collections. Implementing the sales yard act will also see an increase in two other categories of cess: slaughterhouse cess and veterinary and meat inspection cess.

Protecting savers

The Savings and Credit Co-operatives (SACCO) sector in Kenya is the largest in Africa and among the top 10 globally with mobilised domestic savings of KES 800 billion (c. $7.5 billion), accounting for 33 per cent of national savings.

In 2017, BAF supported co-operative sector stakeholders to review the draft Co-operative Development Policy, 2017. The policy was dubbed 'Co-operative Enterprises for Industrialisation' and was intended to replace a policy agreed in 1997. The new policy was necessary to define clear new roles for county and national governments and to ensure effective governance of this critical sector following devolution in Kenya as per the 2010 constitution.

In 2018, seemingly ignoring the draft policy, a State Law (Miscellaneous Amendments) Bill was published by government. It proposed amendments to both the Co-operative Societies Act and the SACCO Societies Act which created the Sacco Societies Regulatory Authority (SASRA), a national body which regulates the SACCOs.

The Bill proposed the creation of a special class of member to be known as a "Social Impact Member" (referred to as SIM) who would not be subject to the rigorous governance systems established in the SACCOs. A special fund, which would be financed by these SIMs, was also proposed complete with a Special Fund Investment Policy and a Special Fund Trustee. These amendments, if adopted, would have given rise to independent institutions within the SACCO sector not bound by the principles guiding other members of the co-operatives and exposing SACCOs to risks such as money laundering.

The proposed amendments also sought to devolve some of the powers accorded to SASRA, a position contrary to the government's new Co-operatives Development Policy and to KUSCCO's position. In addition, a proposal to increase the levy imposed by SASRA on SACCOs had been submitted to the Committee of Delegated Legislation in the National Assembly.

KUSCCO with BAF support prepared and presented three policy positions to relevant policy makers. It engaged the Ministry of Industry, Trade and Co-operatives and the relevant Parliamentary Committees in the National Assembly and the Senate to advocate the adoption of the co-operatives policy and the withdrawal of the proposed legislative amendments.

Outcome

KUSCCO successfully advocated the withdrawal of the respective amendments in the State Law (Miscellaneous Amendment), 2018.

In November 2019 the Cabinet approved the Co-operatives Development Policy and it awaits Parliament's adoption into a Sessional Paper.

Impact

The withdrawal of the Social Impact Member and the Special Fund will mean that the SACCOs are not exposed to the risk of implications of money laundering and pyramid schemes and, furthermore, that the sector has not incurred the cost of employing more people to implement the additional regulations.

The Co-operatives Development Policy should guide stakeholder-inclusive reforms in the sector including the review of the SACCO Societies Act and the Co-operatives Act. The review of these legal frameworks allows SACCOs to operate with adequate regulatory oversight that mitigates risk but also creates an enabling environment for the sector to thrive.

The policy facilitates access to finance for businesses to increase their incomes. It is also beneficial to over 22,000 active registered SACCOs in the country with a total of an estimated 3.6 million members that can gain access to affordable credit.

Promoting greater variety of plant seeds

The Seed Trade Association of Kenya (STAK) is a membership organisation which draws members across all the seed value chain. STAK represents and promotes the interest and competitiveness of the seed industry through advocacy, provision of information and capacity building of its members.

The Seeds and Plant Varieties Act and the associated regulations were causing significant hindrances and distortions to the production, import and distribution of seeds in Kenya. This severely limited the availability of seeds in the market and the activities of seed distributors as well as reducing the range of seeds available to farmers.

In 2007, BAF supported STAK to engage the Ministry of Agriculture, Livestock and Fisheries (MoALF) and the Kenya Plant Health Inspectorate Service (KEPHIS) and to make proposals to amend the Seeds and Plant Varieties Act. STAK additionally drafted a proposed National Seed Policy to assist the Ministry and to inform the drafting of a Bill to revise the Act. This led to the adoption and gazetting of the National Performance Trials Regulations, 2009 and the National Seed Policy, 2010.

Photo: Juozas Cernius

The National Seed Policy led to further reforms in the sector in line with initiatives on the harmonisation of certification and variety performance trials within the East African Community and the Common Market for Eastern and Southern Africa. After the adoption of the National Seed Policy, the Ministry of Agriculture drafted a Seed and Plant Varieties Amendment Bill, 2011.

STAK sought further BAF support to propose amendments and to advocate enactment of the Amendment Bill and, simultaneously, to allow them to participate, alongside MoALF and KEPHIS, in the preparation of the regulations which would be anchored in the new Act.

STAK ensured the involvement of the private sector in the seed certification process arguing for self-regulation as well as updating the plant variety protection and the inclusion of agreements for harmonisation of seed trade in the region. Following enactment, STAK organised workshops with seed industry stakeholders to refine the three sets of proposals for regulations. In partnership with

MoALF and KEPHIS, STAK issued press releases on the proposed regulations. It made a presentation of the final proposals for regulations to the Cabinet Secretary and engaged with the Parliamentary Committee for Agriculture to secure their approval.

Outcomes

The Seed Certification Regulations and Plant Variety Evaluation and Release Regulations were gazetted in December 2016.

In June 2017, the harmonized COMESA Seed Trade Regulations for the region were launched with participation by seven countries – Kenya, Uganda, Rwanda, Burundi, Zimbabwe, Zambia and Malawi. This aligned regulations on seed trade across the different countries.

The seed regulations have put in place a clear procedure to import and export seeds. This procedure requires that all imports have been tested, meet stipulated quality standards and have a phytosanitary certificate. There are now clear guidelines for the import of seed for germplasm for research which is beneficial to research institutions and universities.

Indeed, all seeds released to the market must be tested, packaged, sealed and labelled. This has led the seed industry to adopt the use of seed sticker labels to identify seed and thus reduce the incidence of counterfeit seed.

Impact

As a result of STAK's advocacy, the new *Seed Regulations, 2016* have improved the Seed certification process:

- There is now in place a regulatory framework allowing private seed inspection services and KEPHIS has already gazetted 25 private seed inspectors.
- STAK is in the process of creating a Seed Inspectorate Unit (SIU) which will offer seed inspection services, both improving access to seed inspection services and contributing towards the sustainability of STAK.

The Veterinary Medicines Directorate

Kenya Veterinary Association (KVA) sought BAF support in 2008 to facilitate research on veterinary medicines distribution. At the time, the regulation of both veterinary and human medicines was undertaken by the Pharmacy and Poisons Board. KVA argued that the capacity and motivation of the Pharmacy Poison Board to enforce the regulation of veterinary medicines was limited.

Their study revealed that there was substantial misuse of veterinary medicines and prevalence of counterfeit and substandard drugs. This caused public health concerns and hindered access to markets as some livestock and livestock products did not comply to international standards. KVA proposed reforms to the regulation of veterinary medicines, covering import, manufacturing, registration, distribution, storage and usage, as regulated by the Pharmacy and Poisons Act.

In 2010, KVA made proposals to revise the draft Veterinary Medicines (VM) Bill originally tabled in 1998, in partnership with the Ministry of Livestock Development (MoLD) and other veterinary stakeholders. The VM Bill was published in 2010 but faced resistance from pharmacists who wanted the status quo to prevail. This affected the progress of the Bill through Parliament and it expired with the term of Parliament in 2012.

Photo: Kenya Veterinary Association

While this was happening, KVA also engaged government on a separate draft Bill on the regulation of veterinary professionals. This effort resulted in the Veterinary Surgeons and Veterinary Paraprofessionals (VSVP) Act of 2011. The Act provided for the establishment of the Kenya Veterinary Board (KVB) and additional institutions to manage the animal resource industry effectively. These included a Veterinary Medicines Directorate (VMD), an animal health inspectorate service, the Kenya Livestock Research Institute and the Kenya Marketing and Development Authority.

In 2012, KVA once again sought the reintroduction of the Veterinary Medicines Bill, now rechristened as the Veterinary Medicines Directorate Bill and, additionally, the development of VMD Regulations. However, the Attorney General advised the Ministry of Agriculture Livestock and Fisheries (MoALF) to shelve the VMD Bill as the proposal for a VMD was already covered in the VSVP Act. KVA then partnered with the State Department of Livestock in MoALF to develop draft VMD regulations. In 2013, KVA undertook stakeholder engagements on the proposed

regulations and lobbied the Parliamentary Committee for Agriculture to approve the regulations before gazetting.

Outcome

The Ministry of Agriculture gazetted the Veterinary Surgeons and Veterinary Professionals (Veterinary Medicines Directorate) Regulations, 2015, after their adoption by parliament in October 2015.

Unfortunately, in 2016 the Pharmaceutical Distributors' Association took the Kenya Veterinary Board and the Veterinary Medicines Directorate to court seeking to halt the implementation of the VMD regulations. This delayed implementation to October 2017. The VMD was officially launched in November 2017 at a conference organised by the Global Alliance for Livestock Veterinary Medicines.

The VMD categorises veterinary medicines and the qualification of persons authorised to trade in each category and reviews the categories every five years. The Council may grant the renewal of registration and retain records of the movement of all veterinary medicines for a period not exceeding five years. This has led to better administration of veterinary medicines.

Impact

These regulations set up the VMD, a new agency with the vision to be a world-class regulatory body promoting the responsible, safe and effective use of Veterinary Medicines and other animal health products. This has brought about the following changes:

- For one to trade in or dispense veterinary medicines at any level, one must be licensed by the VMD. Ultimately all veterinary medicine supply chain actors (i.e. suppliers, wholesalers, retailers, exporters, importers and some veterinary professionals) will have to be registered by the VMD which would, if well implemented, reduce the prevalence of both unauthorized personnel working at the Agro Vets and the prevalence of counterfeit medicines being dispensed at the Agro Vets.
- KVA stated that the efficiency of the process of registering products had increased in that while before it was taking over three years at the Pharmacy and Poisons Board, it is now taking about half the time.
- The VMD regulations require a technical expert to be present at each Veterinary Medicine Outlet to advise farmers. This has led to an increase in employment opportunities for technical experts at the Agro Vet locations. Failure to employ qualified practitioners could result in the closure of an Agro Vet store by the VMD inspectors.
- KVA stated that their members have reported that some pharmacy outlets have stopped stocking veterinary medicines. This is a direct result of the VMD regulations which make it illegal for pharmacists to dispense veterinary medicines unless they have a Veterinary Surgeon present at their outlet. Consequently, this is slowly correcting malpractices by agriculturalists, livestock technicians, pharmacists and other groups by avoiding the misuse of veterinary drugs from unlicensed practitioners.
- The VMD now utilises the Kenya Trade Network Agency portal that facilitates cross-border trade to authorise and approve import permits of veterinary medicine. This has reduced the wait time for clearance of importers' products at the port.
- This regulation, albeit good for the sector, has led to double regulation of the manufacture of drugs in the country. The PPB has over the years conducted good manufacturing practice (GMP) inspections for manufacturers in the country annually at a cost of $1,000. With the

VMD regulations, these manufacturers are now subjected to two inspections, one from PPB and one from VMD. PSK argues that the PPB has the expertise and experience to conduct GMP inspections effectively and efficiently but that VMD lacks the expertise and so will be less effective. KVA counters that this is a transitional issue being discussed between VMD and PPB.

If the VMD regulations are implemented well, it is expected that there will be better management and quality controls in the supply chain of veterinary medicines

Reform in the mining sector

Kenya's strategic plan, Vision 2030, identifies mining as a priority sector. The 2013 government created a stand-alone Ministry of Mining (MoM) in place of a Department of Mines and Geology in the previous Ministry of Environment and Mineral Resources. By 2014, mining contributed around one per cent of GDP though it was expected to grow by around 10 per cent in 2014 compared to GDP growth of around four per cent, making it one of the few sectors which could deliver the Jubilee Coalition's manifesto commitment of a 10 per cent per annum growth rate.

Until the end of 2013, government policy on mining was largely undefined, with the Mining Act dating from 1940. A process of review was initiated in 1992, with United Nations Development Programme support, and then started again in 2002, with Commonwealth support. In part, issues were addressed by passing additional legislation.

In 2009 the Kenya Chamber of Mines, with support from BAF, was able to secure amendments to the Mining & Minerals Bill as it related to land and mining titles. MoM agreed that the existing legislation was too limited, failing to address emerging issues such as environmental concerns, the importance of communities and equitable sharing of benefits, devolution of decision making, in line with the new constitution, as well as licensing, accountability, efficiency and predictability. And all parties recognised that there was a need for a complete overhaul of the legislation rather than just further tinkering.

After some discussion and several internal drafts, the government published a draft Mining Bill in June 2013. KCM was invited to make presentations, both in writing and orally, which they did. In March 2014 the government published the Mining Bill 2014.

Parallel to engagements on the Bill, KCM advocated the need for an overall policy framework for the mining sector. KCM sought to refine the proposed mining policy and regulations so that they offered an investment-friendly royalty regime that would attract foreign direct investment. However, the Ministry was more interested in developing the legal framework first and so the policy took a back seat, though the draft Bill was largely aligned to the spirit of the draft policy.

KCM, amongst others, made considerable effort to seek amendments to the Bill and, in the end, secured around 80 per cent of what they sought by way of reform. Through the rest of 2014 and 2015 the Bill was reviewed by different organs of the National Assembly and the Senate. This resulted in a final version of the Bill, in March 2016. This was then sent back to both Houses for approval and in May 2016, the Mining Bill was approved by both Houses and sent to the President for assent. The Mining Act No. 12 of 2016 was gazetted in May 2016. KCM also gave extensive comments on the 13 sets of regulations drafted by the Ministry for implementation of the new law.

Outcome

The Mining and Minerals Policy was approved by the Cabinet on 1 April 2016. The Mining Act No. 12 of 2016 is now the legislation that guides the mineral sector of Kenya.

In July 2016, the Ministry published 13 draft regulations and guidelines on its official website. Operationalization of the new law commenced following Parliamentary approval of the regulations in June 2017.

Impact

Through the mining and minerals resources sector, the Government of Kenya aims to generate revenues of KES 300bn by 2030 following increased investment, especially foreign direct investment. The new policy framework provides a foundation for building towards accelerated and sustainable development of a profitable mining and minerals resources sector. This could eventually ensure that benefits from the growth of the sector accrue to all stakeholders, including investors, local artisanal and small-scale miners, national and county governments, local communities and the people of Kenya.

The impact of the regulatory reform in the sector will be felt through: contribution to safety, creating investor opportunities, licensing regulations, employment concerns regulations, local insurance requirements, operations requirements, impact of community development regulations and environmental and sustainability concerns.

Despite the Act and the Regulations being in place, some issues still remain. Implementation of the law remains a big challenge. The remaining 20 per cent of issues that KCM presented is still critical and subject of continuous advocacy. KCM has continued to engage the Ministry to review the legislation to correct some anomalies which threaten to weaken the sector. These issues would discourage investments and local development of the sector if not addressed.

The efforts of KCM in regard to amending the Mining Bill was written as *The Kenya Chamber of Mines: a case study in public sector advocacy* published in The SAGE handbook of international corporate and public affairs (see https://iga.fyi/sage)

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