



REPUBLIC OF KENYA

**MINISTRY OF STATE FOR NATIONAL HERITAGE
AND CULTURE**

MUSIC POLICY

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CHAPTER 1 INTRODUCTION

1.1 Background and Context

Music is a powerful means of enhancing the country's identity and distinctiveness while simultaneously creating employment, developing human skills and generating socio-capital and cohesion. Kenya with no socialism system of government has practiced liberal door policy in the music sector. Such policies create a more universally competitive environment good for quality within a globalised system.

Music is a very important social tool of communication used to educate, encourage and inspire society at all levels. Music can inspire social consciousness that is beneficial to the development of Kenya's economy, politics and even education. Besides that the music industry directly and indirectly creates employment opportunities which can be demonstrated in the rise of the number of entertainment spots employing hospitality staff, security, sound managers and cashiers etc.

Protectionist policies barring importation of locally available goods and products were instituted in the early 70's to protect local industry from unfair competition from imports from industrialized Nations. However, music was not accorded similar protection. The survival of the local music industry is a complement to local creativity which has managed to overcome the surge of foreign content through good innovative instincts that have continued to offer more aesthetic appeal.

The Music Industry is facing challenges that impede its growth and development. While the Industry shows signs of potential, the unfavourable environment in which musicians operate, combined with an incomprehensive support structure and policy framework make it virtually impossible for musicians, producers and other stakeholders to develop a competitive music industry.

Music is arguably the most consumed entertainment commodity in the world. However, in Kenya the high levels of music consumption have not

translated into adequate employment opportunities and economic empowerment for musicians or a viable tax base for the government. Recent surveys (quote the survey/year) put the economic worth of the music recording industry in Kenya at about Kshs.11.52 billion per annum. The country has not been able to optimally harness this potential due to inadequate measures and structures for copyright and intellectual property enforcement, co-ordination and policy guidelines in the Music Industry.

Lack of an explicit coherent and codified music policy has led to music being marginalized in the national development agenda. However the Constitution of Kenya recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.

Moreover, the United Nations Educational Scientific and Cultural Organizations (UNESCO) provide direction and policy statements under the **Convention for the Safeguarding of the Intangible Cultural Heritage 2003**. The Convention defines “intangible cultural heritage”, as to include performing arts; (a) adopt a general policy aimed at promoting the function of the intangible cultural heritage in society, and at integrating the safeguarding of such heritage into planning programmes; The Declaration emphasizes the need to Safeguard meaning measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage. The **Convention concerning the Protection of the World Cultural and Natural Heritage 1972** requires of state parties to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.

At the national level, this policy is aligned to contribute to the realization of Vision 2030 goals.

Kenya is a signatory to other regional declarations on the status and development of music industry including the **Copyright Conventions administered by the United Nations Educational, Scientific and Cultural Organization and the World Property Organization**. Further UN resolution number 57/249 as adopted by the 78th plenary meeting of 20th December 2002 emphasized the need to enhance the potential of culture as a means of achieving prosperity, sustainable development and global peaceful coexistence.

POLICY STATEMENT

- The Government shall take all necessary steps to promote all forms of cultural expressions through education, literature, the arts, and music.

1.2 Definition of Music

Music is defined by Webster dictionary as an art of sound in time that expresses ideas and emotions in significant forms through the elements of rhythm, melody and harmony.

Music in the Kenyan context is the use of sound to express and reflect ideas, attitudes and emotions collectively and individually in acknowledged fora. It embraces traditional and contemporary idioms of sacred and secular genres of song and instrumental expressions. It is a vital communication tool.

1.3 Rationale for the Policy

The need for a national policy on music and the arts is informed by the recognition that music creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for

communities, peoples and nations,

It has been done in conformity with Kenya's ratified conventions requiring each State to formulate, develop and apply as far as possible a policy whose principal aim should be to co-ordinate and make use of all scientific, technical, cultural and other resources available to secure the effective protection, conservation and presentation of the cultural and natural heritage.

In view of the potential of music as an industry and a vehicle for economic development, there is need for clearly articulated deterrent measures against piracy and other forms of infringement in the Music Industry.

For music to develop into a viable sector, it is necessary to provide guidelines and a comprehensive framework to streamline the Music Industry, hence the need to have music recognized and incorporated into the national development agenda.

1.4 Vision

A comprehensive roadmap that guides, regulates and coordinates a dynamic, creative, culturally vibrant, intellectually stimulating and economically empowering music industry.

1.5 Mission

To create a mechanism for the growth and development of music while providing a basis for interactions with music as an educational, cultural and economic activity

1.6 Objectives of the Policy

1. To facilitate the creation of a legislative framework that promotes the growth and development of music;

2. To articulate the rights and obligations of players in the Music Industry;
3. To spearhead the preservation and development of indigenous and other music styles;
4. To support the process of music education and training at all levels; and
5. To facilitate the harnessing of creative and economic potential within the Music Industry.
6. To promote effective music management and use for national development.

CHAPTER TWO: THE MUSIC INDUSTRY

2.1 The Situation analysis

The Music Industry comprises of creators, arrangers and performers of the works of arts, the producers of the works into sound and audio-visual recordings and record companies. It also includes managers comprising of music trainers, publishers, promoters and distributors.

As African societies transform from traditional to modern ones, the functions, roles and uses of music retain their significance. Kenya holds its music traditions which are part of her cultural heritage in high esteem. The traditional music practices embody the people's oral history, literature, philosophies, aesthetics, nationalism, education, ideals and ethics.

In the 1970's Kenya enjoyed a flourishing Music Industry with its products being exported to other parts of the world. The trend has been hastened by the growth of the communication sector creating new mediums of communication and especially that of music in articulating the concept of infotainment which blends salient social messages as well as playing the country's flagship. This flagship helps to maintain a country's presence in the mainstream of global activity and the better the product the better the image of its country. The benefits are varied and create a brand name that also sells other business sectors.

Currently the Music Industry faces degradation in its legal and institutional infrastructure. Lack of proper legal awareness, enforcement, coordination and knowledge of procedures remains a major problem. The Industry is fragmented with no umbrella body to oversee its affairs. The industry lacks a coherent strategic vision to align all the key players.

This has brought in an influx of new music idioms and materials that is shaping and defining a new musical culture and identity. Regrettably, Kenya has not effected measures to safeguard her music heritage and the result is that over 90% of the content on most radio and television is foreign. One of the most glaring realities here is that the media content is

exclusively controlled from the Capital City of Kenya, making it contradictory to the letter and spirit of devolution requiring devolution. This discourages investment in and by local artistes due to inadequate returns.

The high rate of piracy in the Music Industry is an indication of weak law enforcement. Low royalty collection and payment; lack of defined administrative structures to help regulate the influx of illegal recording; absence of a code of conduct and lack of transparency in the transactions in the printing industry are issues that need to be addressed.

Music practitioners in the country have formed associations to cater for the interests of their members. These groups include church choirs, traditional and contemporary/modern dance groups, choral associations, orchestra associations, composers and performers associations and music producers associations. The constitution guarantees every citizen with the right to form and join associations including trade unions hence there is awareness for a musicians' trade union in Kenya.

The linkages between these organizations are however not well defined or coordinated. Their activities border more on lobbying than the professional development of the industry. Besides these, there is mistrust between players in the Industry at various operational levels. The administration of music matters in the country is also scattered across various Government bodies without any clear jurisdictional boundaries. This has resulted in an unstructured Music Industry hence the need for an institutional framework to harmonize and regulate the administration of the Industry.

In the absence of accurate data the World Bank report "*An Integrated Value Chain Analysis of the Kenya Music Industry: Critical Challenges and Opportunities*" estimates Kenyan market size to between 10 to 32 million recordings a year. This translates to Kshs.5.4 billion Per annum from audio cassette sales. When CD sales are included the retail value of this music rises to Kshs.11.52 billion per annum. Over and above this additional revenue could be earned from supporting industries such recording studios and printing companies if music in Kenya was better managed.

A vital step in the growth of Music Industry in Kenya is the ability of the country to control its music distribution through greater control of production and distribution in both local and international markets having regard to the attendant copyright laws and enforcement thereof.

There is no defined administrative structure whether through banderole system or other format to help regulate the influx of illegal recording.

POLICY STATEMENTS

- The Government is committed to the development of a vibrant and productive sector by facilitating capacity building for the various organizations and associations within the music Industry.
- The National Government shall create an enabling environment for writers, authors, composers, arrangers, publishers, producers of sound recording and other music practitioners through the enforcement of the Copyright Act.
- The National Government shall put structures in place to help combat piracy including introduction of banderol and application of best international practices in combating irregularities and exploitation within the sector.
- The National Government shall establish of a national 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.

2.2 Music Education and Training

Kenya has an abundance of untapped music talents that need to be nurtured and developed for the country to increase its contribution to the global music repertoire and move to the world market. The removal of music education syllabus in both formal and technical institutions has

adversely contributed to the deterioration of standards of music products. Whereas there are several independent private music schools, there is no government institution that exclusively caters for the wholesome and comprehensive training of musicians. In addition, there is no effective system of monitoring and evaluating the quality and content of the education provided by these schools to ensure globally acceptable standards are adhered to.

The decision to make music non-examinable in the primary school has produced a rippling effect that has affected all levels of the education system in our country. The decline in music education started with the declaration of music as one of the non-examinable subjects in primary schools. While on paper, music is still in the curriculum in primary schools, it is in reality barely taught. Many of the secondary schools that used to offer music as an academic subject have now dropped the same. Serving music teachers are at times forced to teach other subjects due to the decline of music as an examinable subject. At the Universities, fewer students opt to take the subject due to limited opportunities in the labour market.

There are therefore fundamental problems with regard to the provision of music education in schools. Little practical music making goes on to facilitate learning and nurture creativity at both primary and secondary school levels. This is occasioned by higher and unaffordable costs of music instruments and equipment. Music learning is therefore heavily theoretical. This results in graduates who are barely skilled in music making and are not able to meet the market demands or service the Music Industry. Despite these setbacks music still thrives (in varying degrees) in post primary institutions. Learning is however characterized by a curriculum that is heavily biased towards western content, material and delivery, making formal music education culturally alienating to the Kenyan child.

Music educators range from full time and part time school music teachers, staff running music services through to music teachers and musicians for whom music education may make up only part of their career. Wherever on this spectrum music educators sit, music education needs to be seen

as a rewarding and structured career, with opportunities for both personal and professional growth. Music educators should be supported and recognized throughout their careers.

Several public and private universities have established music departments while teacher training colleges offer music as a subject. However, even at this level, learning is still characterized by a theoretical approach. Lack of goodwill at all levels and appreciation of the value of music also contribute to the apathy that surrounds the teaching and learning of music. In addition, there is insufficient understanding amongst stakeholders in the Industry with regard to the functioning of the Industry, labour relations, contracts and music business opportunities. This inhibits the industry players, limiting their performance and resulting in low output.

Issues of intellectual property rights are either ignored or unknown. There should be a systematic attempt to educate young people artists and managers on copyright matters and management of music business.

The Government has however begun the establishment of music systems to encourage the youth through youth programs that provide young people with opportunities to grow their musical talents. These youth forums identify and nurture talents for young musicians and provide access to a range of music experiences to these young musicians from all over Kenya.

POLICY STATEMENT

- The Government shall facilitate music education and training at all levels of learning.
- The national government shall create a plan for music education through practical oriented music curriculum, relevant learning materials and monitoring and evaluation of the learning process at all levels of Education
- The Government shall create standards to guide educators in determining objectives for their teaching to include evaluating music and performances, reading music and notations, singing and playing instruments of different repertoire, composition and arrangement of music
- The National Government shall establish centres of excellence and a academy for the teaching and learning of music in its diverse cultures which shall be replicated at the county.
- The Government at both levels shall facilitate research and documentation in the area of music.
- The Government at both levels shall support the creation of a strategic approach towards encouraging more musical activities for the young people through the creation of a Music Manifesto.
- The National Government shall facilitate training, support and incentives for music teachers' instructors and educators.
- The Government will set up a Music Information Centre to facilitate access to music and related information and services.

STRATEGIES

To achieve the above objectives, the Government aims to realign the education sector in line with music in the following ways:

- *Provision of learning music at all levels of education, to be assessed appropriately*
- *Diversification of tertiary level provisions for training, to capture the needs of society and reflect the multi-disciplinary possibilities of the disciplines*
- *Curriculum Review to include music from tender age to tertiary level*

- *Extend training beyond provision of teachers and performers by opening avenues to higher education where talented youth can gain access through music Scholarships and also creating music centres of excellence*
 - *In-school activities to include instrumental, vocal tuition at individual, and group levels; creation of performing ensembles such as bands, orchestras, choirs, Provision of performing opportunities as part of the school programme, including festivals, school arts programmes, inter-house/class; inter-school festivals/competitions;*
- *Community-based activities to include music bands, groups and choirs*
- *County support for arts education and programmes/projects in the community*

2.3 Documentation and Archiving

A country without a record of its past is a country without a future and this applies to the Kenyan music industry. The future generations of Kenyan musicians must be able to relate to what happened to musicians in their past. This can only be done through a proper archiving and documentation of the past and present of Kenyan music which need to be made accessible to the public.

Our country's past history, philosophies, aesthetics and education are embodied in our traditional songs, dances, artefacts and folklore. Traditionally both music have been transmitted orally from generation to generation. With the dynamics of culture, this mode of preservation has lost its efficacy. Although there is still, a generation of persons who can provide valuable information on this aspect of the country's rich cultural heritage, it risks extinction through natural attrition.

Over the years Kenyan artists have produced a wide repertoire of works of arts. Despite the establishment of recording in the 1940's a large proportion of these works remain undocumented. Most recordings are in

the hands of individuals and private organisations. This makes previously produced music not readily accessible.

In areas where traditional music performance thrives; costumes and instruments of music are maintained. In other circumstances, such valuable materials are not well preserved by the current custodians. This has resulted in loss of crucial materials for education and posterity. Despite oral transmission and audio visual recording, access to Kenyan music is still limited due lack of proper framework for music Publishing.

POLICY STATEMENTS

- The Government is committed to the documentation, preservation and dissemination of the country's music material.
- The Government at both levels shall facilitate a central depository through systematic collection and documentation of music expressions of Kenyan communities in all formats;
- The Government at both levels shall establish living Treasures Programs to help capture and preserve the social and cultural significance of traditional music.
- The Government at both levels shall facilitate the establishment of music publishing for preservation and accessibility for commercial and educational purposes.
- The Government at both levels shall maintain a systematic archiving of discographies of all musicians and ensure its availability to the public through ICT.

2.4 Media and Advertising

The music industry cannot singularly thrive without consideration at the impact of the media. A significant percentage of media programmes involve music. The types of music played and accompanying commentaries influence the public's perception and attitude towards music. In particular, except in the case of vernacular stations, a large percentage of music aired from public and private broadcasting media houses is non-Kenyan. By their very nature, airwaves are a public resource and as has been successfully argued, the government has a duty to ensure that the use of airwaves does not work to the detriment of our cultures and common good.

The hotel industry, a vital player in the tourism circuit is crucial in portraying the identity of Kenya. However, though they utilize traditional dance troupes in their entertainment menu, piped music in their rooms is largely foreign. Similarly, the print media pays a lot of attention to international music and artists at the expense of local talents. The commercials and advertisements used to market local products use foreign expertise and music thereby suppressing local creativity and promoting foreign cultures. Though music contributes heavily to the growth of the media industry, the artist and producers are seldom compensated for their work.

POLICY STATEMENTS

- The Government is committed to ensuring that the media partners with other players in the development of local music and musicians.
- The National Government shall put structures ensuring that at least (60%) of the music content aired is Kenya and promotes Kenyan cultures;
- The National Government shall reinforce the existing laws and regulations in regard to payment of royalties by the broadcasting houses.
- The National Government shall put mechanisms aimed at ensuring and promoting the use of Kenyan music in public institutions, including national airline, government offices, airports and public functions.
- The National Government shall put mechanisms aimed at ensuring that commercials on local products use local talent and expertise and that tax benefits are given to the media houses for their use.
- The Government shall encourage a broader coverage of folklore material in national and regional press, publishing television, radio and other media, for instance through grants, by creating jobs for folklorists in these units, by ensuring the proper archiving and dissemination of these folklore materials collected by the mass media, and by the establishment of departments of folklore within those organizations.

2.5 Music and National Identity

Firstly, what do we mean by the words music, nation and national identity? Benedict Anderson, in his seminal book "Imagined Communities", offers this: "I propose the following definition of the nation: It is an imagined political community - and imagined as both inherently limited and sovereign." (1991:15) By "imagined", he means that they are a product of the mental effort of the people in that nation. What music is may seem obvious. But nothing should be left to assumptions when trying to define terms used in an effort at analysis.

The digital era provides musicians with technologically advanced mechanisms to produce, market and distribute their music to a wider audience in a more faster in a less strenuous way.

How are national identities constructed and articulated through music? Popular music has long been associated with political dissent, and the nation state has consistently demonstrated a determination to seek out and procure for itself a stake in the management of 'its' popular musics.

In such considerations we see efforts to use music or other forms of mass media as a tool for creating identity at the national level. That it happens without most people noticing its effect does not make it any less powerful.

Folklore, as a form of cultural expression, must be safeguarded by and for the group (familial, occupational, national, regional, religious, ethnic, etc.) whose identity it expresses.

Preservation is concerned with protection of folk traditions and those who are the transmitters, having regard to the fact that each people has a right to its own culture and that its adherence to that culture is often eroded by the impact of the industrialized culture purveyed by the mass media.

Measures must be taken to guarantee the status of and economic support for folk traditions both in the communities which produce them beyond.

POLICY STATEMENTS

- The Government shall develop a national inventory of institutions concerned with folklore with a view to its inclusion in regional and global registers of folklore, institutions;
- The state shall create identification and recording systems (collection, cataloguing, transcription) or develop those that already exist by way of handbooks, collecting guides, model catalogues, etc., in -view of the need to co ordinate the classification systems used by different institutions.
- The Government shall stimulate the creation of a standard typology of folklore.
- design and introduce into both formal and out-of-school curricula the teaching and study of folklore in an appropriate manner laying particular emphasis on respect for folklore in the widest sense of the term, taking into account not only village and other rural cultures but also those created in urban areas by diverse social groups, professions, institutions, etc., and thus promoting a better understanding of cultural diversity and different world views, especially those not reflected in dominant cultures.
- The Government shall guarantee the right of access of various cultural communities to their own folklore by supporting their work in the fields of documentation, archiving, research, etc., as well as in the practice of traditions
- The Government shall provide moral and economic support for individuals and institutions studying, making known, cultivating or holding items of folklore

2.6 Music and Tourism

Music tourism is the act of visiting a city or town, in order to see a music festival or other music performances. It creates opportunities for employment in the service sector of the economy, associated with tourism. These service industries include transportation services, such as airlines, cruise ships and taxicabs; hospitality services, such as accommodations, including hotels and resorts; and entertainment venues, such as amusement parks, casinos, shopping malls, music venues and theatres.

The Tourism industry is by far the largest single export earner in Kenya. Tourism forms a vital foundation for the country's economy. It is growing as a result of the liberalization measures, diversification of tourist generating markets and continued Government commitment to providing an enabling environment, coupled with successful tourism promotion and political stability. Enormous opportunities exist for investment in film production; recreation and entertainment facilities in the following areas:

- Conference Tourism
- Cultural tourism
- Cruise ship Tourism
- Aviation/tour and travel Tourism
- Eco-tourism

In the Tourism circuit, music promotes Kenya's culture and continues to market the country. Each of the country's forty two plus indigenous communities has a unique body of cultural expressions that attract international attention. These cultural expressions including music continue to give the country a unique identity which is a special branding that only the arts can do.

The Tourism Industry has recognized the demand for new products. Local music can play a great role in meeting this demand as tourists develop interests in musical expressions. Currently music performers in the rich tourist sites include contemporary and traditional music. Traditional performers' exhibit low level of professionalism, the products are not well

packaged or marketed to reflect the authentic Kenyan musical forms and expressions and the artists seldom get value for the services provided. Kenya has a strong background of traditional cultural expressions including folklore which is forefront in tourist attractions. The Government is aware that these need to be protected and used as a means of attracting tourists hence enhancing the economy.

In March 2012, the Tourism Ministry launched a campaign to promote Kenya as a tourist destination through music. The musical theater show, "Out of Africa: The Magic of Kenya", which is scripted to showcase the cultural beauty of Kenya, thereby promote the country as a tourist destination with a positive visibility that the show will generate more than Euros 270,000 in terms of media coverage"

POLICY STATEMENTS

- The Government is committed to ensuring that the performance of Kenyan music in the tourist circuit is explored and Kenyan music is used to promote the country internationally.
- The National Government shall enhance the Tourism industry to provide for music tourism in Kenya and explore ways of boosting the tourism economy through music.
- The Government shall develop a local music tourist infrastructure through national, regional and international music festivals and international trade and tourism fairs.
- The Government shall put up mechanisms in ensuring the use of Kenyan cultural music idioms as marks of identity (Branding).
- The Government at both levels shall enhance cultural heritage and identity by capitalising on each unique culture and providing platforms for their expressions e.g festivals

2.7 Music Performance

The Government recognizes the numerous music performing opportunities and programmes in the country. Various sections of society engage in activities that include music making. This avails opportunity for and gives rise to the birth of performers of diverse categories.

There are professional and amateur performers, as well as semi-professionals. These are persons with varied degrees of competence and training in music. Most are talented individuals with interest in music making as an aesthetic experience.

The participation of music groups during national celebrations, state and other public functions, plays an important role in the social political life of our nation. Through music, members of the public express their aspirations, expectations and achievements as they physically participate in the events that mark the celebrations.

Though the festivals are effective in developing talent at the grassroots, there is need to create an international forum where Kenyan artistes can be pitted against their counterparts elsewhere as a means to ensure they are competitive at the global level.

POLICY STATEMENTS

- The Government is committed to the development of music and musicians for the performing sector of the Music Industry.
- The Government at both levels shall put measure to ensure performance of music that reflects and promotes the country's values and aspirations in during national and State functions.
- The Government shall strive to create an enabling environment for talent development and exposure both locally and internationally.
- The Government shall put measures in place to ensures consumers of music products have the right to goods and services of reasonable quality.
- The Government shall encourage the development of the necessary facilities (museums, concert halls, theatres and other forums) conducive to fostering the dissemination of the arts and the meeting of artists with the public.

2.8. Music and national development

Music can become a medium of national development, “Musicians can play a significant role, musicians can sing songs of development. Dramatists can give shape to the vision of the nation. The choreographers and dance performers can portray development themes and educate the rural population on many ideas areas. As a developing country, with limited resources and limited prospects for creating new employment, Kenya needs to have all of its economic sectors strengthened and working effectively. Obviously, it would be extremely difficult for governments and the population to appreciate the true value of the music industry if we are unable to indicate its contribution to the economy, and more so if we are unable to assess the industry's worth as a sector which produces employment for Kenyans.

The critical elements of a strong music industry would include strong marketable products, professionalism and integrity, viable markets, cooperation within the industry, effective management and support and recognition from the government.

Fundamental principles of competition and marketing suggest that one must either offer the same competing product at a cheaper price, or offer the same product but of superior quality and charge more, or offer a unique product. In all cases, one must offer what audiences want. On a large scale,

Producing marketable product requires a strong creative culture. To achieve that, first and foremost, our musicians and performers must be skillful. We must also have access to affordable technology which would allow for the production of quality product. While Kenya has very talented musicians, there is an apparent lack of expressed creativity, and/or that the expressed creativity is simply not being marketed effectively.

Kenya Vision 2030 is the country's development blueprint covering the period 2008 to 2030. Its objective is to help transform Kenya into a “middle-income country providing a high quality life to all its citizens by the year 2030”. Developed through an all-inclusive and participatory

stakeholder consultative process, the Vision is based on three “pillars”: the *economic*, the *social* and the *political*. This Vision's adoption came after the successful implementation of the Economic Recovery Strategy for Wealth and Employment Creation (ERS), responsible for the country's GDP growth from a low of 0.6% and gradual rise to 6.1% in 2006.

Consultations were held to provide an in-depth understanding of the country's development problems and the necessary strategies to achieve the 2030 goals. Experts used the input from the above stakeholders and their own economic analysis to identify sectors with the most promising potential in driving Kenya's economic growth up to 2030. This approach involved an assessment of two critical components:

1. the potential of the different sectors to make a wide economic impact
2. the feasibility of unlocking that potential for the benefits of economic growth, employment and poverty – reduction

A similar process and methodology was followed in identifying projects and priorities in the social, economic and political pillars.

Music as an agent for communication is a vital tool for disseminating information in all the areas of development as captured in the Millennium Development Goals (MDGs).

Music Industry is an important source of employment generation and wealth creation. The employment opportunities are largely found in song writing, instrument playing, singing, dancing, retailing, promotion, recording, production, education sector, hospitality industry and religious bodies among others. Through music, substantial revenues are collected thereby adding to the national tax base.

The Music Industry avails equal opportunities for equal participation by both women and men as women play a key role in all sectors of economy. To this end the Government is committed to ensuring that

both men and women participate and benefit equally in the music sector and that they receive appropriate recognition and treatment. The youth, who comprise a large percentage of the population, are a major driving force in the music industry. It is imperative that their energies and creative efforts are geared towards making music profitable and beneficial.

The country's population comprises persons with diverse abilities. Participation to music is a right that each and every Kenyan ought to enjoy. This is captured in article 33 of the constitution which recognises the right to freedom of expression which includes freedom of artistic creativity. This right if well implemented will enormously contribute to the nations' economic growth.

POLICY STATEMENTS

- At all appropriate levels of national planning, in general, 'and of planning in the cultural field, in particular, Member States should make arrangements, by close co-ordination of their policies relating to culture, education and employment among other things, to define a policy for providing assistance and material and moral support for artists and should ensure that public opinion is informed of the justification and the need for such policies.
- Music will be used to create awareness and disseminate information on areas of national development.
- The Government is committed to protect the rights of every person to freedom of expression which includes freedom of artistic creativity.
- In line with the poverty reduction strategy, the Government is committed to support, promote, and motivate professionals in the Music Industry.
- The Government is committed to ensuring that persons with special needs actively participate in the music sector through provision of equal opportunities in education, performance and employment.
- The Government undertakes to put strategies that will ensure women and men have the right to equal treatment, including the right to equal opportunities in political, economic , cultural and social spheres.
- An integrated development programme will be put in place to advance the role of music in social economic and political development.

2.9 Music and Technology

Music technology is a term that refers to all forms of technology involved with the musical arts, particularly the use of electronic devices and computer software to facilitate playback, recording, composition, storage and performance. Furthermore, music technology encompasses the technical and scientific aspects of music such as acoustic science,

programming, music psychology/sociology and music industry business practices.

The concept of music technology is intimately connected to both artistic and technological creativity. People are constantly striving to devise new forms of expression through music, and physically creating new devices to enable them to do so. Music technology includes many forms of music reproduction.

Despite decrease in physical sales and piracy, statistics indicate that consumer requests for music content are strong. Although sales of physical product have decreased, the demand for digital music has dramatically increased. The current market players and technology innovations provide new opportunities to deliver music to the consumer. It is imperative to balance the divergent interests of consumers and artists, while ensuring profits for all parties involved.

Technology is one of the ways that more high quality work reaches a wider range of people; engage them as both audience and participants. It is important for the music industry to embrace technology in order to continue to grow.

The Government realizes the challenges that technology also brings to the music industry and aims to bring the law into line with reasonable consumer behaviour and expectations while also encouraging creativity. The Government further realizes the need to adapt to emerging technologies. The Internet and social media have radically changed how the music industry works. The growth of online distribution as opposed to physical distribution is a significant opportunity to both music producers and musicians. At the same time this also poses intense risk of copyright infringement.

The music piracy problem has been significantly impacted by technology.

The Government realizes that music technology is under-used in schools. Schools can improve music teaching through the use of technology and

also through the teaching of music technology. This can be realized through partnership with the digital village hubs in specific counties whereby all students including those in rural areas who cannot access specialist tuition will be in a position to access it and further those with special needs and disabilities who are unable to use more traditional instruments will have a chance to experience music in a different form.

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- The Government will work with Internet search providers to ensure that illegitimate sites are less readily available than legitimate sites.
- The Government will encourage development and use of indigenous and modern technology, including information Communication Technology in a bid to develop the quality and quantity of music products.
- The Government will put effort to develop partnerships with national broadcasters and technology providers to ensure music is accessible to the whole country through broadcasting and new and existing technology.
- The Government shall put strategies to ensure efficient digital copyright licensing system including supporting the administration of the private copying levy provided for in the law though not implemented. This encourages the musicians to create more despite the law allowing for private copying.

CHAPTER THREE: RIGHTS ASSOCIATED WITH MUSIC AND ARTISTS

3.1 Copyright and Intellectual Property

Copyright infringement is the unauthorized use of works under copyright, infringing the copyright holder's "exclusive rights", such as the right to reproduce or perform the copyrighted work, spread the information contained within copyrighted works, or to make derivative works. It often refers to copying "intellectual property" without written permission from the copyright holder, which is typically a publisher or other business representing or assigned by the work's creator.

The term "piracy" on the other hand has been used to refer to the unauthorized manufacturing and selling of works in copyright. Article 12 of the 1886 Berne Convention for the Protection of Literary and Artistic Works uses the term "piracy" in relation to copyright infringement, stating "Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection." Article 61 of the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) requires criminal procedures and penalties in cases of "willful trademark counterfeiting or copyright piracy on a commercial scale." Piracy traditionally refers to acts intentionally committed for financial gain, though more recently, copyright holders have described online copyright infringement, particularly in relation to peer-to-peer file sharing networks, as "piracy."

In copyright law, infringement does not refer to theft of physical objects, but an instance where a person exercises one of the exclusive rights of the copyright holder without authorization. The enforcement of copyright is the responsibility of the copyright holder.

Section 22(1) of the Copyright Act provides for work eligible for protection under the Act. This include literary works, musical works, artistic works, audio visual works, sound recordings, performances and broadcasts. The Act grants both economical and moral rights.

The rights of authors, performers, publishers, broadcasters and many others whose livelihoods depend upon recognition of rights in intellectual property, particularly of copyright are too often ignored by persons intentionally, deliberately and systematically attempting to benefit from creations of others. The World Customs Organization for example found out in its most recent survey, 2005, that around 5% of all world trade is trade in pirated goods. The extent of the problem can be seen in the number of job losses that can directly be attributed to piracy.

Whereas Kenya is a signatory to most of these conventions protecting musical works, and has even enacted a law on copyright, not much has been achieved with regards to enforcement. Many works of Kenyan musicians, composers and artists continues to be pirated and sold at the expense of the benefit of the rightful would be beneficiaries who are the originators of the works.

The cultural and information industries form important and well recognized contributory components of the economic and cultural development of any country. They add considerably to national wealth, thus pirate activities undermine this industries hence negatively impacting on wealth creation.

Allowing pirated musical products to be sold freely in local markets effectively all opportunities for a national recording industry to develop.

POLICY STATEMENTS

- The state shall support, promote and protect the intellectual property rights of the people of Kenya.
- The Government at both levels shall put measures aimed at ensuring fair labour practices for those in the music industry.
- The Government shall take measures to put structures in place for effective investigation, regulation and prosecution of offenders involved in piracy.
- The Government shall domesticate international conventions of protection of literary and artistic works.
- Government will ensure the laws on internet use are in line with emerging technological trends as regards copyright and intellectual property.

3.2 Enforcement of the bill of rights

The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The United Nations have in the Universal Declaration for Human Rights Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom. The constitution of Kenya does not deviate from this norm as it provides explicitly for these rights to its citizenry.

Recognizing the essential role of art in the life and development of the individual and of society, the Government has a duty to protect, defend and assist artists and their freedom of creation. For this purpose, they should take all necessary steps to stimulate artistic creativity and the flowering of talent, in particular by adopting measures to secure greater freedom for artists, without which they cannot fulfill their mission, and to improve their status by acknowledging their right to enjoy the fruits of their work. Member States should endeavour by all appropriate means to secure increased participation by artists in decisions concerning the quality of life. By all means at their disposal, the Government should demonstrate and confirm that artistic activities have a part to play in the nations' global development effort to build a juster and more humane society and to live together in circumstances of peace and spiritual enrichment.

Some of the rights that artists and musicians directly gain from if well executed include

- a) Right o social security- art 43
- b) Right to use the language, and to participate in the cultural life, of the persons choice. Right to enjoy the person culture and the persons language - Art 44

POLICY STATEMENTS

- The state shall take measures, including affirmative action programmes to ensure that the youth have opportunities to associate, be represented and participate in the political, social and economic and other spheres of life.
- Through appropriate legislative means when necessary, that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations.
- The Government shall take steps to see that the artist benefits from the rights and protection provided for in international and national legislation relating to human rights.
- The Government endeavour to take the necessary steps to see that artists enjoy the same rights as are conferred on a comparable group of the active population by national and international legislation in respect of employment and living and working conditions, and see that self-employed artists enjoy, within reasonable limits, protection as regards income and social security.
- The Government shall recognize the importance of 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, the Universal Copyright Convention, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and take all necessary steps to extend the field of application, scope and effectiveness of those instruments.
- The Government shall recognize the right of trade union and professional organizations of artists to represent and defend the interests of their members and give them the opportunity to advise the public authorities on suitable measures for stimulating artistic activity and ensuring its protection and development.

CHAPTER FOUR FUNDING

4.1 Investing in Music and Musicians

The Government appreciates the viability of music as an industry. Like all other sectors of the economy, it demands input for development of personnel, equipment and infrastructure. It is an area of investment with sure returns.

As an industry, music needs funds to build capacity for all manner of activities. These include scholarships for academic pursuits, support for exchange visits and tours, activities for the exposure of musicians and development and acquisition of equipment and instruments.

The industry generates products that need to be promoted if returns are to be realised. This aspect of selling the industry is vital, taking the form of marketing products and supporting artists on tour.

Each industry must care for the welfare of its workers. Many musicians barely make a living out of music. There is need for structures that cater for the welfare and sustenance of musicians during their non-productive seasons.

The creation of an arts fund will ensure that any genuine budding musician can apply for funding to embark on their music projects without going through the pain and anguish that is common. This process of determining who ends up with the funding must be thorough and highly transparent. The process can be twice yearly and the artists have to determine that they have invested fully in their music.

Finally, the system of recognition awards plays a big role in building stamina and motivating artists. Elsewhere, cash awards accompany plaques and certificates. These assist the artists in developing their trade.

The following will be the sources of funding for music:-

- Budget allocation from the Government of Kenya;
- Music Trust Fund - the Government will facilitate the establishment of a Music Trust Fund;
- Contracts and agreements - the Government shall encourage individual musicians/associations to enter into contract/agreements/endorsements with partners locally and internationally;
- Music levies - the Government shall impose a percentage of profit from the total collections for local and international music events. Gate fees shall be fixed by the Music Trust Fund officials
- Membership/affiliation fees;
- Partnership with development partners and funding agencies;
- Sponsorship and council for specific music activities.

POLICY STATEMENTS

- The Government is committed to developing a strong financial base for the operations of the Music Industry.
- The Government is committed to providing funding for music projects and activities and further providing financial assistance to the promotion of music e.g access to loans, grants etc
- The Government shall put measures to provide tax concessions towards music industry as a whole
- The Government shall put measures to encourage public private partnerships in the music sector

4.2 Financial Management

Music is a lucrative source of income. Increased international and local earnings, sponsorships, grants and contracts have attracted many people of various backgrounds to the Industry. In order to ensure prudent management of these funds the following measures will be put in place:-

- *Each music organization and association will be affiliated to an umbrella body to oversee their operations and management;*
- *The Kenya Copyright Board will conduct a periodic inspection of the books of accounts of all its affiliates;*
- *All music organizations will form active finance committees to manage their finances;*
- *All music organizations will open and maintain bank accounts which will be open to public scrutiny;*
- *All associations will give their audited accounts reports during the Annual General Meeting to ensure transparency.*
- *All music associations will institute clear articles and memorandum of association and deposit a copy with the umbrella body.*

4.3 Music Industry Development Fund

The Government shall create a Music Trust Fund to help artistes create quality Kenyan Music Works and give Kenyan talent the tools to fully develop their creative and business skills.

The functions of the Trust shall include but not be limited to:-

- *Establishing a Musical Diversity Programme to offer resources to produce and distribute specialized music recording reflective of the diversity of Kenyan cultures;*
- *Providing funding to enable Kenyan music entrepreneurs to effectively develop their skills and competencies;*
- *Providing funding to conferences and award shows, market development initiative to provide opportunities to share best practices, inspire young artists and entrepreneurs;*

- *Ensuring significant works are preserved, giving Kenyans of today and tomorrow access to their musical heritage;*
- *Ensuring that Kenyan artists have access to career development opportunities;*
- *Ensuring Kenyan sound recording entrepreneurs meet challenges of transit to new technologies and enjoy more fruitful long term collaborations;*
- *Providing an enabling environment in which artists can build their skills and develop their art;*
- *Ensuring capacity building of all categories of stakeholders in music;*
- *Strengthening research and training.*
- *Ensuring the publishing of Kenyan music in sheet and book form.*
- *This development fund will get its funding from the government, private sector and NGOs.*
- *The fund should have a fundraising organ whose mandate is to find creative ways of fund raising for the MIDF.*

CHAPTER FIVE INSTITUTIONAL AND LEGAL FRAMEWORK

5.1 Registration and affiliation of music organisations:

In this regard, it is fundamental that Kenya adopts a deliberate legal and institutional framework that will seek to address the legal dynamics in the industry in a structured and coordinated manner.

The following principles shall thus apply with regard to registration and affiliation of music organisations;

- *Every registered music organization/association shall have a recognized office from where it shall provide the necessary services;*
- *The Government shall provide political goodwill to encourage professional discipline among stakeholders;*
- *The Government shall facilitate the signing of recognition agreements between stakeholders and the media; and stakeholders and entertainment managers. To this end the Government shall play a facilitative role between the various players in the industry.*
- *All collecting bodies will be affiliated to the Kenya Copyright Board as entrenched in the Copy Right Act 2001;*
- *All cadres of players in the Music Industry are encouraged to form professional associations, organizations and unions;*
- *Each music organization/association shall be required to adopt arbitration as a means of resolving disputes that may arise within their ranks.*

5.2 National Music Board

The Government shall through legislation establish a body which shall be in charge of the music industry development and coordination.

The Board shall among other things be responsible for;

- Implementing the Music policies established herein;
- Providing policy advise to the government by practicing skilled advocacy, expert policy formation and research in support of music including funding, legislation and regulation
- Identifying, nurturing and promoting music talent in the country.
- Documenting, preserving and disseminating the music heritage of Kenya;
- Offering support, where necessary to bodies initiating and supporting research on the music heritage of Kenya.
- In consultation with the music stakeholders will develop a code of ethics for music which shall set out the basic principles of professional practice in the music industry
- Encouraging and coordinating the study of Kenyan music as a means of promoting the development of Kenya's cultural heritage.
- Spearheading the promotion of Kenyan music locally and internationally.
- Promoting and developing relevant and quality music entertainment programmes during State, National days and Presidential functions.
- Providing consultancy services in music to the public and private sector.
- Promoting awareness about the music industry by mounting campaigns, projects, producing recordings, publications.
- Providing an avenue for incorporating the concerns of the private sector, NGOs and the general public into music development issues.
- Conducting periodic surveys to monitor and evaluate the potential and continued growth and development of the Music Industry in order to ensure its contribution to the economy

CHAPTER SIX: IMPLEMENTATION PLAN

The policy measures that have been outlined in this document provide a comprehensive framework within which, Government efforts to preserve, guide, develop and promote the Music Industry will be realized. In particular, these measures seek to:

- (i) Provide guidelines and a comprehensive framework to streamline the Music Industry.*
- (ii) Provide a more diverse and innovative music industry which is valued by the both the industry players and the public*
- (iii) Provide opportunities for the most talented musicians to develop their practice, learning new skills, taking time out for research and taking advantage of development programmes here and abroad*
- (iv) Encourage more children, youth and adults to take part in the music industry*
- (v) Exploit technological opportunities to develop and grow the music industry*
- (vi) Deter piracy and other forms of fraud in the Music Industry.*
- (vii) Enforce the existing laws by the relevant agents.*
- (viii) Enable more people to take part in the music industry.*

Implementation of the music policy will involve the setting of targets through an appropriate work plan that commits the Government to achieve in the medium term using appropriate strategies.

LIST OF ACCRONYMNS