

Policy and Legal framework for promotion of film Industries in East Africa

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Abstract

In most of the East African countries, laws, regulations and policies governing culture and creative industries exist. Some countries have gone beyond to formulate specific legal frameworks to support and govern specific creative industries. Such support has nurtured not only the growth but also the survival of such industries like film, music and theatre. Film has evolved as one of the fastest growing industry in the region. With over thousands releases every year, the region collectively can stand to be the second largest after that of Nigeria. Employment, entertainment and education support have emerged as the key functions if the industry.

Regardless of such achievements, most creators and filmmakers have not succeeded to survive purely depending on their work due to various reasons including low payments and inadequate entrepreneurial skills. Piracy and counterfeit products, poor implementation of the rules and regulations at the national and community levels as well as slow pace of formalization of the industry have remained as key challenges impeding the vibrancy of the film industries across the region. Inadequate and inaccessible data about the magnitude of the industry has also impeded policy makers to act upon favorable reforms.

This presentation therefore calls for a regional approach to support and improve the existing legal frameworks including integration of the film industry with other industries such as tourism. The establishment of regional networks and revival of the existed platforms will easier integration and speed up legal and policy reforms in specific countries.

Introduction

Research from various parts of the world reveals the dynamism of the creative industries as opposed to the pre-conceived assumptions them being a barrier to development. Culture(s) where most if not all of the creative industries derive their existence provides core values including positive integrity, patriotism, spirit of excellence, social cohesion, dedication among others. The United Nations report of 2008 for example, shows such evidence of the potential of the creative industries to the national economies (United Nations, 2008). This evidence shows that there is a direct link and symbiotic relationship between development and creative industries. Hence it is important when discussing issues pertaining to development of the East African (EA) region to take into consideration the role of policies, laws and regulations which govern culture and particularly the creative sector. This is due to the fact that most of the policies and legal frameworks in EA addresses the latter through the former.

There are many sectors connected to the creative industries in the EA region which for the purpose of this presentation includes Burundi, Kenya, Rwanda, Tanzania and Uganda. Such sectors include but not limited to theatre, film, music, fashion, design, advertisement and other related sectors such as mass media and tourism. Film has evolved as one of the fastest growing industry in the region. With over thousands releases every year, the region collectively can stand to be the second largest after that of Nigeria. Employment, entertainment and education support have emerged as the key functions of the industry. Due to its dynamism and vibrancy, this presentation will focus on film policies and legal frameworks and others sectors will be cited as examples when needed.

There are, however, many gaps in film and existing policies and legal frameworks in EA. Apart from that, there is inadequate literature about regional approach to film and the history of distribution and marketing in the major cities of the region. There is also no dedicated cultural impact study of the film industry in East Africa to evaluate the generative capacity of the industry to envision new ways of managing the industry. With such gap, this presentation seeks to analyse the role of policies, laws and regulations in enhancing/promoting the growth and sustainability of the film industry in respective countries and collectively as a region. This presentation draws much of its information from documentary review including online sources, books, journal papers and presentations.

The Status of the Film Industry in East Africa

For the past two decades, film has evolved as one of the fastest growing industry in the EA region. So far there is no evidence to show how many titles are released in a year in the region but the Tanzanian Kiswahili based video film industry alone releases between 800 and 1,200 titles a year. There are various causes for such growth including well noted technological advancement where filmmakers can access 'cheap' video cameras, atrocious television owners' behaviors, dominant global neoliberal policies of free market economy, languages both English and Kiswahili.

It is argued that the major challenge for an African film practice lies in its need to become a fully-fledged industry with the requisite infrastructures of production, distribution, exhibition, promotion, training, and marketing, thus making it sustainable and reducing its dependence on government or donor funding. But, as Peruvian economist Hernando de Soto argues, while the poor are capable and are hardworking, they seem to suffer because they are kept out of the

formal economy, unable to expose the capital potential of their entrepreneurship (Hernando De Soto, 2003, p3).

East Africa's film industry is undoubtedly helping create jobs although its core employment is still strictly limited to some production and DVD vending. Thousands of people are currently employed in the industry, and while the region's economy will grow by 7% this year in each of the 5 countries, insufficient jobs for a growing youth population continue to be a huge concern. (See United Republic of Tanzania, 2013, p. 31).

Emerging and Existing Gaps

Article 119 of The East African Community Treaty stipulates clearly the position of culture in the region. However, the treaty does not mention or stipulate the role and position of film nor creative industries. This might be due to the fact by the time the treaty was put into existence, creative industries were not seen as part and parcel of both social and economic growth.

'Scanning' of EA countries it is noted that Tanzania is one of the countries with the oldest Cultural Policy of 1997 followed by Rwanda (2006), Uganda (2006), Burundi (2006, 2014) and Kenya (2009). Kenya has a draft of the Film Policy which was expected to be in place by 2015. Tanzania on the other hand has a draft policy which has to wait for review of the Cultural Policy. No information is available about Uganda, Rwanda and Burundi regarding film policy.

It should be noted that most of the cultural policies and legal frameworks of the East African countries borrow and in most cases reflects regional and international charters and declarations. These includes the African Cultural Charter (1976), Plan of Action for the Cultural and Creative Industries in Africa (2008), The African Charter for Cultural Renaissance (2005), Universal

Declaration of Human Rights (1948), Universal Copyright Convention (1952, 1971), The UNESCO Convention on Protection and Promotion of Cultural Diversity and Cultural Expressions (2005) among others.

There are various laws and regulation in various countries which govern the film industry. These laws and subsequent regulations for countries like Burundi and Tanzania have been in place since 1970s. Some of the regulations were borrowed from the colonial period and appealed to suit the independent nations. What can be observed is the commitment of the EA member states in protecting creative rights through Copyright law and other related rights. All EA member sates have in place Copyright Laws and subsequent regulation. The question is how effective are they and to what extent they are reinforced.

While Tanzania has Film and Stage Plays Act of 1976 (with its regulation of 2011) Kenya has Cap.222. The difference is; while in Tanzania the Film Censorship Board promotes, regulates, censor films and provide licenses for cinema halls. In Kenya, the Film Classification Board regulates and censor but do not provide licenses for cinemas. The Kenya Film Commission (KFC) established in 2005 plays a major role in advising and facilitating the growth of the industry. In Burundi, the Press Law is the one which also regulates the film industry. In Uganda, the film industry is regulated across various state organization and departments.

Lack of film policies and specific laws and regulations pose a major challenge for the region. Policies facilitate room to respond to socio-economic and geo-political developmental challenges. Policies also avail individual countries to benefit from regional and international opportunities offered such as regional integration. It is high time that film policies are put in place and implemented accordingly. Policies can support to chart out the way forward in terms of

professional expertise, investment and sustainability. Policies which reflect East African culture(s) such as video palours are seen as illegal but they are effective. Some of the proposals in the policies can be to establish Film Schools, Film Funds as well as bringing together state owned film bodies and departments such as Censorship Boards under one umbrella.

Piracy and counterfeit products, poor implementation of the rules and regulations at the national and community levels as well as slow pace of formalization of the industry have remained as key challenges impeding the vibrancy of the film industries across the region. It can be argued that piracy is a marketing problem, inadequate supply in the right time and place. There are many reasons for such delay, one being inadequate resources to implement even the existing policies, laws and regulations. EA states should play its role in reinforcing and reviewing existing laws, regulations and policies which safeguard the interest of the filmmakers and other creatives in the film industry

There is a need to push for the institutionalization of film policies in members' countries and harmonization of the existing laws and regulations. Since some of the countries are at the preparation and finalization stages, the need for regional partnerships and engagements should be clearly stipulated in the documents. Having policies focusing specifically on film, it will also result into legal amendments and subsequently review/adoption of new regulations. Therefore each member country should devise a mechanism to minimize piracy and counterfeit products which can be shared and implemented regionally.

Challenges on how to distribute royalties pertaining to the distributed films have not been adequately addressed. Policies should clearly state how films will be distributed across the region by facilitating filmmakers to access global markets. The ongoing practice where casting for

significant roles is awarded to actors from different countries, has proved to broaden the market of the produced films across the region. Specific policies and laws should back up such initiatives from filmmakers.

Film cannot continue to operate in isolation from other dominant sectors such as mass media, tourism and communication. There is a need for clear guidance on how the industry will collaborate with private sector perhaps through Public-Private-Partnership (PPP) to share experience, expertise and resources both human and financial.

Each member country should facilitate investment friendly environment through appropriate policies to attract regional and international investments in the film industry. Entrepreneurs should be encouraged to invest in the film industry while protecting filmmakers and each country's heritage. Policies and enacted laws should also empower women, youth and other marginalized groups of filmmakers by harnessing their creative talents and contributions to film productivity.

Drug and human trafficking, are currently evolving as key issues which need to be addressed. This problem is not peculiar to East Africa partner states. It can be noted in US, UK and other parts of the North. Most cases are reported through social media where some have been executed in China while the human trafficking is common in the Arab countries, Dubai in particular. Most of the film practitioners, specifically actors have been victims of such illegal business. Policies should acknowledge the magnitude of the problem and address the issue so as to protect the film fraternity.

Each member country should be encouraged to share best practices related to policy and law enforcement. For example in 2013, Tanzania introduced a Tax Stamp Regulation as one of the mechanisms to curb piracy and other related copyright infringements. The regulation gives directives, and legal sanctions on a newly established system of putting stamps on film and music works. These stamps come in pair; possessing the same serial number of eleven digits. The price for the pair of stamps including printing and excise duty is equivalent to 0.0057 UK pound (or Tanzanian fifty-four shillings and fifty cents).

For films there are two types of stamps differing in colours and initials; all are approximately 1 x 2 centimetres large. The violet LF is for local films, the green IF for imported films in DVDs/VCDs. So far there is no concrete study to evaluate the outcomes of the Tax Stamps but the existing evidence shows that the system has been able to register most of the distributed films and filmmakers involved. The government has managed to collect some monies not only through taxes but also through film licenses.

There is a need for a regional approach to support and improve the existing legal frameworks including integration of the film industry with other industries such as tourism. The establishment of regional networks such as East African Film Network (EAFN) in 2014 and revival of the existed platforms will easier integration and speed up legal and policy reforms in specific countries. Such networks can opt to establish a one stop center for film activities in each country which will help filmmakers to acquire required information and licenses easily.

Each member country should engage in rigorous research and publication of the findings in their respective countries. This will support researches and other stakeholders who are interested in the creative sector to see its contributions to the national economies. This initiative can be

supported by East Africa Community (EAC). Depository of research, use of ICT can facilitate this.

EAC Arts and Culture Act can be enacted. The challenge lies in the fact that EAC has no mandate to force partner states to implement it. Government should invest in creating awareness about piracy so as to protect creative. Sometimes people think, “these songs and stories are ours, why pay for them while we used to have them for free?”

Conclusion

Film is one of the fastest growing creative sectors in the East African region. It is clear that there are best practices to be documented including the establishment of Kenya Film Commission (KFC), East African Film Network (EAFN) and the implementation of Tax Stamps regulation in Tanzania. The existence of favourable policies and proper legal frameworks to support film industries in the region has remained a fundamental challenge. In the context of predicting how East African filmmakers will continue to produce their films, it becomes clear that conducive policies, laws and regulations should be in place.