



Creating Sustainability in Kenyan Film industry: Regulatory and Commercial Challenges

Kennedy Njasi Simiyu

Kibabii University, Department of English Literature, Journalism and Mass Communication, P.O Box 1699- 50200, Bungoma.

Received 25th November 2019, Accepted 1st December 2019

Abstract

Literature suggests that the Film Industry in any country needs proper support structures and models that enable it to operate efficiently and contribute positively to the country's economy. Most of this literature focuses on Western countries which produce films that dominate the global film market. Because of a number of factors that will be discussed later, countries in the global South have not been able to follow the structures and models that have succeeded in the West. Their markets are still dominated by films produced in the West. If this dominance is allowed to continue, the film industry of countries in the global South will continue to struggle to survive, thus employing trial and error methods. However, there are countries such as Nigeria and Ghana, where the film industry has flourished without necessarily following the Western structures and models. This paper examines structures and models of the Kenyan film industry in order to establish whether they are supportive or not. The paper reviews literature and draws lessons from Western countries, such as the USA, that have well-structured film policies and business models; as well as countries in the global South, such as Nigeria and Ghana, whose film industries have grown rapidly without much assistance from the government, non-governmental organizations and with weak to nonexistent regulatory frameworks. This comparison will help make recommendations for the Kenyan film Industry.

Keywords: Sustainability, film industry, Regulatory and Commercial.

© Copy Right, IJRRAS, 2019. All Rights Reserved.

Introduction

Literature suggest that film industry needs proper support structures and models for it to realize its full potential. It is important therefore for a country to support this sector culturally and economically through various initiatives of promotion of the industry, identification of the places where it can flourish, improvement of the quality of life where it operates and strengthening of the resources that it needs. This enablement can be done through the provision of a supportive framework that comes partly from policy interventions (UNESCO, 2013; Olsberg, 2012). However, most of this literature focuses on Western countries that dominate the global market. Because of a number of factors, countries in the global South have not been able to follow the structures and models that have succeeded in the West. Their markets are therefore still dominated by films produced in the West. If this dominance is allowed to continue, the film industry of countries in the global South will continue to struggle to survive thus employing trial and error methods. In this regard, there are countries such as Nigeria and Ghana, where the film industry has flourished without necessarily following the Western structures and models.

This paper examines structures and models of the Kenyan film industry in order to establish whether they are supportive. The paper reviews literature and draw lessons from Western countries, such as the USA and the UK, that have well-structured film policies and business models; as well as countries in the global South, such as Nigeria and Ghana, whose film industries have grown rapidly without much assistance from the government, non-governmental organizations and with weak to nonexistent regulatory frameworks. This comparison helps make recommendations for the Kenyan film Industry. The paper argues that if Western countries that have stronger economies but actively promote their industries putting in place proper structures, then less developed nations like Kenya need to do even more in terms of creating conducive environment for them to realize the full potentials of their film industry.

Although there are other factors that could help the film industry to be sustainable, this paper posits that there must be structures and controls at production, distribution and consumption of films at every stage. If these structures are well constituted, then movement of film as a commodity becomes smooth (Mosco V., 1996). The role of the government in such a system is to establish structures and controls to facilitate the smooth movement of film as a commodity and to facilitate value exchange at each phase of such economic movement.

This paper further looks at the key role played by the government in managing and regulating the film

Correspondence

Kennedy Njasi Simiyu
simiyunjasi2@yahoo.com

industry locally. The paper hypothesizes that if the government puts in place proper structures that support the production, distribution and consumption of Kenyan films, then there will be fair competition and maximum rewards for players in the Kenyan film industry. In this paper, the government-centred approach is explored with a view to 1) demonstrating the mechanisms employed by the state, 2) demonstrating how the hinderances to the growth of Kenyan film can be addressed by the state by putting in place proper structures, 3) demonstrating the role of the state in providing help, and the state's function to remove obstacles that may arise from the existing regulatory practices.

In the attempt to understand the sustainability of film industry, the paper will not only look at the structure of the film industry and the prevailing horizontal and vertical integrations, but also look at the relationship between the industry and the state including the enforcement of the regulations and intellectual property rights, among others (Wasko, 2005). The state thus plays a major role in designing and implementing the structures in any industry. Policy intervention is not always possible when the government does not support its own institutions and policies (Ross, 2010).

The film industry, which involves the production, distribution and consumption of film and related products, has a great potential to significantly influence the economy of any country while also promoting and enriching its culture. According to Wasko (2005), film can be placed within a social, economic and political context and judged on the basis of its ability to maintain and reproduce structures of power. These structures, according to Olsberg (2012), address the operation of the film industry and all players who converge to produce film as a commodity for consumption. Such players include the producers, script writers, directors, actors, technical crew team, distributors and consumers who work within an environment that is well structured and supports their operations. Having this in place enables the film industry to operate comfortably and independently in order to meet the market demands, and at the same time make profit (United, 2011; Olsberg, 2012). As Olsberg (2012) puts it, the structures in place to look into the government support for the film industry, public support for the film industry, film market, digital innovations and how they change the film business, should guide the sharing of revenues, provide good leadership in film business by having well-experienced and qualified personnel, foster a good working relationship with successful actors, ensuring good international and corporate business relationships, putting in place a supportive and consistent public policy environment amongst other facets (Olsberg 2012).

Film Industry in the US

Western countries like the United States have through information communication technology strategically Americanized media (Foss & Littlejohn,

2009). Media technologies, content and distribution from America have been pushed to most countries. This has put pressure on most countries to adopt US productions under the guise of development in democracy, that has led to redefinition of their local policies, hence making technologies, innovation, and content attractiveness and distribution strategies look like the American role models (Foss & Littlejohn, 2009). By doing this, America has positioned its film industry to flourish both locally and internationally.

The strategies put in place to control the importation of films in any country are supposed to be organized in a way that accommodates foreign films while at the same time safeguarding local films (Mwakalinga, 2013). This approach not only reinforces the relationship between the exporting and importing countries but also promotes the local productions. If it is not organised properly, the local filmmakers, foreign film distributors and the states will not work in harmony. For instance, the importation, distribution and exhibition channels of commercial films originating from western production houses, in many African States have been, and continue to be, in the hands of foreign and private companies which have been set up for these purposes internationally (Mwakalinga, 2013). Some African states like Tanzania tried to nationalize film importation and distribution, but their major suppliers of foreign films stopped to supply films to them because of this (Ashbury, Helsby, & O'Brien, 1998). An American distributor, the Motion Pictures Export Associations, colluded with other distributors like Anglo-American United Film distributors and Pan-African Distributors and Promoters to block the Tanzanian government from acquiring films from abroad (Mponguliana, 1984).

The American economic system adopted Smith's free market model (Keenan, 2009). According to Keenan, private businesses in America perform much better than state owned businesses. In this regard, American government allowed free trade policies that allowed private businesses to sell their products such as film locally and internationally with minimal regulations (Keenan, 2009). According to Wasko (2005), US films have dominated the international markets and their success can be understood by looking at the historically prevalent, powerful mechanisms that have been put in place to sustain this market dominance, secured by the involvement of the state in the entire process, and the consequences of insufficient support mechanisms for indigenous film industry in other countries which opened a market gap for US films (Wasko, 2005).

According to the Motion Picture Association of America (MPAA) Pfanner, the US government argues that most countries have liberalized and deregulated cultural sectors because they believe that the cultural market should be left in the hands of a free market (MPPA, 2009). On the contrary, as outlined by the United Nations (2011), what works is not the free market but proper planning and lobbying where countries strategically plan and position their film products at the

international markets. It is because of these strategies that Hollywood has continually dominated the global box offices taking more than 60% share of the international film market. The small numbers of transnational film companies which exploit economies of scale and scope to distribute their products globally, seem to create and precipitate a global system that is relatively autonomous from national policy/regulatory oversight (Keir and Flynn, 2003).

Critics of US Model

The US model is criticized by scholars like Adam Smith are opposed to government controls and advocate for a free market system. As much as Smith recognizes the role of the state in controlling the film industry, he argues that the state should distance itself from regulating the production, distribution and consumption of film products and allow free market forces to determine economic growth. In a democratic society, a successful economy operates independently from the government and Smith argued that consumer demand for goods is determined by demand and supply forces, not by the government (Smith, 1931). The argument here is that without government intervention, the free market provides the most efficient means for resource allocation in an economy that has sufficient audience numbers who can spend disposable income on entertainment. This means that filmmakers only create films that will find a ready market (Weber, 2010). Consequently, Smith further looks at resource allocation and emphasizes the functions of the market thus advocating for a free economy and not regulation of the market place. The freedom to buy and sell films indeed creates more revenue for the economy because of circulation where profits from newly available film products are invested in improving the existing product (Smith, 1931). Smith further states that the government regulations have a negative impact on financial success in a capitalist system. He states:

The industry of the society can augment only in proportions to what can be gradually saved out of its revenue. But the immediate effect of every such regulation is to diminish its revenue and what diminishes its revenue is certainly not very likely to augmented its capital faster than it would have augmented of its own accord had both their capital and their industry been left to find out their natural employment (Smith, 1931:224)

Smith argues that the state should restrict itself to regulation of the law and order in the society. Following this logic, a film consumer therefore can freely express demands and wants at the market place (Hsia, 2011; Mosco V. , 1996; Wanyande, Omasa, & Ludeki, 2007; Foss & Littlejohn, 2009). For the Kenyan film industry, it can be estimated that entertainment institutions and other entities which broadcast and distribute the films to the audience form a major part of the market that contributes either only small revenue or

form part of the illegal markets served by private entities.

Adam's line of thought is opposed to the model where the state controls everything including the market. His model has successfully worked in some countries, notably where a large middle income class has considerable disposable income.

The Development of Nigerian film Industry

Nigerian film industry commonly known as Nollywood has overtaken Hollywood in the numbers of films produced per year. The United Nations Daily News Centre reported on 5th May 2009 that Nigeria had surpassed the United States in the number of feature films produced (UNESCO, 2009; Lobato 2009; United Nations, 2011). Ebewo (2011) attributes the popularity of Nigerian movies not only to their low unit costs, but also to their indigenous content of issues quite relevant to a mass audience. Ebewo argues that through a combination of African storylines and Western technology, the films document and create socio-political and cultural events that resonate with audiences. Thus, while Hollywood has extensive publicity network and Indian productions are widely circulated, Nigeria's film production and distribution is firmly based on local end-user support and consumption (Lobato, 2012).

As much as Nigeria has become one of the largest film producers in the world by virtue of its sheer output (Lobato 2009; United Nations, 2011), it has little resemblance to the Euro-American industrial model. Its informal economy produces around two thousand films a year for a pan-African audience and the industry has grown rapidly without assistance from the government, non-governmental organizations or film festival circuits. The industry further generates on average \$ 600 million annually and employs over one million people (Lobato, 2009; Lobato, 2012; Oh, 2014). Nigeria's film industry has evolved under a weak to non-existent intellectual property regulatory framework, which allowed the emergence of complex international piracy networks; conversely, it led to deep audience penetration of these products. Ironically, the successful illicit trade networks put the Nigerian film industry on the international map and drew the attention of the global audience (Lobato, 2009; Lobato, 2012; Oh, 2014; UNESCO, 2013). The Nigerian film industry has some resemblance with the much smaller Kenyan film industry and therefore information and studies from Nigeria are crucial to this study in terms of drawing comparisons and lessons.

Like Kenya's film industry, the Nigeria's film industry is traced back in the beginning of the 20th century in colonial Britain. In the beginning, the Nigerian local film industry failed to pick up because of high costs of film materials and lack of technical experts (Benibo, 2008). From the early 1990s, when the digital camcorders replaced 35mm motion film cameras, the Nigeria film industry underwent a revolution. (Chowdhury, et al, 2008). During this time, according to Chowdhury et al, Asian countries had found a ready market in Nigeria for their digital technology such as the

VHS, DVDs, VCDs and other digital devices that led to the creation of a DVD manufacturing industry which directly contributed to the growth of the Nollywood film industry. Realizing the potential of the Nigerian film industry, the government tried to intervene through the creation of agencies like the National Film and Video Censorship Board (NFVCB) and the Nigerian Film Corporation. According to Mba (2007), the government successfully promoted the Nigerian films within the country through road shows. Moreover, the state owned Television channel – Nigerian Television Authority brought on board skilled workforce like cameramen, writers, film editors and so forth to help in creating indigenous video productions. Thus, the government formed and trained a good number of skilled workforce in the video industry. It further subcontracted many independent video production companies to supply content to the station. (Chowdhury, et, al, 2008). However, in early 1990s, NTA changed its strategy and started importing soap operas from South Africa. This move brought the local film industry to a halt which later created a successful redeployment of the trained workforce into a newly born video industry - *Nollywood* (Chowdhury, et, al, 2008).

The process of producing a film in Nigeria, according to Chowdhury, takes 4 to 5 weeks while in Hollywood, it takes up to one year to have a film ready for distribution. While Hollywood's post production involves many steps involving official release and exhibition in theatres, Nigerian films are made on digital formats and are directly taken to video stores for rental and sales. Moreover, there are limited formal distribution channels, a situation that led to the rise to informal distribution channels, characterized by the rampant production and distribution of illegal DVDs and a gross violation of intellectual property. Film consumers generally rent or buy DVD/VCD/VHS copies of films from stores across the country which makes distribution cheap and faster (Chowdhury, et, al, 2008). On the international scene, as it is the case for most African films, there are no formal distribution channels for Nigerian films. According to (Chowdhury et al. (2008), upon completion, Nigerian films are directly taken to video stores for rental and sales. Theatrical releases are limited because the audiences of these films are the rural and urban poor who can not afford to go to theatres. Formal distribution channels are limited, a situation that gave rise to informal distribution channels that make and distribute illegal copies of DVDs. Cunningham (2007) notes that the sector is an emergent, innovative part of the service sector of the Nigerian economy that is multi-skilled but lack formal structures that could bring good rewards to the industry and the country at large. All these operate in economic activities that are involved in making cultural products that can be exchanged for money.

Although Nollywood is celebrated for doing well, Lobato (2012) argues that this booming industry rarely features in discussions in global cinema because of

its informal operations and copyright infringements. The sector is controlled by small entrepreneurs, pirates and marketers and has yet to meet the standards of Euro-American models (which are considered formal with clear guidelines (Lobato, 2012:56). It is however the gross violation of local and international copyright law that put it on the map as a negative player. Consequently, as Oh (2014) points out, its informality and persisting high rate of piracy has deterred international co-productions, thus closing the doors on potential investments and distribution opportunities for Nigeria on the foreign market (Oh, 2014). Generally speaking, the future of the film industry will depend on how the African states formulate policies that are inclusive, transparent and which include views of all the stakeholders for economic development, promotion of public interests and opportunities for private concern (Uche, 1989)

The development of Ghanaian film industry

Like Nollywood, Ghanaian film industry is equally performing well yet the latter started with full support from the government which stopped with the coming of a new government while the former started with no support from the government but still performed well. The Ghanaian film industry received full support from the first head of state, Dr. Kwame Nkrumah after independence in 1957, but immediately after the coup of 1966, the government that took over did not pay attention to the film industry hence the film industry was brought to its knees for some time (Tamakleio, 2013). Like in many African countries, film in Ghana was introduced and controlled by the colonial government. Before 1940, the film industry was run by private businessmen. According to Meyer (2015), the industry consisted mainly of the distribution and screening of films which were imported from India, America and Britain and the colonial government got involved in the industry through censorship and taxes. The colonial government got actively and directly involved when the Gold Coast Film unit toured the villages and towns screening documentary films depicting the Western way of life and propaganda films about World War which were produced in London by Colonial Film Unit (Sakyi, 1996; Diawara, 1992). Film was thus seen as a tool to serve the interests of the government (Diawara, 1992). The colonial film Unit started producing education films and by 1950s, the film industry was flourishing and had spread to many parts of the country (Pinther, 2010)

Upon independence in 1957, the Ghanaian film industry received full support from the head of state then, Dr. Kwame Nkrumah. The Gold Coast Film Unit which was established in 1948 under the Information Service department was transformed to the Ghana Film Unit in 1957 and in 1961 it was renamed the Ghana Film Corporation (Mensah, 1987). Nkrumah thus nationalized film production, distribution and consumption and invested a lot of resources in film making through construction of studios, acquisition of state-of-the-art

equipment and by the sending of Ghana Film Industry Company staff to the US to study film-related courses in film production (Tamakleio, 2013). Nkrumah further bought cinema halls owned by private businessmen so that they could become exhibition outlets for films made by the Ghanaian filmmakers. With the launch of a television station in 1965, Nkrumah aimed at feeding it with Ghanaian films (Tamakleio, 2013). Despite such measures, he did not develop a film policy. As Diawara (1992) states, Ghana and Nigeria did not draft a thorough cultural policy that paid attention to film (Diawara, 1992).

The change of regime in Ghana that resulted from the 1966 coup d'état saw the film industry in Ghana suffer. The governments that came after Nkrumah ignored the industry. They only used it when they wanted to highlight their achievements (Tamakleio, 2013). The introduction of video formats into Ghana and Nigeria in mid-1980s made it easy and affordable for film makers to make films on DVD formats and distribute them to the target markets easily. (Diawara, 1992). According to Yamoah, Currently, Ghana releases at least 10 films per week (Yamoah, 2014). The thriving of video films in Ghana made it difficult for Ghana Film Industry Company (GFIC) to have control over distribution and exhibition of these films. Until 1984, GFIC had an arrangement to import and distribute films by themselves but due to lack of funds it could not import many new films. After 1984, they were forced to hire more than 85% of the films that they showed from private distributors (Mensah, 1989).

The booming of Ghanaian video films in early 1990s spawned a full-fledged film industry with no formal structures of production, distribution and exhibition. According to Meyer (2015), video films thrived to a large extent on personal informal networks and producers who sought to maintain personal relations with important persons involved in production, distribution and exhibition of their movies. In 1993, the GFIC was converted into a liability company that was to operate on a commercial and self-sustained basis while the government retained 49% of the company's shares. These were later sold to the Malaysian Television Company in November 1996. The liberalization of the economy and adoption of a democratic constitution led to the withdrawal of immediate state control of the mass media that gave a boost to the growth of the film industry (Meyer, 2015). The discussion above regarding how the film industries in countries like Ghana and Nigeria are run shows that the state plays a key role in terms of coming up with good film structures that promote the production, distribution and consumption of films in any country. This paper argues therefore that the film industry thrives well with the support of the state.

The Kenyan film industry

The film industry, and by extension the creative industry in Kenya, has a great potential to improve the country's GDP and double employment but this can only

happen with a well harmonized government, stakeholders' and private sector leadership and support (IBM Corporation, 2012; Kenya Film Commission, 2013). Until recently, the Kenyan film industry had been home to many foreign film production companies using Kenya as a location to shoot their own stories (Kenya Film Commission, 2008). Some of the films that were shot in Kenya and were able to reach the international market include: *African Holiday*, *Stanley and Livingstone*, and *Trader Horn*, *The Snows of Kilimanjaro*, *King Solomon's Mines*, and *Mogambo*. These films showcased Hollywood stars on wild adventures in the rugged Kenyan terrain (Kenya Film Commission, 2010).

The current Constitution of Kenya (2010) recognizes the value of the creative industries to Kenyans. It provides that: *...every person has a right to freedom of expression which includes ... the right of freedom of artistic creativity* (p26 Section 33.1b). This provision gives the Kenyan society an opportunity to exercise and exploit their full potential in art. According to the IMB Corporation, Kenya has young vibrant and talented artists with high levels of initiatives even in rural communities, and there is also successful knowledge transfer from established foreign film production companies in Kenya to produce films (IBM Corporation, 2012). However, according to the World Bank report of March 2016, there is a high unemployment rate among Kenyan youths of working age placing it slightly above 16 per cent. The report further states that the growing labor force is not being put to productive use. The working age population is expected to rise to 62 percent by the year 2050 from 56 percent in 2014 (World Bank, 2016). Therefore, there is need to support the film industry so that it can provide employment opportunities for the youth.

The Kenyan film industry, like those in most countries in Africa, is faced with many challenges. Mbye Cham (1998), notes that the problems of African filmmakers range from the usual accusation of ignorance to the neglect of the cultural industries by African states and entrepreneurs. Further, Mayer Cham (1994) points out that although African film-making, at the time he was writing, had come a long way in quality, quantity and infrastructure, little had changed over the previous three decades of its history in terms of production, distribution and exhibition. The establishment of Kenya Film Commission by the Kenyan Government in 2005, for instance, was to oversee the growth of film industry in Kenya. However, since the establishment of the commission in 2005, the Kenya film industry is still developing at a slow pace, according to the report by World Story Organization which was commissioned by Kenya Film Commission (Kenya Film Commission, 2008). The reasons for the slow growth of the Kenyan film industry according to this report include: lack of film schools to offer rigorous training in film production; lack of creativity and effectiveness in the Kenyan stories; financial problems; limited or very expensive

technologies; and problems of finding appropriate audiences, amongst other reasons (Kenya Film Commission, 2008; 3&4).

According to Cham (1994:15), the situation is not different today, in spite of government intervention in some countries to create parastatal institutions to enhance their film industry, and despite the efforts of individual film makers to organize themselves in order to effectively promote their craft. The African film industry has continued to be plagued by chronic lack of capital, equipment, production facilities and effective distribution and exhibition channels. This argument by Cham highlights the fact that for the film industry of any country to grow and thrive, it requires a conducive environment in respect of economic, audience and policy variables. A UK film policy review (2012:6) noted that with the help of carefully crafted policy interventions, growth in audiences at the cinema and in all other media will increase access and choice and thus benefit films of every kind.

Control of Film Industry in Kenya

The origin of the film industry, and by extension media sector, in Kenya is strongly connected to the British colonial government which was characterized by racial segregation. In 1930, the British government wanted to manipulate film as a very powerful propaganda weapon to advance their interests. Thus, the legal, regulatory and policy framework governing media during the colonial era was to advance their political and economic interests (Mbeki, 2008). Peris (2002) argues that British cinema played a major role in spreading propaganda in the Empire. He states that the earliest empire films were simple stories that reflected the heroic moments in the empire. They promoted imperial ideologies, praised the colonial administrations and soldiers as well as glorified the British rule (Peris, 2002).

As much as films emerged during this period, of the films were sponsored by the government to promote its propaganda campaigns. Film makers were convinced by the government that patriotism was profitable and that the cinema would help shape public opinion (Peris, 2002). Thus, according to Nyutho (2015), British films propagated and supported official policies. However, during the 2nd World War, Africans realized the high handedness of the colonial rule which started to be reflected in the British cinema (Peris, 2002). The colonial government moved in to justify their presence in Africa by arguing that it was not meant to exploit Africans but to benefit both sides. The Colonial Film Unit was thus established to perpetuate these mythical perceptions (Peris, 2002.) The coming in of American films posed a threat to British commercial and political interests, leading to a perceived need for censorship. Hence, the colonial office provided guidelines on the operation of films in Kenya, Uganda Tanganyika, Zanzibar, Northern and Southern Rhodesia to ensure that censorship was implemented (Smyth, 1979).

After Kenya became independent in 1963, it had a growing population of middle class citizens going to the cinema. The first president, Jomo Kenyatta, developed a policy to establish an indigenous Kenyan film industry that would replace the one that was previously dominated by Europeans (Nyoike, 1979). Diawara (1987) further observes that film production and distribution in Africa had suffered in the hands of American, European and Indian film companies. However, according to Nyutho (2015), the American companies were not ready to allow Kenyans to do film distribution. The attempt by the Kenyan government to persuade the vice president of MPEAA to allow them into the acquisition and distribution of films business in the country did not bear any fruits. The Kenyan government then gave an ultimatum to the 20th Century Fox Group to open their cinemas, failure of which, the cinemas would be seized and given to groups who were willing to collaborate with the Kenya Film Corporation (Nyutho, 2015). The Kenyan government was aware that the 20th Century Fox organization and Anglo-American Co. (Kenya) were owned and controlled by South Africa which had been given the franchise for the African market (Gachathi, 1968). According to Matiba, MPEAA by allowing Kenyans into the film business would enable Kenya to earn \$ 1.5 million per year in importation and distribution of American films. There was no need therefore for MPEAA to refuse to collaborate with the Kenya Film Corporation (Nyutho, 2015). Although this strategy finally managed to reopen the closed cinemas, Kenya did not manage to get the franchise from MPEAA to import and distribute films thereafter as agreed (Nyutho, 2015).

The window to allow Kenyans into the mass media operations came with strict control and censorship making sure that locals do not use radio to broadcast their own views (Mutullah, Mudhai, & Mwangi, 2015; Mbeki, 2008). According to Mutullah et al (2015), these restrictive measures instituted by colonial governors continued even after independence. The first president, Jomo Kenyatta, after assuming power upon independence was keenly aware of the power of the media and set out to manipulate and control the media. National unity and development, political rivalry and ideological issues surrounding the media ownership were some of the issues that shaped the media law and policy in Kenya during this time. Kenyatta's government therefore co-opted the media into narrowly defined area that contributes to national development. The government chose what to communicate and what not to communicate to the public (Mutullah, Mudhai, & Mwangi, 2015; Ochola, 1993; Mbeki, 2008).

The government of the second president of Kenya, Daniel Arap Moi, restricted and limited political freedom, making Kenya a one party system. Dissent was criminalized and there was overt clampdown on media. The government harassed the media through sedition trials and later banned independent and critical magazines (Mbeki, 2008). The introduction of the

multipart system in Kenya in 1992 saw the opening up and liberalization of the media and the communication sector. The economic demands and pressures from the donors and civil society forced the government to review media laws in the 1990s. It therefore established institutions that regulate and promote the communication and media industry in Kenya. Some of the laws that govern the film industry in Kenya both as business and socio-cultural and political institutions include the constitution of Kenya 2010, the Film and Stage Plays Act (Cap 222), the Kenya Broadcasting Corporation Act (Cap 221), the Kenya Information and Communication Act, 2008 and The Copyright Act, 2001.

New development in Kenyan film industry

The deteriorating Kenyan economy in the 1980s and 1990, due to mismanagement under the corrupt political regime of the former president Daniel Arap Moi, led to the closure of several cinema houses including Odeon cinema, Nairobi cinema, Fox drive in cinema, and Globe cinema among others (Kimani et al, 1014). According to Gacheru (as quoted by Nyutho, 2015), the political climate was harsh with the Kenyan government imposing too many restrictions and taxes on foreign movie distribution companies in Kenya. Consequently, makeshift video theaters mushroomed in the informal settlements, shopping centers and estates in the main towns. The Hong Kong and Hollywood movies which were popular with young audiences were screened with deejay commentators in Kiswahili who helped them in dialogue translations and made it available for those who hardly understood English (Nyutho, 2015). In response, according to Nyutho, Kenyan local producers started producing local simple comedy movies in Nairobi's River Road on VHS equipment in 1990s.

Establishment of the Kenya Film Commission

The Kenya Film Commission was established in the year 2005 by the Kenyan government after a lobby group put pressure on the government to set up a body that would provide funding to local film producers through a transparent and competitive process. Through the same body, it was hoped that Kenyan film practitioners would be equipped with relevant film making skills through workshops, internships and seminars (Maithya, 2013). According to Ondego during an interview with Maithya (2013), the body was also expected to help in the distribution of Kenyan films. Under normal circumstances, for such institution to be established, the minister in charge was supposed to table a bill in the parliament to be discussed by the legislature and thereafter accented to by the president to become an Act of parliament. It is in this bill that provides for the establishment of the Commission. Ondego (2013), explains that instead of this normal process being followed, the Minister for Information and Broadcasting, Raphael Tuju, hastened the setting up of Kenya Film Commission. He took the proposal straight to the then president, His Excellence Mwai Kibaki, who set up the

Kenya Film Commission under executive Order No. 10 of 2005. The Commission is mandated to advise the government, and other relevant stakeholders, on matters pertaining to the development, coordination, regulation and promotion of the film industry in Kenya. It should also facilitate the provision of content development resources, funding and investment for film. Further, it is expected to facilitate the proper keeping of the film archives in Kenya and to market Kenya as a centre for excellence in film production (Kenya, Kenya Film Commission Order No. 10 of 2005, 2005).

The Films and Stage Plays Act (Cap 222)

This is an act of the Kenyan parliament (2012) that makes provision for controlling the making, exhibition and licensing of films, stage plays, theatres and cinemas. This Act was established to regulate the production, distribution and consumption of film in Kenya. There are however some sections in the Act that seem to discourage the production of films. There is an element of subjectivity in terms of the person charged with the responsibility of issuing licenses as well as the licensing procedures as outlined in the Act. If powers are vested in one person who is appointed by the minister to make judgment on a piece of art, then chances of making subjective decisions are high unless there is detailed procedures and auditing requirements. Moreover, apart from the subjectivity, the procedures appear to be stiff and might delay the film making process.

The above act provided for the establishment of the Kenya Film Classification Board (KFCB) which is a state corporation that regulates the creation, broadcasting, possession, distribution and exhibition of films by rating films in order to maintain public order and to uphold national values. The body regulates public performances by examining every film and every poster submitted under the act for classification, imposing age restriction on viewership and giving consumer advice, having due regard to the protection of women and children against sexual exploitation or degradation in cinematography. The body also licenses and issues certificates to distributors of films and, finally, prescribes the procedures in case anyone wants to apply for a license of a distributor or exhibitor of films and guidelines to be applied in the classification of films (Kenya Film and Classifications Board, 2013).

The mandate and responsibility of the Kenya Film and Classifications Board were initially exercised by the Department of Film Services which was established in 1982 by the government of Kenya with the aim of formulating, coordinating and administering policy in the department of film. However, the enactment of the Kenya Information and Communication Act and the Film and Stage Play Act cap 222 transferred this mandate to the Kenya Film and Classification Board. The Department of Film Services was left to deal with only government film productions. The institution has the responsibility of producing films about the government's development policies and programs, and

also promoting Kenya's cultural identity, diversity and nationhood. The department is furthermore expected to establish modern film studios and to decentralize film services to all regions. So far, there is no documented evidence of how the department has performed.

Conclusion recommendations

In order to address some of the inherent weaknesses and factors affecting the Kenyan film industry, as Olsberg (2012) states, there is a need for the government of Kenya to create a conducive environment that enables the industry to flourish. This can be done by tasking the government agencies like Kenya Film Commission, Kenya film Classification Board, Ministry of Culture and Sports amongst others. The study recommends clear clarification of roles by different entities. The Kenya Film Classification Board should have procedures that enhance creativity by Kenyan filmmakers but not normative ideologies that scare away filmmakers. The Ministry of Arts and culture's mechanisms on the other hand to secure institutional support for industry players. It should establish a framework for financial support while the Kenya Revenue Authority to establish taxation structures for the film industry.

The film industry to have an overarching body for film associations. They should establish actors' guild to protect actors and other players in the industry. Film associations should establish companies' code of conduct both for large and small companies to ensure accountability as well as developing forums to enable funding pathways and accountability. Further, there is need to have equipment insurance frameworks.

On the other hand, Kenya Film Commission functions to be defined by all players. The study suggests need for representation of industry on selection and planning panels. Banks and Kenya Revenue Authority to develop a framework for film funding. Many countries have done this based on their appreciation of the cultural and economic importance of the industry

References

1. Ashbury, R., Helsby, W., & O'Brien, M. 1998. *Teaching African Cinema*. London: British Film Institute.
2. Barnard, H., & Tuomi, K. 2008. How Demand Sophistication (De)Limits Economic Upgrading: Comparing the Film Industries of South Africa and Nigeria (Nollywood). *Industry and Innovation* 15 (6): 647 - 668.
3. Cham, M. 1994. *Film History Now*. Retrieved from Film History Now: <http://web.uct.ac.za/conference/filmhistorynow/papers/mchm>, accessed on 20/9/2015.
4. Chomsky, N. 2008. The Struggle Against Neoliberalism. In W. R. McChesney, *The Political economy of Media; Enduring Issues and Dilemmas*. New York: NYU Press.
5. Chowdhury, M., Landes, T., Santini, M., Tejada, L., & Visconti, G. 2008. *Nollywood: The Nigerian Film Industry*. Retrieved from Harvard Business School: http://www.isc.hbs.edu/pdf/Student_Projects/Nigeria_Film_2008.pdf. Accessed on 20/08/2015.
6. Dale, M. 1997. *Movie Game: The Film Business in Britain, Europe and America*. London: Cassell.
7. Diawara, M. 1992. *African Cinema, Politics and Culture*. Bloomington: Indiana University Press.
8. Doyle, G., 2002. *Understanding Media Economics*. London: Sage.
9. Foss, K. A., & Littlejohn, S. W. 2009. *Encyclopedia of Communication Theory*. Los Angeles: Sage.
10. Golding, P., & Murdock, G. 1991. Culture, Communication and Political economy. In J. Curran, & M. Gurevitch, *Mass Media and Society*, 2, pp. 11 – 30
11. Hakanen, J. J., Schaufeli, W. B. & Ahola, K. 2008. The Job Demands-Resources Model: A three-year cross-lagged study of burnout, depression, commitment, and work engagement. *Work & Stress*, 22(3):224-241.
12. Hesmondhalgh, D. 2002. *The Cultural Industries*. London: Sage.
13. Hsia, Y. 2011. *The Film Industry in Taiwan: Political economy perspective*. Norwich: University of Anglia.
14. Jedlowski, A. 2013) Exporting Nollywood: Nigerian Video Filmmaking in Europe. In: Szczepanik P., Vonderau P. (eds) *Behind the Screen. Global Cinema*. New York: Palgrave Macmillan.
15. Kahumbu, P., & Halliday, A. 2016. *Finally Kenyans can watch their own country's wildlife*. Retrieved from The Guardian website: <https://www.theguardian.com/environment/africa-wild/2016/feb/03/>, accessed on 3/8/2016.
16. Keenan, G. K. 2009. *The Political Economy of Independent Films: A Case Study of Kevin Smith Films* (Masters Thesis). Florida: Florida State University.
17. Kenya Film Commission, 2010. Audience Consumer Trends Survey. Report by Strategic Research.
18. Kenya Film Commission. 2013,. History of film in Kenya. Retrieved from Kenya Film Commission: <http://www.kenyafilmmcommission.com/Home/Filming-Kenya/History-Of-Film-in-Kenya>, accessed on 3/4/2015.
19. Lobato, R. 2009. Creative Industry and informal economies: Lessons from Nollywood. *International Journal of Cultural Studies*, 13(4):337- 354.

20. Lobato, R. 2012. *Shadow Economies of cinema; Mapping Informal Film Distribution*. London: Palgrave Macmillan.
21. Mbeki, P. O. 2008. *The Media, legal, Regulatory and Policy Environment in Kenya*. Nairobi: British Broadcasting Corporation.
22. Miller, T., Govil, N., McMurria, J., Maxwell, R. and Wang, T., 2005. *Global hollywood 2* (pp. 1-442). BFI Publishing.
23. Barsam, R.M. and Monahan, D., 2013. *Looking at Movies: An Introduction to Film*. WW Norton.
24. Monaco, P., 2010. *A History of American movies: a film –by – film look at the art, craft and business of cinema*. Scarecrow Press.
25. Moran, A. 1996. *Film Policy: International, National and regional Perspective*. London: Routledge.
26. Morawetz, J. 2007. *Finance, Policy and Industrial dynamics: The rise of Co productions in the film Industry*. Copenhagen: Druid.
27. Mosco, V. 1996. *The Political Economy of Communication: Rethinking and Renewal* (2nd ed.). London: Sage .
28. Moudio, R. 2015. *Creative Economy as a Path to Economic Development for Africa; cases of Nollywood in Nigeria and Women's Gold in Burkina Faso*. New York: CUNY City College
29. MPAA, 2009. *The economic Impact of Motion Pictures on Television Industry in US*. Los Angeles: Motion Picture Association of America.
30. Mutere, A. 2010. Media policy making in Kenya. *African Communication Research*, 3(1):121-143.
31. Mutullah, W. V., Mudhai, O. F., & Mwangi , S. 2015. *Political and interactive Media in Kenya*. Centre for Governance and Human Rights: University of Cambridge.
32. Mwakalinga, M. 2013. Political Economy of Cinema (Video film) in Tanzania. *African Review*, 40(1):203 - 217.
33. Mwangi, H. K. 2015. *Media Concentration, Funding and Programming Diversity: A critical study of Public Commercial Television Station in Kenya*. Nairobi: University of Nairobi.
34. Mwaura, P. 1980. *Communication Policies in Kenya*. Paris: United Nations Educational,
35. Scientific, and Cultural Organisation, National Film and Video Foundation 2013. Retrieved from <http://www.nfvf.co.za/home/22filesBaseline%20study.pdf>, on 20/9/2015
36. Njama, K., 1985. 'How Serious is the Video Cassette Threat?' *Life and Leisure, Weekly Review*, September 1985,
37. Ochola, P. O. 1993. Press Freedom and Functions of Media in Kenya. *Journal of African Media Review* 7(3):19 - 33.
38. Oh, E. 2014. *Nigeria's Film Industry: Nollywood looks to expand globally*. Lagos: United States International Trade Commission.
39. Okioma, N., & Mugubi, J. 2015). Filmmaking in Kenya: The Voyage. *International Journal of Music and Performing Arts*, 3(1):46 - 61.
40. Olsberg, S. 2012. *Building Sustainable Film Business: the challenge from industry and government*. London: Olsberg.
41. Onuzulike, U. 2009. Nollywood: Nigeria videofilms as a cultural and technological Hybridity. *Intercultural communication Studies*, 17(1):176 - 187.
42. O'Regan, T. 2008. The political economy of film. In J. Donald , & M. Renov, *The Sage Handbook of Film Studies*. London: Sage.
43. Paris, M. 2003. Africa in post-1945 British Cinema. *South African Historical Journal* 48(1): 61 – 70.
44. Picard, R. 1989. *Media Economics: Concepts and Issues*. Newbury Park: Sage.
45. Republic of Kenya 1998. *Kenya Broadcasting Corporation Act*. Nairobi: Government Press.
46. Republic of Kenya 2012. *Kenya Film and Stage Play Act*. Nairobi: Government Press.
47. Republic of Kenya 2005. *Kenya Film Commission Order No. 10 of 2005*. Nairobi: Government Press.
48. Republic of Kenya, 2008. *Kenya Information and Communication Act 2008*. Nairobi: Government Press.
49. Republic of Kenya, 2010. *Constitution of Kenya*. Nairobi: Government Press.
50. Republic of Kenya 2001. *Copyright Act of Kenya*. Nairobi: Government Press.
51. Ross, M. R. 2010. Audiovisual laws and legal intervention in South American cinematic culture. *UK International Journal of Cultural Policy* 16(4): 418 - 432.
52. Semsel, G. S. & Hong, X., 1990. *Chinese Film Theory: A Guide to the New Era*. Portsmouth: Greenwood Publishing Group.
53. Simiyu, B. 2015. *Kenyan film*. Retrieved from Kenya image: <http://www.Kenyaimagine.com>, accessed on 23/2/2015.
54. Smith, A. 1931. *Select Chapters and Passages from the Wealth of Nations*. New York: MacMillan Company .
55. Smyth, R. 1979. The Development of British Colonial Film Policy, 1927 - 1939 with special reference to East and Central Africa. *Journal of African History*, 20(3):437 - 450.
56. Tamakleo, A. 2013. *Social Representation in Ghanaian Cinema* (MA Thesis, African Studies). Legon: University of Ghana.
57. Toby M., 2005. Introduction, in *Global Hollywood 2*, ed. Miller, T, Govil N., McMurria, J., Maxwell, R., and Ting Wang, T., London: British Film Institute:1-49

58. United Kingdom. 2012. *A future for British Film, It Starts with the Audience*.
59. Isar, Y.R., 2013. *Creative economy report: widening local development pathways*. Retrieved on <http://www.unesco.org/culture/pdf/creative-economy-report-2013>. Accessed on 15/05/2016
60. United Nations Educational and Scientific and Cultural Organization 2000. *World Culture Report 2000; Cultural Diversity, Conflict and Pluralism*. United Nations Educational and Scientific and Cultural Organization.
61. United Nations 2011. *Strengthening the Creative Industries for Development in Zambia; Trade and Development*. New York: United Nations.
62. Wanyande, P., Omasa, M., & Ludeki, C. 2007. Governance Issues in Kenya: An overview. In P. Wanyande, M. Omasa, & C. Ludeki, *Governance and Transition Politics in Kenya*. Nairobi: University of Nairobi Press.
63. Wasko, J. 1982. *Movies and Money: Financing the American Film Industry*. Norwood NJ: Ablex Publishing Corporation.
64. Wasko, J. 1994. *Hollywood in the Information Age: Beyond the Silver Screen*. Polity Press.
65. Wasko, J. 2003. *How Hollywood Works*. London: Sage.
66. Wasko, J. 2005. Critiquing Hollywood; The Political Economy of Motion Pictures. In C. Moul, *Handbook of movie industry economies*, pp. 5 - 31.
67. Wasko, J., Murdock, G., & Sousa, H. eds, 2011. *Handbook of Political Economy of Communication*. John Wiley & Sons.
68. Weber, C. M. 2010. An Overview of the Political Economy of Cultural Policy in the United States of America. *New School of Social Research*, 1 - 8.
69. World Intellectual Property Organization 2011. *From Script to Screen: The importance of copyright in the distribution of films*. WIPO: Geneva.
70. World Bank Group 2016. *Kenya Country Economic Memorandum: From Economic Growth to Jobs and Shares*. Washington: World Bank.