



### **Statement by BAKE on the proposed Films, Stage Plays and Publications Bill, 2016**

The Bloggers Association of Kenya (BAKE) is a community organization that represents a group of Kenyan online content creators and that seeks to empower online content creation and improve the quality of content created on the web.

We are concerned by proposed amendments being fronted by the Kenya Film and Classification Board via the Film, Stage Plays and Publications Bill, 2016. This Bill if enacted in its current form, presents one of the most dangerous attacks on our freedom of expression with serious implications on film, publishing, advertising, theatre, games, artistic creativity and online expression.

In line with recent whimsical and arbitrary actions by KFCB's CEO, Ezekiel Mutua on various forms of expression including Coca Cola advertisements, NETFLIX Programming, coverage of protests, the Spread Collective podcast and You Tube which he claimed promoted immoral behaviour. We are concerned that the Board has moved to try to legitimize its actions by attempting to expand its mandate through the Bill in question.

Whereas the Act restricted KFCB's mandate only to films, stage plays and posters for their promotional purposes, the Bill now expands the mandate to include broadcast content, online content, outdoor advertisements, print publications and registration of cinemas and theatres.

Article 33 of the Constitution of Kenya enshrines freedom of expression and ensures that Kenyans have the right to seek, receive and impart information including freedom of artistic creativity. The constitution also provides that freedom of expression can only be limited pursuant to Article 33 (2) in cases of propaganda for war, incitement to violence, hate speech, advocacy for hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or hatred based on discrimination. Additionally, Article 19 of the International Convention on Civil and Political Rights (ICCPR) recognizes limitation on grounds of protecting public morals.

But who gets to decide what entails public morals? The Constitution, which is the legal yardstick that all other laws must comply only talks about national values which as per Article 10 espouses progressive ideals of patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; good governance, integrity, transparency and accountability; and sustainable development.

Children have a legal right to be protected from all forms of exploitation and material that is likely to compromise their innocence. However, the Board is mandated to classify films and play acts to enable parents to prevent their children from accessing such content. The board is also mandated to ensure that certain material is not aired during times that children are likely to be watching TV.

We maintain that the Bill as it stands does not define concepts such as “national values” or “moral standards”, meaning that none of the notions relied upon would have a uniform meaning or interpretation among ordinary citizens; what is obscene to one may be normal to another. We reiterate that the Bill is an affront to freedom of expression, especially artistic creativity.

Additional provisions we take issue with include:-

- The concern that the shift from regulation by classification of films to regulation creation of films is a significant change that infringes the freedom of artistic creativity secured in the constitution.
- Definition of 'exhibition' covers basically all types of art and not just film work. It therefore appears to confidently regulate other forms of expression, not just about films and plays.
- The fines and sentences for all declared offenses is too high.
- Clause 23(2). CEO might give filming certificate but send police /inspector AS HE MAY SEE FIT.
- Clause 26(1). As described, the power of the police or appointed persons the making of a film has a chilling effect on freedom of artist creativity.
- Clause 27(2). Qualifications for film assessors not well described.
- Clause 39. (2). Attempt to regulate and penalize Internet Service Providers for actions of their users.
- Clause 43. (1). Restriction on advertisements of plays classified for over 18 is uncalled for.
- Clause 50(1). No display or exhibition of posters of stage performances without KFCB'S approval
- Clause 53(1)-determination of objectionable and non-objectionable publications left at board's discretion
- Clause 53(2) (d). Assumptions on concepts of morality and decency.
- Clause 55 (3) shifts the burden of proof from the DPP to the accuser. This flies in the face of Article 50 of the Constitution which enshrines the right to fair trial.
- Clause 56-gives KFCB's power to examine packages at the airport and confiscate objectionable works
- Clause 60- Police can search premises without warrant.

BAKE therefore calls on the Cabinet Secretary for Information Communication Technology to ensure meaningful public participation in order to bring forth a law that is owned by all stakeholders. Moreover, international best practice and constitutional provisions on freedom of expression must be adhered to during this process.

**END**