

# Censorship and Kenyan Cinema

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## Introduction: Understanding Censorship in Cinema

The Oxford Advanced Learners Dictionary defines censorship as the official examination or oversight before release of such materials as books, films, news and other forms of art so that any parts that are considered obscene, socially objectionable, politically incorrect, or a threat to security are suppressed or debarred before getting to the public. The result of this oversight may affect the subject in its entirety, leading to the whole work being censored. According to Fitzsimmons (1996) censorship may be exercised by the government, private organizations, groups or individuals for “political, religious, or moral grounds, making the offense one of treason, heresy, or obscenity” (p.1). This shows that censorship can be looked at from different perspectives, depending on its purpose and the actors involved. Wiesand (2016) distinguishes between two distinct forms of censorship: ex-ante censorship and ex-post censorship. According to Wiesand, ex-ante censorship—also known as prior restraint—is a kind of censorship which is anticipatory or preemptive. It is instituted to suppress the expression of undesirable artistic and media content before such content is created and distributed for public consumption. Ex-post censorship refers to measures that are called into action to prevent exposure or circulation of undesirable media or artistic content already created for the public.

Besides, this chapter distinguishes forms of censorship depending on who institutes them which include official censorship, social censorship and self-censorship. Official censorship refers to measures of oversight of art, media and communication by governments or state agents aimed at curtailing the production and/or the circulation of certain creative products for public consumption. More often than not, official censorship affects what is considered politically objectionable by governments. It is a measure that is more prevalent in more authoritarian regimes across the world. Social censorship is practiced by social setups such as religious and communal institutions in contexts where the social ideals and norms of such social groups are at variance with certain creative productions. Self-censorship is instituted by actors involved in the production of creative works. It is important to note, however, that self-censorship is not a stand-alone exercise done out of sheer desire to censor oneself. Rather, it is often occasioned by the fear of one being censored or even reprimanded by the instruments of official or social censorship.

Like in many other authoritarian—or fairly and/or legally authoritarian—jurisdictions across the world, freedom of expression and the attendant right to access information in Kenya is contested. The Constitution of Kenya (2010) provides for the freedom to express, seek and receive information; and artistic creativity and academic freedoms but with the caveat that such right and freedom are not absolute. The constitution goes on to state that the said freedoms will be limited if they constitute propaganda for war, incitement to violence and spread of hate. It is against this background that this chapter explores the practice of censorship in Kenya through the Kenya Film Classification Board (KFCB), a state agency that regulates media content (in other words, the agency that censors artistic productions).

## The History of Film Censorship in Kenya

Censorship in Kenya began in earnest in 1912 following the publication of The Stage Plays and Cinematography Exhibitions Ordinance. The ordinance came into effect as soon as Governor Sir Henry Conway Belfield placed a notice in the gazette, marking the first time the British colonial government considered regulating stage and cinematic performances in Kenya. The ordinance defined stage plays as tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, dialogue, prologue, epilogue, “or other dramatic entertainment, or any part thereof,” and defined cinematography exhibition as “pictures or other optical

effects presented by means of a cinematograph or other similar apparatus”(East Africa Protectorate: Ordinances and Regulations, Vol. XIV KNA, NRB).

In the ordinance, the theatre was viewed as “any building, tent or other erection, open to the public, gratuitously or otherwise, where a stage play or cinematography exhibition is performed or presented.” The new law authorized licensing officers to inspect all films before issuing a license. The licensing officers had the power to deny granting a license for any stage play or cinematography exhibition if they felt the production contravened any of the laid down rules and regulations. The ordinance also empowered police officers to enter exhibition theaters at “all reasonable times” to enforce its provisions, and any person obstructing their entry was subject to prosecution. Only the governor could revoke a license once it had been issued. As punishment for those who violated the law’s spirit, the ordinance empowered judges to impose a fine or jail them for a term not exceeding 90 days. Mainly concerned with commercial films, the law left untouched films produced locally by foreign directors for overseas exhibitions and didactic films meant to “educate” and “civilize” Africans in Kenya.

The ordinance set the stage for much of the messy process taking place in the film industry from then to date. To begin with, the government dispensed the new law without a staff in place, and censorship officials and licensing officers received no training in film review or basic cinematograph techniques. Police constables, as well as volunteer European women looking for something to do in their spare time, qualified to what Charles Ambler (2001) calls “celluloid butchers.” Members of the Criminal Investigation Department (CID), religious leaders, and women groups sat on censorship boards. Female European and Indian censorship officials comprised 90 percent of board members. Africans in colonial Kenya were excluded from the Board of Film Censorship, a national body that oversaw censorship activities throughout the country. However, the exclusion ended after WWII, when Board members agreed to the amended Cinematograph Films Censorship Rule of 1930 that allowed for the “appointment of two [Blacks] to the panel of the Board of Film Censors.” Officials also hoped that the appointment would ease the increased scrutiny in the press about the question of discrimination against Blacks by the Board. The Stage Plays and Cinematography Exhibitions Ordinance of 1912 did not definitively standardize what would be considered “unpleasant” scenes and “undesirable” ideas. It left these judgments open, allowing British colonial officials in Kenya to imagine competing categories of social vices they considered unacceptable to their colonized viewers.

## Keeping the Status Quo in Post-Independence Kenya

In 2016, the Kenya Film Classification Board (KFCB) proposed a bill that the *Daily Nation's* newspaper editors decried as “a dangerous piece of legislation” (*Daily Nation*, November 10, 2016). The editors argued that Stage Plays and Publications Act of 2016 contravened articles 33 and 34 of the Kenya Constitution (2010), which provide for freedom of expression and media independence. They further bemoaned that, as currently constituted, the act would empower the board’s so-called compliance officers and police officers to raid, search, and seize equipment or materials from organizations perceived to be producing or exhibiting materials that they deem to have questionable content. Expressing their concern that the act vested broad powers in the state agency to control content in documentaries, internet, film, newspaper, and television media, for example, the editors lamented that the board would eventually usurp the powers of other state entities. In the editors’ view, KFCB board members were “priming as the moral police that seeks to protect the society from pornography, obscenity, and debauchery.” They therefore asked the government to consider vacating the contentious legislation since it was “intrusive, oppressive, destructive, egoistic, and plainly unconstitutional.”

The hostility that met the Films, Stage Plays and Publications Act of 2016 in the media matched the increasing anger against the proposed censorship law that was openly expressed by the industry players in a town hall meeting for key stakeholders in the film industry at the Louis Leakey Auditorium. From the outset, the mood inside the hall assumed a sour tone, and it remained throughout the meeting and thereafter. It was evident that Ezekiel Mutua, the then KFCB’s Chief Executive Officer, and his team had ignored the private sector’s input in drafting the act and had arrived at the meeting unprepared to defend it. “You cannot come to us with the bill that intends to be a law that will regulate what we are doing online and you do not talk to us,” Mutua heard from the audience, who accused his board of conspiring with the government to regulate “our content”. Reassuring the raucous crowd that the bill was nothing “but just proposals,” Mutua renounced it, albeit temporarily, and yielded to the audience’s demand to “shred” it and, in “good faith,” consult them next time.

The spirit and the letter of review Act 2016, however, lacked the historical context informing censorship in Kenya. Similar to the Stage Plays and Cinematography Exhibitions Ordinance of 1912, which empowered the governor to appoint licensing officials, the Films, Stage Plays and Publications Act of 2016 ceded unfettered power to the president to appoint a non-executive chairperson to oversee the daily activities conducted by an established board of directors, a

governing body whose other members include the CEO, two principal secretaries, and five non-public officers appointed by the cabinet secretary. In a small but significant manner, the Films, Stage Plays and Publications Act of 2016 diverged from its predecessor in that it required all the appointees to possess a college diploma and receive training and advancement. The requirements, however, have failed to spell out in clear terms the collective elements constituting the said “training and advancement”.

Stage Plays and Publications Act of 2016 promised, like its predecessor colonial law, to protect “the people of Kenya” by “preventing” the creation, exhibition and distribution of films and stage performances that “are not reflective” of Kenya’s “national values.” Specifically, they paid attention to protecting children from harmful content. While chastising those who thought there was no bad content in the media, the KFCB CEO, Ezekiel Mutua, called for tighter regulatory laws that would protect “our children.” Defining a “child of tender years” as any person under the age of ten years, and a “child” as any “human being under the age of eighteen years,” Section 7 (1) (h) pledged to “protect children from exposure to disturbing and harmful materials and from premature exposure” (The Films, Stage Plays and Publications Act of 2016). In the views of the act’s framers, harmful materials included pornographic productions.

Like the Stage Plays and Cinematography Exhibitions Ordinance of 1912, the proposed censorship law vested enormous power in the police force. It allowed officers free access to shooting locations, where they were free to “stop the making of any [cinema] scene [in] which, in his or her opinion, the making of the film is dangerous, cruel or causes unnecessary suffering to an animal, or contravene[s] the Act’s spirit” (The Films, Stage Plays and Publications Act of 2016). This was at no remove from the colonial censorship law that required colonial police officers to enforce cinema laws. The postcolonial government amplified its efforts through the bill’s Part III Section 26 (3), which affirmed the broad authority given to any police officer—on or off duty—to “permit the making of the film to resume; or permit the making of the film to be resumed on such additional conditions as he may think fit; or refuse to permit the making of the film to be resumed and revoke the registration certificate in respect of the film.” Any person engaged in a film’s production—such as producers, proprietors, promoters, photographers, and actors—obstructing or hindering any police officer from exercising his or her duties would be guilty of an offense that attracted a staggering fine of \$50,000 (over 5 million Kenyan shillings), a jail term of up to four years, or both. These conditions are not only punitive and stifling, but retrogressive also.

## The Quest for Artistic Freedom in Kenya

The struggle for Artistic freedom in Kenya is well documented. According to Wa Thiong’o (1997), theater practitioners initiated the first struggle for artistic liberty during the period when postcolonial administrations outlawed theater groups whose individuals associated themselves with established institutions, such as the University of Nairobi and Kenya National Theatre. Government operatives considered these institutions as avenues where radical ideas that espoused a divergent ideology from the government of the day were performed, circulated, consumed and celebrated. To counter this, the government decreed theater groups to submit play scripts for “assessment” before it could issue a performance license. Ngugi wa Thiong’o, whose play was banned and whose theater company was deregistered during Kenyatta’s and Daniel Moi’s regimes, lamented that the war between art and the state was really a struggle between the power of performance in the arts and the performance of power by the state—in short, enactments of power. The government, however, allowed music productions to thrive because such artistic productions did not antagonize the government.

Like the theatre productions that Wa Thiong’o (1997) bemoans above, Film productions face constant scrutiny from state agencies because they are considered “harmful” and/or antagonizing the government’s agenda. According to Fiorelli (2016), scholars in cinematic realism posit that film can show reality better than any other art form. This is because, she asserts, cinematic realism prioritizes physical reality as opposed to psychological reality. In Kenya today, filmmakers use film as a vehicle to represent various issues in society and to also question the politics of cinematic representation. The filmmakers have also used film to spur a national dialogue over what constitutes free speech as encapsulated in the country’s constitution. Noteworthy is the fact that filmmakers have increasingly embraced cinema as the canvass upon which to construct a pluralistic identity that includes the LGBTQ community, a construction that has offended the government’s sensibilities. Consequently, the government has heightened scrutiny on film as a cultural product in the country.

The full force of Government censorship of film productions was witnessed in May 2009 when *Otto: The Bloodbath* was debarred because of flouting the rule against screening a combination of violence, occult and horror. The film is strewn with scenes of violence and bloodbath—blood in a literal sense because of bloodied floors, clothes, bathtub, and mysterious creatures and ghosts spitting jets of blood sucked from their victims. Besides, it has scenes that show gory dead bodies for much longer than is necessary for the audience to view or witness death in film.

The manner in which some of the characters are hacked to death was also found objectionable by KFCB. Although that might be permissible in other jurisdictions outside of Kenya—especially with Hollywood horror films—the CEO of KFCB argued that the film was hell-bent on “showing dead human characters for too long,” and that it was “too horrific, even to an adult.” (*Daily Nation*, May 16, 2009). The KFCB also accused the film of consistently depicting macabre scenes. According to one of the thematic areas on guidelines on “Occult and Horror”, the portrayal of scary scenes, the paranormal or mysterious and black magic is prohibited (KFCB, 2016). The scene that opens the film is consistent with all that goes against this prescription.

Four years later, in September 2014, the same fate would befall the film *The Stories of Our Lives* after the production company, Nest Collective, applied for a license to distribute and exhibit the film. In denying the company approval, the KFCB lamented that the film “has obscenity, explicit scenes of sexual activities and it promotes homosexuality which, is contrary to our national norms and values.” While leaving vague the elements constituting norms and values, the KFCB drew the Nest producer’s attention to sections 16 (c) and 12 (2) of the Film & Plays Stage Act. Four years later, the KFCB once again censored yet another film, *Rafiki*, for going against the norms and values in society. The KFCB officials banned *Rafiki* because it contained “homosexual scenes that are against the law, the culture and moral values of the Kenyan people”. Wanuri Kahiu, the film’s director, sued and argued in court that the ban violated her constitutional right to free speech and artistic freedom of expression. Kahiu insisted that Kenya is “made up of different types of people with different imaginations. There should be freedom to express these imaginations, because imagination doesn’t have boundaries”. The high court agreed with her and upheld her right to distribute and exhibit the film albeit within a specified period of time. The ban on the two films attracted public attention and triggered a debate regarding the country’s censorship laws in particular and whether they are anchored in the constitution.

The Constitution of Kenya (2010) does not define morals and values per se. Article 10 (2) (b) emphasizes “national values and principles of governance.” As laid out in the constitution, national values encompass “human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.” Article 11 (1) sheds light on culture, in which culture is broadly defined as “the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.” Thus, censoring art neither occurs in a vacuum nor is it a random act designed to secure imagined norms and values. It is a calculated act of subjugation, one that often takes place on the heels of political attrition. By and large, the censorship of creative works of art is a fundamental

pillar of authoritarianism. Authoritarianism in the cultural sphere begins when the ruling class imagines and constructs national values that encompass nonexistent and undefined principles such as ‘moral values and norms’. By censoring the said films, it seems obvious that the government conceptualized a static and rigid moral compass incapable of assuming a new form once it is established.

## Conclusions

The focus of this chapter has been on censorship and cinema in Kenya. Using a historical approach, the chapter traces censorship to the colonial era and made the connection between the current censorship rules and regulations with those of the colonial period. The chapter establishes that the Stage Plays and Cinematography Exhibitions Ordinance of 1912 and the Films, Stage Plays and Publications Act of 2016 are similar in outlook and spirit. In this regard, the chapter has shown that the post-independence Kenyan government still maintained the status quo by re-appropriating the same laws that stifle artistic freedom in the country. It’s instructive to note that the two laws rely on police as enforcing agents and that they sought to impose a mysterious and/or nonexistent moral code to creative productions in the country.

The foregoing has shown that KFCB’s censorship activities are hurting the freedom of artistic expression in the country. Whereas film has slowly emerged as a platform through which various filmmakers engage and stake various socio-cultural and political issues that characterize the country, censorship stifles its growth and development as a site for artistic freedom and freedom of speech in the country. KFCB has listed many variables which inform the decision of whether to ban a film. These variables range from moral, cultural, social, religious, political to legal issues. However, it behooves upon KFCB to vacate these punitive and rigid measures and to embrace measures that will foster the growth of the industry in the country and that will benefit all stakeholders. KFCB is obligated to promote artistic freedom. To do this, it needs to work with filmmakers to explore novel means of presenting their stories, without making the censor to wield the big stick. By so doing, KFCB shall protect the right for artistic expression while protecting the public from objectionable content.



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