



THE PROGRAMMING CODE FOR BROADCASTING SERVICES IN KENYA

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DEFINITIONS:

“Act” means the Kenya Information and Communications Act, 1998, as amended and any subsequent amendments;

“Advertise” means to broadcast any item in return for payment or other valuable consideration to a broadcaster with the intention of:

- (a) Selling to a viewer/listener, any product or service;
- (b) Convincing a viewer or listener of a belief or course of action, person or organization;
- (c) Promoting a product, service, belief, course of action, person or organization;

“Authority” means the Communications Authority of Kenya established under the Act;

“Broadcasting” means unidirectional conveyance of sounds or television programmes, whether encrypted or not by radio or other means for reception by the public;

“Broadcaster” any legal or natural person who composes or packages or distributes television or radio programme services for reception by the public or sections of the public or subscribers to such a service, irrespective of technology used;

“Broadcasting station” means a station equipped to broadcast radio/television programmes;

“Board” means The Communications Authority of Kenya’s Board of Directors;

“Child” means any human being under the age of eighteen (18) years;

“Editorial” means an item on radio/television that expresses the opinion of the station;

“Electoral Body” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

“Election Period” means the period between publication of a notice by the electoral body for a presidential, parliamentary or county election and the gazettelement of the election results;

“Free to air” means a service, which is broadcast without encryption and capable of being received by conventional broadcasting receiving apparatus;

“Minor” means a child under the age of ten years;

“News” means information about recent events or happenings, especially as reported by newspapers, periodicals, radio, or television;

“Occultism” means the belief in or the study of the action or influence of supernatural or supernormal powers, agencies, or phenomena;

“Para-psychological Programmes” means programmes that are meant to impart behaviors, events or perceptions that are outside normal human understanding;

“Parental Guidance” means a programme that requires parents/adults to provide guidance for the viewership of children of tender years;

“Policy” means the ICT Policy Sector Guidelines of 31st March 2006 or its subsequent amendments;

“Political Party” means a party registered by the Registrar of Political Parties as a political party in Kenya under the *Political Parties Act, 2007*, and other successive Acts;

“Political Propaganda” means techniques used by political parties/individuals in political campaigns;

“Programme” means a body of live or recorded material consisting of images, sounds or both embodied in signals and emitted for the purpose of ultimate broadcasting;

“Programming” means scheduling of programmes;

“Programme Classification or rating” means the rating or classification as described below allocated to a programme or film by the Kenya Film Classification Board as mandated by *Film and Stage Plays Act, Cap 222*;

GE means General Exhibition or programmes suitable for general family viewing or viewers of all ages;

PG means Parental Guidance or programme that may contain scenes unsuitable for children under age 10 years and which require parental guidance for young viewers;

16 means programmes containing medium or moderate impact classifiable elements of an intensity and frequency and are not suitable for persons under the age of 16 years;

18 means programmes may contain scenes suitable for adults only and whose viewing is restricted to persons aged 18 years and above;

“Programming Code” means a code of practice for both radio and television broadcasters, setting the standards for the time and manner of programmes to be broadcast by a licensee prescribed by or approved by the Authority

“Radio” means a communication system that broadcast audio programmes to the audience;

“Regulations” means the *Kenya Information and Communications (Broadcasting) Regulation, 2009*, and any subsequent amendments;

“Television (TV)” means a form of telecommunication for the transmission of signals representing scenes, images of the scenes being reproduced on a screen as they are received. The received signals may be stored for subsequent display of the images on a screen.

“Trailer” means an advertisement of a feature of a video/film to be broadcast at a later time;

“Vulnerable Adult/Person” means a person over the age of 18 who requires care or assistance due to mental disability, and who is unable to protect themselves against significant harm or serious exploitation.

“User Generated Content” (UGC) means broadcast content that is created or produced by the end-user and is publicly available.

“Watershed” is used to describe time in television and radio schedules after which material more adult in nature can be broadcast.

“Watershed Period” means the time between 5:00 a.m. and 10:00 p.m. or such other time as may be prescribed by the Authority, within which content intended for adult audience is not to be aired.

SECTION 1: PREAMBLE

1.1 Regulatory Framework of the Code

The Communications Authority of Kenya (CA) is the statutory regulatory body charged with the responsibility of promoting and facilitating the development of the broadcasting industry in Kenya.

The Communications Authority of Kenya (the “Authority”) is required by the *Kenya Information and Communications Act 1998*, as amended (the “Act”) and the *Kenya Information and Communications (Broadcasting) Regulations, 2009*, to prescribe a Programming Code setting the standards for the time and manner of programmes to be broadcast by licensed broadcasters under the Act; Section 46H (d) of the Act mandates the Authority to ensure compliance to the Programming Code prescribed under the Act. This code is to be known as the Kenya Programming Code for broadcasting services in Kenya (the “Programming Code” or the “Code”).

1.2 Scope

In drawing up this Code the Authority has taken into account the objectives of the Act and the fundamental values, rights and freedoms enshrined in the *Constitution of Kenya, 2010*. It is the responsibility of broadcasters to ensure that their programmes and services comply fully with this Code. Broadcasters are also required to satisfy the Authority that they have adequate procedures to fulfill this requirement.

This Code will not apply where a broadcaster is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a Programming Code enforced by that body by means of its own mechanisms and such Programming Code and mechanisms have been filed with and accepted by the Authority.

The provisions set out in this Code should be read in conjunction with the Act, the Regulations, the Policy and the respective broadcasting licence conditions. In this Code where the context admits, references to any provisions of the Act, Policy or Regulations includes any reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

1.3 Objectives of the Code

Broadcasting by its nature exerts a strong influence on a community. It is a medium for entertainment, information and education. Both radio and television combined are accessible to

nearly all the people of Kenya, including children. Because of its impact, programmes over broadcasting must at all times maintain a standard that is acceptable to the Kenyan communities.

This Code desires that:

- 1.3.1 Broadcasting in Kenya should reflect the national values, aspirations, hopes and dreams of Kenyans;
- 1.3.2 Broadcasting is regarded as a powerful medium for influencing culture, beliefs and values as well as a tool for economic growth and development;
- 1.3.3 Broadcasting has an immediate and lasting impact on the public and therefore demands that its practitioners display a high sense of responsibility, morality, fairness and honesty at all times;
- 1.3.4 Broadcasting services are expected to uphold the values and customs of civilized society, maintain the respect of the rights and sensitivities of all people, preserve the honor and sanctity of the families and homes, protect the sacredness of individual dignity, and promote national unity and cohesion.

SECTION 2: GENERAL PRINCIPLES

2.1 Freedom of Expression

The *Constitution of Kenya, 2010* recognizes and upholds every person's right to freedom of expression, which includes freedom to seek, receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.

2.2 Limitation of Freedom of Expression

The right to freedom of expression does not extend to propaganda for war, incitement to violence, hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or discrimination.

2.3 Public Interest

2.3.1 Broadcasters have an obligation to serve the public interest at all times.

2.3.2 Public Interest obligations of broadcasters include but are not limited to:

- (a) Provision of uninterrupted services throughout the entire term of their respective licences;
- (b) Observance of the local content quotas as prescribed by the Authority from time to time;
- (c) Protection of minors, children, and viewers from indecent programming or potentially harmful content;
- (d) Accuracy and impartiality in gathering and presentation of news and information;
- (e) Representation of a wide range of views and opinions when broadcasting controversial issues of public interest;
- (f) Safeguarding the right of citizens and groups to defend themselves if they have been attacked on air (right of reply);
- (g) Separation of advertising from editorial programming;
- (h) Providing equitable coverage and opportunities to registered political parties/candidates participating in an election and in particular to presidential candidates;
- (i) Provision of public notices of emergency or public disaster announcements at no charge upon the request of a person authorized by the Government;
- (j) Special rates for and mandatory airing of commercials on issues of public interest;
- (k) Access to broadcasting services by persons with disabilities particularly news and events of national importance.

2.4 General obligations for broadcasting stations

2.4.1 Ensure that all aspects of their programming respect the dignity of individuals and basic rights of others;

- 2.4.2 Respect professional and generally accepted values, ethical and moral standards while creating and editing programmes;
- 2.4.3 Responsible for the broadcast materials relayed on their stations, regardless of their source, as well as professional activities of its employees;
- 2.4.4 Schedule programme materials that adhere to generally accepted standards of decency.

These standards include but are not limited to respect of ethnic, cultural, economic and religious diversities;
- 2.4.5 Ensure special attention in programmes is dedicated to treatment of vulnerable persons who appear in these programmes;
- 2.4.6 Publish and make their editorial policies publicly available.

SECTION 3: WATERSHED PERIOD

Relevant legislation to this section includes Section 46I (2) (a) (b) of the *Kenya Information and Communications Act, 1998*, and Sections 20 (b), and 34 (1) (2) of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*.

3.1 Scope

- 3.1.1 This Programming Code seeks to ensure that unsuitable material for children and minors is not broadcast at times when there is likely to be a large audience of young listeners or viewers.
- 3.1.2 The Code further seeks to ensure programmes broadcast during the watershed period are suitable for family audiences and the transition from family-oriented to a more adult programming after the watershed period is gradual.
- 3.1.3 Attention will be given to include and respect diversity such as may be expressed through differences due to, but are not limited to, cognitive or physical ability, culture, ethnicity, religion, socio-economic status, gender, age, national origin, political persuasion, marital status, educational background or geographic location.
- 3.1.4 The watershed period guidelines apply to all programme and non-programme matter, namely advertisements, infomercials, programme promotions, programme listings,

community service announcements, station identifications, commentaries, interviews and documentaries.

3.2 Definition of Watershed period

- 3.2.1 All programmes broadcast between 5.00am and 10.00pm must be suitable for family listening and viewing. Any programmes or movies classified or rated for Adults only shall not be aired during this period.

3.3 Guidelines to programming during the watershed period

- 3.3.1 Material unsuitable for children should not be shown between 5.00am and 10.00pm. The transition from family-oriented to adults only programming after the watershed period of 10.00pm shall be gradually executed. For subscription and pay per view services, mechanisms put in place to protect children must be clearly explained to subscribers.
- 3.3.2 Consumer advice such as warnings, labeling, classification details and other announcements should be given prior to the telecast of the programme or its trailers.
- 3.3.3 Classification details or rating should be shown throughout while the programme is running. However, this does not diminish the broadcaster's responsibility for sensitive scheduling of programmes to reduce the risk of causing offence.
- 3.3.4 Save for educational programmes, which may require graphic details, no broadcasting station shall air programmes including interactive call-ins or discussion sessions whose content is suitable for adult only audience during the watershed period.
- 3.3.5 Promotional material and music videos, which contain scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences shall not be broadcast during the watershed period.
- 3.3.6 Material that contains images and/or language of a strong sexual nature or strong language in general must not be broadcast during the watershed period.

3.4 Program Classification and Rating

This means the rating or classification allocated to a programme or broadcast in Kenya.

3.4.1 Scope

Classification guidelines as prescribed apply to all programme and non-programme matter, namely commercials, infomercials, documentaries, programme promotions, programme listings, community service announcements and station identifications.

3.4.2 Guidelines for programme classification or rating

3.4.2.1 The two key principle guidelines for programme classification or rating are:

- (a) To protect children and vulnerable adults from potentially harmful or otherwise unsuitable content.
- (b) To empower consumers, particularly parents and those with responsibility for children, to make informed viewing decisions.

3.4.2.2 Broadcast material must be classified prior to being aired.

3.4.2.3 Broadcasters are encouraged to include in all parental guided programmes warnings in other publicity materials like the TV page in newspapers and TV guides.

3.4.2.4 All trailers and promotional material shown before the watershed period must comply with the programming during the watershed.

3.4.3 FTA broadcasting rating system

3.4.3.1 Representations of sexually explicit content must not occur before the watershed period (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children.

3.4.3.2 Programmes rated Adult only should not be aired during the watershed period.

3.4.4 Subscription and 'Pay per view' broadcasting rating system

Subscription and 'Pay per view' broadcasting services providers shall:

3.4.4.1 Provide mandatory restricted access such as a PIN protected system (or other equivalent protection) that restricts access solely to those authorized to view and protect children from accessing content rated for Adults only;

3.4.4.2 Ensure that the mechanisms that have been put in place to protect children are clearly explained to subscribers.

- 3.4.4.3 Provide information to subscribers about programme content that will assist adults to assess its suitability for children.
- 3.4.4.4 Provide information to subscribers that clearly itemizes viewing details including viewing times and dates.

SECTION 4: GOOD TASTE AND DECENCY

4.1 Generally Accepted Standards

- 4.1.1 Generally accepted standards must be applied to content aired on all broadcasting services in order to provide adequate protection for members of the public from harmful and/or offensive material.
- 4.1.2 In the provision of services, broadcasters must take all reasonable steps to protect children from material that is unsuitable for them.
- 4.1.3 Factual programmes or items or portrayals of factual matters must not materially mislead the audience.
- 4.1.4 In applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, gender, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sexual orientation, marriage and civil partnership).
- 4.1.5 Appropriate information should also be broadcast to assist in avoiding or minimizing offence.
- 4.1.6 Meaning of “context”: Context includes (but is not limited to):
 - (a) Offensive as measured by the contemporary community standards.
 - (b) The editorial content of the programme, programmes or series.
 - (c) The service on which the material is broadcast.
 - (d) The time of broadcast.
 - (e) What other programmes are scheduled before and after the programme or programmes concerned.

- (f) The degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes.
- (g) The likely size and composition of the potential audience and likely expectation of the audience.
- (h) The extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information.
- (i) The effect of the material on viewers or listeners who may come across it unawares.

4.2 Children's Programming

Relevant legislation to this section include Section 20 (a) (c) and 31 (c) of *the Kenya Information and Communications (Broadcasting) Regulations, 2009*, which require licensees to take due caution to protect children and to encourage programming that develops their physical, mental and social potential.

4.2.1 Scope

The children's programming guidelines apply to all programme and non-programme matter namely advertisements, infomercials, programme promotions, programme listings, commentaries, interviews and documentaries.

4.2.2 Children's Programming Guidelines

- 4.2.2.1 Broadcasters shall ensure that children's programmes promote appreciation of good social and moral values.
- 4.2.2.2 Children's programmes shall not foster violence as a desirable means of resolving conflicts and problems. Any unavoidable depiction of such violence must portray the consequences of such violence to its victims and perpetrators.
- 4.2.2.3 Children's programmes shall not depict inappropriate sexual subjects or violent actions.
- 4.2.2.4 Broadcasters should avoid programmes that portray any dangerous or harmful behavior easily imitated by children.

- 4.2.2.5 Children's programmes should avoid scenes depicting the consumption of liquor or tobacco products unless an educational point is being made or in very exceptional cases if the dramatic context makes it absolutely necessary.
- 4.2.2.6 Advertisements of products or services which are not suitable for children or which might cause them physical, mental, psychological or moral harm shall not be aired in or adjacent to children's programmes.
- 4.2.2.7 No material which might be physically, mentally, psychologically, or morally harmful to children shall be aired immediately before, during or immediately after a children's programme.
- 4.2.2.8 Animated programming for children, which is an accepted style of story telling, can contain non-realistic violence. It should, however, not have violence as its central theme, and should not invite dangerous imitation.
- 4.2.2.9 Demonstrations of exorcisms, occult practices and the paranormal, must not be shown when children are particularly likely to be watching or listening.
- 4.2.2.10 Music videos with content that may be harmful to children in terms of lyrics, video images and dressing should be avoided during the watershed period when most children are likely to be watching or listening
- 4.2.2.11 Broadcasters should ensure trailers for post-watershed content are not scheduled during the watershed period.
- 4.2.2.12 Broadcasters should give more time and emphasis on programmes that promote educational standards, positive moral character, and religious upbringing of the child.

4.3 Coverage involving Children

Relevant legislation to this section includes Section 20 of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*.

4.3.1 Scope

Children are involved in programmes in a number of ways and programme makers must have due regard to their welfare at all times. Particular care should be taken to avoid causing any

distress or alarm to children involved in programmes. Under no circumstances may children be put at physical or moral risk, for example, in factual programmes concerning criminal activity.

4.3.2 Guidelines on coverage involving children

4.3.2.1 The right to privacy of the children must be respected. Since undue publicity or wrong labeling can cause harm to them, children who are victims of abuse or conflict with the law shall not be identified, directly or indirectly. Any information that might cause them to be identified shall not be aired.

4.3.2.2 Surprise and unplanned (“ambush”) interviews of children are not allowed.

4.3.2.3 Child victims, child suspects, child accused of a crime, child arrested or detained on suspicion of wrong-doing, and a child undergoing trial shall be protected from further suffering emotional distress or trauma; they shall be interviewed only upon consent of their parent or legal guardian, unless the parent or the guardian is the accused.

4.3.2.4 Children should not be required, coerced or bribed to recall and narrate traumatic experiences, demonstrate horrific acts, or describe them in graphic details. Programmes and materials involving children must comply with all pertinent laws, rules and regulations of this country, such as the *Children’s Act, 2001*.

4.4 Religious Programmes

Relevant legislation to this section includes Section 19 (1) (d) of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*.

4.4.1 Scope

Kenya is multi-religious nation whose laws guarantee, safeguard and protect the freedom of worship and association.

4.4.2 Guidelines on Religious programmes

4.4.2.1 All religious programmes shall be geared towards emphasizing the positive role of religion in the society.

- 4.4.2.2 Religious programmes shall not be used to maliciously attack, insult, harass, or ridicule other churches, faiths, sects or denominations or their followers because of their beliefs.
- 4.4.2.3 Religious programmes shall give due regard to the freedom of religion and religious expression.
- 4.4.2.4 Broadcasters shall ensure that religious programmes do not improperly exploit any susceptibilities of the audience for such a programme.
- 4.4.2.5 Broadcasters must use their best endeavors to provide accurateness and correctness of the content of religious programmes.

4.5 Occultism and Superstition

Relevant legislation to this section includes Section 46I (c) of the *Kenya Information and Communications Act, 1998*.

4.5.1 Scope

Occultism is a belief in the efficacy of various practices based on hidden knowledge about the universe and its mysterious forces. In order to avoid glamorizing occultism and to avoid its undesirable consequences to the people of Kenya, the following guidelines shall apply.

4.5.2 Guidelines on Occultism and superstition

- 4.5.2.1 Programmes featuring superstitious and pseudo-scientific beliefs and practices, such as supernatural powers, foretelling of the future, astrology, phrenology, palm reading, numerology, mind reading, hypnotism, faith healing or similar subjects shall be carefully presented as not to mislead the viewer/listener. Care should be taken to prevent the exploitation of people who may be easily swayed by such superstitious and pseudo-scientific beliefs and practices.
- 4.5.2.2 Programmes or programme materials that promote or encourage occult practices, black or white magic, witchcraft and similar activities are not admissible during the watershed period.

4.6 Advertisements

Relevant legislation to this section includes Section 46I (i) of the *Kenya Information and Communications Act, 1998* and Section 33 of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*.

4.6.1 Scope

Broadcasters are responsible for advertising material transmitted by their stations and must therefore ensure that all advertisements are legal, honest, decent, truthful and conform to the rules of fair competition. Broadcasting, and particularly radio and television broadcasting, because of their constant presence in the home, must maintain a consistently high quality of broadcast advertising.

4.6.2 Guidelines on Advertising

4.6.2.1 Advertising shall not –

- (a) Prejudice respect for human dignity,
- (b) Include any discrimination on grounds of race, sex or nationality,
- (c) Be offensive to religious or political beliefs
- (d) Encourage behavior that is prejudicial to the protection of the environment.

4.6.2.2 Advertisements shall be clearly distinguishable as such and recognizably separate from the other items of the programme service.

4.6.2.3 The expression of "News Flash" must not be used as an introduction to an advertisement, even if preceded by an advertiser's name.

4.6.2.4 Advertisements should not encourage behavior prejudicial to health or safety.

4.6.2.5 Advertisements should not without justifiable reason depict or describe situations which show dangerous practices or a disregard for safety. Special care should be taken in advertisements directed towards or depicting children.

4.6.2.6 All forms of advertising for cigarettes, cigars and other tobacco products are prohibited.

4.6.2.7 Advertisers must exercise the utmost care and discrimination with regard to the content and presentation of advertisements transmitted during breaks within or near or adjacent to programmes designed for children.

4.6.2.8 Advertisements shall not exhort children to buy a product or service by exploiting their inexperience or credulity.

4.6.2.9 Advertisements shall not unreasonably show children in dangerous situations.

4.6.2.10 Advertisements shall not contain any descriptions, claims or other material, which may, directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended;

4.6.2.11 Advertisements should not unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.

4.6.2.12 Advertisements should not exceed ten (10) minutes in any 30 minutes of broadcasting.

4.7 Sex, Obscenity and Pornography

The relevant legislation to this section includes Section 46I (c) of the *Kenya Information and Communications Act, 1998* and Section 19 (1) (b) of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*.

4.7.1 Scope

Much fiction and drama is concerned with love and passion which can shock and disturb. Careful consideration should be given to programmes involving sex and nudity and any portrayal of sexual behavior must be defensible in context.

4.7.2 Guidelines on Sex, Obscenity and Pornography

4.7.2.1 Sex and related subjects must be treated with care and must conform to what is generally acceptable to the Kenyan society. Any programmes involving such subjects must conform to the requirements of the watershed and rating by the Kenya Film Classification Board or its successor thereof.

4.7.2.2 Explicit depiction of sexual arts in any programme including music, sexual perversions, nudity and pornography are prohibited during the watershed period and can only be allowed thereafter to the extent that is permitted by the Kenya Film Classification Board or its successor thereof.

4.7.2.3 Unless there is a strong editorial justification, explicit or graphic descriptions of sexual organs, other sensitive parts of the body, and acts generally considered indecent or offensive are prohibited.

4.7.2.4 Offensive, obscene, blasphemous, profane and vulgar double meaning words and phrases are prohibited, even if only understood by the segment of the audience.

4.8 Liquor, Cigarettes, and Dangerous Drugs

Relevant legislation to this section includes Section 46I of the *Kenya Information and Communications Act, 1998*, and Section 45 of the *Alcoholic Drinks Control Act, 2010*.

4.8.1 Scope

Consumption of tobacco and alcoholic products may constitute health risks. It is, therefore, desirable that programmes generally should not include smoking and drinking unless the context or dramatic veracity requires it.

4.8.2 Guidelines on Liquor, cigarettes and dangerous drugs

4.8.2.1 The use of liquor and use of dangerous drugs shall not be presented as socially desirable or acceptable.

4.8.2.2 Drug abuse, smoking and alcohol abuse shall not be presented in the programmes primarily intended for minors, except in cases where programmes are indicating consequences of such abuse.

4.8.2.3 Drug abuse, smoking and alcohol abuse shall not be promoted as acceptable, nor shall it be encouraged or justified in the station's programming.

4.9 Broadcast Competitions

The relevant legislation to this section includes Section 46A (c) of the *Kenya Information and Communications Act, 1998* with respect to promoting observance of public interest.

4.9.1 Scope

Broadcast competition is a competition or free prize draw featured in a programme in which viewers or listeners are invited to enter by any means for the opportunity to win a prize. This also

includes voting in programmes where viewers or listeners are invited to register a vote by any means to decide or influence, at any stage, the outcome of a contest.

4.9.2 Guidelines on broadcast competitions

- 4.9.2.1 Broadcast competitions and voting must be conducted fairly.
- 4.9.2.2 Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.
- 4.9.2.3 Broadcasters must draw up rules for a broadcast competition or vote that are clearly and fully disclosed to the audience including the cost to be incurred by the audience in participating. In particular, significant conditions that may affect a viewer's or listener's decision to participate must be stated at the time an invitation to participate is broadcast.
- 4.9.2.4 Broadcast competitions prizes must be described accurately.
- 4.9.2.5 Broadcasters must fully disclose the costs to be incurred by the audience in interacting with the programming and participating in the broadcast competitions and voting.

4.10 User Generated Content

Relevant legislation to this section includes Section 19 (1) (a) of the *Kenya Information and Communications (Broadcasting) Regulations*.

4.10.1 Scope

UGC may be relayed through traditional as well as non-traditional sources of media such as Twitter, You-Tube, Facebook, blogs, podcasts and even mobile telephony to mention but a few. The proliferation of UGC comes with a set of risks and pitfalls which have made it necessary to take precautionary measures and mitigation.

4.10.2 Guidelines on User Generated Content

- 4.10.2.1 Broadcasters shall:
 - (a) Ensure no harmful, libelous, threatening, or hate UGC is aired on their stations.
 - (b) Guard against copyright and trademark infringement on their UGC broadcasts.

- (c) Avoid obscenity, indecency, and spam in their UGC programmes; and
- (d) Ensure the UGC broadcast generated by their stations are accurate and reliable.

SECTION 5: PRIVACY AND FAIRNESS

5.1 Privacy

Relevant legislation to this section include Section 46I (1) (f) of the *Kenya Information and Communications Act, 1998*, which obligates broadcasters to respect the right to privacy of individuals.

5.1.1 Scope

The rights of an individual are an integral part of Kenya's democratic state and are a framework for social, economic and cultural policies. The media as an agent for information, entertainment and education is expected to play a pivotal role in promoting individual rights.

The guiding principle here is to ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

5.1.2 Guidelines on Right to Privacy

5.1.2.1 The right to privacy of individuals shall be respected. Intrusion into purely personal matters which have no bearing on the public interest is prohibited.

5.1.2.2 Persons affected by tragedy or grief shall be treated with sensitivity, respect and discretion.

5.1.2.3 Persons who have suffered grief should not be subjected to stalking by the media.

5.1.2.4 News coverage must not violate nor interfere with an individual's right to be presumed innocent until proven guilty.

5.1.2.5 Care and reasonable discretion should be exercised in disclosing the identities of persons, by face or by name, so as not to harm their reputation and safety. Proper labeling of a person as a "suspect," "alleged perpetrator," "accused," or "convict(ed)," is required.

5.1.2.6 The broadcast of material showing arrested or detained persons being physically assaulted or verbally abused in a manner that demeans or humiliates them should be avoided.

- 5.1.2.7 Broadcasting stations are not permitted to share phone-in commentaries, including names and phone numbers of the participants without first seeking their consent, except where public interest is justified and in line with the law.
- 5.1.2.8 Broadcasters shall not broadcast any information acquired from a person without that person's consent, unless the information so acquired is essential to establish the credibility and authority of a source, or where the information is clearly in the public interest.
- 5.1.2.9 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, that results in an infringement of privacy.
- 5.1.2.10 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event.
- 5.1.2.11 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime).
- 5.1.2.12 Broadcasters should pay particular attention to the privacy of people under eighteen.
- 5.1.2.13 Where a programme features an individual under eighteen or a vulnerable person in a way that infringes privacy, consent must be obtained from a parent, guardian, or person with primary responsibility for their care.
- 5.1.2.14 Persons under eighteen and vulnerable adults should not be questioned about private matters without the consent of a parent or guardian, or a person with primary responsibility for their care (in the case of a vulnerable person).

5.2 Fairness

Relevant legislation to this section include Section 46I (1) (d) and (e) of the *Kenya Information and Communications Act, 1998*, which obligates broadcasters to respect the right to accuracy, impartiality, and balanced reporting.

5.2.1 Scope

The guiding principle is to ensure that broadcasters avoid unjust or unfair treatment of individuals or organizations in programmes.

5.2.2 Guidelines on Fairness

5.2.2.1 Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

5.2.2.2 Broadcasters and programme makers should be fair in their dealings with potential contributors to programmes.

5.2.2.3 Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should, at an appropriate stage:

- (a) be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- (b) be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc.;
- (c) be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- (d) be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate and which might cause material unfairness;
- (e) be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- (f) be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

5.2.2.4 If a contributor is under eighteen, consent should be obtained from the parent or guardian.

5.2.2.5 In the case of persons over eighteen who are not in a position to give consent, a person of eighteen or over with primary responsibility for their care should give it on their behalf.

5.2.2.6 When a programme is edited, contributions should be represented fairly.

- 5.2.2.7 Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should be honored.
- 5.2.2.8 Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that:
- (a) material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and
 - (b) anyone whose omission could be unfair to an individual or organization has been offered an opportunity to contribute.
- 5.2.2.9 Programmes should not portray facts, events, individuals or organisations in a way that is unfair to an individual or organization.
- 5.2.2.10 If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should be given an appropriate and timely opportunity to respond.
- 5.2.2.11 Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.
- 5.2.2.12 Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.
- 5.2.2.13 Broadcasters or programme makers should not obtain or seek information through secrecy, unless it is in the public interest.
- 5.2.2.14 Broadcasters must ensure that their programming including news, in whatever form, is reported with due accuracy and presented objectively and in a balanced manner with due impartiality.

5.3 Right of Reply

- 5.3.1 Any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies.

- 5.3.2 The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.

SECTION 6: HATE SPEECH

The Constitution of Kenya, 2010 provides that freedom of speech does not extend to propaganda for war, incitement to violence, hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or discrimination. Relevant legislation includes the *National Cohesion and Integration Act No. 12 of 2008* that defines hate speech by providing that a person who (a) uses threatening, abusive or insulting words or behaviour, or displays any written material; (b) publishes or distributes written material; (c) presents or directs the public performance of a play; (d) distributes, shows or plays, a recording of visual images; or (e) provides, produces or directs a programme, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behavior commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up. Section 19 (1) (d) of the *Kenya information and Communications (Broadcasting) Regulations, 2009* is also relevant.

6.1 Scope

The Media plays a role of informing the public and of disseminating views of journalists, editors, directors, and the general public. The media must continue to conduct its primary role while guarding out against action that may expose it to liability.

The objective of this requirement is the provision of adequate protection for members of the public from the inclusion of offensive and harmful material in broadcast programming.

6.2 Guidelines on Hate Speech

- 6.2.1 These guidelines apply to all members of the media; media owners, editors, journalists, reporters, news anchors and talk show hosts and to all those engaging or relating with or using the media.

- 6.2.2 The media plays a critical or special role of informing the public and of disseminating views – and not only the views of the journalists, editors, directors, but also views of other persons from the general public.
- 6.2.3 The broadcasting station shall be responsible for hate speech aired in its broadcasting station or platform.
- 6.2.4 Material, which contains hate speech, must not be included in television and radio programmes.
- 6.2.5 Material, which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services.
- 6.2.6 Where material that contains hate speech, abusive or derogatory content is aired, the broadcasting station shall issue an editorial on the views of the station with respect to the aired material and on the context of airing the same with the objective of deterring hate speech.

6.3 Sensitivity

Relevant legislation to this section includes Section 46I (j) of the Kenya Information and Communications Act, 1998, and Part IV Section 19 (1) (d) of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*.

6.3.1 Scope

Kenya is a multi-cultural, multi-ethnic and multi-religious society. It is imperative that our national unity is upheld and safeguarded against any form of non-cohesive actions. Viewers/listeners have the right to expect that broadcast services will reflect their responsibility to preserve human dignity, as far as possible, in respect of both individuals and communities.

6.3.2 Guidelines on Sensitivity

- 6.3.2.1 No programme should be transmitted which is intended to stir up tribal, racial, religious or, ethnic hatred taking into account the circumstances that are likely to do so: where appropriate, schedules should give a fair reflection of the contribution of all communities to the society.

6.3.2.2 Racist terms, insensitive comments or stereotyped portrayal, which may cause offence, should be avoided. Their inclusion is acceptable only where it can be justified within the context of the programme.

6.3.2.3 Broadcasters must exercise sensitivity and avoid humor, which offends good taste and decency. Examples include jokes based on race, gender, disability as such humor (even malicious intent) can easily cause hurt or humiliation.

6.3.2.4 Personal attacks, that is, attacks on the character of an individual, institution or group, on matters that have no bearing on the public interest are prohibited.

6.3.2.5 Programmes intended to malign, unfairly criticize or attack a person, natural or juridical, are prohibited.

6.3.2.6 When personal attacks against any person, institution or group are aired, that person, institution or group shall be given a fair opportunity to reply immediately in the same programme, if possible, or at the earliest opportunity. If not, the opportunity to reply should be given under similar conditions.

6.4 Crime or Crisis situations

The objective of this requirement is to ensure that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;

And that media plays its vital role in either discouraging or preventing crisis situations.

6.4.1 Scope

A crisis can be defined as an emotional and physical response to some participating event or series of events that disrupts normal day-to-day functioning. In some cases, the experience can be overwhelming leading to one's self esteem suffering.

6.4.2 Guidelines on coverage of crime or crisis situations

6.4.2.1 Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.

- 6.4.2.2 Descriptions or demonstrations of criminal techniques, which contain essential details that could enable the commission of crime must not be broadcast unless editorially justified.
- 6.4.2.3 The coverage of crimes in progress or crisis situations such as hostage-taking, hijack or kidnapping shall not put lives in greater danger than what is already inherent in the situation. Such coverage should be restrained and care should be taken not to hinder or obstruct efforts by authorities to resolve the situation.
- 6.4.2.4 Coverage should avoid inflicting undue shock and pain to families and loved ones of victims of crimes, crisis situations, disasters, accidents, and other tragedies.
- 6.4.2.5 The identity of victims of crimes or crisis situations in progress shall not be announced until the situation has been resolved or their names have been released by the authorities. The names of the fatalities should be released only when their next of kin have been notified or their names released, by the authorities.
- 6.4.2.6 Coverage of crime, security operations/investigations, or crisis situations shall not provide vital information or offer comfort or support to the perpetrators.
- 6.4.2.7 Stations are encouraged to adopt standard operating procedures consistent with this Programming Code to govern the conduct of their news personnel during coverage of crime and crisis situations.

SECTION 7: ELECTIONS

Relevant legislation to this section includes Section 25 of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*, that requires broadcasters to provide equitable coverage and opportunities to registered political parties participating in an election and in particular to presidential candidates.

7.1 Scope

It is the duty of the media to uphold the democratic principles of our nation especially during the election period by providing equitable coverage and opportunities to political parties and candidates.

7.2 Guidelines on Elections

- 7.2.1 Equitable opportunities in the access of unpaid airtime shall be given to candidates and political parties.
- 7.2.2 No programme or sponsor shall be allowed to manifestly favour or oppose any candidate or political party. However, the right to objectively inform the public on significant issues and events and the duty to provide a forum for the discussion of such issues and events shall be respected.
- 7.2.3 The amount of airtime allotted to political propaganda and the rates to be charged for it shall be consistent to all parties and candidates.
- 7.2.4 If a person working on programmes for a station becomes a candidate or is employed or retained in any capacity by a political aspirant or a political party, he/she shall go on leave for the duration of the election period or his employment may be terminated by the station.
- 7.2.5 All broadcasts of election propaganda shall be identified through the words “paid for by” followed by the name of the candidate or political party for whom the election propaganda is being broadcast.
- 7.2.6 No broadcasters shall treat news during the election period to deliberately give some candidates undue advantage over their rivals.
- 7.2.7 Broadcasters shall not employ technological gimmicks like doctoring pictures of political rallies to enlarge the crowds.
- 7.2.8 All programmes related to campaigns and elections shall be subject to the relevant provisions of this Code and all other Laws of Kenya governing elections.
- 7.2.9 Broadcasters shall ensure that political messages do not contain attacks on individuals, their families, ethnic background, race, religion or their associations.
- 7.2.10 Broadcasters shall ensure that political messages do not contain offensive, threatening, abusive, obscene or profane language.

SECTION 8: COPYRIGHT

Relevant legislation to this section includes Section 46I (g) of the *Kenya Information and Communications Act, 1998*, and Cap 130 of *The Copyright Act* of Kenya.

8.1 Guidelines on Copyright

- 8.1.1 The Broadcaster shall be responsible for all obligations and liabilities to any third party associated with copyright or other rights that may arise from the broadcast of copyright programmes.
- 8.1.2 The Broadcaster must have contracts with copyright licensing bodies or authorized legal vendors before broadcasting copyrighted material.
- 8.1.3 The Broadcaster is obliged to have contracts for broadcast of copyrighted material and it shall, upon request, submit such contract to the Authority.

SECTION 9: LOCAL CONTENT

Relevant legislation to this section includes Sections 35(1) and 46I (b) of the *Kenya Information and Communications Act, 1998*.

9.1 Scope

9.1.1 For purposes of this Code, local content means the total of all television or radio programmes excluding news and advertisements, which fulfill any five of the following conditions:

- (a) The production is made in either Kenya's indigenous or official languages;
- (b) Production and post-production was wholly or partly done in Kenya;
- (c) The content deals with issues that are unique and relevant to Kenyan audiences;
- (d) At least twenty percent (20%) of the share of the production company are owned by Kenyans;
- (e) At least fifty percent (50%) of the leading actors, major supporting cast appearing in the program and technical crew are Kenyans;

- (f) The location of shooting, in case of audiovisual programmes or performance was wholly or partly in Kenya;
 - (g) The author(s) of the program are Kenyan (whether or not the program is produced in conjunction with a co-producer, an executive producer or director who is not Kenyan)
- 9.1.2 In case of an animated program, the program satisfies at least three of the following requirements;
- (a) The production designer is Kenyan
 - (b) The character designer is Kenyan
 - (c) The supervising layout artist is Kenyan
 - (d) The supervising storyboard artist is Kenyan
 - (e) The key background artist is Kenyan
 - (f) The director is Kenyan

9.2 Guidelines on Local Content

- 9.2.1 FTA broadcasting stations shall, within one year of award of licence, ensure that at least 40% of their station's programming is local content. The local content programming referred excludes news and advertising.

SECTION 10: PWD ACCESSIBILITY TO BROADCASTING SERVICES

The Constitution of Kenya promotes the rights of all persons and guarantees the freedom from discrimination for Persons with Disabilities (PWD). The Constitution obligates the state to promote the development and use of other communication formats and technologies accessible to PWDs and guarantees PWDs, the right to reasonable access to among others, information, and to be able to use Sign language, Braille or any other appropriate means of communication in accessing materials and devices in order to overcome limitations arising from the person's disability.

Paragraphs (1) and (2) of Section 36 of the *Kenya Information and Communications (Broadcasting) Regulations 2009*, requires broadcasters to take specific steps to promote the understanding and enjoyment of programmes transmitted through its stations by persons who are physically challenged and in particular, persons who are deaf or hard of hearing, or who are blind

of partially sighted, and provides that the Authority shall prescribe by notice in the gazette the manner, time and percentage of programmes targeting the said persons.

10.1 Scope

Television, radio, and Internet are an integral part of the fabric of society and reasonable accommodation is called for to ensure persons with disabilities have the enjoyment on an equal basis with others, of all human rights and fundamental freedoms.

Broadcasters are expected to take specific steps to promote the understanding and enjoyment of programmes transmitted through its stations by persons who are physically challenged and in particular, persons who are deaf or hard of hearing, or who are blind or partially sighted.

10.2 Guidelines on PWD accessibility to broadcasting services

10.2.1 Broadcasters shall take specific steps to include Persons with Disabilities (PWD) in different programmes. In addition, broadcasters should air programmes focusing on persons with disabilities with a view to improving their general welfare and wellbeing.

10.2.2 Broadcasters are required to implement closed captioning, subtitling, and sign language inserts during news and current affairs programmes, emergency announcements and during programming of national interest such as national events.

10.2.3 Humor based on physical, mental or sensory disability, even where no malice is present should be avoided. Reference to disability should only be included where relevant to the context.

10.2.4 The amount of programming made accessible to PWDs shall be gradually increased as prescribed by the Authority from time to time.

SECTION 11: COMPLAINTS HANDLING

The Kenya Information and Communications Act, 1998 Section 46L and Section 39 of the *Kenya Information and Communications (Broadcasting) Regulations, 2009* provides for broadcasters to establish and maintain a complaints handling procedure for use by persons aggrieved by a broadcast or those who may wish to report a violation of law.

11.1 Scope

For the purposes of this Code, a complaint is an assertion:

- (a) Made in writing by letter, e-mail or fax by an aggrieved viewer/listener who provides his/her identification including the address;
- (b) Made to a broadcaster or a person at the television/radio station concerned who is acting with the apparent authority of the broadcaster that the broadcaster has broadcast matter which, in the opinion of the complainant, breaches this Code. Complaints need not specify the section of the Code to which the complaint relates, but must adequately identify the material broadcast and the nature of the complaint.

11.2 Complaints handling Procedure

11.2.1 Broadcasters shall establish a complaint handling procedure as specified by the Authority.

11.2.2 The complaint handling procedure should include the following mandatory requirements as specified in the *Kenya Information and Communications (Broadcasting) Regulations 2009*, clauses 39 to 41:

11.2.3 Full name of the broadcaster as it appears in the license as well as broadcast station identity specific to different services offered.

- (a) The physical, postal and email addresses where complaints can be sent (for each broadcast station).
- (b) Name(s) of person(s) authorized to receive and handle customer complaints.
- (c) Manner in which the complaint may be lodged including the applicable languages.
- (d) Details that need to be submitted when lodging a complaint.
- (e) The need for the complainant to retain a copy of every correspondence exchanged between the complainant and broadcaster.
- (f) The manner in which the complaint shall be investigated and the process of investigation.

(g) Information relating to timeframes for responding to the complainant, and resolving the complaint.

(h) Information relating to how complaints from the physically challenged and consumers that may lack language and/or writing skills and may not be capable of providing complaints in writing shall be addressed.

11.2.4 Broadcasters shall regularly inform their audience on the availability of their complaint handling procedures.

11.3 Customer Service Support

11.3.1 Subscription service broadcasters shall establish and maintain Customer Service Support such as Helplines or its equivalent, and inform its clients on the availability of the same.

11.4 Turn Around Time (TAT)

11.4.1 This Code directs the following on the submission of complaints:

11.4.1.1 The broadcaster must make appropriate arrangements to ensure that complaints are received and recorded by a responsible person during normal office hours.

11.4.1.2 The broadcaster must conscientiously consider complaints and must use its best endeavors to respond substantively in writing within 30 days of the receipt of the complaint. If the broadcaster needs to investigate the complaint or obtain professional advice and a substantive response is not possible within 30 days, the broadcaster must, in any event, acknowledge receipt of the complaint within 30 days and provide a final response within 45 days of receiving the complaint.

11.5 Reporting on Complaints

11.5.1 A record of complaints must be kept by the broadcaster in written form and must include:

- (a) The date and time the complaint is received;
- (b) The name and address of the complainant;
- (c) The substance of the complaint;
- (d) The substance and date of the broadcaster's response(s)

- 11.5.2 Each record must be retained by the broadcaster for a period of (1) year from the date of receipt of the complaint.
- 11.5.3 The broadcaster must cause an extract of the records of complaints and responses to be submitted to the Authority in the prescribed form.

SECTION 12: COMPLIANCE WITH THE CODE

- 12.1 This Programming Code is applicable to all Broadcasters in Kenya.
- 12.2 Persons who regularly go on air and news writers, scriptwriters, editors and directors whose job is to produce material which go on air are expected to know and understand the provisions of this code.
- 12.3 Copies of this Programming Code shall be provided by the station to all its personnel who go on air, produce materials for airing or who participate in such work, all persons granted programming airtime and those who go on air during such time.
- 12.4 Any person who contravenes any provision of this Programming Code shall be liable to enforcement action including penalties under the Act.
- 12.5 Complaints on violations of this Code shall be handled by the Authority.

SECTION 13: ENTRY INTO FORCE

- 13.1 The effective date of this Programming Code is six (6) months from the date of Gazettement.

SECTION 14: BROADCASTING SECTOR GUIDELINES

- 14.1 This Programming Code is further supported by Broadcasting Sector Guidelines based on industry needs and requirements.