



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;

“**Children’s programme**” Any television or radio programming that is specifically designed to serve the educational and informational needs of children in any respect, including the child's intellectual/cognitive or social/emotional needs.

“**Consumer**” means any person to whom a broadcasting service is provided

“**Constitution**” means Constitution of Kenya, 2010

“**Current affairs programming**” means programming that is not a news bulletin but which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance.

“**Drug**” as defined in Section 2 of NACADA Act CAP 121B

“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 the publication of a notice by the Commission (IEBC) for a presidential, parliamentary or county election

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

“Gambling” means the playing of a game of chance for prize winning and includes lottery betting, prize competitions and media promotions with prizes in accordance with the Betting, Lotteries and Gaming Act, 1966 CAP 131 or its successor.

“Licensee” means holder of a broadcasting services licence issued by the Authority;

“Media” means the broadcast, electronic and other types of media but does not include print and book publishing.

“News” means information about factual recent events of happenings of local, National and International public interest especially reported by radio, and TV

“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;

“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, 2011, and other successive Acts;

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

“Primetime” means the period for radio and TV where the audience levels are the highest. Audience measurement indicates that primetime periods for radio listeners and TV viewers tend to differ and can be further defined as follows:

“Primetime for radio” audiences is defined between 6:00am to 10:am, where the listenership level is at its highest.

“Primetime for TV” audiences is defined between 6:00pm to 10:00pm, where the viewership levels is at its highest.

“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 and rating” refers to the classification and rating assigned to a program or film by the Kenya Film Classification Board, as mandated by the Film and Stage Plays Act, Cap 222, as may be amended.

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;

“Religious Programme” means a programme that is religious in nature created with the primary purpose of spreading the teachings of a particular faith.

“Subscription Broadcasting Services Provider” means any legal or natural person who is licensed by the Authority to provide subscription-broadcasting services in Kenya.”

“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 Period” means the Kenyan 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 solely for adult audience is not to be aired.

CLAUSE 1: PREAMBLE

1.1 Regulatory Framework of the Code

The Communications Authority of Kenya (CA) is the regulatory authority for the communications sector in Kenya, established in 1999 by the Kenya Information and Communications Act, 1998 (KICA). The Authority is responsible for facilitating the development of the information and communications sectors including; broadcasting, cybersecurity, multimedia, telecommunications, electronic commerce, postal and courier services.

Pursuant to KICA, Section 46C, broadcasters are licensed by the CA to operate in the country. KICA further empowers the Authority to set standards for the time and manner of programmes to be broadcast as per Section 46H. In this regard, the broadcaster is required to provide responsible and responsive programming that caters for the various needs and susceptibilities of different sections of the Kenyan community, observe standards of good taste and decency, and ensure that advertisements, either in terms of content, tone or treatment, are neither deceptive nor repugnant to good taste.

KICA Section 46H (d) 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. This Code prescribes specific standards for regulating content of programmes transmitted by all licensed free to air and subscription broadcasting Services. 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 approved 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 where application is modified by other provisions from time to time.

1.3 Objectives of the Code

Broadcasting serves as a source for entertainment, information, and education. Radio and television broadcasters reach the majority of Kenyans, including children and given its substantial influence, it is imperative that broadcasting content consistently adheres to standards that align with the values and expectations of Kenyan communities.

Purpose of the Code is to:

- a) ensure that Licensees providing broadcasting services in Kenya have regard to prevailing content standards, while protecting the right of Licensees to responsible freedom of speech;

- b) Protect vulnerable persons from inappropriate content;
- c) Ensure audiences in Kenya are assisted in making informed choices about the content that they and their children may watch and listen to;
- d) Provide uniform, speedy and effective procedures for the handling of complaints from the public about programme content or compliance with the Code.

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.

CLAUSE 2: GENERAL PRINCIPLES

2.1 Freedom of Expression

Article 33 of 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, with the exception of periods of service interruptions that have been duly notified to and authorized by the Authority as provided in the respective licences;
- (b) Observance of the local content quotas as prescribed by the Authority from time to time;
- (c) Protection of children and vulnerable persons from indecent programming, addictive 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 and public service announcements offered at no cost, to raise public awareness regarding matters of public interest and in the event of occurrence of, but not limited to disaster, emergency or pandemic, upon the request by a person authorized by the government;
- (j) Special rates for 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 individual 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,
- 2.4.4 Schedule programme materials that adhere to generally accepted standards of decency. These standards include but are not limited to respect of age, 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 or are the targeted audience;
- 2.4.6 Publish and make their editorial policies publicly available;
- 2.4.7 Subscription based service providers are responsible for the content aired on broadcasting stations not licensed in Kenya.

CLAUSE 3: WATERSHED PERIOD

3.1 Watershed Period

Relevant legislation to this clause includes Section 46I (1) (a) (c), and (2) (a) (b) of the *Kenya Information and Communications Act, 1998*.

3.2 Scope

- 3.2.1 This Programming Code seeks to ensure that unsuitable material for children is not broadcast at times when there is likely to be a large audience of young listeners or viewers.
- 3.2.2 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.
- 3.2.3 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.
- 3.2.4 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.

3.3 Requirement on 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, previews and promotional materials.
- 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 Programming including 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 Programme Classification and Rating

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

3.4.1 Scope

Classification requirement 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 Requirement on Programme Classification and Rating

3.4.2.1 The two key principles for programme classification and 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 listening and viewing decisions.

3.4.2.2 Broadcast material must adhere to the set classification and rating guidelines of Kenya, as set by Kenya Film Classification Board, prior to being aired, with the exception of current affairs, events of national interest and news.

3.4.2.3 The classification and rating of programming material shall be continuously displayed through out the duration of its programming.

3.4.2.4 Broadcasters shall include in all parental guided programmes warnings in other publicity materials like the TV page in newspapers and TV guides.

3.4.2.5 All trailers, previews and promotional material shown before, during and after the watershed period must comply with the programming classification and rating guidelines.

3.5 FTA Broadcasting Rating System

3.5.1 Representations of violence and sexually explicit content must not occur during 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.

3.5.2 Programmes unsuitable for children and/or rated as Adult only should not be aired during the watershed period.

3.6 Subscription and ‘Pay per view’ Broadcasting Rating System

Subscription and ‘Pay per view’ broadcasting services providers shall:

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

3.6.2 Ensure that the mechanisms that have been put in place to protect children inappropriate content are clearly and regularly explained to subscribers on how to activate the feature.

3.6.3 Provide information to subscribers about programme content classification and rating, that will assist adults assess its suitability for children.

3.6.4 Provide information to subscribers that clearly itemizes viewing details including viewing times and dates.

CLAUSE 4: PROTECTION OF CHILDREN

4.1 Children's Programming

Relevant legislation to this clause includes Section 46I (1) (a) and (c) of the *Kenya Information and Communications Act, 1998*

4.2. Scope

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

4.3 Children's Programming Requirement

- 4.3.1 Broadcasters shall observe the quotas and scheduling requirements for children's programming, as prescribed in the industry Guidelines for Children's Programming.
- 4.3.2 Broadcasters shall ensure that children's programmes promote appreciation of good social and moral values.
- 4.3.3 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.
- 4.3.4 Children's programmes shall not depict inappropriate sexual subjects, violent actions, or portray children in a sexual nature.
- 4.3.5 Broadcasters should avoid programmes that portray any dangerous or harmful behavior easily imitated by children.
- 4.3.6 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.
- 4.3.7 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.

- 4.3.8 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.
- 4.3.9 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.
- 4.3.10 Demonstrations of exorcisms, occult practices and the paranormal, must not be shown when children are particularly likely to be watching or listening.
- 4.3.11 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
- 4.3.12 Broadcasters should ensure previews, trailers and promotional material for programming outside the watershed period are suitable for children audiences during the watershed period.
- 4.3.13 Broadcasters should give more time and emphasis on programmes that promote educational standards and positive moral character.
- 4.3.14 Broadcasters shall ensure that children's content that depicts and glamourizes criminal techniques or shows ways of inflicting pain or torture are prohibited.

4.4 Coverage Involving Children

Relevant legislation to this clause includes Section 46I (1) (a) and (c) of the *Kenya Information and Communications Act, 1998*.

4.4.1 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.

4.4.2 Requirement on Coverage Involving Children

- 4.4.2.1 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.

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

4.4.2.3 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.

4.4.2.4 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.

CLAUSE 5: LOCAL CONTENT REQUIREMENTS

5.1 LOCAL CONTENT

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

5.1.1 Scope

Provisions of local content aim to:

1. Promote and sustain Kenya’s diverse cultures, values, traditions, folklores and community life.
2. Provide diversity in types of programming content for the variety of audiences within the cultural landscape of Kenya
3. Promote Kenyan content and encourage the production and showcasing of Kenya’s rich culture through audiovisual media within and outside its borders.

5.2 Definition of Local Content

5.2.1 For the purpose of this Code, Local content means the total of all television or radio programmes, whose production is made in either Kenya’s indigenous or official languages (Kiswahili or English), and which fulfil any four (4) of the following conditions:

- a) Production and post-production were wholly or partly done in Kenya;
- b) The content identifies with issues that are unique and relevant to Kenyan audiences;
- c) At least twenty percent (20%) of the share of the production company are owned by Kenyans;
- d) Fifty percent (50%) of the leading actor(s), major supporting cast appearing in the program and technical crew are Kenyans;
- e) The location of shooting, in case of audiovisual programmes or performance was wholly or partly in Kenya;
- f) 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).

5.2.2 In case of an animated programmes, the production is made in either Kenya's indigenous or official languages (Kiswahili or English), and which satisfies at least five (5) of the following requirements;

- a) The Script Writer is Kenyan
- b) The Director is Kenyan
- c) The Art Director is Kenyan
- d) The Creative Director is Kenyan
- e) The Character Designer is Kenyan
- f) The Supervising Layout Artist is Kenyan
- g) The Supervising Storyboard Artist is Kenyan
- h) The Key Background Artist is Kenyan
- i) The lead animator is Kenyan
- j) At least fifty percent (50%) of the voice artists to be Kenyan

5.3 Requirement on Local Content

- 5.3.1 FTA broadcasters 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 advertisements.
- 5.3.2 Where broadcasters commission Kenyan independent producers for production of content, they shall ensure that they employ the best of global business practices.
- 5.3.3 It is desirable that local content programming is aired during primetime (at a time when audience levels are the highest).

5.4 User Generated Content

Relevant legislation to this clause includes Section 46I (1) (a) and (c) of the *Kenya Information and Communications Act, 1998*.

5.4.1 Scope

User Generated Content (UGC) is content generated by consumers and audiences, such as text, posts, images, call-ins, videos and reviews. UGC may be relayed through traditional as well as non-traditional sources of media including but not limited to Social media, blogs, Artificial intelligence (AI), podcasts and mobile telephony.

The proliferation of UGC comes with a set of risks and pitfalls which have made it necessary to take precautionary measures and mitigation.

5.4.2 Requirement on User Generated Content

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 and artificial intelligence (AI) are accurate and reliable.

5.5 Copyright Obligations

Relevant legislation to this clause includes Section 46I (1) (g) of the *Kenya Information and Communications Act, 1998*, and *Cap 130 of The Copyright Act of the laws of Kenya*.

5.5.1 Requirement on Copyright

- 5.5.1.1 Broadcasters 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.
- 5.5.1.2 Broadcasters shall comply with copyright and related neighboring rights such as payment of royalties and all other applicable fees for the rights exploited.
- 5.5.1.3 Broadcasters shall have contracts with copyright licensing bodies or authorized legal vendors before broadcasting copyrighted material.
- 5.5.1.4 Broadcasters are obliged to upon request and where applicable, provide the Authority with written proof of its agreement with relevant authorized collective management organizations in Kenya or proof of its acquisition of the requisite rights to have contracts for broadcast of copyrighted material and shall upon request, submit such contract to the Authority.

CLAUSE 6: GOOD TASTE AND DECENCY

6.1 Generally Accepted Standards

- 6.1.1 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.
- 6.1.2 In the provision of services, broadcasters must take all reasonable steps to protect children from material that is unsuitable for them.
- 6.1.3 Factual programmes or items or portrayals of factual matters must not materially mislead the audience.
- 6.1.4 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).

6.1.5 Appropriate information regarding the context of the programme should also be broadcast to assist in avoiding or minimizing offence.

6.1.6 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 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 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.

6.2 Sex, Obscenity and Pornography

Relevant legislation to this clause includes Section 46I (1) (a) and (c) of the *Kenya Information and Communications Act, 1998*.

6.2.1 Scope

Much great 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.

6.2.2 Requirement on Sex, Obscenity and Pornography

6.2.2.1 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.

6.2.2.2 Explicit depiction of sexual arts in any programme including music, sexual perversions, nudity and pornography are prohibited during the watershed period and in any case such content to be aired outside the watershed period should have prior classification and rating by the Kenya Film and Classification Board.

6.2.2.3 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.

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

6.3 Liquor, Cigarettes, and Dangerous Drugs

Relevant legislation to this clause includes Section 46I of the *Kenya Information and Communications Act, 1998*, and *Alcoholic Drinks Control Act* and NACADA Act CAP 121B

6.3.1 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.

6.3.2 Requirement on Liquor, cigarettes and dangerous drugs

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

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

6.3.2.3 The use of dangerous drugs, smoking, alcohol abuse and other harmful substances shall not be promoted, justified or presented as socially desirable or acceptable in the stations programming.

CLAUSE 7: PRIVACY AND FAIRNESS

7.1 Privacy

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

7.2 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.

7.3 Requirement on Right to Privacy

- 7.3.1 The right to privacy of individuals shall be respected. Intrusion into purely personal matters that have no bearing on the public interest is prohibited.
- 7.3.2 Persons affected by tragedy or grief shall be treated with sensitivity, respect and discretion.
- 7.3.4 Persons who have suffered grief should not be subjected to stalking by the media.
- 7.3.5 News coverage must not violate nor interfere with an individual's right to be presumed innocent until proven guilty.
- 7.3.6 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.
- 7.3.7 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.
- 7.3.8 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.
- 7.3.9 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.

- 7.3.10 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.
- 7.3.11 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.
- 7.3.12 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).
- 7.3.13 Broadcasters should pay particular attention to the privacy of people under eighteen.
- 7.3.14 Where a programme or non-programme matter 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.
- 7.3.15 Broadcasters may record telephone calls between broadcaster and another party only if the broadcaster has, from the outset of the call, identified themselves and their broadcasting station, explained the purpose of the call and that the call is being recorded for possible broadcast, If the call that has been recorded is to be broadcast live or at a later stage, and this was not explained to the other party at the time of the call then the broadcaster must obtain consent from the other party before broadcasting.
- 7.3.16 Broadcasters are prohibited from obtaining information, audio or pictures through misrepresentation or deception (including secret filming or recording) except when there is a public interest for doing so.

7.4 Fairness

Relevant legislation to this clause 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.

7.4.1 Scope

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

7.4.2 Requirement on Fairness

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

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

7.4.2.3 Where a person is invited to contribute 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.

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

7.4.2.5 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.

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

7.4.2.7 Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should be honored.

7.4.2.8 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.
- 7.4.2.9 Programmes should not portray facts, events, individuals or organisations in a way that is unfair to an individual or organization.
- 7.4.2.10 Broadcasters or programme makers should not obtain or seek information through secrecy, unless it is in the public interest.
- 7.4.2.11 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.

7.5 Right of Reply

- 7.5.1 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.
- 7.5.2 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.
- 7.5.3 Broadcasters shall not intentionally, through negligence, or otherwise depart from the facts, distort, exaggerate, misrepresent or make material omissions in the content of news, current affairs and other factual programmes or broadcast information that they know to be false or inaccurate.
- 7.5.4 Broadcasters shall acknowledge and publicly correct errors of fact at the earliest opportunity. Such corrections shall be appropriately scheduled in the same or a similar time period so as to reach an audience similar to the audience that originally received the misinformation.
- 7.5.5 Broadcasters shall be required to clearly distinguish the reporting and analysis of news, current affairs and factual information from commentary and opinion, including programmes that present authored views. Such authored views may include the opinions of a journalist, commentator or academic with professional expertise or a specialty in that field.

CLAUSE 8: HATE-SPEECH, CRIME AND CRISIS

8.1 Hate Speech

The Constitution of Kenya 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 5 B on Freedom of Media and Section 46I (a) and (c) of the *Kenya Information and Communications Act, 1998*, is also instructive.

8.1.1 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.

8.1.2 Requirement on Hate Speech

- 8.1.1 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.
- 8.1.2 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.
- 8.1.3 The broadcasting station shall be responsible for hate speech aired in its broadcasting station or platform.
- 8.1.4 Material, which contains hate speech, must not be included in television and radio programmes.

- 8.1.5 Material, which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services.
- 8.1.6 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.

8.2 Sensitivity

Relevant legislation to this clause includes Section 46I (1) (a), (c), and (j) of the *Kenya Information and Communications Act, 1998*

8.2.1 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.

8.2.2 Requirement on Sensitivity

- 8.2.2.1 Broadcasters shall ensure that the content of news, current affairs and factual programmes are presented with sensitivity in the case of material likely to cause some distress to a substantial number of the audience, such as televised images of dead or seriously wounded people or animals, images or interviews with victims of traumatic incidents, or reporting on criminal activities of a traumatic nature. Such material should only be used when deemed editorially essential, and if so, sparingly, and have appropriate regard to the feelings of viewers and family members.
- 8.2.2.2 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.
- 8.2.2.3 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.

- 8.2.2.4 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.
- 8.2.2.5 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.
- 8.2.2.6 Programmes intended to malign, unfairly criticize or attack a person, natural or juridical, are prohibited.
- 8.2.2.7 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.
- 8.2.2.8 Warnings before the broadcast of material of a potentially sensitive or traumatic nature must be spoken, and should also appear on-screen for television when a news, current affairs, or other factual programme includes material which in the broadcaster's reasonable opinion has the potential to distress or offend a substantial part of the audience. The warning must precede the relevant report in a news or current affairs programme and precede the programme in other cases, particularly outside the watershed. Warnings must provide an adequate indication of the nature of the material, while avoiding details which may seriously distress or seriously offend viewers or listeners.

8.3 Crime and 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.

8.3.1 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.

8.3.2 Requirement on Coverage of Crime and Crisis Situations

- 8.3.2.1 Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.
- 8.3.2.2 Descriptions or demonstrations of criminal techniques, which contain essential details that could enable the commission of crime must not be broadcast unless editorially justified.
- 8.3.2.3 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.
- 8.3.2.4 Coverage should avoid inflicting undue shock and pain to families and loved ones of victims of crimes, crisis situations, disasters, accidents, and other tragedies.
- 8.3.2.5 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.
- 8.3.2.6 Coverage of crime, security operations/investigations, or crisis situations shall not provide vital information or offer comfort or support to the perpetrators.
- 8.3.2.7 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.

CLAUSE 9: ELECTIONS AND REFERENDUM

9.1 Elections

Relevant legislation to this clause includes Section 46I (1) (a), (d), and (e) of the *Kenya Information and Communications Act, 1998*. Other relevant legislation includes, the *Elections Act No. 24 of 2011 and Elections Regulations*.

9.2 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 registered political parties and candidates.

This section sets out the standards to be observed by broadcasters and their personnel in their conduct as well as handling of political programming before, during and after the general elections including but not limited to by-election, referendum, recall, runoff, party primary election.

9.3 Requirements on Elections Period

- 9.3.1 Equitable opportunities in the access of unpaid airtime shall be given to candidates or registered political parties.
- 9.3.2 No licensee shall be allowed to manifestly favour or oppose any candidate or registered political party. 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.
- 9.3.3 The amount of airtime allotted to political propaganda and the rates to be charged for it shall be consistent to all registered political parties and candidates.
- 9.3.4 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 registered political party, he/she shall go on leave for the duration of the election period or his employment may be terminated by the station.
- 9.3.5 All broadcasts of election propaganda shall be identified through the words “paid for by” followed by the name of the candidate, registered political party for whom the propaganda is being broadcast.
- 9.3.6 No broadcaster shall treat news during election period to deliberately give some candidates undue advantage over their rivals.
- 9.3.7 Broadcasters shall not employ technological gimmicks like doctoring pictures of political rallies to enlarge the crowds.
- 9.3.8 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.
- 9.3.9 Broadcasters shall ensure that political messages do not contain attacks on individuals, including but not limited to their families, race, gender, ethnicity, religious beliefs, nationality, age, sexual preference, physical or mental disability or their associations.
- 9.3.10 Broadcasters shall ensure that political messages do not contain offensive, threatening, abusive, obscene or profane language.

9.3.11 In airing any outcome of a survey conducted during the election period, broadcasters must ensure that the following are reported:

- a) The name and address of the person or organization that conducted the survey
- b) Problem statement
- c) Objectives
- d) Methodology
- e) Sampling method and size
- f) The date on which or the period during which the survey was conducted
- g) The means by which a copy of the survey report may be obtained.

9.3.12 Broadcasters shall ensure reasonable opportunities are accorded to candidates of registered political parties to air their competing views during interviews and discussions on election related issues.

9.4 Requirements on Referendum Period

During the Referendum period, broadcasters shall:—

- 9.4.1 Provide equitable coverage and opportunities to the registered referendum committees participating in the referendum.
- 9.4.2 Announce the name of the referendum committee or sponsor, on whose behalf a broadcast is made, immediately before the commencement and immediately after such broadcast.
- 9.4.3 Not permit any broadcast sponsored by or made on behalf of a referendum committee other than an advertisement thereof to be dramatized.
- 9.4.4 Ensure that any employee of a station who wishes to support a referendum position/committee resigns from their employment the during referendum period.
- 9.4.5 Ensure that employees in the execution of their duties, do not wear or exhibit symbols or appear with outfits or logo associated with any referendum committee during the referendum campaign period.
- 9.4.6 Ensure that employees do not accept gifts, favours or special treatment by any referendum committee or other interest that compromise professional integrity and editorial independence.

- 9.4.7 Give the referendum committee the right of reply where a report aired under the editorial responsibility of the licensee contains inaccurate information or unfair criticism based on distortion of facts.
- 9.4.8 The opportunity to reply is given within twenty four hours in a programme of similar weight and audience.
- 9.4.9 Ensure that its presenters who are on air do not in any way campaign for any referendum position during the referendum period.
- 9.4.10 Not broadcast views that could incite violence or advocate hatred that is based on race, ethnicity, gender, religion or political convictions and that constitute incitement to cause harm to any persons participating in the referendum or the general public.

CLAUSE 10: RELIGIOUS PROGRAMMES, OCCULTISM AND SUPERSTITION

10.1 Religious Programmes

Relevant legislation to this clause includes Section 46I (1) (a) and (c) of the *Kenya Information and Communications Act, 1998*.

10.2 Scope

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

10.3 Requirement on Religious Programmes

- 10.3.1 All religious programmes shall be geared towards emphasizing the positive role of religion in the society.
- 10.3.2 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.
- 10.3.3 Religious programmes shall give due regard to the freedom of religion and religious expression.
- 10.3.4 Broadcasters shall ensure that religious programmes do not improperly exploit any susceptibilities of the audience for such a programme.
- 10.3.5 Broadcasters must use their best endeavors to provide accurateness and correctness of the content of religious programmes.

10.3.6 Broadcasters shall ensure that depictions of violence, aggression, destruction, sexual and gender-based violence are prohibited.

10.4 Occultism and Superstition

Relevant legislation to this clause includes Section 46I (1) (c) of the *Kenya Information and Communications Act, 1998*.

10.4.1 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.

10.4.2 Requirement on Occultism and Superstition

10.4.2.1 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 audience. Care should be taken to prevent the exploitation of people who may be easily swayed by such superstitious and pseudo-scientific beliefs and practices.

10.4.2.2 Programmes or programme materials that promote or encourage occult practices, black or white magic, witchcraft and similar activities are prohibited.

CLAUSE 11: ADVERTISEMENTS

Relevant legislation to this clause includes Section 46I (1) (i) of the *Kenya Information and Communications Act, 1998*.

11.1 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 broadcast advertising.

11.2 Requirement on Advertising

11.2.1 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.

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

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

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

11.2.5 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.

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

11.2.7 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.

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

11.2.9 Advertisements shall not unreasonably show children in dangerous situations.

11.2.10 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;

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

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

11.2.13 The above requirements shall apply to local Kenyan FTA channels carried on subscription broadcasting services. With regards international channels, subscription broadcasters shall ensure their third-party international channel suppliers are made aware of the advertising requirements of the programming code.

CLAUSE 12: GAMBLING AND COMPETITIONS

12.1 Gambling Activities

Relevant legislation to this clause includes Section 46I (1) (a) and *Kenya Information and Communications Act, 1998* and CAP 131 of *The Betting Lotteries and Gaming Act of the Laws of Kenya or its successor and Films and Stage Plays Act*.

12.2 Scope

In order to maintain a socially acceptable balance between the benefits and the social ills generated by gambling activities, these requirements seek to facilitate responsible use of the broadcasting platform by licensees with respect to betting, lotteries and gambling and to protect vulnerable audiences against the negative impacts of gambling in society.

12.3 Requirements on Betting, Lotteries and Gambling Activities

12.3.1 Broadcasters are limited to airing a maximum of four (4) programming promoting gambling activities, gambling campaigns, and/or associated advertisements during the watershed period, within an hour of broadcasting, provided the same has been appropriately classified and rated as suitable for watershed period.

12.3.2 Broadcasters must obtain the relevant license and/or authorizations from the Betting Control and Licensing Board (BCLB) to air any gambling campaigns/promotions, activations and/or adverts.

12.3.3 All gambling activities must adhere to the set classification and rating guidelines of Kenya Film and Classification Board before it is aired on any broadcasting platform.

12.3.4 Broadcasters must observe the set operating conditions required to run and advertise gambling activities on air and must be conducted with full adherence to the terms and conditions issued by BCLB.

12.3.5 Broadcasters must ensure that license number authorizing the gambling campaign is quoted each time during the airing on radio and/or is continuously displayed during the airing of the advert on television.

12.3.6 Broadcasters are prohibited from airing any gambling campaigns/promotions, activations and/or adverts five (5) minutes before, during and five (5) minutes after children's programming.

12.3.7 Broadcasters must quote that gambling is not for persons under the age of eighteen.

12.3.8 Gambling campaigns and/or adverts must not be presented as a socially desirable and acceptable means of achieving success.

12.3.9 Gambling campaigns and/or adverts must not mislead audiences, by implying or overstating the likelihood of winning.

12.3.10 Gambling advertisements must be accompanied by a corresponding message on the harmful effects of gambling addiction and if possible, the sign posting of where to get help.

12.4 Broadcast Competitions

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

12.4.1 Scope

Broadcast competition refers to engagement between the broadcaster and its audience through voting in programmes, to decide or influence the outcome of a contest. Broadcast competitions that are not gambling activities, are not subject to regulation from BCLB.

12.4.2 Requirement on Broadcast Competitions

12.4.2.1 Broadcast voting must be conducted fairly.

12.4.2.2 Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition.

12.4.2.3 Broadcasters must draw up rules for a broadcast competition 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.

12.4.2.4 Broadcast competitions prizes must be described accurately.

12.4.2.5 Broadcasters must fully disclose the costs to be incurred by the audience in interacting with the programming and participating in the broadcast competitions.

12.4.2.6 Broadcasters shall ensure that competition prices aimed at children are appropriate to the age range of the both target audience and the participants in the competition or promotion.

12.4.2.7 Where a subscription broadcasting service provider licensed in Kenya conducts its own broadcast competition, the above requirements must be complied with. The above requirements shall not apply to broadcasting competitions not targeting Kenya, that are aired on international channels available in Kenya.

CLAUSE 13: ACCESSIBILITY TO BROADCASTING SERVICES

Relevant legislation to this clause includes Section 46I (1) (a) of the *Kenya Information and Communications Act, 1998*. The Constitution of Kenya also 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.

Broadcasters are required 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, and the Authority shall prescribe by notice in the gazette the manner, time and percentage of programmes targeting the said persons.

13.1 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.

13.2 Requirement on PWD accessibility to broadcasting services

- 13.2.1 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.
- 13.2.2 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.
- 13.2.3 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.
- 13.2.4 The amount of programming made accessible to PWDs shall be gradually increased as prescribed by the Authority from time to time.
- 13.2.5 Broadcasters should ensure that warning is issued to audiences where the programme contains flashing lights that can easily trigger epileptic seizure.

13.3 Electronic Programme Requirement for FTA Broadcasters

Relevant legislation to this section includes Section 46O (2) (e) of the *Kenya Information and Communications Act, 1998*.

13.3.1 Scope

An Electronic Programme Guide (EPG) is an on screen guide that gives information about the current and scheduled programmes that are or will be available on each TV or radio channel. Free-to-air broadcasters are required to prepare and provide the broadcast signal distributor with an electronic programme guide for audiences to use to access information relating to the schedule of programme materials for all broadcasting services it carries.

13.3.2 Requirement for Electronic Programme Guides

13.3.2.1 Free-to-air TV licensees shall:

- a) Provide a 7-day electronic programme guide (EPG) including the time and title of each programme, for each month in advance.
- b) Provide classification and rating information for each programme.

- c) Provide updates as appropriate to ensure the most updated version of the EPG is available on the digital platform.
- d) Ensure the electronic programme guide is user friendly and easy to navigate through programme materials, which are the subject of a broadcasting service.

13.3.2.2 For value addition, the electronic programme guide may also include information on the genre, brief description of the programme, cast, directors and writers.

CLAUSE 14: COMPLAINTS HANDLING

The Kenya Information and Communications Act, Section 46L 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.

This clause must be read in conjunction with the Procedure for Handling Complaints Related to Broadcast.

14.1 Scope

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

- (a) Made in writing by letter, e-mail or social media 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.

14.2 Complaints Handling Procedure

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

14.2.2 The complaint handling procedure should include the following mandatory requirements:

- (a) Full name of the broadcaster as it appears in the license as well as broadcast station identity specific to different services offered.
- (b) The physical, postal and email addresses where complaints can be sent (for each broadcast station).

- (c) Name(s) of person(s) authorized to receive and handle customer complaints.
 - (d) Manner in which the complaint may be lodged including the applicable languages.
 - (e) Details that need to be submitted when lodging a complaint.
 - (f) The need for the complainant to retain a copy of every correspondence exchanged between the complainant and broadcaster.
 - (g) The manner in which the complaint shall be investigated and the process of investigation.
 - (h) Information relating to timeframes for responding to the complainant, and resolving the complaint.
 - (i) 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.
- 14.2.3 Broadcasters shall regularly inform their audience on the availability of their complaint handling procedures.

14.3 Customer Service Support

- 14.3.1 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.

14.4 Turn Around Time (TAT)

This Code directs the following on the submission of complaints:

- 14.4.1. The broadcaster must make appropriate arrangements to ensure that complaints are received and recorded by a responsible person during normal office hours.
- 14.4.2 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.

14.5 Reporting on Complaints

- 14.5.1 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)
- 14.5.2 Each record must be retained by the broadcaster for a period of (1) year from the date of receipt of the complaint.
- 14.5.3 The broadcaster must cause an extract of the records of complaints and responses to be submitted to the Authority in the prescribed form.

CLAUSE 15: ONLINE BROADCAST OR STREAMING SERVICE PROVIDERS

Relevant legislation includes Section 46A (a) of the *Kenya Information and Communications Act, 1998* that requires the Authority to promote and facilitate development, in keeping with the public interest, of a diverse range of broadcasting services in Kenya.

15.1 Scope

The Authority recognises that the Internet has brought about unlimited choice in terms of content consumption. Changing consumer habits and preferences, due to emerging technologies, media convergence, wider range of platforms, devices, content and technological innovations, requires progressive and proactive regulation that will ensure consumers are protected from harmful content and broadcasting content standards are upheld.

15.2 Requirement for Online Broadcast or Streaming Providers

Online radio and TV service providers operating in Kenya or whose services target Kenya and undertake streaming services shall:

- 15.2.1 Ensure that the content provided on their platforms, fully complies with the relevant provisions of the Law, Programming Code and supporting Broadcasting Sector Guidelines where applicable.
- 15.2.2 Ensure that their online and social media sites are managed to remove inappropriate content and comments.

CLAUSE 16: BROADCASTING SECTOR GUIDELINES

- 16.1 This Programming Code shall further be supported by Broadcasting Sector Guidelines developed from time-to-time based on industry needs and requirements.
- 16.2 The Broadcasting sector guidelines shall serve to expound on the provisions of the Programming Code for clarity and provide explicit expected deliverables from the Broadcasters.

CLAUSE 17: COMPLIANCE WITH THE CODE

- 17.1 This Programming Code is applicable to all Broadcasters in Kenya.
- 17.2 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.
- 17.3 Copies of this Programming Code should be provided by the stations 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.
- 17.4 Any person who contravenes any provision of this Programming Code and the associated guidelines shall be liable to enforcement action including penalties under the Act.
- 17.5 Complaints on violations of this Code shall be processed in accordance with the provisions of the complaints handling procedure of the Authority.
- 17.6 Broadcasters with packages and/or commissions programming content or channels, must ensure that the programming applies to the requirements of the Code.
- 17.7 Broadcasters that acquire complete channels and therefore not directly able to ensure compliance with the code, must require its channel provider to comply with the requirements of the Code.

CLAUSE 18: ENTRY INTO FORCE

- 18.1 The effective date of this Programming Code is thirty (30) days from the date of Gazettement and shall remain in force until otherwise revised and re-gazetted.