

**THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT - THIRD SESSION - 2024**

**PUBLIC PETITIONS COMMITTEE**

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**REPORT ON-**

**CONSIDERATION OF PUBLIC PETITION NO. 41 of 2023 REGARDING BANNING OF  
TIKTOK IN KENYA, BY MR. BOB NDOLO**

**JUNE, 2024**

**Directorate of Legislative & Procedural Services  
Clerk's Chambers  
Main Parliament Buildings  
NAIROBI**



Approved  
SNA  
25/9/24.

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## CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it was my pleasant privilege and honour to present this House the Report of the Public Petitions Committee regarding Banning of TikTok in Kenya. The petition, conveyed to the House in accordance with Standing Order 225(2)(b) by the Speaker of the National Assembly on Tuesday, 15<sup>th</sup> August, 2023.

The Petitioner prayed that the National Assembly, through the Public Petitions Committee, intervenes and takes immediate action to safeguard Kenyans from the negative effects arising from the use of platform and altogether ban TikTok in Kenya. However, the Petitioner later stepped down the prayer to ban the platform and requested the Committee to establish a regulatory framework that could address the existing gaps in the use of TikTok in Kenya.

In consideration of the Petition, the Committee engaged various stakeholders including the Petitioner, Content Creators, Bloggers Association of Kenya (BAKE), Kenya Films and Classification Board (KFCB), Communication Authority of Kenya (CAK), Office of the Data Protection Commissioner, Law Society of Kenya (LSK), National Cohesion and Integration Commission (NCIC), Kenya National Commission on Human Rights (KNCHR), M/S Majorel Kenya Ltd, TikTok Management, Ministry of Interior and National Administration, and Ministry of ICT and the Digital Economy.

Upon considering the petition, the Committee made observations on various issues arising from the petition including, **national security and data privacy concern, content moderation and violations of Community Guidelines, economic benefits of TikTok, compliance by TikTok to the Kenyan laws and regulations and partnerships and Community Social Responsibility**


The Committee rejects the prayer as a total ban of TikTok is not tenable because it infringes upon fundamental rights and freedoms in the country. Further a ban of the social media platform would stifle social and economic growth and benefits of internet connectivity as the nation seeks to enhance its digital economy. However, the Committee recommends that social media platforms including TikTok be regulated and periodic compliance reviews by the relevant state agencies be institutionalised.

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout the consideration of the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.  
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....  25-09-2024

## **PART ONE**

### **1 PREFACE**

#### **1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE**

The Public Petitions Committee was established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

## 1.2 COMMITTEE MEMBERSHIP

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

### Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.  
Kitui East Constituency

**United Democratic Alliance (UDA)**

### Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.  
Turbo Constituency

**United Democratic Alliance (UDA)**

Hon. Patrick Makau King'ola, M.P.  
Mavoko Constituency

**Wiper Democratic Movement-Kenya  
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.  
Kitui West Constituency

**Wiper Democratic Movement-Kenya  
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.  
Vihiga Constituency

**Amani National Congress (ANC)**

Hon. Maisori Marwa Kitayama, M.P.  
Kuria East Constituency

**United Democratic Alliance (UDA)**

Hon. Joshua Chepyegon Kandie, M.P.  
Baringo Central Constituency

**United Democratic Alliance (UDA)**

Hon. John Walter Owino, M.P.  
Awendo Constituency

**Orange Democratic Movement (ODM)**

Hon. Bernard Muriuki Nebart, M.P.  
Mbeere South Constituency

**Independent**

Hon. Bidu Mohamed Tubi, M.P.  
Isiolo South

**Jubilee Party (JP)**

Hon. Caleb Mutiso Mule, M.P.  
Machakos Town Constituency

**Maendeleo Chap Chap Party (MCCP)**

Hon. John Bwire Okano, M.P.  
Taveta Constituency

**Wiper Democratic Movement-Kenya  
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.  
Mwatate Constituency

**Jubilee Party (JP)**

Hon. Sloya Clement Logova, M.P.  
Sabatia Constituency

**United Democratic Alliance (UDA)**

Hon. Suzanne Ndunge Kiamba, M.P.  
Makueni Constituency

**Wiper Democratic Movement-Kenya  
(WDM-K)**

### 1.3 COMMITTEE SECRETARIAT

The Public Petitions Committee was facilitated members of the secretariat:

Lead Clerk  
Mr. Ahmed Kadhi  
Senior Clerk Assistant

Ms. Anne Shibuko  
First Clerk Assistant

Ms. Miriam Modo  
First Clerk Assistant

Mr. Willis Obiero  
Clerk Assistant III

Mr. Isaac Nabiswa  
Legal Counsel II

Ms. Patricia Gichane  
Legal Counsel II

Mr. Martin Sigei  
Research Officer III

Ms. Roselyne Njuki  
Principal Serjeant-at-Arms

Mr. Paul Shana  
Serjeant-at-Arms

Mr. Calvin Karungo  
Media Relations Officer III

Mr. Peter Mutethia  
Audio Officer

## PART TWO

### 2 BACKGROUND OF THE PETITION

#### 2.1 INTRODUCTION

1. Public Petition No. 41 of 2023 regarding Banning of TikTok in Kenya was conveyed by the Honourable Speaker on Tuesday, 15<sup>th</sup> August, 2023 on behalf of Mr. Bob Ndolo, the CEO of Bridge Connect Consultancy.
2. The Petitioner decried that while it has gained popularity among the youth in Kenya, the content that was being shared on the platform was inappropriate thus promoting violence explicit sexual content, hate speech, vulgar language and offensive behaviour which was a serious threat to the cultural and religious values of Kenya.
3. The Petitioners aver that in Kenya, the internet application (App) was not regulated by the Communication Authority of Kenya leading to failure to remove or block content deemed to be inappropriate or offensive.
4. The Petitioner further averred that TikTok had been implicated in several privacy scandals over the past years. For instance, in 2019, the App was fined USD5.7 million by the United States of America Federal Trade Commission (FTC) for illegally collecting personal information from children under the age of thirteen (13) by collecting data such as names, email addresses and locations from young users without their parents' consent thus violating the Children's Online Privacy Protection Act.
5. The Petitioner alleged that TikTok collects a significant amount of data on its users, including information about their device location and browsing history and sharing with third party companies without users' consent.
6. The Petitioner was concerned that if the platform was not prohibited in Kenya, the App's addictive nature would lead to a decline in academic performance and ascend in mental health issues such as depression, anxiety and sleep deprivation among the youth.

#### 2.2 PETITIONERS' PRAYERS

7. The Petitioner thus prayed that the House intervenes and takes immediate action to safeguard Kenyans from the negative effects arising from the use of platform and altogether ban TikTok in Kenya.

## PART THREE

### 3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

#### 3.1 SUBMISSION BY PETITIONERS

On Thursday, 26<sup>th</sup> September 2023, the Petitioner Mr. Bob Ndolo, the CEO of Bridge Connect Consultancy accompanied by others appeared before the Committee and submitted as follows—

8. **Change of the Title of the Petition:** The Petitioners made application before the Committee to allow for the title of the Petition to read “Regulation of TikTok in Kenya” instead of “Banning of TikTok in Kenya”. The Petitioners stated that they had come to a realization that such technologies would be part of the people during the information era hence it needed to be regulated rather than banning.
9. **Concerns by the Petitioners and presentation of video evidence:** The Petitioners displayed sample TikTok videos alleged to contain hate speech, obscenity to illustrate the gravity of the content matter. The Petitioners stated that while the platform had gained popularity and Kenya was one of the major users, the content being shared was inappropriate thus promoting violence, explicit sexual content, hate speech, vulgar language, and offensive behaviour which were serious threats to cultural, moral and religious fabric of the Kenyan society. Further, the use of TikTok Live was national security concern as it allowed location tracking.
10. **Lack of regulation of TikTok:** The Petitioners raised concerns regarding the lack of regulation of TikTok in Kenya. That the application was not regulated by the Communication Authority of Kenya (CAK) leading to failure to remove or block content deemed inappropriate or offensive. That the lack of regulation has led to the misuse of the platform.
11. **Mental health concerns:** The Petitioners indicated that the addictive nature of the application would lead to the decline the general health and ascend in mental health issues such as depression, anxiety and sleep deprivation among the youth.
12. **Monetization and taxation policy:** The Petitioners decreed the lack of a clear monetization policy on the TikTok platform stating that it benefited the developers more than the users and government did not also gain from the revenues generated by the platform because of lack of clear taxation policy. The Petitioners stated that other platforms such as YouTube had clear monetization policy which allowed the users to benefit more from their content but that was not the case for TikTok. Further, the perception that the platform generated lots of income through content creation was untrue and only lured many youths who actually did not benefit from their content such as music.

### **3.2 SUBMISSION BY TIKTOK CONTENT CREATORS AND BLOGGERS ASSOCIATION OF KENYA**

On Wednesday, 1<sup>st</sup> November 2023, Mr. Kennedy Kachwanya, the Chairperson of Bloggers Association of Kenya (BAKE) accompanied by Ms. Faiza Abdi and other TikTok content creators appeared before the Committee and submitted as follows—

#### **Background**

13. TikTok was a social media platform just like Facebook and Instagram but operates uniquely due to its use of different algorithms. While most social media platforms make relationships between followers and friends, TikTok connects its audience based on the content they like and not necessarily what they follow hence creating a digital persona of a user.
14. Banning TikTok in Kenya was not a good idea as it has many positives including educating and entertaining through good content and the creation of income among the youth. Therefore, the best approach was to work on ways that can ensure consumers get the right content for the right need and for the right age.
15. The regulation aspect of TikTok should fall on the developers since they know what the user may consume right from the design stage. TikTok algorithms operate differently in Kenya compared to other regions hence they should be put to task to improve on the algorithms.
16. One of the challenges in TikTok Kenya as raised by the Petitioner was explicit content degrading the moral and cultural fabric of the society. This was occasioned by the need for content creators to earn. TikTok Kenya content was not monetarised like other platforms, some creators use other inappropriate ways to access pay. Most of the explicit content occurs in TikTok Live where a creator engages the audience live and receives gifts or coins which can be converted into money.
17. Content creators make money through influencer marketing where brands use creators with numbers and insights to promote campaigns over a period. Secondly, the gifting through Live feature enables the creators to get money from the fans who appreciate their content. However, the developer takes almost half of the money collected through gifts.

#### **Proposals for a better TikTok Kenya**

18. **Content censorship through machine learning:** Machine learning models could filter the content for the appropriate audience. Further, algorithms that can detect inappropriate content such as hate speech or explicit content could be

enabled to create some element of censorship. The use of moderators to filter content before being availed to the viewers could also ensure the right content at the right time for the right audience.

19. **Age restriction to secure minors:** TikTok should be compelled to build an age restriction element in their platform to secure minors from inappropriate content. Although it asks for the date of birth, there was no mechanism to establish the truth about the age of a user logging in. The verification model such as the one required for blue badges may be applied to ensure the right audiences receive the right content.
20. **Improved user identification:** Enhanced regulation on user identification by allowing each user to have only one account could bar inappropriate use currently being experienced with duplicate accounts. Currently, a user can mess up and only needs to open another account to continue accessing the platform. Proper identification can curb misuse of TikTok on matters such as hate speech.
21. **Regulating the Live Feature:** Regulation on the Live feature to gag content creators who share inappropriate content as well as limiting the screen recording feature for live content to reduce reposting of the explicit content once a user records them.
22. **Revision of the current monetarization policy:** A new monetarization policy to allow creators to earn from their views, likes, and following just like YouTube does. TikTok Kenya does not pay creators for the views and likes hence the influx of the use of the Live feature for the collection of gifts, yet countries earn through their views and likes. Further, the content creator should earn 100 percent of the earnings from TikTok Live.
23. **Revision of TikTok Algorithms and Features:** The algorithms for TikTok Kenya should be geared towards the promotion of good content that can build audiences. Currently, the algorithms push inappropriate content through the FYP (For You Page) including explicit content making TikTok Kenya look bad. TikTok should build features that can address cyberbullying when a matter was reported as well as copyright issues.
24. **Formation of a Digital Media Council:** A Digital Media Council that can regulate and monitor digital content and assist content creators on digital platforms would address the concerns of cyberbullying and misuse of the platform. TikTok has many cases of cyberbullying where users offend and spoil the reputation of other users or content creators but when such cases are reported or taken to court, they are not properly handled due to the difficulty in investigations of cybercrime. The council would assist in response whenever issues are reported. Currently, TikTok takes down offensive videos, but action should be taken promptly on reported videos.



25. **Establishment of a TikTok Kenya Office:** There was a need for a TikTok Kenya Office where users can report issues and regulations proposed can be followed up.

26. **Content moderation and trusted partners:** There was a need for content moderators to allow the flagging of inappropriate content. Further, trusted partners can also be used to flag out content and TikTok can rely on trusted partners in Kenya to eliminate the harmful content and act upon reporting.

### 3.3 SUBMISSION BY KENYA FILM CLASSIFICATION BOARD

On Wednesday 1<sup>st</sup> November 2023, the Ag. CEO Mr. Joel Wamalwa appeared before the Committee and submitted as follows—

#### Background

27. The KFCB noted the Petition from the Chief Executive Officer of Bridge Connect Consultancy to ban TikTok from operating within the Kenyan jurisdiction in which some of the issues raised fall within the purview of KFCB while others fall under other agencies.

28. The Petitioner averred that the content shared on the platform was inappropriate thus promoting violence, explicit sexual content, hate speech, vulgar language, and offensive behaviour citing that this was a serious threat to the cultural and religious values of Kenya.

29. The Platform was not regulated by the Communication Authority of Kenya leading to failure to remove or block content deemed to be appropriate or offensive. TikTok had been implicated in several privacy scandals over the past years as it collects a significant amount of data on its users, including information about their device, location, and browsing history, and sharing with third-party companies without users' consent.

30. Failure to prohibit the platform in Kenya would occasion addiction whose consequences include a decline in academic performance and an increase in mental health issues such as depression, anxiety, and sleep deprivation among the youth.

31. The petitioner's prayer therefore was for the House to intervene and take immediate action to safeguard Kenyans from the negative effects arising from the use of the platform and altogether ban TikTok in Kenya.

32. KFCB synthesized the Petition and noted that the issues within its purview included, content moderation and reporting, protection of minors from exposure to inappropriate audiovisual content, cultural sensitivity of the values, and public

awareness and consumer sensitization. However, issues regarding data privacy and security and the sharing of information and user details were not within its mandate.

### **Actions by KFCB regarding inappropriate content on TikTok**

33. TikTok was a platform where users upload user-generated content directly and it lacks editorial responsibility. Therefore, this has presented several challenges for which KFCB has interacted and brought to the attention of TikTok, for instance, issuing demand notices to deactivate accounts whose Live sessions are questionable despite live sessions falling outside the purview of KFCB because it only deals with recorded audiovisual.
34. KFCB held several meetings with the TikTok owners to address the issues and chatted about a way forward that they enhance their available tools online to deal with live streaming. The platform held several sessions in Kenya and discussed with users and subscribers and urged them to be responsible and avoid misuse. The platform had narrow line between freedom of artistic expression and the airing of appropriate content. Without stifling the fundamental rights of Kenyans, KFCB has asked the platform to establish tools that can mitigate the challenge and enhance compliance.
35. The platform users were enlightened on several legal provisions and instruments they ought to comply with, for instance, the Films and Stage Plays Act with regards to language and explicit content as well as the Computer Misuse and Cybercrimes Act which have provided clear guidelines on how the users ought to behave. KFCB had raised with TikTok their enforcement of community guidelines which prescribe how users are supposed to conduct their business on the platform.

### **Interventions made by KFCB**

36. *Robust Media Literacy Program (MeLiP)*: The program sought to enlighten content consumers on all digital platforms on continuous consumption, especially for children.
37. *Parents Digital Literacy Program*: The program enlightened and empowers parents to use available tools on such platforms. TikTok has several parental control tools and guidelines that can protect minors from harmful content, for instance, regarding screen time to protect them from continuous use.
38. *Digital Literacy for Creatives Program*: The program targeted content creators and users who did their art, exhibited and distributed them on digital platforms. The program encouraged the creators to complement content regulatory efforts in digital content regulation. Content creators were urged to create local and

relevant content that can focus on enhancing moral and cultural values and the psychological values of the audience.

### **Conclusion and Recommendations**

39. The KFCB proposed solutions that could be undertaken without banning the platform indicating that the platform was not bad but the users as they flaunt existing regulations.

### **Enforcement of the community guidelines.**

40. TikTok should clearly redefine its monetization models to allow creators to commensurately earn from their content. The current model does not favour the content creators hence some of them resort to using their fame to cash in on product endorsements and others promote nudity and inappropriate content to earn income.

41. Enhance the legislative framework on audio-visual distribution and exhibition conferred to the KFCB under the Films and Stage Plays Act to unequivocally provide for a framework for the regulation of digital platforms with KFCB undertaking the licensing, oversight, and monitoring of such platforms.

42. KFCB is allowed to take immediate administrative sanctions for violations by the digital platforms which include, but are not limited to, fines and takedowns. Currently, KFCB can only take a suspected violator to court which provides for a Kshs100,000 which was not commensurate to the harm they have caused. The Act as it is does not provide for takedown notices. KFCB writes to the platform owners to act which takes time and by the time action was taken, damage may have occurred.

43. KFCB had requested the Committee to recommend that resources be availed to KFCB to undertake the regulatory mandate efficiently and effectively in the development of legislation to address emerging issues such as regulation of digital platforms, monitoring tools for enhanced compliance, research and development, and awareness programmes.

### **3.4 SUBMISSION BY COMMUNICATION AUTHORITY OF KENYA**

On Thursday, 30<sup>th</sup> November 2023, the Ag. the Director General/CEO of the Communication Authority of Kenya (CAK), Mr. Christopher Wambua appeared before the Committee and submitted as follows—

#### **The impact of banning TikTok in Kenya**

44. **The emergence of a “splinternet”:** That the ban on TikTok would contribute to the emergence of a 'splinternet,' a scenario where the global internet becomes more fragmented which would limit access to global social media platforms and set a precedent for increased government control over the internet within national borders. Further, it could hinder the free flow of information and ideas across borders, potentially isolating Kenyan internet users from the global digital landscape.
45. **Inhibiting competition and innovation:** The banning of TikTok would curtail the innovative space for local content creators, limiting the emergence of fresh and engaging content hence inhibiting competition and stifling innovation within the country's digital realm. The ban's impact on the digital economy in Kenya was another consideration, potentially affecting entrepreneurs, content creators, and digital marketers who rely on platforms like TikTok for their livelihoods. Users who appreciate TikTok's unique features may shift to alternative platforms, impacting the strategies and business models of local hustles in Kenya.
46. **Violating freedom of expression:** Banning TikTok in Kenya would encroach upon the constitutional right to freedom of expression as outlined in Article 33 which guarantees every Kenyan citizen the right to freely seek, receive, and impart information or ideas. Banning TikTok would limit citizens' access to a popular digital space and be seen as restricting their right to freely share thoughts, opinions, and artistic creations.

### **Regulation of TikTok**

47. The regulation of TikTok as opposed to a complete ban would be beneficial to the sector as well as the citizens of Kenya. Regulation would maintain access to global social media platforms, which would enhance the free flow of information and ideas across borders, enabling Kenyan internet users to be competitive in the global digital landscape.

The CAK made the following proposals:

48. Strengthening the role of the Communications Authority of Kenya (CAK) in regulating new and emerging technologies. There was a Kenya Information and Communications (Amendment) Bill, 2023 which was before the Ministry of Information, Communications, and the Digital Economy.
49. The Kenya Film Classification Board (KFCB) could contribute towards ensuring that the TikTok content conforms to Kenya's culture, moral values, and national aspirations and more importantly, to protect minors from exposure to inappropriate content, since the TikTok service could be considered a film distribution service, hence within KFCB mandate of regulating distribution of audio-visual content in Kenya.

50. The Office of the Data Protection Commissioner had a critical role to play in ensuring the personal data of Kenyans was well protected. This could include adopting an approach akin to Turkey where they require social media platforms to appoint a local representative in the country, to store the user data of Turkish citizens within the country, and to obey local court orders to remove offensive content within 48 hours; otherwise, they would face a heavy fine and a de facto ban.
51. Encouraging data localization measures would ensure that certain categories of sensitive data were stored within the country. That added an extra layer of protection and control over the data, reducing the risk of unauthorized access from external entities.
52. Compelling TikTok to establish a local presence in Kenya and preferably operate a subsidiary with local ownership in line with the approach attempted by the United States. That would better serve data privacy and national security interests and enforcement. However, it would be challenging to execute given that it would require TikTok to alter its legal personality.
53. Strict enforcement of fines on TikTok where its operations are non-compliant with the Data Protection Act 2019 and other relevant laws akin to what was being done by the European Data Protection Board.
54. Public awareness campaigns to educate individuals about their rights regarding data privacy and security. Empower users to make informed decisions about sharing personal information online and raise awareness about potential risks.
55. Use of bilateral and international diplomatic channels to adopt resolutions on the access and management of user data by foreign governments and national companies.

## Conclusion

56. Adopting a holistic approach that combines legal, technical, and educational measures, Kenya can create a robust social media regulation framework that addresses addiction, mental health, data privacy misinformation, child online safety, and data security concerns. This approach not only protects the rights of individuals but also fosters trust in the digital ecosystem, promoting innovation and economic growth. Social media platforms have evolved into primary channels for global connectivity, civic engagement, and individual expression, it was imperative to enhance the regulation of these influential entities.

### 3.5 SUBMISSION BY DATA PROTECTION COMMISSIONER

The Data Commissioner, Ms. Immaculate Kassait, MBS vide a letter, Ref. ODPC/CONF/1/1 and dated 28<sup>th</sup> November 2023 submitted before the Committee as follows—

#### Background

57. TikTok was a popular social media platform that allows users to create and share short-form videos. It was developed by the Chinese company ByteDance and was launched in September 2016. TikTok became particularly popular among younger users for its creative and entertaining content.
58. Users on TikTok can create videos set to music, use various filters and effects, and engage with a wide range of content from dance routines and lip-syncing to comedy skits and educational content. The platform's algorithm was designed to learn users' preferences and show them content tailored to their interests.
59. The concerns raised in the petition were mainly about the inappropriate content that were being shared on the platform and the collection of unproportionate personal data from the application users.
60. The Petitioner alleged that TikTok collected a significant amount of data on its users, including information about their devices, location and browsing history and this information was shared with third parties without the users' consent.
61. From a review of the privacy policy of the TikTok, last updated on 4<sup>th</sup> August 2023, the Office established that the application collected information from its users including:
  - (a) Information the user provides being (the users profile information, user content, messages, clipboard information, purchase information, users phone and social network contacts, proof of the users identity or age, correspondences and information from the users through surveys, research, promotion, contests, marketing campaigns and challenges among others;
  - (b) Automatically collected information being usage information, inferred information, technical information, location information, image and audio information, cookie information; and
  - (c) Information from other sources being, where the user registers for TikTok using a third-party social network account detail, actions taken by the users outside the platform through advertisers, measurements and other partners.



62. The privacy policy has also outlined how the information collected by the application was used, some of the uses include; facilitating purchases and delivery, personalizing content, sending promotional materials, improving the platform, measuring advertising effectiveness, supporting social functions, enabling participation in virtual items program and interactive features, using user content in advertising, detecting and combating harmful activity, promoting safety and security, facilitating research, verifying identity or age, communicating changes in services, enforcing terms and policies, providing location-based services, and training technology.
63. The privacy policy also outlines the parties which TikTok shares the personal information collected from its user as well as the purpose for the sharing. This includes sharing information with social network platforms when registering with the platform, sharing content on social media platforms, providing information to service providers for business support, sharing data with payment processors and transaction fulfilment providers, utilizing analytics providers for platform optimization, sharing information with advertisers and measurement partners for advertising purposes, collaborating with independent researchers for research purposes, sharing information within the corporate group for platform improvement and support, disclosing information for legal reasons such as law enforcement requests, public profiles visible to other platform users and third parties, and disclosing information in the event of a sale, merger, or other business transactions. Additionally, when making purchases through shopping features, information was shared with merchants, payment providers, and other service providers involved in the transaction.
64. The privacy policy also outlines where the user information collected by the application was stored, the rights and choices of users, the security of the information collected from users, how long the information collected from the users was stored, how information from children below the age of 13 was handled and supplemental terms and conditions for various countries with specific data protection requirements. Kenya was not included in the supplemental terms and conditions.

### **Provisions of the Data Protection Act and the Data Protection Regulations**

65. Data controllers and data processors such as TikTok are required to comply with the various compliance obligations as provided under the Act and the Data Protection Regulations. The compliance obligations include but are not limited to, implementing data Protection by design or default. This includes Implementing the data protection principles in an effective manner, integrating and implementing appropriate technical and organizational measures to protect personal data, and Registering as a Data Controller or a Data Processor with the Office of the Data Protection Commissioner.

66. In addition, prior to commencing any processing activity, the Act requires that personal data shall only be processed if at least one of the nine legal bases listed in section 30 of the Act apply. These legal grounds include but are not limited to the consent of a data subject.
67. Furthermore, the Act requires that all processing must be done in compliance with the principles set out under section 25 of the Act. Including that personal data must be processed in a lawful, fair, and transparent manner. The requirement of transparency creates a corresponding obligation on TikTok in relation to the duty to notify the users as provided for under section 29 of the Act. As such, prior to the instigation of the processing operation, TikTok was required to notify the users in a clear and concise manner of their rights, the fact that personal data was being collected, the purpose of the processing of the personal data and if any, the third parties where personal data will be transferred or shared with.
68. Some jurisdictions had banned or restricted TikTok for country-specific reasons including allegedly going against social norms, intelligence and security concerns, privacy risk, misinformation, banning from devices used by government officials, and risk of social harmony detriment.
69. Despite having a privacy policy, guardian guide as well and technical setting in place to help users understand the platform and control its users, the Office had contacted TikTok and raised concerns relating to its processing activities. In particular, the Office sought to understand the measures that need to be taken to ensure the privacy of individuals are respected in accordance with the laws.
70. The Office of the Data Protection Commissioner had requested TikTok to:
- (a) Demonstrate compliance with the requirements of the Act and other relevant local laws;
  - (b) Provide details on the effectiveness of age verification and content filtering if any;
  - (c) Implement additional Kenya-specific supplemental terms in its privacy policy considering the provision of the Act; and
  - (d) Upon demonstration of the compliance, register with Offices as data controller and/or data processor.

### **3.6 SUBMISSION BY THE LAW SOCIETY OF KENYA**

On Tuesday, 14<sup>th</sup> November 2023, the President of the Law Society of Kenya, Mr. Eric Theuri appeared before the Committee accompanied by Ms. Mercy Mutemi, an Advocate, and an IT Practitioner, and submitted as follows—



71. The LSK had identified issues of interest in the Petition including harmful content being shared; the failure by ByteDance Ltd (the company that owns TikTok) to remove harmful content shared on the platform; TikTok's collection of data from minors without parental consent; and TikTok sharing personal information with third parties without users' consent; and whether TikTok should be banned in Kenya.
72. Regarding harmful content being shared on the TikTok platform, the Society noted that TikTok had become a very popular social media platform in Kenya with a high number of users leading to all kinds of content being shared on the platform. LSK conceded that TikTok had allowed content that was of an unconstitutional nature. However, care must be had in defining what amounts to harmful content by restricting the impugned content to only that which the Constitution forbids so as not to restrict the right to freedom of expression which would be unconstitutional.
73. Regarding TikTok's failure to remove content from the platform, LSK submitted that while the Petitioner's claim that TikTok should be banned in Kenya because of its failure to remove harmful content on the platform was misguided and failed to consider the way the TikTok platform works.
74. The TikTok algorithm operated on a recommender basis and was optimized, as claimed by ByteDance Ltd, to remove all harmful content before it was served to a user. That algorithms are systems trained by human beings. To catch certain kinds of content, they must be taught what that content is, to begin with, for example, if certain words or phrases amount to hate speech in a certain community, the algorithm would need to be trained to take down any content that contains that word or phrase.
75. Content moderation was sometimes affected by language inequity in the training of algorithms and most of the social media platforms do not invest in training the algorithms in local languages.
76. Human content moderation through the "Report" feature required that the moderator spoke that local language and understood the context before taking down the offensive content.
77. **TikTok content moderation for the local languages spoken in Africa** was done in Kenya through an outsourced company known as Majorel Kenya Ltd which was a Business Process Outsourcing (BPO) company regulated in Kenya and licensed by the Communication Authority of Kenya (CAK).
78. Regarding **harmful, inciteful, and dangerous content not taken down from TikTok**, LSK submitted that TikTok Community Guidelines were against such content hence the question remains why such kind of content was allowed on the

platform. That could be occasioned by the lack of proper training of TikTok algorithm to understand local languages making it unable to automatically pick up such content and remove it from the platform. Also, there were **inadequate human TikTok Content Moderators as Majorel Kenya Ltd had only hired about 200 content moderators to serve the whole African region with only ten deployed to work on Swahili and Sheng languages.** With such a limited number of moderators and with the focus being on Swahili and Sheng, what hate speech shared in the mother tongue was unlikely to be caught unless it elicits public uproar. Further, the care the content moderators receive was inadequate.

79. Regarding TikTok's **collection of data from minors without parental consent, and TikTok sharing personal information with third parties without users' consent**, the Society agreed that the issue of data protection should be looked at because the right to privacy was protected under Article 31 of the Constitution alongside the Data Protection Act which had been operationalized. The Society recommended that since the Office of the Data Protection Commissioner was fully operational, the issue be deferred to the Commissioner for further investigation and further action.

80. Regarding whether TikTok should be banned in Kenya, the Society expressed believe that the Petition was misinformed and conflated issues. While the issue of harmful, inciteful, and dangerous content must be addressed with immediacy, the solution did not lie in banning TikTok in Kenya for the following reasons-

- (a) Banning TikTok would amount to unfair competition with other social media platforms.
- (b) Banning TikTok would be an unconstitutional limitation on the right to freedom of expression and the freedom of the media. The internet was boundaryless and any attempt therefore to ban TikTok in Kenya would be an exercise in futility.

#### **Proposals by Law Society of Kenya**

81. The Society submitted that the solution was in the legislation and oversight of algorithm work and content moderation work through:

- (a) Undertaking investigation of ByteDance Ltd and their Kenyan agent Teleperformance on:
  - i. The number of posts generated on the TikTok platform from Kenya;
  - ii. The number of posts and comments reported by Kenyan TikTok users for violating TikTok Community Standards in a day;
  - iii. The number of Kenyan posts and comments taken down by TikTok for violating TikTok Community Standards in a day;

- iv. The measures taken to train the TikTok algorithm to pick up harmful content in the local languages spoken in Kenya and to remove the same from the platform;
  - v. The number of content moderators employed to moderate content shared in the local languages spoken in Kenya and the number of moderators deployed at every shift; and
  - vi. The measures being taken to care for and protect the mental health of the content moderators currently employed and working in Kenya and whether these measures are in line with the Occupational Health and Safety Act.
- (b) Making recommendations on how many more content moderators ought to be engaged to protect TikTok users and the public at large, considering that TikTok draws a lot of monetary revenue from Kenyan TikTok users.
- (c) Making recommendations to the Communication Authority of Kenya (CAK) on additional licensing requirements that need to be levied on Business Process Outsourcing companies that undertake sensitive work such as training of algorithms, machine learning, and content moderation.
- (d) Legislate content moderation and algorithm work to benefit Kenyans. Therefore, there was a need for the National Assembly to consider urgent legislation in the following areas-
- i. The collection of data to be used in machine learning and in training algorithms;
  - ii. Measures to prevent algorithm bias in machine learning and in training algorithms;
  - iii. Training algorithms to recognize and uphold the laws of Kenya and the rule of law;
  - iv. Measures to ensure algorithms trained in Kenya, whether done directly by Big Tech companies or their agents, Business Process Outsourcing companies are trained in local languages to prevent language inequity where Kenyan users are not protected by algorithms;
  - v. Requirement that all content moderation work being done in Kenya must be undertaken in accordance with the rule of law. For instance, there should be a penalty for a company that undertakes content moderation in Kenya to fail to take down illegal content that was reported by Kenyan social media users;

- vi. Laws seeking to hold both the Big Tech companies and their local agents responsible in cases where they have underinvested in content moderation. There should be aggressive penalties where this underinvestment causes harm to the Kenyan public.
- vii. Protection of workers doing algorithm work and content moderation work. Legislation should cover: the standards to be observed when recruiting workers from outside Kenya to come to Kenya to do this work. This should include full disclosure on the kind of work they are coming to do in Kenya and the potential dangers; the standard of mental health care to be provided for workers doing digital work especially dangerous work like algorithm training and content moderation work; and protection of workers engaged through the Business Process Outsourcing model where the work they are engaged to do was dangerous digital work.
- viii. Amendment of the Occupational Health and Safety Act to include harm caused by doing digital work and to give the Director of OSHA the mandate to set standards regarding protection measures to be taken about Occupational Health and Safety. Considering the technical nature of such injuries and the burden of proof further amendments be done to confer concurrent jurisdiction to the Courts to handle work-related injuries under Common Law Jurisdiction.

### **3.7 SUBMISSION BY THE NATIONAL COHESION AND INTEGRATION COMMISSION**

On Tuesday, 28<sup>th</sup> November 2023, the Chairperson of National Cohesion and Integration Commission (NCIC), Rev. (Dr.) Samuel Kobia appeared before the Committee together with a team from the Commission and submitted as follows—

- 82. The NCIC had engaged various social media platforms and noted that occasionally some of them had become avenues for incitement, ethnic contempt, and misinformation among different communities in Kenya. Politicians, especially during campaigns, had used these platforms to disseminate content inciting division. TikTok was one of the popular social media applications that allowed users to create, watch, and share videos shot on mobile devices or webcams made possible for users to exercise their freedom of expression in various ways.
- 83. Issues with TikTok: TikTok, distinct from other platforms, permitted the sharing of explicit and inappropriate content including explicit material, violence, hate speech, vulgar language, and offensive behaviour, accessible to users of any age due to the lack of robust age restrictions and self-regulation.
- 84. Global Usage and Bans: Kenya held a significant position globally in TikTok usage, with a majority engaging in diverse purposes, including news consumption.

Notably, numerous countries, such as India, United Kingdom, Canada, EU, Afghanistan, India, Somalia, Jordan, and several others, had taken steps to ban TikTok due to similar concerns about security and societal harm.

85. NCIC'S Measures to Curb Misuse: NCIC had actively worked on various strategies, including strengthening content moderation policies, engaging social media tech companies to partner on content moderation, investigations into incitement and hate speech cases, raising awareness, implementing user-friendly reporting mechanisms, and fostering collaboration among stakeholders to address harmful content online.

### **Recommendations**

86. That the request to ban TikTok in Kenya was unwarranted step hence the Commission recommended:

87. The development of comprehensive policies, akin to the EU's Digital Services Act, aimed at cultivating a safer, more transparent, and accountable online environment.

88. Strict regulation and oversight role by the Government that would proactively safeguard citizens, particularly the younger demographic, from detrimental exposure to content negatively impacting societal cohesion and values.

89. The Trust and Safety team review removes or flags down any content that violates the guidelines. Similarly, community members may report on any violations on the app or website.

90. TikTok to engage local moderators with the capacity to review online content that done in the Kenyans dialect as users engage in hate speech tend to use local vernacular languages.

91. The government puts in place strict measures to ensure the protection of the vulnerable groups from harmful content.

### **3.8 SUBMISSION BY THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

The CEO, KNCHR, Dr. Benard Mogesa, PhD, CPM vide an email dated 16<sup>th</sup> November, 2023 had submitted an advisory concerning the Petition and highlighted users' rights and fundamental freedoms enshrined and protected by the Constitution and the limitations applicable as well as the various recommendations as follows—

92. That the Committee should disallow the petition by declining the invitation to ban TikTok as it risks infringing on fundamental rights and freedoms.

93. The Committee nevertheless should consider the reasons given by the petitioner, and in its oversight role, enhance the regulatory mechanism to ensure that the right to access information and freedom of expression was exercised and enjoyed to the maximum extent possible and within the confines of the Constitution and relevant laws.
94. Instead of a complete ban, the State should implement robust content moderation policies focused on identifying and restricting access to harmful content, particularly for minors.

**The Commission further made the following specific recommendations—**

95. The State in collaboration with proprietors of TikTok to ensure the development and enforcement of age-verification mechanisms to prevent underage users from accessing inappropriate content and to ensure that its policies and operations align with Kenyan laws and international human rights standards.
96. Both the Kenyan Government and proprietors of TikTok should develop a mechanism for regular reviews and audits of TikTok's existing age-gating features as well as its content moderation policies and practices. The Commission was cognizant that a meeting has already been held between H.E the President of the Republic of Kenya and the Chief Executive Officer, TikTok where among others TikTok and the Kenyan government agreed to work together to ensure moderation and monitoring of content on the social media platform.
97. Rather than an outright ban, the KNCHR recommends investing in digital literacy programs and awareness campaigns. Empowering users with the knowledge and skills to navigate the digital space safely was an effective long-term strategy. This aligns with the United Nations Guiding Principles on Business and Human Rights, emphasizing the responsibility of the state to protect human rights while promoting business innovation.
98. Regular monitoring and review of the contemplated social media Guidelines to gauge their effectiveness and impact (both real and potential) on human rights.



### 3.9 SUBMISSION BY THE MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

On Thursday, 21<sup>st</sup> March 2024, the Cabinet Secretary for the Ministry of Interior and National Administration, Hon. (Prof.) Kithure Kindiki appeared before the Committee and submitted as follows—

#### Background

99. The petition submitted by Mr. Bob Ndolo, CEO of Bridge Connect Consultancy, praying for the banning of TikTok in Kenya, stemmed from genuine concerns, yet navigating this issue would be complex. The evolving landscape of social media presents a fundamental juxtaposition with the trajectory of our future world. Achieving equilibrium amidst these contradictions demands careful contemplation and alignment with the role of social media in our society.
100. Kenya had witnessed a swift embrace of technology, with extensive digitization across both public and private sectors, earning commendable ranks in social media usage and communication. This trajectory underscores the pivotal role social media was poised to play in shaping the global future. Beyond being mere communication channels, social media platforms serve as the linchpin of the 4th Industrial Revolution, revolving around Artificial Intelligence, Big Data, and the Internet of Things.
101. Among these platforms, TikTok stood out, championing pervasive connectivity that challenges conventional modes of communication. Alongside TikTok, popular social media platforms in Kenya included Facebook, Instagram, Twitter, Telegram, and Signal.
102. For many Kenyans, social media served as a vital means of staying connected, sharing information, and coordinating events. Moreover, businesses have embraced these platforms to amplify their brand presence and reach expansive audiences. Social media, therefore, emerges not only as a communication tool but also as a cornerstone of business outreach strategies.
103. While social media platforms offered significant benefits such as facilitating commerce, fostering connectivity, and empowering content creators, they also exposed users to various risks. TikTok, for instance, had been exploited by malicious actors to propagate extremist ideologies, perpetrate identity theft and fraudulent schemes, including fake forex trading and deceptive job recruitment practices.
104. Privacy breaches and integrity violations were rampant, with explicit sexual content and intimate imagery often proliferating through the platform's live feature. These risks engendered distress among users, exposed minors to inappropriate content, and sow discord within communities.

105. The request by the Petitioner, the CEO of the Bridge Connect Consultancy, Mr. Bob Ndolo, regarding the banning of TikTok in Kenya had some legitimate basis but it was not an easy matter. The entire social media spectrum presented a major contradiction to the future of the world. Therefore, the balance between the contradictions required serious reflections and harmonization with the place of social media.
106. Kenya had experienced rapid adoption of technology and widespread digitization of services in both public and private sectors, and ranked highly in use of social media and communications space, which would be the future of the world. Social media was not merely a communication platform, but the interconnectivity that it provided the core of the 4th Industrial Revolution that would be centred around Artificial Intelligence, Big Data and the Internet of Things.
107. Among these were social media platforms including TikTok which had promoted ubiquitous connectivity which was dissolving the traditional way of communication. The most prominent social media platforms in Kenya include TikTok, Facebook, Instagram, Twitter, Telegram and Signal.
108. Most Kenyans embraced social media for keeping in touch, sharing information and planning events. Organizations had also adopted use of social media to promote their brand and market their products. Social media was therefore a key tool not only in communication but also in businesses to reach large audiences.
109. There was value provided by social media platforms including commerce, connectivity, efficiency, and transformative fortune for content creators. However, the more information shared on social media, the higher the number of risks users get exposed to.
110. For instance, social media including TikTok had been misused to endanger safety in the following ways:
- (a) Generating and spreading malicious propaganda including by terrorist groups to spread their ideology and fear to communities;
  - (b) Identity theft, ransoms, impersonation, and hijacking of popular accounts to embarrass public officials, celebrities, high profile individuals including business people;
  - (c) Fraudulent and unlawful commercial transactions including luring users into forex trade and job recruitment programs;



- (d) Violation of privacy and integrity by generating explicit sexual content and intimate images through its live feature. This had caused early exposure to destructive content in pornographic and sexual space especially for the children.

111. These risks had caused social distress among users, exposed minors to inappropriate content and promoted social discord among the society.

### **Action taken by the Government**

112. Data controllers and data processors such as TikTok were required to comply with the various obligations under the Data Protection Act, 2019 and the Data Protection Regulations. The compliance obligations included but not limited to, implementing data protection by design or default including:

- (a) Implementing the data protection principles in an effective manner;
- (b) Integrating and implementing appropriate technical and organizational measures to protect personal data; and
- (c) Register as a data controller or a data processor with the office of the Data Protection Commissioner.

113. The Office of the Data Protection Commissioner, had engaged TikTok and raised concerns relating to its data processing and required TikTok to:

- (a) Provide the levels of compliance with the laws of Kenya including the Data Protection Act and Data Protection Regulations;
- (b) Measures to ensure the privacy of individuals was respected in accordance with the laws since the Government was not satisfied that there was compliance;
- (c) Details on the effectiveness of age verification and content filtering;
- (d) Implementation of Kenya-specific supplemental terms in its privacy policy considering the provision of the Kenyan law and how they are customizing the data processing to comply with Kenyan laws;
- (e) Demonstration compliance and register with the Office of Data Protection Commissioner as a data controllers and data processors going forward.

### **3.10 SUBMISSION BY MAJOREL KENYA LTD**

On Wednesday, 14<sup>th</sup> December 2023, e Site Director, M/S Majorel Kenya Ltd., Mr. Sven De Cauter appeared before the Committee and submitted as follows—

114. That Teleperformance was a global digital Business Process Outsourcing (BPO) company with two sites in Nairobi and one site in Mombasa. The company had employed thousands of staff in Kenya to work on content moderation for both Meta and TikTok platform to make them safe. However, they lost the contract with Meta following a court case.
115. That Kenya was a vibrant and a potential market for the BPO industry which included customer care, IT, Customer experience (CX), call centres, and content moderation which would create employment in Kenya and contribute to the GDP just like in other countries. For instance, the industry had contributed to 6.5 per cent of the GDP in India, 7.5 per cent in Philippines with a total of 1.6 million people employed in the BPO industry.
116. That the ban of TikTok would breach several freedoms including access to information, speech and education hence the need for moderation to keep the platforms safe.
117. That a typical working shift for moderators was 8 hours with a two-and-a-half-hour break per day which included a mandatory wellness and counselling sessions every week. The Company had established breakout and recreational areas for its employees as wellness was key to the content moderation work.
118. The content moderators only dealt with content already flagged by an AI system and classified for review. The moderators were only interacting with content that was questionable and the AI was not sure about its classification.
119. The site by Teleperformance was not the only content moderation site for TikTok. However, every site globally worked to the same standards and regulations.

The Committee further sought clarity and detailed information from Majorel-Teleperformance and on Tuesday 8<sup>th</sup> April 2024, the Site Director, Majorel-Kenya Ltd., Mr. Sven De Cauter appeared before the Committee and submitted as follows—

### **Background**

120. Majorel Kenya Limited, headquartered in Nairobi, Kenya, was a registered Business Processing Outsourcing (BPO) company. The company specializes in designing, building, and delivering custom end-to-end customer experience solutions for esteemed digital-born and vertical leading global brands spanning various sectors and industries.
121. The company prioritized the safety and well-being of its moderators, ensuring a secure and healthy work environment. It provides psychological support and

counseling to moderators both during and after their employment. Additionally, Majorel adheres to a wellness schedule and Wellness & Resilience framework, which include moderator training and promote workplace safety.

122. Majorel did not represent TikTok therefore, any inquiries regarding the regulation of TikTok's activities, data collection practices, device information, location tracking, browsing history, and data handling procedures would be directed to TikTok/ByteDance.

**The Director responded to the queries earlier inquired by the Committee as follows—**

123. **Regarding the query on investigation into the perceived monopoly on content moderation services within Kenya**, the company was not aware of any investigation in relation to monopoly in content moderation services in Kenya by the Competition Authority of Kenya.

124. **The details of the content moderation services provided to TikTok, how the work was done; languages provided; type of work, how it was queued up for employees and the functioning of the algorithms.**

- (a) That company had 1000 employees who provided customer support, technical support, and trust and safety content services to some of the world's leading global brands.
- (b) The Company did not host, own, or administer any of the clients' systems or any personal information of clients' customers and sought to maintain compliance with all the applicable local laws and regulations.
- (c) It ensures that content moderators cannot download user-generated content or guidance documents to any location outside of the client tool as shared by the client.
- (d) The type of content moderated includes user profiles and user-generated content on TikTok's platform, including images, audio, videos, comments, direct messages, chats, and livestreams to evaluate whether user generated content or a user profile violates TikTok's platform use policies.
- (e) The employees were sometimes exposed to user-generated content that may be disturbing, including content involving minors. However, they were trained to tag such material for escalation to the client for review and any necessary reporting or action.
- (f) The AI algorithms and platform algorithms belong to TikTok and not the Company as a content moderator.

125. Assessment of the ratio of counsellors per moderator or shift aligned with the incoming volumes of content and moderator coverage for the volume of content and the daily workload per moderator. The working hours for agents/content moderators.

- (a) All working shifts have counsellors' coverage of the ratio 1:38 which was within the industry standards of the 1:75. There are six (6) on-site counselors to handle any moderators' wellness needs and support.
- (b) Team leaders and quality assurance leads were always on-hand to support the content moderators, for example, if they needed advice on how to process a particular case or need some 'time out' after reviewing particularly graphic content. The ratio was 1:10 which was within the industry standards of 1:20.
- (c) Content moderator shifts were aligned with expected incoming volumes which are supplied by TikTok each month. There were four 9-hour shifts each day; 7am-4pm; 9am-6pm; 4pm-1am; and 10pm-7am.
- (d) The volumes handled by a content moderator varied widely depending on the nature of the content. However, the employees' productive hours (without breaks) were capped at 40 hours per week to allow the employees a better life-work balance. They worked for 45 working hours per week (with breaks).
- (e) The moderators were also entitled to 2.5 hours personal wellness time per week or 30 minutes per day and 1.5 hours group wellness time. There were also provisions for additional wellness on need basis for any personal reasons.
- (f) Keeping the internet community safe was a key aspect of the service, hence the need for local knowledge and cultural nuance of the content moderators.
- (g) The Company had round-the-clock coverage for three markets namely Swahili, Hausa and Yoruba while Amharic and Somali had nine-hour coverage per day.
- (h) The various moderators were assigned in the different shifts according to volume patterns with the most staff being on day shift and about 10-20 per cent allocated the full night shift. However, the number could increase depending on the volume of content to be reviewed, and other business needs.

**126. The volume of content for moderation, including the handling of languages and dialects, which exceed 100 different dialects in Kenya and addressing situations where AI or moderators face challenges in understanding.**

- (a) The general guidance and procedure around content displayed in foreign language was for moderators to moderate any violations based on what they visually perceive in the videos or photos. However, for any audio or written content (captions) in a foreign language not featured in such content, the content moderator would flag such content as containing "Foreign Language".
- (b) All moderators were advised to escalate issues to their supervisors in cases where they came across content that would be difficult to moderate.

**127. The reasons behind the loss of the Meta contract:** The Company, Samasource, and by extension, Meta were not related hence it was unable to speculate on the question. The contract to provide the content moderation services to Meta was awarded to the Company, which had even gone ahead to recruit the moderators for this service. However, commencement of the contract was thereafter halted due to the orders in place, in relation to the court litigation in the Employment and Labor Relations Court namely Kiana Monique & James Agada Mark and 182 Others vs Meta Platforms Inc & Meta Platforms Ireland Ltd and 9 Others [ELRCPET/E05212023]

**128. Regarding the connection between the alleged negative media coverage on content moderation in Kenya and its relation to TikTok,** the Company's primary goal was to ensure that the online community was safe and shielded from any form of explicit content.

**129. Regarding why TikTok had been banned in some countries,** the Company and TikTok were separate entities with distinct legal personalities. It provided services to TikTok and as such, the Company did not wish to be drawn into such speculation.

**130. Regarding the origin of TikTok and their measures to safeguard young children and youth from Kenya,** Majorel Kenya and TikTok were separate legal entities hence not in a position to address the query. However, its aim was to safeguard all the platform users by ensuring that all content forwarded for review by TikTok adhered to the established TikTok policies and community guidelines.

**131. The Company's prayers:** The Director Majorel Kenya Ltd stated that the Company prayed that Committee makes a finding that the Company was compliant with all the applicable laws and regulations in the course of the provision of its content moderation services.

Vide a letter electronic mail dated 2<sup>nd</sup> May 2024, the Country Director of Majorel Kenya Ltd., Mr Sven de Cauter made further submissions as follows:



## Content moderation process

132. After being fully trained on TikTok's policies and community guidelines, Majorel content moderators are administered an examination by TikTok to test their understanding of the aforementioned policies. After passing these examinations by TikTok, they are given logins to TikTok's content moderation system. Content is allocated to them by TikTok's system for moderation. Majorel moderators review the content solely based on the guidelines provided by TikTok. If content violates these TikTok policies or TikTok community guidelines, it is flagged or tagged and sent back to TikTok for its consideration. The content moderation process illustrated the diagram below provides a visual representation of the process, highlighting the various stages and actions involved:

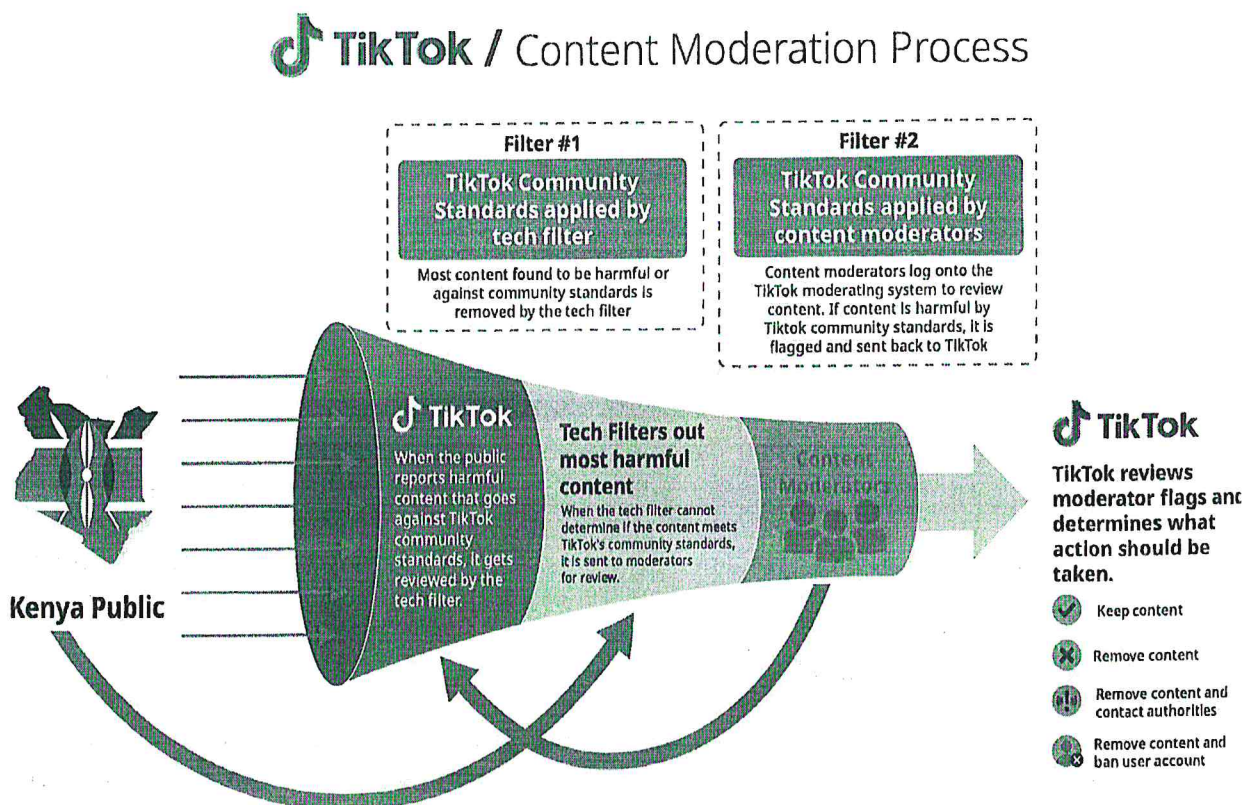


Figure 1. TikTok content moderation process

133. When users upload content to TikTok, it first goes through an automated review process before it is viewable on the platform. If content is identified as a potential violation, it will be automatically removed, or flagged for additional review by moderators. Additional review occurs if the content gains popularity or has been reported as violating community standards.

134. Majorel's moderators play a crucial role in effectively moderating TikTok content, with particular emphasis on addressing cultural nuances. Coming from diverse Kenyan cultural and social backgrounds, the moderators possess a deep understanding of the local context, culture, norms, and practices, enabling them to navigate content moderation with sensitivity and accuracy.

135. While Majorel moderators strive for excellence in their work and take their content moderation duties extremely seriously, Majorel has no ability to either remove content from the TikTok platform, or to report content to the authorities. TikTok's moderation system is simply not set up that way. The moderators are only able to tag and flag content for further action by TikTok. The final decision on what to do with user generated content rests solely with TikTok.

136. Majorel does not host, own, or administer any of TikTok's systems or the personal information of TikTok's users. All content moderation is done in the back-end on TikTok's software as guided and directed by TikTok.

#### **The personnel assigned to TikTok**

137. There are 250 Majorel employees assigned to TikTok content moderation. The moderators head count is assigned based on the client's request and contractual terms agreed therein.

#### **Majorel's commitment to working with clients and other stakeholders to ensure online safety of Kenyan youth**

138. Majorel is steadfast in its dedication to provide thorough and accurate content moderation services to its clients, towards helping to ensure a safer and more secure online ecosystem for the benefit of the Kenyan public. Through collaborative efforts with platforms like TikTok, we are actively enhancing policies, and practices to safeguard users, particularly the younger demographic, from harmful content and interactions.

139. Additionally, Majorel is engaging in open dialogue and collaborating with other industry stakeholders to ensure best practices in content moderation to ensure the highest safety standards are upheld. For example, Majorel's parent company has joined the Children Online Protection Laboratory, working with a global group of stakeholders and the French Government to make new strides in safeguarding online experiences for children.

140. Additionally, it joined key tech industry leaders including Google, Meta and OpenAI in a coordinated effort aimed at preventing harm to children through the

misuse of generative artificial intelligence technologies. Majorel's parent company is the only content moderation service provider to help launch an initiative by committing to support tech clients in helping to keep children safe as they develop, deploy and maintain generative AI technologies.

### **3.11 SUBMISSION BY THE MANAGEMENT OF TIKTOK**

On Tuesday 8<sup>th</sup> April 2024, the Director of Government Relations and Public Policy for TikTok in Sub-Saharan Africa, Mr. Fortune Mgwili-Sibanda on behalf of TikTok Management appeared before the Committee and submitted as follows—

#### **Background**

141. TikTok aimed to positively impact the Kenyan user community by fostering creativity and joy. With over 1 billion monthly users globally, the platform served as a space for creation, learning, sharing, and discovery. Ensuring platform safety was a top priority for TikTok. Particularly for Kenyan youth, TikTok was a significant platform for self-expression, creativity, education, connection, and opportunity.

142. According to the National Council for Population and Development, Kenya was a youthful nation with over 80 per cent of the population aged 35 years and below. Many of these young people may be struggling to find employment, and TikTok would like to partner with the Kenyan government to empower them to leverage technology for sustainable livelihoods.

#### **Support to Content Creators**

143. TikTok actively supports creators through partnerships, exemplified by initiatives like the Africa Creator Hub. Launched in 2023 in collaboration with a local agency, Wowzi, the program facilitated the graduation of a cohort of creators from Sub-Saharan Africa. The program's objective was to nurture and enhance their talent, empowering them to leverage their creative expression and skills to sustain their livelihoods.

144. The programme called hashtag #LevelUpAfrica. This programme provides support to creators across the continent with the tools to create higher-quality content using all the features and resources available to them on the platform. The programme was also used to educate the content creator community in accordance with the Community Guidelines as well as to provide insights into how to build a career using the platform.



## Driving learning and education

145. TikTok was used as a platform by millions of Kenyans to educate themselves and others on topics around entrepreneurship, financial literacy, cooking and sports, to mention a few. This had made learning more accessible and engaging. For example, today, the hashtag *#LearnOnTikTok* has over 33 million videos created by the community and showcases easy-to-follow instructions on things such as how to best manage personal finances, exercises to improve mental and physical health, or how to write an eye-catching CV.

## The Creative economy

146. In February 2023, the Ministry of Youth Affairs, Creative Economy & Sports launched the Talanta Hela project, a flagship plan to support talents in the sports and creative industries. The project was in line with the government's Bottom-Up Economic Transformation Agenda and aimed to discover, nurture and monetise Kenyan talent.

147. The digital creative industry has emerged as one of the fastest-growing sectors in the Kenyan economy. This served not only as a source of employment, but also as a catalyst for national cohesion. Therefore, a ban on TikTok would hinder the progress of such causes, as TikTok plays a key role in surfacing local Kenyan talent and exporting it to global audiences.

## Small to Medium Enterprises

148. TikTok had become a powerful tool for entrepreneurs who make up the majority of Small and Medium Enterprises (SMEs) in Kenya.

149. The Kenyan startup scene was a vibrant and dynamic ecosystem that was driving innovation, economic growth, and job creation in the country. Last year, we embarked on a transformative partnership with Yunus Social Business (YSB), to invest over USD1.5 million in selected social enterprises in Kenya. The first ever beneficiary of the *#TikTokEmpower* programme was BURN Manufacturing, a social enterprise that produces cookstoves that use less fuel, reduces greenhouse gas emissions by 80 per cent, and has already reached over 22.5 million people. In 2024 and beyond, we will continue to roll out this programme through identifying more deserving recipients in Kenya and East Africa, and help them scale for wider impact.

150. Entrepreneurs, startups and SMEs relied on the platform as an effective way to reach their target audience and increase brand awareness. This helps put much-needed income in their pockets to support themselves, their families and millions of others in the entrepreneurial ecosystem.

## **Supporting the Silicon Savannah**

151. Kenya's internet infrastructure journey had been a remarkable tale of overcoming challenges and transforming into a digital powerhouse (also known as "the Silicon Savannah"), enabling the country to harness the power of technology to drive economic growth and improve the lives of its citizens. Indeed, harnessing the power of the digital economy was one of the key development pillars of the current Kenya Kwanza government.
152. Platforms such as TikTok has an important role in expanding the democratic and civic space for Kenyans of all walks of life to express themselves and take part in civic processes and debates on matters that affect their lives. Freedom of expression was a right that was guaranteed by the Constitution of the Republic, and open, robust debates such as those you would see online are part of the lifeblood of democracy. Therefore, shutting down those spaces would be tantamount to silencing citizens, and denying them of their Constitutional rights.

## **Measures by TikTok to protect its users**

153. TikTok recognises that any platform needs to have a huge responsibility. Therefore, the concerns raised about the platform are noted, and taken seriously. It was in the interest of TikTok to address such concerns, correct misconceptions and hopefully adequately demonstrate its commitment to keeping our Kenyan community safe online. Safety was one of the core priorities at TikTok and it was the north star, the guiding light on everything that done by the platform to ensure it inspires creativity and brings joy to more than a billion users worldwide
154. As a global platform that thrived on creativity, it was important that the users feel safe and comfortable online. The user policies and tools are developed to promote a positive and safe environment for our community. Known as Community Guidelines, these policies define a set of norms and a common code of conduct for TikTok users; they provide guidance on what is, and what was not allowed on the platform to make it a welcoming space for everyone.
155. TikTok provided its community with a range of tools and resources to help them manage their experience on the platform. These tools included but are not limited to: Family Pairing Tool which let caregivers pair their accounts to that of their teens, Screen Time Management Feature which allows users to own and manage their screen time.
156. The Safety Centre also provides helpful resources for new and existing users, families and caregivers to help them build an online experience that was right for them. TikTok had more than forty thousand (40,000) trust and safety professionals worldwide, working around the clock to protect our community, and has begun

investing more than two billion US dollars globally in trust and safety efforts in 2024 alone to make this a reality.

157. The Committee or any government agency was welcome to take a tour of TikTok's Transparency and Accountability Centre in Dublin for a first-hand experience of how the teams at TikTok go about securing its community and users including:

- (a) How TikTok uses technology to keep its community safe;
- (b) How moderation teams make decisions about content based on the policies in the Community Guidelines;
- (c) The way human reviewers supplement the moderation efforts using technology to help catch potential violations of the policies;
- (d) In addition to content moderation, the visit will offer detailed insights into the recommendation technology, and the commitment to data privacy and security.

158. Locally, the platform continues with capacity building workshops for policymakers and regulatory agencies on how TikTok works, with a special focus on online safety, data privacy and content moderation on the platform.

159. TikTok values the opportunity to contribute to keeping the Kenyan community safe on its platform and look forward to collaborating more closely with all the stakeholders in Kenya including government, the media, civil society, parents, teachers, guardians and the wider community itself. However, keeping Kenyans safe online required a collaborative effort as well as collective action, and TikTok's commitment to this course was ongoing and unwavering as there was no finishing line in online safety.

### **Addressing the Concerns raised in the Petition**

160. To address the concerns raised in the Petition, TikTok management responded on the following areas:

- (a) A look into TikTok, including a focus on our ownership structure;
- (b) A deep dive into our Community Guidelines and a look at how we moderate content on TikTok;
- (c) A specific focus on how we deal with issues of minor safety, misinformation and how we protect user privacy;
- (d) An exploration of some of the work we have done in Kenya for the creator economy as well as our user safety campaigns; and
- (e) How we work with governments, media and civil society groups to keep the platform safe.

### **Introduction to TikTok**

161. TikTok was owned by ByteDance which has a board of management chaired by Mr. Rubo Liang and other board members include Mr. Arthur Dantchik, Mr. William E. Ford, Mr. Philippe Laffont, and Mr. Neil Shen. TikTok platform was available in over 150 countries in over 75 languages with over 50 global offices. The mission was to inspire creativity and bring joy.
162. TikTok had over a billion people on the platform every month for various purposes including learning something new, expressing creativity, growing businesses, and getting entertainment.
163. The TikTok's FYP algorithm recommended content based on a combination of several factors including time watch rate (average time spent watching the video), participation in hashtag and trends, comments (reactions to user's videos), follows (users who follow and visit a user's profile), shares (sharing of user's videos), and number of likes.
164. The top content categories included comedy (including scripted drama, skits, and stand-up); entertainment (pop culture, movies and events); motivation (career, wellbeing and wellness); beauty (make-up, tutorials, fashion); lifestyle (food, travel, tourism, fitness, health); and sports (football, athletics, rugby, motorsports).
165. The popular content trends in Kenya included entertainment, lifestyle & education which form the dominant themes with most content and high viewership. Popular hashtags with high viewership and publish numbers are #Nairobi and #KenyaTikTokers. Kenyans are learning new skills using #LearnOn TikTok and #CreateWithEffect which both have high engagement rates and likes. Language specific hashtags like #SwahiliTikTok #KikuyuComedy are gaining popularity on Kenyan trends.

### **TikTok partnerships**

166. **Safety:** In partnership with Eveminet, TikTok launched a campaign to educate users, parents, guardians and teachers on how they can keep the younger ones safer online. The campaign has already reached over 116,355 participants, across 21 of Kenya's 47 counties. During the Safer Internet Month of February 2024 alone, the campaign reached 56,020 learners.
167. **Elections:** TikTok partnered with the IEBC to launch an elections hub to help users find accurate and credible information during the 2022 elections and with Strathmore University to launch one of its flagships #TikTok4Peace initiative aimed at nation-building and fostering active citizenship.

168. **Creators:** TikTok partnered with Wowzi to launch the African Content Creator Hub where 28 creators from West and East Africa participated in an eight-week bootcamp aimed at upskilling emerging African creators on how to leverage their creative expression and turn their talents into sustainable careers.

### **TikTok creator support**

169. **LevelUp Africa:** Level Up Programme which was a first-of-its-kind creator amplification programme facilitated by the talented TikTok team which supported almost 200 creators in 2023 alone. In 2024, TikTok hosted the first *#LevelUpAfrica* event in Nairobi.

170. **African All Star:** Celebrating creators across sub-Saharan Africa, in 2023, TikTok launched the African All-Stars programme where it profiled local creators on the TikTok newsroom and use the platform to shine the light on creators making a positive contribution through their content. Currently over 180 creators are supported in Kenya through the programme.

171. **Masterclasses: Kalasha Film Festival:** TikTok team regularly partnered with local organisations such as the Kenya Film Commission to support events such as the Kalasha Film Festival, providing attendees with best practice education and utilising our safety tools effectively.

### **Community Guidelines and Keeping the platform safe**

172. TikTok works to maintain a safe environment where users are welcome to create videos, find community, and be entertained. Safety was essential to feeling comfortable expressing yourself authentically, hence the need to uphold the Community Guidelines by removing accounts and content that violates them.

173. TikTok Community Guidelines reflected the values and defined a common code of conduct on the platform. These guidelines allow the community to help maintain a safe shared space. The platform valued that the users come from a huge breadth of nationalities and cultures, and the Community Guidelines take into account the cultural norms and local regulations of the countries in which it operates.

174. TikTok took a holistic approach when crafting the policies and community guidelines. The diverse consultancy between regulators, experts, and NGOs works in tandem to localize and refine the policies in accordance with laws, culture and social values.

175. TikTok community principles guided the decisions about content moderation to ensure fairness in its actions to protect human dignity and strike a balance between freedom of expression and preventing harm.

176. The previous community guidelines spoke to various areas including dangerous individuals and organisations; illegal activities and regulated goods; violent and graphic content; self-harm and disordered eating; hate speech; harassment and bullying; adult nudity and sexual activities; minor safety; integrity and authenticity; and threat to the platform's security.

177. The updated community guidelines spoke to youth and safety; safety and civility; mental behavioural health; integrity and authenticity; regulated goods and commercial activities; privacy and security; and sensitive and mature themes.

### **TikTok approach to content moderation**

178. TikTok has put in place protective measures by combining content moderation technology with a robust human moderation team. The robust content moderation system had several layers of tools and processes, including automated classifiers, user reports, viewership threshold and more.

179. Firstly, content was received by a detection technology with intelligent models on text, video, image, behavioural signals to identify content that may violate the community guidelines, which allowed TikTok to take swift action. Secondly, a robust moderation ensured swift and scalable responses to reported content. Thirdly, there was Issue-Specific Abuse Team enabled precision safety on nuanced issues.

180. TikTok had Sub-Saharan Africa specific content moderators, enabling the platform to effectively moderate content with special attention to linguistic and cultural differences.

181. TikTok also worked with fifteen (15) fact-checking partners globally and were expanding to more countries and languages.

### **Violations on TikTok**

182. In Quarter 4 of 2023, TikTok removed just over 176 million videos for violating the Community Guidelines or Terms of Service representing about one per cent of all videos uploaded globally. A total of 96.7% of the violating videos were identified and removed before a user reported them; 77.1% were removed before they received any views; and 89.9% within 24 hours of being posted on the platform.



183. In terms of violations per policy, sensitive and mature themes (33.3%); illegal activities and regulated goods (30.1%); mental and behavioural health (15.5%) safety and civility (13.5%); privacy and security (5.8%); and integrity and authenticity (1.8%) were removed in the said quarter.

184. In Kenya, TikTok removed just over 269,309 videos for violating our Community Guidelines or Terms of Service. A total of 98.8% of the violating videos were identified and removed before a user reported them while 82.6% were removed with 24 hours of being posted.

### **Safety tools on TikTok**

185. The safety of the community was a top priority, especially for the younger users. TikTok has invested in tools and resources for families who were looking for easy ways to be engaged in their teen's life online. Every family was different, hence the range of choices and settings. Families were best positioned to know what was appropriate for them, and they had the power to keep themselves and their families safe on TikTok. However, there was no finished line when it came to protecting users and their safety, hence the continuous investments in safety.

186. TikTok prioritized user safety and content authenticity as per the Community Guidelines and seeks to remove any content that attempts to exploit the trust of the users for personal benefit, and including scam-related content. Users with repeated violations may have their accounts banned.

187. User reporting: TikTok had empowered its users to alert it should they come across any suspicious content on the platform with a dedicated reporting option for frauds and scams. Reporting a Live was a feature which empowers the users to play a vital role in keeping the community safe and welcoming for everyone and alert TikTok of any potentially violative content. Reported Live rooms may be ineligible for recommendations into anyone's "For You" feed for up to 10 minutes while it was being manually reviewed. Reporting was not limited only to viewers reporting hosts. Hosts may also report their co-host and guests in a multi-Live room should there be any reason to feel unsafe.

188. Safety guides: TikTok had curated helpful safety guides with various reputable organisations globally on its Safety Centre which includes eating disorders; online challenges; bullying prevention; suicide and self-harm; election integrity; sexual assault resources; countering hate; scams; preventing child sexual abuse on TikTok; and digital well-being.

189. Minor safety: TikTok was a 13+ app, hence caregivers could also be involved in ensuring safety. Minor safety was among the highest priority areas hence the commitment to enforcing the minimum age requirement and to ensuring children who are old enough to access the platform have an age-appropriate experience.

Being an app for users aged 13 and over as per the Terms of Service, TikTok had set a 12+ rating in the Apple App and Google Play Store to enable parents to block or limit specific apps from their child's phone using device-based controls. Further, only users aged 16 and over were able to send or receive Direct Messages. The platform allows users to report underage accounts. Further, TikTok had a robust moderation to ensure compliance with age restrictions and accounts that do not meet the age restrictions would be removed.

190. Managing screen time: The platform had new features and tools for teens and families to manage screen time. The tools have custom options including, every account belonging to a user aged below 18 was automatically set to a 60-minute daily screen time limit and through family pairing, teens and their caregivers can set custom daily screen time limits, review the screen time dashboard, and mute notifications.
191. Anti-bullying and kindness tools: TikTok empowered the users to control comments on their content. The Filter All Comments feature allowed creators to decide which comments will appear on their videos. When enabled, comments are not displayed unless the video's creator approves them. Further, Creators could filter keywords they choose from comments, filter spam and offensive comments, and report or delete comments in a bulk. This feature built on the existing collection of comment controls.
192. Family pairing: Family Pairing on TikTok allows parents and teens to customize their safety settings based on individual needs. A parent could link their TikTok account to their teen's and set controls including daily screen time, restricted mode, search, discoverability, suggest account to others, direct messages, liked videos and comments.
193. Youth safety partnerships: In Kenya, TikTok has a #SaferTogether Campaign cognizant of African culture believed and trait of social interaction and engagement, even with strangers, was a strong African cultural trait. An emphasis on culture, heritage and shared values can help build unity and common purpose. Safety partnership, Bonga by Capital FM also focused on mental health awareness.

### **Data privacy and Protection**

194. TikTok was committed to respecting and protecting the privacy and personal information of its community and works to earn and retain the trust of its community.

### **Information and data collected by TikTok**

195. TikTok collected information when a user creates an account on the platform. However, the privacy policy available in-app and on TikTok's website described

the types of information collected and the purposes for which it was used. Some of the non-exhaustive examples of the primary types of personal information collected by TikTok include:

196. **Account information:** Included email address or phone number, chosen username, date of birth to confirm age for registration of the account.
197. **Behavioural information:** The data about how users engaged with content on the platform, for instance, the videos liked or watched all the way through, accounts or videos followed, liked, shared, skipped, or hidden. Also, includes comments users post, and comments they create. This was to help TikTok recommend more relevant content.
198. **Technical information:** Included information about the device used to connect to the platform, device settings such as time zone and language, IP address and mobile carrier information.
199. **Information from third-parties:** Included data that might be received when a user signs into TikTok using another platform, for example, Apple ID or Google account. It could also include contact list if a user chooses to import their contacts from other platforms.

#### **Purposes for the information and personal data collected by TikTok**

200. **Recommendations:** TikTok uses some information to recommend personalised content to its community that reflects their likely interest/preferences.
201. **Safety:** TikTok also use different types of data also help ensure user safety and security.
202. **User experience:** TikTok used some information to improve the user experience on the platform, for example, to enhance existing features and to design new ones.
203. **Advertising:** TikTok uses information to provide personalised advertisements to users so that they may help immerse and enjoy a tailored experience.
204. **Users can request a copy of their data** including profile information, their activity, and settings through the “Download your data” setting in the Privacy options.
205. **The privacy policy, available on TikTok’s website, clearly stipulates what data was collected from users, how the data was used and why.**

## **Privacy for young users**

206. Privacy was extra important for young users hence as part of TikTok's ongoing commitment to keeping its younger users safe, it has a range of industry-first enhanced default privacy settings for our users under 18. Firstly, all registered accounts belonging to those under the age of 16 are set to private by default. Secondly, for users between 13-15 years old, commenting was only from "Friends". Thirdly, no duetting or stitching of videos from users under 16 years old. Lastly, no "Suggest your account" or discoverability of accounts belonging to users under 16 years.

## **Transparency and user education**

207. TikTok regularly looks to make important improvements in line with guidance and recommendations. All the information should be easily understandable to users of all ages. Further, TikTok adopts a layered approach to the provision of information.

## **Working with the government and law enforcement requests**

208. The platform introduced the TikTok Safety Enforcement Tool (TSET) which will provide a highly secured web portal to harmonize external submission of takedown requests external partners onboarded by TikTok. There will be a three-step verification process and only onboarded and verified agencies will be allowed to submit requests to TikTok. Further, it will provide a centralized tool to submit, review status and outcome of any submitted request(s). In Kenya, TikTok has already onboarded the Kenya Film Classification Board (KFCB) and KE-CIRT.

209. TikTok was committed to cooperating with law enforcement while respecting the privacy and other rights of its users. To achieve this, TikTok has internal policies and procedures governing how TikTok handles and responds to law enforcement requests. These require that TikTok disclose user data only where a request was based on a valid legal process or in emergency circumstances. Such requests must be submitted by email to with any attachments, such as official warrant, court order or other documentation supporting the request in PDF format.

### **3.12 SUBMISSION BY THE MINISTRY OF INFORMATION, COMMUNICATION AND TECHNOLOGY AND THE DIGITAL ECONOMY**

On Tuesday, 24<sup>th</sup> April 2024, the Cabinet Secretary for the Ministry of Information, Communication and Technology and the Digital Economy, Mr. Eliud Owalo, EGH accompanied by the Data Protection Commissioner, Ms. Immaculate Kassait, MBS appeared before the Committee and submitted as follows—

#### **About TikTok**

210. TikTok was a popular social media application (App) owned by a Global Technology company ByteDance and one amongst many product lines under ByteDance with approximately over one billion viewership globally. The platform allowed its user generated content which include creation and sharing of short videos taken on mobile devices or web-cams which in turn created a high level of engagement to its users.

211. In Kenya, TikTok was the third most followed social media platform after Facebook and YouTube with an estimated 10.6 million Kenyans aged 18 Years and above having a TikTok account. The massive subscription had been partly necessitated by positive government policies on infrastructure development across the country leading to high internet penetration.

212. Investor-friendly and predictable policies have led TikTok to select Kenya amongst other Countries in Africa to invest. However, the significant subscription may have contributed to disruption of the social fabric of the society.

#### **Concerns about TikTok**

213. TikTok had attracted controversy as it was liked and loathed in nearly equal measures, and there was indeed a myriad of moral, policy and legal concerns. These concerns stemmed from national security, addictiveness, data privacy, and morality or appropriateness of the shared content.

214. Different countries like Afghanistan, India, Iran, Kyrgyzstan, Nepal and Somalia had put partial or full censorship of the platform in consultation with TikTok following the myriad of reasons including contributing to organized crime and terrorism. Further, other countries especially in Europe and North America (USA and Canada) had banned TikTok on government devices and systems due to geopolitical reasons. The interventions witnessed in such countries reflected the existing concerns about the platform.

215. The main concerns posed by the petitioner were with respect to data protection and privacy, promoting violence, explicit sexual content, hate speech, vulgar language and offensive behavior which were considered a threat to the

cultural and religious values of Kenya. These concerns were valid and legitimate and had informed the several actions by the Ministry.

216. Despite the various concerns, the Ministry proposed adoption of a co-regulation model instead of a total ban. In such a model, the platforms are allowed to continue self-regulating through monitoring and enforcement of the developed and published community guidelines while the government continue to monitor and enforce compliance using existing legal frameworks. In the same model, Government Agencies responsible for censorship such as Communication Authority and KFCB had been provisioned a direct reporting mechanism to TikTok to promptly report any non-compliant content for immediate action.
217. In this regard, the Communications Authority of Kenya was engaging TikTok and other social media platforms on enforcement of community guidelines and content moderation. Similar engagements were ongoing with the Office of the Data Commissioner on data privacy issues.

#### **Why a total ban on Tiktok may not be the best option**

218. The Ministry proposed regulation rather than a total ban citing that a total ban would have various implications including—

#### **Emergence of a 'splinternet'**

219. Banning TikTok would contribute to the emergence of a 'splinternet,' a scenario where the global internet becomes more fragmented. 'Splinternet' refers to a phenomenon where the open globally connected internet becomes fragmented into splinter networks controlled by governments or corporations.
220. In addition, banning TikTok would not resolve the concerns expressed against the platform due to the ever-changing nature of technology. Banning one platform would motivate the emergence of similar platforms, without resolving the real issues. Thus, the focus should be on regulating to ensure that TikTok and other similar platforms conform to established laws and regulations which expressed societal consensus.

#### **Inhibiting competition and innovation**

221. Banning of TikTok in Kenya would curtail the innovative space for local content creators, limiting the emergence of fresh and engaging content hence inhibiting competition and stifling innovation within the country's digital realm.
222. The impact of the ban on the digital economy in Kenya would potentially affect entrepreneurs, content creators, and digital marketers who rely on platforms such as TikTok for their livelihoods.



## Freedom of expression concerns

223. Banning of TikTok in Kenya would encroach upon the constitutional right of freedom of expression as outlined in Article 33. The constitutional provision guarantees every Kenyan citizen the right to freely seek, receive, and impart information or ideas. In the contemporary era, digital platforms were essential mediums of expression. The ban would not only limit citizens' access to a popular digital space but also be viewed as restricting their right to freely share thoughts, opinions, and artistic creations.
224. TikTok served as a diverse platform for expression, encompassing creativity, political commentary, and cultural representation. Therefore, the ban would limit the channels through which individuals express themselves, potentially stifling a range of perspectives and creative voices.
225. The ban would also impact cultural expression since TikTok was a medium for showcasing various facets of Kenyan culture. A ban would impede this form of expression, hindering the sharing and celebration of cultural diversity on an international platform.
226. Additionally, TikTok served as an information-sharing platform, and a ban would limit access to diverse content and viewpoints. This restriction would impede the free flow of information, a crucial aspect of the freedom of expression.
227. Furthermore, TikTok had provided a space for artistic expression, allowing users to showcase their talents in creative ways. A ban may be perceived as an unnecessary restriction on artistic freedom, preventing individuals from expressing themselves through this particular medium.
228. Given these considerations, any potential ban on TikTok in Kenya should be carefully weighed against constitutional provisions safeguarding freedom of expression. A balance must be struck between addressing legitimate concerns and upholding citizens' rights to express themselves through emerging digital platforms like TikTok.
229. These constitutional restrictions call on policy makers to ensure that they regulate the platforms in such a way that the limitations and other legitimate interests were secured.

## Over- the- Top Services (OTTS)

230. The Over-The-Top Services (provision of video content over the internet) had contributed to the growth of Telcos in Kenya leading to growth of customized

bundled packages. For example, the Safaricom Package comprising of minutes, data and WhatsApp. A ban of TikTok would diminish the growth of this model directly or indirectly affecting the overall economy.

## Regulating TikTok

231. The regulation of TikTok and similar platforms instead of a ban would offer a win-win solution. Regulation would maintain access to global social media platforms, which would enhance the free flow of information and ideas across borders, enabling Kenyan internet users to be competitive in the global digital landscape.
232. Additionally, regulation would ensure that the responsible enjoyment of freedom of expression was protected. TikTok was recognized for its unique short-form videos and as a platform for personal expression. A ban would curtail the innovative space for local content creators, limiting the emergence of fresh and engaging content, inhibiting competition and stifling innovation within the country's digital realm.
233. Some of users of the platform were not only earning from it but also promoting their businesses, thus spurring e-commerce. Regulation rather than ban would enhance these positive aspects of competition, innovation, self-expression and the resulting benefits to the economy.
234. The Ministry proposed various ways in which Kenya could mitigate the negative effects of TikTok including strengthening the role of the Communications Authority of Kenya with respect to regulating new and emerging technologies. The Kenya Information and Communications (Amendment) Bill, 2023 and new (proposed) Broadcasting Regulations which the Ministry of Information, Communications and the Digital Economy had developed which will be coming to the National Assembly shortly.
235. Currently, the media and broadcasting in particular were regulated through Kenya Information and Communications Act 1998 and the Kenya Information and Communications (Broadcasting) Regulations, the Kenya Information and Communications (Compliance Monitoring Inspection and Enforcement) Regulations, and the Programming Code. Licensed television media outlets were further required under the Films and Stage Plays Act to ensure that media content was acceptable and consistent with Kenya's culture and values and to ensure appropriate classification aired content. A violation of these restrictions amounted to violation of the programming code.
236. The proposed amendments to the law covered the new media. The upshot of the Kenya Information and Communications (Amendment) Bill, 2023, the proposed Kenya Information and Communications (Broadcasting) Regulations and the new

Programming Code would address regulations concerning content put out for public consumption irrespective of the medium of transmission. Following the proposal, the Communications Authority would be empowered to regulate Over-the-Top platforms such as TikTok and others, and effectively address the many concerns and public outcry.

237. The media landscape had changed significantly and it would continue to change. Media content and entertainment was now predominantly delivered over the internet, bypassing traditional radio, cable or satellite channels. Consumers of entertainment and news content have shifted or are shifting from these traditional outlets to Over-the-Top Transmissions.

238. The kind of content that youth and children were accessing or even generating and sharing as well as harmful content readily available on the internet was a matter of concern that required urgent action. While platforms such as TikTok were beneficial the negative effects and the harm some content was causing to the society could not be ignored hence the legal interventions proposed.

239. The Ministry proposed that just the same way the traditional media channels such as radio and TV were regulated by law, and had an obligation to screen content and protect against harmful content, the new media would require similar obligations under the law. The regulations would necessarily require TikTok and other social media platforms to heighten content moderation to ensure that violence, explicit sexual content, hate speech, vulgar language and offensive behavior which offend the law and values of the people of Kenya were kept out of the platform.

240. On the 8th of April 2024, the Government through Communication Authority published a new Programming Code which redefined broadcasting to extend beyond use of radio frequencies. This, and the proposed Broadcasting Regulations and the Amendment Bill would help bring TikTok and others within the regulatory ambit of the law.

241. On data privacy concerns, the Data Protection Act, 2019 had comprehensive provisions on protection of personal data. It imposes obligations on all data processors and data controllers including social media platform owners to respect data privacy, and empowers the Data Commissioner to ensure that the obligations contained in the Act were complied with. The Office of Data Protection Commissioner had engaged TikTok on issues of compliance with Data Protection Act, 2019 and would continue to enhance compliance with these obligations and enhance the capacity of the Office of the Data Protection Commissioner to fulfil its mandate. The Office of the Data Protection Commissioner had a critical role of ensuring that the personal data of Kenyans was well protected.

242. To complement the aforementioned regulatory measures, there was need to conduct public awareness campaigns on data privacy and security. Users needed to be empowered to make informed decisions about sharing their personal information online and raise awareness about potential risks. The Office of the Data Protection Commissioner had the mandate to create general public awareness under the Data Protection, 2019. Therefore, the data privacy issues raised in the petition could be addressed without the need to ban the platform.
243. In order to necessitate easy community reporting TikTok was required to take an initiative and come up with an easy way of promoting community reporting of inappropriate content within the platform to promote content censorship from a community perspective.
244. Keeping track of compliance with the guideline: TikTok to share quarterly compliance reports with the Ministry clearly showing content taken down and reasons for the same. The report should incorporate and clearly indicate requests received from other Government agencies.
245. Creation of more awareness and diminishing the negative perception: TikTok to undertake extensive user awareness campaigns that extend to the policy makers on the App features, Data protection compliance mechanisms, awareness on the community guidelines and the reporting mechanisms. This will ensure effective use of the TikTok App.
246. TikTok makes profits from revenue generated from online advertising on the App. This was a multibillion venture. To unlock this potential and to discourage proliferation of Global Apps focusing on online advertisement in Kenya, the Ministry encouraged more locally developed Apps to tap potential of revenue generation through advertising. This will be a great contribution by ICT towards the growth of GDP.

## **Conclusion**

247. By adopting a holistic approach that combines legal, technical, and educational measures, Kenya can create a robust social media regulation framework that addresses addiction, mental health, data privacy, misinformation, child online safety, and data security concerns.
248. This approach not only protects the rights and interests of individuals but also fosters trust in the digital ecosystem, promoting innovation and economic growth. Social media platforms have evolved into primary channels for global connectivity, civic engagement, and individual expression. Thus, it was imperative to enhance the regulation of these influential entities. Balanced regulation will help us achieve the desired outcome.

## PART FOUR

### 4 ANALYSIS OF ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

Arising from the submission of the various stakeholders, the Committee makes determination on the following issues as per the prayers sought in the petition as follows:

**Intervene and take immediate action to safeguard Kenyans from the negative effects of arising from the use of the platform and altogether ban TikTok in Kenya.**

The following key issues are raised in the Petition—

#### 249. Issue I- National Security Risks

- (a) The petition highlights apprehensions regarding potential data privacy breach and espionage risks with data potentially being accessed by foreign governments and investors in the application;
- (b) Similar concerns have been raised in other foreign jurisdictions such as the United States and the United Kingdom and TikTok management undertook in mitigating actions such the creation of separate infrastructure for data traffic in the United States and for the localisation of such data within the jurisdiction.
- (c) The petition also highlighted the possibility of Identity Theft and Cybersecurity risks of identity theft, cyberstalking, and blackmail due to the platforms extensive data collection practices.
- (d) The Computer Misuse and Cyber Crimes Act, 2018, provides for offences relating to computer systems to ensure timely and effective detection, prohibition, prevention, investigation and prosecution of computer and cybercrimes.
- (e) The Act aims to protect the confidentiality and integrity of computer systems, promote Constitutional rights such as the right to privacy, freedom of expression and access to information and to facilitate international cooperation on cyber security.
- (f) The Act establishes a National Computer and Cyber Crimes Coordination Committee to implement cyber security. The Committee is required to advise the Government on cyber security and issues such as block chain technology, critical infrastructure, mobile money and trust accounts and to co-ordinate

collection and analysis of cyber threats, and respond to cyber incidents that threaten Kenya's cyberspace.

- (g) The Committee reports to the Cabinet Secretary for the Interior and Administration for National Government and issues quarterly reports to the National Security Council.
- (h) The Committee is also mandated to develop a framework to facilitate the availability, integrity and confidentiality of critical national information infrastructure including telecommunications and information systems in the country.
- (i) The Act outlines several offences and penalties, some of the offences provided for include unauthorized access, unauthorized disclosure of password or access code, cyber espionage, publication of false information, interception of electronic messages or money transfers, child pornography, wrongful distribution of obscene or intimate images, phishing, cyber terrorism, cybersquatting and identity theft.
- (j) Section 43 of the Act provides for a fine of 50 million shillings that the court may order as penalties for corporate bodies upon conviction for breach of the provisions of the Act.
- (k) The Act also provides for international cooperation and mutual legal assistance with other countries in its enforcement to curb cyber threats. Its application extends outside Kenya's territorial jurisdiction, to the extent that victims of these attacks are Kenyan citizens or the crime was against property belonging to the Government or compelling the government to do or refrain from doing any act.
- (l) In order to mitigate cyber threats and foster a safer national cyberspace, the government established the National Kenya Computer Incident Response Team - Coordination Centre (National KE-CIRT/CC), which is a multi-agency collaboration framework that is responsible for the national coordination of cyber security as well as the national point of contact on cyber security matters. The National KE-CIRT/CC detects, prevents and responds to various cyber threats targeted at the country.
- (m) Its functions include the implementation of national cybersecurity policies, laws and regulations, cybersecurity awareness and capacity building; early warning and technical advisories on cyber threats on a 24/7 basis; technical coordination and response to cyber incidents on a 24/7 basis in collaboration with various actors locally and internationally; development and implementation of a National Public Key Infrastructure (NPKI); research and development in cybersecurity.



- (n) National security agencies need to consider the potential risks of such platforms and data security ought to be prioritised to safeguard the country and its cyberspace.

## 250. Issue II- Data Privacy

- (a) The petition has also raised several data privacy concerns such as third-party access to the user's data without consent and the collection of data for minors without parental consent.
- (b) Article 31 (d) of the Constitution provides that every person has the right to privacy, which includes the right not to have the privacy of their communications infringed.
- (c) The Data Protection Act provides for safeguards for the data subject, for example, section 33 of the Act prohibits the use of data for commercial use without the consent of the data subject.
- (d) The Data Commissioner is tasked to carry out inspections of public or private entities to evaluate the processing of personal data and can impose administrative fines for failure to comply with the Act.
- (e) The Act in section 48 sets conditions for the transfer of data outside Kenya, and provides for requirements that the data processor or data controller must meet for such a transfer. These requirements include proof to the Data Commissioner that appropriate safeguards with respect to security and protection of the data have been undertaken and that the foreign jurisdiction where data is transferred has commensurate data protection laws and that the transfer is necessary.
- (f) The Data Commissioner has the power to request from the data processor or controller to demonstrate the effectiveness of these security safeguards and outline compelling legitimate interest that warrant such a transfer.
- (g) Section 49 (3) provides that the Data Commissioner has the power to prohibit or suspend such transfer or subject it to conditions.
- (h) The Act in section 50 also provides for the processing of the data through data servers or centres within Kenya. The Cabinet Secretary may prescribe based on grounds of strategic interest of the state or the protection of revenue, certain nature of processing that shall only be processed through a server / data centre in Kenya.

- (i) Section 58 of the Act provides for enforcement notice which the Data Commissioner may issue where a person has not complied with the provisions of the Act. The notice shall set out steps and specified period for compliance. If the enforcement notice is not complied with the Commissioner may issue a Penalty Notice as provided in section 62 requiring the payment of a specific amount set out in the notice.
- (j) Further, section 63 provides for administrative fines in case of an infringement of the provisions of the Act. While section 65 provides for compensation to a data subject who suffers damages by a data controller or processor that contravenes the provisions of the Act.
- (k) The provisions of the law on data protection provide for safeguards for data privacy. Therefore, there is need for an extensive inquiry by the Data Commissioner on the level of compliance to the Act by TikTok.
- (l) Upon such inquiry, the Commissioner may undertake the necessary enforcement measures to safeguard the rights of data subjects in the country utilising the social media application.

#### **251. Issue III- Content Moderation**

- (a) The petition raised the issue of lack of regulation of how social media content is moderated, the moderating companies and the big tech companies are neither effective in moderation nor sensitive to religious or cultural values and nuances.
- (b) Therefore, regulation of content moderation is imperative to prohibit the proliferation of hate speech, explicit content, and offensive behaviour. The Kenya Information and Communications Act No. 2 of 1998 is an Act that sought to adopt the UN Model Law on Electronic Commerce of 1996. The Act provides for the licensing and regulation of postal, broadcast and telecommunication and information and communication services.
- (c) The Act establishes the Communications Authority of Kenya where the Authority seeks to regulate e-commerce by protecting the interests of users with respect to prices charged and quality of services. It also maintains competition in telecommunication services and ensures data protection of subscribers.
- (d) Pursuant to Kenya Information and Communications Act (KICA) section 46C, broadcasters are licensed by the Communications Authority to operate in the country. The Act further empowers the Authority to set standards for the time and manner of programmes to be broadcast as per Section 46H. Section 46H (d)

of the Act mandates the Authority to ensure compliance to the Programming Code.

- (e) 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.
- (f) The Programming Code gazette on the 8<sup>th</sup> of March 2024 introduces “User Generated Content” (UGC)” defined as broadcast content that is created or produced by the end-user and is publicly available.
- (g) User Generated Content (UGC) is content generated by consumers and audiences, such as text, posts, images, call-ins, videos and reviews. The 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.
- (h) The Programming Code sets out requirements for user generated content to:
  - i. Ensure no harmful, libelous, threatening, or hate UGC is aired on their stations;
  - ii. Guard against copyright and trademark infringement on their UGC broadcasts;
  - iii. Avoid obscenity, indecency, and spam in their UGC programmes; and
  - iv. Ensure the UGC broadcast generated by their stations and artificial intelligence (AI) are accurate and reliable.
- (i) There is need for an amendment to the Act to empower the Authority to regulate social media platforms and content moderation as media platforms.

#### 252. Issue IV-Impact on the youth

- (a) The platform's has notable adverse effects on the mental and physical health of young people, that has contributed to academic decline and mental health issues due to addictiveness to the application, development of negative body image issues and in extreme cases physical injuries caused by stunts undertaken by the youth as promoted on the platform.
- (b) On the contrary, TikTok application has also been lauded to have positive impact on the youth, through exposure to economic empowerment opportunities such as brand endorsements for their creativity on the platform.

## PART FIVE

### 5 COMMITTEE OBSERVATIONS

Arising from the engagement with the various stakeholders including the Petitioner, the Committee made observations on the various concerns raised in the petition as follows—

#### **Banning of TikTok in Kenya**

Regarding the prayer to ban TikTok in Kenya, the Committee observed that—

253. Several countries globally have put partial or full censorship of TikTok platform because of a myriad of moral, policy and legal concerns including national security, addictiveness, data privacy and morality of content shared on the platform.
254. A total ban of TikTok in the country will have a far-reaching impact in curtailing innovation and creativity amongst content users. A ban will create limitations on the right to freedom of expression and the freedom of the media, both constitutional rights within our democracy.
255. There are inadequate policies by TikTok to enable content users in the country to benefit. For instance, the application does not have a monetization policy in the country for content creators to earn directly from their content.
256. TikTok does not have offices in the country where users could report issues and follow up on various concerns. TikTok only works with partners who represent its interest locally.

#### **National Security and Data Privacy Concerns**

The Committee notes the legitimate concerns regarding the national security and data privacy and observed that—

257. The national security risk posed by TikTok is active before the National Security Council and the Ministry of Interior and National Administration is coordinating the cyber security program of the country under the Cyber Crime & Security Coordination Committee to develop policies to safeguard the cyber space. The Committee is comprised of the National Police Service (NPS) and National Intelligence Service (NIS), Ministry of Defence and the Ministry of ICT & Digital Economy.

258. Further, because of its complexity, cyber security is a new security challenge. The impact of the misuse of cyber space would negatively affect the country. On the other hand, the proper use of the cyber space has a potential to contribute to national development.
259. TikTok platform collects various data components from its users including account, behavioural, technical, and information from third-parties. This information includes email address, phone number, date of birth, preferred content, device settings, IP address, mobile carrier information and contacts. The information and personal data collected by TikTok is used for enhancing safety and user experience as well as personalized advertising.
260. The database containing the information and personal data collected by the platform from its users in the country is hosted abroad in TikTok's Transparency and Accountability Centres.
261. TikTok's safety tools and resources especially for younger and minor users are inadequate. These resources and tools include empowering its users to report inappropriate content, tips for preventing cyber bullying, scams, sexual assault as well as improving digital wellbeing.
262. TikTok does not have an effective age verification mechanism to implement age restrictions especially at the user registration phase.
263. The user identification mechanism by TikTok allows one user to create different accounts with different details. This could lead to potential misuse of the platform thereby violating Community Guidelines.

### **Content Moderation and Violations of Community Guidelines**

The Committee observed that—

264. TikTok subcontracted M/S. Majorel Kenya Ltd. as their sole domestic content moderator in the country. TikTok also collaborates with other global firms to moderate Kenyan content.
265. The process of content moderation on the TikTok platform involve the use of an AI system (first level) and human content moderators (second level) in case the AI system is unable to classify the content as per the policy guidelines.
266. The 250 human content moderators at M/S Majorel-Teleperformance dealing with TikTok content moderation in the country and the region is inadequate to moderate the volume of content taken for human moderation.

267. The human content moderators at M/S Majorel Kenya Ltd are occasionally exposed to user-generated content (UGC) that may be disturbing, including content involving minors. The six counsellors on site to offer psychosocial support to the moderators may not be adequate.
268. The human content moderators designated for TikTok content in the country does not cover the over 100 local dialects. Most of the offensive content is propagated in the vernacular language.
269. TikTok's AI system for content moderation is inept in moderating content published local languages in the country as the algorithm in system is not trained in the local languages. Further, TikTok had not audited the flagged content deemed to be harmful in order to identify the point of failure.
270. TikTok's algorithm used in recommending content learns from user's interactions for instance, what they like, how long they watch, and shared videos to create a highly tailored and immersive experience. This algorithm can shape user's mental states, preferences and behaviors without their full awareness or consent hence threatening their cognitive liberty.
271. Despite the various partnerships locally, some of the globally established guidelines are not properly aligned to the local cultural standards in the country as evidenced by culturally-insensitive content depicting and promoting LGBTQ inclinations.
272. Some TikTokers were creating controversial and viral content especially on the Live Feature in order to attract more followers and grow earnings hence occasionally leading to explicit mature content inappropriate for the socio-cultural setup in the country.

### **Economic benefits of TikTok**

Regarding the economic benefits of TikTok in Kenya, the Committee observed that—

273. There is no clarity on the measure of economic benefits of TikTok and contribution to the Gross Domestic Product (GDP) of the economy. There is no multi agency assessment of the economic benefits, projections and estimates of the sector's contribution which would inform the necessary checks and balances.
274. TikTok is yet to introduce monetization services for content creators. However, there is a possibility based on views and discussions that were ongoing between TikTok and content creators. In the meantime, content creators are earning through gifts on the Live feature and endorsement partnerships.



## **Compliance by TikTok to the Kenyan laws and regulations**

The Committee observed that—

275. TikTok may not be compliant with all the data protection laws.

276. TikTok had a collaborative approach with law enforcement agencies in the country through its dedicated law enforcement team to facilitate investigations in cases involving public disorder, disturbance, or other criminal liabilities.

## **Partnerships and Community Social Responsibility**

277. Regarding partnerships and CSR activities the Committee observed that TikTok's safety campaigns and collaboration with local partners on issues such as capacity building and mental health were inadequate as there was no evidence of the impact of such partnerships.

## PART SIX

### 6 COMMITTEE RECOMMENDATIONS

Pursuant to the provisions of Standing Order 227, the Committee recommends as follows—

In response to the prayer that the House **intervenes and takes immediate action to safeguard Kenyans from the negative effects arising from the use of platform and altogether ban TikTok in Kenya—**

On the first part of the prayer that the Committee intervenes and takes immediate action to safeguard Kenyans from the negative effects arising from the use of the platform, the Committee recommends—

**278. That the Ministry of Interior and National Administration and Ministry of ICT and the Digital Economy collaborate to enhance user protection and cyber security on social media platforms including TikTok and reports to the House within four months upon tabling of this report on—**

- (a) The mechanisms for enhancement of age-verification on the social media platforms, the localisation of Kenyan user data to be retained within the country, such as the setting up of local infrastructure for data security by the platforms.**
- (b) The digital literacy programs to create awareness on data privacy, processing and storage and Community Guidelines by social media platforms including TikTok.**

**279. That the Office of the Data Protection Commissioner engages social media platforms including TikTok and reports to the relevant Committee of the House within four months on—**

- (a) Levels of compliance with the laws of Kenya including the Data Protection Act, 2019 and its attendant regulations.**
- (b) Details on the effectiveness of age verification and content filtering.**
- (c) Implementation of Kenya-specific supplemental terms in its privacy policy considering the provision of the law and the social media platforms including TikTok have customized the data processing to comply with Kenyan laws.**

280. The Kenya Information and Communications Act CAP 411A, be amended to mandate the Communications Authority of Kenya to regulate social media platforms in the country.

281. That the Ministry of ICT and the Digital Economy monitors all social media platforms in the country including TikTok to address the concerns in their content moderation by—

- (a) Auditing of the artificial intelligence (AI) moderation system to identify the loopholes, to enhance continuous improvement of the system.
- (b) Training of the AI moderation system in local languages in the country to ensure the algorithm is able to detect inappropriate content presented in the local dialects.
- (c) Ensuring adequate human content moderators to ensure vast coverage of local dialects in moderating content from Kenyan creators.
- (d) Ensuring the human content moderators have adequate psychosocial support.
- (e) Provision of information and reporting options to flag illegal or inappropriate content.

282. That TikTok and other social media platforms without monetisation policy introduce a monetisation policy in the country to enable content creators to earn directly from their content.

On the second part of the prayer that the Committee recommends banning of TikTok in Kenya, the Committee—


283. Notes that a total ban of TikTok is not tenable because it infringes upon fundamental rights and freedoms in the country. Further a ban of the social media platform would stifle social and economic growth and benefits of internet connectivity as the nation seeks to enhance its digital economy. However, the Committee recommends that social media platforms including TikTok be regulated and periodic compliance reviews by the relevant state agencies be institutionalised.

284. Recommends that pursuant to the provisions of Standing Order 208A(c), the findings arising from the consideration of this Petition be debated by the House.

Signed: 

Date: 25-09-2024

THE HON. NIMROD MBITHUKA MBAI, MP  
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>	
<b>DATE:</b> 25 SEP 2024	<b>DAY:</b> WEDNESDAY
<b>TABLED BY:</b>	Hon. JANET CITIENEI (VICE-CHAIRPERSON)
<b>CLERK AT THE TABLE:</b>	MOSES LOMALE