PUBLIC PARTICIPATION SUBMISSION

Memorandum to the National Assembly

On the Films and Stage Plays (Amendment) Bill, 2026 - National Assembly Bill No. 32 of 2026.

SUBMITTED TO	The Clerk of the National Assembly, for the Departmental Committee on Communication, Information and Innovation
BY	Recentred Africa - Policy Desk
DATE	21 July 2026

1. Who we are and why we are writing

Recentred Africa is a Nairobi-based storytelling studio and research practice. We produce documentary, photographic and written work across Kenyan counties, and we train community-based practitioners to document their own communities. Our work has taken us to Mombasa, Kisumu, Kakamega, Nakuru, Nairobi and Turkana.

Our method is longitudinal and embedded. We work alongside people over months rather than arriving to interview them at the end of a programme. The people whose lives we document are frequently the makers of the record, not only its subjects. A significant portion of the material is gathered in Kiswahili and in local languages.

We write because Bill No. 32 of 2026 proposes to amend a statute that governs whether that work may lawfully be done at all. It leaves the substantive production-licensing rules intact while replacing the statutory Board with a ministerial arrangement in which functions are divided between the Cabinet Secretary and licensing officers drawn from the relevant Ministry.

We do not write in defence of the Kenya Film Classification Board. We hold no brief for that institution and we do not ask this House to preserve it.

We write to say that this Bill is not reform, that in three specific respects it makes the law worse, and that the exercise the sector actually requires is the repeal and replacement of a statute enacted in 1962.

2. Summary of our position

2.1 The Films and Stage Plays Act was assented to on 22 November 1962 and commenced on 1 October 1963. It was drafted by the colonial administration in the months before independence. Its architecture - compulsory prior licensing of production, advance submission of scenes and dialogue, police presence at filming, discretionary refusal on unbounded grounds, ministerial revocation at will - reflects the priorities of a government that regarded the moving image as a matter of public order. It has never been the subject of a dedicated reform Act. It has been amended nine times, always through miscellaneous-amendment statutes.

2.2 The Bill does not reform this architecture. It dissolves the Board, reallocates its functions between the Cabinet Secretary and licensing officers from the relevant Ministry, and leaves the substantive production-licensing regime intact.

2.3 Our objections are these:

(a) The Bill replaces a statutory multi-member Board with ministry-based administration, without creating an independent classification body, specialist appeal mechanism, published-reasons requirement or transparent decision-making safeguards.

(b) The Bill expressly re-enacts, in the hands of a licensing officer, a power that the Court of Appeal declared unconstitutional on 23 January 2026.

(c) The Bill preserves prior-licensing provisions whose advance-script requirements and discretionary permissions are especially ill-suited to community-based, multilingual and participatory documentary practice.

2.4 We further object that the Bill's claimed fiscal justification is not substantiated by its own memorandum, and that the public participation period afforded has not been adequate.

2.5 We ask that the Bill be rejected, and that the Committee instead recommend the repeal and replacement of Cap. 222.

3. The three principal objections

3.1 The Bill replaces a statutory multi-member body with ministry-based administration

The Bill dissolves the Kenya Film Classification Board and reallocates its functions between the Cabinet Secretary and licensing officers who are public officers from the relevant Ministry. In particular, clause 13 transfers the examination, approval, refusal and excision

functions in section 16 to a licensing officer. Clause 16 amends section 29 by removing the reference to decisions of the Board; an appeal from a licensing officer to the Cabinet Secretary remains.

The question is therefore not whether the Bill creates an appeal from the Cabinet Secretary to the Cabinet Secretary. It does not. The question is whether a licensing officer located within the responsible Ministry, with an appeal to that Ministry's Cabinet Secretary, provides the independent and publicly accountable decision-making structure that a rights-limiting classification regime requires. The Bill supplies no independent classification body, specialist tribunal, statutory timelines, duty to give published reasons, or duty to publish decisions.

The transitional arrangement is weaker still. The Schedule provides that an application pending before the Board at commencement is deemed to have been made to, and is to be determined by, the Cabinet Secretary. It does not provide an equivalent statutory appeal from that transitional decision.

The Committee should weigh this against the Court of Appeal's judgment of 23 January 2026 in *Kahiu v Creative Economy Working Group & 6 others*, Civil Appeal No. E378 of 2020. The Court declared section 16(3) unconstitutional, limited the use-of-force limb of section 9(1), and directed the appellant to the statutory section 29 appeal. It did not set aside the 2018 restriction of *Rafiki*. The Bill does not abolish the appeal for future licensing-officer decisions, but it recasts the institutional setting in which it operates and leaves pending applications to be determined directly by the Cabinet Secretary without an express statutory appellate route.

We ask the Committee to reject a transfer of powers that replaces statutory institutional pluralism with ministerial administration without providing a genuinely independent, transparent and specialist mechanism for classification and appeal.

3.2 The Bill expressly re-enacts an unconstitutional provision

Section 16(3) of the Act permitted the Board, where it approved a film subject to excisions, to make those excisions itself and to retain the excised parts in its possession.

In the judgment of 23 January 2026 the Court of Appeal declared section 16(3) unconstitutional. In the same judgment the Court struck down section 9(1) to the extent that it permitted police officers or appointed persons to use force to halt filming in the absence of a concrete threat to life, property or animal welfare.

Clause 13(c) of the Bill deletes section 16(3) and substitutes a provision that, where a licensing officer approves a film subject to excisions, permits the licensing officer to make the excisions and retain the excised parts in their possession.

This House is therefore being asked to re-enact, in the person of a Ministry officer, a power struck down by the Court of Appeal six months ago. That provision should be deleted from the Bill.

The Bill also leaves section 9(1) unamended, despite the Court's limitation of the circumstances in which force may be used to halt filming. The Committee should require the sponsor to state expressly how the Bill gives effect to the judgment, rather than re-enacting one invalidated power and leaving another judicially limited provision untouched.

3.3 The Bill preserves a production licensing regime poorly fitted to participatory practice

This is the objection that arises most directly from our own practice, and it concerns the substantive production-licensing rules in Part II of the Act, especially sections 4 to 10, which the Bill leaves intact and which have been absent from public discussion of this Bill.

Section 4 provides that no film may be made in Kenya for public exhibition or sale, within or outside the country, except under a filming licence. Every person engaged in making an unlicensed film commits an offence, punishable under section 32 by a fine not exceeding one hundred thousand shillings or imprisonment for up to five years, or both.

Section 5(1) requires that an application be accompanied by a full description of the scenes in, and the full text of the spoken parts of, **the entire film which is to be made**.

We ask the Committee to consider what this requires of the practitioners we work with.

A documentary made through observation or participation may not yet have the full text of its spoken parts or a settled description of scenes. Work that follows a person's life over eighteen months may develop in ways that cannot be fully specified at the start.

Section 5(1) sets a default designed around a pre-planned work. Its proviso allows the licensing officer to accept other information, but that makes the route for unscripted work discretionary rather than clear and predictable.

The result is that this mode of practice depends more heavily on official discretion: acceptance of other information, permission for material changes, or an exemption under section 10. That is a precarious legal basis for practice and a legitimate concern for Parliament to address.

We ask the Committee to note further that section 5(2) permits the licensing officer to require a certified English translation of non-English material, or to appoint persons to examine and report on it.

Kiswahili is an official language of the Republic under Article 7 of the Constitution. Article 7(3) obliges the State to promote and protect the diversity of the languages of the people of Kenya and to promote the development and use of indigenous languages. This additional

discretionary gate for multilingual work sits uneasily with that obligation and should be reconsidered in any replacement statute.

> **The effect of Part II is regressive, and we ask the Committee to weigh this specifically.**

A pre-planned production with a settled script, compliance capacity and resources is more readily aligned with section 5(1)'s default requirements. That structural point does not assume that every international production is English-language, scripted or inexpensive to license.

A Kenyan photographer documenting her own county over eighteen months, in Kiswahili and her mother tongue, may not be able to supply the scenes and dialogue that section 5(1) makes the default requirement. She must depend on the officer accepting other information, permitting later changes or granting an exemption.

The same statute may impose a qualitatively heavier burden on the local practitioner whose work develops through filming.

We put the conclusion plainly, because we believe it matters to this House. Part II's default requirements are better aligned with pre-planned production than with the embedded, longitudinal and participatory work through which many Kenyans document their own communities. This places the latter at a structural disadvantage unless the law supplies clear and rights-respecting alternatives. This Bill leaves that question intact.

4. Two further objections

4.1 The Bill's fiscal justification is unsubstantiated by its own memorandum

The Bill is presented as an implementation of Cabinet recommendations on restructuring state corporations, intended to address financial inefficiency and reduce reliance on the Exchequer. Its own memorandum states that enactment "may occasion additional expenditure of public funds." It does not quantify a saving, identify when any saving would arise, or set out the cost of the proposed transfer.

We ask the Committee to require the sponsor to quantify the expected saving. If the saving cannot be quantified, the sole affirmative justification for the Bill falls away, and what remains is a transfer of rights-limiting power to a political office with no stated benefit.

We ask the Committee to require a costed implementation case before accepting the fiscal rationale. The Bill memorandum identifies cost reduction as an objective but provides neither projected savings nor transition costs, while acknowledging that enactment may occasion additional expenditure.

4.2 The participation period has not been adequate

The Clerk's notice of 9 July 2026 invited memoranda on ten Bills, with a deadline of 5:00 p.m. on 21 July 2026. Two of those Bills - this one and the Kenya Intellectual Property Bill, National Assembly Bill No. 40 of 2026 - together restructure the institutional architecture governing how creative work in Kenya is classified, cleared, owned and protected.

Twelve days for ten Bills raises a serious question about whether the facilitation of public participation required by Article 118(1)(b) was meaningful for affected practitioners. We ask the Committee to treat this as more than a notice exercise.

We ask the Committee to extend the participation period for this Bill and to convene a dedicated stakeholder hearing at which practitioners - and not only licensed exhibitors, distributors and broadcasters - are heard. The persons most affected by Part II of this Act are not organised into associations, are not represented by counsel, and are for the most part unaware that this Act applies to them at all.

5. What we ask for

5.1 That the Bill be rejected in its present form.

5.2 That the Committee instead recommend the repeal and replacement of the Films and Stage Plays Act, Cap. 222, and the enactment of a modern classification statute. We submit that such a statute should:

1. **abolish prior licensing of film production.** Classification should attach to exhibition and distribution, not to the act of making. Legitimate state interests in filming - public safety, access to protected sites and areas, protection of children on set, wildlife protection - are properly addressed by permitting regimes tied to those specific interests, not by a general requirement that the State approve a film's contents before it is made;
2. **replace section 16(4) with defined and transparent classification criteria.** The existing phrase “for any other reason be undesirable in the public interest” is exceptionally broad. A replacement statute should make the applicable criteria and reasons for decisions clear and reviewable;

3. **establish an independent appeal to a body that did not make the original decision**, with published reasons, published decisions and statutory timelines, and with recourse to the courts preserved;
4. **remove any requirement that work in Kenyan languages be translated into English** as a condition of approval;
5. **reconsider the blanket exemption of Government film-making under section 36**, particularly where the same ministry administers the regime for other makers;
6. **place classification with an independent statutory body, or build on the self-classification model** already introduced by Legal Notices 84 and 85 of 2025, with regulatory attention directed to complaints, age-rating enforcement and child protection rather than to prior restraint;
7. **respect the allocation of cinemas and public entertainment to county governments** under Part 2 of the Fourth Schedule to the Constitution.

5.3 **That in the interim the Committee not enact clauses 13 to 16 without an independent decision-making and appeal structure. At minimum, classification decisions should not rest with licensing officers drawn from the responsible Ministry without independent oversight; the appeal should lie to a body separate from both the initial decision-maker and the Ministry; and the Schedule should provide an express appellate route for transitional decisions of the Cabinet Secretary.**

6. Closing

We are not lawyers and we do not put this submission forward as legal opinion. We are practitioners. What we can offer this Committee is an account of what this statute does to the work of documenting Kenyan life from inside Kenyan communities, which is work we do and work we train others to do.

That account is straightforward. The law's default requirements are a poor fit for embedded, multilingual and participatory documentary, because such work may not yet have a settled script or scenes. This Bill does not change that. It replaces a statutory multi-member Board with ministry-based administration, re-enacts an excision power the Court of Appeal has struck down, and leaves the production-licensing regime intact.

Kenya's creative economy is frequently described in this House as a strategic sector. Its governing statute is sixty-four years old and was written by a government that is no longer in power and did not intend Kenyans to be the ones holding the camera. The sector deserves a law written by this Parliament for this country. We ask the Committee to reject this Bill and to begin that work.

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