

Film Censorship and Identity in Kenya

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Abstract

The postcolonial government in Kenya has embarked on a sustained war against identity by banning locally and internationally produced motion pictures that depict LGBTQ themes in the ongoing national discourse on gender identity. In 2014 and 2018, the government effectively banned two films by local directors (The Stories of Our Lives and Rafiki) for including the LGBTQ community in this discourse. Within the same period, officials banned The Wolf of Wall Street and Fifty Shades of Grey, both by international directors, for their explicit sexual content. The bans attracted public attention and triggered a debate over the country's censorship laws in particular and gender identity in general. However, while paying specific attention to postcolonial censorship laws that aimed to retain the status quo, the debaters failed to ground their arguments in their proper historical context. To better understand censorship in Kenya, we must first understand its history during the colonial period (1895-1963), a period that saw the colonizer attempt to construct for the colonized a morally acceptable identity. This construction saw the British colonial government shield African cinema audiences from films that they thought would teach them undesirable behaviors. To achieve this goal, censorship officials censored films with "questionable" scenes. This study connects the present and the past, broadens present censorship and gender debates by deepening our collective imagination of real and imagined laws, and incentivizes the debaters to think broadly about continuity without change in Kenya. It vacates rigid chronologies and does not purport to provide a definitive history of censorship and identity during the two historical periods, even if such a history were possible to produce. Broadly, the study situates censorship within a long history of framing and re-framing identities and, consequently, contributes to a more complex understanding of the chaotic interplay among power, art, and identity.

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Historical Background

Censorship in the British East Africa Protectorate (present-day Kenya) began in earnest in 1912 following the publication of The Stage Plays and Cinematography Exhibitions Ordinance. The ordinance came into effect as soon as governor Sir Henry Conway Belfield placed notice in the gazette, marking the first time the British colonial government considered regulating stage and cinematic performances in Kenya. Ambitious in its scope, the ordinance defined stage plays as tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, dialogue, prologue, epilogue, “or other dramatic entertainment, or any part thereof,” and defined cinematograph exhibition, rather confusingly, as “pictures or other optical effects presented by means of a cinematograph or other similar apparatus.”¹ To the ordinance framers, theater appeared as “any building, tent or other erection, open to the public, gratuitously or otherwise, where a stage play or cinematograph exhibition is performed or presented.”² The new law authorized licensing officers to inspect all films before issuing a license. Appointed by the governor, licensing officers wielded the power to refuse to grant a license for any stage play or cinematography exhibition; they could also subject a license to any rules made under the ordinance or to any special conditions and restrictions, to be specified in the license, as they saw fit.³

Designed in such a way that it could bring on board other colonial watchdogs beside licensing officers, the ordinance empowered police officers to enter exhibition theaters at “all reasonable times” to enforce its provisions, and any person obstructing their entry was subject to prosecution. Only the governor could revoke a license once it had been issued. As punishment for those who violated the law’s spirit, the ordinance empowered judges to impose a fine or jail them for a term not exceeding 90 days. Mainly concerned with commercial films, the law left untouched films produced locally by foreign directors for overseas exhibitions and didactic films meant to “educate” and “civilize” Africans in Kenya.

With the law firmly entrenched, the stage was set for much of the messy process taking place in the film industry, then and now. To begin with, the government dispensed the new law without a staff in place, and censorship officials and licensing officers received no training in film review or basic cinematograph

techniques. Indeed, the government did not require censorship workers to demonstrate superior academic qualifications or prior experience in film. Police constables, as well as volunteer European women looking for something to do in their spare time, qualified as “celluloid butchers,”⁴ to use Charles Ambler’s timely phrase. Members of the Criminal Investigation Department (CID), religious leaders, and women groups sat on censorship boards.⁵

The problem of untrained censorship officials remained unresolved throughout the colonial period. By 1961, the government had not adequately addressed it, an oversight that prompted E. G. Davis, a White settler and film consumer in Kenya, to question censorship officials’ qualifications. Concerned “that anything even bearing indirectly on sex is suspect and hence in danger of cutting,” Davis wanted to know “the people entrusted with . . . [the] delicate duty of censorship” and whether or not they had received training in “general cultural background.”⁶ Although most critics—like Davis and other concerned film consumers in the country—hardly understood the elements constituting a qualified censorship official, they hoped for a censorship board comprised of officials who “read good books, admire fine paintings, [and] listen to great music.”⁷ Davis probably assumed that the adjectives informing his argument—good, fine, and great—were universally applicable, but, in a real sense, what appears as good books, fine paintings, and great music to someone might offend the sensibility of another.

Africans in colonial Kenya were excluded from the Board of Film Censorship, a national body that oversaw censorship activities throughout the country. However, the exclusion ended after WWII, when Board members agreed to the amended Cinematograph Films Censorship Rule of 1930 that allowed for the “appointment of two [Blacks] to the panel of the Board of Film Censors.”⁸ The appointment reflected the government’s increased concern that the large number of Black soldiers returning from WWII had been exposed to new ideas and were likely to challenge discriminatory policies at home. Officials also hoped that the appointment would ease the increased scrutiny in the press about the question of discrimination against Blacks by the Board.⁹

Lacking in cinema vocabulary and training, censorship officials—especially European women sitting on district censorship boards—cut films so deeply that other government officials took

notice. These women, observed a concerned official, took “an old-fashioned view” of censorship and “ban[ned] too many films for Africans [in Kenya].”¹⁰ Indeed, it was “not in the public interest to exhibit a nude because the women of the board. . .thought it was indecent.”¹¹ Female European and Indian censorship officials comprised 90 percent of board members. Collectively, they carried out the colonizer’s vision for the colonized, a vision that included creating a “morally upright” African identity. They cut scenes they found unpleasant and banned films that “put undesirable ideas into the heads of Africans [in colonial Kenya].”¹² As a reporter for the *Sunday Nation* put it in 1961, “A film is banned if the ladies say so.”¹³ Increasingly, the women endeared themselves to colonial officials as the protectors of “children’s morals and psychology” and as individuals who understood negative influences “better than men.”¹⁴ To African critics in colonial Kenya, however, the women, especially European women in colonial Kenya, created problems for almost anyone who came into contact with them, and the critics considered them “public enemy number one.”¹⁵

Although the cuts were already severe, conservative colonial officials, such as Hesketh Bell, agitated for much deeper cuts. Bell believed that censorship laws were “not sufficiently strict.”¹⁶ Frustrated by what he thought was a soft approach to censorship, Bell recommended that films that had passed censorship in Britain be re-censored for an African audience in sub-Saharan Africa. Aware that the push for deeper cuts was likely to engender “discontent,” Bell asked film producers to prepare two versions of the same film story concurrently—one for general exhibition and the other for display in countries where restrictions were advisable. The bulk of the two editions would be identical, but in the one for exhibition in sub-Saharan Africa, objectionable scenes and episodes would be replaced.¹⁷

The Stage Plays and Cinematography Exhibitions Ordinance of 1912 did not definitively standardize what would be considered “unpleasant” scenes and “undesirable” ideas. It left these judgments open, allowing British colonial officials in Kenya to imagine competing categories of social vices they considered unacceptable to their colonized viewers. In their crosshairs lay scenes depicting sex and prostitution, which they argued offered “false representations” of Western life that should not be shown to “primitive” audiences “unable to distinguish between the truth and a travesty

of it.”¹⁸ What bothered them most were films that showed White women in a state of almost complete nudity. White bodies, they argued, especially White women’s bodies, exemplified purity, and films tarnishing this image by displaying “prolonged osculatory performances and general immodesty” were designed to have “a shocking and dangerous effect on colored youths and men. . .who [had] been led to consider the White man’s wife and daughters as patterns of purity and virtue.”¹⁹ Consequently, they fed an African audience in colonial Kenya with a steady diet of films whose romance had been blotted out.²⁰ Even scenes where boys and girls held hands in courtship were cut. Concerned about the possibility of reverse ethnography (where White civilization was placed on display for the gaze of the colonized),²¹ censorship advocates—such as settlers and church leaders—argued that films displaying undesirable ideas had the potential to undermine the “prestige and authority of the White governing races.”²² As such, they increased calls for tougher censorship laws and asked colonial administrators to consider increasing the number of censorship workers in order to keep up with the high influx of undesirable films in the colonies.

In addition to nude scenes, films with scenes that glamorized criminal activities also bothered officials. Criminality unnerved censorship advocates and government officials who, without evidential data, complained about criminal behaviors among Africans, especially children. The uneasiness justified increased numbers of juvenile detention institutions that effectively separated minors from a society that was supposed to guide them into adulthood. Increasingly, the administration rounded up African children in urban centers, where surveilling black bodies was an easy undertaking. Children were arrested for petty crimes—such as pickpocketing or loitering—that officials believed induced “the greatest cause for concern.”²³ A horrified colonial official noted that a “potential criminal gets ‘good ideas’ from crime films, which he then tries to put into practice.”²⁴ Relying on this twisted logic as a guiding principle through which to curb criminal behavior among Africans, the government censored commercial films portraying theft, fights, burglary, shooting, and “gangsterism being depicted as a virtue.”²⁵ Other objectionable scenes included explosions, as in *The Great Alaskan Mystery* (1944), which attracted the scrutiny of colonial officials when they discovered—after issuing

a license for public viewing—that the film had a scene depicting a staircase being blown up while a man was descending it. Although *The Great Alaskan Mystery* reached audiences in Kenya a decade after its release, the War Council recommended that films showing such scenes should not be exhibited at the “present time [during the Mau Mau war],”²⁶ further demonstrating the administration’s obsession with insulating Africans in the colony from imagined horrors. As the Mau Mau war of land and freedom took center stage in the 1950s, censorship officials paid great attention to gunfight and shooting scenes and put less emphasis on White bodies, petty criminal activities, and brawls in saloon bars.²⁷

These cuts distorted film plots and narrative continuity, yet the African audience was expected to understand films that had been stripped of their temporal and spatial sensibilities. Theater owners, too, were expected to sell to a paying audience films with distorted pictorial storylines. Disturbed by these cuts, Indian viewers in Kenya and proprietors brought their displeasure to the government’s attention. Collectively, they vocalized their dissent through letters to newspaper editors, like the letter E. Goater wrote to *The East African Standard* to express concerns about the “indiscriminate cutting”²⁸ of films. Goater characterized censorship as a “barbarous custom”²⁹ that affected a film’s theme, dialogue, and continuity. Another Indian, R. I. Patel, wrote to complain that the censorship board had banned the Christian film *Adam and Eve* from screening in local theatres.³⁰ Patel first watched this film in London, and he did not think it deserved the ban. Perhaps Derry Quin expressed the frustration over censorship laws well when he reminded government officials, in case they had forgotten, that “this [Kenya] is not a dictator country.”³¹

Others who expressed similar frustration about censorship included the Ikundo Association group, a private group whose objective was to promote the well-being of its members. Calling themselves the “owners” of *King Kong*, the Association members rejected the cuts and informed the authority that they “did not want it [the film] to be cut.”³² They had hired *King Kong* for exhibition, but they canceled the meeting scheduled for “cutting” the film with censorship officials. They also canceled all the scheduled exhibitions and returned the film to Capitol Theatre in Nairobi, which owned it. The group hoped that Capitol Theatre would offer a refund (though refund policy in the cinema industry was

unclear). By rejecting censorship and returning the film without exhibiting it, Ikundo members understood the challenges African audiences in Kenya experienced in reconstructing a mangled plot. Broadly, censorship dismantled the narrative's temporal thread, transforming it to a puzzle to be put back together piece by piece or accepted in the form of a fragmentary body.³³

The Ikundo letter reveals the messy process surrounding censorship in colonial Kenya. The back-and-forth between company officials and government representatives about what was to be cut and what was to be left intact suggests that the film industry during the period under review had not, by the late 1940s and 50s, forged a coherent censorship guideline that would guide the industry and its key actors. Censorship officials, theater owners, and the audience hardly agreed when it came to cuts and their depth. The disagreement is further exemplified in the Indian film, *Shaheed* (1948), which depicts the heroic struggle and personality of Shaheed Bhagat Singh, a revolutionary and prominent face of the Indian Freedom Movement. *Shaheed* caused tension among British colonial officials when its trailer played in Kisumu (a Kenyan port city on Lake Victoria) for the second time, in October 1950. The tension stemmed from a letter H. G. Shawn, the resident magistrate, sent to the Provincial Commissioner to complain about a trailer he had seen at the Nyanza Picture Palace. According to Shawn, the Indian film, whose title he could not recall, promised to show viewers "something of India's fight for independence."³⁴ Based on the short trailer that Shawn watched, he concluded that *Shaheed* was unsuitable for African and Indian audiences residing in Kenya, as it portrayed the involvement of Indians who fought in WWII as "treasonable activities."³⁵ Acting on the Provincial Commissioner's order to investigate the magistrate's concern, F. W. Goodbody, District Commissioner, accompanied by the Assistant Superintendent of Police, called on the theatre's managing agent and asked to see the film's censor certificate (no. 9021, dated 11 July 1949). Goodbody reported back that *Shaheed's* censorship license "was in order,"³⁶ and added that the film had been exhibited before in Kisumu, on 25 January 1950. In any case, *Shaheed* was on its second tour in "response to popular demand."³⁷ Noting that the film had already been censored in Nairobi, Goodbody did not see any valid reasons to "stop or suspend" it, and he sided with H. G. Shawn, saying that it "may not be an appropriate film

for showing to Africans or Asian audiences in Kenya.”³⁸ Unable to make sense of why the Film Censor in Nairobi authorized the screening of a film about independence struggle, Goodbody concluded that the national censorship Board was “guilty of an error of judgment.”³⁹ In making this remark, Goodbody probably overlooked the fact that the Stage Plays and Cinemas Ordinance (Cap. 313) authorized licensing officers at the district levels to refuse to grant a license for the exhibition of a film even though such films had been passed for exhibition by the Film Censorship Board.⁴⁰

The Assistant Superintendent of Police who wrote a report about *Shaheed* based it on the information from his “two [Indian] staff.” In his view, the film did not espouse anti-British sentiments. He further observed that British forces “prevail in the end.”⁴¹ Writing to Kennedy, the District Commissioner, to explain the elimination of unwanted scenes, the Assistant Superintendent of Police assured him that anti-British scenes in the film “were cut when it was first censored.”⁴² Unaware of the film’s theme and story—probably because he did not watch it or his Indian staff had misled him—the Assistant Superintendent of Police reported, rather erroneously, that the film was more of a story about “individual personalities in conflict than party-political strife,”⁴³ a misreading he shared with Kennedy and other top officials in the province.

Not all films from overseas were censored. Those that escaped censorship included didactic films exemplifying the fundamental principles of Western capitalism (taxes, wage labor, trade, and commerce), agriculture (farm equipment, soil erosion, and farming), and healthcare management (nutrition, hygiene, and sanitation). In particular, Hollywood produced didactic films with Latin America in mind, but colonial officials in Kenya also wanted these films because their animation styles were a valuable medium for education.⁴⁴

Continuity without Change: The Postcolonial Experience

Decades later, in 2016, the Kenya Film Classification Board (KFCB), a state agency that regulates media content (in other words, the agency that censors artistic productions), proposed a bill that the *Daily Nation’s* newspaper editors decried as “a dangerous piece of legislation.”⁴⁵ In lockstep with Kenyans demanding

that the board void the Films, Stage Plays and Publications Act of 2016, the editors argued that the act violated the Constitution's articles 33 and 34, which provide for freedom of expression and media independence. They further lamented that, as currently constituted, the act would "empower the board's so-called compliance officers and *police officers* to raid, search, and seize equipment or materials from organizations perceived to be producing or exhibiting materials that they deem to have questionable content [emphasis added]."⁴⁶ Expressing their concern that the act vested broad powers in the state agency to control content in documentaries, internet, film, newspaper, and television media, for example, the editors lamented that the board would eventually usurp the powers of other state entities. In their view, board members were "priming [themselves] as the moral police that seeks to protect the society from pornography, obscenity, and debauchery."⁴⁷ Rejecting the bill in its totality as "intrusive, oppressive, destructive, egoistic, and plainly unconstitutional,"⁴⁸ the editors, together with key players in the film industry who gathered at the Louis Leakey Auditorium in downtown Nairobi in November 2016 to demand that the board "trash this Bill,"⁴⁹ asked the government to consider vacating the contentious legislation.

The messy rollout informing the Films, Stage Plays and Publications Act of 2016 should not have surprised KFCB officials who, while ignoring the increasing anger against the proposed censorship law, organized a town hall meeting for key stakeholders in the film industry at the Louis Leakey Auditorium. From the outset, the mood inside the hall assumed a sour tone, and it remained throughout the meeting and thereafter. It was evident that Ezekiel Mutua, the KFCB's Chief Executive Officer, and his team had ignored the private sector's input in drafting the act and had arrived at the meeting unprepared to defend it. "You cannot come to us with the bill that intends to be a law that will regulate what we are doing online and you do not talk to us," Mutua heard from the audience, who accused his board of conspiring with the government to regulate "our content."⁵⁰ Reassuring the raucous crowd that the bill was nothing "but just proposals," Mutua renounced it, albeit temporarily, and yielded to the audience's demand to "shred" it and, in "good faith," consult them next time.⁵¹

From the beginning, however, the debate lacked the historical context informing censorship in Kenya. Those who opposed

the Films, Stage Plays and Publications Act of 2016 did so without factoring in its historical trajectory, and the KFCB did not bother to share with the public the act's spirit that drew heavily from Kenya's colonial past. On the surface, the Films, Stage Plays and Publications Act echoed the country's new constitution (2010), but a close examination suggests that it in fact extended the Stage Plays and Cinematography Exhibitions Ordinance of 1912. First, like its colonial bellwether, the proposed censorship law vested enormous power in the police force. It allowed officers free access to shooting locations, where they were free to "stop the making of any [cinema] scene [in] which, in his or her opinion, the making of the film is dangerous, cruel or causes unnecessary suffering to an animal, or contravene[s] the Act's spirit."⁵² Echoing the colonial censorship law that required police officers to enforce cinema laws, the postcolonial government amplified its efforts through the bill's Part III Section 26 (3), which affirmed the broad authority given to any police officer—on or off duty—to "permit the making of the film to resume; or permit the making of the film to be resumed on such additional conditions as he may think fit; or refuse to permit the making of the film to be resumed and revoke the registration certificate in respect of the film."⁵³ Any person engaged in a film's production—such as producers, proprietors, promoters, photographers, and actors—obstructing or hindering any police officer from exercising his or her duties would be guilty of an offense that attracted a staggering fine of \$50,000 (about 5 million Kenyan shillings), a jail term of up to four years, or both. Section 26 confirmed the government's fascination with the quasi-police state seen during the colonial era. This fascination is troubling, given that the wounds stemming from past police brutality are still raw. Whether Kenya is sliding back into a quasi-police state is beyond our present discussion, but it is worthwhile to mention that the present government has emboldened the police force, so much so that the force has assumed multiple roles as jury, judge, and executioner. It is little wonder, then, that Kenya sits at the top of sub-Saharan African countries in extrajudicial killings⁵⁴ and is "steadily and systematically sliding towards authoritarianism and dictatorship."⁵⁵

Secondly, similar to the Stage Plays and Cinematography Exhibitions Ordinance of 1912, which empowered the governor to appoint licensing officials, the Films, Stage Plays and Publications

Act of 2016 ceded unfettered power to the president to appoint a non-executive chairperson to oversee the daily activities conducted by an established board of directors, a governing body whose other members include the CEO,⁵⁶ two principal secretaries, and five non-public officers appointed by the cabinet secretary. A corporation secretary appointed by the CEO to function as the secretary to the board of directors rounds out the board. In a small but significant manner, the Films, Stage Plays and Publications Act of 2016 diverged from its predecessor in that it required all the appointees to possess a college diploma and receive training and advancement. The requirements, however, have failed to spell out in clear terms the collective elements constituting training and advancement.

Finally, government officials defending the Films, Stage Plays and Publications Act of 2016 promised, like their colonial predecessors did decades ago, to protect “the people of Kenya” by “preventing” the creation, exhibition and distribution of films and stage performances that “are not reflective” of Kenya’s “national values.”⁵⁷ Specifically, they paid attention to protecting children from harmful content. Perhaps Mutua made the point best when, while chastising those who thought “there was no bad content in the media,” he called for tighter regulatory laws that would protect “our children.”⁵⁸ Defining a “child of tender years” as any person under the age of ten years, and a “child” as any “human being under the age of eighteen years,”⁵⁹ Section 7 (1) (h) pledged to “protect children from exposure to disturbing and harmful materials and from premature exposure.”⁶⁰ In the views of the act’s framers, harmful materials included pornographic productions.

Identity⁶¹

Within five years (from 2013 to 2018), Kenya’s political pendulum swung sharply against political dissenters, intellectuals, and a handful of media institutions that still believed in objective journalism. As political attrition emerged as the lead story captivating the country’s collective attention, other spheres of everyday life were eroding under President Uhuru Kenyatta’s administration, and the progressive gains that the previous administration of President Mwai Kibaki (2002-2013) engineered and left behind had disintegrated. In particular, Kibaki’s successor, and the men

overseeing the country's cultural landscape at his behest, turned to censorship laws to roll back artistic freedom by banning films that considered LGBTQ individuals in the national conversation on identity.

Artistic freedom is not a natural part of Kenya's lifestyle, nor is it a product of evolution; it has always been the outcome of struggle. This struggle is well documented and will not be rehashed here.⁶² In passing, however, it is worthwhile to point out that theater practitioners initiated the first struggle for artistic liberty during the period when postcolonial administrations outlawed theater groups whose individuals associated themselves with established institutions, such as the University of Nairobi and Kenya National Theatre. In the eyes of government officials, these institutions celebrated radical ideas that espoused a socialist ideology during the period when the first postcolonial administration of Jomo Kenyatta (1963-1978) was attempting to align its economic and political identity with the Western bloc during the Cold War. It became a standard procedure for the government to ask theater groups to submit play scripts for "assessment" before it could issue a performance license. Ngugi wa Thiong'o, whose play was banned and whose theater company was deregistered during Kenyatta's and Daniel Moi's regimes, lamented that "the war between art and the state [was] really a struggle between the power of performance in the arts and the performance of power by the state—in short, enactments of power."⁶³

Unsurprisingly, the government withheld its wrath against musicians and film directors whose industries hardly antagonized the ruling elites and produced non-controversial artistic items that tended to avoid gut issues. Composers such as Thomas Wasonga produced *Tawala Kenya Tawala* (Rule Kenya, Rule), a sycophantic song that exhorted Daniel Toroitich Arap Moi, Kenya's second postcolonial President, to rule Kenya eternally. By producing pro-government songs, Wasonga defined his artistic identity as a "praise singer," a phrase that Anne Schumann employed to describe similar singers in Côte d'Ivoire.⁶⁴ His counterparts in the film industry, especially Gamba Sao, Mohamed Amin, Anne Mungai, Wanjiru Kinyanjui, and Dommie-Yambo Odotte, were yet to envision cinema's utility as a powerful tool through which to address political injustice. Composed of pseudo-conservative individuals, this generation of filmmakers stood on the sidelines

as the country slipped. They eschewed political discourse and limited their cinematic gaze to less controversial socio-cultural themes. It seemed, at least from their collective assessment of events, that socio-cultural discourse and politics were independent of each other.

Akin Adesokan has argued that “most new-generation filmmakers are notable for their unwillingness to present their films as the mouthpieces of political engagement, preferring to play up issues of cultural mixing, exile, transnationalism, and cinema itself as a reflexive form.”⁶⁵ However, Adesokan’s statement does not reflect the current state of cinema in Kenya, where young filmmakers are questioning the political contours informing cinematic themes. Ambitious and daring, Kenya’s young filmmakers have inspired a national dialogue over what constitutes free speech as encapsulated in the country’s new constitution. Unlike their forebears, these young artists have increasingly embraced cinema as an ideal platform on which to construct a pluralistic identity that includes the LGBTQ community, a construction that has offended the government’s sensibilities. Consequently, the broad and inclusive definition of identity has brought cinema under heightened scrutiny.

The scrutiny came at full force in September 2014, after the production company Nest Collective applied for a license to distribute and exhibit the film *The Stories of Our Lives*. The following month, the company received a rejection letter from the KFCB.⁶⁶ In denying the company approval, the KFCB lamented that the film “has obscenity, explicit scenes of sexual activities and it promotes homosexuality which, [sic] is contrary to our national norms and values.”⁶⁷ Leaving unattended the elements constituting norms and values, the KFCB drew the Nest producer’s attention to sections 16 (c) and 12 (2) of the Film & Plays Stage Act. Shallow in scope, the two acts borrow heavily from the colonial government’s Stage Plays and Cinematography Exhibitions Ordinance of 1912, which attempted to shield the audience from “undesirable” ideas (e.g., kissing, sex, shootings, and nudity). Rather than evoke the Constitution’s Article 33 (1) (a) (b)—which protects the “freedom to seek, receive or impart information or ideas,” and the “freedom of artistic creativity”—to sue the KFCB, the Nest Collective retreated and took its case to social media, where, as expected, the issue died.

Four years later, the KFCB attempted, once again, to define identity through power, this time against *Rafiki*, another film that broadened identity by interpreting norms and values differently. Wasting little time, the KFCB officials banned *Rafiki* because, as its officials pointed out, it contained “*homosexual scenes* that are against the law, the culture and *moral values* of the Kenyan *people*” [my emphases]. Wanuri Kahiu, the film’s director, sued and argued in court that the ban violated her constitutional right to free speech and artistic freedom of expression. Kahiu insisted that Kenya is “made up [of] different *types of people* with different imaginations. There should be freedom to express these imaginations, because imagination doesn’t have boundaries” [my emphasis]. The country’s high court agreed with her and upheld her right to distribute and exhibit the film.

Kenya’s constitution does not define morals and values. Perhaps Article 10 (2) (b), which emphasizes the “national values and principles of governance,” and Article 11 (1), which shines a spotlight on culture, are the closest references we have to morals and values. As laid out in the constitution, national values encompass “human dignity, equity, social justice, *inclusiveness, equality*, human rights, *non-discrimination* and *protection of the marginalized* [my emphases].” Culture is broadly defined as “the foundation of the nation and as the cumulative civilization of the Kenyan *people* and nation” [my emphasis]. In this formulation, culture includes “all forms of national. . .expression” that embodies all “people,” a term that requires defining, but one that all the key players, including the constitution, employ cavalierly. Does “people” mean only those that the government, through the KFCB, envisions, but not the LGBTQ community represented in *Rafiki*? Yes, the constitution encourages marriage to someone of “the opposite sex” (Article 45 (2)), but it does not prohibit promoting same-sex marriage. Promoting contradictory ideas and definitions is not a violation of the constitution, nor is it a punishable offense under the law. Even if it were, ideas are abstract, and until they acquire a practical ring, punishing them is counterintuitive.

Censoring art to restrict diverse identities does not occur in a vacuum, nor is it a random act designed to secure imagined norms and values. It is a calculated and premediated act of subjugation, one that often takes place on the heels of political attrition. By and large, the censorship of artistic work is a fundamental

pillar of despotism and the second phase of totalitarianism, the first being political suppression. Authoritarianism in the cultural sphere begins when the ruling class imagines and constructs a national identity that encompasses nonexistent and undefined principles such as moral values and norms. With rapid speed, it then moves to create competing categories of *people*, “us” versus “them.” Once this creation is complete, the chips are expected to fall in place, and those that slide onto the margins are considered unpatriotic and unfit to assume the national identity.

It seems obvious that the government conceptualized identity as static, rigid, and incapable of assuming a new form once it is established. Stuart Hall correctly reminded us that “identity is not as transparent or unproblematic as we think.”⁶⁸ He sees identity as an incomplete “production” and warns against assuming that it is “an already accomplished fact.” In other words, identity is pliable. Hall encourages us to think of it as a “process [. . .] always constituted within, not outside, representation.”⁶⁹ Reading Hall through this analysis allows us to imagine identity as an internally conceptualized element that does not render itself to external readings.

Conclusion

Specifically, this essay has explored the intersection of censorship and identity in Kenya. It has traced censorship to the colonial era and made the connection between the present (postcolonial) laws and past (colonial) ordinances. Very similar in outlook, the Stage Plays and Cinematography Exhibitions Ordinance of 1912 and the Films, Stage Plays and Publications Act of 2016 infuriated the public and engendered public debates over whether Kenya had become a despotic nation. In 1952, Derry Quin was convinced that Kenya had turned autocratic, a conviction that Wanuri Kahiu shared more than six decades later, in 2018. This study sees continuity without change and has exposed the postcolonial government’s inability to separate its censorship laws from its predecessor’s. That both laws considered the police as critical in enforcing them further demonstrates this inability. Perhaps identity is the most glaring element that links the two laws. Both laws expressed the desire to construct identities along the shallow contours of morals and values informing their framers who, while expressing the desire to limit the boundaries informing identity,

endowed themselves with the power to silence those attempting to push the boundaries beyond their present formation.

Broadly, this essay has revealed the chaotic intersection of power, art, and identity. Whereas art (in this case, cinema) has slowly emerged as a social platform through which to engage in the discourse of identity, power has firmly stood in its way and usurped artistic freedom and freedom of speech. About three decades ago, filmmakers in sub-Saharan Africa started “to take bare skin as a textual space, letting the camera hug forms as closely as possible.”⁷⁰ Examples includes Mohamed Camara (*Dakan*, 1997), Mahamat Saleh Haroun (*Bye Bye Africa*, 1999), and Souleymane Cissé (*Finye*, 1982). However, the powerful in Kenya have constricted the space through which local film directors can broaden their artistic imagination as their counterparts in sub-Saharan Africa have done. Although depicting any sexual act remains taboo, Idrissa Ouedraogo (*Le Cri du Coeur*, 1994) and Safi Faye (*Mossane*, 1996) produced short love scenes. Kenya, however, has banned films with love scenes, especially films depicting same-sex couples. Consequently, the ban has forced the public to imagine identity through a single lens endowed to it by the government.

Notes

¹ East Africa Protectorate: Ordinances and Regulations, Vol. XIV KNA, NRB.

² Ibid.

³ Ibid.

⁴ Charles Ambler, “Popular Films and Colonial Audiences: The Movies in Northern Rhodesia,” *The American Historical Review* 106, no. 1 (2001): 83.

⁵ *The Times*, “The Cinema in Africa: Views of Leading Churchmen” (October 5, 1926); James Burns, *Cinema and Society in the British Empire, 1895–1940* (New York: Palgrave Macmillan, 2013), 168; James Burns, *Flickering Shadows: Cinema and Identity in Colonial Zimbabwe* (Ohio: Center for International Studies, Ohio University, 2002), 7-15.

⁶ E. G. Davis, “Censorship Barriers are Falling,” *East African Standard*, October 29, 1961. Films: Boards and Committee. Film Censorship Boards KA/2/13. KNA, NRB.

⁷ Ibid.

⁸ Circular from the Secretariat to Provincial Commissioners, “The Cinematograph Films Censorship Rules, 1930 (Oct. 22, 1945), Stage and Cinema General, PC/NZA/2/7/92, KNA, NRB.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Mike Harris, "A Film is Banned if the Ladies Say So," *Sunday Nation*, October 22, 1961. Films: Boards and Committee. Film Censorship Boards KA/2/13. KNA, NRB.

¹² C. H. Hartwell, Acting Chief Secretary, to Lt. Col. C. A. Brown, Chairman, Film Censorship Board (April 1, 1954), Law and Order Stage and Cinematography, DC/KSM/19/155, KNA, Nairobi.

¹³ Harris, "A Film is Banned if the Ladies Say So," Films: Boards and Committee. Film Censorship Boards KA/2/13. KNA, NRB.

¹⁴ Ibid.

¹⁵ Tom Mboya, quoted in Alan Rake, *Tom Mboya: A Young Man of New Africa* (New York: Doubleday & Company, Inc., 1962), 136.

¹⁶ Hesketh Bell, "Cinema in Africa: Perverted Views of European Life," *The Times* (Oct. 4, 1926).

¹⁷ Bell, "Cinema in Africa: Perverted Views of European Life."

¹⁸ Bell, "Tropical Africa and the Cinema: Danger to White Prestige, Censorship of Films," *Sunday Times* (Feb. 16, 1930); Bell, "Cinema in Africa: Perverted Views of European Life," *The Times* (Oct. 4, 1926).

¹⁹ Ibid.

²⁰ Wangari Maathai, *Unbowed* (New York: Anchor Books, 2006), 81.

²¹ Burns, *Flickering Shadows*, 13.

²² Bell, "Tropical Africa and the Cinema: Danger to White Prestige, Censorship of Films." Also see the views of the Church in *The Times*, "The Cinema in Africa: Views of Leading Churchmen" (Oct. 5, 1926). The Church was responding to Bell's letter of October 4, 1926 in the same newspaper titled "Cinema in Africa: Perverted Views of European Life."

²³ Colin Beale, "The Commercial Entertainment Film and its Effect on Colonial Peoples," in *The Film in Colonial Development: A Report of a Conference* (London: The British Film Institute, 1948), 17.

²⁴ Ibid.

²⁵ Ibid.

²⁶ C. H. Hartwell to Colonel Brown, Chairman, Film Censorship Board, April 1, 1954. Law and Order Stage and Cinematography, DC/KSM/19/155. KNA, NRB.

²⁷ Ibid.

²⁸ E. Goater, "The Picture," *The East African Standard*, March 29, 1940.

²⁹ Ibid.

³⁰ R. I. Patel, "That Film," *The Nation*, October 23, 1960.

³¹ Derry Quin, "Film Censorship," *East African Standard*, February 24, 1952.

³² W. Vuaidra to D. W. O., September 18, 1948. African Information Service, DC/MKS/8/3, KNA, NRB. Vuaidra wrote a personal letter to D. W. O. to ask that the film *King Kong* not be censored. Indeed, he postponed the censored version of the film's screening.

³³ Italo Calvino, *The Road to San Giovanni*, trans. by Tim Parks (New York: Pantheon Books, 1993), 40.

³⁴ H. G. Shawn to the Provincial Commissioner, Kisumu, October 30, 1950. Law and Order Stage and Cinematography, DC/KSM/19/155. KNA, NRB.

³⁵ Ibid.

³⁶ F. W. Goodbody to Acting Provincial Commissioner. November 1, 1950. Law and Order Stage and Cinematography, DC/KSM/19/155. KNA, NRB.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Hartwell, "Film Censorship" (May 16, 1952), Law and Order State and Cinematograph DC/KSM/19/155. KNA, NRB.

⁴¹ Assistant Superintendent of Police to D. C. Kennedy, District Commissioner, Central Nyanza "Indian Film Shaheed," November 8, 1950 Law and Order Stage and Cinematography, DC/KSM/19/155. KNA, NRB.

⁴² Ibid.

⁴³ Ibid. D. C. Kennedy to the Acting Provincial Commissioner, "Indian Film Shaheed," November 8, 1950 Law and Order Stage and Cinematography, DC/KSM/19/155. KNA, NRB.

⁴⁴ *Books for Africa*, "Health and Educational Films," April 1944, 24, in Colonial and Protectorate of Kenya, Law and Order, 1944-45, PC/NZA/3/15/159, KNA, NRB.

⁴⁵ Editorial, "Bill on film, theatre and publications a threat to legal freedoms," *Daily Nation*, November 10, 2016.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ <https://www.youtube.com/watch?v=Zn6T8xmn0jY>

⁵⁰ Nation Television (ntv), <https://www.youtube.com/watch?v=Zn6T8xmn0jY>

⁵¹ Ibid.

⁵² "Films, Stage Plays and Publication Act, No.Of 2016."

⁵³ Ibid.

⁵⁴ See The International Amnesty Report of 2016/2017. <https://www.amnesty.org/en/countries/africa/kenya/report-kenya/#endnote-1>

⁵⁵ Editorial, "Reject Attempts to Restore Oppression," *Daily Nation*, August 20, 2017. <http://www.nation.co.ke/oped/Editorial/Reject-attempts-to-restore-oppression-/440804-4064662-6g8ihsz/index.html>

⁵⁶ Section 14 (1) allows the Board to contract out any of its services provided that such contracting out shall not abrogate from the Board's regulatory functions.

⁵⁷ Films, State Plays and Publications Act, No.of 2016.

⁵⁸ Nation Television (NTV), <https://www.youtube.com/watch?v=Zn6T8xmn0jY>

⁵⁹ "Films, Stage Plays and Publication Act, No.of 2016."

⁶⁰ Ibid.

⁶¹ This section advances the argument I made in a short essay appearing in the *Conversation* in 2019. <https://theconversation.com/how-young-filmmakers-are-protecting-artistic-freedom-in-kenya-111837>

⁶² See, for example, Ngugi wa Thiong'o, *Decolonizing the Mind* (Nairobi: James Curry, 1981); Ngugi wa Thiong'o, "Enactments of Power: The Politics of Performance Space," *TDR* 41, no (1997): 11-30.

⁶³ Thiong'o, "Enactments of Power: The Politics of Performance Space," 12.

⁶⁴ Anne Schumann, "Songs of a New Era: Popular Music and Political Expression in the Ivorian Crisis." *Royal African Society* 112, no. 448 (2013): 440–459.

⁶⁵ Akin Adesokan, "African Film," in *Africa*, 4th Edition, edited by Maria Grosz-Ngaté, John H. Hanson, Patrick O'Meara (Bloomington, IN: Indiana University Press), 237.

⁶⁶ My attempts to secure an interview with the KFCB's Chief Communication Officer for this project were unsuccessful. Instead, the administrative assistant gave me a pamphlet that she suggested would answer my questions on censorship.

⁶⁷ Onesmus Mutua to the Manager, The Next Arts Company Limited, "The Stories of Our Lives," 2nd October 2014.

⁶⁸ Stuart Hall, "Cultural Identity and Diaspora," in *Diaspora and Visual Culture*, ed. Patrick Williams and Laura Chrisman (London: Harvester Wheatsheaf, 1994), 222.

⁶⁹ *Ibid.*

⁷⁰ Olivier Barlet, "African Film's Meaningful Body," *Black Camera* 2, no. 2 (2011): 142.

