

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 25 SEP 2024	DAY: WEDNESDAY
	HON. JANET SITIENEI (VICE-CHAIRPERSON)
	MOSES LOMALE

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

PUBLIC PETITIONS COMMITTEE

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**

FEDERAL BUREAU OF INVESTIGATION	
U. S. DEPARTMENT OF JUSTICE	
WASHINGTON, D. C. 20535	
DATE	SEP 12 1964
TO	ATLANTA
FROM	NEW YORK
SUBJECT	MURDER OF MARTIN LUTHER KING, JR.
RE	NEW YORK TELETYPE TO BUREAU, SEP 11, 1964.
RE NEW YORK TELETYPE TO BUREAU, SEP 11, 1964.	

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, 15th 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

Mr. Willis Obiero
Clerk Assistant III

Ms. Patricia Gichane
Legal Counsel II

Ms. Roselyne Njuki
Principal Serjeant-at-Arms

Mr. Calvin Karungo
Media Relations Officer III

Ms. Miriam Modo
First Clerk Assistant

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Mr. Paul Shana
Serjeant-at-Arms

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, 15th 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, 26th 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, 1st 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 1st 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, 30th 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 28th 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 4th 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, 14th 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, 28th 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 16th 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, 21st 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, 14th December 2023, e Site Director, M/S Majorel Kenya Ltd., Mr. Sven De Caeter 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 8th April 2024, the Site Director, Majorel-Kenya Ltd., Mr. Sven De Caeter 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 2nd 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:

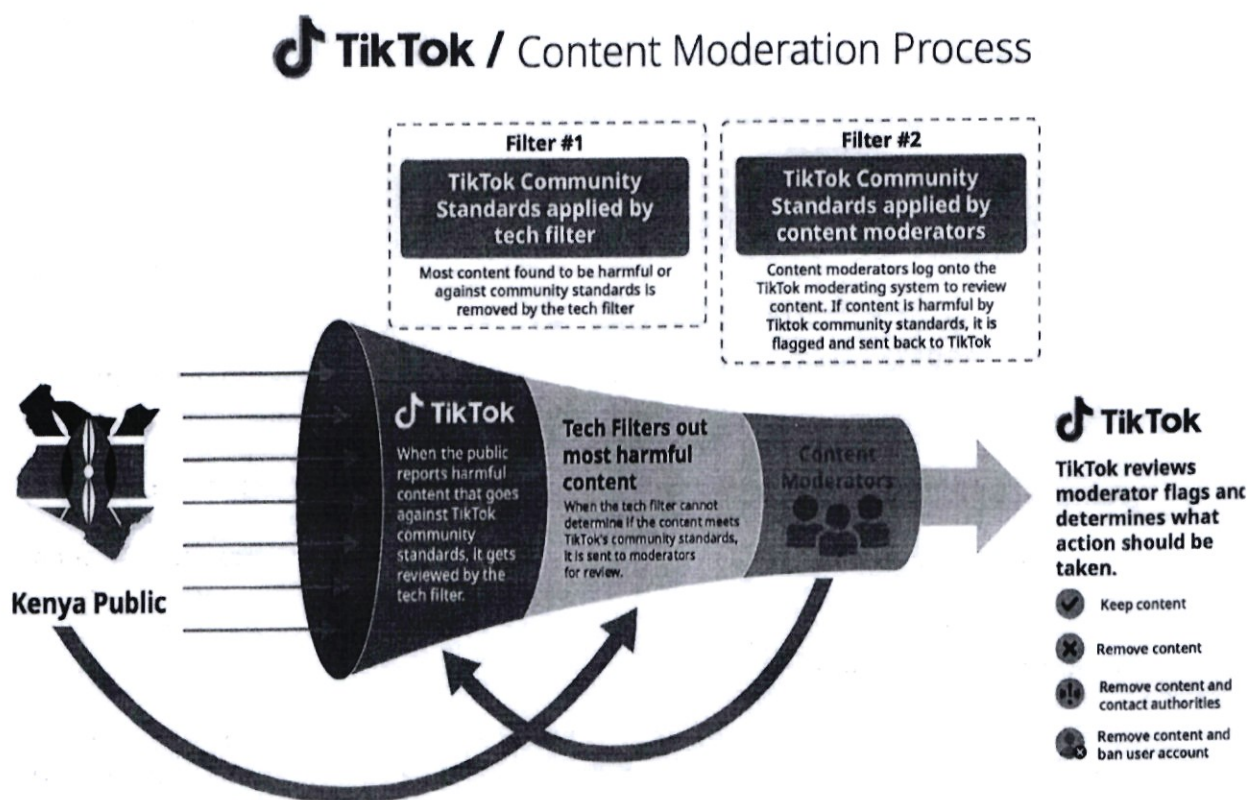


Figure 1. TikTok content moderation process

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 8th 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 #LearnOnTikTok 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, 24th 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 co-ordination 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 8th 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

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

ANNEXURES

- Annex 1: Adoption List
- Annex 2: Minutes of the 61st Sitting held on Thursday 26th September, 2023
- Annex 3: Minutes of the 74th Sitting held on Wednesday, 1st November 2023
- Annex 4: Minutes of the 75th Sitting held on Wednesday, 1st November 2023
- Annex 5: Minutes of the 87th Sitting held on Thursday, 30th November 2023
- Annex 6: Minutes of the 78th Sitting held on Tuesday, 14th November 2023
- Annex 7: Minutes of the 81st Sitting held on Thursday 16th November 2023
- Annex 8: Minutes of the 12th Sitting held on Thursday, 21st March 2024
- Annex 9: Minutes of the 22nd Sitting held on Tuesday, 8th April 2024
- Annex 10: Minutes of the 24th Sitting held on Tuesday, 16th April 2024
- Annex 11: Letter Ref. CA/LS/002/2023(772) dated 16th November 2023
- Annex 12: Letter Ref. ODPC/CONF/1/1 and dated 28th November 2023
- Annex 13: Letter Ref. NCIC/ADM/RPTS/VOL.5 (22) dated 14th December 2023

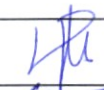
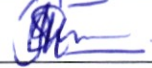
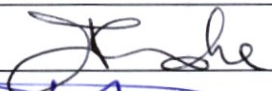
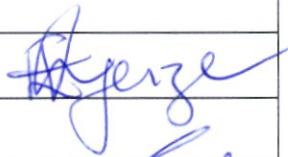
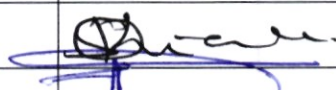


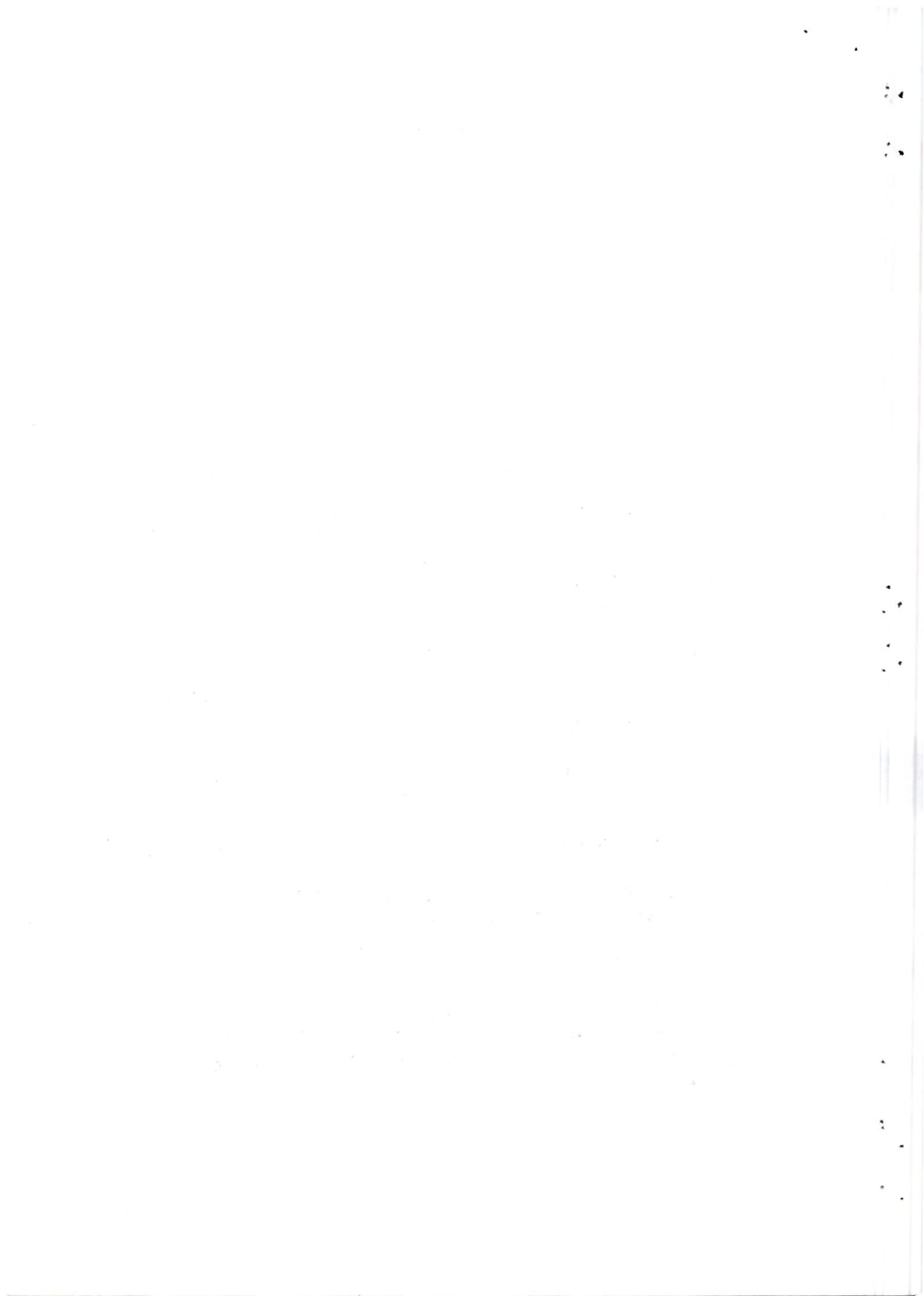
**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE**

**ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 41 OF 2023 ON
BANNING OF TIKTOK IN KENYA**

DATE.....

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration **Public Petition No. 41 of 2023 on Banning of TikTok in Kenya** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

CONVEYANCE OF PUBLIC PETITION

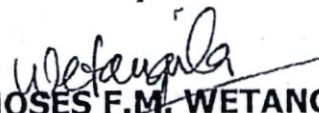
(No. 41 of 2023)

REGARDING BANNING OF TIKTOK IN KENYA

1. **Honourable Members**, Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2) (b), requires the Speaker to report to the House any Petition other than those presented by a Member.
2. In this regard, **Honourable Members**, I wish to report to the House that my office has received a petition from one *Mr. Bob Ndolo, the Chief Executive Officer of the Bridge Connect Consultancy* regarding the banning of Tiktok in Kenya.
3. The Petitioner states that Tiktok is a social media platform that allows users to create and share short videos.
4. **Honourable Members**, the Petitioner decries that while it has gained popularity among the youth in Kenya, the content that is being shared on the platform is inappropriate thus promoting violence, explicit sexual content, hate speech, vulgar language and offensive behaviour which is a serious threat to the cultural and religious values of Kenya.
5. The Petitioners aver that in Kenya, the internet application (App) is not regulated by the Communication Authority of Kenya leading to failure to remove or block content deemed to be inappropriate or offensive.

6. **Honourable Members,** the Petitioner further avers that Tiktok has been implicated in several privacy scandals over the past years. For instance, in 2019, the App was fined \$5.7 million by the United States of America Federal Trade Commission (FTC) for illegally collecting personal information from children under the age of 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.
7. **Honourable Members,** the Petitioner alleges 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.
8. The Petitioner is concerned that if the platform is 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.
9. **Honourable Members,** the Petitioner thus prays that this 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.
10. **Honourable Members,** having established that the matter raised in the Petition is well within the authority of this House; and further, that the matters raised in the Petition are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
11. The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you.


THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY



29th April 2023

National Assembly of Kenya,
1st Floor, Main Parliament Building,
P.O. Box 41842 -- 00100,
Nairobi,
Kenya.

REF: TBCC/PLCNA/04/2023

Subject: Petition to Ban TikTok in Kenya

Dear Clerk National Assembly,

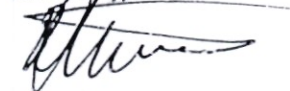
I am writing to bring to your attention a matter of great concern to our organization and to many Kenyans. Enclosed herewith we have submitted a petition calling for the ban of TikTok in Kenya, and we would like to request your immediate attention to this matter.

TikTok is a social media platform that allows users to create and share short videos. While it has gained popularity among young people in Kenya, we have significant concerns about the content that is being shared on the platform. We believe that these issues pose a serious threat to the safety and security of Kenyans, and that action must be taken to address them. As such, our petition is calling for the ban of TikTok in Kenya, and we are enclosing supporting evidence to further emphasize the urgency of this matter.

We urge you to consider our petition and take immediate action to safeguard Kenyans from this high-risk exposure. We believe that banning TikTok in Kenya is the only way to protect our citizens from the negative impact of the platform.

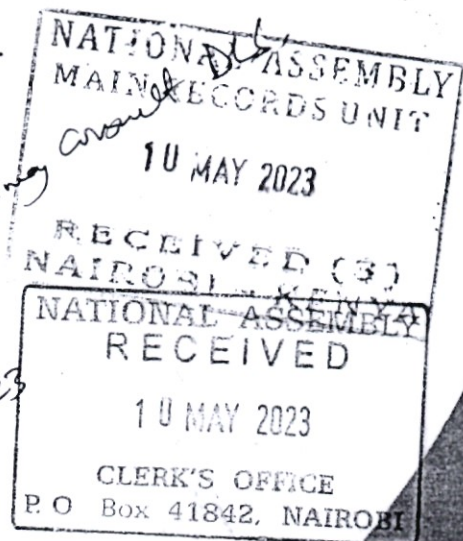
Thank you for your attention to this matter. We look forward to your prompt action

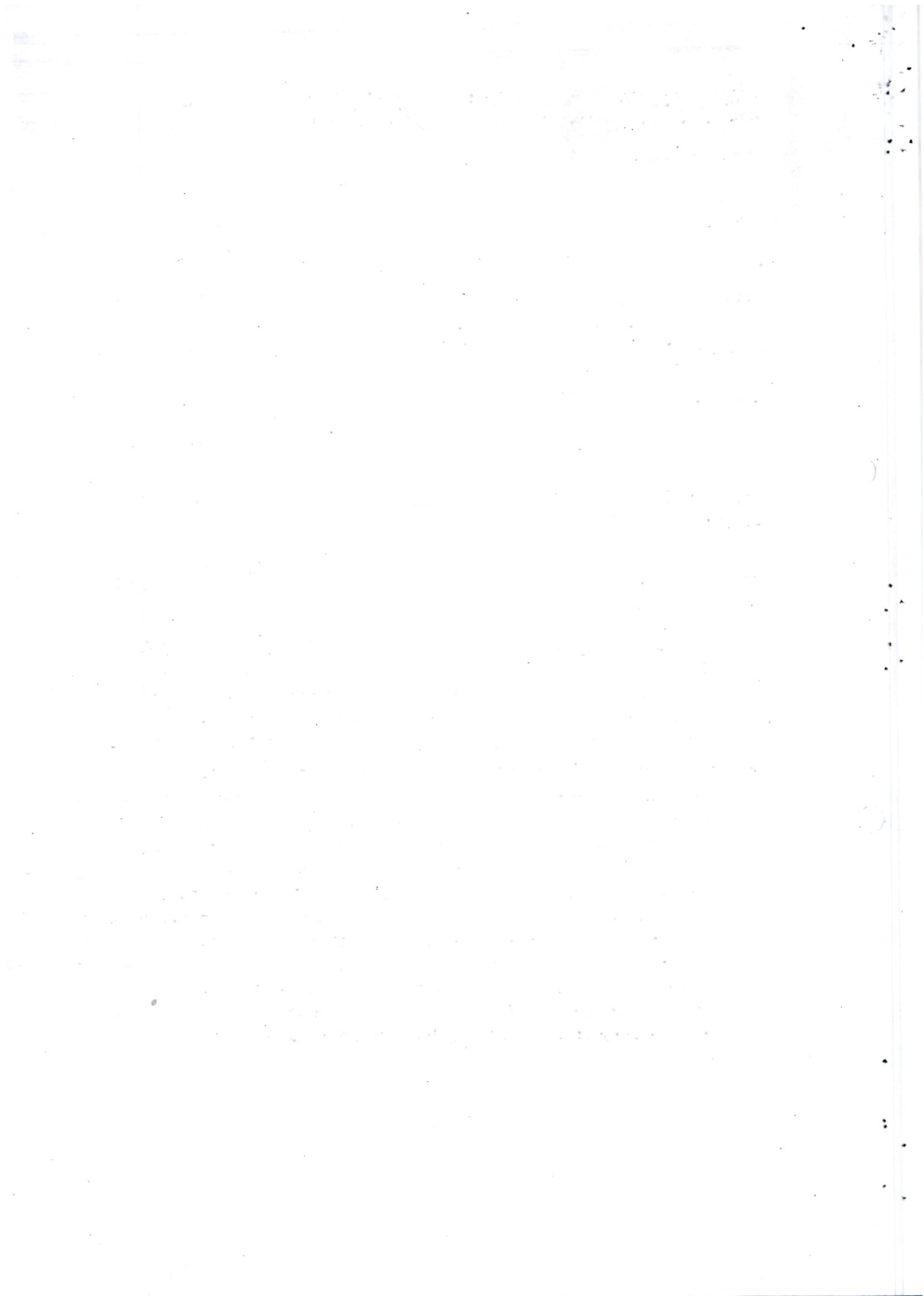
Sincerely,



Bob Ndolo
Chief Executive Officer

Encls





Ref: TBCC/PLCNA/04/2023 Petition to Ban TikTok in Kenya: Protecting National Security, Privacy, and Youth from inappropriate Content

29th April 2023

To;

The Clerk,
National Assembly of Kenya,
1st Floor, Main Parliament Building,
P.O. Box 41842 – 00100, Nairobi, Kenya.



REF: TBCC/PLCNA/04/2023

Dear Sir,

Petition to Ban TikTok in Kenya: Protecting National Security, Privacy, and Youth from inappropriate Content.

We, the undersigned citizens of Kenya, respectfully submit this petition urging the government to ban TikTok in our country. Our concerns are based on the following serious significant issues:

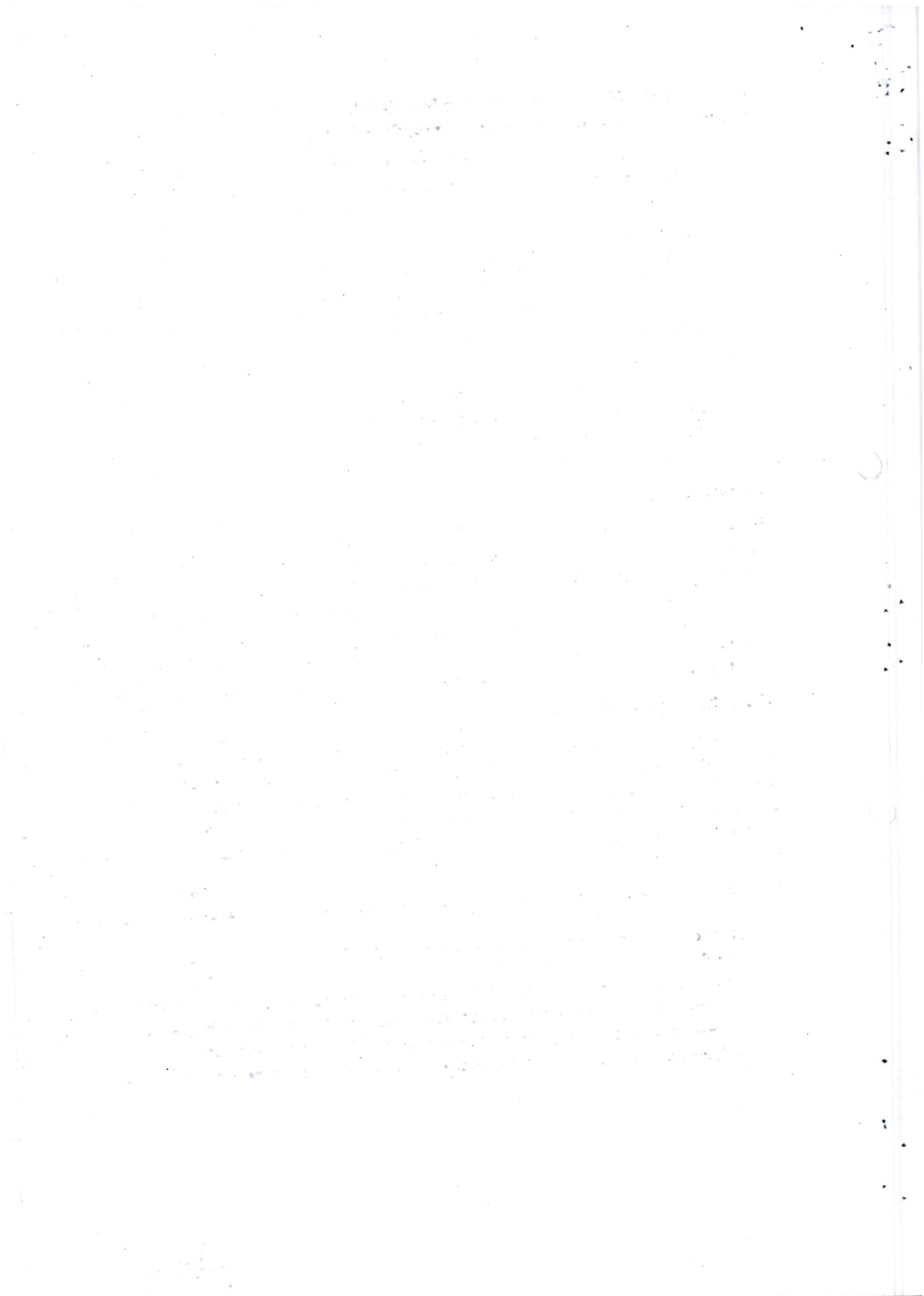
1. **National Security Concerns:** We are concerned that TikTok could be used to collect data on Kenyan citizens and potentially use that data for espionage or other purposes. The fear is that these apps could provide a conduit for foreign governments and criminals to access sensitive personal information about Kenya, including information about their location, contacts, and interests. This is a major national security concern, and the government must take action to protect its citizens from such risks.
2. **Nefarious Concerns:** TikTok presents significant security risks, particularly when used on government devices. For this reason, there is an urgent and immediate need for the Kenyan Government to ban TikTok on government devices. Firstly, TikTok is owned by a foreign company, ByteDance, and foreign governments are known to use technology to spy on other countries, as seen in the Huawei 5G controversy. This could compromise the country's national security and put it at risk. The Kenyan Government has a responsibility to ensure the security of its systems and protect the privacy of its citizens. **Banning TikTok on government devices** is a necessary step towards achieving this goal, given the significant security risks associated with the app. By taking this action, the government can ensure that sensitive information remains secure and protect against potential threats to national security.

A handwritten signature in black ink, located at the bottom right of the page.

Ref. TBCC/PLCNA/04/2023 Petition to Ban TikTok in Kenya: Protecting National Security, Privacy, and Youth from inappropriate Content

3. **Identity Theft, Cyberstalking & Blackmail:** TikTok collects vast amounts of user data, including location data, browsing history, and even keystrokes. This information in the hands of a foreign government or cybercriminal, this data can be used to gain access to sensitive government systems, making it a significant security risk
4. **Privacy Concerns:** TikTok has been implicated in several privacy scandals, with allegations of the app collecting and sharing user data with third-party companies without user consent. This lack of transparency and disregard for user privacy is unacceptable, particularly when it comes to government devices that are used to handle sensitive information.
5. **Data Privacy:** TikTok collects a significant amount of data on its users, including information about their device, location, and browsing history. There are concerns that this data could be misused or shared with third-party companies without the user's consent. We call for The Kenyan government for greater transparency around how TikTok collects and uses data.
6. **Privacy Scandals: TikTok** has been implicated in several privacy scandals over the past few years. In 2019, the app was fined \$5.7 million by the US Federal Trade Commission (FTC) for illegally collecting personal information **from children under the age of 13**. The FTC found that TikTok had violated the Children's Online Privacy Protection Act (COPPA) by collecting data such as names, email addresses, and locations from young users without their parents' consent. In addition to the COPPA violations, TikTok has also been accused of collecting and sharing user data with thirdparty companies. In 2020, the app was banned in India over concerns about national security and data privacy. The Indian government claimed that TikTok was collecting and sharing user data with foreign governments. TikTok has also been accused of collecting data on users' browsing and search histories, as well as their location data. This information could be used to build detailed profiles of users and target them with personalized advertising. Furthermore, the app has been accused of using facial recognition technology to collect biometric data on users, including their age, ethnicity, and gender.
7. **Lack of Regulation:** Tiktok in Kenya lacks of regulation from Communication Authority of Kenya – CAK. TikTok fails to remove or block content that we deemed inappropriate or offensive. This lack of regulation/moderation is seen as a serious threat to public safety and security, as it allowed hate speech and extremist content to spread.
8. **Inappropriate Content:** We wish criticise TikTok for hosting inappropriate content, such as videos promoting violence, explicit sexual content, hate speech, vulgar language and offensive behaviour. This are a serious threat to the cultural and religious value of Kenya. We wish to express our complaint about the app's content





Ref: TBCC/PLCNA/04/2023 Petition to Ban TikTok in Kenya: Protecting National Security, Privacy, and Youth from inappropriate Content

and express concern that it could negatively impact Kenyan society, particularly young people. The app's content does not align with our cultural and societal values, and the government must take action to prevent its harmful effects.

9. **Negative Impact on Youth:** TikTok is also seen as having a negative impact on the mental and physical health of young people in Kenya. The app's addictive nature was leading to a decline in academic performance and a rise in mental health issues. We have cited studies that have showed how excessive use of social media, including TikTok, was linked to depression, anxiety, and sleep deprivation

10. **Censorship:** Some critics have accused TikTok of censoring content that is critical of certain foreign governments. There have been reports of TikTok removing videos related to topics such as the pro-democracy protests in Hong Kong or the treatment of Uighur Muslims in China. The US government has expressed concern that TikTok could be used to spread Chinese propaganda or manipulate public opinion.

Overview:

TikTok, a Chinese-owned social media app, has been banned/fined in several countries across the world, including United States of America, United Kingdom, India, Netherlands, Germany, France, Belgium, Italy, Pakistan and Ethiopia. The reasons behind the bans vary, but they often involve concerns over national security, inappropriate content, data privacy, and cultural values. This petition above provides an overview of the reasons for the TikTok ban in these countries and explores whether the Kenyan government should consider banning the app. Below are some of the class case actions and fines that been metered against TikTok;

The United States of America;

The United States government has taken several steps to restrict the use of TikTok in the country. In August 2020, former President Donald Trump signed an executive order that sought to ban TikTok and WeChat, another Chinese-owned app, citing national security concerns. While the ban has been temporarily blocked by courts, the US government has continued to take steps to restrict the use of TikTok, particularly on government-provided devices and equipment.

The main reasons cited by the US government for its actions against TikTok are:

1. **National security concerns:** One of the primary concerns cited by the US government is related to national security. The government is concerned that TikTok, which is owned by the Chinese company ByteDance, could be used by the Chinese government to collect sensitive information about US citizens. The US government has raised concerns about the app's data privacy policies, which it believes are not transparent enough, and has argued that user data could be used for malicious purposes.



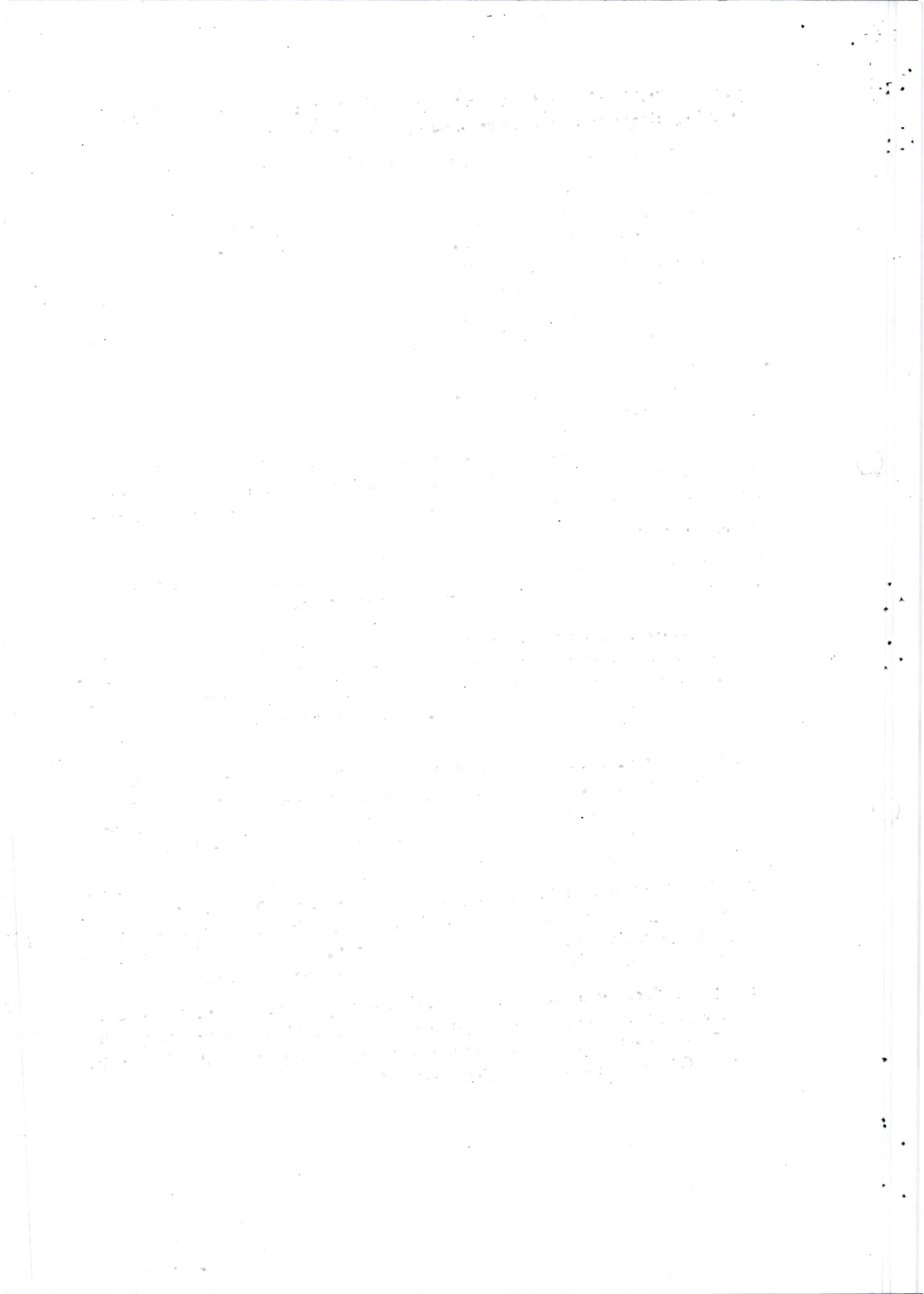
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2. **Lack of transparency:** The US government has also expressed concerns about the lack of transparency in TikTok's ownership and operations. The government has argued that the app is not transparent enough in its data privacy policies and that it is not clear how user data is being used or shared. The US government has raised concerns about the potential for TikTok to be used for propaganda or other malicious activities.
3. **Corporate espionage:** The US government has also raised concerns about the potential for corporate espionage through the use of TikTok. The government believes that the app could be used to steal intellectual property or other sensitive information from US companies. The US government has accused China of engaging in economic espionage and believes that TikTok could be used as a tool for such activities.
4. **Ban on government devices:** In December 2020, the US government issued a directive that banned the use of TikTok on all government-provided devices and equipment. The directive applies to all devices used by federal employees, including smartphones, laptops, and tablets. The government argued that the app posed a potential security risk and that its use on government-provided devices could compromise national security.
5. **Concerns about censorship:** Finally, the US government has expressed concerns about the potential for censorship through the use of TikTok. The government is concerned that the app could be used to suppress or censor certain types of content, particularly content that is critical of the Chinese government. The US government has argued that the app's content moderation policies are not transparent enough and that there is a risk that the app could be used to suppress free speech or other democratic values.

TikTok has faced several accusations and fines from the US government over the past few years. Here are some of the most significant accusations and fines:

1. **COPPA Violations:** In February 2019, TikTok (then known as Musical.ly) was fined \$5.7 million by the US Federal Trade Commission (FTC) for illegally collecting personal information from children under the age of 13. The FTC found that the app had violated the Children's Online Privacy Protection Act (COPPA) by collecting data such as names, email addresses, and locations from young users without their parents' consent.
2. **National Security Concerns:** In 2020, the Trump administration issued an executive order that would have effectively banned TikTok in the United States over concerns about national security and data privacy. The administration claimed that TikTok was collecting and sharing user data with the Chinese government, which owns the parent





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company of the app, ByteDance. However, the ban was later blocked by a federal judge.

3. **Data Collection and Sharing:** TikTok has been accused of collecting and sharing user data with third-party companies without users' consent. In December 2020, TikTok agreed to pay \$92 million to settle a class-action lawsuit alleging that the app had collected and shared user data with third-party advertisers without users' consent.
4. **Biometric Data Collection:** In May 2021, a lawsuit was filed against TikTok alleging that the app had collected and stored users' biometric data, including facial recognition data, without their consent. The lawsuit claimed that this violated the Illinois Biometric Information Privacy Act, which requires companies to obtain explicit consent before collecting biometric data.

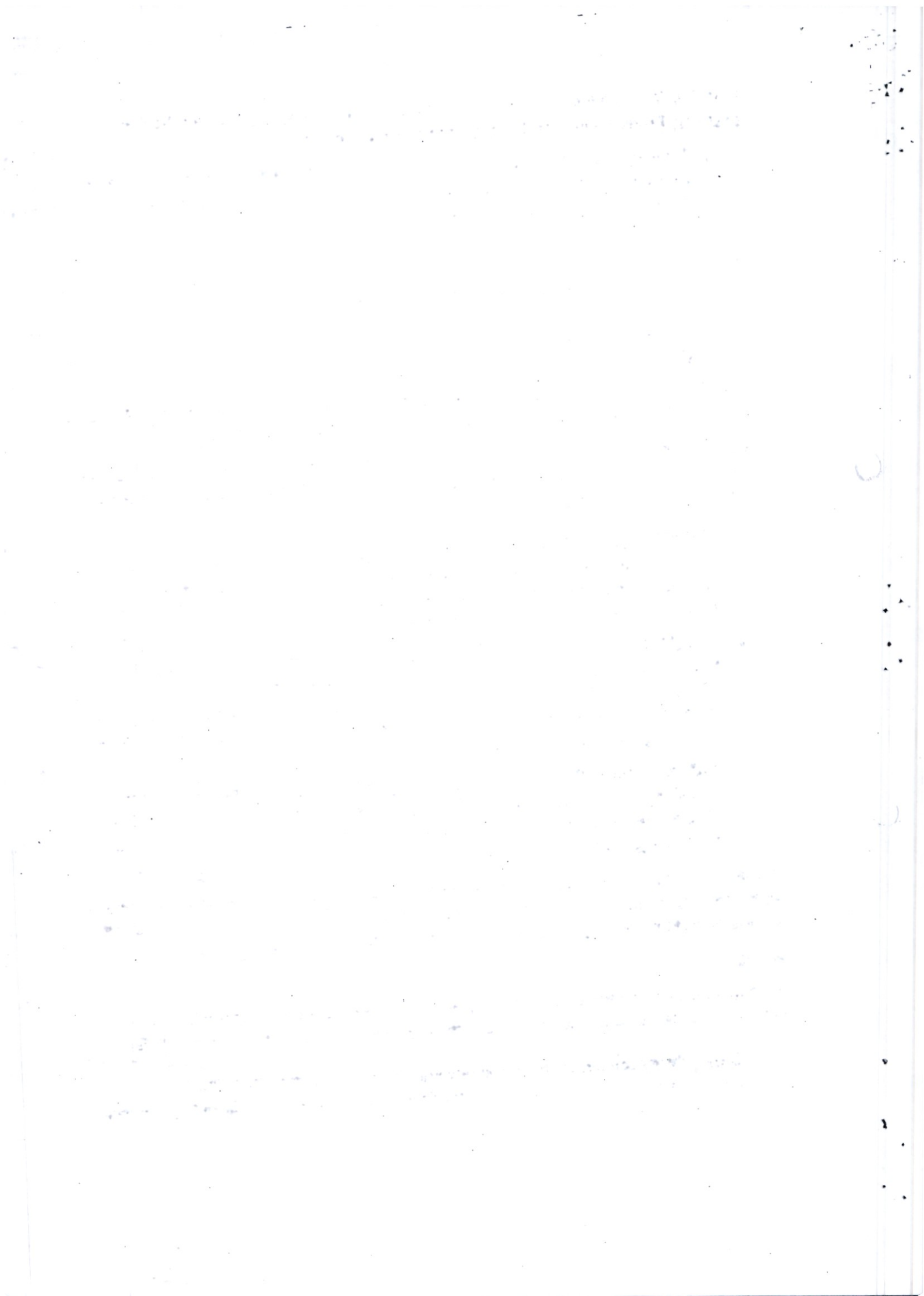
In conclusion, TikTok has faced several accusations and fines from the US government over privacy violations, national security concerns, and false claims about data privacy. These accusations have raised concerns about the safety and security of user data on the platform

United Kingdom;

TikTok, a popular social media app, has faced several fines and bans by the UK government for various reasons. The following are the main leading reasons:

1. **Data Privacy Violations:** TikTok has been fined for violating children's data privacy laws, as it has been found to collect personal information from underage users without their parents' consent. The app has also faced criticism for its data privacy policies, as it has been accused of sharing user data with third-party companies without proper disclosure.
2. **Promotion of Harmful Content:** TikTok has been criticized for hosting harmful content, including videos that promote self-harm, eating disorders, and dangerous stunts. The app has been accused of not doing enough to remove such content from its platform, despite several incidents of users being injured or harmed while attempting to replicate the content.
3. **Misleading Claims on Data Privacy:** TikTok has faced backlash from the UK's Advertising Standards Authority (ASA) for making misleading claims about its data privacy practices. The app had claimed that it did not share data with third-party companies, but investigations revealed that this was not entirely accurate.
4. **National Security Concerns:** TikTok's parent company, ByteDance, is based in China, raising concerns about the Chinese government's potential influence over the app. The UK government has expressed concerns over the app's data collection practices and its potential use in espionage or propaganda efforts.





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5. **Underage User Protection:** TikTok has been fined for failing to protect underage users on its platform, including not providing adequate measures to protect against grooming and inappropriate contact.

These reasons have led to the UK government taking action against TikTok through fines and bans. Below are some of the fines that TikTok has faced;

1. In January 2020, TikTok was fined £4.3m by the UK Information Commissioner's Office (ICO) for violating children's data privacy laws.
2. In February 2021, TikTok faced backlash from the UK's Advertising Standards Authority (ASA) for making misleading claims about its data privacy practices.

The UK government has taken several actions to address concerns regarding the app's user safety and data privacy. The following is a list of the bans and restrictions that have been imposed on TikTok by the UK government;

1. **TikTok's Age Verification System:** The UK government has ordered TikTok to improve its age verification system to better protect minors. The app has been required to implement stricter measures to verify users' age and ensure that underage users are not exposed to harmful content.
2. **TikTok's Promotion of Harmful Content:** The UK government has called on TikTok to take stronger action to remove harmful content from its platform. The app has been criticized for hosting videos that promote self-harm, eating disorders, and dangerous stunts. The government has urged TikTok to improve its content moderation policies and remove such content promptly.
3. **National Security Concerns:** The UK government has expressed concerns about TikTok's parent company, ByteDance, which is based in China. The government has called for greater transparency around the app's data privacy policies and potential links to the Chinese government.

It is important to note that while the UK government has taken significant steps to address concerns around user safety and data privacy. These measures reflect the UK government's commitment to protecting UK citizens from potential harm caused by the app.

India;

India was the first country to ban TikTok in 2020 due to several key concerns related to national security and data privacy. Some of the key concerns that led to the ban include:

1. **Data privacy concerns:** The Indian government was concerned that TikTok was collecting and sharing user data with the Chinese government, which could potentially



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compromise national security. The Indian government believed that the Chinese government could use the data collected by TikTok for surveillance purposes, and this could be detrimental to Indian national security interests.

2. **Inappropriate content:** Another key concern was that TikTok was being used to spread inappropriate content, including content that was harmful to children. The Indian government believed that TikTok was promoting vulgar and explicit content that was not suitable for Indian audiences, especially children. The government had received several complaints from concerned citizens about the kind of content that was being circulated on TikTok, and this led to calls for the app to be banned.
3. **Harmful effects on society:** The Indian government also believed that TikTok was having a harmful effect on Indian society, particularly on young people. The app was seen as promoting a culture of superficiality and promoting harmful social trends such as body shaming and bullying. The government was concerned that such trends could have a long-lasting negative impact on the mental health of young people in the country.
4. **Lack of regulation:** Finally, the Indian government was concerned that TikTok was not adequately regulated, and this could have negative consequences for the Indian public. The government believed that the app was not doing enough to curb the spread of harmful content or protect user data, and this was seen as a major concern that needed to be addressed.
5. **Local Competitors:** TikTok's popularity in India had also raised concerns among Indian companies, who felt that they were losing market share to a foreign app. By banning TikTok, the Indian government may have been seeking to protect Indian companies from foreign competition.

In summary, India was the first country to ban TikTok in 2020 due to concerns related to data privacy, inappropriate content, harmful effects on society, and lack of regulation. These concerns were seen as major issues that needed to be addressed to protect the interests of the Indian public and safeguard national security.

The Dutch Government;

To date, the Dutch government has not issued a complete ban on TikTok. However, the government has taken action against the app for several reasons. Below are the main reasons for the fines metered to TikTok by the Dutch government:

1. **Data privacy concerns:** The Dutch Data Protection Authority (DPA) fined TikTok €750,000 in February 2021 for violating the privacy of young children who use the app. The DPA found that TikTok failed to obtain proper consent from parents or guardians to collect and process children's personal data, as required by the EU's



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General Data Protection Regulation (GDPR). The DPA also found that TikTok did not provide adequate information to users about how their data is processed.

2. **Misleading advertising:** In September 2020, the Dutch advertising watchdog, the Advertising Code Committee, ruled that TikTok violated advertising rules by not clearly indicating when content was sponsored or paid for. The Committee also found that TikTok failed to make it clear when certain content was intended for marketing purposes.
3. **Safety concerns:** TikTok has been criticized for its content moderation policies and for hosting potentially harmful content. The Dutch government has urged TikTok to take stronger action to remove harmful content, particularly content that is targeted at children.
4. **National security concerns:** Like many other governments, the Dutch government has expressed concerns about TikTok's data privacy policies and its links to the Chinese government. However, the Dutch government has not taken any specific action against TikTok for these concerns.

Overall, the Dutch government has taken a measured approach to regulating TikTok. While fines have been issued against the app for data privacy and advertising violations, the government has not yet issued a complete ban on TikTok. This reflects the government's commitment to protecting its citizens' privacy and safety while also recognizing the popularity of TikTok as a social media platform.

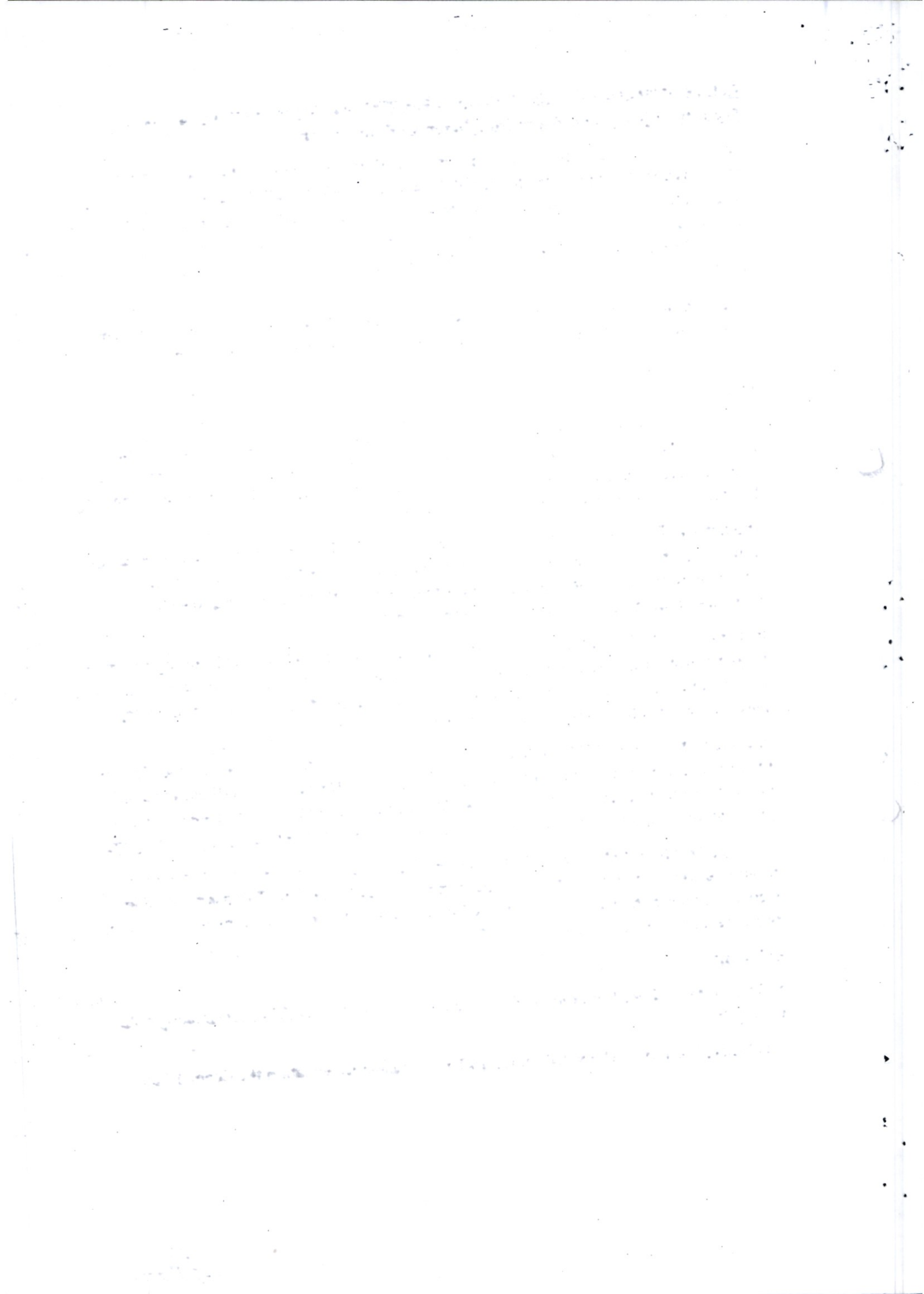
Germany;

The TikTok the platform has faced fines from the German government over concerns about data protection and child safety;

In February 2019, the Federal Commissioner for Data Protection and Freedom of Information (BfDI) in Germany announced that TikTok was in violation of data protection regulations because the app did not provide adequate information to users about how their data was being collected, stored, and processed. TikTok was fined €50,000 (\$58,000 USD) over the issue.

In June 2020, the BfDI launched an investigation into TikTok's data protection practices, expressing concerns over the platform's use of facial recognition technology and the collection of data from children under the age of 13. In August 2020, the BfDI issued a statement calling for TikTok to implement more robust privacy settings and to delete data collected from users who had not given their explicit consent. While TikTok updated its privacy policy in response to the investigation, it was not subject to any further fines.





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In addition to the data protection concerns, the German government has also expressed concerns about the potential for harmful content on TikTok, particularly content that could negatively impact children and young people. In October 2020, the German Youth Protection Commission (Jugendschutzkommission) issued a warning to TikTok over its content moderation policies, calling for the platform to take stronger action to remove inappropriate content.

Overall, while TikTok has faced fines and increased scrutiny over data protection and child safety concerns in Germany, it has not been subject to any bans in the country.

France;

TikTok has faced fines from the French data protection authority, CNIL, for violating data protection laws. In February 2019, CNIL issued a fine of 50 million euros (\$57 million USD) against TikTok for failing to obtain proper consent from users, particularly minors, regarding the collection and processing of their personal data.

The fine was imposed after a group of privacy activists in France filed a complaint against the app for violating EU privacy rules. The complaint alleged that TikTok was not properly informing users about the use of their personal data and that the app was collecting excessive amounts of data, particularly from minors.

In its ruling, CNIL found that TikTok had violated EU data protection laws by failing to obtain proper consent from users for the processing of their personal data. The regulator also found that the app did not provide adequate information to users about the use of their data, particularly in relation to targeted advertising.

In addition to the fine, CNIL ordered TikTok to implement changes to its data collection and processing practices to bring them into compliance with EU privacy rules. These included obtaining proper consent from users, providing clearer information about data collection practices, and implementing mechanisms for users to exercise their data protection rights.

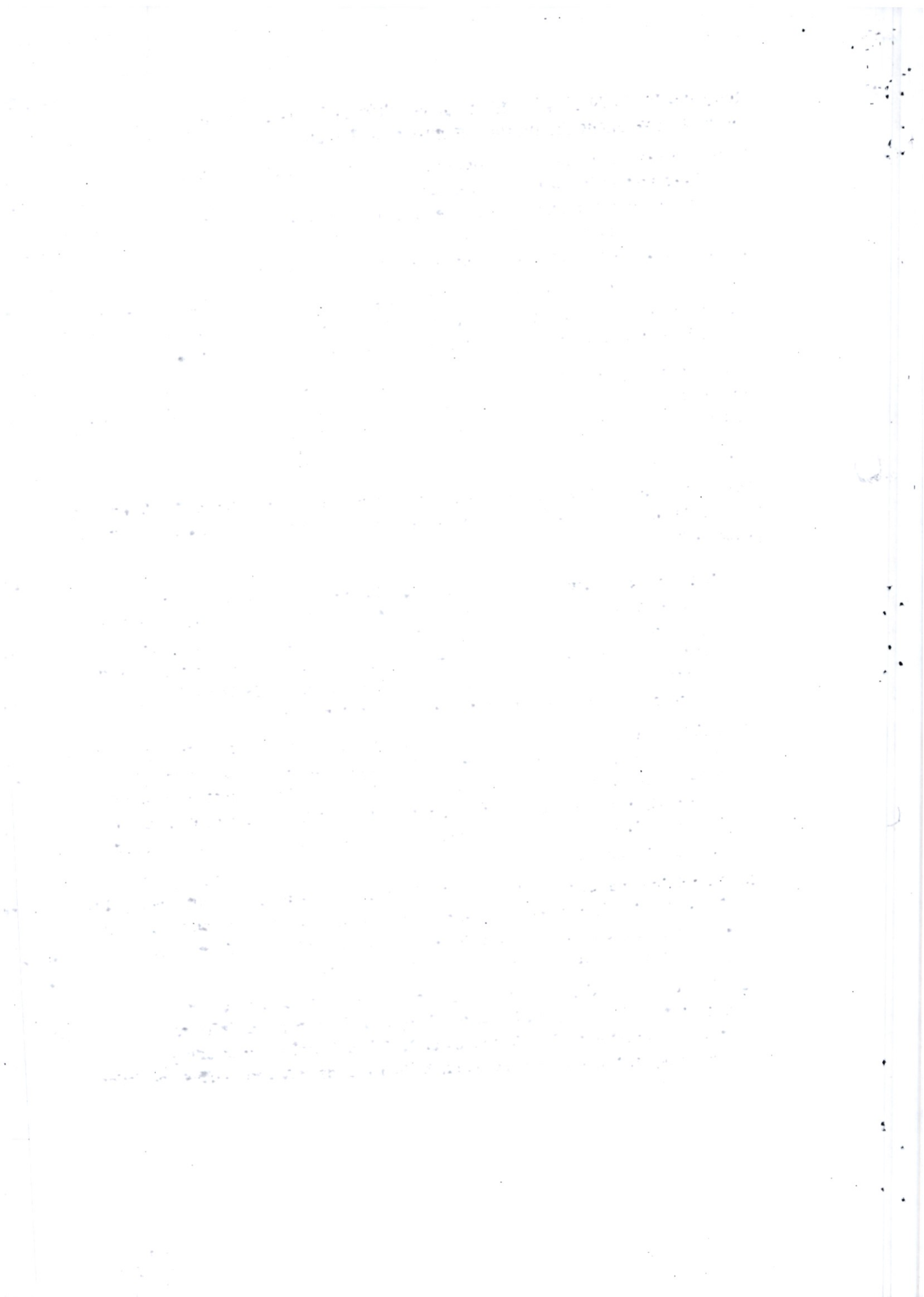
It is important to note that while TikTok has not faced a ban in France, the company has faced scrutiny from French authorities over its handling of user data. This has resulted in significant fines and enforcement actions, indicating that the French government takes data protection and privacy concerns seriously.

Belgium;

TikTok has faced fines from the Belgian Data Protection Authority (DPA) for violating data privacy laws.

In February 2021, the Belgian DPA fined TikTok €5 million for violating the General Data





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Protection Regulation (GDPR), a European Union law that regulates data privacy and security. The DPA found that TikTok had collected a large amount of personal data from users without their explicit consent and failed to provide clear information about how their data would be used. The DPA also found that TikTok did not adequately protect the personal data of minors and did not adequately respond to users' requests to delete their data.

The fine was one of the largest ever issued by the Belgian DPA and one of the largest GDPR fines ever issued in Europe. In addition to the fine, the DPA ordered TikTok to change its data collection practices and provide more transparency about how it uses user data.

It is important to note that while TikTok has not been banned in Belgium, the Belgian government has expressed concerns about the app's data privacy practices and has called on the European Union to investigate the company's handling of user data.

Italy;

The Italian government has not issued a complete ban on TikTok, but the app has faced fines for several reasons. Below are the main reasons for the fines metered to TikTok by the Italian government:

1. **Data privacy concerns:** In January 2021, the Italian Data Protection Authority fined TikTok €2.5 million for violating the privacy of minors. The authority found that TikTok had failed to provide adequate information to users about the processing of their personal data and had failed to obtain proper consent from parents or guardians for the collection of children's data. The authority also found that TikTok did not adequately protect minors from inappropriate content.
2. **Safety concerns:** TikTok has been criticized for its content moderation policies and for hosting potentially harmful content. In February 2021, a 10-year-old girl died in Palermo, Italy, after participating in a TikTok "blackout challenge" that encouraged users to choke themselves until they passed out. The Italian government has urged TikTok to take stronger action to remove harmful content, particularly content that is targeted at children.
3. **Copyright violations:** In February 2021, the Italian Competition Authority fined TikTok €5.7 million for violating copyright laws. The authority found that TikTok had allowed users to upload and share copyrighted material without obtaining the necessary permissions or paying royalties to the copyright owners.
4. **Misleading advertising:** In August 2021, the Italian advertising watchdog, the Institute for Advertising Self-Regulation (IAP), issued a warning to TikTok for misleading advertising. The IAP found that TikTok had displayed misleading advertising on its platform that violated the Italian Code of Advertising Self-Regulation.



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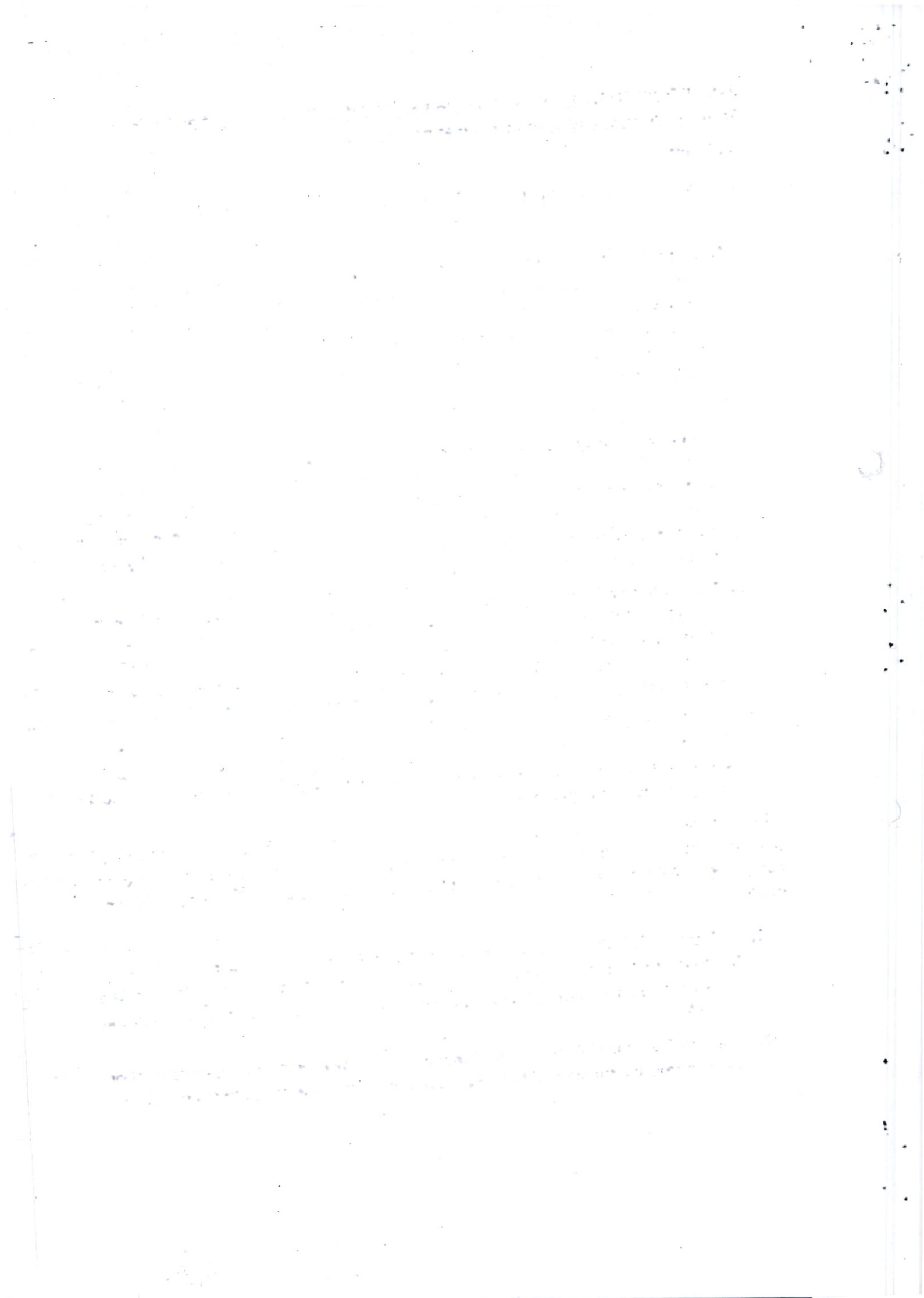
Overall, the Italian government has taken a strong stance against TikTok for its data privacy, safety, and copyright violations. While the government has not issued a complete ban on TikTok, it has imposed significant fines and urged the company to take stronger action to protect its users.

In summary;

TikTok has faced fines and bans in various EU countries due to concerns about data privacy and inappropriate content on the platform. Here are some examples:

1. Italy: In December 2019, the Italian Data Protection Authority (DPA) fined TikTok €1.5 million for failing to protect minors on its platform and for not making its privacy policy easily accessible. The DPA also ordered TikTok to remove users under the age of 13.
2. The Netherlands: In July 2020, the Dutch Data Protection Authority (DPA) began an investigation into TikTok's privacy practices. In February 2021, the DPA announced that it had found TikTok in breach of the General Data Protection Regulation (GDPR) for not providing clear information to users about how their data is collected and used. The DPA gave TikTok until mid-April 2021 to come up with a plan to address the issues, or face fines of up to €1.5 million.
3. France: In February 2019, the French consumer watchdog, the Directorate-General for Competition, Consumer Affairs and Fraud Control (DGCCRF), fined TikTok €75,000 for failing to remove content that could be harmful to minors, such as nudity and pornography.
4. Germany: In March 2021, the German Federal Court of Justice (BGH) ruled that TikTok's terms and conditions were unclear and therefore invalid. This ruling came in response to a case brought by a consumer rights group, which argued that TikTok's terms and conditions did not provide enough information about how user data is collected and used.
5. EU-wide concerns: In May 2021, the European Consumer Organisation (BEUC) filed a complaint against TikTok with the European Commission, alleging that the platform had breached EU consumer laws by failing to protect children from hidden advertising and inappropriate content. The BEUC also accused TikTok of failing to make its terms and conditions clear and understandable for users.





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Pakistan;

The Pakistani government banned TikTok in October 2020, citing several key reasons for its decision. Some of the main reasons cited by the Pakistani government to ban TikTok are:

1. **Inappropriate content:** One of the key reasons cited by the Pakistani government was that TikTok was promoting immoral and indecent content, which was considered harmful to society's values and cultural norms. The government received numerous complaints from citizens regarding the type of content being uploaded on the platform, including vulgar and sexually explicit videos. The government believed that such content had the potential to corrupt young minds and was not in line with the values and cultural norms of Pakistan.
2. **National security concerns:** Another key reason cited by the Pakistani government was that TikTok could be used to compromise national security. The government was concerned that the Chinese government could potentially access sensitive information through the app, putting Pakistan's national security at risk. The government believed that the app was not adequately regulated and that user data could be used by the Chinese government for surveillance purposes.
3. **Lack of regulation:** The Pakistani government was also concerned about the lack of regulation of the app. It believed that the app was not doing enough to regulate the content that was being uploaded on its platform. The government believed that TikTok was not taking sufficient measures to curb the spread of harmful content, such as hate speech and misinformation, and that it was not doing enough to protect user data.
4. **Court orders:** The ban on TikTok in Pakistan was also a result of court orders. The Lahore High Court had ordered the Pakistan Telecommunication Authority (PTA) to block access to the app after hearing a petition that raised concerns about the content being shared on the platform.

TikTok has faced a number of fines and bans from the Pakistan government in recent years, primarily due to concerns over inappropriate and immoral content on the platform. Here is a comprehensive list of the fines and bans that have been imposed on TikTok by the Pakistan government;

1. In October 2020, the Pakistan Telecommunication Authority (PTA) banned TikTok in the country, citing concerns over "immoral and indecent" content on the platform. The ban was lifted after 10 days, following discussions between TikTok representatives and the PTA.
2. In March 2021, the PTA issued a final warning to TikTok over inappropriate content on the platform, and threatened to ban the app if it did not take action to remove such

PTA

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content. The PTA stated that it had received a large number of complaints from Pakistani citizens about TikTok content that was "vulgar, indecent, immoral, and hate-oriented."

3. In June 2021, the PTA imposed a fine of PKR 5.5 million (approximately USD 34,000) on TikTok for "indecent" content on the platform. The PTA stated that it had identified a number of TikTok accounts that were posting "obscene and immoral content," and had ordered TikTok to remove the content within 24 hours. When the content was not removed within the specified time, the PTA imposed the fine on TikTok.
4. In July 2021, the PTA again issued a warning to TikTok over inappropriate content on the platform, and threatened to ban the app if it did not take action to remove such content. The PTA stated that it had received a large number of complaints from Pakistani citizens about TikTok content that was "vulgar, indecent, and immoral," and that the platform needed to do more to prevent such content from being posted.
5. In August 2021, the PTA once again banned TikTok in Pakistan, citing concerns over inappropriate content on the platform. The ban was lifted after two days, following discussions between TikTok representatives and the PTA.

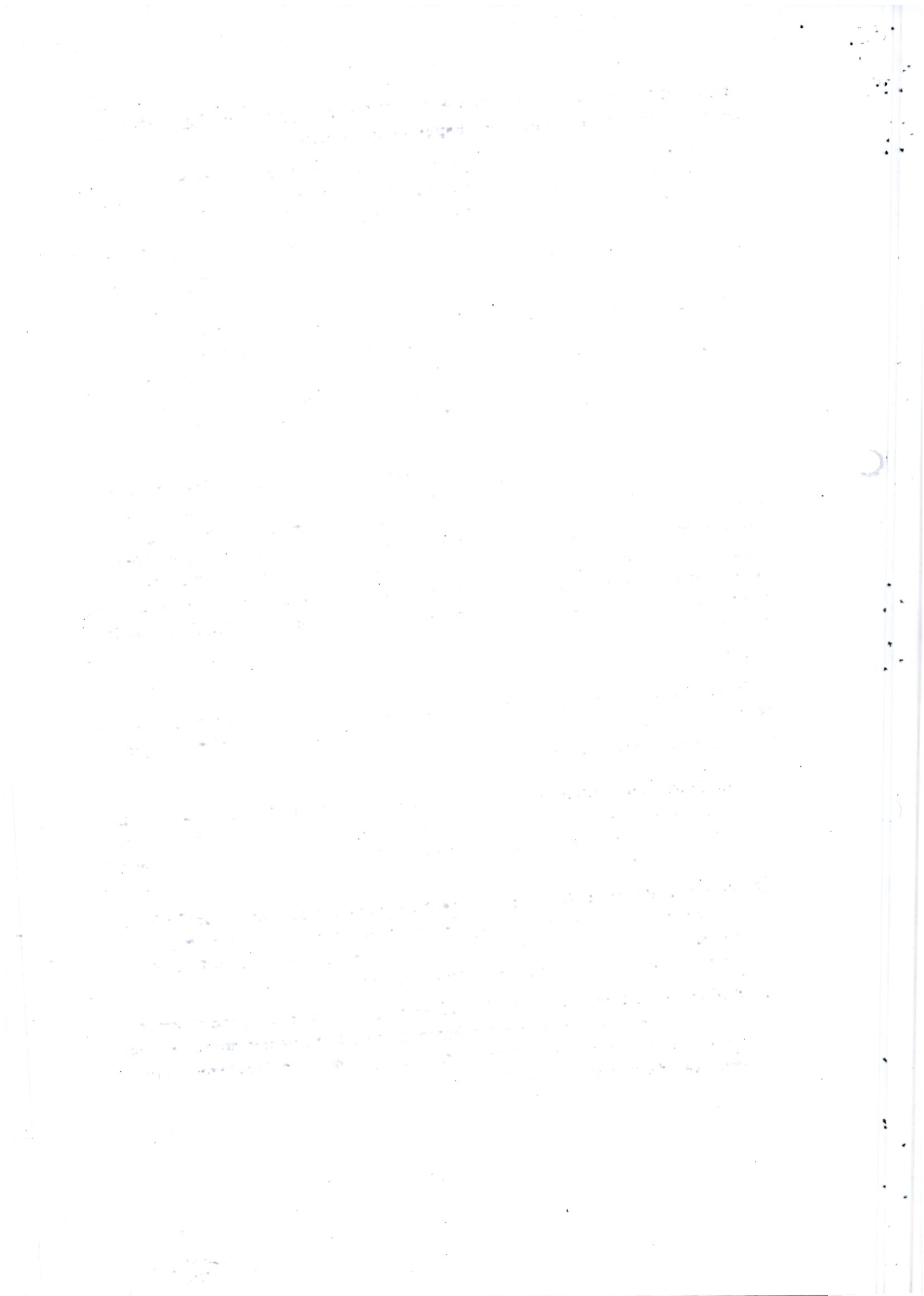
In summary, the key reasons cited by the Pakistani government to fine/ban TikTok were related to inappropriate content, national security concerns, lack of regulation, and court orders. The government believed that the app was not in line with the values and cultural norms of Pakistan, and that it posed a threat to national security due to its data privacy policies. The lack of regulation of the app and court orders were also major factors that contributed to the government's decision to ban TikTok.

Ethiopia;

The Ethiopian government banned TikTok in January 2021, citing several key reasons for its decision. Some of the main reasons cited by the Ethiopian government to ban TikTok are:

1. **National security concerns:** One of the primary reasons cited by the Ethiopian government was related to national security concerns. The government was concerned that TikTok could be used to collect sensitive information about Ethiopian citizens, which could be used to compromise the country's national security. The government believed that TikTok's data privacy policies were not transparent enough, and that user data could potentially be used for malicious purposes.
2. **Cultural concerns:** Another key reason cited by the Ethiopian government was related to cultural concerns. The government believed that TikTok was promoting content that was not in line with Ethiopian cultural values and norms. The government was concerned that the app was promoting a culture of superficiality and was not promoting content that was in line with Ethiopia's cultural heritage.





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3. **Harmful effects on society:** The Ethiopian government was also concerned about the harmful effects that TikTok could have on Ethiopian society, particularly on young people. The government believed that TikTok was promoting harmful social trends such as body shaming, cyberbullying, and addiction. The government was concerned that such trends could have long-lasting negative impacts on the mental health of young people in Ethiopia.
4. **Lack of regulation:** Finally, the Ethiopian government was concerned about the lack of regulation of the app. The government believed that TikTok was not adequately regulated and that the app was not doing enough to curb the spread of harmful content. The government was concerned that TikTok was not taking sufficient measures to protect user data and that the app was not transparent enough in its data privacy policies.

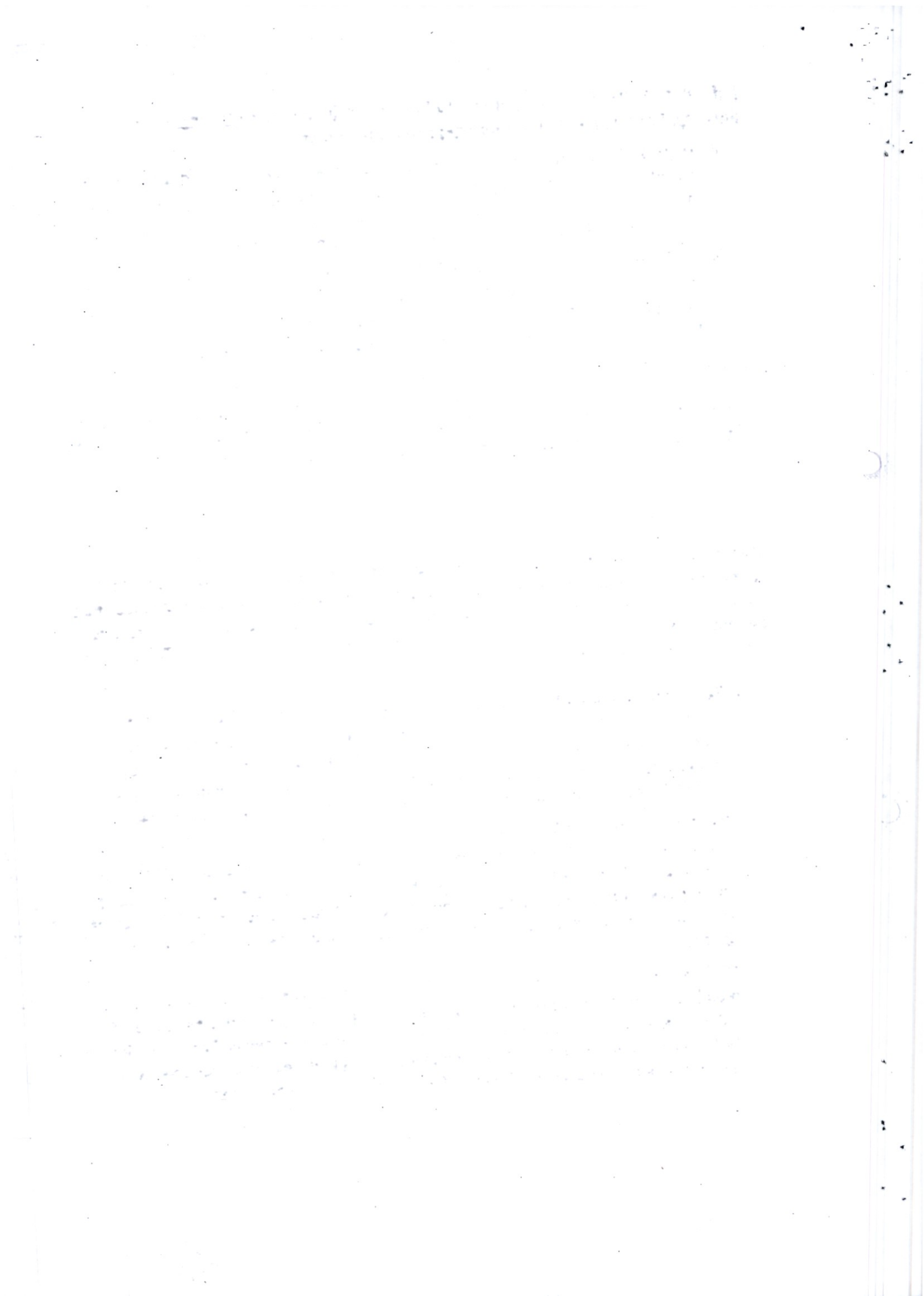
In summary, the key reasons cited by the Ethiopian government to ban TikTok were related to national security concerns, cultural concerns, harmful effects on society, and lack of regulation. The government believed that the app was not promoting content that was in line with Ethiopia's cultural heritage and that it posed a threat to national security due to its data privacy policies. The harmful effects of TikTok on Ethiopian society, particularly on young people, were also major concerns for the government. Finally, the lack of regulation of the app and the app's data privacy policies were also significant factors that contributed to the government's decision to ban TikTok.

Bangladesh;

The Bangladesh government announced a ban on TikTok, a popular short-form videosharing app, on June 20, 2020, citing a variety of reasons. Here are some of the reasons why the Bangladesh government banned TikTok;

1. **Inappropriate Content:** The Bangladesh government claimed that TikTok contains inappropriate and indecent content that is harmful to young people. There have been reports of sexually explicit and vulgar content on TikTok, which may not be suitable for all age groups.
2. **Privacy and Security Concerns:** The government expressed concern over TikTok's data collection practices and how user data is being handled. There have been allegations that the app is collecting user data and sending it to servers located in China, which could pose a threat to national security.
3. **Addiction and Distraction:** TikTok has been accused of promoting addiction and distraction among young people, leading to poor academic performance and mental health issues. The government believes that banning TikTok could help reduce the negative impact on young people's lives.





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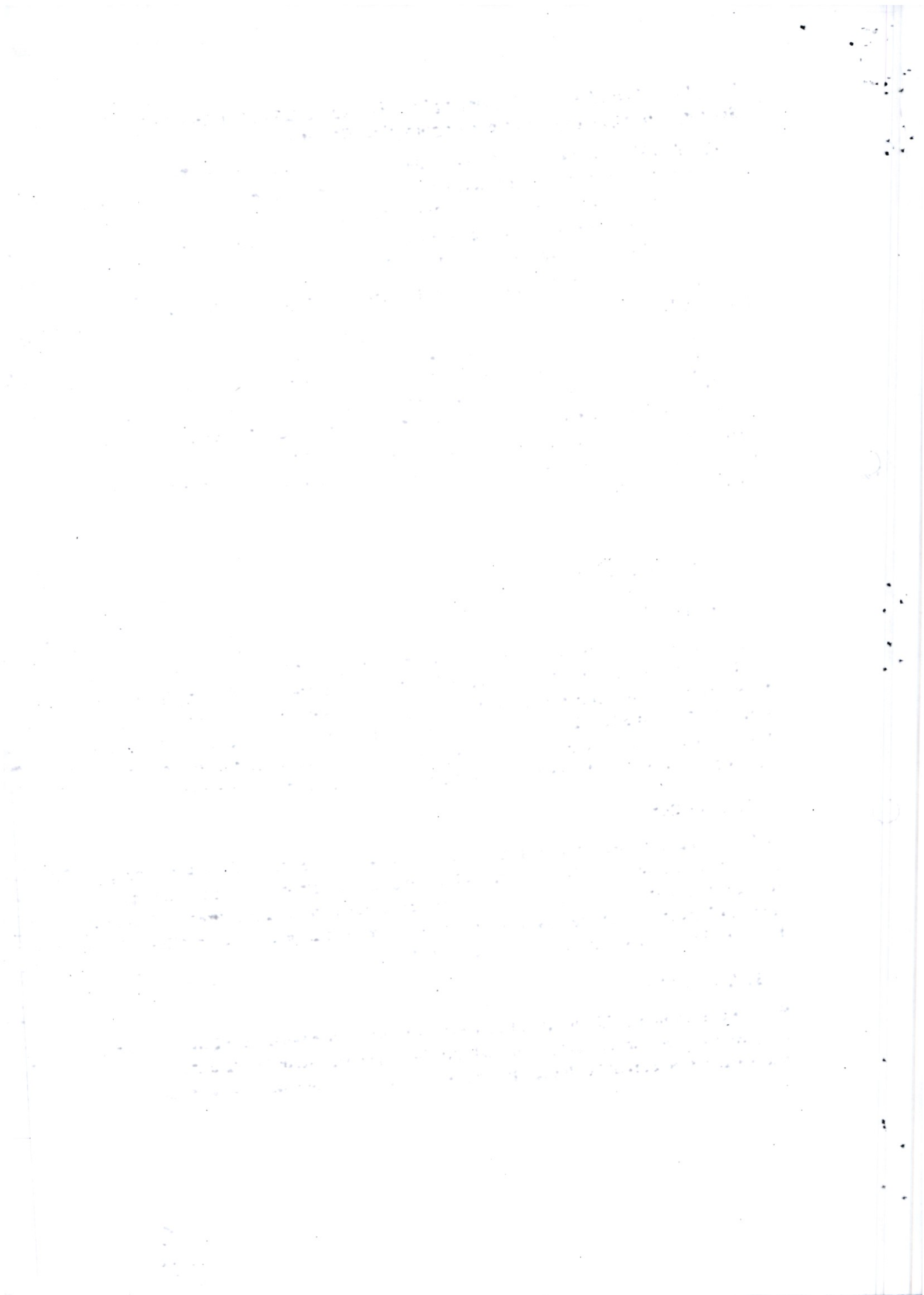
4. **Cultural Appropriation:** Some people in Bangladesh have expressed concern that TikTok promotes cultural appropriation and disrespect for traditional values. There have been instances where users have appropriated cultural symbols and traditions in their videos, which can be seen as offensive by some people.
5. **Misinformation and Fake News:** TikTok has been accused of spreading misinformation and fake news, especially during the COVID-19 pandemic. There have been instances where videos promoting false information about the virus and its treatment have gone viral, leading to confusion and panic among people.

In conclusion, the Bangladesh government banned TikTok due to concerns over inappropriate content, privacy and security, addiction and distraction, cultural appropriation, and misinformation. While some people may disagree with the ban, the government believes that it is necessary to protect young people and maintain national security.

TikTok, a popular short-form video-sharing app, has faced criticism for censoring content that is critical of the Chinese government. The app has been accused of removing videos that mention sensitive topics, such as the Tiananmen Square massacre, the Hong Kong protests, and the treatment of Uighur Muslims in Xinjiang. Here are some examples of TikTok's censorship of critical content;

1. **Tiananmen Square Massacre** TikTok has been accused of censoring videos that mention the Tiananmen Square massacre, a violent crackdown on pro-democracy protests in Beijing in 1989. In June 2020, users reported that their videos about the anniversary of the massacre were removed or hidden by TikTok's algorithm. TikTok denied the allegations, but users continue to report censorship of sensitive topics.
2. **Hong Kong Protests:** TikTok has been accused of censoring videos about the prodemocracy protests in Hong Kong, which began in 2019. Users reported that their videos about the protests were removed or hidden by TikTok's algorithm, even though the app is not officially available in Hong Kong. TikTok said that it removed videos that violated its community guidelines, but critics accused the app of suppressing free speech.
3. **Uighur Muslims in Xinjiang:** TikTok has been accused of censoring videos that mention the treatment of Uighur Muslims in Xinjiang, a region in northwest China. In 2019, users reported that their videos about the Uighurs were removed or hidden by TikTok's algorithm. TikTok said that it removed videos that violated its community guidelines, but critics accused the app of ignoring human rights abuses.





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4. **TikTok's censorship of critical** content has raised concerns about the app's commitment to free speech and human rights. Critics argue that TikTok's censorship is a reflection of the Chinese government's authoritarian control over the internet and media. They say that TikTok's policies undermine democracy and human rights, and that the app should be held accountable for its actions.

Scientific Research Evidence on negative impact as a result of TikTok use;
Introduction;

TikTok, the social media platform known for its short-form videos, has gained popularity among young people worldwide. Despite its widespread use, the potential negative impacts of TikTok use on the mental and physical health of young people have become a concern. This paper will explore the negative impact of TikTok on the youth, focusing on the evidencebased research that highlights six main reasons for the negative impact: cyberbullying, addiction, lack of sleep, body image issues, privacy concerns, and exposure to inappropriate content.

Some of the negative impacts are detailed below;

1. Cyberbullying

TikTok is a platform where users can create and share videos, and while some of the content can be entertaining and positive, it can also lead to cyberbullying. Cyberbullying is a form of harassment that takes place on digital platforms, including social media. According to a survey **by Ditch the Label**, an anti-bullying charity, 68% of young people surveyed reported being cyberbullied on TikTok. Cyberbullying can have a profound impact on the mental health of young people, leading to depression, anxiety, and other mental health issues.

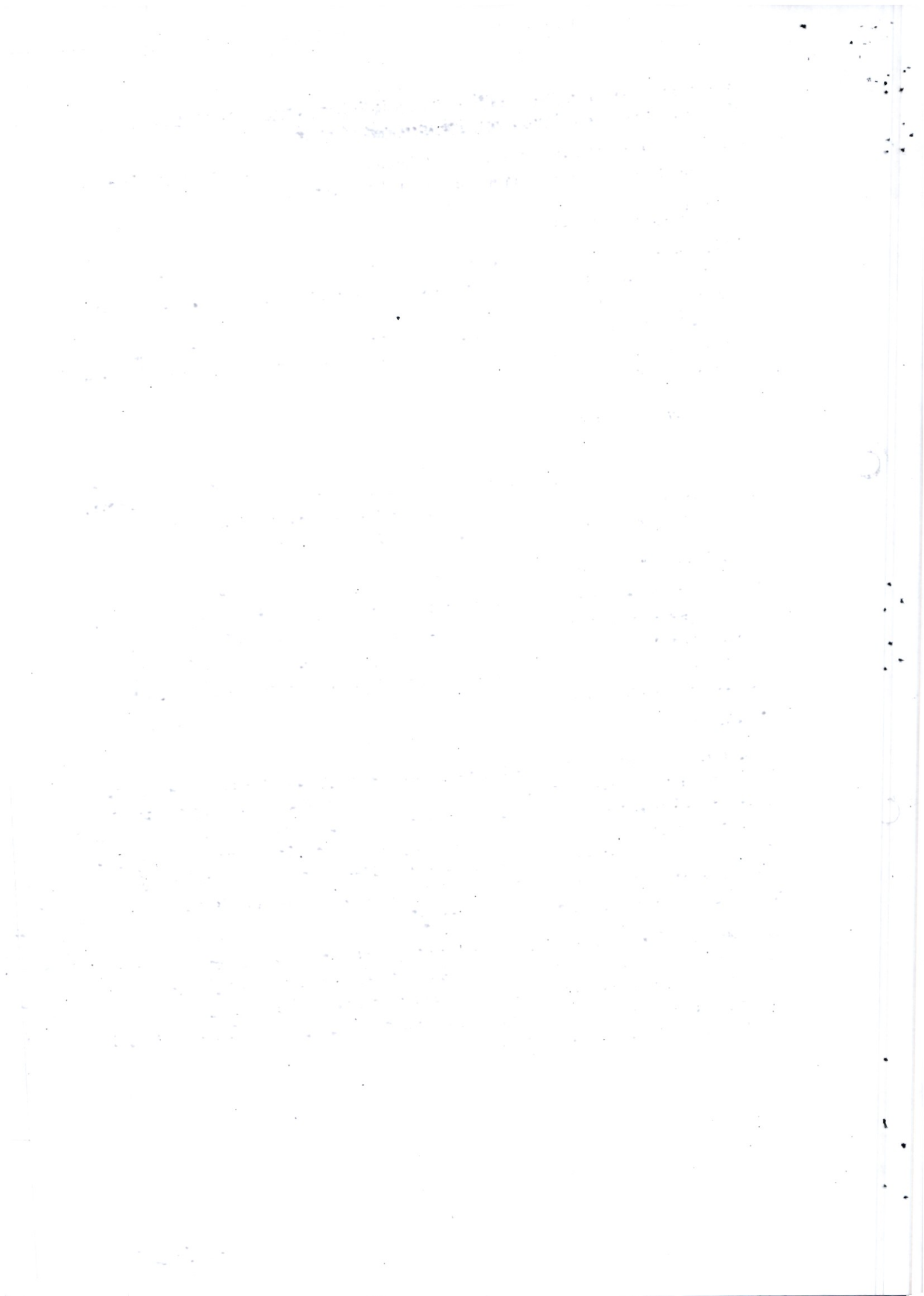
2. Addiction

TikTok can be highly addictive, with its endless stream of short videos that can keep young people scrolling for hours. Addiction to TikTok can lead to a lack of focus, poor academic performance, and social isolation. According to a study published in **the Journal of Medical Internet Research**, adolescents who spend more time on social media platforms like TikTok have a higher risk of developing addictive behaviors.

3. Lack of Sleep

Young people who use TikTok late into the night can experience sleep disturbances, which can have negative impacts on their mental and physical health. According to a study published in **the journal Pediatrics**, the use of screens before bed, such as those found on





Ref: TBCC/PLCNA/04/2023 Petition to Ban TikTok in Kenya: Protecting National Security, Privacy, and Youth from inappropriate Content

TikTok, can lead to poor sleep quality and duration, which can lead to daytime fatigue, poor academic performance, and other negative health outcomes.

4. Body Image Issues

TikTok can contribute to body image issues, with many users feeling pressure to conform to a certain body type or beauty standard. According to a survey by the **Royal Society for Public**

Health, social media platforms like TikTok have a negative impact on the body image of young people, with 70% of those surveyed reporting that social media had a negative impact on their body image.

5. Privacy Concerns

TikTok has been accused of collecting user data without consent, raising privacy concerns among young people and their parents. According to a report by the **Wall Street Journal**, TikTok was found to have collected unique identifiers from millions of mobile devices without user consent, which could lead to potential privacy breaches.

6. Exposure to Inappropriate Content

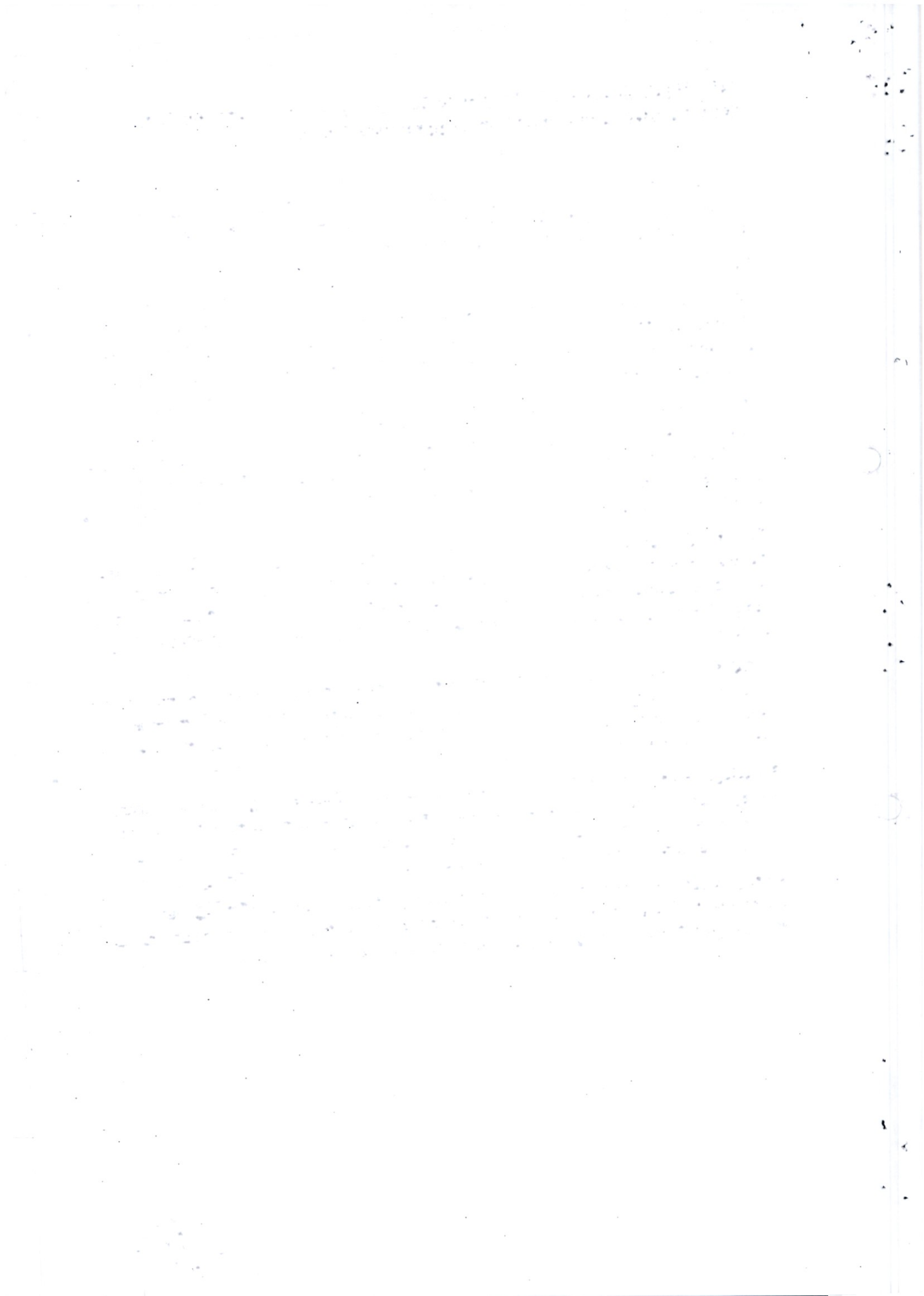
TikTok has been criticized for its lack of content moderation, which has led to the exposure of young people to inappropriate content. According to a report by the **BBC**, TikTok was found to have hosted videos that contained inappropriate content, including sexually suggestive material, which could have negative impacts on the mental and emotional wellbeing of young people.

Conclusion

In conclusion, TikTok has become a popular platform among young people, but it has also been associated with negative impacts on their mental and physical health. Cyberbullying, addiction, lack of sleep, body image issues, privacy concerns, and exposure to inappropriate content are among the main reasons for these negative impacts. To mitigate these negative impacts, it is essential that policymakers are aware and take steps to ban TikTok and equally raise awareness about the potential risks of TikTok use and work to promote healthy and responsible social media use among young people.

Additionally, TikTok has been criticized for censoring content that is critical of the Chinese government, including videos about the Tiananmen Square massacre, the Hong Kong protests, and the treatment of Uighur Muslims in Xinjiang. While TikTok denies the allegations, critics say that the app's policies undermine free speech and human rights, and that it should be held accountable for its actions





Ref: TBCC/PLCNA/04/2023 Petition to Ban TikTok in Kenya: Protecting National Security, Privacy, and Youth from inappropriate Content

It is against the above concerns; we strongly urge the National Assembly of Kenya to impose a total ban on TikTok in Kenya. We believe that this action is necessary to protect national security, data privacy, and the well-being of young people in Kenya

In Summary;

We, the undersigned petitioners **Bob Ndolo ID nos; 14723263** and **Morris Wetindi ID nos: 11591540**, are deeply concerned about the negative impact TikTok is having on Kenyan society. We are calling for a total ban on TikTok in Kenya and wish to reiterate the following reasons:

Firstly, we are concerned about the potential national security risks posed by TikTok. The app is owned by a Chinese company, and there have been reports of TikTok being used by the Chinese government to gather intelligence on foreign countries. Given the sensitive nature of national security issues, we believe it is important to err on the side of caution and ban TikTok in Kenya.

Secondly, we are concerned about the data privacy of Kenyan users of TikTok. TikTok has been accused of collecting and sharing user data with the Chinese government, which raises serious questions about the privacy of Kenyan users. Given the lack of strong data protection laws in Kenya, we believe that a ban on TikTok is necessary to protect the privacy of Kenyan citizens.

Thirdly, we are concerned about the lack of regulation of TikTok in Kenya. The app has been accused of allowing inappropriate content, such as hate speech, religious extremism and pornography, to proliferate on its platform. Without proper regulation, TikTok poses a serious risk to the well-being of Kenyan citizens.

Fourthly, we are concerned about the negative impact TikTok is having on Kenyan youth. The app has been accused of promoting dangerous challenges and stunts that can lead to injury or death. Additionally, the app has been criticized for promoting unrealistic beauty standards and body image issues among young people.

Finally, we are concerned about TikTok's censorship of content critical of the Chinese government. This raises serious questions about the app's commitment to free speech and the ability of Kenyan citizens to express themselves freely on the platform.



Ref: TBCC/PLCNA/04/2023 Petition to Ban TikTok in Kenya: Protecting National Security, Privacy, and Youth from inappropriate Content

We have attached evidence to support our concerns, and we urge the National Assembly of Kenya to take immediate action to ban TikTok in Kenya.

Thank you for your attention to this matter.

Sincerely,

Petitioner 1:

Mr. Bob Ndolo,
Chief Executive Officer,
Bridge Connect Consultancy
Tel nos: +254 722353531,
Email: Bridge.connect.consultancies@gmail.com

Signature



Petitioner 2:

Mr. Morris Wetindi,
Operations Director,
Bridge Connect Consultancy,
Tel nos: +2540721598757,
Email: Bridge.connect.consultancies@gmail.com

Signature



CC;

Committee on Information, Communication and Technology – The National Assembly.
Director General, Communications Authority of Kenya
Cabinet Secretary, Ministry of Interior & Coordination of National Government
Cabinet Secretary, Ministry of Information, Communication and The Digital Economy
National Cohesion & Integration Commission of Kenya
Communication Authority of Kenya
The Ambassador of United States to Kenya
The British High Commissioner to Kenya
The Indian High Commissioner to Kenya
The Ambassador, Netherlands Embassy
The Ambassador of the Federal Republic of Germany to Kenya
Ambassade De France Au Kenya Et En Somalie
The Belgian Ambassador to Kenya
The High Commissioner of Pakistan to Kenya
The Ethiopian Ambassador to Kenya
Inter-Religious Council of Kenya
HAKI- AFRICA





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 61ST SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, SEPTEMBER 26, 2023, IN THE COMMITTEE ROOM ON 2ND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 11:00 AM

PRESENT

- | | |
|---|------------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | (Chairing) |
| 3. Hon. John Walter Owino, M.P. | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | |
| 5. Hon. Edith Vethi Nyenze, M.P. | |
| 6. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | |
| 7. Hon. John Bwire Okano, M.P. | |

APOLOGIES

- | | |
|--|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | Chairperson |
| 3. Hon. Patrick Makau King'ola, M.P. | Vice Chairperson |
| 4. Hon. Bidu Mohamed Tubi, M.P. | |
| 5. Hon. Caleb Mutiso Mule, M.P. | |
| 6. Hon. Peter Mbogho Shake, M.P. | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | |
| 8. Hon. Sloya Clement Logova, M.P. | |

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Ann Shibuko | - | Clerk Assistant I |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Mr. Sakani Kevin | - | Audio Officer |

INATTENDANCE

Bridge Connect Consultancy

- | | | |
|---------------------------|---|------------------------|
| 1. Mr. Bob Ndolo | - | Lead Petitioner |
| 2. Dr. Ezekiel Mutua, MBS | - | CEO, MCSK |
| 3. Prof. Ndung'u Ikunye | - | Clinical Psychologist |
| 4. Ms. Esther Kamaku | - | Director RTT |
| 5. Mr. Collins Osewe | - | Legal Counsel |
| 6. Ms. Millicent Wambui | - | Member, Bridge Connect |
| 7. Mr. Bravin Kerai | - | Member, Bridge Connect |

Petitioners

- | | | |
|----------------------------|---|---------------------------|
| 1. Hon. Protus Akuja, M. P | - | Loima Constituency |
| 2. Hon. Daniel Epuyo, M.P | - | Turkana West Constituency |

MIN./PPETC/2023/396: PRELIMINARIES

The Chairperson called the meeting to order at 3.00 pm. and Hon. (Eng.) Bernard Muriuki Nebart, M.P. said the prayers.

MIN./PPETC/2023/397: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 23 of 2023 regarding Punitive charges levied by the Kenya National Highway Authority
-Meeting with the Petitioner (Hon. Francis Nguga, MCA, Machakos County)
6. Consideration of Public Petition No. 41 of 2023 regarding Banning of Tiktok in Kenya
-Meeting with the Petitioner (Mr. Bob Ndolo)
7. Consideration of Public Petition No. 49 of 2023 regarding Court Martialing and conviction of 41 Kenyans for Eight Years Imprisonment in Uganda
-Meeting with the Petitioner (Hon. Protus Akuja, MP)
8. Any Other Business
9. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. (Eng.) Bernard Muriuki Nebart, M.P. and seconded by Hon. Edith Vethi Nyenze, M.P.

MIN./PPETC/2023/398: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2023/399: CONSIDERATION OF PUBLIC PETITION NO. 23 OF 2023 REGARDING PUNITIVE CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAY AUTHORITY

The Agenda was deferred.

MIN./PPETC/2023/400: CONSIDERATION OF PUBLIC PETITION NO. 41 OF 2023 REGARDING BANNING OF TIKTOK IN KENYA

Legal Brief

The Legal Counsel briefed the Committee on the issues raised in the Petition and provided an analysis of major issues as follows—

- i. *National Security and Privacy*: Apprehensions regarding potential data privacy breaches and espionage risks, with data potentially being accessed by foreign governments and criminals;

- ii. *Identity Theft and Cybersecurity*: Worries surrounding identity theft, cyberstalking, and blackmail due to TikTok's extensive data collection practices;
- iii. *Privacy Scandals*: Allegations of privacy scandals and unauthorized data sharing with third-party companies;
- iv. *Content Moderation and Cultural Values*: Lack of effective content regulation, allowing the proliferation of hate speech, explicit content, and offensive behavior;
- v. *Youth Impact*: The platform's adverse effects on the mental and physical health of young people, contributing to academic decline and mental health issues;
- vi. *Cultural and Religious Sensitivities*: Concerns about the hosting of content that contradicts Kenyan cultural and religious values; and
- vii. *Regulatory Framework*: The absence of a clear and comprehensive regulatory framework from the Communication Authority of Kenya (CAK).

Submissions by the Petitioner, Mr. Bob Ndolo

The Petitioners led by Mr. Bob Ndolo from Bridge Connect Consultancy made presentations before the Committee as follows—

i. Change of the Title of the Petition

The Petitioners made an 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 recognized that such technologies were here to stay in the information age, hence the need for a **regulation** rather than a ban.

ii. Concerns by the Petitioners and presentation of video evidence

The Petitioners displayed sample TikTok videos alleged to contain hate speech and obscenities to illustrate the gravity of the content shared on the platform. 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 the cultural, moral, and religious fabric of the Kenyan society. Further, the use of TikTok Live was a national security concern as it allowed location tracking.

iii. Lack of regulation of TikTok

The Petitioners raised concerns regarding the lack of regulation of TikTok in Kenya. The application was not regulated by the Communication Authority of Kenya (CAK) leading to failure to remove or block content deemed inappropriate or offensive. The lack of regulation has led to the misuse of the platform.

iv. Mental health concerns

The Petitioners indicated that the addictive nature of the application would lead to a decline the general health and a rise in mental health issues such as depression, anxiety and sleep deprivation among the youth. Mental health issues are further aggravated by the cyber bullying meted on individuals on the platform.

V. Monetization and taxation policy

The Petitioners decried 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 the lack of a clear taxation policy. The Petitioners stated that other platforms such as YouTube had clear monetization policies that allowed the users to benefit 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.

Committee's Concerns

i. Change of title of the Petition

With regards to the application to change the title of the petition, the Petitioners stated that following consultations with key stakeholders, it was agreed that pursuing regulation of TikTok was more realistic than a ban. Further, banning the platform would have negative impact on the users who were making income from the platform. The Petitioners further stated that the use of the word "banning" was with an intention to capture the attention of stakeholders involved and a means of beginning a national dialogue on the need to regulate the use of social media platforms, which had been achieved.

ii. Engagement with the management of TikTok

The Committee inquired about the efforts made by the petitioners and whether they had engaged the owners or agents of TikTok. The Petitioners indicated that they had meet a team of officials of TikTok from South Africa to discuss the matter.

iii. Timing and motivation for the proposal to ban TikTok

With regards to the timing of the proposal to ban TikTok, the Petitioners stated that they were motivated to take up the matter as many people were consistently misusing the platform to spread hate speech and explicit content. This had led to normalisation of immorality, nudity and hate speech that are rampant on the platform, prompting action to protect the moral fabric of the Kenyan society for the benefit of the future generations.

iv. Existing laws and regulations

The Committee sought to know whether the existing laws and regulations such as the Computer Misuse and Cybercrimes Act, 2018 was not sufficient to address the matters raised in the Petition. The Petitioners indicated that while such laws existed, there were gaps, for example with regards to evidence arising from misuse. Further, no law stands alone hence the regulation of TikTok was needed to complement the existing laws and regulations.

v. Whether the proposal would affect other social media platforms

With regards to whether the proposal would affect other social media platforms, the Petitioners stated that a time had come to regulate all the social media platforms to ensure they conform to the laws of the country.

vi. Specific recommendations for regulating TikTok

With regards to the specific proposal by the petitioners, they indicated that their proposal was for the Committee to engage the relevant stakeholders to delve into the matter and ensure issues such as monetary policies on TikTok to allow Kenyan content creators to benefit.

Committee decision

In considering the Petition, the Committee resolved to engage and seeks views of—

- (a) The Management of TikTok in Kenya;
- (b) Cabinet Secretary for Interior and Administration of National Government
- (c) Cabinet Secretary for Information, Communications and the Digital Economy, Kenya
- (d) Communication Authority of Kenya;
- (e) Kenya Film Classification Board;
- (f) Data Protection Commissioner
- (g) Blogger Association of Kenya;
- (h) Association of content creators of Kenya;
- (i) Law Society of Kenya;
- (j) Inter-Religious Council of Kenya
- (k) National Cohesion and Integration Commission
- (l) Kenya National Commission on Human Rights; and
- (m) Media Council of Kenya

MIN./PPETC/2023/401: CONSIDERATION OF PUBLIC PETITION NO. 49 OF 2023 REGARDING COURT MARTIALING AND CONVICTION OF 41 KENYANS FOR EIGHT YEARS IMPRISONMENT IN UGANDA

Legal Brief

The Legal Counsel briefed the Committee on the issues raised in the petition and provided an analysis as follows—

Understanding Extradition

Extradition is a formal legal process by which persons accused or convicted of crime are surrendered from one State to another for trial or punishment. Generally, extradition takes place in accordance with bilateral treaties or multilateral conventions entered into by sovereign States. Treaties and conventions ordinarily impose an obligation on the requested country to surrender to a requesting country, a person charged with or convicted of an offence of a certain specified gravity in that country, subject to conditions and exceptions.

Criminal conduct

Extradition is based on the principle that it is in the interest of all civilised communities that offenders should not be allowed to escape justice by crossing national borders and that States should facilitate the punishment of criminal conduct. Without effective extradition arrangements those who commit crimes can seek safe havens without fear of prosecution. It is a form of international co-operation in criminal matters intended to promote justice, based on comity rather than any overarching obligation under international law. The extradition process is designed to provide assistance to criminal proceedings which have taken place or are yet to take place in the territorial jurisdiction of another State.

The Transfer of Prisoners Act, No 22 of 2015

The Act principally facilitates the implementation of arrangements made for the transfer of person serving sentence of imprisonment for criminal offences committed in Kenya or in countries outside Kenya pursuant to subsisting agreement. Section 19 provides for the application for transfers. It provides that the application for transfer may be made by the prisoners or by the Attorney-General. Section 5 requires that the Attorney General's consent is required for the transfer. A prisoner may be transferred upon a request or application—

- (a) To the government of Kenya by the sentencing country;
- (b) By the government of Kenya as the sentencing country; or
- (c) By or on behalf of the prisoner to the Attorney General and subsequent action by the Attorney General.

Submissions by the Petitioner, Hon. Protus Akujah, M.P

The Hon. Protus Akujah, M.P made submissions as follows—

a) Background of the Petition

The 41 Kenyans arrested and detained by a Moroto Third Division Military Court are Turkana pastoralists who were arrested after a search operation conducted by the Uganda People Defence Force (UPDF) following the killing of two officers from Uganda. That 32 of them were arrested and detained in Moroto and court-martialled on 11th April 2023 and nine of them were arrested in 2022. The 32 were charged on account of possession of illegal firearms and live ammunition.

b) Efforts by the Petitioner

The Petitioner indicated that efforts had been made to extradite the 41 Kenyans including engaging the Ministry of Foreign Affairs. That all the happenings were brought to the attention of the Kenyan government but no action was taken to secure their release. Efforts made to the Kenyan Embassy in Uganda to address the matter were equally unsuccessful.

The Government of Uganda opened talks for peaceful coexistence and offered a 168-day period for feedback/reaction from the Government of Kenya but the same was not forthcoming. A further communique was done by Uganda vide a letter dated 3rd March 2023 requesting for the establishment of a resource-sharing agreement within the area, but no feedback was provided by the national government. The resource-sharing agreement was therefore overtaken by Executive Order No. 3 of 2023 by the Ugandan President which indicated that people from Turkana should surrender their weapons for the release of their relatives.

c) The situation along the border

The Petitioner indicated that Turkana County which is about 77,000-kilometre square lacked the presence of government along the border with Uganda hence causing suffering of the people. That the lack of water and pasture on the Kenyan side led to the pastoralists moving upwards to feed their livestock. Further, the relationship between the people in Kenya and Uganda was cordial as the communities were kinsmen sharing culture including language. However, the tribal fights were brought about by the struggle for resources.

d) Mistreatment and unfair reporting by UPDF

The Petitioner stated that the UPDF officers were making life unbearable for the people living in Turkana as there was one-sided reporting in favour of Ugandans whenever a matter occurred between Turkana and Karamojong' such as theft of livestock, loss of lives, and attacks. Further, the officers were also extorting Kenyans along the border

e) Prayers

- i. The Petitioners requested that the Committee recommend the use of all available legal provisions to extradite the 41 Kenyans back to Kenya.

- ii. Further, the Government of Kenya is taken to task to liaise with the Ugandan officials in Moroto Division to establish the status of the 41 Kenyans.
- iii. The Government of Kenya holds bilateral talks with Uganda to strengthen and foster the diminishing peaceful relations.

Committee Concerns

i. Status of the 41 Kenyans

The Committee inquired into the status of the 41 Kenyans and whether they were being visited by their relatives. The Petitioner indicated that the 41 convicts were transferred to different prisons including Wakiso (20) and Jinja (20) and one of the prisoner's whereabouts was unknown. None of the relatives had visited them but the liaison officer in Moroto had confirmed seeing them isolated and in unhealthy condition and efforts were underway to transfer them to Karamojong Prison which is closer to the Kenyan border.

ii. The Cause of the Conflict

With regards to the cause of the conflict in the border between Kenya and Uganda in Turkana County, the Petitioner stated that the Kenyan side lacked rains for over three-quarters of the year and there were no dams for water collection. However, the Uganda side had large dams including Kobebe Dam which could serve them throughout the year. Therefore, the Turkana people sought for water and pasture on the Ugandan side. The Government of Kenya had promised to construct bigger dams in the area but the projects in Turkana were not properly done. The Petitioner cited negligence in the area that keeps happening even under devolution.

iii. Government presence on the border

The Committee inquired about the lack of government presence along the border. The Petitioner clarified that a 10-kilometer borderline had only one police post with four officers. Further, reporting was a challenge as there were no NGAF offices in the entire 120-kilometer border. The existing sub-county offices were yet to be commissioned. That the major efforts made to address the matter had been from the county government yet international relations is squarely a national government's role.

iv. The Executive Order by the Ugandan Government

The Committee inquired about Executive Order No. 3 of 2023 issued by the Ugandan Government and the contents therein. The Petitioner stated that the Executive Order was firm on the Kenyan Government to provide a response, but the government showed no commitment.

v. Action points to address the matter

The Committee engaged the Petitioner to provide action points to assist in the matter going forward. The Petitioner indicated that there was a need for engagement between the two governments at the national level.

MIN./PPETC/2023/402: ADJOURNMENT AND DATE OF THE NEXT SITTING

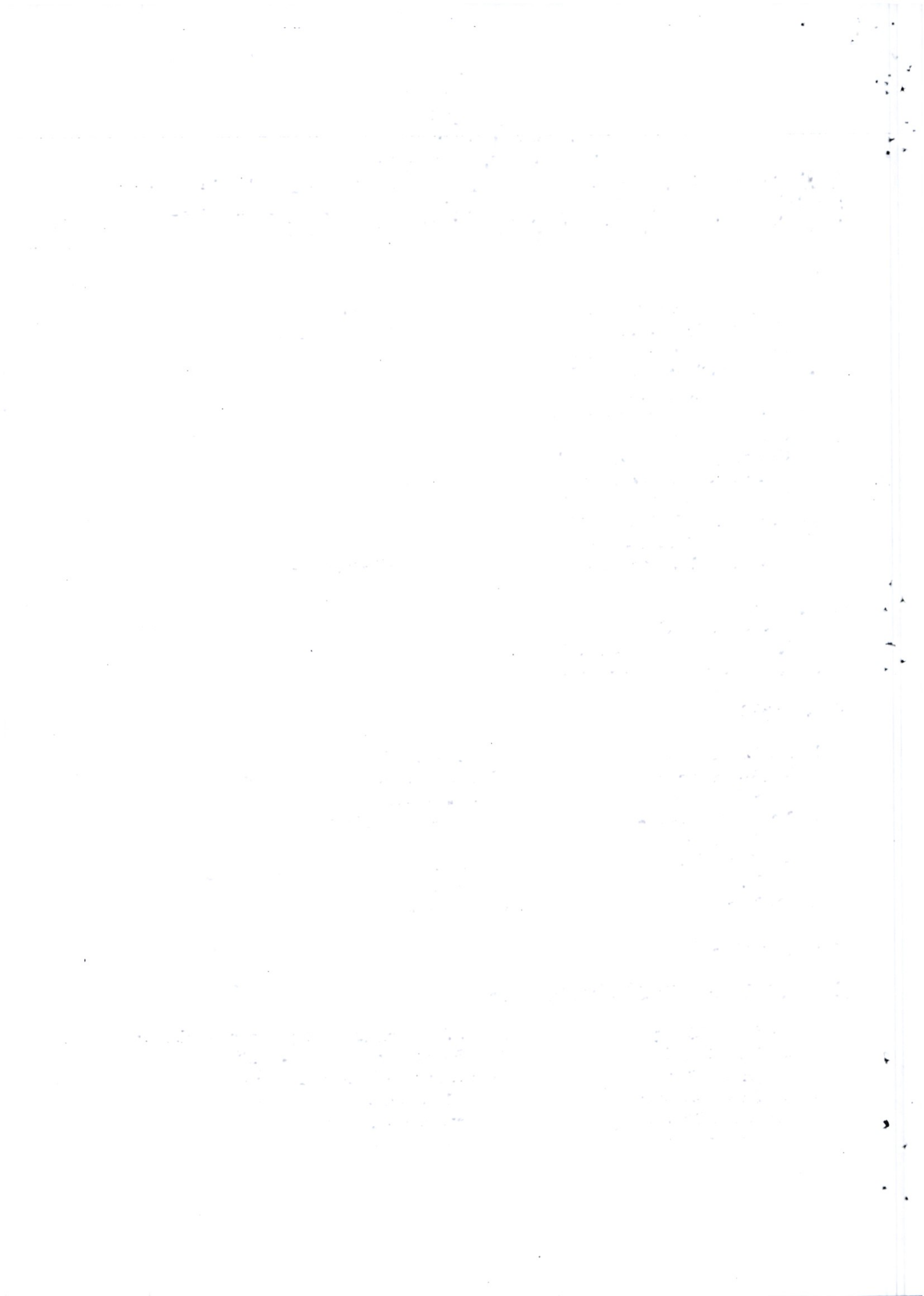
There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting would be held on Tuesday, 26th September 2023 at 3.00 p.m.

Sign: 

For

(CHAIRPERSON)

Date.....16/11/2023.....





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 74TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, NOVEMBER 1, 2023, IN MAGADAI HALL ON THE FIRST FLOOR, VICTORIA PLAZA, HOLIDAY INN HOTEL AT 10.00 A.M

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | | |
| 6. Hon. Maisori Marwa Kitayama, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Caleb Mutiso Mule, M.P. | | |
| 10. Hon. Peter Mbogho Shake, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |
| 12. Hon. Sloya Clement Logova, M.P. | | |
| 13. Hon. Lemanken Aramat, M.P. | - | Friend of the Committee |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Suzanne Ndunge Kiamba, M.P.

SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Ms. Miriam Modo | - | Clerk Assistant I |
| 2. Ms. Willis Obiero | - | Clerk Assistant III |
| 3. Ms. Felistus Muia | - | Protocol Officer |
| 4. Mr. Calvin Karungo | - | Media Relations Officer |
| 5. Ms. Rehema Koech | - | Audio Officer |
| 6. Ms. Winnie Nyaga | - | Secretariat |
| 7. Mr. Yiezel Jilo | - | Sergeant at Arms |
| 8. Ms. Diana Satia | - | Office Assistant |

IN ATTENDANCE

MINISTRY OF WILDLIFE AND TOURISM

- | | | |
|-----------------------|---|--|
| 1. Ms. Sylvia Museiya | - | Principal Secretary, State Department for Wildlife |
| 2. Mr. Eric Mwenda | - | P.W. O State Department for Wildlife |
| 3. Mr. Dickson Ritan | - | Head Wildlife and Community Service |
| 4. Mr. Samuel Tokone | - | Deputy Director, KWS |
| 5. Mr. Collins Nthuni | - | Assistant Director, KWS |
| 6. Mr. James Gichuhi | - | Personal Assistant to the PS |

TIKTOK CONTENT CREATORS

- | | | |
|-------------------------|---|---------------------------|
| 1. Ms. Faiza Abdi | - | Manager, Content Creators |
| 2. Mr. Vincent Nduri | - | Software Engineer |
| 3. Mr. Alex Macharia | - | Content Creator |
| 4. Mr. Kennedy Matiko | - | Content Creator |
| 5. Mr. Brian Ochieng | - | Content Creator |
| 6. Ms. Claudia Naisabwa | - | Content Creator |
| 7. Mr. Carlos Nyaoge | - | Content Creator |
| 8. Mr. Isaack Nazamdin | - | Content Creator |

BLOGGERS ASSOCIATION OF KENYA (BAKE)

Mr. Kennedy Kachwanya - Chairperson

MIN./PPETC/2023/463: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m., the proceedings began with prayers by Hon. Janet Jepkemboi Sitienei, M.P.

MIN./PPETC/2023/464: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition regarding Access Roads for residents of Narok East Constituency -**
 - *Meeting with CS, Ministry of Wildlife and Tourism*
6. **Consideration of Public Petition regarding Banning of TikTok in Kenya.**
 - *Meeting with TikTok Content Creators*
 - *Meeting with the Bloggers Association of Kenya*
7. Any Other Business
8. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Caleb Mutiso Mule, M.P and seconded by Hon. Peter Mbogho Shake, M.P.

MIN./PPETC/2023/465: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/466: CONSIDERATION OF PUBLIC PETITION REGARDING ACCESS ROADS FOR RESIDENTS OF NAROK EAST CONSTITUENCY

Submissions by the PS, State Department for Wildlife

The PS, State Department for Wildlife, Ms. Sylvia Museiya appeared before the Committee and submitted as follows -

- i.) The Ministry undertook to ensure that the communities living around the national parks and the conservation areas get better benefits including access to transport and other infrastructure in full realization that conservation is not possible without communities. There was no intention of making the lives of the communities, who have for many years assisted in conservation, difficult because communities are part and parcel of the conservation agenda.
- ii.) The Ministry had no objection to ceding land for the construction of the access road for the residents of Narok East Constituency and appreciates that the proposed road will not be put in the middle of the park that would compromise the environmental and social impacts of the park and well being of the animals. Therefore, the land being asked for the access road is a reasonable request and the ministry has no objection to it. However, the technical team will ensure processes and procedures are followed.
- iii.) The Ministry had ceded land before for the construction of access roads like the case of Nairobi National Park to allow for the Southern Bypass hence the Narok East case will not be a precedence.
- iv.) The Ministry submitted that there was a concern regarding the critical installations for power production in the area in question which were within the proximity of the proposed access road. Therefore, the installations will be factored in in the design of the road to ensure they remain safe. There would be a need for a ground visit to establish a proper route that will not compromise the security of the critical installations, for example, Olkaria 1 and 2. Currently, the access is controlled for security reasons. Further, there is a need to involve other stakeholders whose installations could be affected.

Members Concerns

The area of land to be ceded by KWS

The Committee inquired whether the ministry was able to cede the entire remaining piece of land required for the access road. The PS indicated that to allow the communities to have an access road, the ministry had shown goodwill to cede land just as the Oserian Company did. However, the manner and the exact measurement to be ceded would be handled in the implementation of the proposal including for future expansions. Further, other stakeholders would have to be involved including the National Lands Commission (NLC) for the change of user of the land.

Security of critical installations

The Committee inquired whether the security concerns raised were due to the people accessing the road or the road itself being a security challenge to the critical installations. The Ministry indicated the access could provide enabling ground for criminals to attack critical installations some of which are foreign-owned for example, OrPower Geothermal Plant which has been targeted before. However, the design of the road will be worked on to ensure it does not pause the security threat to the installations and turbines with hot water. Further, the areas where grounds will be left will also endanger the park as people may encroach hence the need for caution in the design to remain on the periphery of the park.

Committee Resolutions

- i.) The Ministry of Wildlife and Tourism to communicate the decision to cede land for the access road in writing to the Committee.
- ii.) The Committee further resolved to invite the Ministry of Interior and National Administration to address the security concerns that may be raised over the construction of the road near the critical installations.
- iii.) The technical team to conduct a ground visit and establish the design of the road, while considering the concerns raised.

MIN./PPETC/2023/467: CONSIDERATION OF PUBLIC PETITION REGARDING BANNING OF TIKTOK IN KENYA

Submissions by Kenyan TikTok Content Creators and Bloggers Association of Kenya (BAKE)

The Content Creators and Bloggers Association of Kenya appeared before the Committee and submitted as follows: -

Background

- i.) TikTok is 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.
- ii.) Banning TikTok in Kenya is 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 is to work on ways that can ensure consumers get the right content for the right need and for the right age.
- iii.) 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.
- iv.) 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 is 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.
- v.) 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

- i.) *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.
- ii.) *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 is 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.
- iii.) *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.
- iv.) *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.
- v.) *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.
- vi.) *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 is reported as well as copyright issues.
- vii.) *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.
- viii.) *Establishment of a TikTok Kenya Office:* There is a need for a TikTok Kenya Office where users can report issues and regulations proposed can be followed up.
- ix.) *Content moderation and trusted partners:* There is 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.

Committee Concerns

The areas that need regulation

- i.) **The Committee inquired about the opinion of the content creators on regulating TikTok and the areas that need regulations.** The content creators stated that regulating issues such as hate speech and cyberbullying was ideal but also regulating the content. The purpose of content creation was for one to express him/herself and get to earn. Regulating creators through a Digital Media Council where concerns can be reported to deal with the matter. There is a need for training regarding digital literacy to address cyberbullying and defamation while considering freedom of speech to identify what should be penalized.

Exploitation of content creators regarding monetization

- ii.) **The Committee sought the opinion of the creators on whether the developers were exploiting them.** The content creators indicated that they felt exploited as they did not earn from their views, likes, and followers hence resorting to gifting through TikTok Live which the creator only earns half of the money and is later taxed.

How a user joins TikTok

- iii.) **The Committee inquired how one qualifies to be on TikTok.** The creators indicated that one can an audience without having an account. Secondly, you can be a creator who just posts things without any intent. Thirdly, one can be a content creator who is intentional with the content and seeks to earn from the content through influencer marketing and TikTok Live. At joining, one is asked for recommendations of various content, for example, travel, cooking, and entertainment. The user chooses the content they wish to see and the FYP is custom-made for the users' liking.

Cost-benefit analysis of TikTok Kenya

- iv.) **The Committee inquired whether TikTok had more benefits than costs.** The content creators indicated that TikTok Kenya just needed regulation in collaboration with the developers to address the various issues highlighted in the Petition. Otherwise, banning it would be counterproductive as many youths will lose income.

MIN./PPETC/2023/468: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting will be held on Wednesday, 1st November, 2023 at 2.00 p.m.

Sign:

(CHAIRPERSON)

Date: 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 75TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, NOVEMBER 1, 2023, IN MAGADAI HALL ON THE FIRST FLOOR, VICTORIA PLAZA, HOLIDAY INN HOTEL AT 2.00 P.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | | |
| 6. Hon. Maisori Marwa Kitayama, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Caleb Mutiso Mule, M.P. | | |
| 10. Hon. Peter Mbogho Shake, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |
| 12. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Suzanne Ndunge Kiamba, M.P.

SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Ms. Miriam Modo | - | Clerk Assistant I |
| 2. Mr. Willis Obiero | - | Clerk Assistant III |
| 3. Ms. Felistus Muia | - | Protocol Officer |
| 4. Mr. Calvin Karungo | - | Media Relations Officer |
| 5. Ms. Rehema Koech | - | Audio Officer |
| 6. Ms. Winnie Nyaga | - | Secretariat |
| 7. Mr. Yiezel Jilo | - | Sergeant at Arms |
| 8. Ms. Diana Satia | - | Office Assistant |

IN ATTENDANCE**KENYA FILM AND CLASSIFICATION BOARD**

- | | | |
|-----------------------|---|-------------------------------|
| 1. Mr. Joel Wamalwa | - | Ag. Chief Executive Officer |
| 2. Mr. Paul Nganga | - | Head, Film Services |
| 3. Ms. Loise Shalakha | - | Head, Legal Services |
| 4. Ms. Emma Irungu | - | Head, Compliance |
| 5. Mr. David Mukara | - | Personal Assistant to the CEO |

MIN./PPETC/2023/469: PRELIMINARIES

The Chairperson called the meeting to order at 2:00 p.m and the proceedings began with prayers by Hon. (Eng.) Bernard Muriuki Nebart, M.P.

MIN./PPETC/2023/470: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition regarding Banning of TikTok in Kenya.**
 - *Meeting with the CEO, KFCB*
6. Any Other Business
7. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Caleb Mutiso Mule, M.P and seconded by Hon. Bidu Mohamed Tubi, M.P.

MIN./PPETC/2023/471: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/472: CONSIDERATION OF PUBLIC PETITION REGARDING BANNING OF TIKTOK IN KENYA

Submissions by CEO, Kenya Films and Classification Board (KFCB)

The Ag, CEO, KFCB, Mr. Joel Wamalwa appeared before the Committee and submitted as follows:-

Background

- i.) KFCB notes 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;
- ii.) The Petitioner avers that the content shared on the platform is inappropriate thus promoting violence, explicit sexual content, hate speech, vulgar language, and offensive behavior citing that this is a serious threat to the cultural and religious values of Kenya;
- iii.) The Platform is not regulated by the Communication Authority of Kenya leading to failure to remove or block content deemed to be appropriate or offensive;
- iv.) TikTok has been implicated in several privacy scandals over the past years;
- v.) 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; and
- vi.) Failure to prohibit the platform in Kenya will 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.
- vii.) The petitioner's prayer therefore is 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.

- viii.) 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

- i.) TikTok is 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.
- ii.) KFCB has 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 has held several sessions in Kenya and discussed with users and subscribers and urged them to be responsible and avoid misuse. The platform has a 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.
- iii.) The platform users have been 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.
- iv.) KFCB has also 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

- i.) *Robust Media Literacy Program (MeLiP)*: The program seeks to enlighten content consumers on all digital platforms on continuous consumption, especially for children.
- ii.) *Parents Digital Literacy Program*: The program enlightens 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.
- iii.) *Digital Literacy for Creatives Program*: The program targets content creators and users who do their art and exhibits and distribute them on digital platforms. The program encourages them to complement content regulatory efforts in digital content regulation. Content creators are 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

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

- i.) Enforcement of the community guidelines.
- ii.) TikTok should clearly redefine its monetization models to allow creators to commensurately earn from their content. The current model does not favor 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.
- iii.) 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.
- iv.) 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 is 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 is taken, damage may have occurred.
- v.) KFCB 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.

Committees Concerns

Proposals for a better TikTok Kenya

- i.) **The Committee inquired into the proposals that would ensure a better TikTok Kenya.** The CEO indicated that KFCB had been researching how to regulate the new media and it proposes that the digital platforms implement country-level tools that are Artificial Intelligence-based because of the volumes of content. Further, structure the platform to promote local and relevant content about different sectors of the economy, innovation, and e-commerce as opposed to pushing personal brands for marketing purposes which only benefit a few users.

There is a gap in legislation of the Over the Top (OTT) services. Internet is an open space but there needs to be law that ensures registration of all the OTTs for purposes of compliance with the laws of Kenya.

The classification of digital content to ensure content creators and users upload and access the right content is ongoing to establish a rating mechanism for every content on TikTok. This will allow the audience to understand the content suitable for their consumption. There is a need for a collective responsibility for a regulatory framework of the digital platforms.

ii.) **The Committee sought the opinion of the KFCB on banning the TikTok platform in Kenya.** The CEO indicated that KFCB was against the proposal because the platform was not bad but the users clout chasing for popularity using inappropriate content. Further, several users were making a living out of the platform hence the need for addressing the gaps identified.

iii.) **The Committee inquired into how KFCB regulates and whether there was a need for a Digital Media Council to assist.** The CEO indicated that a measure for self-regulation through a code of conduct for the creators would be a better idea. This will have them registered through robust associations, structure them and professionalize the sector through a private body that can ensure self-accountability. However, another media council to regulate them would add to the regulatory burden the creators are facing currently because of the many agencies already doing the regulations such as Kenya Copyright Board, Media Council of Kenya and KFCB.

With regards to how KFCB regulates, the CEO indicated that they only regulate the distribution and exhibition, but the advancement of technology has caused a thin line between the two. Therefore, policy proposals were geared towards regulating the new media, for instance, having the platforms registered at entry level with a physical office in Kenya where concerns can be raised. Further, it will assist in monetization as Kenyan creators will earn without intermediaries of other avenues far off from Kenya without understanding the matrix used to pay.

For content creators' regulations, the law requires submission of scripts for review. However, its challenging to license content creators hence the need for the associations for the creators to enable regulation. Currently, regulation allows for regulation of cinema, theatre, and television, but for category of OTTs such as Netflix and Showmax is covered by self-regulation, and they already have editorial responsibility. The next phase will focus on the user-generated content such as the TikTok platform to have guidelines which can be monitored for compliance.

iv.) **The Committee inquired whether Kenya has the capacity to bar access to the TikTok platform and whether the platform could be suspended until it addresses the concerns raised.** The CEO indicated that the platform had put regulations especially regarding age restriction, but users were still cheating hence it required a collective responsibility from the users too. However, TikTok had been called upon and committed to dealing with concerns raised about inappropriate live sessions.

v.) **The Committee inquired into the cost and benefit analysis of the TikTok platform to Kenyans and whether it was challenging to regulate TikTok without engaging the developer.** The CEO indicated that it was difficult to pinpoint the benefits and costs of the platform due to the *lacuna* in law over registration of the platform in Kenya. With annual renewal of licenses for the platforms proposed in regulation, it would be possible to deal with adverse effects of the platform. KFCB indicated that there was not an express analysis and research on the cost and benefits but there was need to also investigate the other social media operators for fairness.

vi.) **The Committee inquired whether TikTok already have an office in Kenya.** KFCB indicated that they had been engaging with an agency working on behalf of TikTok whose offices were not officially in the country.

MIN./PPETC/2023/473: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 3:30 p.m. The next meeting will be held on Thursday, 2nd November, 2023 at 10.00 a.m.

for Sign: 

(CHAIRPERSON)

Date..... 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 78TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, NOVEMBER 14, 2023, IN COMMITTEE ROOM 12, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS, AT 10.00 A.M

PRESENT

- | | | |
|---|---|----------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | - | Chairing |
| 2. Hon. Joshua Chepyegon Kandie, M.P | | |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P | | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | | |
| 6. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 7. Hon. Caleb Mutiso Mule, M.P. | | |
| 8. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|--|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | |
| 3. Hon. Patrick Makau King'ola, M.P. | | |
| 4. Hon. Edith Vethi Nyenze, M.P. | | |
| 5. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 6. Hon. Peter Mbogho Shake, M.P. | | |
| 7. Hon. John Bwire Okano, M.P. | - | |

SECRETARIAT

- | | | |
|----------------------------|---|--|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Ms. Lilian Mburugu | - | Media Relations Officer III |
| 6. Mr. Martin Sigai | - | Research Officer III |
| 7. Ms. Felistus Muiya | - | Protocol Officer |
| 8. Mr. Koskei | - | Audio Officer |
| 9. Mr. Moses Lokeny Ekutan | - | Attaché (Starehe Boys Centre and School) |

IN ATTENDANCE
LAW SOCIETY OF KENYA

- | | | |
|---------------------|---|------------------------------|
| 1. Mr. Eric Theuri | - | President, LSK |
| 2. Ms. Mercy Mutemi | - | Advocate and IT Practitioner |

MIN./PPETC/2023/486: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 a.m. and Hon. John Walter Owino, M.P. said the prayers.

MIN./PPETC/2023/487: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of a Public Petition regarding punitive charges levied by the Kenya National Highways Authority**
 - *Meeting with the Director General of the Kenya National Highways Authority (KENHA)*
6. **Consideration of a Public Petition regarding the banning of Tik-Tok in Kenya**
 - a) *Meeting with the Data Protection Commissioner*
 - b) *Meeting with the CEO of the Law Society of Kenya*
7. **Consideration and adoption of Public Petition No. 1 of 2023 regarding Poor Implementation of Edu-Afya Medical Scheme in Public Secondary Schools.**
8. **Consideration and adoption of Public Petition No. 5 of 2023 regarding Ward-Based Solution as a long-term remedy to perennial water shortage in Kenya.**
9. Any Other Business
10. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. (Eng.) Bernard Muriuki Nebart, M.P. and seconded by Hon. John Walter Owino, M.P.

MIN./PPETC/2023/482: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/483: CONSIDERATION OF A PUBLIC PETITION REGARDING PUNITIVE CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAYS AUTHORITY

The Agenda was deferred.

MIN./PPETC/2023/484: CONSIDERATION OF A PUBLIC PETITION REGARDING THE BANNING OF TIK-TOK IN KENYA

Meeting with the Law Society of Kenya

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 -

The LSK had gone through the Petition and identified issues of interest including *harmful content being shared*; the *failure by ByteDance Ltd (the company that owns TikTok) to remove harmful content* that is 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*.

A. 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.

B. 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 as follows:

- i.) The TikTok algorithm operates on a recommender basis and is optimized, as claimed by ByteDance Ltd, to remove all harmful content before it is 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.
- ii.) Content moderation is 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.
- iii.) Human content moderation through the "Report" feature requires that the moderator speaks that local language and understands the context before taking down the offensive content.
- iv.) TikTok content moderation for the local languages spoken in Africa is done in Kenya through an outsourced company known as Majorel, now Teleperformance which is a Business Process Outsourcing company that is regulated in Kenya and licensed by the Communication Authority of Kenya.

C. 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 Teleperformance 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 is unlikely to be caught unless it elicits public uproar. Further, the care the content moderators receive was inadequate.

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

E. Regarding whether TikTok should be banned in Kenya, the Society believes that the Petition is misinformed and conflates issues. While the issue of harmful, inciteful, and dangerous content must be addressed with immediacy, the solution does 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.
- (c) The internet is boundaryless and any attempt therefore to ban TikTok in Kenya would be an exercise in futility.

Proposals by LSK

The Society submitted that the solution lies in the legislation and oversight of algorithm work and content moderation work through undertaking the following—

- i.) Investigate ByteDance Ltd and their Kenyan agent Teleperformance on—
 - (a) The number of posts generated on the TikTok platform from Kenya;
 - (b) The number of posts and comments reported by Kenyan TikTok users for violating TikTok Community Standards in a day;
 - (c) The number of Kenyan posts and comments taken down by TikTok for violating TikTok Community Standards in a day;
 - (d) The measures currently being 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;
 - (e) The number of content moderators currently employed to moderate content shared in the local languages spoken in Kenya and the number of moderators deployed at every shift; and
 - (f) 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.
- ii.) Make 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.

- iii.) Make recommendations to the Communication Authority of Kenya 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.
- iv.) Legislate content moderation and algorithm work to benefit Kenyans. Therefore, there is a need for the National Assembly to consider urgent legislation in the following areas—
- (a) The collection of data to be used in machine learning and in training algorithms;
 - (b) Measures to prevent algorithm bias in machine learning and in training algorithms;
 - (c) Training algorithms to recognize and uphold the laws of Kenya and the rule of law;
 - (d) Measures to ensure algorithms trained in Kenya, whether done directly by BigTech 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;
 - (e) 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 is reported by Kenyan social media users;
 - (f) 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.
 - (g) Protection of workers doing algorithm work and content moderation work. Legislation should cover the following areas—
 - 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 is dangerous digital work.
 - (h) 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.

Committee Concerns

- (i) **Regarding the change of the Petitioners' prayer from banning to regulating TikTok**, the Society indicated that such was welcome as the focus will now shift to developing ways and proposals for regulating the TikTok platform and other big tech companies in a manner that benefits Kenyans more. Such regulations could include advertising revenue and the supply chain model of the big tech companies.
- (ii) **Regarding the assertion that content creators make much money on the TikTok platform**, the Society stated that apart from the Live Feature allowing creators to earn through gifts, viral content also attracted direct pay. Therefore, some creators create controversy in their content to grow earnings.

(iii) Regarding whether the concerns raised on bad content would be addressed if the language of usage was English and not local languages, the Society indicated that most of the vile contentment was propagated in the vernacular as such creators had realized that such content drew attention through controversy. Therefore, having all content in English would not address the concerns as the major concern was that African languages were left out in the training of algorithms as well as inadequacy problems for human content moderators.

(iv) Regarding the inclusion of mental health injuries in the Occupational Health and Safety Act to protect content moderators, LSK indicated that the mental health of the workers was ignored as companies did not have proper support such as psychologists or enough workers for turn-taking. There is a need to review OSHA to recognize indirect injuries which are slow but progressive besides physical injuries.

(v) Regarding the cost and benefit analysis of TikTok, the Society indicated that understanding social media was critical and people needed to understand that technology will not go away. Therefore, there is a need to address the challenges through legislation to allow for more employment opportunities, digital taxation, a safe environment, and knowledge retention within the community benefit-sharing realm.

MIN./PPETC/2023/485: CONSIDERATION AND ADOPTION OF PUBLIC PETITION NO. 1 OF 2023 REGARDING POOR IMPLEMENTATION OF EDU-AFYA MEDICAL SCHEME IN PUBLIC SECONDARY SCHOOLS

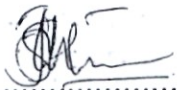
The Agenda was deferred.

MIN./PPETC/2023/486: CONSIDERATION AND ADOPTION OF PUBLIC PETITION NO. 5 OF 2023 REGARDING WARD-BASED SOLUTION AS A LONG-TERM REMEDY TO PERENNIAL WATER SHORTAGE IN KENYA

The Agenda was deferred.

MIN./PPETC/2023/487: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 2:00 p.m. The next meeting will be held on Wednesday, 15th November, 2023 at 11.00 a.m.

Sign: 
(CHAIRPERSON)

Date: 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 81ST SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, NOVEMBER 16, 2023, IN COMMITTEE ROOM 12, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS, AT 11.00 A.M

PRESENT

- | | | |
|--|---|----------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Chairing |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. Hon. Maisori Marwa Kitayama, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Bidu Mohamed Tubi, M.P. | | |
| 8. Hon. Caleb Mutiso Mule, M.P. | | |
| 9. Hon. John Bwire Okano, M.P. | | |
| 10. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|---|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 4. Hon. Peter Mbogho Shake, M.P. | | |
| 5. Hon. Suzanne Ndunge Kiamba, M.P. | | |

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Ms. Lilian Mburugu | - | Media Relations Officer III |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Ms. Felistus Muiya | - | Protocol Officer |

MIN./PPETC/2023/508: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 a.m. and Hon. Bidu Mohamed Tubi, M.P. said the prayers.

MIN./PPETC/2023/509: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of a Public Petition regarding the banning of Tik-Tok in Kenya**
 - a) *Meeting with the Communication Authority of Kenya (CAK)*
 - b) *Meeting with the Kenya National Commission on Human Rights (KNCHR)*
6. **Consideration and adoption of Public Petition No. 01 of 2023 regarding Poor Implementation of Edu-Afya Medical Scheme in Public Secondary Schools.**
7. **Consideration and adoption of Public Petition No. 05 of 2023 regarding Ward-Based Solution as a long-term remedy to perennial water shortage in Kenya.**
8. Any Other Business
9. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Ernest Ogesi Kivai, M.P. and seconded by Hon. Edith Vethi Nyenze, M.P.

MIN./PPETC/2023/510: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Minutes of the 61st Sitting held on Thursday, 26th September 2023 at 11:00 a.m. was confirmed as a true record of the proceeding having been proposed by Hon. John Bwire Okano, M.P. and seconded by Hon. Maisori Marwa Kitayama, M.P.

The Minutes of the 62nd Sitting held on Thursday, 26th September 2023 at 3:30 p.m. was confirmed as a true record of the proceeding having been proposed by Hon. Joshua Chepyegon Kandie, M.P and seconded by Hon. Sloya Clement Logova, M.P.

MIN./PPETC/2023/511: CONSIDERATION OF A PUBLIC PETITION REGARDING THE BANNING OF TIK-TOK IN KENYA

Meeting with the Communication Authority of Kenya (CAK)

The meeting was informed that the CAK vide a letter, Ref. CA/LS/002/2023(772) dated 16th November 2023 requested for the meeting to be rescheduled to 30th November 2023. The Committee acceded to the request.

Meeting with the Kenya National Commission on Human Rights (KNCHR)

The Committee was informed that the CEO, KNCHR, Dr. Benard Mogesa, PhD, CPM vide an email dated 16th November, 2023 had submitted an advisory concerning the Petition. The Committee went through the response 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 -

- i.) The Committee should disallow the petition by declining the invitation to ban TikTok as it risks infringing on fundamental rights and freedoms.
- ii.) 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 is exercised and enjoyed to the maximum extent possible and within the confines of the Constitution and relevant laws.
- iii.) 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 -

- i. 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.
- ii. Both the Kenyan Government and proprietors of TikTok should develop a mechanism for regular reviews and audits of TikTok's existing age-rating 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 CEO of 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.
- iii. 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 is 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.
- iv. Regular monitoring and review of the contemplated social media Guidelines to gauge their effectiveness and impact (both real and potential) on human rights.

MIN./PPETC/2023/512:

CONSIDERATION AND ADOPTION OF PUBLIC
PETITION NO. 1 OF 2023 REGARDING POOR
IMPLEMENTATION OF EDU-AFYA MEDICAL
SCHEME IN PUBLIC SECONDARY SCHOOLS

The Committee reviewed the draft report and resolved that the CEO, NHIF be invited to appear before the Committee to provide further information on key issues raised in the Petition, especially on the findings of the Siaya and Homa Bay Site Visits.

MIN./PPETC/2023/513:

CONSIDERATION AND ADOPTION OF PUBLIC
PETITION NO. 5 OF 2023 REGARDING WARD-
BASED SOLUTION AS A LONG-TERM REMEDY
TO PERENNIAL WATER SHORTAGE IN KENYA

The Committee reviewed the draft report and adopted the report with the following recommendations pursuant to the provisions of Standing Order 227 -

- i. On the proposal to recommend the national government to drill, equip, and solarize boreholes in each of the 1450 wards across the country except for eighty-five wards in Nairobi and major towns. The Committee recommends that the prayer should be rejected;
- ii. On the proposal to amend the Water Act, 2016 to provide for ward-based water supply regulations. The Committee recommends that the prayer should be rejected;

The Committee also recommends that -

- iii. The approach of ward-based supply of water is considered in the National Water and Sanitation Investment and Financing Plan (NAWASIP) between the National Government and County Governments.

MIN./PPETC/2023/514:

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:15 p.m. The next meeting will be held on Tuesday, 21st November, 2023 at 11.00 a.m.

Sign: 
(CHAIRPERSON)

Date: 21-11-2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 87TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, NOVEMBER 30, 2023, IN THE LOUNGE AT THE RESTAURANT IN THE NEW WING, MAIN PARLIAMENT BUILDINGS, AT 10.00 A.M

PRESENT

- | | | |
|---------------------------------------|---|----------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | - | Chairing |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Peter Mbogho Shake, M.P. | | |
| 5. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Patrick Makau King'ola, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. Hon. Caleb Mutiso Mule, M.P. | | |
| 10. Hon. John Bwire Okano, M.P. | | |

SECRETARIAT

- | | | |
|-----------------------|---|------------------------|
| 1. Ms. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Mr. Willis Obiero | - | Clerk Assistant III |
| 3. Mr. Martin Sigei | - | Research Officer III |
| 4. Mr. Kelvin Lengasi | - | Audio Officer |

IN ATTENDANCE

MINISTRY OF TOURISM AND WILDLIFE

- | | | |
|----------------------------|---|--------------------------------------|
| 1. Hon. (Dr.) Alfred Mutua | - | Cabinet Secretary |
| 2. Ms. Sylvia Musciya | - | PS, State Department for Wildlife |
| 3. Dr. Erastus Kanga | - | DG, KWS |
| 4. Prof. Fredrick Irava | - | Adviser to the CS |
| 5. Prof. Charles Musyoki | - | Director, KWS |
| 6. Dr. Richard Chepkwony | - | Director, PHWC |
| 7. Mr. Johanna Tonui | - | Director, Wildlife Services |
| 8. Mr. Samuel Tokome | - | Deputy Director, Community Relations |
| 9. Ms. Grace Nzale | - | Assistant Director |
| 10. Mr. Hashim Rashid | - | Senior Warden |

NATIONAL HOSPITAL INSURANCE FUND

- | | | |
|-----------------------|---|---|
| 1. Mr. Elijah Wachira | - | Chief Executive Officer |
| 2. Mr. Hazel Koitaba | - | Director of Beneficiary and Provider Management |
| 3. Mr. Benard Njenga | - | Manager, Finance |
| 4. Ms. Anne Kibor | - | Senior Assistant Manager, Enhanced Schemes |
| 5. Mr. Andrew Kutto | - | Ag. Manager Enhanced Schemes |
| 6. Mr. Pariken Sankei | - | Director, Internal Audit |

COMMUNICATION AUTHORITY OF KENYA

- | | | |
|---------------------------|---|---|
| 1. Mr. Christopher Wambua | - | Ag. Director General/CEO |
| 2. Mr. Alfred Ambani | - | Deputy Director, Multimedia Services |
| 3. Mr. George Nyamwitha | - | Ag. Deputy Director, Corporation Secretary and Legal Services |
| 4. Mr. Gufu Bonchale | - | Principal Officer, Cyber Security |
| 5. Ms. Caroline Muriangi | - | PA to the DG |

MIN./PPETC/2023/541:

PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m. and proceedings began with prayers by Hon. John Walter Owino, M.P.

MIN./PPETC/2023/542:

ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition Regarding Access to National Parks by Livestock Grazers During Drought**
 - *Meeting with CS, Ministry of Tourism and Wildlife*
6. **Consideration of Public Petition Regarding Poor Implementation of Edu-Afya Medical Scheme in Public Secondary School**
 - *Meeting with the CEO of NHIF*
7. **Consideration of Public Petition Regarding Banning of TikTok in Kenya**
 - *Meeting with the Data Protection Commissioner*
 - *Meeting with the Communication Authority of Kenya*
8. Any Other Business
9. Adjournment

The Agenda of the Meeting was adopted to constitute business having been proposed by Hon. John Bwire Okano, M.P. and seconded by Hon. Sloya Clement Logova, M.P.

MIN./PPETC/2023/543:

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

Meeting with CS, Ministry of Tourism and Wildlife

- i.) The CS, Ministry of Wildlife and Tourism Hon. (Dr.) Alfred Mutua and the Director General of Kenya Wildlife Service, Dr. Erastus Kanga appeared before the committee and submitted that allowing livestock into the parks without proper guidelines would amount to risks including transmission of zoonotic diseases.
- ii.) The Committee sought further clarification from the Ministry on the following issues: -
 - a) The illegal charges by KWS on herders caught with cattle in the park and commercialization of the issue.
 - b) The lack of regulations and guidelines to access the national parks.
 - c) Detainment of both the herders and their livestock.
 - d) The utilization of the compensation charges collected by KWS.
 - e) How the compensation charges were arrived at.
 - f) Safety of the livestock held in the holding grounds under the custody of KWS.
- iii.) The CS requested the Committee to allow the Ministry one week to caucus and respond to the issues raised comprehensively. Further, a team was already working on the regulations on access to the national parks to allow for coexistence and the proposals would be brought to the National Assembly for ratification once finalized.
- iv.) Regarding the safety of the livestock in the holding grounds, the DG, KWS stated that they allowed the cattle to graze while in detention, and the animals were only held as evidence as the herders often flew once they encountered KWS officers. The Ministry stated that the long-term solution would be the provision of services to the communities living around the parks, for example, the provision of water pans to enable livestock to access pasture and water outside the park.
- v.) Regarding the delay in KWS compensation for the destruction meted out by wildlife on the people, the CS stated that the Ministry was working on ways of ensuring that such compensation was done in good time.

Committee Way forward

The Committee resolved that the Ministry submit within a week a comprehensive response on the following issues sought: -

- i.) The illegal charges by KWS on herders caught with cattle in the park and commercialization of the issue.
- ii.) The lack of regulations and guidelines to access the national parks.
- iii.) Detainment of both the herders and their livestock.
- iv.) The utilization of the compensation charges collected by KWS.
- v.) How the compensation charges were arrived at.
- vi.) Safety of the livestock held in the holding grounds under the custody of KWS.

CONSIDERATION OF PUBLIC PETITION
REGARDING POOR IMPLEMENTATION OF EDU-
AFYA MEDICAL SCHEME IN PUBLIC SECONDARY
SCHOOL

Meeting with the CEO of NHIF

The CEO of NHIF Mr. Elijah Wachira appeared before the Committee and submitted as follows:

- i.) NHIF had enrolled 3,955,953 students with Kakamega County leading by 220,289 students and Isiolo County had the least number of enrolled students at 9,219.
- ii.) The analysis of premium payment per county for the Edu Afya since inception (2018-2023) indicated that Homa Bay County was leading with a total of Kshs. 1,161,318,174 and Lamu County claimed Kshs. 20,931,344. The total payment of claims was Kshs. 15,077,151,314 from 2018 to 2023.
- iii.) NHIF had implemented fraud containment measures which included investigation of suspected cases, recovery of the amounts lost, and making recommendations including suspension of an implicated health facility. According to the audit done by NHIF, twenty-seven (27) health facilities were investigated for fraud, and appropriate action was taken based on the findings.
- iv.) The NHIF provided a list of all contracted service providers accredited under the Edu Afya scheme across the country.
- v.) That the total number of students (visits) treated per year per county since inception was 7,550,365 visits.
- vi.) NHIF had put in place fraud containment mechanisms including investigations, internal and external audits, and recovery of money lost through fraud.
- vii.) NHIF had undertaken various efforts to address the issue of awareness of the Scheme among stakeholders including parents and school heads. Sensitization exercises included structured meetings, mainstream media, newspapers, informational materials, and social media.
- viii.) That the design for monitoring and evaluation developed by NHIF was available to ensure the effectiveness of the scheme.
- ix.) Regarding tender advertisement, evaluation, reports, and minutes, the Edu Afya cover was procured by the government through the Ministry of Education on a Government-to-Government basis.
- x.) The NHIF provided a breakdown of the total amount of money paid to the Scheme and claims successfully paid.
- xi.) The Edu Afya Scheme had been seamlessly integrated into the NHIF organizational structure with a clear delineation of roles and responsibilities across different directorates and departments. The integration ensured that all functions aligned with the broader mission and were executed efficiently.

Committee Concerns

- i.) **Regarding the justification for high premiums paid to certain counties**, the CEO indicated that the registration of students in the system was done by the Ministry of Education. The trends had triggered NHIF to conduct audits, especially in the Western region where about 60 hospitals were investigated. The audit established that inadequate documentation that supports student visits was common as well as induced demands by certain hospitals. Further, preliminary findings revealed a possibility of disease incidents such as the prevalence of Malaria in the Western region occasioning more visits by students.
- ii.) **Regarding the fate of Edu Afya under the transition of NHIF to the Social Health Authority**, the CEO clarified that the Social Health Insurance Act of 2023 had provided that all enhanced schemes would no longer be the mandate of the new Authority. Therefore, NHIF would run down the contract with the Ministry of Education under Edu Afya and the Ministry would find another provider. The new authority would only offer social health insurance schemes, primary health insurance funds, and critical emergency funds as provided for in the Act.
- iii.) **As to whether there could be instances of undetected fraud in the Scheme**, the CEO stated that the Fund was always reviewing its monitoring and evaluation framework. However, it was not possible to rule out fraud in totality as some fraudsters were constantly coming up with new ways hence the commitment by NHIF to constantly review and innovate ways of recovering funds lost and blocking the loopholes. Since there was inadequate quality assurance, the Fund was using technology to address the challenges leading to fraud. For instance, using electronic data management systems instead of shipping data manually to the head office.
- iv.) **Regarding the discrepancies in the payment of premiums to private, public, and mission hospitals**, the CEO stated that the payment of premiums to service providers was based on first come first served. The payments were made in real-time, and all payments had been done up to the first week of October 2023.
- v.) **Regarding parents paying additional costs above the amount paid by NHIF**, the CEO indicated that that was an irregularity and ought not to have happened.
- vi.) **The Committee inquired about how the NHIF dealt with outbursts in claims or underwhelming claims and the sustainability of the Scheme**. The CEO stated that the program depended on pulling resources together. However, surplus funds were put in short-term investments for reuse since diseases were unpredictable. Surplus funds were also used in other NHIF products.
- vii.) **Regarding the last expense cover**, the CEO indicated that the Fund had endeavoured to pay the last expense as quickly as possible to help with the funeral expenses. Any delays in payment of the last expense were erroneous and not acceptable.

The Ag. The Director General/CEO of the Communication Authority of Kenya appeared before the Committee and submitted as follows:

The impact of banning TikTok in Kenya

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.

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 is 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.

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

That 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: -

- i.) Strengthening the role of the Communications Authority of Kenya 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.
- ii.) 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.

- iii.) The Office of the Data Protection Commissioner had a critical role to play in ensuring the personal data of Kenyans is 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.
- iv.) 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.
- v.) 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.
- vi.) 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.
- vii.) 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.
- viii.) 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

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 is imperative to enhance the regulation of these influential entities.

Committee Concerns

- i.) **Regarding the role of CAK in regulating TikTok and whether the Authority was late in coming up with proposals for social media regulations,** the Ag. CEO stated that the current provisions had given the Authority a limited mandate on regulating TikTok since the regulation of social media was not within its mandate. The issues raised by the Petitioner touched on cultural and moral concerns that would be regulated by KFCB. The CEO further stated that technology was fast-paced hence regulations always tended to play catch-up because it was often difficult to anticipate the emerging technological trends.

- ii.) Regarding how content creators benefited from the platform, the CEO stated that through monetization of content, many youths were making income through TikTok advertising and share agreements. Further, Kenyans were peculiarly aggressive in the adoption of ICT hence the more interest by big tech companies in Kenya.

MIN./PPETC/2023/548:

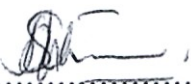
CONSIDERATION OF PUBLIC PETITION
REGARDING BANNING OF TIKTOK IN KENYA

The Agenda was deferred.

MIN./PPETC/2023/548:

ADJOURNMENT AND DATE OF THE NEXT SITTING

There being no other business, the Chairperson adjourned the meeting at 2:00 p.m. The next meeting will be held on Tuesday, 5th December 2023 at 11.00 a.m.

Sign: 
(CHAIRPERSON)

Date... 06-12-2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 12TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, MARCH 21, 2024, IN COMMITTEE ROOM 12, NEW WING, PARLIAMENT BUILDINGS AT 9.00 A.M.

PRESENT

- | | |
|---|--------------------|
| 1. Hon. Maisori Marwa Kitayama, MP | - Chairing |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | |
| 4. Hon. John Walter Owino, M.P. | |
| 5. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | |
| 6. Hon. Edith Vethi Nyenze, M.P. | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | |
| 8. Hon. John Bwire Okano, M.P. | |

APOLOGIES

- | | |
|--------------------------------------|---------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | |
| 3. Hon. Ernest Ogesi Kivai, M.P. | |
| 4. Hon. Caleb Mutiso Mule, M.P. | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | |
| 6. Hon. Peter Mbogho Shake, M.P. | |
| 7. Hon. Sloya Clement Logova, M.P. | |

IN ATTENDANCE**MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION**

- | | |
|---------------------------------|---------------------------------|
| 1. Hon. (Prof.) Kithure Kindiki | - Cabinet Secretary |
| 2. Mr. Njenga Miiri | |
| 3. Mr. Francis Gachuri | - Communications Officer |
| 4. Ms. Mary Njenga | - Parliamentary Liaison Officer |

SECRETARIAT

- | | |
|-----------------------|-------------------------------|
| 1. Mr. Ahmed Kadhi | - Senior Clerk Assistant |
| 2. Ms. Ronald Walala | - Senior Legal Counsel |
| 3. Ms. Roselyn Njuki | - Senior Serjeant-at-Arms I |
| 4. Ms. Miriam Modo | - Clerk Assistant I |
| 5. Mr. Willis Obiero | - Clerk Assistant III |
| 6. Mr. Martin Sigei | - Research Officer III |
| 7. Mr. Calvin Karungo | - Media Relations Officer III |
| 8. Mr. Paul Shana | - Serjeant-at-Arms |
| 9. Mr. Peter Mutethia | - Audio Officer |

MIN./PPETC/2024/ 083: PRELIMINARIES

The Chairperson called the meeting to order at 09:00 a.m. and proceedings began with prayers by Hon. Walter Owino, M.P.

MIN./PPETC/2024/084: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 41 Of 2023 Regarding Banning of TikTok in Kenya
 - *Meeting with the CS, Ministry of Interior and National Administration*
6. Any Other Business
7. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Joshua Chepyegon Kandie, M.P and seconded by Hon. Walter Owino. M.P.

MIN./PPETC/2024/085: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/086: CONSIDERATION OF THE DRAFT REPORT OF PUBLIC PETITION NO. 41 OF 2023 REGARDING BANNING OF TIKTOK IN KENYA

Meeting with the CS, Ministry of Interior and National Administration

The CS, Hon. (Prof.) Kithure Kindiki appeared before the Committee and submitted as follows—

Background

- a) 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.
- b) Kenya has 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 is 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.

- c) Among these platforms, TikTok stands out, championing pervasive connectivity that challenges conventional modes of communication. Alongside TikTok, popular social media platforms in Kenya include Facebook, Instagram, Twitter, Telegram, and Signal.
- d) For many Kenyans, social media serves 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.
- e) While social media platforms offer significant benefits such as facilitating commerce, fostering connectivity, and empowering content creators, they also expose users to various risks. TikTok, for instance, has been exploited by malicious actors to propagate extremist ideologies, perpetrate identity theft and fraudulent schemes, including fake forex trading and deceptive job recruitment practices.
- f) Privacy breaches and integrity violations are rampant, with explicit sexual content and intimate imagery often proliferating through the platform's live feature. These risks engender distress among users, expose minors to inappropriate content, and sow discord within communities.
- g) The request by the Petitioner, the CEO of the Bridge Connect Consultancy, Mr. Bob Ndolo, regarding the banning of Tik Tok 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. The balance between the contradictions required serious reflections and harmonization with the place of social media.
- h) 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 is not merely a communication platform, but the interconnectivity that it provides is the core of the 4th Industrial Revolution that will be centred around Artificial Intelligence, Big Data and the Internet of Things.
- i) Among these were social media platforms including Tik Tok which had promoted ubiquitous connectivity which was dissolving the traditional way of communication. The most prominent social media platforms in Kenya include Tik Tok, Facebook, Instagram, Twitter, Telegram and Signal.
- j) Most Kenyans embrace social media for keeping in touch, sharing information and planning events. Organizations have 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.

- k) There is 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.
- l) For instance, social media including TikTok had been misused to endanger safety in the following ways:
 - i. Generating and spreading malicious propaganda including by terrorist groups to spread their ideology and fear to communities;
 - ii. Identity theft, ransoms, impersonation, and hijacking of popular accounts to embarrass public officials, celebrities, high profile individuals including business people;
 - iii. Fraudulent and unlawful commercial transactions including luring users into forex trade and job recruitment programs;
 - iv. 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.

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

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

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

The Government of Kenya, through the Office of the Data Protection Commissioner, had engaged TikTok and raised concerns relating to its data processing. The Government had required Tik Tok to:

- i. Provide the levels of compliance with the laws of Kenya including the Data Protection Act and Data Protection Regulations;
- ii. Measures to ensure the privacy of individuals is respected in accordance with the laws since the Government was not satisfied that there was compliance;
- iii. Details on the effectiveness of age verification and content filtering;

- iv. Implementation of Kenya-specific supplemental terms in its privacy policy considering the provision of the Kenyan law and how they are customising the data processing to comply with Kenyan laws;
- v. Demonstration compliance and register with the Office of Data Protection Commissioner as a data controllers and data processors going forward.

Committee Concerns

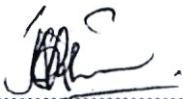
- a) The Committee inquired on the **economic benefits of Tik Tok**. The CS indicated that as part of the recommendations by the Committee, the Ministry would engage with the Ministry National Treasury & Planning, Kenya Revenue Authority (KRA), Ministry of ICT & Digital Economy, and the Creative Industry to have a multi-agency assessment of the economic benefits, projections and estimates of Tik Tok. That it was necessary to get the facts right on what the sector contributes to the GDP and inform the necessary balances. For instance, if there is significant economic value, then instead of total ban, there could be limited control that seals the loopholes where the risks and disadvantaged could come through. However, the place of social media, and other drivers of the 4th Industrial Revolution were at an irreversible stage in the world. Regarding whether the dangers presented by Tik Tok outweigh the benefit, the CS stated that it was premature because there was not an evidence-based policy position in place.
- b) Regarding whether **Tik Tok should be banned until it complies to the various requirements**, the CS stated that the engagement between the Government and Tik Tok was a procedural requirement by the law before action is taken. The government was working through the process to arrive at an administrative action including given the people affected an opportunity to be heard.
- c) Regarding whether **Tik Tok had responded to the request by Government and the timelines for compliance**, the CS stated that there was a timeframe issued by the Office of the Data Protection Commission. In the event they do not comply the government would take the necessary action.
- d) The Committee sought the opinion of the CS on whether **the countries of origin had embraced technologies such as Tik Tok as Kenyans had and the proactive measures** in place to avert the ills that come with such technologies. The CS stated that Kenyans embraced technology but not necessarily than the countries of origin. Embracing technology and prosperity could not be attached because prosperity came alongside other factors. However, there was need to exercise caution whilst having a widespread application that could pose risks.
- e) Regarding whether **the privacy of data of Kenyans was secured and whether there were checks and balance to confirm that Tik Tok gives the true position on the subject**. The CS affirmed that the Ministry understood where the risks were. However, procedure demands that that the person affected by administrative action be given an opportunity to explain themselves whether they have merit or not. Thereafter the Government would triangulate the response against the information available.

f) The Committee inquired about the danger of potential access to data of Kenyans by foreign countries and the policy the government was having in place to protect its data. The CS stated that the controls were important on how the application is used. The question on policy was active before the National Security Council. The Ministry was coordinating the cyber security program of the country under the Cyber Crime & Security Coordination Committee to develop polices to guard the cyber space. The committee was comprised on the National Police Service (NPS) and National Intelligence Service (NIS), Ministry of Defense and the Ministry of ICT & Digital Economy. That cyber security was complex and consequential as it was a new security challenge which required investment in internal security and defense that create a fourth defense and security tier. The potential of the cyber space to hurt the country was huge as well as its potential in contribution to national development. Therefore, there was need a wholesome and long-term look at the matter beyond banning or not banning Tik Tok but also to have a cyber security solution.

MIN./PPETC/2024/087:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 10:30 a.m. The next meeting will be held on Thursday 21st March, 2024 at 12.00 noon.

Sign: 

(CHAIRPERSON)

Date: 09-04-2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

**MINUTES OF THE 22ND SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON
TUESDAY, APRIL 8, 2024, IN THE COMMITTEE ROOM ON THE GROUND FLOOR,
COUNTY HALL, PARLIAMENT BUILDINGS, AT 12.00 P.M**

PRESENT

- | | | |
|--|---|----------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Chairing |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. Ernest Ogesi Kivai, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Maisori Marwa Kitayama, MP | | |
| 6. Hon. (Eng.) Bernard Muriuki Nerbert, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. Hon. John Bwire Okano, M.P. | | |
| 10. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|--------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Bidu Mohamed Tubi, M.P. | | |
| 4. Hon. Caleb Mutiso Mule, M.P. | | |
| 5. Hon. Peter Mbogho Shake, M.P. | | |

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------------|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Roselyn Njuki | - | Senior Serjeant-at-Arms I |
| 3. Ms. Miriam Modo | - | Clerk Assistant I |
| 4. Ms. Anne Shibuko | - | Clerk Assistant I |
| 5. Ms. Patricia Gichane | - | Legal Counsel II |
| 6. Mr. Willis Obiero | - | Clerk Assistant III |
| 7. Mr. Martin Sigei | - | Research Officer III |
| 8. Ms. Felistas Muiya | - | Public Communications Officer |
| 9. Mr. Calvin Karungo | - | Media Relations Officer III |
| 10. Mr. Peter Mutethia | - | Audio Officer |

IN-ATTENDANCE

MAJOREL TELEPERFORMANCE

- | | | |
|-----------------------|---|---------------------------|
| 1. Mr. Sven De Cauter | - | Director |
| 2. Mr. Richard Odongo | - | Legal Counsel |
| 3. Ms. Joan Wanjeri | - | Communications Consultant |
| 4. Mr. Samuel Karanja | - | Communications Consultant |
| 5. Ms. Sahara Bare | - | Legal Counsel |

TIK TOK MANAGEMENT

- | | |
|--------------------------------|---|
| 1. Mr. Fortune Mgwili-Sibanda- | Director of Government Relations and Public Policy for TikTok in Sub-Saharan Africa |
| 2. Ms Keagile Makgoba | - Head of Communications |
| 3. Mr. Mwema Kilemi | |
| 4. Ms. Magdalene Kariuki | - Public Policy Consultant |
| 5. Ms. Felistus Mwangi | - Content Partnership |
| 6. Ms. Mercy Kimaku | - Safety and Integrity |
| 7. Mr. Ian Makamara | - Public Policy Consultant |

MIN./PPETC/2024/ 137: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 p.m. and proceedings began with prayers by Hon. Maisori Marwa Kitayama, MP.

MIN./PPETC/2024/138: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 41 of 2023 regarding Banning of TikTok in Kenya
 - *Meeting with Majorel-Teleperformance*
 - *Meeting with Tik Tok Management*
6. Any Other Business
7. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Edith Vethi Nyenze, M.P. and seconded by Hon. John Bwire Okano, M.P.

MIN./PPETC/2024/139: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the 11th Sitting held on Wednesday, 20th March 2024 were confirmed, having been proposed by Hon. Maisori Marwa, M.P and seconded by Hon. Walter Owino, M.P.

Minutes of the 12th Sitting held on Thursday, 21st March 2024 were confirmed, having been proposed by Hon. Edith Vethi Nyenze, M.P. and seconded by Hon. John Bwire Okano, M.P.

Minutes of the 13th Sitting held on Thursday, 21st March 2024 were confirmed, having been proposed by Hon. Maisori Marwa, M.P and seconded by Hon. Walter Owino, M.P.

Minutes of the 14th Sitting held on Monday, 25th March 2024 were confirmed, having been proposed by Hon. Ernest Ogesi Kivai, M.P. and seconded by Hon. Walter Owino, M.P.

Minutes of the 15th Sitting held on Monday, 25th March 2024 were confirmed, having been proposed by Hon. Suzanne Ndunge Kiamba, M.P. and seconded by Hon. Walter Owino, M.P.

Minutes of the 16th Sitting held on Tuesday, 26th March 2024 were confirmed, having been proposed by Hon. Maisori Marwa, M.P and seconded by Hon. Edith Vethi Nyenze, M.P.

Minutes of the 18th Sitting held on Wednesday, 27th March 2024 were confirmed, having been proposed by Hon. Maisori Marwa, M.P and seconded by Hon. Walter Owino, M.P.

Minutes of the 19th Sitting held on Wednesday, 27th March 2024 were confirmed, having been proposed by Hon. Suzanne Ndunge Kiamba, M.P. and seconded by Hon. Walter Owino, M.P.

Minutes of the 20th Sitting held on Thursday, 28th March 2024 were confirmed, having been proposed by Hon. Maisori Marwa, M.P and seconded by Hon. John Bwire Okano, M.P.

Minutes of the 21st Sitting held on Thursday, 28th March 2024 were confirmed, having been proposed by Hon. Walter Owino, M.P. and seconded by Hon. Maisori Marwa, M.P

MIN./PPETC/2024/140:

CONSIDERATION OF PUBLIC PETITION NO. 41 OF
2023 REGARDING BANNING OF TIKTOK IN KENYA

MEETING WITH MAJOREL-KENYA LTD

The Site Director, Majorel-Kenya Ltd., Mr. Sven De Cauter appeared before the Committee and submitted as follows—

Background

1. Majorel Kenya Limited, headquartered in Nairobi, Kenya, is 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.
2. The company prioritizes 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.
3. Majorel does 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 should be directed to TikTok/Bytedance.

Response to various queries by the Committee

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

4. 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.
5. The details of the content moderation services provided to TikTok, how the work is done; languages provided; type of work, how it is queued up for employees and the functioning of the algorithms.
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.
 - vi. The AI algorithms and platform algorithms belong to TikTok and not the Company as a content moderator.
6. 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.
 - i. All working shifts have counsellors' coverage of the ratio 1:38 which is within the industry standards of the 1:75. There are six (6) on-site counselors to handle any moderators' wellness needs and support.
 - ii. 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.

- iii. 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.
 - iv. 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).
 - v. 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.
 - vi. 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.
 - vii. 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.
 - viii. 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.
7. 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.
- i. 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".
 - ii. All moderators were advised to escalate issues to their supervisors in cases where they came across content that would be difficult to moderate.
8. **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 Labour Relations Court namely Kiana Monique & James Agada Mark and 182 Others vs Meta Platforms Inc & Meta Platforms Ireland Ltd and 9 Others [ELRCPET/E05212023]

9. 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 is safe and shielded from any form of explicit content.
10. 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.
11. Regarding the origin of TikTok and their measures to safeguard young children and youth from Kenya, Majorel Kenya and Tik Tok 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.
12. 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.

Committee Concerns

13. The Committee inquired about how the process of moderation. The Director clarified that first, all the content passed through an AI system for first level moderation. If the AI system is unable to clarify whether the content is harmful or not, such content is disbursed to a human content moderator who reviews the content according to the policy guidelines. If the content was deemed harmful, the moderator would tag it for sending back to the AI system for escalation for action by Tik Tok.
14. Regarding who determines the content going through the AI system before allocation to content moderators, the Director clarified that whatever comes through the AI system is allocated by Tik Tok and was out of the control of the content moderator and the Company did not moderate content that had not passed through the AI. The actual system of allocation was with Tik Tok and Majorel was only a content moderation service provider to the specific content allocated to it by Tik Tok.
15. The Committee inquired about the amount of content consumed on Tik Tok which goes through the AI and human moderation (two-level) and those which do not go through the human content moderation (one-level). The Director stated that the Company could not establish the volume of content moderated in the two levels vis a vis the total volume of content consumed on Tik Tok.
16. The Committee inquired whether the Company had content moderators from all language dialects in Kenya. The Director stated that the Company

moderated content according to the client's needs. That the content being moderated by the Company was sent by the AI system and in cases where the language was unrecognisable, the moderators would moderate the video and not the audio before flagging it for taking back to the Tik Tok's system for action.

17. The Committee inquired about the role of the Company regarding Tik Tok user accounts uploading harmful content. The Director clarified that if a content moderator received harmful content, the matter was escalated to the client directly.
18. Regarding whether the Company would take responsibility for moderation of all content on Tik Tok, the Director clarified that as a service provider, it was responsible only for content sent by Tik Tok to it for moderation and not all content on Tik Tok.
19. Regarding whether there were any other content moderators in Kenya for Tik Tok other than Majorel Kenya Ltd., the Director indicated that they would not comment as they were only responsible for its own moderators locally and globally.
20. The Committee inquired about the percentage of staff and overall time allocated to TikTok content moderation in Kenya, as well as the profits generated from TikTok within Majorel's entire portfolio. The Director provided information on the percentage of staff dedicated to TikTok content moderation within Majorel's portfolio in Kenya. Specifically, the company had 260 staff members for content moderation out of a total of 1000 employees. The Director stated that information regarding the profits generated from TikTok and the overall time allocated for moderation was subject to a contractual agreement with TikTok and could not be disclosed.

MEETING WITH TIKTOK MANAGEMENT

Director of Government Relations and Public Policy for TikTok in Sub-Saharan Africa, Mr. Fortune Mgwili-Sibanda on behalf of Tik Tok Management appeared before the Committee and submitted as follows—

Background

21. TikTok aims to positively impact the Kenyan user community by fostering creativity and joy. With over 1 billion monthly users globally, the platform serves as a space for creation, learning, sharing, and discovery. Ensuring platform safety is a top priority for TikTok. Particularly for Kenyan youth, TikTok is a significant platform for self-expression, creativity, education, connection, and opportunity.
22. According to the National Council for Population and Development, Kenya is 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

23. 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 is to nurture and enhance their talent, empowering them to leverage their creative expression and skills to sustain their livelihoods.
24. 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 is 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

25. TikTok is 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 has 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 your personal finances, exercises to improve your mental and physical health, or how to write an eye-catching CV.

The Creative economy

26. 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 is in line with the government's Bottom-Up Economic Transformation Agenda and aims to discover, nurture and monetise Kenyan talent.

27. The digital creative industry has emerged as one of the fastest-growing sectors in the Kenyan economy. This serves 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

28. TikTok has become a powerful tool for entrepreneurs who make up the majority of Small and Medium Enterprises (SMEs) in Kenya.
29. The Kenyan startup scene is a vibrant and dynamic ecosystem that is 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.
30. Entrepreneurs, startups and SMEs rely 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

31. Kenya's internet infrastructure journey has 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 is one of the key development pillars of the current Kenya Kwanza government.
32. 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 is a right that is 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 Tik Tok to protect its users

33. Tik Tok recognises that any platform needs to have a huge responsibility. Therefore, the concerns raised about the platform are noted, and taken seriously. It is in the interest of Tik Tok to address such concerns, correct misconceptions and hopefully adequately demonstrate its commitment to keeping our Kenyan community safe online. Safety is one of the core priorities at TikTok and it is 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
34. As a global platform that thrives on creativity, it is 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 is not allowed on the platform to make it a welcoming space for everyone.
35. TikTok provides its community with a range of tools and resources to help them manage their experience on the platform. These tools include 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.
36. The Safety Centre also provides helpful resources for new and existing users, families and caregivers to help them build an online experience that is right for them. Tik Tok has 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 this year alone to make this a reality.
37. The Committee or any government agency was welcome to take a tour of Tik Tok's Transparency and Accountability Centre in Dublin for a first-hand experience of how the teams at Tik Tok go about securing its community and users including:
- a) How Tik Tok 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.
38. 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.

39. Tik Tok 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 requires a collaborative effort as well as collective action, and Tik Tok's commitment to this course was ongoing and unwavering as there is no finishing line when it comes to safety online.

Addressing the Concerns raised in the Petition

40. To address the concerns raised in the Petition, Tik Tok 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 Tik Tok

41. Tik Tok is 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. Tik Tok platform is available in over 150 countries in over 75 languages with over 50 global offices. The mission is to inspire creativity and bring joy.
42. Tik Tok has over a billion people on the platform every month for various purposes including learning something new, expressing creativity, growing businesses, and getting entertainment.
43. The Tik Tok's FYP algorithm recommends 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.
44. The top content categories include 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).
45. The popular content trends in Kenya include 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 #LearnOnTikTok and #CreateWithEffect which both have high engagement rates and likes. Language specific hashtags like #SwahiliTikTok #KikuyuComedy are gaining popularity on Kenyan trends.

Tik Tok partnerships

46. **Safety:** In partnership with Eveminet, Tik Tok 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.
47. **Elections:** Tik Tok 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.
48. **Creators:** Tik Tok 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.

Tik Tok creator support

49. **LevelUp Africa:** Level Up Programme which is a first-of-its-kind creator amplification programme facilitated by the talented TikTok team which supported almost 200 creators in 2023 alone. In 2024, Tik Tok hosted the first *#LevelUpAfrica* event in Nairobi.
50. **African All Star:** Celebrating creators across sub-Saharan Africa, in 2023, Tik Tok 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.
51. **Masterclasses: Kalasha Film Festival:** Tik Tok team regularly partners 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

52. Tik Tok works to maintain a safe environment where users are welcome to create videos, find community, and be entertained. Safety is essential to feeling comfortable expressing yourself authentically, hence the need to uphold the Community Guidelines by removing accounts and content that violates them.
53. Tik Tok Community Guidelines reflect the values and define a common code of conduct on the platform. These guidelines allow the community to help maintain a safe shared space. The platform values 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.
54. Tik Tok takes 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.
55. Tik Tok community principles guide 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.
56. 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.

57. The updated community guidelines speak 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.

Tik Tok approach to content moderation

58. TikTok has put in place protective measures by combining content moderation technology with a robust human moderation team. The robust content moderation system has several layers of tools and processes, including automated classifiers, user reports, viewership threshold and more.
59. Firstly, content is received by a detection technology with intelligent models on text, video, image, behavioural signals to identify content that may violate the community guidelines, which allows Tik Tok to take swift action. Secondly, a robust moderation ensures swift and scalable responses to reported content. Thirdly, there is Issue-Specific Abuse Team enables precision safety on nuanced issues.
60. Tik Tok has Sub-Saharan Africa specific content moderators, enabling the platform to effectively moderate content with special attention to linguistic and cultural differences.
61. Tik Tok also works with fifteen (15) fact-checking partners globally and are expanding to more countries and languages.

Violations on Tik Tok

62. In Quarter 4 of 2023, Tik Tok 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.
63. 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.
64. In Kenya, Tik Tok 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 Tik Tok

65. The safety of the community is a top priority, especially for the younger users. Tik Tok has invested in tools and resources for families who are looking for easy ways to be engaged in their teen's life online. Every family is different, hence

the range of choices and settings. Families are best positioned to know what is appropriate for them, and they have the power to keep themselves and their families safe on TikTok. However, there is no finish line when it comes to protecting users and their safety, hence the continuous investments in safety.

66. Tik Tok prioritizes 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.
67. **User reporting:** Tik Tok has 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 is 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 is being manually reviewed. Reporting is 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.
68. **Safety guides:** Tik Tok has 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 Tik Tok; and digital well-being.
69. **Minor safety:** Tik Tok is a 13+ app, hence caregivers could also be involved in ensuring safety. Minor safety is 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, Tik Tok has 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 are able to send or receive Direct Messages. The platform allows users to report underage accounts. Further, Tik Tok has a robust moderation to ensure compliance with age restrictions and accounts that do not meet the age restrictions would be removed.
70. **Managing screen time:** The platform has 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 is 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.
71. **Anti-bullying and kindness tools:** Tik Tok empowers the users to control comments on their content. The *Filter All Comments* feature allows 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 can also filter keywords they choose from comments, filter spam and offensive comments, and report or delete comments in a bulk. This feature builds on the existing collection of comment controls.

72. **Family pairing:** Family Pairing on TikTok allows parents and teens to customize their safety settings based on individual needs. A parent can 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.
73. **Youth safety partnerships:** In Kenya, Tik Tok has a *#SaferTogether* Campaign cognizant of African culture believes and trait of social interaction and engagement, even with strangers, is 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 focuses on mental health awareness.

Data privacy and Protection

74. Tik Tok is 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 Tik Tok

75. Tik Tok collects information when a user creates an account on the platform. However, the privacy policy available in-app and on Tik Tok's website describes the types of information collected and the purposes for which it is used. Some of the non-exhaustive examples of the primary types of personal information collected by Tik Tok include:
76. **Account information:** Includes email address or phone number, chosen username, date of birth to confirm age for registration of the account.
77. **Behavioural information:** The data about how users engage 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 is to help Tik Tok recommend more relevant content.
78. **Technical information:** Includes information about the device used to connect to the platform, device settings such as time zone and language, IP address and mobile carrier information.
79. **Information from third-parties:** Includes data that might be received when a user signs into Tik Tok 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 Tik Tok

80. Recommendations: Tik Tok uses some information to recommend personalised content to its community that reflects their likely interest/preferences.
81. Safety: Tik Tok also use different types of data also help ensure user safety and security.
82. User experience: Tik Tok uses some information to improve the user experience on the platform, for example, to enhance existing features and to design new ones.
83. Advertising: Tik Tok uses information to provide personalised advertisements to users so that they may help immerse and enjoy a tailored experience.
84. 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.
85. The privacy policy, available on Tik Tok's website, clearly stipulates what data is collected from users, how the data is used and why.

Privacy for young users

86. Privacy is extra important for young users hence as part of Tik Tok'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 is 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

87. Tik Tok 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, Tik Tok adopts a layered approach to the provision of information.

Working with the government and law enforcement requests

88. 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, Tik Tok has already onboarded the Kenya Film Classification Board (KFCB) and KE-CIRT.

89. TikTok is 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 is 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.

Committee Concerns

Ownership of Tik Tok

90. The Committee sought clarification on why TikTok was banned in China, given its origin there. The Director explained that while TikTok is owned by ByteDance, founded by individuals of Chinese descent residing in Singapore, it did not originate in China. Despite its global presence, TikTok is unavailable in China due to legal requirements it fails to meet. Additionally, China's data protection laws, which differ from global standards, restrict TikTok's presence, although a similar app called Douyin exclusively serves Chinese users.

Content moderation in Kenya

91. Regarding the content moderator companies in Kenya, the Director clarified that Majorel Kenya Ltd stands as the sole contracted content moderation company in Kenya, although it collaborates with other global firms. Notably, TikTok employs 40,000 professionals globally, including Kenyans, for content moderation. Given the global scale of moderation, Tik Tok had adopted the "follow the sun" model to address moderation in different time zones effectively, ensuring continuous coverage.
92. In response to inquiries about whether Kenyan content moderation is conducted by Kenyans, the Director affirmed that a majority of content moderators were native speakers of the languages they moderate.
93. Regarding the capacity of Majorel Kenya Ltd to handle content moderation for all Kenyan content, the Director clarified that content moderation involved a combination of technology and human reviews. In addition to this, TikTok employed in-house staff at its trust and safety centres worldwide to supplement the broader picture of moderation efforts.
94. Regarding how Tik Tok contracted moderators and held them accountable, the Director explained that TikTok's engagement with contracted moderators and their accountability was governed by specific contracts outlining the terms of disengagement, given the outsourced nature of the service.
95. Regarding the percentage of work given to Majorel Kenya to moderate, the Director noted that the bulk of content moderation was handled by an AI system, with TikTok specifically assigning controversial content to moderation teams for language and contextual analysis. Acknowledging the imperfections of the system, the Director emphasized the ongoing efforts to refine and enhance

it, given the unpredictable nature of user-generated content. Despite this unpredictability, TikTok remains proactive in minimizing harm by swiftly removing harmful content.

Community guidelines

96. Regarding measures taken to control the Live stream feature, the Director highlighted that measures to regulate the Live stream feature included partnerships with stakeholders in Kenya, resulting in valuable feedback and technological investments by TikTok to enhance its management. Notably, TikTok strictly prohibits nudity and pornographic content. However, to minimize the impact of sexually suggestive content or mature themes, which may be culturally unacceptable in some regions, such content is not recommended to users.
97. Regarding the amount of harm, the community is subjected to within the 24 hours before taking down, the Director reported that 89.9% of harmful content was effectively removed before gaining any views within a 24-hour period. While acknowledging that some content may require more time for removal, efforts to improve this process were ongoing. In a bid for transparency, TikTok offers voluntary disclosure of viewership details for such content within the 24-hour window before removal. This commitment underscores TikTok's dedication and the extensive efforts undertaken to address vulnerabilities in content moderation.
98. Regarding the policy on LGBTQ content and other culturally-sensitive content on Tik Tok, the Director clarified that while TikTok's community guidelines are globally established, their implementation is adapted to local contexts. TikTok aligns with universally accepted values like freedom of expression and speech. However, in instances where such freedoms are restricted by local laws, TikTok complies with those regulations. For example, if a specific behaviour is prohibited by Kenyan law, TikTok respects these regulations and promptly removes content depicting such conduct within the Kenyan jurisdiction.

TikTok acknowledges that culturally sensitive content may arise, but through strategic partnerships, it actively learns and adapts to comply with local standards. For instance, in collaboration with the National Cohesion and Integration Commission (NCIC), TikTok familiarized itself with the election code of conduct leading up to the 2022 general elections, resulting in the removal of words deemed as hate speech. Additionally, TikTok has established direct relationships with regulatory bodies such as the Kenya Film Classification Board (KFCB) and other content regulators across Africa. These partnerships facilitate the identification and reporting of culturally sensitive content, which is then addressed by moderation teams applying appropriate measures.

Capacity building and CSR activities

99. Regarding capacity building and Tik Tok's presence in Kenya in relation to CSR activities especially on mental health and public education, the Director highlighted TikTok's commitment to capacity building and corporate social responsibility (CSR) initiatives in Kenya, particularly focusing on mental health and public education. TikTok collaborates with various organizations, such as through the *#SaferTogether* Campaign, which conducted capacity building and training activities across 21 counties in 2023 alone.

These efforts have empowered over 116,000 learners to become trainers, thereby expanding the reach of these initiatives. While acknowledging that reaching everyone simultaneously may pose challenges, TikTok values feedback on the importance of broadening its outreach. Over the past three years, TikTok has maintained regular engagement with government agencies, including the Ministry of Youth Affairs, Ministry of ICT, Communication Authority of Kenya, Kenya Film Classification Board (KFCB), and the National Cohesion and Integration Commission (NCIC), among others. Furthermore, TikTok remains open to engaging with any other agency as recommended by the Committee.

Mental health concerns

100. Regarding mental health concerns, the Director emphasized TikTok's proactive approach to mental health awareness through in-app campaigns, such as Mental Health Awareness Month in October and Mental Health Awareness Day. Collaborating with creators and the user community, TikTok disseminated educational messages throughout the month, in partnership with medical health professionals. These campaigns addressed issues like screen addiction and provided tools like default screen time limits, promoting holistic development among users. Furthermore, TikTok actively encouraged users to limit their time on the app to foster personal growth. Additionally, TikTok expressed readiness to collaborate with hospitals to provide CSR services focused on mental health.

Moreover, TikTok allocated USD 1.5 million to support selected social enterprises in Kenya, aiming to address various social issues, with a willingness to continue such initiatives. Furthermore, TikTok launched a campaign in partnership with the African Union (AU) to promote digital literacy and support small businesses among African youth

Liability and responsibility for harmful content

101. Regarding liability and responsibility for harmful content that violates the community guidelines as well as culture and values of a community, the Director clarified that TikTok conducts user education initiatives to inform users about various limitations and guidelines. Given that TikTok is a platform for user-generated content, users share responsibility in case of any harm caused. Furthermore, there existed a shared responsibility in ensuring the safety of the community, necessitating collective action. TikTok is committed to educating users and innovating tools to enhance their protection, while the government plays a role in implementing regulations to support these efforts. Regarding

TikTok's capacity and ability to audit the one percent of content deemed harmful to establish liability on the part of content moderators, the Director mentioned the need to review and determine the feasibility of such an audit.

102. Regarding partnerships with law enforcement agencies to deal with offensive content or criminal activities, TikTok collaborates with local law enforcement agencies through its dedicated law enforcement team to facilitate investigations via standard procedures. This team is equipped to engage with the appropriate authorities, particularly in cases involving public disorder, disturbance, or other criminal liabilities.

Monetization and compensation of creators

103. Regarding monetization policy and how the content creators are compensated for their content on Tik Tok, the Director emphasized the mutually beneficial relationship between TikTok and its creators, evident through various campaigns and initiatives aimed at empowering them. These efforts have resulted in the global recognition and success of numerous creators solely based on their TikTok content. TikTok provides creators with training on best practices to enhance viewership and improve content quality. Additionally, creators are featured on the TikTok Allstars platform and website, accessible globally for increased visibility to brands and partners. While TikTok has not yet introduced monetization services for creators based on views, discussions were ongoing with creators regarding this possibility. In the meantime, creators can earn through gifts on the Live feature, where users purchase tokens using credit cards to support their favourite creators. These gifts undergo a percentage split, with a portion allocated to VAT, TikTok, and the majority directed to the creator's bank account as real money.

TikTok is committed to providing creators with opportunities to monetize their talent, although more product and service launches are needed for Kenyan creators to earn directly from their content. Once creators begin earning, they are responsible for paying taxes to the government, even when entering partnership deals. TikTok has engaged with the Kenya Revenue Authority (KRA) to ensure compliance with tax regulations in Kenya.

Although TikTok has not conducted a thorough analysis of the economic impact of content creation, it remains dedicated to supporting creators and contributing positively to the economy through their endeavours.

Visit to the transparency and accountability centres

104. Regarding the visit to the transparency and accountability centres, the Director expressed readiness to initiate discussions on implementing the visit to the Tik Tok Transparency and Accountability Centres.
105. The Director responded to the Committee's inquiry about the future projections for maintaining safety on TikTok and other online spaces by emphasizing the application of global best practices. He suggested that Kenya could consider

adopting regulations that have proven successful in other countries rather than continuously reinventing the wheel.

TikTok engages with government agencies as a key industry player and stakeholder to provide input on proposed regulations and leverage the success of other nations in regulating online spaces effectively. Additionally, TikTok expressed willingness to participate in lawmaking processes and make submissions to contribute to the development of regulations and policies that can protect the Kenyan users but also allows innovation to thrive.

MIN./PPETC/2024/141:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 3:30 p.m. The next meeting will be held on Thursday 11th April, 2024 at 12:00 p.m.

Sign: 
(CHAIRPERSON)

Date 17-04-2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 24TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, APRIL 16, 2024, IN COMMITTEE ROOM 12, PARLIAMENT BUILDINGS AT 12.00. NOON

PRESENT

- | | |
|--|--------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - Vice Chairperson |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | |
| 3. Hon. John Walter Owino, M.P. | |
| 4. Hon. Ernest Ogesi Kivai, M.P. | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | |
| 6. Hon. Edith Vethi Nyenze, M.P. | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | |
| 8. Hon. John Bwire Okano, M.P. | |

APOLOGIES

- | | |
|---|---------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | |
| 3. Hon. Maisori Marwa Kitayama, MP | |
| 4. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | |
| 5. Hon. Caleb Mutiso Mule, M.P. | |
| 6. Hon. Sloya Clement Logova, M.P. | |
| 7. Hon. Peter Mbogho Shake, M.P. | |

IN ATTENDANCE

Ministry of ICT, Telecommunication and Digital Economy

- | | |
|--------------------------------|-----------------------------------|
| 1. Mr. Eliud Owalo, EGH | - Cabinet Secretary |
| 2. Eng. John Tanui, MBS | - Principal Secretary |
| 3. Ms. Immaculate Kassait, MBS | - Data Commissioner |
| 4. Mr. David Mugonyi | - Director General, Communication |
| Authority of Kenya | |

SECRETARIAT

- | | |
|-------------------------|---------------------------------|
| 1. Ms. Miriam Modo | - Clerk Assistant I |
| 2. Ms. Anne Shibuko | - Clerk Assistant I |
| 3. Ms. Penninah Simiren | - Legal Counsel II |
| 4. Mr. Martin Sigei | - Research Officer III |
| 5. Mr. Calvin Karungo | - Media Relations Officer III |
| 6. Mr. Peter Mutethia | - Audio Officer |
| 7. Ms. Feistas Muiya | - Public Communications Officer |

MIN./PPETC/2024/ 147: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and proceedings began with prayers by Hon. Ernest Kagesi, M.P.

MIN./PPETC/2024/148: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 41 of 2023 regarding Banning of Tik Tok in Kenya
- *Meeting with Cabinet Secretary, Ministry of ICT, Telecommunication & Digital Economy*
6. Consideration of Public Petition No. 10 of 2023 regarding Resettlement of Muthanga Farm
- *Meeting with the Petitioner, Hon. Mary Wamaua*
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Walter Owino, M.P. and seconded by Hon. John Bwire, M.P.

MIN./PPETC/2024/149: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/150: CONSIDERATION OF PUBLIC PETITION NO. 41 OF 2023 REGARDING BANNING OF TIKTOK IN KENYA

Meeting with Cabinet Secretary, Ministry of ICT, Telecommunication & Digital Economy

The Cabinet Secretary, Ministry of ICT, Telecommunication & Digital Economy, Mr. Eliud Owalo appeared before the Committee and submitted as follows:

About TikTok

1. TikTok is a popular social media application (App) owned by a Global Technology company ByteDance. It is one amongst many product lines under ByteDance with approximately over 1 Billion viewership globally. It allows its user generated content which include creation and sharing of short videos taken on mobile devices or web-cams. This in turn creates a high level of engagement to its users.
2. In Kenya, TikTok is 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 has been partly necessitated by positive government policies on Infrastructure development across the country leading to high internet penetration.

3. 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

4. Tik Tok has attracted controversy. It is liked and loathed in nearly equal measure, and there is indeed a myriad of moral, policy and legal concerns. Concerns of national security, addictiveness, data privacy, and morality or appropriateness of the shared content have arisen and they continue to be raised.
5. Different countries like Afghanistan, India, Iran, Kyrgyzstan, Nepal and Somalia have put partial or full censorship of the platform in consultation with TikTok attributed to a myriad of reasons like organized crime and terrorism. Many others especially in Europe, and North America (USA and Canada) have banned TikTok on government devices and systems and may be attributable to Geopolitical reasons. These interventions reflect the existing concerns.
6. The main concerns posed by the petitioner are with respect to data protection and privacy, promoting violence, explicit sexual content, hate speech, vulgar language and offensive behavior which are a threat to the cultural and religious values of Kenya. These are valid and legitimate concerns that must inform the Ministry's actions.
7. However, rather than imposing a total ban on TikTok, the Ministry proposes adoption of a co-regulation model where the Platforms are allowed to continue self-regulating through monitoring and enforcement of the developed and published community guidelines whereas the Government continues to monitor and enforce compliance using existing legal frameworks. In the same model, Government Agencies responsible for Censorship (Communication Authority and KFCB has been provisioned a direct reporting mechanism to TikTok to promptly report any non-compliant content for immediate action).
8. In this regard, the Communications Authority of Kenya has been engaging TikTok and other social media platforms on enforcement of community guidelines and content moderation. Similar engagements have been going on with the Office of the Data Commissioner on data privacy issues.

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

The Ministry proposes regulation rather than a total ban. A total ban would have the following implications:

- a) *Emergence of a 'splinternet'*
9. Banning TikTok could 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.

10. In addition, banning TikTok will not resolve the concerns that have been expressed against the platform. As is the nature of technology, banning one platform is bound to motivate the emergence of similar platforms, without resolving the real issues. Thus, focus should be on regulating to ensure that TikTok and other similar platforms conform to established laws and regulations, which express societal consensus.

b) Inhibiting competition and innovation

11. Banning 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.
12. The ban's impact on the digital economy in Kenya is another consideration, potentially affecting entrepreneurs, content creators, and digital marketers who rely on platforms like TikTok for their livelihoods.

c) Freedom of expression concerns

13. Banning TikTok in Kenya could encroach upon the constitutional right to freedom of expression as outlined in Article 33. This constitutional provision guarantees every Kenyan citizen the right to freely seek, receive, and impart information or ideas. In the contemporary era, digital platforms have become essential mediums for expression. Banning TikTok would not only limit citizens' access to a popular digital space but could also be seen as restricting their right to freely share thoughts, opinions, and artistic creations.
14. The implications of such a ban on freedom of expression can be viewed through various lenses:
 - i. Firstly, TikTok serves as a diverse platform for expression, encompassing creativity, political commentary, and cultural representation. Banning TikTok would limit the channels through which individuals express themselves, potentially stifling a range of perspectives and creative voices.
 - ii. Moreover, cultural expression is also impacted, as TikTok has been 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.
 - iii. Additionally, TikTok serves as an information-sharing platform, and a ban would limit access to diverse content and viewpoints. This

restriction could impede the free flow of information, a crucial aspect of the freedom of expression.

- iv. Furthermore, TikTok has 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.

15. 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. Freedom of expression is not absolute. It is subject to restrictions outlined under article 33 (2) of the Constitution. The constitution specifically states as follows:

“(2) The right to freedom of expression does not extend to-

- (a) propaganda for war;
- (b) incitement to violence;
- (c) hate speech; or

(d) advocacy of hatred that—

- (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
- (ii) is based on any ground of discrimination specified or contemplated in Article 27 (4).

(3) In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.”

16. These constitutional restrictions call on us to ensure that we regulate to ensure that these limitations and other legitimate interests are secured.

d) Over- the- Top Services (OTTS)

17. The Over-The-Top Services (provision of video content over the internet) has contributed to the growth of Telcos in Kenya leading to growth of customized bundled packages. An example is the Safaricom Package comprising of Minutes, Data and WhatsApp. By banning Tik Tok it will diminish the growth of this model directly or indirectly affecting the overall economy.

Regulating TikTok

18. The regulation of TikTok and similar platforms instead of a ban is a win-win solution. Regulation will maintain access to global social media platforms, which will enhance the free flow of information and ideas across borders, enabling Kenyan internet users to be competitive in the global digital landscape.

19. In addition to this, regulation will ensure that the responsible enjoyment of freedom of expression is protected. TikTok is recognized for its unique

short-form videos and as a platform for personal expression. A ban will 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.

20. There are people who use the platform to not only earn from it but also promote their businesses, thus spurring e-commerce. Regulation rather than a ban will enhance these positive aspects of competition, innovation, self-expression and the resulting benefits to the economy.

21. *Based on the above, the following are some of our proposals on how Kenya can mitigate the negative effects of TikTok:*

- i. Strengthen the role of the Communications Authority of Kenya (CA) with respect to regulating new and emerging technologies. This is proposed in the Kenya Information and Communications (Amendment) Bill, 2023 and new (proposed) Broadcasting Regulations which the Ministry of Information, Communications and the Digital Economy has developed. This will be coming to the National Assembly shortly.

Media, and broadcasting in particular, is 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 TV media outlets are further required under the Films and Stage plays Act, to ensure that media content is acceptable, and consistent with Kenya's culture and values, and to ensure appropriate classification aired content. A violation of these restrictions amounts to violation of the Programming Code.

The proposed amendments cover new media. The upshot of the Kenya Information and Communications (Amendment) Bill, 2023, the new (proposed) Kenya Information and Communications (Broadcasting) Regulations and the new Programming Code is that content put out for public consumption will be subject to regulations irrespective of how they are transmitted. The implication of this is that Communications Authority will be empowered to regulate Over-the-Top platforms such as TikTok and others, and effectively address the many concerns and public outcry.

The media landscape has changed significantly and it will continue to change.

Media content and entertainment is 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.

The kind of content that youth and children are accessing, or even generating and sharing as well as harmful content readily available on the internet should concern us and move us to urgent action. While these platforms have been beneficial and continue to be, we cannot ignore the negative effects and the harm some content is causing to the society, hence the legal interventions proposed.

As a Ministry, we propose that in the same way that traditional media channels such as radio and TV are regulated by law, and have an obligation to screen content and protect against harmful content, new media will have similar obligations under the law. The regulations will 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 are kept out of the platform.

On the 8th of April 2024 (this month), the Government through CA published a new Programming Code. This Code, redefines broadcasting to extend beyond use of radio frequencies. This, and the proposed Broadcasting Regulations and the Amendment Bill will help us to bring TikTok and others within the regulatory ambit of the law, and I urge the National Assembly as a critical stakeholder to support this quest.

- ii. On data privacy concerns, the Data Protection Act, 2019 is instructive. This law makes 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 are complied with. The Government through the Office of Data Protection Commissioner has engaged TikTok on issues of compliance with Data Protection Act, 2019. The Government will 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 has a critical role to ensure that the personal data of Kenyans is well protected, and have been engaging with the TikTok in this regard.

To complement the aforementioned regulatory measures, there is need to conduct public awareness campaigns on data privacy and security. Users need 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 has the mandate to create general public awareness under the Data Protection, 2019. We are confident that data privacy issues raised can be addressed without the need to ban the platform.

- iii. To necessitate easy community reporting TikTok is required to: -
 - a. take an initiative and come up with an easy way of promoting community reporting of inappropriate content within the platform. This will promote content censorship from a community perspective.
 - b. keep track of compliance with the guidelines put in place. 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.
 - c. create more awareness and diminish 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 Tik Tok App.
- iv. TikTok makes profits from revenue generated from online Advertising on the App. This is a multibillion venture. To unlock this potential and to discourage proliferation of Global Apps focusing on online advertisement in Kenya, the Ministry encourages 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

- 22. 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.
- 23. 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 is imperative to enhance the regulation of these influential entities. Balanced regulation will help us achieve the desired outcome.

Committee Concerns

- i. The Committee appreciated steps being taken by Ministry to enact the issues raised in the Petition.
- ii. The Committee enquired under whose ambit the moderators of social media platforms such as Majorelle, who was a moderator for TikTok fell.

The Cabinet Secretary explained that the moderators were part of the Business Process Outsourcing in Kenya. Majorelle was registered under the Data Protection Act as customer service providers.

- iii. **The Committee enquired whether the Ministry had conducted research on cost benefit analysis of TikTok.** The Principal Secretary explained that there was a huge shift to the digital space as opposed to the physical space, with some countries having 40 percent contribution to its economy from the Digital space. The Ministry was keen on taking advantaging of youthful population to create jobs and create indigenous platforms for content creation, partnering with academic institutions and targeted marketing of tourism in Kenya.

In terms of trade, Kenya has commenced negotiations on country-to-country digital content and transactions.
- iv. **The Committee enquired what efforts the Ministry had made to create awareness on the benefits and disadvantages of TikTok.** The Cabinet Secretary explained that major gaps in capacity building have been addressed. The Ministry would design messages to educate the Youth on the laws and regulations that are in progress and disseminate the information through the TikTok application.
- v. **The Committee enquired on the manner of compensating content creators in form of Gifts.** The Cabinet Secretary explained that unlike Face Book, TikTok has not monetized in Kenya. Since the TikTok platform does not provide for adverts so far in Kenya, content creators make use of activities such as concerts and receive Gifts which are retained by the individual.
- vi. **The Committee enquired on the role of the Ministry in regulation of content.** The Communication Authority of Kenya explained that it had a compliance and enforcement department that monitors traditional broadcasting as well as social media platforms. The department has the capacity to regulate content by flagging offensive content and contacting the relevant institution to pull it down from social sites.
- vii. **The Committee enquired on how the Ministry regulates content the manner of regulating content from the over 40 vernacular languages in Kenya, given that TikTok regulates only Swahili and Yoruba languages in Africa.** The Communication Authority of Kenya explained that it had a Cyber Security department that monitors content that goes into cyber security space. The computer incidence response team proactively utilizes its cyber security monitoring tools or responds to complaints lodged by consumers of content via email by referring the complaints to forensic investigators for action.
- viii. **The Committee enquired whether the laws and regulations under preparation comprehensively cover emerging issues in the Digital sector.** The Cabinet Secretary responded that it has done its best to capture the

dynamic aspects including Artificial Intelligence, Internet of Things, Big Data and Cyber Security. The Ministry has set up sector working group comprising of government officers and private sector players to come up with policies, laws and regulations to enable them be proactive instead of reactive.

Further, the Cabinet Secretary explained that the Ministry would introduce recommendations of the working group into the Bill.

- ix. The Committee enquired how long the Ministry would take to prepare the laws and regulations. It was explained that the proposed amendments to the Kenya Information and Communications Act and regulations had completed their work and submitted the Report to the Cabinet Secretary four weeks ago. Once the Broadcasting regulations were concluded, the three documents would be submitted to Parliament for further processing.
- x. The Committee enquired on what form of CSR is being done by Tik Tok in Kenya to mitigate the negative mental effects due to effects on mental health caused by addiction of users the application. The Cabinet Secretary responded that there were no CSR activities in place. However, plans were underway to engage players in the industry such as *Apple* to set up space in Kenya that would improve the interaction with technology and the Digital space. provider such as apple to set up space.
- xi. The Committee observed that TikTok management had stated that it relies on institutions in the relevant countries to explain their specific laws and values specific to the countries. The Committee therefore enquired what efforts the Ministry had made to ensure that TikTok meets the Kenyan values. The Data Commissioner explained that there was a framework that provides for the wider regulation of Social Media platforms. In execution of its mandate, the Office of the Data Protection Commissioner has written to TikTok asking them to:
 - a. demonstrate compliance with the Data Protection Act;
 - b. explain the manner of conducting age verification; and
 - c. demonstrate specific supplementary provisions in terms of privacy that are unique to Kenya

TikTok has ^{requested}asked for additional time to respond to concerns. Based on the response issued by TikTok, the Office of the Data Protection Commissioner will take further action.
- xii. In his closing remarks, the Cabinet Secretary explained that Policy, legal and regulatory framework of the Digital space was still in progress. New innovations kept arising and the attendant challenges that the Ministry was grappling with were a global phenomenon and were not unique to Kenya.
- xiii. Kenya is proactive and has been recognized as a leader in Digital Space and was privileged to host *the Connected Africa Summit from 21st to 25th April 2024* and other conferences in the months of May and September 2024.

Committee Resolution

Having heard the Petitioner's submissions, the Committee requested the Cabinet Secretary to present any further findings arising from consultations of the Ministry with TikTok in written form.

MIN./PPETC/2024/151:

CONSIDERATION OF PUBLIC PETITION NO. 10 OF
2023 REGARDING RESETTLEMENT OF
MUTHANGA FARM

Meeting with the Petitioner, Hon. Mary Wamaua

The Agenda was deferred.

MIN./PPETC/2024/152:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 02:30 p.m. The next meeting would be held on Tuesday, 16th April 2024 at 03:00 p.m.

Sign:

(CHAIRPERSON)

Date.....

Committee Resolution

Having ^{received / heard} listened to the Petitioner's submissions, the Committee requested the Cabinet Secretary to present any further findings arising from consultations of the Ministry with TikTok in written form.

MIN./PPETC/2024/151:

CONSIDERATION OF PUBLIC PETITION NO. 10 OF
2023 REGARDING RESETTLEMENT OF
MUTHANGA FARM

Meeting with the Petitioner, Hon. Mary Wamaua

The Agenda was deferred.

MIN./PPETC/2024/152:

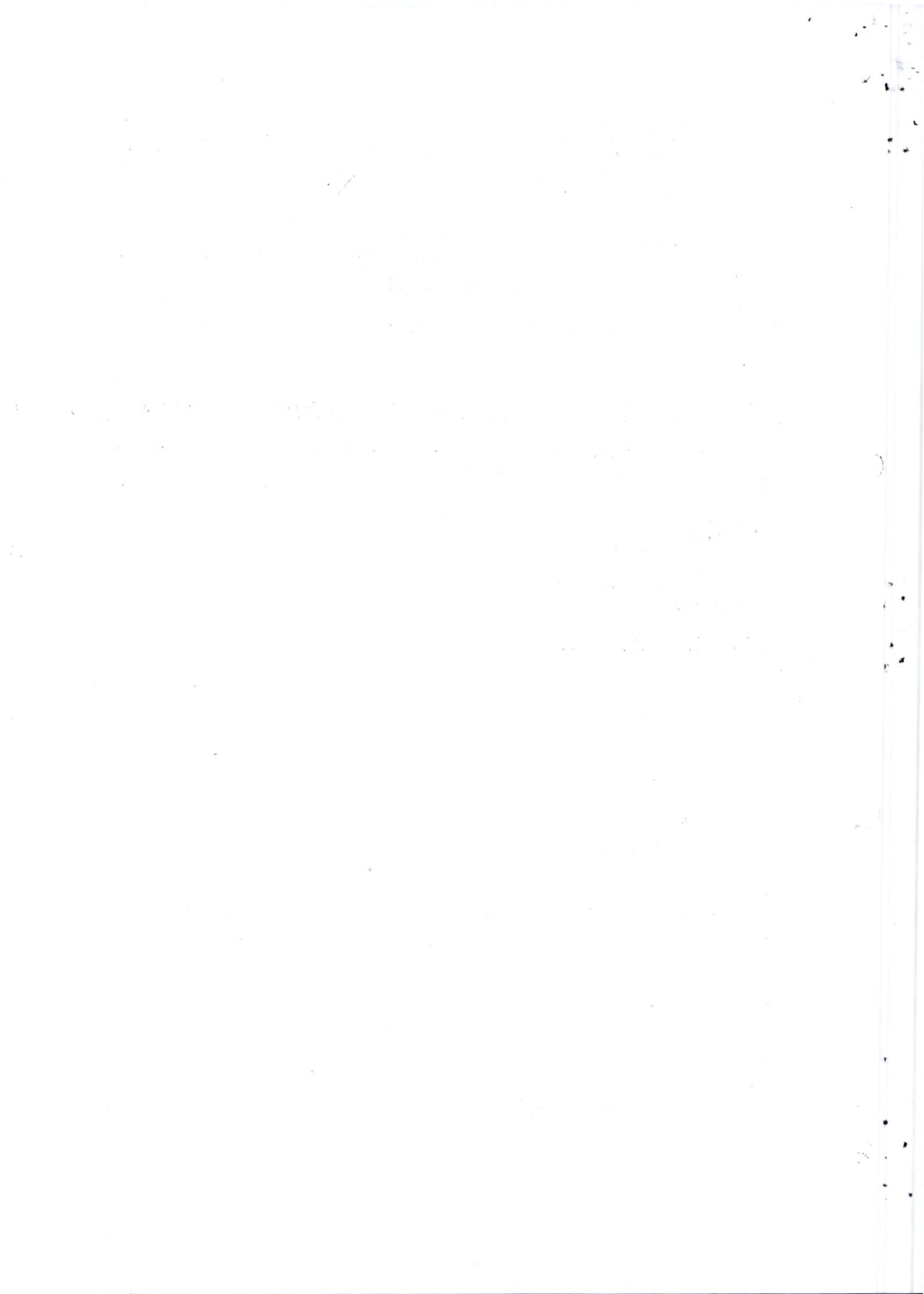
ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 02:30 p.m. The next meeting ^{would} be held on Tuesday, 16th April 2024 at 03:00 p.m.

Sign: 

(CHAIRPERSON)

Date: 5/06/2024





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 35TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, MAY 23, 2024, IN GARDEN SUITE 1, HILTON GARDEN INN HOTEL, MACHAKOS AT 02.00. P.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, MP | | |
| 5. Hon. Ernest Ogesi Kivai, M.P. | | |
| 6. Hon. Joshua Chepyegon Kandie, M.P | | |
| 7. Hon. John Walter Owino, M.P. | | |
| 8. Hon. Bidu Mohamed Tubi, M.P. | | |
| 9. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 10. Hon. Edith Vethi Nyenze, M.P. | | |
| 11. Hon. Caleb Mutiso Mule, M.P. | | |
| 12. Hon. Peter Mbogho Shake, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Sloya Clement Logova, M.P.
3. Hon. John Bwire Okano, M.P.

SECRETARIAT

- | | |
|------------------------------|-----------------------------|
| 1. Mr. Samuel Kalama | Principal Clerk Assistant 1 |
| 2. Ms. Roselyne Ndegi | Senior Serjeant-at-Arms 1 |
| 3. Ms. Miriam Modo | Clerk Assistant I |
| 4. Ms. Anne Shibuko | Clerk Assistant I |
| 5. Ms. Patricia Gichane | Legal Counsel II |
| 6. Mr. Isaac Nabiswa | Legal Counsel II |
| 7. Ms. Abdinasir Moge Yussuf | Fiscal Analyst II |
| 8. Mr. Willis Obiero | Clerk Assistant III |
| 9. Mr. Martin Sigei | Research Officer III |
| 10. Ms. Nancy Akinyi | Research Officer III |
| 11. Mr. Calvin Karungo | Media Relations Officer III |
| 12. Ms. Felistus Muiya | Protocol Officer |
| 13. Mr. Cosmas Akhonya | Audio Officer |

MIN./PPETC/2024/222: PRELIMINARIES

The Chairperson called the meeting to order at 02:00 p.m. and proceedings began with prayers by Hon. Caleb Mutiso Mule, M.P

MIN./PPETC/2024/223: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Consideration of Report on Public Petition No. 41 of 2023 on Banning of Tiktok in Kenya
4. Confirmation of minutes of previous sittings
5. Matters Arising
6. Any Other Business
7. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. John Bwire Okano, M.P. and seconded by Hon. Suzanne Ndunge Kiamba, M.P.

MIN./PPETC/2024/224: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/225: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 41 OF 2023 REGARDING BANNING OF TIKTOK IN KENYA

The Committee reviewed the draft Report and made the following 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—

- i. 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.
- ii. 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.

- iii. 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.
- iv. 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—

- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.
- ix. 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.
- x. TikTok does not have an effective age verification mechanism to implement age restrictions especially at the user registration phase.
- xi. 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—

- xii. 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.
- xiii. 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.
- xiv. 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.
- xv. 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.
- xvi. 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.
- xvii. 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.
- xviii. 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.
- xix. 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.
- xx. 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—

- xxi. 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.
- xxii. 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—

- xxiii. TikTok may not be compliant with all the data protection laws.
- xxiv. 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

- xxv. 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.

The Committee made the following recommendations:

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—

- i. 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.
- ii. 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.
- iii. 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.
- iv. That the Ministry of ICT and the Digital Economy monitors all social media platforms in the country including TikTok to addresses 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.

- v. 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—

- vi. Rejects this 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.

MIN./PPETC/2024/226:

ANY OTHER BUSINESS

The Committee observed that there had been resolutions for drafting of Legislative proposals upon consideration various Petitions. All amendments to be consolidated and proposed as amendments to Statute Law Miscellaneous Amendment Bill No. 67 of 2023.

MIN./PPETC/2024/227:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 06:00 p.m. The next meeting ^{would} be held on Friday, 24th May 2024 at 10:00 a.m.

Sign: 

(CHAIRPERSON)

Date.....05-06-2024



COMMUNICATIONS
AUTHORITY OF KENYA

Our Ref : CA/LS/002/2023 (772)

Your Ref : KNA/DLPS/PPETC/CORR/2023/269

16th November, 2023

Samuel Njoroge
The Clerk
National Assembly, Office of the Clerk
Main Parliament Buildings
P. O. Box 41842-00100,
NAIROBI.

Attn.: Miriam A. Mudo
Directorate of Legislative & Procedural Services

Dear *Clerk,*

**RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE ON A PUBLIC
PETITION REGARDING BANNING OF TIKTOK IN KENYA**

We acknowledge the receipt of your letter dated 6th November, 2023.

The Authority hereby requests to reschedule the engagement due to unforeseen circumstances that hindered appearing before the Committee on 16th November, 2023 as initially scheduled. If convenient, we request you to consider rescheduling the engagement to 30th November, 2023 at 11am.

We look forward to your response and possible confirmation of the proposed date.

Yours

Christopher Wambua
Ag. DIRECTOR GENERAL/CEO

Copy to:

Mr. Eliud O. Owalo

Cabinet Secretary

Ministry of Information, Communication and Digital Economy

NAIROBI

Edward Kisiang'ani (Ph. D)

Principal Secretary

State Department for Broadcasting and Telecommunications

Ministry of Information, Communications and the Digital Economy

NAIROBI



OFFICE OF THE DATA PROTECTION COMMISSIONER

When replying please quote

Ref: ODPC/CONF/1/1

Britam Towers
P.O. Box 30920 - 00100
NAIROBI

Email: info@odpc.go.ke

28th November, 2023

Clerk of the National Assembly

Office of the Clerk

Main Parliament Buildings

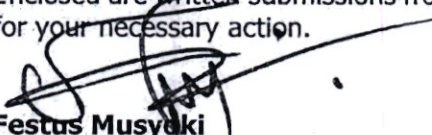
P.O. Box 41842-00100

NAIROBI

**RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE ON A PUBLIC
PETITION REGARDING BANNING OF TIKTOK IN KENYA**

Reference is made to your letter Ref. KNA/DLPS/PPETC/CORR/2023/261 dated 7th November, 2023 inviting the Office of the Data Protection Commissioner to a meeting with the Public Petitions Committee to a meeting on a public petition regarding banning of Tiktok in Kenya.

Enclosed are written submissions from the Office of the Data Protection Commissioner for your necessary action.


Festus Musyoki

For: DATA COMMISSIONER

Encl.



DDLP
20/12/22

Britam Tower, 17th Floor, Hospital Rd, Upper Hill, P.O. Box 7055-00100, Nairobi. Tel: 020-2585701/2
Cell: 0702-777000. Email: info@cohesion.or.ke. Website: www.cohesion.or.ke

NCIC/ADM/RPTS/VOL.5(22)

14th December, 2023

The Clerk of the National Assembly
The National Assembly
Office of the Clerk
P.O. Box 41842-00200
NAIROBI

(Attn: Chair, Public Petition Committee)

RE: COMPREHENSIVE REPORTS ON PROPOSED TIKTOK BANNING IN KENYA

Reference is made to your letter Ref. No. KNA/DLPS/PPETC/CORR/2023/276 dated 16th November, 2023 on the above subject.

Attached herein, please find the Commission submission comprehensive reports concerning the proposed ban of TikTok in Kenya. These report cover insights from TikTok's correspondence, highlighting specific concerns we've identified and offer insights into the European Digital Services Act (DSA).

The received correspondence from TikTok has provided valuable insights into their operations, aiding us in a comprehensive analysis of their impact within our jurisdiction. Additionally, the reports highlight specific cases of concern that impact our national regulatory framework.

Moreover, we've included an overview of the European Digital Services Act (DSA), emphasizing its relevance in the ongoing discourse about governing social media platforms. We believe this Act presents a framework worth considering for responsible and accountable digital service provision.

We trust these reports will aid your committee's discussions on TikTok's regulations in Kenya. For further details or additional information, please contact us.

Yours sincerely,

Harrison Kariuki
Ag. COMMISSION SECRETARY/CEO

NATIONAL ASSEMBLY
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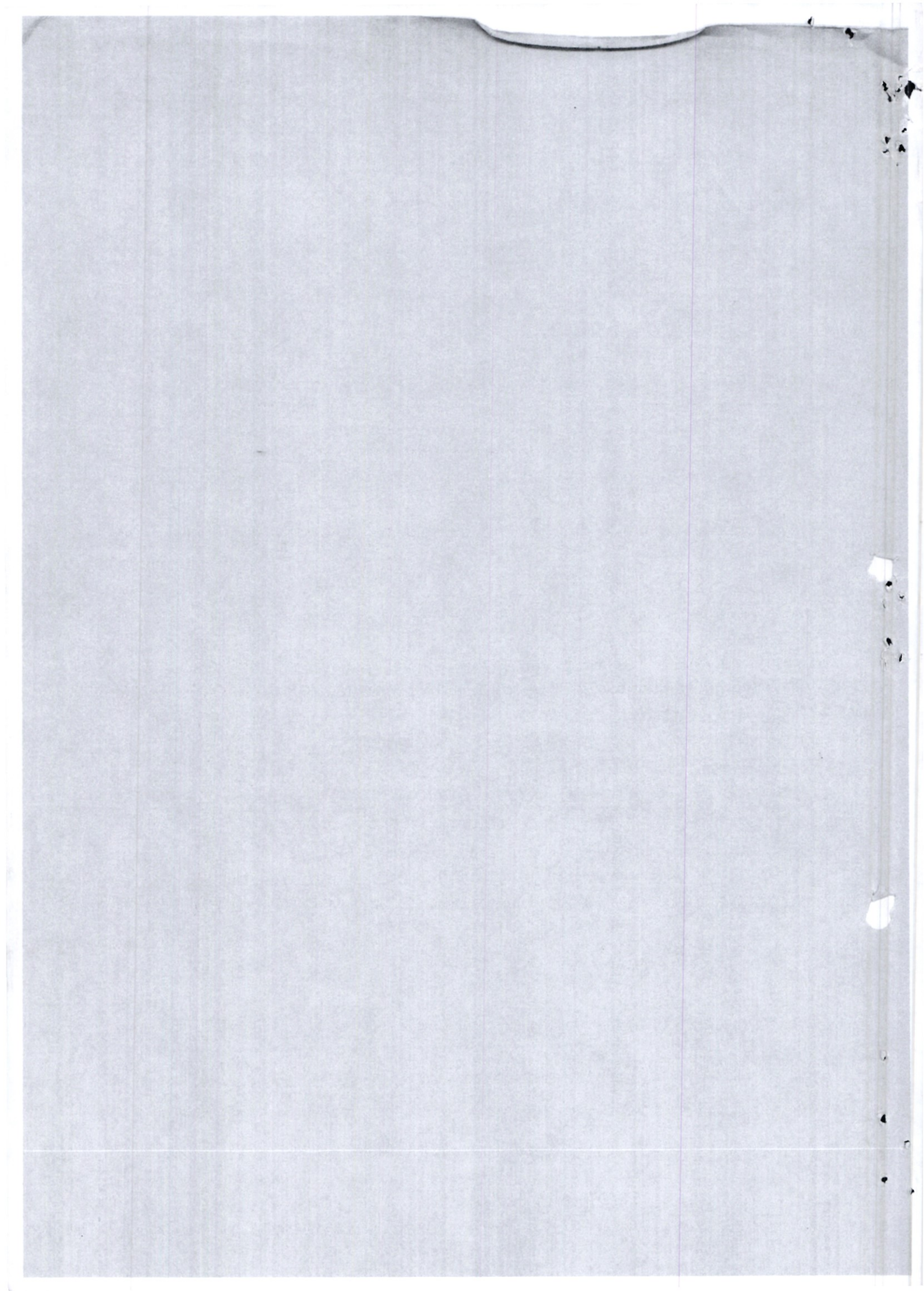
P.O. Box 41842 - 00100 NAIROBI

Mission: To promote national unity, equity and the elimination of all forms of ethnic discrimination by facilitating equality of opportunities, peaceful resolution of conflicts and respect for diversity among Kenyan communities.

Rev. Dr. Samuel Kobia, C.B.S. (Chairperson) Ms. Wambui Nyutu, OGW. (Vice Chairperson),
Commissioners: Hon. Abdulaziz A. Farah, Hon. Eng. Philip O. Okundi, Hon. Dorcas L. Kedogo, Mr. Sam Kona,

Dr. Danvas Makori,

Ag. Commission Secretary/CEO – Harrison Kariuki





REPUBLIC OF KENYA
PARLIAMENT

Hon. Nimrod Mbai, MP.

Kitui East Constituency

Chairperson: Public Petitions Committee

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5th June 2024

**The Rt. Hon. Moses Wetang'ula EGH, MP.,
The Speaker of National Assembly,
Parliament Buildings,
NAIROBI.**

Dear

**RE: LEGISLATIVE PROPOSAL TO AMEND THE KENYA INFORMATION
AND COMMUNICATION ACT, CAP 411A**

Reference is made to the above subject matter.

The Public Petitions Committee is established pursuant to Standing Order 208A and mandated to inter alia, consider all public petitions tabled in the House and make such recommendations as may be appropriate with respect to the prayers sought in the petitions.

The Committee having considered **Public Petition No. 41 of 2023 regarding Banning of TikTok in Kenya**, proposes to introduce a Bill to amend the Kenya Information and Communication Act Cap 411A, to give the Communications Authority of Kenya mandate to regulate social media platforms.

The purpose of this letter is to notify you that the Committee is drafting the legislative proposal for the introduction pursuant to the provision of Standing Order 114A (1) (b).

Yours Sincerely,

Hon. Nimrod Mbithuka Mbai, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

