

SPECIAL ISSUE

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REPUBLIC OF KENYA

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KWALE COUNTY ACTS, 2016

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THE KWALE ANTI-PORNOGRAPHY ACT, 2016

No. 8 of 2016

Date of Assent: 21st December, 2016

Date of Commencement: See Section 1

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**THE KWALE COUNTY ANTI-PORNOGRAPHY
ACT, 2016**

AN ACT of County Assembly of Kwale to prohibit and penalize the production, printing, publication, importation, sale, distribution and exhibition of obscene and pornographic materials and for connected purposes.

ENACTED by the County Assembly of Kwale as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Kwale County Anti-Pornography Act, 2016 and shall come into operation upon notice in the *Kenya Gazette*.

Short title and commencement

2. In this Act—

Interpretation

“executive Member” means the County Executive Committee Member responsible for community development, culture and talent management;

“juristic person” means a juristic person as defined under the Sexual Offences Act, 2006;

“person” includes an individual, a company,, association or other body whether incorporated or unincorporated; and

“pornographic material” includes any public display in print, audio, visual, electronic or other similar medium that describes or exhibits obscenity.

“obscenity” means indecency, immoral, offensive or disgusting sexual materials.

3. Legislation to control the production, printing, publication, importation, sale, distribution and exhibition of pornographic and obscene materials in the County in fulfillment of the provisions of the Fourth Schedule Part 2 Paragraph 13 of the Constitution, Section 52 of the Penal Code Cap 63 and the Sexual Offences Act 2006.

Guiding principle

4. A person who—

Offences and Penalties

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has possession of

any obscene book, pamphlet, paper, drawing, writing, painting, art, representation, cinematography films or figure or any other obscene object that tends to corrupt morals or which depicts the nude image of any person;

- (b) stages or participates in a public performance or act which is obscene in nature and in contravention with acceptable norms of public morality;
- (c) imports, exports or conveys any obscene object for any of the purposes specified in subsection (a), or knowingly or having reason to believe that such object will be sold, hired out, distributed or publicly exhibited or in any manner put into circulation;
- (d) takes part in or receives profits from any business in the course of which the person knows or has reason to believe that any such obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;
- (e) advertises or makes known by any means that a person is engaged in or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or
- (f) allows their premises to be used for any obscenity or pornographic acts, offers or attempts to do any act which is an offence under this section;

commits the offence and upon conviction is liable to—

- (i) imprisonment for a term of not less than six years or to a fine of not less than Kenya Shillings five hundred thousand or to both; and
 - (ii) upon subsequent conviction, to imprisonment to a term of not less than seven years without the option of a fine.
- (g) A person who—
- (i) manufactures or distributes any article which is intended to promote a sexual offence with a child; or

- (ii) who applies or displays to a child any article which is intended to be used in the performance of a sexual act with the intention of encouraging or enabling that child to perform such sexual Act,

Is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than ten (10) years”

5. A person who contravenes a provision in this Act for which a penalty has not been provided for, commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both. General Penalty

6. (1) A police officer or county enforcement officer may, with or without a warrant— Police powers

(a) enter and search any premises, vehicle, aircraft or ship which the police officer has reasonable grounds to believe is being used or has been used or involved in the production of pornographic material or in commission of any other offence under this Act;

(b) seize any device, equipment or material which the police officer has reason to believe has been used in the production of pornographic material or in the commission of any other offence under this Act.

(c) upon conviction under (b), that device, equipment or material must be forfeited to and disposed off by the county government; and

(d) arrest any person whom the police officer has reasonable grounds to believe has committed an offence in this Act.

(2) A person who assaults, obstructs, resists, delays, refuses entry or search by or fails to take all reasonable measures to ensure the safety of or otherwise interferes with a police officer in the performance of his duties or fails to comply with any lawful order, requirement or request of a police officer commits an offence and upon conviction is liable to serve a term not exceeding five years or to both.

(3) A police officer or county enforcement officer while in exercise of the powers given under this section must

properly identify themselves to the occupant or owner of the property in which he or she is entering and searching by the production of their identification document provided by the County Government.

7. The executive member may make regulations for the proper administration of this Act. Regulations