

**REGULATION OF MEDIA: COMPARATIVE ANALYSIS OF REGULATION OF
BROADCASTING SERVICES IN KENYA**

BY

JACKLINE A. OKORE

University of Nairobi

**A project submitted in partial fulfillment of the academic requirement of Masters Degree
at the Nairobi University School of Journalism and Mass Communication**

11th November 2014

DECLARATION

I hereby declare that this project is my original work and has not been presented in and/or any other forum or audience, in any other university or examination body and that to the best of my knowledge, it does not contain material previously published by another person except where due acknowledgement has been made in the text.

Name: Jackline A. Okore

Registration Number: K50/80077/2012

Signature.....Date.....

Certified By:

Professor Muiru Ngugi:

I confirm that the work presented in this project was carried out by the above name student under my supervision.

Signature.....Date.....

ACKNOWLEDGEMENT

I acknowledge with thanks the support and guidance received from my supervisor Professor Muiro Ngugi. This project would not have been perfect without your guidance.

To my family, I am very grateful for your absolute and continued support.

To all my colleagues and friends I wish to extend my appreciation to you all.

God Bless you all.

List of abbreviations and acronyms.

ACHPR	African Charter for Human and Peoples Rights
BCAC	Broadcasting Content Advisory Authority
CA	Communications Authority of Kenya
CC	Complaints Commission
CCK	Communications Commission of Kenya
CORD	Coalition for the Restoration of Democracy
EA	East Africa
KANU	Kenya National Union
KICA 2013	Kenya Information and Communications (Amendment) Act, 2013
KICA	Kenya Information and Communications Act, 1998
KP&TC	Kenya Posts and Telecommunication Corporation
MCA	Media Council Act 2013
MCK	Media Council of Kenya
MOA	Media Owners Associations
NARC	National Alliance Rainbow Coalition
NMG	Nation Media Group
RMS	Royal Media Services
RWB	Reporters without Borders
SG	Standard Group
VOK	Voice of Kenya

Table of Contents.

Acknowledgement.....3
 List of abbreviations and acronyms.....4
 Abstract.....6

Chapter 1.
 10. Introduction.....7

Chapter 2.
 2.0. Literature Review..... 17
 2.1. The historical background to media regulations.....17
 2.2. Media Theory, Policy and Regulation.....21
 2.3 The Institutional framework of media in Kenya25
 2.4. The Legal Framework of media in Kenya.....29
 2.5. Broadcasting Regulations in Kenya.....40
 2.6. Types of Broadcast service in Kenya.....43

Chapter 3
 3.0. Research Methodology.....47

Chapter 4
 4.1. Research Design48
 4.2.Data collection Methods.....49
 4.3 Data Analysis.....52
 4.4. Comparative analysis of Broadcasting regulations around the world..... 52
 4.5 Findings.....62

Chapter 5.
 5.0. Recommendations and Conclusion.....66
 5.1. Recommendations.....66
 5.2. Conclusion.....68
 References.....69
 Appendices.....73

Abstract

All over the world the media is an integral part of our lives at home, at work, at leisure and while traveling. Kenya's Constitution 2010 has a new and progressive bill of rights requiring extensive reforms to both media and information management frameworks. However, the assumption is that once the new laws, policies, regulations and institutions are in place, little or no attention is given to the outputs, outcomes and impact of their implementation. Currently, complaints are being raised on the content of the media, media owners have raised objections to passage of new media laws and there is failure to address existing legislative and institutional inconsistencies. This project focuses on the likelihood of a disparity in the legislation and institutional frameworks relating to freedom and independence of the media in Kenya and the extent to which their implementation affects practice in media. The project analyses the status and progress of media freedom in Kenya, the comparison between media in Kenya, the developed countries and the international standards and makes recommendations for improved protection of the freedom of the media and implementation of the existing regulations in place in Kenya.

Chapter 1

1.0 Introduction

1.1. What is Media Regulation?

Media refers to the means of mass communication, especially the press, radio and television, but also including film and recorded music, as well as a number of distributions by way of cable, satellite, discs, tapes. Of increasing importance is the internet which can now be regarded as a “mass medium” in its own right on the grounds of its gradual diffusion to majorities and its use for a number of public communication functions in the sphere of both entertainment and information¹.

Regulation refers to the whole process of control or guidance, by established rules and procedures, applied by governments and other political and administrative authorities to all kinds of media activities. Thus regulation is always a potential intervention in ongoing activities, usually for some stated “public interest” goal but also to serve the needs of the market like supporting competition or for reasons of technical efficiency. Regulation takes many forms, ranging from clauses in national constitutions and laws to administrative procedures and technical specifications. Regulation can be internal or external. The former case refers to self regulation where internal controls are applied, sometimes in response to public pressure or criticism from outside².

According to Kenya Information and Communications Act 2013(KICA, 2013), broadcasting means unidirectional conveyance of sounds or television programmes, whether encrypted or not by radio or other means of telecommunications, for reception by the public and broadcasting

¹ Fentuck, M. (1999) Media Regulation, Public interest and the Law. Edinburgh :University of Edinburgh Press

² Ibid

services means any service which consists of the broadcasting of television or sound broadcasting programs to the public or subscribers to such a service.

In Kenya the Books and Newspapers Act, states that print media comprises newspapers and magazines printed for mass readership, and according to KICA 2013 the broadcast media comprises radio and television involving transmission of airwaves, cable or satellite of sound or images for simultaneous reception by mass media.

1.2. The Historical background of Media Regulation.

The history of media regulation began with the application of the printing press to book production from the mid 15th century onwards in Western Europe. Initially printing was simply a more productive alternative to the copying of manuscript texts by hand, which had not been formally regulated, although in practice it took place mainly under the oversight of authorities of church or state. As the printing trade and industry expanded, both the church and the state took an increasing interest in the content of what was being printed and published, especially with a view to combating dissent or heresy. This led very widely to the licensing of all printers by the state and/or the requirement for advance approval by church authorities for texts to be published. The export or import of books was also controlled or forbidden. Authors and printers could also be severely punished for publications deemed to be heretical or treasonable. In more autocratic states, such as Ottoman Empire and Russia, printing was banned for 200 years.³

Between the 16th and 19th Century in Western Europe and North America, the history of media regulation was one of struggle against restrictions on publications waged on in the name of political freedom and human rights, but also on behalf of the printing trades and industries,

³ Hallin, D. and Mancini, P. (2004) Comparing media systems. Cambridge: University of Cambridge press

including the right to authors. The freedom to publish was achieved by gradual change in Britain and revolution in France at the end of the 18th Century and gradually in territories of the Austrian and Prussian Empires during the 19th Century. Similar freedoms were never really attained in Russia, even after the revolution of 1917, nor in British colonies. For most of the world during the modern era, repressive and punitive media regulation in the interest of state power is the norm⁴.

A new dimension to regulation was added by the invention of new media during the 19th century, especially the electric telegraph, then the telephone and wireless which led to the public radio broadcasting from 1920 onwards. All these media were closely regulated by national laws that were more or less required by international agreements relating to international agreements relating to technical requirements, for example radio frequency allocation⁵.

Broadcast media (radio and television) were the most closely regulated of all media nearly everywhere during the 20th century and they have never achieved the degree of freedom enjoyed by print media. Since about 1980, new forms of distribution by cable and satellite have led to a great expansion of media output and to more relaxed regulatory regimes, especially in relation to content⁶. There is an hierarchy of regulation of different forms of media. Television is highly regulated, followed by radio, and then print. In Kenya, KICA does not define media and KICA 2013 definition expressly excludes print and book publishing. Additionally media appears in KICA only with reference to MCK sitting on statutory panels⁷.

⁴ Hoffman-Riem, W. (1996) *Regulating the Media*. New York: Guildford Press

⁵ *Ibid.*

⁶ McQuail, D. and Siune, K. (1986) *New Media Politics*. London. Sage Publications

⁷ Otieno, N. (2014) *The impact of Kenya's legal and institutional frameworks on media freedom (2014)*. Article 19 East African: Nairobi

Media regulation in Kenya is traced way back to the colonial period, it evolved through in the post-colonial era and the momentum to reform the Media sector is building in this 21st century.

After the 2002 ousting of the long-ruling independence party, Kenya Nation African Union (KANU) , the era of National Alliance Rainbow Coalition(NARC) government saw various liberating legislative and institutional reforms for the media , that saw an upsurge in the number of broadcast stations, with 108 broadcast licenses being issued to 46 companies and close to 20 television being on air, and while 378 radio broadcast licenses being issued to 80 firms of which 48 stations are operational ⁸the year 2004 saw the establishment of the self-regulating Media Council of Kenya (MCK) which was legislated for by the Media Act 2007. The Kenya Information and Communication Act of 1998(KICA) was reviewed two years later, giving the Communications Commission of Kenya (CCK)a mandate to exercise its oversight functions independent of any person or body.

In time however, the NARC government grew increasing grew intolerant of media freedom, as evidenced by the 2006 vandalizing of the Standard Group's premises. While activism aimed at achieving a free media prevailed into the last days of president Kibaki's regime, the implementation of the legislative and institutional reforms continued to face great challenges. For example, the regime perpetuated the punitive financial obligations imposed on the print media, limiting any opportunity for indigenous small investors whilst also making life precarious for small and independent media workers⁹.

The fifth schedule of the Constitution 2010, created an anticipated extensive legislation reforms. Instead, the opposite has happened with the passage of two controversial media laws in January

⁸ Communications Commision of Kenya (2014), Lives: Annual report 2012-2013. Nairobi:CCK

⁹ Othieno, N. (Ed) (2014)The Impact of Kenya's legal and institutional frameworks on media freedom.Article 19. Nairobi Kenya

2014: the Kenya Information Communications (Amendment) Act 2013(KICA 2013) and the Media Council Act 2013(MCA).These laws gives the state a measure of control over the governing bodies they institute, and do not meet the threshold of the right to free media, free from government, political and commercial interest.

Additionally, the concentration of media threatens diversity and breadth of content, as the Kenya broadcasting stations own radio, television and newspapers, the companies are owned by a few individual or companies.

After the 2007 Kenya General Election that was followed by Post Election Violence in 2007-2008, questions about media conduct rose on the role of the media in the Post Election Violence. The manner, in which the media reported and portrayed the violence that erupted between various ethnic groups around in January 2008, has come under special scrutiny ¹⁰.Religious organization, civil society, government departments and foreign missions are some of the interest groups have spoken about the role of the media in the media that period. They have accused the media of incitement, promoting stereotypes, misreporting events and general misrepresentation.

The growth of ethnic language radio stations, with their appeal particularly at the grassroots, continues to generate the most heated debates. Questions on the place of ethnic language radio stations, which some see as potential platforms for promoting ethnic nationalism at the expense of national cohesion. On the other hand, vigorous defense is mounted for ethnic language radio stations that they have and continue to play a functional role in empowering marginalized and excluded voices ¹¹; with the equally valid yet conflicting debates it is essential that the

¹⁰Othieno, N. (Ed)(2014),op cit

¹¹ Oriare, P., Orlale, R., Ugangu(2009), The Media we want: The Kenya Media Vulnerabilities Study. Friedrich Ebert Stiftung: Nairobi

broadcasting stations need to be regulated and the content of their broadcast be monitored to create a balance in the two competing interest.

During a Friedrich Ebert Stiftung (FES) Media Council of Kenya's monthly public debate series in 2005, in which ordinary citizens spoke directly to media practitioners, the range of opinions expressed strongly indicted the media, questioning why they should continue to listen to radio stations whose interpretation of reality were often misplaced¹². In the study done by Oriare, Orlale and Ugungu in June 2010, they collected views on the kind of media that would be desirable for Kenya as well as ways through which to achieve that ideal and various grievances were given by Kenyans and action that needed to be taken.

In 2008 after the post election violence the Independent Review Commission, chaired by Justice Krieglar was formed to conduct an inquiry into the post election violence. In the course of their work, the commission made extensive comments and recommendation on the country media and their conduct before and after the disputed general elections. The commission indicted the media strongly, for giving credence to public opinion and inciting violence. The Krieglar report, notes that some of the radio stations are owned by politicians, who influenced the media output. It documents a number of weaknesses such as corruption among journalist, partisan ethnic language stations, untrained journalist and failure by journalist to adhere to the professional code. The government view is that several media houses fanned the violence by publishing inciting content and propagating lies that exacerbated an already tense situation.

A review of Kenya's performance on media and information freedom according to global frameworks, in the Reporters Without Borders(RWB) World Press Freedom Index 2014,

¹²Oriare, P., Orlale, R., Ugungu(2009), The Media we want: The Kenya Media Vulnerabilities Study. Friedrich Ebert Stiftung :Nairobi

Kenya's 30.7 score placed it 90th globally out of 181 countries¹³. Finland led with a score of 6.4, Kenya's 2014 position represented an 18 place drop from its 2013 position, with MCA and KICA 2013 being cited as significant reversals. According reports from Reporters without Borders the freedom of media had consistently improved between 2009(when it scored 60) and 2012(52), Kenya has now declined to 122/180 position globally with a score of 57 in 2014.

1.2. Problem statement.

The broadcasting services is heavily regulated and under constant scrutiny by the regulator viz a viz regulation of the other media services and competition in the media sector in an unmonitored environment continues to pose significant challenges. Lager media organizations tend to deploy enormous resources to better their products and to offer the same products within the channels they own. Their expansionist tendencies continue to raise fears that the industry might end up in the hands of only a few actors, hence narrowing diversity.

In the past several months, debates on media regulation, ownership and ethics and professionalism have increased. The general problem area of concern is that the media is not fulfilling its roles in promoting and facilitating development, keeping with the public interest and providing diverse range of content to the Kenyans as it is mandated in the Constitution, on the other hand media practioners and owners are protesting the passage of two controversial media laws in January 2014, KICA 2013 and the Media Act 2013 on the ground that the laws give the state a measure of control over the governing body they create and do not therefore meet the threshold of being " free from government , political and commercial interest' and the other issue of concern is the government .Additionally, Kenyan media laws ignore international standards

¹³ Scores retrieved from http://rsf.org/index 2014/data/2014_wpfi_methodology.pdf

and regional standards of media freedoms and restrict to threaten freedom of expression in some way.

From the foregoing, it is important that there is need to address the existing legislative and institutional inconsistencies as soon as possible to achieve an ideal media economy and to review the regulations in place to create regulations that promote the interest of the public and enhance a diverse and free environment for practice and access to information in the media sector in line with the international standards.

1.3 Research Objectives

The main objective of this study is to review the current Media regulations in Kenya viz a viz the international Media regulations, however with more preference to the broadcasting sector. The study sought to achieve the following objectives:-

1. To review the status of Media regulations in Kenya
2. To identify the level of Compliance with the current Media regulations by broadcasting stations.
3. To do a comparative analysis of the Kenyan Media regulations viz a viz the international broadcasting regulations.

1.4 Research Questions

This study sought to examine the broadcasting stations compliance to broadcasting regulations and how the challenges need to be addressed. This project sought to answer the following questions:

1. What are the Media regulations in Kenya?

2. Are the broadcasting regulations being implemented?
3. Is compliance with the Broadcasting regulations being monitored?
4. How do other countries monitor compliance with the regulations in place?
5. How can enforcement and monitoring of compliance with the regulations be improved in Kenya?

1.5. Research scope and Methodology.

This project sought to give a detailed description of the current media regulation status and an analysis of the context within which the media is currently working. It examined the regulations in Kenya and across the globe.

The study was conducted utilizing qualitative analyses of primary data and secondary data. Focused interview questionnaire to was used to capture the facts and figures and used books, articles, reports and existing statutes to collect information for this study. The list of documents reviewed and the respondents interviewed have been annexed to this project.

Conceptually the study was based on reports done by researchers and stakeholder analysis of the existing reports and statutes. It focused on views from the viewers, the level of compliances in the broadcasting stations and the extent to which they complied with the regulations.

1.6. Limitations.

A study of all the media houses would have been more appropriate, however the constraints of time and financial resources made it impossible. Notwithstanding all the limitations, the research

was conducted taking advantage of the limited resources available. The limitations were not a setback to overall success of the project.

1.6. Significance of the study

This project brings to bear, the various breaches by broadcasting stations, the inconsistencies in the legislative and institutional framework and makes recommendation on area that need to be improved based on the findings of the study.

Chapter 2

2. LITERATURE REVIEW.

2.1 Historical Background of media in Kenya and its Regulation

The development of the media can be traced way back to colonial era. Many people believe that the first newspaper in Kenya was the East Africa Standard in 1901, while according to history the press was started by Rev Albert Stegal of the church Missionary Society when it published the Taveta Chronicle in 1895¹⁴.

After the scramble for Africa by the colonial powers and the establishment of the administrations, settler authorities began to have direct influence on the development of the media in Kenya. In 1901, Asian trader Alibha Mulla Jevanjee¹⁵ launched the African Standard which was a weekly newspaper in Mombasa. In 1905 he sold the paper to 2 British businessmen who renamed it the East Africa Standard. Later in 1910, the paper became a daily newspaper and it moved its headquarter to Nairobi. The colonial media generally excluded indigenous African voices. In many ways the colonial media served as a tool for perpetuating settler ideals across the Kenya protectorate.

Alibhai provided many services to the colonial government, but grew to challenge the settler regime for greater equity and equality for opportunity for Indians and all African. He developed the East Africa Indian National congress and so laid the foundations for an organized and colonial government¹⁶.

¹⁴ Oriare, P., Orlale, R., Ugangu(2009), The Media we want: The Kenya Media Vulnerabilities Study. Friedrich Ebert Stiftung :Nairobi

¹⁵ Zarana, P. (2002)Alibhai Mulla Jevanjee. East African Education Publishers: Kenya ISBN 978-9966-25-III-4

¹⁶ Zarana, P.(2002), op. cit

The struggle for independence by the Kenyan natives, starting from the mid 1920s to the 1950s led to the launch of several African language publications in Kenya. The first African owned press appeared in the early 1920s, but it was not until after world war 11 that a vibrant nationalist press emerged (Ngugi 2012).¹⁷ The publications were essentially vehicles for spreading the liberation gospel among the Kenyan communities, and airing out the complaints of Kenyan nationalist. The concern then was not about professionalism or the quality of the publications but rather on the utilitarian value in mobilizing African populations towards independence from the colonial powers¹⁸. In 1963 upon gaining independence the media role was transformed from liberation platforms to vehicles for speeding up development. In Kenya, government control of the media and media practice remained tight from 1963 to 2002. The Kenya broadcasting Corporation was transformed into the voice of Kenya at independence back to its old name when the pressure to liberalise the economy was brought to bear. It was mainly a government mouthpiece and all dissenting voices were shut out¹⁹.

Gradually, in the years following independence, the Voice of Kenya transformed into a propaganda department for the state. The new leaders realized that influence and control over the flow of information was a necessary pre-condition for stemming undue criticism, consolidating political power and ultimately ensuring that people played only a passive role in national affairs thus draconian press laws curtailing press freedom and other forms of public agitation were passed by the government. The history of the Kenya media in the 1970s and 1980s filled with episodes of state interference, harassment and torture of journalist²⁰.

¹⁷ Ngugi, M. (2012) *From Fetters to Freedom (in) the long walk to Media Freedom*. Nairobi: MCK

¹⁸ Makali, D(ed)(2003, op. cit

¹⁹ Ibid

²⁰ Makali, D(ed)Supra

The re-introduction of multiparty democracy in 1991 after a long stretch of single party dictatorship brought new opportunities for the media. The media ownership based expanded and the media content became bolder. This progress was not however accompanied by progressive legislation to entrench the media freedom in the country. The 1990s saw spirited attempts mainly by the government to create laws that would curtail media freedom. Expansions of media freedom then were unsuccessful because of various resistances from civil society and the media. Although freedom of expression was provided for in the old Constitution, under section 79, there was no specific protection in the law for media in Kenya. Instead there was a lot of derogation that undermined freedom of speech and expression. The media continued to be regulated through various laws such as the Public Order Act, the Defamation Act, the preservation of security Act, the Books and Newspapers Act and the Media Act.²¹

The emergence of the press in Kenya followed the same trends in most colonies in Africa. The standard experience proved that for a newspaper to survive as a commercial enterprise, it had to defer to settler interest. It was obvious then African leaders that the only the grievances of their people could be ventilated was through the establishment of the indigenous press. Thus, the African nationalist press was born of political rather than economic necessity. Put differently, the pioneers of the press in Africa were politicians rather than businessmen or media barons.²²

Until 1997 the Kenya Media was operated as a monopoly .The proliferation of mass media, economic demands and pressure from donors as well as civil society forced the government in 1998 to review the laws governing the media with a view to liberalizing the airwaves, abolishing

²¹ Ibid

²² Makali, D(ed)(2003) supra

of restrictive media laws, and harmonization of Kenya Posts and Telecommunication Act and Kenya Broadcasting Acts (Mureithi, 2002).

In 1997, the first policy paper specific to telecommunication and postal sector liberalization was issued based on the Economic Recovery strategy for wealth creation (2002-2007). The policy guideline led to transformation of the telecommunications and postal sector, the creation of Kenya Communications Act (KCA, 1998) and the Postal Corporation Act (1998). The Kenya Communication Act 1998 created, the Communications of Kenya (CCK) and gave it authority to regulate the information and communication sector²³.

Over the past 20 years the media industry in Kenya has grown exponentially. This growth has also been characterized by the deployment of the latest technological innovations in the field of communication, regional expansion in East Africa, increased number of professional media practitioners and the growth of citizen media. Most of the changes occurred after the 2002 General election when KANU lost power for the first time to a new broad based Coalition, NARC. The media ownership base expanded to include faith based organization. Since the 1990s debate on the media is mainly centered on ethics, ownership, content and regulation. The key players have included civil society groups, media lobby groups such as the Kenya Editors Guild, the Media Council of Kenya and the Kenya Union of Journalist. The formation of media focused civil society organizations such as the African Woman and the child feature service, the media

²³ ibid

diversity Center and the Media Institute among others has boosted lobbying efforts to frustrate the passage of draconian laws that give government undue control over the media in Kenya²⁴.

Until 1998 the Kenya Media operated as a monopoly and the proliferation of mass media, economic demands and pressure from donors as well as civil society forced the government to review the laws governing the media with a view to liberalizing the airwaves, abolishing of restrictive media laws, and harmonization of Kenya Posts and Telecommunication Act and Kenya Broadcasting Acts (Mureithi, 2002).

2.2. Media Theory, Policy and Regulation

Regulation of the media normally takes place within a broader framework of principle and policy .Media refers to the complex of socio –political-philosophical principles which organize ideas about the relationship between media and the society. This study was based on normative theory which is concerned with what the media ought to be doing in society rather than what they actually do.²⁵.

According to Siebert et al (1956) in their book Four Theories of the press, they, the state takes on the form and coloration of the social and political structures within which it operates. The press and other media, in their view, will reflect the basis beliefs and assumptions that the society holds. In western liberal tradition, this refers to matters such as freedom, equality before the law, social solidarity and cohesion, cultural diversity, active participation and social responsibility. Different cultures may have different principles and priorities.

²⁴ Oriare, P., Orlale, R., Ugangu (2009), The Media we want: The Kenya Media Vulnerabilities Study. Friedrich Ebert Stiftung :Nairobi

²⁵ Nordenstron, K. and White, A.R. (2011) Normative Theories of the Media: Journalism in democratic society. Sage:New York University

Although normative theory of the press is now in a considerable state of uncertainty (Nerone, identify certain broad traditions of thought about the rights and responsibilities of media in the society and the degree to which the society may legitimately intervene to protect the public interest. The main relevant variants are Authoritarian theory, free press theory, social responsibility theory, Alternative media theory and development media²⁶ theory.

- (a) Authoritarian Theory applies to early pre democratic forms of the society and also to present day undemocratic or autocratic social systems. In this view all media and public communication are subject to the supervision of the ruling authority and expression or opinion which might undermine the established social and political order can be forbidden. Although this theory contravenes rights of freedom of expression, it can be invoked under extreme conditions.
- (b) Free press theory is mostly in fully developed in USA; it proclaims complete freedom of public expression and of economic operation of the media and rejects any interference by the government in any aspect of the press. A well-functioning market should resolve all issues of media obligation and social need.
- (c) Social Responsibility theory is found more in Europe and countries under European influence. It is a modified free press theory placing greater emphasis upon the accountability of the media especially broadcasting to society. Media are free but they should accept obligations to serve the public good. The means of ensuring compliance with these obligations can either be through professional self-regulation or public intervention in both.

²⁶ Nerone, J.C. (ed)(1995) Last rights: Revisiting Four Theories of the Press. Urbana :University of Illinois Press

- (d) Development Media theory applies in countries at lower levels of economic development and with limited resources. It takes various forms but essentially proposes that the media while desirable should be subordinated to the requirements of economic, social and political development.
- (e) Alternative Media theory is from a social critical perspective the dominant media of the established society are likely to be inadequate by definition in respect of many groups in society and too much under the control of the state and other authorities or elites. This type of theory favours media that are close to the grass root of society, small scale, participative, active and non-commercial. Their role is to speak for and social out groups and also to keep radical criticism alive.

Often, the media system of a given country will have a mixture of theoretical elements and media types displaying neither absolute freedom nor absolute subordination to the state or ruling power. Hallin and Mancini (2004) have argued that we should forget about normative theories and look more closely at actual arrangements connecting media with society. They propose a typology of relations between media system and political system, based on a comparative examination of contemporary national societies. In this view there are three types or variants, each with different implications for the role and obligations of the media in the society:

- (a) A liberal model in which the media operate according to the principles of the free market without formal connections between media and politics and with minimal state intervention.
- (b) A democratic corporatist model in which commercial media co-exist with media tied to organized social and political groups and the state has a small but active role.

- (c) A polarized pluralist model, with media integrated into party politics, weaker commercial media and a strong role for the state.

These models are also 'ideal types' and in practice societies have a mixture of the elements outlined. Public service broadcasting is found in 2 forms in the second and 3rd models as, respectively, either a neutralized and politically impartial organization or as politicized in some way usually with division in terms of the political spectrum. In the fully liberal model, there may be little or no place for public service broadcasting²⁷

According to Christian, C. G et al, liberalism underlies their normative systems built on a foundation of methodological individualism: All normative elements finally depend on persons acting according to their conscience about what kind of public communication represents truth, justice, and respect for human dignity. One of the flaws is that it largely equated freedom with the market and oppression with the state, ignoring the democratic middle way offered by Western Europe's post war mixed with private systems under the guise of a fatalistic realism. Further they argue that no formal claim can legitimately be made on a free press to carry out any particular task.

At the same time, Christian et al try to reach a beyond liberalism, evidenced by their account of how normative traditions have evolved and improved over time, each in turn providing a fuller, richer and more explicit conceptual vocabularies than their predecessor culminating in the model of dialogic citizen participation. Christian et al argue in a universalist fashion that a key condition for establishing a satisfactory normative formula that harmonizes the moral claims of all social actors is the quality of dialogue between social actors. According to Benson (2009) and

²⁷ Siebert, F., W. and Peterson T.(1956) Four theories of press. Urbana, Illinois:University of Illinois Press

Habermas (2007)²⁸ they argue that Christian et al argument that by raising awareness of value laden aspects or arguments, normative theories can help media policymakers and professionals to acknowledge their own unstated premises and thus serve as instruments of emancipation from status quo; however how the emancipation is concretely realized is a challenge. They argue that practice and policy prescriptions have to be adequate to realize normative ideals and that if authors pessimistically conclude , we live in an age when there is little serious challenge to the view that the media are primarily a business and that the freedom of the media is freedom of the trade, then it strain credibility to suppose that small, transient, non-professional collective happenings oriented towards understanding its own identity will be adequate to challenge increasingly concentrated, entrenched economic power.²⁹

2.3 The Institutional Framework of Media in Kenya

There are two legislated institutions in Kenya that have oversight responsibilities over broadcasters. These are the Communications Authority of Kenya (CAK) formerly known as Communications Commission of Kenya and The Media Council of Kenya. There are other associations like the Kenya Journalist Union, the Kenya Media Owners Associations, Reporters without borders(RWB), Article 19 Eastern Africa and the courts which aim to achieve higher professional standards and to protect it members, to promote and defend press freedom.

²⁸ Habermas, J. (2007)How to Save the quality press?Suddeutsche Zeitung.Translated into English version and available at :<http://print.signandsight.com/features/1349.html>

²⁹ Benson, R. (2009) Shaping the public sphere: Habermas and beyond. The American Sociologist 40:175-197

2.3.1. The Communications Authority of Kenya. (CAK).

The communications Authority of Kenya formerly known as the communications commission of Kenya was established under the KICA, 2009 and it is a body corporate capable of being sued and suing.

The commissions name was changed early this year to abide with section 34(5) of the Kenya constitution, 2010. CAK's mandate is broad and includes licensing and regulating postal, information and communications services in accordance with the provision of KICA and so anyone who wishes to operate a broadcasting station applies for same from CAK.

The CAK is charged with the duty of ensuring that each local broadcaster airs the amount of local content in its license, ensure that the broadcasters include news and information in their programming as well as discussions of national importance and ensuring that the broadcasters adheres strictly to the subscribed or authorities subscribing code.

The CAK is also charged with the responsibility of prescribing a programme code that sets the standards for the time and manner of programmes to be broadcast by the broadcasting stations.

The CAK also has a duty of resolving disputes between consumers and a service provider and a service provide provider through it tribunal.

By the year 2007, the liberalization effect in the telecommunication sector had produced an indirect benefit. A very vibrant broadcasting sector that has seen investors get broadcasting frequencies for delivering radio and television channels. The technical licensing process was handled by CAK but the content aspect part remained "unregulated"

The Kenya information and communication Act, 2009 created a Broadcasting Content Advisory Council (BCAC) role was to work with the media Council in setting rules regulatory mechanism for broadcast sector and to make decisions on the administration of the broadcast content aspect and provisions of the Act and on the mechanisms of handing complaints as well as monitoring compliance with the broadcasting codes and ethics for broadcasters. The BCAC was disbanded in January 2014 and a new committee Broadcast Standards committee was formed. The BCAC will work outside the media Council framework.

The move to create Authority outside the media council of Kenya to set up regulations standards of the media has been widely opposed by the media sector on grounds that it takes up its independence and regulations which handled all issues related to media complaints and advised the CAK on regulations of the Media Council³⁰. Additional KICA 2013 replaces the Appeals tribunal with Multi Media and Communications Appeals Tribunal

2.3.2. The Media Council of Kenya. (MCK)

The media Council of Kenya (MCK) was established by the Media Act, 2007 and it is mandated to discipline journalist and oversee the regulation of content of media through self regulation. By 2009, it was commonly agreed that broadcast content, particularly over FM radio stations were not being addressed and the government then enacted the Kenya Information and communication Amendment Act of 2009. believed The Media Council is a body corporate capable of suing and being sued. The Media Council of Kenya functions among others include :-

- (a) Mediate and arbitrate in disputes between the government and the media, between the public and the media, and intra media.

³⁰ Otieno, N.(ed)(2014)The impact of Kenya's legal and institutional frameworks on media Freedom. Article 19 East African: Nairobi

- (b) Promote the freedom and independence of the media.
- (c) Promote high professional standards among journalist.
- (d) Promote ethical standards among journalist and in the media
- (e) Ensure the protection of the rights and privileges of journalists in the performance of their duties.

The Media Council of Kenya comprises of thirteen members drawn from the media sector including Kenya Union of Journalist, media Owners Association, Editor's guild of Kenya, Kenya correspondent association, Public relations Society of Kenya, Kenya News Agency and Kenya Institute of Mass communication.

The Media Act also legislated the Code of Conduct for the practice of journalism in its second schedule which ranges from accuracy and fairness of the journalist, independence, integrity , accountability, confidentiality , unnamed sources, privacy, acts of violence , hate speech and sex discrimination .

The media Council of Kenya is mandated to handle complains through its Complaints Commission (CC) thus providing for a mechanism of solving conflicts among the media stations, media and public and media and the government.

2.3.3. Other Associations and unions

Other the two legislated institution there are other associations and union that are deeply involved in the regulation of the media sector this includes the Kenya Union of Journalist, media Owners Association, Editor's guild of Kenya, Kenya correspondent association, Public relations Society of Kenya, Kenya News Agency, Reporters Without Borders and Kenya Institute of Mass communication.

All these bodies were formed before the two regulated institutions came into play thus they have incredibly helped to promote growth of media in Kenya.

2.4 Legal Framework of Media in Kenya

Freedom of speech and expression and regulation of the media content have obvious though unclear co-existence. The debate of right to freedom of speech and expression plays out more clearly with the emergence of the internet and mobile telecommunication which both straddle both areas of regulation of traditional media and new media.

Annexing the word “right” to the concept of Freedom of expression and speech without more implies that it belongs in the cadre of traditional well established human rights such as right to life. This nomenclature has however generated varied propositions among many scholars and schools of thought against each other.

Free speech is considered an integral part, if not a requirement in democratic society. It is assumed that free speech as a principle is such that it need not render itself up for recognition as existing, as it does exist by virtue of the democratic nature of the society³¹

Historically, the concept of press freedom developed in Western Europe and the United states between the 18th and 19th century.³² This was the period during which aristocracies, usually absolute monarchies, were facing challenge of the capitalist class to expand political space. The competition for power between the capitalist class and aristocratic classes in which none was

³¹ Kihanya, J. , social Media and Defamation 2012, The Law society of Kenya Journal Volume 9 2013 No. 1

³² William, K., (2003). Understanding Media Theory. Oxford university press: New york

strong enough to defeat the other is credited by historians for creating religious and political tolerance that allowed civil liberties and freedom to thrive³³.

In order to maintain some of the privileges the aristocratic classes and the church yielded democratic rights to the emerging bourgeois and working class. Thus democracies emerged in Western Europe as a compromise to manage unwinnable conflict between opposing camps. Therefore freedom of press developed in Europe in conditions where the contending forces willingly accepted the right of the opponent to voice their beliefs and to advocate contrary policy. It is noteworthy that at the onset of colonialism, the thinking of European Powers was informed by a legacy and a tradition of centuries-old political repression and intolerance, the legacy of authoritarianism, political repression and intolerance, and on the other hand a newly found freedom and religious political tolerance. The legacy of authoritarianism, political repression and intolerance triumphed and animated in colonialism.

The logic of colonial state imposed by the British in Kenya was therefore inspired by the legacy of authoritarianism. The consequence of the colonial state would produce far reaching changes in African social formations.³⁴The free speech principle is a distinct principle³⁵which is however, not necessarily superior to other principles with distinct limitation on government powers such as, the principles with distinct limitation on government powers such as the principle of Liberty, or democracy or equality. The principle may however be part of these principles of realization but is nevertheless distinct.

³³ Kihanya, J.op. cit

³⁴ Ibid

³⁵ Schauer F., (1982) Free Speech: A philosophical inquiry, Cambridge University Press, Cambridge. page 3-7

The principle recognizes that the state is restrained in its governmental power in a distinct way when dealing with conduct that affects speech. Kenya in consonance with the international instruments to which she is party to has enshrined the free speech principle in the constitution.³⁶

The state is required under the constitution to give preferential treatment in law to any action that has restraint on speech so as to allow for free speech to the fullest extent possible. It is in the exercise of this preferential treatment that journalist are accorded higher cognizance in the exercise of the right distinct from the ordinary citizen who though has as much right as any other person in the exercise of the right.

The effects of mass communication and the media on the knowledge, understanding, opinions and behavior of audiences has been the primary focus of academic concern and debate. The Key question debated is whether the media have the power to shape, change or determine the attitudes and behavior of individuals.³⁷ Media scholars have been divided over this question. The notion of an all powerful media has a long pedigree in the thinking about the media, and has sway over public and political debate. The public have over the years attached fabulous powers to the capacity of the media to influence their audiences. They have held social media responsible for a range of social ills, including juvenile delinquency, football hooliganism, riots, terrorism, permissive behavior, the decline of religiosity, falling educational standards and political apathy.

As Connel (1984:88) says, it is common place to blame the media for the spread of 'this or that' social problem by being carriers of all manner of distortion or misunderstanding. Systematic inquiry into what the media do to people pre-dates the television era. Previously political and military leaders as well as poets, philosophers and playwrights have theorized about the effects

³⁶ Kihanya, J, Op. Cit

³⁷ William, K(op cit)

of different types of communication. They were concerned about how audiences were moved to obedience or riotous action, anger or joy, critical thought or deep emotion. Such theorizing goes back to the ancient Greeks who developed theories about the power of the spoken word to influence audiences.

Any examination of the impact of the media on their audiences has to be rooted in exploring the ways in which the media report and represent the social world. This has meant examining issues such as race, gender, class, sexual orientation and ethnicity. How particular groups in society, as well as how disputes between these groups are depicted by the media and how these depictions have altered has been an important area represented. In Kenya Political parties are particularly vocal in leveling the accusation of bias .Charges of political and ideological biases are common everywhere in the world. Third World countries have criticized their representation in the world's media as being dominated by the 'coups, famine, and diseases.'

The issue of bias concentrates on the performance of the news media. This is the result of the professional and legal requirements for the news media to be objective and impartial. News reporters see themselves as fearless searchers for the truth, and "telling it as it is" is a central tenet of the philosophy of news journalism. Balance and impartiality are legal requirements of the broadcast media. According to Williams (2002) such claims and demands encourage evaluation of the content of the media to see whether it meets the tests of fairness and accuracy in the representation of issues, events and people.

Another commonly used means to assess media content, particularly in the examination of non-news media forms, is the concept of stereotype. This is used to refer to misleading, partial or offensive misrepresentation.

International standards supply guarantees of free expression. But these standards also typically acknowledge certain legitimate grounds for the state's restriction of free expression. The Universal Declaration of Human rights, proclaimed by the United Nations General Assembly in 1948, pronounces in Article 19 that:

Everyone has a right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 29 then qualifies this right as follows:

...determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and general welfare in democratic society.

Similarly, Article 10 of the European Convention on Human Rights states:

Everyone has a right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. This article shall not prevent States from requiring the broadcasting, television or cinema enterprises.

However, that absolute language is qualified further in this convention:

The exercise of freedom , since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of the

reputation or rights of others, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The African (Banjul) Charter on Human and peoples' Right, adopted June 27, 1981, in Nairobi, by the organization of African Unity(now, the African Union), which Kenya is a party to , provides for the right of free speech at Article 9 as hereunder;

- i. Every individual shall have the right to receive information.
- ii. Every individual shall have the right to express and disseminate his opinions within the law

The international Covenant on civil and political Rights adopted by the General Assembly of the united Nations and which entered into by force on 23rd March 1976, of which Kenya is a party to , provides at Article 19 that;

- I. Every one shall have the right to hold opinions without interference.
- II. Everyone shall have the right to freedom to expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- III. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions , but these shall only be such as provided by law and are necessary:

(a)For respect of the rights or reputation of others;

(b)For the protection of national security or of public order or of public health or

morals

From the foregoing, it is clear that all international instruments recognize freedom of expression as a fundamental right, but one that can be limited by duly enacted laws tailored to protect equally compelling societal interest.

Kenya has signed and is bound by these several international instrumental that recognize the free speech principle. In cognizance of its obligations under the above instruments and in obedience to the principal of freedom of expression, unlike the previous constitution, the Current Kenya Constitution passed in August 2010 provides the freedom of media, freedom to speech, right to privacy. Under Article 28 of the Constitution, 2010 every person has inherent and, dignity and the right to have that dignity respected and protected and Article 31 of the Constitution provides that every person has the right to privacy which includes the right not to have-

- (a) their person, home or property searched;
- (b) Their possession seized.
- (c) Information relating to their family or private affairs unnecessarily required or revealed; or
- (d) The privacy of their communication revealed

The constitution also provides for Freedom of Expression; In Article 33(1) Every person has the right to freedom of expression, which includes-

- (a) Freedom to seek, receive or impart information or ideas;
- (b) Freedom of artistic creativity; and
- (c) Academic freedom and freedom of scientific research

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

In Article 34. (1)Freedom and independence of electronic, print and all others types of media is guaranteed, but does not extend to any expression specified in Article 33(2)

(2) The state shall not-

(a)Exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or

(b)Penalize any person for any opinion or view or content of any broadcast, publication or dissemination.

3. Broadcasting and other electronic media have freedom of establishment, subject to licensing procedures that-

(a)Are necessary to regulate the airwaves and other forms of signal distribution; and

(b) Are independent of control by government, political interest or commercial interests

4. All state –owned media shall-

(a) Be free to determine independently the editorial content of their broadcast or other communications;

(b) Be impartial; and

(c) Afford fair opportunity for the presentation of divergent views and dissenting opinions

5. Parliament shall enact legislation that provides for the establishment of a body which shall

(a) Be independent of control by government, political interest or commercial interest;

(b) Reflect the interest of all sections of the society; and

(c) set media standards and regulate and monitor compliance with those standards

In Article 35 (1) every citizen has the right of access to

(a) Information held by the state; and

(b) Information held by another person and required for the exercise or protection of any right that affects that person.

2. Every person has the right to the correction or deletion of untrue or misleading information that affects that person.

3. The state shall publish and publicize any important information affecting the nation.

All the freedom of expression and freedom of media are not absolute but amenable to limited under constitution.

Under Article 33(2) the right to freedom of expression does not extend to

(a) Propaganda for war

(b) Incitement to violence

(c) Hate speech

(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) of the Constitution.

The current constitution makes comprehensive provisions for the media; however the constitution provides limitations to the fundamental freedoms under vague circumstances³⁸. This has often allowed for violations of the same rights.

There are several laws in Kenya that touch on the Media, they comprise to

1. The Armed Forces Act, CAP 199
2. The Books and Newspaper Act, CAP 111
3. The Chief's Authority Act CAP 128
4. The copyright Act, CAP 130
5. The Defamation Act, CAP 36

³⁸ FES-media Africa's report :[African Media Barometer](http://fesmedia.org/), 2005 at <http://fesmedia.org/>

6. The Films and Stage Plays Act, CAP 22
7. The official secrets Act, CAP 187
8. The Police Act, CAP 84
9. The Preservation of Public security Act, CAP 57
10. The Public Order Act,, CAP 56
11. The Kenya Broadcasting Act, CAP 221
12. The Kenya Information and communications Act, 2013
13. The Media Act,2013

These Statutes have strong anti-media laws. Most of them undermine media freedom as they are largely retrospective, punitive and repressive. The Statutes promote censorship and encourage self censorship³⁹. The Defamation Law⁴⁰ provides for criminal libel, which is punishable by imprisonment, and is a serious disincentive to journalism. The offence of criminal libel is archaic and repressive and need to be abolished. The Books and Newspapers Act⁴¹ requires that publishers and printers execute a bond of Kshs one million each. It also requires publishers to deposit two copies of each publication with the Attorney General. The vendors must also display the bond as proof of registration of the publications.

The official Secrets Act⁴² prohibits the media from telling the truth. It is a claw back to freedom as it stops the media from performing their job freely and effectively. It hinders journalist from accessing information and discourages public officials from providing sensitive information while awarding huge penalties against journalist found in breach

³⁹ FES and AWCFS's Report Card: Media Coverage of the 2005 Referendum, 2006

⁴⁰ The Defamation Act, CAP 36

⁴¹ The Books and Newspaper Act, CAP 111

⁴² The Official Secrets Act, CAP 187 OF 1968

2.5. Broadcasting Regulation in Kenya

Radio broadcasting in Kenya started in 1928 with a single channel targeting European settlers and providing news mainly for the countries of origin and the other parts of the world.⁴³ In 1953, the first radio broadcast service (African Broadcasting services) was created for African, with programmes in Kiswahili, dholuo, kikuyu, kiluhya, kikamba and arabic⁴⁴. Regional radio stations were set up in Mombasa (sauti ya Mvita), Nyeri(Mount Kenya Station) and Kisumu(Lake Station).

In 1959 the Kenya Broadcasting Corporation was established by the British colonial administration with the objective of providing both radio and television broadcasting. Television was found likely to be financially self reliant it was set up as a fully fledged commercial outfit⁴⁵. A consortium of 8 European and North American companies was contracted by colonial administration to establish the national television broadcasting system. By the end of 1962, a transmission station and recording studio had been set up and the television was officially launched in 1963.

When Kenya gained independence, the new government worried about the threat to national sovereignty posed by foreign ownership of the broadcasting infrastructure. The corporation was nationalized in 1964, renamed Voice of Kenya and became a department under the ministry of information, broadcasting and tourism. Its new role was to provide information, education and entertainment. In 1989, the VOK was renamed the Kenya Broadcasting Corporation through the KBC act and accorded semi autonomous status founded on the premise that it would adopt a more commercially oriented stance. Although the corporation unveiled grandiose plans to

⁴³ Githaigi G. (2001) Public broadcasting in Africa Series: Kenya, Open Society Foundation Survey report.

⁴⁴ Ibid

⁴⁵ Nixon Kareithi, Encyclopedia of Radio. The museum of Broadcast Communications, 2003.

expand news coverage and improve local programming content, it was unable to chart an independent editorial position, and is still seen as part of the government propaganda machinery⁴⁶.

The Kenya broadcasting sector has grown tremendously in the past decade. However the regulation of thereof the sector has been amorphous and the legislation for thereof has been designed to control the flow of information. The amorphous nature of the legislation can be traced to 1998 in the case of East African Television Network (EATN) a case between Jared Kangwana and the establishment over the ownership of the Kenya Television Network (KTN)⁴⁷.

The dispute between ownership of KTN started in 1996. KTN was granted a licence to broadcast both radio and television programmes by the Minister of Information and Broadcasting and in June and October 1997, was allocated by the Kenya Post and Telecommunication Corporation (KP & TC) broadcasting frequencies throughout the country. The dispute between Kangwana and KTN was eventually resolved⁴⁸.

At the time of the EATN case, there was virtually no law governing radio and television broadcasts. It was up to the ministry of Information to hand out the broadcasting licence at will⁴⁹. It is not clear which provision of the law was exercised while the license to EATN was issued or what rights, if any, such licenses conferred on the holder. It was the government then prerogative on issuing and revoking of the licenses. In addition to the unregulated exercise of power by the Minister for information, there was the Kenya Broadcasting Corporation (KBC).

⁴⁶ Githaigi G.(2001)op. cit.

⁴⁷ Makali, D. (2003) (Ed), Media Law & Practice-The Kenya Jurisprudence. Phoenix publishers Limited: Nairobi

⁴⁸ Ibid

⁴⁹ Ibid

Some of its functions were to advise the government on all matters relating to broadcasting and ensure the observation of standards of broadcasting and commercial advertisement.

By virtue of section 9 of the KBC Act, the running of broadcasting services without prior permission or authorization was prohibited. It was not indicated where such authorization or permission was to be obtained. Neither were conditions for obtaining such authorization or permission prescribed. Once a person or legal entity had been licensed, it would have to apply to the now defunct KP & TC for the allocation of broadcasting frequencies under the Kenya Post and telecommunication Act, Chapter 411 of the laws of Kenya, which has since been repealed by Kenya Information and Communication Act, 2009. The defunct Kenya Posts and Telecommunication Corporation (KP&TC) was a monopoly provider of postal, telecommunication and regulatory services. In line with the liberalization wind that swept through across the global telecommunication in the 1990s, its services were split up and the Kenya Communications Act 1998 was the tool that split up KP& TC into the 5 major components: postal corporation of Kenya, Telkom Kenya, CCK (the regulator), National Communication secretariat (the policy body) and the Appeal Tribunal (the judicial body)⁵⁰.

Licensing KTN to broadcast in Nairobi began the gradual liberalization of the airwaves in 1989 and in 1995; Capital FM became the first radio station to be licensed by the government. In 1996 the KBC established Metro Fm. Liberalization of the airwaves has resulted in the transformation of broadcasting with numerous stations now serving as platforms for information and public discussion. Kenya today has a wider choice of entertainment and information⁵¹ The KICA Act, 2009 was passed by the then president under duress to bring sanity to unregulated media sector

⁵⁰ Makali, D.(ed)(2003) op. cit.

⁵¹ Githaiga, G(2012)op cit

content. Part 111 makes provision for the broadcasting sector regulations ranging from the different types of broadcasting Licenses, licensing ,obligations of licensee's , content , programme code, complaints handling procedure and transition to digital broadcast services.

The Kenya Broadcasting Act ⁵² preamble states that it is an Act of parliament to establish the Kenya Broadcasting Corporation to assume the government functions of producing and broadcasting programmes or parts of parts of programmes by sound or television; to provide for the management, powers, functions and duties of the corporation; to provide for the control of the broadcasting receiving sets, and for the licensing of dealers, repairers and importers of broadcast receiving sets and for connected sets.

The preamble has been a source of challenge at KBC; the law makes KBC the state broadcaster and not the public broadcaster as expected. Due to the inadequate law to guide KBC in a liberalized market KBC is exposed to serious political, administrative and financial constraints.

The minister for Information and communication in 2003 revoked the provision empowering KBC to act as a licensing authority and to levy fees to the owners and dealers in radio and TV sets to finance its operations. This move undermined the financial viability of KBC especially since the corporation had to compete for advertising revenue in the liberalized market⁵³.

2.6. Types of broadcast services in Kenya

The broadcasting services in Kenya are categorized into 5 categories that is:-

1. Public broadcaster.

⁵² The Kenya Broadcasting Act, CAP 221 OF 1998

⁵³ Oriare, P., Orlale, R., Ugangu(2009), The Media we want: The Kenya Media Vulnerabilities Study. Friedrich Ebert Stiftung :Nairobi

2. Commercial free to air broadcaster.
3. Community broadcasting.
4. Subscription broadcasting services.
5. Terrestrial Digital Broadcasting services.

Rule 19 provides for the content of broadcast that a licensee shall ensure its station does not broadcast any content that:-

- i. Contains the use of offensive language, including profanity and blasphemy;
- ii. Presents sexual matters in an explicit and offensive manner.
- iii. Glorifies violence in an offensive manner.
- iv. Is likely to incite , perpetuate hatred, vilify any person or section or section of the community, on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community; or
- v. Has no program rating from Kenya Films Classification Board indicated prior to commencement of such programs.

In news reporting a licensee shall ensure that news and information are broadcast and presented in a balanced manner , without prejudice or negligent departure from the facts through distortion, exaggeration, misrepresentation and material omissions , give fair reporting regardless of its context or importance.

A licensee shall ensure that reports or broadcast from its station are based on fact and that are not founded on opinion, rumours or supposition, or allegation unless the broadcast is carried out in a manner that indicates these circumstances clearly.

During polling period, a licensee shall provide equitable coverage and opportunities to registered political parties in an election and in particular to presidential candidates.

A licensee shall not disclose in a broadcast the identity of a sexual victim of a sexual offence unless the victim consents in writing to the disclosure of his or her identity.

A licensee shall not accept sponsorship of news broadcast, weather broadcasts, financial broadcast or traffic reports provided that the licensee shall retain ultimate editorial control of the sponsored program.

A licensee shall not broadcast an infomercial for a period exceeding three and a half hours of the performance period in any day and that all infomercial that are broadcast in the station are lawful, honest, and decent and conform to the principles of fair competition.

A licensee shall ensure that content which depicts or contains scenes that are rated by Kenya Film Classification Board as adult, or are of the language intended for adult are not aired during the watershed period and that in all programs broadcast during the watershed period are suitable for family audiences and the transition from family oriented to more adult programming after the watershed period is gradual.

Under KICA, 2009 the CCK (now CAK) shall prescribe a programmed code that sets the standards for the time and manner of programmes to be broadcast by the licensee and any registered body of broadcasters wishing to operate under its own programming code shall submit such code to CCK for approval.

Every broadcaster shall develop a complaints procedure for handling complaints from persons who may be aggrieved by its broadcasts and shall document its complaints handling procedure.

The licensee is also obligated to inform its listeners at least once a day of the existence of complaint handling procedure and how they can lodge a complaint regarding the broadcast station.

The licensee shall not dispose off broadcast transcripts or recordings related to a complaint so long as it has not been summarily resolved either by the broadcaster, the tribunal or the High court and on the 1st July of every year, submit to the commission a written report of all complaints received during the period and the manner in which they are addressed.

Part VIII of Broadcasting rules provides rules for transitioning from analogue to digital television broadcasting and that after the switchover all analogue television broadcasters shall relinquish the frequencies used for free to air television to commission and that any person who holds an a broadcasting frequency for either radio or television broadcasting services in the same broadcast coverage area b, shall be required within a period not exceeding the licence term, to surrender all the additional broadcasting frequencies to the commission.

The main reason for effecting the change is to honour the treaty signed in 2006 at the regional Radio Communication Conference that set the analogue to digital migration for all countries at 17th June 2015. In Kenya the government has been toying with the idea of adopting the shift from analogue to digital since 2009. A planned switch off on 13th December 2013 within Nairobi and its environs has not happened to date because of a suit filed in court by the owners of commercial television house.

Chapter 3

Research Methodology

Regulation of the media normally takes place within a broader framework of principle and policy. It always works in terms of hierarchy, with three main levels consisting of theory, policy and regulation in increasing degree of specificity, followed by means of implementation.⁵⁴

An overarching idea such as that of freedom of expression or human right is expressed in broad policies for communications media. Such ideas provide direction and legitimation for proposals and actions to secure public interest. These regulations have then to be implemented in regulations that are either applied either formally as legal or administrative rules or informally as voluntary industry and professional self-regulation. The matters regulated or self-regulated are: media structure, conduct and content and various technical and organizational matters⁵⁵

There are several media principles of media theory that should be advanced or respected by mainstream media in countries that seek to follow the liberal or democratic model of a media system. Disagreement is found mainly over the means by which the principles can be achieved, for example by regulation, self-regulation or market forces. The main principles can be stated as follows:⁵⁶

(a) Independence

The media should be free to follow their chosen cultural and informational objectives, without undue pressure or limitation from interest other than those of their chosen

⁵⁴ Van Cuilenburg, J.J. and Mcquail, D.(2003)Media Policy paradigm shift:towards anew communications policy paradigm in European Journal of Communications, Vol. 18, No.2:pp.181-208

⁵⁵ ibid

⁵⁶ ibid

audiences. Independence is a necessary condition for playing a critical and creative role in society.

(b) Diversity and pluralism

There should be a wide variety of media in terms of culture, information and ideas. People should be able to choose from a wide range of alternatives according to their different needs, points of view, beliefs and tastes. For this to be achieved there needs to be diversity of ownership and also real opportunities for access to all main voices and interest in the society.

(c) Information Quality

The news and information made available to the public by the media should be of a high standard of quality, in the sense that it aims at the truth and is extensive, trustworthy, professional and accurate, relevant and balanced

(d) Social Culture order

There are expectations that the media will not deliberately offend the basic norms of their society and that they will make a positive contribution to the maintenance of national and minority languages and culture

Some of these principles are potentially in conflict with each other, for instance freedom vs. order, majority cultural values vs. those of minorities. One of the aims of media regulation is to

CHAPTER 4

4.0 Research Design

Since the Kenyan media was liberalized in 1997, there has been a proliferation of broadcasting stations. The status of media and regulation of the media sector has improved. Currently there is comprehensive law regulating the media sector that is Kenya Information and Communication Act 200 and the Kenya Constitution enhanced the provisions on right to free and independent media. According to CAK Sector Report Quarter 3, 2013 -2014 it had issued 10 new TV stations licenses to provide digital platform thereby bringing the total number of entities with temporary authorization to 84. The total number of TV stations stood at 102 while the total number of analogue TV stations which activated their TV signal on the digital broadcasting platform stood at 13 the end of the 3rd quarter.

However, after more than a decade of the liberalization of the media, and the subsequent establishment of regulations the nation is still battling with the challenge of compliance with regulations. Therefore it is only prudent to review the existing regulatory framework and determine whether the broadcasting stations are complying with existing regulations and so an analysis the international broadcasting regulations and how are they implemented within the globe.

The main objective of this study was to review the existing regulations and determine how compliance there is being monitored to ensure the broadcasting stations play their role in the development of the country.

Geographically, after the liberalization, the media started its growth and Nairobi has been the hub of the media, hosting the headquarters of almost all television stations and to some extent the radio stations.

Conceptually, the project was based on literature review of the existing statutes and legislations, reports by researchers and scholars' books and journals and information from the public, media and CAK officials.

4.1 Data Collections Methods.

This study involved qualitative data collection methods. Data for the project was obtained from two main categories, primary and secondary sources. Primary data here refers to all data that was gathered from the field through the use of focused interview questionnaires.

The study analyzed the performance of CAK in this project by sending out focused interview questionnaires to CAK officials to sample their views and to ten individuals of different ages and class within Nairobi to assess whether Media houses are fulfilling their mandate and officials of Nation TV and Kenya broadcasting station to sample their views as well.

To make this project scientific I employed Non probability sampling technique of purposive sampling. According to Mugenda and Mugenda (1999), "purposive sampling is a sampling technique that allows a researcher to use cases that have required information with respect to objectives of the study." Cases of subjects were therefore handpicked because they were informative and they posed the required characteristics.

Thus in purposive sampling, the researcher purposely chooses subjects who in their opinion are thought to be relevant to the research topic. Since the officials of CAK are institutions with

direct knowledge and bearing on the media purposive sampling was used. Focused interviews questionnaires were designed to capture the facts and figures, as well as qualitative responses from CAK. Questionnaires were also sent to officials of broadcasting stations.

Apart from the primary data that were gathered from the field studies, secondary data were also used in analyzing and comparing the primary data to arrive at conclusive comparative analysis. The secondary sources included a literature review on the topic involving a desk study to extract information from books, articles, journals and previous studies. Key information Sources is the Africa Media Development Initiative report-2013⁵⁷ and Open society Foundation report on Mapping Digital media: Kenya -2006⁵⁸ and the KICA, 2009 and the Kenya Constitution, 2010

The secondary data collected from libraries as well as the internet was assembled, synthesized, critically evaluated and conclusions drawn from them. The specific tasks that had to be undertaken in order to address the research questions included, but were not limited:-

1. Identifying and analyzing relevant laws/policies, institutional frameworks and literature relevant to the research objectives. This would set the agenda for focused interview questionnaire.
2. Interviewing media representatives, media workers and officers and any other person of interest. The sample was determined by the needs of the research, as well as time and resources.

⁵⁷ Maina, L.W. (2006). Kenya Research Findings and conclusions: An Africa Media development initiative: BB world service trust : London. Retrieved from [africanmedia initiative.org/file/2013-07-22-amdi-report-kenya](http://africanmediainitiative.org/file/2013-07-22-amdi-report-kenya)

⁵⁸ Nyabuga, G. & Booker N. Mapping Digital media: Kenya report by open society foundations. Retrieved from www.opensocietyfoundations.org/.../mapping-digital-media-kenya-201303

3. Detailing key media related cases and complaints made to the institutions dealing with regulation of the media made under provisions of media laws, policies and regulations between September 2010-June 2014
4. Identifying and analyzing undocumented reports and surveys relevant to the research questions.
5. Recommending options for deepening democracy in the context of media freedom and Kenya's constitutional right to information.

4.2.Data Analysis

Data analysis involved analysis of.

1. Application by judicial courts, complaints commission, of penalties against media enterprises and journalist since the enactment of the constitution in 2010.
2. Analysis of the impact of key legal precedents on the promotion and safeguarding of media freedom.

Assess the impacts on media freedom of the scope of powers to institute, hear and determine media based disputes of CAK, CC and communications and muLti media tribunal

4.3 Comparative analysis of broadcasting regulations across the world.

In terms of data analysis, I utilized qualitative data thus I did content analysis to review the focused interview questionnaires, the documents, books, articles and statutes. The data required extensive reviews to come up with conclusive findings.

National legal systems vary. Civil law nations like Germany and France often adopt detailed and precise statutory schemes that govern the rights, duties, and obligations of journalist. In common law nations like the United Kingdom and the United States; a mix of statutes, regulations, and case law establishes broad legal principles that encompass press freedom, even if the laws do not always directly address journalist.⁵⁹

Regardless of the particular legal approach, good journalism flourishes where society respects and enforces the rule of law. The work of legal, theoretical, and philosophical thinkers including Confucius, Milton, Rousseau, Meiklejohn, and Mill, among others, supplies the intellectual underpinning for contemporary media law and media ethics⁶⁰.

The mass media in Africa, as is well known, was product of colonialism. As with every else, the media in Africa is a product of the political developments and histories of the continent. The ownership systems, their characters, strengths and weakness, their political and social outlooks and above all their outputs and impacts are all the products of the societies that have formed and shaped them⁶¹.

The right to freedom of expression and information is one of the fundamental rights guaranteed by the African charter on Human and Peoples' Right. In October 2002, the African Commission on Human and Peoples' Rights, the body established by the charter to promote and protect human rights on the African continent, adopted the Declaration of principles of Freedom of Expression in Africa in Banjul, Gambia.

⁵⁹ Media law Handbook series: Handbook series edition (2010). Retrieved from http://www.america.gov/publications/books/media_law_law.html

⁶⁰ Ibid

⁶¹ Karikari, K. (2007). African Media since Ghana's independence. In Barratt, E. & Berger, G. (Ed), 50 years of Journalism: Africa Media since Ghana's Independence (p.7). South Africa: Africa Editors Forum.

This document built on the 1991 Windhoek Declaration (later endorsed by UNESCO), declares unequivocally that freedom of expression and information is a fundamental and inalienable human right and an indispensable component of democracy. In addition to prohibiting arbitrary or illegitimate suppression of free speech by state parties to the charter, the charter also enjoins authorities to take positive measures to promote diversity in information and opinion. As regards journalist that effective self regulation is the best system for promoting high standard in the media.

Attacks on media practitioners are described as undermining independent journalism, freedom of expression and free flow of information to the public. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies

The Declaration concludes by saying that state parties to the African charter on Human and peoples' Rights should make every effort to give practical effect to the principles on freedom of expression elaborated in the statement.

The Declaration is hailed as one of the worlds' advanced commitments to freedom of expression. Yet, incidents of murder with impunity, harassment, intimidation, unlawful detention of media practitioners, undue political interference with the media , seizure of publications , destruction of equipments and closure of private media establishments seems to be increase in the continent ⁶²

Across Africa's 54 states, from South Africa, Ghana, Sierra Leone, Nigeria to Egypt the media has grown, albeit at different paces. Despite the noticeable growth, Africa is still lagging behind in enforcing the freedom of expression, speech and media. It is still a paradox that in 50 years

⁶² Tlakula,P.(2007).Time for Progress: A need for Conscious champions. In Barratt, E. & Berger, G. (Ed), 50 years of Journalism: Africa Media since Ghana's Independence (p.7). South Africa: Africa Editors Forum

during which Africa should by rights have enjoyed a long wave post colonial bloom in environments free of restrictions on media, there is still regimes that resist liberalization .it is not only cases of stagnation of media among such countries, but even worse –actual cases of reverses-of shrinkage of media. In particular, current government of Zimbabwe and, Eretria, Ethiopia, and Gambia show how the 21st century, through thoroughly misguided myopia, repressive political authority can be a direct cause of regress in media. Insult laws and criminal defamation laws, inherited from colonialism and which criminalise criticism of government figures, especially remain an affront to post independent Africa outdoing the colonialist themselves, countries like Zimbabwe, compulsory registration of journalist, allowing for disqualification as well is a continuing violation of each individual’s right to free speech and a sure recipe to self censorship that can only pervert the quality of information in circulation. Elsewhere, although registration is often not enforced, or at the present is not used for licensing purposes, it remains on the statutes in places like Uganda, Nigeria, Cameroon and Tanzania⁶³

Newspapers thrive and are vibrant in democratic Nigeria, yet this is still a country that curtails broadcasting by a de facto policy against licensing of community policy. In contrast, many of the DRC’s formerly deprived citizens have access to one of the country’s 196 community radio stations and despite the country’s divisions it has not been wracked by war through the airwaves. TV stations proliferate in Ghana and Tanzania – a result of a liberalised environment there.

Uganda is not far behind. Nollywood products flood Nigeria and beyond. But in places like Zambia, the heavy hand of state ownership and government control still means stagnant print and broadcast assets, and struggling national news agencies, often protected by licensing or other

⁶³ Berger, G. (2007). Looking Ahead: what next for Africa media. In Barratt, E. & Berger, G. (Ed), 50 years of Journalism: Africa Media since Ghana’s Independence (p.7). South Africa: Africa Editors Forum.

monopolies. The number of national state radio outlets in 17 countries has been static over the past five year's⁶⁴. Yet across the continent, it is private and community media which have shown that it is they who can expand the industry.

The problem is that not all African governments have learnt to put public interest in more media, above their own misperceived interests in having only that media which they can control. There is a reductionist equating of their interests with the public or national interest. An African government minister once said: "It is necessary that the information we disseminate not only reflects the truth, but reflects a truth that is not contrary to the superior interests of the people of Côte d'Ivoire"⁶⁵. But this kind of perspective means fettering media, and in so doing, governments end up pulling the whole society down. In more democratic countries, governments have had to learn to live with a free media – recognizing at least that while an independent press may not help them stay in power, it is an essential institution if they hope to make a comeback next time round.

In 1997, the first policy paper specific to telecommunication and postal sector liberalization was issued based on the Economic Recovery strategy for wealth creation (2002-2007). The policy guideline led to transformation of the telecommunications and postal sector, the creation of Kenya Communications Act (KCA, 1998) and the Postal Corporation Act (1998). The Kenya Communication Act 1998 created, the Communications of Kenya (CCK) and gave it authority to regulate the information and communication sector.

⁶⁴ Campbell, W.J. (1996) Newspapers in emerging democracies: A cross-regional study of the newly independent press in Central Europe and Sub-Saharan Africa. Retrieved from the web.

⁶⁵ Campbell, W.J. (1998) *The Emergent Independent Press in Benin and Cote d'Ivoire*. Westport, Connecticut and London: Praeger Publishers

The emergence of the internet and information technology created a new paradigm that blurred the traditional distinctions between telecommunications, information technology and broadcasting and in 2009 parliament.

In 2007, Parliament passed into law the media Act to provide for the realization of the right to freedom of expression and freedom of media and established the Media council of Kenya to set media standards and regulate and monitor compliance the standards, conduct and discipline of journalist and media.

The rising emergence of the internet and mobile communication has had a tremendous effect in the manner in which information is shared and publication is viewed from the traditional media that is radio, television or newspapers. The new mode of communication has had to contend with the law in its pre-social media paradigm and the courts and legislatures are increasing having to align with the new order.⁶⁶

In the recent past, the Kenya media industry has been going through a tumultuous period caused by media stakeholders opposition to the government initiative to streamline regulation of the media sector, terming it as an interference to freedom of speech and expression guaranteed in the Constitution 2010. The media tend to portray the government as being oppressive and hindering the freedom of speech and the government on the other hand shows the media to exposing the audiences to obscenity and threat.

4.4 Kenya Communications (Amendment Act) 2009.

The Act enhanced CCK's regulatory scope and jurisdiction and transformed it to a converged regulator fences with a scope covering the broadcasting, multimedia, telecommunication and

⁶⁶ Kihanya, J., Social and Defamation 2012. The Law Society of Kenya journal volume 9 2013 no. 1

postal services and electronic commerce. In place authority has come out Kenya has been in the race of putting in regulations to control the media Sector so as to take advantage of it in the best possible way. However, the initiative has not been progressive and has been met by delay, lack of expertise and know-how got temporary injunction stopping the switch to digital, and indolence from the legislature in passing laws to keep up with the highly evolving media and by opposition from the media owners, Kenya journalist and civil societies citing breach of freedom of press by the government.

In 2012 the government set the first phase of the migration project on 13th December 2013 in Nairobi and its environs; however the switch did not happen as the Kenya Media owners went to court and got temporary injunction stopping the switch to digital.

In comparison to other African Countries, Kenya has progressed immensely and is at the forefront in putting in place regulations for the media industry. There is much that need to be done to improve on the media policies and regulations in Kenya but it is also important to take an account of the progress achieved and monitor the compliance and enforcement with regulations enacted.

Indeed monitoring of compliance and enforcement of the regulations is still wanting and there is need to improve in that aspect to ensure that fight to have regulations and an ideal media is celebrated, consequently it important to discuss and engage in debates to promote compliance and enforcement of the regulations in place

Across Africa content in the Pan African News Agency has been limited. And alliances of mainly state-owned broadcasters like Urtna (now called the African Broadcast Union) and Saba

(Southern African Broadcasters Association) have focused on content exchanges without enormous effect. One initiative that may prove more successful is Saba's interest in a peer-review system akin to the African Peer Review Mechanism of the African Union. This would help each broadcaster assess its progress in transforming to into a public service, and in turn attract resources to that project. As a peer network of proper public broadcasters, the prospects for real co-operation would be much enhanced. But if there is one imperative for the future, it is that internal content exchange is indispensable for the development of the media industry within and across each country. The solution has increasingly been recognized as being the creation of independent authorities to regulate communications, especially broadcasting.

While governments still have a legitimate role to play in terms of broad policy (and parliaments in terms of law), it is abundantly clear that regulatory bodies should not be akin to an arm of an Information Ministry. Appointments should be via parliament, budgets should be adequate, and there must be no space for political or crony favoritism in licensing. As part of the picture, policy processes should be transparent and inclusive, for example with public hearings being held and taken seriously.

Regulation also needs to be informed by research and conceptual clarity. It does not help, for example, to conflate the terms "government broadcaster" and "state broadcaster" (as Article 19 unfortunately recently does)⁶⁷, when what is meant is state-ownership and government-control (the two do not necessarily go hand in hand; a state-owned broadcaster can – and should – be a public broadcaster in the sense of being accountable to the public, not the government).

⁶⁷ Article 19 2006, Broadcasting Pluralism and Diversity.<http://www.article19.org/pdfs/tools/broadcasting-manual.pdf>

A tier of local community broadcasting, whether seen as money-making (West Africa) or non-profit (Southern Africa), also needs to be recognised as different from state-owned (usually national media) and big city or provincial commercial broadcasting⁶⁸. Regulation also needs to address the critical issue of undying public media – else the experience shows that there can be unfair competition with private media (as in the case of Botswana’s press) on the one hand, and over-commercialized programming (as in the case of the SABC) on the other. African media history records a Beninese government official as saying in 1985: “You are not the first, nor the second nor the third power, not to mention that you will never be the four or fifth power. You are instruments of propaganda.”⁶⁹ The instrumentalist mentality here has historically been justified by African governments in terms of the developmentalist and nation-building role of the media. Kwame Nkrumah famously declared of the “true African journalist” that: “His (sic) newspaper is a collective organiser, a collective instrument of mobilisation and a collective educator – a weapon, first and foremost to overthrow colonialism and imperialism and to assist total African independence and unity.”⁷⁰ This is a perspective that is far from dead, even when it is not hijacked into “sunshine” or pro-government journalism. The role of communication in addressing developmental issues is indeed a central focus for Africa, unlike many other continents. But what is evident is that media role – and its effect on audiences – is not something that is susceptible to social-engineering style of planning. At best, broad direction can be given to the complex production and distribution apparatuses that make up the media – and this is far better achieved by regulation rather than direct control. Thus, for example local content requirements, as well as policies to promote service in different languages, are very important for

⁶⁸ AMDI (2007:5) also confuses the picture by referring to “private, public and state media”.

⁶⁹ 16 Campbell 1998:42

⁷⁰ In Mytton 1983:67

broadcast regulation. Licensing community radio with particular remits is one sure way to promote much needed local content.

Without this, African content will continue to circulate via London, Paris or New York and be tailored to audiences and interests in those centers. And African audiences will know more about irrelevant news from the US than important news in adjacent countries.

The divide between Arab Africa and the rest of the continent will persist, despite geographic and much other proximity. The lesson of African media history, however, is that there are many obstacles – and not least is the one of many conservative governments who oppose content with which they disagree. This difficulty inhibits the growth of and African Al Jazeera, for instance.

Funding of course is another factor, but decreasing costs of making and distributing media may lessen this constraint in the future. Nevertheless, drawing from historical experience, change in this realm will be gradual at best for the next 10 years. However, if *Drum* magazine could famously circulate across the continent in the heady early days of independence, there is no reason why pan-African media products can't succeed today. Regional bodies such as ECOWAS and the SADC have each demonstrated interest in media declarations, training and development, and this could grow. The contacts between The Africa Editors' Forum and the African Union are also politically very important. There are, in short, many pointers towards pan-African media developments, and the future can only enhance these.

4.5. Findings

The status of media and regulation of the media sector has improved. Currently there is a comprehensive law regulating the broadcasting sector that is Kenya Information and Communication Act 2013 and according to CAK Sector Report Q 3 2013 -2014 it had issued 10 new TV new stations licenses to provide digital platform thereby bringing the total number of entities with temporary authorization to 84. The total number of TV stations stood at 102 while the total number of analogue TV stations which activated their TV signal on the digital broadcasting platform stood at 13 the end of the 3rd quarter.

The 2nd finding is that there is a challenge in monitoring compliance and enforcement with the new regulations in place. All broadcasters are required to broadcast at least 30% of local content According to the 15 public individuals interviewed within Nairobi, all of them were of the view that the broadcasters aired more than the permitted percentage of foreign programs. It was established that the media actually broadcasts more foreign programmes on both radio and TV.

CAK lacked capacity and equipment to ensure compliance with laws and regulations in place and does not visit the broadcasting media houses to confirm compliance, neither does it conduct individual assessment of the individual media houses.

CCK's annual report 2012/2013 provides trends in consumer complaints between 2009/2010 and 2012/13. The table is below.

Trends in CCK Consumer Complaints, 2009- 2013

	2009/2010	2010/2011	2011/2012	2012/2013	
				Received	% Resolved
Unauthorized Charges/subscriptions	7	82	139	179	88.9
Service Interruptions	23	45	47	77	74
Quality of service(voice & data)	22	57	39	23	66.9
Inappropriate Media Content	5	8	10	16	93.8
Digital transition				12	100
Confidentiality/Privacy breaches	4	6	4	9	77.8
Misleading Advertisement	5	8	5	4.	75
Frequency Interference				3	100
Defective terminal equipment	30	15	9	7	57.1
Billing	26	69	43	77	74

Source. CCK(2014:43-4)

The trend in the annual report shows no consistency over the review period, a sharp rise in 2010/2011 was followed by a sharp fall over the next two accounting periods. Overall over 80% of the complaints were resolved but no report provides insights into the complaint content, arbitration, proceeding or judgments to enable evaluation of efficiency or impacts.

The CAK's broader mandate is to licence and regulate telecommunications; radio communications and postal service, thus the bulk of the complaints are of technical nature.

From the table, complaints on media content rose steadily, however considering the public outcry on media content the complaints to CAK are low.

It was also established that CAK lacks the legal capacity to prosecute non complying broadcasters. Hence the process of issuing notices was the only means available and having the broadcasters to internally solve the complaints. The table below shows MCK's analysis of media complaints.

	2012	2013	2014
Received	18	17	6
Dismissed for lack of jurisdiction	6	3	
withdrawn	3	5	
Preliminary stage			4
Before the commission		9	2
determined	9		

Source: MCK Website

While legislation does not allow CC to award personal damages, it allows the CC to regulate its own procedure, resulting into fines of upto 500,000 and 200,000/00 respectively against media houses and journalist. While monetary penalties are substantial in relation to the journalist

remuneration, they may not be that significant for the mainstream media which is likely to have insurance cover.

Additionally awards are paid to the MCK as punishment for breaches of the conduct or some other legislation, rather than the complainant and the complainant receives an apology and a mutually agreed correction published as prominent as the offending article. This method of solving complaints by CC is a weak incentive considering the costs involving while pursuing the complaint.

Finally, it came out that broadcasting houses were aware of the broadcasting regulations; however some of the sampled stations specified a number of challenging factors that inhibits the smooth implementation of the Broadcasting regulations by KICA, 2009. The challenges included the high cost of production, viewer's preference of foreign programmes and infiltration of foreign TV stations in Nairobi.

From the analysis, it became clear that the major challenge of the implementation by broadcasting houses was the lack of monitoring of compliance by the media regulator. Though the knowledge level about compliance issues was established to have been known, the details were not known and this was attributed to the lack of enforcement of sanctions by the regulator who was in turn hampered by the lack of technical capacity and expertise to follow up on compliance and increased regulation of the broadcasting services in Kenya.

Chapter Five

5.0. RECOMMENDATIONS AND CONCLUSIONS

This chapter takes look at the recommendations received from the subjects of the questionnaires. These recommendations when implemented will enhance the level of compliance of TV stations regulations and this in turn will restore order on the media sector. Some of these findings and recommendations are presented below:-

5.1. Recommendations

Having identified some of the challenges CAK is facing in implementation of the regulations. Some of the suggested solutions as suggested by the broadcasting stations and the viewers are as follow:-

- To split the role CAK to focus on the technical aspect of regulation and have a different body to regulate the content
- Pass broadcasting laws which will give CAK the power to prosecute offending broadcasting stations.
- By getting equipment that could automatically regulate the broadcasting stations
- Capacity building of technicians, and enforcement of KICA regulations.
- Make punitive sanctions to broadcasting station that fail to abide with the broadcasting regulations.
- Put in place a strict monitoring and compliance section of CAK to improve compliance by broadcasting stations.

- While the existence of a statutory media council goes against the declaration of principles of freedom of expression in Africa and best practice, it need to be recognized that such a body has been created by the constitution, thus the Media Council Act should be reviewed to ensure that as many elements of self regulation as possible are included by developing a formula for membership and appointment procedures which guarantee the independence and integrity of the council and ensure that both media and the public at large are represented on it.
- The Media Council of Kenya should introduce mechanisms to procure funds from the industry for the council and not from the state.
- The Books and Newspapers Act should be repealed to remove Publishers from registering or to paying any bond before going into business. It is sufficient for them to comply with the companies Act.
- Considering the dynamic nature of the media industry an independent committee should be set up to consistently review the Statutes and policies that regulate the media to ensure that the law is up to date and aligned with the developments in the media industry.

Law reforms of the regulations that are not aligned to the Constitution including decriminalizing of defamation under section 194 to 194 of the Penal code, section 67 giving special protection to dignitaries, section 62 of the National Cohesion and integration Act with it broad definition of incitement endangers freedom of expression should be brought in line with the constitution and section 2(d) of the preservation of public security Act which empowers the president to limit freedom of expression, must be repealed.

5.2. Conclusion.

The non compliance of broadcasting stations with the existing broadcasting regulations threaten to erode maximization of spectrum usage and its stands to place the media landscape into a disorganized one. Non compliance will tend to slow down the wheel of development.

In conclusion it was noted that the media sector has improved in Kenya and it has contributed to the socio economic advancement of the nation. The sector is rapidly growing and the issue of non compliance need to monitored and promoted. Most broadcasting stations have ignored the CAK regulations and the broadcasters need to be sensitized to deliver their part of responsibilities.

References

African Commission on Human and People's Rights (ACHPR). (2002). Resolution of the Declaration of Principles on Freedom of Expression in Africa. Retrieved from the web: <http://www.achpr.org/english/declarations/declarationfreedom>

African Media Barometer (2005-2006) Self-assessment reports on 17 African countries. <http://www.fesmedia.org.na>

Barratt, E. & Berger, G. (Ed), 50 years of Journalism: Africa Media since Ghana's Independence (p.7). South Africa: Africa Editors Forum

Benson, R. (2009) Shaping the public sphere: Habermas and beyond. *The American Sociologist* 40:175-197

Berger, G. (2007). Looking ahead: what next for Africa media. In Barratt, E. & Berger, G. (Ed), 50 years of Journalism: Africa Media since Ghana's Independence (p.7). South Africa: Africa Editors Forum.

Campbell, W.J. (1996) Newspapers in emerging democracies: A cross-regional study of the newly independent press in Central Europe and Sub-Saharan Africa. Retrieved from the web.

Campbell, W.J. (1998) *The Emergent Independent Press in Benin and Cote d'Ivoire*. Westport. Praeger Publishers: Connecticut and London.

European Convention on Human Rights, 1998.

Fentuck, M. (1999) *Media Regulation, Public interest and the Law*. Edinburgh : University of Edinburgh Press.

Githaigi G. (2001) *Public broadcasting in Africa Series: Kenya*, Open Society Foundation Survey report

Hallin, D. and Mancini, P. (2004) *Comparing Media Systems*. Cambridge: University of Cambridge press

Habermas, J. (2007) How to Save the quality press? *Suddeutsche Zeitung*. Translated into English version and available at :<http://print.signandsight.com/features/1349.html>

Karikari, K. (2007) African Media since Ghana's independence. In Barratt, E. & Berger, G. (Ed), 50 years of Journalism: Africa Media since Ghana's Independence (p.7). South Africa: Africa Editors Forum.

Kihanya, J. (2012) Social Media and Defamation. The Law society of Kenya Journal Volume 9 2013 No. 1

Maina, L.W. (2006). Kenya Research Findings and conclusions: An Africa Media development initiative: BBC world service trust: London. Retrieved from africanmediainitiative.org/file/2013-07-22-amdi-report-kenya

Makali, D. (2003) (Ed) Media Law & Practice-The Kenya Jurisprudence. Phoenix publishers Limited: Nairobi

McCquail, D. and Siune, K. (1986) New Media Politics. London. Sage Publications

Media law Handbook series: Handbook series edition (2010). Retrieved from http://www.america.gov/publications/books/media_law_law.html

Moggi, P. and Tessier, R. (2001). Media status report: Kenya. Groupe de recherche et D'échanges technologiques (GRET). Retrieved from <http://www.gret.org/parma/uk2/ressource/edm/kenya.htm> research/temp/moehler_private_radio_media_effects_02-07-06.pdf.

Nyabuga, G. & Booker N. Mapping Digital media: Kenya report by open society foundations. Retrieved from www.opensocietyfoundations.org/.../mapping-digital-media-kenya-201303

Ngugi, M. (2012) From Fetters to Freedom (in) the long walk to Media Freedom. Nairobi: MCK

Ochieng, P. (1992). I Accuse the Press: An insider's view of the media and politics in Africa. Initiative Publishers ACTS Press: Nairobi.

Ochola, F.W. (1983). Aspects of Mass Communications Research on Africa. Africa Book Services: Nairobi.

Odhiambo, L. (1991). 'Development journalism in Africa: Capitulation of the Fourth Estate?' *African Media Review*. 5(2): 17-29.

Odhiambo, L. (2002). 'The Media Environment in Kenya since 1990'. *African Studies*. 61(2): 295-318.

Oriare,P., Orlarle, R.. & Ugangu, W.(2010)The media We Want: The Kenya Media Vulnerabilities Study. Friedrich Ebert Stiftung: Nairobi

Schauer F. (1982) Free Speech: A philosophical inquiry. Cambridge University Press, Cambridge. Page 3-7

The Armed Forces Act, CAP 199

The Books and Newspaper Act, CAP 111 Government Printers: Nairobi

The Chief's Authority Act CAP 128. Government Printers: Nairobi

The Copyright Act, CAP 130 Government Printers: Nairobi

The Defamation Act, CAP 36 Government Printers: Nairobi

The Films and Stage Plays Act, CAP 22 Government Printers: Nairobi

The International Covenant on civil and political Rights adopted by the General Assembly of the United Nations and which entered into by force on 23rd March 1976

The Kenya Broadcasting Act, CAP 221

The Kenya Information and communications Act, 2013

The Media Act, 2013 Government Printers: Nairobi

The Official Secrets Act, CAP 187. Government Printers: Government Printers: Nairobi

The Police Act, CAP 84 Government Printers: Nairobi

The Preservation of Public security Act, CAP 57

The Public Order Act, CAP 56

The Kenya Information and Communication Act, 2013. Government Printers: Nairobi

The Kenya Constitution, 2010 Government Printers: Nairobi

Tlakula, P. (2007). Time for Progress: A need for Conscious champions. In Barratt, E. & Berger, G. (Ed), 50 years of Journalism: Africa Media since Ghana's Independence (p.7). South Africa: Africa Editors Forum.

Webster, F. (1995) Theories of Information Society. London: Routledge.

William, K., (2003). Understanding Media Theory. Oxford university press: New York.

Appendices

1. Focused Interview questionnaire for individual viewers.
2. Focused Interview questionnaire for TV stations
3. Focused Interview questionnaire for Communications Authority of Kenya officials

UNIVERSITY OF NAIROBI

SCHOOL OF JOURNALISM AND MASS COMMUNICATION

RESEARCH TOPIC: MEDIA POLICY AND REGULATION: THE
REGULATION OF BROADCASTING SERVICES IN NAIROBI

Appendix 1: Focused –Interview Questionnaire.

This questionnaire is to solicit for information for the conduct of the above mentioned academic research.

Your maximum co-operation is anticipated since data gathered will be handled with absolute confidentiality.

QUESTIONARE FOR INDIVIDUAL VIEWERS.

Name.....Age

Occupation.....Town.....

Questions

1. Which is your favourite Broadcasting Station?
2. Why do you like it?
3. Which TV station do you most dislike?
4. Why do you dislike it?
5. Have you ever filed a complaint at CCK (now CAK) or a TV Station?
6. Do you love local programmes?

7. Which local programmes do you watch on TV?
8. Do the Local broadcasters air local content or not?
9. What percentage of local content does your favourite station offer?
10. What laws or regulations would you like to suggest improving
broadcasting stations in Kenya?

UNIVERSITY OF NAIROBI

SCHOOL OF JOURNALISM AND MASS COMMUNICATION

RESEARCH TOPIC: MEDIA POLICY AND REGULATION: THE
REGULATION OF BROADCASTING SERVICES IN NAIROBI

Appendix2: Focused –Interview Questionnaire.

This questionnaire is to solicit for information for the conduct of the above mentioned academic research.

Your maximum co-operation is anticipated since data gathered will be handled with absolute confidentiality.

QUESTIONNAIRE FOR TELEVISION STATIONS.

1. Name of Station.....

2. Years of operation

3. Where is the location of the station?

4. What is programming focus of the station?

5. What is the percentage of local and foreign programming?

6. What internal mechanisms have you put in place to ensure compliance with the

Programming code?

7. Do officials from CAK visit your stations?
8. How do you handle complains brought against you programmes?
9. Are the broadcasting regulations implemented in your station?
10. If yes, how?
11. What are the implementation challenges?
12. How can the challenges be addressed?

UNIVERSITY OF NAIROBI

SCHOOL OF JOURNALISM AND MASS COMMUNICATION

RESEARCH TOPIC: MEDIA POLICY AND REGULATION: THE
REGULATION OF BROADCASTING SERVICES IN NAIROBI

Appendix 3: Focused –Interview Questionnaire.

This questionnaire is to solicit for information for the conduct of the above mentioned academic research.

Your maximum co-operation is anticipated since data gathered will be handled with absolute confidentiality.

**QUESTIONNAIRE FOR COMMUNICATIONS AUTHORITY (CAK)
OFFICIALS.**

1. Name of Respondent.....

2. Position of the Respondent

3. What is the basic role of CAK?

4. Are there problems of Television stations broadcasting more than the permitted foreign programmes?

5. How are you able to detect this among the Television stations ?

6. Do you Visit TV stations to ensure compliance with the broadcasting regulations?

7. Are there sanctions for exceeding foreign programme broadcast on TV stations?
8. What are the challenges you face in implementation of the broadcasting regulations?
9. What are the suggested solutions for these challenges?