

AFRICAN MEDIA BAROMETER KENYA 2009

Executive Summary

The Kenya Constitution under Section 79(1) provides for the freedom of expression which includes the right to receive and communicate ideas and information without interference. However, the same section 79 (2) of the Constitution provides for exceptions where the freedom may not be applied and states inter alia, the defense of public security, public safety, public order, public morality or health. These provisos are stated without definition or interpretation.

There is no firm recognition of the media in the Constitution but in practice it does exist. The “media freedom invariably thrives on the vagaries of political developments and shifting political interests” as one of the panelists suggested.

Freedom of expression is largely practiced by individual journalists and citizens with the former voicing the latter's concerns. However, as Kenya is emerging from years of autocracy, there is “a degree of recklessness” in sections of media practice. This is evidenced by complaints forwarded to the Media Council of Kenya, the cases before the courts and the citizens' discussions in the mass media.

Entry into the practice of journalism is not legally restricted. However, the Media Act (2007) specifically defines a “Journalist” and makes provisions for accreditation of journalists. The Act in the preliminary part (1) gives wide definition that can hardly be said to be restrictive.

Where public information is concerned, this is restricted by the structure and procedures in the public service, where a Permanent Secretary in a ministry is the only spokesman of the ministry, and yet s/he may not be accessible, and is at liberty as to what information can be provided. The office of the Official Government Spokesman was established in 2003, “to effectively facilitate communication between the Government, its citizens and global audiences”. However, from observations of its performance, it has turned out to be a public relations machinery. Restriction of public information is further reinforced by the culture of secrecy in the public service, based on the Official Secrets Act (Chapter 187). The Act places a responsibility of non-disclosure of information on all government officials and any other person who may come across such information. Civil servants are required to take an oath of secrecy under the Act.

Civil society and lobby groups are active in advancing media causes but there is no reciprocity on the part of the media. This is partly because of media self-censorship, cautiousness in the interests of media owners and other limitations. Engagement

between civil society, media lobby groups and the media is sporadic and issue-based. The intensity of engagement varies with issues to be advanced. However, media practitioners do not engage meaningfully in law making processes. They hardly even read media laws. At best, they only “cover” events discussing media law but do not participate in consultations. In this regard, they behave like “fire extinguishers” who rush to the “scene” of the issue when it has exploded in their own face. Examples are the street protests in early 2009 over the Communications Commission of Kenya Amendment Act, which by the time journalists took action, had already reached the final stage of presidential assent.

The last two years (2007-2009) have seen improvement in the level of consultations on media legislation. Apart from the Communications Commission of Kenya, the Permanent Secretary in the Ministry of Information and Public Communication has constantly involved stakeholders in consultations/discussions on media legislation.

Where information sources are concerned, there is a wide range of information sources accessible to citizens, as more print and broadcast outlets have come up. In the broadcast media there are around 80 radio stations plus some pirate radio outfits. Of the 372 radio frequencies allocated, 233 are being utilized. The entry of internet on the media scene has increased the range of information sources and accessibility.

Broadcasting legislation has been slow on reforms. It has now defined three tiers of broadcasting, namely public, private and community, and also differentiates the roles; identifies the license conditions and obligations of each category of broadcaster. The legislation designate Kenya Broadcasting Corporation as the Public Broadcaster established by an Act of Parliament CAP 221 of the Laws of Kenya, to undertake public services, and assume the government functions of producing and broadcasting programmes by sound or television. The KBC Act provides for balance and editorial independence. The 1997 Inter-parties Parliamentary Group (IPPG) reformed the law to provide for balance in the coverage of political parties. In practice editorial independence has not been visible.

After the Kenyan 2009 Media Barometer took place, the Ministry of Information and Communication enacted the Kenya Communications (Broadcasting) Regulations 2009 whose objectives include: protecting the rights of those who cannot protect themselves, as well as discouraging the incitement of the public as witnessed in post election violence, and are in tandem with political reforms. These Regulations have caused discontent among various stakeholders, with some calling for their revocation. The Media Owners Association (MOA) feel strongly that the restriction of a media house to one frequency in a region (not defined in the regulations), and quotas for local content should be withdrawn. MOA also says that the rule on cross media ownership is not in tandem with the global best practice and would stifle returns from present investments and discourage future

investments. The Editors' Guild have recognized the need for regulation in order to safeguard the profession and promote the inalienable rights of free expression, but feel betrayed by the Ministry for "not securing full consent and participation of the media industry stakeholders" in establishing a broadcast Advisory Council. The Guild is of the opinion that the government is seeking to exercise control of the media under the guise of regulating the media.

A positive development though is that the regulations in Article 13 (2) provide for the CCK, through the frequency plan, to ensure that an equitable number of frequencies or channels are reserved for community broadcasting.

The Statute Law (Miscellaneous Amendment) Act 2009 established the Broadcasting Content Advisory Council that will be responsible for the administration of the broadcasting content, and the mechanisms for handling complaints. The Act makes provisions for appointment of *inter alia*, two members by the Media Council of Kenya, one from the Law Society of Kenya and two nominated by CCK, one of whom shall be recommended by the inter-religious forum.

Broadcasting is regulated by what is supposed to be an independent body an outlook that represents diverse interests. However, the process of selection of membership is not open as it is left to the minister to decide. The relevant legislation does not spell out the qualifications e.g. gender, media expertise and ICT competency. Given the coalition government, the tendency has been appointments based on party and political expediency.

When it comes to standards or reporting, the principles of accuracy and fairness are not always adhered to. There is bias towards political coverage and little about the grassroots. There is bias in headlines giving hint to certain perception and images. Quality of reporting also depends on the editorial policy of the media house. In other words, fair and accurate reporting conforms to editorial interests of the media house. For example, there was a time a former Minister for Finance, Amos Kimunya, made a statement about the Stock Market not being a '*fish market or a potato market*'. But the media reported only on the bit about the stock market not being a 'fish market,' which was a deliberate slant and a case of lack of accuracy and fairness.

Women are not equally or adequately represented in the media although equal opportunity policies in terms of gender are in place in most media establishments. Indeed efforts are constantly being made towards this goal. However, biases are discernable in the prominence given to stories. The issue of sexual harassment has constantly come up in media houses, in stories and discussions.

In the last two years (2007-2009), the Kenyan media environment has witnessed positive developments. These include:

- Internet development that has allowed broadcasting stations to stream their content.
- Robust debates on the role of media in the 2007/2008 post-election violence.
- Skills/training in emerging areas e.g. conflict-sensitive reporting, and trauma counseling.
- State's recognition on the role of the alternative media.
- Media have filled in the position of official opposition in parliament.
- Increase in local content.

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SECTOR 3:

Broadcasting regulation is transparent and independent; the state broadcaster is transformed into a truly public broadcaster.

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THIRD MEDIA

Broadcasting regulation is transparent and independent; the state broadcaster is transformed into a truly public broadcaster.

3.1 Broadcasting legislation has been passed and is implemented that provides for a conducive environment for public, commercial and community broadcasting.

Analysis

Broadcasting legislation has been slow on reforms. It has now defined three tiers of broadcasting namely public, private and community, and also differentiates the roles. The Kenya Communications (Broadcasting) Regulations 2009¹⁷ defines the roles, the license conditions, and obligations of each category of broadcaster.

The Kenya Broadcasting Corporation is designated as the Public Broadcaster established by an Act of Parliament – CAP 221 of the laws of Kenya – to undertake public services, and assume the government functions of producing and broadcasting programmes by sound or television.

The Broadcasting regulations in article 13 (2) provide for CCK through the frequency plan, to ensure that an equitable number of frequencies or channels are reserved for community broadcasting.

The Statute Law (Miscellaneous Amendment) Act 2009 established the Broadcasting Content Advisory Council that will be responsible for the administration of the broadcasting content, and the mechanisms for handling complaints. The Act makes provisions for appointment of *inter alia*, two members by the Media Council of Kenya, one from the Law Society of Kenya and two nominated by CCK, one of whom shall be recommended by the inter-religious forum.

¹⁷ The regulations became law in January 2010, after Media Barometer 2009 had taken place.

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

2.5 (2005=1.0; 2007=1.5)

3.2 Broadcasting is regulated by an independent body adequately protected by law against interference whose board is appointed - in an open way - involving civil society and not dominated by any particular political party.

Analysis

The management of the Communications Commission of Kenya (the regulatory body) is vested in a Board of Directors that consists of a Chairman who is appointed by the President, a Director-General appointed by the Information Minister and Permanent Secretaries from the ministries responsible for Information and Communications, Finance, and Internal Security. The board also consists of seven other persons who are not public officers and who are appointed by the Minister by virtue of their knowledge or experience in matters relating to law, postal services, broadcasting, radio communications, information technology or computer science, telecommunications, and consumer protection matters.¹⁸ The Director-General is the chief executive of the commission and is responsible for its day- to-day management.

CCK is accountable to the Ministry of Information and Communication which happens to be the appointing authority. Even though section 5B of the act provides for CCK to “*exercise its functions independent of any person or body,*” the likelihood of influence from the government cannot be ruled out since the Chairman is appointed by the President, while other appointments are by the Minister, who also is a Presidential appointee. Moreover, the permanent secretaries who sit on the commission could easily consider themselves government representatives. The

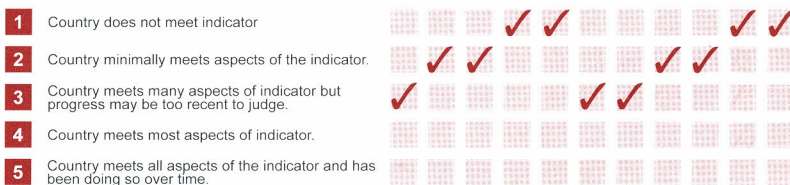
¹⁸ Kenya Communications (Amendment) Act of 2008, section 6 f (i) to (vii)

Kenya Communications (Amendment Act) 2008 did not amend the appointment process, which is a critical part of the independence of such statutory bodies.

However, the Board is independent in outlook, and represents diverse interests. But, the process of selection of membership is not open as it is left to the minister to decide. The relevant legislation does not spell out the qualifications e.g. media expertise, gender, ICT competency etc. Given the coalition government, the tendency has been appointments based on party and political expediency.

Scores:

Individual scores:



Average score:

1.8 (2005=n/a; 2007=n/a)

3.3 The body regulates broadcasting services and licenses in the public interest and ensures fairness and a diversity of views broadly representing society at large.

Analysis

The Kenya Communications (Amendment) Act, 2008 section 46 (a and c) provides for “public interest” where CCK in its functions in relation to broadcasting services will (a) *“promote and facilitate the development, in keeping with the public interest, of a diverse range of broadcasting services in Kenya”* and in (c) *“promote the observance at all times of public interest obligations in all broadcasting categories”*.

The Act also provides for a clear application and licensing procedure stipulating licensing fees at various levels, allocation of frequencies and an Appeals Tribunal. In practice, allocation of frequencies has been haphazard and hardly taking into account the public interest.

The Kenya Communications (Broadcasting) Regulations 2009¹⁹ in article 6 on obligations relating to broadcasting services, provides that CCK shall (1) (a) ensure that broadcasting services reflect the national identity, needs and aspirations of Kenyans; (c) develop a frequency plan which sets out how the frequencies available for broadcasting services in Kenya will be shared equitably and in the public interest among various tiers of broadcasting, and (d) ensure that every applicant secures relevant permission or entered into agreements or arrangements necessary for the operation of the broadcasting service.

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

2.1 (2005=1.7; 2007=1.6)

3.4 The state/public broadcaster is accountable to the public through a board representative of society at large and selected in an independent, open and transparent manner.

Analysis

In its long existence, the Kenya Broadcasting Corporation has suffered from ambivalence in definition, outlook and functions. It has invariably acted as a public broadcaster, state broadcaster and a public service. Indeed, it has carried out these roles at various times at the behest of the political regime. Current studies show that there are reforms underway to clearly define its role and future direction.

KBC is governed by a Board of Directors appointed by the Minister for Information and Communication. The chairman of the Board is appointed by the President²⁰. The board consists of the chairman, the managing director, who is appointed by the Minister, the Permanent Secretaries in the Ministries of Information and Communication as well as Finance and Office of the President. The rest of the

¹⁹ The regulations became law in January 2010, after Media Barometer 2009 had taken place

²⁰ The Kenya Broadcasting Corporation Act chapter

members, who should not be more than seven, can be public officers, but they must not be employees of the corporation. Of these seven, four should at least have specialization or experience either in “*matters connected with radio communication and radio communication apparatus; radio or television programme production; print media; and financial management and administration.*”²¹ However, this requirement has not always been followed and KBC has even at some point had board members who had no inkling of specific tasks of the broadcaster.²²

But perhaps what is disturbing is the fact that as currently comprised, the KBC board is wholly appointed by the executive. The chairman is appointed by the President, three of the members are Permanent Secretaries (who are presidential appointees) and the remaining seven are ministerial appointees. There is exclusive control by the government over the appointment of directors and senior management of KBC. The KBC board also reports to the Minister for Information and Communication, who happens to be the appointing authority for a majority of the members, including the Managing Director. The minister also determines the terms and conditions of service for the Managing Director.

According to the regulations governing statutory corporations, the Minister is supposed to consult the board before appointing a chief executive through a process of “competitive bidding” but this rarely happens at KBC. Moreover, in some other jurisdictions the board appoints the managing director. The implication of KBC’s system of appointment is that the managing director is answerable to the minister as opposed to the board. This could mean that chances of implementing board decisions that are not in line with the minister’s vision may be minimized.






KBC has a feedback mechanism through its public relations department and through its programming where audiences are asked to give comments through emails, letters, text messages or calls. It is not clear though how regular for example the public relations office responds to public complaints.

21 *ibid*

22 Study by AfriMap on *Public Broadcasting Kenya* (yet to be published)

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

1.5 (2005=1.0; 2007=1.0)






3.5 Office bearers with the state and political parties as well as those with a financial interest in the broadcasting industry are excluded from possible membership on the board of the state/public broadcaster.

Analysis

There is such no provision.

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

1.1 (2005=1.0; 2007=1.0)

3.6 The editorial independence of the state/public broadcaster from political influence is guaranteed by law and practiced.

Analysis

The Kenya Broadcasting Corporation (KBC) Act provides for balance and editorial independence. The 1997 Inter-parties Parliamentary Group (IPPG) reformed the law to provide for balance in the coverage of political parties. As part of the IPPG²³ KBC was required to stop its partisan ways and give fair and equitable coverage to all political parties, but this remained a hollow undertaking as KBC soon lapsed into its old ways.

In practice editorial independence has not been visible. A former Managing Director, Wachira Waruru, who attempted to assert the editorial independence, was removed. Earlier Koigi wa Wamwere, then Assistant Minister for Information and Broadcasting, constantly sought to control and influence the proceedings at the establishment.

Official influence at KBC is still visible.

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

1.6 (2005=n/a; 2007=n/a)

²³ The Inter-Party Parliamentary Group (IPPG) brought together parliamentarians from both sides of the political divide who agreed to break a political deadlock by agreeing to a series of legal and political measures, deemed as a minimum requirement, intended to open up political space to ensure free and fair elections in 1997.

3.7 The state/public broadcaster is adequately funded in a manner that protects it from arbitrary interference through its budget and from all commercial pressure.

Analysis

Kenya Broadcasting Corporation (KBC) is not funded by the Treasury. It gets revenue from commercial advertising. While it is treated as a state corporation, the government itself owes the Corporation large sums of money in debts. Similarly, KBC has debts with other state corporations including Kenya Power and Lighting Co, the Postal Corporation of Kenya and bodies dealing with copyright and royalties. These old debts are up to the tune of Kshs 20 billion. It continues to operate on obsolete technology whose maintenance costs continue to skyrocket. This old technology uses high power which translates to more costs.

However, the year 2010²⁴ will bring a sigh of relief to KBC's financial pressures, as the Kenya Communications (Broadcasting) Regulations 2009, now provide that KBC (11) (2) shall be supported by revenues from the exchequer, grants, donations and its commercial services but shall not draw from advertising and sponsorship. However, CCK may on application by KBC (4) grant a private/commercial broadcasting license, and may require KBC (5) to maintain separate accounts in respect of its Public broadcasting services and private/commercial broadcasting services. KBC may when providing its commercial services enter into public private partnership: provided that the public private partnership complies with the law relating to public procurement.

KBC is the designated signal carrier as Kenya enters into digital broadcasting. It is anticipated that the tariffs for signal distribution will contribute to its budget.

²⁴ The new regulations took effect after Media Barometer 2009 had taken place.

Scores:

Individual scores:

1	Country does not meet indicator	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	✓
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

1.1 (2005=n/a; 2007=n/a)

3.8 The state/public broadcaster is technically accessible in the entire country.

Analysis

Kenya Broadcasting Corporation (KBC) radio and TV channels have countrywide reach even though the quality of the signal may be poor in some areas due to terrain and weather interferences.

The Corporation is the designated signal carrier in the on-going migration from analogue to digital broadcasting and has formed a separate company *Signet* for this purpose. Kenya's timetable for the migration is the year 2012 while ITU set it for 2015. Kenya launched the digital terrestrial television (DTT) on December 9, 2009.

KBC is on-line on www.kbc.co.ke

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	✓ ✓
4	Country meets most aspects of indicator.	✓ ✓ ✓ ✓ ✓ ✓
5	Country meets all aspects of the indicator and has been doing so over time.	✓ ✓ ✓

Average score:

3.8 (2005=4.0; 2007=3.4)

3.9 The state/public broadcaster offers diverse programming formats for all interests.

Analysis


Kenya Broadcasting Corporation (KBC) offers diversity in programmes for many interests. These include various formats/genres namely news bulletins, current affairs, documentaries/features, drama/comedy/serials, movie, music shows, talk shows (mainly political/social/topical issues), Chat shows (mainly human interest and lifestyle topics), quiz/game/ reality shows, education, children's programmes, youth programmes, women, sports, culture/media/arts, and on faith. This variety of programs, with a wide range of subjects is meant to address and reach out to different audiences.

The broadcaster also uses Kiswahili and English languages as key languages and nineteen vernacular stations targeting different communities of Kenya, including in marginalized areas for example the semi arid and arid lands (ASAL)²⁵.

KBC is persistent in content and programmes pay attention to human values. KBC has also been persistent on issues of decency, morality and avoids sensationalism.

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

3.7 (2005=4.5; 2007=n/a)

²⁵ Githaiga, Grace. 2009. *A Preliminary Survey of Available Technologies for Distance Learning Through Radio*. London. Institute of International Education and Development.

3.10 The state/public broadcaster offers balanced and fair information in news and current affairs, reflecting the full spectrum of diverse views and opinions.

Analysis

Kenya Broadcasting Corporation (KBC) reports on diverse interests. There has been marked improvement in the attempt at balancing between patriotism and balanced coverage. However, there are times when KBC appears too cautious on certain issues to avoid “exciting audiences” in particular in its news, unlike others who thrive on deliberate sensationalism. Generally, KBC airs more stories from the countryside and remote parts of the country. This can be attributed to the fact that the broadcaster receives stories from KNA – the government supported News Agency.

Admittedly because of its history of government control it continues to be seen as a tool of an authoritarian regime in the country. It continues to suffer harsh judgment despite the progressive changes made.

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

2.4 (2005=2.7; 2007=n/a)

3.11 The state/public broadcaster offers as much diverse and creative local content as economically achievable.

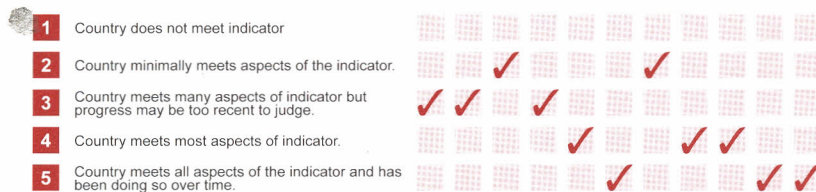
Analysis

The Kenya Broadcasting Corporation (KBC) largely observes media ethics in content and language. It has higher local content than other broadcasters. It also

has a long history and structure and capacity for wider reach. The broadcaster has a history of live coverage of national events with little digressions. Having the best Outside Broadcast (OB) infrastructure has enabled the Corporation to collaborate with other broadcasting outlets in broadcasting in real time, events of national importance.

Scores:

Individual scores:



Average score:

3.3 (2005=3.8; 2007=3.3)

3.12 Community broadcasting enjoys special promotion given its potential to broaden access by communities to the airwaves.

Analysis

The Kenya Communications (Amendment) Act 2008²⁶, in the amendment of second 2 (4) (interpretation), defines a community broadcasting as a service that: (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes; (b) serves a particular community; (c) encourages members of the community served to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and (d) may be funded by donations, grants, sponsorships or membership fees, or by any combination of the aforementioned.

The Community broadcasting sub-sector has not been given due attention. There are no incentives for the sector despite the fact that proponents have demanded for such, for example, tax rebates, scaled annual frequency fess, a dedicated number of frequencies on the spectrum etc. Kenya compares unfavourably with some African countries that have affirmative action where community radio is concerned. Such countries include:






²⁶ The Kenya Communications (Amendment) Act 2008 that amended the Kenya Communications Act, 1998

Mali, with over 300 Stations
 South Africa – Over 100 Stations
 Mozambique – with 30 Stations
 Kenya, with 8 Stations.

A new development is that of the enactment of the Kenya Communications (Broadcasting) Regulations 2009²⁷ which in 13 (2) provides that CCK will through the frequency plan, ensure that an equitable number of frequencies or channels are reserved for community broadcasting and (5) community radio stations will be allowed to advertise, on their stations, adverts that are relevant and specific to that community within the broadcast areas.

Scores:

Individual scores:

1	Country does not meet indicator	
2	Country minimally meets aspects of the indicator.	
3	Country meets many aspects of indicator but progress may be too recent to judge.	
4	Country meets most aspects of indicator.	
5	Country meets all aspects of the indicator and has been doing so over time.	

Average score:

1.4 (2005=1.1; 2007=1.5)

Average score for sector 3:

2.2

²⁷ The Regulations became law in January 2010.