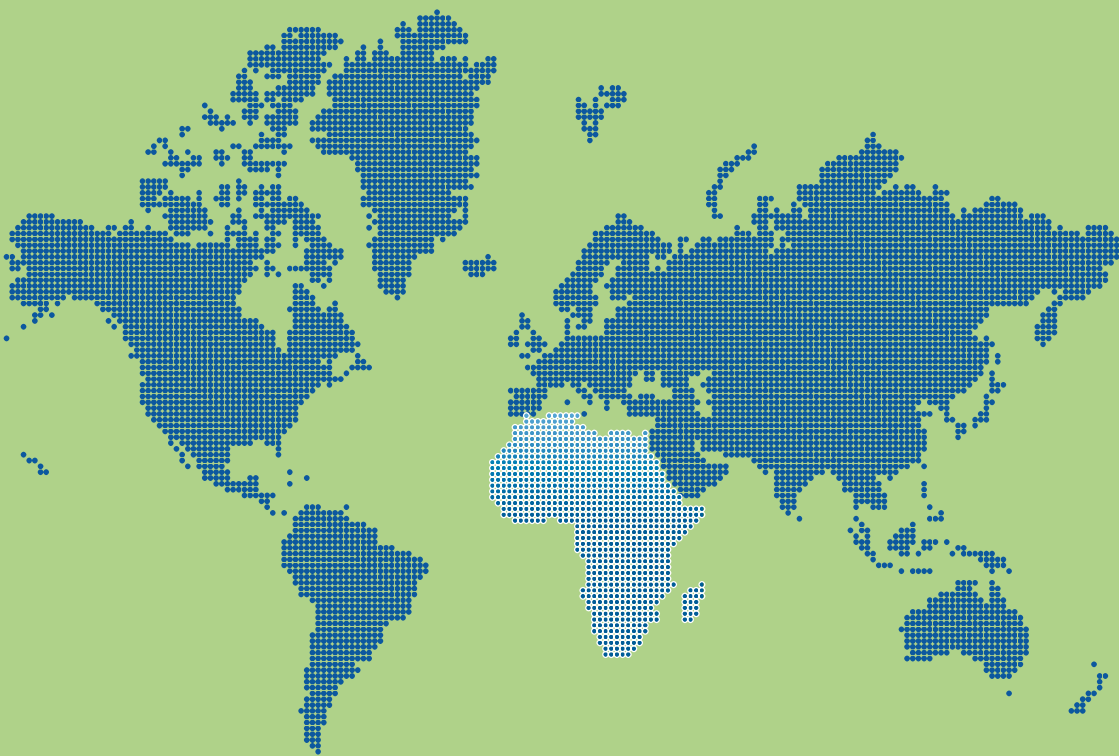


Factually true, legally untrue

Political Media Ownership in Kenya



A Research Paper Written
By Othieno Nyanjom



Internews
Local voices. Global change.

The background features several light gray curved lines and arrows. Some are solid, while others are dashed. The arrows point in various directions, creating a sense of movement and flow. The overall design is clean and modern.

Factually true, legally untrue: Political Media Ownership in Kenya

A Research Paper Written
By Othieno Nyanjom

Contents

Foreword	
Executive Summary	
List of Acronyms/Abbreviations	1
1 Introduction	3
2 Research Methodology	6
3 Media Concepts and Practices	8
4 Legislative and Institutional Frameworks	11
5 A Review of the Kenyan Media in Practice	17
5.1 A History of the media in Kenya	17
5.2 Structure of the media in Kenya	22
5.2.1 Radio	24
5.2.2 Television	27
5.2.3 Print	31
5.2.4 Mobile Telephony and the Internet	33
5.2.5 Media Training Institutions in Kenya	34
5.2.6 Media Management Institutions in Kenya	34
6 Issues in Ownership and Content of the Kenyan Media	36
6.1 Legal Framework for Media Practice	38
6.2 Ownership of the Kenyan Media	40
6.3 The Conduct of the Kenyan Media	51
6.4 Conduct of Institutions of the Media Industry	58
6.5 Training and Professionalism in the Media	60
6.6 Political Opinion Polling in Kenya	61
7 Discussion	67
8 Conclusions and Recommendations	75
9 Bibliography	78
10 Appendices	81

Foreword

The political ownership of media outlets can act against the requirement for a fiercely independent media – especially during election times.

In the run up to the 2007 general elections, the Kenyan media was seen as partisan because of political interference in editorial content. This had devastating consequences. Public, private and community media took sides, undermining their objectivity and credibility. The public received unbalanced and sometimes inappropriate information. The political campaign turned virulent – the media being a platform for accusations and abusive language.

Five years down the line, as the country approaches the much anticipated March, 4th 2013 general elections, has the situation changed? Yes and no. Some media outlets have learnt a lesson and reviewed their structures and policies to safeguard their integrity from boards of directors and owners. Editors now appear more capable of resisting the risk of influence.

But other outlets, especially radio stations operating at the local level, still depend on a powerful ‘big man’ who has the final say on editorial content and programming. This situation can put staff under immense pressure and poses a dilemma: should they take sides or risk being fired? In some provinces, politicians have joined the rush to own a radio station. Take Eastern and Coast provinces for instance: for the last two years, a number of new radio stations have been created by politicians vying for parliamentary or county seats.

Internews in Kenya, under its election focused “Free and Fair Media” program, wanted to find out more about this particular problem. We commissioned a researcher for a nationwide investigation into political ownership of the full range of media outlets. This research would establish data on the make-up of media boards, coverage areas and broadcast licensing, and identify conflict of interest arising from the political ownership and socio-economic interests at play at media houses.

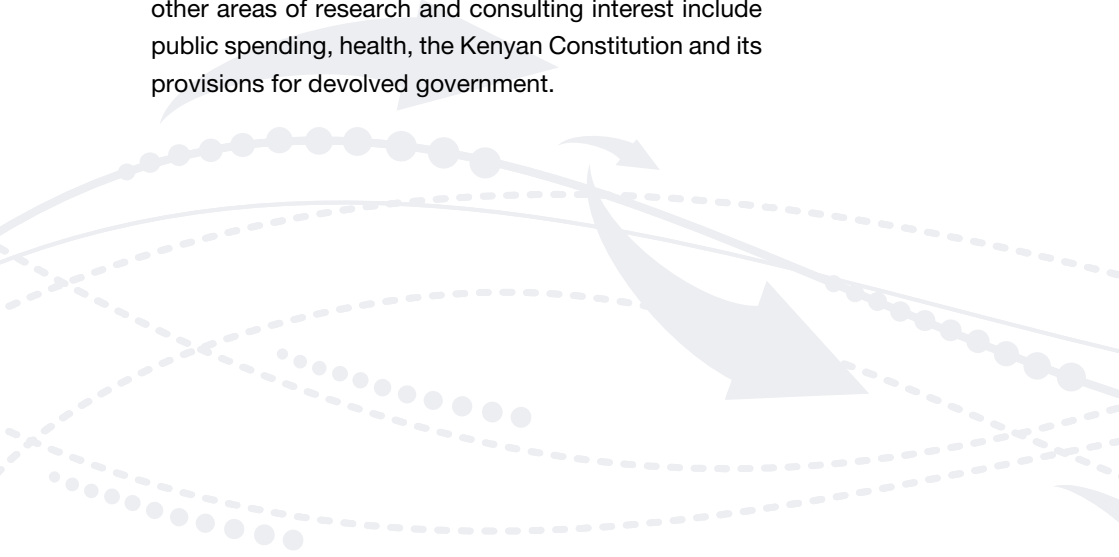
The main objective of this report is not to point an accusing finger at media owners and managers. Rather, it is to identify weaknesses in the sector to resist political influence on editorial content and to propose solutions and recommendations. The report will also inform innovative interventions such as an interactive map of ownership of the Kenya media (available at www.internewsinkenya.org) and several events to directly engage stakeholders.

This unique engagement seeks to stimulate ongoing discussion on the challenges posed by political ownership, and to chart the way forward for journalists and editors willing to report in a more independent manner on the electoral process.

Brice Rambaud
Program Director
(Democracy & Governance)
Internews in Kenya

About the author

Othieno Nyanjom holds a doctoral degree from the University of Sussex, an MSc degree from Bradford and a Bachelors degree from Nairobi. He is a researcher and private consultant on a wide range of development issues. Besides his special interest in the media, his other areas of research and consulting interest include public spending, health, the Kenyan Constitution and its provisions for devolved government.



Executive Summary

The media is important as an efficient mirror of society's status, an amplifier of development initiatives, and an agenda setter. Yet, the media can be an agency of destruction, as some have alleged over Kenya's 2007/08 post-election violence [PEV]. On the eve of Kenya's first general election under its new constitution (2010), it is significant that two aspiring presidents, who are among the four Kenyans indicted at the International Criminal Court [ICC], for PEV, are also major media investors. Kenya's legislation for media management has not been fully operationalised due to a history of weak governance and impunity. This has spawned weak professionalism, with many media practitioners being poorly trained and/or remunerated, and working under unsatisfactory terms and conditions of employment. This makes them amenable to manipulation by politician-owners of media outlets, politicians in general, and the corporate sector. Additionally, some of the roles of the statutory but weak Media Council of Kenya [MCK] have been usurped by the self-interested Media Owner's Association.

Kenya's two foremost media houses – Nation Media Group [NMG] and Standard Group [SG] – are on the domestic stock exchange. While NMG's dominant shareholder, the Aga Khan, has traditionally deferred to the government, SG's dominant shareholding involves former President Moi, even if only indirectly so. However, the electronic media is dominated by the Royal Media Services which has been partial to President Mwai Kibaki. Prime Minister Raila Odinga is associated with Neural Digital's multiple radio stations, while ICC-bound, presidential aspirants, Deputy Prime Minister Uhuru Kenyatta and ex-minister William Ruto are respectively associated with Media Max and Kass Media Group. Other national politicians with media interests include presidential aspirants, Vice President Kalonzo Musyoka, minister Charity Ngilu, and ex-minister Raphael Tuju. Several current parliamentarians and aspiring politicians also have direct or indirect media interests, most notably FM stations. Kenyan politicians also subscribe to internet facilities.


The Constitution has focused extensively on improving governance, underscoring the freedoms of information and the media, necessitating reviews of the key media legislation, the Media Act (2007), Kenya Information and Com-

munications Act (1999) and the Books and Newspapers Act (2009). The reviews should result in more independent and efficacious media management institutions insulated from government, politician and corporate interference, while addressing media misconduct. MCK's improved oversight capacity should explore synergistic links with other institutions that address media-related concerns, such as the National Cohesion and Integration Commission on ethnic jingoism. MCK's effectiveness could also be enhanced by:

- ❑ Undertaking an extensive stakeholder-driven review of the media sector's needs against the backdrop of the Constitution (2010).
- ❑ Consequently review of the adequacy of existing legislative and institutional frameworks of the sector, to arrive at a lean but efficacious integrated management framework.
- ❑ Using the integrated sector management framework to review capacity and training needs resulting in elaborate curricula content for all categories and levels of the sector.
- ❑ Building on the approved curricula to develop an accreditation basis for institutions offering media studies on the evidence of their having adequate capacities. This should then lead to the development of frameworks for accession of individuals to the various professions.

List of Acronyms and Abbreviations

ACC	Advocates Complaints Commission
AKFED	Aga Khan Education Foundation
AMWIK	Association of Media Women in Kenya
ASAL	Arid and Semi-Arid lands
BAKE	Bloggers Association of Kenya
CCK	Communications Commission of Kenya
CDF	Constituency Development Fund
ESOMAR	European Standards for Opinion and Marketing Research
ICC	International Criminal Court
ICCK	Independent Communications Commission of Kenya
ICT	Information and Communications Technology
IEBC	Independent Boundaries and Electoral Commission
IPPG	Inter-Parliamentary Parties Group
ISP	Independent Service Provider
KADU	Kenyan African Democratic Union
KANU	Kenyan African National Union
KBC	Kenya Broadcasting Corporation
KCA	Kenya Correspondents Association
KEG	Kenya Editors' Guild
KNA	Kenya News Agency
KTN	Kenya Television network
KUJ	Kenya Union of Journalists
LLS	Local Language Station
MCK	Media Council of Kenya
MOA	Media Owners Association
MPDB	Medical Practitioners and Dentists Board



MSRA	Marketing and Social Research Association
MTL	Miller Trust Limited
NARC	National Alliance Rainbow Coalition
NCCK	National Christian Council of Kenya
NMG	Nation Media Group
NSE	Nairobi Securities Exchange
NSSF	National Social Security Fund
NTV	Nation TV
ODM	Orange Democratic Movement
PEV	Post-election violence
PNU	Party of national Unity
RMS	Royal Media Services
SG	Standard Group
SMS	Short Messaging Service
STV	Stellavision TV
TV	Television
TWKL	Trade World Kenya Limited
VOK	Voice of Kenya

Introduction

1

The media is a significant channel of communication. The manner in which it executes its duties has a critical impact on events such as political electioneering. In most developing countries, the print media has remained largely out of reach for the average citizen due to low literacy levels and non affordability.

In the Kenyan context, the print media is divided into four broad categories: regular (daily and weekly) newspapers; magazines; regional newspapers; and the 'alternative press. In the electronic media, radio has far wider reach than television (TV). Information and communications technology (ICT) provides new and significantly expanding communications opportunities through the mobile phone, e-mail, internet, blogs, and other social media tools. A comparatively new entrant into the Kenya media scene, in relation to elective politics, is the opinion pollster whose findings can significantly shape public opinion. Alternative media comprise populist dailies and

religious and village fora. Globally, the media has played a significant role in promoting good governance and development, but it has also posed major risks in certain areas. Most Kenyan electoral processes are marked by violence, but the intensity increases during the specific periods of immediately before, during and after general elections. This has been the case since the beginning of the multi party system. The violence that followed the disputed 2007 presidential elections was unprecedented.

The perception has been that Kenyan media's conduct was a significant trigger for the violence. Kenya's next general elections are due in March 2013,¹ placing the country at the crossroads of either prospering under the new constitution promulgated in 2010, or regressing into electoral violence once more. Hence this timely study: a review of the potential conflicts of interest that might arise from political influence in the ownership and management of the media in Kenya.

¹ In resolving a constitutional ambiguity over the date of the next general elections, the High Court set this at March 4th 2013. However, delays in preparations, such as the registration of voters, have raised some doubts on the efficacy of this date.

Three of the four Kenyans presently indicted before the International Criminal Court (ICC) for various crimes over the 2007/08 PEV hold media interests. One is a local-language radio journalist. Two are active politicians with reported media interests (see Section 6.2). While the journalist only recently (October 2012) decided not to contest a county political seat in Kenya's upcoming elections, the two politicians have declared their presidential candidacy. The concern extends to the media in general in the light of (often anecdotal) information that active and prospective politicians are investing in media outlets directly or through proxies (see Section 6.2), raising the scope for biased and politicized reportage. Further, there is practitioner evidence of extensive corruption by politicians and the corporate sector to influence media content.

Kenya's media straddles the formal/informal sector divide. The Media Act (2007), as umbrella legislation, establishes the national media oversight body, the Media Council of Kenya (MCK). The formal electronic media is governed by the Kenya Information and Communications Act (2009) while the print component is

governed by the Books and Newspapers Act (2009).

Years of single party rule rendered the Kenyan media a closed sector during the early independence decades. The government owned the only national TV and radio stations; and two multinational companies had near-absolute duopoly over the nation-wide print media. Into the 1980s, however, growing civil society demands coincided with the global drive for economic and political liberalization to change the landscape, with various private interests joining the industry, some linked – even if surreptitiously so – to the demands for greater political space.²

The grudging and therefore ad hoc manner in which the-then President Daniel arap Moi conceded to demands for media-focused reforms undermined orderliness in the process that allowed new formal and informal investors into the industry. While the media has since made great strides in formalising its legal and institutional frameworks, it constantly acknowledges the need for improvement and attention to previous oversights.

This is especially true against the backdrop of Kenya's promulgation

² As illustrated in Section 5.1, Kenya has a long history of media in politics. For detailed discussions of this history, see Ngugi (2012), Nyamora (2007) and MCK (forthcoming).

of its arguably progressive Constitution (2010). Media conduct during and after the 2007 general elections was not satisfactory. What needs to be most critically addressed is the interface between media owners, managers and journalists.

The primary task of this research report is to:

- ❑ Investigate nationwide political ownership of the full range of media outlets: print, online, television, radio (from community to mainstream media).
- ❑ Establish the political affiliation or ownership of opinion pollsters.
- ❑ Examine the make-up of the boards of governors of media institutions, their broadcast footprint areas and broadcast licensing (conditions under which license was granted and compliance).

The report also attempts to answer the following questions:

Who owns the media in Kenya?
What else do they own? Which politicians own media outlets or media groups in Kenya?

What is the social network of media owners in Kenya, i.e. those perceived to be business partners of media owners working especially in the political and economic arena?

How does ownership, as analyzed above, influence media content in Kenya, if so? How did media ownership influence the coverage of the 2007 general election, and how is it likely to influence the coverage of the 2013 general election?

Section 2 of this paper presents its research methodology. Section 3 provides a brief review of the models of media management, and the debates surrounding media ownership and its independence. Section 4 summarises the key frameworks for media management in Kenya.

A brief overview of the structure of the media in Kenya is presented in Section 5, whose influences on media independence and the scope for political interference is addressed in Section 6. The final section (7) makes some recommendations arising from the emerging picture on the interface between politics and media ownership in Kenya.

2

Research Methodology

The probing manner of data collection for this assignment required a research permit which was obtained from the National Council of Science and Technology. The research was conducted between March and October 2012, its design involving the following steps:

Literature review: This was designed to establish the nature of media ownership globally, as well as interactions between media owners, managers (editors) and journalists. The review would also cover the policy, legal and institutional frameworks within which the Kenyan media operates, and an examination of how these frameworks affect relations between owners, managers and journalists, especially in relation to electioneering.

Key Informant Interviews on the Kenyan Media Structure: This phase collected registration data on media operators to establish their legal status. It also explored the perceptions of key informants on the Ke-

nyan media industry. Finally, the foregoing processes pointed to material overlooked during the initial literature review. The various sources consulted include:

- ❑ Registrar of Companies and the State Law Office – registration data of formal media
- ❑ Ministry of Information – registration of opinion pollsters, and private, public and community print and electronic media
- ❑ Registrar of Books and Newspapers – registration of formal print media
- ❑ Communications Commission of Kenya – registration of electronic media
- ❑ Media Owners Association – media ownership; policies/frameworks governing interactions with editors
- ❑ Alternative Media Network – ownership and interactions with editors
- ❑ Media Council of Kenya – media self-regulation frameworks, especially with respect to interactions between owners and editors

3

Media Concepts and Practices

The characteristics of varied media models provide insights into the scope for interaction among protagonists, including the government, media owners, media professionals and society, which in-turn provides the basis for exploring specific media contexts, such as the place of political media ownership.

The motives for media investment can be commercial, political or both (Wanyande, 1995); these motives shaping, or being shaped by, the design of a national media model. Makokha (2010) distinguishes four media models, viz. the market model, social responsibility model, professional model, and the alternative media model.

Under the libertarian market model, the media environment is a free market of ideas in which there is neither state interference nor self-regulation among the practitioners. Juxtaposed against such a potentially utopian model is the social responsibility model which places societal interests above those of the

self. Consequently, while incorporating the right to publish, the model also expects high standards of self-regulation, allowing for possible government intervention such as in establishing a public broadcaster.

The professional model recognises the potential tyranny of the government and consequently strives for its own institutional and professional autonomy to enable it to keep the government in check, especially with respect to preserving the space provided to citizens through democratic struggles. Thus, the professional model informs of and comments on government conduct, but it also provides a platform on which the public can offer views on the same issues.

Finally, Makokha distinguishes the alternative media model which incorporates non-mainstream and non-formal operations at the grassroots and community levels. Makokha suggests that these models 'prune and subsume' the authoritarian state model and the developmental journalism model (2010:

274): yet, none of the four models adequately captures an absolute statist media in which no other opinion exists.³

Nonetheless, Makokha (2010) identifies six roles of the media in the democratic process, including: information dissemination; analysis of information; social representation; forum for discussion; entertainment; and oversight over the government. In discussing the media and electoral violence, Stremlau and Price (2009) distil these roles into three: mirroring the current status of society; amplifying on-going interventions; and enabling national agenda-setting. Success in these roles depends on the extent of the media's freedom from interference by owners (including politicians), the state and commercial interests, as well as – and critically so – the extent to which the media is itself professional, often gauged by its own conformity with a code of professional conduct.

Thus, Oriare et al (2010) are right to ask about who benefits from media liberalisation, which should benefit the masses who might however, have little or no access. Skewes (2007) and Johnson (2009) have

argued that agenda in the media is set by elites outside the sector, including advertisers (commercial interests) and politicians. A Marxian analysis of trends in media ownership argues that the loss of balance between public and private ownership leads to a loss of voice for capital and labour, jeopardising truth, freedom, progress and democracy (Welton, 2002: 368). This analysis sees government funding of private media as being as 'corrupt and crippled' as corporate funding of the public media.

Yet, therein exists a dilemma: Johnson sees corporate ownership as enhancing media concentration, increasing the quantity of the media, but neither its quality nor diversity of content. In the context, Beder (2004) sees the emergence of a 'propaganda model' in which money and power prune news and marginalise dissent to enable their own interests to dominate content.

While 'media diversity' is an ideal, Oriare et al (2010) distinguishes between its expanding (mere) 'outlets' as opposed to 'opportunities'. For media concentration transforms editors into 'proprietors' voices' in a context where 'objectivity' is not

³ Oriare et al's (2010) make a distinction between a government broadcaster and a public broadcaster, the former being an exclusive mouthpiece with low attention to objectivity, as opposed to the latter, a public resource.

synonymous with 'truth' (Beder, 2004). While content might have the attributes of objectivity – accurate; balanced; depersonalised – value judgement is critical for concerns, such as who was interviewed, what was asked and what was cited.

This filtering by media owners, advertisers and news agencies – such as through Johnson's 'eliminative journalism', 'feel good news' and 'agenda setting' – leads to an 'echo effect of master narratives' which undermine substantive investigative reporting. Johnson sees the consequence of this to be reliance by politicians on the media, which the public must therefore engage if they are to connect with their political leaders.

In effect, therefore, Welton (2002: 384) argues, media ownership becomes a greater weapon (than politics) for controlling people's 'minds and souls' (over political and socio-economic choices), making editors the "unelected and unregulated keepers of the public trust and moulders of the public mind."

Into which of the theoretical models does the Kenyan media fit? The review below should illustrate the fact that the media models are not discrete, that ascription to them is a fluid rather than static reality over time and space. This consequently calls for a legal and institutional framework that is sufficiently dextrous over the medium to long term, and across contexts, to manage the fluid realities likely encountered.

Notes

.....

.....

.....

.....

.....

.....

.....

.....

.....

Legislative and Institutional Frameworks

4

Kenya promulgated a highly transformative Constitution in 2010. This has triggered a flux in legislation: while the Constitution itself mandates the enactment of new legislation necessary for its full implementation, pre-existing legislation must also be reviewed to ensure conformity.

The Constitution has various implications for conduct of media business, occasioning the on-going reviews of the Media Act (2007) and the Kenya Information and Communications Act (1999). Of the Constitution itself, and certainly in relation to the current discussion on the impact of political media ownership on media content, media practitioners would do well to familiarise themselves with at least the following areas: the Preamble; Bill of Rights; Leadership and Integrity; and the principles of representation. Indeed, these constitutional provisions set the agenda for Stremlau and Price's (2009) media as a mirror, amplifier and enabler of national develop-

ment. The Preamble's ethno-cultural, social and governance values and Article 10's national values and principles which bind all individuals, are significant for the media in light of accusations that its broadcast of 'hate speech' contributed to the 2007/2008 PEV.

The Bill of Rights (Chapter Four) applies to all laws and binds all persons, and must be interpreted in order to favour fundamental freedoms (Article 20). In relation to the media environment, the Bill of Rights protects the media (professionals against owners and the public) by guaranteeing personal freedom and security (Article 29), freedoms of conscience, religion, belief and opinion (Article 32), and expression (Article 33), besides guaranteeing the media's own freedom (Article 34); but it also protects society against the media, by guaranteeing privacy over family and private affairs (Article 31). Besides the 'traditional rights (assembly, association and politics), Article 46 invokes the

consumer's right to goods and services of reasonable quality and the full information with which to enjoy such goods and services – provisions with implications for media content.⁴

Oriare and Mshindi (2008) adjudge the plethora of laws affecting the Kenyan media to be “controversial... retrogressive, punitive and repressive...”⁵ However, this report focuses only on the ownership and operational provisions of the three central acts, i.e. the Media Act, Kenya Information and Communications Act and the Books and Newspapers Act.

The umbrella legislation for the media industry is the Media Act (2007), which contains the Media (Complaints Commission) Rules (2009). In establishing the MCK (Section 3), the Media Act oversees “the conduct and discipline of journalists and the media (and) the self-regulation of the media and for connected purposes.” The Council's functions include mediation and arbitration in disputes between the industry and government, between it and the public, and within itself (Section 4). The Council is also obliged to advise the government on media professionalism, employment criteria,

and to promote media freedom and independence, ethical standards, discipline and rights of journalists. Its chief executive officer, the Secretary to the Council, should conduct an annual review of the profession based on the register it maintains (Sections 12, 13 and 19).

The Council has a membership of 13 graduate representatives of two public institutions and seven non-government media sector institutions (Sections 6 and 7) whose remuneration is provided through a parliamentary budget line and the Council's own revenues (Sections 11 and 18). MCK's main agency, the Complaints Commission chaired by an advocate assisted by three members, undertakes conciliation, mediation and arbitration (Sections 23 and 24), over complaints against media houses, their operatives, or on behalf of journalists. Appeals against Commission decisions can be to the Council, and eventually to the High Court on legal matters.

The Second Schedule of the Act provides the Code of Conduct for the Practice of Journalism, covering 23 areas of concern. Most relevant for a discussion on the impact of political media ownership on media

⁴ This matter is taken up by Section 46A of the Kenya Information and Communications Act's emphasis of 'public interest' and 'protection of privacy'.

⁵ The list includes: Defamation Act, Cap 36; The Penal Code, Cap 63; Copyright Act, Cap 130; Preservation of Public Security Act, Cap 57; Public Order Act, Cap 56; Film and Stage Plays Act, Cap 222 (1962); Chief's Authority Act, Cap 128; Official

content is the Code on Independence, which charts that professional journalists guard against self-interest, and commercial or political controls or influences as they gather and disseminate news.

On Integrity, journalists should not pay news sources, accept gifts, favours or compensation from those who might seek to influence coverage, or engage in activities that may compromise their integrity or independence.” These factors are echoed in the recently published Guidelines for Elections Coverage (MCK, 2012).

Part II of the Kenya Information and Communications Act (2009) establishes the Communications Commission of Kenya [CCK] which manages, amongst other aspects of communications, broadcasting services (Part IVA), licensing and enforcement (Part VI), electronic transactions (Part VIA), and fair competition (Part VIC).⁶ Under broadcasting, Section 46B provides for public, private and community stations, whose licences may be free-to-air radio or TV, subscription radio or TV, and subscription management. Licensees – which may not include

political parties – must keep to their respective categories, areas, geographical limits, and timeframes.

The intention to grant a licence must be gazetted for feedback within 30 days from the public (Sections 77–79). Section 46B declares Kenya Broadcasting Corporation the public broadcaster, while a private licence may be issued to any person fulfilling CCK conditions (Section 46G). The community radio licence is however, conditioned on, amongst other things, it being a not-for-profit community initiative, with an intention of involving the community in its management and benefits (Section 46H).

Stations must ensure a distinctive Kenyan identity, while broadcasting accurate, impartial and balanced news and views, and protecting the privacy of individuals (Section 46I) – such matters are overseen by the Broadcasting Content Advisory Council (Section 46S). Legislation prohibits unfair conduct by licensees (Section 84Q–S), and conditionally allows the minister or CCK to revoke licences (Sections 46J and P) and provides various financial and/or custodial penalties for infringements.

Secrets Act, Cap 187; Police Act, Cap 84; Armed Forces Act, Cap 199; Kenya Broadcasting Act, Cap 221; and ICT Act.

⁶ *The intention to supersede this legislation is contained in the Independent Communications Commission Bill (2010) about which Nairobi university journalism lecturer Oriare sees to: “provide(s) a good legal and regulatory framework for ensuring that the Information and Communications Act 1998 complies with the provisions of the Constitution 2010... meet(ing) the minimum international standards on broadcasting regulations.” (see http://eastafricapress.net/index.php?option=com_content&view=article&id=557:assessing-icck-bill&catid=133:media-law). Accessed 8/9/2012.*

The Act's Regulations (2009) provide that licence applicants follow CCK prescribed procedures (Section 3). Applications for commercial broadcast licences must be accompanied by a business plan which reflects technical capacity, experience or expertise, programme line-up or schedule and the capacity for eight hours of continuous broadcasting per day (Regulations, Section 4). For community broadcasting, the applicant must provide minutes of meeting(s) that resolved on the need to establish the service, funding sources, sustainability and weekly programming (Section 5). Section 10 of the regulations declares that no individual entity will be issued more than a frequency per area.

Any changes in the ownership status of the frequency require CCK approval. While community stations must re-invest in their respective domains, all stations must espouse decorum in content and conduct (Sections 19–29) and facilitate complaints handling procedures (Section 39).

Arising from perceived shortcomings of the Kenya Information and Communications Act – notably with respect to CCK's status as an inde-

pendent communications regulator, the Independent Communications Commission Bill (2010) has been published. It includes the establishment of the Independent Communications Commission of Kenya (ICCK), the dissolution of the CCK and amendments to existing sector legislation, among which is the Media Act and the Kenya Information and Communications Act.

The Bill is derived from Article 34 of the Constitution which provides for the freedom and independence of print, electronic and all other media, from state control or interference, except as required by licensing provisions. Specifically, the Bill responds to Article 34 (5) which requires legislation establishing “a body... independent of control by government, political interests or commercial interests (reflecting) the interests of all sections of the society; and (setting) media standards (compliance with which it) regulate(s) and monitor(s)...”

Designed to assume CCK's functions, the ICCK will have a chair and six commissioners identified by the Public Service Commission through a competitive process and thereafter appointed by the President. To

facilitate sub-section 5, the Bill bars all public servants and political office holders from the Commission whose members will be full-time staff.

As noted above, the Internet and other forms of technology are providing a new and important but hitherto weakly regulated media platform. Consequently, the Information Communications and Technology [ICT] Bill (2012) is in the pipeline. Its main objectives include empowering the CCK and harmonising all ICT legislation.

With respect to broadcasting, it addresses local content and media diversity, which the current legislation ignores despite its being in the

media policy document. However, the bill has been criticised for paying scant attention to the media's obligations to the public and an outlet's obligations ahead of licence renewals.

For the print media, the Kenya Books and Newspapers Act establishes the office of the Registrar of Books and Newspapers, with whom two copies of every publication must be deposited (Sections 3 and 7). Printers and publishers must in the first instance deposit a Kenya Shillings 1 million bond backed by sureties – validated through registration with the Registrar of Documents – against which any subsequent liabilities would be defrayed.

Notes

Notes

A series of horizontal dotted lines for writing notes, overlaid with a decorative graphic of wavy lines and arrows.

A Review of the Kenyan Media in Practice

5

Only a keen look at the historical perspective will help us to clearly understand the character of contemporary media ownership in Kenya. It is likely that the most apparent insight from this review will be the extent to which the Kenyan media has always been politicised, both during colonialism and into independence. That background offers an insight into the dialectics governing the contemporary Kenyan media industry.

5.1 A History of the media in Kenya

The origins of the modern media in Kenya was extensively racialised with missionaries evangelising ‘natives’, Europeans championing their settler and investor interests, and Asians and Africans championing justice for themselves (MCK, forthcoming; Ngugi, 2012; Nyamora, 2007).⁷ Of the print media, the ear-

liest publication was the Christian Missionary Society’s quarterly, *Taveta Chronicle* launched in 1895, followed by the Church of Scotland mission’s *Kikuyu News* and the Catholic Church’s *Wathimo Mukinyu* and *Rafiki Yetu*. On the secular front, the pioneering publication was *The East Africa and Uganda Mail* (1899-1904). In 1901, Alibhai Jevanjee launched the *East African Standard* in Mombasa, but this was eventually bought out by colonial interests in 1905, moving it to Nairobi in 1910 to continue to represent the mainstream European viewpoint (Nyamora, 2007).

In the intervening years to the 1952 declaration of the state of emergency, the Asian community was involved in the media industry for their own consumption. Fledgling African nationalists were also busy publishing, some with the help of Asian entrepreneurs, such as Achariar printing Jomo Kenyatta’s *Mwigith-*

⁷ *Modern media* acknowledges the existence of a pre-colonial traditional media.

ania (launched 1928) and the Vidyarthi publishing the Kenya African Union's *Sauti ya Mwafrika* (1945). Among the other earlier publications were Harry Thuku's *Tangazo* (1921) and H.M. Owiti's *Luo Magazine* (1937). Into the post world War II period, Oginga Odinga's press printed *Ramogi* and *Nyaza Times*, and other African publications like *Agikuyu Mwiathia*, *Mulinavosi*, *Mumenyereri* and *Paul Ngei's Uhuru wa Mwafrika*.

Nyamora (2007) reports the existence of 17 independent papers by 1946, which prompted the settler driven *Standard* to sponsor local language publications. New sedition and libel laws enacted in 1950 raised the costs of publishing, giving rise to an alternative media. At the 1952 declaration of emergency, all African papers were banned, the colonial government filling the resulting gap by sponsoring several local language publications beginning 1954, while employing the restrictive *Books and Newspapers Act* to maintain control of the sector (Oriare and Mshindi, 2008).

However, Nyamora (2007: 53-4) reports that editors cleverly kept issues of nationalism alive by covering related developments in other countries, like South Africa. Into

the eve of independence, various papers emerged culminating in the Aga Khan's 1960 launch of the *Nation* to counter the anti-African stance of the *Standard*.

At independence, the mainstream press was foreign owned, a convenient reality for Kenyatta's leadership style, which quickly turned against the nationalist aspirations of the independence struggle (Odinga, 1965). The 1968 legislation of the *Official Secrets Act* was a clear indication of the direction the government was taking over information and media freedoms. Additionally, *Nation* soon became an arena of editorial struggles with its ownership keen on toning down criticisms of the government, resulting for example, in the departures of editors John Abuoga, Hillary Ng'weno and George Githii (Nyamora, 2007: 62-7). With political detention without trial in the statutes alongside the *Official Secrets Act*, it became very easy for the increasingly repressive Kenyatta government to contain dissent that would have come through the media.

By 1967, the British multi-national, LONRHO had bought out *The Standard*, joining the Aga Khan in the market stranglehold of foreign own-

ers even as enduring publications like the National Christian Council of Kenya's (NCCCK) Target/Lengo chugged away quietly in the background, edited at some point by the indomitable Bishop John Henry Okullu who would in 1974 author the controversial Church and Politics in East Africa. The 1970s and 1980s saw the emergence of various other mainstream publications, notably Ng'weno's The Weekly Review (1975) and his daily Nairobi Times – which the sole political party KANU acquired and renamed Kenya Times, both initially edited by veteran journalist Philip Ochieng'.

After the 1982 coup attempt, the then President Moi's government had become additionally repressive, transforming Kenya into a constitutional single-party state. With the mainstream press largely intimidated into towing the government line, the gap in critical journalism was gradually taken up by various publications of varied levels of seriousness that have generally been dubbed the 'alternative media' (Nyamora, 2007).

These publications included the courageous Gitobu Imanyara's Nairobi Law Monthly launched in 1982. Njehu Gatabaki's Finance was

launched in 1984 while Pius Nyamora's Society (1988) would have the distinction of pioneering cartooning the President, no mean feat during a period that saw the emergence of 'subversive' publications like Mwakinya and Pambana whose possession consigned many individuals into prison or preventive detention.

Into the late 1980s, NCCCK'S Target/Lengo would courageously publish Odinga's series of 'open letters' to President Moi on the state of democracy. These initiatives heightened the government's displeasure with the media, causing the banning of some 20 publications in the two years to 1990. A notable publication launched in 1992 was ex-detainee Kenneth Matiba's weekly newspaper, The People edited by Bedan Mbugua, which took criticism of the government to unprecedented heights. Matiba also authored the autobiographical Kenya Return to Reason which was banned a year later in 1994. These struggles saw many Kenyans tortured, maimed, imprisoned, detained without trial and even killed.

Regarding electronic media, the colonial government launched the East African Broadcasting Corporation (1927), later English Broadcast-

ing Corporation (1928), targeting news to European settlers (Oriare and Mshindi, 2008). The first official broadcast focus on Africans came through the 1939 launch of the African Language Broadcasting Services using eight local languages. The seven-language African Broadcasting Service was launched in 1953, clearly designed to counter the Mau Mau uprising.

This expanded through the 1959 launch of the Kenya Broadcasting Services. Given the financial and technological needs of this sub-sector, it did not generate the private interests seen in the print media. Into the 1950s, however, the African Inland Church's Bibilia Husema Studios had launched Radio Kijabe, which remained for many years the sole privately owned station in the country.

On the eve of independence, the colonial radio station was renamed Kenya Broadcasting Corporation (KBC), a further change in 1964 creating the Voice of Kenya (VOK), a couple of years after the launch of its TV service. Oriare et al (2010: 6) report a Homa Bay 1982 initiative to be the first licensed community radio station whose opera-

tions were however, short-lived. In turn, Mangelete applied in 1997, but had to wait for its licence until 2002. In the meantime, however, in the mid-1980s the first private TV station, STV, reportedly owned by Ng'weno, was licensed. Ng'weno had sold Nairobi Times to KANU party – opening the door to privately-owned TV stations, such as Kenya Television Network (KTN). In this period, the VOK was transformed into a state corporation, the station reverting to the KBC name.

This highly restricted radio and TV environment remained as such until 2000, despite various attempts by entrepreneurs to register private radio stations. Notable among these attempts were the repeated applications by the Nation Media Group (NMG) and those of Royal Media Services (RMS) proprietor S.K. Macharia.⁸

Githii has remarked on the tolerance of Kenyatta towards the media, with the former president in one instance asking merely that government position on political detentions without trial be also explained.⁹ Successor president Moi was however less tolerant even as vice-president, a factor that probably led to KANUS'

⁸ Macharia's run ins with the government also extended to long-running litigation over his paper mill investment in Webuye.
⁹ See Press Reference: Kenya. Available at <http://www.pressreference.com/Gu-Ku/Kenya.html> Accessed 4/11/2012.

desire to own its own media outlet, Kenya Times.

While Kenyatta's aura generated media self-restraint, media repression during the Moi era has been well documented.

The list of the victims during 1994-95 included Alex Chege, Julius Mookaya, Mutegi Njau, Joseph Ngugi and David Makali (Article XIX, 1995). Ever the reluctant reformer, the government instituted several inquiries into media reforms through the 1990s;¹⁰ yet, it was not until 'people power' succeeded in instituting the 1997 Inter-Parliamentary Party Group (IPPG) reforms that hope for substantive change arose. IPPG did away with various constitutional and legal constraints to the freedoms of conscience, assembly and participation, amongst other areas.

While Moi won the 1997 presidential elections, IPPG had unshackled his monopoly of political power in irreversible ways. The IPPG did away with sedition in the statutes, which Moi had employed to deter critical journalism; but the system fought media freedoms through libel and slander suits. In 2000 for example, cabinet minister Nicholas Biwott

won US\$375,000 in damages from the authors of a book linking him to the murder of the late foreign affairs minister Robert Ouko, with the store selling the book ordered to pay US\$ 125,000 (Ochieng', 2011). Biwott was in 2002 awarded a further US\$ 250,000 for a 1999 story in Matiba's People Daily that had linked the former to a hydro-electric power station scam.

In the late 1990s the national telecommunications parastatal was split into the distinct functions of the CCK, Telkom Kenya Ltd and the Postal Corporation of Kenya. With CCK as a mere regulator of broadcasting, the pressure grew for the licensing of private stations, made possible by the addition of frequencies in the mid 2000s. After Mwai Kibaki's 2002 victory, economic recovery soon brought benefits to the information and communications sector. Kibaki's post-2003 economic revival strategy opened up opportunities for SK Macharia and others (see Box 5.1). It is the intense mistrust of (the Moi) government in the management of the media sector that led to a weakly regulated liberalisation context within which RMS ended up capturing an exten-

¹⁰ Successive orchestrated task forces came up with proposals that did not substantially reform the media environment, and were appropriately rebuffed. For details, see Oriare and Mshindi (2008)

sive share of sector resources.¹¹

Thus there is evidence that leading politicians position themselves for a substantive slice of the media industry through direct ownership of print and electronic outlets. There is further evidence that some, who might not have the same financial clout, are also purchasing media content through surreptitious means, such as engaging media practitioners at various levels as gate-keepers for private interests (Namwaya, 2010). Given the fickle nature of Kenya politics in which upwards of 50% of parliamentarians lose their seats at succeeding general elections, this ad hoc approach may be seen to be more cost-effective than the outright ownership of a media outlet.

5.2 Structure of the Kenyan Media

As noted above, conduct for the entire formal Kenyan media industry is governed by the Media Act (2007), which creates the MCK. The Kenyan print media is specifically governed by the Books and Newspapers Act which establishes the office of the Registrar of Books and Newspapers in the State Law Office/Attorney General's office. For the electronic

media, the Kenya Information and Communications Act establishes the CCK, which is answerable to the Minister for Information and Communications.

The potential damage to national security, which in theory can occur through brief and illegal access to the airwaves, inspires the government to ensure stringent monitoring. The same vigilance is not applied to the print media, which gives rise to an informal sub-sector. The pre-conditions imposed on printers and publishers by the Books and Newspapers Act are quite demanding for a country with nearly 50% of the population living in poverty. This results in non-compliance by many of the sectors' operators, even though the exact extent is not known, as acknowledged by a March 2010 Kenya Copyright Board document.¹²

Before considering the context of the various individual media categories, it is useful to have a picture of their comparative influence. Radio penetration is greatest at about 90% according to Steadman statistics for 2008 cited by Oriare et al (2010).¹³ The added significance of radio is that one set can serve a multiple ears – as GEs in a matatu or in

¹¹ Contemporaneous operations of the Kenyan media are discussed in Section 6.

¹² See Q. 45 at www.wipo.int/export/sites/www/copyright/en/registration/replies/doc/kenya.doc+kenya+a+compliance+books+and+newspapers+act&hl=sw&gl=ke&pid=bl&srcid=ADGEEsgjox6q2TppwKFyXMcgCRN-M4010GSAzmHlx8opz11bBS98jipfklcRQ-KR3zE_pKWguQvngbgFnrpvpPbMYTqUOmth8_KcCarNAA5xT85SH3k3.JnsBuhn545btpnux7zyLwrlGZ&sig=AHIEtbR1sLnHVNj0eY8U7urZMhYqOwSp5Q Accessed 7/09/2012

Box 5.1: S. K. Macharia: Kenya's media mogul¹⁴

Viewed from the perspective of audience size, S.K. Macharia's Royal Media Services (RMS) is arguably the leading media house in the Eastern Africa region; yet, it was not always like that! Born into abject poverty, Macharia aspired beyond his Primary-3 teaching certificate to eventually win a 'Mboya Airlift' scholarship to the US. Despite the backdrop of the 1960s civil rights movement, Macharia was apparently greatly impressed by the host country's 'uplifting of justice and human rights'. Returning to Kenya in 1968, civil servant Macharia developed into an astute businessman trying his hand at many ventures. A 1970s visit to an Italian paper recycling plant inspired his investment in the ill-fated Madhupaper Kenya. At Kenya's 1992 return to multi-party democracy, Macharia appreciated the might of the media: his preferred presidential candidate Oginga Odinga lost badly. Electronic media monopolist KBC refused with impunity to carry the Odinga campaign adverts which Macharia had personally paid for.

Even as KBC refused to refund his advertising fees, Macharia resolved to launch his own media outfit. The Information ministry initially denied him a licence; but years of litigation finally secured one in 1998, only for his operations to be interrupted in 2000, and again in 2001 when the paramilitary police vandalised his country-wide network. Re-launched ahead of the 2002 general elections, and with Macharia in tussles with Moi on multiple fronts, RMS became the opposition National Alliance Rainbow Coalition (NARC) and Kibaki's mouth-piece, implicitly countering KANU's monopoly of KBC. Against the backdrop of the euphoric democratisation and attendant liberalisation policies of a NARC government that 'owed him', Macharia acquired numerous electronic media frequencies. He used these to thank Kibaki through blanket support during the 2005 referendum on the proposed constitution whose failure ended the NARC honeymoon. RMS' support for Kibaki would be even more explicit into the fateful 2007 elections with Inooro FM being amongst the stations adjudged to have instigated the post-election violence.

The 2002 media liberalisation occurred in the absence of a substantive regulatory framework, which individuals like Macharia exploited. While independence had been legislated for the Communications Commission of Kenya [CCK], provisions, such as the ministerial appointment of its management, undermined such autonomy. Politically-connected individuals like Macharia could violate the pertinent legislation with impunity. When CCK tried to enforce licensing, Macharia teamed up with the Nation Media Group to block CCK through protracted judicial processes. Thus RMS has operated unlicensed for years. However, Macharia has also fallen foul of the courts that have previously protected him, and recently faced a bankruptcy judgement over a KShs 35 million award against him and his wife in 2001. Should Macharia lose the various cases against government agencies, he will experience extensive financial stress. That possibility is likely to determine Macharia's choice of candidate for the upcoming presidential elections.

¹³ Data from 2008 is admittedly old. While AudienceScapes provides 2009 data, its analysis covers only the top media outlets. See <http://audiencescapes.org/country-profiles/kenya/media-and-communication-overview/radio/radio-323> Accessed 6/11/2012.

¹⁴ Much of the foregoing information is from a 19/10/2012 speech by Macharia to Kenyatta University Students on Business Perspective. Available at http://www.ku.ac.ke/images/stories/featured/chairman_rms_ku_speech.pdf Accessed 24/10/2012.

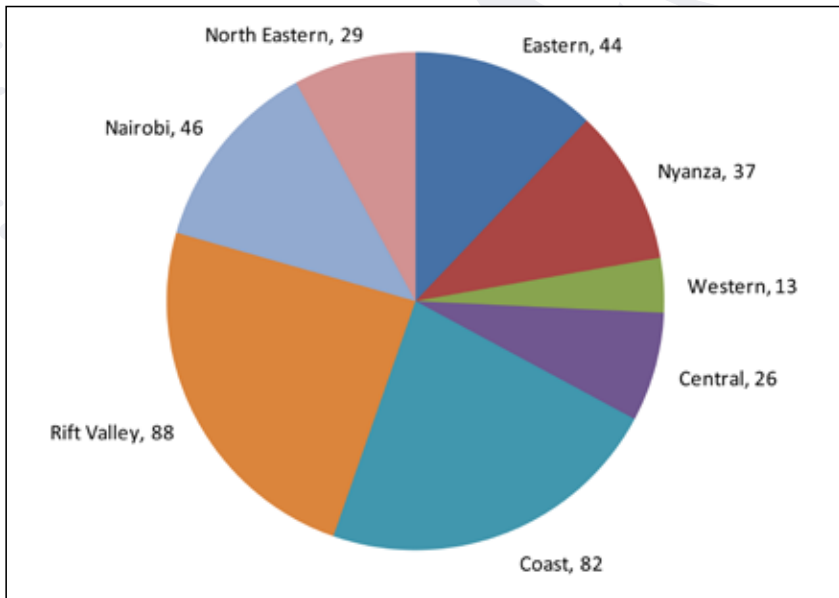
the village. While TV is a very attractive medium, it only reaches 39% of the population. The newspapers' limited coverage – 23% – reflects both literacy and cost constraints. Thus, entrepreneur and politicians would be most likely to target radio for its cost effectiveness and wide reach. The significance of these realities is heightened by the trust Kenyans have in the media – for “gospel truth”, with 81% believing it to report accurately on the government (Oriare et al, 2010: 60). It is thus easy to agree with the observation that: “politicians have found

that if you have [media ownership] then you will spend less and influence more (voters) (Abdi and Deane, 2010: 5).”

5.2.1 Radio

As at October 2012, CCK has issued nearly 365 radio frequencies listed by location of transmitter, about 300 of which are operational, reported ‘on air’.¹⁵ KBC accounts for 85 (22%) of the frequencies, but 64% of these are ‘not on air’. RMS has 63 frequencies – 16% of the total, with only 3 ‘not on air’.¹⁵

Figure 5.1: Regional Distribution of Radio Frequencies -



Source: CCK database

¹⁵ The National Assembly presently broadcasts live parliamentary debates on 92.80 MHz, a KBC frequency.

Table 5.1: Distribution of Radio Stations by Language of Broadcast¹⁶

Broadcast Language/Dialect	FM Stations
DhoLuo	Mayienga (N); Nam Lowle; Radio Lake Victoria (Osienala); Ramogi FM
DhoLuo/Kiswahili	Radio Maendeleo; Sahara;
Embu	Wimwaro;
English	Capital; One; Classic; Easy; Family; Hot; Hope; KBC English Service (N); Kiss 100; Venus; X;
English/French	Radio France International ;
English/Hindi	East; Sound Asia Radio;
English/Sheng	Homeboyz;
Giriama/Miji Kenda/Kiswahili	Bahari; Pwani (N); Kaya;
Kalenjin	Chamgei; Kass; Kitwek (N);
Kamba	Athiani; Musyi; Radio Mangelete; Mbaitu; Syokimau
Kikuyu	Coro; Countryside; Inooro; Kameme;
Kisii	Minto; Egesa;
Kiswahili	Baraka FM; Biblia Husema Broadcasting; Pamoja FM; Citizen Radio; Pilipili; Radio Jambo; Radio Amani; QFM; Radio Maisha; Radio Rahma; Radio Salaam; Radio Taifa (N); Radio Salaam; Sauti ya Mwananchi; Sheki FM; Sifa; Sifa Mataa; Milele FM;
Kiswahili/English	BBC; East Africa Radio; Equator; Heroes; Radio Umoja; Sayare FM; Voice of America; Waumini Radio;
Luhya	KBC Western (N); Mulembe; West;
Luhya/Kiswahili	Radio Mambo;
Maasai	Nosim;
Meru	Mugwambo Ivetu; Mwariama; Muuga FM;
Sheng	Ghetto Radio; Koch FM;
Somali	Frontier; Garissa; KBC Eastern;
Somali/Kiswahili	Iqra; Star FM;
Taita	Anguo FM;
Turkana	Akicha.

Source: MCK (forthcoming) citing Reelforge Media; and own compilations

¹⁶ The list of FM stations might either be incomplete or include duplications due to variations in the spellings of the names of various stations. For example, some documents refer to Çhamge FM which might be a misspelling of RMS' Chamgei FM. Also consider Sheky FM and Sheki FM.

The National Assembly has 21 frequencies none of which is 'on air'. The other 3 frequencies 'not on air' belong to Elgonet Telecommunications Technologies.¹⁷ Nation Media Group and Kalee Ltd have 6 frequencies each. Regionally, Rift Valley province leads with about over 88 frequencies, followed by Coast province with 82 frequencies; but Nairobi with 46 frequencies has the highest density of radio frequencies, the regional percentage shares be-

ing illustrated in Figure 5.1.

Since the liberalisation of the airwaves, a notable trend has been the growth not just in FM stations, but also in local language – so-called 'vernacular' – FM stations [LLS]. In 2000, Kameme FM became the first LLS, whose operation was however suspended the following year. A new round of local language stations emerged starting 2004, their distribution covering all of the major ethnic languages across the coun-

Box 5.2: Community Radio Stations

Kenya Institute of Mass Communication – Nairobi

Koch FM – Korogocho, Nairobi

Maseno University – Maseno

Masinde Muliro University – Kakamega

Pamoja – Kibera, Nairobi

Radio Maria Kenya – Muranga

Ghetto FM – Kawangware, Nairobi

Sidarec – Pumwani, Nairobi

Light FM – St. Paul's Theological University – Limuru, Nairobi

Others which are members of the the Community Radio Association of Kenya include:

Bulala FM, Budalang'i, Busia

Serian FM, Maralal, Samburu

OI toilo le Maa, Suswa, Narok

Mugambo Jwetu FM, Tigania West, Meru

Mang'elete FM, Kibwezi, Makueni

Kangema FM, Kangema, Murang'a

Wajir FM, Wajir.

¹⁷ For some ownership details, see section 6.2.

try. As Table 5.1 shows, there is at least one local language radio station for each of Kenya's most populous ethnic groups, Kikuyu, Luhya, Kalenjin, Luo Kamba, Kisii and Meru, who constitute about 70% of the national population. Kiswahili, the national language and one of the official languages, has the largest number of stations, followed by English, the other official language.

There are various other radio stations whose primary language of broadcast was not established, but it is likely that they use either Kiswahili or English or both languages. These include: Bahasha; Family; Fish; Hero; Imani; Injili; Jesus is Lord; Mambo; Pambo; Radio 316; Relax; Shine FM; Umoja; Uptown; Voice of Africa; Radio Waumini; and YFM. Additionally, Box 5.2 lists the registered community radio stations which are non-commercial by statute, and invariably broadcast in the local language even if they may have a little Kiswahili programming.

Table 5.2 illustrates the dominance of RMS-operated radio stations, based on a survey of listeners above 15 years of age conducted by Ipsos Synovate during the first quarter of 2012. RMS's Radio Citizen which broadcasts nationally

was listened to by about 50% of the respondents. RMS' six local language stations – Mulembe, Inooro, Ramogi, Musyi, Chamgei and Egesa – are also competitive against other stations broadcasting in the same languages. For example, its Kikuyu-language station Inooro FM outperforms the much older Kameme FM, even if Kass FM outdoes its Chamgei FM.

While these performance data put various stations in the shadows, it is critical from a political influence perspective that the stations which are small on the nation-wide radar are not ignored, because they can be very significant in influencing people at the grassroots level where political turmoil is fomented.

5.2.2 Television

For television, the CCK has issued 108 frequencies across the country. Regionally, the expansive Rift Valley has the largest number of frequencies, 28. Nairobi and Coast provinces have 18 each. While North Eastern province is also expansive, socio-economic factors mean the region has only two frequencies. Central province has 9.

As with radio frequencies, KBC dominates the TV frequencies with

Table 5.2: Top 50 Radio Reach (% shares)

Radio Station	Market (%)	Radio Station	Market (%)
Citizen (RMS)	49.78	Mbaitu FM (Eastern Broadcasting Corp)	3.23
KBC (state owned)	25.04	Nam Lolwe FM (Neural Digital)	3.22
Milele (Digitopia)	24.86	Muuga FM (RMS)	3.13
Q FM (NMG)	16.68	Lake Victoria FM (OSIENALA)	2.90
Jambo FM (Africa Ltd)	16.41	Radio Star (North Eastern Media & Telcomms)	2.86
Inooro FM (RMS)	15.42	Bahari FM (RMS)	2.77
Kiss FM (Radio Africa)	15.19	Kaya FM (Southern Hills Development Agency)	2.64
Kameme FM (Media Max)	12.34	Kisima FM	2.52
Ghetto Radio (SIDAREC Pwani)	12.00	Risala FM	2.45
Coro FM (KBC)	10.17	Capital FM (Capital Group Ltd)	2.40
Ramogi FM (RMS)	9.98	Radio One FM (GO Communications)	2.40
Classic FM (Radio Africa)	9.47	Syokimau FM (Eastern Broadcasting Corp)	2.35
West FM (KBC)	8.85	Injili FM (Africa Gospel Church)	2.26
Musyi FM (RMS)	7.21	Minto FM (KBC)	2.19
Kass FM (Kalee Ltd)	6.42	Pwani FM (KBC)	2.18
Easy FM (NMG)	5.91	Baraka FM (FEBA Radio)	2.15
Chamgei FM (RMS)	5.89	Wimwaro FM (RMS)	2.14
KBC English (KBC)	5.14	Metro FM (KBC)	2.05
BBC (Foreign)	5.10	Imani FM (International Christian Ministries)	2.02
Radio Maisha (SG)	4.85	Kitwek FM (KBC)	1.82
Sayare FM (Sauti ya Rehema)	4.35	Sauti ya Mwananchi FM (Sauti ya Mwananchi FM&TV)	1.73
Egesa FM (RMS)	4.08	Hope FM (NPC)	1.55
Mulembe FM (RMS)	4.05	Sahara FM (Ke-Wi Media)	1.50
KBC North Eastern (KBC)	3.40	Jesus is Lord (International Children's Mission)	1.40
Bibilia Husema (AIC, Kijabe)	3.38	Mambo FM (SG)	1.40

Source: Ipsos Synnovate (2012)

Table 5.3: Regional Distribution of TV Frequencies

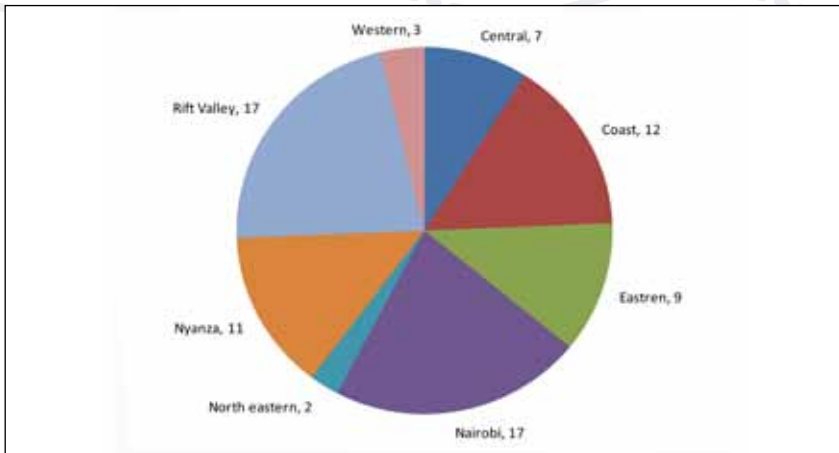
Region	Frequency of Stations
Central – 7	Nyahururu - 1
	Nyeri - 6
Coast – 12	Lamu - 1
	Malindi - 1
	Mombasa - 10
Eastern – 9	Kitui - 1
	Machakos - 2
	Makueni - 1
	Nyambene - 5
Nairobi – 17	Nairobi - 17
North Eastern – 2	Garissa - 2
Nyanza – 11	Kisii - 5
	Kisumu - 5
	Migori - 1
Rift Valley – 17	Eldoret - 8
	Kapenguria - 1
	Lokichogio - 1
	Nakuru - 7
	Rongai - 2
	Timboroa - 3
Western – 3	Webuye - 3

Source: CCK database

45 (41.7%); but it also owns all the 25 frequencies which are ‘Not on Air’. Among the private investors, RMS has 11 frequencies; KTN has 9, with 7 for NMG. KBC’s monopoly of frequencies – more than half of which are not on air, means that the vast northern Kenya has no terrestrial TV broadcasts, viewers having to acquire satellite dishes.

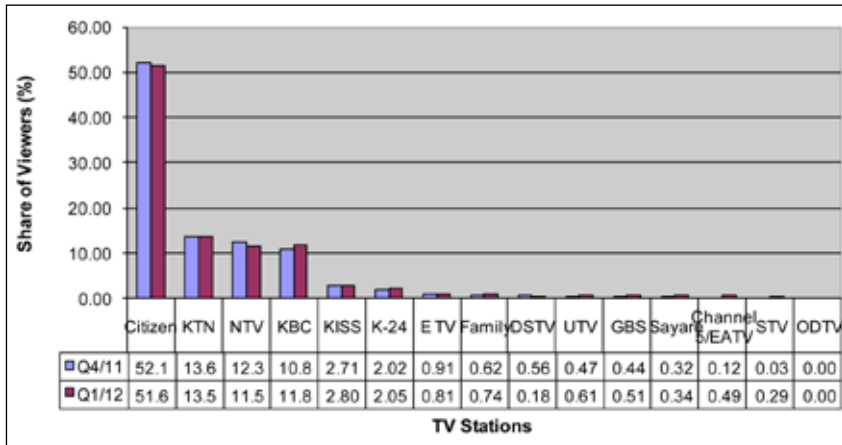
The regional distribution of TV frequencies is summarised in Table 5.3 and Figure 5.2. Nairobi’s extensive endowment – both in numbers of frequencies and their power likely explains the low subscription for Central which neighbours Nairobi. The expansive Rift Valley has the largest number of stations.

Figure 5.2: Regional Distribution of TV Frequencies



- Source: CCK database

Figure 5.3: Share of TV Viewing Across Stations – 2011 and 2012



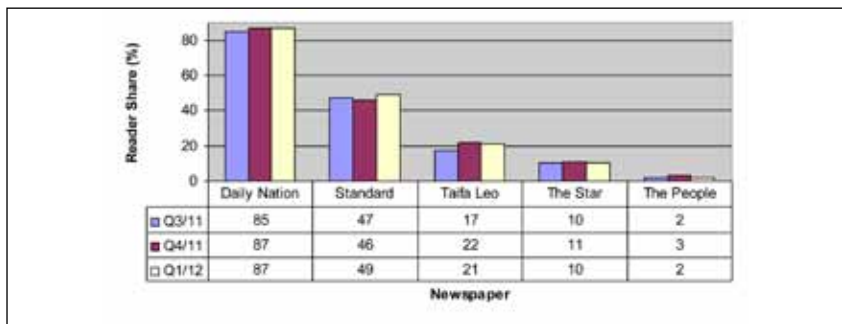
Source: Ipsos Synnovate (2012)

North Eastern province is also expansive, but is inhabited by nomadic pastoralist communities. Located at the southern-most tip of the province, Garissa signals cannot reach the population concentrations of Wajir (450km) and Mandera (750km)

whose peoples are therefore denied participation in national debates.

CCK data shows a total of 22 TV stations on air. RMS' dominance of the radio sub-sector is also extended to TV viewing as illustrated in Figure 5.3.

Figure 5.4: Daily Newspaper Readership – Past 7 Days Trend



Source: Ipsos Synnovate (2012)

5.2.3 Print

As will be illustrated below, there is extensive cross-media ownership in Kenya; yet RMS has not had a significant impact in the print media, its fledgling initiative, The Leader, collapsing several years ago.¹⁸ While the Aga Khan's Daily Nation made a comparatively late (1960) entry into the print media (see Section 5.1), it soon became and remains dominant in the sub-sector. Figure 5.4

shows that NMG's flagship product, the Daily Nation, accounts for a daily newspaper market presence that is double that of its nearest rival, the Standard Group's [SG] Standard, their respective circulations being 205,000 and 75,000 for 2009. NMG's dominance is underscored when its Kiswahili publication, Taifa Leo, and its Business Daily are also considered. NMG also has the very influential weekly – Sunday Nation

Box 5.3: Print Media in Kenya

Dailies

Business Daily; Daily Nation; People Daily; Taifa Leo; The Standard; The Star

Weeklies

Coast Week; Financial Post; Inside Kenya Today; Newsweek; Standard on Sunday; Sunday Nation; The County Weekly (Nation); The County Weekly (Standard); The East African; The Economist; The Sunday Express; The Weekly Citizen; Time.

Monthlies

African Business; African Woman; Business Journal Africa; Business Monthly EA; Business Woman; CEO Africa; CIO East Africa; Drum; HFM; Kenyan Kitchen; Management; Nairobi Law Monthly; New African; Parents; Passion; Prime Parenting; Small and Medium Enterprise; Sports Monthly; The Diplomat; The Insider; True Love.

Bi-monthlies

BBC Focus on Africa; Biashara Leo; Business Africa; Business Post; Go Places; Safari Digest; Sokoni.

Quarterlies

Chobo; Doctor News; G; Her; HM; Host Africa

¹⁸ While there is a prevalent opinion that The Leader self-destructed through an excessive pro-Kibaki bias, an RMS executive notes that its withdrawal from circulation was a conscious decision to focus the media group exclusively on the electronic media sub-sector.

– which outstrips its most immediate competitor, Sunday Standard. Launched in 2009, The Star is a new entrant to the sub-sector and performs well for its age, while The People is undergoing restoration, its Media Max owners having bought it from retired politician Kenneth Matiba's Kalamka Ltd in 2009. The survey report's focus on mainstream newspapers means it has omitted the alternative media where the controversial Citizen Weekly reportedly sells close to 30,000 copies because of its salacious reports. Box 5.3 provides a summary of publications categories and the various papers in each category.

Besides the mainstream commercial publications listed above, the Directorate of Information also has some regional community papers, which are a carry-over from the early 1990s initiatives of UNESCO to encourage grassroots journalism.

The following are among the current titles, based on the information department's database: The Sun (Kabarnet); The Eye/Mwangaza (Siaya); The Eastern Star (Machakos); Ngao (Nakuru); Sauti (Keri-

cho); Sauti ya Gusii (Kisii); Nuru (Isiolo); Nyota ya Magharibi (Vihiga); Sauti ya Pwani (Mombasa); Maarifa (Murang'a); and Habari (Garissa)

Finally, local entrepreneurs have also invested in various grassroots publications with varied sustainability, according to KCA information.¹⁹ In Nairobi, there is The Truth and Education News. The Kajiado/Narok region has Kajiado County News and Narok County News. Migori has The Link. Kericho has South Rift Times; and Kisumu the Nyanza Weekly.

Towards the north-west, Bungoma produces Horizon Weekly and Community Eye, and the Eldoret/Kitale area has Trans Nzoia Magazine, Trans Nzoia Times and Weekly Mirror. Central Province has four publications, including Slopes Weekly, County Leader, Highlands Tribune and Business Express. While Machakos has The Anchor, Meru has three publications, including Imenti News, Wembe and County Focus. Finally, Mombasa has the long-running, tourism-focused Coast Week and Pambazuko which discusses coastal issues.

¹⁹ The ownership of some of these publications is discussed in Section 6.2.

5.2.4 Mobile Telephony and the Internet

While telephone services have been important in Kenya over the years, the outreach was severely constrained by inefficiency at the monopoly provider, Kenya Posts and Telecommunications Corporation, later transformed into Telkom Kenya Ltd. While Telkom launched the pioneering mobile telephone service around 1997, the high access costs constrained use to the upper income brackets of society until the entry of a second provider in 2000. This liberalisation generated competition that reduced costs. The mobile phone provides a new important means of communication in Kenya, through the voice message and the short-message service (SMS) or text message. By 2012, there were 25.3 million subscribers, according to CCK data, up from 9.3 million in 2006/07.²⁰ CCK reports that the SMS load grew from 316 million in 2006/07 to 2.6 billion in 2010/11. Safaricom accounts for a dominant 64% of the market share, with Airtel, Orange and Essar accounting respectively for 16.5%, 10.5% and 9%.

Additionally, there has been rapid growth in Internet service providers (ISP). By 2012, the ISP numbers stood at about 50, the main ones being Safaricom, Kenya Data Networks, Airtel, Orange, Zuku and Access Kenya.²¹ CCK data show that the number of subscribers rose from 1.8 million in 2008/09 to 4.3 million by 2010/11. By June 2012, there were 14 million users.

An important outgrowth of the Internet is the emergence of blogging by Kenyans at home and abroad. Practitioners recently formed the Bloggers Association of Kenya (BAKE) in 2012.

An initiative to enhance professionalism among bloggers, the association held its inaugural BAKE Blog Awards 2012 in May during which 14 categories of practitioners were recognised, and a BAKE Technical and Online Freedom Workshop in August, which noted the weak understanding of blogging regulations. Kenyans in the Diaspora are also very active on the Internet, politics being a major area of often vitriolic interaction, as evidenced by Wamungai (2010).

²⁰ See Communications Commission of Kenya Annual Report Financial Year 2010/11. Available at http://www.cck.go.ke/resc/publications/annual_reports/CCK_Annual_Report_2011.pdf Accessed 5/11/2012

²¹ For lists of ISPs, go to <http://softkenya.com/technology/internet-service-providers-isp-in-kenya/> and <http://www.mbendi.com/indy/cotl/isrv/af/ke/p0005.htm>

5.2.5 Media Training Institutions in Kenya

With respect to media training, Wanyande's (1995: 65) decades old lament remains pertinent, that:

"...it appears that anybody can consider himself or herself a journalist simply on account of having written an article for a newspaper or having read news on radio or television."

The number of institutions offering media studies have grown extensively in recent times, reflecting the weak regulation of the media environment despite the arrival of the legislative and institutional frameworks provided by the Media Act (2007). Thus, besides the full degrees offered by about six universities, a raft of other qualifications is offered by institutions of varied quality. Yet, as lamented by Wanyande, very many prominent members of the media sector practice without any of these paper qualifications.

Among the universities offering graduate qualifications are the two UNESCO Centres of Excellence, the University of Nairobi's School of Journalism and Mass Communications and Daystar University.

Other universities include Kenyatta University, Jomo Kenyatta University of Agriculture and Technology, Moi University, Egerton University, Maseno University, Masinde Muliro University, St. Paul's University, Catholic University of East Africa, and United States International University, among others.

Nairobi's School of Journalism and Mass Communication and Daystar University have started doctoral degree programmes. Several institutions around the country also offer diploma and certificate level programmes in journalism and media studies.

5.2.6 Media Management Institutions in Kenya

The legislated media management institutions in Kenya include the MCK and its Complaints Commission, the CCK, the Registrar of Books and Newspapers, and the Kenya Union of Journalists. However, there are a number of other formal and non-formal, unlegislated institutions which contribute to varied degrees to the professional conduct of media work.²² In the recent context, the Media Owners Association (MOA) stands out among the non-

²² Among these are: Kenya Editors Guild; Association of Media Women in Kenya; Kenya Journalists Association; Kenya Parliamentary Journalists' Association; Foreign Correspondents Association of East Africa; Kenya Business Writers' Association; Kenya Correspondents Association; Science Reporters' Association; Kenya Sports Writers Association; Environmental Journalists Association; Kenya Association of Designers and Illustrators; and the Association of Women

government institutions because of its capacity to exert political pressure on the government, reflected in the manner it took responsibility for the fledgling MCK, and generally sets the media freedom agenda, amongst other initiatives.

MOA's significance is probably best illustrated by the Media Act's reservation of 3 MCK seats for it, the single largest bloc on the 13-member Council. While MOA is in principle

open to all media owners, its membership seems concentrated among the big media players; NMG, SG, RMS, Radio Africa Group, Family Media, Media Max, Kass FM, Hope FM and Star FM (Oriare et al, 2010: 36-7).

Its membership stands at about 92, including 17 newspapers, 30 radio stations, 10 TV stations, 8 news agencies, 15 training institutions and 12 media related professional bodies.²³

Notes

Journalists. Others include: Kenya Journalists Association; Senior Women Editors Group; Kenya Community Media Network; Alternative Media Network; Mohamed Amin Foundation; and Media Educators and Trainers Association. Others still are: Kenya Journalists Association; Senior Women Editors Group; Kenya Community Media Network; Alternative Media Network; Mohamed Amin Foundation; and Media Educators and Trainers Association. Prominent non-government organizations include: the African Woman and Child Feature Service; Kenya Community Media Network; The Media Institute; EcoNews Africa; Africa Broadcasting Network; FEMNET; Africa Council for Communication Education; Media Focus Africa; and Media Speak Africa.

²³ This information is found at <http://www.zebraproductionskenya.com/zebra/aboutus.php> Accessed 5/11/2012

6

Issues in Ownership and Content of the Kenyan Media

This paper set out to examine the actual and potential impact of political ownership of the Kenyan media on the output of the industry. The Kenyan literature reviewed, the key informant interviews and the field interviews revealed extensive connections between politicians and media ownership.

While it was – unsurprisingly so – difficult to interview media owners on their links with politicians, the reluctance of employees to talk despite assurances of anonymity was surprising. The situation is probably best captured by Radio Africa Group chairman Kiprono Kittony’s reported observation to former US ambassador Michael Rannenberg that:

*“the Kenyatta connection (with Media Max) is ‘factually true but legally untrue’ because as in many cases in Kenya, Uhuru Kenyatta’s name does not appear in any of the legal documents of the merger...”*²⁴

Consequent to such ‘covering of one’s tracks’ – Oriare et al (2010: 43) – this report has not sought the investigative journalist’s ‘smoking gun’. Instead, it has synthesised the issues gleaned from the interviews and other interactions into five areas which are seen as avenues through which political influence can be, and is indeed, brought to bear on media content. Attending to identified gaps reduces the risk of political manipulation of the media, even if it is unlikely to be eradicated

Notwithstanding the various media roles expounded on by Makokha (2010) and Stremlau and Price (2009), Wanyande (1995) and MCK (forthcoming) propose two motives for investment in the media: commerce and politics. In some instances, these motives will stand alone: business – such as stock exchange investors – will see the media as an avenue to profits; and politicians will see the sector as an efficient means

²⁴ See <http://wikileaks.org/cable/2009/12/09NAIROBI2656.html>, Accessed 3/9/2012.

Table 6.1: Advertising Revenues Shares (%) in the Kenyan Media – 2010 to 2012

		2010	2011	2011/ 2010 (%)	Jan - Apr 2012
Television	Citizen	38.7	41.0	54.0	46.6
	NTV	22.6	24.7	59.0	26.0
	KTN	15.6	13.3	23.0	11.7
	KBC	11.4	13.7	76.0	9.9
	Totals (Kshs mn)	14,153	20,552	45.0	7,666
Radio	Kass FM	11.8	11.8	37.0	9.8
	Kiss FM	6.2	11.9	161.0	9.5
	Citizen	9.5	7.2	3.0	7.9
	West FM	9.1	10.4	56.0	7.8
	Inooro FM	6.6	3.2	-33.0	6.3
	Ramogi FM	5.2	3.3	-13.0	5.9
	Totals (Kshs mn)	19,865	27,130	37.0	8,517
Print Media	Daily Nation	49.9	45.2	48.0	46.0
	Standard	24.3	21.5	44.0	23.4
	The Star	6.7	5.8	89.0	10.6
	Saturday Nation	2.3	4.4	208.0	2.4
	Saturday Standard	1.2	1.4	104.0	1.4
	Sunday Nation	4.6	5.9	111.0	4.4
	Sunday Standard	1.7	2.3	102.0	1.9
	Totals (Kshs mn)	1,194	1,950	63.0	1,210

Source: MCK (forthcoming) citing Reelforge Media.

of electoral publicity. Yet, the inter-connections between the two motives is well illustrated by Abdi and Deane's (2010: 5) finding that media ownership reduces the extent of political spending while increasing the extent of political influence. This finding supports an underlying concern of this paper with the drive

by politicians to become media owners. While these two motives for ownership benefit the politician/investor, Namwaya (2010) illustrates across the various mainstream media houses that the benefits could also be accruing to the media practitioners through bribes, even if this is in most cases intermittent.

A key source of media revenue is advertising for which Table 6.1 provides returns for Kenya's main electronic and print players. Aggregate TV advertising revenue grew by 45% between 2010 and 2011. Meanwhile, radio advertising revenue grew by 37%, roughly 35% more than the TV revenues for both years. However, the TV and radio revenues were competitive during the first quarter of 2012, suggesting either a swing to TV, or comparatively higher rates, or both. Print media revenue was significantly lower than those for the other two media, but the inter-year growth was a high 63%, with the first quarter 2012 performance a great improvement on the previous two years.

The wide extent of cross media ownership (Section 6.2) means that revenue often accrues to the same individuals or companies. Thus RMS accounts for an average 40% and 18% respectively of TV and radio advertising income, while NMG's TV and print shares average 24% and 50% respectively. Together, NMG and SG account for more than 80% of print revenue, but growth in The Star's share is remarkable for its publication size. While RMS dominates radio revenue, the per-

formance of smaller FM stations – Kass FM and Kiss FM – are quite impressive. So, the media provides a strong commercial incentive for investment therein.

6.1 Legal Framework for Media Practice

On the right of access to justice, journalist Frank Ojiambo of CCK's Broadcast Content Advisory Council deems the MOA injunctions that have shackled CCK's oversight of licensing an unpatriotic use of the court process. Yet, the history of mutual suspicions between regulators and operators (Section 5.1) should be treated differently in this post constitutional era. Indeed, this need for wisdom is illustrated in both MOA's acknowledgement of its inability to fund MCK, and its proposal for a government subsidy for that purpose (Oriare et al, 2010: 37). This shift to government provisioning previously considered a hindrance to self-regulation – has prompted a review of the Media Act. The stakeholders would have done well to heed Wanyande's (1997) caution a decade before the passage of the Media Act that relations between government and civil society – including the media – need

Box 6.1: Who Owns the Nation Media Group and the Standard Group?

Nairobi Securities Exchange [NSE] data show the ownership structure of the Nation Media Group [NMG] as at 8th September 2012 to be as follows:

Category	Share (%)
Local individuals	30.22
Local companies	22.89
Foreign individuals	0.71
Foreign companies	46.29
Total	100.00

The data shows that aggregate local ownership (individuals plus companies) is greater than the company's foreign ownership. However, the dominant NMG share holder is Geneva-based Aga Khan Foundation for Economic Development (AKFED) which accounts for 46.66% share. Among the other investors with more than a 1% shareholding include Amin Nanji Juma (9.98%), the National Social Security Fund Board of Trustees (3.82%), John Kibunga Kimani (1.30%)

and Jubilee Insurance Company (1.15%). The rest of the top 20 shareholders accounts are held via nominee accounts in banks (Standard Chartered Bank and Kenya Commercial Bank) and insurance companies (Insurance Company of East Africa; Phoenix of EA Company; Old Mutual; Kenya Reinsurance Company). These top 20 shareholders account for 65.99% of NMG's 157,118,572 shares, the company having another 10,902 shareholders.

At the Standard Group [SG], NSE records of the 31st July 2012 show the ownership is structured as follows:

Category	Share (%)
Local individuals	7.11
Local companies	23.22
Foreign investors	69.67
Total	100.00

Unlike the NMG, the distribution of SG shares favours foreigners who account for about 70% of ownership. Interestingly, 90.56% of the company's 81,646,978 shares are in the 1,000,001 to 2,000,000,000 share band, while a small 0.34% are in the 1 to 500 band, meaning control of the company is weighted in favour of large shareholders. Globally, the company's largest

shareholder is S.N.G. Holdings Limited (UK) with 69.11% of the shares. The other two shareholders with more than a 1% share are both Kenya-based, Trade World Kenya Ltd (10.91%) and Miller Trustees Ltd (10.54%). Of the global top ten individual shareholders, Kirtesh Premchand Shah has the highest holding at 0.53%. Shah's shares amount to 7.41% of local individual shareholding. The third largest local individual shareholder is Julius Gecau (3.81%), a prominent Jomo Kenyatta-era personality who once chaired the boards of BAT (K) Ltd and EAPL Co Ltd., amongst other companies. The top 10 local individual shareholders account for 30.30% of all local individual shareholding, among them being – based on their names – 5 Asians, 4 Africans and a single European.

Among the top 10 local institutional SG investors, the prominent holders are Trade World Kenya Ltd (TWKL) (46.97%) and Miller Trustees Ltd (MTL) (44.40%). These rates translate to 10.91% shares globally for TWKL and 10.54% for MTL. The only other institutional investor with more than a 1% share is Denroma Investment Limited with 1.26% share of local institutional share. Under a title Who Owns What with Whom, the MARS Group website associates TWKL 100% with Joshua Kulei, who it reports to have represented ex-President Moi in over 50 companies.²⁵

²⁵ See http://www.marsgroupkenya.org/corruption/index.php?option=com_content&task=view&id=51&Itemid=26
 Accessed 3/9/2012

not always be confrontational given the heterogeneity of both civil society and the media.

MCK's provisioning problem arose because of poor preparation for the liberalisation of the airwaves which, amongst other things, allowed strategically placed individuals to amass frequencies, hence the current debilitating imbalances in the sector.²⁶ The Constitution (2010) makes a review of the legal (and institutional) frameworks of the sector an imperative, a fact which is on-going with the Media Bill (2012) and ICCK Bill (2012). However, the review proposals of this report are based on current legislation, including the Media Act (2007).

Reforms to the MCK are imperative despite its remarkable evolution from an ad hoc volunteer's institution housed through charity in 2002, to a statutory body in 2007. Yet, the media sector's understandable suspicion of the government seemed to have delivered MCK into the hands of a new tyranny – of the non-statutory MOA, a members' club of owners or their representatives – primarily of the large media houses (Oriare et al: 2010: 37). While the Act specified MCK's sources of funding – fees, incomes, gifts, grants, etc.

– these have not been adequate for planned activities, including the Council's critical role as a civic educator. The unlegislated arrangement whereby media operators contribute to MCK on a pro rata basis has been unsustainable for both operations and independence.

Meanwhile, the electronic media's legal framework is being reviewed via the ICCK Bill (2010) whose main objectives include the establishment of ICCK as an autonomous institution that can regulate without fear or favour (see Section 4). The Bill focuses greatly on ICCK's constitution, but does not suggest ways in which the new body will resolve the current impasses between MOA and CCK.

6.2 Ownership of the Kenyan Media

Ngugi wa Thiong'o's *A Grain of Wheat's* was prophetic of the Kenyan elite with its newly elected parliamentarian promptly straddling into settler farming (wa Thiong'o, 1965). In Kenya – as in many countries – the tendency has been for the wealthy to spread their tentacles into as many areas of the economy as possible, regardless of their efficiency. The media industry has recently become an arena for such

²⁶ RMS was a major beneficiary of the government's dithering; but it was 'just rewards' for its years of persistent struggle for the liberalization of frequencies.

self-enrichment, motivated by potential commercial returns (Table 6.1), or likely political harvest (Wanyande, 1995; MCK, forthcoming). Kenyan parliamentary politics is an increasingly expensive affair:

Masime and Otieno (2012: 467) estimate that each 2007 parliamentary candidate spent an average Kshs 7 million on direct financial benefits to voters and supporters. With 46% of Kenyans living below the poverty line, such spending is the preserve of those with resources, whether generated honestly or not.²⁷ Consequently, the Kenyan Parliament has few exclusively 'professional' politicians, many members having originally amassed wealth in other professions, or through corruption.

As the stakes in Kenyan politics have risen, politicians have increasingly taken advantage of media liberalisation to directly or indirectly acquire media interests with which to secure their place in politics. As one editor observed, politicians have realised that acquiring votes through the airwaves is more cost-effective than traversing a constituency personally or using proxies, giving monetary or material favours. The additional disadvantage of hand-outs is that they involve sub-

stantial evidence of electoral misconduct which can sustain a petition against a victor, resulting in the extreme in a custodial sentence.

One approach to understanding the influence of media ownership on media content was to review the effect of management structures – whether corporate or not – on the scope for interference in content, whether by politicians, owners, or editors. The expectation is that corporatisation – such as quotation on a stock exchange – distances the owners and the medium, thereby reducing the scope for parochial influences. From the small sample of media houses reviewed, interference and non-interference were reported across the different management structures.

Of the two Kenyan media houses that are corporate by virtue of listing on the stock exchange, NMG's Aga Khan seems far removed from mundane Kenyan politics; yet, the individual has always had access to State House, not the least because of the vast business empire of the Ismaili community. From the experiences of the early independence years, when the Aga Khan owned a significantly greater portion of what became NMG, he was quite

²⁷ Obviously, candidates without such resources, but with a political premium, might acquire coalitional funders. This could be such as through one of the major political parties, the main three of 2007 estimated to have spent a total Kshs 5.6 billion.

conscious that his paper should not fall foul of the government, causing various editorial changes (Nyamora, 2007).²⁸

The current NMG ownership structure summarised in Box 6.1 shows the Aga Khan to continue to be the single largest shareholder with 47%. While the Aga Khan's hand might be imperceptible to the average journalist at NMG, his shareholding must be significant in determining editorial policy and practice. The more intriguing ownership structure is that of SG, which has generally been associated with former President Moi and his associates, with anecdotal information suggesting he controls an estimated 85% of the company, making other shareholders functionally inconsequential. Yet, the NSE evidence (see Box 6.1) paints a sharply different picture, with a UK-registered company, S.N.G Holdings Ltd accounting for 69.11% of the shares.

Meanwhile, only 30% of the SG shares are held locally by individuals or institutions. As the analysis in Box 6.1 shows, Trade World Kenya Ltd (TWKL), a company associated 100% with Joshua Kulei, owns 47% of the aggregate local shareholding, which amounts to about 10% of SG.

Anecdotal information from the Kenyan-based NGO, Mars Group suggests Kulei to be a Moi proxy at TWKL, meaning the former president could have access to at most 10% of SG through that channel. The ownership of Miller Trustees Ltd (MTL) – and its own global 10% share of SG – is unclear. Given the Kenyan elite's penchant for off-shore companies – a practice that escalated during Moi's presidency, it would be instructive to unpack SG's off-shore shareholding to see if there are any links to Moi and his business empire, testing the widely held view that the family owns the media group.

NMG has in the past been perceived to be against the Moi regime, and in time, for Kibaki. Given the extensive Kenyan business interests of the Aga Khan and his local Ismaili community,²⁹ it is unsurprising that NMG has traditionally found soul mates among a Kikuyu business elite that saw in Moi an obstacle to growth and development – hence the perceived control of NMG by a Kikuyu elite.

This further would seem to have translated to the 2007 support for Kibaki and his Party of National Unity (PNU), with an NMG director

²⁸The more prominent politically instigated editorial departures have included John Abuoga, Hillary Ng'weno, and George Githii.

²⁹NMG apart, the other flagship local Ismaili business interests include the Aga Kahn hospitals and schools, the Serena Hotel chain, Diamond Trust Bank, to name a few.

being at the heart of the PNU campaign effort.

Yet, that election saw Moi behind Kibaki/PNU and visibly against Odinga and his Orange Democratic Movement (ODM), who was broadly perceived to have had the support of Moi's SG. This latter reality would support the NSE evidence of a weak Moi ownership of SG. Indeed, one ex-SG staffer argues that notwithstanding Moi's position, the close

connections between a top SG manager and (then) ODM's William Ruto enabled an ODM bias, which was also driven by the desire not to alienate the group's top regional market, Western Kenya, an ODM stronghold.

Yet, a study of media coverage during the 2007 elections shows that the coverage by the main media houses for PNU/Kibaki dominated that for ODM/Odinga across the board.

Box 6.2: Media Professionalism vs. Employment Expediency

A former SG editorial director recalls the difficulties of balancing media professionalism against the idiosyncratic demands of owners, especially when such an owner had the additional clout in being Head of State. A professional board too would be quite aware of the commercial risk posed by partisanship, especially given when theirs is the media house playing catch-up with their main competitor. LOHNRO vice-chair and Moi-protégé Mark Too's presence on the board in 1997 had ensured the paper give disproportionate coverage to Moi's presidential re-election bid. Similarly in 2002, Moi demanded and expected exclusive coverage of his chosen successor, KANU's Uhuru Kenyatta, meaning a complete black-out on NARC politics. The former editor recalls that when Moi felt this directive had been ignored, he personally called for an explanation, even summoning such SG employees to State House for explanations. On many other occasions, the calls came from senior KANU and government operatives.

But there is evidence that many media practitioners have succumbed to the lure of lucre, so that politicians and the corporate sector do not have a very difficult time influencing what appears in print or on the airwaves. Namwaya (2010: 19) notes:

"Politicians in Kenya claim that they are besieged by journalists demanding bribes in exchange for coverage and threats of blackmail. They claim that they are forced to apportion a percentage of their monthly expenditures to pay journalists and generally 'manage' the media. This could partly explain why every media content analysis last year by Synovate showed that politics and politicians took up the largest space or airtime in both print and broadcast media."

In the case of the individually owned media houses, however, political connections are either overtly stated or easier to discern. RMS' SK Macharia overtly supported the 'Yes' campaign in the 2005 referendum and PNU in the 2007 elections, even if surreptitiously so; after all, it was the Kibaki tenure that had facilitated his realisation of the RMS empire. However, Synovate media monitoring data show RMS coverage during the 2007 campaigns to have been most balanced across the mainstream media houses, an outcome contributed to in no small way by the contemporary RMS managing director's professional objectivity which had previously seen him eased out of KBC (see Box 6.2).

The connections in the FM stations are often also quite obvious, even if relevant documentary evidence is not to be found. Various politicians own FM stations, directly (e.g. Mutava Musyimi, Raphael Tuju, Jakoyo Midiwo and Koigi Wamwere) or through direct proxies (e.g. the kin or spouses of Joan Pogishio and Rose Mwakwere for respective politician spouses Samuel Pogishio and Chirau Mwakwere) or remote proxies (for a detailed listing, see Table 6.2).

The scope for political interference in such stations is vast since such politicians assure the financing of such stations, in a context in which secure financing for rent, wages and other overheads renders many FM stations vulnerable. This is especially the case with those registered as community radio stations, which Section 46F of the Kenya Information and Communications Act declares to be not-for-profit, meaning they cannot generate commercial revenue. The plight of such stations was vividly illustrated by a broadcaster with a slum-based station who revealed the staff had received no pay for over six months prior to our interview. This makes such staffers vulnerable to political interference: politicians will make direct hand-outs, such as against personal coverage. But, in some of our interviews, there were also allegations of Constituency Development Fund [CDF] resources – patronised by the incumbent parliamentarian – being allocated to such grassroots media outlets, with obvious implications for the independence of such broadcasters.

The need to secure sustainable funding causes many community stations to transform into commer-

cial ones, with Radio Lake Victoria (Osienala) presenting interesting lessons. The station was launched as a medium for championing non-governmental organisation (NGO) OSIENALA's original environmental concerns over the lake, the station becoming just one among the NGO's various other enterprises.

Thus, OSIENALA already had a trustees' board and a management board backed by an executive secretary to whom the radio station's manager reports. Thus, while the station's success has attracted politicians, the management framework has protected the station manager from excessive interference. Effectively, Radio Lake Victoria is therefore not a typical community radio station susceptible to manipulation by political and commercial interests in pursuit of its sustainability.

Thus, even as Table 6.2 lists known links between practising and/or prospective political office holders and the media, such as through the CCK database, or suspected links between them, Zipporah Kittony's dilemma with Uhuru Kenyatta's Media Max ownership status must be borne in mind. However, Table 6.2 lists at least six declared political candidates with direct or proximate

ownership links to media houses. Among the spouse owners listed are the wives of Vice President Kalonzo Musyoka, Information and Communication minister Poghisio, and Environment minister Mwakwere. Other links are through vocal lieutenants, like Midiwo for Prime Minister Raila Odinga, C.K.

Joshua for presidential candidate Ruto, and parliamentarian David Musila for presidential hopeful Kalonzo Musyoka, or less vocals ones, such as Hannington Gaya for presidential candidate Raphael Tuju. Additionally, politicians employ subterfuge to cover their tracks, such as using their long-discarded first/Christian names to register their media outlet. Appendix Table A-6.1 lists some other publications and their respective owners about whom there was no immediate information on potential political links.

There was evidence of much cross-media ownership in the mainstream media as illustrated in Table 6.3. The government's presence is pervasive when one adds the Kenya News Agency (KNA) correspondents to the regional newsletters and the radio and TV stations listed. However, cross-media ownership in the private sector is also quite ex-

Table 6.2: Known and Likely Kenyan Political Links with the Media (September 2012)

Registered Frequency Holder/Station ID	Likely Political Link
Bondo Community Multimedia Centre – Radio Maendeleo	Anthony Munyao, associated to Raphael Tuju, presidential aspirant
Capital Group Ltd – Capital FM	Chris Kirubi, probable associate of President Mwai Kibaki
Citizen Weekly	Tom Aluaka; has been associated with various Nairobi parliamentarians
Digitopia – Milele FM, Anguo FM	Granton Samboja, a prospective Taita Taveta politician (Milele FM allegedly sold to MediaMax as we go printing)
Eastern Broadcasting Corporation Ltd – Mbaitu FM; Syokimau FM	John Musyimi; Mbaitu FM linked to Charity Ngilu, presidential aspirant (Mbaitu FM and Syokimau FM allegedly sold to MediaMax as we go printing)
Elgonet Communications Technologies Ltd -	Joan Chelimo Poghisio, wife of Information and Communications minister Samuel Poghisio
Fish Media – Fish FM	Reuben Kigame, gubernatorial candidate, Vihiga
Golden Dreams – Content production	Alfred Mutua, gubernatorial candidate, Machakos
Kalee Ltd – Kass FM; Kass Weekly; Kass TV	CK Joshua, probable associate of presidential aspirant William Ruto
Mau West Development Initiative - Mururi FM	John Muthutho, parliamentarian
MediaMax – The People, K24, Kameme FM, Meru FM	Connected to Uhuru Kenyatta, presidential aspirant
Media Seven Group Magazines	Hannington Gaya, member of presidential candidate Raphael Tuju’s campaign team
Neural Digital Broadcaster Ltd – Radio Umoja; Radio Nam Lolwe	Peter Oluoch, connected to parliamentarian Jakoyo Midiwo, first cousin to Prime Minister Raila Odinga
Pili Pili FM	Associated to Najib Balala, parliamentarian
Radio Africa Ltd – Kiss FM; Kiss TV, Radio Jambo, XFM, Classic 105	Kiprono Kittony, son of former Maendeleo ya Wanawake chair Zipporah Kittony, distant relative of former President Moi
Regional Reach Ltd – Kameme FM	Rose Kimotho, sold to Media Max, company associated with presidential aspirant Uhuru Kenyatta

Royal Media Services Ltd – Citizen TV; Citizen Radio and 11 vernacular radio stations	Samuel K. Macharia, previous parliamentary candidate Gatanga, links to various senior politicians
Radio Salaam	Associated to Yusuf Haji, parliamentarian
Sauti ya Mwananchi Radio and TV Ltd	Joseph Koigi Wamwere, ex – parliamentarian, senator candidate, Nakuru
Sauti ya Pwani	John M. Musyimi, parliamentarian and presidential candidate
Sauti ya Rehema – Sayare FM; Sayare TV	Rev. Eli Rop, board of directors previously included Prof Margaret Kamar, parliamentarian and wife of former parliamentarian Nicholas Biwott
Southern Hills Development Agency – Kaya FM	Mandale Warrakah/Rose Mwakwere, brother and wife of minister Chirau Mwakwere
Star Radio and TV Network Star FM	Former parliamentarians Hezron Manduku and Reuben Oyondi
STV Holdings – STV	Sold to TV Africa Holdings, associated with presidential aspirant Uhuru Kenyatta
Universal Broadcasting Ltd – Radio Rahma	Abdul Swammad Nassir, parliamentary aspirant Mombasa

Source: own compilation

tensive; NMG leads the way despite RMS dominating the airwaves. Such cross-media ownership is especially undesirable where there is a conflation of ownership and editorship, as is evident in editors sitting on the MOA board.

Media owners are invariably driven by commercial and political concerns, which can often conflict with the professional obligations of editors. For example, while the owner might wish to constrain the wage bill to enhance profits, an editor should be obliged to secure those terms and conditions of employ-

ment that optimise professionalism among staff. Indeed, editors could resist cross-media ownership, denying media owners the attendant economies of scale in employment – which would require owners to employ more journalists.

But there are other channels through which owners may influence editors. Among these are the relative personalities of the two: owners that see strong personalities in editors might not only refrain from attempting to compromise their professionalism, but might also just admire and encourage such integrity.

Table 6.3: The Patterns of Cross Media Ownership in Kenya

Publisher/Owner	Print Titles	Electronic Assets	Associations
Government of Kenya, Ministry of Information and Communications, Director of Information, Managing Director, KBC	The Sun (Kabarnet); The Eye/ Mwangaza (Siaya); The Eastern Star (Machakos); Ngao (Nakuru); Sauti (Kericho); Sauti ya Gusii (Kisii); Nuru (Isiolo); Nyota ya Magharibi (Vihiga); Sauti ya Pwani (Mombasa); Maarifa (Murang'a); and Habari (Garissa)	National Kiswahili Service; National English Service; Eastern Service (Somali, Borana, Rendile, Burji and Turkana); Central Service (Meru, Embu, Maasai and Kamba); Western Service (Luo, Kisii, Kalenjin, Kuria, Teso, Luhya, Suba and Pokot); Metro FM; Coro FM; Pwani FM; Free to air KBC TV; Pay TV; Entertainment Metro TV	The emphasis on the state rather than the public renders these outlets amenable to Government manipulation
Nation Media Group	Daily Nation, Sunday Nation, Saturday Nation, The East African, Taifa Leo, Taifa Jumapili, Daily Metro, Business Daily	NTV; Q FM; Easy FM; QTV	See Box 6.1 and related discussion
Standard Group	The Standard, Sunday Standard, Saturday Standard, Game Yetu, County Weekly	KTN, Radio Maisha	Moi family. See Box 6.1 and related discussion
Media Max including former Regional Reach	People Daily, Sunday People	K-24, Kameme FM	Kenyatta family and associates

Royal Media Services	After demise of The Leader, RMS apparently no longer interested in the print media.	Mulembe; Chamgei; Inooro; Musyi; Egesa; Hot 96; Muuga; Ramogi; Radio Citizen; Citizen TV; Bahari; and Wimwaro	S.K. Macharia
Radio Africa Group	The Star	Kiss FM; Kiss TV; Classic FM; East FM; Jambo FM; X FM; Smooth FM; Relax FM	Patrick Quarco and William Pike
Kalee Ltd; Kass Media Group	Kass Weekly	Kass FM; Kass TV; Kass Washington; Kass London	CK Josiah
Media Seven Group Magazines	Monthly Motor, Mum and Dad, G Magazine, Business Monthly and HM		H. Gaya, member Tuju campaign team

Source: author's compilation

Namwaya (2010: 18) reports of an SG bureau chief in Mombasa who refused bribes from a major 2007 political party, subsequently suspended two of her journalists who had taken bribes from the party, and when she was adamant on her actions, was simply asked by her superior to “go slow on the matter”. The reverse is obviously true; in which case such editors will be bombarded with directives and lavished with free riders that compromise professional integrity. Namwaya (2010: 13) reports an informant stating that:

“...journalists are even driving cars that were bought for them a few years ago by a former Police Commissioner. A number of journalists also benefited from hefty packages from police after helping lure (civil society activist) Oscar King'ara to his death and then obscuring the story by writing only what the police said...”

The same relationship can be replicated between owners and journalists, as well as between editors and journalists. The extent of such interference – whether successful or not – will partially depend on the extent that issues, rather than personalities, drive the national and lo-

cal political agenda. Yet, even when issues drive the agenda, there will be attempts to compromise the media. For example, while one could argue that Raila Odinga's profile fuels his domination of The People's coverage among presidential candidates, reported at 33% against Uhuru Kenyatta's 8% (MCK, 2012), the greater proportion of that publication's negative coverage of Odinga at 18% compared to Uhuru's 14% could be by design.

In this regard, the Internet and ICT in general, provides a somewhat different problem because the owner or sender is out of contact. Browsing Kenya discussion forums and blogs on the Internet, one develops a perception that ethnic vitriol and hate speech is greater among expatriate Kenyans than it is within the country. Kenyans abroad often seem caught in a time-warp that does not allow them to appreciate the dynamism of the home context.

A final consideration is whether owners need to intervene for politicians, or whether politicians drive their own media agenda. During 2012, the media has been rife with reports of politicians hiring key media personalities to manage their communications and marketing strategies,

including the use of the Internet. There is also extensive evidence of politicians directly corrupting media practitioners for coverage, as well as the latter demanding considerations for coverage, various illustrations of this from Namwaya (2010) being presented in various information boxes in this chapter. However, the predisposition of individual politicians to media access is also significant for the extent to which such politicians will make the news.

Makokha (2010) notes that PNU spent the most on advertising during the 2007 elections – placed at Kshs 378 million compared to ODM's Kshs 200 million (Masime and Oti-eno, 2010: 468-9): however, ODM had a better grasp of media fundamentals, its candidates being readily accessible to journalists. Indeed, certain politicians 'sell', meaning that even rational editors will place such politicians' stories strategically to attract buyers and audiences, Raila Odinga seemingly being pre-eminent among such politicians.

Where the agenda is thus driven by the market, even media owners must know that (political) interference will undermine market strength. Key informants report RMS' desperate effort to recover market share after

Box 6.4: Oiling the wheels in ‘enemy’ territory...

During the 2007 general elections, protagonists PNU and ODM had media experts on their payrolls with the former party having a larger war-chest, while the latter had a broader reach (Namwaya, 2010: 21). The PNU was reportedly alarmed at not making any headway in the Rift Valley despite its spending there, with one insider lamenting that:

“Neither the use of The Standard nor The Daily Nation was helping. So it was decided that we should try to use the Kalenjin language stations. It was very hard pushing a PNU story through to these FM stations, so we decided to use money.”

The insider reportedly personally delivered between KSh.10,000 and KSh.20,000 per story on each of the FM stations, with the amounts rising as the elections drew closer, to KSh.200,000 per week on FM stations alone, and KSh.10, 000 paid to individual journalists per day.

its ill-fated decision to concentrate support on the ‘Yes’ camp during the 2005 referendum on the proposed constitution, the suggestion being that the strategy estranged pre-referendum audiences.

6.3 The Conduct of the Kenyan Media

In terms of political interference through the media, the radio is most powerful, because it is the ‘medium of the masses’, reaching deep into the country side, hardly discriminating for socio-economic status and therefore reaching the largest audience. Section 6.2 argued that the size of the media house does not automatically predispose it to

political interference. The larger media houses are likely to be more resource-secure, and should therefore be less amenable to manipulation; yet interview evidence suggested that their dependence on advertising has exposed them to manipulation by the big clients, such as Safaricom over issues related to the Kenya Revenue Authority (Oriare et al, 2010: 45) and Initial Public Offering (Namwaya, 2010).

Other sources report that when Safaricom suspended a reported Ksh 8million advertising account in reaction to an expose in RMS’ *The Leader*, of a perceived underpayment of dividends to Telkom (K), this prompted RMS’ retraction of

Box 6. 5: Corporate corruption for self-preservation

The corporate sector is adept at securing their interests against negative media while ensuing positive stories see the light of day (Namwaya, 2010: 23). Namwaya reports a March 10, 2010, *Daily Nation* story *Extracted from the Auditor General's reports* on irregularities in Safaricom's 2008 Initial Public Offer (IPO). While individual business writers knew even more damaging material than had been reported by the Auditor General, NMG received many complaints of inaccuracy of content from those mentioned. While the NMG chief executive defended journalist Joseph Bonyo, he acknowledged that Safaricom was indeed "our largest advertiser", but pointed out that he had never influenced content on behalf of anyone. That neither NMG nor any other media house ever carried the story (again) is likely evidence of the might of Safaricom's pressure.

Namwaya notes that such situations are made even more complicated when there is a cross-over of interests, such as when the NMG board chair, Hannington Awori also sat on the boards of numerous other companies, including Unilever, and former NMG chief executive returned to the board, while also being on the boards of Standard Chartered Bank and East African Breweries.

Besides influencing what journalists do, or do not write, corporations engage public relations companies which submit complete stories, including TV footage, which editors use verbatim, meaning PR firms provide editorial content at the expense of essential journalism.

the story in the following issue. In another instance, a story on Kenya Cannery's dogs harassing villagers led NMG managers to stop press. The smaller, resource-insecure media houses are likely to be more vulnerable, such as those finding themselves depending of CDF resources. Indeed, weak resource bases undermine the sustainability of appropriate terms and conditions of employment, making junior cadres especially susceptible to manipulation, and to the lure of moonlighting.

Editorial practices across media houses also vary considerably, with significant consequences for the scope for controlling extenuating influences. In only a couple of instances did this research find any acknowledgement of extensive owner editorial presence in a media outlet. As for the editor/journalist interactions, in some instances, there were daily editorial meetings, in others fortnightly, while in others still, such meetings were of an ad hoc nature.

Box 6.6: KBC Managing Director ‘eased out’....

During the 2002 general elections, KBC – the public broadcaster – gave exclusive coverage to KANU presidential candidate and Moi protégé Uhuru Kenyatta, to the great detriment of the commercial interests of a corporation whose establishing statute requires it at Section 38 “to conduct its business according to commercial principles and to perform its functions in such a manner as to secure that... its gross revenue is not less than sufficient to meet its outgoings...” As if the commercial lessons of 2002 were not learnt, the 2005 referendum saw KBC being pushed by the ‘reformist’ NARC government to exclusively back the ‘Yes’ side of the constitutional referendum. These attitudes by successive governments reflected serious misinterpretation of the KBC Act (1989), of which Section 8 mandates the corporation to “provide independent and impartial broadcasting services... with impartial attention to the interests and susceptibilities of the different communities in Kenya.” Indeed, Section 44 requires the Information minister to demand redress from the board should the corporation violate its mandate.

KBC’s attempt at editorial impartiality in 2005 led a national leaders’ induction workshop into the workings of the government to conclude that the corporation had worked at the behest of the ‘No’ side of the referendum. Among the Managing Director’s [MD] accusers were the Internal Security minister whose ‘rattled snake would bite’ SG in 2006, and the Information minister, a seasoned media practitioner, and the egregious government spokesperson. Despite the MD’s protestations to the contrary, and his elaboration of the corporation’s statutory obligations, the impending renewal of his contract never occurred, and he was transferred to the low profile Kenya Film Corporation.

The difficulty of getting interviews with consistent slates of decision makers across media houses undermined the conduct of a mapping study, meaning it is not possible to evaluate the impact of the frequency of meetings on political content. Indeed, such mapping would require a very elaborate analysis of the contents of such meetings against that of the media outputs.

However, it is likely that a high fre-

quency of owner-attended meetings, or the existence of a clear station focus, facilitates tight control – ‘guided content’, if that is desirable. Efforts to interview Koigi Wamwere of Sauti ya Mwananchi failed; but a listen in to his radio station suggested his close personal attention to the station’s editorial content. However, rare editorial meetings can also provide room for political interference: in such an absence of editorial policy focus, dissatis-

fied journalists can fill their material needs gap by soliciting additional incomes from outsiders, such as politicians.

Such realities – including the idea that politicians may drive the media agenda beyond the desires of owners and editors – heighten the pervasiveness of the problem. For one, live broadcasts – including text messaging and the Internet – pose a problem over content even if the scope for controls is greater in the print media. *Sunday Nation* columnist Maina Kiai recently questioned the wisdom of the media omitting to publish the vitriolic utterances at the Hague-bound politicians’ ‘prayer rallies’ – in the name of ‘responsible journalism’.

If such self-censorship is good, it is nonetheless always threatened by the pervasive competition across media houses for the most engaging headlines and stories. Further, media houses are often caught between getting the right headlines and meeting the desired deadlines; a delay in launch for some may result in extensive constraints to sales.

Disparities in terms and conditions of employment can be a major source of discontentment among

media practitioners (Oriare et al, 2010: 31), opening doors for compromising activities among disadvantaged staffers – even if Namwaya (2010) shows this scourge to be common among well-remunerated managers. Recruitment and remuneration often focus on the ‘radio voice’ and ‘TV face’ instead of substance, breeding discontent and consequent susceptibility to compromise, reported various interviewees. Furthermore, when colleagues live beyond their known means, this is often attributed to their being compromised, inducing others to follow suit. Further, the perception is that rising competition has caused political parties to infiltrate media houses, making attempts at editorial objectivity futile,³⁰ a phenomenon well illustrated by Namwaya (2010). Additionally, there are perceptions that NSIS has also infiltrated the media, driving an agenda that might be quite distinct from that of the owner or editor.

Journalists outside the mainstream media houses, such as members of the Kenya Correspondents Association (KCA) face multiple disadvantages despite a 2002 determination that they contribute upwards of 65% of all media content.³¹ While

³⁰ An example cited was the shutting down of Express FM which saw its entire staff complement cross over to Kass FM.

³¹ KCA chairperson Oloo Janak places his members’ contributions at 80%.

Box 6.7: Negative Ethnicity in the Media?

Given the ethnic nature of Kenyan politics, the ethnic structure of a media's management could also point to the extent that it could be a conduit for the political agenda of a few people. In response to allegations that NMG was a 'Kikuyu fiefdom', the CEO declared satisfaction with the ethnic diversity of his team which included "Tom Mshindi, the Managing Director of the Newspapers Division, comes from somewhere in the Rift Valley; Joseph Odindo, the Group Editorial Director is a Luo; Ian Fernandes, the director in charge of the NMG Digital Division, is Goan; Mutuma Mathiu, the Managing Editor of the Daily Nation, is Meru and Eric Obino, the Managing Editor of the Sunday Nation, is Kisii." By contrast, the Standard Group had Paul Wanyagah as its official chief executive but in reality he remained inferior to the Group Vice Chairman and Strategy Advisor, Paul Melly, who basically ran the company. Melly is Kalenjin and a representative of the Moi family, which is Kalenjin. The Group Chief Editor, John Bundotich, is Kalenjin, and Kipkoech Tanui, the Managing Editor of The Standard daily editions, is Kalenjin. The weekend edition has no Managing Editor... after the resignation of Dr. George Nyabuga, a Kisii.

some are retained by established media houses as 'stringers', notably by NMG, the majority of the 400-odd registered members survive precariously, unsure whether their (sometimes tortuously-generated) article will deliver returns.

This causes them to be prolific in the hope that at least one article will succeed. With respect to content, such journalists often face danger in either refusing to tow a politician's line, or in their story losing its original intention through the editing process. Journalists mentioned instances where politicians and other leaders have provoked crowds against them for being 'the

enemy of our development'. Poor terms and conditions of employment, or simple greed, often cause correspondents and media house journalists to indulge in mercenary activity, such as in publishing biased analyses of political contests or pre-empting the outcome of an electoral contest.

As Goldenberg architect, Kamlesh Pattni illustrated, and Namwaya (2010) underscores, journalists can be 'gate keepers' who block certain news items, or they can be paid to damage people's reputations. Many analysts have blamed the conduct of the Kenyan media for the 2008 PEV (MCK, forthcoming), arguing

Box 6.8: Efforts to Stifle Anglo-Leasing Exposés

According to Namwaya (2010), a former NMG Crime and Investigations editor was the centre of exerted efforts of the management and fellow journalists to block Anglo-Leasing exposés in the media between 2004 and 2005. The editor reports that colleagues on monthly retainers of as much as Kshs 200,000 would use the office intranet to access his draft stories, promptly notifying the senior people in government who were implicated. The editor was offered a 'hefty lump-sum' in addition to monthly payments of Kshs 50,000 to refrain from negative reportage on Anglo Leasing, which he turned down, reporting the matter to his managers – only to realise that they too had vested interests in blocking the stories. He believes his obduracy was the cause of his 'unceremonial' exit in 2006. However, NMG CEO attributed the editor's exit to misuse of company facilities to do private business, and his 'unhealthy' relations with the Police department from which he purportedly successfully tendered for the purchase of a vehicle, a transaction the editor proved to have involved a cousin. But the editor reveals that 'most' Crime and Investigation journalists are on the police 'payroll'.

that a partisan, co-opted media that resembled a political party uncritically reproduced inflammatory political statements which aggravated tensions. The 2008 Kriegler inquiry into the Electoral Commission of Kenya conduct adjudged the media a problem as well as a solution. The Kenya National Commission of Human Rights indicted about five FM stations for incitement and/or hate speech, including Cooro, Inooro, Kameme, Kass FM and Radio Injili.

The Waki inquiry into the post-electoral violence also indicted FM stations, including Bahasha, Classic, Easy, Kiss and Namlolwe. Other

analysts have advised on the need for a more nuanced analysis of the context to better understand what transpired (Hirsch, n.d.; Stremlau and Price, 2009). For example, 'hate speech' can simultaneously constitute 'in-group humour' and 'out-group castigation'; and violence is a process not an event.

However, there is consensus that the Kenyan media lacked the capacity for conflict-sensitive journalism, which, in the context of the freedoms created by media liberalisation, allowed the airing of combustible material. Further, a study found a low awareness of the me-

dia Code of Conduct, a mere 60% of the respondents owning a copy – 18% through the employer (AW-CFS, 2005).

On the other hand, media houses and practitioners point to their many positive – even if ad hoc – ‘peace journalism’ initiatives during and after the fighting. Using grassroots discussions on-air in Kibera, for example, Pamoja FM highlighted the folly of looting and rioting which resulted in higher consumer prices in those outlets courageous enough to remain open during PEV. The station also hosted forums where citizens held discussions with village elders and members of the Provincial Administration. Sayare FM also conducted similar reconciliatory initiatives in Eldoret. Other observers point to the positive media initiatives in the run up to the general elections.

In submissions to the Waki commission, the Kenya Editors’ Guild noted that the media was already actively suppressing inflammatory statements. In a March 13, 2008 Daily Nation article, journalist Peter Oriare argued there was only “a grain of truth in the charge that vernacular stations fuelled... violence”, pointing to “simplistic accusations”

and the ‘multiplicity of factors making proof of causality problematic’. Oriare further points to media mobilisation for registration and civic education, as well as its highlighting grassroots ECK conduct in rigging.

Building on the media’s indictment over the 2007/08 violence, there is concern that little has been done to reform the media scenario. There is apprehension that the key players of 2007/08 remain the same: the politicians, media owners, media managers, journalists, and of course, the citizens. What has been done, it is asked, to raise the level of propriety among these groups of individuals when key perpetrators of the inequities of the previous elections remain unpunished at the local, national and international levels? In this context, the CCK has received disturbing reports of frequency hijacking across stations, which might also raise temperatures further. This development calls for immediate attention by the CCK since it grows out of an emerging tendency of concentrating frequencies in the hands of a few entrepreneurs. In this context, the KBC proposal to decentralise to the counties is timely. According to the Permanent Secretary, Information and Communications, the intention

Box 6.9: 'There's no honour among thieves...'

Ahead of the 2007 general election, mainstream media political reporters continued the tradition of collecting their 'brown envelopes' from political party secretariats whose contents would be shared among editorial colleagues, reports Namwaya (2010). Through prior arrangements with political parties, senior editors would despatch a trusted reporter to collect their joint dues. In October 2007, one such emissary collected their respective Kshs 10,000 dues from a political party, but decided his personal needs required the whole loot. Thus, he kept the superior's share 'knowing there was nothing he could do about it, having previously been given shares of money he was not expecting, and would likely receive some more in the future'.

is to establish local language stations in the counties which will provide competition to the dominance of selected private operators. Since KBC is the public broadcaster, such stations will undertake social responsibilities which private stations might not prioritise, such as civic education in the context of devolution.

6.4 Conduct of Institutions of the Media Industry

The all encompassing role of the MCK specified in the Media Act is presently under review in the Media Bill (2012). Meanwhile, the CCK's operations have been hampered by political interference and what amounts to misuse of the freedoms availed for litigation that undermine decisiveness. The Independent Communications Commission of Kenya Bill, (2010) merely provides

for the dissolution of the CCK on the effective date of the new legislation when the Independent Communications Commission of Kenya is to take over. However, the significance of the proposed legislation is the independence it affords the ICCK, through a transparent establishment process, compared to that of predecessor CCK.

The extent to which the various media organisations can fulfil their mandate is obviously curtailed by many of them having no legal status with which to leverage their interests, which is critical for their ability to ameliorate political pressure. This was however not the case with the Kenya Union of Journalists (KUJ), a statutory trade union organisation that originally championed media reforms but has lately faded from the limelight. KUJ pioneered the

search for media self-regulation, responding to the rejection of the Press Council of Kenya Bill (1995) by leading a media review task force that developed the Media Bill (1998) which recommended the repeal of Section 79 of the Constitution, and the establishment of the Independent Mass Media Commission and the Media Council of Kenya (Oriare, 2008: 5).

A probable contributing factor to KUJ's emasculation might be –ironically so – the growth of a private sector media after the 1998 liberalisation, in which competition for employment enables media owners to dictate that their members must eschew union activity or resign (Oriare et al, 2010: 34). This would of course be a violation of Article 41's constitutional right of workers to fair labour practices. While membership of a union is optional, certain professional arrangements mandate it.

A primary non-statutory media organisation is the MOA, a grouping of the most financially and politically powerful media houses. At one point, MOA was chaired by the long running media freedom advocate, and now RMS chairman, SK Macharia. A dominant player on MCK, MOA early inherited MCK from

original hosts, and has been bank-rolling the organisation, a significant factor in its successful resistance to the incorporation of cross-media ownership restrictions in the Media Act (Oriare and Mshindi, 2008: 35).

In 2007, the MOA successfully pressed the government to ratify the Kenya Media Council Bill (2007) while repulsing the statutory disclosure of information sources and the 2008 threat to close media houses over incitement during the post-election violence. In 2009, MOA members closed ranks to fight a review of the Kenya Communications Act (1998) that would have given the Information minister the powers to confiscate radio equipment, but successfully pressed for the establishment of the Broadcast Content Advisory Board and government funding of the MCK.

In March 2011, the Information ministry complained that MOA was frustrating the digital migration by refusing to submit their proposed content to the authorities, even as MOA members continued to operate without licences. In 2011, MOA received Intellectual Property Kenya's support in fighting a CCK intention to close 26 unlicensed frequencies by November, CCK's action being

adjudged to amount to government interference contrary to Article 34 (2) and (3) of the Constitution.

Against these realities, Oriare et al's (2010: 36) conclusion is that MOA's primary concern is its members' private business interests. This explains its failure to deploy its political and financial muscle in strengthening the weak media professional bodies, instead undermining them such as by inducing professional conflict of interest in having media managers hold MOA offices, effectively emasculating the Kenya Editors' Guild. While MOA's profit motive has been seen to overrun social sensitivities, it was instrumental in the 2011 private sector-driven Kenyans for Kenya! initiative against hunger.

6.5 Training and Professionalism in the Media

Various sector analysts have blamed the lack of professionalism among media practitioners – including owners, editors and journalists, on the lack of training or orientation. That many of them literally learn by doing, was the cause of Wanyande's (1995) frustrated perception that the mere writing of a newspaper article, or the reading of a radio or TV news

broadcast should not cause one to be considered a journalist. Yet, Kenya's media potential is evident in the number of journalists who have excelled in contexts abroad.

The media is expanding as an arena of investment and employment, making it imperative that frameworks be in place to promote professionalism. The pioneering Kenya Institute of Mass Communications was launched in 1963 to serve the needs of the KBC/VOK and the Information Ministry's KNA. The University of Nairobi's media initiative was launched as the diploma-awarding School of Journalism in 1971.

Both institutions admitted students who had not qualified for degree studies. Presently, all eight public universities offer degree-level media studies, with some offering post-graduate studies. Daystar University pioneered private sector media studies in 1973, and would in 2007 become a UNESCO Centre of Excellence alongside the University of Nairobi's School of Journalism and Mass Communications. Into the 1990s, various private institutions began offering middle level media studies.

Despite the Media Act mandating the MCK to provide guidance on professionalism, the media training environment remains unregulated with the various institutions offering seemingly self-structured courses (Oriare and Mshindi, 2008). This gap in regulation has meant that training needs are identified in an ad hoc manner, providing a training system based on 'template pedagogy', undermining sustainability. Thus, for example, while UNDP's 2007, six-month training on media reporting in conflict contexts was commendable, it did not underscore the fact that contexts needing conflict-sensitive reporting – such as livestock-based conflicts of northern Kenya – preceded and have outlived the tensions of the 2007 elections.

Besides academic training, an additional important area to be covered by media training curricula is the issue of socialisation that allows a media practitioner to understand the context in which they are operating. Hirsch (n.d) highlights difficulties with distinguishing hate speech ('out-group castigation) from the kind of in-group humour (that characterises the performances of Kenyan stand up comedy). Training should also cover issues like the

governance, environment, gender and human rights, devolution and children's rights.

6.6 Political Opinion Polling in Kenya

Political opinion polling has increasingly become controversial especially into and around the 2005 referendum on the proposed constitution. However, Kenya has a history of opinion polling dating back to the first independence decade when a 261-sample survey of voters in Central Nyanza produced a result reasonably similar in overall terms to the final result..." (Kiage and Owino, 2010: 315).

Another election result confirmed the findings of a Gallup-type poll survey in the same year, but the poll's variation from the final count showed that polling could predict a winner, but not (necessarily) the margin. Political polling continued in Kenya until the 1966 emergence of Oginga Odinga's opposition Kenya People's Union party which President Kenyatta proscribed in 1969, sending its entire national leadership into political detention.

A USAID-funded 1973-4 survey investigated constituents' percep-

tions of the roles and personalities of parliamentarians. After Moi's 1978 accession, *Weekly Review* habitually published constituency-level electoral reviews, incurring the Government's wrath.³² Substantive opinion polling returned in the wake of the 1991 return to multi-partyism, with 1992 seeing various exercises including write-in polls by opposition-sympathetic *Society* and *Finance* magazines, two polls by the National Election Monitoring Unit, and some constituency-based analysis sponsored by the KANU party. Polling became widespread leading up to the 1997 general elections with various institutions offering predictions of outcomes.

Into the millennium, International Republican Institute conducted at least seven pre-2002 election opinion polls, while the first of the five Afrobarometer surveys to date was conducted in 2003 (Kiage and Owino, 2010: 340).³³ Steadman launched quarterly popularity polls in 2005, while NMG contracted three companies – Consumer Insight; Infotrak Harris; and Strategic PR and Research – to conduct simultaneous weekly opinion polls leading up to the 2007 general elections (: 350).

Since then, political opinion polling has become an indispensable part of the Kenyan electoral landscape, with a special focus at the level of the presidency and party – rather than the parliamentary seats. Yet, political opinion polling seems to generate controversy, partially because of results in relation to the 2007 presidential elections. Some quarters have attributed the PEV to the expectations raised by the poll results that consistently returned an Odinga/ODM victory.³⁴ In effect, political opinion polling remains poorly understood.

This context gave rise to the hurried drafting and tabling in Parliament of the private member's bill, the Release of the Opinion Polling Results Bill. Consisting of eight clauses, the proposed legislation is "borne of the reality that the publication of the results of electoral opinion polls influences voters to vote in one way or the other." It is designed to regulate "the manner of publication of electoral opinion polls and for connected purposes." Since its publication as a private Member of Parliament's bill – as opposed to a government sponsored bill tabled by the Attorney General, political opinion

³² This would especially be the case if *Weekly Review's* analysis led to a victor that was different from KANU's preferred candidate.

³³ The Afrobarometer is an independent, nonpartisan research project that measures the social, political, and economic atmosphere in Africa. See <http://www.afrobarometer.org/> Accessed 5/11/2012.

³⁴ According to the Waki Report on the post-election violence, electoral monitoring the National Security Intelligence Services also pointed to an Odinga/ODM victory.³² This would especially be the case if *Weekly Review's* analysis led to a victor that

pollsters have consulted with the parliamentarian and contributed to its revision into the Opinion Polls Council Advisory Board Bill. While June 2012 media reports indicate the President assented to the opinion polling management legislation, its existence is curiously not reflected in the Kenya Law Reports database.³⁵ While as a consequence, we are unable to summarise the final provisions of the legislation, media reports indicate that Parliament approved the doubling of the penalty for violating the law's provisions to Kshs 1 million.

Kenya's mainstream individual and corporate pollsters come together under the Marketing and Social Research Association (MSRA), a self-regulating body whose operations are guided by the opinion polling principles and methods established under the European Standards for Opinion and Marketing Research [ESOMAR].³⁶ Among the basic tenets of the ESOMAR framework are the screening of questions, the standardisation of the question format and the timely release of the results to ensure relevance to context. ESOMAR also provides that while market research can be undertaken

at three month intervals, opinion polling must allow a six-month lapse. MSRA has various sub-committees that vet its members' activities as part of the self-regulating process. MSRA has nearly 200 practitioner members among whom 10 are market research/opinion poll companies. Of the ten polling companies in the country, only four undertake political opinion polling, viz. (i) IP-SOS Synovate; (ii) TNSrms EA Ltd; (ii) Infotrak Research & Consulting; and (iv) Strategic PR & Research. Another political opinion polling company which remains outside the ambit of MSRA is Nakuru-based Smart Octopus, whose contacts could not be obtained. In the event, this study only managed interviews with two of these companies, that is Infotrak Research & Consulting and Strategic PR & Research. .

All the political opinion polling companies are private companies (of limited liability) run on a profit-making basis. They have standard institutional management frameworks of varied sizes; political opinion polling forms only a small part of their work portfolios, the bigger part involves market research, public relations, events management and related ac-

was different from KANU's preferred candidate.

³⁵ See http://www.kenyalaw.org/kenyalaw/klr_home/ Accessed 5/11/2012.

³⁶ See <http://www.esomar.org>. *Opinion polling companies relate professionally – such as through sub-contracts – to marketing companies, such as members of the Association of Practitioners of Advertising.*

tivities.³⁷ For opinion polling, these companies have a regular ‘omnibus’ countrywide survey within which clients from any sector can contract the inclusion of own inquiries.

If an intending politician commissions a question about the state of affairs in constituency X, this will be included in only the questionnaires of that constituency, alongside the rest of the questions asked in that constituency which were also being asked across the rest of the country. The client has the option of having the raw data generated by their specific questions analysed, or delivered raw according to Infotrak and Strategic PR.

As for the question on the presidential elections, as discussed above, NMG commissioned three political opinion polling companies to work simultaneously in 2007, producing results which could be compared for verification. The Star has also recently commissioned a survey conducted by Strategic PR, which also conducted three surveys during 2011.

A major issue raised by political opinion polling detractors is the

need for the pollsters to declare who has sponsored or commissioned the survey. Opinion polling expert, Dr. Tom Wolfe, says the following of the high expenses related to polling exercises:

*“...the survey firms (except those that receive direct donor or parent-company funding from abroad) must scamper around to find enough sponsors so as to at least break even, given the very significant costs of conducting such surveys where (due to the spatial distribution of over the landscape) the population remains predominantly rural, with some of it in very distant and infrastructure-poor locations). Such efforts often produce a very complex funding ‘mix’, with clients having various ‘profiles’ like: (1) Those who contribute to the firm for its work in general, but such payments are not associated with any particular poll; (2) Those clients who pay for an entire poll (and may or may not want the results released to the public through the media); (3) Those clients who pay for a number of specific questions, the results to which only they receive/learn about, while other clients... (4) Pay for a number of specific questions, but allow the results (to at least some of them) to be released to the media; and so on.”*³⁸

³⁷ For example, Strategic PR was founded by the late University of Nairobi journalism lecturer, Peter Oriare Oriare and a partner. In turn, Infotrak is a family-based company. See <http://www.infotrakresearch.com> for the company’s portfolio of clients, many of whom have nothing to do with politics.

³⁸ See interview at <http://www.bizcommunity.com/Article/196/15/76480.html>, accessed 10/9/2012

All pollsters use the MSRA/ESOMAR framework to develop survey instruments and delineate samples, both of which must be peer reviewed by MSRA colleagues. The companies are conscious to the problem of survey fatigue among respondents who do not see any direct benefit in responding. Consequently, survey instruments are concise, and the pollsters report that their research assistants are well trained for efficiency, many of them being retained from previous survey cycles.

The companies report conducting call-back reviews to confirm that outputs are based on bona fide interviews, failing which the work of the offending interviewer is rejected and a repeat survey conducted. The interviewers are normally college and university students working under supervisors overseen by company officers.

Data collection is usually preceded by a courtesy call on the local administration to ensure the smooth conduct of the exercise. Political pollsters deny any collusion with politicians, pointing to the fact that not many politicians even take the initiative of loading their questions on the omnibus. Yet, there are persisting perceptions that the political

opinion pollsters were partisan in 2007; these perceptions remain so to date. The view was that with its Central Kenyan CEO, IPSOS Synovate was PNU aligned, while Infortrak with a Western Kenya CEO was ODM aligned.

Namwaya's (2010) revelations about politicians and their political parties' interactions with media houses also lend some credence to the suspicions that pollsters might collude with certain politicians. Yet, the consistency of the returns – such as NMG's 2007 commission – suggest objectivity among pollsters, who, like the mainstream media houses risk losing clientele if they are seen to be partisan. Kenyan pollsters point to the fact that in spite of their operational independence, their results are often quite comparable across companies, and with those of the National Security Intelligence Service (during 2007).

Indeed, when in 2007 NMG hired the two pollsters interviewed for this report and Consumer Insight, the results from the 50 surveys conducted between 29th September and 17th December were comparable, with Odinga consistently ahead of Kibaki (Kiage and Owino, 2010: 351).

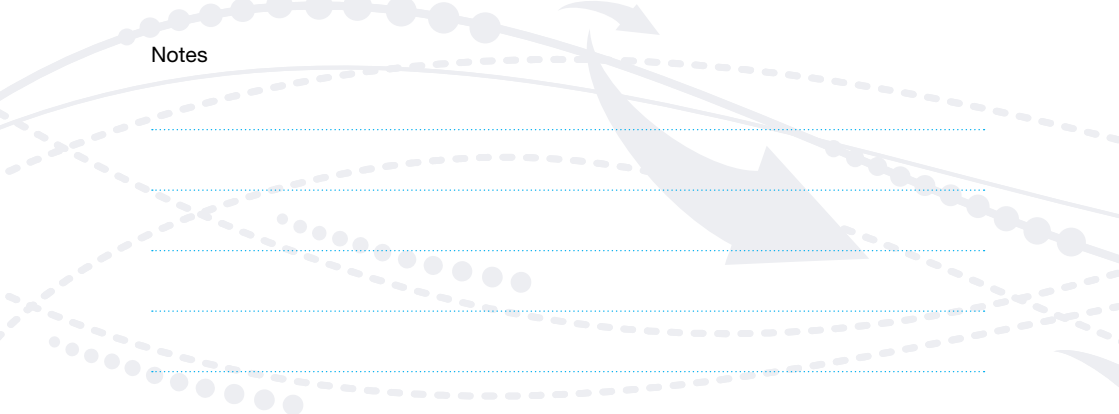
It is therefore curious that NMG would produce a 2012 caution to its journalists declaring:

“We take the view that, not knowing the sponsors of and how the polling was conducted, we risk our reputation if we play up the “findings” of these pollsters,”³⁹

A new entrant to the political opinion polling scene is Poll Kenya, “a web/sms based interactive system that will allow Kenyans to give their opinions on next year’s elections as well as other topical issues within

the country.”⁴⁰ Poll Kenya promises a cost-effective means of collecting data, thereby enabling the expansion of the survey sample size. However, the lack of a face to face interaction with the respondent is likely to undermine aspects of data collection, such as the random distribution of the sample. The initiative by opinion pollsters incorporate a council advisory board in the pending opinion polling legislation should enhance confidence in the product of opinion polls.

Notes



A series of horizontal dotted lines for taking notes, with a large grey arrow pointing downwards on the right side.

³⁹ This is reported by Caroline Kimutai at <http://www.bizcommunity.com/Article/196/15/76480.html> Accessed 12/10/2012

⁴⁰ <http://www.pollkenya.co.ke/index.php> Accessed 12/10/2012

Discussion 7

In finalising this discussion on the influence of ownership and content, we consider some implications of the issues that have arisen. Most important of all is that the review of the Media Act should produce a more effective framework for MCK operations.

Along those lines, it is critical that MCK get government funding *without strings attached* to make it independent of big media, MOA. Such an arrangement already exists in the legal sector where the Advocates Complaints Commission (ACC) is an integral part of the State Law Office, but handles complaints against all private and public sector advocates.

Similar arrangements exist for the medical profession through the Medical Practitioners and Dentists Board (MPDB). In keeping with that ACC model, therefore, it will be necessary to strengthen MCK's functions relating to the registration of all media practitioners, not just its current statutory function of registering local journalists and accrediting foreign journalists.⁴¹ Effectively, MCK

should licence practitioners; and that process should mandate dues from practitioners which can be set by the Act – in relation to the recommendations below on a statutory framework for terms and conditions of employment.

Thus, besides the remedial measures currently availed to the Complaints Commission, it or MCK should be able to discipline errant practitioners by, amongst other things, suspending or even cancelling their practicing licences. In the proposed context, individual media professions could have societies that perform a similar role to the Law Society of Kenya in relation to ACC, or Kenya Medical Association in relation to MPDB.

The Kenya Information and Communications Act already gives CCK extensive powers of regulation over the electronic media. However, the appointment of the executive by the Minister undermines the CCK's independence. The proposed new legislation radically changes the landscape and provides greater

⁴¹ The Act's limiting definition of a journalist is a person who 'collects, writes, edits and presents news or news articles in newspapers and magazines, radio and television broadcasts, and in the internet'.

independence of the sub-sector's oversight body, ICCK, by removing the arbitrary ministerial choice of its commissioners. The selection of the commissioners has been shifted to the Public Service Commission which is itself being reformed for fidelity to the Constitution. Meanwhile, the Constitution (2010) and legislation arising have offered variants for appointments to sensitive public offices that enhance their distance from the Executive, and indeed the Legislature and Judiciary. The measures include preliminary (public) screening of applicants for suitability, and a secondary screening of recommended appointees by Parliament. Advantage should be taken of these experiences to enhance the independence of the proposed ICCK.

These proposals lead to a further major concern in the sector, that of training which currently reflects no universal status (in terms of scope and content). While the central accreditation of universities (probably) universalises the scope and content of their mass communication curricula, the same cannot be true of an aviation college of tourism studies institute offering journalism in comparison to other certificate

or diploma colleges. Legislation for curricula for different levels of qualifications would enable MCK to regulate the qualifications of individuals entering the media and their subsequent professional conduct, such as with respect to handling sensitive political matter.

A further area needing improved legislation for MCK is in regulating and monitoring media content. For politics, the concern is with inflammatory material in the context of electioneering, but this concern also has to do with improving capacity in the rest of the areas the Act requires MCK to monitor, such as inaccuracies, and pornography. The effective use of curricula developed in a consultative manner would enhance regulation of media content as it is produced. In terms of monitoring output, MCK's scope for universal monitoring is limited; hence it must look for partnerships recognised by its revised legislation to collect credible evidence with which to undertake its mandate. For political issues, for example, MCK could liaise with other government and non-government agencies that monitor political mischief, such as the National Security Intelligence Service, National Cohesion and Inte-

gration Commission, Peace-building and Conflict Resolution Programme, human rights commissions, and the police amongst others. In these respects, the Internet presents an especial even if surmountable challenge, being the arena of much ethnic, racist and divisive vitriol. However, the Internet also offers a cost-effective platform on which to undertake such integrated monitoring.

Directly related to these concerns with curbing hate speech and ethnic jingoism is the reality that since the 2007/08 elections and violence, various people have been arraigned in court on suspicion of having committed such crimes; yet many such cases have not been finalised four years later. This is also true of a lot of impunity in the country. Such conduct – including the government's current attitude to the impending ICC trials – fuels the perception that crimes of particular kinds will never be prosecuted and finalised.

Thus, even as MCK's capacity for monitoring such misconduct is improved, it is timely that prosecution and judicial reforms are underway that can act decisively on misdeeds. Such finalisation would in itself provide a deterrent against further misconduct. However, there is also a

dilemma in distinguishing art – such as the ethnicised content of Kenyan stand-up comedians – from hate speech and jingoism. It is the comical characterisations of ethnic Kenyans that provides the background against which ethnic chauvinists ply their trade.

Finally, the Media Act should also address the status of media owners. Firstly, in many other jurisdictions, media conglomeratisation and concentration is statutorily controlled. For Kenya, while the ICT Policy 2006 advocated against the two practices (Oriare et al, 2010), subsequent related legislation (Section 4) did not address this area which is critical from the perspective of the misuse of the media for political gains. In truth, RMS' control of radio and TV frequencies and audiences presents real challenges for democratic deepening in Kenya. The failure to legislate against the two practices has been attributed to the strength of the mainstream media lobby, MOA. It is imperative that legislation restrain the scope for monopolistic practices that can undermine the deepening of nationhood.

Additionally, how can MOA conduct be reined in specifically in the context of the Media Act, additional

to the weak provisions presently provided by the Kenya Information and Communications Act and the Books and Newspapers Act, which largely focus on the technical aspects of the industry?⁴² For one, applicants for print and electronic media licensing could be required to declare their political affiliations, including relationships to active politicians. Further, media operators could be required to declare allegiances so many months ahead of a general election.

If media practitioners – the media owners’ employees – are regulated as proposed above, it is necessary to provide measures that regulate owners’ (mis)conduct towards employees and profession associates. At too many FM stations, staff remain unpaid for months on end; yet legislation requires owners to show evidence of financial solvency. KCA members are also at the mercy of the media houses to whom they submit their stories. This is indeed the domain of KUJ, whose activism amongst other things, produced the 1992 proposals of the Media Industry Steering Committee, the earliest foundations of MCK. Yet, KUJ appears to have been emasculated reportedly through its internal

mismanagement, but arguably also through a liberalisation that has expanded the sector at a faster rate than the union could monitor and respond to. However, the union should also review its rules to enable it to have a strong base from which it can defend journalists who might fall foul of owners and managers rebuffing a compromising situation. Thus, while there is need to strengthen KUJ, there is also a need to rein in MOA in the interests of enhancing the capacities of employees to stand up to threats of disciplining by employers for refusing to comply with orders that might threaten political harmony. Provisions could be made in the Media Act; or alternatively, the government could legislate for a nationwide media owners’ policy and legal framework, an approach that could rein in the alternative media.

Vulnerability is a major avenue through which unprofessional influences are made to prevail over individuals. As individual media associations, some of whose members work under a single owner or editor, it will always be difficult to extract concessions from the latter. However, there is a possibility that a united front under the umbrella of

⁴² For example, the Kenya Information and Communications Act only provides under its Regulations (2009) for the restriction of multiple frequencies per licensee within the same “broadcast coverage area”.

MCK could enable the associations to extract reasonable concessions from employers. Thus, a revitalised MCK should provide a platform on which all the sector associations meet. Such a platform would, for example, deliberate on the curriculum content, alongside the proposals concerning accreditation, registration, recruitment, discipline and related matters.

While employers will agree with employees on the specific terms of engagement, there should be minimum terms and conditions of service which ensure professional dignity in the sector, keeping compromising situations at bay, such as the rampant corrupting practices by politicians and the corporate sector. Finally, such deliberations could rationalise the existence of the various media management organisations, as some likely duplicate others' functions, to arrive at a leaner, more internally coherent set that is better able to represent members of the profession.

In that context, it is important to revamp the Kenya Editors' Guild (KEG) and make it a more professionally focused entity. It is sacrilegious that a member of the Guild should also sit on the MOA board as the two

organisations' core objectives are unlikely to map. Special attention should also be paid to KCA given its contribution to media output.

The persistence of personality-based politics perpetuates the risk of a return to violence in the next general elections – for many of the reasons cited above, such as the media agenda being demand rather than supply-driven. The conduct of the Independent Electoral and Boundaries Commission (IEBC) will be critical to whether the forthcoming elections are peaceful or not. Yet, many lament the failure by IEBC and its predecessor, the Interim Independent Boundaries Commission, to take advantage of the many by-elections conducted since the signing of the National Accord, to stamp authority on the electoral process, having failed to take action against many electoral indiscretions.

Kenyans also wait to see the value of the investment in the Truth Justice and Reconciliation Commission which failed to interview key perpetrators of injustices over the years. The work of the National Cohesion and Integration Commission is also critical in these respects. These related scenarios will necessarily be played out in the media, meaning

tensions can arise outside the immediate political context.

A final issue is over the likelihood of violence in the impending 2013 elections, and whether the media conduct is likely to promote such violence. Stremlau and Price (2009) emphasised the need to place electoral violence in the context of time and space, rather than viewing it as an event, arguing that electioneering provides an opportunity for opening up old wounds, bringing underlying grievances to the fore. Wanyande (1997) used heterogeneity of civil society to underscore the same characteristic in the media, which has progressive and reactionary elements.

Thus, while various commentators have blamed the Kenyan media for the 2007/08 PEV, others have pointed to its double edged performance, providing civic education over many years while also stoking violence. Since August 2012, the Tana River delta in north-eastern Kenya has been experiencing violence which some analysts have associated with local politicians' need to influence the ethnic configuration of the voters' roll. Significantly, the Tana Delta was not a locus of the 2007/08 PEV, but has always experienced inter-

mittent violence over access to water between its pastoralist and farming communities.

But it is the scope for mobilising for such crimes that makes media ownership attractive. Electoral violence is a characteristic of all electoral politics in Kenya since independence, the extent varying over time and across regions; and it has not depended on the media. What can be done is to minimise the extent to which media conduct either provokes or fuels such violence while also championing peaceful coexistence. There is already in place the Code of Conduct for the Practice of Journalism in Kenya and New Guidelines on Election Coverage. AWCFS (2005) established that the existence of such material does not translate directly into their use as sometimes, journalists do not even have ready access to them.

Consequently, it is important to conduct regular education on such material. This conforms with Stremlau and Price's (2009) various recommendations on managing electoral violence, including inter-media dialogue, clear definitions of hate speech and its monitoring, partnerships and the management of opinion political polling.

The history and contemporary practice of the media in Kenya presents a sustained rebellion by private investors against the colonial and independence governments' desire to over-regulate the media.

As with the European community during colonialism, the mainstream media owners have preferred Makokha's (2010) professional media model in which private interests prevail over all others, leading to the 2007 emergence of an MCK controlled by MOA.

And as the government and the mainstream media have struggled against each other, those excluded have evolved their own alternative media model which strides the divide from outright gutter material to serious publications that are only constrained by resources from entering the mainstream media category.

The Kenyan alternative media distinguished itself through guerrilla-like tactics that contributed to the liberalisation not just of the media sector, but also of national politics. Thus, to paraphrase a Marxian framework, the emergence of MCK and CCK were mere preliminary syntheses of media dialectics given the dictatorial scope of the old constitution.

These gains are arguably only now being made substantive in the context of the progressive Constitution (2010), with the media sector transforming more into a social responsibility model, even if threat remain. But the foregoing chapters have illustrated the manner in which the Kenyan media has continually lived up to Stremlau and Price's (2009) characterisation of the media as a mirror of society that amplifies reforms while also enabling agenda-setting.

Notes

Conclusions and Recommendations

8

The Constitution (2010) revolutionises government in Kenya. Specifically, the Bill of Rights (Chapter 4) has far-reaching implications for personal freedoms, including those that require the media for their enjoyment.

Yet, media practitioners need to be aware that the Constitution contemplates the oppressive enjoyment of rights and freedoms and provides that these can be limited by law “to the extent... reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors...” Fundamentally, then, the document is not a *carte blanche* for anarchy: instead, it is a framework for enhancing psychological and material human welfare, which is consistent with enhancing democracy.

Concern has revived with the media’s perceived role in Kenya’s 2007/08 post-election violence, in the context of the impending general elections under the new constitution. The focus is on the extent to

which politicians own, or might have access to owners of, the media, and to therefore adversely influence media content for a favoured agenda. In order to better understand the context in which the media operates vis a vis the risk of political interference, this report is the product of a limited review of the literature on the dialectics of media ownership, policy and output, interviews with key informants, and a unstructured survey of various media houses. The study found various avenues through which politics can enter media houses, including areas outside and inside the media houses. The Kenyan practice since independence of the elite straddling multiple economic sectors – politics, industry and agriculture – has been reinvented in the media industry where the mainstream investors straddle the print/electronic divide, sometimes with multiple investments in each sub-sector. This has been made possible because of the weak legislative and institutional frameworks governing the sector which are also inefficiently applied.

The media training arena lacks adequate regulatory frameworks, resulting in many graduates with questionable orientation. The proliferation of media houses attracts many young people to pursue studies at questionable institutions, but the large numbers graduating also weakens their bargaining power, including their scope for resisting interference.

The line between media owners and editors has increasingly been blurred as the latter are co-opted into the formers' domain, meaning the editors no longer exclusively pursue professionalism.

Most importantly, the core legislative frameworks – the Media Act and those governing CCK and the Registrar of Books and Newspapers – are out of focus in terms of the needs of the sector.

Consequently, MCK and other regulatory bodies are unable to efficiently fulfil their mandates, leaving gaps through which weak professionalism creeps in, providing opportunities for political interference. With an underlying objective of enhancing the media sector's independence and professional integrity, the study makes

the following recommendations:

- ❑ It is necessary to undertake an extensive stakeholder-driven review of the legal and institutional frameworks governing the media sector. Such a review should take into consideration the various provisions on the media in Constitution (2010). The review should be sufficiently wide to cover all aspects of the media industry.
- ❑ Critically, the review of legislations should arrive at a stronger, well resourced and therefore more effective MCK that is respected by all sector players, including the government, owners, editors, managers and journalists.
- ❑ The legislative reviews should also improve the capacities of the various media oversight bodies, such as CCK and Registrar Books and Newspapers, to perform their functions.
- ❑ There should be a stakeholder assessment of the institutional needs of the sector, which will rationalise the various organisations that are currently active in the sector with a view to providing an efficient integrated framework for the sector's management.

- ❑ Arising from the development of an integrated sector management framework, there should be a review of capacity needs which leads to a review of training needs. This should cover elaborate curricula content for all categories and levels of the sector.
- ❑ The development of appropriate curricula should form the basis for accreditation of institutions to offer mass communication studies on the evidence of their having adequate capacities. This should then lead to the development of frameworks for accession of individuals to the various professions.

Notes



Abdi, Jamal; and James Deane, James (2008). The Kenyan 2007 elections and their aftermath: the role of media and communication. Policy Briefing #1. BBC World Service Trust. London, UK.

Africa Women and Child Features sServices (2009), For Better? Or For Worse? Impact of the Code of Conduct on Journalism Ethics in Kenya. Supported by the Friedrich Ebert Foundation October 2005 A Study by the African Woman and Child Feature Service (AWC).

Article 19 (1995), Censorship in Kenya; government critics to face the death sentence. Available at <http://www.article19.org/data/files/pdfs/publications/kenya-censorship-in-kenya.pdf> Accessed 4/11/2012.

Butegwa, C. (Ed.), (2006), Strengthening Africa's Media: Towards a Framework for Action – Eastern African Sub-Regional Meeting. Strengthening Africa's Media (STREAM) Consultation, Process, 25 - 26 September 2006, Nairobi, Kenya.

Hirsch, Susan H. (n.d.), "Putting Hate Speech in Context: Observations on Speech, Power, and Violence in Kenya." Paper prepared for the Holocaust Memorial Museum conference on Speech, Power, and Violence and available at <http://www.ushmm.org/genocide/spv/>.

Kanyinga, K. and D. Okello (Eds.) (2010), Tensions and reversals in democratic Transitions: the Kenya 2007 general elections. Nairobi: Society for International Development with Institute for Development Studies (UoN).

Kiage, O. and K. Owino (2010), History, Politics and Science of Opinion Polling in Kenya. In Kanyinga and Okello (2010) pp 311 to 371.

Makokha, K. (2010), The Dynamics and Politics of the Media in Kenya: the role and impact of the mainstream media in the 2007 general elections. In Kanyinga and Okello (2010), pp 271 to 310.

Masime, Kennedy and Charles Anderson Otieno (2010), Money in Politics: financing the 2007 general elections. In Kanyinga and Okello (2010), pp 459 to 487.

Media Council of Kenya (2012), The Long Walk to Media Freedom. Nairobi: MCK.

Namwaya, Otsieno (2010), Dirty Hands: Despite great image, Kenya media is blighted by corruption. Expression Today No. 10. 19 Oct-nNov 2010.

Ngugi, (2012), From Fetters to Freedom: media regulation in Kenya. In Media Council of Kenya (2012).

Nyamora, Pius M. (2007), The role of alternative press in mobilization for political change in Kenya 1982-1992: Society magazine as a case study. Graduate School Theses and Dissertations. Paper 2305. Available at <http://scholarcommons.usf.edu/etd/2305> (Accessed 28/08/2012).

Ochieng', Zachary (2011), Kenya: Long, lonely road to press freedom. Free Africa Media. Available at <http://freeafricanmedia.com/article/2011-02-16-kenya-long-lonely-road-to-press-freedom> Accessed 5/11/2012.

Odinga, Oginga (1965), Not Yet Uhuru. Nairobi.

Okoth-Owiro, A. (no date), Law and the Mass Media in Kenya. Monograph

Oriare, P. M (2008), The Media, Legal, Regulatory and Policy Environment in Kenya: A Historical Briefing. Commissioned by the BBC World Service Trust , To be read in conjunction with BBC World Service Trust Policy Briefing No. 1

Oriare, P. M. and T. Mshindi (2008), Kenya Media Sector Analysis Report. Prepared for the Canadian International Development Agency, Nairobi.

Oriare, Peter, Rosemary Oklello-Orlale and Peter Ugangu (2010), The Media We Want: the Kenya media vulnerabilities study. Nairobi: FES.

PUBLISHERS WITH UNKNOWN POLITICAL ALLEGIANCES

Publication	Publisher/Editor
Africa Woman magazine	Sylvia Owori
Animal welfare	Gatu Mbaria
Business Post Magazine	Alex Ndung'u
CIO East Africa Magazine	Leadership - Kommunication Ultimate Ltd – Zachary Ochieng
Diplomatic Magazine	Global Village Publishers (EA) Ltd – Kwendo Opanga
Expressions Today	David Makali, Henry Makori
Homes Kenya Magazine	Beyond Media – Carole Muchendu
East Africa Destination Magazine	Haligonian Investment Ltd – Brennen Matthews
Management Magazine	Kenya Institute of Management Carole Kimutai
Nairobi Law Monthly	Law Monthly Ahmednasir Abdullahi and Dennis Ben Mosotah
Parent Magazine	Stellan Consult Ltd – Eunice Mathu
Pregnant Magazine	Integral Media – Brenda Wangwe
Sacco Review	Peter Silsil and Joseph Karanja
Salon Business Solutions Magazine	Afri-Salon Consultants Ltd – Faith Harry
Small Medium Enterprises Today	Liason Media – Munene Kaboro
Smartlife – Nakumatt	Creative Edge – Jenny Luesby
SWARA	East Africa Wild Life Society – Nigel Hunter
The Agrolink	Tropex Limited – Mumassabba Michael
The Corporate Intelligence Africa	Talanta Africa Media & Telecommunications Ltd – Bernard Gitonga
The Exchange Magazine	East African Securities Exchanges – Donald Ouma
The Property Zone	Property Zone Consulting Ltd – Christine Mweteeli
True Love Magazine	Carole Mandi
Tupike Magazine	Lavender Hues Limited – Catherine Muraguri
Unique Homes	Unique Homes Magazine Kenya Limited – Boniface Gatobu

Source: MCK (forthcoming), citing Reelforge Media Monitoring

Notes

A series of horizontal dotted lines for taking notes, overlaid with a faint, abstract graphic design consisting of curved lines and arrows.

Notes

A series of horizontal dotted lines for taking notes, with a decorative graphic at the bottom consisting of curved solid and dashed lines, arrows, and a trail of dots.



USAID
FROM THE AMERICAN PEOPLE