AFRICAN MEDIA BAROMETER KENYA 2009

Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SECTOR 2:

The media landscape, including new media, is characterised by diversity, independence and sustainability.

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The media landscape, including new media, is characterised by diversity, independence and sustainability

2.1 A wide range of sources of information (print, broadcasting, internet) is accessible and affordable to citizens.

Analysis

There is a wide range of information sources accessible to citizens, as more print and broadcast outlets have come up. In the broadcast media there are 80 radio stations plus some pirate radio outfits.

Broadcasting

Of the 372 radio frequencies allocated, 233 are active while 138 are yet to commence transmission. Many universities and community organizations have been allocated frequencies and are already broadcasting. The main operators in the broadcast media remain the Kenya Broadcasting Corporation (KBC), which has a countrywide reach even though the quality of the signals may be wanting in some parts of the country, followed by Royal Media Services (RMS), owned by businessman Samuel Macharia. RMS operates thirteen (13) radio services in Kenya's main vernacular languages, as well as a television station. The other prominent media owner has been Rose Kimotho of Regional Reach Ltd, who made history as the first Kenyan woman to start a radio station. Her Kameme FM, broadcasting in Kikuyu language, was seen as a symbol of power of the wireless in rejuvenating indigenous languages. She also launched K24, a news television station. However, these two outfits have now been acquired by TV Africa Holdings, which has also acquired the People Daily and also owns Stellavision. Radio Africa Group which is owned by Ghanaian Patrick Quarcoo runs Kiss FM, Classic FM, Radio Jambo, East FM, Radio Maria and XFM. It has two television stations namely Classic TV and KISS TV. Nation Media Group (NMG), which runs Nation TV (NTV) and two radio services (Easy FM and OFM), is owned by the Aga Khan who holds majority shareholding. NMG is the largest media house in Eastern and Central Africa and is listed on the Nairobi Stock Exchange. The Standard Group, owners of the Standard (formerly the East African Standard) – established in 1902 – is reportedly owned by former Kenyan President Daniel arap Moi, his son Gideon and businessman Joshua Kulei. It owns the Kenya Television Network (KTN), and has in the recent past acquired a radio station.⁷

⁷ Study by AfriMap on Public Broadcasting in Kenya (yet to be published).

Most of these radio stations cover Kenya's major towns. Radio listenership, which is dominant and cheaper, has been enhanced by radio receivers in public transport and increased use of mobile phones that receive radio signals. It is the most dominant mass media in the rural areas.

There are 16 television stations but very few of them have countrywide reach, and the urban dominance remains.

The entry of internet on the media scene has increased the range of information sources and accessibility. About five-six million Kenyans have access to the internet. The introduction of cheaper modems by mobile service providers has increased accessibility. The cost is Kshs 1,000 (US $\$ 12.5) per 300 to 400 MB. Internet at cyber café is on average Kshs. 60 (US $\$ 0.75 per hour. It should however be noted that although these appear to be low costs, the slow speed owing to limited bandwidth end up raising the costs.

Print

Given the developments in the other media sub-sectors mentioned above, the circulation in the print media have stagnated and in some cases, gone down. A contributory factor is affordability, given the high production costs and heavy taxation of newsprint. Circulation and sales respond to the economy and the current situation is unfavourable.

The *Daily Nation*, the *Standard* and their Saturday and Sunday sister publications are the largest circulating newspapers in Kenya. The others are The *Kenya Times*, the *Sunday Times*, *Saturday Times* and the *People Daily* and the *People on Sunday*. There is also the *Business Daily*, a publication of the Nation Media Group and *The Star* (formerly the *Nairobi Star*), which are the recent publications on the Kenyan market⁸.

Nation Media Group also owns The East African, a regional weekly newspaper and Taifa (a Kiswahili daily newspaper that was established in 1959).

For the leading dailies, circulation figures in 2008 stood at:

Daily Nation – 180,000 The Standard – 110,000

⁸ Study by AfriMap on Public Broadcasting in Kenya (yet to be published).

Table 1: Newspapers in Kenya

Title		Circulation
		PE: Publisher estimate
		ABC: Audited Bureau of Circulation
Daily Nation		180,000PE
Sunday Nation		280,000ABC
The Standard		110,000PE
Sunday Standard		150,000PE
Kenya Times		38,000PE
Sunday Times		38,000PE
The People		65,000PE
The People on Sunda	ay	66,000PE
Taifa leo		44,000PE
Taifa Jumapili		46,000ABC
Business Daily		15,000PE
Nairobi Star		10,000PE
Daily Metro		30,000PE
The East African		40,000PE
Coast Week		12,000PE
The Financial Post		60,000PE
Some of the newsp	apers that were	in circulation but have been phased out:
1. The Leader		2. The Weekly Advertiser
3. Daily Metro		4. Kenja Times

Source: *The Status of the Media in Kenya*. A report of the Media Council of Kenya, 2008.

Individual scores:

- Country does not meet indicator Country minimally meets aspects of the indicator. Country meets many aspects of indicator but progress may be too recent to judge.
- Country meets most aspects of indicator.
- Country meets all aspects of the indicator and has

been doing so over time.

Average score:

3.3 (2005=3.0; 2007=3.0)

2.2 Citizens' access to domestic and international media sources is not restricted by state authorities.

Analysis

Overall, the Kenyan government has not banned or restricted access to local or foreign print or broadcast media. Our boundaries are porous. Besides, technology transcends physical boundaries. However, two cases of restriction have been recorded recently. In the wake of post-election violence in 2007/2008, the government restricted some stations from live broadcasts. In 2007, there was an attempt to restrict the circulation of an international magazine.

The National Press Board is also fighting relentlessly against illegal publications that have been created over the past months in violation of the 2004 Act (creation of a company, registration, taxes, etc...) and in contempt of professional standards. The Board accuses these illicit publications of being illegally present on an already fragile market with legally established media outlets that rigorously comply with the obligations of the profession. The CNP has instructed printers not to run these papers under threat of penalty. In June 2008, the CNP gave GEPEC (Group of Press Editors in Ivory Coast) a 45-day moratorium for these newspapers, which are mainly published by the group, to conform to the law.

Individual scores:

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

Average score:

3.8 (2005=4.8; 2007=4.4)

2.3 Efforts are undertaken to increase the scope of circulation of the print media, particularly to rural communities.

Analysis

Mainstream dailies concentrate on national issues and the metropolitan region. Coverage of rural areas is limited to provincial or regional "Round-ups" or "Briefs". Moreover, a significant percentage of content is corporate supplements which do not carry development issues like agriculture, which would interest rural-based readers.

Individual media houses have made some efforts to reach the rural communities. *The Standard* expanded their rural bureau for example to Nyeri, in the central parts of the country, but recorded low returns. *The Nation* started sending free copies of their Kiswahili newspaper *Taifa Leo* to schools under the project of "Newspaper in Education," to increase literacy and in the long run, capture the market.

In this scenario, the alternative media have taken the opportunity to establish and expand their presence in both urban and rural areas. There are now 46 alternative media outlets. In addition, the post-election violence changed the patterns of readership, listenership and viewership, to a more discerning selection of national and regional media outlets and coverage.

Individual scores:

1	Country does not meet indicator		11111					
2	Country minimally meets aspects of the indicator.		/		/		/	/

Country minimally meets aspects of the indicator.

Country meets many aspects of indicator but progress may be too recent to judge.

Country meets many aspects of indicator but progress may be too recent to judge.

Country meets most aspects of indicator.

5 Country meets all aspects of the indicator and has been doing so over time.

Average score:

2.7 (2005=4.0; 2007=2.9)

2.4 The editorial independence of print media published by a public authority is protected adequately against undue political interference

Analysis

Previously there was no print media by a public authority. In August 2009, a weekly Kenya Today, was launched. It is published by the Department of Information of the Ministry of Information and Public Communications. The Editorial Director is the Director of Information and Public Communications in the Ministry. Contributions are mainly by the Kenya News Agency (KNA) in the Ministry. The weekly focuses on government activities especially those not widely covered by the privately-owned commercial media outlets.

The Kenya News Agency is the main information collection agent of the Ministry of Information. It collects stories mainly from the rural areas. The KNA Press Office, based in Nairobi, serves as the communication and editorial centre for the reception, processing and dissemination of news to subscribers¹⁰. It is noteworthy that the brief of KNA is to collect 'news' from 'rural' areas. The Ministry of Information policy document states that the rural press offices are strategically located to ensure narrow-casting in the coverage of development news to enhance information flow at the grassroots level. The main consumer of KNA news is the KBC, the *Kenya Times* and *Taifa Leo* newspapers. Other media also subscribe to KNA for rural news.

⁹ There were no scores for this indicator in Media Barometer of 2005 panelists then felt that there was no print media published by public authority (defined as a state authority e.g. Ministry of Information)

¹⁰ Study by AfriMap on Public Broadcasting in Kenya (yet to be published).

Towards the end of 2009, KNA received Kshs 80 million¹¹(US \$ 100.000) from the World Bank to set up twenty four (24) information resource centres.¹² The centres are meant to enhance the capacity of the department in processing, packaging and storage of information through modern technology. The centres will enable KNA to be vibrant in its supply of news from the different regions, provide information to the public and serve as a news bank for foreign media based in the country. The department has also through the Kenya Information Communication Technology (KICT) Board already received Kshs 19 million state-of the art equipment and Kshs 60 million has been spent on Local Area Network (LAN) and bandwidth connectivity.

At this point, it is still early to judge Kenya Today editorial independence.

Scores:

Individual scores:

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

Average score:

2.0 (2005=n/a; 2007=2.3)

2.5 Adequate competition legislation/regulation seeks to prevent media concentration and monopolies

Analysis

Trends indicate an upsurge of individuals seeking media concentration motivated by the quest of political control, influence and business gains.

The Media Owners Association has been keen to scuttle efforts and discussions towards media de-concentration. They argue that in free enterprise, those with the capacity should be free to invest. Business and political interests have seen the emergence of monopolies by a few individuals, families and other categories. This is the case with, for example, the Standard Group, the Royal Media Services, the

¹¹ Exchange rate is 1 US\$ is equivalent to Ksh. 70.

^{12 &}quot;Exciting Times Ahead for State News Agency". Kenya Today, November 16-22, 2009.

Nation Media Group, Radio Africa Group and a few others. The Royal Media for example owns over 60 broadcast frequencies.

The law has been largely reactive to these developments. The Kenya Communications Amendment Act 2008 tried to restrict concentration. It advocates "fair" competition. The ICT policy of 2006 proposes that in order to promote diversity of views and freedom of expression, concentration of ownership of print and electronic media in a few hands will be discouraged. Limits to cross media ownership will therefore be set through regulations to be issued from time to time and through competition laws¹³.

One of the very recent developments and which may be interpreted to be in line with the ICT policy of 2006 of 'issuing regulations from time to time' is the enactment of the Kenya Communications (Broadcasting Authority) Regulations 2009¹⁴ which in article 10 (1) on ownership and control points out that "no person other than the public broadcaster shall be directly, entitled to more than one broadcast frequency or channel for radio or television in the same coverage areas. Provided that CCK shall prescribe a time frame for existing stations to comply with this requirement". And in article (10) (6) "a broadcaster shall not lease or transfer broadcast frequencies or channels assigned to it to any other person without the written authority of the CCK".

Scores:

Individual scores:

1	Country does not meet indicator	/				/				/	/	/
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3	Country meets many aspects of indicator but progress may be too recent to judge.					14111			11/11/11			
4	Country meets most aspects of indicator.											
5	Country meets all aspects of the indicator and has been doing so over time.				1145 1445 1445 1445 155	0.0 m kg 0.0 m kg	10111			11111		100

Average score:

1.5 (2005=1.5; 2007=2.3)

¹³ Study by AfriMap on Public Broadcasting in Kenya (yet to be published

¹⁴ The Regulations were gazetted in January 2010. The Media Barometer 2009 had already taken place.

2.6 Government promotes a diverse media landscape with economically sustainable and independent media outlets.

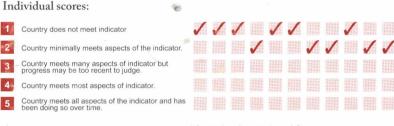
Analysis

For some time in the past the allocation of the limited broadcast frequencies was haphazard, leading to some monopolists acquiring what they did not need. They ended up "hoarding" for speculation.

The Kenya Communications Amendment Act 2008 provides for the withdrawal of unused frequencies, and this has been effected.

For the future there are prospects of increased diversity and more independent media outlets, given the installation of the fibre optic cable and the migration to digital broadcasting.

Scores:



Average score:

1.5(2005=n/a;2007=n/a)

2.7 All media fairly reflect the voices of both women and men.

Analysis

All media do not fairly reflect the voices of both men and women. Women in particular are portrayed in stereotypes. Even when serious issues are to be raised, sexist imagery accompanies the coverage.

In April 2009, the Group of 10 (G10), a coalition of women groups and organizations called for one-week sex boycott. This was in a bid to oblige the

President and Prime Minister to settle their differences and address urgent national issues, including insecurity, sexual violence, poverty, constitutional reforms and national reconciliation. The mass media treated the event with sexist vilification and cynical trivialization which ended up detracting audiences from the real concerns that the group was raising.

Unfair portrayal of women can also be seen in reporting which is mainly judgmental, and where the coverage is made, the story will only be used as a filler.

Scores:

Individual scores:

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



Average score:

2.2(2005=n/a;2007=n/a)

2.8 All media fairly reflect the voices of society in its ethnic, linguistic, religious, political and social diversity.

Analysis

All registered media espouse editorial fairness in reflecting national diversity. However, media discriminates rural communities and marginalized groups. Nevertheless, recent developments have increasingly made it imperative for media to act fairly.

Because of competition for consumers, media outlets are making efforts at fairness, wide coverage, ethics and diversity. Market segmentation and business interests have similarly focused on diversity.

There is still a disproportionate focus on politics and the urban sector. It is said that economic survival hinges on political coverage. This for example, was the experience of the Nairobi Star (now The Star) newspaper which has had to shift to increased political content.

Individual scores:



Average score:

2.2 (2005=n/a; 2007=n/a)

2.9 The country has a coherent ICT policy, which aims to meet the information needs of all citizens, including marginalised communities.

Analysis

The ICT policy (2006) is in place. Its vision is to have a prosperous ICT driven Kenyan society, while its mission is to improve the livelihoods of Kenyans by ensuring the availability of accessible, efficient, reliable and affordable ICT services. This is recognition of the move towards convergence of technologies. It makes provision for universal access fund (Article 8) aimed at facilitating communication to disadvantaged areas even those that do not make economic sense but are important in terms of development. Specifically, the fund is meant at leveraging the provision of communication services to rural un-served and high cost areas. The fund will support projects that may not be economically feasible but critical to development. The key components of universal access are¹⁵:

- Accessibility non-discriminatory in terms of geographical location, religion, race and sex
- Affordability affordable to all citizens in terms of pricing
- Availability nationwide coverage or availability of communication services.
 Internet penetration in the country is now at 6 million (out of the estimated country's population of 43 million). With the laying of the fibre optic now on course, it will be important to examine how the policy broadens ICT penetration and the lowering of costs.

¹⁵ www.cck.go.ke

Individual scores:

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



Average score:

3.5 (2005=n/a; 2007=n/a)

2.10 Government does not use its power over the placement of advertisements as a means to interfere with editorial content.

Analysis

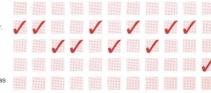
The government being the heaviest advertiser uses its power to interfere with content. For example, towards the end of 2007 it withdrew advertising with the Standard Group for being anti the Party in power. When the Nation Media Group carried some stories on the Kenya National Examinations Council (read government), the Council withdrew advertising from the *Daily Nation* and turned to *The Standard*.

However, trends indicate more accommodation on the part of the Government, although perceived threats are still there.

Scores:

Individual scores:

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



Average score:

2.5 (2005=1.7; 2007=1.5)

2.11 The advertisement market is large enough to support a diversity of media outlets.

Analysis

Although the advertising market is large enough to support a diversity of media outlets, advertisers favour the mainstream outlets, supposedly for wider reach. A survey conducted in the months of January and February 2008 by the Steadman Group¹⁶ showed advertising expenditure to television, radio, print and cinema as having risen steadily since 2003 when it stood at KShs 6.6 billion to 2007's 17.4 billion (US \$ 80-220 mio.).

There is the emerging issue of globalization and homogenization of advertizing content, for example by multinationals like Coca-Cola. The multinationals also target the large advertising agencies leaving out the smaller outlets.

However, it is to be noted that the small media outlets are beginning to have a niche in the advertising market. This is through new packaging of products and market segmentation. Examples include advertising in moving passenger vehicles, scenes at hospitals, and use of mobile phone advertising, park seats, and money transfer.

Scores:

Individual scores:

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

3.3 (2005=4.6; 2007=2.8)

Average score for sector 2:

Average score:

2.6

^{16 &}quot;10.7m homes own TV or radio", Daily Nation 19 March 2008.