

# 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.

# SECTOR 4:

The media practice high levels of professional standards.

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## 4.1 The media follow voluntary codes of professional standards, which are enforced by self-regulatory bodies that deal with complaints from the public.

### Analysis

The Media Council of Kenya (MCK) is in place as a statutory body (The Media Act, 2007). It was founded by the media industry after wide consultations on self-regulation, but entrenched by law for enforcement of its mandate. It deals with complaints received from the aggrieved parties. Currently, it has 40 cases before the Ethics Commission. In place is also the MCK *Code of conduct and practice of Journalism in Kenya* (2<sup>nd</sup> ed.repr.2007).

The first edition of the Code of Conduct was published by MCK in conjunction with the Media Industry Committee in 2001. The major goal was to ensure that the country's media is free from government interference. A self regulatory mechanism guided by the code and enforced by a non statutory media council were key to this endeavour. The code of conduct was to serve as a foundation for the practice of ethical journalism in the country. Different media houses also have internal guidelines which are reviewed from time to time. Enforcement of such guidelines often depends on the leadership of the media house.

As far as professional standards are concerned, the MCK made this tentative step of developing the code of ethics, and it has been vocal in promoting ethics. So far, over 4000 copies have been distributed. MCK has mounted trainings on this code for it to be used as a basis for ethics and professionalism. MCK also brought stakeholders together and highlighted the code as a basis for questioning the media and lodging complaints.

Arbitration is mainly reconciliatory with little monetary awards. Complaints of technical nature e.g. equipment and airwaves go to the Communications Commission of Kenya (CCK) while those of content go to MCK.

The MCK has to evolve a balance as a strong media self-regulating body. It has the challenge to be proactive and initiate cases in public interest.

## Scores:

### Individual scores:

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

Average score:

2.6 (2005=3.3; 2007=3.7)

## 4.2 The standard of reporting follows the basic principles of accuracy and fairness.

### Analysis

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 perceptions 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, one time the 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.

Also, some stories lack follow-up to a logical conclusion. This has at times been attributed to time pressure to meet deadlines and the 'newsworthiness' of such ongoing stories. As such, media practitioners have failed to exhaust all possible sources of information. The coverage tends to adhere to "facts" and not necessarily "truth". Selection of the "news" is therefore the prerogative of the reporter and editor. These two it is said, argue that the society itself has its practice and expectations, and that the "news" is therefore not a conspiracy in the media house.

On the whole from studies conducted, standards are wanting and there is need to improve journalistic standards in Kenya. One way to improve the situation is through more training.





## 4.4. Equal opportunities, regardless of race, social group, gender/sex, religion, disabilities and age are promoted in media houses.

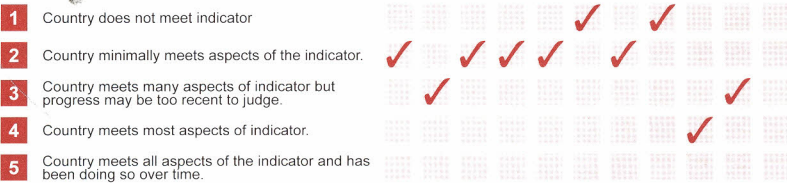
### Analysis

Women are not equally or adequately represented in 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.

More emphasis seems to be placed on portraying women as victim in most stories and discussions yet women's engagement and participation in development and policy decision making is not given prominence.

### Scores:

#### Individual scores:



Average score: 2.2 (2005=n/a; 2007=n/a)

## 4.5 Journalists and editors do not practice self-censorship.

### Analysis

Self-censorship exists among the journalists and editors and is prompted by the following factors:

- Media ownership and their other interests.
- Business interests and cheque-book journalism.
- Political interests, pressure and criminal intimidation.
- Professional ethics, moral interests and in-house practice on the selection of stories.

- Legal issues.
- Personal relationships between editors and news sources.
- Advertisers' arm-twisting.

The result is slanting stories to please certain sections of society or killing the story altogether. However, journalists have learnt how to go round the “story-killers.”

## Scores:

### Individual scores:



Average score:

1.9 (2005=2.5; 2007=3.1)

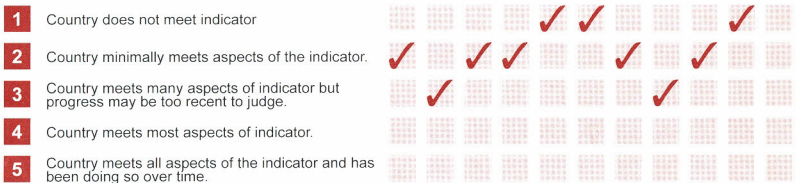
## 4.6 Owners of established mainstream private media do not interfere with editorial independence.

### Analysis

Editorial independence from ownership exists only in theory. Changes in ownership/directorship directly lead to changes in the editorial teams. An example is the Standard Group where the editorial department was overhauled in 2008 following changes in ownership.

## Scores:

### Individual scores:



Average score:

1.9 (2005=2.0; 2007=1.5)

## 4.7 Journalists and media have integrity and are not corrupt.

### Analysis

There are widespread allegations of bribery of journalists to cover stories. There are also allegations that there are editors on the “payroll” of some politicians for being gatekeepers of story selection and treatment. The situation is made worse by the fact that media houses have very few permanent staff. They depend on correspondents who form 70% of editorial workforce. The poorly paid correspondents depend on “newsmakers,” namely the politicians and provincial administrators, for such facilitation as transport and lunches, who in turn expect favourable coverage. Forms of corruption include transport for journalists by newsmakers, lunches, “sex for stories,” compromise of media houses by sources etc.

*Forms of corruption include... “sex for stories”...*

It is noted that despite these allegations and the picture painted, few cases have been brought to the Media Council of Kenya.

### Scores:

#### Individual scores:

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

Average score:

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

## 4.8 Salary levels and general working conditions for journalists and other media practitioners are adequate.

### Analysis



Salaries are low, with wide discrepancy between the senior and junior journalists. Sample indications of earnings in Kenya Shillings per month.

Top editors (Electronic)	----	500,000	-	700,000
Top editors (print)	----	200,000	-	300,000
Editors (print/electronic)	----	70,000	-	150,000
Reporters	----	40,000	-	60,000
Retainers (2-year contract)	----	9,000	-	15,000 with an insurance cover for 2 years.
Correspondents	----	No salary		
	----	200	-	500 per published story
KBC--- Managers	----	200,000		
Senior Editors	----	28,000	-	50,000
Editors	----	21,000	-	25,000
Reporters	----	15,000	-	18,000

Many employees both senior and junior are now hired on contract. Journalists working in public relations in the corporate sector earn more and enjoy insurance benefits and pension schemes.

### Scores:

#### Individual scores:

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

Average score:

1.7 (2005=n/a; 2007=n/a)

# 4.9 Media professionals have access to training facilitates offering formal qualification programmes as well as opportunities to upgrade skills.

## Analysis

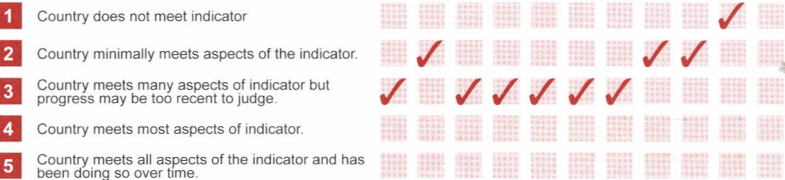
In Kenya today there are wide opportunities for professional journalism training and skills upgrading at all levels. A number of institutions offer certificate, diploma and degree programmes. Those that offer degree courses include University of Nairobi, Egerton University, Masinde Muliro University of Science and Technology, Daystar University, Kenyatta University, St. Paul's University, Jomo Kenyatta University of Agriculture and Technology, Tangaza College of Catholic University of Eastern Africa, Moi University, Multi Media University College and United States International University.

Diploma and certificate courses are offered by many colleges and schools, including Kenya polytechnic, Kenya Institute of Mass Communication, Mombasa Polytechnic, and East African School of Journalism.

In addition to formal training, some media establishments have internal induction and training for upward mobility. The Media Council of Kenya has a Training and Accreditation Committee and also conducts trainings in selected areas to enhance professionalism.

## Scores:

### Individual scores:



Average score: 2.5 (2005=4.4; 2007=2.8)

## 4.10 Journalists and other media practitioners are organised in trade unions and/or professional associations.

### Analysis

The media professional associations and interest groups (see sector 1.11) have largely been focused when it comes to training needs and opportunities in the industry. These have also been active in advocacy for media interests. But it should also be noted that some have emerged as “Brief case” associations limited to self-interests.

The Kenya Union of Journalists (KUJ) is not well organized. It has been steeped in leadership wrangles, thus rendering it weak and ineffective.

### Scores:

#### Individual scores:

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

Average score: 2.5 (2005=4.7; 2007=2.6)

Average score for sector 4: 2.4

**Overall Country Score: 2.5 (2007=2.9, 2005=2.7)**

# Developments since 2007 and the Way Forward

## Positive developments in the media environment in the last two years:

- 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.

## Negative developments in the media environment in the last two years:

- Wages decreasing in media. Huge layoffs and a thin workforce.
- Media owners spearheading media debates.
- Continued concentration of media ownership.
- Polarization of media along ethnic lines.
- FM radio stations have gone overboard in terms of sexual matters. One would think Kenya is in a relationship crisis.
- Journalists threatened and one killed.
- Marked media-government hostility in post election violence.