

## 10. Technological Advancement: New Frontiers for Kenya's Media?

By Grace Githaiga<sup>1</sup>

The media in Kenya has grown tremendously in the last two decades more or less in parallel with the expansion in democratic space, which in itself evokes the close linkage between media and democratic tenets. It is true that both broadcast and print media were severely constrained before the 1990s. It is also true that the number of broadcast outlets and the quality and vibrancy of print media have risen steadily since then. For instance, the Kenya Broadcasting Corporation, founded in 1928, remained the sole operator of television and radio stations<sup>2</sup> up till 1989 when Kenya Television Network (KTN) was established; a development that was a precursor to a flood of new broadcast stations. The print media scene has, on the other hand, been dominated mainly by The Nation Media Group and The Standard, with other publications surfacing and disappearing at various times.

There have been constant concerns over the balance and quality of content from KBC. But, generally, the media in Kenya, with KBC included, has been instrumental in informing and educating the public over the years. The struggle for an expanded democratic space in the 1980s and 1990s benefited from the media's enormous support, sometimes at very high costs<sup>3</sup>. While the government had maintained a tight grip on the media back then, the existing outlets braved the odds to take on weighty social, political and economic issues, even if only sporadically. This partly accounts for the high levels of public confidence in the media. A 2010 survey found that the majority of Kenyans trust media more than other public institutions including the judiciary, police and parliament.

This chapter, while anchored on Kenya, draws perspectives from global experiences when tackling policy and reform challenges for the media environment. It finds that the entry of new media, largely in the 1990s, and its continued expansion, has provided new avenues and opportunities for growth, both in terms of the financial health of individual media houses and also in terms of the multiplicity of outlets, and content diversity. Besides, the passage of Kenya's new constitution in 2010 promises even higher prospects for growth, access, freedom and diversity. The chapter also notes that press freedom now enjoys constitutional protection, which may provide opportunities for dealing with the challenges such as censorship that undermined editorial content. Online communication and widespread use of mobile telephony is another avenue through which distortions of information access, especially in the rural areas, can be corrected.

### 10.1. Access and Accessibility

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<sup>2</sup> Okello, R. 2000. Broadcasting media in Kenya In: M. Odero and E. Kamweru, 2000. *Media Culture and Performance in Kenya*. Nairobi. The East African Media Institute.

<sup>3</sup> Mutunga, W. 1999. *Constitution Making From The Middle*. Nairobi. Sareat/Mwengo.

The last two decades have been definitive for the media in Kenya. Firstly, the operating environment has become freer, liberalised and more competitive. Secondly, the broadcast media, partly as a result of the liberalisation policies, has grown in leaps and bounds as the number of radio and television outlets has multiplied significantly. But print media, while it faces fewer possibilities of external interference today<sup>4</sup>, has not grown at the same pace as the broadcast, in particular at mainstream level. It remains dominated by The Standard and The Nation, although The Star also joined the market in 2006. This was tempered by the winding up of The Kenya Times in 2010, which had been founded in 1984 by the then ruling party, Kenya African National Unity (Kanu). While it is possible that lack of expansion in print media can be attributed to the high investment costs, it is notable that the three or so major publications have had to battle for an average market share of 350,000 readers per day for the last thirty years.

A critically important opportunity for Kenyan media came in 1998/99 with the introduction of telecommunications sector reform. Then the government disbanded Kenya Posts and Telecommunications Corporation (KP&TC), replacing it with a new telecommunications policy and laws<sup>5</sup>. The reform had three components - separation of roles in sector management (policy and regulation), creation of a multiple operator environment (liberalisation) and the reduction and eventual elimination of government operational role in the telecommunications sector (privatisation). The outcome split the KP&TC into three entities – Telkom Kenya Limited, Postal Corporation of Kenya and Communications Commission of Kenya.

This shift in policy and administration has had some positive effects on the regulation regime and even increased the number of content producers. Today demand for broadcasting frequencies outstrips availability, especially in urban areas. To date, 372 FM frequencies have been issued to radio stations nationally. Of these, 233 are on air and 139 are dormant. At the same time, 109 television frequencies have been allocated; of these, 71 frequencies are on air and 38 are dormant<sup>6</sup>. Liberalisation of the airwaves has transformed broadcasting, with numerous new stations now serving as platforms for information and public discussion, allowing citizens to debate issues perceived to be important to them through call-in programmes and talk-shows.

Radio is the most accessible and affordable broadcasting medium in Kenya. A survey from 2008 revealed that some 7.5 million homes have radios and 3.2 million have television sets. Of the homes with radios, 5.5 million are in rural areas and 1.9 million in towns. Further, 1.8 million television set owners are in rural areas while 1.4 million are in urban centres<sup>7</sup>.

New media, internet and cell phones are growing rapidly in terms of consumers and service providers. From October to December, 2010, mobile subscriptions grew 12 per cent from 22.3 million to 24.96 million subscribers, which was the highest growth rate recorded that year<sup>8</sup>, as evidenced by Safaricom's huge profits. This subscriber base is equivalent to one mobile phone per

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<sup>4</sup> Oriare, P. 2010. *What the new constitution means for press*. Expression Today, October 2010.

<sup>5</sup> EPZ and International Research Network. 2005. *Kenya's Information and Communications Technology Sector report*

Available at [www.cck.go.ke](http://www.cck.go.ke) [Accessed August 21, 2011].

<sup>7</sup> It was not clear how many homes were targeted for this survey.

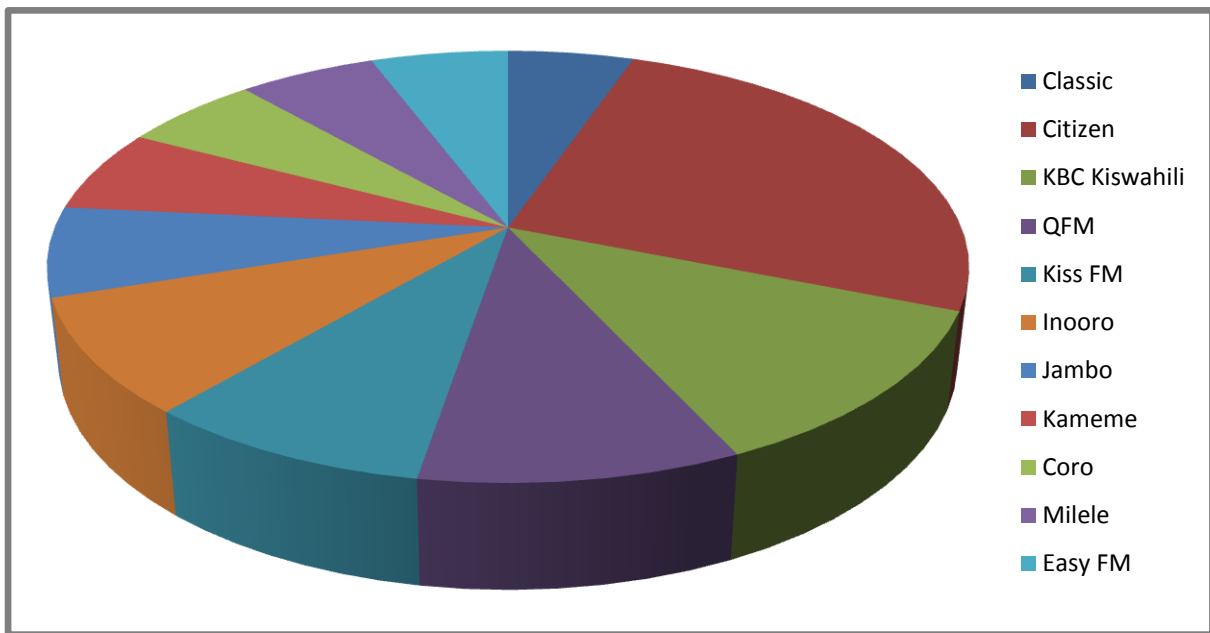
<sup>8</sup> CCK Quarterly Sector Statistics Report, Second Quarter, October – December 2010/2011.

adult<sup>9</sup> served by Safaricom, Airtel, Yu and Orange. The growth became pronounced when services providers reduced calling rates, introduced low denomination calling cards, and cheaper telephone handsets became available. But the four mobile providers have shifted attention to data services, by which this chapter means telecommunications services transmitted via high speed data rather than voice<sup>10</sup>, which includes popular mobile money transfer services.

The mobile phone subscriber base has wide ramifications for traditional internet service providers. For example, most Kenyans now access the internet using mobile phones as opposed to personal computers - whether at work, home, or internet café. The Digital Life Survey, a report by TNS Research International<sup>11</sup>, found that 60 per cent of respondents use their handsets to access the internet, compared with 29 per cent using PCs at home, 33 per cent using PCs at work and 41 per cent accessing the internet in cyber cafés. The leading activities on mobile internet are social networking (67 per cent of users) and accessing e-mails (54 per cent). 14 per cent use it for administrative work like filing tax returns and conducting internet banking.<sup>12</sup>

### Radio

Figure 29: National reach for Kenya's radio stations, 2011<sup>13</sup>



KBC, for a long time the largest and only broadcasting organisation in Kenya, is a state agency and one of the just three radio stations with a nationwide reach. As well as this nationwide reach through its Swahili and English channels, the Corporation also broadcasts in 19 different languages, including those of marginalised communities that would not ordinarily make economic sense for commercial broadcasters to serve. As a national broadcaster, which also has loosely been passing for a public broadcaster, KBC has been mandated to air public interests programmes including

<sup>9</sup> World Bank. *Kenya Economic Update*. December 2010. Edition No. 3.

<sup>10</sup> PC Magazine Encyclopedia. 1981 – 2011 [online] Available at <http://www.pcmag.com/encyclopedia/> [Accessed August 21, 2011].

<sup>11</sup> *Kenya turns to phones for Internet browsing*. 2010. Daily Nation, 3 December.

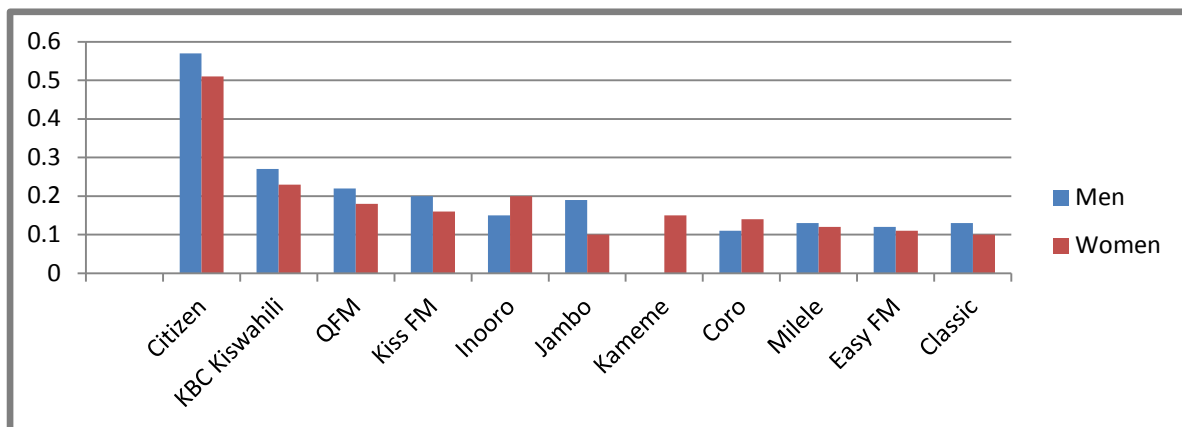
<sup>12</sup> *Kenya's mobile revolution bucks international trend*. 2010. The Standard, 3 July.

<sup>13</sup> Own compilation based on KARF Audience Research. 2011. First Quarter. Synnovate.

educational and cultural programmes. But the changing market has meant that KBC no longer enjoys an audience monopoly. A 2011 audience survey by Synnovate research<sup>14</sup> shows that, despite KBC having long enjoyed state protection, which shielded it from open competition by refusing to license other players, Citizen Radio today has the widest audience reach (54 per cent). KBC's Swahili service is a distant second with 25 per cent and QFM with 20 per cent. All three stations broadcast in Swahili.

The report also finds interesting listenership patterns by gender. Each of the three stations – Citizen, KBC Swahili and QFM – have a higher male audience than female, partly because, in the patriarchal nature of most communities, the radio is under the care of the man. This was also true for the other stations, except for Inooro and Kameme, both of which broadcast in the vernacular Kikuyu and are listened to by more women.

Figure 30: Access of radio stations by men and women, 2011<sup>15</sup>



### Community broadcasting

Community media has been in Kenya since the 1980s with support from UNESCO and the government. It is recognised as a third sector of broadcasting alongside public and private/commercial broadcasting. Kenya was the home of the first community radio station in Africa – Homa Bay Community Radio, and civil society, the most dependable anchor of community media, is quite vibrant and more established in Kenya than in other parts of the world where community radio has grown and developed<sup>16</sup>. Despite the importance of this market, community media growth in Kenya has been stunted as it is perpetually grappling with sustainability issues such as finance, human resources and content generation.

This chapter uses a broad definition of community media including any form of media that is created and controlled by a geographical community or a community of identities or interests<sup>17</sup>. This includes print media, although the focus in Kenya has been broadcast media. But most important the Communications Commission of Kenya seems to have taken on this broad definition as evidenced by the

<sup>14</sup> KARF Audience Research. 2011. First Quarter. Synnovate.

<sup>15</sup> Own compilation based on KARF Audience Research. 2011. First Quarter. Synnovate.

<sup>16</sup> Githethwa, N. 2010. *Milestones, Challenges, and Proposals in the Development of Community Radio in Kenya*. A Discussion Paper presented at the AUF – ACDM meeting on 21<sup>st</sup> February, 2010 as a framework of discussions and a guide to further action.

<sup>17</sup> Rennie, E. 2006. *Community Media: A Global Introduction*. (Critical Media Studies).

various stations it has classified as community<sup>18</sup>. With the exception of Mangelete, the first to be licensed, all community radio stations have been limited to within a radius of 3km. This is to ensure that they remain focused on local issues and remain relevant to the audiences living and working in close proximity.

Aside from institutional community media - that supported by institutions such as universities - community media in Kenya clearly requires state support including infrastructure provision and tax rebates. The other challenge is a lack of data about the sector - what has been done, what has worked, what has failed and what needs to be done. There is need to secure and further develop community media in Kenya with regard to changes arising from technological advancement.

### Private television

Private television, alongside private radio, has experienced phenomenal growth in the past decade, but there are genuine concerns about patterns of ownership. Until 1989 state-owned KBC was the only television station but now the dominant players are private stations, with KBC now a distant fourth. The key private players are NTV, KTN, and Citizen TV. The stations are owned by Nation Media Group (NMG), Standard Group Limited (SGL) and Royal Media Services (RMS) respectively, all of which also own radio stations, newspapers, or both. The question of cross-ownership dominated public debate around the Kenya Communications (Amendment) Act, 2009. Private media fought hard, and due to their immense clout, were able to prevent the imposition of any limits on cross-ownership. There are other television stations, EATV, KISS TV, Family TV, GBS and K24; however ownership of these stations is concentrated among a small number of political and economic elites whose interests are not necessarily in sync with public interests.

The quality of content produced is varied. The main players (NTV, KTN and Citizen) have the resources to recruit competent professionals and correspondingly produce high quality programmes, especially news. The other television stations, not owned by the three key players, are clearly limited in terms of quality. But the difference in quality between the mainstream and alternative television stations is not replicated with regard to content; the general trend is for stations to emulate, or even replicate, popular material from the competition. The result is that Kenyan domestic television is dominated by foreign material such as Nigerian movies, Mexican soaps and American pop music and movies. There are a few high quality and popular local productions<sup>19</sup> on Citizen TV, most of them drama series that other stations have attempted to copy, but these are far too few to match the regulatory requirements<sup>20</sup>, and even public demands, for local content.

*Figure 31: Kenya's main television reach and viewership, 2011*<sup>21</sup>

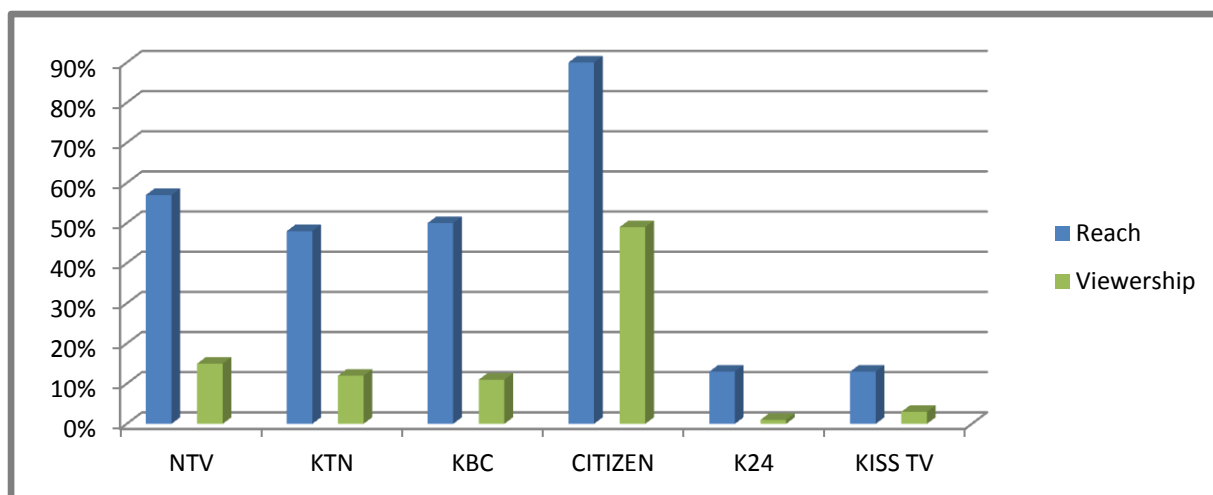
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<sup>18</sup> The CCK list includes Mang'elele Community (Kibwezi), Koch FM (Korogocho), Pamoja Development (Kibera), SIDAREC (Pumwani), Bondo Community Center (Ndori), Maseno University (Maseno), Daystar University (Athi River), St. Pauls University (Limuru), Baraton University (Eldoret), Masinde Muliro University (Kakamega), Kenyatta University (Thika Rd) and KIMC (Nairobi).

<sup>19</sup> The draft Broadcasting Code, which requires 40 percent local content for radio and TV [online] Available at [http://www.cck.go.ke/links/consultations/current\\_consultations/draft\\_programme\\_code-rev\\_2\\_nov\\_2010.pdf](http://www.cck.go.ke/links/consultations/current_consultations/draft_programme_code-rev_2_nov_2010.pdf) [Accessed August 25, 2011].

<sup>20</sup> Kenya Communications (Broadcasting) Regulations 2009. Article 26 (1) and (2).

<sup>21</sup> Own compilation based on KARF Audience Research. 2011. First Quarter. Synnovate.



### Newspapers

The print media presents some notable contrasts. As with all media in Kenya, it has benefited from the expansion of democratic space. However, its growth in terms of number of outlets and audience has been limited. The scene has for decades been dominated by two mainstream publications, The Nation – which owns several other titles – and The Standard, together with their sister publications on Saturdays and Sundays. There are other publications, such as The People and The Star, but it remains to be seen if they can mount a credible challenge for a reasonable share of the rather stagnant readership. Stagnated market growth is partly caused by uneven and low purchasing power. However there is untapped growth potential in parts of the country, such as North Eastern Province, which remain under-served by mainstream newspapers. The fact that an alternative press<sup>22</sup>, has been mushrooming in various urban centres and is attracting readership even in Nairobi, suggests that some sections of society are not well served by mainstream media.

Table 12: Newspapers circulation in Kenya, 2008<sup>23</sup>

Publisher	Publication	Frequency	Circulation
Nation Media Group	Daily Nation	Daily	180 000 (PE)
The Standard Group Ltd	The Standard	Daily	110 000 (PE)
Mediamax	The People	Daily	65 000 (PE)
Nation Media Group	Taifa Leo	Daily	44 000 (PE)
Nation Media Group	Business Daily	Daily	15 000 (PE)
Radio Africa Group	The Star	Daily	10 000 (PE)
P.G. Kariuki	The Financial Post	Weekly	60 000 (PE)
Coast Week Newspapers Ltd	Coast Week	Weekly	12 000 (PE)
Nation Media Group	The East African	weekly	40 000 (PE)
Nation Media Group	Sunday Nation	Sundays	280 000 (ABC)
Standard Group limited	Sunday Standard	Sundays	150 000 (PE)
Media Max	The People on Sunday	Sundays	38 000 (PE)
Nation Media	Taifa Jumapili	Sundays	46 000 (ABC)

<sup>22</sup> Kenyan term for the sensational brand of newspapers, mainly published on A4 size sheets of papers, whose editorial quality is low; the physical address is lacking contrary to legal requirements, and are famously derided as scandal sheets.

<sup>23</sup> *The Status of the Media in Kenya*. 2008. A report of the Media Council of Kenya. PE: Publisher's estimate. ABC: Audit Bureau of Circulation figure.

## New Media

As discussed, new media in Kenya is experiencing rapid growth. New media is beginning to challenge traditional media (radio, television and print) as the preferred platform for accessing news and information. The information society is now inseparable from communications media which enables interactive communication<sup>24</sup> through the internet and mobile telephony. There are 22.3 million mobile subscribers in Kenya, and an estimated 8.69 million internet users. Fixed broadband subscriptions increased from 18,626 subscribers to 84,726 between 2010 and 2011. However a whopping 99 per cent of the internet traffic in Kenya is through mobile operators, mainly through 3G, as well as Edge or GPRS.<sup>25</sup> This suggests that mobile phones are the leading platform across board for information access in Kenya, enabling users to access voice, text and the internet on one platform.

The impact of new media has not yet been clearly established. However, it is becoming clear that new media has enhanced journalism and altered modes of information access. Internet-based applications allow for user generated content and blogging. This has decentralised information-sharing at unprecedented level and made it potentially feasible for every citizen to act as a broadcaster, creating, modifying and sharing content with a large audience<sup>26</sup>. This is blurring the line between traditional and new media, electronic and print media.

It can be argued that, compared to other forms of mass media, the internet offers low barriers to access and was designed to work without the kind of gatekeepers that exist in traditional print or broadcasting media<sup>27</sup>, unless of course the service provider opts to intervene. A computer and an internet connection are far less expensive than a printing press, or other mechanised media for reaching large audiences offline. Radio and television technology are limited technically by the capability to exploit the electro-magnetic spectrum. Government regulation of airwaves has generally been found necessary as a way of managing this scarce resource. The internet, by contrast, can accommodate essentially an unlimited number of points of entry and speakers<sup>28</sup>.

Nevertheless, the cost of accessing the internet remains *prohibitively* high for the majority of Kenyans. This is despite the commissioning of the fibre optic cable, which had been expected to bring down charges. Rather than reducing prices, data market players are demanding that the Communications Commission of Kenya (CCK) reduce spectrum prices, enact a vandalism law, and accord them access to the National Fiber Backbone Infrastructure (NOFBI)<sup>29</sup> before they reduce prices.

The standoff between CCK and data market players has kept the costs of internet connectivity in Kenya high and thus unavailable to wide audiences. Additionally there are gaps in availability - of 7, 149 sub locations in Kenya, for example, voice telephony is inaccessible in 1,100

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<sup>24</sup> Nyabuga, G. 2011. *New Media and its Effects*. Nairobi. University of Nairobi.

<sup>25</sup> Hash. 2010. *Kenyas-mobile-Internet-by-the-numbers*. [online] <http://whiteafrican.com/2011/02/18/kenyas-mobile-internet-by-the-numbers-q4-2010/> [Accessed July 9, 2011].

<sup>26</sup> Interview with Dennis Itumbi, May 3, 2011

<sup>27</sup> Ibid.

<sup>28</sup> The Internet's unique architecture can enable freedom of expression in unprecedented ways. 2010 [online] Available at <http://www.cdt.org/policy/regardless-frontiers-human-rights-norms-digital-age> [Accessed July 9, 2011].

<sup>29</sup> *Data Costs: Are firms being realistic?* 2011. Daily Nation, July 26.



of them, and just 893 sub locations have access to broadband data/internet services<sup>30</sup>. Much as the figures speak for themselves, these gaps can potentially distort the market in ways that sometimes cannot be directly discerned from the figures. For example, even in some of the locations with access to telephony, services might still experience limitations to access due to the absence of other requisite infrastructural facilities like electricity.

### Accessibility to the spectrum

In Kenya's history of liberalisation of the airwaves, the question of spectrum access has been a difficult one. When KP&TC was still in charge of licensing and frequency allocation, there were many accusations that authorities allocated frequencies on the basis of political expediency and cronyism<sup>31</sup>. There have been many changes since, including the splitting of Kenya Posts and Telecommunications Corporation in 1998, aimed at correcting this situation. Statutes have since been passed to streamline the industry and include the Broadcasting Regulations 2009, which, in section 6 (1) (c), requires CCK to "develop a frequency plan which sets out how the frequencies available for broadcasting services in Kenya will be shared equitably and in the public interest". The process however is still devoid of clear mechanisms of scrutiny and accountability, and this has resulted in disaffection among industry players, augmented by the exhaustion of spectrum in some locations. The transition from analogue to digital broadcasting could provide some remedies.

The frequency plan has also come under criticism from different stakeholders. A report on Spectrum Development<sup>32</sup> argues that the current model puts the country at risk of running out of spectrum. "Right now, 20 million Kenyans use GSM mobile communications. Many day-to-day activities require the use of WiMax. Data runs on WiMAX, e-government, telecommunications and rural internet access. So running out of frequency would bring the country's development to a halt, especially in rural areas, which would be the hardest hit." It further notes that, the measures introduced by the government to alleviate the frequency shortfall are only aimed at addressing the immediate concerns. The measures proposed include auditing whether frequencies are being used, and migrating government-allocated frequencies to other frequencies and so releasing part of that spectrum for commercial use. The report also notes that the current system puts rural communities at a disadvantage because it is expensive for telecommunications companies to operate where population density is scarce.

### Convergence

There are various examples of convergence in Kenya. Some mobile phones enable users to access radio, television and the internet. Accessing the internet allows users to access online newspapers. And digital television (DTV) was launched on December 9, 2009. Thus current trends in technological convergence, especially digitalisation, point to the possibility of communication media being available on a single multipurpose device or platform<sup>33</sup>.

The concept of convergence is not well entrenched, or understood, within traditional Kenyan media. A number of media houses have set up convergence desks, or appointed senior managers tasked with convergence. However implementation of the concept as a journalistic practice remains

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<sup>30</sup> *ICT Access Gaps in Kenya*. August 2011 [online] Available at [http://www.cck.go.ke/news/downloads/Access\\_Gaps\\_Final\\_Report.pdf](http://www.cck.go.ke/news/downloads/Access_Gaps_Final_Report.pdf) [Accessed September 4, 2011].

<sup>31</sup> *What The Citizen Case Means for Broadcasting*. 2000. Expression Today, Issue No 16. March.

<sup>32</sup> Mureithi, M. 2010. *Open spectrum for Development: Kenya Case Study*. Nairobi. APC.

<sup>33</sup> Gustavo, G. 2008. *Digital Television and Radio*. APC.



sporadic and irregular. At present, media houses still have different teams for each platform. The old definitions that provided separation between radio, television, cable and newspapers still holds<sup>34</sup>. The rise of digital platforms presents enormous opportunities to better inform citizens and opens greater access to information. Given the desire to cut costs, it is inevitable that media organisations will embrace the reality of convergence journalism in the foreseeable future.

#### Initiatives to promote access

There have been concerted attempts to promote access, although access rates remain low in the least developed regions such as North Eastern Province. Such initiatives include the establishment of the Universal Service Fund under the Kenya Communications Amendment Act, 2008, “to support widespread access to, support capacity building and promote innovation in information and communications technology services.” The Fund is to be sustained through levies from licensees and “monies as may be provided by Parliament for that purpose”. However stakeholders have expressed doubts about whether the Fund will be implemented. ICT specialist, Washington Akumu<sup>35</sup>, has argued that the Universal Access Policy has been misunderstood, as even cell phone providers seem to think that total coverage of Nairobi and its environs is all that Universal Access Policy (UAP) is about.

Ensuring universal access is extremely challenging<sup>36</sup> encompassing many dimensions. These include lowering costs, widening access, promoting technology-neutral frameworks to enable innovation and low cost delivery, as well as promoting competition at all layers of communication. Universal access should mean access to the internet, mobile telephony, television and radio content at an affordable cost<sup>37</sup>.

The undersea fibre optic cable has contributed to improved access by reducing internet costs. Heightened competition and price wars between cell phone service providers have significantly reduced calling and data costs. Furthermore, the government is also establishing ‘digital villages’, i.e. public access internet points, in various parts of the country. But the most significant change is likely to be the implementation of the National Optic Fiber Backbone Infrastructure (NOFBI). The NOFBI is intended to cover 80 per cent of the districts enabling more communities to connect. Access rates are also expected to improve with the ongoing expansion of physical infrastructure such as roads.

## **10.2. Media and Public Interest Communication.**

### **10.2.1. Media Ownership**

Media ownership in Kenya is an important but complex issue. The most powerful media, in terms of reach and readership, is the print media. The most influential section of print media is either owned by, or under the control of, groups that are closely linked to key members of the three post-independence regimes. The Standard is owned by former President Moi and his allies, The People is

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<sup>34</sup> Interview with Otsieno Namwaya, Media Researcher, June 2, 2011.

<sup>35</sup> Interview Washington Okumu. June 14, 2011. Nairobi.

<sup>36</sup> Maina, Henry. 2011. *Freedom of Expression and the Internet: a paper presented at the Subsaharan consultations with the UN Freedom of Expression Rapporteur.* Article 19.

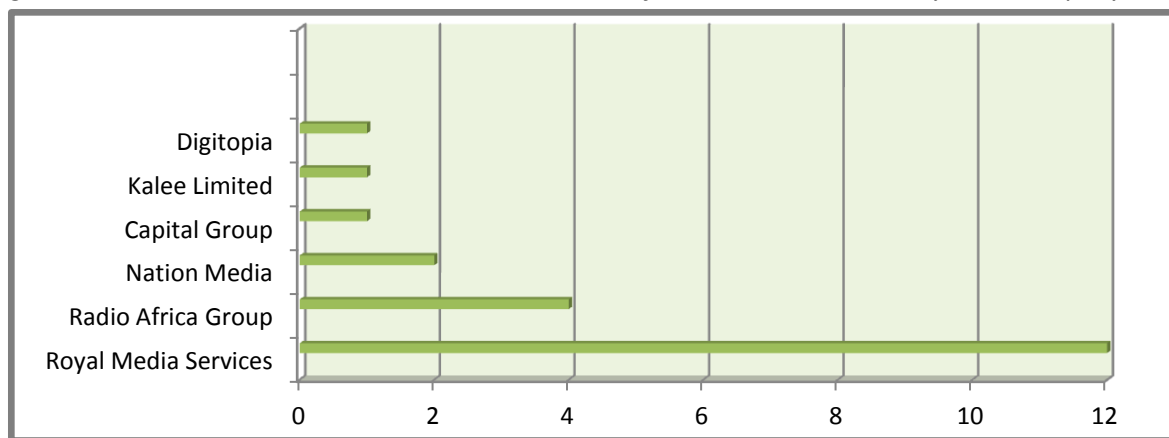
<sup>37</sup> Ibid.

owned by the family of former President Kenyatta, The Star is partly owned by individuals close to the regime of former president Moi. The Nation is owned by the Aga Khan; however its credibility was tested in 2005 and 2007 when top management was accused of having ties with the Kibaki administration. The same applies to the radio and television stations – KTN, K24, Kiss TV and NTV – that are owned by the same media houses.

KBC is owned by the state, and both Citizen TV and a host of its radio outlets are owned by an individual known to have close ties with the present government. This leaves only Family TV, EATV and GBS TV outside of political control/influence, meaning that, despite the much touted independence of Kenyan media, it is largely in the hands of the ruling class.

The situation is slightly different with FM stations, but even then, most FM stations are still owned either by politicians or individuals associated with the political elite. The number of radio stations has grown significantly – there were 98 FM stations on air as of December 2010. However Figure 32 demonstrated that ownership of these radio stations is dominated by just six groups. The other stations, as already mentioned elsewhere, are part of community broadcasting. In addition to geographically defined community broadcasters, there has also been a proliferation of religious-based broadcasters, on both radio and television. These stations are difficult to categorise since they do not qualify as ‘community’. Yet, they are also not commercial stations since they do not make profits and survive on donations<sup>38</sup>.

Figure 32: Commercial radio market, 2011<sup>39</sup> - number of radio stations owned by each company.



A number of international broadcasting services (BBC, VOA, Radio France, Radio China) have been granted FM frequencies, and Al Jazeera holds a television license. During the days of information deficit - when the government had a stranglehold on the media with KBC as the sole broadcaster - these broadcasters filled that important gap. Most Kenyans would turn to them for news and information about key political events that KBC could not report freely on.

### 10.2.2. Production and Content: The Transformation

<sup>38</sup> Ibid (page 36).

<sup>39</sup> Own compilation based on KARF Audience Research. 2011. First Quarter. Synnovate.

The new media landscape has transformed the media environment, pushing traditional media into finding new ways of repackaging content or adopting new trends. There has been an emergence of exclusively online media outfits that compete with traditional media houses, which are also extending their services to online channels<sup>40</sup>. This has led to fears among print media, that online services would undermine demand for their services. But thus far there is no evidence that this is the case in Kenya. Traditional media has responded by establishing a presence on the web (with which to raise more revenue) and repackaging print products in terms of content and outlook. Nation Media Group for instance, have digitalised the print version of their newspapers and made them available online by subscription. Digital communications also allow media houses to extend their reach to fresh territories without the need for frequencies, regulator involvement, physical points of presence or the bureaucracy of setting up shop in a new country. Internet radio, for instance, allows traditional FM stations to reach global audiences with minimal investment and without a change of editorial policy. It is also notable that the broadcasting sector has integrated social media platforms in to their broadcasts with nearly every station setting up Facebook and Twitter accounts to interact with their audiences.

The changing technological environment has not only forced a shift in priorities but also introduced new services. The government's attention at present is on preparing for the switch from analogue to digital broadcasting expected in 2012.<sup>41</sup> The ministry has also stood firm on the provision of local content, since the digital switch will allow for more channels and thus greater avenues for access. But at another level, mobile phone users are now subscribing to news alerts on cell phones or RSS feeds. Journalist Dennis Itumbi<sup>42</sup> has noted that technology has transformed the news industry into a participatory process. Television stations have moved a step further and are now accessible on YouTube as well. Various TV stations – K24 , NTV, KBC, KTN and Citizen – have uploaded their most popular programmes onto YouTube<sup>43</sup>. This has thus changed the way audiences interact with news outlets and sources. Blogs and social sites are regularly the platform on which events are quickly shared, discussed and opinions shaped.

The debate among communicators and media practitioners now centres on the question of what the actual place and role of bloggers should be since they are helping to democratise information, production and dissemination. The traditional media organisations are also using web-based and mobile technologies to turn communication into interactive dialogue. Other sites<sup>44</sup> and services have served well as platforms for reporting, circumventing government censorship, raising awareness, enabling democratic participation and engaging with the broader public. Forums such as Ushahidi and the Kenya ICT Action Network (Kictanet) are good examples. Ushahidi mapped reports of violence in Kenya during post election violence in 2008 and has since become a great resource for journalists. It has provided an option for communities to share real time information using text messages, emails and social networks.

#### Existing initiatives that address content production

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<sup>40</sup> Interview with Muchiri Nyagah, Principal Partner, Semacraft Consulting Partners.

<sup>41</sup> Address by Dr. Bitange Ndemo During the Kenyan Internet Governance Forum, Nairobi, July 22, 2011.

<sup>42</sup> Interview with Dennis Itumbi, May 3, 2011

<sup>43</sup> Kamweru, E. 2011. *Digital Media as a gender challenge*. Nairobi. MCK.

<sup>44</sup> Munyua, A. 2011. *Social media as a positive tool for social transformation?* Nairobi. KICTANet.

The government has taken a number of measures to improve production of local content. In January 2011<sup>45</sup>, the Ministry of Information and Communications set up a Task Force to look at the possibilities for leveraging local talent into the information technology, animation, film and music sectors. The Task Force, which has just started to work, is to establish a mechanism to tackle the sector's bottlenecks and to review areas that require interventions by the Kenyan government. The work of the Task Force notwithstanding, there have been various pieces of legislation, among them the Broadcast Regulations of 2009, aimed at addressing the matter, although there has been concern over the slow pace at which the regulations are being implemented and enforced.

### **10.3. Human Rights and Social Justice on Digital Media**

This chapter has argued that the development and impact of digital media, has pervaded all sectors in Kenya. The human rights sector is no exception, although the penetration and usage of digital communications by the human rights community has been fairly slow. This can be attributed to a number of factors. Firstly, by their very nature, the NGO human rights organisations are donor funded and it therefore takes time, sometimes even years, for the NGOs to negotiate with the donors to allow and fund usage of the latest communications technology. Secondly, until recently digital media has been cost inhibitive for most individuals and groups in Kenya. This scenario is replicated across the East African region. Human rights researchers criticise the highly commercialised nature of the internet environment in East Africa which, they rightly point out, is not in the public interest<sup>46</sup>. However, the human rights community in Kenya is responding to the changing communications technology very well, having already adopted the usage of new platforms such Facebook and Twitter, even if it has often lagged behind in taking up the latest technologies.

#### Democratic participation and mobilisation

In the aftermath of the Arab Spring, the role of digital media – internet, mobile phones and social media such as Facebook and Twitter – in the expansion of democracy and in the mobilisation process, has dominated discussion in democracy forums<sup>47</sup> online and in academia. The debate continues<sup>48</sup>, but the Kenyan human rights community in particular has been abuzz with talk about the potential for using digital media to mobilise citizens. There have been attempts to mobilise the public around common concerns such as the rising cost of living and insecurity<sup>49</sup>. For example, the so-called 'Unga Revolution' (Flour Revolution) protests were largely organised through Twitter, Facebook and other websites. The use of digital platforms to organise demonstrations is a departure from the scenario of the 1990s when advocates of the new constitution were at the mercy of the traditional media. The demonstration in July against Kenya's Minister of Education over the Free Primary Education Fund scandal (when significant portions of the ministry's funds could not be accounted for), for example, was organised through text messages, Twitter and

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<sup>45</sup> *Kenya eyes a slice of creative arts industry*. 2011. Daily Nation. 10 January.

<sup>46</sup> Maina, H. 2011. *Freedom of Expression and the Internet*. A paper presented during the Sub-Sahara Africa Conference. Article 19.

<sup>47</sup> Philip, N. Muzammil, M. 2011. *The Role of Digital Media in the Upheavals in Egypt and Tunisia*. Journal of Democracy Volume 22 [online] Available at [http://muse.jhu.edu/journal/journal\\_of\\_democracy/toc/jod.22.3.html](http://muse.jhu.edu/journal/journal_of_democracy/toc/jod.22.3.html) [Accessed August 3, 2011].

<sup>48</sup> Ibid.

<sup>49</sup> Kiberenge, K. 2011. *More Food Protests Expected in Nairobi*. The Standard. 23, April.

Facebook. This is a new frontier that is yet to be fully exploited by the Kenyan democracy and human rights sector.

Digital media has revolutionised the way that human rights groups in Kenya network and share information<sup>50</sup>. Groups, such as Bunge La Mwananchi (Peoples Parliament), which used to meet physically to organise events, today largely organises its members and debates issues through Listserves and Facebook. The group has a website, Facebook group, and uses Twitter and YouTube platforms. The use of multiple social media platforms is an emerging trend among civil society groups. Another notable example is the Kenya Young Voters Alliance which is largely based on Facebook, with a membership of 10,000. Since the Alliance was founded in 2009, it has provided a platform for debate on key national issues<sup>51</sup>.

But, away from the civil and political rights action front, there have been other initiatives such as Ugatuzi, which is the Swahili word for devolution. Ugatuzi was founded by the Social Development Network (SODNET) as a budget-tracking tool that acts as platform for grassroots communities to participate in public resource management. This web-based tool seeks accountability from government and parliamentarians by enabling communities to access information with which they can make informed decisions and hold their leaders accountable.

#### ICT and human rights

The human rights movement in Kenya has generally been slow to realise the value of websites and the internet as tools of mobilisation and information exchange. Most NGO websites were, and still are, dull and rarely updated, showing that they do not attach much value to them. Part of this can be attributed to fear of legal and security implications.

Most civil society organisations only migrated from fixed to mobile phones around 2005 and, even then, did not fully appreciate the potential that mobile phones had for their work<sup>52</sup>. Yet there is no doubt that digital media has had an impact, for better or worse, on a variety of human rights, be they social and economic or even civil and political. In particular, writers and commentators on social and economic rights in Kenya hold the view that digital media has, indeed, contributed to social change.<sup>53</sup> But it was not until 2007, during Kenya's post election violence, that CSOs began to appreciate the significance of this mode of communication, let alone the challenges that are attendant on it. Text messages were widely used, and this time not just by CSOs but by all Kenyans, to communicate information about the election, and the resulting violence. But most importantly, civil society has found the mobile phone very useful in protecting human rights defenders (HRDs), as faster, secure lines of communication have been easy to establish between HRDs and protection agencies.

Another challenge for civil society organisations is IT security, i.e. the security of data in computers, and storage devices and even the security of information exchanged by email and text message. Some of these have in the past exposed human rights defenders, in need of protection, to even

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<sup>50</sup> Diamond, L. 2008. *In The Spirit of Democracy*. New York, Henry Holt and Company LLC.

<sup>51</sup> Interview with Otsieno Namwaya, July 26, 2011. Nairobi.

<sup>52</sup> Interview with Otieno Ombok, Nairobi. August 28, 2011.

<sup>53</sup> Interview with Muthoni Wanyeki, July 6, 2011. Nairobi.

greater risk<sup>54</sup>, as the government has on occasions been able to retrieve mobile text messages that reveal the location of these human rights defenders.

But these changes are widely being viewed as double-edged. It is positive that people communicate, share information and engage interactively, but such opportunities bring with them the potential for abuse. Danger lurks in a situation where there is such enormous space and opportunity for the entire public to share and disseminate information without a clear definition of the ethical parameters and how they can be enforced. Such a situation is replete with many problems. Firstly, interpersonal communication is today being exchanged as though it is truthful and factual. Such information is also being posted on blogs – such as Jukwaa – and circulated through personal e-mails, especially as witnessed during the campaign period and also during Kenya's post-election violence period in 2008<sup>55</sup>. But this does not take away the positive aspects of this new trend. Digital communication has opened up a space, giving members of the general public the opportunity to participate and express themselves in a variety of governance debates.

#### **10.4. Controlling Media and Communications**

Various industry analysts have acknowledged the Kenyan media as being among the most vibrant in Africa. While the media sometimes faces charges of being sensational on delicate national issues, it has nonetheless been the most powerful and consistent public watchdog, often prodding the political leadership and demanding public accountability<sup>56</sup>. This freedom was not granted to the media easily. Rather, media and other interest groups have had to fight for it, demanding legal and later constitutional, protections. The new constitution unequivocally provides for an elaborate Bill of Rights, which includes freedom of expression and media<sup>57</sup>. The constitution also provides for public participation in all public processes including policy making, and this can be interpreted to mean that, henceforth, major decisions that will affect the ICT and media sector will benefit from public input. The legislation that will implement Kenya's constitution includes a statute on the Media and ICT sector. According to the constitution, the industry players have an opportunity to input and shape the final product, not as a privilege extended by the authorities but as a constitutional right.

##### Privacy and security

This is a difficult area for the media not just in Kenya but throughout the world. Privacy in media is not just a problem for the law; it must also be dealt with through ethical guidelines of the media profession<sup>58</sup>, an issue the Media Council of Kenya has grappled with for a couple of years. And, save for the aberrations of the alternative press and a section of the FM stations, the media has generally done well on this score. There have not been overt intrusions by the media, for instance, into the privacy of individuals or generally the lives of private – as opposed to public – citizens.

State security, on the other hand, was once regularly used to excuse government clampdowns on the media, despite the fact that Kenya has not had major security concerns. Nonetheless, the two

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<sup>54</sup> Interview with Otsieno Namwaya, July 26, 2011, Nairobi.

<sup>55</sup> Ibid.

<sup>56</sup> Interview with Patrick Ochieng, Nairobi, August 28, 2011.

<sup>57</sup> *Constitution of Kenya 2010*. Article 34.

<sup>58</sup> *The Code of Conduct*. 2007. The Media Council of Kenya.

issues have been well dealt with by way of legislation. Under the current constitution, Article 31, the right to privacy is guaranteed. Further, the Kenya Communications Amendment Act (KCA) of 2008 in Article 46 I(f) and (g) requires all broadcasters to respect the individuals' right to privacy. The Act criminalises unauthorised access to data in a computer. But includes an exception allowing acts carried out under any statutory power for obtaining information, or taking possession of any document or other property for legitimate purposes, such as national security.

#### Cybercrime and filtering

Seen as a controversial national regulatory issue, net neutrality discussions have mainly focused on the kind of policies required for broadband access at the national level. But with increased access to the internet, this debate now goes further to address the right of internet users to access services, content and applications without interference. It also includes the issue of the rights of network/infrastructure operators to be free of liability for transmitting applications and content considered illegal<sup>59</sup>. The debate is now on whether net neutrality is going to become a global internet governance principle combining concepts of universal access and rights to communication and innovation.

Owing to the opaqueness of the practice, there is no public information on filtering or blocking, even though there has been widespread concern that the National Security Intelligence Services has a facility for this. Whether this is a reality remains uncertain - there has never been a tangible case of filtering and blocking at the Kenya government level. Blocking at the level of service providers is a real danger given that the government has been pushing for such measures. During the post-election violence in 2008, the government, after seeking the consent of media owners and managers, banned live broadcasts and even considered closing down the SMS messaging system. This could mean that the Kenyan government lacks the capacity to filter or block content on mobile and internet communication in the absence of the collaboration of the service providers. Alternatively it could mean that the government is reluctant to use blocks and filters – although the latter seems highly unlikely. The then Safaricom CEO, Michael Joseph, said in a subsequent interview that mobile phone providers convinced the government to refrain from shutting down the short messaging service, allowing the providers to send out messages of peace and calm instead<sup>60</sup>. Also, there is evidence that the names of more than 1,700 people who created or forwarded text messages inciting ethnic violence were compiled by the government. The purpose of this compilation of names was not specified. The assumption was that those individuals would be prosecuted but to date they have not been.

Kenya is already witnessing various forms of cyber crime e.g. website hacking, copyright infringement, email account hijacking etc. In terms of cyber law adoption, Kenya has passed relevant regulation though there may still be outstanding issues that will require revision as a result of the ever-changing cyber world. The Kenya Communications Amendment Act 2009 addresses transactions, electronic signatures and authentication, consumer protection and computer crime.

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<sup>59</sup> Interview with Alice Munyua, KICTANET Convener. June 13, 2011. Nairobi.

<sup>60</sup> Available at <http://allafrica.com/stories/201009230933.html> [Accessed July 9, 2011].



There is also a Kenya CERT (Computer Emergency Response Team) <sup>61</sup> and though it is still at the initial stages of the set up, it is seen as a step towards combating cybercrime.

### **10.5. Conclusions and Recommendations**

The media environment in Kenya is changing rapidly and this poses major challenges to traditional media. Even if it has the capacity or the resources, the media simply has to adjust to the changes if it is to stay afloat and remain relevant in light of the emerging consumption trends. There are many exciting options ahead, and this is an area whose potential is yet to be fully exploited in the country. There is a need for constant research and analysis of the industry in order to keep pace with the changes, and develop policies that are in sync with the public's needs. The priority areas for action are:

#### Regulation

- *Media stakeholders will need to take advantage of the prevailing mood of inclusiveness – there have been widespread consultations in the recent past, and the constitution now require greater levels of public participation in the legislative process. For example, stakeholders have been asked to input into the draft Broadcasting Code of Practice for free to air radio and television as well as an updated ICT amended policy. There are many other pieces of legislations that will have to be created in the next five years as the constitution is implemented and this should be seen as presenting an opportunity to redress past mistakes, particularly in the broadcasting sector.*
- *Consultations and public participation in this regard should not be allowed to mean the inclusion of just a few urban-based stakeholders. Rather, it should include as wide a selection of stakeholders as possible, including rural, community radio stations.*
- *There is also an opportunity to develop legislation to address some of the most glaring industry issues including market gaps, high levels of media concentration, and cross-media ownership; for example through the introduction of laws against monopolistic tendencies to safeguard the public interest. The role of the KBC as a public broadcaster will also need to be re-examined with the view to making it more effective and responsive to public needs and the changing social, economic and political environment.*

#### Local content quotas:

- *All media houses should be required to produce a minimum percentage of Public Service Remit. There is already a proposal that calls for both radio and television stations to ensure 40% of programming is Kenyan. However further debate is needed on how to achieve this.*
- *Training in quality content production in light of digitisation of broadcasting will be needed.*

#### Bloggers and social media

- *Professionalisation of bloggers must be debated and agreed, to clarify their ways of working with the traditional media whilst they collect, analyse and impart information. Training of*

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<sup>61</sup> *Report of the East Africa Community (EAC) meeting of the taskforce on cyber laws Phase II.* 2011. Mombasa, Kenya. Page 3 [online] Available at [http://www.eac.int/advisory-opinions/cat\\_view/153-eac-cyberlaws-framework.html](http://www.eac.int/advisory-opinions/cat_view/153-eac-cyberlaws-framework.html) [Accessed August 31, 2011]

*bloggers should also be considered so that they provide alternative perspectives on mainstream media. Media personnel will also need training on how to take advantage of new media.*

#### Community media

- *To secure its growth and development, community radio requires an enabling environment, an assessment of what has worked and what has failed, and what needs to be done; all in light of technological advancement.*

#### Convergence

- *Training of all media personnel will be needed to facilitate multitasking. They will need to develop skills in the packaging of content in digital formats that can be delivered simultaneously through different platforms such as radio, television, print and online.*

#### Human rights

- *The human rights movement should establish effective ways of reaching and mobilising the masses through new technologies so they can demand their human rights.*

## Kenya

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