Policy Briefing

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The Kenyan 2007 elections and their aftermath: the role of media and communication

Front cover image
Sympathisers of Kenya's opposition leader Raila Odinga celebrate on the streets of Kisumu as they hear a radio transmission saying that Odinga had signed an agreement to form a coalition government with Kenyan President Mwai Kibaki.

Introduction

In the late afternoon of 30 December 2007, the Election Commission of Kenya declared Mwai Kibaki to be the winner of the country's election, the count of which was considered by both national and international observers as flawed, possibly rigged.

Within an hour, as Kibaki was sworn in as President in the capital, Nairobi, smoke could be seen rising from homes being burned in Kibera, the biggest slum in Africa. Within six weeks, more than 1,000 people across the country had been killed, and perhaps 500,000[1] others driven from their homes or fled in fear.

On January 22, 2008, international reports began to appear, claiming that media, and particularly local language (commonly called vernacular) radio stations in Kenya, were responsible for fanning ethnic hatred and fuelling violence.[2] The reports echoed previous such allegations, including around the 2005 referendum campaign in Kenya. While the mainstream media has been praised for trying to calm the situation, people within and outside the media argue that it has failed to live up to professional and ethical standards and has contributed to the crisis.

The government is seeking a formal review of the media, a move resisted by the Media Council of Kenya which acknowledges major failures and is instituting its own review.

This Policy Briefing, compiled for development policymakers, has been put together by the BBC World Service Trust to provide a briefing on a complex and fast moving series of events.

The role of the media and communication in democratic governance is the subject of increasing attention from international development actors. The situation in Kenya has potentially profound implications for and lessons relevant to many other countries. The Briefing is an early contribution to a process of learning those lessons and particularly situates its analysis within debates on democratic governance and poverty.

The crisis in Kenya has deep historical roots and many complex factors – political, cultural, economic, historical and colonial – and is rooted in long standing grievances. The role of the media and communication is just one among many other such factors which this briefing does not attempt to address.

The Policy Briefing is based on around 20 semi-structured interviews with national and international figures, mostly media research and support organisations, and figures linked to Kenyan media and civil society organisations. Interviewees were given the option of speaking on or off the record – nearly all spoke on the record. The authors are very grateful for them doing so and for the candour with which many were prepared to talk about their own profession.

It is also based on a review of much research and monitoring material, and we are particularly grateful for information provided by Strategic Public Relations and Research, UNDP, Internews, the Kenya Human Rights Commission, the European Union and BBC Monitoring, News and Swahili services for their help.

Summary of policy conclusions

The Media Council of Kenya is undertaking its own review and analysis of what has gone right and wrong within the Kenyan media around the current crisis. This Policy Briefing is designed not to hold the media to account or in any way take the place of that process. It is rather designed to enable those not familiar with the media scene in Kenya to develop an understanding of what has happened. It is produced in the belief that these issues have important policy learnings and consequences not only in Kenya, but in many other countries (including in the West).

Policy conclusions relevant to development policymakers include:

- The media have shaped and will continue to play a central role in shaping Kenya's democracy. The recent record of the media, according to many within it, is that media has undermined as well as invigorated that democracy. An understanding of democracy and democratic governance in Kenya is not possible without a strong understanding of the media's role in the country. We would urge development actors to be better engaged and more supportive of media in the future.

- The problem facing Kenya's media is not an excess of media freedom. It is a lack of it. Media freedom cannot, however, be described simply in terms of independence from government. Journalists and broadcasters face immense commercial and political constraints which are constraining their journalistic independence and integrity.

- Some local language radio stations have incited fear and hatred particularly at the height of the violence. Local language radio stations are routinely partisan and flout codes of ethics. Talk shows have provided the greatest opportunities for hate speech and talk show hosts are not trained in conflict reporting or moderation. Nearly all we spoke to on the subject felt this was a priority.

- More recently, most local language stations (and much of the rest of the media) appear to have been playing an important role in calming tension and promoting dialogue. A strengthening of such a role by a genuinely independent media will form a critical contribution as Kenya navigates the turbulent waters ahead of it.

- Training in general remains a major priority, although this is less a challenge of traditional journalistic training, and more one of training talk show hosts and others engaged in facilitating public debate. Training on conflict reporting has been considered unnecessary in Kenya – many journalists now consider it an urgent need.

- The media policy and regulatory environment in Kenya will be the subject of considerable review and debate within Kenya in future weeks and months. Such a debate should be encouraged, and particular attention could usefully be focused on a public interest approach to broadcasting and media.[3]

- Media monitoring by civil society and research organisations has done a good deal to discourage the broadcast of hate speech by media organisations. Such monitoring is currently haphazard and could be more systematic and better supported.

- Community media has, despite its tiny size, emerged from this crisis with great credit and arguably provides a model for the future. It requires better, more strategic engagement and support in Kenya and elsewhere. This support is partly a question of policy engagement, partly one of financial, funding and sustainability models.

- The poor remuneration, status and safety of journalists is hampering a free and plural media. Substantial progress in strengthening the media will not be possible unless the working conditions of journalists are improved.

- There is no independent public service broadcaster in Kenya. If there had been, the scale of the violence and of the crisis may well have been much less severe. If there is a debate and a move in the country to transform KBC into one, it could usefully be intensively supported.

- Kenya faces the most important public debate in its history. The media will be central to its character, conduct and its outcome. An inclusive and balanced debate may need financial support.

- Coordination, information sharing and long term strategic planning of media support within Kenya could be substantially improved, including in ensuring that external media support is both demand led and strategically coherent. Much capacity building of media over recent years has been donor led (focused for example on specific health or other issues) rather than addressing the core challenges facing media in Kenya.

The media in Kenya: the 15 year boom

The Kenyan media is one of the most respected, thriving, sophisticated and innovative in Africa. Although Kenya is one of the poorest countries in Africa, it has a relatively high literacy rate.[4] It has, in recent years, had a successful economy with one of the most dynamic advertising markets on the continent and a population which consumes news and information voraciously. This market has supported an explosion in media over recent years.

This is a relatively recent phenomenon. While an independent media tradition in Kenya is a long one, it is only in 1992 that the media began to become the thriving industry it is today. Until then, the suppression of media freedom by the then KANU government, a stagnant economy and the continued monopolisation of the airwaves by the government's Voice of Kenya (now Kenya Broadcasting Corporation), meant that independent media outlets were few and confined mostly to narrow elites.

Over a period of 15 years, this increasingly assertive and self-confident media has played a substantial role in mediating relationships between citizens and state, in shaping the democratic dispensation in the country, and has transformed utterly how some of the most marginalised in society access information on issues that shape their lives. Kenyan citizens have become increasingly reliant on the media for such information, investing it with greater credibility than almost any other source of information.[5]

For most of this period, the media has been seen nationally and internationally as a principal indicator of the democratic vitality of Kenya. Media has been at the forefront of moves to transform Kenya from one party state to multiparty democracy; it has gained a reputation for exposing corruption and acting as a vigorous fora for public debate; it is seen as a guardian of the public interest against overweening state power.

That reputation is now being challenged. Recently the media has been accused of fanning the flames of ethnic hatred, of having become politically coopted, of marginalising voices of reason at a time of ethnically polarised politics and failing to uphold its function as a source of investigation of abuse of power.

Many of these accusations have been made by those within the media itself. It is a recurrent theme of almost all the interviews conducted for this study that senior media figures believe that the media has much to reflect on and

address if it is to regain public trust, and if it is to become again a source of pride for those who work in it. The government of Kenya is seeking to conduct its own formal investigation into the conduct of the media but this is being resisted by the Media Council of Kenya amid fears that it could be used to muzzle media freedom.

The actions and roles of different media have played out very differently. This Policy Briefing looks at each main media sector, starting with:

- claims facing **local language media** that it has fanned ethnic hatred and incited violence;

- the role of **community media** and an examination of why there isn't more of it given its social role;

- the role of the **mainstream media** and examining claims that it has become politically co-opted;

- an examination of claims that **blogs** and **SMS text messages** were used to inflame tension and incite ethnic hatred.

- the role of the **government media**, and the claim that a more credible and independent public service broadcaster could have done much to shape a more constructive tone in national debate;

- and finally the role of the **international** media.

> "The problem facing Kenya's media is not an excess of media freedom. It is a lack of it "

We conclude by looking briefly at how media in similar conflict situations have performed in other countries.

Vernacular media: "part hate, part peace"

Why is there a local language media?

A minimum condition of democratic citizenship is that people have access to information on issues that shape their lives. Without it they cannot make informed democratic choices. Citizenship also requires people to be able to communicate their perspective into public debate, and to have spaces for public discussion on issues that most affect them. Without such spaces, democratic discourse cannot take place.

For most of the Kenyan population, these conditions have not existed for large parts of the country's history.

Kenya has two official languages, English and Swahili, but a large minority of people in the country rarely speak either. Many do not have more than a basic understanding of Swahili and none of English. For a majority of people in the country, these are secondary languages used as a *lingua franca*, but not a preferred language of communication.

For most, the preferred language is that of their community. More than 100 unofficial languages and dialects are spoken.[6] Until recently, access to information in these languages has come either through informal community networks, or from the Kenyan Broadcasting Corporation, which is owned and controlled by the Kenyan government. KBC is, in varying degrees, distrusted by many people communicating in these languages.

A substantial proportion of the population of Kenya – typically the poorest, the most politically marginalised, those who feel the most aggrieved and excluded from Kenya's economic success – have for most of the country's history had access only to a media controlled by a government they distrust.

This is no longer the case.

4
In 2004, the World Bank estimated literacy at 73.6%, with male literaracy at 77.7% and female literacy at 70.2%, *World Bank country profiles quoted in AMDI country report on Keny*a.

5
Steadman Research Services Report quoted in *Daily Nation* (2006), cited by *African Media Development Initiative Report*, BBC World Service Trust, 2006.

6
Africa Media Development Initiative Report (2006), 'Kenya: Research Findings and Conclusions', BBC World Service Trust.

Public debate in a hot climate – but moderated by whom?

Media liberalisation in Kenya was an initially gradual process, with the first private (English language) FM station, Capital FM, being licensed in 1996, followed by the steady growth of other English and then Swahili language stations.

In 2000, Kameme FM, a Kikuyu language station, became the first to break the state monopoly on local language broadcasting. A heated national debate ensued, focused on whether such stations would stir ethnic conflict. However, although Kameme was suspended for a time in 2001, precedents had been set and the floodgates of local language media had opened.

In 2004, a new law was passed further liberalising media, and that paved the way for a wave of new local language radio stations to be established targeting listeners from the main ethnic communities: Kikuyus in Central Province, Luos in West, Kalenjins in Northwest, Kambas in Southeast, and Kisiis in Southeast.

The main incentives driving the opening of these stations was neither developmental, nor even political. It was commercial. The majority of these stations were founded as profit making enterprises and principally as entertainment vehicles. Some new local language stations are government owned, like Cooro FM, and a tiny handful are community broadcasters (see separate section below).

The largest group of such stations is run by the Royal Media Group, which runs nine stations in different languages and different parts of the country. Local language radio stations immediately attracted large audiences, and by 2007 had 27 per cent of the radio market (compared with 33% held by mainstream radios.)[7]

Early content of these stations was music and entertainment based, but audience demand quickly encouraged these stations to focus much of their airtime on popular public discussion fora. Nearly all these stations have highly popular talk shows and phone-in programmes, often in the morning prime time slots. Ramogi FM, a Nairobi based Luo language station calls its talk show, "Baraza" meaning "informal assembly". Lake Victoria FM, another Luo language station, calls its morning talk show "Just Say It!". The Kikuyu language Inooro FM, has "Hagaria" ("Sharpen") and Kameme FM, calls its main phone in show, "Arahuka" ("Wake-Up!")

Suddenly, and largely accidentally, these talk shows had become an outlet for a public debate and an expression of voice which had been suppressed for decades. Many of these voices were angry, disaffected and determined on change. Such outlets were arguably much needed if tensions were to be defused through public debate rather than violence.[8]

In any society, such debate in such a political environment would have required skilful and careful moderation. That is not what generally happened.

People hired to broadcast in these stations were rarely trained journalists or commentators, but sometimes entertainers and other personalities familiar to their audience. Personnel from these radio stations have acknowledged that they have little or no training in mediating discussions in conflict situations.

The point is reinforced by Professor Absalom Mutere from the Media Council of Kenya who reflects that claims of inciting ethnic tension by these stations is not new. "We have had these issues before, particularly around the time of the 2005 referendum," he told us. "Immediately after liberalisation of the airwaves, we had the issue of journalists who had no training – a lot of them had been disc jockeys – some of them were just there because of good looks and their ability to speak the language. We have been trying to address these issues of lack of training."

In the current political climate, talk shows appear to have been seized on by those with the strongest and most organised political views.

Claims made against – and by – local language media

According to Caesar Handa, from Strategic Public Relations and Research, most of the media generally abided by the code of conduct for journalistic practice [established by the Media Council of Kenya].

"But after the elections when the results had been disputed, we saw a very clear turn of events, we saw clear positions taken against particular ethnic communities... and some of these stations clearly presented the position that certain communities were against their communities – and many of these bordered on hate and incitement by the local language stations. There were clear examples of incitement, especially among stations that were not being monitored in Nairobi."

This is confirmed by people from some radio stations themselves. "The ethnic hate our radio station was propagating about those from outside the community was unbelievable," one such journalist told a forum organised by the media support organisation, Internews. "The unfortunate thing is that we let these callers speak bile and laughed about it," the journalist said.[9]

Some parts of the media "are definitely complicit" in creating conditions for violence, according to L. Muthoni Wanyeki, director of the Kenya Human Rights Commission. "The reports we have got through our own media monitoring processes are just appalling in terms of what was allowed to be said, in terms of prejudices spread, ethnic stereotypes made and the fear created."

However, says Handa, most of these messages were implicit, not explicit. "There were no clear messages that we should kill or burn these people or chase these people away, there were rather coded messages that were being presented and most of them from people who were calling [in through the talk shows]… and people calling in were saying very clearly that we want to liberate ourselves from certain positions and certain communities… in this way the local language stations played a role in my opinion in the escalation of the violence."

Handa argues that such views gained power and currency from the fact that they were broadcast: "People would have positions… on whether certain communities were [to blame for their problems] but when aired on the radio the believability of those positions is strengthened and it galvanises people into action… the vernacular radio stations could have played a better role in reducing the role of ethnic tensions…"

He also argues that news reporting by these stations was both one sided and sometimes inflammatory. He gives the example of reporting around the killing of more than 30 people in Eldoret Church on New Years Day. "What we saw from one side was matter of fact reporting of the burning of the church… but others reporting to a different audience had very emotional coverage - and when the reverse situation was true, then the reporting was emotional the other way round… radio stations could have condemned what was wrong, reporting what ought to have been reported and making commentaries which could have united the competing communities."

The government has argued that the local language media have a responsibility for the violence that followed the

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elections. "The violence after the announcement of the polls was due to the polarity in the media, especially vernacular media which were turned into political tools," Samuel Poghisio, Minister of Information is quoted as saying. Stations recruited 'quacks' as news anchors and editors according to Poghisio, and he cited a case where a media house broadcast ethnic war songs targeting certain communities.[10]

It was this coverage which prompted the government, which carries out its own monitoring of stations, to impose a month long live media ban when the violence first started, according Poghisio. "The media had and were likely to inflame passions, if editors did not delay broadcasts," said Poghisio speaking on January 24.[11] "Then, emotions were high and lives were at stake and as someone rightly said desperate times call for desperate measures. Materials that were broadcast before the ban was imposed, especially on a few vernacular FM stations, were actually incitement to murder and mayhem," he said.

Nearly all commentators on the current Kenya crisis strongly resist and resent comparisons to the role of the media in the genocide in Rwanda. From the evidence that the authors of this report have seen, they are right to do so. Broadcasts from Rwanda's Radio Milles Collines urging mass murder were part of a carefully orchestrated, systematically planned process of killing, and the political dynamics of Rwanda in 1994 are completely different from those in Kenya in 2008.

Nevertheless, Handa does make one cautious comparison: "We did not reach the Radio Milles Collines level, but we were not very far from it... some of the presenters were clearly happy that a caller was saying certain things."

Mitch Odero of the Media Council of Kenya, which has been inundated with complaints about local language radio stations, says at least some of the responsibility needs to lie at the door of some politicians. "Yes there were many cases where [vernacular] radio stations championed hate speech," he says. "One area of weakness was on live talk shows, a politician suddenly comes out of nowhere calling on people to stand and fight for this cause and sometimes literally calls on the youth to rise up and fight."

Odero also argues that future media policy should address issues of political ownership of these stations. "In Kenya you are talking of a situation where certain politicians own FM stations, particularly vernacular ones," he says. "In Kenya there are close to 50 FM stations today. So the editorial policies of certain media houses tend to reflect interest of the station owner who happened to be politicians."

These issues have become particularly acute over recent months. "This issue of to what extent politicians should own media houses is an area out of this election that we may regard for policy research – money plays a crucial role in elections, and politicians have found that if you have [media ownership] then you will spend less and influence more," he says.

Issues of ownership also undermine the ability of journalists to do their job as they think fit, says Odero. "I have cases where a journalist would come to me and say 'Mitch do we have a way where the conscience of a journalist can be protected because my boss wants me to take this particular stand – and I'm not happy about it'."

Different conduct by different stations
There is not sufficient content analysis available currently to do a clear assessment of the role of all radio stations at all times in the current crisis, but it is certain that different radio stations have played very different roles. There is

evidence to suggest that those owned by Royal Media Group in particular made an effort to curtail contributions that incited hatred.

There is also evidence of many local language stations doing much to promote reconciliation and defuse tension particularly after the initial wave of violence in January 2008. Talk show hosts on many stations have been trying to reach across ethnic barriers, are actively curtailing calls that seem to be engaging in ethnic stereotypes and are calling for reconciliation. At least some are calling for perpetrators to be brought to justice.

"I urge people to promote peace so that things can come back to normal and for politicians to abstain from inciting people and speak the truth," said one caller to a Luo station on February 11. Kass FM, a Kalenjin station subject to particular criticism and closed down in the past, urged its listeners to help human rights monitors with their enquiries (February 7).

"We are looking for a solution to unite all of us Kenyans, I had to cut short one of the callers whose opinion was not to unite people but to divide them," said the presenter of a talk show on Inooro FM, a Kikuyu language station (February 5). "My heart bleeds for these, our brothers and sisters, who have become victims of a conflict this country could have avoided… we must give them assistance," said a caller to Radio Lake Victoria on February 5. This tone appears to be typical of much recent coverage by local language stations across the ethnic spectrum.

Adam Mynott, who reported on the Kenya crisis for the BBC, believes these media may be being unduly singled out. "If you look at vernacular radio, yes it is very partisan, but there seems to have been a war on vernacular radio and I don't think it has been quite as bad as people [have said]… I don't think there's been any sort of sophisticated planned hate campaign and certainly I haven't seen much evidence of it."

Farida Karoney of KTN agrees with this conclusion: "Editors in vernacular language stations should have been more careful in the language, phrases, parables and idioms used," she says. "The way the country had been segmented along ethnic lines, some of the programme hosts took sides and argued for lines of action that were popular with their community – but I don't believe they were involved in planning the violence."

Many local language stations argue that their partisan coverage is being driven by their audiences, and that not being radical loses listeners. Wachira Waruru, Managing

Above Opposition leader Raila Odinga aswers journalists' questions.

10
Quoted in *Media Blamed,* February 7, 2008, Kenya News Agency, accessed March 7, 2008, **www.kenyanewsagency.go.ke/detailnews07.php?recordID=872**

11
Quoted in All Africa.com, *Kenya: State Ignores Media Demands*, 25 January, 2008, Samuel Kumba and Oliver Mathenge.

Director of Royal Media Service (and also now chairman of the Media Council of Kenya) told us that: "We were serving specific communities and each has its own political orientation so some of them only wanted to hear one side of the story. Objectivity and neutrality is often seen in those areas as a sign of hostility – people say you have to be with them 100%." Waruru argues that Royal Media tried to be cautious and not get carried away in a polarised political environment.

The defence of the local language stations only goes so far. No-one denies that bias is endemic and the use of language has at least been inflammatory. The political allegiances of the owners of these stations, and how they influence their content, is also an issue that will need to be examined, says Absalom Mutere, of the Media Council.

"There is another problem which may be playing itself out, and we will have to work with government to manage it, and that is to do with ownership [of local language stations] and their reasons for investing in that area – if those reasons fall short of professionalism we'll have to take steps to manage it," he says.

More training with local language media is seen as a minimum response to the recent crisis. "The mistakes that have happened in the media do not by and large reflect deliberate attempts on the part of the media", says Moses Rono of Kass FM speaking at an Internews workshop "The mistakes have to do with lacking capabilities and technical know how".

Wachira Waruru of Royal Media agrees with this. "Training needs to be a big component in the future", he says. "People were employed because of their command of the language, not their qualifications or knowledge. Training is not just about learning codes of conduct… it is about being able to divorce yourself from the subject."

A debate will inevitably take place in Kenya about the future role – and possibly existence – of local language radio stations and international comparisons will be highlighted in this debate.

Neighboring Tanzania has more than 125 ethnic groups compared to Kenya's 42. The Tanzanian government has taken the decision to ban the operations of local language radio stations fearing it might promote ethnic division.[12] There are, however, major differences between Kenya and Tanzania. The greatest is use of language, with Swahili having been much more firmly embedded in Tanzania as a language of popular currency – a central plank of efforts dating back to Julius Nyerere to foster national unity and identity. This does not apply to the same extent in Kenya.

Absalom Mutere does not believe that banning is the answer: "Banning is not in the spirit of liberalisation and enlightened thinking. Banning is where you shut down ideas. What we need to be doing here is coming up with a policy framework that talks about who we are, do we know what Kenya is, where did we come from – we have never really interrogated those issues," he says, and argues that the media will be critical to that debate. "We need to move beyond a simple discussion on regulation which is a colonial hangover." For the same reason he opposes an explicit law on hate speech: "I am not for laws that ban."

Wachira Waruru of the Royal Media Group says that more regulation is not the answer. "The failure of the media was more of an attitude than one of regulation," he says. He questions how regulation can keep pace with the rapid changes in the media industry.

Grace Githaiga is Executive Director of Econews, an NGO that supports community media. Githaiga is clear that,

although she has defended the role of vernacular stations in the past, greater regulation is required: "There are so many complaints about the vernacular radio stations [and accusations of hate speech] and there does need to be better regulation… some of them are truly inflammatory. Freedom comes with responsibility – some of these stations went overboard, as evidenced by the many complaints to the Media Council of Kenya."

The issue of the future of local language radio stations in Kenya – and perhaps elsewhere – cannot be restricted to an issue of conduct. It also needs to encompass issues of democratic need. How are people to access credible information on issues that shape their lives in their own language? How are they to find an expression of their voice in the public domain? How are they to engage in democratic debate in ways that reflect and resonate their concerns? Having access to information in forms that people can understand – including in their own language – seems likely to continued to be a basic democratic necessity.

Addressing how those questions can be answered in ways that can bring people together as a nation and not drive them apart will be one of the central policy challenges facing Kenya's people, media and government over forthcoming months and years.

Community media: "more would have helped"

It may be considered curious to have a prominent section in this report on community media given that Kenya has so little. It is not their overall impact, but their example that makes them of interest in the policy context.

Although the first community radio on the entire African continent was established in Kenya – in Homa Bay in 1982 (and deregistered two years later) – community broadcasting has consistently struggled to gain a foothold in the country.

There are just a handful of such stations in the county, most of them very small. They are Mangelete FM, Radio Maendeleo, Koch FM, Pamoja FM, Mugambo, Jyetu, Shinyalu and Konoina.[13] They collectively reach a tiny proportion of the Kenyan population.

The NGO Econews,[14] which hosts the community radio network and has been advocating for community radio for two decades, says it has been a constant and largely fruitless struggle. Government has consistently hesitated to promote community media amidst concerns it could exacerbate social and ethnic tension.

"Radio Mangelete [set up by Econews] for instance applied for a license in 1997 and that was not approved until 2002," says Grace Githaiga, Executive Director of Econews Africa. "It applied to broadcast in the vernacular language because that is the one the whole community understands – and I remember officials asking 'are you sure they don't want to incite others'?"

Ironically, the few community radio stations that do exist in Kenya appear to have played a much more positive role during the recent crisis than their better financed commercial rivals.

Pamoja FM, located in Kibera slum – one of the main centres of the post-election unrest in Nairobi – has played an especially courageous role. It has, despite its position, insisted on providing a voice for different communities and worked to calm conflict. Young people make up its main audience and it has directed its efforts at trying to stop

fighting between groups of youths.

Playing this role has not been easy. The station has received threatening phone calls when they have broadcast interviews with politicians seen as opponents in the community.

"I have been running a show from 6 -10 pm which mainly talks about peace and trying to show people that what they were doing was wrong," says Tola Nyatta, a Pamoja FM Presenter. "I was accosted by a group of about 50 youths during the recent skirmishes. It seems they weren't happy with my show but after taking about ten minutes to explain to them [what I was doing in the show] they became calm," he said.

Pamoja, which broadcasts to a 5km radius, relies almost entirely on a group of around 20 volunteers. It broadcasts to all of the 14 "villages" that make up Kibera, has been trying to organise events that bring together people from different communities and groups. In common with commercial stations, Pamoja FM broadcast many adverts paid for by the different political parties in the run up to the election.

"If I'm not wrong, we were the only station that was talking about peace and encouraging people to live together *before* the election," says Nyatta. "We saw the tension before and we tried to tell people to iron out their differences. But we didn't do it as hard as we would have liked to, largely because we simply didn't have the resources."

Community media exists to provide a voice for the community they serve, but they also work to a clear set of ethical and social frameworks. As in other countries (see section on International Comparisons below), community media appear to have been able to balance providing an outlet for people's anger and grievances whilst discouraging violence and division. It has done so in Kenya in the most difficult of circumstances.

"More community media would definitely have helped during this crisis," says L. Muthoni Wanyeki, Director of the Kenya Human Rights Commission, and formerly heavily involved in the international community media movement.

Tola Nyatta is more emphatic: "More community media could have quelled the violence. In Pamoja, we did quite a lot and we touched very many people. People tend to identify with the station, so when you give them an idea, and you talk about something, they feel it is coming from one of their own, they tend to believe you more. When the skirmishes broke out, people in Kibera tended to listen to Pamoja FM news more than any other… these guys live here and know what is happening and they are going to tell the truth."

There is real confusion, even among media and media support organisations, about what community media is and is not. The vast majority of local language radio stations in the country are commercial and profit making, not community radio stations.

"This is what we've continually been trying to make the point about throughout the 1990s about the difference between privately owned broadcasting and community media," says Wanyeki. "Community media are by definition participatory with a clear social development agenda and their journalists are trained accordingly; private media can be whatever they want to be, whether music, entertainment, spoken word – or hate speech. It's up to them."

Mitch Odero of the Media Council of Kenya argues that the confusion surrounding community media are rooted in legislation and policy. "Our ICT policy does not define community media as it should," says Odero. "[Real] community media is owned by the media and acts in the interests of the community. Now it's a mixture – radio stations owned by private individuals which think they are community media."

"Such media would have helped in enabling people to discuss the conflict and the solutions, and because they are participatory they would have enabled less divisive debate – this country is larger than ODM and PNU and community media would have reflected that diversity," says Githaiga.

The ownership structure and culture of community media varies but is very different from commercial media.[15] "Radio Mangalete is owned by 33 rural women's groups," says Githaiga. "Many of these women don't speak Swahili at all – they speak Kikamba – and so this is a really important way for people to find a voice in their own language." She also argues that community radio station content is underpinned by a code of conduct developed with UNESCO.

Community media continues to face massive problems. They have to pay the same licence fee as commercial stations, and donor support has tended to be scarce and sporadic. Pamoja FM has been unable to afford to commission a proper survey of audience listenership which would enable it to attract more advertising and in any case it faces major restrictions on use of advertising.

The problems facing community media in Kenya and elsewhere should not be underestimated, especially in relation to how they sustain themselves and how they engage and entertain their audiences as well as inform them. However, the Kenyan experience would appear to have provided fresh, powerful arguments and evidence for advocates of this sector.

The mainstream media: media in action, media in crisis

A democratic media in action

The mainstream media refers to the major media houses (print, radio and television) such as the Nation Media Group, Standard Group and other large commercial organisations operating nationally in English and Swahili.

These organisations are the powerhouse behind a highly sophisticated, dynamic and internationally respected media. It is respected for its independence, its record in subjecting government and other authorities to independent scrutiny and for its historical role in promoting multiparty democracy. Many within the media, as well as those outside it, are questioning whether this reputation is still deserved.

In many respects though, the media played an extraordinarily effective role in covering the 2007 elections.

A record turnout for the elections can largely be attributed to the civic awareness carried out by the media.

The media also mounted a largely effective and very substantial election monitoring exercise, with journalists stationed at hundreds of polling stations. Keen competition between media organisations to announce results first ensured a major logistical exercise, including exit polls and media organisations collating their own election databases. On the day of the election, voting was judged to have been fairly conducted and people queued for hours to vote. Journalists played a key role in ensuring this fair conduct and their presence almost certainly deterred malpractice.

> **The few community radio stations appear to have played a much more positive role than their better financed commercial rivals**

15
There is another form of media which also needs to be clearly distinguished from community media, namely the 'gutter press' (also sometimes referred to as alternative media, although many would dispute this term is appropriate). This Policy Briefing has not attempted to provide an analysis of the role and impact of the gutter press.

16
A fuller examination of the effects of the live media ban have been well documented elsewhere , in particular by International Media Support (*Kenyan Media Under Pressure: the Nairobi Round Table Recommendations*, published by International Media Support, February 12, 2008).

17
Griffiths was speaking at a meeting organised by Internews, February 2008.

18
Kenyan Media Under Pressure: the Nairobi Round Table Recommendations, published by International Media Support, February 12, 2008.

19
Speaking at Round Table organised by Internews, Feburary 1, 2008.

The European Union Election Monitoring Mission was generally complimentary about the role of the mainstream media in the run up to the election suggesting media achieved a reasonable, if mixed, degree of balance (see box below).

The alleged improprieties around the election count happened at the central counting in Kenya Conference Centre in Nairobi, and not substantially in the constituencies (although there were cases of ballots being stolen). Journalists were, despite efforts, prevented from accessing the tallying rooms at KCC during the count, and three days of growing public suspicion and anger culminated in a rowdy press conference when the result was announced. Fierce questioning by journalists revealed the reservations the chairman of the Election Commission had about the probity of the count.

A ban on live news reporting instigated by the government was designed to defuse public anger, but arguably did the opposite as rumour spread over SMS text messages and other networks took over from live journalistic reporting. When the media was prevented from doing its job, the public clearly missed it and the country almost certainly suffered as a result. The ban was largely considered ineffective because international broadcasters continued to broadcast coverage, including through national partners (see section on International Media below).[16]

When violence erupted all over the country following the election declaration, the mainstream media was one of the few sectors to make an immediate and determined effort to unite to calm the situation. On January 3, 2008, the main media houses took coordinated action in splashing the same headline across their front pages, 'Save Our Beloved Country'. "Some of our coverage focused on the role of the media in trying bring peace to the country," says a producer with Al Jazeera. "Radio stations like Kiss FM and the newspapers did a lot to try to bring messages of peace to the country."

Journalists risked their lives to bring reports from around the country on the violence. "I can celebrate the fact that the media used its freedom to get out there, they were out there in the tear gas, they were out there with the people reporting what they saw and that was commendable," says Absalom Mutere of the Media Council of Kenya.

The mainstream media has also been praised for the accuracy and fairness with which they reported the negotiations chaired by Kofi Anan to achieve settlement after the disputed election. Martin Griffiths, adviser to Kofi Anan, says that: "We would get up in the morning and would read very accurate accounts in the newspaper the next day and on the whole very fair and very unpolemical."[17]

Much of the mainstream media also appears to have been very careful in its use of language. Farida Karoney of KTN contrasts their coverage with those of some of the local language radio stations. "Here at KTN when we are reporting conflict we will not refer to people by their tribe because we think that such tribal references will entrench feelings of hate." This seems to have been typical of most of the mainstream media.

There is, however, a flipside to this positive portrait.

A democratic media in crisis: "we went to sleep"

Nearly everyone we spoke to in the mainstream media both formally and informally felt that their performance over recent weeks, months and years constituted a collective failure to defend the public interest.

This self-criticism has been most powerfully articulated by Frank Ojiambo of the Editor's Guild of Kenya writing in a recent report published jointly by Article 19, Reporters without Borders and International Media Support.

"I wish we could have done a better job," says Ojiambo. "I feel embarrassed being a journalist… had we played our role as media, perhaps hundreds of people would not have died. Perhaps billions of shillings would not have gone up in smoke… I have been a journalist since 1974 and I must say that what I have seen now, I have never seen anything as shocking. Journalism is no longer what it was." He argues that the profession is "seriously corrupt" and has lost its professionalism.[18]

"We thought we actually got democracy in 2002," says Mildred Ngasa, a journalist with the *Daily Nation*.[19] "But then after 2002, democracy went to sleep. Many people want to say that we as Kenyans, we as the media, went to sleep instead of nurturing a democracy that should have grown within five years to ensure a very smooth transition in 2007, but that didn't happen."

Such sentiments have been echoed by civil society and by government, but our interviews and those of other media organisations suggested that it is felt equally strongly within the journalistic profession itself.

What then has gone wrong?

At least part of the explanation can be rooted in an understanding of how democratic politics in Kenya have changed – and how media in the country have increasingly been shaped by it.

Kenya's media in the years running up to 2002 were critical to establishing genuine multi-party democracy in the country. A long and intensifying tradition of media freedom, courage, investigation, innovation and professionalism played a major role in the public and political debate that

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Mostly balanced? Extract from the report of the EU Mission

The commercial radio stations provided some degree of diversity between the main political parties though the PNU coalition partners enjoyed the majority of coverage. Excluding paid for political advertising, Citizen FM granted 45% of its coverage of political actors to the parties of the PNU coalition. ODM received 29% and ODM-K 12% share of coverage. Similar imbalance also characterised Easy FM's coverage and the PNU coalition received 52% share, ODM 34% and ODM-K12% share of coverage on this station. Kiss FM provided a greater degree of balance in their coverage of political parties. The PNU coalition and ODM received almost equal coverage: 44 and 43% respectively. The commercial television channels, KTN and NTV's coverage demonstrated similar trends. The PNU coalition received 46 and 50% share of coverage on the respective channels. ODM received 39% share of coverage on KTN and 28% share on NTV. ODM-K was afforded 12% share of coverage on KTN and 17% on NTV. Citizen TV granted the PNU coalition partners 56% share of coverage and ODM 29% with ODM-K receiving 11% share. The vernacular radio stations' coverage demonstrated a tendency to grant greater access to the parties and candidates with close links to the tribal and political affiliations of their listeners with few of these stations providing adequate balance in their coverage.

Newspaper coverage demonstrated a constant trend across all of the titles monitored. In the *Daily Nation* the PNU coalition received 54% share of coverage compared with 53% in the *Kenya Times*, 55% in the *Standard* and 56% in the *People*. ODM received 29% in the *Daily Nation*, 33% in the *Kenya Times*, 30% in the *Standard* and 28% in the *People*. ODM-K received a 12% share of coverage in the *Daily Nation*, 8% *Kenya Times*, 10% in the *Standard* and 5% in the *People*.

Extracted from Preliminary Statement, European Union Election Monitoring Mission, General Elections 2007 (January 1, 2008)

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ended one party rule. Kenya's civil society, media and political class were engaged in a movement for multi party democracy that transcended ethnic divisions.

Since then, the media has changed dramatically in two main ways. It has done so because democratic politics has changed, which has become increasingly factionalised and divided along ethnic lines; and because the media environment has undergone the kind of radical changes affecting most media in most countries.

First, the mainstream media have increasingly reflected the hard – and sometime unpleasant – realities of the new democratic framework in the country. As politics has become more factionalised along political and ethnic grounds, the media – including much of the mainstream media – have been drawn into, and often aligned with different political interests.

Editorial policy has been increasingly shaped from board rooms inhabited by people with close links to particular parties. Senior editors and other media figures have become explicitly involved in political movements, with many media figures taking party political and election campaign positions. Major newspaper groups have aligned their coverage to favour particular parties and have rarely been transparent with their readership in doing so.

"The influence from boardrooms and shareholders on mainstream media has been heavy," says Absalom Mutere. "We see professionals resigning at the point when they reach the top of the ladder as managing editors and editors-in-chief because of pressures in the board room, often through the influence of politicians. Media have become pawns in the political game."

Political influence unsurprisingly reached its peak during the 2007 elections. "A lot of co-option happened during the last elections," says David Makali of the Media Institute of Kenya. "Some of the journalists were affiliated to certain groups, some media houses have been alleged to have some leanings towards or against certain politicians. The editorial content or the drift of analysis would point which direction the media were. The media in totality were co-opted and corrupted in this election, there is no doubt about that."

It is practising journalists who have borne the brunt of how mainstream media has changed, according to the Kenyan Union of Journalists. "Journalists have always had a complaint on the way media ownership is structured in Kenya," says Eric Orina, Secretary General of the Kenya Union of Journalists. "Some senior editors who have been there for long are there not due to their professional excellence but because they were able to toe the line and publish content that appeals to the owners," he says.

"The fundamental problem we have is with correspondents who are the most neglected components of the media industry and yet in situations like this they are the most important," says Absalom Mutere of the Media Council of Kenya. "They have the least resources, they are paid the lowest salaries – we have to clean up these issues," he says.

Journalists in this environment report ever greater disincentives to carry out investigative journalism, and remuneration and conditions for journalists remain poor, with widespread suspicion of bribe-taking.

Major stories over recent years have gone largely uninvestigated. "They simply haven't invested in investigative journalism," says Muthoni Wanyeki of the Human Rights Commission. She contrasts the risks that people from networks of human rights organisations such as her own

are taking to highlight and investigate killings and other abuses and those of journalists. "If we can get these names and we are not criminal investigators, you can too… why are you expecting us to do it for you… it's appalling," she recounts telling a recent press conference.

Individual media houses are conducting their own investigations into aspects of their coverage, and particularly into the crashing of electoral databases. "At Nation Media Group we invested heavily in very expensive software that provided us with an Election Database," says Emmanuel Juma, head of TV News at Nation TV. "We had people in all the tallying centres and were meant to know the results long before the Electoral Commission announced them. But to everybody's shock and horror, the database crashed and that happened to the Nation, to Citizen TV and even KTN… they all crashed which is very mysterious. We're trying to find out what really happened… but there's no way all the databases could have crashed accidentally at the same time."

The second set of challenges facing the mainstream media are those facing most media in most countries.

A booming media sector, built on an increasing advertising base, has gone through similar changes to other rapidly developing media markets. Fierce competition for breaking news stories and a 24 hours events driven news culture, has squeezed out room for more reflective debate and analysis that provides perspective, clarity and makes sense of the rapid and turbulent changes in the country.

The mainstream papers were "imagining that things would go smoothly," says Absalom Mutere of the Media Council of Kenya. When violence broke out: "We missed a lot of the background and analysis of the source of the problem from a historical perspective. We saw the headlines of events, not the background to the events."

The trend is further exacerbated by competition from new technologies and blogs (see below). "With so much information being available, are we able to synthesise all this information and respond in a relevant manner," says Mutere.

The media did not go deep enough in its reporting and look for reasons behind events and took too much at face value, says Tole Nyatta of Pamoja FM: "For example, a month before the election we saw reports of landlords evicting tenants [in Kibera] – the media was just covering that and not trying to find out the root cause. The media was covering events, not what has caused those events."

In this environment, the few sources of independent analysis unaligned with specific political interests have been squeezed out. Those sources of independent analysis are, in any case, rarer than they were. Just as media has become more factionalised, so at least to some extent have other independent sectors in society, including civil society and academia.

"Money is also an issue. Elections are nearly always a major revenue earner for media and this election was a particular money spinner. The campaigners, politicians and parties used a lot of money this time round," says Tola Nyate. "It gave media a lot of money to cover their issues [through adverts]."

A focus on minimising costs and maximising income has also led to a deterioration of journalistic standards, according to Mitch Odero outgoing chair of the Media Council of Kenya. This problem became particularly acute around the election. "In Kenya something like 70% of materials you read from the mainstream media comes from correspondents

who are not really staff of the mainstream paper," says Odero. "A good number of them were perhaps former teachers who had to learn on the job and come the elections more of them had to be engaged. There was UNDP sponsored training course which we conducted – during it we found that even basic skills of journalism like accuracy and so forth was actually new to them. We distributed over 4,000 booklets containing our code of conducts and many had not read it."

According to a 2006 report by the BBC World Service Trust,[20] 80% of all journalists in Kenya are not permanent employees but are employed instead as correspondents who are not on regular pay and depend on short contracts typically earning as little as $100 per month. Since 2006 however, and partly in response to trade unions and international reports about poor remuneration of journalists, at least one media house – the *Nation* – has taken measures to put all their regular correspondents on a monthly retainer basis.

Media contributed to the crisis – but were not responsible for it

Most in the media seem ready to accept that their role could and should have been different – more independent, less partial, more proactive and investigative, less corrupt, more transparent when politically biased, more contextual and less event driven.

However, they also feel that they cannot be held to blame for Kenya's problems.

"What is happening in Kenya is not being caused by the media and to limit it in this way trivialises the problems," says Farida Karoney, Head of Editorial News at KTN. "The issues we face go far deeper than those highlighted at the election – the election was just a catalyst to provide people with an opportunity to vent their frustrations of what they had felt for many years."

The level of violence in Kenya has shocked the media into examining their own role and responsibility in the crisis and much of the critical analysis provided in this Policy Briefing has come from journalists and other media figures. Such criticism can go too far however. Media monitoring by Strategic Research and Consulting found that media 'had largely improved its adherence to the code of conduct' [drawn up by the Media Council of Kenya].

Nor need the media be overly apologetic about polarising public opinion. It is an inevitable outcome of an election to polarise public opinion, and the media in all democratic societies contributes to such polarisation. It was not the muscularity of their reporting that is at issue, it is the integrity, content and character of it.

And it is unrealistic to hold the media in Kenya up to a set of ideal standards that exist nowhere else. Most media in most societies are politically biased or aligned in some way, have tendencies towards sensationalism and simplification, balance self interest – whether of profit or power – with acting in the public interest. The debate on the accountability of the media to the public is a global, not simply a Kenyan debate.

It is partly for these reasons that acknowledgment by many in the Kenyan media that they contributed to near disintegration of their country has important lessons for societies everywhere.

Ultimately though, a free and independent media look like they will be more important in Kenyan society in the future, not less. Kenya does not have a surfeit of political and public accountability, it has an insufficiency of it. It

also has, despite it all, an extraordinarily rich and diverse media landscape.

Press freedom starts with journalistic freedom. Journalists need greater freedom to investigate, to hold politicians and others in authority to account. Journalist freedom is at risk not simply from government, but from the structure and ownership of the media organisations for which they work. As in so many other countries, poor conditions and remuneration are critically undermining genuine press freedom in the country.

How media is reformed in Kenya is not for documents like this to say. The government and media have been locked in a fierce argument over recent months over whose responsibility it is to assess the role of and propose actions to reform the media. Both government and the Media Council of Kenya have initiated enquiries into media conduct around the elections.

No government in any country at any time has proven able to directly regulate media without inhibiting media freedom and, as this Policy Briefing has repeatedly argued, media freedom is too rare a commodity in Kenya to be eroded further. Whether the media will be able to regulate itself, however, is – as in other countries – the greatest challenge the industry faces.

SMS, mobile telephony and blogs: from nice to nasty

The authors of this report have written before about the transformative and largely positive opportunities new technologies offer for enhancing democracy and empowering people. Their role in facilitating markets, enabling oppressed or marginalised people to organise peacefully in pursuit of their rights, in extending democratic debate and enhancing inclusion has been documented repeatedly.

This has been as true in Kenya as elsewhere. There are around 7 million mobile phone users in Kenya, one of the highest ownership rates in the region. Kenya has become internationally renowned for the sophisticated and early adoption of mobile technologies including being a global pioneer in M-Banking (holding bank accounts on mobile phones). New technologies have done much to advance both the country's democracy and its economy.

During the recent crisis, these technologies played a very different role, however.

Unregulated mass SMS messaging has been a feature of the election campaign, and has been used for promoting ethnic hatred and intolerance, according to recent reports from the NGO, the Kenyan Human Rights Commission.

'While they cannot be said to be sanctioned by any political party or individual politician, such publications contribute to the creation of a climate of hatred not conducive to free and fair elections,' says the report.[21]

The similarly named official Kenya National Commission for Human Rights highlighted hate speech over SMS texts before the election. 'The KNCHR is disturbed by the escalating use of SMS and email disseminating hate messages against particular candidates and other communities.'[22]

Charles Onyango-Obbo, the Nation Media Group's managing editor for convergence and new products, reported that "There were SMSs landing in my cellphone's inbox literally every 15 minutes in the last two weeks of the campaign, emanating from all sorts of support groups for the candidates... after the dispute over the outcome, the texts were arriving every five minutes, and they were

20
Maina, Lucy W. African Media Development Initiative, *Kenya: Research Findings and Conclusions*, BBC World Service Trust, 2006.

21
Human Rights and Election Bulletin No. 1, 2007, Kenya Human Rights Commission Monitoring and Response.

22
Still Behaving Badly: second periodic report of the Election-Monitoring Project, Kenya National Commission on Human Rights, December 2007.

meaner, nastier and more propaganda-filled."[23]

Kenya has as lively a blog culture as is likely to be seen anywhere. Many of these, such as Mashada.com, form online communities connecting people within the country with diasporic communities; they provide a key form of public debate and a source of investigation at a time when investigative journalism is under threat in the country. As such, blogs provide a growing form of democratic expression and accountability, and fresh opportunities for dialogue and debate across cultures and communities.

However, much of blogosphere in the country, as diverse as it is, can also be characterised as highly factionalised and often virulent in their content. Onyango-Obbo, writing in the *East African* newspaper, argues that there were around 600 blogs around the elections: "Some of them spewing shocking tribal vitriol… many African nations are already on the verge of being failed states, so we should be very afraid that at highly emotional moments like the recent Kenyan election, it's the subversive forces and hate-peddlers who are winning the SMS and blog wars."

On January 31, 2008, Mashada decided to suspend its forum. According to the site manager this was "because we haven't managed to control the heinous messages coming in. We receive about 5,000 comments a day and we've only got three people to supervise the discussions. We've seen a definite change in the last few months. Since November, when the electoral period started, more and more people started to post ethnically insulting comments… before that, ethnicity had never been a problem for the forum."

He says that the volume of posts was beyond their limited capacity to monitor messages and suggests that some of them may have been planned. "Finally, we were just bombarded. I think there was some organising it. They clearly wanted to enrage the debates because political leaders profit from these ethnic tensions, but we can't prove the site was being manipulated."[24]

The backers of Mashada have also been involved in setting up Ushahidi.com (which means 'Witness'), a site designed explicitly designed to expose and document the level of violence and destruction. This mapping initiative enables people to report by cellphone text messages instances of violence.

A government ban on live media following the election count may have fuelled credibility in rumours circulated through blogs and SMS messages. Moses Rono of Kass FM, speaking at an Internews workshop, says that: "Cell phones played a very big role… an hour after the election results were announced, after the swearing in of the President, live broadcasts were banned. From that time, cell phones took the place of live broadcasts."

Michael Joseph of Safaricom, the country's largest mobile phone service provider acknowledges that there were hate messages and condemns them: "Yes, there were hate SMSs but the number of such messages were not the majority. These messages started with somebody, who asked them to send them to ten other people and so on so they multiplied – but while I don't want to belittle them, they were not the majority."

His company has a policy designed to inhibit offensive material, such as pornographic images aimed at children. However, he feels that any law prohibiting hate messages would be extremely hard to enforce. Apart from problems of defining what hate is, he says: "It is extremely difficult to trace the source of SMS messages from our records. We also have to operate according to the terms of our license and that states that we have to keep subscriber

information confidential." He reveals that Safaricom came under some pressure from the government to close the SMS system down around December 31 but they resisted it "because we felt that panic might ensue."

"On an average day, there are about 5 million SMSs being sent by our subscribers, and there were probably more during that period," says Michael Joseph of Safaricom. Regulating such a system for content he believes is very difficult, and possibly not desirable. The Ethiopian government banned SMS texts during its 2005 election, but Joseph does not believe that it would be a helpful step to follow. However, Safaricom has in recent weeks installed new technology: "Which would have allowed us to filter SMS messages based on their content… installation of this system was planned more than a year ago."

Joseph is continuing discussions with the government about appropriate next steps and says he would favour Kenya following the Rwandan policy which makes it illegal to refer to any individual by their ethnic group. "That would be a great idea," he says.

23
The *East African*, January 28 – February 3, 2008.

24
Quoted on Observers website (France 24), February 1, 2008, *In Kenya, hate media has found a home* accessed March 14, 2008.

The Media Council of Kenya

There has been heated debate over recent years over who should regulate the Kenya media. The temperature of that debate has reached record levels over recent weeks following the performance of the media around the General Election. The media has waged a long campaign since the early 1990s to ensure that it is self regulated. Various governments have sought – to one extent or another – to maintain or enhance their role in regulating media.

The Media Council of Kenya is the organisation, set up under statute in 2002 (and controlled by the media) to be the main regulatory body for media in Kenya. It started operations properly in 2004. It exists to regulate, to educate and to provide research relevant to the media industry.

Its regulatory functions focus on developing and upholding voluntary codes of conduct developed by the media itself, including handling of complaints and enforcing decisions on complaints upheld. A specific code of conduct was established for the 2007 election, which state that: 'journalists should take a stand against hate speeches and utterances' and 'not fuel election violence'. The code seems to have been widely flouted.

The government argues that the Media Council, consisting as it does of owners and other stakeholders in the media, is unable to regulate itself adequately. The Media Council argues that it has not been in existence long enough to develop all the codes, systems and enforcement mechanisms that can make self regulation work as effectively as they feel it needs to. It argues that attempts by the government to increase its role in regulation would seriously undermine media freedom.

The overall regulatory environment for media and ICTs in Kenya is a complex one with many statutes affecting the media, including the Official Secrets Act, the Public Order Act, the Defamation and an the Preservation of Public Security Act. There is no law explicitly banning hate speech (one was proposed but defeated in 2004) and neither is there a clear media policy in Kenya that can uphold the constitutional provision for freedom of expression by the media. Section 79 (1) of the Kenya constitution does however state that:

'Except with their own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say freedom to hold opinions without interference, freedom to receive ideas and information without interference and freedom from interference with his correspondence.'

The Kenya Communication Act of 1998 remains on the statutes and it was Section 88 of this act that was used by the government to justify suspending live broadcasts in the 'interests of public safety and tranquility'. The legality of this step was challenged by the Media Council of Kenya. A new Media Act of 2007 gives the Media Council responsibility for regulating the media. The degree to which it will be given the chance to – and will be able – to fulfil that responsibility is a key issue for the months to come.

Government media: it could have set the tone – it didn't

There were some hopes that the signing of the multi-party constitution in 2002 would mark a sea-change in the performance and character of Kenya Broadcasting Corporation (KBC). For its entire history (since 1989) as KBC and even more so as its earlier incarnation, Voice of Kenya, the government owned broadcaster has been a government mouthpiece. The opportunity, at least potentially, existed for it to be transformed into an independent, public service broadcaster.

> **KBC could have played a critical role in facilitating a genuine democratic discourse that might have convinced frustrated, angry or fearful people that their voices were being heard and reflected in a national public debate, not simply a polarised political one**

The existence of such a broadcaster could hardly be more important in the current Kenyan context. KBC is the only media organisation in the country capable of reaching a genuinely nationwide audience. It broadcasts in nearly 20 languages[25] and its radio signal reaches virtually the entire country. It operates both news and commercial entertainment vehicles (such as the English language Metro FM broadcasting from the urban centres of Nairobi, Mombasa, Kisumu, and Nakuru) and Cooro FM and Pwani FM which transmit in Kikuyu and Swahili respectively. And there are three television channels broadcasting in English and Swahili.

KBC had – and has – the capacity to become a source of news and information credible to all parts of society, broadcasting in people's own language and reflecting their principal concerns. It could, in other words, have been an independent broadcaster acting in the public interest, free of influence of government, party or commercial concerns. For a brief period after 2002, a concerted effort was made to transform it into just such a broadcaster, and coverage did become markedly less biased towards government concerns.

It didn't last. The government became increasingly irritated by the tone of some of its coverage, and its legal foundation means that its directorship remains within the gift of government. Changes in directorship left it falling back into toeing the government line, and it lost credibility with a large part of its audience as a result.

The consequence was that, when Kenya faced its recent crisis, it was not equipped to be a reliable source of information since few of its audience considered it be so. Audiences – particularly those preferring or needing information in their own local language – turned instead to news sources they either trusted or reflected the views they preferred to hear, principally in the form of the new local language FM stations.

"In my opinion KBC performed dismally in terms of how they projected themselves and supported certain positions," says Absalom Mutere of the Media Council of Kenya.

According to the European Union Election Monitoring Mission: 'The Kenya Broadcasting Corporation (KBC), in particular, failed to fulfil even its minimal legal obligations as a public service broadcaster set out in the Kenya Broadcasting Corporation Act, the IPPG agreement 1997 and international and regional standards. KBC Radio's English and Swahili language services demonstrated a high level of bias and granted a combined total of 76 per cent of coverage to the PNU coalition partners.'[26]

Some of the most trenchant recent criticism directed at KBC came from the Election Council of Kenya chairman, Samuel Kivuitu, who said the station's coverage of the elections had been biased and had favoured President Kibaki. He condemned it for not providing equal coverage to all presidential candidates. "KBC has let us down as taxpayers, in an election year reporting should show competition; it cannot be that others [candidates] are so stupid that they have nothing which cannot be reported." Kivuitu said at the height of the election campaign (although KBC rejected this accusation).

KBC is not alone in facing such situations. All former monopoly broadcast stations in Africa have faced major problems over the last decade, and most of them are in decline. Liberalisation of broadcasting has ushered in dynamic private sector competition which have rapidly achieved dominance in both advertising markets and among the urban, consumer audiences that advertisers are interested in. Government funding has been static or in decline, and government influence or direct control has undermined attempts to build trusted brands. KBC's problems are typical of many others and it has in many respects performed better than many others, both in the quality of its news broadcasts and in attracting advertising.

Nevertheless, it has been unable to match trust and respect with its reach and penetration. If it had, it would have been in an ideal position to develop public debate and inform public understanding across political and community lines. It could have focused national debate on the underlying political causes of the tension that are driving conflict. It could have played a critical role in facilitating a genuine democratic discourse that might have convinced frustrated, angry or fearful people that their voices were being heard and reflected in a national public debate, not simply a polarised political one. Given the political climate of recent months and years, such a role by an independent, credible public service broadcaster could potentially have made a major difference, particularly outside of the main urban centres.

Sources within KBC, however, in the course of this research says that the laws under which KBC operates are vague and confused. According to the law, KBC is required to: 'keep a fair balance in all respects in the allocation of broadcasting hours as between different political viewpoints.'

That has been interpreted to mean that KBC must provide equal treatment or equal airtime to all political viewpoints. However, argues our source, who preferred not to provide their name, equal airtime is neither professionally possible nor desirable. The source told us that: "Equal airtime must not be confused with fairness and balance, because the country has 108 political parties which cannot be allocated air time. If the law was enforced KBC would be taken over by the 108 political parties during elections. The Kenya Broadcasting Corporation Act needs to be revised."

The role of international media

International media organisations are also important national media players in Kenya. International broadcasters, and particularly Al Jazeera, CNN and the BBC World Service/BBC World are readily available in Kenya. Al Jazeera has a partnership with STV and is also available via satellite. The BBC also reaches 7 million people in Kenya through its Swahili language service, broadcast directly and through 5 commercial partner radio stations (Sheki, Kameme FM, Star, West FM and Simba FM).

25
KBC broadcasts in Borana, Burji, Embu, Kalenjin, Kamba, Kikuyu, Kisii, Kuria, Luhya, Luo, Maasai, Meru, Pokot, Rendile, Somali, Suba, Teso and Turkana as well as English and Swahili.

26
European Union Election Monitoring Report, Election Observation Mission, Kenya General Elections 2007, Preliminary Statement, January 1, 2008.

Law, Regulation and Politics in Kenya since 2002 *by Peter Oriare Mbeke*

President Kibaki came to power on the promise of change in the 2002 Presidential Elections. His government was largely seen as a reformist one that would decisively address the legal, regulatory and policy flaws that had undermined governance and crippled social-economic development in Kenya.[27] He took power when the country was in recession and the economy recording negative growth. His priority was to deliver a new constitution within 100 days and part of that package contained progressive laws on media.

FREDERIC COURBET/PANOS

Indeed, the Chapter six on the Bill of Rights Part two Sections 48, 49, 50 and 51 of the proposed constitution[28] stipulated the rights to freedoms of religion, belief and opinion; freedom of expression; freedom of the media; and freedom of access to information respectively.

Unfortunately, the new constitution was never implemented by the Kibaki administration despite approval during the 2005 Referendum on the new constitution. The media laws would form the subject of another constitutional review according to the National Accord and Reconciliation Act 2008.

The Kibaki administration remains ambivalent towards media. It created the Office of Public Communication in 2004 that addresses the media on critical policy issues weekly.[29] Despite that it has had difficult relationship with an independent, assertive and watchful media in Kenya. Following media exposures of the Anglo Leasing Scandal[30] and protracted media stand offs, armed police raided the Standard Group headquarters in 2004, beat journalists, burnt newspapers, destroyed property and illegally dismantled and confiscated equipment under the guise of national security threats.

Following a humiliating defeat during the 2005 Referendum and confronted with formidable ODM opposition, low public rating and hostile media, the Kibaki administration changed tack towards the media. It created the Media Council of Kenya in 2007[31] for the conduct and discipline of journalists and the media, and as a mechanism to provide self-regulation of the media. Unfortunately, it also created a mechanism for control through financing and appointments for MCK.

The attitude of the administration towards media came to head when in the middle of announcing of flawed election results, it banned live broadcasting, and later formed a task force to investigate the conduct of media in elections and post-election violence and threatened to withdraw its support for the Media Council of Kenya.

The government has put in place the ICT Act,[32] policy and strategy. These ICT instruments were motivated by the quest to improve governance, create jobs and improve the economy in a globalising world. Unfortunately, the ICT Act 2007 is inadequate in policing and regulating the mass media and communication sector. Although it addresses the establishment of ICT villages and ICT centres at the grassroots, it does not address the development of community media and broadcasting in vernacular languages. For a long time the government has not supported community media because its fear of empowering the citizenry in ways that would challenge its hold on power and demand good governance. Media owners have not been keen to see this sub-sector develop as they consider them competitors that would undermine their reach.

The Kibaki administration has also prepared the Freedom of Information Bill (2007) that would deal a death blow to the Official Secret's Act and improve access to official information and governance.

Conclusion and way forward

The mass media and communication sector in Kenya remains vulnerable to system-wide pressures. The recent post-election violence and the resulting ban on live broadcasting are just two recent examples of this. The causes of this are weak, irresolute and inadequate legal, regulatory and policy framework inherited from the colonial era. The growth and development of the mass media and communication has been slow, stunted, haphazard and often inconsistent with public and investor expectations over the years because of a disenabling legal and policy environment. Political, social, cultural, economic, globalisation and technological forces influenced the legal, regulatory and policy environment throughout the history of Kenya.

The legal, regulatory and policy environment is still hostile to media and communication development but there is hope that it will get better if a better constitution is enacted, draconian laws repealed and new policies put in place. Progressive laws governing media and communications in Kenya need to be firmly entrenched in the proposed Constitution to provide impetus for steady growth of the sector.

The government urgently needs a language policy that deals with the use of hate speech in media and during elections in particular. The proposed Ethnic Relations Commission would champion this. The broadcasting policy need to integrate community media, public and private commercial broadcasting principles and regulatory framework. A comprehensive communication policy that addresses such important issues as media ownership and control, programming and local content, education and training, capacity building for community media among other issues is urgent.

Extracted from a longer historical analysis, including of how colonial law continues to influence media policy, by Peter Oriare Mbeke, Lecturer, School of Journalism and Mass Communication, University of Nairobi, Kenya. The full version is available on the BBC World Service Trust website.

Left A local freelance photographer argues with a policeman after tear gas was fired towards a group of journalists and ODM supporters to try to prevent a rally organised by the opposition Orange Democratic Movement (ODM) in Uhuru park.

27
See the Annual Progress Report 2004-2005: Economic Recovery Strategy, Monitoring and Evaluation Directorate and the Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007.

28
See the *The Kenya Gazette Supplement No. 63, 2005: the Proposed New Constitution of Kenya.*

29
See The Office of Public Communication's website at **www. communication.go.ke**

30
The scandal centred around a multimillion dollar fraud – reported by anti-corruption chief, John Githongo – for a major contract for provision of passport printing systems in 2002. The media were instrumental in making details of the fraud public.

31
See *The Media Act, 2007 in the Kenya Gazette Supplement, Acts, 2007*, Nairobi, October, 2007.

32
See Ministry of Information and ICT's website: **www. information.go.ke**

The international media have also done much to shape international perceptions of the political crisis in the country, and international reports in turn influence national public debate.

There has been criticism within Kenya of the way in which some parts of the international media covered the crisis. These criticisms have centred on claims that international reports exaggerated the scale of the violence of the country (and thus prompted increased fear and tension); used inappropriate language in describing the violence (particularly "genocide", "ethnic cleansing" and "tribalism"); and that the presence of international media – particularly camera crews – became in themselves a catalyst for violence.

"I watched the BBC and I thought this country was on fire," says Grace Githaiga of Econews, who was travelling at the time of the greatest violence. "CNN was playing the same clip from Kibera as if it was a commercial. Part of what I saw was sensational [and created fear]."

A producer we interviewed with Al Jazeera argues that, while this may have been true of some international reporters, it was not true of their coverage. "We covered the story very well both before and after the election. We provided equal air time to both parties and how we treated the story [of the violence] was really good… we were not using words like savagery [or tribalism] as used by some of our competitors and we were careful not to pass judgment on the killings."

Adam Mynott, who reported on the crisis for the BBC does not believe that the BBC exaggerated the scale of the violence, and he shares the criticisms made of those who compared the violence to the Rwandan genocide.

> **"There has been criticism within Kenya of the way in which some parts of the international media covered the crisis"**

"I don't think the BBC did compare the violence to the Rwandan genocide, although others did. It's a ludicrous parallel to draw," he says. "800,000 people died in Rwanda and so far 1,000 people have died in Kenya, so it is a comparison that is odious."

Mynott, believes the BBC's coverage got it broadly right. "I think the BBC, Al Jazeera and some of the international newspapers, German and French TV and radio have people who are based here and understand the issues and people involved," he says. "The problem is people who parachute in here and have a much more difficult job… knowing the facts and the nuances and hidden dynamics can only be understood by living in the country."

An Al Jazeera producer who was interviewed for this Policy Briefing believed international news organisations, and particularly Al Jazeera, played a critical role in keeping Kenyans up to date when the government instituted a ban on live news reporting immediately after the election result was declared on December 30. "During the ban, we kept Kenyans up to date in the absence of live news. We filled the void, we were lucky to be available 24 hours on the locally available channel, STV – KTN and the *Nation* could not do that so we became the alternative."

Mynott does feel that the BBC should have better anticipated the possibility of electoral malpractice. "We covered the election and the run up to it well, we had good geographic coverage across the country, the issues that we covered were the ones that Kenyans voted on," he says. "However, what we didn't do well was to anticipate enough what would happen in the event of an [institutionally] rigged election… we went into this believing that the people of Kenya and the international community had a lot of faith in the Kenyan electoral system."

He makes no apology, however, for not predicting the violence that swept the country. "Others have said to me, should we have anticipated the trouble that followed" says Mynott. "We did say in the run up to the election that if it was a close result there would be increased tension… but we have a policy at the BBC in News of not predicting violence because that can incite violence itself so we didn't do that which I'm glad we didn't – but we did say the risk of tension was high if there was a close election."

Both Mynott and Al Jazeera stressed the lengths they go to to avoid situations where the presence of the cameras incites greater violence.

"[Particularly] when opposition supporters were cordoned off from the towns and not allowed in, the only way they could vent their anger was to do so for the television cameras," says the representative from Al Jazeera. "We refused on several times not to come out with our cameras… some of the acts were being done for the benefit of the cameras and we tried to limit it as much as possible."

"A clear distinction needs to be made between the international and the national media," says Caesar Handa of Strategic Research and Public Relations. "The international media tended to report, sometimes erroneously that this was a clear conflict between the Luo and the Kikuyu and we saw quite a bit of that with BBC and CNN. Then we had the national media who refrained from mentioning ethnic communities [at all] – I don't know whether that is right or wrong."

Absalom Mutere believes that most of the international reporting depends for its information sources on Kenyan journalists. "We are feeding them the bulk of what they get and we'll have to get back to the role of international reporting in the long run… I'm glad that we are not depending on them for their reporting, but they are depending on us and that's how it should be."

Solomon Mugera, Head of BBC Swahili, argues that their role was critical during the crisis: "When the government slapped a ban on live transmissions, many people called in to say that we were the most credible source of information available." Technical problems meant the BBC Swahili signal went down for a time in Western Province, and when it did: "we were inundated with calls from people wanting to know what was going on."

Like other international broadcasters we spoke to, Mugera is proud of their role and believed it made an important contribution. "We knew we were broadcasting to a country divided," he says. "At every step, we asked ourselves how balanced and accurate our coverage had been." He also believes BBC Swahili provided a critical source of analysis for neighbouring countries.

In common with other reporters both within and outside Kenya we spoke to, Mugera highlighted just how difficult the crisis was to report. "We deliberately avoided using tribal references, but when we broadcast items and interviews with people urging peace and calm, we were accused of being pro government. When we didn't, we were accused of being ODM – even words like peace and justice became loaded terms," he says.

Mitch Odero of the Media Council of Kenya believes that the international media provided an important reference point for Kenyans, not least because they were more explicit in their reporting. "The mainstream media were

not reporting the ethnicity of the fighting community, but Kenyans knew if they wanted to know the names of the community all they needed was to switch on to international media like BBC and CNN – they named the communities at war when the local media did not. Millions of people turn to international news to confirm if the local reports are correct – that's been the tradition for years."

The debate to come: a free and plural media will be critical

A fragile peace deal has been reached in Kenya, but no-one pretends that the challenges facing Kenya are anything other than enormous.

The media will be critical to monitoring adherence to the deal reached by Kenya's political leaders, according to Martin Griffiths, adviser to Kofi Annan, who mediated the agreement between Mwai Kibaki and Raila Odinga.

"Not only does the media need to disseminate the details of the agreement," says Griffiths. "But the media also has a role in monitoring whether the decisions made are being observed, and whether the negotiations in a windowless room in the Serena Hotel in Nairobi improves the realities of people across the country who have had such an enormously difficult time in recent months."[33]

"There has to be some way whereby the voice of the media and of civil society is brought into play in the process of implementation of this agreement," says Griffiths. "In the media you have a critical role in ensuring that the voice of the people in an organised fashion is brought to bear on the key outstanding issues (such as constitutional reform electoral reform, institutional reform, land reform) that need to be dealt with in the crucial 12 months ahead… that's a big debate that needs to happen… politics is going to be too important to be left just to politicians… that's not just the case in Kenya but in any country, including my own."

According to John Githongo, the highly respected former anti-corruption chief, now in exile in the UK, the political settlement will not last without a deep-seated public debate in the country.

"As Kenyans we will have to ask ourselves some tough questions," he says. "I would ask members of the Kikuyu elite: why is it so frightening an idea to have, say , a Luo as president of Kenya; to the Luo elite, I would ask for a careful listing of the mountain of grievances they feel against the Kikuyu elite; I would ask Kalenjin leaders why they are so angry with the Kikuyu presence in the Rift valley and so on."

A free, trusted and more plural media will be important enablers of such a public debate.

"Media has this unique privilege of being free unconditionally as long as it recognises it has an added responsibility and this is where monitoring of ethics and professionalism [comes in] – that is where we stand to maintain our credibility. We should be monitoring our conduct, this is where the Media Council of Kenya comes in to show where the media is going ethically wrong," says Absalom Mutere.

Kenya is a divided and fearful country just now. The media have played too great a part in enhancing division and fostering fear. They now need a chance to address their shortcomings and use their immense creativity to heal and foster a public debate of the kind called for by Githongo. To do that they need more, not less, freedom.

YASUYOSHI CHIBA/AFP/GETTY IMAGES

The Kenya experience and development policy debates

Most donors and development actors have attached a low priority to media and media support issues in the context of development and particularly in fragile states. Neither funding nor research in this area have (with some exceptions) been considered significant strategic priorities. A generic and generally rhetorical commitment to the importance of a free media has sufficed.

There are several institutional reasons for this: a lack within most agencies of an established track record and capacity in this area; a perspective that it is too political and "messy"; there is little pressure from mainstream development actors, particularly mainstream NGOs, to make this a priority; a limited research base that supports objective evidence of impact of interventions; and there's been a conflation between a concern with media as part of the fabric of democracy with external communication and public relations.

There is also, however, a real lack of serious policy analysis and guidance on these issues and that which exists is not subject to serious debate and scrutiny.

The role of the media during the Rwanda genocide, for example, prompted a major workshop organised in 2006 by the London School of Economics and the Annenberg School of Communication. Its report, *Why Templates for Media Development do not work in crisis states*,[34] concluded that: 'In situations where the state is fragile… and where the political process is unstable and de-legitimated, the primary objective of donor assistance should be supporting the formation of a functioning state. In such a scenario, unsophisticated liberalisation of the media can potentially undermine the state building project.'

Such conclusions have led many agencies to feel that engaging with media support issues should not be a priority.

And certainly, this analysis could have resonance with the Kenyan situation. A complex, liberalised media system has on one level probably undermined the 'state building project' and has played a major role in reinforcing the factional character of Kenya's recent democracy.

It seems difficult to conclude, however, that an un-liberalised media would have led to a better outcome. Given the record of KBC in this crisis, it is likely that anger and frustration would have been even greater and democracy would certainly have been harmed.

Democracy, globalisation, technology and many other factors make transformative shifts in media patterns inevitable, and media and communication liberalisation

Above Residents of Kisumu celebrate after news that opposition leader Raila Odinga had signed an agreement to form a coalition government with President Mwai Kibaki.

33
Speaking at briefing organised by Internews, February 2008.

34
Putzel, James and van der Zwan, Joost (2006), Why Templates for Media Development do not work: defining and understanding media development strategies in post-war and crisis states. London School of Economics. http://eprints.lse.ac.uk/837/1/MEDIA.REPORT.pdf

is the necessary and generally (in democratic terms) positive result.

It is equally clear that 'unsophisticated liberalisation' could be said to apply to the Kenyan context (it is not alone in this). Yet policy engagement in how governments liberalise their media systems, how support can best be provided in doing so, how capacity building and training with media can best be structured and organised, how public interest media can be encouraged are generally low priorities in development policy.

There are plenty of examples of where sophisticated media liberalisation has had a uniformly positive effect on countries riven by conflict. The extremely liberalised media in Nepal for example (which admittedly has a very different political topography to that of Kenya) played an important role in helping to secure a peaceful democratic transition from monarchical dictatorship in 2005/6. Here the media – and particularly community media – played a critical role in defusing rather than inflaming conflict, having to navigate between factional political interests, a capricious monarch, an angry and desperately poor population and a Maoist insurrection in doing so.

Highly liberalised media in Ghana and in Sierra Leone and many other African countries have played a central role in democratic debate and played a major contribution

to successful elections. In the Democratic Republic of Congo, donor support (principally from DFID through the Panos Institute) channelled funding to the country's media regulator. This did much to contain inflammatory and hate content in the media during the country's 2006 general election.[35]

These and many other experiences from all over the world demonstrate that how media is liberalised and how it is capacitated after liberalisation make a huge difference to democratic outcomes.[36]

The role of media is also far from ignored in mainstream development analysis, not least in drivers of change studies and power analyses. However, while its role is highlighted, policy recommendations relevant to it rarely result.[37]

Kenyan society and democracy is changing and the media is shaping and mediating those changes to a very substantial extent. Development policy has in general been uninterested in media's role in such changes. We believe that the Kenyan crisis demonstrates that such disinterest cannot be sustained in the future without seriously undermining other development efforts.

There is much that can be done by donors and other development actors to support media in countries such as Kenya. The suggested policy conclusions and actions summarised at the beginning of this paper are just some of them.

35
Myers, Mary Dr, *Donor Support for Media Development: the Demand for Accountability*. p. 3, Paper presented at Uppsala University Conference on 'Whose Voices: Media and Pluralism in the Context of Democratisation', September 2007.

36
See for example, Buckley S, Duer K, Mendel T, O'Siochru S, *Broadcasting, Voice and Accountability: A Public Interest Approach to Policy, Law and Regulation*, World Bank/World Bank Institute, 2008.

37
See, for example, p 29 (public debate) of OECD DAC, 2005, *Lessons learned on the use of Powers and Drivers of Change Analysis in Development Cooperation – Final Report*, OECD Govnet www.gsdrc.org/docs/ open/DOC82.pdf

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