



# AFRICAN MEDIA BAROMETER

The first home grown analysis of the  
media landscape in Africa



## KENYA 2012

FRIEDRICH  
EBERT  
STIFTUNG



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MEDIA  
BAROMETER

## **KENYA 2012**

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# The African Media Barometer (AMB)






The African Media Barometer (AMB) is an in-depth and comprehensive description and measurement system for national media environments on the African continent. Unlike other press surveys or media indices the AMB is a self-assessment exercise based on homegrown criteria derived from African Protocols and Declarations like the “*Declaration of Principles on Freedom of Expression in Africa*” (2002) by the “African Commission for Human and Peoples’ Rights” (ACHPR)<sup>1</sup>. The instrument was jointly developed by *fesmedia Africa*, the Media Project of the Friedrich-Ebert-Stiftung (FES) in Africa, and the Media Institute of Southern Africa (MISA) in 2004.

The African Media Barometer is an analytical exercise to measure the media situation in a given country which at the same time serves as a practical lobbying tool for media reform. Its results are presented to the public of the respective country to push for an improvement of the media situation using the AU-Declaration and other African standards as benchmarks. The recommendations of the AMB-reports are then integrated into the work of the 19 country offices of the Friedrich-Ebert-Stiftung (FES) in sub-Sahara Africa and into the advocacy efforts of other local media organizations like the Media Institute of Southern Africa.

## Methodology and Scoring System

Every two to three years a panel of 10-12 experts, consisting of at least five media practitioners and five representatives from civil society, meets to assess the media situation in their own country. For 1 1/2 days they discuss the national media environment according to 45 predetermined indicators. The discussion and scoring is moderated by an independent consultant who also edits the AMB-report.

After the discussion of one indicator panel members allocate their individual scores to that respective indicator in an anonymous vote according to the following scale:

<b>1</b>	Country does not meet indicator	
<b>2</b>	Country meets only a few aspects of indicator	
<b>3</b>	Country meets some aspects of indicator	
<b>4</b>	Country meets most aspects of indicator	
<b>5</b>	Country meets all aspects of the indicator	

<sup>1</sup> The ACHPR is the authoritative organ of the African Union (AU) mandated to interpret the African Charter on Human and Peoples’ Rights.

The sum of all individual indicator scores will be divided by the number of panel members to determine the average score for each indicator. These average indicator scores are added up to form average sector scores which then make up the overall country score.

### **Outcome**

The final, qualitative report summarizes the general content of the discussion and provides the average score for each indicator plus sector scores and overall country score. In the report panellists are not quoted by name to protect them from possible repercussions. Over time the biennial or tri-annual reports are measuring the media development in that particular country and should form the basis for a political discussion on media reform.

In countries where English is not the official language the report is published in a bilingual edition.

Implementing the African Media Barometer the offices of the Friedrich-Ebert-Stiftung (FES) and - in SADC countries the Media Institute of Southern Africa (MISA) - only serve as a convener of the panel and as guarantor of the methodology. The content of the discussion and the report is owned by the panel of local experts and does not represent or reflect the view of FES or MISA.

At the end of 2008 the indicators were reviewed, amended and some new ones were added to address the rapid developments in Information Communication Technology<sup>2</sup>.

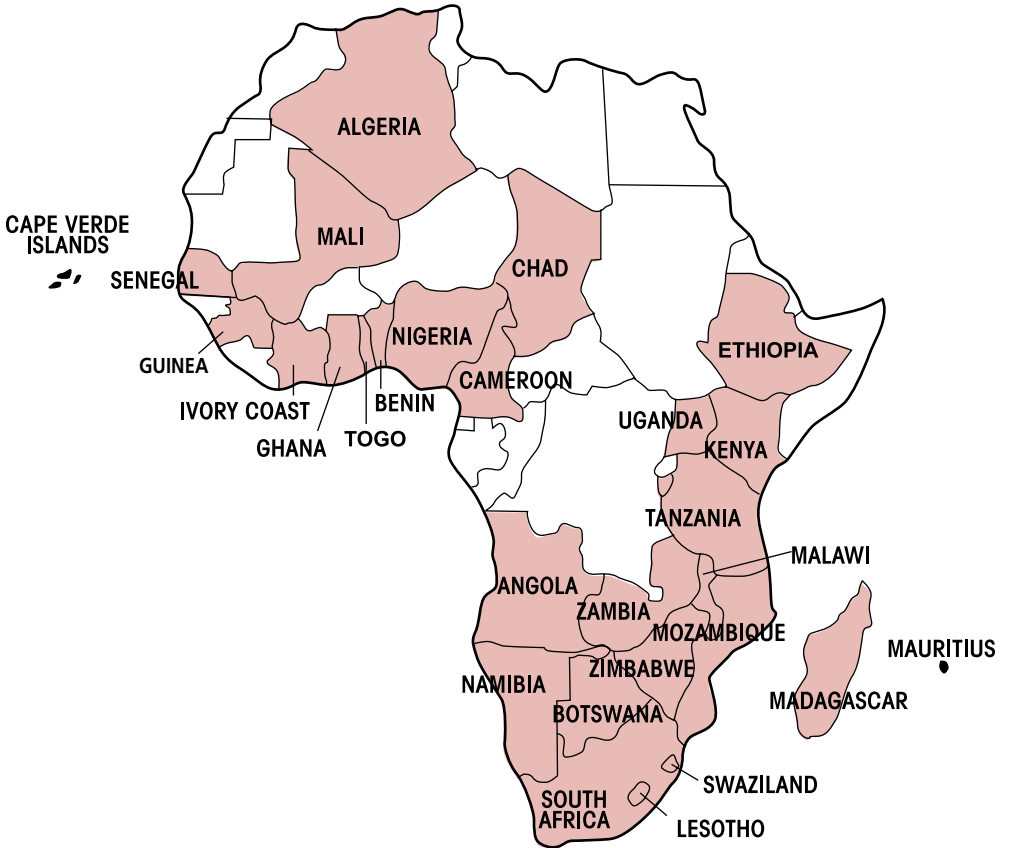
By the end of 2011 the African Media Barometer had been held in 28 African countries, in some of them already for the third time.

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<sup>2</sup> Consequently, the comparison of some indicators of previous reports is not applicable (n/a) in some instances in which the indicator is new or has been amended considerably. Furthermore sector scores are not applicable (n/a) as indicators have been moved.



*See above 28 AMB Countries (2005-2011)*

# African Media Barometer

## KENYA 2012

### Summary

In August 2010, Kenyans celebrated the promulgation of their new Constitution as an instrument that would bring significant change to the social, economic and political landscape of the country. The 2010 Constitution is seen as one of the most democratic instruments in the region as it provides for sweeping changes through the most important structures of governance.

The new Constitution establishes a bi-cameral parliament, with a legislative assembly and a Senate, restricts the powers of the President, gives the Senate the authority to exert oversight on the activities of the Executive and even provides for public participation in the conduct of parliament. It paves the way for much-needed land reform and gives Kenyans a bill of rights.

There is a startling contradiction in the implementation of the contents of the Constitution – on the one hand there have been sweeping changes, but on the other there has been a delay in aligning outdated and restrictive legislation to specific constitutional guarantees. There are ongoing discussions to align the Media Act and Independent Communication Bill of Kenya to the new Constitution, but talking is where it stops. A draft Freedom of Information (FOI) Act that has been ready for many years is still to be tabled in parliament.

This Constitution was adopted on the heels of the violence that rocked Kenya soon after the disputed 2007 presidential election which resulted in the loss of 1500 lives and the displacement of just under 1 million people. This bloodshed highlighted the political and ethnic tensions that had always been bubbling just under the surface of this vibrant and robust country. So the celebrated Constitution is also regarded as an instrument that will reform the social landscape to foster harmony.

The sensitivity around ethnic and tribal divisions manifests itself in hate speech as contained in the Constitution. Hate speech is defined in broad terms thus rendering the definition vulnerable to the whims of people in power who want to increase tensions between political parties or different ethnic groupings.

The relationship between different ethnic groups is still fragile and so journalists practise a great deal of self-censorship in the manner in which they report issues affecting different communities. "Since the 2008 violence, you will hear things like 'two communities' without any mention of which communities these are," to avoid upsetting any one group.



For the media the most crucial element of the Constitution is the explicit guarantee of freedom of expression, media freedom and access to public information. In practice, public information remains largely inaccessible to the media and the wider public.

The only officials permitted to speak on behalf of government are permanent secretaries within ministries and they are not easily accessible or available for comment. The role of the official government spokesperson seems to be that of managing information rather than facilitating access to the information that the public or the media may be seeking.

The public and more specifically the media, also have to deal with the bureaucracy of putting in a formal request for information. This process takes so long, that if and when the information is released it is outdated and irrelevant.

Despite the events of the past few years, Kenyans at every level of society are exercising their rights with vigour, by speaking openly and candidly especially about politics and politicians. A group of artists working in plain sight of the general public sprayed a prominent wall in the city centre with graffiti which depicted politicians as overbearing vultures ruling over the general populace. A few hours into their exertions they were being filmed by television crews and the incident was eventually put on air. Participants pointed out that this would have never been allowed by State authorities few years ago.

The media on the other hand continue to restrain themselves from commenting on certain political issues for fear of being targeted by politicians or the State. It is standard practice for many journalists to write explicitly about a contentious subject then lie low for a while and eventually reappear in public a few days later when the storm has subsided.

Growth of the media industry is a paradox. Print media products have increased in diversity and range which has automatically translated into increased readership yet print runs have been reduced because circulation figures have dropped. The print media is considered pricey at a cost of US60 cents per issue. Known for their enterprising spirit, Kenyan vendors have overcome this problem by renting out daily newspapers for a nominal fee for an hour or two. Once the person has read the paper it is handed back to the vendor who will place it back on the newsstand.

The steady interest in print media could be attributed to the fact that the mainstream media has shifted its focus slightly on the type of news it carries. The larger papers have started including more local stories from different parts of the country instead of concentrating on political and urban centred news.

Television audiences have grown in number and at 7pm every evening the majority of Kenyans tune into a specific channel of their choice to catch the main news

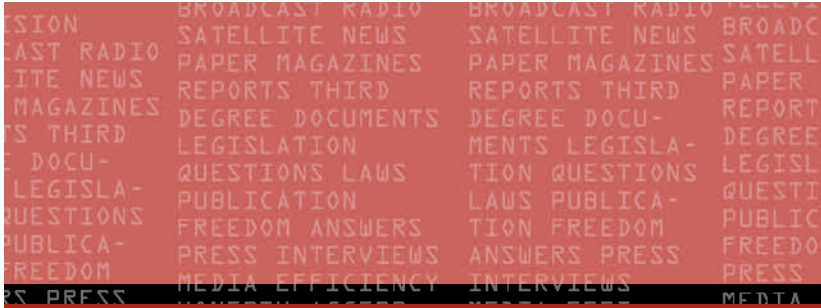
bulletin of the day. Generally, people tend to watch TV news along ethnical and political lines, especially since the post-election violence ended in 2008.

The number of radio stations has increased further since the last AMB of 2009, and radio continues to be the most widely available and accessible source of news and information for the vast majority of Kenyans.

This positive interest in media is marred by the increase in the level of corruption within the media sector. Media organisations have spoken out against corruption but in practise, bribing journalists is such a common practice that it has been coined “grassroots editing”. Grassroots editing is a practice whereby Kenyan journalists receive money to run stories that are biased in favour of the person who has paid the bribe. Even senior editors have been implicated and many of them are suspected of being on a retainer for personalities in positions of power. “Media houses have no moral high ground to punish corrupt journalists because even senior editors are corrupt.”

Kenyan media reflects the Kenyan society, which means there is little space for the voices of women or stories that tend to show women in a positive light. Stories about women often centre on issues like domestic violence in which women are portrayed negatively. Women from minority and conservative groups like Muslims often come under intense scrutiny and are criticised about how they dress or talk in public.





# SECTOR 1:

**Freedom of expression, including freedom of the media, are effectively protected and promoted.**



# Freedom of expression, including freedom of the media, are effectively protected and promoted.

## 1.1 Freedom of expression, including freedom of the media, is guaranteed in the constitution and supported by other pieces of legislation.

Just three weeks after a national referendum, during which 68 percent of the population voted in favour of it, President Mwai Kibaki signed the new Kenyan Constitution into existence.

The constitution, which was promulgated on 27 August 2010, is considered one of the most democratic on the African continent as well as the rest of the world.

It guarantees wide ranging freedoms in its fourth chapter titled the Bill of Rights. Articles 33 to 35 of the 2010 constitution specifically grant freedom of information, freedom of the media and access to information.

Article 33 (1) states that “Every person has the right to freedom of expression, which includes: (a) freedom to seek, receive and impart information or ideas; (b) freedom of artistic creativity; and (c) academic freedom and freedom of scientific research”.

Article 34 guarantees “freedom and independence of electronic, print and all other types of media”, and underlines that “the State shall not exercise control over or interfere with any person engaged in the broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.”

Meanwhile, Article 35 states that: “Every citizen has the right of access to (a) information held by the State and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.”

The 2010 Constitution provides for checks and balances and ensures accountability of elected officials through a provision that allows for the recall of parliamentarians.

Critics are concerned by the unclear definition of hate speech which allows for broad interpretation of the term and could be used to curtail freedom of expression.

Section 33A states:

- (c) hate speech; or
- (d) advocacy of hatred that -
  - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
  - (ii) is based on any ground of discrimination specified or contemplated in Article 27 (4);

while Section 27 (4) states:

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

“You cannot say what hate speech is unless someone says a statement amounts to hate speech towards him or her. Sensitivity to hate speech varies from one ethnic group to the other and depends on the level of social tension. Since the post-election violence, just about anything can spark a passionate reaction.”

Over the past few years, at least three Kenyan lawmakers have been dragged to court over alleged use of hate speech. Two of the cases have been dropped partly because “what people consider to be hate speech, the court does not.”

There has been some attempt to formally define hate speech by media practitioners and one definition describes it as a statement urging action against a section of the population, especially an ethnic group. Yet, “far too many people call many things hate speech”. As a result, there is already evidence that the media have been forced to practice self-censorship in order to avoid being accused of using hate speech.

When reporting conflicts, media outlets will avoid naming the different tribes in fear of this “hate speech” clause. Several ethnic groups are hardly called by name in media reports, especially when reporting tribal conflicts.

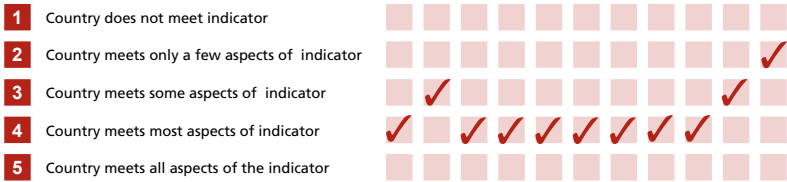
While the new constitution specifically of freedom of expression and the media, it has not yet been tested in practice.

Another drawback to the constitutional guarantees freedom of expression and of the media is the glaring absence of supporting policy and legislation.

There are ongoing discussions to align the Media Act and Independent Communication Bill of Kenya to the new constitution. A draft Freedom of Information (FOI) Act that has been ready for over a decade still has to be tabled in parliament. The process is widely viewed as slow. In the meantime, the old legislation which guarantees fewer freedoms is still in force.

## Scores:

### Individual scores:



Average score:

3.6 (2005 = 1.8, 2007 = 2.2, 2009 = 2.8)

## 1.2 The right to freedom of expression is practised and citizens, including journalists, are asserting their rights without fear.

A graffiti depicting the country's leadership as vultures ruling with impunity over a helpless population appeared on a major wall at the Nairobi City Hall in February 2012. The artists worked throughout the night and were filmed by television crews but no one tried to stop them. The authors of the artwork were later questioned by the police but let to go. It was a striking indication of how far Kenyans can take their freedom of expression these days. "This is something that would not be heard of in the Kenya of the past."

Whether it is through the media or other channels of communications, Kenyans can now express themselves freely and even talk negatively about the president and national issues without fear. They "can be as expressive as possible." But there are also limits, especially for the media. "Sometimes you do a strong story [in the newspaper] and want to disappear from the streets for fear that it can irk some ruthless people in positions of power."

The general feeling is that there is plenty of room for freedom of speech and expression but at the same time, journalists and other members of the public can sometimes be targeted for their work or comments.

In March 2012, freelance journalist and blogger with a huge following Denis Itumbi was arrested for allegedly hacking into the website of the International Criminal Court (ICC). It followed a complaint to Kenyan authorities from the ICC prosecutor Louis Moreno Ocampo that Mr Itumbi had allegedly compromised the email accounts of witnesses in Kenya's post-election violence cases at the court. In Kenya, Mr Itumbi has been suspected allegedly of working for one of the suspects.

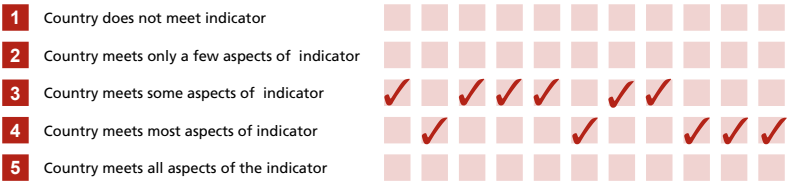
Mr Itumbi’s case was isolated in its scope and dimension and it was doubtful if the criminal investigation of alleged hacking amounted to a breach of his freedom of expression. But it is commonplace for the police to engage in spectacular arrests and interrogations “to send a message that we are still in control.” Often, “the police would attempt to intimidate the public by arresting someone publicly, whether or not a statement is taken in the end.”

Ethnic associations also limit the exercise of freedom of expression. A common practice is for members of an ethnic group to express political views that align with those of their top brass, whether or not that position is one they believe in. Others who may disagree will abstain from voicing support for the opponent. However “you are compelled to express love for a political kingpin and staying silent could be viewed as a betrayal.”

This has emerged starkly in the way the *Kikuyus* (one of Kenya’s major ethnic groups) discuss the ICC post-election violence trials, where they view suspects as martyrs. “If a Kikuyu speaks against a suspect, he/she is asked if they have a problem with being saved.” This is also true of the *Kalenjins*, another major ethnic group from whom there are two key suspects before the ICC. To some extent, journalists from a certain ethnic community see themselves working to defend the interest of that community out of fear that they could be viewed as enemies if they do not.

## Scores:

### Individual scores:



**Average score:** 3.5 (2005 = 3.0, 2007 = 3.7, 2009 = 3.0)



### 1.3 There are no laws or parts of laws restricting freedom of expression such as excessive official secrets or libel acts, or laws that unreasonably interfere with the responsibilities of media.

Kenya has an Official Secrets Act that “can always be shoved” in the way of journalists or members of the public. *Lawyer Magazine* was forced to go to court to force public authorities to release information they had applied for. It argued that some “secrets” are of public interest and in no way likely to jeopardise public security if released. But the attempt was futile.

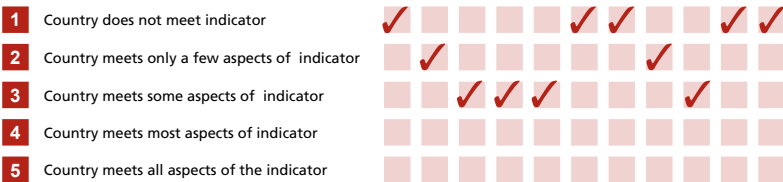
During the post-election violence in 2008, the Officials Secrets Acts was used to impose a ban on live broadcasts by radio stations and television channels. Most public documents are stamped “secret”.

Libel is criminalised in Kenya and remains an integral part of the Kenyan media environment. The Books and Newspapers Act obliges publishers to deposit a bond that can be used to pay up the libel claims of convicted media organs. In 2002, the value of the bond was raised from KSh10 000 (about U\$125) to KSh1 million (About US\$ 12 500). Criminal libel continues to be used, only less so since the removal of Kanu from power in 2002.

The country is in the process of enacting laws in line with the new constitution. But “when you see the time it is taking, it is obvious that there is a desire to stifle things and maintain the old order.”

### Scores:

#### Individual scores:



#### Average score:

**1.9 (2005 = 1.4, 2007 = 2.3, 2009 = 1.9)**

## 1.4 Government makes every effort to honour regional and international instruments on freedom of expression and the media.

Article 2 (6), of the Kenyan constitution states:

“Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.”

But in practice, the government of Kenya is not seen as making any effort to honour regional and international instruments on freedom of expression and the media. Instead, “it is felt that the government makes an effort to undermine international instruments”.

However, this is still to be fully appreciated since members of the public and the media have not yet tested the laws. “It is up to the users to take advantage of the laws ratified by the government. But that is not yet the case.”

### Scores:

#### Individual scores:

<b>1</b>	Country does not meet indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>2</b>	Country meets only a few aspects of indicator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>3</b>	Country meets some aspects of indicator	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4</b>	Country meets most aspects of indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>5</b>	Country meets all aspects of the indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Average score:

1.4 (2005 = n/a, 2007 = n/a, 2009 = 1.5)

## 1.5 Print publications are not required to obtain permission to publish from state authorities.

Prior authorisation is required to start and run a print publication in Kenya. Newspaper publications in Kenya are regulated by the Book and Newspapers Act of 1960, which was amended in 2002. By law, anyone starting a newspaper must take the following steps:

- Register a company;
- Open a bank account;
- Print at least one edition which will serve as a sample to be attached with the application to the Registrar of Books and Documents;

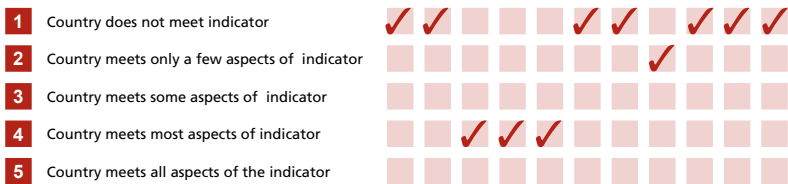
- Pay taxes and pledge to bank at least one copy of each issue with the Registrar to serve as part of the public archive;
- Pay a KSh1 million (about US\$12,500) bond to pay up for libel claims (Refundable if newspaper closes);
- Register with the General Post Office so that the publication can be audited by the Audit Bureau of Circulation.

Article 9(4) of the Books and Newspapers Act states that violators of the legal requirement for publishing and distributing a newspaper “shall be guilty of an offence and liable to a fine not exceeding KSh20 000 (about US\$250) or imprisonment for a term not exceeding six months, or both.”

In practice, newspapers can begin publishing while complying with the requirements. But in many cases, publishers choose to ignore the process entirely. Even though such publications are considered illegal, they are often left alone by the authorities because they are generally considered “small and inconsequential” newspapers. “The law exists but is not enforced robustly, [and so] compliance is weak.” Nevertheless, unregistered newspapers remain vulnerable to crackdown from the authorities. “When the police decide, such newspaper publishers are all criminals.”

## Scores:

### Individual scores:



**Average score:**

**1.9 (2005 = n/a, 2007 = n/a, 2009 = 1.4)**

## 1.6 Entry into and practice of the journalistic profession is not restricted by law.

Kenya’s Media Act of 2007 tries to describe conditions for entry into and the practice of journalism. It considers a journalist to be:

“...any person who holds a diploma or degree in mass communication from a recognised institution of higher learning and is recognised as such by the [Media] Council, or any other person who was practicing as a journalist immediately before the commencement of this Act, or who holds such other qualification as

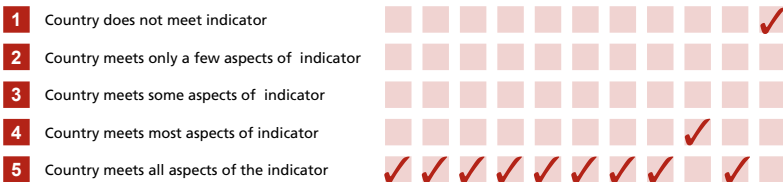
recognized by the Council, and earns a living from the practice of journalism, or any person who habitually engages in the practice of journalism and is recognised by such by the Council.”

Yet on the ground, it is felt that Kenya has left the practice of journalism open to anyone who wishes to join the profession.<sup>1</sup> “If a person wants to be a journalist, they apply for a job or just stand up and start writing.”

Once in the profession, they must also obtain accreditation from the Media Council of Kenya to be recognised as an accredited member of the press corps. This process is required by law. However this process has been slow since 2008 due to lack of capacity of the Media Council to do the accreditation across the country. The application for accreditation is made by the media house and costs KSh2000 (about US\$25) annually. Individual journalists, including freelancers can seek direct accreditation with the Council without waiting for the media houses to apply for them. The media council has also opened accreditation to student-journalists.

## Scores:

### Individual scores:



**Average score:**

**4.5 (2005 = 5.0, 2007 = 5.0, 2009 = 3.8)**

## 1.7 Confidential sources of information are protected by law and/or the courts.

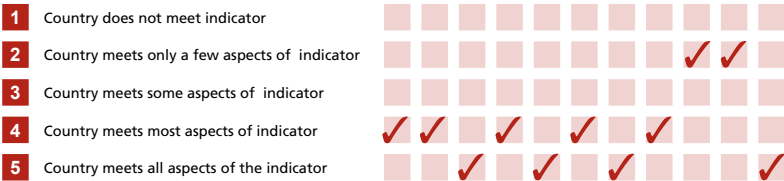
The Media Act of 2007 talks of the need to respect confidential sources of information but in general their protection is not guaranteed. It is commonplace for the police to harass journalists to reveal their sources.

“The court does not feel an obligation to help [journalists] protect their sources.” However there is the Witness Protection Act (2006, amended 2010), which is often extended to journalists’ sources of information, but technically only protects people who agree to be state witnesses.

<sup>1</sup> The Panellists felt that the requirements are not strictly applied and that in practice journalists could enter into the profession without restrictions.

## Scores:

### Individual scores:



**Average score:**

**4.0 (2005 = 1.0, 2007 = 1.7, 2009 = 1.0)**

## 1.8 Public information is easily accessible, guaranteed by law, to all citizens.

Kenya's new constitution guarantees access to information but in practice information remains largely inaccessible to the wider public. In the civil service, only the permanent secretary, who is often not easily reachable, can speak on behalf of the government. There is an official spokesperson but his/her job is essentially to manage information in tune with his/her own agenda, or in the interest of the top ruling elite, rather than helping the public get the information they desire.

Every now and then, the Official Secrets Act can be used to deny information to an applicant. Furthermore, where a member of the public is asked to make a formal request for information, the process takes so long that if the information is ever released, it is dated and worthless.

A great deal of civic information is, nevertheless, available to the public either in the Kenya Gazette, or on government websites as accessible files that are easy to download or pasted on notice boards outside public offices. Generally, such information is more easily available and more accessible to urban dwellers than to rural folk. In some rural areas, members of the public are often forced to pay for information that is available for free on the internet, such as downloadable forms, since they lack the knowledge to take advantage of the free services.

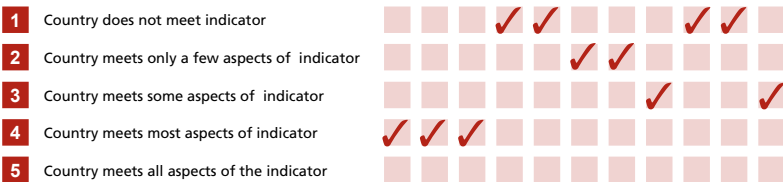
The Kenya Gazette, which contains a great deal of government information, is sold at KSh50 (about US\$0.62) but this is still expensive for many. More 'sensitive' information is scarce and hard to obtain for all citizens, including journalists. Most public officials have held on to the norms of past Kenyan regimes which required a good measure of "self-preservation" in releasing information or speaking publicly. Moreover, applicants for information must state what they need the information for.

A Freedom of Information Bill (FOI) was tabled in parliament in 2006 which was drafted by civil society. It did not get to the voting stage and government took over the process. Several amendments have been made to the draft document, including inputs from the media and civil society. The draft FOI Bill is believed by those who have seen it to contain very “progressive” clauses such as criminalising any attempt by a public official to deny information. It also proposes a deadline during which a request for information must be granted. But the draft law has remained locked up at Cabinet for many years. “We have lost ground on the FOI Bill. Even though elections are looming, it is expected that it might take up to five years for the FOI Bill to be passed.”

The Freedom of Information Network continues to push for progress on the Bill.

### Scores:

#### Individual scores:



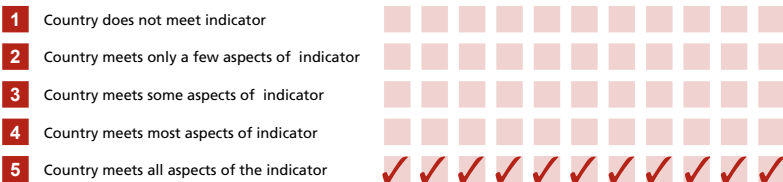
**Average score:** 2.5 (2005 = 1.5, 2007 = 1.5, 2009 = 1.5)

## 1.9 Websites and blogs are not required to register with, or obtain permission, from state authorities.

There are no laws regulating the creation of websites and blogs in Kenya at the moment. “Anyone wanting to create a website can do so anytime and shut it down when they want.”

### Scores:

#### Individual scores:



**Average score:** 5.0 (2005 = n/a, 2007 = n/a, 2009 = 4.8)

## 1.10 The state does not seek to block or filter internet content unless laws provide for restrictions that serve a legitimate interest and are necessary in a democratic society.

Over the past two years, the government has been monitoring social media and other new media communications to lookout for the use of “hate speech”. In early 2011 a woman was jailed in Nakuru, Kenya’s fourth largest town for sending an insulting SMS. There have been increasing cases reported to the police which have either been investigated or are under investigation. During election campaigns, there have also been attempts to stop the use of social media for political campaigns. Kenya’s permanent secretary is on record for saying, “Let no Kenyan think there is an email or website that is not being monitored.”

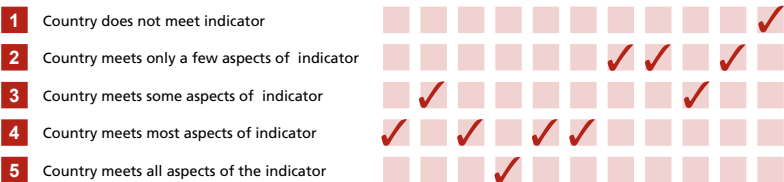
The state also actively monitors and tries to control internet content as a means to check growing cyber crime and the explosion of sexually explicit content.

In April 2012, about 21 government systems were hacked into, leading to the loss of a large amount of information. Authorities have now asked telecommunications service providers to actively monitor websites to track criminal activities. Telecommunication services are also often asked to release details about the communication of their clients as evidence during investigations and trials.

An Independent Communication and Data Protection Bill will seek to regulate the use of social media in order to protect government data and protect people’s right to privacy. The content of the Bill was still being developed in March 2012.

### Scores:

#### Individual scores:



#### Average score:

3.1 (2005 = n/a, 2007 = n/a, 2009 = 4.7)

## 1.11 Civil society in general and media lobby groups actively advance the cause of media freedom.

The major interaction between national and international civil society organisations with the media fraternity is in providing specialised and skills development training for journalists.

The mandate of many civil society organisations includes engaging with the media to highlight issues of public concern. But the relationship is considered “minimal and strained.” Some media actors see civil society organisations’ engagement with the media as a ploy to increase the visibility of those organisations for the sake of fundraising.

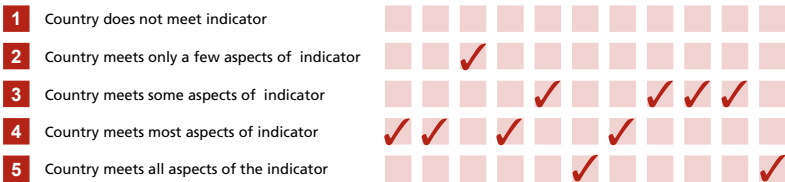
However, the Freedom of Information Network, a coalition of civil society organisations, has been at the forefront of the battle for Kenya to enact a Freedom of Information (FOI) Act.

The civil society organisations that are aware of media freedom issues tend to leave the media to fight their own battles.

In this respect, media organisations, editors and media owners, have been involved in the formulation of several media laws, even though most of them are yet to be enacted.

### Scores:

#### Individual scores:



#### Average score:

**3.6 (2005 = 4.4, 2007 = 3.8, 2009 = 3.5)**



## 1.12 Media legislation evolves from meaningful consultations among state institutions, citizens and interest groups.

Generally citizens are not involved in the process of formulating legislation. “People only hear that there is a new law in parliament and have no information about how it got there.”

More recently, there have been stakeholder meetings related to the formulation of new legislation but citizen participation has been minimal. Even when there is visible consultation, the resultant legislation often does not reflect the inputs of interest groups outside the government.

“Since the passing of the new constitution, there has been a deliberate effort to get people talking about laws and bringing in ideas but as soon as they walk out, those views remain in the room.”

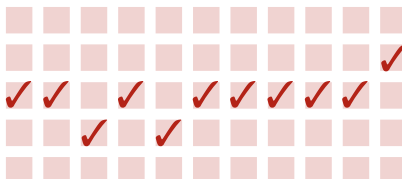
The outcome of consultation on several media laws, including the FOI Act, cannot be judged at this point because the legislations are yet to be enacted. But there has been a strong involvement of the media in the formulation and amendment of the Media Act. Initially the government tried to “ambush” the Kenyan Media Council by introducing a clause stopping it from receiving outside grants, yet not making provisions for government grants.

The Kenyan Media Council preferred alternative funding to that provided by the State to ensure that there was no government influence. Following consultation with the media fraternity that included groups like the Editors’ Guild as well as parliamentary committees, the Act was later amended to guarantee government sponsorship of the Media Council but with the proviso that the organisation continue to act independently and outside of government influence.

## Scores:

### Individual scores:

- 1** Country does not meet indicator
- 2** Country meets only a few aspects of indicator
- 3** Country meets some aspects of indicator
- 4** Country meets most aspects of indicator
- 5** Country meets all aspects of the indicator



**Average score:**

**3.1 (2005 = n/a, 2007 = n/a, 2009 = 2.7)**

**Average score for sector 1:**

**3.2 (2009 = 2.7)\***

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\* The indicators were reviewed, changed and shifted in 2008/2009. Therefore the scores of some indicators and sector scores are not comparable to scores of previous AMBs.



# SECTOR 2:

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

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

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

Kenya has seen an increase in the number of print publications and electronic media since 2009.

#### Print publications

There are now an estimated six dailies, seven weeklies and scores of regional newspapers in the country. The introduction of 47 counties in the country's devolution reform has increased the number of new publications. However, the state run *Kenya Today* was closed recently, partly because of weak funding from the state and wide ranging operational problems. There are plans to set up a new state-run publication to replace the paper that used to enjoy immense public funding and government advertising.

According to various estimates, including publishers and the Audit Bureau of Circulation, the largest circulating papers in the country are the *Sunday Nation*, the *Daily Nation*, the *Standard*, the *Star* and the *People*.

With the devolution of power, there is a growing need for local newspapers that cover local issues. So far, most of the weeklies are playing this role, with some publishing in Kiswahili. Emerging newspapers promise to be more permanent and consumer-driven, with better quality of journalism and print, compared to politically-sponsored sporadic upshots that appear close to the election period.

Even though newspapers are widely available, they are not quite affordable. Cover prices range from KSh20 to 50 (about US\$ 0.25 to 0.62), which is more expensive than a packet of milk at KSh40 (around US\$0.5).

The country appears to be faced with a generation that is unwilling to pay for news. To make newspapers affordable to poorer members of the community, vendors loan out the daily edition of a publication to a reader for a few hours at a time at a nominal amount. After reading the paper of choice, the reader will return the paper to the vendor who will sell it or "rent it out" to another consumer.

Subsequently national newspapers have seen their circulation drop over the years from figures of 800 000 a few years ago to a joint circulation of all dailies currently put at between 350,000 and 500,000.

But county newspapers, which are able to reach some very remote parts of the country, appear to be growing in circulation and taking up some of the lost space in the newspaper industry. National papers now appear compelled to include more local or county content to keep their competitive edge.

### **Television**

Kenya has about 20 television stations even though only five are considered serious, Television attracts large audiences partly because it is free and because popular entertainment centres such as restaurants, cafes and bars have put up flat screen television sets to attract more customers. At 7pm every day these social venues are packed to the brim as most people flock there to catch the evening's prime time news bulletin. Clients even know which bar, restaurant or cafe offers the channel of their choice.

Generally, people tend to watch TV news along ethnical and political lines, especially since the post-election violence ended in 2008. "People tend to watch TV channels that reflect their political views."

Television is a popular medium and signals get to even the most remote parts of the country thanks to satellite dishes and decoders that are able to capture free-to-air broadcasts.

### **Radio**

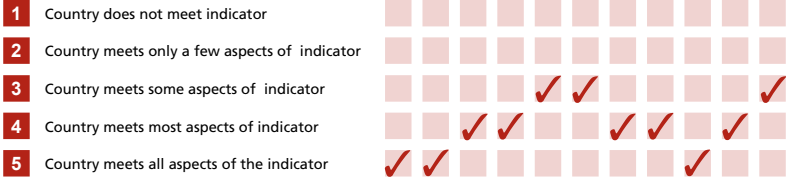
Radio remains the most widely available and accessible source of news and information for the vast majority of Kenyans. There has also been an increase in radio stations since 2009 to about 103. About 300 frequencies and licenses have been issued even though most are not being exploited. The audiovisual media's reach in general has been helped by a deliberate effort by the authorities to electrify rural areas.

### **Internet**

Whether it is at cybercafés, at the work place, at home or on handheld devices, internet is also gaining ground as a source of information, especially in urban areas. Many people get their internet through wireless external modems, even though it remains expensive at KSh3000 (about US\$37.5) monthly for unlimited access. But competition is helping to push down prices. "People change service providers everyday because of better deals." As a result, younger people increasingly access the internet on their phones. To the larger public, cybercafés remain the most available and affordable point of access for about KSh10 per hour (about US\$0.125).

## Scores:

### Individual scores:



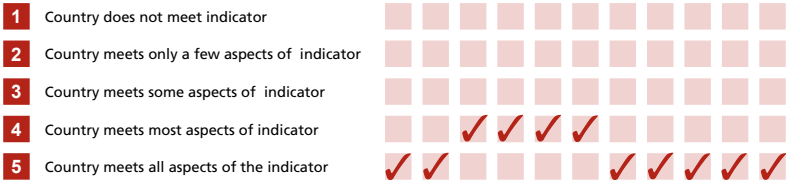
**Average score:** 4.0 (2005 = 3.0, 2007 = 3.0, 2009 = 3.3)

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

Kenyan’s have lived through more difficult times. In the past, it was illegal to buy a fax machine. Foreign broadcasters were allowed to broadcast for only about two hours a day and you could go to jail for circulating or buying certain magazines. But that was then. A wide variety of media sources, including print, audiovisual and electronic, are now freely and widely available to Kenyans across the country. Cable television beams a wide range of foreign channels, while the internet is stepping up how people get news and information.

## Scores:

### Individual scores:



**Average score:** 4.6 (2005 = 4.8, 2007 = 4.4, 2009 = 3.8)

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

Local or regional newspapers now have better reach, especially to rural communities since they are their primary readership. There are other initiatives which have assisted in the decentralisation of news and have helped bring national papers closer to everyone.

A unique project that has gained ground is the “Media Content Centres”, initiative which assists journalists in the different regions of the country collect information and file stories from their locality as cost effectively and easily as possible.

The MCCs were established through a partnership between the Africa Woman and Child Features Service (AWCFS) and the Kenyan Correspondents Association because they felt that mainstream media ignored human interest stories and focused mostly on covering political issues. So it was decided that there was a need to create more avenues to market stories that were not being used by the mainstream media.

The correspondents are provided with a personal computer and modem that enables them to access the internet. They load units on their own and are responsible for setting up or acquiring office space, paying rent and related utilities. It works well where journalists form a partnership as it becomes more affordable. The MCCs cut down on the cost and time of going to the cybercafes and they now have offices which they can at any time turn into a “Media Centre” from where they can hold press conferences.

Correspondents based in far flung parts of the country as well as city centres outside Nairobi generate stories from a community perspective with a particular emphasis on women and marginalized communities. The stories are generated from 11 MCCs (more are being set up) by field based correspondents and freelancers. These are then emailed to a team of editors at the Media Diversity Centre in Nairobi who process them before they are uploaded every two weeks. These are then published on an online platform called Reject, because these are stories side-lined by the mainstream media.

A print version of Reject is printed and inserted into *The Star* - one of the major dailies in Kenya - every two weeks. The contributors are paid per story published and per picture, and this adds to their earnings. The correspondents are continuously trained through the African Child and Woman Feature Service (ACWFS) and Media Content Centre initiative and their skills upgraded which has ensured that the standard is kept high.



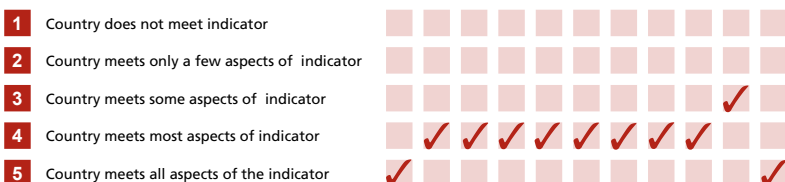
These community news inserts have become so popular that the national mainstream print media has started assigning the journalists to write specific stories for their own use.

The Content Centres have also become points of collection where members of these communities can access free copies of national newspapers, especially those that talk to their concerns and interests. Are becoming interested in newspapers have also seen the need to broaden their circulation to parts of the country they would not normally go to.

Some newspapers, like *The Anchor*, use alternative networks of circulation to get their paper to many parts of the community they serve. The paper uses public transport to deliver newspapers to correspondents or vendors in rural areas.

## Scores:

### Individual scores:



### Average score:

4.1 (2005 = 4.0, 2007 = 2.9, 2009 = 2.7)

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

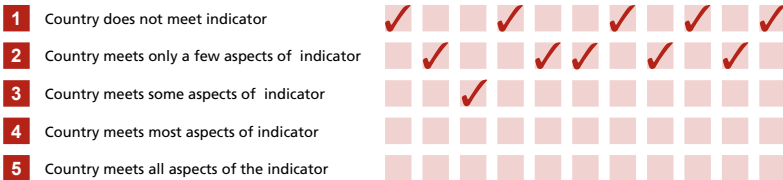
In 1992, the government passed a law which pushed Kenya into a one-party state. The *Kenya Times* was born against this backdrop in 1993 supposedly as an independent ruling party newspaper. But the party and government were one.

When a new government took over and things changed, *Kenya Times* was sold off but it could not survive because of its initial reputation as a state-run publication. *Kenya Today* was started by the Director of Information in 2009 to run stories generated by the Kenya News Agency. Again, it was hardly critical of government and lacked editorial independence. It died in 2011.

Both papers were set up as a response to government “misrepresentation” in the private independent media. They were created to project government propaganda, which did not find much space in the independent media.

## Scores:

### Individual scores:



**Average score:**

**1.6 (2005 = n/a, 2007 = 2.3, 2009 = 2.0)**

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

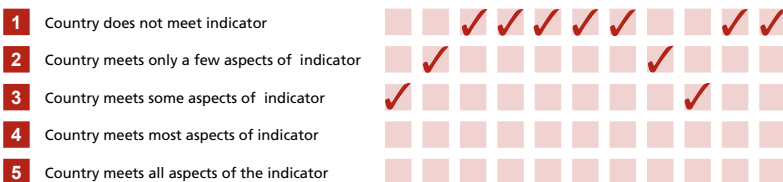
The debate to end cross-ownership rages on and the prevailing legal framework in Kenya allows the practice to flourish. As a result, media ownership is concentrated in the hands of a few, very powerful people who have succeeded in blocking attempts to restrict cross-ownership. Attempts to redistribute broadcast frequencies, which again, are concentrated in the hands of a few players has also been difficult.

Owners claim they are businessmen and investors so there should be no limit to how they choose to invest their money. Royal Media, for example, is believed to own 63 frequencies but is currently exploiting only 11. The Radio Africa Media Group is also believed to have several frequencies. Some media owners resisted attempts by the government to get them to surrender unutilized frequencies or renew radio and TV frequency licences. So only a few more radio stations have been licenced by the government recently.

About 4000 applications are believed to be pending.

## Scores:

### Individual scores:



**Average score:**

**1.5 (2005 = 1.5, 2007 = 2.3, 2009 = 1.5)**

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

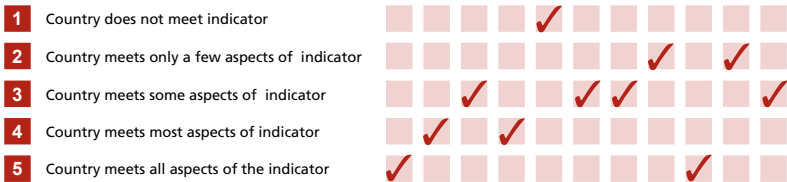
The deployment of a fibre optic network in Kenya has helped foster the growth of electronic media. But the government does little to directly promote the growth of a strong and independent media.

The media in Kenya does not enjoy tax concessions or subsidies on equipment or resources. The costs of setting up and running media houses are generally considered to be high.

There has been continuous advocacy by the media fraternity to further bring down the cost of setting up and running media organisations.

### Scores:

#### Individual scores:



#### Average score:

3.2 (2005 = n/a, 2007 = n/a, 2009 = 1.5)

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

Kenyan media reflect the structure and behaviour of society, which means there is limited space for the voices of women or even stories that tend to show them in a positive light. Stories often centre on issues like domestic violence in which women are portrayed negatively and as victims unable to help themselves out of these situations.

Women and groups like Muslims, as a minority, often come under intense scrutiny about how they dress or talk in public. “The media is basically masculine and that is the way journalists are trained – ‘women make news as victims or as scandalous headlines’.” Thus, it is common to see headlines like, “Three robbers, including a woman, rob bank.”

If they are not being portrayed in a negative way, women are often used to “decorate” newspaper and magazine pages. The photos of women that wind up in the newspaper appear to be attractive. In the meantime, powerful stories about women and their contribution to improving the health sector, the economy or even the business sector, receive minimal media attention.

Some of the panellists placed the blame on women themselves. Most are not proactive and willing to approach the media like men. It is difficult to find a woman who would easily accept to be interviewed or host a news conference. “Men want to be in the media. They want their stories to be told, but women do not.”

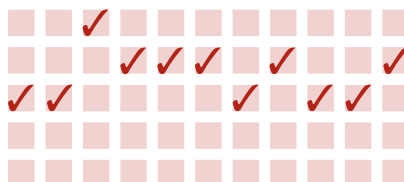
The gender angle in stories is often ignored and when there is gender consideration in favour of women the story is highly sensationalised. In recent months there have been an increasing number of stories of women beating up their husbands being reported by the media because of the sensational feature of the story.

But there are some good practices. *Pulse Magazine* runs a section called Sister-to-Sister that showcases successful women. The *Kenyan Woman* focuses solely on women’s issues. In the national newspapers, it is also increasingly possible to see women and women-related stories on newspaper cover pages. However at women’s conference the editor of the *Nation* acknowledged that several pages in the newspaper are dedicated to stories about men and they usually focus on squabbles and this space should go to women instead.

## Scores:

### Individual scores:

- 1 Country does not meet indicator
- 2 Country meets only a few aspects of indicator
- 3 Country meets some aspects of indicator
- 4 Country meets most aspects of indicator
- 5 Country meets all aspects of the indicator



### Average score:

2.4 (2005 = n/a, 2007 = n/a, 2009 = 2.2)

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

Kenya's media industry is a paradox.

There are more women than men in journalism schools but fewer in newsrooms. Women tend to move into public relations and corporate communication after training.

Since they are glaringly absent in the decision making positions in the media, the content tends to be lopsided. Coverage of women is minimal and women's voices are mostly absent in the media. Women appear to make news only if they play a negative role in the story.

Underreported segments of the Kenyan society also include minority groups like Muslims and people with physical handicaps. "Unless people with disabilities take to the streets to protest, they are hardly in the news." Islam is portrayed in the media only in association with groups like al Shabab and al Qaeda.

Airtime and print pages focus on politics and economics. On television, it is easy for the first ten minutes of the newscast to concern politicians. Politicians are major players in the industry as owners, leading to unfair representation of voices in their favour. "The media is often considered a tool to promote their political agendas." The rest of the newscast, which includes stories about social issues such as water or education, is viewed as "other news".

But there is some progress in covering ethnic groups and local communities. There is at least one daily newspaper published in Kiswahili, the "*Taifa Leo*" published by Nation Media Group. Many radio stations run programmes in one vernacular language and spotlight local issues of concern. Radio stations focusing on issues of concern to slum dwellers has gained ground and give the dwellers an avenue through which they can express themselves, which is often absent from the upstream media. The impact of the township radios was visible in the amount of debate relating to Kenya's new constitution in 2010.

With the demand for regional and local news seen to be growing with devolution, the big national newspapers are now opening up more pages to local news. Several newspapers now run county (state or provincial) editions, which focus on communities far off from the major cities and marginalised groups such as women and children.

## Scores:

### Individual scores:

<b>1</b>	Country does not meet indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>2</b>	Country meets only a few aspects of indicator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>3</b>	Country meets some aspects of indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4</b>	Country meets most aspects of indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>5</b>	Country meets all aspects of the indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Average score:

2.4 (2005 = n/a, 2007 = n/a, 2009 = 2.2)

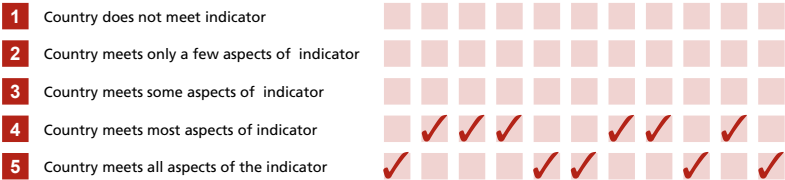
## 2.9 The country has a coherent ICT policy or the government implements promotional measures, which aim to meet the information needs of all citizens, including marginalised communities .

Kenya recently announced plans to build the Konza Technology City (KTC), which has been branded Africa's first and foremost Silicon Valley. Located near the resort city of Machakos, it is envisaged that KTC will play host to institutions and companies involved in the development of information and communications technologies (ICTs). The KTC project embodies the effort authorities in Kenya are making to place ICTs at the centre of the country's development.

Several other programmes exist. The country's ICT Board under the Ministry of Information and Communication promotes training in the sector. It has also set and is running ICT Villages, which are centres to make these new technologies accessible to people in rural areas. The ministry of education also runs a Computer for Schools programme. The aim of the initiative is to equip every school in Kenya with computer labs. At the moment, computer labs are mandatory for all secondary schools.

## Scores:

### Individual scores:



**Average score:**

**4.5 (2005 = n/a, 2007 = n/a, 2009 = 3.5)**

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

In the run-up to the 2007 elections, one of Kenya's frontline dailies, *The Standard*, lost nearly all government advertising because the paper decided to side with the opposition. At the same time, its main rival *Daily Nation*, which sided with the incumbent government continued to receive a lot of government advertising. In a separate example, a government department recently decided to run a civic education campaign. Even though all newspapers were invited, only some were selected to run the advert. One publisher found out they had been cut out because of some unfriendly reporting on an official of the department in the past.

The use of advertising to reward stewardship and punish unfriendly press cuts across Kenya's public establishment. "When you publish a negative story about a parastatal, the company simply shifts advertising to your rival." The state-run Kenya Broadcasting Corporation (KBC) receives the lion's share of government adverts. Most adverts also went to *Kenya Today*, also state-run, when it still existed.

## Scores:

### Individual scores:



**Average score:**

**2.1 (2005 = 1.7, 2007 = 1.5, 2009 = 2.5)**

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

At KSh 66 billion (about US\$825 million), the yearly estimate advertising spend in Kenya is considered large. The bulk of it, KSh32 billion (about US\$400 million) goes into radio advertising, according to polling and research company Synovate. Newspapers get a smaller KSh9 billion (about US\$112,500,000) while the television scoops KSh25 billion (US\$312,500,000). But this large advertising spend does not support the diversity of media outlets.

This large amount of advertising spend does not seem to be evenly distributed, as most of it is confined to the larger and more established media organisations. Some of the media owners also have shares in major advertising companies and tend to direct adverts to their media products.

The majority of Kenya's media houses and more specifically the smaller media outlets have to fight hard to justify their need for some of this advertising. Most of these outlets are unable to pay for expensive scientific studies to back their circulation and readership claims.

Advertisers also use adverts to try to control the media.

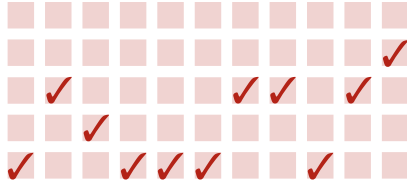
*The Standard* lost all Kenya Airways advertising as well as subscriptions for their flights when they reported the Douala plane crash of one of their planes.



## Scores:

### Individual scores:

- 1** Country does not meet indicator
- 2** Country meets only a few aspects of indicator
- 3** Country meets some aspects of indicator
- 4** Country meets most aspects of indicator
- 5** Country meets all aspects of the indicator



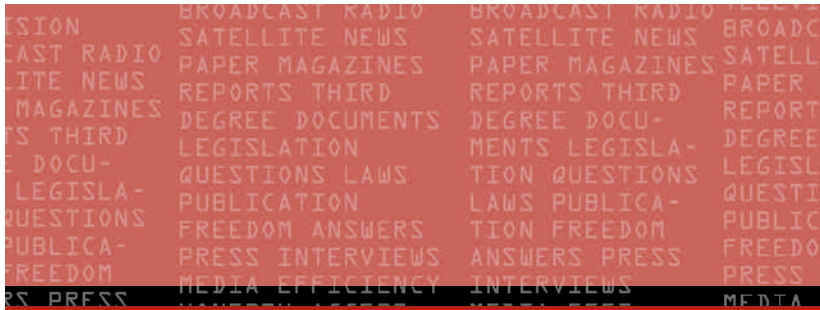
### Average score:

**3.9 (2005 = 4.6, 2007 = 2.8, 2009 = 3.3)**

### Average score for sector 2:

**3.1 (2009 = 2.6)\***

\* The indicators were reviewed, changed and shifted in 2008/2009. Therefore the scores of some indicators and sector scores are not comparable to scores of previous AMBs.



# SECTOR 3:

**Broadcasting regulation is transparent and independent; the state broadcaster is transformed into a truly public broadcaster.**



# Broadcasting regulation is transparent and independent; the state broadcaster is transformed into a truly public broadcaster.

## 3.1 Broadcasting legislation has been passed and is implemented that provides for a conducive environment for public, commercial and community broadcasting.

Until 1998, the only legislation regulating this sector was the Kenya Broadcasting Corporation Act.

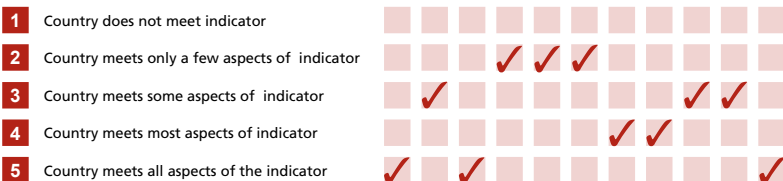
The enactment of the Kenya Communications Act liberalised the sector, and spells out conditions for starting and running public, private and community broadcasting services. It empowers the Communications Commission of Kenya (CCK) to set programming codes for licensed operators. The Minister of Information and Communication grants licenses, while the CCK allocates frequencies

But the enforcement of the Act has been difficult. Broadcasters, for example, must include local content in their programming. But they argue local content is expensive to produce and instead they fill the airwaves with Latin American soaps. It has also been difficult to manage the use of frequencies, which a few broadcasters have stockpiled while only utilising a small fraction.

It is expected that the Communications Act will be amended to align with the recently legislated Constitution. There are also plans to revise the KBC Act to transform it from a state broadcaster into a truly public broadcaster.

### Scores:

#### Individual scores:



**Average score:**

**3.5 (2005 = 1.0, 2007 = 1.5, 2009 = 2.5)**

### 3.2 Broadcasting is regulated by an independent body adequately protected by law against interference whose board is appointed - in an open way - involving civil society and not dominated by any particular political party.

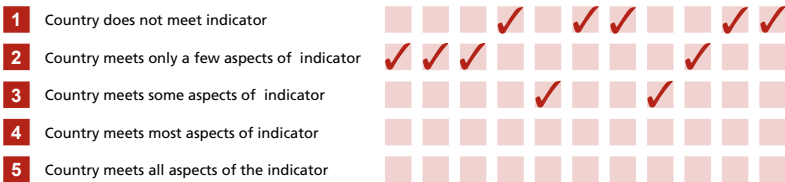
The Communications Commission of Kenya is the chief regulator of broadcasting in the country. Its board is not independent and is dominated by people with vested interests and includes politicians and businesspeople.

It is funded by the State, which appoints its members without consulting civil society or other stakeholders in the industry. "Members are appointed based on narrow considerations."

A court was forced to dismiss the sitting DG, who had been reappointed by the Minister of Information and Communications in spite of the objection of the CCK board. It is currently run by an interim Director General.

#### Scores:

##### Individual scores:



Average score:

1.7 (2005 = n/a, 2007 = n/a, 2009 = 1.8)

### 3.3 The body, which regulates broadcasting services and licences, does so in the public interest and ensures fairness and a diversity of views broadly representing society at large.

Obtaining a broadcast frequency is a tough job in Kenya.

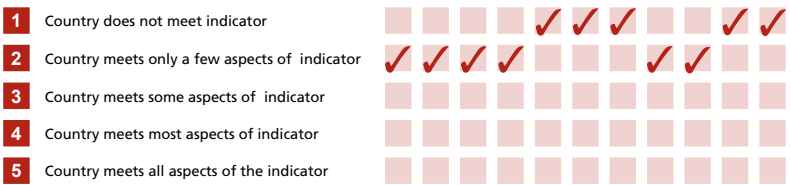
In March 2012, about 4000 applications for frequencies were pending. Yet, every now and then, a newcomer receives a frequency. "The process is not put out in the public domain and the criteria [for allocating frequencies] are not known." Frequencies for the city of Nairobi have all been taken but only a small fraction

is in use. An additional obstacle is that broadcasters are not allowed to replicate their frequencies nationally and instead they are confined to specific geographical distances.

Faced with the difficulties, newcomers into the broadcasting industry are often forced to buy existing frequencies and then come to the CCK for change of ownership. *The Standard* was forced to buy Radio Simba to be able to have a frequency.

## Scores:

### Individual scores:



**Average score:** 1.5 (2005 = 1.7, 2007 = 1.6, 2009 = 2.1)

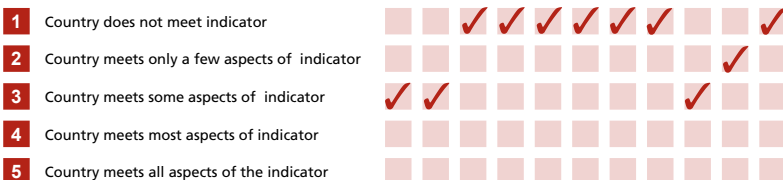
## 3.4 The state/public broadcaster is accountable to the public through a board representative of society at large and selected in an independent, open and transparent manner.

Kenya's Minister of Information and Communications appoints the board of the Kenya Broadcasting Corporation. The process is not open and the public is not involved. The board is regularly subjected to interference from public officials and is often powerless. At least one general manager of the KBC was dismissed a few years ago for trying to open up the airwaves and run a more independent broadcasting service. The dismissal followed complaints from ministers, who were unhappy with the changes.

In February 2012, workers of the KBC went on strike over low pay and other grievances. The board appeared unable to deal with the situation. Calm only returned after a parliamentary committee intervened. In March 2012, a parliamentary committee was investigating the operations of the KBC.

## Scores:

### Individual scores:



Average score:

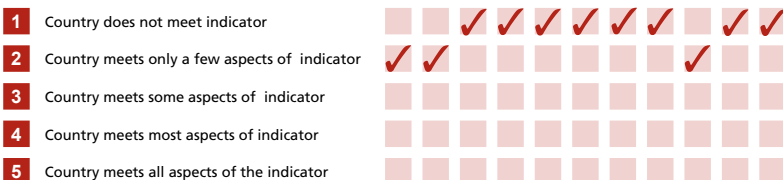
1.6 (2005 = 1.0, 2007 = 1.0, 2009 = 1.5)

## 3.5 Office bearers with the state and political parties as well as those with a financial interest in the broadcasting industry are excluded from possible membership on the board of the state/public broadcaster.

One member of the present board of the KBC is a service provider to the state broadcaster. The conflict of interest emerged during parliamentary hearings on a workers' strike at the KBC in early 2012. But it is not the only case. The board of the KBC is dominated by officials from the state and the ruling party, as well as, people with vested interests.

## Scores:

### Individual scores:



Average score:

1.4 (2005 = 1.0, 2007 = 1.0, 2009 = 1.1)

### 3.6 The editorial independence of the state/public broadcaster from political influence is guaranteed by law and practiced.

A clause contained in Article 34 (4) line 2010 Constitution of Kenya states:

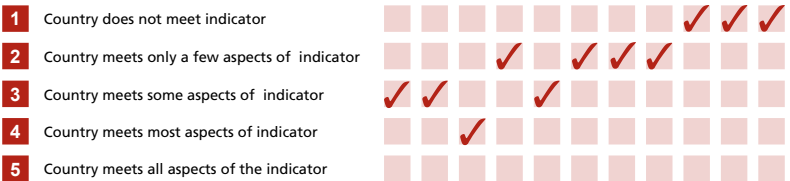
- All State-owned media shall -
- (a) be free to determine independently the editorial content of their broadcasts or other communications;
- (b) be impartial; and
- (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

This legal guarantee for editorial independence is yet to be tested.

In the meantime, there is no practice of editorial independence. The Presidential Press Service (PPS), which covers the presidency, is located at the KBC headquarters. They edit their own material that is aired without any input from the KBC editors. "News editors cannot touch or comment on material from the PPS."

#### Scores:

##### Individual scores:



**Average score:** 2.2 (2005 = n/a, 2007 = n/a, 2009 = 1.6)

### 3.7 The state/public broadcaster is adequately funded in a manner that protects it from arbitrary interference through its budget and from all commercial pressure.

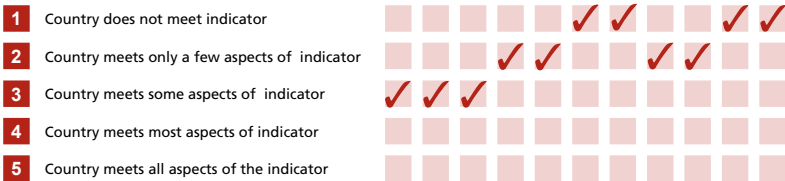
KBC has been forced to chase after advertising because state subsidies are barely enough to sustain it. Television licence fees used to go to the KBC but that stopped.

To survive, KBC has drifted away from its more conservative programming to include more liberal content to attract advertising.

Key indicators of the change include Latin American soaps and even a lottery show. KBC has equally increased violent and explicit content to attract larger audiences and the subsequent advertising that is attracted as a result. The state broadcaster has also indulged in the sale of live broadcasts of specific events. Parliament pays KBC KSh10 million (about US\$ 125,000) monthly to broadcast its deliberations. KBC in turn sells the right to other broadcasters.

## Scores:

### Individual scores:



**Average score:**

**1.9 (2005 = n/a, 2007 = n/a, 2009 = 1.1)**

## 3.8 The state/public broadcaster is technically accessible in the entire country.

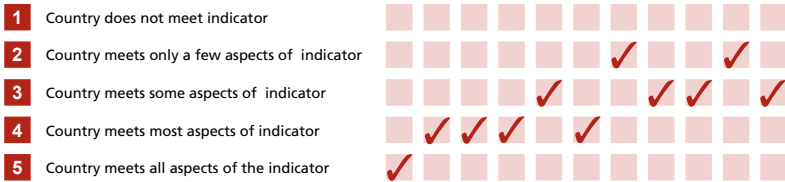
Kenya's past policies of developing infrastructure of "high priority" areas neglected other areas and there are parts of the country that do not have the basic infrastructure to support radio and television broadcasting. As a result some parts of the country remain uncovered by the state broadcaster.

Difficult terrain is also to blame for the poor reach of KBC, especially in the north of the country. However, the unreached parts of the country are shrinking. These unreachable parts seem to be shrinking because the KBC is a free-to-air broadcaster and people with satellite dishes are able to capture its signal in the hinterlands.



## Scores:

### Individual scores:



**Average score:** 3.4 (2005 = 4.0, 2007 = 3.4, 2009 = 3.8)

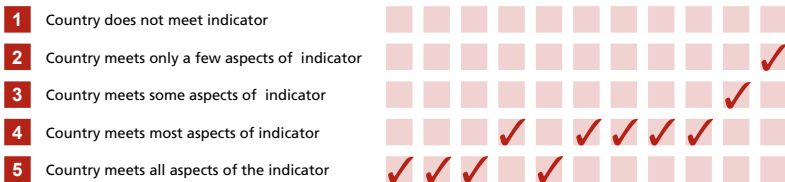
## 3.9 The state/public broadcaster offers diverse programming formats for all interests.

Broadcasters in Kenya borrow a great deal of content ideas from the KBC and only change the name. KBC pioneered shows with studio audiences and was good at producing local soaps.

KBC remains the leader in diversity with programming for children, youth, women and different segments of the society. "KBC has very high quality programmes, which are absent on commercial television channels." Because of competition, KBC was also forced to introduce breakfast shows. It broadcasts in English and Kiswahili. About 15 stations in the KBC network broadcast in vernacular languages. KBC has transformed its broadcasting from medium wave to frequency modulation and runs predominantly local stations with local content, especially in places where commercial broadcasters dare not venture.

## Scores:

### Individual scores:



**Average score:** 4.1 (2005 = 4.5, 2007 = n/a, 2009 = 3.7)

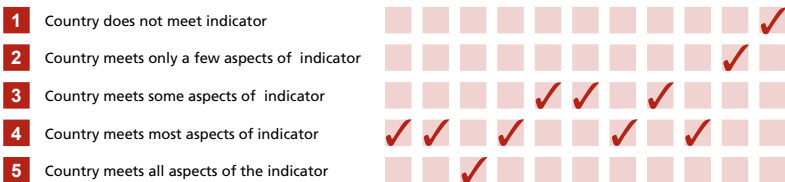
### 3.10 The state/public broadcaster offers balanced and fair information in news and current affairs, reflecting the full spectrum of diverse views and opinions.

The KBC airs more diverse views in its news and other programmes, than it did before. "It is now common to hear views opposing the government on KBC, which was not the case in the past."

Morning shows, which have become a major part of the KBC network, bring together people of all walks of life. The broadcaster has been obliged to change its tone mainly by competition posed by commercial broadcasters. "At some point, many people believed the KBC was not being watched."

#### Scores:

##### Individual scores:



**Average score:**

**3.4 (2005 = 2.7, 2007 = n/a, 2009 = 2.4)**

### 3.11 The state/public broadcaster offers as much diverse and creative local content as economically achievable.

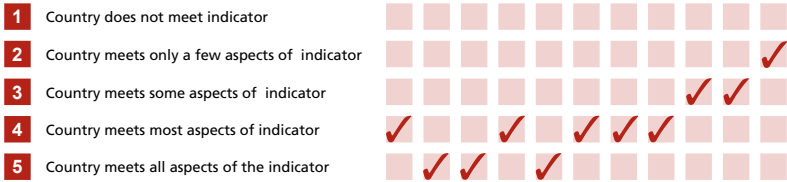
KBC airs a large percentage of local content and is well known for pioneering locally produced soaps.

Its radio networks contain mostly local content. However, local content on KBC lacks a creativity edge, but it does have a national Kiswahili service.

More recently, there have been plans to start a channel dedicated to educational programmes through the Kenya Institute of Education, in a bid to supplement the school syllabi.

## Scores:

### Individual scores:



**Average score:**

**3.9 (2005 = 3.8, 2007 = 3.3, 2009 = 3.3)**

## 3.12 Community broadcasting enjoys special promotion by the government given its potential to broaden access by communities to the airwaves.

Some effort is made to promote community broadcasting.

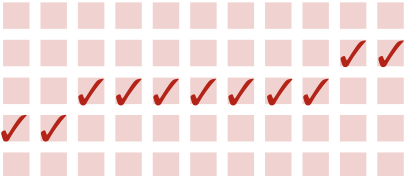
Licence fees for this category of broadcasters are KSh15,000 (about US\$188) compared to KSh65,000 (about US\$813) paid by commercial broadcasters per year. But in exchange, they make do with a limited broadcast range. University radios, which fall under the definition of community radio, are only allowed a 5km radius reach. University-based stations are also barred from taking advertising, even when the advertising comes with content provided by other broadcasters.

Many people do not know what community broadcasting is. Stations broadcasting in local languages often think they are community radios, even if they are commercially oriented. There is a debate about whether or not this category of stations should accept advertising. Strictly speaking, Kenya only has about 15 community radio stations, which is a far cry from the scores that pass themselves off as community stations.

# Scores:

## Individual scores:

- 1** Country does not meet indicator
- 2** Country meets only a few aspects of indicator
- 3** Country meets some aspects of indicator
- 4** Country meets most aspects of indicator
- 5** Country meets all aspects of the indicator



## Average score:

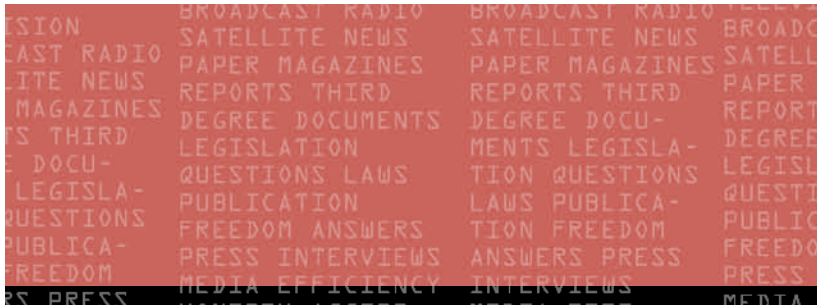
3.0 (2005 = 1.1, 2007 = 1.5, 2009 = 1.4)

## Average score for sector 3:

2.6 (2009 = 2.2)\*

\* The indicators were reviewed, changed and shifted in 2008/2009. Therefore the sector scores are not comparable to scores of previous AMBs.





# SECTOR 4:

The media practice high levels of professional standards.



## The media practice high levels of professional standards.

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

Media houses in Kenya tend to have their own editorial policies with clear cut rules and regulations addressing ethics and standards with some of the media houses instituting their own complaint mechanisms.

- *The Star* has a Complaints Editor and they encourage the public to report professional lapses by the paper or its journalists
- The *Daily Nation* runs an advert informing the public that its reporters cannot accept money from news sources and that the paper does not pay for stories. The advert includes a number that readers can use to make complaints.

On a national level there is a voluntary self-regulatory body even though it is instituted through legislation.

The Media Act of 2009 establishes the Media Council of Kenya which is then responsible: “for the conduct and discipline of journalists and the media; for the self-regulation of the media and for connected purposes.” The same Act allows the MCK to set up the Complaints Commission (CC).

Any member of the public, who has a complaint against a journalist, publication or a media enterprise, can write to the Media Council of Kenya about “the nature of the injury or damage suffered and the remedy sought.”

Within two weeks of receiving the complaint the MCK is required to pass on the complaint to the CC for a determination. The authority of the Complaints Commission is backed by this legislation and in turn the decisions are recognised by the Kenyan judiciary. The CC’s rules of proceedings have also been approved by the attorney general.

The Complaints Commission is headed by a Judge, who is required to have the same professional qualifications as one who sits in the High Court. Its work includes receiving complaints from the public. The accused media house has fourteen days to respond to the complaint. And then, all parties are invited for a hearing.

Members of the commission include media owners, journalists, lawyers and state representatives. It is partly funded by the government, the media industry and foreign development partners. The annual grant from the government is KSh 50

million (about US\$625,000). Even though it is set up within the MCK, the CC works independently of the council.

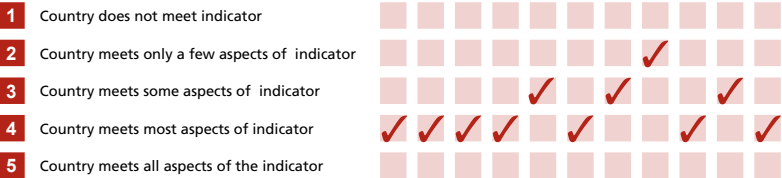
The Complaints Commission is able to retain its autonomy because it is not bound by the Evidence Act and "except as expressly provided in this Act or any regulations made thereunder, the Complaints Commission shall regulate its own procedure."

The media actually prefers dealing with the Complaints Commission, which can impose a fine of up to KSh 200 000. "The commission's primary objective, though, is mediation. Most complainants often want only an apology. Since its creation, only two or three cases have resulted in fines." Court proceedings, on the other hand, are quite expensive and fines could reach KSh 500 000 (about US\$6.250). There was a case where the Complaints Commission of the Media Council slapped a fine of KSh 1.4 million for breach of the Code of Ethics and another case was KSh 1000000 and another was KSh 800 000.

Since its creation, the CC has been quite busy. It has presided over 70 complaints over the last year leading to March 2012. At the time of this report, it was handling at least 25 complaints. One of them was filed by a minister who filed for defamation against a weekly newspaper.

**Scores:**

**Individual scores:**



**Average score:** 3.5 (2005 = 3.3, 2007 = 3.7, 2009 = 2.6)

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

Kenyan media reporting is considered acceptably accurate but not always fair. Unfair reporting is influenced by politics, ethnicity and advertising. The media will rarely ever report negatively about an advertiser and give less space to businesses that are not regular advertisers.

There are many examples that demonstrate sloppy reporting in the media. A court had to stop *The Star* from reporting a murder case after the paper revealed the



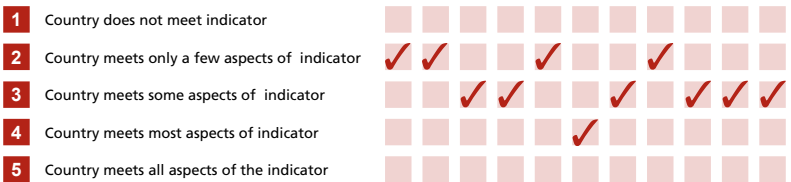
picture of the underage suspect, who allegedly killed her father. The media also ignored some facts of the story, including allegations that the father tried to rape the girl.

In a separate story, the media reported a teachers’ strike even though the teachers’ union had clearly stated in a statement that their line of action was still being worked out. There have been cases of misinterpretation and misrepresentation of public declarations by officials, including those made on live television.

Increasingly, newspapers try to remedy cases of inaccuracies by running corrections, clarifications and apologies-even though they are often hidden in difficult to spot corners.

## Scores:

### Individual scores:



**Average score:** 2.7 (2005 = 3.4, 2007 = 3.1, 2009 = 2.6)

## 4.3 The media cover the full spectrum of events, issues and cultures, including business/economics, cultural, local and investigative stories.

Every subject is covered by the Kenyan media, but sometimes coverage is biased and influenced by stereotypes. The *Luos* [a major ethnic group in Kenya] often get very negative representation in the media, for example. It is the same thing for women and minority groups like people with handicaps and Muslims.

But on the good side, investigative journalism is increasing, with stories targeting drug trafficking and abuse, prostitution and corruption over the past two years. The Kenya Media Programme is helping newspapers to undertake investigative reporting projects.<sup>2</sup>

<sup>2</sup> According to its website, “The Kenya Media Programme (KMP) is a programme of Hivos. Its purpose is to strengthen the existing media landscape in Kenya. As a dedicated media facility, the KMP provides a framework of various interventions aimed at improving the professionalism and effectiveness of the media in Kenya.” - <http://www.kmp.or.ke/>

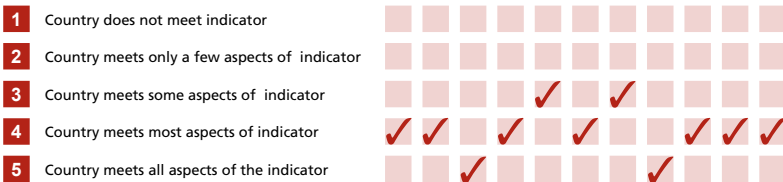
There is also plenty of business reporting. Newspapers run business supplements and pullouts, while radio stations and television channels have specialised business programmes.

Cultural reporting is a mix of positive and negative stories. The coverage of people is also in the increase, with some outlets running “your story” sections or programmes that encourage user-generated content. Local stories are dominant on community radios and local newspapers. About 80 percent of local content across the industry is on radio.

“Even though there is diversity across the media, radio and television remain the least diverse in their programming. Most of them are into entertainment and relationship shows. Only about three broadcasters can be said to have diverse programming.”

## Scores:

### Individual scores:



**Average score:**

**4.0 (2005 = 4.4, 2007 = 4.1, 2009 = 3.7)**

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

“A lot of discrimination exists in the Kenyan media, particularly the print media.”

The country’s leading publication *The Nation* does not have woman in the top management team. Its main rival *The Standard*, however, has women as managing and associate editors. But it is rare across the industry to see women at the head of decision-making or news.

Kenya’s media industry is also getting younger and there appears to be discrimination against older and experienced journalists. As a result, themes are changing with more serious issues losing space. Long features that are often undertaken by seasoned journalists are scarce.

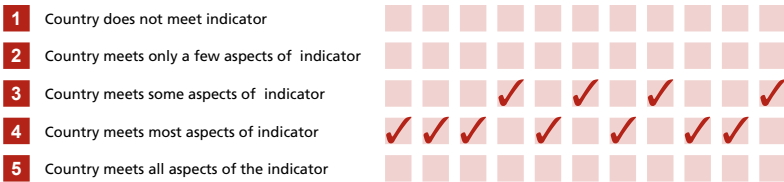
There is also visible discrimination against people with disabilities, with only two handicapped presenters on television in the entire country. Newsrooms are not built to accommodate people with physical handicap. “Employers prefer full-bodied people because they can multi-task, which may not be the case for people with disabilities. They would rather not deal with the inconvenience of disabilities.” Even though there are many albinos in Kenya, there are none on television.

Television channels also tend to hire people who are acceptable and good looking. “Many consider television to be for models.” An applicant for a Kenya Television Network (KTN) lost his job because he came to the interview in dreadlocks, even though he was more qualified than all the other candidates.

But, the number of people from all major religions - Christians, Muslims and Hindus – is increasing in the media. Christian, Muslim and Hindu stations have also emerged over the past years.

## Scores:

### Individual scores:



**Average score:** 3.6 (2005 = n/a, 2007 = n/a, 2009 = 2.2)

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

Kenyan newsrooms are very sensitive and do not want to be seen as offensive. They come under a lot of pressure from advertisers, owners, public officials, politicians and social tensions lingering from the post-election violence of 2008.

Most media organisations in Kenya are owned by families and journalists/editors find it difficult to report on issues that involve these media moguls or their enemies without the fear of getting into trouble. Reporters are also apprehensive of tribal tensions and drug dealers.

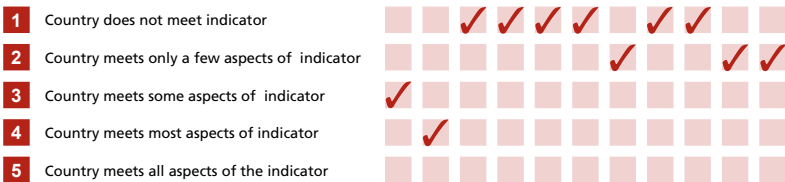
“Many journalists have been threatened in the past and the general rule is to be careful. Since the 2008 violence, you will hear things like ‘two communities’ without any mention of those communities. People practice self-censorship in

order not to create passions.” Journalists were partly blamed for the post-election violence and they are in constant fear of provoking social tension through their work. Communities may also boycott a paper or broadcast service that they deem unfriendly. “Not everything would go into a story. Sometimes, you are confronted with realities.”

Self-censorship is also extended to advertising. Ahead of the 2007 elections, media owners banded together to decline political advertising that they judged unacceptable and capable of inciting violence.

## Scores:

### Individual scores:



**Average score:**

**1.7 (2005 = 2.5, 2007 = 3.1, 2009 = 1.9)**

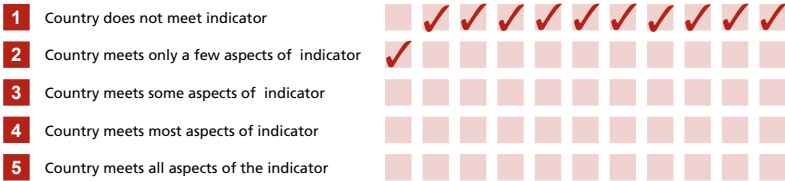
## 4.6 Owners of established mainstream private media do not interfere with editorial independence.

Ahead of the 2007 election, editors of *The Standard*, switched sides and decided to support the opposition, even though the paper is owned by publishers that are considered pro-government. The result was a withdrawal of government advertising to *The Standard*. Subsequently the executive editor was fired along with several other line editors and the newspaper's board was reorganised.

Since media owners are often politicians, they try to use the media to run their political agendas and so regularly interfere with editorial decision-making. In some newspapers, stories are often reviewed by a committee to align them with the owners' desires. Owners also impose political endorsements on the editorial team. A good example is that of Royal Media, whose proprietor often rallies editors and reporters to ask them to support one politician against the other.

## Scores:

### Individual scores:



**Average score:**

**1.1 (2005 = 2.0, 2007 = 1.5, 2009 = 1.9)**

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

“Grassroots editing” is a common practice whereby Kenyan journalists receive money to tilt stories in favour of the payer. Across the industry, corruption is a common practice, affecting the lowest-placed reporters to top level editors.

“It is standard practice for lawyers implicated in land cases to pay court reporters KSh 20,000 (about US\$250) not to mention their names or film them for fear of losing clients.”

Journalists, especially those operating far away from the central newsroom, go to the extent of harassing news sources. “They will ask for money, which they claim is intended to be passed over to the editor so that the story can be published. Journalists on the ground even form cartels to extort money from newsmakers.” It is commonplace for journalists to approach people to run profiles of them against a fee. They will hang around after an event, waiting for tips.

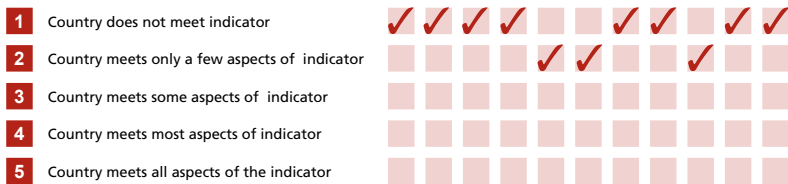
In spite of the fact that most newspapers speak openly against corruption, it still affects even the country’s large daily newspapers. Some senior editors are believed to be on retainers for politicians and receive a fixed weekly or monthly fee. A trade unionist is known to receive good media coverage because he manages to corrupt everyone, from reporters to senior editors.

Some public officials believe they cannot be covered if they do not pay. Other public officials pay editors and reporters to kill stories that will expose their illegal activities if published. A good example is the story of an official caught trying to profit financially from free government services. After a fund was created to help small business access credit, an official running the programme decided to charge a fee from people who wanted to be included in the database of potential beneficiaries. “When the story reached the press, phone calls started flying in for the story to be killed” and so it was spiked.”

“Media houses have no moral high ground to punish corrupt journalists because even senior editors are corrupt.” Most newsrooms have no clear rules on gifts and this has opened the way for corruption. However, when the integrity of the media house is in jeopardy, someone at the bottom end of the land is made a scapegoat and sacked for alleged corruption.

## Scores:

### Individual scores:



### Average score:

1.3 (2005 = n/a, 2007 = n/a, 2009 = 2.0)

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

In March 2012, journalists of Kenya Broadcasting Corporation were on strike against poor pay. Across the industry, the average pay for journalists and other workers of the media industry is considered to be low. It is particularly lower for private media employees, compared to those of the state-run media. Pay disparities are more pronounced in the television industry where a popular broadcaster can earn well above his/her supervising editor. Some really popular show host can earn up to KSh1 million (about US\$ 12,500) a month. A new Chinese channel offers good pay and is attracting many broadcasters.

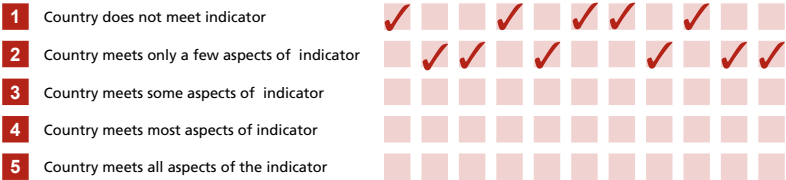
Studies show that on average:

- 8 – 10% of TV workers earn KSh1 million (about US\$12,500);
- Top editors earn KSh250,000 – KSh500,000 (about US\$ 3,125 – 6,250);
- Most reporters earn KSh150,000 (about US\$1,875);
- While the starting salary is KSh60-70,000 (about US\$750 – 875)

Permanent employees are few across the industry, with most being stringers that are paid per story published. Permanent workers work about eight hours or more per day. The Kenyan Union of Journalists has been spearheading a collective bargain agreement with employers but the initiative has died several times. Nevertheless, because of thinning staff strength, many media houses are increasing the number of permanent workers on their payroll.

## Scores:

### Individual scores:



**Average score:** 1.5 (2005 = n/a, 2007 = n/a, 2009 = 1.7)

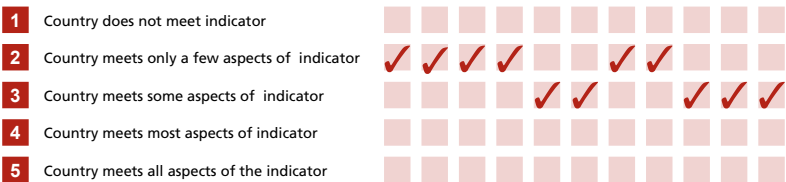
## 4.9 Media professionals have access to training facilitates offering formal qualification programmes as well as opportunities to upgrade skills.

Formal journalism training is widely available in Kenya. Every university offers either a diploma or a degree programme in journalism. Some offer postgraduate degrees. This is available to students leaving high school but working journalists have few opportunities to train in these institutions: timetables are tight, courses are expensive and journalists are not often granted study leave. Some however manage to follow part-time course offered mostly in the evenings.

Refresher and skills-upgrade training is also available in the form of seminars. These are run by international organisations and often involve the development of specialised and thematic reporting skills. These courses are more accessible to working journalists, even though discrimination in the newsroom may leave out some.

## Scores:

### Individual scores:



**Average score:** 2.5 (2005 = 4.4, 2007 = 2.8, 2009 = 2.5)

## 4.10 Journalists and other media practitioners are organised in trade unions and/or professional associations, which effectively represent their interests.

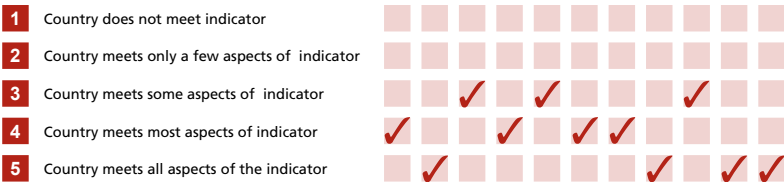
Kenyan journalists can belong to the Kenyan Union of Journalists or pick from a wide array of professional organisations and associations. KUJ membership is open to employed journalists. It is currently plagued with leadership problems. In March 2012, they were still trying to reorganise regional chapters.

Professional associations and organisations are mostly involved in training and exchange programmes to improve the quality of journalism. Awards have also been used to encourage higher standards in journalism. The Association of Media Women of Kenya raises funds every other year to support four female journalists through university. Professional associations existing in Kenya include:

- Kenya Union of Journalists
- Kenya Correspondents Association
- Kenya Publishers Union
- Association of Media Women of Kenya
- Editors' Guild of Kenya
- Alternative Media Network
- Kenya Community Media Network

### Scores:

#### Individual scores:



**Average score:** 4.1 (2005 = 4.7, 2007 = 2.6, 2009 = 2.5)

**Average score for sector 4:** 2.6 (2009 = 2.4)\*

**OVERALL COUNTRY SCORE:** 2.9 (2009 = 2.5)

\* The indicators were reviewed, changed and shifted in 2008/2009. Therefore the scores of some indicators and sector scores are not comparable to scores of previous AMBs.



# The way forward

## 1. What were the developments in the media environment in the last two /three years?

### Positive developments

- Social media use has grown rapidly in Kenya over the last two years. The media is adopting this new means of communication. In addition to websites and Facebook/twitter accounts, some media houses are beginning to use SMS news alerts to increase reach.
- Media policy improved and the environment more accommodative. New publications and broadcast services were launched. The coming of the 2010 Constitution and talks over new legislation promise more improvements.
- The media played a positive role in raising public understanding of the new constitution that was voted in favour during a national referendum and promulgated in August 2010.
- The emergence of alternative media gave more voice to grassroot populations and highlighted issues that are often left out in the mainstream media.
- Investigative journalism became more prominent, featuring in many print publications and audiovisual services.
- Investment in the media sector increased with additional investments from politicians and Chinese businessmen.
- The volume of local content increased, including programmes for children telling their own stories.
- Overall content improved and was more sensitive, especially since the 2008 post-election violence. Truth-metres to check public statements by politicians became commonplace.

### Negative developments

- Many politicians took over media houses and influenced editorial decision-making processes to promote their agendas;
- Media houses openly took partisan positions on major political and national issues.
- Media was on trial with the ICC post election violence case that implicated a journalist.

## 2. What kinds of activities are needed over the next two years?

<b>ACTIVITY</b>	<b>RESPONSIBILITY</b>
More media engagement in civic/voter education through media/civil society partnership to bring about training for media.	<i>Kenya Correspondents Association and AMNET</i>
Promote media literacy in the country to improve public understanding of the role and working of the media	<i>Media Council of Kenya</i>
Step up advocacy for press freedom and the passing of other legislation to support constitutional guarantees for freedom of expression and of the media	Article 19
Training of journalists Strengthen safety and security of journalists involved in conflict reporting, especially with pending elections.	<i>FES Kenya and Media Council of Kenya</i>

*The panel meeting took place in Naivasha from 24 to 25 March 2012.*

## **Panellists:**

### **Media:**

1. Mr Martin Masai, Journalist
2. Ms Christine Nguku, Media practitioner
3. Mr Joseph Nyanoti, Journalism Lecturer
4. Mr William Oloo, Journalist/ media activist
5. Mr Simon Rugu, Journalist

### **Civil Society:**

1. Ms Jane Godiah, Children and women activist
2. Ms Mary Njeri, Human Rights Lawyer
3. Ms Hamisa Maalim Zaja, Persons with disability activist
4. Ms Consolata Migowa, Gender activist
5. Mr Geoffrey Mogire, Trade Unionist
6. Mr Kevin Osido, Youth activist

### **Rapporteur:**

Eugene N Nforngwa

### **Moderator:**

Reyhana Masters





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