

# International Journal of Communication and Public Relations (IJCPR)

**Impact of Media Law and Regulation on Radio Programing Diversity in  
Kenya**

Allan S. Wekesa, Proffesor Hellen K. Mberia and Dr. Lilian Omoke



### Impact of Media Law and Regulation on Radio Programing Diversity in Kenya



\*Allan S. Wekesa

Technical University of Mombasa

\*Corresponding Author's E-mail:  
[allansiangu@tum.ac.ke](mailto:allansiangu@tum.ac.ke)

Proffesor Hellen K. Mberia

Jomo Kenyatta University of Agriculture and  
Technology

Dr. Lilian Omoke

Embu University

#### Article History

*Received 20<sup>th</sup> February 2023*

*Received in Revised Form 5<sup>th</sup> March 2023*

*Accepted 16<sup>th</sup> March 2023*



#### Abstract

**Purpose:** All around the world, radio is regulated. The extent of the regulation and how it is done varies. Regulation takes many forms, ranging from clauses in national constitutions and laws to administrative procedures and technical specifications. This study examined how media laws and regulations affect radio programming diversity in Kenya.

**Methodology:** The study adopted a mixed research design method, data was gathered through questionnaires and interviews and analyzed using descriptive and inferential statistics.

**Findings:** The findings revealed that despite the importance of media laws and regulations to journalism practice, journalists' adherence to media laws and ethics was low. It was also established that journalists contravened media laws and ethics because of sycophancy, security reasons, desperation, greed, ethical dilemmas, ignorance of media laws and ethics, and laziness.

**Unique Contribution to Theory, Practice and Policy:** The study was rooted on the normative theory of the press. According to Siebert, F., Peterson, T., & Schramm, W. (1956) A Normative theory describes an ideal way for a media system to be controlled and operated by the government, authority, leader and public. On its contribution to practice, the study calls on the Media Council of Kenya in conjunction with the Kenya Union of Journalists to enhance interaction between gatekeepers and reporters especially on ethical concerns in order to enhance adherence to the code of conduct.

**Keywords:** *Regulation, Media Law, Programing*

©2023 by the Authors. This Article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>)

## INTRODUCTION

According to Baker (2007), all around the world, radio is regulated. The extent of the regulation and how it is done varies. Regulation takes many forms, ranging from clauses in national constitutions and laws to administrative procedures and technical specifications. Regulation can be internal or external. The former case refers to self regulation where internal controls are applied, sometimes in response to public pressure or criticism from outside.

Freedom of expression is an essential part of democracy, and free speech goes hand in hand with a free media. Thomas Jefferson, the principle author of the American Declaration of Independence, wrote in 1816: “Where the press is free and every man able to read, all is safe” (Jefferson 1816/1900).

Curran (1996) states that the development of democracy requires the availability of a variety of sources of information and opinion so that so that citizens can make informed decisions. Throughout the world, television and radio are now the main sources of news and information. To enable proper debate for the proper operation of democracy, broadcasting service providers need to be free of political constraints so that they are able to provide viewers and listeners with a wide range of sources of news and information. It is accepted best practice that as an independent broadcasting industry develops, so too must an independent legal system to license and oversee this industry

Wanyama (2015), argues that the Freedom of expression and information constitutes one of the essential human rights and it is important in democratic societies for there to be a wide range of independent and autonomous means of communication. Article 19 of the Universal Declaration of Human Rights states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. But this is not an unrestricted right and it comes with responsibilities

According to Curran (1996), since the dawn of broadcasting governments have been aware of its power and have sought to control its output. In many parts of the world the only source of television and radio – at least initially – has been the State. The State has determined what its citizens have access to, and has often used the power of broadcasting to underpin its own objectives to retain power. But over the years State control of broadcasting has been eroded: commercial operators, often large multi-nationals, have introduced broadcasting supported by advertising. Almost without exception, governments have tried to limit the numbers of new commercial operators through instigating systems of licensing. This licensing system has then been applied to restrict the content which new, non-State broadcasters can offer.

The Constitution of Kenya, 2010, recognises the importance of media freedom and in fact, upholds media freedom under Article 34. This article guarantees the freedom and independence of media. Furthermore, with regards to independence, the Constitution provides that the State shall not interfere with the functioning of the media or penalize the media for opinions expressed. However, all media freedoms under the Constitution are applicable with the caveat that the right does not extend to “propaganda for war, incitement to violence, hate speech or advocacy of hatred.”

Moreover, the Constitution of Kenya, under Article 24, also provides for the general limitation clause regarding provisions under the Bill of Rights. Thus, for a right under the Constitution to be limited, the limitation has to be reasonable, justifiable and provided for in legislations. Following the promulgation of the constitution in 2010, enactment of new laws to uphold the rights protected under the Bill of Rights was required by the 5th Schedule of the Constitution of Kenya. This included media laws to uphold the rights guaranteed under Article 34.

As a result, some media laws have recently been enacted to regulate the media. They include the Kenya Information and Communications Act, (KICA) as well as the Media Council Act (MCA). The Information and Communications Act created the Communications Authority of Kenya (CA) that replaced the Communications Commission of Kenya (CCK) while the MCA established the Media Council of Kenya which sets media standards. However, there have been criticisms that these laws defeat the freedom of media instead of upholding their rights. These complaints have been seen through the institution of cases by media stakeholders at the courts with claims that the laws were unconstitutional

## **LITERATURE REVIEW**

Baker (2007), states that the media plays a fundamental role in today's society. In fact, as John C. Merrill states, and that media freedom is essential in maintaining authentic journalism. This freedom ensures that the media system is creative and journalists become more self-assured in pursuing the truth. These characteristics of a media system are responsible for the media ensuring that they are responsible to the society.

According to Makali (2004), the Constitution guarantees the freedom and independence of all types of media. Thus, the State is restricted from exercising control or interfering with the media or penalising any person in media for any opinion or content that is broadcast or disseminated. State owned media has the responsibility of independently determining its editorial content, of being impartial and of affording fair opportunity for presentation of dissenting views or opinions.

John Stuart Mill discussed on the importance of freedom of expression and by extension, freedom of the media. He states that freedom of opinion, and the freedom of expression of such opinion is at the core of the well being of mankind through the propagation of truth. Mill takes an extremely libertarian approach to freedom of speech as he emphasizes on the freedom to state and express one's opinion no matter how right or wrong, how moral or immoral it would be considered.

In the Kenya Media Vulnerabilities Study Report (2010), one of the points raised in the strategy towards the desired media in Kenya includes the need to enable efficient regulation of the media through building capacity of the Media Council of Kenya. This can only be achieved if the legislations in place are amended and not left in legal limbo.

## **Theoretical Review**

### **Media Policy and Regulation**

Regulation of the media normally takes place within a broader framework of principle and policy. Media refers to the complex of socio –political-philosophical principles which organize ideas about the relationship between media and the society. This study was based on normative theory

which is concerned with what the media ought to be doing in society rather than what they actually do.

According to Siebert et al (1956) in their book *Four Theories of the press*, they, the state takes on the form and coloration of the social and political structures within which it operates. The press and other media, in their view, will reflect the basis beliefs and assumptions that the society holds. In western liberal tradition, this refers to matters such as freedom, equality before the law, social solidarity and cohesion, cultural diversity, active participation and social responsibility. Different cultures may have different principles and priorities.

Although normative theory of the press is now in a considerable state of uncertainty (Nerone, 1955) identify certain broad traditions of thought about the rights and responsibilities of media in the society and the degree to which the society may legitimately intervene to protect the public interest. The main relevant variants are Authoritarian theory, free press theory, social responsibility theory, Alternative media theory and development media theory

Authoritarian Theory applies to early pre democratic forms of the society and also to present day undemocratic or autocratic social systems. In this view all media and public communication are subject to the supervision of the ruling authority and expression or opinion which might undermine the established social and political order can be forbidden. Although this theory contravenes rights of freedom of expression, it can be invoked under extreme conditions.

Free press theory is mostly in fully developed in USA; it proclaims complete freedom of public expression and of economic operation of the media and rejects any interference by the government in any aspect of the press. A well-functioning market should resolve all issues of media obligation and social need.

Social Responsibility theory is found more in Europe and countries under European influence. It is a modified free press theory placing greater emphasis upon the accountability of the media especially broadcasting to society. Media are free but they should accept obligations to serve the public good. The means of ensuring compliance with these obligations can either be through professional self-regulation or public intervention in both.

Development Media theory applies in countries at lower levels of economic development and with limited resources. It takes various forms but essentially proposes that the media while desirable should be subordinated to the requirements of economic, social and political development.

Alternative Media theory is from a social critical perspective the dominant media of the established society are likely to be inadequate by definition in respect of many groups in society and too much under the control of the state and other authorities or elites. This type of theory favours media that are close to the grass root of society, small scale, participative, active and non-commercial. Their role is to speak for and social out groups and also to keep radical criticism alive.

Often, the media system of a given country will have a mixture of theoretical elements and media types displaying neither absolute freedom nor absolute subordination to the state or ruling power. Hallin and Mancini (2004) have argued that we should forget about normative theories and look more closely at actual arrangements connecting media with society. They propose a typology of

relations between media system and political system, based on a comparative examination of contemporary national societies. In this view there are three types or variants, each with different implications for the role and obligations of the media in the society:

A liberal model in which the media operate according to the principles of the free market without formal connections between media and politics and with minimal state intervention.

A democratic corporatist model in which commercial media co-exist with media tied to organized social and political groups and the state has a small but active role.

A polarized pluralist model, with media integrated into party politics, weaker commercial media and a strong role for the state.

### **Institutional Framework of Media in Kenya**

There are two legislated institutions in Kenya that have oversight responsibilities over broadcasters. These are the Communications Authority of Kenya (CAK) formerly known as Communications Commission of Kenya and The Media Council of Kenya. There are other associations like the Kenya Journalist Union, the Kenya Media Owners Associations, Reporters without borders (RWB), Article 19 Eastern Africa and the courts which aim to achieve higher professional standards and to protect its members, to promote and defend press freedom.

### **Communications Authority of Kenya**

The communications Authority of Kenya formerly known as the communications commission of Kenya was established under the KICA, 2009 and it is a body corporate capable of being sued and suing.

The commission's name was changed to abide with section 34(5) of the Kenya constitution, 2010. CAK's mandate is broad and includes licensing and regulating postal, information and communications services in accordance with the provision of KICA and so anyone who wishes to operate a broadcasting station applies for same from CAK. The CAK is charged with the duty of ensuring that each local broadcaster airs the amount of local content in its license, ensure that the broadcasters include news and information in their programming as well as discussions of national importance and ensuring that the broadcasters adhere strictly to the subscribed or authorities subscribing code.

The CAK is also charged with the responsibility of prescribing a programme code that sets the standards for the time and manner of programmes to be broadcast by the broadcasting stations. The liberalization effect in the telecommunication sector had produced an indirect benefit. A very vibrant broadcasting sector that has seen investors get broadcasting frequencies for delivering radio and television channels. The technical licensing process was handled by CAK but the content aspect part remained "unregulated".

The Kenya information and communication Act, 2009 created a Broadcasting Content Advisory Council (BCAC) role was to work with the media Council in setting rules regulatory mechanism for broadcast sector and to make decisions on the administration of the broadcast content aspect and provisions of the Act and on the mechanisms of handling complaints as well as monitoring

compliance with the broadcasting codes and ethics for broadcasters. The move to create Authority outside the media council of Kenya to set up regulations standards of the media has been widely opposed by the media sector on grounds that it takes up its independence and regulations which handled all issues related to media complaints and advised the CAK on regulations of the Media Council. Additional KICA 2013 replaces the Appeals tribunal with Multi Media and Communications Appeals Tribunal.

### **The Media Council of Kenya (MCK)**

The media Council of Kenya (MCK) was established by the Media Act, 2007 and it is mandated to discipline journalist and oversee the regulation of content of media through self-regulation. By 2009, it was commonly agreed that broadcast content, particularly over FM radio stations were not being addressed and the government then enacted the Kenya Information and communication Amendment Act of 2009. The Media Council is a body corporate capable of suing and being sued. The Media Council of Kenya functions among others include:

- a) Mediate and arbitrate in disputes between the government and the media, between the public and the media, and intra media.
- b) Promote the freedom and independence of the media
- c) Promote high professional standards among journalist.
- d) Promote ethical standards among journalist and in the media
- e) Ensure the protection of the rights and privileges of journalists in the performance of their duties.

The Media Council of Kenya comprises of thirteen members drawn from the media sector including Kenya Union of Journalist, media Owners Association, Editor's guild of Kenya, Kenya correspondent association, Public relations Society of Kenya, Kenya News Agency and Kenya Institute of Mass communication. The Media Act also legislated the Code of Conduct for the practice of journalism in its second schedule which ranges from accuracy and fairness of the journalist, independence, integrity, accountability, confidentiality, unnamed sources, privacy, acts of violence, hate speech and sex discrimination. The media Council of Kenya is mandated to handle complains through its Complaints Commission (CC) thus providing for a mechanism of solving conflicts among the media stations, media and public and media and the government.

### **Research Question**

The Kenya Information and Communications Act as well as the Media Council Act have been criticised for certain unconstitutional provisions. The media is of utmost importance and plays a key role in a democracy. Accordingly, there is need to assess whether the current media laws and regulations therein influence radio programming diversity

### **METHODOLOGY**

The study adopted the mixed research design and was conducted in Nairobi at the headquarters of the Royal Media Group, Media Max and the Kenya Broadcasting Corporation. Quantitative data was collected using questionnaires while interviews of key informants was used to gather

qualitative data. SPSS version 22, was used to analyze quantitative data. The statistics included frequencies, correlation, and regression. Qualitative data from key informants that included programme managers and radio presenters was used to compliment the quantitative statistics. Given the qualitative nature of this study, purposive sampling was used to select the study respondents. This type of sampling was applied because the study aimed at specific and in-depth information from officials directly involved in decisions and actions regarding programming. By conducting research with such respondents and schedules proportion the researcher expected to get deeper understanding of the subject of the study and a wider perspective into the research problem. A total of 230 questionnaires were administered to the six radio stations, 12 respondents were selected to be interviewed for this study. In this research Cronbach's alpha was used to test the reliability of the proposed constructs (Ali *et al.*, 2016). The result shows that the overall reliability Cronbach's Alpha is 0.833. All the variables had Cronbach's Alpha of more than 0.7 as given in Table 1. This shows that the tools used to collect the data set were reliable and consistent.

**Table 1: Reliability Statistics**

Cronbach's	N of Items
0.833	30

**Reliability Statistics for individual variables**

Variable	Cronbach's Alpha
Ownership structure	0.738
Laws	0.878
Stakeholder's interest	0.789
Market forces	0.750
Political Factors	0.713
Programming Diversity	0.816

### Factor Analysis for Media Law and Regulation

To check the sample adequacy of the data, KMO was used to check on the sample adequacy. KMO value ranges between 0 and 1 with a value of more than 0.5 considered ideal, Warmbrod (2001). For the Bartlett's test to be considered, it should have a p value of less than 0.05. Table 4.6 shows that KMO was 0.540 and Bartlett's test of Sphericity had a p value of 0.000 which is less than 0.05. Therefore the data can be subjected for further factor analysis tests.

**Table 2: KMO and Bartlett's Test**

Kaiser-Meyer-Olkin Measure of Sampling Adequacy	0.789
Approx. Chi-Square	718.229
Bartlett's Test of Sphericity Df	10
Sig	.000

Factor analysis helps in regrouping data into exhaustive and mutually exclusive clusters for ease of understanding and interpretation of relationships and patterns, Creswell (2009). Principal



component analysis was used to reduce components of law. All the constructs of ownership were subjected to factor analysis and results given in Table 2.

**Table 3: Total Variance Explained**

Component	Initial Eigenvalues			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative	Total	% of Variance	Cumulative %
1	3.469	69.383	69.383	3.469	69.383	69.383
2	.846	16.922	86.305			
3	.276	5.513	91.818			
4	.265	5.306	97.124			
5	.144	2.876	100.000			

Extraction Method: Principal Component Analysis

The table 3 shows that only one factor had the greatest influence on the variations in laws. The factor accounted for 69.383% of all the variations. The factor had an Eigen value of more than one and is therefore retained for further analysis. Since there is only one retained factor the rotated component matrix was not generated.

**Table 4: Correlation Analysis**

		DIVERSITY	LAWS
DIVERSITY	Pearson Correlation	1	.385**
	Sig. (2-tailed)		.000
	N	210	210
LAWS	Pearson Correlation	.385**	1
	Sig. (2-tailed)	.000	
	N	210	210

\*\* . Correlation is significant at the 0.01 level (2-tailed).

Table 4 shows that there is moderate significant positive relationship between laws and program diversity. The correlation coefficient was obtained as 0.385 which is significant at 0.05 level of significance (p value =0.000).

### Regression Analysis

To determine the exact nature of the relationship a linear regression model was fitted between the laws and program diversity. The results obtained are presented in table 5.

**Table 5: Model Summary**

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.385 <sup>a</sup>	.148	.144	.77404
2	.391 <sup>b</sup>	.153	.144	.77377

- a. Predictors: (Constant), LAWS
- b. Predictors: (Constant), LAWS, moderator2

Table 5 shows that laws accounts for 14.8% of all the variations in diversity of programs. Other factors not in the variable accounts for 85.2%.

**Table 6: ANOVA Results**

Model	Sum of Squares	df	Mean Square	F	Sig.
1 Regression	21.629	1	21.629	36.101	.000 <sup>b</sup>
Residual	124.621	208	.599		
Total	146.251	209			

- a. Dependent Variable: DIVERSITY
- b. Predictors: (Constant), LAWS

Table 6 shows that media laws and regulations have moderate influence on programming diversity (F value of 36.101 and p value of 0.000).

**Table 7: Coefficients**

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.814	.137		20.500	.000
	LAWS	.276	.046	.385	6.008	.000

- a. Dependent Variable: DIVERSITY

Table 7 presents the most probable form of the relationship between laws and program diversity. Since the p value (0.000) of the test statistic on the variable ownership is less than 0.05, there was significant influence of laws on diversity. This relationship can be modeled as ( $Y_i$  is the program diversity and  $X_2$  is the laws).

$$Y_i = 2.814 + 0.276X_2 \dots\dots\dots (4.2)$$

Equation 4.1 shows that for every one unit change in laws diversity increases by 27.6% keeping other factors constant.

The findings from the qualitative research were not far from quantitative findings. A key informant 4, a radio program manager opined that:

*Radio broadcasting is a very powerful tool used to influence people. Media law and regulation of the content of radio broadcast material is about protection: there are many reasons for protection which are invoked through regulation; the protection of democracy and ensuring the democratic right to free speech is not endangered by censorship; protection of the right to accurate information in news and programs; the protection of cultural norms; and the protection of the quality of the listening experience. Uncontrolled and irresponsible radio broadcasters can have enormous negative impact on societies, for example local radio stations in Rwanda greatly inflamed the Hutu slaughter of the Tutsi people.*

Key informant 5 a radio programming manager stated that:

*Radio Broadcasting by its nature exerts a strong influence on a community. It is a medium for entertainment, information and education. Because of its impact, radio programs must maintain a standard that is acceptable to the Kenyan public. The programming code seeks to ensure that programs broadcast during the watershed period are suitable for family audiences and the transition from family oriented to a more adult programming after the watershed period is gradual.*

These findings are in agreement with Wanyama (2015) who argues that society relies on the media for information, education, and entertainment among other needs. The media has a central role to play in the freedom of information and expression. To contain the powerful sources of information, entertainment and education, government use media laws and regulation to capture, limit or control the media

McQuail (2005) opines that media laws and regulation refer to all policies, laws and regulations that affect media structure and operations whose purpose is to create and maintain the conditions for free and extensive communication in society to advance the public good and to limit potential harm to legitimate private and public interests. McQuail (2005) emphasizes that media law and regulation is concerned with four key areas: business ownership and control; standards of content, preservation of personal liberties; and preservation of the public interest.

In agreement, Dominick (2005) says policies to regulate ownership and control are important to regulation of the business, in order to create diversity and remove the concentration of media power from the hands of a few. Concentration of services in the hands of a small number of operators is a threat to media pluralism and can hinder the free flow of news, commentary and debate in a democratic society. Media ownership and control rules are vital to ensure that a diversity of news and commentary is maintained.

Mbeke (2008) asserts that Laws governing the media in Kenya are fragmented and exist in different sections of civil and criminal laws. The three sources of press law in Kenya include the Constitution of Kenya, the Statutory Law; and Common Law. The Constitution of Kenya is the

supreme law of Kenya and guarantees the right to freedom of expression. The Constitution of Kenya 2010 outlines certain fundamental rights in Chapter Four on the Bill of Rights. The Constitution in Section 33- Freedom of expression gives citizens the right to entertain and impart information without interference from any quarter including the state or any of its agencies. Section 34- Freedom of the press and Section 35- Access to information all together guarantee Kenyan citizens and the press enjoyment of fundamental rights pertaining to communication. The constitution further stipulates that a body or bodies shall be established through legislation for the purpose of implementation of the above sections of the constitution. The findings of this study concerning the influence of media laws and regulations on programming diversity, concurs with the literature review. The null hypothesis and the alternate hypothesis were stated:

$H_{01}$ : Media laws and regulations have no statistically significant influence on programming diversity

$H_{0A}$ : Media laws and regulations have statistically significant influence on programming diversity

### **Conclusion**

This study concluded that media laws have a moderate influence on radio programming diversity. There is a statistically significant relationship between media laws and radio programming diversity. The three sources of press law in Kenya were identified as the Constitution of Kenya, the Statutory Law and Common Law. The Constitution of Kenya 2010 was the supreme law of Kenya and guarantees the right to freedom of expression. The study calls on the Media Council of Kenya in conjunction with the Kenya Union of Journalists to enhance interaction between gatekeepers and reporters especially on ethical concerns in order to enhance adherence to the code of conduct and practice of Journalists

### **Further Research**

The study focused mainly on the impact of media laws and regulations on radio programming diversity in Kenya. The study recommends further research to be conducted on the influence of media owners on program content.

## REFERENCES

- Baker, C. Edwin (2007). *Media concentration and Democracy: Why Ownership Matters*. Cambridge
- Bagdikian, B.H (2000). *The media monopoly* (6<sup>th</sup> ed.). Boston: Beacon Press
- Curran, James (1996). *Mass Media and Democracy Revisited*. New York: St Martin's Press
- Creswell, J. (2009). *Research design: Qualitative, quantitative, and mixed methods approaches* (3rd ed.). Thousand Oaks, CA: Sage.
- Chomsky, N., & Herman, E.S. (2008). *Manufacturing Consent: The political economy of the mass media*: London
- Dominick, Joseph R. (1990). *The dynamics of mass communication*. New York :McGraw-Hill.
- Hallin, D.C. and Mancini, P. (2004) *Comparing Media Systems Three Models of Media and Politics*. Cambridge University Press, Cambridge
- Kenya (2010), Constitution
- Kenya (2013), Kenya Information and Communication Act
- Kenya (1969). 'Penal Code', Laws of Kenya, Chapter 63.
- Kenya (1969). 'Official Secrets Act', Laws of Kenya, Chapter 187.
- Kenya (1969). 'Defamation Act', Laws of Kenya.
- Kenya (1963). 'Evidence Act', Laws of Kenya, Revised Edition, 1977, Chapter 80.
- Kenya (1966). 'Copyright Act', Laws of Kenya, Revised Edition, 1983, Chapter 130.
- Makali D. (2004); *Media Law and Practice: The Kenyan Jurisprudence*, phoenix Publishers
- Mosco, V. (1996). *The Political Economy of Communication: Rethinking and Renewal*. London: Sage
- Mbeke, P.O. (2008) Background Note: The Media, Legal, Regulatory and Policy Environment in Kenya: A Historical Briefing. BBC World Service Trust, Nairobi.
- McQuail, D. (2005). *Mass Communication Theory*. London: Sage Publications.
- Siebert, F.S., Peterson, T. and Schramm, W. (1956) *Four Theories of the Press*. University of Illinois Press, Urbana III
- Wanyama, L. (2015). *Media Control in Kenya: The State of Broadcasting under the New Kenya Information and Communication Act of 2013*. *New Media and Mass Communication*, 33(1)