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The Trouble with Press Freedom in Kenya

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ANALYSIS

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Executive Summary

Press freedom in Kenya has undergone significant changes over the past few decades. This resulted in a complex and evolving landscape, where the country boasts of a diverse and lively media landscape, with numerous newspapers, television and radio stations, and a growing online presence giving a credible impression of a plurality of perspectives and voices in the media. Further, the 2010 Kenyan Constitution is recognized as one of Africa's most progressive in terms of press freedom protections. It calls for an independent regulator – the Media Council of Kenya – to oversee the media and its standards and safeguard journalists' independence and safety.

But there is a problem.

While Kenya's constitution theoretically guarantees freedom of the press, putting this freedom into practice has encountered substantial hurdles. First, concerns persist about restrictive media laws, especially those that grant authorities broad powers to regulate the media. Second, journalists often face threats, physical assaults, and harassment, particularly when covering sensitive political matters, including election campaigns, corruption, or human rights abuses. In the 2022 political transition, the media was split, with media owners taking sides overtly and covertly influencing editorial coverage to back their allies in the political establishment. Cases of assault of journalists, public attacks against the media, and threats against journalists emanating from both government and opposition, have been on the rise in the past year.

Third, financial challenges have become an endemic issue for numerous media outlets in Kenya, profoundly affecting their ability to uphold journalistic standards and safeguard editorial independence. Of particular concern is the mounting financial pressure placed on these outlets as authorities resort to punitive measures like withholding advertisements as retribution for what they perceive as unfavorable coverage. This not only places the financial sustainability of media houses in jeopardy but also raises serious questions regarding the fundamental principles of press freedom and editorial autonomy. The denial of government advertisements or arbitrary reductions in ad placements directly impede revenue generation, destabilizing the operational foundation of media organizations¹. Consequently, this predicament triggers a domino effect, resulting in cutbacks in investigative journalism, a diminished diversity of voices in the media landscape, and an unfortunate inclination toward self-censorship as outlets grapple with the intricate balance between financial viability and journalistic integrity². Ultimately, this relentless financial strain jeopardizes the media's indispensable role as a watchdog and its capacity to provide an equitable and unswayed

viewpoint on the nation's most pressing matters. Notably, media conglomerates with nationwide reach, such as Nation Media Group, the Standard Group, The Mediamax Group, and even Radio Africa Group, alongside smaller media houses, find themselves in dire financial straits due to a confluence of factors. These include the shift of advertising budgets to digital platforms or government-controlled outlets, the country's precarious economic climate, the destabilizing impact of the Covid-19 pandemic, and the escalating operational costs. In this harsh environment, many journalists have tragically lost their livelihoods.

Fourth, the media landscape has also had a blessing in disguise. The emergence of digital media and increased internet access has opened new opportunities for independent journalism in Kenya. However, it has also brought challenges such as the spread of false information, including that which targets the media and seeks to erode public trust in journalism, thus exposing the media and journalists to online harassment. This situation often escalates during elections and political transitions, making it a crucial concern for both domestic and international stakeholders. For a country with relatively low digital literacy levels, this is risky for the tenets of free and independent media, as it is likely to stir self-censorship, and undermine transparency and accountability in public debate.

The Media Council, as the regulator, together with professional associations for editors and journalists, and civil society organizations in Kenya working with international bodies like the Committee to Protect Journalists (CPJ) and Reporters Without Borders (RSF) actively monitor and advocate for press freedom in the country.

To bolster press freedom in Kenya, a multifaceted approach is crucial. As a key foundation, there is an urgent need to reform and reinforce the legal frameworks governing media operations. Outdated or restrictive laws, policies and regulations, must be amended to align with international standards, ensuring they do not encroach upon press freedom. Moreover, transparent regulations should be developed to protect journalists' rights while holding the media sector accountable.

Addressing media ownership is equally paramount. Transparency in ownership can mitigate conflicts of interest and undue influence on editorial decisions. Establishing mechanisms for disclosing media ownership and commercial interests is pivotal to informing the public about potential biases. Journalist safety and security should be a top priority. Robust measures must be enacted to safeguard journalists from threats, physical attacks, and harassment, particular-

1 Gicheru, C. W. (2014). The challenges facing independent newspapers in sub-Saharan Africa. Reuters Institute for the Study of Journalism. Retrieved from <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/research/files/The%2520Challenges%2520Facing%2520Independent%2520Newspapers%2520in%2520Sub-Saharan%2520Africa.pdf>.

2 Nyarko, J. (2023). Media diversification: Redefining reliance on advertising revenue and autonomy implications. *Cogent Social Sciences*, 9(1), 2193382. Retrieved from <https://doi.org/10.1080/23311886.2023.2193382>.

ly during sensitive periods like elections and during political transitions. Empowering the mechanism within the media council to investigate and prosecute violence against journalists is essential to ensure accountability. Media self-regulation, supported by ethical standards, should be promoted. Encouraging dialogue and collaboration between media practitioners, regulators, and civil society can enhance self-regulation's effectiveness.

Further, to sustain media independence, financial support and incentives for media organizations, especially independent outlets, should be explored. This can foster editorial autonomy and the delivery of high-quality journalism. Additionally, media literacy programmes can empower the public

to discern reliable news sources and combat disinformation. International collaboration and diplomatic pressure can play a pivotal role in advocating for stronger press freedom protections. Civil society organizations should be empowered to advocate for press freedom through resources, training, and legal support.

Monitoring press freedom during elections, fostering digital media literacy, and maintaining a long-term commitment to these efforts are vital components of a comprehensive strategy. By implementing these recommendations, Kenya can make substantial strides toward safeguarding press freedom, bolstering democracy, and fostering an informed and engaged citizenry.

Introduction

The 2022 post-election political turbulence and the media fallout

In August 2023, Kenyans marked the first anniversary of the 2022 general election. A month later, the country marked one year in office for the administration of President William Ruto, elected for his first term in that election. For the media enterprises and journalists in the country, this was a time for reflection about a tenuous relationship with an administration that holds a grudge for the biased³ coverage of its pre-election campaign⁴ and frames continued accountability as resentment arising from sour grapes for “going to bed” with the opposition⁵.

The hostility of the Kenyan State and its institutions against the media is not new.⁶ In all administrations, State institutions like the presidency⁷, parliament, political parties, and security agencies,⁸ together with powerful individual politicians pose serious threats to media freedom. The most recent Reporters Without Borders press freedom index for 2023, for example, shows that Kenya slid from position 69 in 2022 to 116 in 2023. The report indicates that the significant slide is attributed to “dangers that media personnel face”. It also claims that Ruto’s election “marked the start of a difficult period for the media, with the heads of major press groups, including the Nation Media Group, and leading media outlets, such as the *Daily Nation*, being fired as a result of political

pressure”.⁹ What is more, the report shows Kenya doing badly in all the indicators measured: political, economic, legislative, social, and security.¹⁰

The deterioration of media freedom in Kenya raises critical questions. Despite constitutional protections and advancements in media development, why is the situation worsening? The hostility from the political class is concerning. In a landscape marked by political, economic, and technological challenges, what lies ahead for the media? This troubling scenario is exacerbated by political intolerance, police crackdowns, economic pressures, and self-censorship by both the state and media outlets. Furthermore, the absence of a robust civil society and the relatively passive stance of the international community in response to threats from state and non-state actors have emboldened those seeking to curtail media freedom. Addressing these complex issues is essential to safeguarding the vital role of the media in Kenya’s democracy.

This policy paper examines the hurdles facing media freedom in Kenya, focusing on five key factors: the impact of legal regulations, political influences, economic pressures, the media landscape, and the roles of the international community and civil society. By understanding these challenges, we aim to shed light on the complexities surrounding media freedom in Kenya and work toward a more open and independent media environment.

3 Awich, A. (2022, June 3). Ruto slams media houses for being biased in coverage. *The Star*. Retrieved from <https://www.the-star.co.ke/news/2022-06-04-ruto-slams-media-houses-for-being-biased-in-coverage/>.

4 Ominde, T. (2022, June 25). Raila receives more coverage than Ruto says MCK report. *Nation Africa*. Retrieved from <https://nation.africa/kenya/news/politics/raila-receives-more-coverage-than-ruto-says-mck-report-3859310>.

5 Gachagua, R. (2023, March 12). Rigathi: The media should know elections are over, Azimio lost [Video]. KBC Channel 1. YouTube. Retrieved from <https://www.youtube.com/watch?v=JQCGKwbpUKY>.

6 Lohner, J., Banjac, S., & Neverla, I. (2016). Mapping structural conditions of journalism in Kenya. *Media Conflict and Democratization (Working Paper)*.

Retrieved from http://www.mecodem.eu/wp-content/uploads/2015/05/Lohner-Banjac-Neverla-2016_Mapping-structural-conditions-of-journalism-in-Kenya.pdf.

7 Ndonge, M. (2022, August 22). Uhuru Kenyatta and Kenya’s media: a bitter-sweet affair that didn’t end happily. *The Conversation*.

Retrieved from <https://theconversation.com/uhuru-kenyatta-and-kenyas-media-a-bitter-sweet-affair-that-didnt-end-happily-188832>.

8 Nation Africa. (2023, March 31). Outrage as Kenyan police attack journalists during protests.

Retrieved from <https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-protests-police-attack-journalists-4179824>.

9 See Reporters Without Borders’s Kenya index report. Retrieved from <https://rsf.org/en/country/kenya>.

10 Ibid.

The political climate, media landscape and the inevitable unending clash

Throughout Kenya's history, each time there is a political transition, there are heightened threats targeting the media and journalists, mainly from the incoming administration, as its leaders find themselves in the harsh glare of the media. The new leaders want, or even crave, positive coverage, while journalists and an impatient public, pursue more accountability.¹¹ In such situations, a clash of ideas, outlook, and expectations, becomes inevitable. Government officials exert their power by misappropriating State agencies, especially the police¹², and public platforms to bully the media, often accusing it of bias, and at times, inciting physical assaults, or credibility attacks against journalists and their platforms.¹³ On the other hand, the media, views such attacks as a threat to their freedom, as far as they flout the constitutional provisions that guarantee their independence.

The open threats to the media came to the fore, for example, in March 2023, when the Leader of Majority Party in the Kenyan Senate, Sen. Aaron Cheruiyot posted on X, previously Twitter, that President Ruto "would succeed in crushing every cartel in the country save for two that are extremely powerful." He cited the Kenyan media as one of those "powerful" cartels and vowed that "for public good, a way must be found" to crush it.

Screenshot 1 | A post of the Leader of Majority Party in the Kenyan Senate Aaron Cheruiyot on Twitter



Source: X formerly Twitter

The reference to the media as a cartel suggests that the media is often shadowy and conspiring with those intent on sabotaging the status quo. The claim opened a Pandora's box of inflammatory remarks from politicians who saw that as an opportunity to settle scores with the media and journalists they perceived as hostile to the Ruto administration.¹⁴

Similarly, the Cabinet Secretary for Investment, Trade and Industry Moses Kuria also attacked the media¹⁵ to deflect coverage of a brewing edible oil scandal in his ministry. On June 18, 2023, Kuria promised to deliver a lethal financial and political blow on the media for what he claimed was a persistent and obstinate criticism of his ministry and the Ruto administration. Reacting to an expose by the Nation TV (NTV) on his alleged involvement in an oil importation scandal, Kuria reframed his response as an attack: the Nation must decide if it was "a media house, a broadcasting house or *opposition party* [emphasis mine]"

"I have in fact decided that from ... today, any government [official, in any] department who advertises with the Nation Media [Group], [if you give the Nation any advert] count yourself jobless, he said.¹⁶

Threats to withdraw government advertising as retribution for what government officials deem unfair or negative coverage, have a detrimental effect on the media's capacity to report fearlessly, more so, at this time when media houses face serious revenue challenges.¹⁷ Such threats foment self-censorship as media houses try to stay open, but if executed, the withdrawal of advertising revenue strikes at the heart of media sustainability.¹⁸ Kuria's offensive against the media continued with the imputation of improper media conduct and anti-government campaign. He posted another tirade on June 18, 2023 replete with expletives (see screenshot 2).

The first part of the post is in Kiswahili language and loosely translates to: "For those Aga Khan whores at the Nation Centre ...". The Nation Media Group's principal shareholder is the Aga Khan.¹⁹ Kuria's use of derogatory language to refer to critics is not new, although as a member of the government

11 Awino, I. (2020). "You Can't Run Away from the Truth": Journalistic reflections of enduring injustices that shape news-making in Kenya. In *Critical Incidents in Journalism* (pp. 85-98). Routledge.

12 Sifuna, T. (2022). Image Repair Discourse of Kenya Police facing a Scandal. *Journal of Linguistics, Literary and Communication Studies*, 1(2), 8-19.

13 Hassid, J., & Brass, J. N. (2011). Scandals, Media, and Government Responsiveness in China and Kenya. In *APSA 2011 Annual Meeting Paper*.

14 Resian, S. (2023, March 7). Editors Guild says Cheruiyot's remarks open threat to media. *Capital FM*.

Retrieved from <https://www.capitalfm.co.ke/news/2023/03/editors-guild-says-cheruiyots-remarks-open-threat-to-media/>.

15 Committee to Protect Journalists (2023, June 21). Kenyan government minister Moses Kuria insults, threatens Nation Media Group. CPJ.

Retrieved from <https://cpj.org/2023/06/kenyan-government-minister-moses-kuria-insults-threatens-nation-media-group/>.

16 Kuria, M. (2023). The Message is clear [Video]. X. Retrieved from https://twitter.com/HonMoses_Kuria/status/1670513870148886529.

17 Ogola, G. (2023, April 16). From advertising blackmail to physical threats, Kenya's journalists are under attack – but they must also regain public trust. *The Conversation*.

Retrieved from <https://theconversation.com/from-advertising-blackmail-to-physical-threats-kenyas-journalists-are-under-attack-but-they-must-also-regain-public-trust-203580>

18 Ogola, G. (2015). African journalism: A journey of failures and triumphs. *African Journalism Studies*, 36(1), 93-102.

19 Loughran, G. (2010). *Birth of a nation: The story of a newspaper in Kenya*. Bloomsbury Publishing.

Screenshot 2 | A post on X, formerly Twitter, by Kenyan Trade Minister Moses Kuria



Source: X formerly Twitter

his statements are seen as the government's intolerance to criticism, and as attack on press freedom and free expression. Despite condemnation from various quarters, Kuria has continued with his verbal assault on the media, alleging secret coercion of journalists to publish negative stories. In another post on X (see a screengrab below) on the night of June 19, 2023 he tweeted that he would publish names of journalists "coerced to publish anti-government stories".

Screenshot 3 | A post of X by Kenyan Trade Minister Moses Kuria alleging a media scheme to smear the Ruto administration



Source: X formerly Twitter

But it is not only government ministers or top legislative officials who have been attacking and threatening the media. The broadcast media regulator, the Communication Authority (CA) has joined the fray. Given the authority's position in Kenya's media ecosystem and the power to license or switch off broadcasters, its threats carry significant weight.²⁰ In March 2023, the authority threatened to revoke the licenses

of six television stations over their live coverage of opposition protests.²¹ In a press statement issued by the CA's chief executive officer Ezra Chiloba on March 20, 2023, the body claimed the live coverage of opposition protest was a form of public incitement. The authority said the protests had violated the law for being inciting and hateful and thus lost protections under the freedom of expression. To accuse the stations, namely Citizen TV, NTV, K24, KBC, TV47 and Ebru TV, of such crimes was tantamount to suggestions that they were advocating for or supporting an insurrection. Additionally, CA claimed that the live coverage and broadcasting the opposition protests and rallies violated the Programming Code for Broadcasting Services in Kenya.

"Failure to adhere to the outlined obligations shall be acting in breach of license conditions, which shall attract liability under relevant provisions of the law, including revocation of broadcast license and/or broadcast frequencies," he warned.²²

Such action was, however, criticised as unconstitutional as media houses and stakeholders challenged the edict. Nonetheless, the persistent labelling of media as rogue and anti-government is serious indictment on the place, roles and responsibilities of the media and journalism in a 'democratic' society where criticism is part of media obligation. This further suggests that, unless tethered, the political class together with legal institutions often under control or direction from those in power or government will continue to pose challenges to media freedom. Consequently, it seems for now that media freedom under the current government will be long-haul.

Photo 1 | A plain-clothed policeman fires a teargas canister into an opposition media car, in which journalists covering the protests had taken refuge



Source: Photo courtesy of Africa Uncensored

²⁰ The CA is the statutory regulatory body charged with the responsibility of promoting and facilitating the development of the broadcasting industry in Kenya.

²¹ Wanjala, E. (2023, March 23). Chiloba censures six TV stations over Raila's demo coverage. *The Star*.

Retrieved from <https://www.the-star.co.ke/news/2023-03-22-chiloba-censures-six-tv-stations-over-railas-demo-coverage/>

²² Ibid.

Besides, it is not only the State-allied side of the political class that threatens media freedom. The opposition too has failed to protect journalists covering protests. Some journalists were attacked by opposition supporters. Thieves and looters also infiltrated the protests, beat up journalists, and robbed them of their equipment. For example, on March 30, 2023, at least 25 journalists were attacked, assaulted, injured and their equipment stolen and vandalized, in Kenya's capital Nairobi while covering opposition protests.²³ Eric Osinta, a videographer at Nation Media Group, was one of the journalists struck by two tear gas canisters fired at close range by the police.

When the *Star* newspaper penned a stinging editorial²⁴ calling on opposition leader Raila Odinga to call off planned demos, the Azimio leader responded with a call on his supporters to boycott the paper, describing it – alongside other corporates – as “the enemies of people” and “enablers and facilitators of brutal regime.”²⁵ In the editorial, *The Star* had slighted Azimio's electoral justice grievance citing a conclusive Supreme Court process which settled the matter. The editorial however backed Azimio's agitation around high cost of living, warning the government not to ignore the concerns.

Screenshot 4 | Raila Odinga calls for Boycott of Safaricom, Star Newspaper (Radio Africa) and KCB



Source: ...

Attacks on journalists in Kenya are not new. Hundreds of Kenyan journalists have been physically or verbally attacked in the course of their work since the promulgation of the current Constitution. For instance, in six months after the announcement of the first case of Covid-19 in Kenya in March 2020 and subsequent lockdowns, 48 journalists had been attacked.²⁶ The attacks included physical assault, arrest, and telephone or verbal threats and online harass-

Photo 2 | KTN Photojournalist Boniface Magana and two other colleagues attacked by students while covering a school protest in 2019



Source: Photo courtesy of Standard Media

ment. More than 20 of the cases were recorded in less than two months after the government introduced a number of restrictions to curb the spread of the pandemic.²⁷ Some of the attacks were for political reasons. One of the most audacious attacks happened in Nakuru town, 120 kilometers west of the capital, Nairobi. On March 4, 2021, four journalists were injured while covering a civic by-election in Nakuru County. The four – Evans Asiba (*Citizen TV*) Regina Wangui

23 Oniang'o, M. (2023, August 8). Journalists punched, kicked and tear-gassed: inside 'the darkest month for Kenyan media'. *Reuters Institute for the Study of Journalism*. Retrieved from <https://reutersinstitute.politics.ox.ac.uk/news/journalists-punched-kicked-and-tear-gassed-inside-darkest-month-kenyan-media>.

24 <https://www.the-star.co.ke/opinion/leader/2023-03-20-enough-is-enough-with-raila-demos/>

25 <https://www.the-star.co.ke/news/2023-03-21-uproar-over-railas-call-for-boycott-of-the-star/>

26 See Article 19 (2020) Kenya: Journalists attacked and silenced during COVID-19 pandemic. Article 19 [online], September 30.

Retrieved from <https://www.article19.org/resources/kenya-journalists-attacked/>.

27 Ibid.

(Kameme FM), Kigotho Mwangi (*K24 TV*) and Elijah Cherutich (*Emoo FM*) – were attacked by United Democratic Alliance (UDA) party supporters. And in the same county, a *Milele FM* journalist David Omurunga sustained serious injuries after being severely beaten by the police on April 5, 2021 for allegedly breaking curfew rules.

Photo 3 | Standard Media Photojournalist Samson Wire bleeds after he was caught up in a flare-up between wrangling factions of political party leadership on April 26, 2023



Source: Photo Courtesy of Standard Media

This is despite the fact that journalists were considered “essential workers” and exempted from the restrictions. And more recently, *Daily Nation* journalist Mwangi Muiruri was physically assaulted on November 24, 2022 by security officers attached to Deputy President Rigathi Gachagua’s wife, Dorcas Rigathi. The Deputy President justified the attack claiming the journalist was fond of disrupting political functions.

Photo 4 | Nation Media Videographer Eric Isinta writhes in pain, awaiting rescue after he was teargassed in a political protest.



Source: Photo courtesy of Africa Uncensored

In the face of threats to press freedom from political actors, media outlets and journalists can take several proactive measures to protect their independence and continue their vital role in upholding democracy. While threats to press freedom from political actors are concerning, media outlets and journalists have the capacity to respond effectively. By maintaining professionalism, fostering solidarity, engaging with civil society, seeking international support, promoting transparency, and educating the public, the media can continue to fulfill its essential role in holding power to account and safeguarding democratic values.

Photo 5 | Denis Onsongo helps Beverlyne Musili during tribal clashes in Mathare November 2017



Source: Photo Courtesy of Standard Media

External storms and internal industry woes as threats to media freedom

Aside from the political environment, there are self-inflicted threats to media freedom arising from newsroom dynamics, media house powerplays, and the necessary, delicate, and tricky dalliance between media managers and journalists on one hand, and the news sources, politicians and the people in power on the other hand.

For instance, after the 2022 elections, the Nation Media Group saw a newsroom overhaul that culminated with the exit of editorial director Mutuma Mathiu.²⁸ Claims persisted the editorial director had to be let go, following persistent claims of bias from close allies of the Ruto administration – that during his tenure, he did the bidding of their election rivals, the former president Uhuru Kenyatta and his ally, long-time opposition politician Raila Odinga.²⁹ Mathiu himself had a hint of the claim in his weekly column that he continues to write. On March 3, 2023, he wrote that the “number of folks sacked, or whose sacking has been instigated or demanded by Kenya Kwanza, are getting to numbers where they can constitute a movement for the disgruntled. There are families where both the mother and the father have been sacked, not because they are incapable or corrupt – as a matter of fact, many are earnest professionals – but because they were appointed by the former regime or are perceived not to have supported Kenya Kwanza.”³⁰ Kenya Kwanza is the ruling coalition of President Ruto.

The sackings of top bosses coupled with the annual ritual of mass sackings in newsrooms since the Covid-19 pandemic, have increased staff demotivation, reduced quality and the media enterprises and journalists susceptible to media capture. In some media houses in Kenya, such as the Standard Media Group Plc³¹ news of employees going without pay for months, or subsisting on half-pay, are now common. The weak human resource management in newsrooms – and the precarious job security – for journalists is a major threat to press freedom, more so, because the media managers are less interested in staff welfare, but more interested in their own jobs. The focus on the bottom line at the expense of the editorial independence is also seen as a major contributor to declining press freedom in Kenya. Macharia Gaito, a former managing editor at the Nation, wrote on June 20, 2023 in his weekly column noted that “there are many things

wrong at Nation Centre”. The Nation Centre is the headquarters of the Nation Media Group. Gaito specifically cited “editorial independence under siege from bureaucrats and bean counters”.³²

The corporate dynamics, external storms, and internal woes have led to serious concerns not only about the quality of journalism but also about the ability to speak truth to power and overall press freedom. This affirms claims made at the Freedom Café held at the Friedrich Naumann Foundation for Freedom offices in Nairobi in January 2023 that there is a serious decline in the quality of journalism.³³ This is sometimes due to self-censorship born out of the notion that there is no need to bite the fingers that feed the media.

Although there may be genuine reasons for self-censorship – for example in instances where individual journalists are threatened with violence for publishing ‘damaging’ information – it is now often used by many media organizations to prevent the publication of information that may harm their financial bottom-lines. In many modern media environments, the profit motive frequently overrides public interest.³⁴ Even in situations where the security of journalists is at stake, there is an overarching view that self-censorship is increasingly being applied for reasons relating to the protection of commercial, managerial and entrepreneurial interests. Accordingly, pressures from within and without media organizations point to increasing desire to control media content, particularly that which is considered not favourable to ruling class, powerful politicians, advertisers, media owners and their associates.

In effect, there is often little doubt about the amount of pressure that journalists and media face, particularly from advertisers and the political class, including governments, and individual politicians³⁵. These pressures thus become major determinants of decisions taken by journalists, media owners, managers, executives and others. These decisions relate to how stories are framed, where and when they are published and, in fact, whether to publish them or not. These choices thus become the bane of journalists interested in advancing public interest, and in turn affected the credibility, reliability of media and journalism as an important institution in society.

28 Mathiu, M. (2022, December 09). Thoughts on stepping into retirement. *Nation Africa*.

Retrieved from <https://nation.africa/kenya/blogs-opinion/opinion/thoughts-on-stepping-into-retirement-4048778>

29 BT Reporter (2022, December 7) End of an era as Nation Media pushes out its senior most editor. *Business Today*. December 7.

Retrieved from <https://businesstoday.co.ke/mutuma-mathiu-end-of-an-era-as-nation-media-pushes-out-its-senior-most-editor/>.

30 Mathiu, M. (2023, March 3) What's in the granary, folks? *Nation Africa*. Retrieved from <https://nation.africa/kenya/blogs-opinion/opinion/what-s-in-the-granary-folks--4143968>.

31 Okubasu, D. (2022, November 2). 3-month salary delay rattles KTN News, Standard Journalists. *Kenyans*.

Retrieved from <https://www.kenyans.co.ke/news/81210-3-month-salary-delay-rattles-ktn-standard-journalists-exclusive>

32 Gaito, M. (2023, June 20). Why are officials in fear of media? *Nation Africa*.

Retrieved from <https://nation.africa/kenya/blogs-opinion/opinion/why-are-officials-in-fear-of-media--4276386>.

33 See the Friedrich Naumann Foundation report on the proceedings of the event.

Retrieved from <https://www.freiheit.org/sub-saharan-africa/concerns-rife-over-shrinking-press-freedom-kenya>.

34 Mabweazara, H. M., Muneri, C. T., & Ndlovu, F. (2020). News “media capture”, relations of patronage and clientelist practices in sub-Saharan Africa: An interpretive qualitative analysis. *Journalism Studies*, 21(15), 2154-2175.

35 Ogola, G. (2011). The political economy of the media in Kenya: from Kenyatta's nation-building press to Kibaki's local-language FM radio. *Africa Today*, 57(3), 77-95.

This may explain the level of media capture in Kenya,³⁶ and the difficulties journalists face in extricating themselves from a situation where the state, advertisers, and owners seek to

control media content. A captured media often advances the interests of the government and their officials, sources, advertisers, and owners instead of public interest.

Hostile media economy, digital disruption and the pecuniary hazard to a free press

Declining advertising revenue and poor financial performance³⁷ have forced media enterprises to either scale down their operations, cut wages, or reduce staff. Some media houses have had to shut down their operations. Further, the weaponization of advertising has been applied over time as a threat to get the media to toe official line or tone done its criticism of the government. Although previous regimes, for example, applied legal and informal pressure, including the detention of 'dissident' journalists and opposition figures, the recent weapon of choice is advertising. Given the financial challenges the media face, the refusal to toe the line has had serious repercussions especially on the revenue streams. This coupled with other challenges, particularly the Covid-19 pandemic and its consequences, digital and technological disruptions³⁸, have seen the financial performance of most media enterprises plummet.³⁹

Moreover, digital disruption in the Kenyan media landscape has ushered in both opportunities and challenges for press freedom.⁴⁰ On one hand, the rise of digital platforms and online news outlets has expanded the reach and accessibility of information, providing a platform for diverse voices and independent journalism.⁴¹ However, this disruption has also exposed journalists and media organizations to new threats, including online harassment, cyberattacks, and the spread of disinformation.⁴² Moreover, the digital landscape has witnessed the emergence of online censorship tactics by state actors and political interests, further compromising press freedom. Navigating this evolving digital terrain while safeguarding journalistic integrity and independence remains a critical challenge for the Kenyan media, highlighting the need for robust digital security measures and vigilant protection of press freedom in the digital age.

Major mainstream media companies in Kenya such as the Nation Media Group Limited (NMG), the Standard Group Plc, Radio Africa Group, Royal Media Services, and Mediamax

Network have suffered serious financial challenges since 2020 when the first case of Covid-19 was recorded in Kenya. The financial challenges, however, go further back based on evidence showing falling revenues going back to 2013.⁴³ All the media companies mentioned have all laid off journalists since 2020 in austerity campaigns seen as inevitable in the current economic environment. The Kenya Media Sector Working Group (KMSWG), a group bringing together over 30 media associations in Kenya reported that more than 400 journalists lost their jobs since 2020 as media companies struggled to stay afloat⁴⁴ during and after the pandemic. As a result, the quality of journalism has waned as experienced journalists exit the newsroom. Furthermore, threats of job losses, retrenchments or wage cuts have led to incidents of self-censorship, compromise and capture especially by the government, advertisers and even owners and their supporters. Further, stories touching on corruption, poor political and fiscal governance and leadership, and human rights violations committed by security apparatuses and government may not always see the light of day for fear that such media reports do or would invite reprisals from the increasingly intolerant government.

In 2015, the government set-up the Government Advertising Agency (GAA) under the Ministry of Information and Communication Technology in what was seen in media and civil society circles as a ploy to further clamp down on press freedom and freedom of expression. In his weekly column on August 7, 2015, the then Nation Media Group Editorial Director, Mutuma Mathiu, wrote that the formation of the GAA was intended to "kill democracy by stifling dissent and undermining independent civil society" because it created what he called "communist-type Central Advertising Agency, which is supposed to know the advertising needs of all government agencies and the suitability of all media. ... In one fell swoop, this [Jubilee] ... government has undermined the media-buying industry and the viability of small media outfits

36 Mäkinen, M., & Wangu Kuiru, M. (2008). Social media and postelection crisis in Kenya. *The international journal of press/politics*, 13(3), 328-335.

37 Nyabuga, G., Booker, N., Dragomir, M., Thompson, M., Jama'i, A., Chan, Y. Y., & Nissen, C. S. (2013). *Mapping digital media: Kenya* (p. 1). Nairobi: Open Society Foundations.

38 Ndonye, M., & Wanyama, M. (2023). Kenyan Media Industry: Digitize or Disappear!. In *African Media Space and Globalization* (pp. 53-77). Cham: Springer Nature Switzerland.

39 Wamunyu, W., & Siguru Wahutu, J. (2019). Old habits, new realities: digital newsrooms in Kenyan commercial media houses. *African Journalism Studies*, 40(1), 36-52.

40 Wainainah, D. (2017). Technology Disruption in Kenya: Challenges Facing Local Newsrooms. *Reuters Institute for the Study of Journalism*, 2018-08.

41 Kacungira, N., & Owuor, M. (2023). Surviving Digital Disruptions: The Future of Television in Kenya.

In *The Future of Television in the Global South: Reflections from Selected Countries* (pp. 49-70). Cham: Springer International Publishing.

42 Mudhai, O. F., Wright, B., & Musa, A. (2016). Gender and critical media-information literacy in the digital age: Kenya, South Africa and Nigeria. *Journal of African Media Studies*, 8(3), 267-280.

43 Ogola, G., & Rodney-Gumede, Y. (2013). The Future of Quality News and Media Journalism Accountability in South Africa and Kenya. *The Future of Quality News Journalism: A Cross-Continental Analysis*, 101.

44 Ochieng, J. (2020, October 29). More than 400 Kenyan journalists lose their jobs during Covid-19 period. Nation Africa.

Retrieved from <https://nation.africa/kenya/news/more-than-400-kenyan-journalists-lose-their-jobs-during-covid-19-period-2726008>.

which rely on government institutions for local advertising". "Jubilee" refers to the name of the then ruling coalition under then president, Uhuru Kenyatta. Mathiu further noted that the "Jubilee leadership does not accept, or see, the role played by non-State actors in a democracy. It is open to question whether they believe in democracy at all or are merely playing in some inept pantomime. When a leader says that newspapers are only good for 'wrapping meat', that is a statement of ideological antagonism. ... It has created an avenue for corruption, incompetence, and censorship."⁴⁵

The establishment of the GAA was ostensibly meant to cut spending by channeling government advertising. By operation of the policy, all government advertisement was withdrawn and collapsed into "MyGov" newsletter owned by the government. The only saving grace for independent media in the circumstances was a belated agreement between government and independent newspapers to distribute "MyGov" as an insert, an arrangement which turned out to be a poisoned chalice for an already struggling media. In the run up to the Finance Bill 2023 debate, it emerged that the government was considering driving the last nail on media houses. A parliamentary committee report tabled in parliament revealed that "the state department for Broadcasting and Telecommunication is in the process of reviewing the distribution of MyGov from the current model of using daily newspapers to using Postal Corporation of Kenya in the distribution."⁴⁶ In its justification, the department said the change aimed to enhance value for money in government advertising but also in ensuring a monitoring and evaluation framework.

Besides, GAA is mired in corruption, mismanagement and financial impropriety.⁴⁷ As of mid-2019, it owed media houses more than €15.9 million (KSh2.5 billion),⁴⁸ and there were no indications that it would settle the debts despite promises by the government that it would pay. Needless to say, the debt has thrown mainstream media houses into dire straits given Kenya's current economic. The government and the media have been at loggerheads over this money – sometimes with the media begging, at other times, with the government paying debts to curry favour with the newsrooms – to the extent that as of March 1, 2023, the debt had reportedly fallen to €2.1 million⁴⁹ (KSh332 million).

The financial performance, inability to pay salaries, reduced pay and lay-offs reveal the tough situation many of the major media companies face. What is worrying is the damage the trend has had on journalism and media performance, an issue that was discussed at the Freedom Café held at the Friedrich Naumann Foundation for Freedom offices in Nairobi in January 2023. The meeting concluded that the economic performance "has led to decline in the quality of journalism, shrinking revenues and the deteriorating welfare of journalists and other media employees."⁵⁰ While the short-term effects of the dire current financial position have and continue to be felt, there are fears that such an economic situation will have a long term deleterious impact on the quality, reliability and credibility of the media in Kenya, and survival of media houses some of which are facing imminent collapse. With a struggling financially deficient media, a free press is nearly impossible to achieve.

45 Mathiu, M. (2015, August 7). In the end, these senseless attacks on media will harm those pushing them. *Nation Africa*.

Retrieved from <http://www.nation.co.ke/oped/Opinion/senseless-attacks-on-media/-/440808/2822770/-/6ow3yc/-/index.html>.

46 Report on the Consideration of the Estimates of Revenue and Expenditure for FY2023-2024 and the Medium Term tabled before the National Assembly on June 6, 2023 by Deputy Majority Leader, Hon. Owen Baya.

47 Wekesa, B. (2018, August 18). Why Government Advertising Agency was doomed to fail. *Nation Africa*.

Retrieved from <https://nation.africa/kenya/blogs-opinion/opinion/why-government-advertising-agency-was-doomed-to-fail-78708>.

48 Matete, F. (2018, December 8). State urged to pay media's KSh2.5 bn advertising debt. *The Star*.

<https://www.the-star.co.ke/news/2018-12-08-state-urged-to-pay-medias-sh25bn-advertising-debt/>.

49 Mwere, D. (2023, March 1). Government says it owes media houses Sh332m for 'MyGov' circulation. *Nation Africa*.

Retrieved from <https://nation.africa/kenya/business/government-says-it-owes-media-houses-sh332m-for-mygov-circulation-4141404>.

50 See the Friedrich Naumann Foundation report on the proceedings of the event. Op. cit.

Retrieved from <https://www.freiheit.org/sub-saharan-africa/concerns-rife-over-shrinking-press-freedom-kenya>.

Media laws and regulations: The case for legal reforms to protect press freedom

Thirteen years ago, Kenya promulgated a fresh constitutional order guaranteeing the protection of freedom of the media, the right to access to information, and freedom of expression.⁵¹ Article 33 prescribes that “Every person has the right to freedom of expression, which includes the freedom to seek, receive or impart information or ideas, freedom of artistic creativity; and academic freedom and freedom of scientific research”.⁵² Article 34 also echoes these provisions by explicitly stating that “Freedom and independence of electronic, print and all other types of media is guaranteed”. The two clauses also note that the enjoyment of these freedoms “does not extend to propaganda for war; incitement to violence; hate speech” and with due respect given to “the rights and reputations of others”. Kenya also enacted a law for access to information law to enable access to information held by government.⁵³

However, over the past decade, there have been significant efforts to limit freedom of the media and freedom of expression. Some laws passed or retained in the current legal framework contradict the guarantees set forth in the constitution. Some of these laws with draconian provisions that threaten press freedom and free expression⁵⁴ are:

- I. National Police Service Act No. 11A of 2011,
- II. Prevention of Terrorism Act No. 30 of 2012,
- III. Kenya Defence Forces Act No. 25 of 2012,
- IV. National Intelligence Services Act No. 28 of 2012,
- V. Books and Publication Act (Cap 111),
- VI. Penal Code,
- VII. Computer Misuse and Cybercrimes Act (2018),
- VIII. Security Laws (Amendment) Act (SLAA) No. 19 of 2014,
- IX. Preservation of Public Security Act (Cap 57),
- X. Official Secrets Act (Cap 187),
- XI. Defamation Act (Cap 36),
- XII. Films and Stage Plays Act (Cap 222),
- XIII. National Cohesion and Integration Act No. 12 of 2008.

The application of these laws demonstrates the difficulties the media face. For example, the security laws have been used to shut down television stations, arrest and prosecute bloggers and journalists. The Computer Misuse and Cyber

Crimes Act of 2018 has especially raised serious concerns because it is often used to justify the arrest and prosecution of those using their mobile devices and computers for reporting purposes, or to write articles critical of government. It has introduced criminal defamation under section 22 (false publications) and 23 (publication of false information) are considered deleterious to the freedom of expression in Kenya.

Specifically, section 22 states that:

A person who intentionally publishes false, misleading or fictitious data or misinforms with intent that the data shall be considered or acted upon as authentic, with or without any financial gain, commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both.

Section 23 reads:

A person who knowingly publishes information that is false in print, broadcast, data or over a computer system, that is calculated or results in panic, chaos, or violence among citizens of the Republic, or which is likely to discredit the reputation of a person commits an offence and shall on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

Besides, section 17 (1) of the Act states explicitly that:

A person who intentionally and without authorisation does any act which intercepts or causes to be intercepted, directly or indirectly and causes the transmission of data to or from a computer system over a telecommunication system commits an offence and is liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

Accordingly, despite constitutional protections, a raft of laws and intolerance continues to cloud press freedom in Kenya. A fresh round of advocacy for legal reforms is urgently needed to clean up the media’s regulatory environment taking into consideration the important place of media in a democratic state.

51 Maina, H. O. (2015). Constituticide: Enacting Media Laws That May Undo Constitutional Gains in Kenya. *Kenya’s Media Landscape: A Success Story with Serious Structural Challenges*. Leipzig: VISTAS Verlag, 28-45.

52 Kenya Law Reform Commission (2010). *The constitution of Kenya: 2010*. Chief Registrar of the Judiciary. Retrieved from <http://kenyalaw.org/lex/actview.xql?actid=Const2010>.

53 Hofman, D., & Katuu, S. (2023). Law and record keeping: a tale of four African countries. In *Managing Digital Records in Africa*. Taylor & Francis.

54 Article 19 (2021, May 28). KENYA: Harmonise legal framework on free expression with ICCPR recommendations. Article 19. Retrieved from <https://www.article19.org/resources/kenya-harmonise-free-expression-with-iccpr-recommendations/>.

Defending press freedom: The role of the civil society and the international community

Civil society and the diplomatic corps in Kenya collaborate to protect press freedom through a multi-faceted approach. Civil society organizations continue to advocate for press freedom, raise awareness about attacks on journalists, and provide legal support when needed. They also engage in public campaigns, lobby for the repeal or reform of restrictive laws, and hold those who threaten press freedom accountable through legal means.

For instance, several organizations, including Friedrich Naumann Foundation, Article 19, Committee to Protect Journalists, African Freedom of Expression Exchange, UNESCO, Reporters Without Borders, and Katiba Institute, have been active in defending press freedom in Kenya. Katiba Institute was quick to criticize the Communications Authority of Kenya's decision to censor six TV stations for broadcasting anti-government protests, emphasizing the potential threat to peace and cohesion in the country. Article 19, part of the Kenya Media Sector Working Group, consistently produces reports detailing attacks on journalists, joining forces with organizations like CPJ, UNESCO, and Reporters Without Borders to issue reports and statements whenever press freedom is jeopardized. The Civil Society Reference Group, although involved in various causes, staunchly defends media freedom when it faces threats. Coordinator Suba Churchill has voiced concerns about Kenya's journey towards true press freedom, noting that it often appears as a facade, concealing attempts to undermine this fundamental right.

Conclusions

This policy paper highlights significant threats to press freedom in Kenya despite legal protections and media development progress. These challenges encompass various aspects, including legal, political, economic, and internal issues within the media industry. Both civil society and the international community, usually key defenders of press freedom, have faced limitations in their efforts to protect the media from these diverse challenges.

The political environment poses significant challenges, with the government and politicians showing little tolerance for press freedom. Troublingly, government officials, including high-ranking figures, have been involved in attacks on journalists, raising concerns due to their influential positions. The government's manipulation of advertising exacerbates the assault on media freedom, as advertising revenue is crucial

for media sustainability. Financial stability is essential for countering external pressures.

On the other hand, the diplomatic corps can use their diplomatic leverage to nudge the Kenyan government to respect and uphold press freedom. This can involve issuing public statements condemning attacks on journalists, engaging in diplomatic dialogues to address concerns, and leveraging international partnerships and aid to incentivize improvements in the media environment. By working in tandem, civil society and the diplomatic corps can amplify their efforts and contribute significantly to safeguarding press freedom in Kenya.

While religious organizations like the National Council of Churches of Kenya and the Catholic Church's Peace and Justice Commission have previously championed human and media rights, they have been notably silent in response to recent assaults. The reasons behind their silence remain unclear, although some speculate that religious organizations have moderated their criticism due to their engagement with the current regime. Civil society organizations have faced challenges following the enactment of the Public Benefits Organizations (PBO) Act, which regulates these groups and has been used to intimidate those critical of the government's actions.

In conclusion, it is evident that the international community and civil society play a critical role in advancing press freedom. Organizations like Article 19, CPJ, UNESCO, and Reporters Without Borders provide essential reports and advocacy efforts to protect this space and their reports provide valuable evidence for potential interventions.

The financial strain on media organizations has worsened due to Covid-19-related austerity measures, resulting in staff cuts, wage reductions, and limitations on content development. This financial hardship has driven government officials, advertisers, and media owners to exert control over media content, leading to self-censorship in newsrooms.

To address these challenges and promote media freedom in Kenya, civil society and the international community must reengage actively. Their advocacy and support can counterbalance the identified challenges. Implementing the recommendations outlined below is crucial to improving the media landscape in Kenya and protecting press freedom.

Recommendations

For journalists, media, and stakeholders in the media sector

1. Foster strong solidarity among media freedom, freedom of expression, and human rights defenders to safeguard the necessary media space for democracy and constitutionalism.
2. Develop a proactive and coordinated approach involving civil society, the international community, and political institutions like Parliament to address political and state threats to media freedom through the Kenya Media Sector Working Group (KMSWG) and other key stakeholders.
3. Conduct an urgent comprehensive audit of all laws related to media freedom to identify persistent threats.
4. Advocate for a thorough review of legislation that violates constitutional media freedom protection through a collaborative, multi-stakeholder effort involving media stakeholders, civil society, and the international community.
5. Establish an independent media support fund to address pressing financial challenges, enhance media independence, and prevent media capture. This fund should also provide financial assistance to journalists in struggling media outlets and legal support for media houses and journalists facing legal threats. Media should pull all stops to build reliable and independent revenue streams in order to maintain editorial independence and safeguard against undue influence on their reporting.
6. Produce regular or annual reports on the state of media freedom to provide evidence-based insights for interventions aimed at advancing press freedom in Kenya.
7. Promote media literacy and public awareness initiatives to empower citizens to discern credible sources of information and support independent journalism.
8. Encourage media outlets to adopt and enforce ethical guidelines and professional standards to maintain integrity and credibility.
9. Establish a legal defense network to provide swift and effective legal assistance to journalists and media organizations facing harassment, censorship, or legal challenges.
10. Engage with international organizations and foreign governments to enhance support for media freedom and human rights.

For government

11. Implement tax exemption and/or reduction for media enterprises, and for media products as an essential contribution to promote media freedom. These should include Value-added tax (VAT) exemption on newsprint, equipment and other essential resources, tax incentives for training, and custom duty waivers on equipment and non-content media-related imports.
12. Disband the Government Advertising Agency to eliminate the potential for undue government influence over media outlets. By removing this centralized agency, media organizations can operate with greater autonomy, reducing the risk of self-censorship or biased reporting due to financial dependencies. It would promote a more level playing field, fostering diverse voices and independent journalism, which are essential components of a thriving democracy.
13. Give priority to the investigation and prosecution of individuals or entities responsible for attacking journalists and media houses to safeguard press freedom, protect journalists' safety, and uphold the rule of law.
14. Hold to account state and public officials whose conduct, words and actions are established to have undermined or to be undermining media freedom. This could be done through the tightening of the legal provisions on public leadership and integrity, open public condemnations and other forms of lawful sanctions.

