The Politics of Impunity and the Shifting Media Landscape in Kenya

This article focuses on state-media relations and the shifts in the overall media landscape in Kenya. Drawing on a political economy approach to media operations in Kenya, it argues that while there are competing meanings over what constitutes “news values”, “editorial independence”, and “critical media”, changes in political regimes and unclear media regulations contribute to political and/or corporate interference on media coverage of corruption and political impunity. This renders media operations problematic at the normative and operational levels. The discussion situates these arguments within the contexts of “policy laundering” and “critical junctures”, seeking to establish whether the shifting media landscape is a function of increased information and communication affordability or, instead, an indication that critical media are on the decline. Overall, the article provides an assessment of key temporal periods that have shaped media regulatory frameworks to show how political and/or corporate interests have influenced journalistic practices and editorial independence over time and space.

Keywords: Kenyan media; media regulations; editorial independence; political impunity; policy laundering; safety of journalists; critical junctures

Introduction

Kenya has been perceived as one of the few African countries with a “pluralist” media, often linked to somewhat favourable conditions under which media outlets operate. For instance, a recent report by Reporters Without Borders (2018) ranks Kenya 96th (out of 180 countries) on World Press Freedom Index, a 4-point improvement from 2015. Transparency International (2013) also “ranks Kenya as 38th out of 176 of the most corrupt nations” (cited by Ireri, 2016, p. 245). While Kenya’s new constitution, adopted in 2010 following the 2007/08 post-election violence, recognizes the need for journalists to exercise their profession freely and responsibly, “a hostile and inadequate political, legal, policy and regulatory environment continues to negatively impact the media in Kenya” (Mbeke, Úgangu and Okello-Orlale, 2010, p. 7). Indeed, media coverage of insecurity, high-level corruption, and the past ICC proceedings against president Uhuru Kenyatta and his deputy William Ruto have been subjected to strict scrutiny by state organs.

While it is true that “there is a relatively free media and general respect for freedom of expression” in Kenya (Kanyinga, 2014, p. 11), there are several concerns with regard to political and corporate interference on media content, particularly on corruption and political impunity. At the centre of these concerns is how to protect journalists and their sources in an environment

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increasingly marked by high intolerance toward critical media. While some
may attribute such concerns to formal institutionalization of norms and best
practices determining journalistic practice (Benson 2006; Couldry 2003), this is
not always the case in environments where formal institutionalization of such
media practices exists alongside informal institutionalization. In such
circumstances, one can certainly expect editorial independence to depend, to a
large extent, not on media regulatory frameworks or policies in place, but on
written and/or unwritten policies of the state as well as the political
environment. This is particularly true in countries with high levels of
corruption and political impunity such as Kenya, where several unwritten rules
form part of the broader policies that determine media operations. These
unwritten rules may translate into self-censorship, especially when threats and
hefty fines are used as potential means to regulate media content on sensitive
topics such as high-profile corruption and national security.

Certainly, the resilience of journalists and editors is in such environments
is uncertain. In Kenya, a good example of such uncertainty can be
demonstrated by the progressive disappearance of the Jicho Pevu series,
formerly aired on Kenya Television Network (KTN). The Jicho Pevu series
had become a household name, exposing a wide range of social, political, and
economic impunities within the country, some of which involved individuals at
high levels of the government (Kanyinga, 2014). Some of the topics covered
included the alleged rigging of the 2013 elections, exposure of drug hauls
involving key politicians and government officials, and the supposed cover-up
government failures during terror attacks at Nairobi’s Westgate Mall and
Garissa University. Given the prevalence of Jicho Pevu and the appeal it
seemingly created around “digging up political dirt”, some of its investigative
journalists (e.g., Mohammed Ali and John Allan Namu) became subjects of
constant death threats and harassment. Some describe such practices, where
state/corporation interests interfere with media content, as a form of “media
capture” or “state capture” (Wasserman, 2017; Schifrin, 2017).

While these observations provide important insights into the role played by
state in influencing media operations, journalistic practices have also raised
questions with respect to the institutionalization of political impunity. Authors
such as Ireri (2016) have highlighted the prevalence of corruption in Kenyan
media, arguing that “cash money (40%) is the most common form of
corruption—and politicians are the top bribe-givers to local journalists,
followed by businesspeople” (p. 245). Other studies have also pointed out the
problems of media literacy and insufficient training among journalists and how
they profoundly compromise the overall quality of news media. This is the case
of studies conducted by Mbeke, Ugangu and Okello-Orlale (2010) suggesting
that, “media organizations [in Kenya] place a low premium on investigative
journalism and hardly prioritize it” (p. 8). Further, the “poisonous rhetoric”
circulated through new or interactive media have increasingly compromised
the credibility of several journalists and their parent media outlets. These
contems may explain why the Kenyan government has been keen on enacting

2Jicho Pevu is a Swahili word for “critical eye” or “investigative lens”
restrictive media policies over the years, particularly following election cycles which often seem to be violent in one way or another.

For instance, following the aftermath of the 2007-08 elections, the state proposed policies that allowed for the surveillance of text messages suspected of spreading hate messages. This extended to the use of information and communication technologies (ICTs) (Mitullah, Mudhai and Mwangi, 2015).

Recently, concerns of the circulation of “fake news” in Kenya have also prompted questions on whether more policies are underway to curb online content (Posetti and Matthews, 2018). While untrue or false stories may have serious implications on public opinion, one emerging problem is that the state appears to capitalize on such circumstances to further infringe on freedoms of expression and online media content. Independent newsgathering, including the anonymity of journalists and their sources, can therefore no longer be guaranteed because interested parties increasingly have the means to access the digital footprints. Authors such as Mitullah, Mudhai and Mwangi (2015) have pointed out that, “registration of SIM cards enables the government to trace sources of information and mobile phone signals” (p. 8).

This article focuses on the intersections between media regulations, state-media relations, and the shifts in the overall media landscape in Kenya. It adopts a political economy approach (PEA) to show that the dynamism around media regulations in Kenya is closely aligned with the shifts in political regimes which, depending on the government in place, establishes regulations and specialized state agencies that control media content. PEA is used to establish the linkages “between interests, incentives and institutions”³, and how they transform the overall media landscape. The article argues that the fluidity characterizing the media regulatory framework not only contributes to the decline in editorial independence and critical news reporting, it also institutionalizes political impunity. The article begins by providing an overview of the media landscape in Kenya before focusing on media concentration and ownership patterns. It then shifts the focus to media regulatory frameworks and how they have informed journalistic practices over time. Finally, it situates these debates within the contexts of policy laundering (Hosein 2006), journalistic field (Benson 2006; Couldry, Livingstone and Markham 2010) and critical junctures (McChesney 2007).

Overview of the Media Landscape in Kenya

Although the Kenyan media environment is considered to be resilient, dynamic, pluralistic, and somewhat critical\(^4\), significant changes have taken place in Kenya’s overall information ecosystem. Understanding this resilience requires an assessment of three temporal periods, which appear to have marked important shifts in Kenya’s media practice. That is, the 1990s-2000s; the 2000s-2010; and post-2010 media environment. More details about media environments prior to the 1990s are found in the works of Ochilo (1993), Faringer (1991), Moggi and Tessier (2001), David and Dixon (1997), and Okoth-Owiro (1990).

The 1990-2000s period was mainly characterized by strict state-led media control despite the reforms that saw the restoration of multiparty politics. For instance, political gatherings and media coverage of government activities in a negative light was almost always unlawful. In fact, until 1982, Kenya was regarded a de facto one-party state, and it was normal practice for the parliament to establish laws with little to no consultation with media organizations. This seemed to be the approach the then ruling party (Kenya Africa National Union – KANU) took in its attempt to influence policies on media and on other issues of public concern (Obonyo 2003; Widner 1992).

This provided the state-owned media – Kenya Broadcasting Corporation (KBC) – with leverage as the primary source of information. Independent and privately-owned media that existed (e.g. Nation Media Group and The Standard Group) were confined to limited airwaves. It is worth noting that even though independent news media were stifled through restrictive media policies, commercial and political interest progressively infiltrated media operations, which, as a result, strengthened grass-root opposition politics (Haugerud 1995; Widner 1992).

It was not until the 2000s (2000-2010) when the government embarked on ambitious political reforms. These reforms, which included a revision of the existing media laws/regulations, can be attributed to several factors. First, the end of Moi’s 24-year authoritarian regime provided room to readjust policies on democratic and civil liberties that had been stunted (Shilao 2013). With the formation of a new government in 2002 (The National Rainbow Coalition, NARC), many expected to see a series of political and institutional reforms. However, since the anticipated reforms were slow to materialize, many accused the NARC government of rolling back the reform promises once they ascended to power (Mueller 2014; Shilao 2013). Second, the perceived deception has been partly blamed for reviving inter-ethnic hatred, and subsequent sensationalist media coverage of the 2007 election campaigns (Lynch 2014). Accordingly, the 2007-08 post-election violence is believed to have provided grounds for the state to amend self-regulatory bodies such as the then Media Council of Kenya (MCK) and Communication Council of Kenya (CCK), previously tasked with overseeing media practice (Sommerville 2012). Third, the 2000-2010 period also marked one of Kenya’s worst ethno-political

violence, as more than 1000 lives were lost during the 2007-2008 post-election violence (Lynch 2008). At the core of this violence were concerns about vernacular media’s role in fomenting inter-group hatred before, during, and after the elections (Onguny 2016). More importantly, the incentivization of violence by political elites became very apparent, which may have set up the possibility of establishing a series of regulations aimed at curbing hate speech, political incitement, and inter-ethnic prejudices (Sommerville 2012; Lynch 2014). Moreover, with the confirmation of charges against Joshua Sang, one of the vernacular FM radio journalists, the 2000-2010 period also raised questions with respect to professional journalism in the country. Nonetheless, the 2000-2010 period saw a sharp and steady increase in the number of independent news media, particularly vernacular FM radio stations which added to media pluralism and diversity of opinions in the country (Ogolla 2011; Mbek, Ugangu and Okello-Orlale 2010).

Finally, the post-2010 media environment has mainly been characterized by a new constitutional dispensation, a notable effort in supporting democratic changes in Kenya. In a sense, the 2010 constitution is a by-product of the 2007/2008 post-election violence and its aftermath. Although some may argue that its practical implementation is still a subject of debate, it is undoubtful that the document has somewhat attenuated political powers in the form of devolved government. The new constitution also ushered in new media reforms in an attempt to put an end to sensationalist reporting often driven by identity, personality, and ethnic politics (Shilao 2013; Lynch 2014). Although the new regulations also sought to protect the media, the controlled coverage of the ICC proceedings between 2010 and 2015 against president Kenyatta and his deputy demonstrated that each political regime sets its own rules with respect to media operations. This time, the Jubilee government, which came to power in 2013, appeared to use unwritten rules in an attempt to control media discourse on issues of political impunity (Shilao 2018; Lynch 2014; Mueller 2014). The consolidation of state’s advertisements through the newly created Government Advertisement Agency also added to the indirect ways of “media capture”. That is, given the significance of advertisement revenues in media operations, the incumbent regime may have found a way to increase its leverage on media coverage of controversial topics implicating its officials (Media Policy Research 2015). While it is reasonably true that the initiative may help the government reduce its spending, the agency appears to use its newly-found monetary power to influence media content at the editorial level. As a consequence, news outlets perceived to be critical of the state have seen their ad revenues dwindle due to withdrawal of government advertisements. The post-2010 media landscape is therefore marked by an increase in both formal and informal institutionalization of media regulatory frameworks.

In sum, the three broad periods suggest that the media landscape in Kenya is relatively linked to changes in political regimes. If these patterns are indicative of anything, then one can certainly expect media regulatory frameworks to be unstable in the long-term. What is certain, is that with the steady growth of independent and commercial media, journalists and news editors will continue to be at a crossroads. They will constantly wrestle with
the idea of adopting a more critical perspective on matters of political impunity and risk sanctions or taking part in the overall impunity process by accepting “brown envelops” in order to bury or water down certain news stories. Regardless of these choice alternatives, it is undoubtful that political impunity and corruption have risen to worrying levels (Shilao 2018; Schmidt and Deselaers 2015).

### Media Reach and Concentration

In order to understand the links between political impunity and the shifts in media regulatory frameworks, it is worth discussing Kenya’s media reach and concentration more broadly. Such an overview is important not only because the distribution between media formats (e.g. radio, TV, newspaper, etc.) is unbalanced, but the impact these regulations has on different media is equally disproportionate. Nonetheless, it is widely accepted that radio still remains the primary means of information in the country despite the increase in the number of Kenyans with access to digital technologies. The annual statistics by the BBC Media Action (2017) show that 96-98% of Kenyans have access to radio, followed by mobile phones at 95-97%, then TV at 81-89% and finally Internet at 51-58%.

The completion of the digital migration process in 2015 has also brought about new forms of media experiences. According to the International Telecommunication Union (ITU) (2017), digital migration saw the population covered by TV grow from 55% to 66%. The same report shows that the number of broadcasters increased from 14 to 65, with about 22 broadcasters reaching multiple cities (up from just 5). This growth also means expansion and diversification of media content, which, by extension, tilt the patterns of media concentration and ownership. To date, seven media houses remain the most dominant to date. These include Nation Media Group, Standard Media Group, Royal Media Services, Radio Africa, Kenya Broadcasting Corporation, and TV Africa Holdings. One common factor is that the majority, if not all, are controlled by political elites or influential entrepreneurs who, in one way or another, are linked to the current or previous governments.

Royal Media Services, owned by businessman Samuel K. Macharia, controls almost all privately-owned ethnic/vernacular radio stations (at least 14 vernacular FM stations), including dominant news outlets such as Citizen radio, Hot 96 FM, Citizen TV, and iNooro TV. Kenya Broadcasting Corporation, on the other hand, is a state-run media group, which oversees mainly KBC TV, KBC Radio, and y254 TV, among others. The largest (in terms of circulation) and probably the most influential media organization is Nation Media Group. It is also the second oldest media group after the Standard Media Group. Owned by philanthropist The Aga Khan, Nation Media controls Daily Nation newspaper, Nation Television (NTV), the East African, Taifa Leo, Easy FM, and the Monitor (Uganda).

5See [https://www.royalmedia.co.ke](https://www.royalmedia.co.ke) accessed August 28, 2018
The Standard Media Group is the oldest media organization and second largest in terms of concentration. It is controlled by the retired president Moi, his family, and business affiliates. The group controls popular TV stations such as the Kenya Television Network (KTN), Bamba TV, the Standard newspaper, the Nairobian, Radio Maisha, and Think Outdoor, an advertising company. Other significant media houses include TV Africa holdings, which is under the purview of Kenyatta’s family and affiliates. They oversee K24 TV, People Daily, and Kameme FM. Radio Africa Group, co-owned by businessman Kiprono Kittony, is also an important media outlet in the country. It controls at least six radio stations (Classic 105, Radio Jambo, Kiss 100, Relax FM, East FM and X FM) a TV station – Kiss TV and a newspaper – The Star Newspaper. Other notable media owners include philanthropist Chris Kirubi who owns Capital FM, one of the most popular urban radio stations in the country.

In short, a close examination of media concentration and ownership patterns not only shows the extent to which the Kenyan media are in the hands of a handful political elites, it sets up the possibility of understanding the dynamism around media regulations, particularly during elections when political and corporate interests largely infiltrate news media. A potential explanation for this is that different media outlets often have a tilt toward specific political candidates and/or parties. It is therefore undoubtful that commercial and political interests drive both the growth, ownership patterns, and media regulatory frameworks in the country.

Media Regulations and the Shifts in Journalistic Practices

The changing media landscape has also impacted journalistic practices over time and space. Prior to the 2010 constitution, section 79 of the previous constitution remained the primary framework around which media operations were grounded (Moggi and Tessier 2001; Okoth-Owiro 1990). This was supplemented by several Acts such as Defamation Act, Public Order Act, Information and Broadcasting Act, The Books and Newspapers Act, Kenya Broadcasting Act, and Official Secrets Act, most of which were unfocused and/or vague (Ogbondah 1994; Obonyo 2003; Ogola 2011). As some have pointed out, these laws relied upon pre-independence Statutes, which, for the most part, did not encourage critical media (Mbeke 2008; Oriare and Mshindi 2008).

Section 79, “Protection of Freedom of Expression”, which guided freedoms of speech and freedom of media until the 2010 constitution read:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas without interference (whether the communication be to the public generally or to any person or class of

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See [https://www.standardmedia.co.ke/corporate/aboutus](https://www.standardmedia.co.ke/corporate/aboutus) accessed August 28, 2018

While there is nothing indicative of malice in the above clause, what is interesting to observe is the vagueness and broadness of subsections 79a, 79b and 79c, which suggest that the outlined freedoms could be revoked for the “interests of defence, public safety, public order, public morality or public health” (79a); or for the “purpose of protecting the reputations, rights and freedoms of other persons or private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television” (79b). The said freedoms could also be withdrawn if an individual “imposes restrictions upon public officers or upon persons in the service of a local government authority, and except so far as that provision or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic state” (79c).

The broad scope of section 79 of the old constitution provided more wiggle room for previous governments to conveniently interpret what constituted violations of “national security”, protection of “reputations, rights and freedoms of others”, etc. Section 79 did not explicitly mention media practice, thereby providing the state with the powers to limit editorial independence (Mbeke 2008; Moggi and Tessier 2001). It was unclear what really defined/constituted media and journalistic practice. In addition to invoking the interests of national security as grounds to contain political dissent, the issuance of broadcast license was limited to a handful of media organizations. This, in part, discouraged media growth in the 1990s and early 2000s (Mbeke 2008; Oriare and Mshindi 2008). However, despite the restrictive media environment, investigative journalism began to rise, keeping the public abreast of issues of public concern such as high-profile corruption by state, corporate and political elites. The uncovering of the Anglo Leasing Scandal, implicating retired president Moi and several other civil servants, is a good example of the early beginnings of investigative journalism in the country (Bachelard 2010; Okoth 2016).

With the gradual development of investigative journalism and critical media, it became common for journalists and whistle-blowers bringing such topics to public’s attention to face intimidation, hefty fines, and attacks (Jarso, 2010; Helander 2010; Oriare and Mshindi 2008). Although NARC government gave high hopes for reforms following the 2002 elections, media operations were still guided by section 79 of the old constitution until 2010. NARC government also used the broad regulatory framework to control media content on certain issues such as the abuse of power. This was the case in 2004 when the police stormed into The Standard Group buildings at night, seizing broadcast equipment and burning newspaper copies to prevent their circulation the following morning. This sat at odds with the anticipated reforms and served as a reminder that media environment under NARC was not any different. In
fact, no major media reforms took effect until the early 2008, following the
2007/08 post-election violence.

Although the state’s media capture appears to be a worrying trend,
journalistic practices have also eroded over the years due to “the prevalence of
corruption in journalism in Kenya” (Ireri, 2016, p. 245), and, to some extent,
lack of professionalism in journalistic practices. Obviously, this is not the case
for all media organizations. As Mbeke, Ugangu and Okello-Orlale (2010)
observe, “large media organisations such as Nation Media Group, Standard
Group, Royal Media Services and Radio Africa produce products and services
that indicate a high level of professionalism” (p. 28). It would therefore be
false to suggest that the continued strains put on media operation were due to
poor levels of journalistic professionalism. What is worrisome is the growing
infiltration of political and corporate interests in the determination what is
newsworthy.

In terms of media regulatory bodies, two “independent” organs guided
media practice up until 2013: Communication Commission of Kenya – CCK
(now Communication Authority of Kenya) and Media Council of Kenya –
MCK (with amendments in 2013). CCK’s mandate included, among others, the
licensing of telecommunication services, approval of communication
equipment, management of radio frequency spectrum, and implementation of
universal service obligations for telecom and postal services (Mitullah, Mudhai
and Mwangi 2015). Although the Commission identified itself as an
independent body, most of its activities were supervised by the former Ministry
of Information and Communication. It is therefore not surprising that licencing
privately-owned media was very selective with audience reach limited to select
urban areas. MCK, on the other hand, set the standards of journalistic practice.
On a broader scale, MCK acted as an arbitration body between the media, the
public and the government.

With the adoption of the 2010 constitution, the parliament adopted a series
of relegations in 2013 which saw changes in the existing media governing
bodies. Among them were the Kenya Information and Communication –
Amendment – Act (KICA) and Media Council Act, which amended the
operations of CCK and MCK by establishing the Communication Authority of
Kenya (to replace CCK) and Media Council of Kenya (with a revised mandate).
These Acts supplement Articles 33 (freedom of expression), 34 (freedom of the
media), and 35 (access to information) of the 2010 constitution, all of which
target media practice. Article 33 provides that freedom of expression does not
allow the circulation of content that promotes “propaganda for war; incitement
to violence; hate speech; or advocacy of hatred that – constitutes ethnic
incitement, vilification or others or incitement to cause harm; or is based on
any ground of discrimination”7. Article 34, on the other hand, observes that
“the State shall not – (a) exercise control over or interfere with any person
engaged in broadcasting, the production or circulation of any publication or the
dissemination of information by any medium; or (b) penalise any person for

any opinion or view or the content of any broadcast, publication or dissemination". Finally, Article 35 states that “(1) 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”.

Whereas these regulations provide some clarity with respect to contemporary media operations, the arrival of the Jubilee regime in 2013 has brought with it new changes in media and journalistic practices. Because Kenya has been the victim of numerous terrorism attacks in recent years, the Jubilee government has enacted policies around the dissemination of information on terrorist attacks, including public access to and use of government information or records. The Access to Information Law signed by president Uhuru Kenyatta in 2016 is a good example of these changes. Although it is unquestionable that taking measures on news content generating unwarranted public fear is necessary, such measures, if left unchecked, create incentives for repressive media bills/Acts. It is believed these new regulations targeting media coverage of matters of insecurity explain the steady decline in Kenya’s Media Freedom Index since 2013. While it is also true that such normative indexes are subject to mixed interpretations, what is certain is that media coverage of the government in a negative light (e.g. covering police brutality) have culminated into tight media regulations and attacks on journalists. For example, media coverage of the terrorist attacks at Westgate Mall and Garissa University in 2013 and 2015 which exposed government insufficiencies in matters of domestic security, soured state-media relations. The exposure of the lootings perpetrated by the defence forces at Westgate Mall were deemed “inciteful” or “propaganda” despite video evidence. Another blatant example of “unwritten restriction” is the clampdown on journalists who publicize the number of Kenyan defence forces killed in Somalia. National security is increasingly used as grounds to limit journalists’ coverage of matters relative to internal insecurity.

The highly contested general elections in 2017 and subsequent nullification of the presidential results also add to the worrying political interference in media. The switching off the signals of major TV stations (e.g. Nation TV, Kenya Television Network, Citizen TV, and live K24) and their

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8Ibid, Article 34.
9Ibid, Article 35.
subsidiary radio stations in 2018 is a good example of this concern\textsuperscript{14}. Worse, with accusations of bias coverage from both the opposition and the incumbent government, journalists and news editors seemed to be the primary targets of harassment, intimidation, and physical attacks from both parties, most of which were perpetrated by the police and military forces. Policing online content has also increased in recent years to reduce the circulation of hate messages online. Unfortunately, independent news bloggers covering the state in a negative light have been the primary targets of police brutality\textsuperscript{15}. In a sense, these dynamics seem to force journalists and news editors into cooperating with the state in exchange for “freedom”.

These examples not only show the interconnections between media regulations and state-media relations, they show that media environments influence journalistic practices. This, of course, is not anything new. A number of studies, including those specific to Kenya, have already shown how media environments influence the journalistic field. Lohner, Neverla and Banjac (2016), for instance, emphasize conditions such as “... (1) historical development, (2) political system, (3) political culture, (4) media freedom, (5) level of state control and regulation of media by the state, (6) media ownership and financing, (7) structure of media markets and patterns of information distribution, (8) orientation of media, (9) political/societal activity and parallelism of media, (10) journalism culture, and (11) journalistic professionalism” (p. 1). Other studies have coined these conditions more broadly as “media fields” (Benson 2006; Couldry, Livingstone and Markham 2010), highlighting the significance of political economic approaches to understanding media operations. To put it in Benson’s (2006) words, “it is just as much a mistake to locate journalistic (or any other form of specific cultural) autonomy on the side of a paternalistic as on the side of a privatizing state” (p. 197). This is because media quality also depends on the degree to which it is aligned with commercial interests, political parties, and ethnic group interests. Journalistic culture, including the problems of bribery and corruption, must also be examined closely if issues of impunity are to be dealt with in a meaningful manner.

\textbf{Political Impunity, “Policy Laundering”, and “Critical Junctures”}

As argued in the previous sections, the shifts in media regulatory framework have largely been influenced by the changes in political environment. Over the years, the media sector has been the target of varying repressive bills, often justified on the grounds of curbing irresponsible journalism. Although this is sometimes true, given the infiltration of corruption at the editorial levels (see Iteri, 2016; Kanyinga, 2014), the temporal survey of media regulations presented in the previous sections show how the changes in political environments influence media regulations/policies. It is no surprise


that there is a correlation between regime change and fluidity in media regulatory mechanisms.

Several studies have documented the many attempts made by the state to implement controversial media bills, and this, with little to no consultation with media owners’ associations or the union of journalists (Oriare and Mshindi 2008; Mitullah, Mudhai and Mwangi 2015; Obonyo and Peel, 2012). For years, this seemed to be the path many media policies took. If some of the proposed regulations/policies failed to materialize, it is probably due to the uproar by public and media activists over the years. Examples of such attempts include the failed effort to establish a Task Force of Press in 1993 by the KANU government (Mbeke 2008). This was followed by another attempt, in 1995, to introduce the Kenya Mass Media Commission Bill and Press Council of Kenya Bill, but, again, both of which failed due to pressure exerted on the government by media and human rights activists (Moggi and Tessier 2001).

In an attempt to make sense of the constant shifts in media regulations, some have argued that the creation of the Kenya Union of Journalists (KUJ) in 1998 and subsequent formation of the Media Council of Kenya (MCK) in 2002 (with operations in 2004) were due to the concerns that the Kenyan government was increasingly seeking ways to stifle independent media operations (Collender 2005). This is probably why the then MCK established the Code of Conduct and Practice of Journalism in Kenya in an attempt to guide journalists through their news coverage. What is certain is that the existence of independent media regulatory bodies has never stopped government attacks on journalists or their respective media organizations. A good example of this is the invasion of the Standard Media Group by state officials in 2004 and 2008. The failed 2007 policy that required journalists to disclose their sources to the police forces and/or courts is another clear example of the state’s numerous attempts to establish policies limiting the exposure of acts of impunity. For some, these challenges raise the question of whether the media should self-regulate, or the state should take active role in regulating the media (Obonyo and Peel, 2012). This, according Obonyo and Peel (2012), remains the fundamental question that needs “to be negotiated between the media, those in power and the general public” (p. 139).

Static constitutional amendments up until the 2010 constitution also highlight the vocation by successive governments to restrict reforms. Despite the changes in regime, the media environment seems to have remained volatile. Under the first regime (1963-1978), Jomo Kenyatta made a handful of changes to the constitution to reflect Kenya’s newly gained sovereignty. Under Daniel Moi (1978-2002), the vast majority of policies were enacted little public consultation. During Kibaki’s NARC government (2002-2013), media operations were still closely monitored by the state even though there was an exponential growth of commercial and independently-owned news media during this period. Under Uhuru Kenyatta’s Jubilee government (2013 to date), regulatory bodies have seen their powers amended (the 2013 Information and Communication Act) and a Tribunal (Multimedia Appeals Tribunal) established to address complaints against journalists and media houses. One emerging concern is that the supposed Tribunal is not entirely independent of
the state, raising serious questions with regard to fair hearing of journalists. For instance, a successful compliant may cost media houses up to USD $20000 in fines, while individual journalists risk fines up to USD $5000. In a sense, the hefty fines seem to be a deterrent mechanism aimed at co-opting journalists and news editors into friendly coverage of the state.

This does not mean journalistic practices, particularly the smaller news outlets, do not leave much to be desired in terms of professionalism and ethical conduct. Several studies have documented the role played by news editors and/or journalists in institutionalizing or perpetuating corruption and impunity by accepting bribes or “brown envelops” to “kill” certain stories (see Mwangi, 2008; Helander, 2010; Ireri, 2016; Kanyinga, 2014). The argument advanced here is that successive regimes use regulations and or policy as a tool to conveniently define what journalism is or should be, which potentially impact news coverage of acts of political impunity. This fluidity in media regulations could be understood as a form of policy laundering, defined by Hosein (2006, 228) as “a practice where policy makers make use of other jurisdictions to further their goals, and in so doing circumvent national deliberative processes”. Two factors are indicative of a policy laundering environment, according Hosein (2006). First, the “national consultative processes disappear or are weakened, as important policy decisions take place outside our traditional democratic institutions” (p. 228). Second, “policies are shaped by foreign interests and foreign processes” (p. 228).

The notion of policy laundering captures the complex environment within which media regulations are established in Kenya. Whereas it is unquestionable that the challenges of national security have been on the rise, it is increasingly becoming risky for journalists to expose scandals in government without political interference on news content, even though recent efforts against corruption are applauded. The coverage of opposition events during election cycles and police brutality have also been conveniently construed by the state as dissemination of “inciteful” information likely to cause public fear. As a result, some news anchors have resigned from mainstream media outlets due to arbitrary interference with news content. Overall, these cases show potential linkages between regime change and the shifts in state-media relations.

Concluding Remarks

This article discussed the interconnections between media regulations, state-media relations, and the shifts in Kenya’s media landscape. It argued that broad media regulations provide room to nurture an environment of self-censorship, particularly on matters of corruption and political impunity. The article adopted a political economic approach to assess the key temporal periods and how they have variably contributed to media regulatory framework, including media reach and concentration. The argument advanced is that these

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17Ibid.
shifts have profound influence on journalistic practices, editorial independence, and the overall media landscape in Kenya. At the core of these changes is the idea of “policy laundering”, used as a potential frame to make sense of the rapidly changing media and political environments. Obviously, the regulations discussed here are not, by any means, exhaustive given the rapidly changing media regulatory landscape in Kenya. The longstanding question remains whether the Kenyan media is at a crossroads. To borrow from McChesney (2007), the answer lies in how “critical junctures” are used. For McChesney, recent transformations in the media sector, supported by the digital revolution, provide a window of opportunity to effect sustainable media systems that are creative, humane, and egalitarian. Although McChesney’s work draws primarily on the American media system, its relevance in understanding media systems stretches beyond the American context. Accordingly, “critical junctures” are crucial moments likely to bring about changes within a shifting media structure that, otherwise, would never be possible.

With another referendum potentially in the making, media organizations/unions could potentially influence several forms such as pushing for live broadcast of parliamentary proceedings to increase transparency with respect to national policies. Bringing clarity to broad clauses could also limit convenient interpretations that criminalize online political dissent or abusive attacks on independent political bloggers. This is because opinion pieces are part of a vibrant media environment contributing to the diversity of media content. Given the fact that the majority of media outlets are owned by politicians or influential business persons, revisiting media ownership patterns may be something worth pursuing. Finally, because journalists and news editors have also played a central role in facilitating and institutionalizing political impunity, media owners may consider ways of incentivizing journalists/editors who uphold the highest journalistic ethics. Overall, if the patterns of media regulations described here are anything to go by, the new regime anticipated in 2022 is likely to bring with it new changes to media regulatory frameworks.

References


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