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## Mapping structural conditions of journalism in Kenya

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Mapping structural conditions of journalism in Kenya

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## Executive Summary

Using a multi-dimensional scheme as a conceptual framework, this working paper maps the structural conditions relevant to journalism and conflict communication in Kenya. The report makes use of a broad range of country-specific academic literature, as well as reports compiled by various non-academic organisations active in the media sector.

- 'Structural conditions' are understood as the totality of (formal and informal) orders and structures that characterise media and journalism in a certain space, usually a country.
- Eleven interrelated and interdependent dimensions of structural conditions relevant to media and journalism have been extracted and adapted from existing literature, guiding structured and comprehensive analysis within specific (country) contexts: (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.
- Analysis suggests that media and journalism in Kenya face highly complex and changing structural conditions shaped by the country's colonial and authoritarian legacy, its cultural and ethnic diversity, by hybrid forms of current political governance, and an ambivalent political culture characterised by a strong state, majoritarian politics, and a system of clientelism favouring non-compliance with the rule of law and corruption.
- Unprecedented guarantees of freedom of media, expression and information which were granted by the 2010 constitution have been *de facto* repealed to a large degree by recent media legislation, affording the executive more power to regulate the media and impose heavy fines. In fact, both individual journalists and media outlets in all media sectors are regulated by oversight institutions favouring the government as opposed to non-government stakeholders. In this framework marked by political interference, Kenyan journalists regularly face intimidation, threats and attacks.

- The media landscape in Kenya enjoys a broad range of state-owned, private and (non-commercial) community media outlets. However, this pluralism is challenged not only by a high level of concentration and cross-media ownership but also issues of political ownership.

These structures are reflected in a high level of political/societal activity and parallelism of media, and an ambivalent journalism culture which fluctuates between critical and concordant, clientelist reporting. Within this context, the journalistic profession is marked by varying standards of journalism education and declining systems of self-control and self-regulation. Furthermore, journalists have a poor public reputation as well as low levels of professional security facilitating bribery and various forms of self-censorship.

## Introduction

This working paper aims to systematically and comprehensively map the structural conditions relevant to journalism and conflict communication in Kenya.

In specific situations such as democratisation conflicts and in certain countries, as well as in general terms journalistic performance and journalism culture are informed by various interrelated constituents: journalistic work practices, role perceptions, ethical orientations, and, last but not least, the *structural conditions of journalism* (Neverla et al. 2015).

Based on Kleinsteuber (2005, p.275), by *structural conditions*, we understand the totality of (formal and informal) orders and structures that characterise media and journalism in a certain space, most commonly, a country.

These structural conditions are established on four levels: (1) the respective society in general, (2) the media system, (3) the professional field of journalism and (4) the particular media organisation.

Several dimensions can be extracted and adapted from existing research on structural conditions of media and journalism, which is largely based in comparative studies on media systems (Hallin and Mancini 2004, 2012; Blum 2014). These dimensions are listed and described in the table below.<sup>1</sup>

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<sup>1</sup> For a more in-depth description of dimensions please refer to Lohner et al. (2016).

**Table 1: Structural conditions of journalism: dimensions**

Dimension	Description
Historical development: Political stability of country	<ul style="list-style-type: none"> <li>• Changes of political systems / regimes over time and impact on the media system</li> </ul>
Political system / form of Government	<ul style="list-style-type: none"> <li>• Formal and informal rules regarding:               <ul style="list-style-type: none"> <li>○ Freedom of people to vote</li> <li>○ Degrees of division of power (system of checks and balances among the executive, legislative, and judicial branches of government)</li> <li>○ Institutionalisation of the rule of law and civil liberties</li> </ul> </li> </ul>
Political culture	<ul style="list-style-type: none"> <li>• Concepts, ideas and structures ruling both the functioning of institutions (media) and agency of political and societal actors as well as citizens:               <ul style="list-style-type: none"> <li>○ Centrality of the state in aspects of society (low state intervention of liberal system vs. high involvement in welfare system)</li> <li>○ Distribution of political power (majoritarian vs. consensus politics)</li> <li>○ Relationship between political institutions and the public (individualised vs. organised pluralism)</li> <li>○ Level of cleavage of political parties and ideologies (polarised vs. moderate vs. fragmented vs. hegemonic pluralism)</li> <li>○ Adherence to formal rules, procedures and political institutions (rational-legal authority vs. clientelism)</li> <li>○ Political culture of citizens: how people see the role of the state, treat different ethnicities, religions, linguistic groups, participate in community/political life (voter turnout), the kind of political debates/historical traditions they support</li> </ul> </li> </ul>
Media freedom	<ul style="list-style-type: none"> <li>• Level of media freedom in legal framework (constitution, media laws and regulation on censorship, information access and control, legal protection of journalistic actors, legal autonomy of regulation bodies)</li> <li>• Policies and actions by state actors or legal bodies</li> </ul>
State control / regulation of media	<ul style="list-style-type: none"> <li>• Intention of state control (Political control through organisational, personnel and content-oriented intervention vs. apolitical regulation via distributing frequencies, limiting advertising)</li> <li>• Media types that are being controlled/regulated, addressees of media control</li> <li>• Procedures regarding licensing of media outlets, accreditation of journalists</li> <li>• Character of regulation bodies (state or independent public institutions)</li> <li>• Nature of prosecution of journalists by state actors</li> </ul>

Media ownership and financing	<ul style="list-style-type: none"> <li>• Whether media are owned by private companies and/or the public or state</li> <li>• Market driven media, mixed-source financing, and state financing</li> </ul>
Structure of media markets and patterns of information distribution	<ul style="list-style-type: none"> <li>• Audience and market share of different media types</li> <li>• Size of media market / Level of internationalisation</li> <li>• (De-)centralisation of media market / system</li> <li>• Pluralism / concentration of ownership</li> <li>• Patterns of media distribution and circulation of information</li> </ul>
Orientation of media	<ul style="list-style-type: none"> <li>• Primary social focus that guides news production: commerce/market oriented, divergent, society oriented</li> </ul>
Political / societal activity and parallelism of media	<ul style="list-style-type: none"> <li>• Tendency of media to intervene in political debate / engage in advocacy / influence political events</li> <li>• Alignment between media outlets/individual journalists and political parties and societal actors (religious institutions, trade unions, business)</li> <li>• Polarisation of the public/audiences according to the political orientation of media which they consume</li> </ul>
Journalism Culture	<ul style="list-style-type: none"> <li>• Overall status of journalism and role perception of journalists in relation to other social systems: investigative/critical, ambivalent, or rather concordant to those in power</li> </ul>
Journalistic Professionalism	<ul style="list-style-type: none"> <li>• Internal rules and norms of the professional field and media institutions: <ul style="list-style-type: none"> <li>○ Level of professional education/training</li> <li>○ Level of professional organisation</li> <li>○ System of self-regulation</li> <li>○ Awareness of professional norms and practices</li> <li>○ Prestige/competitiveness of journalistic profession</li> </ul> </li> </ul>

It is important to keep in mind that, while structures are often referred to as something static or ‘given’, they are established by different *actors* and always subject to *change* (Hallin and Mancini 2012b, pp.302–303). This particularly applies to countries in transition. Thus, agency and the procedural dimension are also an important focus of analysis when the structural dimensions of journalism are being investigated.

We will provide a systematic and critical analysis of the structural conditions of media and journalism in Kenya based on the scheme of dimensions. The report builds on country-specific literature that touches on subjects raised within each of the



dimensions, aiming at a comprehensive overview of the structural conditions of media and journalism in the country.

Furthermore, using country-specific literature should enable us to identify possible additional factors of structural conditions specific to the Kenyan context.

Limitations in existing research and the availability of current facts and figures have resulted in varying amounts of information on certain dimensions. Due to the focus of existing literature, this paper will focus on the structural conditions concerning (1) Kenyan society in general, (2) the media system, and (3) the professional field of journalism. Structural conditions at level 4 (particular media organisation) will be treated in detail in the MeCoDEM interviews with journalists reporting on democratisation conflicts.

In addition, it should be noted that the editorial deadline for this working paper was April 2015 and therefore subsequent publications relating to structural conditions of journalism in Kenya are not reflected here.

## Country report: Current structural conditions of journalism in Kenya<sup>2</sup>

Kenya is a country situated in the Eastern part of Sub-Saharan Africa with 45 million inhabitants belonging to a range of ethnic groups such as Kikuyu, Luhja, Luo, Kalenjin and Kamba.

Since its independence from British colonial rule in 1963, Kenya has faced several, fundamental changes to its political system. According to Blum's typology, its **political history** can be seen as an example of "broken continuity" (Blum 2014). Ogola points out that Kenya's news media system has developed and progressively redefined itself against the complex political and economic structures characterising the country's distinct political phases between the 1960s and the present day (Ogola 2011).

While the first years of **Jomo Kenyatta's rule** as the first president of independent Kenya between 1963 and 1978 were "briefly but broadly attended by national political goodwill" (Ogola 2011, p.80), under his presidency Kenya soon evolved into a coercive and repressive state. The political goal of "nation-building" was pursued through an "ideology of order" (Atieno-Odhiambo 1987) and opposition was systematically contained and delegitimised on the grounds that competing (political, ethnic and religious) interests would impede the country's development. In this context, media were modelled on the developmental journalism paradigm and seen by the state as partners and a central instrument to promote the narrative of national unity in the nation-building project (Ogola 2011, p.80). This project gradually led to the co-option of the mainstream media by the state. The print market was monopolised leaving only two mainstream newspapers, The Daily Nation and the East African Standard. While these newspapers were privately owned, they were directly and indirectly controlled by the state, particularly through their advertising revenue as the government was the largest advertiser at that time (ibid., p.81).

Under Kenyatta's successor **Daniel Arap Moi** who served as President from 1978 to 2002, Kenya evolved from a de facto to a de jure one party state, a situation

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<sup>2</sup> We thank our colleagues Gamal Soltan and Yosra El Gendi for their valuable contribution to this report.

formalised by law in 1982 (Mueller 2008, p.189). Moi was a member of the Kalenjin ethnic group and disempowered the Kikuyu elite. Governing in an authoritarian and corrupt manner, Moi quickly consolidated his position and concentrated all political and economic power in the hands of his Kenya African National Union (KANU), dominated by the Kalenjin tribe, and a handful of allies from minority groups. The “Moi era was infinitely more repressive than that of Kenyatta’s rule” (Mueller 2008, p.188) and has been described as “imperial presidency” (ibid., p.197). The first phase of Moi’s authoritarian presidency was marked by an increase of government involvement in the media sector. The government continued to use state mechanisms to intimidate political opposition and alternative media.

In the absence of a press law, intimidation of media workers and organisations, and the detention of newspaper editors was commonplace. Between 1988 and 1990, nearly twenty publications were banned. Moi also tried to increase state control over the two major newspapers. While connections with KANU members enabled him to buy a majority share in the *Standard*, he did not gain direct control of the *Nation*, but asserted his influence through business relations with the group’s principal shareholder, the Aga Khan (Ogola 2011, pp.82–83). This interdependence allowed both newspapers to grow economically under the Moi regime, with only occasional state intimidation. Additionally a national party newspaper, Kenya Times, was established as a “government mouthpiece” (ibid., p.83) acting alongside the state broadcaster, the Voice of Kenya (the name was changed to Kenya Broadcasting Cooperation in 1989).

Increased economic decline and “informalization of the state” (Ogola 2011, p.83), with executive power almost exclusively assigned to the president and KANU party, seriously eroded the government’s legitimacy in the late 1980s and early 1990s. This “opposition culture” (Haugerud 1995, p.15) also applied to the media sector. Opposition politicians funded a number of press outlets and alternative voices were now heard within mainstream newspapers. Due to increasing political pressure exerted by opposition groups, civil society, sections of the church, and the international community, the government was forced to readopt multipartism in 1992. The reintroduction of political pluralism allowed for the liberalisation of the media: several new media outlets emerged and existing mainstream news media switched

from their traditional developmental focus to the market model. The *Nation Media Group* saw massive growth in its portfolio because of new private capital, making it gradually less reliant on state patronage and allowing more adversarial reporting, although criticism was limited so as not to endanger good business relationships between the Aga Khan and the Moi administration (Ogola 2011, p.84). By contrast, due to the KANU's shareholding in the company and governmental involvement in editorial decisions, The *Standard* remained loyal to the regime, campaigning for Moi in the 1997 presidential elections.

Although the *Nation* and *Standard* continued to dominate the print sector despite liberalisation of the media, the broadcast sector experienced fundamental change with the introduction of the first private broadcast media such as the FM radio station, *Capital FM* and the TV station, *Kenya Television Network*. However, the fact that these two stations were both owned by the *Standard Group* (through a subsidiary, Baraza Limited) and another new entrant *Royal Media Group*, belonged to Samuel Kamau Macharia, a prominent Nairobi businessman with strong government links, demonstrated that broadcast licence acquisition "was based mainly on political connections and state patronage" (Ogola 2011, p.84).

Hence, although the early 1990's were marked by liberalisation, Kenya "became a case study of the problematic relationship between multi-party elections and genuine political reform" (Cheeseman et al. 2014, p.5). President Moi and KANU maintained their hold on power and national elections in 1992 and 1997 "were each preceded by the explicit mobilization of ethnic constituencies and substantial violence, which sought, at least in part, to drive Kikuyu, Luo, Luhya and Kisii voters – then associated with the opposition – out of particular areas" (*ibid.*, p.5).

A two-term limit forced Moi from power in 2002 and his misjudgement of succession politics facilitated a new era in Kenya's political development. Moi backed Uhuru Kenyatta, the son of his predecessor Jomo Kenyatta, as the KANU presidential candidate, and so unwittingly aided an alliance of major politicians and ethnic constituencies in the National Rainbow Coalition (NaRC) (Cheeseman et al. 2014, p.5). In December 2002, voters overwhelmingly elected members of the NaRC to parliament and NaRC candidate **Mwai Kibaki** to the presidency. The largely

peaceful elections “in which multiple minor irregularities were made irrelevant by the size of Kibaki’s overall victory” (*ibid.*, p.5) marked an important turning point in Kenya’s democratic evolution. There were high expectations of the new government, with some calling the landslide win a “second liberation” or even “revolution” (Schmidt and Deselaers 2015, p.12).

However, the “appearance of political transition was partly illusory” (Cheeseman et al. 2014, p.5). The new government came to power with a commitment to create a new constitution, but debate over its terms soon created a rift in the NaRC. Raila Odinga, who had supported Kibaki in the 2002 elections, switched his allegiance on the grounds that the party did not offer sufficient reform and failed to create the position of Prime Minister that he had been promised in return for his electoral support. Subsequently, Mwai Kibaki’s government did not succeed in the 2005 Constitutional Referendum. Kenya’s political stability “crumbled for a while” (Schmidt and Deselaers 2015, p.12), and finally collapsed in December 2007; at the presidential elections, Kibaki and Odinga ran against each other. Kibaki was declared the winner by the Kenyan Elections Commission amidst widespread accusation of malpractice and multiple failings of the electoral process triggering unprecedented violence between the country’s different ethnic groups. The Commission of Inquiry into Post-Election Violence and the government confirmed that the outbursts resulted in 1133 deaths, and up to 700,000 more were people displaced (Cheeseman et al. 2014, p.5).

The *post-electoral violence 2007/2008* came as a “shock for Kenyans and to an international community that assumed that 2002 had marked a stable political transition” (Cheeseman et al. 2014, p.5). The violence offered terrifying evidence both of the need for real political reform and the value of peace and stability.

A diplomatic deal mediated by international negotiators appointed by the African Union ended the violence. Following the agreement, power was shared between the two rivals, President Kibaki and Prime Minister Odinga; Kenya was governed in a grand coalition between 2008 and 2013 (Cheeseman et al. 2014, pp.5–6). Considered as a “necessary step that must precede more ambitious reforms” (Cheeseman 2008, p.180), the **‘unity government’** managed to pass a long

awaited new constitution (also offering a changing framework for media as will be elaborated below).

In 2013, the unity government 'experiment' ended when the **Jubilee Alliance** of Uhuru Kenyatta and William Ruto won both the presidential contest and a parliamentary majority in contested but mostly peaceful elections, opening the current chapter of Kenya's political history (Cheeseman et al. 2014). In the meantime, Kenya was confronted with a new threat to national security. From 2011 the country faced several major terrorist attacks by Al-Shabaab, characterised as retribution for the Kenyan military's deployment in the group's home country of Somalia.

To summarise, the legacy of different political phases, political volatility due to ethnic divisions and the threat of terrorism from Al-Shabaab impact on the current structural conditions of Kenya's political and media system in many ways.

One of the hallmarks of a democratic **political system** is the structure of checks and balances established by formal as well as informal rules among the executive, legislative, and judicial branches of the state.

Cheeseman (2008, pp.180–181) noted that between 2002 and 2007, Kenyan politics had failed to implement comprehensive political reform and establish adequate formal rules to ensure elections with democratic outcomes:

Democratic elections do not sit well with an authoritarian constitution, and coalition building and elite compromise are undermined by the dominant nature of the presidency and the lack of institutions that operate independently of the executive. The potential for conflict in Kenya would have been significantly diffused if the government had not deliberately manipulated the process of constitutional reform to prevent the decentralization of power away from the executive.

As Mueller (2008, pp.197–198) argues, conditions favouring institutional change did not apply in Kenya after the election of the NaRC government in 2002. Rather, politicians feared institutional innovation which might have led to the loss of political

power. According to Mueller (*ibid.*, pp.194–195), it was informal norms which increasingly undermined formal rules by trumping the autonomy of independent branches of government in favour of a highly personalised presidency. This phenomenon of deliberately weak autonomous institutions outside the presidency was considered a precipitating factor in Kenya’s implosion following the 2007 election; institutions such as the Electoral Commission and the courts, which in theory could have dealt with the challenges, were viewed as partisan and as being tied to the executive rather than independent from it (Cheeseman et al. 2014, p.3, Mueller 2008, pp.197–199).

With the ***new constitution of 2010***, Kenya seems to better meet the standards of a democratic system (listed in chapter 2: pluralism of parties, governmental change following a change in majority, the division of powers). According to the constitution, the politics of Kenya take place in a framework of a presidential representative democratic republic: the President is both head of state and head of government. Executive power is exercised by the executive branch of government led by the President, who chairs a cabinet composed of people chosen from outside parliament. Whereas this presidential strength seems conform to the long-lasting tradition of a strong executive, the new constitution grants the National Assembly relatively high levels of independence from the executive and introduces new procedures for the conduct of elections, new judicial safeguards to ensure integrity, and a new regulatory framework for political parties (Cheeseman et al. 2014, p.6). It also promotes decentralisation, establishing 47 new county governments (*ibid.*, pp. 3–4). Thus, the constitution is considered to feature “stronger checks and balances, and is potentially far more effective at integrating marginalized communities into the political system” (*ibid.*, pp.17–18).

Elections are the central test case for newly introduced rules and institutions and the polls of 2013 were intended to be a major step in Kenyan political transformation. Indeed, Kenya experienced a very high official voter turnout (86 per cent) and, while the Jubilee Alliance of Kenyatta and Ruto won both the presidential contest and secured a parliamentary majority, elections for the newly devolved structures of government left many county governments in the hands of other parties. Though there have been numerous legal appeals over the outcome of many of the

contests, the decisions of the courts have been accepted, “albeit often grudgingly, by the losers” (Cheeseman et al. 2014, p.3). However, although the 2013 elections passed off largely peacefully, according to Cheeseman et al. (*ibid.*, pp.3-4) they did not confirm a process of democratic consolidation or herald the end of inter-ethnic tension and mistrust. Rather, they argue that the course of the elections might have been made possible by specific circumstances which can be evaluated rather ambivalently in terms of their ‘democratic value’:

First, the decision of the International Criminal Court (ICC) to prosecute Kenyatta and William Ruto for crimes against humanity for their alleged role in the postelection violence of 2007/08 had the unexpected effect of bringing these former rivals together in the Jubilee Alliance, which reduced the prospect for violence between their respective Kikuyu and Kalenjin communities. Second, a pervasive ‘peace narrative’ emerged that was associated with a plethora of monitoring and early-warning mechanisms, but which also delegitimized election protests and political activity seen to challenge the status quo and encourage instability. Combined with the heavy deployment of security forces in potential ‘hot spots’, this significantly constrained the options available to the losing candidate: civil disobedience was both less popular, and more risky, than in 2007/08.

For all of the limitations in Kenya’s democratic system, the country may be undergoing a gradual process of democratisation: although incumbents have constantly sought to block reform, remarkable progress has been made over the last 20 years. Over five successive elections, “Kenyan voters and opposition parties converted political openings into political change” (Cheeseman et al. 2014, p.17). Even dramatic setbacks such as the breakdown of the political system around the 2007 elections did not bring an end to the slow process of institutional change; rather, they created a “new window of opportunity” within which long awaited institutional reforms were initiated and Kenya finally received a constitution that features stronger checks and balances (*ibid.*, p.17).

In summary, present day Kenya can be described as a *hybrid regime*, incorporating the characteristics of both a democracy and an authoritarian system



(Levitsky and Way 2010). This is even more evident when one takes a closer look at the political culture and current developments in the media regulations shaping structural conditions of journalism in Kenya.

Basic characteristics of the **political culture** in Kenya have already been indicated above.

Given its authoritarian history, the state has traditionally played a central role in regulating many aspects of Kenyan society. This **regulatory power of the state** declined when market-oriented reforms began in the latter half of the 1980s and the onset of economic, and later, political liberalisation extending to other aspects of society (Barrett et al. 2006, p.250). However, the state remains an important regulator, granting licences, permitting and, to an extent, controlling credit. This political culture of a 'strong state' also has an impact on media regulation. It is important to note however, that Kenyan society traditionally builds on authorities other than the central state, including ethnic groups and clans, reflecting a "traditional ordering of relations based on hierarchy and authority" (Frederiksen 2000, p.209).

In terms of preferred **modes of distribution of political power**, Kenyan elites traditionally favour majoritarian politics. The former authoritarian regimes clearly supported the principle of 'winner takes it all' and the current presidential system continues to place the concentration of power in the hands of the dominant political force. However, since 2002, several coalition governments have been elected, weakening the two-party model and demanding a certain degree of consensus and cooperation. Whereas under authoritarian regimes 'national unity' was a pretext to cumulate power to one political and ethnic group, in recent times, a 'power-sharing model' has come to prominence leading to the construction of a generally inclusive government representing a broad range of parties. However, the "unity government" (Cheeseman and Tendi 2010, p.203) of the grand coalition between 2008 and 2013 was not guided by a democratic quest for compromise – rather, as Cheeseman and Tendi suggest, government members overcame their mutual animosity and managed to find common ground mainly for the purpose of defending the system through which they had secured access to resources (*ibid.*, p.223). Accordingly, the combination of opportunity and incentive (access to state resources in order to form a union against

prosecution by national or international tribunals) explains the alliance formed between Kenyatta and Ruto since the run-up to the 2013 elections; a connection which, at first glance, is remarkable, as the communities of these leaders, Kikuyu (Kenyatta) and Kalenjin (Ruto), fought against each other in the postelection violence of early 2008 (*ibid.*, pp.223-224).<sup>3</sup>

This is directly linked to the ***level of cleavage of ideologies and the role political parties***. Traditionally, political mobilisation has evolved from ethnicity rather than distinct political ideologies: Kenyan politicians mostly obtain power by employing ethnic arithmetic and clientage as mobilising factors, whether openly articulated or otherwise. Since political change and continuity has revolved around the manoeuvrings of prominent personalities often creating parties specifically for the purpose of elections, loyalties have shifted from party to party and in this process, a salient feature of Kenyan multipartyism has been the weakness and “ephemeral nature of political parties” (Cheeseman et al. 2014, p.6). As their ideologies, policies, and programmes are largely indistinguishable, Kenyan political parties can be seen as non-programmatic “ethnically driven clientist parties” (Mueller 2008, p.186).

Against this backdrop, there is limited adherence *to a rational-legal authority* and respect for formal rules, procedures and political institutions. Rather, Kenya’s political culture is marked by a ***Clientelism*** which is rooted in ethnic divisions as well as colonial and authoritarian legacy. While under colonial rule tribalism was instrumentalised for political means, all presidents since independence have been accused of favouring their own ethnic group both politically and economically (Schmidt and Deselaers 2015, p.12). As Mueller (2008, p.200) argues, politics is viewed primarily as a “winner-takes-all zero-sum ethnic game” with the national economic cake being the prize and various ethnic groups arguing openly “that it is their turn to ‘eat’”.<sup>4</sup> This system results in poor governance and corruption. In 2014,

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<sup>3</sup> Mueller argues, that for International Criminal Court (ICC) indictees, Uhuru Kenyatta and William Ruto, “winning the election was part of a key defence strategy in order to undercut the ICC by seizing political power, flexing it to deflect the ICC and opening up the possibility of not showing up for trial if all else failed.” (Mueller 2014,p.26)

<sup>4</sup> During Jomo Kenyatta’s rule, other ethnic groups complained that the Kikuyu benefited, obtaining land and civil service jobs at their expense. Moi in turn used his power to weaken the Kikuyu’s economic base while rewarding his own ethnic Kalenjin and other marginal groups with jobs and appointments in government. Since assuming

the Corruption Perceptions Index of Transparency International which measures perceived levels of corruption in public sectors around the world, ranked Kenya 145 out of 174 countries, with a score of 25 (on a scale from 0 =highly corrupt to 100 = very clean) (Transparency International 2014). As the rule of law is still weak and politicised in Kenya, varying degrees of non-compliance and attempts to ignore or undermine the law and other formal rules still seem to be business as usual (Mueller 2014, p.26).

To summarise, **ethnicity** plays a central role in Kenyan society, impacting significantly on political culture as well as everyday life, both as a resource and form of social capital, as well as a potential challenge to a peaceful and fair community life. As will be further elaborated below, ethnicity and ethnic/patron-client ties are also very important in understanding how the **media** in Kenya operates.

In evaluating **media freedom**, it is important to distinguish between formal rules inscribed in constitutions, media laws, and the actual media policies in the country.

In terms of the **constitutional framework**, the new constitution passed in 2010 did not only comprise a generally improved system of checks and balances but was considered a turning point for Kenyan media, granting freedom of the media, expression and information, “in a way the country has not seen before” (Schmidt and Deselaers 2015, p.15). In fact, it was considered one of the strongest guarantees of its kind in sub-Saharan Africa (Maina 2015, p.29). Articles 33 and 35 of the constitution guarantee freedom of expression and access to information respectively, while Article 34 assures independence and freedom of all types of media, and protects individual journalists and media organisations from state control and interference. The regulation also bars the state from imposing penalties for “any opinion or view or the content of any broadcast, publication or dissemination” (*ibid.*, p.29). Although the comprehensive restrictions of Article 33 regarding incitement to

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power, Kibaki also has been criticised for favouring the Kikuyu from his area, and ignoring high-level corruption in his inner circle (Mueller 2008, p.201, Otieno 2005) – a system that has not been stopped either under the Unity government of the Grand Coalition or under the Jubilee government.

violence, hate speech and war propaganda also apply to freedom of the media, these potential curbs on media freedom are not considered as severe as those in the preceding constitution (Schmidt and Deselaers 2015, p.15). Unlike its predecessors, which were easily amended according to the whims of political expediency, the 2010 constitution is considered more of a “hard law” (Maina 2015, p.29) by experts as no amendments can be effected without a very high approval threshold in a popular referendum.

However, a constitution cannot provide the level of detail needed to offer sufficient regulations at national level. The Fifth Schedule of the Constitution therefore stipulated a three-year (2010-2013) timetable for implementing specific aspects of the document through **concrete legislation pertaining media freedom** (Article 19 Eastern Africa 2014, p.9). Maina (2015, p.29) states that, although there have been some significant constitutional developments, implementation is hampered by “deep-seated interests that grasp every opportunity to threaten it”.

Against this backdrop, the guarantees of the constitution still compete with anachronistic government legislation, documents and policy instruments containing provisions which are “an antithesis to freedom of media” (Simiyu 2014, p.127). The 1960 Books and Newspapers Act obliges “any person who wants to start a newspaper to be registered with the Registrar of Books and Newspapers and pay a bond of KES 1 million”, a provision that has tended to lock small players out of the media market (Open Society Foundations 2011, p.26). The 1967 Preservation of Public Security Act gives the president sweeping powers to censor, control or prohibit information that is deemed a security risk (*ibid.*, p.29). Although the majority of libel and defamation cases are tried under civil law, defamation is a criminal offence under the penal code of 1930 (*ibid.*, p.27). It is argued that the mere possibility of charges such as criminal defamation is often used to intimidate journalists (Freedom House 2014c, see also Article 19 Eastern Africa 2014, pp.9–10).<sup>5</sup>

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<sup>5</sup> According to the Freedom House Report 2014, In May 2013, newly elected deputy president William Ruto threatened to sue the *Sunday Nation* for defamation over a story about his use of a luxury private jet to visit several African countries (Freedom House 2014c). As Maina points out, the law has been used to censor films, publications and artistic expressions unfairly in the past (Maina 2015, p.34).

The reluctance of governments to implement media reform is particularly evident in *access to information rights*. The Access to Information Bill 2013 is the product of years of campaigning; previous versions were published in 2005, 2008 and 2012. After public consultations led by the Constitutional Implementation Committee, the 2012 bill became the Access to Information Bill 2013, which was still awaiting parliamentary debate at the end of 2014 (Article 19 Eastern Africa 2014, p.10).<sup>6</sup>

An even greater risk than persisting archaic media laws and missing regulations relating to access to information appears to be the *new media laws* enacted under the new Jubilee government: The Kenya Information and Communications (Amendment) Act 2013 (KICA) and Kenya Media Council Act (MCA) 2013. As these pieces of legislation grant the executive more power to regulate the media and impose heavy fines, they *de facto* repeal a considerable number of the guarantees granted by the 2010 Constitution and have been called some of “most repressive media legislation in the country’s 50-year history” (Freedom House 2014c). It is this failure to implement constitutional reform by constantly trying to maintain the status quo of archaic media laws or reversing the reforms with repressive new regulations that Maina (2015) calls “constitutivecide”.

Indeed, the recent laws have essentially modified the **system of media regulation and control**, as well as **the role of the state in regulating media**, by establishing new regulatory bodies and changing mandates as well as structures of existing institutions.

The Media Council Act 2013 created a new legal framework for the *Media Council of Kenya (MCK)*, “the leading institution in the regulation of media and in the conduct and discipline of journalists” (Media Council of Kenya 2015b). The MCK was established in 2004 as a self-regulating body overseeing the Kenyan media industry

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<sup>6</sup> However, it is worth noting that the Kenyan government launched the “Kenya Open Data Initiative” in 2011, making key government data freely available to the public through a single online portal: [opendata.go.ke](http://opendata.go.ke).

but was transformed into a statutory, independent public institution under the Media Act 2007.

The Media Council Act 2013 has retained some elements of the “co-regulation media regulation approach” (Media Council of Kenya 2015b) which was introduced by the Media Act in 2007 to regulate appointment procedures of the MCK members. As opposed to provisions in previous versions of the bill giving the executive ultimate decision making powers for selecting members of the Council, according to the final draft of the 2013 Act, members of the MCK are appointed independently and the role of the executive is limited to merely formalising appointments (Article 19 2013).<sup>7</sup> However, the Act does allow some state interference in the selection of council members as the ‘selection panel’ includes not only representatives of media stakeholders such as the Media Owners Association, the Kenya Union of Journalists or the Kenya Correspondents Association but also the “Ministry responsible for matters relating to media”. Moreover, the Council receives funding from the government and is obliged to table “through the Cabinet Secretary, before Parliament reports on its functions” – factors that could undermine section 12 of the Act, which states that the “Council shall be independent of control by government, political or commercial interests” (Republic of Kenya 2013b).

Under the official vision of “a professional and free media accountable to the public” (Media Council of Kenya 2015b), the MCK is mandated to register and accredit journalists, register media establishments, handle complaints from the public, and create and publish an annual audit of the Media Freedom in Kenya (Republic of Kenya 2013b). Several mandates and procedures have been criticised by analysts and media NGOs. The MCK’s function to “accredit journalists and foreign journalists by certifying their competence, authority or credibility against official standards based on the quality and training of journalists in Kenya” is problematic for several reasons. Firstly, it was found that the regulation created unjustifiable restrictions on entry to, and practice of journalism by prescribing minimal educational

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<sup>7</sup> The draft version of the Act, which was introduced into the National Assembly in July 2013, stipulated in section 8 (9) and (10), that the cabinet secretary would appoint a chairperson and six members of the Council out of “three persons qualified to be appointed as chairperson and twelve persons qualified to be members of the Council” (Republic of Kenya 2013a: 596).

standards as entry qualifications (Maina 2015, p.32, Article 19 2013). Secondly, the regulation was criticised for inconsistencies: it is difficult to see how the MCK can accredit journalists based on “competence, authority or credibility against official standards based on the quality and training of journalists in Kenya” (as stated in the Act) and simultaneously apply the Code of Conduct for the Practice of Journalism in Kenya which defines ‘journalist’ as anyone who “collects, writes, edits and presents news or news articles in newspapers and magazines, radio and television broadcasts, in the internet or any other manner as may be prescribed” (Article 19 Eastern Africa 2014,p.27).<sup>8</sup>

With regard to the MCK’s mandate to “facilitate resolution of disputes between the government and the media and between the public and the media and intra media”, the Act established the *Complaints Commission of the Media Council (CC)* as an independent arm of the Media Council of Kenya (Media Council of Kenya 2015a).

The Kenya Information and Communications (Amendment) Act (KICA) grants direct power to the State to control broadcast media regulation through the creation of the Communications and Multimedia Appeals Tribunal and the Communications Authority of Kenya (Schmidt and Deselaers 2015, p.16). The *Communications Authority of Kenya (CA)* replaced the Communications Commission of Kenya (CCK) as the regulatory body governing the communications sector, including broadcast and online media. Its main tasks include licensing “all systems and services in the communications industry, including; telecommunications, postal, courier and broadcasting” and frequency allocation, through “managing the country’s frequency spectrum and numbering resources” (Communications Authority of Kenya 2015). The KICA was widely criticised allowing the executive power to appoint the authority’s board and chairperson (without stakeholder input); the Cabinet Secretary is given a choice of candidates from which to select the final appointees (Article 19 2013, Freedom House 2014c, Maina 2015, p.31).

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<sup>8</sup> In this context, it has been also deemed problematic that a Code of Conduct which was created by media practitioners and stakeholders in 2001, has been included as part of the legal text in the Media Council Act, as the code can now legally be revised by legislators at their discretion (Maina 2015, p.32).

The *Communications and Multimedia Appeals Tribunal*, which falls under the Communication Authority, is authorised to hear appeals on complaints. This provision has been criticised as undermining the independence and legitimacy of the MCK's Complaints Commission by giving the state controlled tribunal jurisdiction to hear appeals from the CC "without prescribing when such appeals may be entertained in matters of law as opposed to facts" (Maina 2015, pp.31–32, Article 19 2013). The tribunal is also authorised to revoke journalists' press credentials and recommend de-registration, again undermining the MCK's accreditation competences.

Contrary to recognised regional and international standards, KICA created punitive penalties for media outlets and journalists. The tribunal can impose fines of up to KES 500,000 (EUR 4,160) on individual journalists and a maximum of KES 20 million (EUR 167,000) on media companies found to be in breach of the journalistic code of conduct. The tribunal is authorised to seize property or other assets to cover these fiscal penalties (Schmidt and Deselaers 2015, p.16, Maina 2015, p.31, International Press Institute 2014b).

To summarise the ***characteristics of supervision and regulation bodies*** under the framework of KICA and MCA 2013, it can be stated that both individual journalists and media outlets in all sectors, are regulated by "oversight institutions favouring the government as opposed to non-government stakeholders" (Article 19 Eastern Africa 2014, p.29); the state is given a significant measure of control over their establishment and conduct. Thus, although co-regulation is in force, the Kenyan state has (re-)gained a very strong position with regard to media supervision.<sup>9</sup>

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<sup>9</sup> Both laws have been condemned in the strongest terms by Kenyan journalists as well as by international media NGOs such as International Federation of Journalists (IFJ), the Federation of African Journalists (FAJ) or Freedom House, as the new statutory power over journalists seems to conflict with the 2010 constitution (Freedom House 2014c, Reporters without Borders 2013, International Federation of Journalists 2013). Two constitutional challenges were filed against both laws through the High Court, one by a number of Kenyan media houses, the second by Kenyan media professional associations (Kenya Editors Guild, Kenya Union of journalists, Kenya Correspondents Association) (Maina 2015, p.32). Although the High Court decided to temporarily stop the Minister of ICT from implementing the laws as petitions were still pending, the ruling was ignored by the government on two occasions (Maina 2015, p.32).



Another indicator for evaluating the state's role in media regulation is the ***governance of public broadcasting***. The *Kenya Broadcasting Corporation (KBC)* is an enterprise wholly owned by the state. According to the Kenya Broadcasting Corporation Act 1989 (amended in 2009), the *KBC* was established “to assume the Government functions of producing and broadcasting programmes or parts of programmes by sound or television.” In line with this definition of the broadcaster's function, the *KBC* is a largely government-controlled entity. The government appointed Board of Directors consists of government officials, and the Managing Director is appointed by the Minister for Information and Communication and as such is answerable to the Minister rather than the Board (Open Society Foundations 2011, pp.69–70). Notwithstanding its character as a government-controlled entity, the *KBC* has a public mission and shall – according to the Act – “provide independent and impartial broadcasting services of information, education and entertainment”, “conduct the broadcasting services with impartial attention to the interests and susceptibilities of the different communities in Kenya” and “keep a fair balance in all respects in the allocation of broadcasting hours as between different political viewpoints” (Open Society Foundations 2011, pp.70–71).

In the context of digitisation, another instrument of broadcasting regulation refers to ***distribution of digital broadcasting signals***. The government has licensed two signal distributors, ‘Signet’, a subsidiary of *KBC* and the ‘Pan Africa Network Group’, a Chinese company that allegedly has links to the government. This

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Despite criticism of the 2013 laws, President Uhuru Kenyatta signed another controversial bill into law in December 2014: The Security Laws Amendment Act (SLAA) was adopted in response to the increase in Al-Shabaab terrorist attacks in Kenya. Section 12 penalised media coverage “likely to cause public alarm, incitement to violence, or disturb public peace” or that “undermines investigations or security operations by the National Police Service or the Kenya Defense Forces”. Under the new law, journalists have to seek permission from the police before reporting on anti-terrorism investigations and operations. The maximum sentence for violators is three years in prison and a fine of KES 5 million (USD 55,000) (Reporters without Borders 2015b). Thus, under the pretext of improving national security, the bill contains provisions carrying the potential to severely restrict freedom of information and media when covering terrorist acts and issues related to national security (International Press Institute 2014a, Committee to Protect Journalists 2014a). In February 2015, the **Kenyan high court** struck out the media-related sections of the law; the government reacted by stating its intention to appeal against the high court ruling and that, pending the outcome of the appeal, all of the law's disputed sections would remain in effect (Reporters without Borders 2015b) – an announcement that underlines the government's determination to establish media regulations at its discretion.

has led to accusations that the government is seeking greater control over the broadcast media, and that the Chinese company may be willing to block certain signals in the future if requested to do by the government. After a two-year court battle, the Supreme Court granted the four TV stations *NTV*, *KTN*, *Citizen* and *QTV* a joint licence to distribute digital signals in January 2015. However, the analogue signal was turned off in February 2015 by CA before the four media houses had been able to establish their own digital distribution platform, resulting in widespread "blackouts" in parts of the country (Magango 2015).

Apart from the legal background, media freedom and state control is to be measured by the ***actual safety of journalists***. According to Media NGOs and academic papers, Kenyan reporters regularly face threats and attacks. Although homicides are rare,<sup>10</sup> "the safety of practicing journalists in Kenya once again became more volatile lately" (Schmidt and Deselaers 2015, p.19).

Throughout 2013, journalists faced increased pressure and threats when attempting to cover sensitive or controversial events, such as the March elections, corruption, the impending International Criminal Court trial of President Uhuru Kenyatta and other top officials, and issues related to the security forces and the terrorist attack on the Westgate shopping centre (Freedom House 2014d). A 2013 national baseline survey of 282 Kenyan journalists showed that 91 per cent faced threats in the course of their work. Only 23 per cent reported that they had never been threatened, with the rest having received threats at least once and 19 per cent more than five times (Hivos Kenya 2013). Freedom House reports 21 incidents across the country in 2013, ranging from harassment, warnings and intimidation such as death threats<sup>11</sup> to temporary detention<sup>12</sup> and physical assaults (Freedom House

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<sup>10</sup> In 2009, a reporter for the *Weekly Citizen*, was brutally murdered in western Kenya while investigating suspected corruption in a police construction project. Investigations did not lead to any arrests (Committee to Protect Journalists 2013b).

<sup>11</sup> According to Freedom House, investigative journalists for the private *KTN* television station received death threats from suspected security agents shortly after airing a program that suggested foul play in a helicopter crash that killed former interior minister George Saitoti (Freedom House 2014c).

<sup>12</sup> The Committee to Protect Journalists reported that Kenyan police in Kisumu city, threatened and briefly detained a reporter for the privately owned daily *The Star*, in connection with a story he wrote alleging criminal

2014c).<sup>13</sup> It is stated that the threats and attacks on journalists are perpetrated mainly by the police and (both national and local) government officials (Freedom House 2014c). This is in line with the Hivos study which states that the polled journalists link the biggest portion of threats to politicians and political goons (Hivos Kenya 2013, p.ix). As the International Press Institute reported in 2014, threats have severe consequences: Kenyan journalists are prompted to go underground or even leave the country (International Press Institute 2014c).<sup>14</sup>

It is not only individual journalists who face threats. The Hivos study states that “media houses have been intimidated against covering some particular individuals” (Hivos Kenya 2013, p.1). Under the Jubilee Alliance, there is also a practice of telephoning editors to ‘persuade’ them not to run certain stories. Threats to withdraw government advertising and acting against the business interests of media owners were key strategies. Critical coverage of the September 2013 terrorist attack on the Westgate shopping mall in Nairobi was met with one of the most blatant and significant examples of government media intimidation in recent times: in October 2013, Inspector General of Police David Kimaiyo singled out two journalists during a press conference, accusing them of “provoking propaganda” and threatening to “deal with [them] firmly” for their investigative reports on security operations at the mall (Freedom House 2014d, see also Schmidt and Deselaers 2015, p.19). As Freedom House reports, the foreign press also is targeted. In March 2013, information ministry

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activity by police officers in the region (Committee to Protect Journalists 2014b). According to Freedom House, the government relied heavily on hate speech laws to monitor and curtail inflammatory reporting ahead of the elections in 2013. In January, a National Steering Committee on Media Monitoring was set up to monitor hate speech, particularly on blogs and social media, and several people were arrested (Freedom House 2014c)

<sup>13</sup> According to Freedom House, in January 2013, residents in the Tana River Delta area attacked several journalists with machetes and other weapons when they went to cover a peace meeting organized by a local human rights group; the reporters were forced to flee (Freedom House 2014c). During the 2013 elections, in Homa Bay, a town in western Kenya, paramilitary police attacked newspaper reporters when they tried to take pictures of a dispute that broke out between supporters of two rival candidates (Freedom House 2014c). As the Committee to Protect Journalists reports, a correspondent for *The Star* who was found dead in his house in Mombasa had received anonymous threats via text message in connection with a story that described allegations of unlawful shipment and sale off fertiliser that had passed its expiry date (Committee to Protect Journalists 2013b).

<sup>14</sup> According to Freedom House one journalist covering the ongoing International Criminal Court (ICC) felt compelled to flee the country after being routinely followed and monitored by unknown individuals (Freedom House 2014c).

official Joseph Owiti threatened to deport foreign journalists who did not have proper accreditation, despite the fact that authority for accreditation rests with the Media Council (Freedom House 2014c).<sup>15</sup>

This situation has led to media practitioners and organisations calling for measures to provide better protection for journalists. The Media Council of Kenya has launched the “Enhancing and Up-scaling Media Safety and Journalistic Professionalism in Kenya project” which includes the creation of safety and protection mechanisms (Protocols), a safety fund, trauma counselling, safety training, and promotes dialogue between media and security institutions. It also runs a web-based alert system for journalists in distress and carries out a rapid response operation for journalists based in Kenya (Media Council of Kenya 2015c, Schmidt and Deselaers 2015, see also Hivos Kenya 2013).<sup>16</sup>

The legal framework relating to actual and developing media freedom and the safety of journalists is reflected in the latest ***media freedom rankings of media NGOs***. In the 2015 Reporters Without Borders world press freedom index, Kenya is ranked 100 out of 180 countries. Since 2010 (when it was placed 70<sup>th</sup> in the ranking), Kenya has continuously lost ground; it has not been positioned so far down the index since 2006 (Reporters Without Borders 2015a). The latest Freedom House Global Press Freedom Ranking categorised the press status as being ‘Partly free’ and internet as being ‘Free’, thus judging Kenyan media as overall ‘Partly free’ in 2013. Having improved consistently between 2009 and 2012, the score declined as a result

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<sup>15</sup> In this context, the Committee to Protect Journalists reports that the tougher government stance towards the press appears to be reflected in its response to the documentary "Inside Kenya's Death Squads," produced by Al-Jazeera in Qatar and broadcast on December 7, 2014. The documentary implicated the Kenyan security forces and foreign governments in extrajudicial killings. It included interviews with people that Al-Jazeera alleged were officers from special units who claimed the killings were part of anti-terrorism efforts and had backing from the British and Israeli governments. Although the documentary was not aired in the country, Kenyans were able to watch it via satellite TV and online. The government denied the claims and, in a press release, said it had instructed the relevant authorities to begin investigations on whether charges could be brought against the network (Committee to Protect Journalists 2014a).

<sup>16</sup> Despite the frightening developments on journalistic safety, it is worth noting that Kenya continued to be the main regional country of refuge for journalists fleeing their home countries in fear of attack or imprisonment. Since 2007, at least 52 journalists have resettled in Kenya, but often under extreme hardship (Committee to Protect Journalists 2013a).

of MCA and KICA passed in December 2013. Although Kenya's position has declined to 122 of 180 globally and the country is outperformed by 24 other African states, one should note, that in 2005, Kenyan media had the status of 'Not free' (Freedom House 2014c, Freedom House 2014b, Article 19 Eastern Africa 2014).<sup>17</sup>

There is a great diversity of outlets in the Kenyan **media landscape**. Kenya currently has about 100 radio stations, around 20 TV channels and approximately 20 regularly published print products (Schmidt and Deselaers 2015, p.13). There are four daily newspapers, one business daily, and several regional weekly newspapers in Kenya. The Daily Nation has the largest circulation, followed by the Standard, Taifa Leo, The Star, Business Daily, and The People. Weekly newspapers like Saturday Nation, Sunday Nation, the Standard on Saturday, the Standard on Sunday, The East African, as well as Citizen Express all have a wide readership (Simiyu 2014, p.126). In addition, a number of independent tabloids are published irregularly. Six private television broadcasters and one state broadcaster operate alongside a myriad of private and community radio stations (Freedom House 2014c).

When considering **media ownership and financing**, it should be noted that media liberalisation in Kenya was initially a gradual process. While private newspapers existed under the authoritarian regimes of Yomo Kenyatta and Moi, the liberalisation of the airwaves and introduction of private broadcasting media occurred in the 1990's and reflected the parallel liberalisation of the political system. The first private (English language) FM station, *Capital FM*, was licensed in 1996 and was followed by a steady increase in numbers of other English and then Swahili language stations (Ismail and Deane 2008, p.322). A notable trend in media liberalisation was the introduction of vernacular media (Nyanjom 2012, p.26). In 2000, *Kameme FM*, a Kikuyu language station, broke the state monopoly on local language broadcasting (Ismail and Deane 2008, p.322) and in 2004, a new law liberalised the media further, opening the way for a wave of new local language radio stations targeting listeners from the largest ethnic communities (*ibid.*).

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<sup>17</sup> It is of course important to note that these media freedom rankings can be criticised for focusing on structural factors based on western norms. The rankings do not measure diversity of different points of view in the media, with a lot of stories criticising the president, ministers, and corruption. We will come back to this later.

Today, there are three types of media in Kenya: state-owned media, private media and community media. *State Ownership* centres on the *KBC*. It operates the national free to air public service TV station *Channel One* and MW radio services (in both Kiswahili and English and three regional services broadcasting in a total of 17 languages), as well as three commercial FM radio stations (*Metro FM*, *Coro FM*, *Pwani FM*), Pay TV and the movie entertainment channel *Metro TV* (Open Society Foundations 2011, pp.72–75, Nyanjom 2012, p.48). With regard to funding, the Kenya Broadcasting Corporation Act 1989 (as amended in 2009) states that the government may “make grants to the Corporation as are necessary for the purposes of the Corporation”. Although the government cut funding to the *KBC* in the 1990s, the Ministry of Information and Communications has granted more than KES 400 million (USD 4.9 million) for various purposes and projects over the past few years (Open Society Foundations 2011, pp.81–82). However, the Act requires the corporation to operate as a commercial enterprise with prescribed annual returns: addition to state funding, the *KBC* therefore creates revenue through its commercial services by selling airtime through advertising, casual announcements and greetings, and renting out space on its masts for private broadcast transmitters. Of a total KES 31.4 billion (USD 387 million) spent on radio, television, print and outdoor media advertising in 2009, the *KBC*’s share came to around KES 800 million (USD 9.9 million).<sup>18</sup> The Open Society Foundation (2011, p.83) states the *KBC* is “technically insolvent”, making losses every year and facing substantial debts.

*Private media* dominate the print sector. There are also six private television networks. In addition to various mainstream FM stations, private enterprise has been the driving force of the development of vernacular radio (Schmidt and Deselaers 2015, p.13). Today, Kenya has about 30 vernacular broadcasting stations, providing at least one local language radio station for each of Kenya’s largest ethnic groups (Nyanjom 2012, p.26, Schmidt and Deselaers 2015, pp.13–14).

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<sup>18</sup> According to the Broadcasting Regulations 2009, however, *KBC* is not allowed to carry advertisements or accept sponsorship for programming on its public service stations such as the national English and Swahili channels, regional radio services or television *Channel One*. These services should be funded mainly by the government and cross-subsidisation from its commercial services (Open Society Foundations 2011, p.82).

The vernacular radio is the only *non-commercial community media*. With only a handful of community radio stations, they are still an emerging element of the broadcasting sector and differ fundamentally from commercial FM stations in that they are non-profit-making, local and participatory (Schmidt and Deselaers 2015). In order to qualify as non-profit making, community broadcasters' funding should come from membership fees, grants and donations. Stations are "prohibited from carrying advertising, but may broadcast sponsorship announcements and limited adverts specifically relevant to the community" – a clause, which has been broadly interpreted (Kimani 2015, p.53).

In terms of the structure of media markets and patterns of information distribution in Kenya, structural conditions of journalism are influenced by the *usage of the different types of media*.

*Radio* is by far the most popular medium in Kenya. Although the rapidly growing and changing media sector means there is little reliable data on newspaper circulation and readership or radio and TV audiences, it is safe to say that almost every Kenyan has access to a radio and most listen to it regularly. The average listening time is high at 37 hours per week (Schmidt and Deselaers 2015, p.13) often occurring in a community setting as one radio usually serves multiple ears in a matatu or village (Nyanjom 2012, p.22).

*TV* is the second most popular medium in Kenya and has reached 39 per cent of the population in the last years (Nyanjom 2012, p.24, Schmidt and Deselaers 2015, p.14). Both the reach of TV and the quantity of channels is likely to increase in future years due to the introduction and extension of the digital broadcasting signal (Schmidt and Deselaers 2015, p.14).

*Newspapers* are not a common source of information for Kenyans when compared to television and radio. Figures for 2010 show that only 320,000 newspapers were bought daily (Simiyu 2014, p.126). While this low circulation reflects both literacy and cost constraints (Nyanjom 2012, p.24), it is important to note that a 'library system' is quite common and readers can borrow newspapers for a

limited period of time in return for a small fee. Consequently, it is estimated that each newspaper in Kenya is typically read by 10 to 14 people considerably strengthening the reach of this media type (Schmidt and Deselaers 2015, p.14, Simiyu 2014, p.126). According to findings by Ipsos-Synovate, Kenya's daily print readership stands at slightly over three million while the weekend figure exceeds six million (Simiyu 2014, p.126).

While offline media still predominate in Kenya, there has been a remarkable increase in *internet access and mobile phone usage* during the last few years. About 39 per cent of Kenyans accessed the internet in 2013 making Kenya the leader in usage in East Africa, boasting a thriving online community including a series of critical blogs (Freedom House 2014c, Nyanjom 2012, p.33). The rise of internet usage is largely due to recent developments such as a drop in the cost of mobile phone services and equipment. Twenty-nine million Kenyans (70 per cent of the population) have a cellular service subscription and about 93 per cent of households own a mobile phone – compared to only 7.9 per cent able to access a computer (Committee to Protect Journalists 2013a, Schmidt and Deselaers 2015, p.13). However, due to the lack of infrastructure and poor electricity supply, distribution of internet services is still limited to certain areas and social groups in the country (Schmidt and Deselaers 2015, p.15).

The ***geographic structure*** of the Kenyan media market is, in part, characterised by centralisation. National newspapers and TV programmes are mainly based in Nairobi, though they have regional branch offices (Open Society Foundations 2011, p.36). Of approximately 100 licensed FM radio stations that were on air in June 2011, almost half are based in Nairobi (Schmidt and Deselaers 2015, p.13). On the other hand, *ethnic and linguistic diversity* has an impact on the media market, attaching target audiences to different media outlets.<sup>19</sup> While print publications mainly use English as their primary language of communication, with some media houses employing Swahili (thus reaching highly educated parts of

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<sup>19</sup> Whereas Kenya has two official languages, English and Swahili, a large minority of people in the country rarely speak either and for a majority of Kenyans, these are secondary languages used as lingua franca, but not the preferred languages of communication. For most, the preferred language is that of their community. More than one hundred unofficial languages and dialects are spoken in Kenya (Ismail and Deane 2008, p.321).



Kenyan society), broadcasting media offer more linguistically diverse programmes. Both the *KBC* and the largest private national broadcaster *Royal Media Services* offer programmes in both English and Swahili, plus various local languages (Nyanjom 2012, p.32). Apart from this, vernacular radio stations attract large audiences and by 2007 held a 27 per cent share of the radio market (Ismail and Deane 2008, p.322, Open Society Foundations 2011).

Despite the large amount of national outlets, the *influence of international news media* on the Kenyan media market is significant. International broadcasting stations like BBC, Voice of America, Radio France Internationale, Radio Netherlands, and Deutsche Welle Radio, all of which have a Kiswahili service, are widely available in Kenya (Schmidt and Deselaers 2015, p.14). It is likely that international influence will become even more important in future years due to digitisation, even more so as a result of the recent entry of newer, international media players such as the Chinese government's China Central Television (CCTV) to the Kenyan media market (Schmidt and Deselaers 2015, p.14, Freedom House 2014c).

However, the pluralism of media outlets is confronted with a high **concentration of media ownership**. As Schmidt and Deselaers (2015, p.17) summarise, despite continuous growth in the number of media outlets, media ownership concentration and especially cross-media ownership continue to pose a threat to the plurality of Kenyan media. In fact, a handful of major players dominate the industry: Nation Media Group, the state-run Kenya Broadcasting Corporation, Royal Media Service, Standard Media Group, Radio Africa Group and MediaMax Communication Group (Schmidt and Deselaers 2015, p.17, Open Society Foundations 2011, pp.33–38).

*Media Concentration* differs by sector, with the newspaper and TV market being more concentrated than radio.<sup>20</sup> More alarming in terms of media pluralism is

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<sup>20</sup> In 2011, approximately 20 print products (daily, weekly and monthly newspapers) were regularly available in Kenya; the share of the biggest two dailies (Nation and Standard) and four newspapers was 81.2 per cent and 96.7 per cent respectively (Simiyu 2014, pp.126–127, Schmidt and Deselaers 2015, p.13). The (free to air TV) market is concentrated most notably in terms of viewership as, in a market with around 20 TV channels in total, the four most popular TV stations have acquired 90 per cent of the viewers (*Citizen TV*: 39 per cent; *Nation TV*:

extensive *cross-media ownership* (Nyanjom 2012, p.31). The most striking example of this is the *Nation Media Group* which is not only the largest private media house in East and Central Africa with offices in Kenya, Uganda, and Tanzania but owns both important print outlets, TV channels and radio stations in Kenya. The *NMG*'s flagship product *Daily Nation* accounts for a daily newspaper market presence twice that of its nearest rival, the Standard Group's *Standard* (Nyanjom 2012, p.31). In total *NMG* owns seven newspapers, and several magazines (Simiyu 2014, p.125). Within the broadcasting sector, the company owns *Nation TV*, the second largest news channel in Kenya, *QTV* and the radio stations *Easy FM* and *QFM*. Likewise, *Standard Media Group*, as well as *Media Max* own both print titles and broadcasting channels. While *Royal Media Services* is not a significant player in print media RMS-operated radio stations and TV channels dominate the market (Nyanjom 2012, p.27; p.48). In a recent survey by Simiyu, over 69 per cent of polled journalists believe that media diversity is at risk due to trends in private media ownership (Simiyu 2014, p.139). Seventy-one per cent of those surveyed do not believe that Kenya has adequate media diversity in broadcast media and agree that legislation is needed to promote this (Simiyu 2014, p.139).

It is true that concentrated private media can act as a check on the government, lying outside of direct state control. However, threats to media pluralism and diversity are also rooted in the fact "that media and politics are closely linked in Kenya" with regard to ownership (Schmidt and Deselaers 2015, p.17), with political patronage being an obvious example. **Political ownership** in Kenya, however, has to be described as "factually true, legally untrue" (Nyanjom 2012): although there is no gainsaying that the political class in the country has invested heavily in the media industry, media ownership structures lack transparency and politicians' names often do not appear in the legal documents of the companies (Nyanjom 2012, p.36, Schmidt and Deselaers 2015, p.17, Simiyu 2014, pp.124–125). Documentary evidence is unavailable, particularly in cases where media groups have multiple shareholders, rather political affiliations have been assumed based on historical and

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20 per cent; *Kenya Broadcasting Cooperation*: 19 per cent; and, *Kenya Television Network*: 12 per cent) (Simiyu 2014, p.127, Schmidt and Deselaers 2015, p.14). In contrast, the radio sector (with about 100 stations) faces "moderate concentration at the Group level" as there are five main radio groups, with no player having a market share above 35-40 per cent (Simiyu 2014, p.127, Schmidt and Deselaers 2015, p.13).

current political alliances. This is the case for *the Nation Media Group* which was thought to be against the Moi regime and in favour of Kibaki, supporting his re-election bid in 2007 – hence the assumed control of Nation Media Group by a Kikuyu elite (Nyanjom 2012, Simiyu 2014, p.125). The *Standard Group*, whose largest shareholder is Baraza Limited (owned by the family of former President Daniel Moi), endorsed Uhuru Kenyatta in his race to the presidency in 2002 (Simiyu 2014, p.125, Nyanjom 2012, p.42). As Nyanjom (2012, p.44) summarised the situation in 2012, various politicians own FM stations, directly or by direct (e.g. spouses, kin) or remote proxy. In his report, he lists at least six declared political candidates for the 2013 elections with direct or proximate ownership links to media houses (Nyanjom 2012, p.46). Interestingly, the *Media Max group*, which owns the *People Daily* as well as *K24 TV*, *Kamene FM*, *Meru FM* and *Milele FM* has been associated with current president Uhuru Kenyatta although his ownership status cannot be confirmed (Nyanjom 2012, pp.45–46). At the time of Simiyu’s research, *Kass FM* had allegedly sold a 49 per cent stake to deputy president William Ruto (Simiyu 2014, p.125). Ruto is also associated with *Chamge FM*, a radio station that broadcasts to a largely Kalenjin audience in the Rift Valley region. Simiyu (*ibid.*, p.125) notes that four other allies of Uhuru Kenyatta have recently invested in the media industry in Kenya.

These structures of media ownership impact on the **orientation of media** and its **societal and political parallelism**. Studies state that *market-orientation* seems to have become the paramount **social focus that guides news production** in recent years, potentially conflicting with journalistic normative ideals and reporting for public interest. Wasserman and Maweu observe that Kenya’s “economic liberalization” has also led to a “corporatisation and finalisation” of the media driven “by capitalist imperatives of maximizing profits for investors, stockholders and advertisers” (Wasserman and Maweu 2014, p.1, see also Helander 2010, p.522)

On the other hand, studies have confirmed a **high level of political/societal activity and parallelism of media in Kenya** reflecting ethical and political divisions in Kenyan society, and the political ownership of media. This tendency became most visible in the context of the elections held in 2007 and 2013, when it led to oppositional forms and outcomes in reporting.

In coverage of the 2007 elections and post-electoral violence, Kenyan media clearly showed a high level of *political and societal activity*, engaging in political debate and societal developments. Several studies have pointed out that, for many journalists, covering the post-election conflicts in 2007 and 2008 was not only “personally difficult”, but “threatened impartiality in the newsroom” causing divisions along ethnic and political lines (Bunce 2010, pp.522–523). While the majority of journalists working at major newspapers did an average job, some media organisations, particularly local language radio stations, were accused of “fanning the flames of ethnic hatred, of having become politically co-opted, of marginalizing voices of reason at a time of ethnically polarized politics, and failing to uphold its function as a source of investigation of abuse of power” (Ismail and Deane 2008, pp.320–321, see also Wachanga 2011, Ireri 2013). The media was indicted as a contributor to the escalation of violence. One should note however, that while these accusations have been made by those within the media itself, the criticism of the media was also partly fuelled by politicians looking for a scapegoat.

In contrast, coverage of the 2013 elections was characterised by the paradigm to remain “neutral” and adopt a “‘Do No Harm’ framework” (Oluoch and Ohaga 2015, p.120). Given the experience of postelection violence in 2007–08, many journalists covered the elections “with extreme caution, often avoiding sensitive issues such as election irregularities and even incidents of violence” (Freedom House 2014c). Many journalists admitted to self-regulating their reporting content in the interest of peace preservation – thus committing self-censorship under the paradigm of peace journalism (Oluoch and Ohaga 2015). This behaviour can be considered as societal parallelism, as it conforms with the “pervasive ‘peace narrative’” (Cheeseman et al. 2014, p.4) mentioned above, which dominated Kenyan society at that time.

In addition, studies reveal that partisan reporting once again guided journalists in 2013. In the run-up to the elections, the alignment of media owners to certain politicians was very apparent. Many journalists found themselves facing a conflict of interest, admitting that self-censorship was necessary in order to accommodate the interests of their respective media houses in the election coverage (Schmidt and Deselaers 2015: 17, Freedom House 2014c).

In summary, vernacular media function is particularly partisan in Kenya. Due to obvious ethnic and/or political alignments, these media outlets are externally rather than internally pluralised. Moreover, the state's notable influence in public broadcasting governance and its "emphasis on the state rather than the public" (Nyanjom 2012, p.61) render the state broadcasting media "amenable to government manipulation" (*ibid.*, p.48). On the other hand, journalists working for (mainstream) private media face market pressures and the political alignments of their respective media houses, a particular challenge if the two fall together due to political ownership.

Consequently, according to Blum's typology (Blum 2014), **journalism culture** in Kenya can most accurately be described as ambivalent, switching between critical and concordant, clientelist reporting. This is also reflected in the Freedom House report: "Kenya's leading media outlets, especially in the print sector, are often critical of politicians and government actions. They remain pluralistic, rigorous, and bold in their reporting" – however they also frequently "pander to the interests of major advertisers and influential politicians" (Freedom House 2014c).

In fact, investigative journalism is hindered by political intimidation and the financial structure of the media as well as ambivalent structures relating to **journalistic professionalism**. One of the structural factors indicating the level of professionalisation and development of journalism as a profession in its own right is the condition of **professional education and training**.

Scholars and Kenyan media practitioners have blamed the perceived lack of professionalism on the absence of professional training and orientation (Schmidt and Deselaers 2015, pp.18–19, Nyanjom 2012, p.34, p.58). Indeed, as Nyanjom points out, very many prominent members of the media sector practice without any paper qualifications (Nyanjom 2012, p.34, p.58). However, the first programmes of study were launched under the authoritarian regime of Jomo Kenyatta and the number of institutions offering courses in media studies has grown extensively in recent times. Today, numerous schools and colleges offer both academic and vocational journalism education and training (Schmidt 2015, p.7).

According to Nyanjom, in 2012 all eight public universities in Kenya offered degree-level media studies courses; full degrees in media and journalism are offered by about six universities. The University of Nairobi's School of Journalism and Mass Communications established in 1971 and Daystar University which pioneered private sector media studies in 1973 are both UNESCO Centres of Excellence in the field (Nyanjom 2012, p.34, p.60). A raft of other qualifications is offered by a vast number of private institutions (Schmidt and Deselaers 2015, p.18–19).

The real challenge appears to be that the media training environment remains unregulated and the standard of journalism education varies considerably. Although the UNESCO Model Curricula for Journalism Education is taken into consideration by several institutions and the MCK is mandated to “set standards in consultation with the relevant training institutions” (Media Council of Kenya 2015b), various schools offer seemingly self-structured courses where training needs are identified in an *ad hoc* manner sometimes by unqualified lecturers, undermining sustainability (Nyanjom 2012, p.61). Most schools and colleges offer courses that are general in nature and experts have claimed a need for a more specialised journalism training in order to mainstream topical issues and concerns such as gender, development and media reporting in conflict contexts (Schmidt and Deselaers 2015, p.19, Nyanjom 2012, p.61, Egybujor 2015).

In terms of the ***level of professional organisation***, several professional unions and media associations exist, though their role in the development of the profession has to be considered ambivalent as it is undermined by business interests. The *Kenya Union of Journalists* (KUJ), a statutory trade union, originally championed media reforms and has pioneered the search for media self-regulation; however, the organisation has recently “faded from the limelight” (Nyanjom 2012, p.59). As Nyanjom (2012) points out, ironically, this loss of influence may be due to the growth of the private media sector, in which competition for employment enables media owners to prohibit union activity. A primary non-statutory media organisation is the *Media Owners Association* (MOA), whose membership includes the most financially and politically powerful media houses. While the MOA has successfully campaigned for media reforms (such as the Media Council Bill of 2007) and prevented some repressive regulations, its primary concern is said to be its members’

private business interests. This profit motive has overrun social sensitivities and explains the MOA's failure to use its political and financial power for "strengthening the weak media professional bodies, instead undermining them by inducing professional conflict" (Nyanjom 2012, pp.59–60).

Due to the media laws recently introduced, systems of **self-control and self-regulation** have declined in the last few years. Although the introduction of the Media Council of Kenya by media stakeholders in 2004 was intended to prevent government from creating a regulatory body, in 2007 media stakeholders agreed to convert the MCK from a self-regulatory to a statutory body under the Media Council Bill. The Code of Conduct and Practice of Journalism in Kenya, which was created by media practitioners and stakeholders in 2001 to enhance professionalism, demands that Kenyan journalists and media outlets "openly account for their conduct"; however, since it was included in the Media Council Act, the code can now be revised at the discretion of legislators (Maina 2015, p.32). A further example of self-regulation came ahead of the 2013 general election when the MCK together with the MOA and editors developed and signed a code of conduct to guard against their journalists fanning violence, as was the case in 2007 (Simiyu 2014, p.120). However, the system of self-regulation has been undermined by the state and 59 per cent of the journalists participating in Simiyu's study rate the performance of MCK as low, which can be seen as "indicative of MCKs inability as a media regulator to act independently" (Simiyu 2014, p.141).

Another structural factor of professionalism is the **prestige and competitiveness** of the journalistic profession. Kenyan citizens had become increasingly reliant on the media following the liberalization process, investing it with greater credibility than almost any other source of information (Ismail and Deane 2008, p.320, Nyanjom 2012, p.24). The reputation of journalists, however, has been challenged after coverage of the postelection violence 2007/2008 was criticised (Ismail and Deane 2008, pp.320–321). Studies suggest that public confidence in media was also low at the time of the 2013 elections (Simiyu 2014).

Apart from their damaged reputation and the pressures from media owners to adhere to certain lines of reporting as well as threats from third parties mentioned

earlier, a major challenge for journalists is **low professional security**, as many have little job security and receive low salaries. While working conditions for journalists vary significantly depending on the size of the media house they work for, about 80 per cent of journalists are employed as ‘correspondents’ meaning that they do not receive a regular salary and depend on short term contracts. As stringers, many only get paid for pieces that are published. Freelancers often earn “as little as USD 100 per month” (Schmidt and Deselaers 2015, p.20, Helander 2010). This low level of security makes it very difficult for journalists not to respond to pressures or incentives (brown envelopes) and many find themselves forced to request bribes to write a story because they are not paid enough to survive otherwise. The economic vulnerability of journalists facilitates intimidation by third parties and encourages a form of self-censorship, with journalists only submitting pieces that they know will be published and thus will be paid for.



## Conclusions

In conclusion, this analysis suggests that media and journalism in Kenya face highly complex and changing structural conditions shaped by the country's colonial and authoritarian legacy, its cultural and ethnic diversity, by hybrid forms of current political governance, and an ambivalent political culture characterised by a strong state, majoritarian politics, and a system of clientelism favouring non-compliance with the rule of law and corruption.

The unprecedented guarantees of freedom of media, expression and information which were granted by the 2010 constitution have been *de facto* repealed considerably by recent media legislation which allows the executive more power to regulate the media and impose heavy fines. In fact, both individual journalists and media outlets in all media sectors are regulated by oversight institutions favouring the government over non-government stakeholders. In this framework marked by political interference, Kenyan journalists regularly face intimidation, threats and attacks.

The media landscape in Kenya is diverse, enjoying state-owned, private and (non-commercial) community media outlets. However, this pluralism is challenged by a high level of concentration and cross-media ownership: political ownership is clearly an issue.

These structures are reflected in a high level of political/societal activity and parallelism of media, and an ambivalent journalism culture, switching between critical and concordant, clientelist reporting. Within this context, standards of journalism education vary and professional unions and media associations are undermined by business interests and declining systems of self-control and self-regulation. Furthermore, journalists face limited public trust as well as a low social security, facilitating bribery as well as various forms of self-censorship.

In general, the developed list of dimensions has proven its validity, as it guides the analysis towards the central factors of structural conditions relevant to media and journalism in Kenya. However, the relative influence of each dimension inevitably varies. In addition, the implications of the internet and social media on the structural

conditions of journalism have not been considered systematically in (theoretical) literature on media systems.

Central structural factors of the political, economic and legal framework in Kenya exist on the level of the *nation-state* proving the validity of the country-specific analysis of structural conditions. However, the report also identifies transnational influences on the Kenyan media market (e.g. investments by international media players such as China, market share of international foreign broadcasting stations such as BBC). Hence, although the nation-state still seems to be the central unit of analysis at the beginning of the 21st century, transnational impact should be an additional frame of investigation.

The report goes on to demonstrate the importance of *conflict communication* as a case study with regard to structural conditions: conflicts (and communication about them) can be considered a test case for the functioning of media-related structures, and serve as possible catalysts for changes to these structures.

This country report also confirms the need to consider *agency* and the *procedural dimension* while investigating structural conditions of media and journalism: structural conditions have been (re-) designed by central political incumbents, economic actors and media practitioners for their personal benefit, changing repeatedly during the different phases of transition and consolidation.

Although the literature allowed for a comprehensive country report, *various knowledge gaps exist* with regard to the different dimensions of structural conditions in Kenya. This applies, for instance, to ownership structures and media funding; multiple investments in media companies by political actors are clearly an issue but there is a lack of documentary evidence relating to these. Moreover, difficulties in accessing reliable and up-to-date information, for example relating to recent media legislation and its implementation, arise from shifting circumstances in Kenya.

In conclusion, the report provides a useful basis for an informed analysis of MeCoDEM interviews with journalists, with regard to the structural conditions shaping media and journalism in Kenya. While the list of dimensions (table 1) offers insight

into the general factors which potentially shape journalism and media on a structural level and how they interrelate with each other, the country report provides a comprehensive overview of the current structural conditions of media and journalism described in the interviewees' statements on their working practices, role perceptions, ethical orientation. Overall performance in the various democratisation conflicts can be analysed and better explained against this background. As the paper includes the analysis of political systems, socioeconomic frameworks and political cultures of politicians and citizens in Kenya, it provides a useful background for MeCoDEM research on conflict communication by civil society actors and political activists (work package 5), as well as for the analysis of conflict management by governmental actors (work package 6).

MeCoDEM interviews with journalists in Kenya will provide additional empirical knowledge on cases and types of journalism embedded in certain structural conditions, i.e. how journalists behave within these structures. This research will not only allow us to broaden knowledge on certain dimensions of the structural conditions discussed in this working paper, but will likely elicit new structural factors of media and journalism which have not been considered in literature to date. On this basis, MeCoDEM findings will constitute a first step to reconsider and potentially expand the existing work on media systems and structural conditions of journalism in Kenya.

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