

Regulation of Media Content in Kenya: In Search of a Paradigm in the Era of Convergence

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Abstract: With advancement in information and communications technology, there has been convergence of various communication channels into few distribution platforms or same media organizations owning several media channels. Media stakeholders in Kenya had wanted to have self-regulation in the media industry. Three regulatory bodies (Media Council of Kenya, Communication Authority of Kenya and Film Classification Board) have been established through legislation to regulate media content and practice. This paper aims at analyzing the current media regulatory system in Kenya with a view to recommending the appropriate system. To achieve this, the paper has systematically reviewed academic journal articles, books, newspaper stories on media regulation and the law governing the establishment and operations of the three key media regulators. Social responsibility theory has been applied to explain the relevance of media regulation. The findings were that Kenya currently applies two media systems: 1. statutory regulatory system that is applied in two regulatory bodies and 2. Statutory media self-regulatory system which is applied in one regulatory body. The paper has recommended that Kenya should apply the statutory media self-regulatory system as it is the best for developing democracies. The paper has also recommended the review of the laws governing the three regulatory bodies so that they conform to the dynamics of technological advancement in the media industry in order to avoid duplication and competing roles.

Keywords: Media regulation, statutory regulation, Self-regulation, Social Responsibility

BACKGROUND INFORMATION

Media regulation in Kenya is traced to the colonial period, it evolved through in the Post-Colonial era and it builds momentum in the 21st century. After the 2002 general election when the Kenya African National Union (KANU) was ousted from power, the era of NARC government saw various liberating legislative and institutional reforms for the media that saw an upsurge in the number of broadcast stations [1].

The Constitution of Kenya 2010 outlines certain fundamental rights in Chapter Four on the Bill of Rights. The Constitution in Section 33- Freedom of Expression gives citizens the right to entertain and impart information without interference from any quarter including the state or any of its agencies. Section 34- Freedom of the press and Section 35- Access to Information all together guarantee Kenyan citizens and the press enjoyment of fundamental rights pertaining to communication. The constitution further says that a body or bodies shall be established through legislation for the purpose of implementation of these sections of the constitution [2].

In pursuit of this constitutional requirement, Parliament has consequently reviewed, amended and

passed new laws that regulate media practice including the content. These laws have in essence established respective statutory bodies whose core mandate is to regulate media content and practice in Kenya. The laws and statutory bodies are: The Kenya Information and Communication (Amendment) Act, 2013 (KICA) that established the Communication Authority of Kenya (CAK), the Media Council Act, 2013 that established Media Council of Kenya (MCK) and the Kenya Access to Information Act, 2016. Already in existence before the passage of the Kenya Constitution, 2010 is Film and Stage Plays Act Cap 222 that established the Kenya Film and Classification Board (KFCB).

There have been consistent debates on media regulation and journalism ethics in Kenya by the industry stakeholders. Concerns have been raised on the confusion that has reigned in the media industry on the regulation of media content. With the existence of several statutory bodies and laws and each of them having the mandate to regulate media content in one way or the other, the Kenyan media industry is confused on who specifically regulates content and practice. The million dollar question is: Does Kenya need all these regulatory bodies in this era of convergence? Or should the regulatory policy be

reviewed to merge the regulatory institutions to be in tandem with convergence? The Communication Authority of Kenya (CAK) that is created by KICA, 2013 has the mandate to facilitate the development of the information and communication sector (including broadcasting, multimedia, telecommunications and postal services) and electronic commerce. This implies that the Authority is mandated to regulate all kinds of broadcast and online media. On the other hand the Media Council of Kenya core function is to protect and promote freedom of the media and prescribe standards for journalism practice.

These functions cut across the industry whether it is broadcast, print or online. However, in the course of executing their mandates, each regulatory institution has often been accused of overlapping its mandate and encroaching on the others.

Technological advancement in communication technology has also brought in convergence in the larger communication sector. Several media channels can be operated on the same platform. Media organizations nowadays do not own one media channel as it was decades ago but it could own up to several media channels under the same organizational structure. All these have posed a challenge to regulation of the media industry and specifically content.

The media stakeholders established the Media Council of Kenya in 2004 as the industry self – regulator. But later it was transformed into a statutory regulator through the Media Act, 2007 which was subsequently amended to Media Council Act, 2013 in order to conform to the Constitution of Kenya, 2010. Prior to Media Council of Kenya, there had existed the Communication Commission of Kenya (CCK) that was created by the Kenya Information and Communication Act (KICA), 1998 which regulated the broadcast media, postal services, multimedia and telecommunication. The KICA, 1998 was reviewed and emended to KICA, 2009 and currently we have KICA, 2013. The film sub-sector is regulated by the Film Classification Board (KFCB). All the three institutions are mandated to regulate media content in one way or the other. With advancement in information and communications technology, there has been convergence of various communication channels into few distribution platforms or same media organizations owning several media channels. Media practitioners had wanted to have self-regulation in the media industry. But the trend now is that several statutory regulators have been established through legislation with the intention of stifling freedom of the press. This paper aims at analyzing the current regulatory system in Kenya with a view of recommending a suitable system. It also wants to analyze the mandate of the three key institutions in regulating media content and to find out if it is

necessary to continue having several statutory regulators with competing, duplicating and sometimes conflicting roles.

STATEMENT OF THE PROBLEM

The regulation of media content and practice should be based on a well defined system and policy. Two different systems are applied in regulating the media industry, that is, Statutory regulation system and Statutory media self-regulation system. This paper intends to establish the suitable media regulatory system for Kenya.

The statutory bodies mandated to regulate media content in Kenya seem to be in competition with each other in the execution of their mandate. The Communication Authority through KICA 2013, Media Council of Kenya through MCK 2013 and Kenya Film and Classification Board through Film and Stage Plays Act Cap 222 each has the mandate of regulating a section of media content. The technological development in information and communication has enhanced different communication channels to be operated from the same platform. It means technology has enhanced the convergence of different communications channels into very few platforms.

The Media Council of Kenya was created and anchored in law with the view to regulate journalism practice and also to regulate the media content. The establishment of other institutions like CAK and KFCB is viewed as duplication of roles. The big question is: does Kenya need several statutory institutions to regulate the media or a single one will be sufficient? This paper seeks to analyze the laws governing the establishment and operations of the mentioned regulatory bodies with a view to suggesting appropriate measures to avoid duplication and competing roles among the regulatory bodies.

LITERATURE REVIEW

According to [3] media policy and regulation refer to all public policies, laws and regulations that affect media structure and operations whose purpose is to create and maintain the conditions for free and extensive inter-communication in society to advance the public good and to limit potential harm to legitimate private and public interests [3]. It also includes formal controls, such as in-house Codes of Ethics and internal operating procedures relating to such aspects as standards of content, advertising rules etc.

Media regulation is, therefore, according to (3), concerned with four key areas: business ownership and control; standards of content, preservation of personal liberties; and preservation of the public interest.

Dominick J. R [4] says policies to regulate ownership and control are important to regulation of the business, in order to create diversity and remove the concentration of media power from the hands of a few. Concentration of services in the hands of a small number of operators is a threat to media pluralism and can hinder the free flow of news, commentary and debate in a democratic society. Media ownership and control rules are vital to ensure that a diversity of news and commentary is maintained. Limiting cross-ownership and mergers of media companies is especially important to promote diversity and to support democracy [4].

Policies helps regulates licensing, control media business operations, governing the number of players, how they enter the market, and how operations take place. For instance, planning allocation and distribution of signals in broadcasting, applied through stringent licensing, is necessary to remove conflicts in business operations and to avoid interference with security or aeronautical signals. It also helps the government to preserve the public interest, such as national cohesion and security by keeping track of the operators and their operations.

Policies on content and professional conduct seek to ensure that media operations reflect high level of professional standards and community expectations. They also seek to ensure that media operates in an ethical manner, maintaining high professional standards, and observing the cardinal rule of news gathering and dissemination- fairness, accuracy, transparency, and decency. In addition, policies and laws are necessary to ensure the preservation of individual privacy and personal liberties against media intrusion. In many states, this is achieved through stringent laws and stiff sanctions – including laws about defamation and libel and through standards of practice/codes of ethics that provide for arbitration and complaints.

Finally, policies and other regulation are necessary to ensure the preservation of the public interest. Media have a role to play in social order, and regulation and policies are needed to ensure that the media do not undermine the preservation of the public interest, but rather, plays an active role in propagation of positive social norms. This includes preservation of national security and social cohesion, and promotion of what is good in society e.g. cultural identity.

According to Cuilenberg and McQuail in [5], ‘historically the state has often been perceived as the main enemy of freedom of individual expression, while at the same time it has also become, through recognitions and legal systems, the effective guarantor of freedom in important respects’. As this statement

underscores, there is much controversy regarding the level of involvement that regulatory instances should have in guaranteeing that the media carries out its social responsibilities. Different views of debate span the spectrum from complete opposition to any formal regulation whatsoever (e.g. self-regulation by the media with reference to ethics code as a normative framework internal to each media organization), to propositions for enforcement of social responsibility in media legislation [5]. However, regardless of the wide range of differing positions on what constitutes as acceptable level or intensity of regulation, most would agree that the media is obliged to carry out ethical practices.

Middleton, M [5] says that the argument against regulation follows free market principles. Proponents of this view envision the media as a free market place of ideas. In line with this stance, one can argue that the natural tension in journalism, between the media’s need to remain neutral and the pressure from groups within society to exert influence is not objectionable and needs to be well managed by the journalists themselves. According to this view, the existence of regulatory Commissions, Councils, Ombudsman or other frameworks are unnecessary.

Vogt Achim [6] says that regulation and self – regulation need objects. Without a pluralistic media landscape, there would be no need to regulate. Where state monopolies prevail, it will be the state itself that controls rather than regulates. He also says that in the Western societies, owing to the fact that print media enjoyed a far- reaching freedom, Press Councils of different varieties have for a long time acted as watchdogs, monitoring observance of national and professional codes of ethics. Adherence to a code of ethics is mainly being monitored by the profession itself; state involvement is rare. The German Press Council, for instance, comprises representatives of two public associations and two main professional bodies. It is an institution of self-regulation solely for the print media. Public broadcasting is regulated by councils within the different broadcasting corporations. Only when the audiovisual sector was finally liberalized in the 1980s were other forms of regulation needed and state broadcasting commissions founded to grant licenses for private radio and television stations, to monitor their programs and to sanction stations if necessary [6].

McQuail, D [7] argues that the media are undergoing rapid change, mainly as a result of new technology with the consequence that existing frameworks of regulation and social controls are becoming obsolete. In his opinion, the dilemma faced is how to reconcile the increasing significance of media with declining capacity to control them on behalf of the general good [7].

SELF – REGULATION Vs STATUTORY REGULATION

Cambridge dictionary defines statutory regulation as the process of checking by a government organization that a business is following official rules. This definition by Cambridge notes that having defined rules set by the government is a key element of statutory regulation.

Statutory regulation is the set standard by the law to regulate media content and practice. It means that the set rules to govern the operations of media practice and content must go through the legislative process and become law as established in the respective country.

According to Haraszti, M [8] media self-regulation is a joint endeavor by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public. By doing so the independent media accept their share of responsibility for the quality of public discourse in the nation, while fully preserving their editorial autonomy in shaping it [8].

In Kenya, the institutions that are mandated to regulate the media content are statutory, meaning they are anchored in the law. But the debate is whether the regulation of media should be statutory or self. The literature that will be reviewed aims at guiding policy makers and media stakeholders in forming opinion on whether the media content in Kenya should be self-regulated or statutory regulated.

Self –regulation is not censorship and not even self- censorship. It is about establishing minimum principles in ethics, accuracy, personal rights etc. while fully presenting editorial freedom on what to report and what opinions to express. Haraszti, M [8] argues that by promoting standards, self- regulation helps maintain the media credibility with the public. It helps convince the public that the free media are not irresponsible. She goes further to explain that self- regulation protects the right of journalists to be independent, and to be judged for professional mistakes not by those in power but by their colleagues [8].

In supporting self- regulation [9], a non-government organization promoting freedom of the press, argues that self-regulation is the best system for promoting high standards in the media [9] argues that media professionals themselves generally agree they cannot be left to their devices to report as they choose without any kind of oversight. If the media repeatedly float journalism ethics and standards, they lose the public's confidence and threaten their own existence. Supports self- regulation as the best method of

promoting accountability while protecting media freedom [9].

But some experts and scholars have suggested statutory recognition of media self- regulation. These scholars' argument is that the media self-regulatory system should be anchored in law hence statutory media self- regulation. There argument is that instead of having pure self- regulation that could be abused by the media when they become irresponsible in behavior, and pure regulatory system where the government would abuse the freedom and independence of the press, a system that accommodates both is recommended. That is the statutory media self- regulation. Adeline H [10] has explored in an article how statutory recognition is compatible with the concept of media self- regulation. She argues that statutory media self- regulation in non-democratic countries is problematic because of the risks of it being transformed in to a compulsory system controlled by political interests. In democratic countries, the media self- regulation can make the voluntary system more effective [10].

Media self- regulation is more popular in Europe according to Adeline H [10] says many experts have suggested that public authorities should support such systems in order to make them more effective. Having statutory media self – regulation is an acknowledgement by law of a media self- regulatory body [10].

This argument is supported by the media industry situation in Kenya where, for example, Media Council initially was a self- regulatory body founded in 2004 by the media industry stakeholders to regulate it, but later anchored in law through the Media Act, 2007.

The Media Council was initially a self-regulatory body founded by the media stakeholders but later became a statutory body by the Media Act, 2007 which was later amended to Media Council Act, 2013. Under this Act journalists or the media should ensure that the freedom and independence of media is exercised in a manner that respects the rights and reputations of others. The Media council Act 2013 established the Media Council of Kenya as the lead agency in the setting of media standards and ensuring compliance with those standards. By anchoring the Media Council in law, it means the media stakeholders will now be compelled to obey the set standards of media practice. For example, it is no longer a matter of voluntary membership to the body as is the case in self-regulation, but it is a must that anyone who practices media in Kenya must be accredited by the Council. Media Council of Kenya is an independent body hence it is not owned neither is it controlled by the government. So it is both a statutory and self-regulatory body.

According to Iglesias the term statutory refers to any regulation that is implemented by law [10]. Iglesias clarifies that this does not mean government control or state regulation:

'An Act of parliament could also force the industry to form a self-regulatory entity, and at the same time pre-establish key institutions, in order to increase accountability and responsiveness. Aspects such as what sector sectors should be represented in the entity and the ethical criteria or public interest justifications to be observed by its members can be established in law through, for example, obligations on newspapers above a certain size to participate. On the other hand, judgment and enforcement related powers could be assigned to the industry's representatives, avoiding political influence over these procedures. The state's participation in the regulatory regime can also happen through financial incentives' [Iglesias, cited in 10].

Mijatovic argues that media freedom is tied to the quality of democracy more broadly [10]. In countries where democratic standards are jeopardized, media freedom violations are recurrent. In Azerbaijan, for instance, the atmosphere for political activists and opposition journalists is hostile. Journalists are commonly arrested on manufactured charges. In Turkey, government is improperly using its leverage over media to limit public debate about government actions and punish journalists who dispute government claims (Freedom House, 2013 cited in [10]. In Hungary, the Fidesz Party used its parliamentary majority to pass legislative changes that tightened the government control over media, in particular through the creation of a new media regulation authority supervising all media in the country [10].

Adeline H [10] argues that in countries with more developed democracy, statutory media self-regulation is not a problem for press freedom. The state for instance, contributes to the funding of the system and the system remains totally independent [10].

The literature reviewed in this article has revealed a new system that has been recommended by scholars. The literature in this section, therefore, proposes a regulatory system called statutory media self-regulation. Since Kenya is still a developing democracy, a purely self-regulatory body for the media will not successfully work to regulate the ethical standards of journalistic practice and media content since there is likely hood of interference by media owners and other interested parties. The self-regulatory codes might also be abused and stakeholders like journalists might decide not to be members of such

a body. But when it is supported and enforced by a legal frame work like being anchored in the law, then stakeholders and practitioners will be forced by law to abide by it. The media industry stakeholders will participate in developing their own code of ethics, for example, and the law will be used to restrain the government in interfering in the regulators activities, while at the same time, the practitioners will be forced to abide by the provisions of the law that regulates the industry.

Kenya has established several statutory institutions to regulate media. These include; the Media Council of Kenya (MCK) established by the Media Council Act, 2013, The Communication Authority of Kenya (CAK) established by the Kenya Information and Communication (Amendment) Act, 2013 and the Kenya Film and Classification Board (KFCB) established by the Film and Stage Plays Act, 1962.

There have been consistent debates on media regulation, ownership and journalism ethics in Kenya by the industry stakeholders. Concerns have been raised on the confusion that has reigned in the media industry on the regulation of media content. With the existence of several statutory bodies and laws and each of them having the mandate to regulate media content in one way or the other, the Kenyan media is confused on which body specifically regulates content. There is also the major issue of duplication of roles among these statutory bodies.

This section seeks to analyze some of the mandates of the media statutory bodies and the debate surrounding them with a view to establishing if there is duplication or conflicting roles and which body should actually regulate media content.

Wanyama L [11] argues that everyone relies on the media for information, education, and entertainment among other needs. The media has a central to play in the freedom of information and expression. To contain the powerful sources of information, entertainment and education, government use regulation to capture, limit or control the media [11]. He further argues that most governments including Kenya government are likely to control media operations by all means, and that is only why the Kenya Information and Communication Act, 2013 was enacted [11].

Section 34 (5) of the Constitution of Kenya, 2010 states that Parliament shall enact legislation that provides for the establishment of a body, which shall be independent of control by government, political interests or commercial interest, reflect the interests of all sections of the society and set media standards and regulate and monitor compliance with those standards

[2]. In order to operationalise the section, Parliament established the Media Council of Kenya through the Media Council Act, 2013.

Some of the functions of the Media Council include: promoting and protecting the freedom and independence of the media, setting standards of practice for journalists and media practitioners, ensure the protection of the rights and privileges of journalists in the performance of their duties, promote and enhance ethical and professional standards amongst journalists and media enterprises, and regulation of ethical and disciplinary standards for journalist among others. The Council is also mandated to facilitate resolution of disputes between the government and the media, between the public and the media and intra media [12].

Another media statutory regulator is the Communications Authority of Kenya (CAK) which is the regulatory authority for the communications sector in Kenya. Established in 1999 as the Communication Commission of Kenya (CCK) by the Kenya Information and Communications Act 1998, with subsequent amendments in 2009 and 2013, the Authority is responsible for facilitating development of the information and communication sectors including broadcasting, multimedia, telecommunications, electronic commerce, postal and courier services [13].

The responsibility of the Authority include: licensing all systems and services in the communications industry, including telecommunications, postal courier and broadcasting; managing the country's frequency; spectrum and numbering resources; facilitating the development of e-commerce; type approving and accepting communications equipment meant for use in the country; protecting consumers rights within the communication environment; managing competition within the sector to ensure a level playing ground for all players; regulating retail and wholesale tariffs for communications services and monitoring the activities of licensees to enforce compliance with the license terms and conditions as well as the law [13].

The Kenya Communication and Information (Amendment) Act 2013 was enacted to address the need to give effect to article 34 of the constitution of Kenya (media freedom). It amended the Kenya Information and Communication Act, 1998. It created the Communication Authority of Kenya (CAK) to replace the Communication Commission of Kenya (CCK). In the beginning there was the monolithic Kenya Posts and Telecommunications Corporation (KPTC) which was a monopoly provider of postal, telecommunications and regulatory services. In line with the liberalization wind that swept across the global communication industry in the 1990s, its services needed to be split up. The Kenya

Communication Act was the official tool that split up the KP&TC into five major components: Postal Corporation of Kenya, Telkom Kenya, CCK (the regulator), National Communication Secretariat (policy body) and the Appeals Tribunal [14].

Section 102 of Kenya Information and Communications (Amendment) Act, 2013 provides for the establishment of the Communications and Multimedia Appeals Tribunal of the Communications Authority of Kenya (CAK) whose mandate is to adjudicate and mediate in disputes between the government and the media, public and the media and intra media. The Media Council Act, 2013 also established in Section 102, the Complaints Commission of the Media Council of Kenya. Its mandate is to mediate and adjudicate the disputes between the government and the media, and between the public and the media and intra media on ethical issues.

The Kenya Film Classification Board (KFCB) is a state corporation established under the Film and Stage Plays Act Cap 222 laws of Kenya to regulate the creation, broadcast, distribution and exhibition of film and broadcast content to conform to national aspirations, values, culture and morality.

The Film and Stage Plays Act is an Act of Parliament that was legislated in 1962 to provide for controlling the making and exhibition of cinematographs, films, for the licensing of stage plays, theatres and cinemas and for purposes incidental thereto and connected therewith [15].

Kenya Film Classification Board is the regulatory institution for films, stage plays and posters in Kenya. Its functions include: regulating the creation, broadcasting, possession, distribution and exhibition of films by examining every film and poster submitted for purposes of classification; imposing age restriction on viewership; giving consumer advice, having due regard to the protection of women and children against sexual exploitation or degradation in cinematograph films and on the internet; license and issue certificate to distributors and exhibitors of films. The Board also prescribes the procedure for application for licensing as a distributor or exhibitor of films and guidelines to be applied in the classification of films [15].

A critical analysis of the roles of the three regulatory bodies (Media Council of Kenya, Communication Authority of Kenya and Kenya Film and Classification Board) reveals that they play same roles and to some extent compete against each other in executing their mandates. The literature reviewed earlier in this article has proved that MCK is a statutory media self-regulatory body. After review of the literature this paper argues that MCK should be the

body mandated to regulate the media industry since it has the element of self regulation. Bringing in other bodies to perform the same or similar roles as it is, shows that either there is a gap in its performance so far or there is inadequacy of statutory self-regulation.

Recently the Kenya Film and Classification Board (KFCB) proposed a new a Bill – the Film, Stage Plays and Publications Bill meant to give it more powers to censor all forms of media content. The proposal was roundly criticized by stakeholders who argued that it was a clever way to expand KFCB's mandate to cover all media content including broadcast content, games, advertising content, print publications and online content.

Commenting on the proposals Wilson Ugangu, a media and communication scholar, said that the Board seeks to control over a largely contentious area in modern communications, that is, content. He argues that it would be important for KFCB and other media regulatory agencies to take cognizance of the changes in society as a result of globalization. Therefore, restrictions on media contents that derive from such rationale are bound to be perceived as a throw-back to a past era. Such restrictions also betray a conservative stance largely informed by moral traditionalism [16]. On the same debate, Kimani Njogu said that the draft Bill undermines creativity and goes against the constitution. He argued that in the draft Bill KFCB is trying to expand its mandate to regulating films, broadcast content, stage performances, outdoor media, gaming applications, videos, print publications, and the whole array of sub-sector that fall under the cultural and creative industries. In his opinion the board is trying to take over the functions of other bodies [17].

During the debate, the Board, in its interpretation of its mandate, said that in addition to the statutory authority conferred on it by Cap 222, the Kenya Information and Communications Act and the Kenya Communication (Broadcasting) Regulations 2009 Section 34 (1) empower it to impose age restrictions on broadcast programmes to protect children from exposure to harmful content during the watershed period (5am- 10pm). The Board further argued that the Programming Code for Free-to-Air Radio and Television Services in Kenya vests the Board with the power to classify and rate television and radio programs as well as non-programme matters, like commercials, infomercials, documentaries, programme promotions, programme listings, community service announcements and station identifications [18].

But Mr. William Oloo Janak who is the Chairman of the Kenya Correspondence Association sees the proposed Bill as an upfront to stifle freedom of expression among Kenyan citizens. He was quoted in a

story by the Daily Nation remarking that 'This overzealousness to regulate Kenyans is not acceptable' [19]. Mr. Erick Oduor, the Secretary General of Kenya Union of Journalist said the proposed law will duplicate the roles of other regulators like the Communications Authority and Kenya Film Commission while Clifford Machoka, the Nation Media Group Head of Corporate and Regulatory Affairs said that the law amounts to censorship as the suitability of content would be decided by members of the board who are not media experts [19]. The stakeholders said the proposed law will impede freedom of speech and lead to loss of revenue for the country if sectors like the fledgling film industry are stifled.

Most of the stakeholders in the media industry argued that KFCB mandate is restricted to regulating films and stage plays only and does not extend to television, radio and print content. The stakeholders had argued that KFCB in its proposed Bill wanted to extend its mandate to regulating content on television and radio especially. The proposed Bill was eventually withdrawn after strong opposition from the stakeholders who had also argued they were never consulted.

The proposed Bill was also opposed by other key regulators, the Communication Authority of Kenya and Media Council of Kenya. They argued that some of the regulations KFCB had proposed to do or was already doing are actually being done by them. This was a proof of how these key regulators have overlapping and duplicating mandates.

Another area of duplication of mandates is found in mediation and adjudication of disputes in the media industry. Section 102 of Kenya Information and Communications (Amendment) Act, 2013 (KICA) provides for the establishment of the Communications and Multimedia Appeals Tribunal whose mandate is to adjudicate on complaints between the public and media, between government and media and intra media (KICA, 2013). The Media Council of Kenya (MCK) in Section 27 has also established the Complaints Commission whose mandate is to mediate and adjudicate in disputes between the public and the media, government and media and intra media on ethical issues [12].

The big question is: does Kenya need two regulators to mediate on media matters and adjudicate in disputes between the media and other stakeholders with complaints? Having more than one regulator performing the same task is a waste of resources and creating avenues for unnecessary competition among the regulatory bodies. This paper proposes that Media Council Act, 2013 to be reviewed with the aim of giving it the sole mandate to adjudicate and mediate in disputes within the media industry. This is because it is the only one amongst the three regulatory bodies that is

self-regulatory hence it has high chances of attracting the confidence of the stakeholders especially the public and media practitioners.

The Communications Authority of Kenya through KICA is to facilitate the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and electronic commerce. This also means that it has the mandate to regulate content on television, radio, mobile telephone and all other electronic devices. This paper has already indicated that Media Council of Kenya is also mandated to regulate journalism practice including monitoring the content that they publish and broadcast. There is confusion in the role of each of these two institutions on who really regulates media content. The simple interpretation would be that CAK mandate is limited to regulating the content on broadcast and other electronic devices only. But MCK in its role to regulate the conduct of media practitioners must analyse the content they have published in the print and broadcast on television and radio. In this case, both of these regulators clash and eventually accuse each other of overlapping into each other's territory.

To that extent then the regulation law should be reviewed so that one regulator is given the mandate to regulate content. This will go a long way in eliminating duplication and unnecessary conflicts among the statutory regulators.

THEORETICAL FRAMEWORK SOCIAL RESPONSIBILITY THEORY

The first formal theory of social responsibility of the press was developed by Siebert, Peterson and Schramm in 1956. Social Responsibility was presented in their book *'Four Theories of the Press'*, alongside Authoritarian, Libertarian and Soviet theories. One characteristic of their view is an emphasis on the media's responsibility to use its powerful position to ensure appropriate delivery of information to audience [5]. However, if the media fails in carrying out their responsibility, it may be relevant to have a regulatory instance to enforce it.

The power and near monopoly position the media impose on them an obligation to be socially responsible, to see that all sides are fairly presented and that the public has enough information to decide, and that if the media do not tasks on themselves such responsibility it may be necessary for some other agency of the public to enforce it (Siebert et al., 1956 cited in [5]). This statement outlines the enormous responsibility the media have on their audience. The media is accountable to their audience by telling the truth, giving factual information in a fairly balanced story.

In Kenya, for example, the status changed from self-regulation to statutory regulation. The media had initially proposed to regulate itself through a self-regulatory body, Media Council of Kenya, which was founded in 2004. But it was later made a statutory body through legislation of Media Act, 2007, which was later amended to Media Council Act, 2013. The Second Schedule of Media Council Act, 2013 Section one states that any person subject to the Act shall write a fair, accurate and an unbiased story on matters of public interest and shall not publish a story that fall short of factual accuracy and fairness. The Second Schedule has the Code of Conduct for journalism practice in Kenya that contains 25 sections that have detailed the ethical and professional standards for journalism practice [12].

In the theory put by Siebert, *et al.*, the concept of public interest lies at the heart of the definition of social responsibility. This highlight the crucial role of communications sector in shaping societal processes: the formation of public opinion and civil society movements, social and political development patterns, including more tangible processes such as the elections and their outcomes [5].

Middleton argues that Habermas' discourse ethics in Moral Consciousness and Communicative Action provide a convenient framework for making this point he borrows from the universalisation principle from Kant's moral theory; extending the notion of categorical imperative to include all those affected by a norm as its participants. In the context of discourse, this includes the idea that communication inherently involves those who are listening to its author. The journalist as a communicator is therefore intrinsically linked to its audience –hence the fundamental principle of the media's obligation to fulfill public interest, which also lies at the basis of social responsibility theory [5].

The Social Responsibility theory has been used to guide in developing the Code of Conduct for the practice of journalism in Kenya. Section four of the Code is on accountability and it states that: 'A person subject to this Act shall recognize that they are accountable for their actions to the public, the profession and themselves and therefore they shall: a) actively encourage adherence to these standards by all journalists and media practitioners; b) respond to public concerns, investigate complaints and correct errors promptly c) recognize that they are duty –bound to conduct themselves ethically [12].

McQuail [3] in his book *Mass Communication Theory, Fifth Edition*, says that the Hutchins Commission report coined the notion for social responsibility and named the key journalistic standards that the press should seek to maintain. According to [3]

the report indicated that a responsible press should: provide a full, truthful, comprehensive and intelligent account of the day's events in a context which gives them meaning; serve as a forum for the exchange of comment and criticism and be a common carrier of the public expression and give a representative picture of constituent groups in society and also present and clarify the goals and values of society. The report criticized the sensationalism of the press and the mixing of news with editorial opinion [3].

The recommendations in the Hutchins Commission report have guided media industry stakeholders and the government when establishing regulations that set standards for journalism practice in most countries today. The establishment of the Media Council of Kenya and the resultant Code of Conduct for the Practice of Journalism in Kenya are good examples of how the report and by extension the Social Responsibility theory have influenced policy and regulation formulation in Kenya.

According to McQuail [3], the theory of social responsibility involved a view of media ownership as a form of public trust or stewardship, rather than as an unlimited private franchise. He argues that when it comes to the choice between the right of individual and the public, the public interest overrides individual rights. Hence, the media has a responsibility to serve the public interest first.

Regulation of media content should be based on accountability and responsibility according to [7]. He says that regulation should be based on accountability which has to meet certain general aims: 1. Accountability should protect and promote media freedom. 2. It should prevent or limit harm which the media might cause. 3. Accountability should promote positive benefits from media to society. McQuail D [7] in his analysis prefers self-regulation to external regulation [7]. He further argues that freedom is not well served by coercive forms of control or by making the media more liable for consequences which are considered harmful.

Tankard W, *et al.* [21] argue that despite moves toward professionalism and self-regulation, pressure for greater government regulation of media mounted throughout World War II and continued during the anticommunist agitation that followed. In response, Henry Luce, the CEO of Time Inc. provided funding for an independent commission to make recommendations concerning the role of the press [21].

It emphasized the need for an independent press that recognizes other social institutions and provides objective, accurate news reporting [21]. Tankard W, *et al.* [21] say that the most innovative

feature of social responsibility theory was its call for the media to be responsible for fostering productive and creative 'Great Communities'. They argued that the media should prioritize cultural pluralism – by becoming the voice of all the people- not just elite groups or groups that had dominated national, regional or local culture in the past.

Tankard, Severin have indicated that social responsibility theory, evolving from media practitioners, media codes, and the work of the Commission on Freedom of the Press (Hutchins Commission), holds that while the media inform, entertain, and sell, they must also raise conflict to the plane discussion [(Siebert, Peterson and Schramm, 1956 cited in [21]).

Some scholars have in the recent past argued against relying on social responsibility theory as the basis for developing the standard for journalism practice. In the article 'Social Responsibility Worldwide' published by Journal of Mass Media Ethics, Christians and Nordenstreng asserts that instead of facilitating the interests of business or government, the Hutchins Report insisted on the media's duty to serve society. They argue that responsible journalism does not strengthen the government in power nor does it insist in merely on the individual right to publish and make a profit. The press must remain free from government and business pressure and serve society instead. Social responsibility news is defined by its duties to the community [22].

Christians C, *et al.* [22] explain that, for Social responsibility theory, it is the duty of the press to provide a truthful, comprehensive and intelligent account of the days' events in a context which gives them meaning. The press should serve as a forum for the exchange of comment and criticism. The debate by the two scholars is that there should be a paradigm shift from the traditional Social Responsibility theory to ethical principles that are universal. They argue that the various professional ethics affected by the Hutchins Commission cannot serve as the foundation of a worldwide social responsibility paradigm but must be replaced by universal ethical principles instead [22]. From this argument one would therefore, conclude that the content of the Code of Conduct for the practice of Journalism in Kenya is based on Social Responsibility theory.

The power and near monopoly position the media impose on them an obligation to be socially responsible, to see that all sides are fairly presented and that the public has enough information to decide, and that if the media do not tasks on themselves such responsibility it may be necessary for some other agency of the public to enforce it (Siebert et al., 1956

cited in [5]. This statement outlines the enormous responsibility the media have on their audience. The media is accountable to their audience by telling the truth, giving factual information in a fairly balanced story.

In Kenya, for example, the status changed from self- regulation to statutory media self- regulation. The media had initially proposed to regulate itself through a self regulatory body, Media Council of Kenya, which was founded in 2004. But it was later made a statutory body through legislation of Media Act, 2007, which was later amended to Media Council Act, 2013. The Second Schedule of Media Council Act, 2013 Section one states that any person subject to the Act shall write a fair, accurate and an unbiased story on matters of public interest and shall not publish a story that fall short of factual accuracy and fairness. The Second Schedule has the Code of Conduct for journalism practice in Kenya that contains 25 sections that have detailed the ethical and professional standards for journalism practice [12].

In the theory put by Siebert, et al., the concept of public interest lies at the heart of the definition of social responsibility. This highlight the crucial role of communications sector in shaping societal processes: the formation of public opinion and civil society movements, social and political development patterns, including more tangible processes such as the elections and their outcomes [5].

Middleton, M [5] argues that Hebamás' discourse ethics in Moral Consciousness and Communicative Action provide a convenient framework for making this point he borrows from the universalisation principle from Kant's moral theory; extending the notion of categorical imperative to include all those affected by a norm as its participants (Hoenish, 200 cited in [5]. In the context of discourse, this includes the idea that communication inherently involves those who are listening to its author. The journalist as a communicator is therefore intrinsically linked to its audience –hence the fundamental principle of the media's obligation to fulfill public interest, which also lies at the basis of social responsibility theory [5].

According to Middleton, M [5], the media are accountable in the following ways: to their audiences, to whom they owe correct news reportage, analysis and editorializing; to government, to whom they owe constructive criticism, a relay of popular opinion and adequate feedback from the populace; to their proprietor, to whom they owe the survival of the media organization as a business venture as well as a veritable source of education, enlightenment and entertainment; to themselves, to whom they owe fulfillment in their calling, satisfaction, and entire success story [5].

METHODOLOGY

The methodology used in this paper is the review of existing literature from academic journals, newspaper articles, books, various government publications, and information on websites of various institutions. The literatures gathered from those sources were systematically reviewed and adequate critique offered.

FINDINGS

The literatures reviewed in this article have demonstrated the importance of regulating the media industry in Kenya and in other countries as well. It has been discovered that most countries in the West especially Europe have self- regulatory bodies for regulating the media industry. Some countries especially in emerging democracies have both statutory and self- regulation. There is no definite recommended regulatory system for the media.

However, Adeline and other scholars have recommended that for developing democracies like Kenya, a new regulatory system called statutory media self- regulation should be applied. For developed democracy like USA and most Western European countries, self- regulatory system is recommended.

A review of the three Acts cited in this paper (KICA, 2013, Media Council Act, 2013 and Film and Stage Plays Act) shows that the overlapping, duplicating and conflicting roles amongst the key media regulatory bodies are real. KFCB is mandated to regulate film and broadcast content and would like to extend this mandate to include even print media content. MCK and CAK are also mandated by law to regulate content in broadcast, print and telecommunication sub-sectors. There also exists duplication of roles when the Communications and Multimedia Appeals Tribunal of the CAK and the Complaints Commission of MCK perform the same role of mediation and adjudication of disputes in the same industry.

This paper has also found out that most stakeholders in the media industry in Kenya are opposed to any attempt to increase the mandate of KFCB to regulate content in area outside the film sub-sector.

CONCLUSION AND RECOMMENDATIONS

From the findings, this paper concludes that the media in Kenya should have a self- regulatory body that is backed by the law so that it has stronger teeth to bite. The Media Council of Kenya provides a good example of statutory media self- regulation system and that is the one that is ideal for Kenya as a developing democracy.

When a country has regulatory bodies that are purely statutory without the active participation of all or key stakeholders, such a system is likely to give the government opportunity to control the media and abuse the freedom of the press and of expression. Government is likely to introduce laws that will erode the gains made in media freedom as this paper has demonstrated in the case of Kenya Film and Classification Board.

This paper, therefore, recommends that Media Council of Kenya should not be referred to as a statutory body but it is a statutory media self-regulatory body. The paper also recommends that Kenya Information and Communication (Amendment) Act, 2013 and Media Council Act, 2013 should be reviewed to allow one regulatory body to perform the duty of mediation and adjudication in disputes between the media and other stakeholders.

The law governing the three regulatory bodies should also be reviewed so that they conform to the current dynamics of technological advancement in communication that has enhanced convergence. This will help avoid duplication and conflicting roles among the regulators.

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