New communications technologies and freedom of expression in Kenya

A report from the Freedom of Expression Project

Twaweza Communications, Kenya
May 2009

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Twaweza Communications is an arts, culture and media organization that brings together academicians and practitioners in knowledge and skills development. Twaweza works to contribute to the wellbeing of society through an engagement with health, environment, gender, leadership and governance. We seek to provide an enabling and empowering environment for marginalized people, especially youth, women and children, to make informed choices. Twaweza Communications is a partner in the Freedom of Expression Project. www.twawezacommunications.org

The Freedom of Expression Project began in 2006 as a response to global changes in networked digital communications. It set out to assess and understand this developing environment's relationships with democracy, justice and human achievement. The Project is working to promote principles to help guide policy and activity in the networked communications environment: the aim is to build an environment that supports human rights and the public interest. www.freedomofexpression.org.uk The Project is coordinated by Global Partners & Associates. www.global-partners.co.uk

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Executive summary

This report explores issues relating to communications technologies in Kenya, and the factors that affect freedom of expression. It considers the Freedom of Expression Project principle of affordable and equitable access to information, with attention to issues of local content and the influence of the media in Kenyan life.

The **introduction** outlines the scale of the challenges facing African countries in fully adopting and implementing communications technologies. It notes that Kenya, a young democracy eager for development, is also characterised by marked inequalities of wealth that threaten citizens' full realisation of freedom of expression. It draws attention to issues of local language and culture in people's access to and use of communications. Finally, it briefly describes the methodology used for this study, in an area where little research exists, which combined desk research and interviews.

The second section of the report presents the findings of our desk research into the levels of access to different communications platforms in Kenya, focussing on issues of penetration and cost. Different initiatives that are being taken to improve access are then discussed. Finally, findings from our interviews are presented, with an overview of stakeholders' opinions concerning access issues and potential solutions to problems.

The third section of the report considers issues relating to communications content in Kenya, based largely on our interviews. Issues discussed include:

- linguistic diversity
- culture and quality of content
- the role of journalists
- regulation of hate speech
- opportunities for participation in public communication
- young people and new communications.

The **conclusions and recommendations** acknowledge that while there have been great strides, more needs to be done. They identify the following priorities for change:

- policies to promote social entrepreneurship and community-owned businesses
- action on the language and culture commitments in Kenya's ICT Policy
- promotion of competition in the communications industries to create more affordable and accessible services, in a transparent and stable regulatory environment with the rule of law and fair competition upheld
- further research, particularly in the areas of:
  - sustainable, community-based models of ownership
  - the social impacts of new communications technologies, especially with reference to the youth.

1 Introduction

This paper is an investigation of the communications environment in Kenya, and its impact on people's access to the means of receiving and disseminating opinion, information and culture.

The investigation was framed using the layer model and principles for a public interest communications environment, developed by the Freedom of Expression Project.[1] We have focused primarily on one of the four 'layers' identified in this model: the physical (infrastructure) layer. Within this we have explored factors affecting the realisation of the principle:

- All people should have affordable and equitable access to the means of receiving and disseminating opinion, information and culture.

We note that the following principle is also relevant to this report:

- The range of content available should be diverse, representing the whole spectrum of cultures, interests and knowledge (at the 'content' layer).

The Freedom of Expression Project's Principles are grounded in the right to freedom of expression as set out in international conventions and protected by the Constitution of Kenya. Article 19 of the Universal Declaration of Human Rights states that 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.'

The Constitution of Kenya guarantees the principle of freedom of expression as follows: 'Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.'[2]

In this research, we set out to explore some of the challenges and problems in Kenya in achieving equitable and affordable access to communications. This research considers issues of ownership, affordability, and the economics of the communications industry and services. It also discusses people's capacity to make effective and creative uses of the newer technology, and the cultural implications of its introduction. It discusses issues of language and culture, and how these have impacts on people's ability to access the new communications environment and exercise their right to freedom of expression. It also considers people's access to the means of communication production, for example, by broadcast and print media with a view to understanding what factors determine access to traditional, non-electronic, forms of expression.

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1 *Shaping a Public Interest Communications Environment,* available at: http://www.freedomofexpression.org.uk/resources/shaping+a+public+interest+communications+environment and discussions at www.freedomofexpression.org.uk/resources/about+the+project

2 Section 79 (1). Section 2 defines permitted exceptions. Available at http://www.bunge.go.ke/parliament/downloads/constitution.pdf [Accessed 9 May 2009]

This study takes place in a young and flourishing democracy, eager to tap into private equity to promote national development, and strengthen participation in the knowledge economy, enabled by modern communication technologies. This report describes how liberalisation of the telecoms environment and greater competition – particularly in the field of mobile telephony – has delivered benefits for consumers in Kenya in terms of increasing access to communications. However, we also describe limitations and barriers to access that remain, particularly in rural areas, and note that regulation of competitive markets is necessary to protect both citizen's rights and consumer interests.

Southwood et al. note that the concept of 'dominant market power ... where a player in a market has the ability to skew the operation of that market because of its strong commercial position ... is something all-too-familiar to anyone doing business in Africa's telecoms and internet markets where the historic position of the incumbent telephone company ... still casts a long shadow over how the market operates'. They also note that this 'dominant market power can shift over time' (Southwood et al. 2006: 14). As corporations grow with acquisitions and mergers, competition may be stifled in the resultant oligopolistic markets which may be harmful to the interests of consumers. Flexing their financial muscle, private companies can potentially influence government directly and indirectly. Where there is less matured consumer protection legislation and regulation, there is a danger that basic human communication rights – the right to receive and share information, and to form or express opinions or culture – can become vulnerable to corporate priorities.

Professor Kwame Karikari has raised concerns over the lack of technological advancement and ownership of technology in African countries, which limits a community's information and knowledge base and thereby restricts their abilities to fulfil their potential for expression. He also notes that significantly, most of the data and knowledge held about African societies are not on the continent itself but in the global North[3]. He said, 'We may be provoked to ask: To what extent is Africa a player in the new communications technology and the enormous opportunities it offers in advancing social, economic, cultural and political progress? The expansion of the communications spaces in Africa is an everyday experience, especially for people in urban communities. But can Africa make the new technology its own, so as to use it to address appropriately and effectively the fundamental questions of social development and human progress? Will Africa be a full participant in or marginal to the communications revolution, and will such participation enhance freedom of expression?'[4]

This small study aspires to make a contribution to knowledge in this vast and rapidly-evolving field, by presenting relevant personal and community positions as well as regulatory and policy frameworks, and by highlighting the enduring significance of local content, culture and knowledge in this new environment.

3 Prof Kwame Karikari, 2007, address to Freedom of Expression Project's Africa workshop, June 2007
4 Ibid.

1.1 Methodology and research questions

The research was focussed on exploring whether the existing communications environment in Kenya is capable of supporting public interest communications as defined through the Freedom of Expression Project values of accessibility, diversity and openness[5]. It did this through assessing the following principle in the Kenyan context: **All people should have affordable and equitable access to the means of receiving and disseminating opinion, information and culture.** The research questions were:

- What economic, political and social factors are affecting affordable and equitable access?
- What is the effect of the current structure of the networked environment on freedom of expression and culture?

In our desk research, we considered the policy and legislative environment as well as data on access to and usage of communications. We conducted in-depth interviews and used some supporting questionnaires with a range of key stakeholders, during summer and autumn of 2008. Interviews covered the following areas:

- Definitions of affordable and equitable access
- Factors determining communication access
- The extent to which people can access, receive and disseminate information and opinion
- Interviewees' perceptions of the principle and its realisation
- Recommendations on promoting the principle.

Interviewees included representatives from: government bodies; freedom of information, human rights and democracy advocacy networks; and media editors. The following were represented:

- Communications Commission of Kenya (CCK), the regulator
- The Kenya ICT Board
- Ministry of Information and Communications
- Honourable members of Parliament
- East African ICT Policy makers
- Freedom of Information Coalition
- Media Owners Association of Kenya
- Internet Service Providers
- Print Media Editor
- Community Broadcasters
- Community Telcos representative
- University Students
- Parents
- Kenyan Section of the International Commission of Jurists

5 *Shaping a Public Interest Communications Environment,* available at: http://www.freedomofexpression.org.uk/resources/shaping+a+public+interest+communications+environment and discussions at www.freedomofexpression.org.uk/resources/about+the+project

A full list of interviewees is on page 26. Interview questions covered all aspects of the principle. Some parents, on discovering the ongoing study, volunteered their views on aspects of communications related to culture and youth, although these were not in the initial study plan.

Data on the Pasha programme, funded by the Kenya ICT Board and the World Bank, was obtained from the ICT board website. Additional data was obtained from websites and mailing lists, including those of Kenya Network Information Centre and Communications and Information Consumers.

1.2 Reflections on conducting this study

Researchers found most respondents initially uneasy with the study motives, perceiving the theme (the Principle under analysis) as having ‘political’ ingredients. One respondent wondered if the research objective was to give information to an ongoing Commission of Inquiry into 2007’s electoral and political crisis.

To address this concern and to win respondents’ trust, researchers spent time to explain the background to the Freedom of Expression Project and its Africa Workshop held in Nairobi in June 2007. Researchers explained the ‘layer model’ in private and publicly at several policy-related meetings and conferences[6], and widely circulated the workshop materials and web links, which enabled them to win trust with respondents, notably in the public sector.

The novelty of the research met with various reactions ranging from excitement, embracing the ideas and participation, to suspicion. Much effort had to be invested in, for example, assuring respondents of confidentiality, to win their trust. In spite of this, a few individuals and two institutions we had hoped to include either declined to participate or did not respond. Fortunately, we consider that the final cross-section of participants is fairly representative of the wider Kenyan community.

6 At the East African ICT Policy harmonisation meeting held on 28 -29 August 2008 in Nairobi, the model was considered for adoption when comparing the policies of all five countries in the region.

2 The infrastructure layer: Access to communications in Kenya

The context of the communications environment in Kenya today is one of rapid growth following liberalisation and the end of state monopolies in the 1990s. Before 1998, telecommunications were under the control of the state-owned monopoly Kenya Posts and Telecommunications Corporation (KP&TC). The Kenya Information and Communications Act 1998 established the Communications Commission of Kenya (CCK), the regulator, and divided KP&TC's responsibilities between the Commission, Telkom Kenya Limited and the Postal Corporation of Kenya.[7]

The information and communications liberalisation of the 1990s was intended to end the state monopoly and control of information and communication. The privatisation of state telecommunications was aimed at injecting efficiency, increasing accountability and curbing waste to deliver more efficient, affordable, and widespread communication. The intended results of the envisaged wider public participation included availability of more information allowing more opinion and freedom, leading to expanded expression and promotion of cultural diversity.

Arunga and Kahora have described the communications service as 'failing' in Kenya while under state control. They cite audit reports that demonstrated high levels of inefficiency and personal enrichment among employees of KP&TC and subsequently of the incumbent Telkom Kenya, and examples of government interference in the independent regulatory role of CCK. They describe how this situation began to change for Kenyans with the arrival of competition to fixed lines, in the form of the mobile phone (Arunga and Kahora, 2007).

There has been rapid growth in Kenya since the 1990s in both the telecoms and internet sectors, with the first Internet Service Provider (ISP) starting up in 1995 and the first mobile operator in 1997 (Southwood et al. 2006: 40). By December 2008 there were 127 licensed ISPs, of which 50 were operational, and four competing mobile operators (CCK 2008: 16, 3).

The growth and competition in the sector have greatly extended access, but issues remain about affordability, particularly in relation to the internet..Sections 2.1 and 2.2 provide an overview of the findings of our desk review, examining the penetration and costs of communication in Kenya. Section 2.3 outlines initiatives being taken by the government and community organisations in order to improve access, whilst Section 2.4 discusses concerns raised by respondents during the course of our interviews.

2.1 Penetration and usage of communications technologies

2.1.1 Internet and phones

Data from the Communications Commission of Kenya (CCK) shows that by December 2008 Kenya had 16.2 million mobile phone subscribers, representing a penetration of 43.6% of the population. Growth to this level has been rapid: in December 2007, for example, there were 11.3 million subscribers and 30.51% penetration. Coverage extends to 83% of the population

7 The Act is available at http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

(i.e. 83% of the population live within the area of coverage) and 32% of land area (CCK 2008: 4, 7).

The number of fixed line subscribers is low by comparison, and in fact fell during the same 12-month period, from 264,882 to 252,296, a drop which the CCK attributes to 'the convenience of mobile telephony and the low penetration of the fixed network'. As of December 2008 Kenya also had 360,909 wireless fixed line subscribers, the number of which has been increasing since fixed wireless technology was introduced in 2006 (CCK 2008: 10).

By December 2008 Kenya had an estimated 3.3 million internet users, an increase from 2.8 million a year previously, but still representing a penetration of just 9%. The CCK notes: 'Among the telecommunication services, the internet has been among the least accessible service [*sic*] in the country' (CCK 2008: 15-16). Users are highly concentrated in Nairobi and the coastal provinces, with these areas accounting for over 90% of users. The commercial sector accounts for about 80% of usage, with the education sector accounting for 1% (CCK 2007). The most often-visited internet sites in Kenya are international: Google, Yahoo and Facebook head the rankings. Only a handful of the 100 most-visited sites have a Kenyan (.ke) domain name.[8]

2.1.2 Traditional media

Traditional media are also given attention in this report, in acknowledgment of the important roles of conveying information and expression that are entrusted to them by society. Kenya has a relatively diverse and vibrant media, and the liberalisation of communications has, since the 1990s, gradually diminished centralised state control of information and increased opportunities for access. Kenya Broadcasting Station (KBC) – the nationwide and government-owned broadcaster – no longer has a monopoly and private media stations have benefited from freed airwaves.[9] As in many African countries, radio is the most widespread and popular form of communications media, especially for news (Horner, 2006).

The first privately-owned, commercial vernacular radio was licensed in 2000[10] and the number of stations broadcasting in local languages has grown, mostly in provincial towns. By 2007, these stations accounted for a 27% share of listeners, against the 33% held by mainstream radio stations. Local language stations mainly cater for listeners from six ethnic communities: Kikuyus (central Kenya), Luos (west), Luhyas (west), Kalenjins (northwest), Kambas (southeast) and Kisiis (southwest).[11]

There are 87 FM licensed radio stations across Kenya, including 46 in Nairobi[12]. All high-power FM frequencies have been taken up by commercial operators, not only in Nairobi but across the country. As of November 2008, Nairobi had over 70 applicants on the waiting list, should any frequency be available. In order for various communities to have a chance at

8 http://www.alexa.com

9 For a historical brief of the media environment's development see Collender 2004. For a profile of the environment and main players, see 'Kenya's vibrant and critical media', January 2008, available at http://news.bbc.co.uk/1/hi/world/africa/7171372.stm

10 'When Radio Spreads Violence: Free Speech Questioned in Kenya' http://towardfreedom.com/home/content/view/1268/1/

11 'Kenya's vibrant and critical media', January 2008, available at http://news.bbc.co.uk/1/hi/world/africa/7171372.stm

12 www.cck.gov.ke

broadcasting, by policy the government reserved FM frequency 99.9 for non-commercial community radio stations. Nairobi already has four such 'low-power' FM stations.

According to www.nairobist.com[13], ownership of radio stations is as follows:

- Royal Media Services owns: Citizen Radio, Innoro FM, Ramogi FM, Hot 96, Musyi FM, Mulembe FM, Muuga FM, Egesa FM, and Chamgen FM
- The state-owned Kenya Broadcasting Corporation owns: English Service , Swahili Service, Metro FM, Coro FM, Central Service, Eastern Service, Western Service, and Pwani FM
- Nation Media Group owns East FM and Easy FM
- Other private radio stations players are: Family FM , Bibilia Husema , Capital FM, Classic FM , Coro FM , Hope FM, Hot 96 , Homeboyz Radio, Iqra FM , Kameme FM, Kiss FM, Metro FM 101.9FM (KBC), Metro East 101.9FM , Radio France International (RFI) FM, Ramogi FM , Waumini FM- 98.5FM , and Y-FM.

The number of television stations has risen from one to 15 channels[14] including satellite and digital providers. These include KBC Channel 1, Channel 2, Nation TV (NTV), Kenya Television Network (KTN), Citizen TV, Family TV, STV (Stella Vision), Pay TV, Digital Satellite TV (DSTV), Gateway Television (GTV), and Oxygen Digital Television Network (ODTV).

Even with this expansion, demand for broadcasting spectrum exceeds availability, both in radio and TV. The CCK annual report 2007-08 records 735 radio and 192 TV licence applications pending (CCK 2008: 8). This makes it virtually impossible for civil society groups to gain access to broadcasting.

Within this growth there is also a level of cross-ownership in the media, with companies owning combinations of radio, television and print media outlets. For example, Royal Media Services owns Citizen TV as well as numerous radio stations; the Nation Media Group owns the Daily Nation, Kenya's largest-circulation daily newspaper as well as radio and TV stations. There are concerns that such consolidation can give a minority a controlling role in determining the communications content agenda, and tend to reduce diversity in content. This is discussed further in Section 2.2.4.

2.2 The costs of access

The unequal distribution of wealth and income in Kenya[15] has implications for the affordability of and access to communications. While costs are reducing in some areas, they nevertheless remain unaffordable for many Kenyans.

13 Viewed on 10 October 2008

14 See http://www.cck.go.ke/radio_and_tv_stations/

15 Kenya's Gini coefficient is relatively high at 0.425. The Gini coefficient is a measure of the inequality of the distribution of income in a country, where zero indicates perfect equality (i.e. every household would earn exactly the same); 1means absolute inequality (i.e.one household would earn the country's entire income). See http://hdrstats.undp.org/indicators/147.html

2.2.1 Mobile phone costs

Call tariffs vary, typically between Ksh 8 and Ksh 14 per minute (US $0.10 to $0.18)[16]. This makes calling expensive for the majority of people, as the average income is around Ksh 100 per day[17] (around US $1.30). The cost of SMS (text messages) is typically lower, around Ksh 3 to Ksh 4 (CCK 2008(2): 7), which means that text messages are more widely used than voice calls. Recent CCK data suggests that the annual number of SMS sent in Kenya increased by around 300% between 2007 and 2008, from 445 million to 1.8 billion (CCK, personal communication).

After the entry of the Orange brand into Kenya in 2008[18] genuine competition benefits began to reach consumers. Orange offered the lowest ever on-net (i.e. to the same network) mobile tariff of Ksh 1 per minute (and Ksh 14 to other networks), while competitors Zain offered Ksh 8 to any network and Safaricom's on-net rate was Ksh 10. This has since been lowered to between Ksh 3 and 8 in a graduated manner, with lower tariffs for subscribers who top up with large airtime denominations. This, however, has been perceived as discrimination against the poor and has elicited strong consumer reactions: 'Should I pay a higher rate just because I am poor and cannot afford to load the higher denomination scratch card of Ksh1,000 [US $12.80]? If they don't want me on their network I will just leave as I now have alternatives!'[19]

Noting a drop in average call tariffs in late 2008, the CCK attributed this to increased competition in the market: 'The entrance of the two mobile operators [Telkom Orange and Econet] in the 2nd quarter seems to be the main reason for the overall call charge reduction in the mobile market' (CCK 2008(2): 6).

Analysts have pointed to a range of factors that may keep prices high in developing telecommunications environments. These include, for example, a lack of regulatory action on inflated prices for connecting to other networks and absence of number portability, which locks customers in to one network and reduces competition. Kenya has, however, a longer-established consumer movement than many other African countries (Southwood et al. 2006: 33). In addition, the growing new wave of consumers demanding their rights may have been fuelled by the '*Chukua Hatua'* programme, launched by the regulator in September 2008, to empower ICT consumers to demand their rights from service providers. This was the second phase of a strategy adopted by CCK (the first being to focus on increasing competition in the market) and, coupled with sustained consumer rights lobbyist activities, it would appear to be translating into the improved affordability of mobile communication services.

2.2.2 Internet access costs

Internet access remains less affordable in Kenya compared to other communications technologies. Data on internet usage in Kenya, collected by KIXP, shows that internet access is predominantly taking place at work, suggesting that it is less accessible and affordable for private and home use. The data shows patterns of peaks during daytime office-hours use,

16 CCK notes average rates of Ksh 8.98 for same-network calls and Ksh 13.26 for calls to other networks at December 2008 (CCK 2008(2): 7). 100 Kenyan Shillings (Ksh) = US $1.30 approximately.

17 http://www.guardianweekly.co.uk/?page=editorial&id=579&catID=7

18 After Orange acquired a 51% stake in Telkom Kenya in November 2007. http://www.orange.com/en_EN/group/latest_news/kenya.html

19 Watchman, Daily Nation 21 October, 2008 http://www.nation.co.ke/oped/Cutting%20Edge/-/440802/482656/-/4eer56z/-/

with dips that coincide with lunch breaks, half-day working on Saturdays, and showing low use on Sunday.[20]

The CCK's own data supports this. When he launched the CCK's *Internet Market Study* in 2006 the CCK Director-General, Eng John Waweru said: 'The failure of liberalization to spur the much anticipated growth in the sub-sector has compelled the Commission back to the drawing board'[21]. He noted that it was important to identify the reasons why internet growth was lagging behind other communications sectors in Kenya. The study, when it reported the following year, confirmed that affordability was one of the factors, providing a comparison of the affordability of fixed dial-up internet services in Kenya with mobile internet or SMS services. It expressed affordability as the average annual cost of the services as a percentage of GNI (gross national income) per capita, used as an indicator of 'purchasing power'. On these calculations, the annual cost of a local SMS service represents 8.72% of GNI per capita, with the annual cost of analogue dial-up services over 26 times higher, at 233.28% (CCK 2007).

The CCK's 2007-08 annual report acknowledged that 'Access to Internet services has continued to be hampered mainly by high access charges brought about by high costs of bandwidth', yet it also noted that increased competition has reduced the cost of international bandwidth in recent years, from Ksh 272,000 per 1Mbps in December 2008, a decrease from Ksh 390,000 in June 2007 (CCK 2008: 33). The amount of international bandwidth available has also increased, which may help further reduce costs in the future.

It is acknowledged that the cost of bandwidth is a key factor in the growth of the digital economy and some commentators have criticised African telecommunications sectors as 'cartels' that are 'not able to deliver effective and affordable bandwidth to the continent'.[22] CCK's *Internet Market Study* also highlighted the extent of Internet Service Providers (ISPs) bandwidth mark-up: the average price to customers for 1 Mb/s (Megabyte per second) leased line bandwidth is Ksh 364,317, which appears to be lower than the Ksh 403,032 that ISPs pay to the Internet Backbone and Gateway Operators (IBGOs). However, for every 1 Mb/s purchased from the IBGO, an ISP connects about six customers using 1 Mb/s links: 'That is, there is a ratio of at least 1 to 6 between bandwidth purchased and bandwidth sold'[23].

Cyber cafes can provide an alternative for consumers when fixed-line subscriptions are too expensive; however, cyber cafe costs are also unaffordable for the majority of Kenyans. The average internet browsing rate is 1 Ksh per minute[24] – approximately to US $1 per hour. The costs of personal media in the form of video cameras, VCRs, DVDs and computers are also high[25].

To determine whether communication costs are 'equitable' we could compare the costs of various options open to an individual in order achieve a certain communication task. It is at

20 'Internet Exchange Points', Available at http://www.isoc.org/educpillar/resources/igf-ixp-report-2007.shtml#measurement [Accessed 9 May 2009]

21 Available at http://www.cck.go.ke/html/speech.asp?speechid=89

22 'Shuttleworth urges telecoms reform' Nairobi, 2006 http://www.tectonic.co.za/wordpress/?p=888

23 CCK 2007, available at http://www.cck.go.ke/internet_tariffs_affordability

24 For example, see rates at http://www.world66.com/africa/kenya/nairobi/cybercafes

25 For example, prices of digital cameras and mp3 players on www.ke.gadgetsguru.com are up to 100% higher than on www.amazon.com.

present cheaper to board a *matatu* (minibus taxi) and deliver a 10 megabit file by hand than it is to upload it via email at 32 kilobits per second.

2.2.3 Costs of having an online presence

The costs of internet domain names, website development and web hosting are expensive in Kenya, effectively preventing most of the population from having a presence online. As of 23 October 2008, there were 9,238 generic .ke domains and 548 restricted or 'second level' domains registered, totalling 9,786 .ke domain names. The policies of Kenic (Kenya Network Information Centre) on internet domain pricing were hotly discussed during the period of this study. A price of Ksh 2,000 per domain had applied for all .ke domains, until sustained complaints that the domain was overpriced, and that this was a barrier to purchasers, compelled Kenic to review prices downwards in August 2008.[26] However Kenic's Board decided to lower to 500 Ksh only the prices of restricted domain names (those used by government and schools) which were also the least registered. Kenic's minutes[27] from its annual general meetings fail to record the levels of public dissatisfaction with their policies, reflecting a tendency to report only on positive achievements.

Estimates suggest that the lowest accepted commercial rate for website development is around US$ 1,000 (approximately Ksh 80,000)[28], making the cost prohibitively high for community and civil society organisations. Professionally developed websites can cost upwards of three times this amount. Popular 'cheap' hosting in the US costs about US$ 100 (approximately Ksh 7,500) per year[29], which is expensive for many Kenyans and civil society organisations.

Around 50% of Kenyan websites are currently hosted overseas. The organisation Afrispa (A continental Association of African Internet Service Providers) has published a strategy arguing that this is the case because the 'unfair distribution of bandwidth cost sharing is actually driving traffic out of AISP [African Internet Service Provider] backbones and into IBP [International Backbone Providers] backbones'[30]. Kenyan ISPs, it says, are effectively bearing the cost of international connectivity in both directions, resulting in higher costs to consumers. The strategy proposes redressing this imbalance of cost sharing and the consequent high prices, by promoting the development 'peering' through Internet Exchange Points (IXPs) so that locally-destined traffic can be routed locally and at lower cost.31

2.2.4 Costs of running traditional media

Kenya's income and wealth disparities are also reflected in the communications environment, for example, with ownership of the media dominated by wealthy individuals and politicians. We are concerned that the effective denial of access to communications infrastructure and the

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26 See http://www.cio.com/article/444446/KENIC_Reduces_Cost_of_.Ke_Domains
27 Available at http://www.kenic.or.ke
28 For example, http://www.kenyawebhosting.com/ quotes Ksh 80,000 to 100,000
29 Depending on the size of the website. For example see 'Top Ten Webhosts' at http://www.kenyawebhosting.com/
30 See ITU 'Are poor countries subsidizing the rich?' http://www.itu.int/itunews/manager/display.asp?lang=en&year=2005&issue=03&ipage=interconnectiv-poor& and AfrISPA - 'The Half Way Proposition: The Problem' http://www.afrispa.org/index.php?option=com_content&task=blogsection&id=5&Itemid=47
31 *Ibid.*

means of communication, brought about by wealth disparities, may mean that only the voice of the rich is heard.

The costs of access to communications infrastructure – to the means of communication – are prohibitive for most community and civil society organisations. A couple of examples suffice:

- A commercial FM station frequency licence fee is Ksh 130,000 per year (over US$1,500) but for Community FM station frequency the licence cost is Ksh 30,000 per year (nearly US$400), which is high for poor communities. A one-off application fee of Ksh 1,000 is also charged. This excludes set-up fees and annual running costs[32].
- In print media, in order to run a journal a publisher is required to deposit Ksh 1 million (nearly US$13,000) with the Registrar of Books and Newspapers.[33]

2.3 Improving access to communications: universal service obligations, pro-consumer policies and community initiatives

The Communications Commission of Kenya (CCK) was established by the Kenya Communications Act 1998, to license and regulate telecommunications, radio communication and postal services in Kenya. It is also responsible for implementing the Universal Service Obligation for both postal and telecommunication services. Under sections 23 and 47 of the Act, the Commission is required to ensure that communications services are provided throughout Kenya and that the interests of all users of these services are protected with respect to prices charged and the quality and variety of those services, among other responsibilities.

As a result of inadequate enforcement and the rapid pace of technological change, Kenya's Universal Service Obligation on the whole failed to achieve its goals[34]. In response to this, the regulator has developed a Universal Access plan, designed to improve affordability of and access to communications, particularly in rural areas which it acknowledges are greatly underserved. It is currently implementing several universal access pilot projects in order to increase access to information and communications technologies. These pilots include: supplying 16 schools with equipment and supporting them to become school-based ICT centres; establishing four community telecentres for rural areas; and supporting the development of a National Backbone for Fibre Infrastructure, to improve the availability and affordability of international bandwidth.[35]

In addition CCK has undertaken the following initiatives:

- A partnership with the Kenya Institute Education (KIE) is procuring hardware and software for e-learning in schools[36].
- Satellite connection licence fees have been waived for schools and community-based non-governmental organisations[37].

32 Fees are set out at http://www.cck.go.ke/licensing_information/
33 According to the Media Law passed in 2002. See http://www.hrw.org/en/news/2002/05/09/kenya-new-media-law-curbs-free-speech
34 See the analysis at http://www.idrc.ca/en/ev-93055-201-1-DO_TOPIC.html
35 See http://www.cck.go.ke/current_ua_pilot_projects/
36 'Deal for e-learning content signed' Business Daily August 25, 2008 http://www.bdafrica.com/index.php?option=com_content&task=view&id=9562&Itemid=5847 [Accessed 18 January 09]

- A resource centre open to the public has been established at CCK.
- CCK launched a consumer education programme, ‘Chukua Hatua’[38] in September 2008, to empower consumers to demand their rights from service providers and advance their interests in the networked communication environment.

At the launch of ‘Chukua Hatua’ the Minister of Information and Communications ‘promised to move with speed’ to announce consumer protection in subsidiary legislation upon the enactment of the ICT Bill before parliament[39]. This Bill (now the Kenya Communications [Amendment] Act) establishes a Universal Access Fund with the intention of supporintg widespread access, capacity building and innovation. The Ministry has also promised to finalise the drafting of the Freedom of Information law[40]. There is also a Consumer Protection Bill[41], which proposes a generic legal framework to address consumer protection issues.

The Kenya ICT Board also has two programmes, ‘Pasha’ and ‘Tandaa.08’, aimed at providing access to over 300 internet access centres throughout Kenya and with targets to increase the number of internet users from the current level of around three million to 12 million by 2012. The Pasha programme is to promote the establishment of ‘Digital Villages’ to provide services to the public in rural areas via the internet and to educate the public in their use. The aim is to enhance information, to provide employment and wealth creation opportunities, and to enhance the provision of government services. The Centres will be run by private entrepreneurs who, after completing approved training, can apply to the Kenya ICT Board for a development loan. ‘Tandaa’ is intended to promote the development of local digital content in Kenya.[42]

Whilst these initiatives are important, we believe that more needs to be done to ensure that regulatory frameworks support the development of community-driven and owned communications access initiatives. The Free and Open Source Software (FOSS) community in Kenya complains that the ICT Board has failed to include the use of open source software on 'Pasha' training programmes and project roll-out, running the danger that rural entrepreneurs will be locked into proprietary software and incur licensing costs that they could have avoided if a FOSS option had been included.

We note that there are models emerging elsewhere in Africa of community ownership of infrastructure. Telecommunications entrepreneurs and community investors are developing services for rural and urban under-served consumers, reducing their dependence on other providers and also reducing their costs. One example is the Dabba Community Telco[43] in South Africa. Dabba is a community telecommunications company that helps to set up village telcos. It has used reprogrammed Wi-Fi routers as base stations, and open source

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37 ‘CCK waives satellite costs for schools’ http://www.bdafrica.com/index.php?option=com_content&task=view&id=872&Itemid=5822 [Accessed 18 January 09]

38 See http://www.cck.go.ke/html/news.asp?newsid=282&area=new [Accessed 18 January 2009]

39 http://www.ictconsumers.org/index.php?option=com_content&view=article&id=59:chukua-hatua-regulator-tells-consumers-&catid=1:latest-news&Itemid=50

40 Freedom of Information Bill 2007, available at http://www.information.go.ke/docs/FOI%20Bill.pdf

41 Introduced into Parliament in 2007. See http://www.kenyalaw.org/Downloads/Bills/2007/The_Consumer_Protection_Bill_2007.pdf

42 http://www.ict.go.ke

43 Dabba Community Telco http://manypossibilities.net/2008/03/dabba/ and http://en.wikipedia.org/wiki/Dabba

software to build its first local network. Cheap Wi-Fi handsets are used to make calls, which are free within the local network and at cheaper rates than other operators when they connect to national networks. The company also encourages local entrepreneurs to set up their own networks and connect to theirs, to help bring affordable services to underserved areas. There are also a number of community-driven connectivity initiatives in Kenya[44].

Social investors have not received serious attention or support, and it is not clear how they will be affected by new regulatory systems such as the unified licensing framework.[45] Most major investors in Kenyan telecommunications have been foreign investors. In the communications sector this is most visible on Vodafone, Zain (formerly Celtel), Orange and Econet mobile companies. Many of these companies are reluctant to invest in areas which would yield low profit margins. At the national level, they are competing with small indigenous ISPs. Access in rural and underserved areas may be improved if more focus is given to improving the regulatory framework so that it supports local entrepreneurship and community investment.

A range of concerns are also regularly raised by consumers, for example about the affordability of tariffs, billing, quality of service, insufficient information about services and prices, mobile 'competitions' fraudsters and misleading advertising. For example, Southwood et al.'s 2006 research noted that consumer complaints from mobile subscribers included: 'loss of pre-paid credit after loading it; ... being charged for SMS messages that were not delivered; and calls directed to voice mail when the network is congested.' Fixed line subscribers' complaints covered the speed of repair, quality of calling and wrong billing – 'common when individual lines are "tapped" into illegally and used by others to make calls' (Southwood et al. 2006: 42). Some of these issues have been addressed, with consumers' agitation providing the impetus – for example in 2007 complaints resulted in refunds being made by one mobile operator for undelivered SMS messages.[46] We hope that the further strengthening of the consumers movement in Kenya will help to spur the development of a public interest communications environment.

2.4 Interview findings: Access to communications

Our desk research revealed that progress is being made in improving the penetration and affordability of communications in Kenya. However, significant obstacles still remain, and we suggest that these might be overcome by regulatory frameworks that support local innovation, community-based media and access initiatives. Further insight into the issues was provided by interviews with stakeholders. Respondents recognised that some reform or modification of regulation and policy is required to facilitate the implementation of access in rural areas. Specific ideas included the removal of charges or duties applied to new technologies that are particularly suited to rural areas. It was also suggested that certain services, such as communication during emergencies and disasters, should be provided as a

44 See for example http://www.kenyatelecentres.org/

45 This framework aims to simplify licensing arrangements and create a technology-neutral regulatory regime as services converge around ICTs. The framework distinguishes between network facilities (infrastructure), applications and content service providers, rather than between how these services are provided (e.g. by phone, internet, satellite). See http://www.ictregulationtoolkit.org/en/Publication.3399.html

46 'Consumer watchdog efforts bear fruit', 31 Aug 2007, available at http://www.bizcommunity.com/Article/414/78/17690.html and Business Daily http://www.bdafrica.com/index.php?option=com_content&task=view&id=2740&Itemid=5822

public good. (There are examples of mobile phone companies themselves donating free mobile airtime to people in distress after the violence accompanying the elections of 2007.[47])

There was a recognition that access to communications technologies requires more than simply the provision of a connection. There is a need for capacity building around technological development, and adaptation to ensure that connectivity tools are 'fit for use'. Fundamentally, respondents were interested in social change and wanted ICT s to be at the centre of that process. A strong argument was made that ICTs can and should be embedded within social development initiatives and in these circumstances be delivered as a public good.

Respondents were interested in community-based models of infrastructure ownership, perceiving them as potentially more sustainable, accessible and reliable, and less costly. Their embedded social enterprise principle ensures that community and public interest is above personal private interest. Kenya, and the rest of Africa, needs to invest in community based models, owned locally and subsidized by government. Respondents identified a number of obstacles that may prevent local ownership of infrastructure, including little or no knowledge on the part of potential investors about modern communication technologies and surrounding business models. It was noted however that the initial public offerings (IPOs) of KeNGEN (electricity generation) and Safaricom (telecommunications) in 2006 and 2008 respectively were massively oversubscribed: this demonstrates that citizens had money to invest but they lacked local vehicles for their investment ambitions, the only public option available being the Nairobi Stock Exchange.

Community broadcasters we interviewed felt disadvantaged in comparison to private stations, complaining that regulation prevents them from receiving advertising revenue for sustainability. They also questioned why they are allocated only a 5km broadcasting radius that prevents them from reaching out to larger audiences to develop and raise funds.

Cyber cafe owners interviewed for this study gave another perspective as providers of internet access, complaining of high charges yet the poor quality of service they receive from ISPs. They thus have to charge consumers more, and the poor quality of the services makes them lose customers. A frustrated cafe operator said: 'Imagine when you have full house with clients and not a single machine can download a mail.' He wondered how to get intervention on internet users' behalf, as many users complain of paying for no internet services received. The quality of service from ISPs is a major challenge in Kenya.

47 See http://www.freedomofexpression.org.uk/resources/conference+report+international+media+and+human+rights

3 The content layer: Diversity and culture

As well as investigating access to the means of communication in Kenya, this study was also concerned with the content of communications, and more specifically with the issues of diversity and quality. Unless otherwise stated, the information in this section is drawn from our interviews with stakeholders. Discussions were held with Media Owners Association of Kenya and editors in the print media, while civil society respondents also brought insights about the relevance of freedom of information legislation – not only to ensure the free flow of information but to protect and preserve Kenyan cultures.

3.1 Language

African languages and cultures are quickly disappearing, threatening to undermine diversity and cultural heritage. As the Nigerian film industry adviser Charles Igwe has noted: 'We have cultures literally vanishing. Each time someone dies, it is like losing a library'[48].

Kenya's National ICT Policy includes specific objectives on the development of local content in Kenya, noting that this requires 'Developing content in local languages' and 'Identifying, selecting and capturing information and knowledge available in various formats' (Ministry of Information and Communications 2006: 10). It specifies that its strategies on local content will encourage the use of local languages, the development of content to capture and preserves knowledge and culture of local communities, and the management of information and knowledge resources as a national heritage (Ministry of Information and Communications 2006: 16).

We emphasise here the importance of local language content in facilitating the use of communications networks by communities. As Abiodun Jagun has noted: 'An appreciation of the culture and incorporation of local languages also helps to promote and develop the skills of the members of the community in using the networks and in adapting them to their needs' (Jagun 2008: 10). This can significantly improve their sustainability and continuity, because they are people-driven and owned. Respondents in our interviews also felt it was critically important that networked communications pay attention to languages from the global South. They must be friendly to those who do not have access to major world languages. Thus in recognising the needs of users – especially those in rural communities – it becomes imperative to translate and promote local languages and local customs.

There are some examples of how applications of new technology may help to preserve such resources. Jens Finke has been concerned with the rapid disappearance of traditional forms of Kenyan culture, in particular of ethnic music, and for some years has been compiling an online sound archive. He discusses the difficulties he has encountered in collecting this material (including surprise that he, a '*mzungu*' or non-Kenyan white man, should be undertaking such a project). Finke's online library illustrates the potential of the digital communications environment to help archive, curate and share traditional forms of culture, including sound.[49] However, while this is one example, the authors found comparatively little cultural expression from Africa available and accessible in the new communications

48 Kaitlin Mara, 'Open Business Systems Fill Gap In Mainstream Entertainment Industry', available at http://www.ip-watch.org/weblog/2008/09/12/open-business-systems-fill-gap-in-mainstream-entertainment-industry/ [Accessed 9 May 2009]

49 www.bluegecko.org/kenya

environment; there is scope to do much more to link artistic and cultural expression from Africa with the new communications technologies.

The preservation of African languages is not only as issue for the online media, but also for traditional outlets. Respondents emphasised the popularity of vernacular radio stations, giving as an example the town of Nyeri. Here the majority of radio listeners are tuned to Kameme FM and Coro FM, stations that broadcast in the Kikuyu language[50]. While these are very popular, respondents warned that cultures were being diluted through some privately owned stations. Two respondents accused profit-driven vernacular stations of employing young anchors, sometimes of different communities, who lacked depth of knowledge or ability in the languages they spoke on air. In contrast, community stations draw from the cultural repertoire of communities; such questions about linguistic dexterity would not arise in the same way.

3.2 Culture and quality of content

No known studies on the impact of ICTs on culture have been conducted by the government. Officials at the Ministry of Culture interviewed for this study expressed the need for such studies. Other government officials expressed concern that the international fibre optic cable connection expected in 2009 will open the gateway to unchecked 'cultural pollution' from the West. Accordingly, they see a need to mitigate the impact by developing significant local content in advance. The government has stated that the majority of Kenyans in fact prefer local content and that available statistics show that local programmes are the most watched[51].

Some respondents considered the extent to which communication companies upheld the Kenyan government policy of ensuring that ICTs provide opportunities for people to express their ideas and culture. The predominant view was that many companies are interested in profit and often show only minimal commitment to social responsibility. Many are perceived to seize opportunities to 'showcase' themselves when they undertake activities in the public interest, such as supporting sports and the arts.

Some respondents blamed the popularisation of Western culture for the absence of local culture publications. The marketing of Western popular culture was perceived to be eating into the creativity and innovation of citizens in Kenya and the region. Moreover, little content is available in African languages. Deliberate action would need to be taken to buttress and promote local creativity. Civil society respondents suggested the government could take action to enable more local content development. For example, to encourage local offline print media, initiatives could include lower taxes on printing press equipment and inputs. Interview respondents noted that most quality printing was now only possible outside Kenya, at high costs. When overheads are added to printing costs, and as advertising opportunities are limited, this makes magazines unaffordable, expensive and out of reach for most potential users. It also helps to explain the high publications mortality rate in the country.

Media respondents said that each broadcast station, with its own editorial freedom, sets its own criteria for content. Regarding local content, FM stations were credited by audiences for

50 Kameme FM is privately owned; see www.kameme.co.ke. Coro FM is operated by the state-owned Kenya Broadcasting Company; see http://www.cck.go.ke/radio_and_tv_stations/

51 'Ndemo speaks out on the forthcoming digital shift' http://www.bdafrica.com/index.php?option=com_content&task=view&id=10939&Itemid=5844

promoting local artists and local music. Media owners said the process of promoting local content was continuous but posed the questions about the definition of 'local content'. Does it mean locally-produced news and programmes? Does a soap opera produced by a foreigner employed in Nairobi qualify? Does a programme produced, for example, in Zanzibar qualify as 'local content' or does it refer to programmes made only by Kenyans? Respondents called for more public debate on local content policies.

Some respondents accused broadcasters of failing to deliver improving programming and focusing on politics and sleaze, competing for audience numbers to assure their advertising revenue. In the words of one respondent: 'Broadcasters should tell listeners what research they conducted that established that Kenyans liked to hear about sex, a culturally taboo subject, on radio first thing in the morning every day.' There was also concern that co-ownership in the media may contribute to the impoverishment of content. One example given was of a report published in July 2008 by the *Nairobi Star,* alleging that nearly half of women university students 'date older partners for money'. This was based on its own poll of only 250 students, but KISS 100 FM, a radio station owned by the same publisher, made this their story of the morning. This raises some statistical and also moral concerns, given the social impact of such reporting. Is a poll of Nairobi-only respondents a fair representation of the national student body[52], especially from a station that broadcasts in seven major towns across Kenya? Is it acceptable for media houses to use their own outlets as 'news sources'?

3.3 Journalism in Kenya

Respondents highlighted the influence that journalists and media companies can have on the subject matter and quality of media content. The challenge of untrained 'comedian' journalists on the radio was discussed by respondents. In the past the problem has been radio presenters who gave their own, often uninformed views about a major issue. But comedians attract audiences and therefore more comedians have been employed. The concern is that disturbingly, audience members may assume that what is being presented on radio or television may in fact be factual, due to limited media literacy.

There was concern that Kenya has not developed a journalism curriculum which has developed in tandem with media growth and the pursuit of freedoms by individuals and communities. Journalism curricula are implemented at the government owned Kenya Institute of Mass Communication (KIMC), Daystar University and University of Nairobi School of journalism. It was suggested that other private institutions have borrowed extensively from the KIMC curriculum. This has led news reporters to 'think and see issues from the same window' as one respondent phrased it. The possibility of nurturing a culture of journalism that is responsive to local needs was also emphasized; one that includes local views. The concern was that otherwise, the belief that 'sleaze sells' would become the norm and affect the values of families and communities.

Media practitioners interviewed for this study agreed on the necessity to take positions on contentious national issues but felt these should be openly declared, to avoid media houses appearing 'neutral' while in fact biased on their coverage of debates. In many cases, media houses have taken positions and endorsed national politicians without making it common knowledge.

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52 32,108 students applied for Higher Education Loans in 2006/2007 academic year. See http://www.helb.co.ke/breakdownperdistrict0607_250706.pdf

Media stakeholders also raised issues related to the Media Council of Kenya, the body responsible for mediating in disputes between the government and the media, for promoting the independence of the media and for promoting high standards of journalism. Specifically, practitioners questioned the rationale for journalists paying a mandatory annual subscription to the Media Council in order to be allowed to practice in Kenya[53]. This has resulted from the implementation of Kenya's Media Act 2007, which established the Media Council and gave it the power to 'impose a levy in respect of all media enterprises operating in Kenya, and an annual registration fee in respect of all journalists whose names appear in the registers kept by the Council'.[54] There were concerns voiced about the resulting friction between government and the media, and also that if the Media Council were to impose hefty journalists' registration fees then local news, information, and cultural values would seriously suffer, as about 75% of media houses' content originates from external contributors.[55] There are now proposed policy changes providing for government funding of the Media Council.[56]

Media practitioners responded to accusations that the media preferred to define the social agenda rather than act as custodians of the public interest. They cited recent cases that have been followed by the media and in which there are issues of public interest. They gave examples including: the tenth anniversary of the 1998 bombing of the US Embassy in Nairobi; the investigation into the controversial sale of the Grand Regency hotel by the Central Bank of Kenya to Libyan investors; the Goldenberg International corruption scandal involving subsidies to promote gold exports during the 1990s, which cost the country an estimated US $600 million[57]; and the Anglo Leasing scandal concerning over-priced, non-transparent and corruptly awarded government tenders for services[58]: the last three of these involved highly-placed political figures. Certain respondents felt, however, that there are stories exposed through the media that are not pursued to their conclusion. They felt that there are other cases that have not been sufficiently investigated, for example: corruption regarding the establishment of a molasses plant in Kisumu; allegations of fake university degrees being held by prominent Kenyans, including politicians[59]; and presidential election fundraising and expenditure

Some media respondents commented on the assertion that private media houses without published editorial policies have acted as information gatekeepers, setting the agenda and dominating opinions while controlling expression. They felt that in an environment of many players it was not possible for one to dominate.

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53 'Paying to cover the news in Kenya', Business Daily 22 July, 2008, http://www.bdafrica.com/index.php?option=com_content&task=view&id=8887&Itemid=5822

54 Media Law 2007 s19(1). Available at http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

55 Concerns have been voiced about compulsory registration by the international NGO Article 19: 'Any mandatory licensing system, whereby individuals cannot practise journalism without first obtaining a license, constitutes an unjustifiable restriction on freedom of expression and goes against recognised international best practice.' It notes: 'ARTICLE19 objects to the law's demand that local journalists pay an annual fee of KSh2,000, while foreign journalists must pay KSh10,000, or KSh5,000 if on a short term assignment. The imposed fees appear nominal at present. However, there's a subtle threat of deterring aspiring journalists because the fees could be gradually increase[d], pricing some poorer talents out of the profession.' *Around Africa*, July 2008. Available at http://www.article19.org/pdfs/publications/around-africa-july-2008.pdf

56 See International Freedom of Expression Exchange http://www.ifex.org/en/content/view/full/103080

57 Summary and links to sources at http://en.wikipedia.org/wiki/Goldenberg_scandal

58 Summary and links to sources at http://en.wikipedia.org/wiki/Anglo-Leasing_scandal

59 See http://africanewsonline.blogspot.com/2008/07/14-kenyans-probed-over-fake-us-degrees.html

3.4 Regulation and hate speech

Respondents highlighted the challenges and lessons learnt in the wake of the heavily contested presidential elections of 2007, in which some radio stations were known to have exacerbated tensions between ethnic groups[60]. To guard against hate messages and insults, delayed systems that allow editors to listen for a few seconds are being introduced. The time lag gives editors an opportunity to pre-assess broadcast material for inappropriate content. We would say it is appropriate that freedom of expression goes hand in glove with responsibility within live networked communications. Constraints imposed on those who seek to harm others are not censorship, we argue, but the necessary and responsible exercise of freedoms.

Respondents also raised concerns about regulating the use of mobile phones for hate speech. Whereas the law provides for the registration of mobile communications lines, this rule is not followed and SIM cards purchased off the streets, 'no-questions-asked', are quickly activated. Pre-pay accounts for 99% of Safaricom's customers, and the appeal of pre-pay services makes it necessary for providers to tailor services around this model. This lack of registration poses several challenges to the regulators concerned with limiting hate speech. In view of the post-election violence in Kenya in early 2008, the Kenya National Human Rights Commission has proposed that mechanisms be put in place to legislate against hate speech. Whilst we argue that this is important, we urge the government to ensure that these are in line with international human rights law and do not place unnecessary restrictions on freedom of expression. There are also concerns over the power that the Communications Amendment Act (2009) gives to the CCK to regulate both traditional and online media. The independence of the CCK is enshrined in the constitution, but many of the commissioners are appointed by the government and critics have questioned their independence[61].

3.5 Opportunities for expression and public participation

Interviewees were asked about the opportunities that the Kenyan media environment provides for individual expression and participation in public debate. We found mixed experiences with online media. It was noted that mailing lists, for example, promoted expression and individual opinion but they could also become instruments of control by the technologically 'savvy' or avenues for the suppression of a less technologically literate majority. Observations included the fact that messages posted to moderated mailing lists were being withheld, only to be released days or weeks after a subject discussion had been concluded. One subscriber described lists as 'extensions of [a] culture of secrecy and opaqueness to the online space'. Another questioned who determined discussion subjects, apparently because of the undisclosed *modus operandi.*

There were also doubts expressed about the legitimacy of online voting on such mailing lists. It was suggested that more research was required into the principles under which such mailing lists are run, to ascertain their role and to determine whether indeed they promote the rights of individuals or mask them. There was concern that polls conducted through the

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60 See 'When Radio Spreads Violence: Free Speech Questioned in Kenya', *Toward Freedom*, Tabitha Nderitu, 3 April 2008. http://towardfreedom.com/home/content/view/1268/1/ . See also BBC World Service Trust, *The Kenyan 2007 elections and their aftermath: the role of media and communication*, Policy Briefing No. 1 April 2008. Available at http://downloads.bbc.co.uk/worldservice/trust/pdf/kenya_policy_briefing_08.pdf

61 See for example Freedom House: http://www.freedomhouse.org/template.cfm?page=384&key=209&parent=19&report=79

networked media may be ‘doctored’, because the public never gets to know the sample size or demography.

The views of non ICT-based social movements were found to be largely absent from active online discussions, suggesting that there may be difficulties for others in establishing themselves online, such as capability and costs.

With regard to participation by audiences in traditional media, respondents cited popular listeners’ call-in programmes, and noted that audience opinion polls on topical subjects, collected via SMS votes, shape the agenda on news. Media respondents claimed that research was conducted prior to hosting talk shows and radio debates and that the public paid attention to what was being said – media houses were said to be encouraged to receive repeat calls and emails as it indicated audience bonding with content policies. Aired off-the-street-views (‘vox pops’) informed public opinion on key social issues of the day. But other respondents felt that media houses’ editorial content was largely influenced by media owners’ interests, with editors acting as gatekeepers via undisclosed ‘editorial policies’.

Print media avenues for participation were also acknowledged, including editorials, letters to the editor, opinions, and ideas and debates columns. The availability of blogs for media houses, such as the Daily Nation blog[62], was considered to be an example of how public opinion on news items could be sought further – though we note that these are not accessible to the majority of Kenyans.

3.6 Youth and new communications technology

Views about young people and their relationship to the new communications technology were contributed by students and parents, who volunteered perspectives on culture and youth aspects although they were not in the initial study plan. These reveal a certain degree of concern about the impact that new communications are having on culture and values in Kenya. Many people are struggling to understand and adapt to changes that are occurring in Kenyan society, and blame new communications for dynamics that they perceive to be negative. This could be described as a digital generation gap.

On the one hand, young people are embracing modern communications technology; on the other they are challenged by its depth and complexity. Some respondents felt that young people’s yearning for more information, now available in this environment, has led to new and previously unexpected attitudes and behaviour. Some respondents said that access to various sources of information has led to youth getting exposed to adult lifestyles at very young ages.

During the course of this study there was a wave of simultaneous riots in schools, and the mobile phone was named as the communication tool used to synchronize or incite such actions. In a ministerial statement, Education Ministers said the technology had been used in fuelling the chaos, affecting more than 300 schools. The Government banned the use of mobile phones among students in learning institutions in bid to halt the unrest in secondary schools.[63] A parliamentary committee investigating the unrest found a decline in the respect

62 ‘Outside the Box’ Daily Nation blog http://www.nation.co.ke/blogs/-/634/634/-/8cwo0e/-/index.html
63 ‘State bans mobile phone in schools’, *Business Daily* July 23, 2008 and http://www.afrol.com/articles/29964

accorded to seniors and a disregard for taboos and expected norms, and also said that evidence showed that parents had failed to impart relevant cultural values to their children.[64]

Respondents expressed different views about whether students could afford the large amounts of airtime needed to coordinate riots. Others argued that cheaper text messaging could have been used. Drugs, mobile phones, poor parental guidance and negative peer pressure were all considered as contributors to the indiscipline; while others also felt it was necessary to point to the school management system: blaming the mobile phone for indiscipline is a vain attempt to blame the messenger for the message. Other respondents felt that the proliferation of FM radio stations was a factor, as most youth in schools now have mobile phones capable of receiving FM broadcasts, which may have prompted other students elsewhere to go on strike.

Youth respondents themselves spoke of problems facing the youth today and affecting their behaviour: hopelessness, despair, and a feeling of being lost. They voiced concern about existing youth outreach initiatives as they considered them ineffective, focusing primarily on slum dwellers and people living with HIV at the expense of other groups in need. They felt that 'well off youth' tend to be ignored; that 'ghetto youth' receive attention 'for the wrong reasons' as they are 'used' by politicians and organizations with donor funds. They said that isolation and despair are experienced by 'upcountry youth', who are marginalized by limited facilities such as schools and hospitals: politicians only remember them when they want their votes and few NGOs work with them.

Parent respondents complained of uncomfortable situations in which they find themselves because of ICTs. These included embarrassment at DVDs played on *matatus* showing semi-naked women dancing, concerns about inappropriate television programmes, and family tensions over programme preferences. There were concerns about children being exposed to undesirable content without supervision, including over the internet and a real fear of children being exposed to pornography. Some expressed discomfort at their children requesting mobile phones so that they could call their lovers. Others felt that too much freedom had been given to children by the law and the pursuit of human rights was encroaching on family values. One respondent, for example, felt that interpretation of the law criminalising physical punishment contributed to a current lack of discipline among children.

Youth, and the wider community, today clearly find themselves at a crossroads, and are trying to come to terms with the role that communications tools and practices are playing in positive and negative social processes. One approach to addressing these issues might be life skills education, to promote responsible decisions[65] in the context of new communications technologies.

64 'School riots: Probe finds parents guilty' The Daily Nation, 25 October, 2008 http://www.nation.co.ke/News/-/1056/483938/-/tlh5f4/-/index.html

65 An example of such programmes is the US website Students Against Destructive Decisions http://www.sadd.org/.

4 Conclusions and recommendations

This report acknowledges the Kenyan government policy to promote and preserve a vibrant and competitive free market for the internet, and stresses that it should be available to all. Encouragingly, the Ministry of Information and Communications has shown commitment for the development of a rapid communications infrastructure and the creation of an enabling policy environment. On its part, the CCK continues to ensure that the communications sector contributes to the country's overall development through efficient and enabling regulation and public participation. Consumer empowerment and education through initiatives such as '*Chukua Hatua*' are important for protecting consumers. Meanwhile, the ICT Consumers Association of Kenya has successfully lobbied relevant legislators to hold Annual National broadband hearings where stakeholders report to parliamentarians on the progress in ensuring this incredibly powerful, enabling technology is available to all Kenyans. Despite these efforts, more still needs to be done.

Research is needed into sustainable, workable community-based models of ownership and control of communications technologies.

The principle that 'all people should have affordable and equitable access to the means of receiving and disseminating opinion, information and culture' can be supported through community-owned models. Further research is needed into how these can safeguard the public interest while encouraging investment from profit, development and prosperity, and into how the government could support these initiatives financially and through the regulatory framework. This research should encompass investigation into sustainable, workable community-based models for all aspects of the networked communication environment. This would include content, software (including free and open source software), wider and national community-based broadcasters, publishers, and voice and internet data traffic companies. Universal Service Fund grants, for example, could fund community telcos.

Key stakeholders should lobby the regulator to step up and maintain competition in Kenya in the communications industry in order to create more affordable and accessible services. Stakeholders should lobby decision makers and political leaders for a transparent and stable regulatory environment in which the rule of law and fair competition are upheld.

Increased competition has given consumers options and contributed to more affordable and equitable access; this should be extended. Changes in policies and regulations should focus both on promoting competition and protecting consumers.

The competitive environment needs to be developed, and this requires that regulatory and policy regimes be improved in the key areas of international gateways, terrestrial networks and the mobile sector. Other regulatory and policy areas that need attention include an increase in diversity of organisations that are able to provide telecommunications services. These include community operators, municipal authorities and co-operatives, among others.

In order to attract international investment in the development of infrastructure, it is imperative that there is a transparent and stable regulatory environment and that the rule of law is upheld. Commitments need to be articulated and implemented quickly efficiently, in relation to fair competition, licensing and spectrum allocation procedures and flexibility for innovative services.

Key stakeholders should lobby the Ministry of Information to spearhead action on the language and culture commitments of the ICT Policy and to reserve national frequencies for community-based broadcasting services.
Throughout our interviews respondents argued that new communications technologies ought to pay attention to Kenyan values and systems that have withstood the test of time.

Research is needed on the social and cultural impacts of new communications technologies in Kenya with particular reference to youth.
Our interviews highlighted many challenges. How can values be upheld within the new communications technologies? How can media literacy be improved? Which technological actions can be undertaken to ensure that younger uses are not exposed to inappropriate and pornographic content? How can parent-child communication be increased in Kenya? Life skills education within the context of the new communications technologies is urgent, and we recommend that programmes to assist the youth in making responsible decisions are started in Kenya.

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Kenya Network Information Centre http://www.kenic.or.ke/
Communications Commission of Kenya http://www.cck.go.ke/
Ministry of Information and Communications http://www.information.go.ke/

List of interviewees

Judy Adhiambo (youth)
Silverse Anami, Director Department of Culture

Simon Gisore, university student
Harry Hare, ICT and media expert
Carole Kimutai, Magazine Editor, Kenya Institute of Management
Victor Kyalo, Kenya ICT Board
Patricia Muchiri , Director, Consumer Affairs, CCK
Charles Njoroge, Director General, CCK
Priscilla Nyokabi, ICJ Kenya
Gilda Odera, Skyweb Technologies (Internet Service Provider)
Judy Okite, Youth and advocacy in ICT
Mike Theuri, Diaspora views
Kanja Waruru, Media Owners Association
Eng. John Waweru, former Director General, CCK
Hon. Members of Parliament: Energy, Communications, Infrastructure Departmental Committee
Three university students who preferred to remain anonymous

And the following groups:
East Africa ICT Policy Harmonisation Workshop participants
ICT Consumers Association of Kenya (consumers' forum)
Kictanet mailing list online discussions (a multi-stakeholder forum)
The National Communications Secretariat (ICT Policy)
'Skunkworks-Kenya' mailing list online discussions (local technical forum)
Strathmore University Conference (organisers and several students)

Acknowledgements

We would like to acknowledge the support of Global Partners (UK) in undertaking this study. Lisa Horner provided important guidance and we are indebted to her. We are also indebted to the many people in the ICT sector who agreed to answer our questions and to discuss with us including at the Communications Commission of Kenya, Media Owners Association, Strathmore University, ICT Board Persons with Disabilities Program and the many members of mailing lists committed to ICT matters. We are grateful to all those who opened their doors for us.