Abstract

Given the ongoing democratisation and human rights advancement around the globe, including in societies hitherto never thought permeable such as the Muslim world, it is futile for a present day government to use freedom-curtiling means to reign on its subservient: be it media, civil society or the populace. The resilience exhibited by the Kenyan media, albeit amidst blame for occasionally going to bed with government, points at media focused on serving the fast democratising Kenyan society in the wake of ICC heightened charges against top government officials. In 1963, Malcolm X stated that the media are the most powerful entity on earth, and human beings, as renowned writer and critic Wole Soyinka argues, like to dominate others, especially if they are in power and this makes them seek the power of the media to perpetuate their internal inadequacy. While attempting to analyse the love-hate relationship between the Kenyan government and the media, especially on ICC issues, this study seamlessly merges Malcolm X’s and Soyinka’s opinions above and draws a lesson for both government and media.

Keywords: ICC, Kenyan media freedom, election violence, journalism practice, Kenyan government

I. Demediatisation of ICC and Line Toeing

The Hague based International Criminal Court (ICC) has for close to seven years been engaged in attempts to prosecute Kenyan cases that arose out of the controversial 2007 presidential elections that culminated in post-election violence (PEV) between December 2007 and early 2008. The cases involved six suspects including Mr. Uhuru Kenyatta, now President; William Ruto, now deputy President; Arap Sang, a vernacular radio journalist and three other public figures. President Kenyatta’s charges have since been withdrawn while the three public
figures Henry Kosgey, Hussein Ali and Francis Muthaura were acquitted. Deputy President, William Ruto, and radio journalist, Arap Sang, still fight for their freedom at the court. The accusations facing the two include inciting masses into murder, rape and forcible transfer of people.

Deputy President Ruto, a shrewd politician who besides wielding political power is thought to use it to push ICC prosecutor Fatou Bensouda to withdraw charges against him. After all she has since withdrawn President Kenyatta’s case citing lack of sufficient evidence; after some of her key witnesses died mysteriously while others withdrew their testimonies citing intimidation and loss of interest in the case (Holligan, 2014).

Related to it was another twist of events in which the ICC prosecutor issued an arrest warrant on yet another Kenyan journalist, Walter Osapiri Barasa, for allegedly corruptly influencing the ICC witnesses (BBC Africa, 2013). However much Journalist Barasa may fight in the Kenyan court of law to stop the ICC arrest warrant, public opinion holds him not innocent, for there is public evidence about his attempts to bribe and intimidate the witnesses. As to whether it is the Kenyan Journalism training standards that are wanting or individual Kenyan journalists personal shortcomings is a debate that this article seeks to put to an end.

To begin with, in one of its editorials, Kenya’s leading daily newspaper Daily Nation argued that the Kenyan government seems keen on how media portray it, especially regarding the ICC indicted Deputy President and the President despite his charges having been withdrawn, allegations of 2013 Presidential election rigging, and now public debates on government attempts to suppress the media and civil society freedoms gained over the years. A local TV comedian joked, “If two wrongs do not make a right, try three.”
Journalists and programmes that are boldly critical of the Kenyan government (largely criticised by the public for not being media friendly while it argues that the media are becoming a threat to national security) suffer reprisals. In a televised interview, media critic and cartoonist Patrick Gathara argued that the rain started beating the media the day they remained silent on the allegations of electoral malpractices in the 2013 presidential elections. There were widespread allegations of the incumbent government having rigged the 2013 presidential elections, but they were put to rest when the Kenyan Supreme Court ruled in favour of the incumbent government. Consequently, this left a bad taste in the mouths of nearly half the Kenyans who had voted against the government. The majority of the media editors agree that in an attempt to reunite the Kenyans divided nearly down the middle, the government then embarked on muzzling the media against airing content that was thought to perpetuate the division. This is besides the President’s public ridicule of the media calling Kenyan newspapers ‘meat wrapping paper in butcheries.’

As a result of the interference in the media by government, there seemed to be choreographed media reporting. For instance, in the first week of December 2014 four leading newspapers carried similar headlines about opposition leader Raila Odinga turning down the offer for Senatorial position after it fell vacant following the death of Homa Bay County Senator. A week earlier, two leading Newspapers *Daily Nation* and *The Standad* carried the same headline with the same wordings “Massacre at Dawn”, after suspected Al Shabaab militiamen killed 34 quarry workers at night.\(^1\) Social media were awash with ridicule about leading newspapers carrying similar headlines in a democratic state.

In a local televised discussion, a section of Kenyan media editors openly admitted that phone calls from top government officials expressing interest in certain news stories are not uncommon

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in newsrooms today. They argued that former President Kibaki’s reign may have been quickly forgotten because they received no such phone calls. While corroborating this in a separate media editors’ debate, a number of editors admit that media ‘goes (sic) to bed’ with government, and that what is not agreed is the extent. They argue that editors fear government reprisals if they do not agree to some extent with it. This is in agreement with a report by Reporters without Borders (2014), which reveals that the Kenyan government has become less friendly to the media, with the ranking index dropping from the previous 72 to 90.²

Whereas the public remain divided over the controversial bill on security seeking to introduce numerous new laws that offer stiffer penalties to terrorist groups causing insecurity in the country, media legal experts agree that hidden in the laws are attempts to gagging the media and civil society from publicising the atrocities of the terror groups on pretext that it heightens tensions in the country. For instance, in his address to the public during Kenya’s commemoration of her 50th independence on December 12th, 2014, the President indicated displeasure with the media for publishing photographs of the people injured or killed at the Westgate Mall by the terrorist group Al Shabaab. For such, the bill in part seeks to compel journalists to seek police approval of their news stories before publication or broadcast in order to breach security threats that may be caused by the media. In as much as the media argue they try their best to balance between mirroring society and minimizing harm to the affected, the government holds that media reporting glorifies the terrorist acts. On the other hand, security analysts think the government wants to conceal terrorist related deaths in the future so as to down play the death tolls.³ The

³ Sky News. Thursday, 18 December 2014, Brawl Breaks out in Kenyan Parliament
Kenyan National Parliament exchanged blows amidst attempts to stop government allied Members of Parliament from passing the controversial bill, albeit in vain.

The Kenyan government’s stoppage of the investigative piece *dugudwa la uchaguzi* in the regular programme *Jicho Pevu* from airing on Kenya Television Network (KTN), arguing it is a threat to national security is an epitome of the intolerance to the media. The investigative piece was to air the findings of an investigation into the then just concluded 2013 presidential elections where the electoral body was alleged to have manipulated vote tallies to ensure the incumbent government garners the constitutional threshold of 50% plus one vote to be declared the winner so as to avoid a possible election run off. *The KTN-Standard* group media editorial director somehow allowed the programme to run amidst public claims that the aired version was heavily edited to conceal the truth about the electoral malpractice. Weeks later, the editorial director was unceremoniously fired for allegedly allowing the running of a story about the Kenyan President and his top government officials spending 20 million Kenyan shillings on a weekend retreat to explore ways of cutting down on government expenditure. The public could easily link the firing to the airing of the programme on electoral malpractice.

Elsewhere, in a weekly televised debate by media editors, *Sunday Nation’s* editor argued that *The People* newspaper (associated with the sitting President) has a circulation of less than 30,000 copies a day but carries most of the government adverts. Leading newspapers like *Daily Nation* and *The Standard* whose circulation is close to 200,000 and 100,000 copies a day respectively carry less government adverts than *The People*. True to the allegation, the researcher established through a survey that on Friday, November 28, 2014 *The People* newspaper carried more government adverts than any other newspaper in Kenya including adverts from the

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In his observation, veteran News Editor at East and Central Africa’s largest media house Nation Media Group, Macharia Gaitho says that the government is the biggest advertiser of the media, and advertisers are the biggest threat to media freedom. This is in agreement with McChesney (1998) who argues, “The government being the single largest advertiser for media, government may act as a censor of the media, not as a government per se, but as a big-business player” (p. 17). The Kenyan government, therefore, can use either of the following censorship methods: impose unfavourable policies and levies or deny adverts to media. While concurring with this, renowned writer and critic Wole Soyinka argues that governments all over the world have an interest in media. He says, “Human beings like to dominate others; it is an internal inadequacy, especially if they are in power.”

The state and big businesses do influence the news media, both directly and indirectly, and we must “beware of the contradictions in the system” for it is also true that “owners, advertisers and key political personnel cannot always do as they would wish. They operate within structures which constrain as well as facilitate and impose limits and offer opportunities” (Babe, 2010). Stuart Hall (1980) shares this view noting that economic determination can only be seen in the first instance. While economic dynamics, for instance, play a central role in “defining the key features of the general environment in which communicative activity takes place, they cannot offer a complete explanation of the nature of that activity” (Babe, 2010). Any discussion that underplays the influence of these forces becomes rather reductive. Only by looking at the

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5 Simon Stanford. 28 April 2005. Wole Soyinka Interview Transcript
interlocking relationships between these factors can one see how the media are in fact implicated in the broader structures of power.

Media critics allude that in seeking to dominate the media, the Kenyan government has made the media take a low profile on national interest issues, and they are readily willing to take the government side of the story to win favours (adverts) at the expense of public interest. Patrick Gathara, a media critic, argues that by not reporting the anomalies of electoral malpractice during the 2013 presidential elections, the government got the conviction that media can be made to let go unreported public interest issues which in turn makes the public remain governable despite people’s discontent. It is no wonder that former vice President and now deputy opposition leader in Kenya, Mr. Kalonzo Musyoka, in April 2014 during a press conference told off journalist Ken Mureithi saying that his question was biased towards the government side and needed no answer. Whereas this sparked public debate on how the former Vice President’s remark lacked taste, many people pointed out that the media are divided down the middle: the pro government media who eye government freebies and the objective media who risk government reprisals. It culminated into the former Vice President apologizing to journalist Muriithi, but public debates about media freedom from government still rage on.6

During a parliamentary session in July 2014, the Kenyan Senate debated the media’s conduct over its last minute decision not to air a live coverage of Kenya’s political opposition coalition. The political rally of the Coalition of Reforms and Democracy (CORD) dubbed SabaSaba, held on the seventh of July 2014 at Uhuru Park was, was suspiciously blacked out by the media amidst tight security. Kisumu Senator, Anyang’ Nyong’o, claimed that the Chief of Kenya

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Defense Forces, then Julius Karangi, and Information & Communications Cabinet Secretary Fred Matiang’i influenced the media blackout on the rally. The CORD rally was thought to give a greater milestone to the opposition, and the tensed government through the Communication Authority of Kenya (CAK) ordered all Kenyan media houses not to air the rally live.\(^7\)

II. ICC Genesis and Facets

In a televised journalists’ debate on December 8, 2014 on NTV, Macharia Gaitho, an editor with Kenya’s leading newspaper, argued that attempts to kick out non locals from the Rift Valley province in Kenya over land disputes started as early as 1992 when Moi was President and Kenya African National Union (KANU) was the only political party. He added that the 2007/2008 post-election violence (PEV) was an opportune moment to accomplish the land evictions and killings, and nothing would prevent the locals from achieving it. He said that the proof to this was the failure of the kicked out communities to return to the province despite the absence of violence in the regions. Whereas the Deputy Presidential Press Service personnel argue that the sitting government is doing everything to ensure that peace prevails, the editor insists that the two warring communities, namely Kikuyus and Kalenjins, have only been separated where Kikuyus has been given land away from Kalenjins’ land. International Relations Professor Macharia Munene agrees with the editor saying that violence in 2007/2008 broke out long before the elections, and so it should have been called election violence not post-election violence.

\(^7\) Mwakilishi. Tue, 07 August 2014. Senate Tackles Lack of Cord Live TV Coverage http://www.mwakilishi.com/content/articles/2014/07/08/senate-tackles-lack-of-cord-live-tv-coverage
Boniface Mwangi, a photo journalist who took photographs of the PEV in 2007/2008 while working with The Standard media, argued that the images and names of the PEV perpetrators were identified by the victims and about 3500 files forwarded to the Director of Public Prosecution (DPP) by the Criminal Investigation Department (CID) for prosecutions. Since then, no action has been taken. In a separate televised interview on ICC, the CEO for Kituo cha sharia, a civil society group, holds that the ICC cases would be different today if Kenyatta was not the President. The CEO argues that the President commands state machinery which he uses to his advantage. While withdrawing the case against President Uhuru in December 2014, the ICC prosecutor mentioned Kenyan media as one of the hindrances to justice, besides the Kenyan government. Whereas a political reporter with a local newspaper, Oliver Mathenge, argues that judgments for court reporting varies among media houses; whereby editorial policies for individual media houses govern court reporting, and that the editorial policy is beyond journalists, the ICC prosecutor holds that the media infringed into the privacy of the witnesses making them vulnerable.

Even with a stretched imagination, to argue that ICC’s 34 judges, 700 staff members, and a 166 million dollars budget a year could not help fix the Kenyatta case is to miss the point, though individual governments’ willingness to prosecute ICC cases is key since ICC has no police force to enforce the good laws. For this, Professor Munene calls it a utopia court meant to meddle in diplomatic, political and military arms of third world countries. He said that ICC bit more than it could chew by taking on Kenyan cases. He also added that the belief that African countries are easy to fix has betrayed the court, and that western countries which fund the court are untouchable (Ochieng, Jennings 2014).
While linking Kenya’s President to crime, an exposé dubbed ‘Inside Kenya’s Death Squad’ ran on December 10, 2014 by *Aljazeera TV* where Kenyan elite police personnel admit receiving shoot-to-kill orders from their seniors so as to eliminate all suspected Al Shabaab converts and sympathisers at the Coastal City of Mombasa.\(^8\) The exposé heavily tilts towards implicating President Kenyatta for sanctioning killings reminiscent to the 2007/2008 PEV regarding which he has been fighting accusations of crimes against humanity pressed against him by the ICC for over six years. That the public is not entirely convinced that Kenyatta is innocent is true, but that he is a perpetual criminal against humanity is hash and unfounded. Maybe the desperate situations in which Al Shabab is pushing Kenya into call for desperate measures.

**III. The Lows, the Highs and the Preparedness**

The Media Act (2007) gives the Media Council of Kenya (MCK) the mandate to compile and maintain a register of journalists, which helps in regulating the journalism practice in the country (Media Observer, 2011) In keeping with Section 19 (1) of the Act, the Council notifies the public through the *Kenya Gazette* of the legality of Journalism in Kenya. Local and international journalists are accredited at a fee to help regulate journalism standards.

Arguably, Joseph Mathenge, who won the 2014 prestigious CNN MultiChoice African Journalist of the year in Tanzania, explains MCK’s strife for journalism excellence. Kenya dominated the 28 member list of finalists from 10 countries with seven Kenyan journalists including Joseph Mathenge, Anne Mawathe & Rashid Ibrahim, Patrick Mayoyo, Christine Muthee & Oliver Ochanda, John Muchangi Njiru, Evelyn Watta and Bob Koigi.\(^9\)

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The previous five years witnessed the same dominance levels. The 2009 list of 25 journalists from 12 African countries had six Kenyan nominees, including James Moturi Mogaka, John Benson Mwangi, John Allan Namu, Sammy Muraya, Violet Otindo and Boniface Mwangi. Photo journalist Boniface Mwangi was also a finalist for the 2008 Award. The competition, now in its 19th year, receives entries from over 1000 journalists from 40 countries, including French and Portuguese-speaking Africa (Media Observer, 2011).

In attempt to explain the rationale for quality journalism in Kenya, former CEO and chair of the Media Council of Kenya (MCK) Professor Levi Obonyo argues that freedom of expression goes beyond legal niceties to touch on an enabling environment guaranteed by government (Media Observer, 2011). It is important, therefore, that journalists be equipped with the capacity to exercise their role without government interference. He observes that there is proliferation of training institutions in Kenya today, the majority of which are seeking to produce journalists who are better prepared for the job. However, as it stands today, the government seems unwilling to let go freedom of the media, thus hampering quality journalism practice by the affected individual journalists and targeted media houses.

While agreeing with Obonyo, Chaacha Mwita, former Managing Editor of The Standard Media Group, maintains that journalists need to understand media’s paramount role, namely promoting dialogue and reconciliation, but only on two conditions. The first is that the media are most powerful in promoting dialogue before potential violence breaks out and not after. Media are powerful but immensely lose their power in case of violence outbreak. The second is that journalists and media should resolve to stick to professional ethics. He argues that the media should not be beholden to partisan or tribal interests. The media were hostage to tribal interests
in the 2007 General Election (MCK Media Monitoring report, 2012). These are facts that escape a government that does not believe in the freedom of expression.

In contrast, training and an enabling environment offer no guarantee of achieving the freedom envisaged in the Windhoek Declaration of UNESCO’s twenty sixth general conference. The focus is often on the hardware in the newsroom rather than on ensuring the security of journalists who are expected to take on government on public interest issues. Rarely do Kenyan journalists put on protective gears when covering stories in dangerous environment. They cover riots without protection (UNESCO, 2014). TV Journalist Ken Mijungu while having a live coverage of the civil society protest that involved use of pigs to demonstrate against the Members of Parliament’s move to increase their salaries met irate police who hurled tear gas at them making Mijungu break into cough, tears and running nose on air (personal communication, August 18, 2014). Moreover, the beating up of the local media journalists who followed up a story on the harassment of the people of Galana by the police at Galana ranch, and the shooting at the journalists following up a story on land grabbing involving a Nakuru, Member of Parliament, show the hostile environment in which they work. These forms of harassment are meant to frustrate and disable journalists from covering particular stories the government feels uncomfortable with in attempt to keep the public ignorant and easy to rule.

IV. Methodology

The findings herein are the result of 18 months continuous observation and analysis of sampled local media coverage on ICC issues, general freedom of the media and the Kenyan government response to the same. The study was based on the observation of randomly sampled local media newscasts and TV interviews with experts on matters pertaining to freedom of expression and media. With the help of experts’ opinions, the researcher’s analysis of the
entanglement of the aforementioned two players (media and government) aimed at pointing out whether attempts by the Kenyan government to curtail media’s freedom of expression affect journalism standards, and how the media attempt to maneuver the curtailments. Using an observation schedule, the sampled five local television programmes were put under study. They included Cheche of Citizen TV; The Newsroom, Weekend Prime, and The Way It Is of KTN TV, Good Morning Kenya of KBC TV and Press Pass of NTV. Sampled newspapers included Daily Nation, The Standard and The People. In the study, media programmes with topics/issues that popped up numerously were regarded as more public interest issues than those that did not. The researcher also regarded as common truth the media interviews that enlisted common experts’ responses/opinions. Those that had varied expert responses/opinions were regarded as controversial.

V. Weird Wielded Power

In spite of the hardships, the media in Kenya have helped shape public attitudes more than the church. This gargantuan power of the media is the main centre of attraction for the government that seeks to regulate it in an almost equal measure. Perhaps, given opportunity everyone would wish to regulate media, even control them so that they work to serve certain interests, so that they do not exceed certain ‘limits’ and jeopardise certain interests or established standards and accepted traditions (Media Observer, 2011).

This is more pronounced in the Niger Delta of Nigeria where environmentalists, human right activists and fair trade advocates seek to own and control media so much so that the trial and hanging of environmental writer Ken Saro-Wiwa and eight others made international headlines due to the heavy media presence and competing interests from the giant oil companies like Mobil, Agip, Chevron, Shell, Elf among others (Odine, 2013). Nonetheless, the media need to
open up pages and airtime to all these competing interests to discuss the sensitive issues of the times.

Kenyan media, for good or for bad, wields weird power that excites the government to seek to regulate or control it. The power of the media was best seen when the media, besides being accused of fueling post-election violence in 2007/2008, also played a pivotal role in calming the violence (MCK, Media monitoring report 2012). Media’s role in changing perceptions regarding long held traditions like Female Genital Mutilation (FGM) in some societies as well as gender discrimination and ethnic cohesion cannot be overstated. However, the media have also been a bed partner in unspeakable atrocities as was the case with KANU’s regime where former President Moi and Kenya Broadcasting Corporation (KBC) were synonymous (Makali, 2004).

In the worst case scenario, some media professionals have been indicted as it is the case with journalist Joshua Arap Sang- now facing trial at the ICC Hague for inciting the masses. Hence, the question of media regulation is closely linked to the power that media wield: the power to create and shape on one side and to shame and destroy on the other. An American human right activist was after all right to say, “The media is (sic) the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power; because they control the minds of the masses” (Malcolm X, 1963). There is enormous trust that the masses have in the media that borders on naivety. If there is an argument between people in Kenya, all one has to do to win the argument is to invoke the media “Hataredioimesema or Hatagazetilimeandika” (even the radio/newspaper said so).

In as much as Kenyan media have started to cherish objectivity and respect professional tenets to promote dialogue and reconciliation, both practicing journalists and industry analysts

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10 Malcolm X (1963), Good reads, www.goodreads.com/quotes/74430
are keen but divided right down the middle. On the one hand are conservative thinkers who insist that the media have no business engaging in advocacy and campaigning for dialogue and peace. The role of the media, they argue, is to inform and educate the public and not to get as deeply involved in advocacy and peace campaigns as some media houses did during last 2007/8 post-election violence. On the other hand are diehard conciliators who argue that the media are useful when they actively push for dialogue and reconciliation even when they merely provide editorial space and airtime for protagonists to talk about the burning issues or when they edit negative messages.

This may have prompted the Kenyan government to propose an inquiry into the way the media covered the 2007 election campaigns, an issue that put it at loggerheads with media industry stakeholders, including the Media Council of Kenya. The media raised eyebrows arguing that they did not incite people into election violence. Rather, some journalists through acts of omission and commission may have done things that may have fuelled the violence.

While striving for creativity in the newsroom, the journalist walks a tight rope of losing the news value. It is worsened by the audience preformed definitions of the terminologies the journalist use. It is assumed that when terms like ‘celebrate a win', 'lose marginally', 'concede defeat' are used, they are readily understood. On the contrary, audiences through experiences and discussions with each other may often settle for misleading or wrong meanings (Gallagher, n.d). This then translates into communication of wrong or negative messages when the terms are used in articles or broadcasts in a society. In African contexts for instance, celebrating a win may be interpreted as humiliation or insult to the loser. Losing marginally may mean there is still chance to fight on for a win regardless of the outcome at hand thereby calling for hardline stand. Conceding defeat, on the other hand, may be interpreted as weakness.
VI. Conclusion

Given the democratisation and human rights advancement around the globe including in societies it never permeated hitherto such as the Muslim world, it is futile for a present day government to use freedom curtailing means to reign on its subservient be it the media, civil society or the masses. The resilience exhibited by the Kenyan media, albeit amidst blame for occasionally going to bed with the government, points at media focused on serving the society heightened by ICC cases. However, undue pressure and influence from the government to individual journalists and media houses occasion the blunders, some of which have since landed two Kenyan journalists at the ICC. Claims of individual journalists being bribed to take political sides, using media to harm or injure reputations of those with differing ideologies as well as masquerading as journalists so as to access ICC witnesses for bribery and intimidation are not uncommon in Kenya. The level of the shortcomings amongst individual journalists and media houses determine how much and how often they succumb to the government pressure and undue influence. Noteworthy too is that the governments in developing countries need to restrain from undue influence on media freedom, for it is counterproductive and meddles with journalists’ professionalism often subconsciously.

References


compromised.


