GOVERNMENT AND INDUSTRY-LED INITIATIVES TO SUPPORT THE DEVELOPMENT OF THE MEDIA MARKET: CASE FOR KENYA

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1. Summary of recommendations

- The most effective policy decisions for intervening in the media market to support news organisations in their efforts to mitigate financial vulnerability should be taken by the government.
- Media coalitions and lobbying play an essential role in engaging the government to make effective policy changes in media development.
- Direct media subsidies to media houses have enabled news media to respond to financial viability challenges triggered by the Covid-19 pandemic.
- Kenya's Government Advertisement Agency (GAA) has played the twin role of rationalising public expenditure on advertising and supporting community and regional media outlets through affirmative action. It is a model that is worth exploring further.
- Media subsidies to support media viability should be seen as a means of promoting public interest journalism as well as diversity and plurality which are fundamental tenets of democracy.
- Establishing a media diversity fund would require a legislative and structural framework to address contentious issues such as transparent disbursement. It would require the involvement of media industry players at all levels.
- Affirmative action to support public service media by allocating a substantial percentage of the government's advertisement budget as opposed to directly allocating funds from the exchequer has partially contributed to addressing the problem of underfunding of the Kenyan public broadcaster.
- Digital media start-ups should be supported by the government through business policies and subsidies and encouraged to upscale their operations, in particular by producing and disseminating public interest content and creating employment for young people.
- Engagement with global tech companies such as Google and Facebook should be conducted by the government at the national level. Equally, copyright laws should be operationalised to safeguard the work of journalists from exploitation by global techs without compensation.
- Though a media diversity fund has the potential to disrupt free market media models, it can play a vital role in addressing gaps in public interest journalism left by private and commercial outlets.
- A universal access fund managed by an independent regulatory authority and utilised to increase universal access to telecommunication services should also be used to support public interest journalism. Funding would allow media houses not only to address viability challenges but also to deliver public interest content.
- The government's political good will combined with a commitment to freedom of expression and of the media is imperative in creating a media viability ecosystem for vibrant public

interest journalism.

2. Introduction

Given its central position in society and the diverse and often conflicting interest it attracts from different stakeholders, the media remains a contested space. Advocates of freedom of expression, freedom of the media and civic rights, particularly in less democratic societies, believe that governments cannot implement citizen-centric reform of these spaces on their own volition. And in those cases when they are successful, these reforms are primarily designed to safeguard the partisan interests of political elites and their adherents. Thus, true reforms are, in such circumstances, achieved through protracted and lengthy advocacy, protest and litigation. Research, however, shows that, in countries where there are media and civil society coalitions and where there is solidarity in efforts to pursue freedom of expression and of the media, governments have grudgingly collaborated with these stakeholders to bring about far reaching reforms in the media environment.

This paper explores the instances and circumstances under which the media community in Kenya has closely worked with the government to introduce media reforms though new legislation and related policies. It focuses on changes that have been enacted over the last decade and, in particular, those aimed at responding to challenges related to media viability. The study also explores media-exclusive initiatives that have indirectly influenced policy on the media market. This period coincides with three key processes which have thrown the media into a financial abyss:

- The explosion of the internet leading to the exponential growth of a plethora of digital media platforms;
- The disruption of the media business model triggered by growing competition for advertising revenues;
- The current global recession caused by the Covid-19 pandemic.

The paper, therefore, explores the following issues:

1. How the media industry in Kenya has engaged in collective advocacy and helped shape government policy on media;
2. The Kenyan experience of fostering improved market conditions for media and supporting the growth of public interest journalism;
3. The place of the Government Advertising Agency (GAA) on the Kenyan media market (theory and practice);
4. Government influence on private-sector advertising and its impact on local media;
5. Proposals for managing direct public subsidies including ways of securing local ownership and buy-in;
6. The proposed funding of public interest and independent journalism through the allocation of subsidies under the aegis of a Media Diversity Fund and the proposed use of the Universal Service Fund (USF) under the Communications Authority of Kenya (CA)[1] for media support.

3. Methodology

[1] The CA is the regulatory authority for the communication sector.

This study adopted an exploratory design and utilised a qualitative research approach to identify government and media industry-led initiatives aimed at supporting the development of the media market in Kenya and, in particular, those that were designed to support news media adversely affected by the Covid-19 pandemic .

Qualitative data collection approaches were employed to gather both primary and secondary data, including (a) secondary data review/desktop research, (b) key informant interviews (KIIs), and (c) case studies.

The desk research complemented the KIIs and case studies. The author engaged with a network of senior editors; media managers; media regulators; members of taskforces driving media reforms; institutional members of media and civil society coalitions; GAA executives; and academics. They were asked to clarify issues arising from the desk research, thereby providing deeper insight into the nature of interventions as well as their impact and related challenges.

The author conducted a total of eleven interviews and reviewed a body of literature on media policy; media self-regulation; media coalitions and advocacy; and the formation and operation of the GAA and the USF.

The study zeroed in on the role of the GAA for analysis, paying close attention to its influence on the media market and, particularly, in supporting downstream and community media outlets.

4. Findings and discussion

4.1. The role of media coalitions and collective advocacy

Over the past decade, cooperation between the Kenya Media Sector Working Group (KMSWG) and the government has continued to lend much needed momentum to media reform processes. Although these stakeholders have failed to agree on many of the key issues and although they have engaged in bruising stand-offs and litigation, the mutual respect displayed during the engagement process has guaranteed progress in many areas of media reform.

Formed in 2013, the KMSWG is an informal coalition of professional associations, publishers, CSO and development partners that currently totals around 30 members. They work closely with media houses and the government to safeguard the media space and promote independent journalism. They have mobilised various media players and promoted collective advocacy for media reforms particularly in the drafting of freedom of expression laws. They have gradually accrued formidable convening power for media stakeholders and development partners as well as adopting a structured and organised format for engaging with the government.

Through this engagement, important pieces of legislation have been passed by Kenya's Parliament albeit through lengthy and protracted counter-arguments and court battles. These laws include the Media Council Act 2013 that provides for media self-regulation; the Access to Information Act 2016 that went through as a private member's bill; and the Data Protection Act of 2019. There has also been litigation aimed at countering offensive and hostile provisions in some laws such as the Computer Misuse and Cybercrime Act 2018 in which 26 clauses were declared unconstitutional and contrary to the principles of freedom of expression. The coalition has taken the lead in all forms of media engagement and planning and has carried out joint fundraising to support major activities such as setting standards for election reporting.

More recently, the coalition has been lobbying members of Parliament and engaging the government through the Ministry of Information, Communication and Technology (MoICT) to address the financial viability and sustainability of the news media. Substantive gains have been made. Through direct subsidies, the government has supported community media that have been devastated financially by the effects of the Covid-19 pandemic.

Other KMSWG initiatives have included:

- Persuading the government to change its policy on the allocation of public advertising;
- Leading on the formation of a Task Force to review the national media policy;
- Initiating a debate on how the USF under the CA can be used to support public interest media;
- Lobbying for reforms to the Kenya Broadcasting Corporation (KBC), the public broadcaster.

It is important though to note that the history of media reforms in Kenya mirrors the political reform process and the two agendas have been intertwined and mutually supportive. This has amplified the voices of various political forces, culminating in the introduction of multiparty democracy in the 1990s and the expansion of media and civic space which was part of the constitutional review inaugurated in 2010.

One of the major strengths of the KMSWG is the sense of ownership that it enjoys among member associations as well as the convening power of media stakeholders and the lobbying skills which have resulted in a constructive and structured engagement with Parliament and other policy makers. Most members of the coalition are highly active and boast sound organisational structures and democratic leadership.

For example, the Kenya Editors' Guild (KEG), established in 1996, is a vibrant association of editors and academics in media studies. It has been leading all conversations related to editorial independence. Meanwhile, the Kenya Union of Journalists (KUJ), the Kenya Correspondents' Association (CAK) and the Association of Media Women in Kenya (AMWIK) have existed for more than 25 years and have been central in protecting the media against external interference and promoting the self-regulatory system of the Media Council of Kenya.

Conclusions

- Solidarity and collective advocacy among media stakeholders play an essential role in influencing Government policy on media and freedom of expression and in safeguarding the media space against attack.
- Media coalitions have significant convening power and are able to engage government and development partners in a structured manner which is useful in maintaining momentum for change processes.
- Media stakeholders should have worked harder to protect the media against government interference particularly when media subsidies and state advertising spend are used as instruments to interfere with editorial policy. The "arm's length" principle should also be emphasised.
- The more committed the government is to the values of democracy and good governance, the more likely it is to institute policies aimed at addressing media market challenges such as establishing media diversity funds and subsidies.

4.2. Fostering improved market conditions and supporting growth of public interest journalism

While, in the past, the free media market model has –without significant state intervention – succeeded in allocating sufficient resources to support media content as a public good, there is ample evidence from across continents, nations and economies that such a model cannot address the manifold emerging economic and technology-related challenges that media practitioners are currently facing. Consequently, deliberate state intervention to support the media regardless of whether they are private or public is essential to uphold democracy. The realisation that multiple forces working against the media have triggered a decline in public interest journalism; compromised independent journalism; and constrained the media and civic space has acted as a wake-up call for stakeholders worldwide.

In Kenya, multi-faceted strategies have been adopted by various media stakeholders, media support groups and the government to address some of these challenges and, in particular, the financial viability of the news media. The paragraphs below explore some of these interventions including policy changes and also examine how they have affected the media market.

4.2.1. The Government Advertising Agency

In countries where government advertising is managed through state agencies, the justification has been to reduce and rationalise public spending in addition to creating new standards for advertising. Just like any other advertiser, the government buys space in print media and on online platforms as well as airtime on TV and radio to run public service announcements, public campaigns, or respond to crises or health emergencies such as the Covid-19 pandemic.

However, in many countries that have employed this model, governments have tended to take advantage of the desperate need for advertising revenue to control editorial independence and cajole the media into portraying the government and its agencies in a positive light. In some instances, these governments have pressurised independent and commercial media, which might otherwise offer alternative views to those expressed on state-run media, to propagate its political agenda. However, the ability of advertisers to limit editorial independence depends on the extent to which media respect the principles of freedom of expression and observe professional practices in the newsroom.

The GAA was created in 2015 as the result of a Cabinet paper and was "mandated with authorising public sector advertising and implementing sectoral standards, procedures, guidelines and managing consolidated Government Advertisement Funds (GAF)" (Treasury Circular, 2015). All advertising budgets for mainstream government ministries, departments and constitutional offices were consolidated to group GAF under the MoICT and bring them under GAA management.

The GAA has a fully-fledged secretariat which is headed by a Director. It receives the advertising budget for all ministries and independent offices directly from the Treasury in order to run advertisements in the media on their behalf and when requested. The challenge associated with this model is that, following the launch of the Agency, only 20 percent of the advertising budget was sent directly to GAF and, by June 2021, the GAA owed media houses close to $20 million for advertisements that had been published in the print media. This caused serious tensions between the government and the media industry, which served to discredit the GAA.

The model was seen as a deliberate tool for constraining media operations and as a way of silencing critical voices. This coincided with a period when the effects of the Covid-19 pandemic had started to bite, triggering layoffs in several media houses. However, through engagement with the media industry, this figure was significantly reduced and, by the end of 2021, the outstanding debts had been reduced to $3.2 million.

One other feature of the model is that some central government advertising budgets are not consolidated under the GAA and close to $10 million is disbursed independently by universities and independent commissions. Officials from the GAA explain that these institutions are exempt because of their unique mandate and the need to safeguard their independence. This model also allows them to operate freely without being hampered by the bureaucratic red tape that characterises most government operations and decision-making processes. Thus, by December 2021, total government spending on advertising amounted to $21 million. This excludes expenditure at regional government level which is estimated at $141 million, putting the combined government spend at $162 million, which accounts for 40 percent of total advertising spend in Kenya (Mwangi, 2021).

Conclusion

The regulation of traditional government advertising spend through a state advertising agency can act to ensure prudent public spending and support media houses which are chronically underfunded and have been negatively affected by the current economic downturn.

4.2.2. State-run weekly publication MyGov.

In 2017, with a view to effectively operationalising the GAA model, a weekly publication called "MyGov." was established through a government circular. One of its key goals was to "articulate the government agenda in a deeper and more accurate way for better appreciation of government effort to improve the livelihood of Kenya" (Cabinet Circular 2017).

This publication carries news and features on government projects and events as well as advertising and tender opportunities for youth and information on government tender notices. The paper is circulated as an insert by the four mainstream newspapers namely *The Standard*, *Daily Natio*n, *People Daily* and *The Star.* Each of these newspapers carries the MyGov. insert once a month (on Tuesdays), marking a reduction from twice a month between 2015 and 2019. This downscaling halved the government advertising spend as part of a wider bid to reduce public spending.

However, this move was also financially ruinous for the four media houses concerned. Their advertising income plummeted by an average of 45 percent and their circulation dropped by 62 percent (MCK, 2021). This was due to the face that the amount paid to these newspapers was directly linked to their circulation figures, which often increase by 5 to 8 percent in the days when they carry the insert. MyGov. is popular among suppliers of goods and services as well as job-seekers. Besides earning revenue directly by circulating MyGov., the media houses are also paid for printing the publication when they carry the insert.

4.2.3. Government influence on private sector advertising and its impact on local market forces

Private-sector advertising accounts for 60 percent of the total media advertising market (GAA Report 2022). The top advertisers in the private sector include banks; telecommunication companies; insurance companies; private-public partnership projects; projects funded by non-governmental organisations; and manufacturing industries.

Advertising spend by the private sector is highly dependent on the business environment and the size of the economy in general (Mwangi 2015). In the past, the disruption of the business environment has had an immediate and direct effect on the media market. The 2007/2008 post-election violence, for example, triggered an economic downturn that was particularly damaging for the media industry because media houses stood accused of fuelling the ethnic violence. In general, private-sector advertising has a more significant bearing on the media business than government advertising spend.

However, the way in which government advertising is apportioned means that it has greater resonance for certain parts of the media sector. For example, through the GAA and GAF, 30 percent of all advertising spend is allocated to small media houses both at the local and regional level while 30 percent goes to the public broadcaster and 40 percent is earmarked for mainstream media. Thus allocations to private and commercial media are based purely on circulation and readership while the allocation to the public broadcaster and downstream media is an affirmative action to promote localism, diversity and plurality, and to help economically challenged media houses to continue producing local news, and retain their employees.

This is in contrast to private-sector advertising spend which is geared exclusively to market considerations such as print circulation, readership and audience figures for broadcast media. Only 10 percent of private-sector advertising goes to small media outlets with 90 percent going to the private and commercial mainstream media outlets.

Thus, without a deliberate market intervention by the government, more than 150 community, regional and local radio and TV stations and a few digital platforms would face insurmountable financial challenges possibly leading to mass layoffs and their eventual closure (GAA Performance Report, 2021).

The affirmative action by the GAA has met with little enthusiasm from mainstream private and commercial media houses who share the view that decisions on advertising spend should be made entirely on the basis of market position. However, this market orientation negates the public interest view of the media and the role of the State in protecting essential institutions from the vagaries of imperfect market conditions.

The importance of the GAA-MyGov. model notwithstanding, some editors feel that the media in Kenya has continued to suffer from the double jeopardy of editorial interference from both the government and the private sector, albeit in different forms. On the one hand, the private sector through its communication or PR departments has been accused of increasingly spinning the news and, therefore, indirectly exerting influence on editorial independence. This has become more apparent now that there is a decline in advertising revenue which has prompted business entities to redouble their efforts to court media outlets for favourable coverage in return for more advertisements. Businesses have also been accused of promoting brown-envelope journalism (bribes) in order to unduly influence media coverage of unethical business practices. On the other hand, the government is more overt in bringing pressure to bear on editors. Thus, public interest journalism in Kenya finds itself caught between a rock and hard place.

Those interviewed from the journalists' associations worry that the state has continued to use the GAA to unfairly extend favour to those media outlets that provide positive coverage of the government, its agencies and top government officials. Those outlets that sit on the fence and resist calls to investigate and report authoritatively have benefited immensely. The concern that the government has used the agency to indirectly censor the media has also been expressed by representatives of the academic and civil society sectors. They argue that government content is saturated with PR, "spin" and propaganda as opposed to public service messaging.

Some media houses also shared the fear that, unless clear terms of engagement between the agency and the media houses are spelt out, advertising contracts that are based on "being in the government's good books" are likely to erode brand credibility and public trust in the media. In 2018, some media houses which received government advertising reported that they were asked to pay kickbacks while other respondents claimed in 2019 that certain top agency officials were in fact the shadow owners of publications that had secured government advertising contracts. These matters and others related to the misappropriation of GAA funds are being considered by the High Court.

Conclusion

Media subsidies should support all types of media, regardless of their ownership, including community, print, digital and magazines as well as private and public media

4.2.4. Media Diversity Fund: Funding of public interest and independent journalism

In 2019, the Government of Kenya picked up on conversations within the media industry on mechanisms for supporting news media outlets that were facing challenges with sustainability and viability. This culminated in the establishment of a Task Force officially known as the Media Diversity Working Group whose mission was to find ways of addressing these issues. The Media Diversity Fund aims to offer direct subsidies to both the public and private media, thereby enabling them to constructively engage in public interest journalism to protect democracy, promote governance and the rule of law and support media houses in their efforts to remain solvent.

Besides looking into strategies for mobilising the funds, and developing a framework for disbursement, the working group proposed a code of conduct for advertisers including a proposal whereby each media house would contribute seed money to the fund in direct proportion to their advertising revenue. Other sources of income proposed by the Task Force were direct public funding from the Exchequer and media development support groups. Although the proposal for media houses to contribute to the fund failed to gain traction among mainstream media, there was consensus that such a fund would be useful in supporting media houses to grow their audience and revenue streams as well as in providing enough leeway to adopt a viable business model.

Those engaged in this dialogue also pointed out that supporting independent digital news and information platforms in addition to online platforms for mainstream media would facilitate the expansion of digital news and help beneficiaries to take advantage of Kenya's exceptional Internet penetration estimated at 92 percent as well as of increased use of smartphones to access news (CA, 2021).

The proposal was discussed by the Parliamentary Committee on Information Communication and Technology which felt that such funds should be enshrined in law as well as managed and administered by an independent body. Two options were considered: either amending the Media Council Act of 2013 or coming up with an entirely new law. Those familiar with the litigious nature of the law-making process in Kenya proposed that plans for creating the fund should be assimilated into the ongoing national media policy debate. Therefore, the Media Diversity Task Force was given the responsibility of developing a proposal on how to anchor the fund in law and establish a mechanism for fund management, disbursal and accountability.

As a result of this development, the heads of community media associations recommended that the county governments devise mechanisms for supporting local news outlets directly through donations and advertising. They also recommended that county governments advertise on local media outlets and not in the national and mainstream media. That would encourage localism and address the realities of the devolved units. Furthermore, they recommended support for local news outlets, some of which were too small to hire professional journalists but which, nevertheless, played an important role in informing and educating communities.

Conclusion

Media development support groups should work closely with local media to support the establishment of media subsidies to promote public interest journalism.

4.2.5. Managing the proposed Media Diversity Fund

The Universal Service Fund (USF) under the Communications Authority of Kenya (CA), which now amounts to $70 million (CA Financial Report, 2020), has traditionally been used to erect telecom masts in unserved or underserved areas of the country. These are areas where telecom operators would find it commercially unviable to install this infrastructure. The funds have also been used partially by the government to lay down internet cables throughout the country, thereby increasing internet penetration to 92 percent (CA Annual Report 2020).

However, an argument has been made by the media industry that such funds should also be used to support the production of public interest content, thus supporting small media houses that are chronically underfunded. The challenge with such an initiative is that, as opposed to the telecoms operators, internet service providers, postal services and courier service providers that contribute a portion of their income to the USF, the media industry is under no obligation to make statutory contributions. Consequently, telecoms providers argue that the media should not benefit from a fund that they do not contribute towards.

Although this would make legal and business sense, it does not logically speak to the need to support media as institutions with a public service remit. Informed by this argument, the CA is proposing to carry out a comprehensive study to identify financial viability and other related gaps in the media industry. The Authority will also review the fund's current utilisation mechanism with a view to extending it to include media support. This will call for collaboration with the Task Force responsible for launching the Media Diversity Fund, which predominantly represents the interests of the media, so that media market challenges can be fully addressed.

4.2.6. Media subsidies to address the impact of the Covid-19 pandemic

In February 2020, the WHO observed that Covid-19 had unleashed a "massive infodemic" fed by a rash of coronavirus conspiracy theories. They noted "an overabundance of information — some accurate and some not — that makes it hard for people to find trustworthy sources and reliable guidance when they need it." These theories have been amplified by right-wing newspapers in the USA and some parts of Africa demonstrating, as noted by one respondent, that "social media provided fertile ground for massive misinformation".

The crisis has gone hand in hand with the global economic downturn that hit entire media sectors particularly in the newsroom leading to redundancies, furloughs, salary cuts and closures worldwide. In Kenya, there were over 800 layoffs between 2020 and December 2021. The media owners interviewed for this study agreed that Covid-19 had devastated the financial viability of the news media in a way never seen before.

They observed that, while the demand for media services had grown, larger audiences did not necessarily translate to increased revenues and, as one observer in Ethiopia noted, "Just like Covid-19 patients in intensive care, the media here is gasping for air to survive" (Hugh Macleod , 2011: 61). A media owner retorted, "Getting media out of this valley of death should be a joint effort between the government and the media. We should protect public interest journalism."

It is in response to these challenges that the KMSWG led by the Media Council of Kenya approached the Parliamentary Committee on Information Communication and Technology seeking direct subsidies to support media outlets, particularly community media, that were facing viability challenges. Subsides were distributed in the form of direct payments on the condition that beneficiaries published or broadcast messages aimed at fostering positive attitudes and behavioural measures to prevent the spread of Covid-19. There was also a massive public education campaign on the need for vaccination.

While the public broadcaster received 30 percent of the available funds, the remaining 70 percent went to the community and ethnic media houses, which are often chronically underfunded, and journalists' professional associations promoting Covid-19 public health messaging. While some credited these subsidies with saving the media business, there was widespread concern that the government had positioned itself as the only source of credible information about Covid-19. In some instances, journalists feared that the government had constrained the diversity of information sources.

Nevertheless, it is true to say that this model was highly successful and continues to inform the ongoing conversation on establishing a Media Diversity Fund.

Conclusion

Collaboration between the government and media stakeholders in addressing the devastating challenges prompted by Covid-19 has proven that the relationship between the two stakeholder groups need not be adversarial. Media market challenges can better be addressed by collaboration of this kind.

4.2.7. Funding for the public broadcaster

As a result of past experience with the public broadcaster which was used by the authoritarian regime of the 1980s and 1090s as a megaphone to propagate its autocratic agenda, subsequent governments have paid little attention to KBC and have failed to revisit the issue of financial support. The public broadcaster is underfunded and mired in bad international debts. It has lost its competitive edge to private and commercial media. The traditional funding model of directly allocating public funds from the treasury through MoICT is no longer a viable option while direct funding by the public through the licensing of broadcast equipment and permits for radio and TV was curtailed in the late 1990s. The public broadcaster now operates on a commercial basis and has to face ruinous competition from the more vibrant private and commercial broadcasters.

Occasional attempts to revive KBC particularly through improving technology and revamping its studios have failed to bear fruit. The station has lost its staff to private and commercial media while, by 2021, its audience and advertising market share had plummeted to 10 and eight percent respectively.

The allocation that KBC receives from the Exchequer is meagre and barely enough to sustain its operations. However, the public broadcaster receives 30 percent of the broadcast advertising spend from the GAA, although this appears to constitute a small number of government-sponsored advertisements, which are limited to public campaigns or other related public service announcements.

As a result of engagement by media stakeholders, academia and progressive legislators in Parliament, a Task Force was set up in 2014 to explore ways of reviving the public broadcaster. Some of the recommendations included revisiting the 1990s direct public funding model; improving technology; streamlining the workforce; and disposing of some of the unused assets scattered across the country in order to reduce maintenance costs.

This joint effort between the government and media stakeholders marked the beginning of the rationalisation and restructuring of the public broadcaster. It has taken a long time due to limited funding though there is a sense that the government is not committed to concluding these reforms. However, there is wide recognition of the urgent need to breathe new life into the public broadcaster which still has legal mandates that include the provision of diversity content; a focus on cultural and indigenous issues and an obligation for universal access.

In the past, the independent, private and commercial broadcasters have vehemently opposed the proposal to support KBC, arguing that it would distort the broadcast market. They contend that they also provide public interest content and, therefore, the national broadcaster should be treated as one of the commercial players in the media market. However, the proposed reform of the public broadcaster continues to move forward, albeit at a snail's pace.

Conclusion

Public subsidies to support media in their efforts to supply public interest content should be treated as a state obligation or duty as opposed to simply a display of good will towards the sector.

4.2.8. Engagement with tech companies

Just as in South Africa where the Competition Commissioner was inspired by Australia to make Google and Facebook pay for news and support local journalism, Kenyan editors and the Kenya Union of Journalists are actively discussing the possibility of introducing similar provisions. The idea is to urge the Kenya Copyright Board and the government to handle the matter at national level as opposed to an "every-man-for-himself approach" or acts of good faith between tech companies and individual media outlets. These stakeholders are exploring the possibility of introducing legislation to ensure that local media are compensated for the loss of advertising revenue.

4.2.9. Supporting digital media investment start-ups

When addressing the launch of the Kenya Media Policy Guidelines Taskforce, the Cabinet Secretary of the MoICT advised the team to pay special attention to media investment opportunities particularly in digital media platforms, the creative industry and content production by young people. He opined, "We anticipate that the new policy will guide investment in media and enable our citizens to make money out of their creativity" (MCK 2021). Support for digital start-ups could include:

- New policy initiatives;
- Stricter enforcement of copyright laws and regulation;
- Direct and indirect tax concessions and rebates;
- Provision of start-up capital and training of new business models;
- Mechanisms for upscaling business.

Besides boosting youth employment, such start-ups could facilitate efforts to step up local news in a shrinking media market and contribute to plurality and diversity of content that can act for public interest journalism and democracy.

4.2.10. Media policy that guides media investment

Since the onset of the media reforms in the 1990s in Kenya, there has been disquiet in the media industry and sections of the government about the disconnect between media as a business and media as a social, cultural and political institution. The 2009 Media Policy failed to directly address the media laws and respond to the emerging realities of the media environment. For example, it failed to speak to the role of the media in creating a nation state out of disengaged and diverse ethnic groups, building the capacity of citizens to participate in the socio-economic and political agenda as articulated in Vision 2030, as well as promoting the role of the media business in creating employment. It was also unsuccessful in addressing emerging global realties driven by new information and communication technology, the challenges of disinformation and increased online threats and terrorism.

The Kenya Information and Communication Act 1998, which marked the first comprehensive law on media and information, was the predecessor to the media policy. This was followed by other media and freedom of expression laws in the following decade, which again were not anchored to any single policy agenda. There has, therefore, been a gap of understanding on how to operationalise media and freedom of information laws from government institutions, media organisations and individual media houses as well as journalists and other media players in general. Thus, Kenya's media environment has remained un-shepherded despite the vibrancy of the sector and the presence of a media self-regulatory framework.

It is for this reason that media policy debate driven by the KMSWG, the Media Council of Kenya and the academic community culminated in the formation of the Kenya Media Policy Guidelines Task Force in 2021. Composed of journalists, media organisations, academics and members of professional journalism associations, the 13-member Task Force was mandated with reviewing the Kenya Media Policy Guidelines developed in 2009; identifying any gaps or inconsistencies in the policy guidelines; and proposing specific policy or requirements for a legislative review.

The policy will develop goals and norms leading to the creation of instruments that are designed to shape the structure of the media system in Kenya. It will also advise on a review of media laws and the development of regulatory tools to achieve the new policy objectives. This is part of a bid to improve the media governance system in the country.

Within the tripartite frame of media policy, regulation and governance, the policy will address specific issues related to:

- Digital media;
- Access to information;
- Media information literacy;
- Violence and threats including impunity;
- issues of censorship including diversity and plurality;
- Social media platforms.

The members of the Task Force have also indicated that they will dedicate a section of the policy to media viability and address the proposed establishment of the Media Diversity Fund including its institutional and organisational framework and a mechanism for disbursing and allocating funds.

Conclusions

- Any media policy aimed at addressing media viability challenges and performance gaps should be specific on the role of different media actors and government at institutional, organisational and individual levels.
- Free media markets are imperfect and cannot be left to address the many business-related challenges that media as special political and cultural institutions in a society are facing. Deliberate state intervention to support the media regardless of whether they are private and commercial, public or otherwise is an essential element of upholding democracy.

5. Conclusion and recommendations

It is apparent that the impressive performance of the media during the global economic boom lulled media stakeholders and policy-makers into the false hope that the media market would be able to overcome its financial viability challenges without significant external intervention. This hope has gradually been dashed by the growing pre-eminence of digital technologies over the last two decades and then the virtual extinction of many media outlets as a result of the Covid-19 pandemic.

Both the government and the media industry, jointly or singularly, have frantically taken policy decisions in a bid to save journalism. However the most significant changes have taken place as a result of joint initiatives between these two stakeholder groups. Thus coalitions and lobbying are imperative, particularly in those instances where the government is hesitant to enact recommended policy recommendations.

While direct subsidies awarded by the government may pose challenges due to the logistics involved and the criteria applied for allocating the available funding, the GAA – which bases its decisions on market performance – offers an attractive and replicable model.

Further, it should be noted that there has been a tendency to treat the telecommunication industry separately from the media sector and, consequently, the opportunities offered by convergence have largely been ignored. Thus, universal access to telecommunication services should be supported alongside efforts to promote media viability and sustainability.

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