

Implementation of the Regulatory Framework on Adult Media Content and Its Impediments in Protecting Children in Kenya

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Abstract: This article delves into the regulatory loopholes that enable media to disregard the laws and the regulations regarding adult content in Kenya. The concern is whether in terms of implementation, the existing regulatory regime governing broadcast media in Kenya adequately protect children from adult content. The researchers first analyse the sexual content broadcast in Kenyan radio, television, music and video, news and advertisement; and the extent to which the regulatory framework is effective or otherwise. Thereafter, the impediments to effectiveness of the implementation of regulatory framework are evaluated. Lastly, the conclusions are drawn with recommendations based on the results. The findings reveal that Kenyan media houses regularly air sexually explicit programs during the day in complete disregard of media laws. Evidence presents insufficient independence of the regulatory bodies due to the manner in which appointments of officials are made. Moreover, the fact that many of the leading media houses are owned by prominent politicians is a major impediment to the implementation of a child protective broadcast framework in Kenya. The findings also show that there is confusion about the process that a complainant should follow in Kenya; a situation that has not been challenged by Kenyans, probably due to the lack of media literacy in the country. The researchers recommended option of a single independent media regulatory body so as to ensure effectiveness in the regulation of adult content in Kenya. Further, the established body should adopt a clear and consistent rating system and installing V-chips in television sets. This way, the parents, the media and the regulatory bodies will participate in the regulation making and this will mean it will be more effective than it is currently.

Keywords: Broadcast Media, Adult Content, Child Protection, Regulatory Framework.

INTRODUCTION

Sexually explicit content is a norm in Kenya's radio and television. These daytime broadcasts are in violation of numerous laws regarding child protection. One of the regulatory bodies (the Media Council of Kenya) has severally published reports of dissatisfaction among the Kenyan populace about sexually explicit content in broadcast media [1]. The Association of Progressive Communications states that as early as 2009, the government of Kenya received complaints about the lurid content aired on broadcast media [2]. Since then, the respective government stakeholders have failed to address the issue. Below is an example of a narrated experience with regard to the concern of this paper:

“Last year in May, at around 8:30am in the morning, I was sitting in a *Matatu* (public service vehicle) with my sister, elderly mother, nephew and niece (fourteen and ten years old respectively) on our way to my nephew's school. The *Matatu* was full of young and old people going to school and work. Suddenly, the *Matatu*'s driver switched on the radio. It was Classic 105 FM. They were having a sex

discussion of whether women should start denying men 'pare pare'. 'Pare pare' is slang for the female sexual organs. And as I was seated there, opposite my elderly mother, elder sister and young niece and nephew, a female caller called in and I quote what she said [3].

Transcript in Swahili

Maina (the name of the host of the show), wanaume wengine ni bure kabisa! Mimi niko na mwanamume anakujanga tu wakati anataka 'pare pare'. He never visits any other time. Yeye huwa anakuja nampea anaenda, anakuja nampea anaenda. Hata hakuji na sabuni! Kwani anafikiri hii kitu inaoshwa na nini? Yeye anakakuta kitu ni safi, anaichafua halafu anaenda! Hata hawezi niletea sabuni ya kuiocha! Kwani hajui hii kitu inaoshangwa? Kazi ni kuichafua tu! Some men are just useless Maina!

Transcript in English

[Maina, some men are very useless! I have a man who only comes when he wants my sexual organs. He never visits any other time. He just

comes, I give him he goes, he comes I give him, he goes. He doesn't even come with soap. What does he think this thing is washed with? He finds this thing clean, he dirties it and goes. He can't even bring me soap to wash it. He doesn't know this thing is washed? Some men are just useless Maina!"

The above conversations are a clear indication of the seriousness of the situation in Kenyan radio broadcasts. The radio industry in Kenya is proliferated with sexual innuendos aired during peak hours of the day as illustrated. Free to air radio is the most popular and egalitarian form of broadcast media in Kenya [4]. This is because of its relative affordability and wide reach [5].

In 2014, the Media Council of Kenya carried out a survey of the status of the media in the country [6]. The survey findings show that numerous respondents complained about the sexual content broadcast during peak hours of the day. The study established that there are some radio programs that they wished they be taken off air [7].

The leading in the list is the popular Maina and King'ang'i Morning Breakfast show, which is aired by Classic 105 FM every weekday; from Monday to Friday. The show has people call in live and discuss their sexual escapades. The second one is the *'Bonokode Show'* aired by Ghetto Radio 89.5 FM between 3-6pm every weekday in which the presenters ask the general public to call in and contribute on sexual topics and their experiences in explicit sexual innuendoes. The third show in the list is the *'Busted Show'* that is aired by Classic 105 FM at 3-5 pm on weekdays in which the presenter impersonates an acquaintance of a cheating spouse and embarrasses them on air before going into details of their sexual affair.

The respondents in the Media Council survey argued that such shows were played when children were likely to hear them as they are often played in public service vehicles in which children travel to and from school. In a different survey, a respondent from Kisumu, Kenya had this to say about the sexual explicitness of broadcasting content in Kenya radio stations:

Some of the topics of discussion in some of our radio stations are just not palatable. Imagine a woman caller who says her husband cannot be satisfied sexually as he comes home at tea time, lunch time and evenings for sex adventures-this is aired live on radio. Then it is left for listeners to air their views. So another woman calls in to say *'kama hautaki huyo wako tupatie juu wetu hafanyi kitu'* (translated

to mean-if you don't want your man, let's have him as our men at home can't perform sexually) All this on radio!'-Male Respondent Kisumu [1].

A second respondent from Eldoret, Kenya; expressed concern regarding the messages from radio stations in Kenya thus "... public service vehicles tune on radio stations discussing things you can't even imagine in the morning when there is traffic jam; so there is nothing you can do..." [9]. Another respondent confessed '... for some time I completely stopped listening to the radio because the sexual content was too much...' [10]. Yet another respondent added, 'I think it has become a trend for all radio stations to talk about sex in the morning when children are going to school...' [11].

It is noteworthy that the Media Council of Kenya carried out some of the above surveys as early as 2012 and others as recently as 2014 in which members of the public express their dissatisfaction on the lack of media regulation, yet it seems they are doing little about it many years later. This negligence has given a loophole so that sexual content continues to be common in the country's broadcast media. For instance, Kenyan daytime radio has always aired sexually explicit music such as Marvin Gaye's 'Sexual healing is good for me' [12].

SEXUAL CONTENT IN FREE-TO-AIR TELEVISION

Studies carried out in Kenya show that free-to-air television is saturated with sexual content through soap operas, music shows and advertisements [13]. The studies establish that, while sexual content is prevalent, it generally does not show the repercussions of irresponsible sexual behavior, nor does it include any messages on safe sex [14]. Grant, a sociologist, in his book *'Sex on Soaps: Afternoon Love and Lust on Daytime Dramas'* analyses sexual content in daytime soap operas [15]. Among the soap operas he mentions are *Days of Our Lives*, *The Young and the Restless* and *Passions* which have been evidently and repeatedly broadcast in various Kenyan television networks [16]. Like other researchers, he too argues that the programs give unrealistic ideas about sex by showcasing irresponsible sexual behavior without negative consequences such as AIDS, abortions and teenage pregnancy [17].

A study on the impact of soap operas in Kenyan broadcast media concludes that soap operas have become a common source of sexual education for young people, especially young girls, in Kenya [18]. The study analyses that the story line in most soap operas aired in Kenya television tends to be the same. They entail mysterious strangers who fall in love, pursue a romantic secret relationship while engaging in

unprotected sex and get caught up in sex scandals. Due to the longevity of most soap operas, it is not unusual for a single character to be caught up in three to four sex scandals. All this drama tends to be shown without negative consequences, thus supporting Grant's conclusion. Young people, especially girls, view soap operas on a regular basis and often believe that the sexual scenes in the programs are realistic and that they can try the experiences for themselves [19]. An example of such popular daytime soap opera targeting young people in Kenya's television in 2014 was *Wild at Heart*, a soap opera loaded with irresponsible sexual escapades [20].

Another study by Onyiego establishes that soap operas in Kenya seem to suggest that men are sex driven and have trouble being faithful; that women are sex objects whose value is based on their physical appearance and that sex is a non-serious recreational activity [21]. The study adds that soap operas aired in Kenya's television stations create an impression that 'everyone is doing it' but you [22]. Other than soap operas, television in Kenya airs music videos that have sexual content.

SEXUAL CONTENT IN MUSIC VIDEOS

Music has always been popular with teenagers [23]. Because of today's media reach, we no longer drive long distances to purchase music. The availability of music comes at the push of a button on our personal radio and television receivers. In Kenya, music on radio and television is awash with sexual innuendoes and the music shows on television tend to be full of explicit and provocative videos. Most music shows on Kenyan television such as *The Beat* as intimated in one of the previous sections, expose children, especially adolescents, to sexual desires and desire for voyeurism.

Numerous music videos with sexual content are played on Kenyan television, such as *Nishike* meaning *Touch Me*- launched in 2014. The song's sexual explicitness caused an outrage among the conservative audience in Kenya [24]. The music video is about a whole night sexual experience and the scenes leave little to the imagination, with topless men dancing with barely dressed women. Shortly after the song *Nishike* was broadcast on Kenyan television, another provocative music video called '*Mfalmewa Mapenzi*' was released and launched on televisions [25]. Spronk, an anthropologist, points out that Kenyan local hip hop television is quite sexually explicit with what are commonly known as video vixens (women who showcase their sensational body parts in high speed videos) [26].

The song '*Fundamentals*' is a big hit in Kenya, airing in most music television programs. The song argues that the fundamentals of a woman are her breasts and hips [27]. Another music program that shows

pornographic scenes in Kenya is '*Channel O*' which is aired by the Kenya Television Network at 4pm every day [28]. This music program caused a heated debate in parliament as early as 2003, yet still remains on the Kenyan national screen [29].

The study by Onyiego [30] concludes that there exists an association between exposure to sexual content on television and youth sexual attitudes. The sexual behavior and attitudes of youth has been proved to be influenced largely by sexually explicit video more than any other media [31]. The worst thing is that, unlike other causes easily undone, ideologies shaped through videos are hard to do away with. However, the same television, when handled well can be instrumental in influencing the youth and children in a positive way. According to Baran [32], culture can be created through media, whether positive or negative. Many have agreed that it is not easy to do away with television and thus, the only way to ensure its constructive use is to regulate the content that is broadcast through it [33]. Despite such studies and their recommendations to have the sexual content in Kenya be regulated, the media regulatory bodies are doing very little.

CONDOM ADVERTISEMENTS DURING NEWS TIME

Advertisement is one of the most functional tools for media marketing and thus, it tends to be persuasive and influential. Gay has argued that an average young person is exposed to over 3000 advertisements in a day [34]. This statistic raises a lot of concern with regard to the impact that advertisements have on children. Among those that are broadcast during daytime in Kenya are condom adverts. Some of them have raised controversies but nevertheless later were brought back to television. An example is the advert about *Mpango Wa Kando Na Condom* (encouraging those engaging in extra marital sex to use condoms). Such adverts, though not targeting children, are aired at a time when children can see and hear their message and could influence them otherwise. A study by Wasike [35] on students and the use of condoms concluded that 71 percent of condom users are influenced by television adverts. Studies prove that over 40 percent of children in Kenya between the age of 15 and 18 are sexually experienced. Worse is that most of them have had sexual experiences as early as 8 years of age. Media contributes much of the influence, besides other influences such as peer pressure. Research shows that advertisements on television can have a predominant influence on children as compared to other factors [36]. Thus advertisements meant for adults such as that of those concerning condom use do a lot of damage to children in shaping their behavior and thus, to protect children such advertisements are not fit for broadcast outside watershed hours.

IMPEDIMENTS TO BROADCAST REGULATION

The implementation of legal framework on broadcast and protection of children in Kenya has been slow and poor. From the way things are, there seems to be lack of political will especially because of commercialization of media, media ownership and consumerist ideals in the media industry. Today's growing capitalist world and economic imperative and value for profit drive almost every activity. In Kenya media cannot self-regulate and the seemingly external media regulators have become docile [37]. In many countries capitalism has dominated religious, social, economic and political institutions and invariably, it has also compromised those who are supposed to act as guardians of common person's interest [38]. Kenya has a unique situation where most media is owned by political barons and by private owners whose supreme interest is profit.

The top officials in Kenyan media regulatory bodies are political appointments, and these appointments are enshrined in the Constitution thus making the environment difficult for regulators. As a result, media continues to broadcast child unfriendly content with impunity. The other impediment is corruption, when regulatory bodies act against individuals and media houses, the owners sometimes bribe their way to immunity [39]. This explains why the regulatory bodies frequently do not get far in prosecuting cases of breach of sexual content compliance. Factors hindering protection of children from potentially harmful sexual broadcast content will be further discussed in detail below.

1. Lack of Political Independence of Regulatory Bodies

One of the most salient factors of an effective regulatory framework is the independence of the media regulator [40]. Independence is necessary for the major functions of broadcast regulation which include licensing; applying content standards as well as media house ownership [41]. Subsequently, any public body that exercises authority in the areas of broadcast regulation should be independent and protected from interference, particularly of a political or economic nature [42].

The 2003 United Nations Special Rapporteur on Freedom of Opinion and Expression stated: All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members, which should be transparent and allows for public input and is not controlled by any political party [43].

Unfortunately, despite the above international laws which form part of Kenya's law by virtue of article 2 of the Constitution of the Republic of Kenya, the Kenya Information and Communications Act provides as follows: 'The management of the Commission (now Authority) shall vest in a Board of Directors which shall consist of –

- a) A chairman who shall be appointed by the President
- b) The Director-General who shall be appointed by the Minister'

The above provision is in contradiction with international standards and guidelines as encapsulated in the UN law. The best practice suggests that individuals who are in charge of regulating broadcasts should have no personal connection with the media industry and should be nominated and appointed through a transparent process, detached from politics. The independence of media regulation in Kenya is not only hindered by the method of government appointments as shown above; many politicians own media houses.

Kenya's media is largely owned by politicians who use it to propagate their own political and commercial interests [44]. Ochieng concurs, noting that numerous politicians in Kenya own media houses in order to promote their agendas and gain mass prominence [45]. For example, 1 Frequency Modulation (hereafter *One FM*), a popular radio station in Kenya, is owned by Henry Kosgey, a member of parliament, *Kaya FM* is owned by Ali Makwere, a former long standing politician. *MediaMax* (which owns The People newspaper, K24 TV and Kameme FM) is owned by the Kenyatta's family- Kenya's first and current president, while Royal Media Group is owned by Samuel Macharia who is known to openly endorse presidential candidates [46].

The above findings are confirmed by the Media Council of Kenya's report that the President's family owns *MediaMax*. Raila Odinga, the main opposition leader owns *Radio Umoja* and *Nam Lolwe FM* while the retired President of Kenya, President Daniel Moi and his son Gideon Moi own the *Standard Group* which owns, *the Standard* Newspaper, several radios and television stations including *KTN* television [47]. Having politicians own media stations not only causes conflict of interest, but also disables regulatory bodies from properly executing their work.

2. Lack of Media Literacy

Media literacy is defined as the ability to assess, analyze, evaluate and create various forms of media messages [48]. Media literacy serves various goals, including equipping members of the public with skills to understand media output and apply critical analysis to it. It also enables consumers of the media to

understand their rights in relation to media output and whether it complies with acceptable standards [49]. Media literacy can be tailored for both adults and young people according to their developmental needs, making it appropriate for their age and type of media use [50]. Learning how to critically analyze media content can help protect children from adult content by teaching them how to judge media messages that are against their own beliefs and values [51].

The Media Council of Kenya has severally expressed concern at the lack of media literacy in Kenya [52]. It has reported that 80% of the people had never launched a complaint with the Media Council of Kenya as they did not know that they could or how to go about it [53]. A similar report by the Media Council of Kenya confirmed that indeed there is lack of media literacy among the Kenyan populace [54].

For media regulation to be effective, it is imperative for both parents and children to pursue media literacy [55]. For example, Salomon argues that the watershed program can only be effective if parents are educated about its existence and ensure children go to bed at the requisite time. It has been argued that the government should include media literacy in the school curriculum. This has not been done in Kenya. However, a few countries around the world have included media literacy in their school curricula.

3. Lack of Child Participation in Media Monitoring

Due to lack of media literacy, children are unable to participate in media monitoring. Other than that, the Media Council of Kenya does not seem to recognise child participation. For example, in the recent surveys carried out on the status of the media in Kenya, children were not engaged. This is contrary to both local and international laws that provide for child participation in all matters affecting [56, 57] the child, including research [58] touching on their welfare.

SOLUTIONS TO THE IMPEDIMENTS

The researchers propose the following as solutions to the impediments discussed above. The solutions are the compulsory installation of v-chips in television sets, establishment of a clear, consistent rating system and the establishment of a single independent media regulatory body, which has no reflection of political interest. These are just some of the proposed solutions that can ensure the Kenyan regulation for the adult content in the media is successfully effective.

1. Establishment of a Single Independent Media Regulatory Body

Kenya has a relatively new Constitution promulgated in 2010. Older parliamentary legislation is yet to fully comply with this Constitution. Compared to many other countries, Kenya has a long way to go in

developing effective media regulatory frameworks and bodies. For example, CAK, which is the media regulatory body of Kenya, lacked independence at the time of this study. This is unlike other countries like South Africa, Canada and the United Kingdom. These countries have independent regulatory bodies, and thus the authorities are able to effectively regulate media to protect children from harmful adult content. By contrast, in Kenya broadcast media is running loose due to the lack of independence of the regulatory body [59]. This is seen from the appointments made of the board members by the President and his cabinet ministers [60]. This is in direct contravention to article 34(5) of the Kenyan Constitution as noted earlier provides as follows:

“Parliament shall enact legislation that provides for the establishment of a body which shall-

- a) Be independent of control by government, political interests or commercial interests
- b) Reflect the interests of all sections of the society; and
- c) Set media standards and regulate and monitor compliance with those standards”

This provision clearly envisages a single, independent media regulatory body that would effectively protect children from harmful broadcast content. However, as discussed earlier, Kenya has two media regulatory bodies – the CAK and the MCK, and neither of these bodies meets all of the above requirements. It is therefore safe to say that the body envisaged in article 34(5) of the Constitution of Kenya does not exist in reality. For the sake of improving protection of children from harmful broadcast content, it is imperative that the Kenyan parliament establishes one such media regulatory body. The regulatory body should be akin to the UK’s *Ofcom*, which is an independent media regulatory body that reflects all interests of society, sets media standards, and regulates and monitors those standards effectively.

It is therefore important that the legislative media laws in Kenya provide for one regulatory body as opposed to having two bodies that the public can make complaints to with regard to media content. The two bodies are prone to relegating their duties which are somehow duplicated, and each can blame the other for media regulatory failures. A provision for one regulatory body will reduce confusion and make launching complaints easier thus improving public participation in media regulation. It will also bring on board accountability in the body that will be created to watchdog media industry and control its operations.

Moreover, Kenya could borrow from South Africa’s BCCSA independent approaches such as requiring that all regulatory officials not be politically connected, and having the public participate in the

nomination of regulatory officials who are thereafter appointed by an independent retired court of appeal judge. This is contrary to what currently happens in Kenya where, as seen above, regulatory officials are appointed by the president and the cabinet secretary [61].

The appointment procedure and media ownership by politicians hinder the adherence to broadcasting laws, which protect children from harmful content. There is, therefore, a need for the media regulatory body to be independent from control or influence of either the government or commercial interests. The primary rationale for this is to prevent the regulatory body from continuing to act in ways which promote its political master's interests over the interests of the public, and in this case, the best interests of the child. It is needful that Kenyan politicians either give up their political offices or forego ownership of broadcasting stations [62]. Perhaps after media literacy is promoted in the country, the public will demonstrate against the inappropriate involvement of political and commercial interests in the media.

2. Establishment of a Clear, Consistent Rating System

Consistency and persistence in monitoring and rating of media content prevents 'ratings creep'; where content meant for adults is gradually and increasingly included in programs meant for children [63]. A clear and consistent rating system must therefore be developed for Kenya by an independent regulatory authority to avoid ratings creep. For that reason, Kenya should amend its Broadcasting Regulations to make its ratings clearer. For example, instead of having 'General Exhibition' (GE) also rated as '10', the regulations should provide for one of the two and not both of them for purposes of consistency. Kenya can also learn from the advice of Canadian parents who called upon the government to tailor the information included in ratings according to specific age groups of children to avoid the 'forbidden fruit effect' [64].

3. Compulsory Installation of V-Chips in Television Sets in Kenya

After addressing the issue of clear, consistent rates, the government of Kenya should consider passing a law similar to Canada's Telecommunications Act of 1996, which provides for compulsory installation of the V-Chip in all television sets sold in future in the country to assist parents in monitoring broadcast content that could be harmful to children. As discussed above, the V-Chip technology that assists in media monitoring is being applied in countries such as Canada and America. In 1996, the Canadian government made it compulsory for all television sets to be installed with a V-Chip for purposes of protecting its children from harmful media content. Kenya should consider passing a similar legislation in order to assist parents in

monitoring broadcast content. However, for this technology to be successfully applied, ratings should be clear and consistent.

CONCLUSION

The article discussion demonstrates that Kenyan television and radio are hardly regulated and their content such as music videos, soap operas and advertisements contain undeniably sexually explicit displays. The sexually explicit content is broadcast during daytime, from morning breakfast shows to evening prime time news hours when children are consuming media. Not only is there a lot of sexual content on radio and television, but most of it does not deal with the risks and responsibilities of sexual activity. As evidenced by the studies carried by the same existing regulatory bodies, they lack the will and power to prosecute those who go against the established legal framework with regard to sexual content and protection of children against such content. There are some impediments to the regulation and implementation of already existing laws, and whose solutions are also proposed in the article. These findings are useful for the government, media regulatory bodies, the parents and the media in ensuring the children are protected from potentially harmful materials for the sake of their future.

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62. The researcher was unable to ascertain media ownership in other countries.
63. See Section 4.2 part 4.2.5 above.
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