



**NATIONAL MECHANISM
FOR THE SAFETY & PROTECTION OF
JOURNALISTS IN KENYA**

1.0 Introduction:

The Kenya Media Sector Working Group established a general framework to guide the media stakeholders in Kenya in handling the issue of safety and security of media practitioners nationally

The framework is premised on an all-inclusive national intervention mechanism that brings stakeholders in Kenya, among them the Media Council of Kenya, Media professional groups, media associations, media unions, media support groups, Government representatives, development partners, human rights defenders and journalism training institutions.

The objective of establishing this national mechanism is to provide a well-coordinated and sufficient support to media practitioners and journalists, do away with duplication and complement each other's efforts with an aim of increasing the impact of the impact of existing interventions.

In addition, it will also enable the country to monitor and document efforts in achieving the Sustainable Development Goals (SDGs)- 16

The goal of creating the mechanism is to ensure a safe and secure environment for journalists and media practitioners in Kenya through prevention of violence against journalists, protection whenever in distress and prosecution of perpetrators.

1.2 Background and Situation Analysis

Media in general and journalists and media workers in particular play a very important role in ensuring fair, credible and acceptable elections. Media is an integral part of the election process in any country and the expectation that a free, independent and objective media will suffice ahead of the 2017 general election is not an exception.

While Kenyan journalists enjoy an environment that is among the most hospitable in Africa, the situation is gradually changing, if recent attacks and harassment of media workers is anything to go by. Journalists and media workers across the country have been attacked by police and their equipment confiscated, intimidated and made to flee by goons and well-known personalities while a number of media houses have been dragged to courts to gag them against publishing on certain topics, organizations or personalities.

Attacks and violence against journalists violate the Kenya Constitution that provides for the protection of all Kenyans and freedom of expression. Part Two of Chapter Four, commonly referred to as the Bill of Rights of the Kenyan Constitution, states inter alia in Article 26 (1): "Every person has the right to life". Sub-section (3) of the same Article further elaborates that "a person shall not be deprived of life intentionally, except to the extent authorised by the Constitution or other written law" while Article 28 guarantees the inherent right to human dignity and to have that dignity respected and protected.

Article 29 is specifically on freedom and security of the person, in particular, the right not be deprived of freedom arbitrarily or without just cause. This Article is categorical with regard to detention without trial, being subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological and treated or punished in a cruel, inhuman or degrading manner.

In this regard a citizen of Kenya, and, indeed, any person in Kenya enjoys all these rights without exception, including journalists and media professionals. Articles 31 and 32 protect the privacy of persons and freedom of conscience, religious belief and opinion.

Freedom of Expression:

Article 33 protects and entrenches the Freedom of Expression in all its manifestations, including the freedom to seek, receive or impart information or ideas, including artistic creativity, academic and scientific research, but with limited exceptions to propaganda for war, incitement to violence; hate speech or advocacy of hatred.

Freedom of the Press (Media):

Article 34 of Chapter Four that makes a specific reference to Freedom of the Media, which is guaranteed, but with a disclaimer, that these guarantees do not extend to any expression specified in Article 33 (2).

This Article delves deeper into what the state and or its agents can and cannot do to infringe on media (Press) freedom, including penalising any person for any opinion or view or the content of any broadcast, publication or dissemination but with an important editorial independence proviso from “government, political interests or commercial interests.”

Indeed, the constitutional Article ventures into the realm of public service media (Press) architecture and design, including the media (Press) co-regulation statutory body to set standards and arbitrate in inter-media and public-state and intra-media dispute resolution, compliance and monitoring through the establishment of a statutory media council.

Access (Right) to Information:

The Access to information Act 2016 as provided for via Article 35 enhances transparency and access to information held by both state and private entities that is necessary in the protection and exercise of any right of fundamental freedoms.

Labour Rights

Journalists and media professionals are through the labour related laws entitled to labour rights as provided for in Article 41, which states inter alia: “Every person has the right to fair labour practices, including fair remuneration and reasonable working conditions.”

The Media Council Act 2013

The Media Council of Kenya is an independent national statutory body. It was established by the Media Council Act 2013 to regulate the media and protect its freedom; including protecting the rights and privileges of journalists the conduct and discipline of the journalists’ advice government on media related policies.

The Penal Code and Press (Media) Freedom

A number of laws exist via the Penal Code that related to media freedom. These include the Official Secrets Act, the Books and Newspapers Act, the Films and Stage Plays Act and punitive libel and slander statutes not to mention a weak oversight and complaints handling mechanism, in particular over state policing and executive authority.

At the international level, it is also a violation of international treaties that Kenya is party to including General Comment 34 on Article 19 of the International Covenant on Civil and Political Rights that says: *States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 [of Article 19] may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of at-*

tack as arbitrary arrest, torture, threats to life and killing, be compatible with Article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.

UNESCO Member States passed Resolution 29 on “Condemnation of violence against journalists” in 1997 following serious concerns about the killing of journalists in many countries and the evidence of the spread of impunity – that is, the persistent failure of the lawful authorities to bring those responsible to justice.

The subsequent UN Security Council Resolution 1738 (2006) condemns attacks against journalists in conflict situations recalling and acknowledging that journalists engaged in dangerous professional missions in areas of armed conflict shall be considered civilians, to be protected as such.

Provisions protecting the right to life, personal liberty and integrity, freedom from torture, freedom of expression, and the right to an effective remedy which are incorporated within international human rights law instruments provide journalists with the necessary guarantees against violations of their rights and risks to their safety.

The *African Charter on Human and People’s Rights* guarantees individuals against arbitrary deprivation of the right to life (Article 4), establishes an absolute prohibition of torture and other inhuman or degrading treatment (Article 5), guarantees the right to liberty and security of the person (Article 6), and freedom of expression (Article 9).

UN Plan of Action on Safety of Journalists:

The UN Plan of Action on the Safety of Journalists and the Issue of Impunity, from 2012, which “recommends working in cooperation with governments, media houses, professional associations and NGOs to conduct awareness raising campaigns on a wide range of issues such as existing international instruments and conventions, the growing dangers posed by emerging threats to media professionals, including non-state actors, as well as various existing practical guides on the safety of journalists”. The plan is being piloted in six countries, including South Sudan, but should in principle be implemented in all countries globally.

The National safety and security mechanism in Kenya was established as a follow up of the recommendations by the Eastern Africa media stakeholders held on 14th November 2017 that led to the Nairobi declaration (<https://en.unesco.org/sites/default/files/nairobideclarationsafetyjournalists.pdf>), on establishing National Mechanisms for Safety of Journalists in the region.

The Media Council of Kenya will be the conveners of the National the mechanism for safety and protection of journalists:

1. Membership structure

- (i) The Media Council of Kenya (MCK)
- (ii) The Kenya Editors Guild (KEG)
- (iii) The Kenya Union of Journalists (KUJ)
- (iv) The Association of Media (AMWIK)
- (v) The Media Owners Association (MOA)
- (vi) The National Police Service (NPS)
- (vii) The Office of the Director of Public Prosecutions (ODPP)
- (viii) The Political Journalists Association (PJAK)
- (ix) The United Nations Educational and Scientific and Cultural Organisation (UNESCO)

- (x) The International Research & Exchanges Board (IREX)
- (xi) The Kenya Correspondents Association (KCA)
- (xii) ARTICLE 19 Eastern Africa
- (xiii) Three (3) media representatives from the regional media networks/Associations
- (xiv) Two (2) representatives from the civil society/human rights defenders/lawyers associations;
- (xv) Two (2) representatives from Journalism training and research institutions;
- (xvi) Two (2) representatives from media bilateral donors
- (xvii) The Law Society of Kenya
- (xviii) The Kenya National Commission on Human Rights (KNCHR)
- (xix) Commission for Administrative Justice (CAJ)
- (xx) Internal Police Unit
- (xxi) The Attorney General's Office
- (xxii) The government spokesman's

2. Terms of Reference (ToRs)

- (i) The Media Council of Kenya (MCK) and Kenya Union of Journalists shall be responsible for calling for meetings and in carrying out activities
- (ii) The Council shall organise the Committee's meetings once a month, ensuring that there is a quorum represented by half of the regular members.
- (iii) Establish a joint national monitoring and reporting system for media rights' violations and a mechanism for supporting investigations and prosecution of the perpetrators.
- (iv) Create a data base for press freedom violations
- (v) Review legal, policy and institutional regulatory frameworks that threaten freedoms of expression and the media,
- (vi) Establish a joint resource mobilization plan
- (vii) Support regular interaction dialogue forums between security personnel and the media fraternity
- (viii) Develop training materials for safety including curriculum
- (ix) Establish a rapid response mechanism for dealing with safety of journalists
- (x) Engaging the media stakeholders, government, public and private sector on key policy/strategy/development plan related to safety of Journalists
- (xi) Advocate for institutionalization of the training of safety
- (xii) Raise awareness for safety of journalists through regular well investigated reports on the state of safety of journalists in the country.
- (xiii) Enforce laws that guarantee journalists freedom to access information, maintain privacy, and use of Internet for communication
- (xiv) Allocate sufficient funds for the development of the media industry and specifically for strengthening the safety of journalists national mechanism

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