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This project is part of PIWA’s ‘Pluralism and media development’ programme whose objective is to foster a political, legal and professional media environment in favour of democratizing communication.

As part of PIWA strategy, this study is part of the effort to generate knowledge on the media sector. It provides a base to document debate and contribute to thinking by stakeholders involved in developing communication policies. It aims to support advocacy for media reform in West Africa.

Thus, it is of interest to all those involved: public decision-makers and authorities responsible for communication policies, media support organizations, media professionals, civil society organizations, and experts. That is, all those who are working to strengthen pluralism and media development in the region.
The African Charter on Broadcasting

A review of its impact in West Africa
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A review of its impact in West Africa
This book presents the results of a study carried out by Panos Institute West Africa (PIWA) in 2010.

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*The opinions expressed herein are those of the authors and interviewees and do not necessarily reflect the views of the Panos Institute West Africa.*
PIWA is an independent African regional non-governmental organization, created in 2000. PIWA’s mission is to democratize communication and consolidate public spaces to facilitate open African societies where citizens are informed and have their voices heard and amplified.

Based in Dakar, PIWA works in fifteen ECOWAS countries and in Mauritania.

PIWA supports:

- public debate and policy dialogue on key development issues in Africa;
- knowledge-building on media development and the challenges of communication for development in Africa;
- the production and dissemination of quality media content, created by Africans themselves;
- capacity-building of agents for social change to inform, communicate and be heard;

PIWA federates and serves as a catalyst, contributing to innovation at the regional level and creating and promoting initiatives for democratic communication.

PIWA is a founding member of the ‘Panos Network’ which includes seven other independent institutes: Panos Eastern Africa, Panos Southern Africa, Panos South Asia, Panos Caribbean, Panos Canada, Panos London and Panos Paris.
FOREWORD

Radio has experienced huge growth over the last fifteen years in West Africa. This trend can be attributed to political liberalization accompanied by liberalization of the media environment, and technological advances, which have facilitated the installation and operation of small units, even in the most remote areas. It is difficult to put an exact figure on the number of radio stations in West Africa today, but an estimate can be made at over 700. However, this figure masks disparities between countries. For example, in 2009, Mali had 498 radio stations officially registered (of which 300 are currently broadcasting) as well as several operating without a licence. Benin, in comparison, has 180 radio stations and Burkina Faso, only 60.

This growth also obscures the large disparities in the status of these radio stations, both domestically and internationally, particularly in terms of so-called ‘community’, ‘voluntary’ or ‘local’ radio stations. In countries such as Nigeria, the radio landscape remains limited to public and commercial radio stations, whereas in Mauritania, only public radio stations may broadcast. In terms of international norms in the broadcasting sector, disparities across the region are therefore considerable.

In 2007, PIWA began a project entitled “Support for the community radio broadcasting sector in West Africa: legislative frameworks and capacity building”. It aimed to strengthen radio pluralism in order to democratize information in transition countries in West Africa. The impact assessment of the African Charter on Radio Broadcasting in West Africa is part of this project, and is a response to one objective which is to strengthen national legal frameworks for information and communication, and to make them more supportive of radio pluralism, including development of the community radio sector.

With the aim of strengthening radio pluralism in West Africa, the study sought to chart the evolution of the West African radio sector by assessing it in terms of international norms in radio pluralism. Taking the application of the African Charter on Radio Broadcasting provisions as a reference in the target countries, two key questions have guided this study:
- To what extent were Charter recommendations adopted?
- To what extent can this be attributed to the existence of the Charter itself (or to awareness of its existence by those involved)?

Such an approach should also enable the impact of the Charter to be evaluated by those involved in the reform of the media sector in West Africa.

Five countries were selected, based on linguistic criteria (a balance between anglophone and francophone countries); a balance between coastal countries and Sahelian countries; and above all, a balance between countries considered more advanced in terms of the diversity and dynamism of their radio landscape, and countries which lag behind in this respect. Ghana and Mali stand apart as the most advanced due to their legal frameworks supporting the development of the public, private and community radio sectors, and the stability of established players in the sector. Ghana’s community sector, even if its development is slow compared to a country such as Mali, (which claims 17 members in the community radio station network, GCRN), is one of the most stable and active in the areas of capacity-building and a community-based approach. In Mali, the dynamism of the broadcasting sector is evident in the number of established radio stations, whereas Senegal is an example of a ‘midway’ situation, with recognition of the three sectors (community, public and commercial), but with restrictive regulations for community radio. Nigeria is characterized by underdevelopment in the community radio sector, which has no legal recognition. In Niger, whose radio landscape has expanded since liberalization began in 1993, media organizations have found themselves regularly restricted in recent times due to the political situation.

The methodology used for this study is based upon documentary analysis and interviews. The former derives from the examination of the legal and regulatory texts available in the countries targeted, and monitoring of current trends in the media through reports produced by different institutions (e.g. IREX, IFEX, Reporters Sans Frontières)

Semi-structured interviews were conducted in each country with around 20 influential decision-makers, media professionals, activists and other civil society representatives.
Research was undertaken by national experts chosen for their familiarity with and knowledge of the radio sector and media in their respective countries, and supervised by an international expert. The latter also has extensive knowledge of the region as well as international debates on radio pluralism and development of the community radio sector.

The study, which takes recognized norms in the African Charter on Broadcasting as a benchmark, gives an assessment of the position of each of the targeted countries in light of these norms. It gives an overview of the evolution of the radio landscape in these countries while identifying the gaps in terms of reform. The political and legal framework is also reviewed, as well as the structure of the sector (i.e. number and types of stakeholders and services). The study gives an overall summary of some of the main chapters making up the Charter: general regulatory issues and regulation, recognition of the three sectors, and the public service radio broadcasting model, and focuses on community radio, with case studies for each country.

Apart from assessing countries in terms of the Charter, the study identifies a general lack of information regarding the Charter itself, a view shared by the majority of those interviewed. Save for activists involved in advocacy for the recognition of community radio, such as in Nigeria, very few of those working in the radio sector are aware that the Charter exists and that it is a useful tool for advocacy. Nigeria and Southern Africa are the exception. The Charter is better known there, and used by activists in support of their demands for the reform of the radio sector.

Although not well-known in the countries targeted, the study found however, that when legal advances were made, progress was greatly inspired by the guidelines advocated in the Charter. Indeed, although the Charter has no legal force, it inspired the Declaration of Principles on Freedom of Expression, which is in turn recognized by the African Union.
The contents of the Charter, however, remain outdated in many respects. It not only takes no account of access to information, an ongoing issue in West Africa, but also obscures the main challenges such as convergence and digitalization. The study concludes with a series of recommendations focusing on two main lines of action:

- Updating of the Charter, to take account of the current challenges for radio pluralism and the media in general (digitalization, access to information etc.);
- Co-operation between media support organizations to enhance knowledge of the Charter, and greater regard for its recommendations.

By describing the status of the target countries in terms of media freedom and pluralism, providing information about awareness of the African Charter on Broadcasting; and offering recommendations for the updating and increased recognition of the Charter, the study aims to be a tool of support for those involved in the reform of the sector. It enables the debates on reform to be documented, and the strategies of activists who promote such tools to be supported and implemented, with the aim of working towards greater recognition and regard for these activities at the national level.

The results of the study were reported during a seminar organized by PIWA in June 2010, entitled “The African Charter on Radio Broadcasting 10 years on: Updating and responding to the challenges of pluralism”, which marked the end of the three-year support project for the radio broadcasting sector begun in 2007. Those present who responded to the study’s recommendations included policy-makers, representatives from regulatory bodies and media support organizations; media professionals; representatives from the academic and research sector on the media; media experts; and other stakeholders from various countries in West Africa and beyond. Participants agreed that the current approach to assessment of the Charter could also be applied in other African countries. This as part of the process of reviewing the Charter, now approaching its tenth anniversary in 2011, and twenty years after the Windhoek Declaration.
Introduction

Steve Buckley

This study assesses the impact of the African Charter on Broadcasting, a blueprint for broadcasting reform in Africa, approved in 2001 at a conference of media practitioners and freedom of expression advocates held in Windhoek, Namibia. The geographical focus of this study is five countries in West Africa - Ghana, Mali, Niger, Nigeria and Senegal.

The purpose of the study is to contribute to the strengthening of pluralistic media and the democratization of communication in countries in transition in West Africa. Its observations and recommendations are also of relevance to those engaged more widely in media reform advocacy and democracy promotion as well as scholars of broadcasting law and policy.

This introduction outlines the history of the Charter and places it in the context of African media development and the strengthening of democracy and human rights. It compares the content of the Charter with other African and international documents and indicators of media development. It also describes the methodology adopted for the study.

Democratization and media reform

Fifty years ago, independence took hold across much of Africa, including the West African countries that are the focus of this study1. Yet it is only over the last two decades that state broadcasting monopolies inherited from the colonial era have been challenged by the emergence of private and community media. In 1990 there was almost no independent radio or television to be found on the African continent. Broadcasting operated as an instrument of government in the service of nation building, development and sometimes repression.

Over the last twenty years the African media landscape has changed enormously. New policies, laws and regulations have been adopted that have led to an opening up of the airwaves and the emergence of private and community broadcasting services. Today there remains only a handful of African countries where state broadcasting monopolies prevail.

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West Africa has been at the forefront of these developments, although the scope and pace of change has been uneven, reflecting differences in country-level political contexts.

The evolution of the African broadcasting landscape is inextricably linked to change in the wider political environment. The end of the Cold War, which had sustained many autocratic African governments, popular demonstrations in the face of economic hardship and political repression, and the emergence of civil society movements and opposition groups all contributed to a new wave of democratization that commenced in the early 1990s and spread throughout much of sub-Saharan Africa. Media policy reform was among the priorities of democracy activists and strengthened guarantees of the right to freedom of expression were among the constitutional demands seen as crucial to consolidating democratic development.

**The Declaration of Windhoek**

Partly in response to this political context, the United Nations (UN) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) jointly organized a series of regional events, commencing with a seminar on “Promoting an Independent and Pluralistic African Press”, held in Windhoek, Namibia, from 29 April to 3 May 1991. Participants, including representatives of governments, intergovernmental bodies and non-governmental organizations, adopted the Declaration of Windhoek, the first of a series of regional statements on media freedom adopted between 1991 and 1997, and that were subsequently endorsed by Member States participating in the UNESCO General Conference\(^2\).

\(^2\) Four further regional events were held between 1992 and 1997 which produced the Declaration of Alma Ata on Promoting Independent and Pluralistic Asian Media, 1992; the Declaration of Santiago de Chile on Media Development and Democracy in Latin America, 1994; the Declaration of Sana’a on Promoting Independent and Pluralistic Arab Media, 1996; the Sofia Declaration on Promoting European Pluralistic and Independent Media, 1997. The Declarations were endorsed by the UNESCO General Conferences of 1995 and 1997.
The Declaration of Windhoek (1991) linked press freedom to the defence of democracy:

*Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation.*

The Declaration also noted that democratization itself could facilitate media reform:

*The welcome changes that an increasing number of African states are now undergoing towards multiparty democracies provide the climate in which an independent and pluralistic press can emerge.*

The Declaration, together with its regional counterparts adopted in Asia, Latin America, the Arab World and Europe, are among the few substantive statements on media pluralism and independence endorsed by an intergovernmental conference within the framework of the UN system. The UN General Assembly subsequently declared 3 May to be World Press Freedom Day to mark the anniversary of the Declaration of Windhoek.

**Windhoek+10 and the African Charter on Broadcasting**

UNESCO marks World Press Freedom Day by bringing together leading media practitioners, freedom of expression defenders and UN agencies each year in an international conference to assess the state of media freedom and to address thematic issues and challenges. The first such conference to be held in Africa was organized in 2001 in Windhoek, to mark the tenth anniversary of the Declaration of Windhoek. The host organization, the Media Institute of Southern Africa, together with other civil society organizations including the World Association of Community Radio Broadcasters (AMARC), Article 19: Global Campaign for Free Expression (ARTICLE 19), the Association for Progressive Communications (APC) and Southern African Communications for Development (SACOD), seized the occasion to propose a new standard-setting document, the African Charter on Broadcasting. While acknowledging the continuing relevance of the Declaration of Windhoek as an advocacy tool for press
freedom, the African Charter on Broadcasting, 2001, was designed to complement and expand on the original Declaration by focusing on broadcasting:

*The Declaration focused primarily on the promotion of the print media and was silent on issues such as broadcasting liberalization and the globalization of the communications industry. These issues have far reaching social and economic implications for media freedom and threaten to jeopardize the production of media that reflects Africa’s rich diversity.*

The Charter draws particular attention to: “the existence of serious barriers to free, independent and pluralistic broadcasting and to the right to communicate through broadcasting in Africa”, while noting: “that for the vast majority of the peoples of Africa, the broadcast media remain the main source of public communication and information”.

The Charter sets out a recommended framework for broadcasting law and regulation grounded in a rights-based approach in which freedom of expression includes “the right to communicate and access to means of communication” and which elaborates a three tier system for broadcasting – public service, commercial and community.

The standard-setting recommendations of the Charter are set out in four distinct parts:
- General regulatory issues;
- Public service broadcasting;
- Community broadcasting; and
- Telecommunications and convergence

These are discussed in more detail below in a comparison with the Declaration of Principles on Freedom of Expression in Africa, adopted subsequently by the African Commission on Human and Peoples’ Rights, and in relation to other standard-setting texts.
African standards on freedom of expression

The African Charter on Broadcasting can be situated within a tradition of civil society advocacy to strengthen the commitment of African governments to the promotion and protection of human rights within the framework of regional and international law. The Universal Declaration of Human Rights (UDHR) is binding on all states as a matter of customary international law, and guarantees freedom of opinion and expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In addition, all African states are signatories to the International Covenant on Civil and Political Rights (ICCPR) which is legally binding in international law and guarantees the right to freedom of opinion and expression in similar terms. The Constitutive Act of the African Union, an intergovernmental organization of 53 African states, includes among its objectives:

Encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights.

It also affirms Africa’s regional human rights framework with the objective:

Promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments.

The African Charter on Human and Peoples’ Rights (ACHPR) has been ratified by all member states of the African Union. The ACHPR states, in Article 19:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.
The ACHPR provides for the establishment, composition and functioning of the African Commission on Human and People’s Rights, an intergovernmental organization which was inaugurated on 2 December 1987, and which, among other functions, may adopt resolutions to interpret and bring greater clarity to the provisions of the ACHPR. Of particular importance, in this respect, is the Resolution of 23 October 2002 to adopt a Declaration of Principles on Freedom of Expression in Africa (DPFEA). The DPFEA sets out, *inter alia*, a framework for the regulation of broadcasting which draws significantly on elements of the African Charter on Broadcasting. This, in effect, gives an official status within the African human rights system to some of the Charter’s recommendations and therefore merits closer examination of the relationship between the two documents.

**Declaration of Principles on Freedom of Expression in Africa**

At the same time that work was underway leading to the Windhoek +10 conference and the African Charter on Broadcasting, the African Commission on Human and Peoples’ Rights (ACHPR) was considering the development of a Declaration of Principles on Freedom of Expression. The proposal arose from a seminar on “Freedom of Expression and the African Charter” held in Johannesburg, 22-25 November 2000, under the auspices of the Commission. It was subsequently adopted as a project of the Commission at its 29th Session in Tripoli on 7 May 2001, just days after the conclusion of the Windhoek +10 conference. At the subsequent session of the Commission, held in Banjul in November 2001, a Working Group on Freedom of Expression was established, comprising Members and staff of the Commission, and assisted by the freedom of expression campaigning organization, Article 19. According to MISA (2009), the DPFEA, which was eventually adopted on 23 October 2002:

*Was largely inspired by the groundbreaking Windhoek Declaration on Promoting an Independent and Pluralistic African Press (1991) and the African Charter on Broadcasting (2001).*

The documents are closely linked - with Article 19, MISA and other freedom of expression advocacy groups involved in both drafting processes. The African Charter on Broadcasting was itself officially launched on the first anniversary of Windhoek +10, at an evening event on 3 May 2002, during
the 31st Session of the Commission, held in Pretoria. Although there are differences in the two texts and the DPFEA does not make direct reference to the Charter, the core elements on broadcasting are very similar and in some parts identical. The following matrix provides a comparison of their recommendations on broadcasting.\(^3\)

\(^3\) The DPFEA is silent on telecommunications and convergence, which is Part IV of the Charter.
1. The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: public service, commercial, and community.

2. All formal powers in the areas of broadcast and telecommunications regulation should be exercised by public authorities which are protected against interference, particularly of a political or economic nature, by, among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party.

3. Decision-making processes about the overall allocation of the frequency spectrum should be open and participatory, and ensure that a fair proportion of the spectrum is allocated to broadcasting uses. The frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting.

4. Licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content.

5. Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas. States should promote an economic environment that facilitates the development of independent production and diversity in broadcasting.

6. The development of appropriate technology for the reception of broadcasting signals should be promoted.

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I.1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

I.2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

II.1. No one shall be subject to arbitrary interference with his or her freedom of expression.

II.2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

III. Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:- availability and promotion of a range of information and ideas to the public; - pluralistic access to the media and other means of communication, including by vulnerable or marginalized groups, such as women, children and refugees, as well as linguistic and cultural groups; - the promotion and protection of African voices, including through media in local languages; and - the promotion of the use of local languages in public affairs, including in the courts.

VII.1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
PART II: PUBLIC SERVICE BROADCASTING

1. All state and government controlled broadcasters should be transformed into public service broadcasters, that are accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender.

2. Public service broadcasters should, like broadcasting and telecommunications regulators, be governed by bodies which are protected against interference.

3. The public service mandate of public service broadcasters should be clearly defined.

4. The editorial independence of public service broadcasters should be guaranteed.

5. Public service broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.

6. Without detracting from editorial control over news and current affairs content and in order to promote the development of independent productions and to enhance diversity in programming, public service broadcasters should be required to broadcast minimum quotas of material by independent producers.

7. The transmission infrastructure used by public service broadcasters should be made accessible to all broadcasters under reasonable and non-discriminatory terms.

SECTION VI

VI. State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.
PART III: COMMUNITY BROADCASTING

1. Community broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit.

2. There should be a clear recognition, including by the international community, of the difference between decentralized public broadcasting and community broadcasting.

3. The right of community broadcasters to have access to the Internet, for the benefit of their respective communities, should be promoted.

SECTION V

V.1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.

V.2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
- there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
- an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
- licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
- community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.
World Summit on the Information Society

While it was the meeting of the African Commission on Human and People’s Rights that provided the vehicle for launch of the Charter, the World Summit on the Information Society (WSIS) provided a further important forum in which to lobby for its recognition and endorsement by African governments. The holding of a World Summit on the information society under the auspices of the United Nations was initially proposed by the International Telecommunications Union in 1998 and endorsed by the United Nations General Assembly in December 2001. It was planned as a World Summit in two phases, the first to be held in Geneva in 2003, and the second to be held in Tunisia in 2005. Preparatory conferences for the WSIS commenced in 2002, including a series of Regional Conferences, commencing with an African Regional Conference held in Bamako, Mali, from 25 to 30 May 2002.

The opportunity to gain wider support became one of the motivations for the African civil society organizations that had proposed the Charter to get involved in the WSIS process and, after the launch of the Charter in May 2002, one of the implementation objectives set by its proponents was to assert it as an African position in the WSIS context (Naughton, 2003). The Africa Regional Conference for WSIS was attended by representatives of 51 African countries as well as delegates from other countries and people representing African and global organizations, the private sector and civil society. The conference was opened by the President of the Republic of Mali, on behalf of the host country, and by the President of the Republic of Senegal, as the then Chairman of ECOWAS. As a “multi-stakeholder” conference, civil society organizations were able to participate freely in debates and to contribute to the drafting of the conference report. The Final Declaration, adopted by the Regional Conference at its conclusion on 30 May 2002, requests that African states, inter alia:

Adopt the “African Charter” on radio broadcasting (sic) as a framework for the development of policies and legislations regarding information technologies and broadcasting in Africa.

The strategy of engagement in the WSIS was thus immediately successful. The WSIS Regional Conference in Bamako is also, to date, the only forum in which representatives of African governments have formally endorsed
the Charter. The Final Declaration of the Conference provided a comprehensive basis for African engagement in the WSIS. It also assured a profile for the African Charter on Broadcasting in the wider WSIS process and particularly in relation to debates on freedom of expression and the role of the media.

**African Media Barometer and other media development indicators**

The Charter has also contributed to new work on country-level assessment of media freedom and media development. In 2001, when the Charter was written, there was very little comparative research available on the African media landscape. The ‘Freedom of the Press Index’, undertaken since 1996 by Freedom House as an annual survey of media independence was the only systematic assessment that offered both comparative data and trends analysis. It focuses largely on the press rather than on the broadcast media. Its methodology relies on the judgment of international (mainly US-based) experts and it gives no weight to the presence, or otherwise, of public service or community broadcasting as part of a pluralistic media landscape.

In 2002, the French NGO Reporters Sans Frontières launched its own “Press Freedom Index” and has published it annually since then, using a methodology based on international expert opinion. It also focuses mainly on the press and journalists, but does include questions about opposition access to and the editorial independence of state-owned media. There is no indication that either of these indices has taken any account of the recommendations of the African Charter on Broadcasting as a blueprint for policies and laws in an African context.

In 2004, the Media Institute of Southern Africa, together with the Media Project of the Friedrich-Ebert-Stiftung in Africa, started developing the African Media Barometer (AMB). The idea was to create a self-assessment tool based on African standards and by African experts (Paasch, 2009). Rejecting the “foreign-based experts” model of Freedom House and Reporters Sans Frontières, the AMB methodology was designed as a qualitative tool for country-level debate. It was based on 42 indicators that were derived from African declarations, protocols and principles and specifically: the Windhoek Declaration 1991; the SADC Protocol for Culture, Information and Sport 2000; the African Charter on Broadcasting 2001; and the Declaration of Principles on Freedom of Expression in Africa of the
African Commission on Human and People’s Rights 2002 (fesMedia & MISA, 2009). By 2009, the AMB had been implemented in 25 African countries with a total of 47 reports produced. As such it is not yet a comprehensive survey of the African continent, nor does it provide systematic annual reporting to enable trends analysis. On the other hand it is an African-centred self-assessment tool that incorporates the key African Broadcasting Charter recommendations and can contribute to country-level advocacy.

Since 2001, other media development indicators have been applied in Africa, including the IREX Media Sustainability Index, which has a predominantly economic focus, and several comparative country surveys have been conducted, including those by AMARC-Africa (2004), the BBC World Service Trust (2006), and Berger (2007). In 2007 UNESCO commissioned a new study to define indicators of media development (UNESCO, 2007). The study identified 26 different indicator sets including the African Media Barometer and others mentioned above. From these have been derived a new toolkit, published as the UNESCO Media Development Indicators (UNESCO 2008) and approved by the Intergovernmental Council of the International Programme for the Development of Communications (IPDC). While not drawing directly on it as a source, they incorporate key recommendations of the African Broadcasting Charter, including an independent regulatory body for broadcasting, an editorially independent public service broadcaster, and a three tier model of public, private and community media. These recommendations are thus emerging as a normative standard.

Other endorsements of the Charter

Although the Charter is a civil society initiative, with the Bamako Declaration it also gained the endorsement of representatives of African governments. It gained further intergovernmental support following the UNESCO World Press Freedom Day conference of 2005, held in Dakar, Senegal, 1-3 May. The Dakar Declaration on Media and Good Governance (UNESCO 2005a) “reaffirmed” the ACB, noting that it “extended the principles of the Declaration of Windhoek into calls for practical action”. The Dakar Declaration was endorsed by the Member States of the UNESCO at its General Conference on 20 October 2005 (UNESCO, 2005b).
In addition to these endorsements by intergovernmental bodies, numerous civil society forums have endorsed the Charter since its adoption in 2001. Recent examples include: the Joint Statement of the Forum on Freedom of Expression in Africa, held in Saly, Senegal, 5 July 2006; the OurMedia 7 Communiqué adopted at the OurMedia 7 Conference held in Accra, Ghana, from 11 to 15 August 2008; and the Knowledge-Sharing Workshop Of Community Radio Networks in Africa, held in Accra, Ghana, from 16-18 December 2009. In a March 2010 statement to the AUC-EC Joint Informal Expert Meeting on Media and Development (GFMD, 2010), leading African and other media development organizations cited the African Charter on Broadcasting as one of three standard-setting African texts on media development (the others being the Windhoek Declaration and the DPFEA). Such statements are indicative of the continuing currency of the Charter in civil society advocacy, particularly at the international level.

**Methodology of the study**

This chapter has sought to place the African Charter on Broadcasting in context and to demonstrate its international relevance to the development of communication rights and broadcasting policy standards. The following chapters outline five country studies - in Ghana, Mali, Niger, Nigeria and Senegal – which investigate the impact of the Charter at the country level. The five country studies in this report have been undertaken by country-level experts within a joint methodological framework which structured both the data gathering and the report writing. Data gathering for the country studies consisted of the following elements:

- Compilation and review of primary policy, legal and regulatory texts.
- Trends analysis in the media environment based on international media and freedom of expression monitoring reports from sources such as Reporters Sans Frontières, International Freedom of Expression Exchange (IFEX), Freedom House, International Research and Exchanges Board (IREX) and the Africa Media Barometer.

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4 The statement was endorsed by the Africa Forum for Media Development (AFMD), the Global Forum for Media Development (GFMD), the African Media Initiative (AMI), the Federation of African Journalists (FAJ), the International Federation of Journalists (IFJ) and ARTICLE 19.
Review of secondary literature, including country reports and case studies, with particular regard to the status and impact of community broadcasting.

Semi-structured interviews with at least 20 leading media and political actors per country drawn from media houses, media associations, trade unions, regulators, civil servants, parliamentarians, development agencies and human rights groups.

Each country study constitutes a chapter in this report with the following structure:

• a brief summary of the country-level social, economic and political context, and the trends and major changes that have taken place in the focus country since 2001.
• a description of the broadcasting policy, law and regulation in place in 2001.
• a description of changes since 2001 in broadcasting policy, law and regulation.
• a description of the broadcasting landscape in 2001.
• a description of changes since 2001 in the broadcasting landscape including numbers and types of new broadcasting services established, and other improvements or regressions in the freedom, independence, plurality and quality of broadcasting services.
• detailed examination of the regulatory framework and practice for community radio.
• a survey of the country-level awareness, use and impact of the African Broadcasting Charter on broadcasting policy, law and regulation and on the broadcasting landscape.

In examining the impact of the Charter at the country level two questions are posed:

To what extent have the recommendations of the Charter been adopted?
To what extent can this be attributed to the existence of the Charter itself?

The first of these questions is relatively straightforward to answer. It can be measured by changes in policy, law and regulation and/or by changes in the media landscape.
The second question is more challenging. While the response to the first may indicate change has taken place, media policy reform and media development are complex social processes involving multiple actors. Changes in the political environment are often crucial in creating opportunities for media reform, while proposals for media reform may be only one set of demands associated with broader social movements. In a different context of development interventions, Kuby (1999) speaks of the “attribution gap” between the intervention – in this case the production and dissemination of the African Charter on Broadcasting – and the impact that is sought – in this case observed by changes in policies, laws and regulations. The attribution gap arises from a context in which multiple interventions may have contributed in some part to the impact that is observed. If the impact of the Charter is not readily amenable to direct measurement, some outcomes of its existence and dissemination may be, for example, awareness of the Charter, its integration into lobbying documents, its adoption as a reference for policy making and so on. From such observations, the study endeavours to assess the contribution of the Charter to media policy reform and development.

On the other hand, as we have seen in this chapter, the African Charter on Broadcasting is only one among several important policy and standard-setting interventions in Africa. Some of those others, such as the Declaration of Principles on Freedom of Expression in Africa, and the African Media Barometer, have incorporated some elements of the African Charter on Broadcasting, and have themselves been incorporated into other policy texts. Consequently the indirect impact of the Charter may be very considerably greater than its direct impact.

In the final sections of this study the results of the country studies are the subject of a comparative analysis that seeks to provide a broader picture of how the provisions of the Charter have developed in the five countries and to make observations on the conditions that have enabled or been a barrier to progress. This forms the basis for conclusions on the contribution of the Charter to media policy reform and media development, and on the status of the Charter today. The study makes recommendations to be considered as part of the ten-year review of the Charter and the 20th anniversary of the Windhoek Declaration.
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Ghana - country assessment

Berifi Apenteng

Social, political and economic context

After 53 years of independence from British colonial rule, Ghana is now one of the fastest growing democratic countries in Africa. With an estimated population of 23 million made up of several ethnic groups, the country has seen steady improvement in the economy and other development indicators, particularly since the early 1990s. A series of military coups from the middle of the 1960s till the early 1980s led to a period of political instability and saw a decline in many aspects of the country’s development.

In 1993 the country returned to constitutional government and has since held five successful general elections and changed the political party in government on two occasions. The country practices a Presidential form of government with the Parliament and Judiciary as constitutional checks on its powers. Democratic institutions such as political parties, Parliament, the Judiciary and the media have grown strongly over the years.

The two leading political parties have both achieved and handed over power through the ballot box. The National Democratic Congress (NDC), ruled from 1993 until January 2001, when it handed over power to the New Patriotic Party, (NPP), which lost power to the NDC in 2009. Both political parties have been fairly evenly balanced in their representation in Parliament over the period, with neither having less than 40 per cent of seats in recent times. Two other political parties are represented in Parliament, but their numbers have dwindled and they have become a fairly insignificant force. Ghana is now one of the most politically stable countries in West Africa, with rapidly growing democratic institutions and a steadily improving economy.

The structure of Ghana’s economy has remained almost unchanged since independence. The country is well endowed with natural resources. Gold, cocoa and timber are the main exports. Agriculture alone, largely small scale farming, accounts for about 55 per cent of the workforce.
In the period 2001 to 2009, the economy grew annually by an average of over 5 per cent GDP. In 2007 and 2008, it grew by 6.3 per cent and 7.3 per cent respectively. The economy was strong enough to withstand the global economic downturn even though the growth rate fell to under 5 per cent in 2009. Other development indicators such as reduction in the number of people living below the poverty line of $1.25 a day, and access to water, electricity, health facilities and education have all improved in recent years. The number of people living below the poverty line declined from over 35 per cent in 2001 to 28.5 per cent by the end of 2007.

**Policy, legal and regulatory environment in 2001**

The policy and regulatory framework for broadcasting in Ghana in 2001 may be described as not well developed in some respects and lacking clarity in others. The Constitution provides a strong basis for the development of freedom of expression, including freedom of the media, but this is not matched by clearly laid out policy or media specific laws to provide a clear framework for the operation and development of broadcasting and other media.

The Ghana Broadcasting Corporation Decree, 1968, (NLCD 226), which predates the present Constitution, establishes the Ghana Broadcasting Corporation in its present form. Although several provisions of the law have been superseded by the Constitution and circumstances, it remains the law that regulates the operations of the only national broadcaster. The law for the first time allowed the Corporation to carry commercial advertising. Among the objects of the Corporation set out in the law is “to prepare in the field of culture, education, information and entertainment programmes reflecting National progress and aspirations.” The objects are not sufficiently broad for a public service broadcaster and its funding mechanism does not ensure its independence from government or commercial sources. The Board of Directors is currently appointed by the National Media Commission, as required by the Constitution, and not by the President, as stated in the law. Section 3 (5) of the law provides some qualifications for membership of the Board, including a limitation on the number of public officials.
The 1992 Constitution contains several provisions on freedom of expression and a free and independent media. Article 21 (1) (a) states that all persons shall have the right to “freedom of speech and expression, which shall include freedom of the press and other media.”

Chapter 12 of the Constitution contains more elaborate provisions on the media. Article 162 (1) guarantees the freedom and independence of the media, and Article 162 (3) allows for anyone to establish a media body, stating: “There shall be no impediments to the establishment of private press or media: and in particular, there shall be no law requiring any person to obtain a license as a prerequisite to the establishment or operation of a newspaper, journal or other media for mass communication or information.”

These provisions may be limited only under Article 164, which subjects them to “laws that are reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of other persons.” In 1996 the High Court ruled in the case of the Republic v Independent Media Corporation of Ghana that requiring a person to obtain a licence or authorization for radio frequency to set up a broadcasting station was a restriction that was reasonably required for the “protection of national security, public order (and) public morality....”

Article 166, also in Chapter 12, provides for the setting up of the National Media Commission, (NMC), an independent body “to promote and ensure the freedom and independence of the media for mass communication or information.” The NMC is also “to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media,” as well as to “insulate the state-owned media from governmental control.”

The National Media Commission Act, 1993 (Act 449), established the National Media Commission (NMC) provided for in the Constitution. The Commission is made up of 18 members, two of whom are appointed by the President and three by Parliament. The rest are independent representatives of various independent bodies and organizations. The Commission appoints its own Chairman and is subject only to the Constitution.
The functions of the Commission set out in the Act are the same as those provided in Article 166 of the Constitution. The functions include “to promote and ensure the freedom and independence of the media for mass communication or information”, and “to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media.” The Act empowers the Commission “to make regulations by Constitutional Instrument for the registration of newspapers and other publications, except in terms of any direction and control over the professional functions of a person engaged in the production of newspapers or other means of mass communication.” The broadcast media are not specifically mentioned in the provision, and this may partly be the reason why a government agency currently regulates the broadcast sector in spite of the general aspiration of the Constitution to protect mass communication media from governmental control.

The National Communications Authority Act 1996, (Act 524), established the National Communications Authority (NCA) to “regulate communication by wire, cable, radio, television, satellite and other similar means of technology”. Communications services and communication systems are defined to include wired and wireless transmission and the conveyance of sounds, visual images and data. The objective of the NCA under the law, was to, inter alia, “ensure that throughout the country, as far as practicable, there are such communication services as are reasonably necessary to satisfy the demand for the services”. A seven-member Board of Directors is provided for the Authority, six of whom are appointed by the President and one a representative of the National Security Council.

Up until 2001 there was only one clearly set out policy document on the media, the National Media Policy developed by the National Media Commission (NMC), in 2000. The document sets out principles to guide the development and operation of all the various media, stating that the primary objective of the media is to “serve the well-being of all Ghanaians” and that the public interest shall be paramount in the operation of all media. The policy also seeks to encourage and promote a range of media, representing a diverse plurality of social, cultural and economic interests and perspectives. Broadcasting is placed into three categories – public service, commercial and community, and is required to “provide access
for all "... of our people to participate freely, fully and creatively at the community, national and global levels." The categories are defined as follows:

- Public Radio and Television Stations, i.e. those operated by a publicly-owned statutory body, which may be wholly or partially state-funded, and which are in all cases accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming with regard to religion, political belief, culture, race and gender.
- Community Radio and Television Stations, i.e. those that are about, for, by and of a specific marginalized community, whose ownership and management is representative of the community, which pursues a participatory social development agenda, and which is non-profit, non-sectarian and non-partisan.
- Commercial Radio and Television Stations, i.e. those that are privately owned and operated for profit and controlled privately by independent commercial groups or individuals.

The NCA Act 524 gave the NMC no role in granting broadcasting licences to applicants and also did not apply the National Media Policy by the NMC. The NMC itself lacked the necessary resources and did not appear to have the human and material capacity to implement the policy, which has remained an aspirational document.

Policy, legal and regulatory environment since 2001

The general policy and legal framework for broadcasting has not seen major changes over the last ten years. The National Media Policy document of the National Media Commission has remained unchanged and not been implemented. The Commission still lacks capacity in terms of staff and funding to regulate the broadcasting sector and to implement its own policy. It relies almost entirely on government funding, which remains insufficient.

The National Telecommunication Policy, 2005, focuses on the telecommunication industry but includes a few issues relating to broadcasting. It sets out three working categories for radio and television – public, commercial and community, consistent with the National Media Policy. A significant
aspect of the telecommunication policy is the setting up of the Ghana Investment Fund for Telecommunications (GIFTEL), based on financial contributions from telecommunications companies, to promote universal service and access. The Policy states that the fund can be used to develop local content, establish Multi-purpose Community Telecentres, and as a matter of particular priority, to establish Community Media Centres, combining community broadcasting with internet services in under-served areas.

The Electronic Communications Act, 2008 (Act 775) which came into force in January 2009, has replaced the National Communications Act, 1996, for the purposes of regulating radio frequencies for broadcasting service providers. Section 2 of the Act states, *inter alia*, that the National Communications Authority shall “regulate the radio spectrum designated or allocated for the use by broadcasting organizations and providers of broadcasting services...” and “shall determine technical and other standards and issue guidelines for the operation of broadcasting organizations and other bodies providing broadcasting services.” The same section states that “a person shall not operate a broadcasting system or provide a broadcasting service without a frequency authorization by the Authority”.

The Act, also under Section 2, requires the Authority to “adopt policies to cater for rural communities and for this purpose may waive fees wholly or in part for the grant of a frequency authorization.” Under sub section (6), “The Minister, on the advice of the Authority may ... make Regulations to prescribe the issue, conditions, duration, suspension or revocation of frequency authorization...”. The regulations are to be published on the website of the Authority.

Other sections of the law, specifically sections 9, 10, 11, 13 and 14, set out provisions on the “Requirement for a frequency authorization”, “Obligations regarding frequency authorization”, “Conditions of frequency authorizations”, “Suspension and revocation of licenses and frequency authorizations”, and “Amendment of licenses and frequency authorizations”. All the provisions appear to relate to the technical aspects of broadcasting, but it is unclear on ostensible reading of the Act whether or not the Authority is limited to only technical issues when considering applications for use of broadcasting frequency. Section 11 states that conditions for frequency authorization include “other matters that the Authority may specify....”
The law generally appears to strengthen the NCA and the Minister’s regulatory authority over the broadcasting sector, which could undermine the spirit of the constitution in protecting the media from governmental control, and could constitute a reversal of what had previously applied. The law is relatively new and is yet to be tested.

The National Communications Authority Act, 2008 (Act 769) replaces the National Communications Act, 1996 (Act 524). The Act establishes the National Communications Authority “to regulate the provision of communications services in the country.” Its functions, outlined in Section 3, include to “regulate and monitor licensees, holders of frequency authorizations in consultation with the National Media Commission where appropriate;” and to “determine applications for communication licenses including frequency authorizations.” The authority has a nine-member board, all appointed by the President, save for a representative of the National Media Commission, the National Security Council and the Ministry of Communications.

In the exercise of its functions the Board is required under Section 5 of the Act to have regard for “the principles of transparency, accountability, proportionality and consistency.” It must also have regard for “best regulatory practice”; “the needs and interests of persons with disability, the elderly, low income earners and the vulnerable”; and “the interests of both rural and urban dwellers”. The representation of the National Media Commission on the Board could be helpful, but as the Board reports solely to the Minister of Communication, this could also compromise the independence of the NMC.

The National Communication Regulations, 2003, (L I 1719), sets out detailed regulations based on the provisions of the National Communications Authority Act 1996. It is expected that the regulations will be reviewed in line with both the Electronic Communications Act, 2009, and the National Communications Authority Act, 2008.

Apart from the law and regulations, the NCA published “Guidelines for Establishment and Operation of Community Radio Stations in Ghana”, in 2007. Though this does not have the same effect as a law, it provides a useful guide and also shows that the Authority has given formal recognition
to the category of community radio. The guidelines seek to define “community” and outline some attributes of a community radio station. It also states the average transmission power and coverage area it will allow for such stations.

In addition to the guidelines for community radio, the NCA has published guidelines for different aspects of their processes and procedures. There are “Guidelines for the Submission of Feasibility Report for Broadcasting Projects”, “Guidelines for Campus Radio Broadcasting”, “Guidelines for Renewal of Licenses/Authorizations”, and “NCA Technical Planning Guidelines for Radio and Television”. The publication of the guidelines is a relatively recent development and it makes the process for seeking authorization more open than previously. Applicants have a better idea of what the NCA seeks in applications, than the situation 10 years previously, and can better prepare for it. Additionally, it is now easier to raise issues for appeal in the event of the rejection of an application.

In the last two years, the Authority has adopted the practice of dividing the country into two administrative zones, northern and southern sectors, for the consideration of applications for broadcasting authorizations, thereby easing the application process in some parts of the country. However, the process is generally still not sufficiently transparent and could be abused. Not all the factors used in determining which applications are approved or rejected are made public. The public is also not aware of the frequencies available in any particular area at any time for allocation to potential broadcasters.

The Electronic Communications Act, 2009, and the National Communications Act, 2008, have significant implications for the broadcasting sector. The overall effect of the provisions of the two laws is to increase government control over the establishment of broadcasting stations, instead of safeguarding them from governmental control. However, the provisions focus largely on technical issues relating to use of the radio frequency spectrum.

Since 2004, there has been extensive advocacy for the passage of a comprehensive Broadcasting Law by civil society groups, led by the Ghana Ad Hoc Steering Committee for a National Broadcasting Law. Draft proposals were first submitted to government in 2007 and resubmitted in 2009 but
have yet to be submitted by the Executive to Parliament for public debate and passage. The proposals, inter alia, seek to clearly define the various categories of broadcasting, set out clear and transparent rules for the authorization of broadcasting, independent of governmental control, and provide a framework for programme content as well as clarifying the roles of the NMC and NCA in the regulation of broadcasting.

The National Communications Authority currently has sufficient resources and institutional capacity to perform its technical regulatory functions, but remains unable to effectively regulate the broadcasting sector because the National Media Commission has specific Constitutional oversight of the media. The National Media Commission, on the other hand, lacks the institutional capacity and resources to fully perform its expected regulatory functions. This has left a regulatory gap which has prevented the country from implementing a policy framework to ensure a balanced, diverse and healthy growth of broadcasting.

The broadcasting landscape in 2001

Media has expanded tremendously since the return to constitutional government in 1993. The Constitution abolished newspaper licensing, making it possible for anyone to establish a newspaper. Several private publications were set up, largely by journalists, and by the 2000 there were over 80 newspapers on the newsstands. Most of them were weeklies and bi-weeklies of about eight to sixteen pages and, largely contained no advertisements.

The transformation in broadcasting was even more significant. Radio broadcasting was established in Ghana by the British colonial government in 1935 and until 1995 there existed only one broadcasting organization, the Ghana Broadcasting Corporation (GBC). The GBC operated as a state/public service station and broadcast, almost entirely, from the capital, Accra. In the 1980s the Corporation set up a regional station, URA Radio, in Bolgatanga, in the then Upper Region, and later, two FM stations in Accra and Kumasi. In the late 1980s, GBC set up low-powered local stations at Apam in the Central Region and Dormaa Ahenkro in the Brong Ahafo Region. By 2001, GBC was operating one television channel, two national radio networks and 10 regional radio stations.
The situation for private and community broadcasting changed radically after 1995. The 1992 Constitution guaranteed the establishment of private broadcasting, and in 1995 the first private broadcasting approvals, or authorizations, were issued. By 2001, there were about authorized 70 radio stations of which around 55 were on the air, and 17 authorized private television stations, of which five were in operation, in addition to GTV. The majority of the new stations were commercial, except five university-operated campus radio stations and four community radio stations at Ada, Winneba, Wenchi and Wa.

Most of the new private radio stations were located in cities and towns across the country. About 40 per cent of all radio stations were located in the three big cities – Accra, the national capital, Kumasi, the second city, and Takoradi. Ownership of the stations is spread across a large number of people. Even though there was no explicit policy, it appeared there was a deliberate effort by the licensing authority, NCA, to prevent individuals from acquiring multiple frequencies. The NCA, without stating it openly, also seemed not to issue frequencies to religious groups, and political parties and politicians.

In the case of private television services, two operated from Accra, while one operated in Kumasi and one in Takoradi. All the Accra stations, including the national station, were free-to-air stations while the Kumasi and Takoradi stations operated on an MMDS system requiring viewers to purchase a special antenna to receive the broadcast. In addition to the local stations there was one satellite subscriber television, DSTV, which operated out of South Africa.

The broadcasting landscape since 2001

The most significant changes in the broadcasting landscape over the last ten years or so have largely been in the number of stations on air rather than in any other area. The latest figures for broadcasting authorizations and operations show a very sharp increase in radio stations. According to the NCA, there are currently 217 authorizations granted for radio stations and 177 are on the air. The vast majority, (119), are commercial stations. Seventeen of the stations on air are listed as community stations, compared to the four that existed in 2001.
However, the records of the Ghana Community Radio Network (GCRN), an association of community radio stations in the country, indicate that there are only 10 community stations in operation currently, while four others are in preparation to begin broadcasting. There are also 10 institutional stations on the air, operated by universities and polytechnics, while GBC uses many frequencies across the country for its service.

In terms of location and geographic spread, there has not been much change in the situation for radio. Accra, Kumasi and Takoradi, the three biggest cities, account for over 30 per cent of the radio stations on the air. Accra has 25 commercial radio stations and Kumasi, 20. Most of the other stations are located in the regional capitals and in urban communities such as Techiman, Nkawkaw, Tarkwa and Obuasi. The GBC stations are located in Accra and the regional capitals. There are very few radio stations in the rural areas, where about 60 per cent of the population lives. Broadcasting in the country is a highly urban phenomenon and although many stations may broadcast in rural communities, the content is not oriented towards them and does not cater for their needs.

Since most radio stations and all television stations are commercially funded, their programme formats, content and presentation styles are designed primarily to attract large audiences, with disposable income, for advertisers. Programmes are dominated by entertainment, popular culture and subjects which attract a mass listenership, i.e. they are not necessarily beneficial in terms of community development.

Neither the NMC nor the NCA have programme content requirements for broadcasting stations. The National Media Commission has guidelines for broadcasting programme standards setting out professional journalism standards in areas such as news, political reporting, educational programmes and programmes for children. However, the standards are not enforced and many stations get away with serious professional and ethical breaches. In recent times, some of the bigger stations in Accra have developed affiliate stations across the country, which relay their programmes. In the absence of regulation, this practice could undermine diversity.
Regarding ownership, a broad range of people from different sectors of society have set up radio and television stations, however, the importance placed on plurality in ownership of broadcasting media seems to be waning and the tacit policy of not issuing multiple broadcasting licences to individuals, and to politicians, appears to be on the decline. In recent years, since 2005, a growing trend can be observed of companies owning multiple broadcasting services and, in the period up to 2008, a number of sitting members of parliament acquired frequency authorizations and established radio and television stations in different parts of the country. In the absence of appropriate policies and regulations, there is an increased risk of concentration of ownership in the hands of a small number of people or private corporations.

Ghana has begun preparations to transfer to digital television transmission by 2015. The process is led by the NCA, and currently committees made up of the major stakeholders, including broadcasting organizations, are discussing all aspects of the switch-over in order to set up a framework for the exercise. Already GBC and two private commercial stations have been given permission to install transmission facilities for trials. Digital television is expected to vastly increase the scope of services that can be provided and has the potential to be of great benefit to the disadvantaged in society. A large increase in the number of channels available could also reduce the barriers for entry into the television sector. The implications of the digital switch-over for the broadcasting sector in general are therefore immense. The transition will be expensive and both government and the broadcasting sector will need to ensure that the public and industry itself are not adversely affected by the change.

Community Radio

Community radio in Ghana is still in its infancy, especially when compared to developments in the commercial sector, and also to community radio in countries such as Mali. Only around 10 percent of private broadcasting licences granted over the last 15 years have gone to community radio.

The legal and regulatory framework for all categories of broadcasting in Ghana is the same. The laws relating to broadcasting do not differentiate between the different categories of broadcasting. The 1996 NCA Act, the
NCA Regulations of 2003, as well as the new Electronic Communications law, Act 775, all view broadcasting as a single industry and prescribe the same procedures for authorization by all applicants. Under regulation 126 of the NCA Regulations, 2003, a community radio stations, like all broadcasting stations, as well as telecommunication companies, are classified as “Class 1” licence holders and in their applications for authorization must, among other things, provide “technical plans certified by a qualified engineer, of the communications systems to which the application relates,” as well as “forecasts of the investment plan for the first five years and the amount of initial investment for the first year of operation”. The licensing term is five years for all radio stations and the renewal procedures for all categories of broadcasting are also the same.

However, the laws allow for different treatment of “rural” services, and the Electronic Communications Act gives the NCA the authority to “adopt policies to cater for rural communities and for this purpose may waive fees wholly or in part for the grant of a frequency authorization”.

In 2007 the NCA published “Guidelines for Establishment and Operation of Community Radio Stations in Ghana”. These are to be followed by applicants for community radio station licences. A community is defined as one which “must be identified with a specific geographical area”, must have “something of central importance to their culture” and “possess a sense of continuity of traditional values”, and must have “some concrete social structure to interact and identify with each other on all aspects of social, cultural and economic needs”.

The Guidelines also state that the central purpose of a community radio station “is to offer the listening community a voice and help develop their community and build community life”. The station should be non-profit and should be “owned and operated by its listening community.” The Guidelines limit coverage of the community station to an average radius of five kilometers and a term of authorization of five years. The NCA consulted with the Ghana Community Radio Network (GCRN) on the guidelines, although the latter did not agree on the radius of the coverage area.
By setting community radio apart from the other categories, it is clear that the NCA has accepted the concept of community radio as a different kind of radio, requiring a different level of attention - a great improvement on the situation in 2001. However, the need exists to make the guidelines more comprehensive, particularly regarding areas such as community participation in programming and in management. There is also the need for specific wording in the laws for community radio and other categories of broadcasting, and the specific terms relating to them.

The formal recognition of community radio appears to have helped in the growth of the sector, although growth is still very slow. According to the NCA, in 2001 only four community stations were broadcasting, whereas now there are 17 on the air, with nine more having been granted authorization, (although these have yet to start broadcasting). Many of the licences have been granted in the last five years. In 2007 the NCA publicly announced suspension of the granting of broadcasting authorizations but stated that people intending to establish community stations were not affected by the suspension. Therefore although no special arrangements have been set out for frequency allocation to community radio, it is increasingly obvious that efforts are being made by the authorities to encourage the establishment of more of these stations.

Regarding content, there are no special content regulations prescribed for community radio, which is even the case with the National Media Commission’s guidelines on programming standards for broadcasting, the most comprehensive provisions on content in the country so far. Neither are there restrictions on funding sources, and community stations may carry as much commercial advertising as they wish. The government does not provide any public funding for community radio. In a few cases, such as that of Dormaa FM, for example, the District Assembly (the local government authority), has helped with sporadic grants to some stations. Significantly, it is the community radio stations themselves, through their association, the Ghana Community Radio Network, that have done the most to maintain integrity in the structure of the stations, as well as in content and production methods.
The GCRN has been extremely active in providing the framework for community radio stations to operate as well as advocating for their recognition. The Network has developed its own programme guidelines, and also conducts frequent training programmes for member stations.

The GCRN has specific guidelines for sensitive subject areas such as news and political coverage. It also seeks funding for the production of programmes with themes such as “natural resource and environment management”, “financial literacy in the community” and “health regeneration”. Individual member stations produce their own programmes within their communities under these common themes, but do not carry or syndicate one programme. These common themes enable them to source funding together and more easily while remaining relevant to their communities in the production of the programmes. It also enables them to have regular training for their production staff as part of the funding arrangement.

Thus community radio stations appear to have significant impacts in their communities, despite of the rather difficult conditions they operate in. The lack of policy, coupled with the absence of laws and regulations to specifically guide the development of the broadcasting sector, has put community broadcasting at a disadvantage. According to some people hoping to initiate community radio stations in their communities, the huge presence of commercial stations across the country has made it more difficult to get communities to appreciate the benefits that community radio can bring to them, thereby making it more difficult to get community involvement in the initial stages of such projects. Also the lack of proper definition and monitoring of radio stations may have allowed some stations licenced as community radio stations to operate more like commercial stations, with little real participation by the community. This may account for the difference in the numbers of stations on the air as recorded by the NCA and GCRN.

However, in the areas where community radio stations have taken root, it appears they have had significant impacts. In Winneba, Radio Peace has a large listenership in its coverage area, despite competition from over 20 other stations broadcasting in the region from the capital, Accra. The station has received enough community support to allow the construction of its own building, currently nearing completion. Many community members
communicate their problems through the station to the political authorities, and occasionally the station has been directly involved in seeking solutions to potential conflicts between different sections of the community. In Dormaa Ahenkro, the community station receives more paid-for announcements from the community than the local commercial station as it is perceived to have a much bigger listenership. 26 villages in the coverage area have set up listening clubs and engage in fundraising activities for the station.

However, most community stations do not yet seem to have developed well-structured means of finding sustainable funding. They depend heavily on grants from members of the community, particularly for capital items such as equipment. The Dormaa station receives strong support from diaspora members of the community in Europe and America. The station may be affected if these sources of funding decline for any reason, and similar to other community stations, it may need to focus on developing fundraising skills in order to safeguard its future.

Generally, the communities in most need of community radio are the poorest and most marginalized ones, who require deliberate actions on the part of the authorities, civil society groups, development partners or even well-placed individuals, to enable them to initiate such projects. In what appears to be a free-for-all regulatory environment, the rich and powerful have naturally been more successful than the more disadvantaged and marginalized communities. Implementation of a comprehensive policy and legal and regulatory framework is likely to lead to the more balanced development of the different broadcasting categories.

**Impact of the African Charter on Broadcasting**

Field interviews were conducted with stakeholders in the broadcasting sector, as well as members of the public, in order to assess the impact of the African Charter on Broadcasting on policy, law and regulation, and on the broadcasting landscape in general. Nineteen people were interviewed between 5 - 12 March, 2010. Many of the respondents said there had been improvements in the broadcasting sector, but that the impact of the Charter on these changes was low.
In assessing the changes in the legal and regulatory framework for broadcasting in the country and its impact on freedom of expression, access to information and media diversity since 2001, a large majority (17 out of the 19 respondents) stated that there had been an improvement in the situation. Only two respondents said there had been no change in the situation over the period, and no-one reported a deterioration in the situation.

Regarding public service broadcasting, a majority of respondents said there had been improvement in its performance over the period. Some attributed the improvement to greater editorial independence in the work of the station, while others said there had been a general improvement in programme content. A quarter of respondents said there had been no change in performance of the station and one person said there had been a great deterioration.

With regard to community radio, an overwhelming majority (18 out of the 19 respondents) said there had been a great improvement or some improvement in the legal and regulatory status and diversity of community broadcasting services. Only one person said there had been no change in the situation of community broadcasting since 2001.

Nearly all respondents stated that there had been an improvement in public access to and use of information and communication technologies in general. The main areas of improvement seen by respondents were internet access and increased access to telephones and broadband.

On the issue of awareness of the Charter among key stakeholders interviewed, most rated this at between 1 and 5, on a scale of 1 to 10. Only those self-identified as “media rights and freedom of expression defenders” scored in the upper half of the scale. Some respondents reported that they were not aware of the Charter and suggested public education campaigns to raise awareness about it.

Assessment of the country-level impact of the Charter on different areas of the sector reported that respondents did not consider the Charter to have had a significant impact. In all four areas listed, (general legal and regulatory framework, public service broadcasting, community broadcasting
and telecommunications convergence), the majority of respondents rated the impact on the lower half of the scale. Some respondents observed that neither the general public nor the authorities were aware of the Charter, so therefore it could not have made any impact, even on those areas which had seen new developments. They were unable to make suggestions for changes in the Charter as they did not know enough about it.

Generally, the African Charter on Broadcasting is not well-known in many sections of society in Ghana, including advocacy groups working on broadcasting and in areas related to freedom of expression and freedom of the media. The Ghana Advocacy Steering Committee for a Broadcasting Law, as well as the Freedom of Information Coalition, have been very active for several years now and have in fact produced proposals for a national broadcasting law and a bill for the Freedom of Information Act respectively. However the Charter has not been cited in any of their work. Although this may indicate that the Charter is simply not well publicized in the country, it may also be because the Ghanaian Constitution provides sufficient foundation for the building of strong institutions and a culture of democracy, freedom of expression and free media. Advocacy groups may therefore have not found it necessary to rely on a Charter which may be perceived as an unwarranted “external” influence.
Case studies

Dormaa FM

Dormaa FM, based in Dormaa Ahenkro in the Brong Ahafo Region in central Ghana, started off as one of two small 20-watt local area experimental stations, set up by the Ghana Broadcasting Corporation (GBC) in the mid-1980s. At the time the GBC was the only broadcaster in the country and operated essentially as a state broadcaster. Around 1997, after persistent calls from the local people, the Corporation decided to hand the station over to the community. The station was in fact handed over to the local political authority, the District Chief Executive and the District Assembly. Finally, in 2005, the community registered a company by guarantee (a non-profit organization) to own and operate the station. The station has now become a true community radio station in character and focuses almost entirely on the affairs of the community. According to the Station Manager, Mr Ofosu-Otchere, “even though we receive 19 commercial stations in our coverage area, the people come to us first if they have any issues to discuss or announcements to make because they know everyone in the community listens to us”. The station has a total personnel of about 50 people, of whom seven are permanent staff, while more than 40 are volunteers from the community. 26 villages in the coverage area have formed listening clubs to support the station. They undertake fundraising activities for the station as well as participating in programme production.

Radio Peace

Mr David Ghartey-Tagoe, a retired broadcaster formerly with the Ghana Broadcasting Corporation, was among the first to pursue the idea of starting up a community radio station when, in 1996, he began consulting with community members in Winneba following the authorization of the first private broadcasting services. The response was very positive and with the support of the local community together with international assistance from Denmark, Radio Peace officially came on air in July 1999.
Today, Radio Peace is still on the air and about to relocate to its own premises, funded by community and donor support. Mr Gharney-Tagoe, who is now over 80 years old, is still an active advisor to the station. All staff members are volunteers, including the acting Station Manager, Mr Kojo Oppong, an agricultural extension officer in the community. Just like many of the other volunteers, he sees the community radio as an extension of his normal work, that helps him to better interact with his community. One of his biggest dilemmas is how to cater adequately for all the people in the coverage area. The station has a very good transmitter location, covering around seven districts and three municipal areas with a total population of approximately 700,000, none of whom have their own community radio station and all of whom are relatively poor. Financial sustainability is a continuing challenge. About 40 percent of the station’s income comes from paid-for announcements requested by members of the community. Another substantial source of revenue, about 30 per cent, is from broadcasts by Christian churches, who pay for the airtime they use. The station does not engage in systematic fundraising activities from the community but gets periodic contributions from supportive members of the community.
People consulted

Noel Arcton-Tettey, Deputy Director Information Services Department, Ministry of Information
Nana Oye Lithur, Executive Director, Human Rights Advocacy Center, Accra
Alex Bannerman, Deputy Executive Director, National Media Commission, Accra
Dave Agbenu, Organising Secretary, Ghana Journalists Association, Accra
C. Ohene, Editor, Heritage Newspaper, Adabraka, Accra
Matilda Asante Asiedu, Head of News, Joy FM, Multimedia Broadcasting Group, Accra
Kofi Owusu Tawiah, Press Liaison Officer, Compact Media, Accra
Rayborn Bulley, Chief Editor, Ghana Broadcasting Corporation
Ebenezer Owusu Ansah, Public Affairs Office, Ministry of Communications, Accra
Kojo Oppong, Station Manager, Radio Peace Community Station, Winneba
James Asante, Lecturer in Broadcasting, Ghana Institute of Journalism
Kwesi Asare Bediako, Freelance Journalist, Accra
Kwesi Konadu, Social Commentator, Mallam, Accra
Michael Oduro, Student, University of Education, Winneba
Jimmy Quist, Media Practitioner, Citi FM, Accra
Seth Kojo Eyiah, Assistant Editor, Ghana Broadcasting Corporation, Accra
John Gregory, Civil Servant, Ghana Civil Service, Ministries, Accra
Nana Kwade, Sub Editor Adom FM, Tema
Kwame Beltsa, Civil Servant, Ministry of Chieftaincy and Culture
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Ghana Community Radio Network (GCRN) Checklist for Starting a Community Radio Station. Accra: GCRN
Mali - country assessment

Mahamadou Talata Máiga

Social, economic and political context

Mali is a landlocked Sahelian country with an economy mainly reliant on agriculture. It has a total area of 1,240,192 km$^2$ and shares borders with Algeria to the North-East, Niger to the South-East, Burkina Faso, Côte d’Ivoire and Guinea Conakry to the South, and Senegal and Mauritania to the West. According to projections based on the 1998 census, Mali’s population will reach approximately 14 million by 2011 and over 15 million by 2015. This demographic surge gives an idea of the needs to be met in terms of communication, education and employment, inter alia.

Since 1992, the Malian government has embarked on a broad decentralization and deconcentration strategy aimed to increase the involvement of citizens in the development of the country. This process enabled Mali’s administrative landscape to be rearranged into 703 Councils (607 rural and 96 urban councils), 49 Circles, 8 Regions and 1 District (Bamako).

The political and social situation of the country, following the events of March 1991 that led to the fall of the regime of General Moussa Traoré, has improved considerably in the last two decades. Since 1992, regular elections (presidential, legislative and council) have been organized in a more or less harmonious and stable political climate. This has helped guarantee the peaceful handover of power within a stable sociopolitical situation. Based on these attributes, characteristic of a republican democracy, Mali can legitimately describe itself as a State of law.

By enabling free speech, the democratic process has led to a proliferation of private radio stations and newspapers. Mali’s peculiarity lies in the fact that the establishment of radio stations preceded the implementation of regulations governing the broadcasting landscape. With the support of the United Nations Development Programme (UNDP) and the United Nations Food and Agriculture Organization (FAO), Mali was one of the first countries to encourage media liberalization in Africa, in particular through
the organization of a conference in Bamako, in September 1993, on freedom in the African radio sector. Around 3200 journalists, presenters, cameramen and technicians are estimated to be employed in the Malian media, across the print, radio and television sectors.

**Policy, legal and regulatory environment in 2001**

The Constitution of the Third Republic, enacted on 25 February 1992, officially guarantees freedom of expression, including freedom of the media. Article 4 states that: “All persons are entitled to freedom of thought, conscience, religion, worship, opinion, expression and creation, while respecting the law”. Article 7 states that: “Freedom of the press is recognized and guaranteed. It is exercised under conditions determined by the law. Equal access for all to the State media is ensured by an independent body whose status is determined by an organic law”.

The first private radio station was founded in Mali in 1988. Subsequently, in 1991, the first group of community radio stations came into being. The liberalization of the airwaves was officially sanctioned in 1992 by Ordinance N° 92-002 of 15 January 1992 authorizing the creation of private broadcasting services on frequency modulation (FM).

The system instituted by this law is founded on the principle of prior authorization, based on the need to identify promoters and determine their contributions to public service missions, as laid out in guideline documents.

The conditions and procedures required to obtain, suspend or withdraw licences to create private broadcasting services on frequency modulation are determined by Decree N° 92-022/PM-RM of 18 January 1992. This decree articulates the procedures relating to the authorization of radio stations and defines obligations concerning the functioning of FM radio broadcasting services.

This Order specifies the conditions required to establish and manage FM radio stations. It also determines obligations regarding the programming and technical installation requirements which broadcasters are required to respect.

Fees to be paid by private broadcasters are defined by Order N° 94-8510/MFC-CAB of 11 August 1994 and fixed at a flat rate of 100,000 FCFA (approximately US$1,100) in 1994. No changes have occurred to the fee structure since then.

Private television services are also regulated by similar provisions, in particular Ordinance N° 92-037/P-CTSP of 14 May 1992, concerning authorization to create private broadcasting communication services; Decree N° 92-156/PM-RM of 14 May 1992 determining the conditions and procedures to obtain, suspend or withdraw authorization to create private broadcasting communication services; and Interministerial Order N° 94-7166/MCC-MATS of 16 February 1994 determining the specifications of private broadcasting communication services; Order N° 95-0331/MFC-CAB of 16 February 1995 determining the fees applicable to private broadcasting communication services, received as file submission fees, visiting fees and annual fees. Although private broadcasting communication services have been officially authorized and regulated, contrary to radio broadcasting, there is no official private television corporation in Mali.

On 7 July 2000, a new law, N° 00-46/AN-RM, on the administration of the press and press offences was enacted in a bid to professionalize the media landscape. This law furnishes provisions to establish, by decree, a support fund for the private press and radio broadcasting. Conditions for the eligibility, allocation and management of public funds are also included.

In Mali, several institutions are officially involved in media regulation. The sector is regulated by the government through three institutions: the Conseil supérieur de la communication (Higher Communication Council), the Comité national de l’égal accès aux médias d’Etat (National Committee for Equal Access to State Media) and the Comité de régulation des télécommunications (Telecommunications Regulation Committee).
The Higher Communication Council (CSC) was created by Law N° 92-038 of 24 December 1992. Article 5 states that: “Without prejudice to the regulation of conditions and procedures to obtain, suspend and withdraw authorization to create private radio broadcasting and television services, the Higher Communication Council shall determine the allocation and withdrawal of frequencies to radio broadcasting and television stations. It shall monitor these stations closely to ensure their regulatory compliance”.

The National Committee for Equal Access to State Media (CNEAME) was created by Law N° 93-001 of 6 January 1993. The Committee is responsible for ensuring balance and pluralism of information, as well as equitable management of airtime and writing space in the public print and broadcasting media for political parties during electoral campaigns.

The Telecommunications Regulation Committee (CRT) was created by Ordinance N° 99-043/P-RM of 30 September 1999. Article 29 stipulates that: “No frequency can be used without the express and written authorization of the Committee. This authorization is given in a non-discriminatory manner, in accordance with the frequency allocation programme, within the framework of a transparent and objective procedure irrespective of the intended uses these frequencies”.

Despite the existence of these regulatory mechanisms, none of these bodies has enforcement powers, allowing the Ministers in charge of Communication and Territorial Administration to proclaim by joint order the allocation, suspension or withdrawal of licences.

In light of this, two national commissions have been set up, with the aim of providing technical advice for licence applications. They were created by decrees to implement Ordinances N° 92-002/P-CTSP and N° 92-037/P-CTSP respectively, concerning the authorization to establish private radio and television services.
Policy, legal and regulatory framework since 2001

Faced with difficulties in clarifying the status of various radio stations, Decree N° 02-227/P-RM of 10 May 2002 was enacted, classifying FM radio broadcasting services into two categories, namely, community and commercial.

A community radio station is defined as an urban, semi-urban or rural radio station whose activities are mainly devoted to satisfying the needs of the community it serves. Either of a private community or denominational nature, it is a non-profit association or cooperative whose principal revenue must not derive from advertising. At least 70% of its programming must be domestic and it should strive to promote local culture. Its management and functioning are handled by a General Assembly, a management committee and a technical department.

Regulatory provisions concerning the funding of a community radio station stipulate that: “It should neither receive grants, legacies nor subventions in cash or kind from a political party; it must publish its service rates and carry out regular accounting; it must pay all applicable licences, fees and taxes”.

A commercial radio station is defined as “an urban, semi-urban or rural radio of a commercial leaning” (Article 6). The private commercial radio station mainly obtains its funding from the production and marketing of communication services. Its objective is to make profit.

As from 7 July 2003, Decree N° 03-264/P-RM determines conditions for the eligibility, allocation and management of public funds to the press. In accordance with law N° 046/AN-RM of 7 July 2000, the State supports the media, including community radio, in the form of direct assistance through grants, as well as indirect assistance.

Eligibility criteria include the requirement to have no criminal record, either as an accessory to a crime or a press offence during the financial year; to exist as a recognized legal entity; to carry out regular accounting; to comply with labour law and; to regularly produce programmes throughout the financial year. These criteria apply to all media, depending on legal status.
Despite the existence of several issues related to the development of services on the ground, these foundational texts fail to specify several areas, in particular:

- The rate of foreign media productions authorized for broadcast by private radio and television stations;
- Simultaneous broadcasting (re-broadcasting) of programmes from foreign radio and television channels through various processes;
- Live radio and television broadcasting by satellite, using electronic means.

In addition, there are no measures to regulate competition and the constitution of consortiums, particularly by foreigners.

Information has become more accessible and diversified with the proliferation of new media and the arrival of new information and communication technologies.

Since 2005, the desire to broaden Mali’s broadcasting landscape, particularly by embracing private television and preparing for the migration to digital broadcasting transmission, has led to the reform of legislative and regulatory texts governing the sector.

This involves providing the broadcasting landscape with an adequate framework based on the new realities of the sector. It also involves promoting the development of economic activities in the area of production and distribution of content as well as supporting the development of new digital infrastructure.

A key element of this revision lies in the proposal of a single law for radio and television. The draft law defines some commonly used expressions. Comprising 10 titles, it also takes into account the re-broadcasting of programmes as well as the distribution of foreign broadcasting and television channels.

An innovative fund has been established, aimed at promoting domestic programming, and to assist in particular in producing, collecting and preserving the national broadcasting heritage. This fund will be sustained by service promoters, service distributors and network operators. Due to the scarcity of radio resources, frequency allocation will be managed on a competitive basis.
Individual authorizations to create private radio broadcasting and television services have been cancelled. The editor must be a moral entity recognized by Malian law, and must provide guarantees of financial ability, human resource capabilities and procedures to ensure compliance with legislation on intellectual property and related rights. Foreign-owned share capital should not exceed 20% of total capital shares.

For private broadcasting communication services, authorization to operate is only granted following the signing of an installation and operation agreement between the regulatory body and selected candidates. Distinction is made between commercial radio broadcasting services and community radio broadcasting services.

Draft decrees have already been prepared regarding radio and television services, to accompany and complete this law, still under consideration by the National Assembly. These draft decrees focus on the range of services and the decree’s scope of application.

The responsibility of stakeholders is also ensured through the increased authority of a sole body charged with regulating the broadcasting sector. Applications are handled by this regulatory authority, capable of meting out sanctions, ranging from warnings to suspension of licences.

The media promoter is obliged to guarantee the promotion of culture in the service area, ensuring a rate of 55% of domestic production for television and 70% for radio, as well as reserving at least 40% for musical productions by national composers, artists or producers.

Draft laws were prepared following consultation with public and private stakeholders in the broadcasting sector.

The broadcasting landscape in 2001

On September 22 1983, the ORTM television channel was established, progressively extending its broadcasting into the regions of Ségou (1986), Koulikoro (1989), Sikasso (1990), Mopti (1993), and gradually to the rest of the country.

Until 1992, public radio broadcasting only existed as a centralized State service. Law N° 92-021/AN-RM of 5 October 1992 reformed the RTM, thereby creating the Malian Radio-broadcasting and Television Office (ORTM), holding the legal status of public administrative authority (établissement public à caractère administratif). This new administrative authority is endowed with legal status and financial autonomy. In October 1996, relations between the State and the Office were formalized following the adoption of the ORTM’s specification documents.

This stage marked its passage from a State body to a public service radio and television station. As the national public broadcasting corporation, its mission is to design, produce and broadcast radio and television programming in order to meet the various information, education and entertainment needs of the public. ORTM exclusively promotes general cultural interests and contributes towards the strengthening of national unity.

Comprising the national radio station (Radio Mali), its 4 regional stations (Kayes, Ségou, Sikasso and Mopti) and channel 2 (the Bamako area FM radio station), ORTM’s demographic coverage has been estimated at 65% for radio and 35% for national television.

Foreign services on Frequency Modulation (FM) began in 1993 following the signing of agreements on behalf of the State by ORTM, for airtime rental to four stations, Africa N° 1, Radio France Internationale, BBC Africa and Beijing Radio - China. These foreign broadcasters are not subject to any specific national regulation.

The arrival of TV5-Afrique in 1995 heralded the beginning of broadcasting by foreign television channels following agreements signed between the ORTM and two distributors, Multicanal and Malivision. Foreign television packages were thereafter offered to Malian television viewers.
Although the first private radio station in Mali, Kayes Rural Radio, was established in 1988, it was only in 1991 that the first wave of private radios came about. At the time, these stations were labelled as either political, denominational, community or commercial.

In 1994, a second generation of four private radio stations emerged through rural broadcasters set up through financial and technical assistance from the Technical and Cultural Cooperation Agency (ACCT).

In 1998, four rural radio stations were established in the south of Mali, with financial and technical assistance from the Netherlands and the FAO. In total, 93 private radio FM stations are officially broadcasting across the country, including around fifteen from the capital, Bamako, alone.

As of 31 December 2000, the Union des Radios et Télévisions Libres du Mali – (URTEL - Union of Free Radio and Television Stations in Mali), had 104 affiliated radio stations 48% of which were rural radio stations. Most of them were either funded by communities themselves, or from Regional and Local Development Tax Funds (Taxe de Development Régional et Local - TDRL), or with the support of partner NGOs.

The aim of private radio stations in Mali is to inform, educate and entertain the communities they serve. Thus all private radio stations can be considered public utilities and are therefore entitled to state funding.

With the application of law N° 92–37/AN-RM of 24 December 1992, direct subsidies to the press took effect in 1996 with a total annual allocation of 200 million FCFA (around US$444,000). Following consultation with member associations of the Press Association (Maison de la Presse) funds were distributed as follows: 75 million FCFA (around US$166,000) to the Association of Editors of the Private Press (Association des Editeurs de presse privée - ASSEP); 75 million FCFA to the Union of Free Radio and Television Stations in Mali, (Union des Radios et Télévisions Libres du Mali - URTEL); and 30 million FCFA to the Press Association (Maison de la presse), And 10,000,000 FCFA each to two public bodies already in receipt

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6 These two public bodies are subsidized by the State, representing about 70% of their annual budget.

Since the first funding allocation in 1996, the 35 officially registered private radio stations have each received 2,200,000 FCFA (around US$4,900). However, this was no longer the case after 2001.

The broadcasting landscape since 2001

Apart from the national broadcaster (Radio Mali) and Channel 2 (the FM radio station of the Bamako district), the ORTM has set up 8 regional stations (Kayes, Ségou, Sikasso, Mopti, Tombouctou, Gao and Kidal) with a demographic and territorial coverage estimated respectively at 80% and 60%. ORTM designs, produces and broadcasts programmes on education, culture and entertainment in the country’s 10 main local languages, as well as in the official language, French.

Since 2007, the national public television channel (ORTM), is broadcast in Europe by Eutelsat’s satellite W3A.

During its ordinary session of 10 March 2010, the Council of Ministers announced plans to launch 15 stations, implement digitization, and improve services in Bamako, with a view to creating new public channels in 2010.

No private television licences have been allocated as yet in Mali, but a satellite television station (Africable) is already in operation.

In 2001, ORTM renewed its agreements with image distributors Multicanal and Malivision for the use of public media services.

Currently, there are 3 television distributors in the country (Multicanal, Malivision and SAT-TV Mali), and one distributor of live images by satellite (Sabah Electronic), all of which operate without specific regulation, a situation encouraged by the inadequacies of current laws.

Malians receive roughly eighty channels, ranging from general information to sports channels and African channels are also available (e.g. CRTV, LC2, ORTM, RTBF, RTG Conakry, RTG1, RTI Première, RTS1, Télé Sahel).

Since 2001, foreign radio stations such as Voice of America, Deutsche Welle and Radio Canada International are now part of the FM services broadcast by private stations in Bamako and elsewhere in the country.

In March 2006, there were 130 community and denominational radio stations, 38 commercial stations in Mali. With over 207 private radio stations affiliated to the Union of Free Radio and Television Stations in Mali (URTEL) and accessible on FM frequency in 2007, roughly 95% are community radios operating across the country. The region of Sikasso is first with 40 stations, followed by Kayes with 34, Koulikoro and Ségou with 31 each, Tombouctou 20, Mopti 15 and Gao 14. The region of Kidal trails with 6 stations, 5 of which are community stations. The Bamako region alone is supplied with 16 stations.

In contrast to the print media where a declaration to the competent authority suffices in order to set up a newspaper, private radio and television stations in Mali are required to secure a licence. Approval must be obtained from the administrative authorities before broadcasting. Under the current system, authorizations are granted on a “first come, first served” basis.

In total, 498 private radio stations are licenced to broadcast in Mali with around 300 of them operational in 2009. There are also exist a small number of radio stations broadcasting without authorization.

8 General channels : TF1, France 2, RFO, LC2, Guyane, Tempo, OTA Test, TV5, LBC Sat, Al Jazeera, Saudia TV1, NTV, MBC, LBC Europe, Canal Algérie, 2M Maroc, CCTV4, CCTV (Es & it), RAI International, TVE Internacional, RTR Planeta, Rotana, Perviy kanal, LCI, CNN, TV5, EURONEWS, MBC, Info sir, Canal Ó, RFO, Al Arabia, Jamahīyā Ta, Oman Ta, Abu Dahbi Ta … Fiction channels : - Série club, Ciné cinéma, TF1, Tps ciné family, Tps star, Tps Home cinéma, Canal + Horizon, Discovery Channel, Mnet, Magic movies 1, Magic movies 2, M6, Mbc 2, Mbc 3, Mbc 4, B4u, RIIIS , Action, TF6 … SPORTS channels : - Tps foot, Sport +, EuroSport, SuperSport 1, SuperSport 2, SuperSport 3, SuperSport4, SuperSport7, Al Jazeera Sport (4 channels), Espn, EuroSport Live

Discovery channels : Planét, Discovery Channel, National geographic. Children’s channels : Cartoon Network, Tiji, Mangas, Teletoon, - Eureka, Music channels : M6, Music Hits, Trace TV.


The widespread establishment of community stations and the abundant use of national languages on the air, particularly for an oral culture such as predominates in Mali, gives radio a key role to play in terms of social mobilization. Access to information in local languages has a considerable impact for populations in terms of quality of life and involvement in the management of their own community affairs. Development and NGO educational campaigns, which include disseminating information on health and agriculture, for example, are primarily carried out through the medium of community radio where the talents of presenters play a major role.

The expansion of this sector has enabled the increased allocation of licences to FM radio stations, most of which are usually faced with challenges in terms of professional standards (technical and ethical), despite the efforts of the State and its partners. These stations operate under difficult conditions, generally with a shortage of qualified staff and an acute insufficiency of equipment and financial resources.

Community Radio

During an international workshop on rural radio organized by the FAO in Rome, Italy, in 2001, Mr. Moussa Keïta stated that: “[...] The Malian Radio-broadcasting and Television Office (ORTM) is the voice of Mali and community radio stations are the voices of Malians”.

Following two decades of pluralism, services in terms of radio information are important for listeners, who had been subjected for several years to monologues from State broadcasters. It is important to note that since 2002, private radio stations have been categorized as either community radio stations (non-profit or denominational) or commercial radio stations.

Rural community radio is a powerful means of supporting socio-economic development activities and promoting local cultural heritage. It prioritizes a participatory approach and encourages communities to take charge of their own development, particularly within the context of decentralization.

11 Moussa Keïta was the Secretary General of the Union of Free Radios and Television in Mali (URTEL) for seven years before being elected president of the Higher Communication Council (CSC) in Mali. He was the promoter of the "Patriote" private radio. He died in 2008 before the end of his mandate at the CSC.
in Mali. It encourages social interaction and strengthens democracy through participation, by supporting local language programming related to education, the environment, health and the protection of women and children.

Community radio stations can only be described thus when local communities recognize them as such and invest local funds to ensure they are effectively set up and provided with the necessary infrastructure to operate. Technical partners provide equipment while the State takes care of training needs. A supervisory body, the Assembly, represents the entire village. The community elects a management committee and a programmes committee, and later appoints a director. All these elements combine to make it a local radio station.

Community radio in Mali is governed by the same laws as commercial radio, and is hence subject to the same restrictions regarding guidelines, fees and taxes. The uniqueness of community radios is linked to their associative or cooperative nature: their apolitical and non-profit status determines their functioning and organization. Commercial radio stations, however, are subject to current laws applicable to companies, as far as their organization and functioning is concerned. Depending on the circumstances, these stations tend to follow the commercial radio track. Community stations consume a larger share of the weak Malian advertising market, causing serious survival problems for commercial stations.

Whether commercial or community-oriented, private radio stations are nonetheless obliged to offer services of public interest at the behest of public authorities or the populations they serve. For this reason, they are entitled to benefit from State subsidies.

In general, the total annual allocation for private radio in particular is 75,000,000 FCFA (around US$166,000) an amount which has not been modified since 1996, despite a 60% increase in the number of radio stations to 2009. The results of this distribution provided by a press commission shows that the amount allocated to some of these 210 community radios is no more than 100,000 FCFA (around US$220).
This is why, for the 2009 financial year, Kayes Rural Radio, the first ever private broadcaster, was given the sum of 690,000FCFA (roughly US$1,500), “just enough to pay a month’s electricity bill” according to its director, Mr. Darrar Maguiraga. The Bèlèkan Community Radio received around 500,000FCFA (US$1,100) the same year.

Malian community radio stations currently face several problems related to economic and human resource shortages. These problems have a significant influence on the quality of programming which has often been reduced to entertainment.

Another problem relates to the quality of presenters, recruited on the spot, who generally have low levels of literacy. However, they are no less influential, as they embody the concerns of their social environment.

Much of the technical equipment is outdated or even obsolete, and this combined with high technical maintenance costs, is a further obstacle for several of these radio stations that lack the financial capacity to replace their equipment. Most radio stations are still analogue and do not have access to the Internet and related services.

Serious problems relating to financial viability have emerged in the management of these radio stations whose highest paid employees barely receive salaries equivalent to 30,000FCFA (US$60), slightly less than Mali’s minimum wage. The poor quality of programming produced is one of the main reasons for the economic difficulties in which most Malian community radio stations found themselves.

Another not inconsiderable obstacle is the fact that presenters, after being trained by community radio stations, often end up leaving to work in the greener pastures of local institutions and NGOs.

**Impact of the African Charter on Broadcasting**

Over the last twenty years, the Malian media landscape has been the testing ground for radio pluralism and other bold moves in terms of press freedom. A characteristic of this rich broadcasting landscape is that the establishment of private radio stations in 1991 preceded legislation and regulation of the press.
n December 1991, faced with the explosive growth of private radio stations and newspapers, communication professionals held their first meetings to deliberate on ways to better organize and adapt to the emerging social and political context. As these first radio stations were being established, the international community laid the groundwork for the doctrine of liberalization and privatization of the print media, to ensure their freedom from State control, at a UNESCO seminar in Windhoek (Namibia),

This endorsement of freedom of expression aims to encourage the development of private broadcasting, transforming State radio and television stations into well-functioning public service utilities and creating independent regulatory bodies.

Surveys to date indicate that the African Charter on Broadcasting is not well-known in Malian media circles, with most people associating it with the 1991 Declaration of Windhoek, thus making awareness-raising difficult. However, decision-makers in media and regulatory bodies are thought to be more aware of its existence, whereas civil society organizations and the public generally appear to be less aware of it.

There are no campaigns currently underway by radio officials or decision-makers to increase awareness of the Charter. However, Mr Mahamane Hamèye Cissé reports that, in 2001, there was a certain amount of political will due to the personal interest of the then Head of State, which may have boosted awareness of the text, in addition to public awareness-raising campaigns, advocacy and conferences, inter alia.

Concerning the legal and regulatory framework, the State, in view of the new Constitution of the Republic enacted in 1992, prepared various laws and regulations concerning the media sector. Within the context of emerging democratic openness, beginning in 1991, the Malian authorities were inspired by international principles including the following:

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12 Two innovative conferences took place in Windhoek - one on the independence of the print media in 1991 and the other on the broadcasting media 10 years later.
• Article 19 of the Universal Declaration of Human Rights that guarantees freedom of opinion and expression, as well as the freedom to receive and broadcast information and ideas via the media, regardless of frontiers;

• Article 19 of the International Covenant on Civil and Political Rights that recognizes the right of every individual to form opinions freely, as well as to exercise freedom of expression, including the right to seek, receive and broadcast information and ideas regardless of frontiers;

• The Inter-American Declaration of Principles on Freedom of Expression that states that freedom of expression, in all its forms and expressions, is a fundamental and inalienable right, inherent to all persons;

• Article 9 of the African Charter on Human and People’s Rights that stipulates that each individual has the right to receive information.13

The adoption of legal instruments has led to legal guarantees, especially through “the impossibility of resorting to temporary custody in cases of press offences”, according to Mr Cheickné Detteba Kamissoko, a Magistrate and former Minister of Communications and Member of the National Committee on Equal Access to State Media. The above thus illustrates some improvements observed in the area.

The main ways in which national policies, laws and regulations have been influenced include the involvement of journalists in meetings and forums on freedom of expression and diversity of information; declarations by human rights organizations advocacy; the significant influence of professional organizations and; the organization of awareness-raising events. However, the legal and regulatory status has not evolved to meet these needs and community radios face unfair competition. Mr Assana Diawara, a civil servant at the Ministry of Communications and New Technologies criticizes the current situation, stating that: “the revision of laws on the private broadcasting sector faces a delay that is detrimental to the development of appropriate regulatory bodies…”

13 Basic principles drawn up in Windhoek were codified by the African Union as a whole through the African Commission on Human and Peoples’ Rights (ACHPR) in its 2002 Declaration of Principles of Freedom of Expression in Africa.
However, there have been several noteworthy developments in the public radio broadcasting service. The change of status of the national radio broadcaster under law N° 92-021/AN-RM of 5 October 1992, creating l’Office de radiodiffusion télévision du Mali (Malian Radiobroadcasting and Television Office), provided for financial autonomy. Other developments including the current geographical and demographic coverage of the country; the increasing number of people trained, especially journalists; the rising number of free televised debates characterizing greater freedom of speech; the promotion of culture through the diversity of programming; and above all, the installation of the KU band for Malian diaspora, are clear proof of the fact that the public radio broadcasting service has significantly evolved.

The establishment of regional stations throughout the country demonstrates the will to ensure public broadcasting services are available to communities, even if institutional influence is still very evident in ORTM’s programmes.

However, Yaya Sangare, Honourable Member of Parliament and Rapporteur of the Commission on Education, Culture and New Information and Communication Technologies at the National Assembly, criticizes: the “appointment of a General Manager for ORTM by decree without a call for candidatures; the absence of initiatives to fund programmes and the invasion of foreign programmes, thus rupturing our cultural values” as “factors that do not guarantee the independence of the public body”. Due to its grant-making ability, the State has the necessary powers to make the administrative changes that it desires to the ORTM. The Board of Directors is presided over by the Minister in charge of that sector who takes care of political interests.

Despite its status, the Office has a rather complex method of functioning, thus making procedures cumbersome, whereas the very nature of its status should imply a certain degree of flexibility in its management.

The rapid growth of community radio can be attributed to technical and financial support from strategic partners, ensuring for more community debate which contributes towards autonomy of rural communities.
Improvements in the situation of community radio can also be attributed to increased freedom in terms of editing and choice of programmes. Radio stations increasingly develop a range of programmes devoted to the needs of the local region, making them more relevant to their target communities. New authorizations are still being allocated.

However, as expressed by Mr. Tiégoum Boubèye Maïga, Publisher of La Nouvelle République, “Quantity has nothing to do with quality. One always notices the propensity of these services to just offer music programmes. Regarding the allocation of radio licences, the government is reluctant when the applicant is not politically convincing, whereas some start operating without even having had applied for a licence”.

The restrictiveness of laws concerning the obtention of licences as well as the allocation and withdrawal of frequencies (a prerogative of the public authorities), the lack of transparency in the allocation of licences and the absence of a single regulatory agency, are, according to those interviewed, the main factors responsible for the deterioration of the sector. In addition to these, Mr. Mahamane Hamèye Cissé, Publisher of the Scorpion and member of the editing commission of the draft law on the broadcasting sector observes that, “State aid has dropped and laws have not evolved in relation to the Charter. Even if a new law were to be submitted to the National Assembly, the draft law has already been adopted by the Government”.

The technical conditions required to offer FM radio services remain below international standards. There have been deliberate increases in the level of prescribed strengths of transmitters, poor calibration of allocated frequencies and the absence of filters at the exit of transmitters, leading to interference on the entire FM band. It is also quite common to find stations operating without prior authorization.\footnote{\textit{Ministry of New Information and Communication Technologies, report of the 3\textsuperscript{rd} National Reflection Day on Information and Communication, Bamako, 21-24 December 2009.}}

The expansion of mobile telephone use in rural parts of the country enables radio stations to use this as an effective working tool in reaching out to audiences.
Mobile phone infrastructure is available throughout the country, through a GSM network installed by two operators, estimated to have a combined total of about 4 million subscribers, although networks do not always perform well due to saturation and poor reception quality.

Increasingly, Malians are using the services of new information and communication technologies, and radio and television are not exempt from changing modes of broadcasting and reception of programmes.

According to Mr. Sékou Coulibaly, a Telecommunications Engineer, the Malian Radio-broadcasting and Television Office has already digitized a significant proportion of both its radio and television production and transmission equipment. Under this process of ongoing digitization, it is expected that an entirely digital second television channel will eventually be established.

Private radio stations, particularly those in Bamako, as well as some rural radio stations in other parts of the country, although unfortunately very few, have also digitized some of their production equipment.

According to a study carried out in 2008 by the Panos Institute West Africa on radio and digital communication technologies, the connectivity rate of all radio stations in Mali, stands at 34%\(^{15}\). The Internet, currently a more urban phenomenon, provides access to online information and published media content, although connection speeds are slow. However, it is worth noting the existence of unfair competition in the sector as well as the problem of quality in relation to price.

To summarize and conclude, on a scale of impact it can be stated that the African Charter on Broadcasting has had most impact in the legal and regulatory domain, followed by that of telecommunications and convergence, whereas public service radio broadcasting and community radios appear to be largely unaffected by the existence of the Charter.

It is recommended that any revisions to the Charter should take into consideration cultural factors and the rights of consumers.

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\(^{15}\) Radio and NICT in West Africa: connectivity and uses, PIWA, 2008.
Mr Isaïe Somboro, Administrator of the Union of Free Radio and Television Stations in Mali emphasizes that, “Today, awareness of this Charter must be raised, as it is not well known in Mali and campaigns to this effect should be launched. Mali has recently held its 3rd National Information and Communication Day, during which similar recommendations were made. They equally apply here”.

According to Mr. Abraham Bengaly, Lecturer at the Faculty of Law and Political Sciences of the University of Bamako, the dissemination of knowledge of the Charter, whose text is still very relevant, can contribute towards strengthening the legal and professional environment of the media in Mali. This could influence national policies and programmes to take better consideration of the media’s concerns.
Case studies

Kayes Rural Radio

Community radio stations, especially rural ones, have long been integrated into Mali's media landscape. A good example is the Kayes Rural Radio that has been transmitting since 1 August 1988. Its area of coverage is situated around the border with Senegal and Mauritania, comprising roughly 400 villages of over 700 000 people. It meets the needs and aspirations of rural populations by giving them voice and broadcasting in local languages (Soninké, Khassonké, Bamanankan and Poular). At the request of other non-native ethnic groups, the Mooré, Bwa and Sénoufo, their languages have been included in the list. Launched in 1987 by two NGOs (GAO and Terra Nova), with the support of the Italian Cooperation, as part of its “animation and training programme for rural development”, Kayes Rural Radio transmits across a 150 km to 250 km range. In January 1992, the Association of Kayes Broadcasters for Rural Development (comprising 15 associations and NGOs active in the Kayes region) was created, comprised of a Board of Directors and Management Committee. The Radio receives State support, that declines each year, as well as institutional support from foreign partners and donors for equipment and infrastructure and income from radio services (40%), with advertising barely covering 2% of this. Other activities such as office rental account for 60% of its revenue.

Bèlèkan Community Radio

Founded in April 1999 by “Nyëtaa Walé”, an association of young graduates from the Kati Council area, Radio Bèlèkan aims to create a forum for expression for all citizens in the region. It also aims to provide the community with a tool for development. The stations reaches 292 villages, i.e. 90 % of the 304,243 inhabitants of the Kati Council region. It works to promote traditional, cultural and artistic values, to raise awareness on issues including health, unemployment, illiteracy and the environment, and to organize youth training programmes, inter alia. Staff are recruited locally (on the basis of equal opportunities), with 8 permanent and 15 external collaborators.
Operating a policy based on partnership, Bèlèkan collaborates with the technical services of Ministries, NGOs, the Council and local businesses. USAID (the United States Agency for International Development) has provided significant institutional support. Apart from its listening clubs (which provide a symbolic financial contribution) and State grants, most of Bèlèkan’s income derives from services that bring in on average, 300,000FCFA (around US$650) per month. Bèlèkan is one of the few radio stations managed by a woman.
People consulted

Abdramane Kéïta, Higher Communication Council
Abraham Bengaly, Professor of Law, University of Bamako
Alfousseyni Sidibé, Journalist, Association SOS Civisme
Almahady A. Cissé, Journalist, Agence Associated Press
Alou Djim, Coordinator of Jamana Radio Networks
Cheickna Dettéba Kamissoko, Magistrate, former Minister, member of CNEAME
Daouda Mariko, Director of Community Radio – Sikasso, President of URTEL
Gamer Dicko, Journalist at L’Essor, Press Syndicate
Hassana Diawara, Technical Adviser at the Ministry of Communication.
Ibrahim Famakan Coulibaly, Journalist, President of the Union of West African Journalists
Filifing Diakité, Journalist, Radio Guintan
Isaïe Somboro, Administrator, Union of Free Radio and Television Stations, Mali (URTEL)
Kassim Traoré, Journalist and association leader, Radio Klédu
Mahamane Hamèye Cissé, Director of publication, UPF/Mali
Me Brahima Koné, Lawyer, Malian Human Rights Association
Moustaph Maïga, Director of Radio - Ségou
Nouhoun Keïta, Kayira Associative Radio
Ramata Diaouré, Bi-hebdo 22 Septembre
Sadou Yattara, Institute for Democracy and Media Education
Seydou Baba Traoré, Director, National Radio (ORTM)
Tiégoum Boubeye Maïga, Director of the Communication Agency
Yaya Sangaré, Parliamentarian, National Assembly
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Interministerial Decree N° 94-7166/MCC-MATS of 16 February 1994 on specification documents for private broadcasting communication services;
Decree N° 94-8510/MFC-CAB of 11 August 1994 establishing fees applicable to private broadcasting services by terrestrial hertzian waves on frequency modulation;
Decree N° 95-0331/MFC-CAB of 16 February 1995 establishing fees applicable to private broadcasting communication services;
Constitution of the Republic of Mali, 1992;
Decree N° 02-227/P-RM of 10 May 2002 concerning the status of the various types of private broadcasting services by terrestrial hertzian waves on frequency modulation;
Decree N° 92-022/PM-RM of 18 January 1992 determining the conditions and procedures to obtain, suspend or withdraw authorization to create private broadcasting services by terrestrial hertzian waves on frequency modulation;
Decree N° 92-156/PM-RM of 14 May 1992 determining the conditions and procedures to obtain, suspend or withdraw authorization to create private private broadcasting communication services;
Law N° 92-038 of 24 December 1992 creating the Higher Communication Council;
Law N° 93-001 of 6 January 1993 on the Organic Law relative to the creation of the National Committee on Equal Access to State Media;
Law N° 00-046 of 7 July 2000 on the regime of the press and press offences;
Ordinance N° 92-037/P-CTSP of 14 May 1992 concerning authorization to create private broadcasting communication services;
Ordinance N° 92-002 / P-CTSP of 15 January 1992 concerning authorization to create private broadcasting services by terrestrial hertzian waves on frequency modulation;
Ordinance N° 92-037/ P-CTSP of 14 May 1992 to create private broadcasting communication services;
Draft Interministerial Decree N° 09-/MCNT-MATCL-SG of determining the specifications and missions of private commercial radio broadcasting and television services;
Draft Decree N° 09 /P-RM of determining the conditions to establish, use and distribute private radio broadcasting and television services;
Draft Decree N° 09 / P-RM of determining the conditions to establish, use and distribute private radio broadcasting services;
Draft Law N° 09 /AN-RM of relating to private broadcasting communication services.
Niger - country assessment
Moussa Tchangari Aissami Tata

Social, political and economic Context

Niger is a large landlocked country in West Africa, with an area of 1,267,000 km², and a population of around 14.6 million (2009). With an economy dominated by agriculture and livestock production (occupying almost 80% of the population), Niger is considered one of the least developed countries in the world. Its Gross Domestic Product (GDP) was estimated at 2,397.2 billion FCFA in 2009, with a per capita GDP of 172,200 FCFA. In 2008, the country was ranked last according to the United Nations Development Programme’s (UNDP) Human Development Index (HDI). Official statistics indicate that over 75% of the population lives on less than a dollar a day.

In 2003, after several years of structural adjustment, Niger officially embarked on a strategy to reduce poverty by 2012, through the implementation of the Poverty Reduction Strategy (PRS), revised in 2008 to become the Accelerated Development and Poverty Reduction Strategy (DPRS). However, the measures implemented under the PRS did not significantly improve the situation in key areas, including education, health, nutrition and access to safe drinking water. Indicators in these areas are particularly alarming, with an estimated literacy rate of only 29%, health coverage at below 50% and high levels of child malnutrition, worsened by recurring food crises and a rate of access to safe drinking water of less than 70%.

Faced with these difficult conditions, it is clear that the democratization process launched in 1991 did not lead to significant improvements in the daily lives of the country’s inhabitants, particularly due to the fact that the process was severely thwarted and undermined by the implementation of structural adjustment policies in a context of chronic political instability. Within a twenty-year period, the country witnessed two military coups d’état (in 1996 and 1999), and two waves of armed rebellion in the northern and eastern regions, as well as several mutinies by soldiers and strikes by workers.
After a long period of turmoil, the country regained political stability following general elections held in November 1999 that saw the former State party, MNSD-Nassara, return to power, under the leadership of Mr Mamadou Tandja. In 2004, the country embarked on a new political system, with the creation of 265 rural and urban councils and the holding of combined local elections. Decentralization brought about the transfer of a number of areas of authority, previously under the control of the central government, to local councils. However, it must be noted that many sections of the population have not succeeded in getting the elected authorities to take their concerns into consideration. Worse still, local councils frequently mismanage public property.

Over the last few years, civil society institutions in Niger have been strengthened and have been involved in the country’s democratization process and in the fight against poverty. Civil society has emerged through a strong social movement that draws on a rich tradition of democratic struggle that began with a sovereign national conference held in 1991. So far, the process has been outstanding, due to the diversity of stakeholders involved, the directives given, the methods of action and above all, its wider establishment throughout the populace.

**Policy, legislative and regulatory framework in 2001**

In West Africa, Niger was one of the first countries where the liberalization of the airwaves became a tangible reality from the start of the democratization process. Adopted in the aftermath of the sovereign national conference of 1991, and after a 1992 convention on the state of communication, new Nigerien laws put an end to State monopoly of the communication sector. Of note is the fact that it was the Constitution of 26 December 1992 that laid the groundwork for this liberalization, by guaranteeing freedom of expression. Hence, Article 24 stipulates that: “All persons have the right to freedom of thought, opinion, expression, conscience, religion and worship”. This Constitution created a media regulatory body known as the Conseil Supérieur de la Communication (CSC - Higher Communication Council), through Article 112, stipulating that “The Higher Communication Council is an administrative authority independent from political power”.

The African Charter on Broadcasting
Created by Ordinance N° 93-021 of 30 March 1993, the Higher Communication Council (HCC) is the media regulatory body. In addition to guaranteeing freedom of information and communication, and guaranteeing the independence of the State broadcasting organs and the private press, the HCC is charged with, inter alia, (i) guaranteeing free access to sources of information and documentation; (ii) ensuring respect for diversity of expression of thought and opinion in the press and communication media; and (iii) contributing towards the protection of national cultural identities, particularly through the promotion of local languages.

According to Law N° 2006-24 of 24 July 2006, the Higher Communication Council is headed by a President and a Vice-president, elected by their peers, assisted by a Secretary General appointed by decree, signed during a ministerial cabinet meeting. Under the authority of the President, the Secretary General is in charge of managing the administrative services of the Higher Communication Council. The HCC works with the support of permanent or temporary commissions that it can create, as well as with administrative and technical staff provided by the State. It also works with the support of the Press Council, which is entrusted with the task of ensuring respect for media ethics. The Press Council has the power to issue and withdraw journalists’ professional cards. Comprising exclusively of professional journalists, the Council examines complaints made by citizens concerning ethical violations, and may apply sanctions in the event of misconduct.

The functioning of the Higher Communication Council is governed by internal regulations that establish (i) conditions for deliberation at the HCC; (ii) rules of procedure to be followed by the HCC; (iii) the number of commissions and working groups of the HCC, as well as their composition, roles and areas of competence; (iv) conditions for implementing a disciplinary regime for advisers; (v) electoral methods; and (vi) powers and prerogatives of the President and Vice-President. Deliberations at the HCC are made during monthly ordinary sessions convened by the President, or extraordinary sessions convened by at least six (6) members. Meeting agendas are proposed by the President of the HCC, who must inform members at least three days prior to the meeting. Drafts for deliberation and other documents required for deliberation are prepared under the supervision of the Secretary General.
Under Law 2006-24 of 24 July 2006, all matters submitted for deliberation by the Higher Communication Council should be examined prior to the meeting and a report prepared accordingly, as stipulated by internal regulations. Decisions, recommendations, observations and opinions of the Higher Communication Council are adopted by an absolute majority and must be published in the Republic of Niger’s official gazette. Every year, the Higher Communication Council reports its activities to the President of the Republic, the President of the National Assembly and the Prime Minister, in the form of a publicly available report.

In Niger, legislation has granted considerable freedom to the media sector up to a point where it would not be an exaggeration to say that the establishment of a newspaper or radio broadcasting service has become one of the most common administrative tasks. Regarding newspapers, applicants are simply required to make a declaration for publication to the relevant local court, whereas radio broadcasting and television services simply have to request an authorization from the Higher Communication Council. In both cases, the procedure is very simple, based on the underlying principle of press freedom. Public authorities, especially the Executive, are not involved at any stage of the creation of a broadcasting organ.

Radio broadcasting is primarily regulated by Ordinance N° 93-31 of 30 March 1993, relating to broadcasting communication. Article 1 of this Ordinance stipulates that “broadcasting communication is free” and that it “results from public broadcasting communication services and non-profit private sector enterprises and associations authorized by virtue of the present law”. The Ordinance stipulates on the one hand, that “Nigerien citizens have the right to broadcasting communication services across the national territory” (Article 2); and on the other, that “The Higher Communication Council (HCC) guarantees the existence of freedom of broadcasting communication and the independence of public service media under the modalities and conditions established by the law”. Articles 10 and 11 of the Ordinance specify that the issuing of an authorization to operate radio broadcasting or television services, as well as their technical specifications, are the exclusive responsibility of the Higher Communication Council (HCC). However, it allows for the possibility of appeal to the Supreme Court in cases of rejection of a decision by the HCC, suspension of licence or withdrawal of authorization to broadcast.
Under Ordinance 93-31 of 30 March 1993, radio broadcasting services are classified into three (3) main categories: (i) local radio, i.e. stations whose programmes are designed to meet the needs of audiences in the region in which they broadcast or its immediate surroundings; (ii) regional radio, i.e. stations whose programmes are designed to meet the needs of audiences in one or more localities situated around the main transmission area; and (iii) national radio, i.e. stations or broadcasting enterprises whose programmes are designed to meet the needs of the entire national territory. The Ordinance also identifies two (2) categories of broadcasting communication enterprises, namely, public and private. In the category of private enterprises, it distinguishes between private commercial broadcasting enterprises and community, non-profit radio and television stations.

Although Ordinance 93-31 distinguishes between the various types of radio broadcasting services, the same laws and regulations apply to each type of broadcasting services, except in relation to access to the advertising market, which is exclusive to commercial enterprises (public or private). Article 18 of the Ordinance stipulates that community radio and television stations “do not have access to the advertising market”, and that their funding “is guaranteed by public and private subventions, contributions from members, as well as grants and legacies”.

Each radio broadcasting service, be it commercial or community, is bound by its own specifications as defined by the Higher Communication Council “following a public audience during which representatives of civil society and all stakeholders are given the opportunity to state their points of view”. Ordinance 93-31 stipulates that these specifications may set forth the following: (i) the proportion of airtime to be given to programmes produced in Niger; (ii) standards relating to programming; (iii) the nature of advertising and the amount of time allocated to it; (iv) The proportion of airtime that should be allocated to the broadcasting of programmes – including advertising and announcements – relating to political parties, as well as equitable distribution of airtime between political parties and candidates; (v) information to be provided by enterprises concerning their programmes and financial situation or in every other aspect relating to the management of their business; (vi) standards and technical conditions of functioning and broadcasting.
Concerning programming, Article 20 of Ordinance 93-31 of 30 March 1993 sets forth that, “Public and private broadcasting communication enterprises are entitled to freedom of expression and are solely responsible for their own programming”. Article 21 stipulates that “Each broadcasting enterprise assumes responsibility for the programmes it broadcasts”. It can only be exempt from this responsibility “in case of harm resulting from live broadcasting when it can demonstrate the exercise of reasonable diligence to prevent the broadcasting of damaging statements”. Broadcasting enterprises are subject to the following obligations: (i) to ensure the most varied programme schedules possible; (ii) to promote culture and national languages; (iii) to use local, regional, national and international sources; (iv) to offer educational and informative programmes, aimed at raising awareness and spreading knowledge; (v) to handle opposing opinions in a balanced manner; (vi) to offer citizens access to the media to enable them to contribute towards discussions affecting civil society; (vii) to give priority to national productions.

It is thus evident that Nigerien legislation has clearly established the freedom of broadcasting communication. Deliberate restrictions laid down by Ordinance 93-31 of 30 March 1993 concern compliance with terms of reference and the technical specifications of equipment; the temporary status (5 years) of frequencies granted to radio broadcasters; the nature of the share capital of communication enterprises (which must have at least 51% Nigerien ownership); the prohibition of foreign ownership of more than 25% of the share capital of a broadcasting enterprise; and restrictions placed on community radio with regard to advertising. Some passages also provide for the payment of annual dues by beneficiaries, however, this provision has not yet been applied by the Higher Communication Council (HCC).

In stark contrast to the letter and the spirit of Ordinance 93-31, in July 1995, the Higher Communication Council adopted Decree N°001/CSC regulating the installation and use of private radio broadcasting and television services, which prescribes restrictions not specified by the law, from which it is supposed to draw its legitimacy and legality. According to this Decree by the HCC, private radio broadcasting and television services are classified into three (3) categories: non-commercial services; thematic commercial services; and general commercial services.
Article 6 of the Decree stipulates on the one hand that, “non-commercial services should be non-profit, community-oriented, cultural and educational radio and television stations”. On the other hand, “their programmes may not comprise of general, political, sports-related, information and commercial advertisements”. Article 7 defines thematic commercial services as “stations with a specific vocation”, whose “programmes and advertisements may not be of a general nature”. Article 8 stipulates that, “general commercial services are those (i) whose programmes mainly consist of information and service programmes, cultural programmes and games, (ii) whose programmes are diversified; (iii) and primarily funded by advertising”.

By virtue of this decree, the Higher Communication Council assumes powers not explicitly conferred on it by law; in this case, that of using regulatory means to determine the types of programmes that various categories of radio broadcasting services, (they themselves arbitrarily defined), can offer to citizens. The practical consequence of the provisions of Article 6 of Decree 001/CSC of 17 July 1995 is that, only public and commercial radios and televisions are authorized to provide programmes with general, political and sports-related information. These provisions remained operational until 27 August 2007 when they were repealed by Deliberation N02-2007/P/CSC, establishing procedures to create, install and operate private radio broadcasting and television services.

State radio broadcasting is governed by Law N° 67-011 of 11 February 1967. This text created the Niger Radio and Television Office (ORTN) establishing its powers and modes of operation. This law stipulates that the ORTN, consisting of the national radio station (Voix du Sahel) and the national television station (Télé Sahel) must provide the public with information, entertainment and education, as well as promote national culture. Law N° 67-011 of 11 February 1967 was modified by Ordinance N°78-21 of 12 October 1978. This law contributed towards transforming the ORTN into an Industrial and Commercial Public Establishment (EPIC), endowed with financial autonomy. However, every year, the State grants subsidies to the ORTN to enable it to fulfill its public service mission. Despite these subsidies, the Office still faces difficulties in accomplishing its task due to the obsolescence of its equipment and the arrival of competition following the liberalization of the airwaves.
Policy, legislative and regulatory context since 2001

Since its adoption in 1993, Ordinance No. 93-031 of 30 March 1993 on broadcasting communication has not been modified. However, in August 2007, the Higher Communication Council adopted a new regulatory text repealing provisions of Decree 001/CSC of 17 July 1995. By its very nature, the new text differs from the previous one in that it is no longer a decree, but a deliberation of the Higher Communication Council. Based mainly on the provisions of Ordinance 93-031 of 30 March 1993, Deliberation 02-2007/P/CSC of 27 August 2007 deviates from the classification of private radio broadcasting and television services as non-commercial, thematic commercial and general commercial services. This new regulatory text maintains the classification made by Ordinance 93-031 that distinguishes between, local, regional and national radio and television stations, according to location and target audience. As previously mentioned, this classification takes into consideration practical issues relating to respect for freedom of broadcasting communication as guaranteed by Nigerien law.

Article 6 of Deliberation 02-2007 clearly stipulates that "broadcasting communication is free" and that it results from "public service broadcasting communication offers from public and private sector enterprises and non-profit associations". Article 12 stipulates that "public or private broadcasting communication enterprises are entitled to freedom of expression and are solely responsible for their own programming". These two articles repeal the rather harsh provisions of Decree 001/CSC of 17 July 1995, particularly those stated in Article 6, which stipulates that programmes of non-commercial services "should not comprise general, political, sports-related information and commercial advertisements". A critical analysis of deliberation 02-2007 indicates that community radio stations can henceforth provide general, political, and sports-related information, while still respecting the ban on advertising, as stipulated in Article 18 of Ordinance 93-031 that forbids them from advertising. The deliberation allows radio and television services to draw up their own programmes and decide whether or not they wish to offer news bulletins.

However, it is important to note that Deliberation 02-2007 highlights a series of obligations in the design of radio and television programmes. Article 17 of the Deliberation specifies that "all private radio and television
services must include a minimum amount of programmes devoted specifically to promoting national culture, corresponding to 20% of airtime”. Article 19 stipulates that “programmes targeting children must be aired during periods conducive to relaxation, education, and to family and children’s entertainment”. In addition, “broadcasting of X-rated (pornographic) films is strictly forbidden on Nigerien territory”. Article 20 provides that “private radio and television services avoid broadcasting programmes that attack or debase any person or community”. Article 23 stipulates that “provision of international channels broadcasting on satellite to the Nigerien public must be undertaken via Nigerien operators, authorized by the Higher Communication Council”.

Concerning conditions to establish and install radio broadcasting services, Deliberation 02-2007 makes clarifications that were not present in Decree 001/CSC of 17 July 1995. Article 26 stipulates that “denominational or political radio and television stations are strictly prohibited”, in contrast to Article 1 of Decree 001/CSC which gives the impression that these can be authorized according to provisions to be specified later on. Article 29 makes clarifications on the length of the licencing period, slated at five (5) years for radio broadcasting services, and ten (10) years for television services. Article 29 specifies the documents required to submit an application for authorization to create and install radio broadcasting or television services. The file should comprise of a hand-written, stamped and signed application, a certificate of non-conviction less than 3 months old, a certificate of nationality, a certificate by a notary confirming the legal status of the enterprise, a taxpayer’s number, a business registration certificate, a non-bankruptcy certificate, an operation licence issued by the Minister of the Interior, bye-laws and internal regulations for associations, proof of funding, programme schedules for radio and/or television, programme synopses, list of equipment, an information sheet on the founder or association and an information sheet on the project.

It is also important to note that Article 29 of Deliberation 02-2007 stipulates application fees to be paid to the Higher Communication Council, while Article 34 stipulates fees for radio broadcasting and television services. Non-payment of said fees by 31 March each year is liable to penalties determined by a HCC deliberation and immediate termination of the operating agreement by 31 December of the same year. Debt recovery can
be forcefully carried out under applicable laws. From a disciplinary point of view, the Higher Communication Council has the power to suspend the authorization or part of the programme, reduce the length of the licencing period or opt for withdrawal of the licence. These sanctions can be pronounced without prejudice to other sanctions stipulated by laws and regulations in force. However, contrary to relevant provisions of Ordinance 93-031, Deliberation 02-2007 does not provide for appeals at the Supreme Court.

In the legislative domain, it is important to note that one of the biggest drawbacks since 2001 is undoubtedly the modification of the composition of the Higher Communication Council following the adoption of Law N° 2006-24 of 24 July 2006. Upon its creation in 1991, the Higher Communication Council was made up exclusively of members of the communication sector and civil society. However, the composition of the Council was considerably modified in 2006 to strengthen the representation of public authorities and reduce that of the civil society. The Council is comprised of representatives of: the President of the Republic, the President of the National Assembly, the Prime Minister, the President of the Supreme Magistracy Council, the Head of the Opposition, associations defending human rights and promoting democracy, women’s associations, the Bar council, professional journalists and technicians of the public sector, and private sector media.

According to Law N° 2006-24 of 24 July 2006, the Higher Communication Council exercises its authority in three (3) main areas: (1) broadcasting communication, defined by the law as “providing to the public or a part of the public, through telecommunication, signs, signals, writing, images, sounds or all types of messages which are not private correspondence, in accordance with the legislation in force”; (2) the print media, that “concerns newspapers or written periodicals and all periodical publications constituting a source of information on current national or international events, that regularly publish information for public consumption; and (3) press advertising, referring to “any announcement made in a bid to stimulate sales, purchasing or hiring of a product or service, promoting a cause or an idea, or producing any other effect desired by the advertiser, for which a space or transmission time has been granted to the advertiser in return for payment or similar compensation”.

The African Charter on Broadcasting
Apart from these functions, the Higher Communication Council also plays a consultative role, particularly with regard to the executive and legislative branches. Article 9 of the new law stipulates that “the Higher Communication Council can formulate proposals, for the attention of the executive and legislative, give opinions and make recommendations on issues within its area of competence”. Paragraph 3 of the same article specifies that public authorities must consult the Higher Communication Council before any decision is taken on issues within its authority, particularly on laws concerning the communication sector. Even though its functions are clearly defined, the Higher Communication Council has never been consulted by public authorities (executive and legislative), prior to decisions in its sphere of authority. Legislative texts are usually adopted without its knowledge, and it is totally unaware of appointments to duty posts at public media bodies. Contrary to the previous law, the 2006 law does not oblige the Executive to seek “prior and justified consent” from the HCC for the appointment of general managers of public media organs.

Broadcasting landscape in 2001

Until April 1994, the Nigerien broadcasting landscape was dominated by the Office de radiodiffusion et télévision du Niger (ORTN), responsible for la Voix du Sahel, Télé Sahel and Tal TV. Created in 1958, la Voix du Sahel exercised a real monopoly in the Nigerien broadcasting media sector; for, with seven regional stations installed in regional headquarters, it was virtually the only source of information accessible to all. As the only operator in the television sector, Télé Sahel enjoyed a position of monopoly since its creation in 1978 during the football World Cup. This monopoly ended only in 1993 with the adoption of Ordinance 93-030 of 30 March 1993 on broadcasting communication that paved the way for the creation of private broadcasting organs. The first private Nigerien radio station, Radio R&M, was launched in April 1994 in Niamey; and in 1995, a second private radio station, ANFANI, was created, thus signalling the opening of the broadcasting sector.

Between 1994 and 2001, the broadcasting media landscape evolved immensely with the issuing of several licences for the establishment and operation of a number of private commercial and community stations.
In 2001, Niger had 13 private and 62 community radio stations distributed across the country. The first private television channel, TéléStar Network, was created in 1997, available as a digital package upon subscription. It was only in 2000 that another private television channel, Télé Ténéré, was created, offering the public programmes that were partly produced locally by Nigerien journalists. In contrast to the national television channel, until 2001, Télé Ténéré only reached the capital and its environs. However, it soon became very popular, particularly due to the continuous existence of censorship on the national television that virtually never succeeded in fulfilling its public service mission.

Regarding liberalization of the airwaves, it is important to note that several foreign radio channels obtained authorization to broadcast on the FM frequency, either directly by installing antennas, or indirectly through relay contracts with local radios. This situation largely contributed towards diversifying information services to Nigerien audiences, as most international channels (RFI, Africa N1, BBC, Voice of America, Deutsch Welle, etc) provided programmes in French and Hausa. Concerning policy issues, it is worth noting that the presence of these international channels was sometimes negatively viewed by Nigerien authorities, particularly after the 1996 military coup d'état and ensuing political crisis. The Higher Communication Council tried several times to prevent local radio stations from directly broadcasting programmes from foreign channels. However, all these attempts were generally futile due to collective protests by the public and the refusal by local radio stations to yield to injunctions that would have deprived them of non-negligible subsidies normally given to them by their partners.

**Broadcasting landscape since 2001**

From 2001 to date, the Nigerien radio landscape has improved considerably since the liberalization of the airwaves that occurred in 1993. The country presently has a public radio station, la Voix du Sahel which has a number of other stations attached to it: seven (7) regional, thirty-two (32) commercial (13 of which are based in Niamey), and one hundred and eighteen (118) community radio stations spread across the various regions. Most of these community radio stations were set up by international and domestic NGOs such as SNV, HKI, Africare, Mooriben and Alternative.
Apart from these there are a few foreign radio stations broadcasting on Nigerien territory (RFI, VOA, BBC and Deutsche Welle). The public service mission of these radio stations is little contested by users and the public authorities, and even less so by audiences. It seems that everyone recognizes that, apart from their basic mission to inform, independent radio stations also play a key role in civic education and awareness-raising for development activities.

If it can be considered that the first decade of liberalization was that of independent radio, it would not be an exaggeration to assert that the second decade was that of private television. Within only a six year period, the Nigerien television landscape gained three new private television channels (Bonferey, Dounia and Canal 3), joining the previous two public channels (Télé Sahel and Tal TV) and two private channels (TéléStar Network and Ténéré TV). It is equally important to note that Ténéré private television is now present in all of the country’s regional headquarters; and the national television, Télé Sahel, is now accessible from abroad by satellite.

Nowadays, the broadcasting media landscape is thus characterized by new developments, with the proliferation of stations escaping State control. However, it should not be forgotten that public authorities are increasingly reluctant to go further. Lasting the past few years, several observers have noted the unwillingness of authorities, particularly the Higher Communication Council, to grant licences to establish new stations. The development of radio broadcasting and television tends to be slowed down by bureaucratic obstacles; and clear proof is seen in the slow pace with which files to create or extend existing stations are treated. It is important to highlight the fact that almost all Nigerien broadcasting media, particularly radio stations, function without a permanent authorization consisting of specification documents.

In September 2003, the Higher Communication Council took an unprecedented decision, declaring that around fifteen authorizations issued by its President to radio promoters were “null and void”. This decision was taken on the grounds that licences had been issued after flouting regulations in force. Following serious mobilization of media organizations and civil society groups, the Higher Communication Council reversed its
decision a few days later. The closure of independent stations as a result of this situation exposed the incoherence and malfunctioning of the regulatory authority, revealing to civil society stakeholders and politicians that all existing broadcasting entities in Niger were at that time operating without a permanent authorization issued under legal circumstances.

It is also important to note that the development of independent broadcasting media has been seriously hindered by the persistence of a particularly morose economic environment. Nigerian broadcasting media face serious difficulties, forcing many promoters to increasingly accept that mere good will is not enough. This situation negatively affects journalists’ living and working conditions as well as the independence and credibility of the media enterprises. The collective agreement for journalists and media practitioners, even though provided for by legislative texts, is being delayed, and until recently, journalists’ organizations were hesitant to raise the matter, in light of the fact that the enterprises are operating under extremely unstable conditions. Respect for ethical standards, key to journalistic integrity, is hindered daily by uncertainties owing to the fact that most independent media employees do not receive sufficient salaries or social security benefits, to enable them to resist numerous temptations.

Apart from economic difficulties, it is important to note that the Nigerian broadcasting media also faces a resurgence of violations of the right to freedom of communication. Since 2001, several repressive measures have served to erode the freedom of the press in Niger up to a point where President Mamadou Tandja’s two terms could be characterized by a clear erosion of the right to freedom of expression. Without doubt, the first victims of the curtailment of journalistic freedom were those who paid a high price during the political upheavals and armed rebellions. Private media faced innumerable restrictions, the most incomprehensible of which was the ban on journalists from travelling to the Agadez region, the site of deadly clashes between regular forces and the rebels of the Mouvement des Nigériens pour la Justice (MNJ – Nigerien Movement for Justice). It is also worth recalling the government’s aversion to media coverage of food and nutritional security, particularly in 2005.
Apart from these issues, it is equally important to note that access to official information continues to be a major problem for Niger's media. Efforts at organizing the media and civil society to ensure the country has legislation on access to information have yet to meet with success. Similarly, actions to encourage access to the public media by social and political stakeholders have generally been futile. In contrast to the independent media, that strive to reflect the diversity of political trends and opinions in the country, public broadcasting media have remained politically monolithic. The recent political crisis following the controversial constitutional referendum of 4 August 2009 awakened the debate on the public service mission of State media and the need to transform them into truly independent public service bodies, with several observers shocked to see the Office de radiodiffusion et télévision du Niger (ORTN- Nigerien Radio and Television Broadcasting Office) being used as a tool of political operation aimed at establishing authoritarian leadership.

Community radio

The most important changes that occurred since 2001 in the legislative and regulatory areas mainly concern the status of community radio, with Deliberation 02-2007/P/CSC of 27 August 2007 ending the injustice that the promoters of these stations have continuously denounced concerning programming restrictions. The Deliberation recognizes the fact that community radio stations are essentially providers of information, and clarifies processes for their establishment, installation and operation. In view of this Deliberation, it is clear that community radio stations currently have an associative status. Article 29 implicitly stipulates that these radios be created and run by associations under specific legal conditions. Administrative formalities for creating and running these community radio stations are clearly distinct from those of commercial stations.

The first condition is that the community radio project be handled by an association recognized by the Ministry of the Interior. Applications must contain the following: a hand-written application, a decree recognizing the association, its byelaws and internal regulations, funding guarantees, its programming schedule, a summary of its programmes, a list of its equipment, an information note on the association, and another on the
The application to set up a community radio station is examined by the HCC that decides to issue an licence to operate on the basis of programming and standards specifications and technical operating and broadcasting conditions. An authorization is issued for a five-year (5) period following checks to ensure technical standards. However, it should be noted that issuing of a licence by the CSC implies automatic allocation of a frequency. The procedure stipulated by Deliberation 02-2007 allows for the authorization to be withdrawn if the beneficiary fails to begin operating the station six (6) months after receiving the authorization. However, in case of force majeure, the association can request for an extension of its period of authorization from the Higher Communication Council.

Concerning programming and content, it is worth noting that the principle of freedom of programming is applies equally to community radio stations. In accordance with the provisions of Ordinance 93-031 of 30 March 1993, it is possible for community radio stations to offer programme schedules similar to those offered by any other type of radio broadcasting service; especially since, as mentioned above, obligations concerning programming set forth by Ordinance 93-031 and reiterated by deliberation 02-2007, are practically the same, irrespective of the type of radio broadcasting service. The legal obligations of the station are mainly to inform the public, offer educational and awareness-raising programmes, provide the opportunity to express a diversity of opinions, and to promote culture and local languages. These obligations fall within the public service mission that community radios specifically have, and that generally apply to all private radio broadcasting and television services. It is in recognition of this service mission that Ordinance 93-031 recommends public funding for community radios.

On the issue of funding, it is important to reiterate that Ordinance 93-031 stipulates that “funding for community radios and televisions is guaranteed by public and private subventions, contributions from members, as well as grants and legacies”. However, to date, there is no legal or regulatory provision specifying processes of public funding for community radio and television stations. This issue is even more crucial because, in practice, community radio stations are excluded from the media aid fund stipulated by other Nigerien texts regulating the media sector. The current
situation whereby community radio stations are prohibited from advertising requires a clear definition of their modes of funding by the State; for it is clear that private subventions, contributions from members, as well as grants and legacies no not guarantee the long-term viability of these radio stations. At the moment, these stations survive only thanks to a few sources of support from development projects and international cooperation institutions, whereas it is the State’s duty to give grant support as stipulated by law in order to avoid situations where stations are forced to cease broadcasting, as has been the case in recent times, following the withdrawal of donors.

**Impact of the African Charter on Broadcasting**

A series of interviews conducted with key resource persons indicate that the African Broadcasting Charter remains widely unknown in Niger, including among professionals in the sector. This clearly illustrates that information on the Charter was not properly disseminated either by the UNESCO representative in the country, or by Nigerien media and civil society organizations. On this issue, it is striking to note that from 2001 to date, intensive campaigns carried out in Niger by professional organizations to improve the policy and legislative frameworks of the broadcasting communication sector made no explicit reference to the Charter.

It is notable that on the ground, public radio broadcasting programmes are largely dominated by propaganda, in a bid to please the current government. There is an urgent need to review the programming body of the ORTN, in order to include participation from civil society stakeholders. Public radio broadcasting officials should be appointed by an independent body such as the HCC to ensure the adequate representation of civil society. This is not the case presently, however, as under the new law governing the HCC, the principle of prior consultation is now called into question. Furthermore, it is equally striking to note that the need to move from State broadcasting to public service broadcasting is not clearly demanded by lobbyists, who seem to insist only on equal access by associations and political parties to State media. This implies that the notion of public service broadcasting is widely misunderstood.
Regarding community broadcasting, it is of note that operators do not have access to the Internet, thus depriving communities of an important tool. The Digital Convergence Fund was set up in Niger in 2007 aimed at extending information and communication technologies (ICTs) to rural areas. This fund is currently financed by a deduction from the turnover of telephone operators, even though the government of Niger has still not signed a decree specifying conditions for the use of this fund. There is thus an urgent need to legislate on the matter so that operators of the broadcasting community can be linked to the global network.
Case studies

Dolbel community radio

Situated 260 km west of the Nigerien capital, Niamey, Dolbel community radio is one success story in the community broadcasting sector. Its success is due to three factors. The first is the involvement of presenters and association members who have taken over the operation and managing of the station. The second factor is its location in an area of flourishing trade. The station has its highest turnover in terms of announcements and musical concerts on market days. Illiterate listeners who cannot fill their request cards have the possibility of recording their requests on cassettes before sending them to the station. The third factor is that Dolbel FM is situated only 12 kilometres from the border with Burkina Faso and its programmes are received in several Burkinabé areas leading some to some consider it a sub-regional radio station.

Alternative FM

Located in the capital, Niamey, this community radio station has established itself in the capital and its environs in particular as result of its numerous themed programmes aimed at youth and women. Human rights, women's participation in politics, health and food security are key features of its programmes. Alternative FM gives priority to social movements and organizes debates on emerging issues (e.g. globalization, North-South inequality, economic recession, climate change etc.). One of the key factors in Alternative FM's success is its solid partnership with several development organizations and donors that fund its activities. Its relative financial health enables it to pay competitive salaries to journalists and presenters, in contrast to other community radios stations whose activities are based on volunteering.
People consulted
Aboubacari Kio Koudize, Journalist, Former president of the ONC
Khamed Abdoulaye, Former Adviser, SNV
Ousmane Toudou, Former member of the CSC
M. Halirou, Réseau des radios communautaires,
Mamane Mamadou, Former member of the CSC
Ali Ramadan Sekou, Expert, Démocratie 2000 NGO
Boukar Gamborni, Former Secretary General of the CSC
Abdourahamane Ousmane, President, RJDH
Gremah Boucar, Former Parliamentarian, GM of Agence Anfani
Mme Moussa Kaka Djamila, President of the APRPN, GM of Saraounia
Mme Diaffra Fadimou Moumouni, Former SG of the ORTN, member of APAC, Niger
Ali Ousseini, Former General Manager of IFTIC
Narey Oumarou, Lecturer and Researcher at UAM
Gayakoye Abdourhamane, Magistrate
Me Moussa Coulibaly, Lawyer, President of the Bar Council

Legal and regulatory references
Decree N° 001/CSC of 17 July 1995 regulating the installation and use of private radio broadcasting and television services;
Deliberation N° 97-002/CSC of 4 July 1997 on the Charter of Professional Journalists;
Deliberation N° 02-2007/P/CSC of 27 August 2007 regulating the installation and use of private radio broadcasting and television services;
Law N° 67-011 of 11 February 1967 regulating public radio broadcasting;
Ordinance N° 93-021 of 30 March 1993 on the organization, competences and functioning of the Higher Communication Council (CSC);
Ordinance N° 93-029 of 30 March 1993 on the regime of freedom of the press;
Ordinance N° 93-31 of 30 March 1993 on broadcasting communication;
Nigeria - country assessment

Akin Akingbulu

Social, political and economic context

Nigeria is located on the eastern edge of West Africa. It shares borders with the Republic of Cameroon in the east, Benin in the west, Niger and Chad in the north and the Gulf of Guinea in the south. It has a population of approximately 150 million, composed of around 300 ethnic groups. The largest and most influential among these groups are the Hausa-Fulani in the north, the Yoruba in the south-west, the Igbo in the south-east and the Ijaw in the Niger Delta region. The major religions are Christianity, Islam and indigenous faiths.

Since the country gained independence from Britain in 1960, it has been ruled alternately by military and civilian leaderships. Military rule alone accounts for a total of 28 years since independence. The country returned to civilian rule again in 1999 under an American-type presidential system. The executive branch of government is headed by the President, assisted by a Vice President and Ministers. The legislative branch has two chambers, the Senate and the House of Representatives. The 109-member Senate is headed by a Senate President while the House of Representatives is headed by a Speaker. A Chief Justice leads the judiciary arm.

This three-pillar structure is replicated at the three tiers of government - federal, state and local. Elected officers hold office for four years at federal and state levels. The tenures of their counterparts at the local level are fixed by the state-level legislatures. Elected persons in the executive branch may hold a maximum of two terms. There are no term limits for members of the legislatures. The electoral system is handled by a combination of electoral management bodies. The Independent National Electoral Commission (INEC) registers political parties and conducts elections for federal and state-level offices. State Independence Electoral Commissions (SIEC) conduct elections for local government offices. Electoral disputes are handled by a hierarchy of judicial bodies from Election Petition Tribunals, through to the Court of Appeal to the Supreme Court.
Since the return of democratic rule in 1999, the government has articulated and sought to implement such development programmes as the National Economic Empowerment and Development Strategy (NEEDS), the Seven-point Agenda, and Vision 20-2020. But huge challenges remain to be overcome. An estimated 70 per cent of the population lives below the poverty line. Major infrastructure and public utilities have deteriorated, most citizens have no access to clean water, electricity supply is poor and the rail system is substandard. Oil remains the primary driver of the economy while other resources are poorly capitalized on. Conflicts continue to fester in various parts of the country. The electoral system has critical deficiencies which there has been a lack of political will to address.

**Broadcasting policy, law and regulation in 2001**

Policy on broadcasting has been embedded within a wider policy document, the National Mass Communication Policy 1990, which has not since been updated. According to this document, the country’s policy objectives of the broadcasting sector were, among others:

- the dissemination of information to enhance people’s welfare in such areas as health, economy and culture as well as the promotion of other values of national excellence
- the provision of efficient broadcasting services to the entire population based on national objectives and aspirations.
- ensuring that broadcasting programmes shall be a vehicle for mobilizing the rural population for national development and improving the quality of their lives
- providing regular channels of communication between the government and the people
- ensuring effective communications coverage across the country
- emphasizing the use of indigenous Nigerian languages in broadcasting to ensure direct relevance to local communities
- ensuring that the right of broadcasting professionals over editorial and programme content is guaranteed.
The policy articulates a four-point implementation strategy, which states:

(a) a broadcasting regulatory body shall be established
(b) imbalances in information flow shall be redressed such that information shall also be sourced from rural areas and communities
(c) audience measurement activities shall be carried out in all regions of the country to determine at all times the impact and effectiveness of the subject area
(d) viewing and listening centres shall be established in all local communities, as these are vital in ensuring communication flow and therefore the success of an audience measurement machinery.

On ownership of broadcast media, the policy document acknowledges the endorsement of private participation in Section 36(2) of the 1979 Constitution. But the policy concludes that: “the time is not yet ripe for private ownership of the (broadcast) media.”

There are several laws with direct or indirect impact on the broadcasting sector as of 2001. The Constitution of the Federal Republic of Nigeria 1999 is the basic law under which democratic rule was restored after the end of the last period of military government. It has some key provisions which directly affected the broadcasting sector. Section 22 gives the media, including broadcasting, the power to monitor governance. It says:

the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the Government to the people.

Section 39 deals with issues of freedom of expression. Its subsection 39(1) provides that:

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
Its sub-section 39(2) provides further as follows:

...Every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions, provided that no other person, other than the government of the Federation or of a state or any other person or body authorized by the President on the fulfillment of conditions laid down by an act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

This provision situates the final authority for the issuing of licences for broadcasting services other than government stations with the President. Sub-section 39(3) prepares the ground for government to sometimes deny the freedoms granted in sub-sections 1 and 2, for it says:

Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society –
(a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films

Another issue which strongly affects broadcasting in the Constitution is the collection of fees for the ownership of radio and television receiver sets. Under the Fourth Schedule of the Constitution, this function is assigned to local governments - the third tier of government. The constitution does not specify what the local governments should do with the money collected.

The Nigerian Television Authority Act of 1977 is the law with which the federal government (military at the time) established the Nigerian Television Authority (NTA) after the severance in the mid-1970s of television services from the parent Nigerian Broadcasting Corporation, which initially combined both radio and television. This law vested the NTA with exclusive right over television broadcasting in the country as is stated in Section 7 (1) of the Act:
The Authority shall, to the exclusion of any other broadcasting authority or any person in Nigeria, be responsible for television broadcasting in Nigeria and, accordingly, the transitional and savings provision in Schedule 2 to this decree shall have effect notwithstanding the provisions of any law under which any other broadcasting authority is established, and every such law shall be construed with such modifications, amendments and omissions as would bring it into line with the general intendment of this decree.

This monopoly was first dismantled by Section 36 of the 1979 Constitution and later by the National Broadcasting Commission (NBC) Act of 1992.

The law provides for appointment processes for the Governing Board of the Authority, but these processes are not transparent and do not guarantee security of tenure. Section 2 of the law provides for a Board which shall be appointed by the Federal Executive Council (the Cabinet) on the recommendation of the Information Minister. Although the Board counts among its membership representatives of women groups, the mass media, education, management, finance, engineering and arts and culture, there is no provision for the involvement of civil society or the constituencies represented by nominees to this board.

Members of this board who are not government officials have tenure of three years, renewable for a further three years. But they may be removed from office before completion of their tenure by either the Minister of Information or the Council of Ministers on any of four grounds: misconduct; inability to perform functions of their office; absence from two consecutive meetings without satisfactory explanation; and where it is felt that a member’s continued presence on the board is not in the national interest or the interest of the Authority. The government alone determines this “national interest” and “the interest of the Authority”.

Under what it calls ‘general duties’ in Section 6, the law mandates the Authority to “provide as a public service in the interest of Nigeria, independent and impartial television service” and to ensure that its services reflect the unity of Nigeria and give adequate expression to the culture, characteristics and affairs of each state, zone or other part of the country.
The particular functions of the Authority include:

- executing, maintaining and operating television transmitting and receiving stations,
- planning and coordinating the activities of the entire television network
- establishing production centres
- specifying programme types to be transmitted by the entire network
- collecting news and information, including subscribing to news agencies
- publishing printed matter that might be conducive to the performance of any of its functions

Controls which have the potential to erode operational and editorial independence are to be found in Section 10, 11, 12 and 13: the NTA has a duty to carry the speeches of such government officials as ministers, members of the federal legislature, state governors and members of the cabinet. The Minister of Information is empowered to give:

...directions of a general character or relating generally to particular matters with regard to the exercise by the Authority of its functions under this Act, and it shall be the duty of the Authority to comply with such directions.

The law provides for three main sources of funding for the Authority. These are: government grants, loans and such “other sources either in the execution of its functions or in respect of any property vested in the Authority or otherwise howsoever”. Advertisements fall under this last category.

The Federal Radio Corporation of Nigeria (FRCN) Act of 1979 was used to transform the earlier federal broadcaster, the Nigerian Broadcasting Corporation (NBC), established by ordinance in 1956, into a new body, the FRCN. Two amendments were later made to this law - in 1988 and 1991. Section 5 of the Act stipulates the “general duties of the Corporation”. These are that the corporation should:
(a) provide as a public service in the interest of Nigeria, independent and impartial radio broadcasting services for general reception within Nigeria and to provide external services for general reception in countries outside Nigeria; and

(b) ensure that its services reflect the unity of Nigeria and give adequate expression to the culture, characteristics, affairs and opinions of each state, zone and other parts of the country.

Specified in Section 7 are “particular functions” of the Corporation which include:

• erecting, maintaining and operating radio transmitting and receiving stations;
• installing and operating wired radio distribution services
• planning, regulating and coordinating the activities of the zones and the entire federal broadcasting system
• providing and receiving broadcast materials (news, information)
• acquiring copyrights
• publishing printed matehrs that may be conducive to the performance of its functions

Section 6 of this law grants the FRCN a monopoly for country-wide coverage. It says:

The corporation shall, to the exclusion of any other broadcasting authority in Nigeria, be responsible for radio broadcasting on shortwave or powerful medium-wave for effective and simultaneous reception in more than one state at any one time and, accordingly, any other broadcasting authority in Nigeria shall be limited to transmission of radio broadcasts for effective reception in one state or part thereof and, in pursuance of this sub-section, every radio broadcasting authority in Nigeria (other than those owned or controlled by the Government of the Federation) shall as soon as may be after the making of this decree, endeavour to transmit at such power as to ensure that the field strength, as measured at the state boundary, of which the transmitter is located, shall not be more than one milivolt per meter.
The membership and tenure of the Corporation's governing board are specified in Section 2. The board has a Chairman, the Director-General of the Corporation, one representative from each of the External Affairs and Information Ministries, and representatives of the following groups: women, mass media, education, management, finance, engineering, arts and culture. Members who are not government officials have tenure of three years, with possible renewal for the same length of time. No tenure limit is specified for government officials who serve on the board. All board members are appointed by the Information Minister with the approval of the Federal Executive Council (the Cabinet). There is no provision for consultation with civil society or the constituencies represented by these members before the appointments are made.

There is also no guarantee of tenure security for these members, and they may easily be removed before they complete their term. Section 3 provides that the Information Minister (with cabinet approval) may remove any member for any of four reasons: misconduct, inability to perform functions, absence from two consecutive ordinary meetings without acceptable explanation, and if the Corporation is satisfied that his continued presence on the board is not in national interest or the interest of the Corporation. The government alone determines what constitutes national interest and the interest of the Corporation.

Several provisions of the Act affect the independence of the Corporation in editorial and general operational matters. Section 9, for example, mandates the Corporation to cover the speeches of key government officials such as members of the Supreme Military Council, the National Council of States and the Federal Cabinet. Section 10 expands this group of privileged officials to include “authorized public officers”, meaning “any officer in any of the public services of the Federation declared to be such by the Head of the Federal Military Government.” Whenever an authorized public officer so requests, the corporation must broadcast a government programme at its expense. The power of the Information Minister to give directives to the Corporation for compliance is articulated in Section 14 of this Act. But it is given more force in the 1991 amendment to this law which states:
The Minister (of Information) may give the Corporation directives of a general character or relating generally to particular matters with regard to the exercise by the Corporation of its functions under this Act and it shall be the duty of the Corporation to comply with such directives.

The law provides for three major sources of funding for the Corporation. According to Section 23, these sources are government grants, loans and such sums of money which may be collected or received from the Corporation’s execution of its functions or in respect of property vested in the Corporation to whatever extent.

The National Broadcasting Commission (NBC) Act of 1992 established for the first time, a broadcasting regulatory body, the NBC, and paved way for liberalization of the broadcasting sector, particularly the inclusion of private concerns among owners and operators of broadcasting organizations in the country. It was amended by the NBC (Amendment) Act 55 of 1999, just as the military prepared to relinquish political power to civilian rulers.

The law stipulates the functions of the Commission (NBC) which include:

- receiving, processing and considering applications for the ownership of broadcasting stations.
- regulating and controlling the broadcasting industry.
- upholding the principles of equity and fairness in broadcasting
- establishing and disseminating national broadcasting code and setting standards with regard to the content and quality of broadcast materials.
- promoting Nigerian indigenous cultures and moral and community life through broadcasting.
- monitoring broadcasting for harmful emissions, interference and illegal broadcasting.
- determining and applying sanctions on broadcasting stations which do not operate in accordance with the broadcasting code.
- ensuring qualitative manpower development in the broadcasting industry by accrediting curriculum and programmes of mass communication in relation to broadcasting in tertiary educational institutions.
- intervening and arbitrating in industry conflicts.
The Commission does not have full powers in the area of licencing. The final approval power is vested in the President of the country according to the provisions of the Constitution of 1999, as outlined above. Under Section 2(1)(b) and (c) of the NBC Act of 1992, the role of the NBC in the licencing process is that of “receiving, processing and considering applications” and “recommending applications through the Minister (of Information) to the President, Commander-in-Chief of the Armed Forces for the grant of radio and television licences”. This section of the law operates in agreement with Section 39 of the Constitution.

The law provides for a governing body for the Commission. This body consists of a Chairman, the Director-General of the Commission, and ten other members who represent the following constituencies: law, business, culture, education, social science, broadcasting, public affairs, engineering, state security service and the Federal Ministry of Information. The Chairman and all the members are appointed by the President on the recommendation of the Information Minister. The law leaves the appointment process to the discretion of the Minster and President as there is no provision for input of stakeholders in the process. There is also no safeguard for tenure security for these members within the law. Each is appointed for a term of three years renewable for one further term of the same duration. But before tenure completion, any of them may be removed from office by the President if he is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office. The President (and the government) alone determines what constitutes the interest of the Commission and the interest of the public in this matter.

One key area in which the independence of the Commission is wholly compromised is the supervisory power granted to the (Information) Minister over it. Section 6 states:

... the Minister (of Information) may give the Commission directives of a general character relating to particular matters with regard to the exercise by the Commission of its functions under this Act and it shall be the duty of the Commission to comply with such directives.
To be eligible and considered for licencing under this law, an applicant must fulfill conditions such as being “a body corporate registered under the Companies and Allied Matters Decree of 1990 or a station owned, established or operated by the Federal, State or Local government”; demonstrating to the satisfaction of the Commission that s/he is not applying on behalf of any foreign interest; complying with the objectives of the National Mass Communication Policy as is applicable to the broadcast media; being able to give an undertaking that the licensed station shall be used to promote national interest, unity and cohesion and that it shall not be used to offend religious sensibilities or promote ethnic conflict, sectarianism, hatred or disaffection among the people of Nigeria. Fulfillment of these requirements does not automatically entitle an applicant to a licence. This is still subject to availability of frequencies and consideration of issues such as: the structure of shareholding in the (applicant) broadcasting organization; the number of shares held in other media establishments, and the distribution of these stations and establishments across urban, rural, commercial or other categorizations.

To address the issue of monopolies and media concentration, the law stipulates that: “it shall be illegal for any person to have controlling shares in more than two of each of the broadcast sectors of transmission”. Two groups, political parties and religious organizations, are ineligible for broadcasting licences under the law.

The Act provides for four funding sources for the Commission. These are:

- fees and levies to be charged by the Commission on the annual income of licenced broadcasting stations
- loans and grants from the federal or state governments
- gifts, loans, aid grants, bequests etc.
- other assets that may, from time to time, accrue to the Commission.

The Public Enterprises (Privatization and Commercialization) Act of 1998 was enacted to guide the federal government’s programme for the privatization and commercialization of enterprises in which it has an interest. The law creates a policy body, the National Council on Privatization, and an implementation agency, the Bureau of Public Enterprises (BPE).
Under the Second Schedule of this law, the FRCN and NTA are listed for “partial commercialization”. This status means that they shall be expected to generate sufficient revenue to meet their operating expenses, and to get government grants and/or loans from the financial sector, to meet their capital expenditure programmes.

Despite the return of democratic rule in 1999, the country’s media continues to operate in a strongly restrictive environment characterized by the retention and application of colonial- and military-era laws of sedition, official secrets and criminal libel, inter alia.

The Officials Secrets Act of 1962 restricts access to government-held information and criminalizes several categories of activities in relation to information held by government agencies. The law specifies a sanction of up to 14 years’ imprisonment for a violation and gives wide powers to the police to search those suspected of committing related offences.

The Law of Sedition occupies Section 50-52 of the Criminal Code Act of 1990 and Section 416-422 of the Penal Code (which is applicable in the northern states of the country and Abuja, the federal capital). The law punishes publications (these include non-print materials) with seditious intention. Section 50 of the law defines a “seditious intention” as an intention:

a) to bring into hatred or contempt or excite disaffection against the head of government or government itself, at federal and state levels
b) to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established
c) to raise discontent or disaffection among the citizens or other inhabitants of Nigeria
d) to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

Although lacking in effective decision-making powers or independence, the regulatory body for broadcasting has contributed substantially to the elaboration of the regulatory framework. Its key instrument is the National Broadcasting Code. Introducing its second (1996) edition, the then
Director-General of the NBC, Dr. Tom Adaba, stated that its objectives were to enable broadcasting to play a greater role in ensuring the accountability of government media to the citizens of Nigeria; to promote plurality of opinions across age, sex, socio-economic and geo-political barriers and so sustain the country’s democratic structures; to encourage the injection of life-giving capital into the industry; to provide a market for goods, services and ideas; be an honest vehicle to propel the industry in its role of social engineering towards the realization of a strong united nation; and to increase and improve career opportunity and job satisfaction for professionals in the broadcasting industry.

The code contains detailed guidelines on, among other matters, broadcasting and programming standards, coverage of news and current affairs, sports and outside broadcasting, sponsorship and advertising, and technical specifications. The Code also provides procedures for reporting complaints and for the exercise of sanctions by the NBC for non-compliance with the Code. Breaches of the Code include transmitting without a valid licence, deviating from the assigned technical parameters and the broadcasting of content in contravention of the programming obligations. Sanctions range from a written warning, a fine, suspension of the licence, to, in extreme cases, revocation of the licence.

In addition to the Code, the NBC had other regulatory instruments in place in 2001. Among these was a structure for licencing and related fees payable to it by broadcasting stations. There were three categories of licence fees. Category 1 was applicable in key urban locations, Category 2 in semi-urban locations and Category 3 in rural locations. Licences for Category 1 were 3million NGN (US$20,400) for radio, 1.5million NGN (US$10,200) for Television and 2.5million NGN (US$17,000) for cable/satellite re-transmission. These rates applied only to private stations. Stations owned by federal and state governments paid a flat rate of 50,000 NGN (US$340) regardless of location or type of state. Responding to widespread industry and public criticisms, the NBC said the licence fees for government-owned stations had been increased but did not make the new fees public at the time. The licence fees for private stations applied for a 5-year period. Licence renewal attracted the same amount for all categories. In addition, each station was expected to pay to the NBC 2.5% of its gross turn-over as annual charge.
Policy, law and regulations since 2001

In 2000/2001, the federal government took steps in the direction of law reform including the introduction of a bill in the National Assembly (parliament) seeking a review of the NBC Act of 1992 (as amended in 1999). The bill was not passed into law by the time that term (1999 to 2003) of the National Assembly ended, and the bill has not been re-introduced to the Assembly since then. In addition, a committee was set up within the Ministry of Information to review the laws by which information-sector agencies such as NTA and FRCN were established. The intention was to send the review document as a bill to Parliament. The committee’s work terminated when the Minister was removed, and the document never made its way to Parliament because of lack of interest on the part of subsequent Ministers.

In what is generally regarded as a response to civil society pressures, the government began a series of media policy reform activities in 2004. First, it set up a committee in mid-2004 to review the 1990 National Mass Communication Policy. In its report submitted in November 2004, the committee recommended inter alia, that: an equitable spread of broadcasting licence categories be established to ensure that no community or segment of the population is denied access to information through the broadcast media; the development of community broadcasting should be promoted; adherence to professionalism in broadcasting should be achieved through self-regulation and statutory regulation; the regulator should be a convergent body which combines broadcasting and telecommunications; the regulator should be an independent non-partisan, non-sectional body with well-defined funding sources; and that public service stations should be prohibited from commercial broadcasting.

Second, it set up another committee in August 2006 to design a National Community Radio Policy. The committee’s report articulated a series of recommendations which include the following: licences for community broadcasting should be free, while procedures for application and processing should be simple, transparent and community-friendly; broadcasting should be in the language(s) of the owner-community; stations should be granted transmission power of at least 100 watts;
sustainability should be encouraged through diversity of financing; and both the regulatory body and community members shall be involved in monitoring and evaluating community broadcasting stations’ activities.

Third, a media and communication thematic group was established in May 2009 as part of a National Technical Working Group to design a policy framework for the attainment of the government’s objective of having Nigeria become one of the world’s top 20 economies by the year 2020. In its report to the government, the group made the following recommendations, inter alia: extending the reach of broadcast media to communities in Nigeria; establishing community media outlets such as radio, newspapers, theatres and viewing centres in all Nigerian communities; instituting comprehensive policy and legal reforms in the media/communication sector; and using the media to promote open and accountable leadership at all levels.

The final documents from all these policy processes are still being expected from the government and none have yet been implemented.

Some changes have taken place in regulation. The regulatory code, now renamed the Nigeria Broadcasting Code, has twice been reviewed - in 2003 (third edition) and 2006 (fourth edition), while another review exercise has just been initiated by the NBC. The 2003 edition for the first time gave recognition to community broadcasting, while the 2006 edition elaborated on this further. Chapter 9 of the NBC Code 2006 explicitly acknowledges the African Charter on Broadcasting as a source and validation for its definition, stating:

9.0.1 Community broadcasting, recognized by the African Broadcasting Charter, as the third tier of broadcasting, is a key agent for democratization for social, cultural and economic development. It is a non-profit, grassroots public broadcasting service medium through which community members are able to contribute and foster civic responsibility and integration.

Among its guidelines on the subject is that the types of community to be licenced would include: a local, not-for-profit association; an educational institution; a cultural association; a cooperative society and a partnership of associations. In practice, however, only campus-based locations operated by tertiary educational institutions have so far been permitted.
Another significant regulatory change is in the licencing fee schedule. There are now two categories of commercial licences for the purpose of fees. Category A locations, including Lagos, Abuja and River State, attracts licence fees of 20million NGN (US$136,000) for radio and 15 million NGN (US$102,000) for television. Category B which applies in all other locations across the country, cost 15million NGN (US$102,000) for radio and 11.25million NGN (US$76,500) for television. A special licence fee of 1million NGN (US$6,800) has been created for university campus radio stations.

Broadcasting landscape in 2001

The implementation by government of the liberalization of the broadcasting sector, which was statutorily legalized by the NBC Act of 1992, continued into the year 2001. The regulatory body, the NBC, was established in 1993 and licensing of private commercial broadcasting organizations started the same year. This means that as at 2001, the broadcasting landscape included both government and commercial operators. There were two levels of government broadcasting. The first consisted of those owned by the federal government, with examples being the FRCN, NTA and Voice of Nigeria (VON). The second level comprised stations owned by the states, the second tier of government. There were 36 of these states.

The FRCN (also called Radio Nigeria) operated five stations consisting of a head office station in Abuja, the country’s capital, and four national stations located in Lagos (the former capital), Kaduna (in the north), Enugu (in the south-east) and Ibadan (in the south-west). The state governments altogether owned forty stations. The FRCN, mandated by statute, covered the whole country while state stations covered their individual state territories. The only external service broadcaster, VON, was controlled by the federal government. Government ownership of television stations followed the pattern of the radio sector. The NTA had 32 stations located in 24 states of the country. State governments controlled 37 stations.

In the commercial sector, there were nine television, eight radio, two global satellite television and fifteen satellite re-transmission stations. Commercial radio and terrestrial television states each covered a group of states allocated to it.
Political utility and commercial viability appeared to dictate the geographical locations of broadcasting stations. Government-owned stations were generally sited in the cities or towns which functioned as seats of government, i.e. state capitals. Commercial stations were concentrated in big commercial centres such as Lagos, Ibadan, Kaduna and Warri.

In 2001, the commercial broadcasting sector was dominated by local investors, some of whom had backgrounds in broadcasting. Foreign investment presence was seen in the pay TV sector, where such players as Multi-choice, a South African enterprise, were operating.

Commercial broadcasters had major challenges to tackle in the years up to 2001. Among these challenges were the fees payable to the NBC, the regulatory body. When the pioneer commercial stations were licenced in 1994, a radio station, for example in Lagos, would be required to pay a licence fee of 500,000 NGN (US$3,400). With the upward fees review in 1997, this amount moved to 3 million NGN (US$20,400). In addition, every station was required to pay 2.5 per cent of gross income as an annual charge. This latter fee sparked controversy leading to a court case in which the commercial broadcasters sought a declaration that the NBC Act did not “in any way confer absolute or unfettered powers on the NBC to ‘unilaterally and arbitrarily’ fix any fees/levy as it deems fit on private broadcasters without involving Independent Broadcasters Association of Nigeria (IBAN) members in some form of dialogue, negotiations or consensual agreement, or peculiar, financial constraints of private, owner”.

The broadcasters also asked the court to declare that immediate closure by NBC of their stations on account of failure to pay the levy without room for negotiation, was excessive, oppressive and disproportionate to an alleged breach of the Code of conduct or Decree…” However, the NBC did not budge. It claimed to be acting in accordance with section 14 (2) (a) of the NBC Act which empowers it to get funding from “such percentage of fees and levy to be charged by the Commission on the annual income of licenced broadcasting stations”.

On another front, the NBC and one of the commercial operators, Daar Communications, had a confrontation over attempts by the latter to broadcast on a national network in collaboration with some commercial and state-owned stations. The NBC said that Daar had no pre-requisite licence to launch a network in Nigeria. The company accused the NBC
of acting in bad faith and even received support from civil society organizations who issued a press statement on the issue. However, the NBC did not allow Daar to go ahead with the networking plan.

**Broadcasting landscape since 2001**

There have been several developments in the broadcasting sector since 2001. One major development has been the phenomenal expansion in the numbers of broadcasting stations.

The NTA began an expansion programme designed to establish an additional 67 stations in its network. Announcing the plan earlier (in December 2000), the Authority’s Director-General stated that the purpose was to “enable the authority cover adequately and accurately all the important activities of the three tiers of government”. The implementation progressed over the years, with the NTA generating funding support for the programme, not only from the federal government, but also the state governments. Figures are not available on the exact number of new stations so far set up. A similar expansion programme was also initiated at FRCN. The plan was to add 32 new stations to the existing network. It continues to be implemented, however figures on the completion rate are currently unavailable.

An increased number of commercial broadcasting licences have been issued since 2001. In 2002, sixteen radio and five television stations were licenced. Four of the radio stations were labelled “specialized stations”. These four included one campus radio station at the University of Lagos. Another batch of 38 licences comprising 28 radio and 10 television stations was approved in 2007. Among the 28 radio licences were 8 for campus stations in tertiary educational institutions. Then, in February 2009, a list of 18 campus stations was approved.

Institutional and environmental challenges increased for broadcasters in the post-2001 period. Changes in administration by governments have led to a high turnover of leadership in many government-owned broadcasting organizations. The regulatory body, the NBC, has had four Directors-General in this period; the FRCN has had five, while the NTA has had three. In state-level broadcasting stations, managers are usually removed and replaced by new governors after taking office.
Licence fees for commercial stations have again been reviewed upwards. A radio station in Lagos, Port Harcourt or Abuja, for example, now has to pay a licence fee of 20 million NGN (US$136,000). The contentious annual charge (2.5% of gross income) has not been abolished for commercial stations. But their government-owned counterparts are now require to pay 500,000 NGN (US$3,400) per annum.

Stations now face increased sanctions for alleged breaches of the law or the broadcasting code. For example, in 2005, Africa Independent Television (Lagos) was closed down for some days over alleged unprofessional coverage of an aeroplane crash. In 2006, Freedom Radio (Kano) was closed down for several days for alleged unprofessional handling of audience participation in a discussion programme. In 2008, Channels Television (Lagos) was shut down and its editors arrested over a story which allegedly suggested that the President of the country was contemplating resignation on account of his health. In 2007, eleven stations (both government-owned and commercial) were each fined 500,000 NGN (US$3,400) for allegedly violating guidelines on political reporting during the 2007 national elections.

In 2006, a presenter on Africa Independent Television was arrested and taken to court on sedition charges for statements made during his discussion programme, Focus Nigeria, to the effect that a faulty Presidential aircraft which the government claimed was new may just be a used, second-hand vehicle.

**Community radio**

Community radio was not recognized in the 1990 National Mass Communication Policy. Indeed, the policy proscribed all forms of private ownership and operation of broadcasting stations. Two years later, the same federal government reversed the position by enacting the NBC Act of 1992 which opened up the broadcasting landscape for private participation, but without making any specific recognition for community broadcasting. Indeed, there are indications in the law that suggest the vision for liberalization which the NBC Act was to deliver was in fact commercial broadcasting. For example, one of the requirements for consideration of a licence application stipulated in Section 9 of the NBC Act is “the structure of shareholding in the broadcasting organization”.
Under the Second Schedule of the law which outlines the application form for grant of a licence, an applicant is required to state, among other details, the names and nationalities of shareholders and shareholdings as well as equity structures in the broadcasting organization. However these requirements are alien to the non-profit organizations applying to establish community radio stations.

Community radio development is however strongly favoured in the various policy documents currently being processed by the government. These include the reviewed National Mass Communication Policy, the Community Radio Policy and the Vision 20-2020 document. The space available in the law which may apply to community broadcasting is in the 1999 amendment to Section 9 (1) (a) of the NBC Act of 1992. The amendment provides that an applicant for licence shall be “a body corporate registered under the Companies and Allied Matters Decree 1990 or a station owned, established or operated by the Federal, State or Local Government.” The Companies and Allied Matters Law of 1990 recognizes and provide for corporate bodies in the non-profit as well as business/commercial/profit-oriented sectors.

Community broadcasting has also been recognized in regulation. Provisions were made for it in the 2002 edition of the Broadcasting Code and improved upon in the 2006 edition, currently in use. The Code defines a community in geographical and interest terms. It says that a community “shall be a group of people residing in a particular geographical location or sharing a strong interest which the community desires to develop through broadcasting”.

It recognizes the following as corporate forms of community which could own community broadcasting stations: a local, not-for-profit organization; an educational institution (e.g. university campus); a cultural association; a cooperative society; and a partnership of associations. It adds that a community broadcasting service shall be owned and controlled by the community through a trusteeship or foundation with a board of trustees. The document provides for three funding sources for community broadcasting: resources from the community raised through levies, contributions and membership fees, etc; donations, gifts or grants; and local advertising.
The code prohibits the granting of community broadcasting licences to religious organizations, political parties, individuals and profit-oriented corporate bodies.

The regulatory body has a six-stage licencing procedure for all broadcasting sub-sectors and categories, which should equally apply to community broadcasting:

1. A prospective applicant put in place a corporate body and incorporates it with the Corporate Affairs Commission.
2. The organization purchases/collects an application form from the Finance Directorate of the National Broadcasting Commission (NBC).
3. The organization completes the form and returns it to the Commission with a detailed feasibility study.
4. The NBC processes the application through the Minister of Information and Communication to the President who gives final approval.
5. The successful applicant pays for the licence.
6. Licence is issued and frequency allocated to the applicant.

However, the licencing process is not as simple as the procedure outlined might suggest. Because the process involves three levels - the NBC, the Information Ministry and the Presidency - the licencing period is uncertain. Applicants may not receive information again once the applications leave the tables of the NBC for the higher levels. Applicants denied licences may not get any explanation, and the regulatory process has no provision for appeals.

Meanwhile, community radio stations serving grassroots, under-served communities, as envisaged by the African Charter on Broadcasting and by local community radio advocates in Nigeria, have not been licenced. But twenty-seven radio stations have been licenced on campuses of tertiary educational institutions and several of them are already operating. The regulatory body categorizes campus radio stations as a form of community broadcasting.
After the President’s approval of applications, campus radio stations are issued licence approval letters which carry such terms as: payment of a licence fee of 1 million NGN (US$6,800) for a period of five years; registration of any broadcast equipment imported into the country; prescribed limits on transmission power; certification of equipment installation by the NBC before commencement, registration with the NBC of a station identification (call sign); programming to include 60 per cent local content and 80 per cent Nigerian/African music; audited accounts to be submitted annually to the NBC; payment of an annual charge to the NBC of 2.5 per cent of income; and compliance with the NBC Act and the Nigeria Broadcasting Code.

Radio Unilag, the radio station of the University of Lagos in 2004, was the first campus radio station in the country. Others now on the air include Diamond FM (University of Ibadan), Lion FM (University of Nigeria, Nsukka), Search FM (Federal University of Technology, Minna), BU FM (Babcock University, Ilishan), and UniZik Radio (Nnamdi Azikiwe University, Awka). These stations have developed programming at a high professional level such that some, such as Radio Unilag, now provide internships to students from other universities. But the campus stations face internal and external challenges. A large proportion have not started operating for financial reasons. Some are slowed down by bureaucracy in their owner-institutions.

They have also faced difficulties from the regulator. In the absence of a clear framework for the funding of community (including campus) broadcasting in the country, there were reports in 2009 that the NBC wrote to one of the stations, asking it to stop carrying advertisements. There were also recent reports that the NBC is asking the stations to pay an “annual frequency allocation fee”. This would be in addition to the licence fees and annual charges.

Impact of the African Charter on Broadcasting

Interviews were conducted with twenty people, representing key stakeholder constituencies, to get a picture of the impact of the African Charter on Broadcasting on policy, law and regulations and the broadcasting landscape along with related observations on the value and use of the charter.
Those interviewed included policy-makers and regulators, parliamentarians and politicians, media professionals and associations, media rights and freedom of expression defenders, civil society and the general public.

On the general legal and regulatory framework the majority (up to 70 per cent) of those interviewed are of the opinion that the broadcasting landscape has seen some improvement since 2001.

Areas of improvement include: emergence and expansion of the private broadcasting sector in terms of numbers of stations; the assertiveness of the NBC to enforce some regulatory guidelines; recognition and reflection of the three tiers of broadcasting (including community broadcasting) in the Nigeria Broadcasting Code; licencing of many commercial and campus radio stations; development of vibrant commercial stations with editorial independence to a large extent; provision of local content quota as well as for independent productions - in regulation; more freedom for professional practice/less harassment of professionals by security agencies; better debates on political issues; and the plan to licence networks with country-wide coverage to break the monopoly of the government-owned national broadcasters.

There were also several shortcomings or areas of decline noted: despite democratic rule in the country there are still cases of arbitrary arrests and detention of journalists as well as illegal shut-down of media (including broadcasting) houses; the operation of the broadcasting sector remains based on outdated policy instruments; many government-owned stations are not independent; there has been a failure to licence full-fledged community broadcasting stations; the legal framework allows only the President of the country to approve broadcasting licences; the NBC is treated as an appendage of the federal government, ruling party and state officials interfere in broadcasting content; poor funding levels for state media; the failure of government agencies to pass the Freedom of Information Bill into law; concentration of broadcasting licences in the commercial sub-sector; and the failure to review the NBC Act.

In terms of public service broadcasting around 60 per cent think that there has been an improvement in the status and performance of principal state-owned broadcasters such as the NTA and FRCN. The main areas of
improvement identified include: acquisition of modern broadcasting equipment; expansion of services and coverage to large parts of the country and even in the case of NTA, to international audiences, with the opening of an international station; diversity in programming and increase in local content; higher programme quality through better picture quality on NTA stations; enhancement of programme production at zonal levels; and the development of internal regulatory mechanisms such as the code of coverage for elections.

Several areas of decline were also identified: lack of editorial independence, which reduces public broadcasters to mere mouth-pieces of government; suppression of opposition/independent voices; commercialization of services which has undermined the public service principles on which they were established; poor funding; and growing dependence on game shows.

Regarding community broadcasting about 55 per cent say there has been some improvement since 2001 in the legal and regulatory status as well as the range and diversity of community broadcasting services. The main areas of improvement listed are: the efforts being made by government to come up with a legal and regulatory framework for the licencing and establishment of community radio; the licencing of 27 stations in tertiary educational institutions, as a prelude to licencing of proper community radios; a national policy on community radio development is in process; better understanding of the concept of community broadcasting by regulators and prospective community licencees; and development of a regulatory framework for community broadcasting.

The main areas of decline noted are: continued manoeuvrings in government to delay the licensing of true community radios, the setting up of more federal government-owned radio stations, with the claim that these could fulfil community aspirations; absence of a legal instrument that makes community broadcasting possible in the manner that it operates in other African countries and beyond; and the reluctance of government to deploy political will and take the policy process for community radio development to a positive conclusion.
Telecommunication and convergence is the area with the highest endorsement of improvement. About 55 per cent believe there has been great improvement, while about 40 per cent say there has been some improvement. Areas of improvement identified by interviewees include: policy, legal and regulatory reforms in the telecommunications sub-sector; expansion in services and better access to citizens in such areas as telephone and internet, etc; convergence development has enabled media such as newspapers to have on-line editions; the merger of two former supervising ministries - one for Communications, the other for Information and National Orientation - into one ministry, now called Information and Communication; and robust usage of ICT in such industries as banking, health and education.

Interviewees considered the main areas of decline in telecommunications and convergence as being: delay in the merger of the National Broadcasting Commission and Nigerian Communications Commission; the frequency of technical service disruption in telephone services; on-line services in such sectors as banking experiencing problems; the high cost of internet access making it unaffordable for many citizens; poor enforcement of regulations (poor commitment to consumer protection by the regulator); poor security of communication and privacy as SIM card registration has yet to take-off; disrespect for policy guidelines, such as on co-location of masts, by operators; and the fact that universal telecommunications service coverage has not reached many areas of the country.

The interviewees rated the awareness of the African Charter on Broadcasting among various groups. They deemed awareness to be highest among media rights and freedom of expression defenders (average=6.6 on a scale of 1=no impact to 10=very high impact). There was felt to be moderate awareness among media policy makers and regulators (average=5.6), civil society organizations and the general public (average=5.1), and media professionals and media organizations (average=4.9). Awareness was assessed to be lowest among politicians and parliamentarians (average=3.2).
Interviewees think that the following strategies have been most successful, since 2001, in raising awareness of the Charter and its contents among key stakeholders: advocacy/public awareness campaigns; workshops and seminars for stakeholders; lobbying of government agencies; media briefings; and conference declarations/statements.

Additional strategies suggested in the future for increasing awareness of the Charter include: questioning political office-seekers about the Charter during elections; more advocacy programmes on existing government and commercial broadcasting stations; a series of social dialogues with key stakeholders underlining the importance and promotion of community broadcasting; special events (such as talkshops) for parliamentarians; more lobbying of government bodies including the executive, legislature and regulator; organize more training (e.g. workshops, seminars and roundtables) for stakeholders such as legislators, media professionals, civil society representatives, regulators, bureaucrats etc.; incorporation of the Charter's issues in the curricula of training institutions; advocacy sessions involving collaboration between journalism schools and civil society groups; mobilization at the grassroots level through radio-based campaigns; establish media forums on the Charter and educate journalists on its provisions, and set work targets for dissemination of the Charter to the public; build and strengthen alliances of media, civil society and other groups to popularize the Charter; reproduce the Charter for mass circulation among relevant interest groups and stakeholders.

Interviewees rated the impact of the African Charter on Broadcasting on various policy areas. Its impact was assessed as being low to moderate with respect to the general legal and regulatory framework (average=4.1 on a scale of 1=no impact to 10=very high impact), public service broadcasting (average=3.9), and community broadcasting (average=4). Impact was assessed to be moderate in the field of telecommunications and convergence (average=5.3).

Interviewees identified the main ways in which the Charter has impacted on policies, laws and regulations. Television stations are now required to broadcast local (Nigerian) content during the 7.00pm to 10.00pm belt. It has been the major point of reference for community radio advocacy, and advocates have consistently relied on and cited it. It has facilitated the
initiation of the community radio debate in the country. It has served as a useful reference point and guide for developing countries’ broadcast laws and policies. It has contributed more widely to the inclusion of civil society activists in Nigeria’s policy drafting bodies.

They also identified factors limiting the impact of the Charter. These include lack of political will on the part of policy-makers to align the country’s policies, laws and regulations with the provisions of the Charter; continuing widespread ignorance of the Charter within legislative and executive arms of government; poor awareness by citizens and lack of full commitment to implementation by state parties; the slowness of the country’s democratization process.

Regarding the possible need to revise the Charter’s contents, most of the interviewees consider the document to be satisfactory for now, and that countries like Nigeria which have lagged behind, should implement its provisions. Some felt there should be some stock-taking on political developments in Africa and new challenges posed by new ICTs (since 2001) and that lessons learned should be incorporated into the Charter.

Additional points made by interviewees included: the need for monitoring and evaluation on a country-by-country basis; governments, particularly policy-makers, should use the Charter as a guide in deciding the future of broadcasting on the continent; sanctions could be articulated and enforced on countries which refuse to implement the provisions of the Charter.
Case studies

Community radio development is yet to be properly implemented in Nigeria, however 27 campus radio stations have been licensed and several are now broadcasting.

Radio Unilag

This is the campus radio station of the University of Lagos. It became the first campus radio to be licensed in Nigeria when it received what the regulatory body called a ‘specialized’ licence in 2002. It went on the air in 2004 and now broadcasts on 103.1 FM. The station is under the supervision of the University’s department of Mass Communication. It has a governing board whose membership is sourced from various departments of the institution.

The radio station’s objectives include: to optimize instructional and educational opportunities available to Nigerians in order to facilitate sustainable human development in Nigeria; to serve as an authoritative channel of instructional and educational programmes for tertiary level students and other adults seeking knowledge in order to improve themselves; and to provide opportunities for schools to engage in appropriate research that can advance the knowledge and practice of radio broadcasting and mass communication.

The station serves two levels of audience: on-campus and around-campus. In addition to its variety of programmes, it now gives airtime to the Distance Learning Institute of the University to broadcast educational programmes. The station has several permanent members of staff (who are experienced broadcasters) while University students work as volunteers. It also accommodates students from other tertiary institutions for industrial training programmes. It is headed by a broadcaster with long professional experience.
Diamond FM

This is the radio station of the University of Ibadan. Prior to the station’s licensing in early 2009, the University put in place an establishment planning process which was handled by a governing board which had campus-wide membership, i.e., it drew membership from faculties and divisions of the institution. The board is still in place. Over 90 per cent of the station’s personnel are volunteers drawn from among the students and staff. A few staff are on contract appointments. The Coordinator is a veteran broadcaster who is also a lecturer in the University’s department of Communication and Language Arts. The station provides programmes for both campus and neighbouring communities. In addition to airing programmes which cater to the University community’s general tastes, it provides airtime for delivery of lectures by the Distance Learning programme of the institution. There are programmes for specific audience segments such as persons with disabilities. An indigenous language programme, which targets the University’s neighbouring communities, is aired on Fridays.
Persons consulted

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Policy, legal and regulatory references

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Federal Radio Corporation of Nigeria Decree (1979)
National Broadcasting Commission Decree (1992)
Official Secrets Act (1962)
Criminal Code (Sections 50-52)
National Mass Communication Policy (1990)
Senegal - country assessment
Mor Faye

Social, economic and political context

Senegal has a population of approximately 12 million inhabitants, on a surface area of 196,000 km$^2$. Its economy is predominantly based on livestock, agriculture and fisheries. Commonly spoken languages are Wolof, and French, the official language. Several other languages are spoken, reflecting the principal ethnic groups.

The Senegalese political system has long been considered a model of democracy$^{17}$ in Africa, indicated by the competitive multiparty electoral system and media pluralism evident from the 1970s on. However, year after year, this system tends to look more like a “semi-democracy”, “without power change” or an “uncompleted democracy” (Samb, 2004, p.41). Nevertheless, on 18 March 2000, there was a democratic handover of power, marked by the electoral defeat of the Socialist regime that had been in power since the country’s independence in 1960. The opposition took over under the leadership of the current head of state, Abdoulaye Wade. One of the key features of this change was that it was led by popular demand expressed particularly by thousands of Senegalese youths, victims of unemployment, who gave a huge vote of confidence to the new President and his allies of the “Bokk Sopi Senegal”$^{18}$ coalition, in a bid to put an end to the prevailing economic and social crises.

From 2000 to 2002, the new regime enjoyed a certain amount of grace. However, in the face of rather slow progress in solving the country’s problems, a new idea emerged, upheld by Senegalese public opinion, including by local journalists, that it was impossible to solve in a few months, problems that had existed for forty years, and that the new regime needed some time to implement its economic and social development programme.

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$^{17}$ From 1960 to 1990, except for the well-known case of Senegal, the one-party civil or military political system was practically the norm in all of francophone Africa (Coniac, 1993).

$^{18}$ In Wolof, “Bokk Sopi Sénégal” literally means “together to change Senegal”.
However, since 2002, a series of issues have contributed towards eroding the regime’s popularity base, including audit recommendations that were not implemented, because those targeted rallied behind the new regime, contributing towards the development of “political migration”\textsuperscript{19}; the sinking of the ship, the Joola\textsuperscript{20}; the persistence of corruption within the machinery of government (USAID Report, 2010); the persistence of both rural and urban poverty; the energy crisis; and government instability\textsuperscript{21} caused by ongoing cabinet reshuffles.

These factors gave rise to much discontent among a significant part of the population against the regime of change, and there was widespread surprise when Abdoulaye Wade was re-elected in 2007 for a second five-year term. Senegalese political analysts even talked about the existence of “irrational voters” in Senegal (Silla, 2007), in order to explain this apparently paradoxical re-election. Since then, the local, municipal and regional elections of March 2009 have been won by the opposition in virtually all regions of the country, including Dakar, the capital, the latter phenomenon considered to be a major political event. The country’s political agenda is currently dominated by prospects for the 2012 presidential election.

**Policy, legal and regulatory framework in 2001**

The Constitution of Senegal, adopted by referendum on 7 January 2001, protects freedom of speech. Article 8 guarantees “freedom of expression” quoted in the title dealing with “Civil and political rights”; Article 10 guarantees “the right to freely express opinions through speech, writing, image or peaceful march” and Article 11 dwells on “freedom of creation” and provides the possibility to launch without prior authorization “a press organ for political, economic, cultural, sports, social, recreational, scientific information”.

\textsuperscript{19} This term refers to automatic rallying of some politicians behind the current regime when their party loses power. The reason for this rallying is purely opportunistic, or a bid to avoid legal proceedings due to embezzlement or other misdemeanours.

\textsuperscript{20} This ship operated between Ziguinchor and Dakar. At the time of its sinking in September 2002, it had over 1,800 people on board, even though its capacity was estimated at 550 passengers. Only 64 people survived.

\textsuperscript{21} In his eight years of power, Abdoulaye Wade has appointed 105 ministers and sacked 77 during 9 cabinet reshuffles and made as many ministerial arrangements.
Despite these assurances, restrictions still exist in Articles 72, 80 and 255 of the Senegalese Penal Code, repressing all statements likely to “disturb public order”, “incite rebellion among the population” and “broadcast false news”. Article 139 of the Penal Procedure Code allows that prior to judgement, any individual accused of a crime can be handed over to the courts, simply upon instruction from the Prosecutor.

Regarding the broadcasting media, the main laws in force in 2001 were Law 92-02 of 16 December 1991 creating a national company known as Radio Télévision Sénégalaise (RTS); the 1994 guidelines applicable to private commercial radio stations; Law 96-04 of 2 February 1996 relating to social communication organs and to the journalism and technician professions; the specifications of 1996 relating to community radio stations and Law 98-09 of 2 March 1998, creating the Haut Conseil de l’Audiovisuel – (the High Broadcasting Council). These laws were developed in the 1990s under the previous socialist regime. They encouraged the liberalization of the airwaves, with the launching of the first private commercial radio stations such as Sud FM Sen Radio, created in 1994, and the first community radio stations such as Penc Mi FM, created in 1996. However, they also allow the State to maintain its monopoly over the public broadcasting sector and prevent the emergence of a private television sector.

Radio was introduced to Senegal in the 1930s. Although television was established in Senegal in 1965 (with the support of UNESCO), proper broadcasting of programmes only began in 1972 during the Munich Olympic Games. In the context of the authoritarian construction of the postcolonial State of Senegal, characterized from 1966 by the rolling back of the political and media pluralism inherited from the colonial period in favour of the party in power (the Union Progressiste Sénégalaise - Senegalese Progressive Union - UPS) the radio and television sector as well as the print media automatically became a State monopoly (Sy, 2003, p. 33). This desire to keep the broadcasting sector under State control was consolidated through the enactment of Law 73-51 of 4 December 1973, allowing radio and television to be united under a single body known as the “Office de Radiodiffusion Télévision du Sénégal”, the Senegalese Radio-broadcasting and Television Office (ORTS), an administrative public establishment. From the start, this situation led to the legal and economic dependence of the sector vis-à-vis the State, which exercised a complete monopoly over all forms of broadcasting at the national level (Fall, 2008, p. 43).
Hence, from 1973 to 1992, in terms of its structure and editorial line, the ORTS never functioned as a public service media body. During this period, national radio and television were exclusively at the service of the State and its ideology. They were inaccessible to the opposition, who returned to the political scene in 1974, as well as all non-conformist voices, operating instead in favour of the regime under Presidents Léopold Sédar Senghor and Abdou Diouf. Far from reflecting the country’s realities, national radio and television services were limited to mere propaganda tools. This explains why the authorization of a partisan press in the mid-1970s and a private press in the 1980s was considered a breath of fresh air by all those who had hitherto had no access to national broadcasting media (Faye, 2008), even as they continued to clamour for greater access.

It is within this context, where radio and television were increasingly losing their legitimacy and credibility, that Law 73-51 of 4 December 1973 was repealed and replaced by Law 92-02 of 16 December 1991, creating a national company known as the “Radio Télévision Sénégalaise” (Senegalese Radio and Television). The ORTS therefore became known as the RTS. An attempt to analyze the terms of this law indicates that the major change brought about by this new law relates to the funding of the national broadcasting sector, which now no longer depends on the State, but relies on income from its own activities. On almost all other provisions, the new law reaffirmed the monopoly of the RTS, and thus of the State, over all means of broadcasting. Although Article 2 assigns objectives to the RTS including, inter alia, meeting the information, cultural, educational and entertainment needs of the population, and contributing towards strengthening national unity, the same article highlights that the RTS:

“Has monopoly to broadcast and distribute to the public, radio and television programmes, throughout the entire national territory. The involvement of a concessionaire in exercising this monopoly is, as the case may be, dependent on agreements specifying reciprocal obligations between the concessionaire and the national company. These agreements are approved by decree”.

The African Charter on Broadcasting
It should be noted that this excerpt from Article 2 of Law 92-02 of 16 December 1991, by allowing the RTS to have monopoly over all means of broadcasting, grants it considerable prerogatives concerning the allocation of broadcasting frequencies and sows the seeds of conflict between the RTS and future private commercial radio stations when these are finally granted authorization to broadcast.

At the same time as the enactment of Law 92-02 of 16 December 1991 creating the RTS, another law was passed, Law 12-02 of 16 January 1992 relative to the status of the RTS. Analysis of this law in terms of its capacities to guarantee the RTS a status that is conducive to the independence of the national broadcasting sector vis-à-vis the ruling authorities, reveals that the law further strengthens the State’s grip over this sector. Of the 12 members that comprise the Board of Directors of the RTS, only two are appointed based on their professional experience. The other ten members are appointed by the regime based on its “own criteria”. An examination of the composition of the Board of Directors clearly indicates allegiance to the ruling authorities, such as the fact that the President of the Board is appointed by the President of the Republic and that all Board members are appointed for a two-year term, renewable without limit.

In light of the complete control of the State over the RTS, the idea of establishing a pluralistic broadcasting media by ending State monopoly of the airwaves only materialized in the 1990s. President Abdou Diouf personally alluded to this in 1991 while talking to Radio France Internationale (RFI), which had only then been authorized to broadcast on FM in Dakar:

“In any case, we live in an open world, in an era of satellite communication. It is clear that no country can attempt to protect itself. Besides, it would not be reasonable to attempt to protect oneself; I believe it will be good to have such diversity in our media landscape. This will strengthen output quality, not only because of your arrival, but also because of the need for Senegalese media to adapt” (Paye, 2002).
Seizing on this declaration by President Diouf, officials of the Sud Quotidien newspaper, following three years of intense negotiations with the State, obtained a licence to launch Sud FM Sen Radio, which began broadcasting on July 1, 1994. This was the first Senegalese private commercial radio station, followed by Radio Dunya, Walf FM and Nostalgie. Today, the Senegalese radio landscape has over twenty private commercial radio stations. This wave of private commercial stations was followed by that of community radio stations set up in rural, semi-urban and even urban areas. These private commercial and community stations, in the absence of a legal framework, were nonetheless still regulated only by specification and concession agreements, mere administrative documents linking them to the Ministry of Communication and as such, not binding.

Regarding the regulation of private commercial radio, 32 articles apply. According to Article 1, “a commercial radio station is defined as any station that is not under the control of public authorities, and one with an essentially commercial objective”. Other articles specify the obligations of private commercial radio stations, regarding control; technical obligations; obligations relating to participation and programming; advertising and sponsorship; the safeguarding of pluralism; the right to rectify and the right to reply. All these obligations are accompanied by possible sanctions in case of non-compliance, including temporary suspension or permanent withdrawal of the broadcasting licence.

Regarding the regulation of community radio, 22 articles apply. Article 1 states that “a community radio station is any non-profit private radio station”. Apart from their non-profit status, and their prohibition from participating in political debates and advertising, community stations are subject to virtually the same obligations as private commercial broadcasters.

In 2001, private commercial and community broadcasters were not only answerable to the Ministry of Communication through specification documents which it could cancel whenever it pleased, but were also, technically dependent on the RTS, charged with the management of frequencies, under Article 2 of Law 92-02 of 16 December 1991, mentioned above. Private commercial and community radio stations were thus obliged to pay fees for frequency allocation to the RTS, their direct competitor (Loum, 2003, pp. 116-117). Thus on 8 August 1997, exercising its ability
to sanction private commercial and community broadcasters, RTS to suspended signals for Sud FM, Dunya and Nostalgie for unpaid licence fees and fined the stations the following amounts: 20 million FCFA (approximately US$43,000) for Sud FM, 27 million FCFA (approximately US$48,000) for Dunya and 18 million FCFA (approximately US$39,000) for Nostalgie. It was not until 1999 that the Minister for Communication announced that the RTS would no longer be a member of the Commission for allocating frequencies and that licence fees would henceforth be paid directly to Senegal’s Public Treasury.

Law 96-04 of 2 February 1996, relating to social communication organs and the journalism and technician professions, is not specific to the broadcasting sector, but regulates all categories of Senegalese media, including print and broadcasting media. It determines conditions for the creation, operation and regulation of press organs; the conditions required to practice in the journalism and technician professions; and the conditions required to obtain a press card and to receive public grants, which had just come into force. Under pressure from SYNPIC, (Syndicat National des Professionnels de l’Information et de la Communication du Sénégal, - the Union of Senegalese Information and Communication Professionals) the main objective of this law, according to Mame Less Camara\textsuperscript{22}, a correspondent for BBC Africa, was to revise the “liberty-killing“ Law of 1979 that until then had served as the Press Code. The Law of 1979, inspired by the 1918 Charter of French Journalists, outlined the duties of a journalist, from the State’s point of view, barely alluding to the rights of journalists and failing to clearly define either their status or that of the press. Drawing inspiration from the 1971 Munich Charter relating to the rights and responsibilities of journalists, Law 96-04 covered these aspects that the Law of 1979 had failed to provide for. Considering that private commercial radio stations only came into being in 1994, Law 96-04 also provided the opportunity to include them in its general provisions.

\textsuperscript{22} Interview for this study: 16/03/2010.
However, as Law 96-04 was enacted only a few months prior to the signing of specification documents for the first licensed community radio station, it did not take into account this new type of radio and the status of its staff, thereby automatically excluding it from public aid. Law 89-09 of 11 February 1998 created the Haut Conseil de l’Audiovisuel (HCA - the High Broadcasting Council), replacing the Haut Conseil de la Radio Télévision created by Law 92-57 of 3 September 1992 relating to public broadcasting pluralism. As stated by the explanatory memorandum of the 1998 Law, the official objective of the new Council is to endow Senegal with a proper regulatory body:

“in charge of ensuring objectivity and pluralism of information, for free and healthy competition between broadcasting media. It assists public authorities in implementing their duties as assigned to them by the Constitution, laws and regulations of the Republic”.

The State’s justification for creating the new Council was to overcome the limitations of the previous one, which could not make judgments regarding new radio stations. In reality, as illustrated by its functioning and the partisan statements of its President, Babacar Kébé, against private commercial broadcasters, the High Broadcasting Council is in fact, more than a regulatory body. It is a political mechanism set up to counter the rise of private commercial radio stations whose outlook is generally hostile to the ruling authorities.

However, despite the technical and administrative challenges that they face, private commercial radio stations have in fact significantly transformed the radio landscape, within a very short period of time. A significant development was the fact that, for the first time, stations not under the influence of government control could reach the people through programmes and information bulletins in local languages, i.e. with no language barrier. This contrasted with the independent print media which, although licensed since 1974, had always faced problems of accessibility, as the majority of Senegalese were mostly illiterate. Another development brought about by these radio stations was interactive programming which, from the outset, enabled listeners, irrespective of their social status, to express their (usually critical) opinions of the government live on air. An example of this interactive format was the
Sud FM programme Wah Sa Xalat (“express your thoughts” in Wolof), a true “media bomb” directed against the ruling government which at the time faced dwindling popularity, confirmed by its defeat in the elections of March 2000. In fact, the private media, particularly private commercial radio stations, played a crucial role in the transparency of these elections. Despite limited human, financial and logistical resources, they covered all the main voting offices in the country. In order to prevent electoral “irregularities”, they obtained and published the results of each voting office, live on air, thus enabling political parties and members of the public to effectively estimate results before they were officially published. These efforts were instrumental in consolidating the feeling among private media journalists that their role was vital in bringing about the change, which may not otherwise have occurred.

Policy, legal and regulatory framework since 2001

Analysis of both the legal and regulatory framework governing the media in Senegal and interviews with key actors as part of the present study indicate that there has been very little change in radio broadcasting policy in Senegal since 2001, either from the legal or regulatory point of view. The State’s continuous grip over the public broadcasting sector is obvious, despite promises of reform, even if this monopoly is balanced by the launch of private television channels by national operators. With regard to private commercial and community radio stations, in the absence of a legal framework pertaining specifically to them, they continue to operate based on regulations outlined by specification documents.

Nevertheless, it is worth noting the enactment of the Telecommunications Code, establishing a new authority, the Agence de Régulation des Télécommunications et des Postes (ARTP - Telecommunications and Postal Regulatory Agency), responsible for licencing management as well as dissolving the HCA and replacing it with a Conseil National de la Régulation de l’Audiovisuel (CNRA - National Council for Broadcasting Regulation).
Following the successful elections of 2000 and a campaign marked by a firm promise by the new Head of State, Abdoulaye Wade, to profoundly reform the national broadcasting sector, which for 40 years had remained an exclusively political preserve, (Sy, 2003, pp. 11-12), an informal working group on the broadcasting sector was set up, under the leadership of Jacques Habib Sy, a renowned academic, communication expert and founder of the NGO, Aid Transparency (Fall, 2008, pp. 46-49). This working group was in charge of submitting a proposal to the President for the reform of the broadcasting sector, providing the opportunity to totally transform the RTS into an engine of pluralistic democratic expression, a role it had never fulfilled to date. However, according to Jacques Habib Sy (2003, p. 14), the working group’s recommendations were not pursued by the President. Instead of committing to a genuine change of direction, he simply proceeded to replace the management of the RTS.

It ought to be noted that the dismissal of Babacar Diagne, Director-General of the RTS and fervent supporter of the outgoing socialist regime, and his replacement by Mactar Silla, then Director of TV5 Afrique, had raised hopes that the RTS would become a genuine public service broadcaster. However, the public quickly became disillusioned when Mactar Silla was dismissed following a report on farmers angry with the State for “unpaid vouchers”. He was replaced by another Director-General who openly declared that his mission was to raise the profile of the President and his party, thus going against his predecessor. Since then, the RTS has remained a State media organ. According to Mame Less Camara:

“What is abusively referred to as public service, I consider State media with all the Stalinist connotations and almost similar connotations to what Althusser referred to as ideological State machinery. These are thus ideological State mechanisms at the service of a government led by the party in power.”

Only Radio-Sénégal currently seems to enjoy a certain degree of credibility in the eyes of the public, although, as underlined by Ibrahima Benjamin Diagne23, former Director of Disso FM and current correspondent for the RFM in Fatick, the injunction officially placed on it to interrupt its daily press review has rather limited its freedom of speech.

23 Interview for this study: 05/04/2010.
Since 2001, the main initiative undertaken by the Senegalese authorities in terms of broadcasting has been the liberalization of the television sector through private national operators. However this liberalization relies on the State’s goodwill in the exercise of control over newly-established private television channels.

In reality, the liberalization of the national television landscape and its opening up to private Senegalese operators represented more than the goodwill of the State and was almost inevitable, for a number of reasons. This included pressure applied over several years by members of the public, civil society, political parties, and journalism groups to correct the political and ideological bias in the national broadcaster. The Sud Communication press group, in particular, was tireless in its efforts to work for the liberalization of television media, both during Abdou Diouf’s socialist government and under the current regime, especially following Abdoulaye Wade’s 2000 promise of reform. The emergence since 1991 of satellite television in Senegal and the arrival of digital packages such as Excaf (Expo Carrefour Afrique) and Canal Horizons, was a catalyst for television pluralism, making the State’s refusal to liberalize the national television sector and to open it to private Senegalese operators (Fall, 2008, pp. 43-45) appear ridiculous.

A combination of these factors caused the Senegalese authorities to finally authorize the establishment of a second national television channel, in September 2002. As a result, the channel RTS 2S was set up, initially dependent on the RTS. It was subsequently completely privatized and renamed 2STV, coming under the ownership of the Pyramide Culturelle du Sénégal (PCS, an independent broadcasting production company). Other channels began to broadcast at the end of 2006: Walf TV of the Walfadjri group, Radio Dunya Vision (RDV) of the Excaf company and Canal Info.

The licence application procedure requires the submission of an application to the Ministry of Communication, which gives its opinion before referring the application on to the ARTP, charged with allocating frequencies. According to Souleymane Niang24, Executive Director of CORED, the Broadcasting Ethics Committee, this process is becoming increasingly

24 IREX/Senegal 2008: Media Viability Index.
biased and politicized in favour of individuals and social groups close to power, or expected to get closer to those in authority. Observers equally criticize the absence of a public call for tenders prior to the authorization of a new channel, with licences being allocated through negotiated agreement, generally following a meeting with the Head of State. This procedure is considered detrimental to freedom since it is suspected to lead to the broadcasting of State diktats on private television channels.

The same observation holds true for the radio sector. When Senegal liberalized its airwaves in 1994, it was difficult to obtain a radio licence, a difficulty which persists to date. Several private commercial radio developers have submitted licence applications to the Ministry of Communication and are currently awaiting a decision. However, there is generally no feedback given on these applications. Applicants are always told that the radio sector is saturated, even though it is clear that supporters of the current regime have succeeded in obtaining licences in record time, licences which they do not always use. One interviewee, who asked to remain anonymous, indicated that out of a total of 325 licences granted, only a third of them are currently operational. This failure to make use of radio licences by those to whom they have been allocated, has led to the growth of a “black market” for radio frequencies.

Law 2006-04 of 04 January 2006, creating the National Council for Broadcasting Regulation (NCBR) established a new body charged with regulating the Senegalese broadcasting sector, replacing the High Broadcasting Council. According to Article 7 of Law 2006-04, the principal objectives of the NCBR are to ensure:

“the independence and freedom of information and communication in the broadcasting sector; respect for the law, and preservation of cultural identities, through the exercise of objectivity and respect for balance in the treatment of information transmitted by broadcasting media; safeguarding childhood and adolescence in programme content; respect for fair access by political parties, unions and organizations recognized by civil society to the broadcasting media, under conditions determined by laws and regulations in force; respect for specifications applicable to bearers of concessions authorizing the use of a broadcasting communication service; an free and fair competition between broadcasting communication enterprises”.

The African Charter on Broadcasting
However, apart from the fact that Council board members are all appointed by the incumbent regime, a situation that surely affects its independence, the NCBR is also accused of:

- its limited powers of intervention concerning private broadcasting media and community radio stations for alleged breaches of ethics or terms of reference;
- failing to pursue violations of freedom of the public broadcasting media, in favour of the incumbent regime.

It ought to be noted that these criticisms are almost identical (verbatim) to those directed at the HCA in the 1990s under the Socialist regime.

Concerning the ARTP, its role is to ensure respect for the provisions of Law 2001-15 of 27 December 2001 on the Telecommunications Code. By virtue of this law and in reference to Decree n° 2003-64 of 17 February 2003 relating to frequencies and radio wavebands and to operators of such equipment, the ARTP is in charge of issuing licences and recovering licence fees, under the administrative procedures of the Ministry of Communication. Charges of bias levelled against the ARTP seems to be confirmed by a recent communiqué published by the Agency on 22 March 2009 opposing private radio and television stations.

**Broadcasting landscape in 2001**

From the time of independence in 1960 until the liberalization of the airwaves in 1994, Radio-Sénégal was the only radio broadcasting service in Senegal. Like the national television broadcaster, Radio-Sénégal is a public service enterprise, linked to the ORTS from 1973, and to the RTS from 1991. With a listenership across the entire national territory and programmes mainly produced in local languages, Radio-Sénégal

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25 On Sunday 22 March 2009, on election night, while the Senegalese public was listening to commentaries and analyses of the ruling party’s defeat during the March 2009 local elections over the airwaves of private radio and television channels, the Agence de Régulation des Télécommunications et des Postes (ARTP - Posts and Telecommunications Regulatory Agency), the body in charge of allocating broadcasting frequencies and fees collection, published a surprising communiqué, announcing the suspension of licences “for a 45-day period” for radio and television stations that were not “in order as far as their financial obligations were concerned”. Said suspension could be permanent if the broadcasters failed to pay their arrears after the deadline. Under pressure from the public, civil society and political parties, the ARTP reversed its decision. Although the Ministry of Communication had stated that the government was not involved in the decision, the public nevertheless was highly suspicious of the ruling authorities.
has branches in all of the country’s key regions. In its bid to diversify its programming in the face of competition, the national broadcaster has since established Radio Sénégal Internationale (RSI, broadcasting exclusively in French) and Dakar FM (in French and local languages).

1994 thus signalled the end of the monopoly enjoyed by Radio-Sénégal on the airwaves. However, from 1994 to 2000, very few radio stations were set up. The only private commercial stations that existed during this period were Sud FM, Dunya FM, Walf FM, Nostalgie, 7 FM and Téranga FM. Some of the few community radio stations broadcasting at the time included Penc Mi, launched in 1996, and Oxy-Jeunes, Jeery FM, Jiida FM, Awagna, Niani and La Côtière, set up in 1999.

**Broadcasting environment since 2001**

Since 2001, the Senegalese broadcasting environment has undergone dramatic changes. In the radio sector, there has been a significant increase in the number of private commercial radio and community radio stations broadcasting, as outlined below. (This list does not include types such as municipal stations created by local councils, e.g. Dakar Municipal Radio, launched by the Dakar Council, and Zig FM created by the Ziguinchor Council, and denominational stations such as Lamp Fall FM, Touba).

Private commercial radio stations (19):

Community radio stations (26):
- Dakar Region: Ndef Leng, Jokko, Afia, Jappo FM, Oxy-Jeunes, Manoore FM, Diappo Sen.
- Matam Region: Tim Timol FM, Jikke FM.
- Saint-Louis Region: Gaynako (Podor), Pété FM (Podor).
- Tambacounda Region: Niani FM, Jiida.
- Thiès Region: La Côtière, Xum pane, Penc Mi, By Yen, Khombole FM.
Louga Region: Jeery FM, Niakhène FM, Jolof FM, Ferlo FM.
Kolda Region: Tewdu FM.
Ziguinchor Region: Kasumay FM, Awagna FM, Goudomp FM.

Several international radio stations also broadcast in Senegal on FM, including RFI, Africa N° 1, and the BBC. Through partnership agreements with local stations, the public may access programmes from foreign radio stations. These agreements include RDV and Top FM in partnership with Voice of America, Manooré FM (community radio) with RFI, and RDV with Chinese radio stations.

Most private commercial radio stations are based in the Senegalese capital, Dakar. However, in recent times, some of these have set up stations in other parts in the country. Community radio stations, on the other hand, are generally located in rural, semi-urban and some urban areas.

There has been a slight development in the television sector which for decades, broadcast only one channel, loyal to the incumbent regime. There are now four private national television channels authorized to broadcast since 2003: 2STV, RDV, Canal Info and Walf TV.

2STV is derives from a partnership between the RTS and Origines SA. It began broadcasting on 21 June 2003 on channel UHF23. Considered to be a culture-oriented station, in reality it offers general programming, including films, TV series, cartoons, telefilms and magazines ranging from culture (Culturama) to sport (Sensei), religion (Yoon Wi) and politics, as well as music. The second private station, RDV, is owned by the Excaf Telecoms Group. This channel broadcasts around the clock, covering the entire national territory, and in the sub-region, thanks to satellite NSS7. Its schedule consists of music programmes, variety shows, religious magazines, cartoons, films, soap operas and news broadcasts. Walf TV began broadcasting in France on 22 December 2006, via satellite, making it the first Senegalese channel to broadcast digitally. Part to the Walf Fadjri press group, Walf TV has a “television-radio” format which aims to engage both viewers and listeners. Providing around the clock news coverage, Canal Infos is the latest addition to the Senegalese broadcasting landscape, offering news programming on issues affecting society. As a pioneer on the subject, it is taking a completely different course, essentially making it a community television station.
Today, thanks to the increased affordability of digital subscriptions, international channels such as CNN, TF1, France 24, Africa 24 and TV 5 are now viewed in many Senegalese homes.

However, the context of this diversification is still repressive. Following the publication in 2003 of a controversial article by investigative journalist Abdou Latif Coulibaly on the “supposed erring ways” of the government entitled “Wade, an opponent in power: Booby-trapped change?”, reproduced and widely commented on among the private media, a tense relationship has developed between the media and government. Since then, journalists are regularly summoned before the Division of Criminal Investigations of the National Police Office to “justify” information considered “subversive” towards public authorities and the ruling regime. Apart from these acts, considered by many in the private media to be intimidation and harassment, there has also been a recent upsurge in police assaults against journalists. For example, Kambel Dieng of RFM and Karamokho Thioune of West Africa Democracy Radio were physically attacked by officers of the Police Intervention Brigade following a football match between Senegal and Liberia on 21 June 2008, while they were busy reporting. To date, no prosecutions have been made for these assaults.

Legal proceedings embarked upon by journalists and their associations to officially identify the perpetrators of violence against the media, are rarely successful. However, whenever a member of the media is assaulted, all eyes turn towards the government. International press freedom organizations have expressed serious concerns about the violence of some statements made against journalists by the President himself, Abdoulaye Wade, and by some of his Ministers and members of his party, the Senegalese Democratic Party (PDS). On this issue, it is important to note the war declared against the press by Farba Senghor, (former Senegalese Minister for Aviation and Craft Industry, in charge of propaganda for the ruling PDS party), in reaction to the establishment of the Committee for the Defence and Protection of Journalists, that had called upon the media to observe “a no press day” on 22 July 2008, in order that justice be served in the Dieng/Thioune case. On 26 July 2008,

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26 MFWA/IFEX (27 June 2008): Two sports journalists assaulted by the police.
27 CPJ/IFEX (2 July 2008): “The CPJ signaled a worrying trend of physical assaults and threats against independent journalists while carrying out their duties.”
during the 8pm State television newscast, Minister Senghor responded by calling on all PDS service chiefs and party members to boycott the private media and suspend all subscriptions to and advertising with these media, considered highly critical of the President and Government.

There has recently been a shift from individual assaults on journalists to attacks of vandalism on media property. In 2008, for instance, following threats of reprisals from Farba Senghor directed at a “certain press organ” that dared to invade his privacy, the head offices of L’AS and 24 Heures Chrono were ransacked and staff attacked. The perpetrators were sentenced to huge prison terms, one sign of progress. However, the fact that the former Minister, Farba Senghor, suspected of masterminding this criminal act has not yet been summoned is a issue in the eyes of journalists and their associations. The most recent example of vandalism of a press enterprise concerned the Walfadjri media group, an act committed by individuals officially identified as disciples of Mame Thierno Birahim Mbâcké, half-brother of Serigne Modou Kara Mbâcké, an important religious dignitary of the Mouride brotherhood. The attack was sparked by an article published by Walf Quotidien on 25 September 2009, broadcasting the words of Mame Thierno Birahim Mbâcké Niang, another half-brother of Serigne Modou Kara Mbâcké, who stated that his brother supported the President, Abdoulaye Wade, only because of the privileges he had due to his links to the current regime. Since the newspaper mentioned only Mame Thierno Birahim Mbâcké, rather than Mame Thierno Birahim Mbâcké Niang, the latter considered it slander. Instead of a request for rectification from the newspaper, he and his followers instead attacked the Walfadjri premises, shattered glass, destroying computer equipment, injuring journalists and security officers and even kidnapping the CEO of the press group for a few hours. Under pressure from public opinion, the Prosecutor began legal proceedings. Despite the overwhelming proof against Mame Thierno Birahim Mbâcké, and a hearing at the Division of Criminal Investigation of the national police force, the matter is still pending. That is why, according to Oumar Diallo28 of the Rencontre Africaine de Défense des Droits de l’Homme (RADDHO, African Encounter for Human Rights Defence – a civil society group), the legal proceedings which so far have yielded nothing, have in fact worsened the situation.

28 IREX/Senegal 2009: Media Viability Index.
Community Radio

As previously mentioned, community radio stations only began broadcasting in Senegal in 1996, following liberalization of the airwaves in 1994. These developments will be further examined within the regulatory framework of the sector.

Since the creation of Penc Mi in 1996, Senegalese community radio stations do not have legal status. They are governed by guidelines that are mere administrative documents linking them to the State on the basis of a number of obligations that they are expected to respect, facing the risk of sanctions should they fail to do so (e.g. temporary suspension or permanent withdrawal of licences). In the 14 years since then, no law has yet been enacted to protect against interference by the government. According to these guidelines, “A community radio is any non-profit radio station. Only one frequency is granted to each community radio station. A community radio station should under no circumstance take part in political discussions” (Article 1). Another distinctive feature of this type of radio is that it is formally forbidden from any form of advertising (Article 16). It can benefit however “[from] sponsorship of public or private organs interested in funding projects in keeping with the social objective of the body in charge of authorization” (Article 17).

Following on from this rather restrictive definition of community radio, the guidelines outline other obligations indistinguishable from those governing private commercial radio, leading Oumar Seck Ndiaye, President of AMARC Africa, to comment that those who had prepared the guidelines for the operation of community radio stations displayed no intellectual effort, resorting to the mere task of “copying and pasting”.

Senegal’s first community radio station was launched in the 1990s. At that time the Ministry of Communication received and handled licence requests while the RTS was charged with allocating frequencies, as provided for by Law 92-04 of 16 December 1991. However, after the enactment of Law 2001-15 of 27 December 2001 on the Telecommunications Code and Decree N° 2003-64 of 17 February 2003 relating to frequencies and wired radio frequencies and to operators of this equipment, authority to allocate frequencies passed to the ARTP, following administrative procedures
at the Ministry of Communication. Following this process, authorizations were issued following the signing of guideline documents and a concession agreement.

Apparently simple, this procedure was in reality a complicated one, plagued by holdups. In the 1990s, it was only after a long and difficult lobbying campaign of public authorities that the Oxy-Jeunes community radio station, based in Pikine, managed to obtain a frequency and an operating licence. The authorities feared that the station would be used for political means, especially since Pikine was an opposition stronghold and the 2000 presidential elections were approaching. All licence applications are now handled on a case-by-case basis, irrespective of the type of station to be set up. The Ministry has never published a call for tenders.

Regarding range of coverage, community radio stations are restricted to broadcasting within a 70 km range. Community radio licence fees, (649,000 FCFA) are paid annually to the ARTP, with private commercial radio stations paying an annual fee of 1,750,000 FCFA.

As mentioned above, community radio stations are strictly forbidden from participating in political discussions. To ensure compliance with this ban, they are required to record and keep copies of all programmes for at least one month after broadcasting for monitoring purposes, in accordance with the clauses of the guideline documents applying to them (Article 2). As well as the requirement to have a communication practitioner manage their programmes (Article 11), they are also forbidden from “scheduling programmes contrary to laws and regulations, public order, public decency, public security and respect for human dignity” (Article 12). Guidelines state that should these stations fail to respect these rules, the body in charge of authorizing and broadcasting the programmes of the accused station will be held responsible (Ibid).

However, the ban on participating in political discussions, increasingly considered a major constraint by several stakeholders in the community radio sector, is often deliberately ignored. This action earned community radio stations based in Dakar (Oxy-Jeunes, Afia FM and Manooré FM) a three-month broadcasting suspension issued by the CNRA due to their coverage of the March 2009 local elections. Nevertheless, under pressure
from community radio associations (AMARC and the Union of Community Radio Stations) and public opinion, this suspension was later lifted. Souleymane Bâ, Director of Afia FM, argues that what really needs to be banned is partisan politics and not political information as such. Furthermore, he notes that, just about everything is political on community radio stations, especially with regard to problems concerning decision-makers (health, culture, education etc.). All the country-level experts interviewed for this study essentially stated that there are always significant qualitative changes wherever community radio stations are located. According to Mame Less Camara,

“Since the arrival of Oxy’Jeunes and Penc Mi, the first ever community radio stations, community radio has been very involved in preserving local languages, intangible assets of the country. This is what makes them cultural archives. With the arrival of these stations, radio somehow loses its magic because for a long time, the radio was an instrument of official administration in the rural world. Nowadays, it has been demystified. Rural people have appropriated the radio”.

Illustrating the impact of community radio, Oumar Seck Ndiaye, President of AMARC Africa note, that the theft of cattle has significantly reduced along the Saint-Louis/Bakel highway, thanks to local community stations, which report regularly on such acts, calling on listeners to denounce those suspected of keeping animals belonging to others.

In the eyes of community radio stakeholders, there are several factors that compromise the viability of this type of radio, such as the ban on advertising as a source of funding. In an international context marked by economic recession and the withdrawal of funding, these stakeholders are unable to ensure the survival of community radio without recourse to advertising.

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Interview for this study: 16/03/2010.
Interview for this study: 17/03/2010.
Safi Ly, an independent consultant, speculates on whether sponsorship would work in the Senegalese context, where there are very few big companies capable of offering assistance to such stations. In her opinion, there has been no effort to adapt the concept of community radio to the local context. It has been insufficient to copy the concept, as it exists in Canada for instance, where there are big enterprises supporting community radio, without recognizing that the Senegalese economic context is less developed and does not offer such funding opportunities. Safi Ly concludes that, without advertising, it would be difficult for Senegalese community radio to survive.

However, thanks to lobbying by URAC, community radio stations are now permitted to obtain up to 15-20% of their income through advertising, on condition that it is strictly limited to the social domain. However, according to Souleymane Bâ, this limit should be extended to at least 50%, for he wonders how significant 20% could be for a community radio station located in Kolda, for instance, where there are few advertising possibilities. In reality, many community stations subvert this 20% limit, similar to their non-compliance with the ban on political broadcasting.

Another factor affecting the survival of community radios relates to the obsolescence of their technological equipment. As highlighted by Souleymane Niang:

“The community radio sector is the mortuary of outdated equipment from Western countries. We are still in the analogue era. And what sort of analogue era? Very often, we use second-hand equipment. However, there are some initiatives in place to improve the situation, with the aid of Western partners”.

Even when existing equipment is not obsolete, it is often insufficient. A former Manooré FM journalist reported that when she worked for the station, there was only one computer in the office. During power cuts, the generator often did not work, due to lack of funds for fuel to power it.

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31 Interview for this study: 18/03/2010.
Community radio stations are also vulnerable to a “brain drain”. Often, as soon as a community radio presenter becomes popular, he is lured away by commercial stations. This phenomenon is partly related to the volunteer nature of work in the community sector. Safi Ly argues that volunteering does not work well in the Senegalese context. Whereas volunteering can be successful in countries like Canada, where presenters have other sources of income enabling them to volunteer their free time to community radio stations, she argues that such a situation is not possible in Senegal, where presenters have no other sources of income.

A fourth factor accounting for the vulnerability of Senegalese community radio stations, according to those interviewed, is that they are increasingly losing their identity. They attribute this to the fact that several community radio stations, operating under this designation, have in reality become private commercial stations. In addition, politicians sometimes create ‘dummy’ community radio stations, thereby contributing significantly towards politicizing the sector. These two elements combined have make it difficult to clearly describe the community radio sector in Senegal and to precisely state how many community radio stations there really are in the country.

In light of these challenges and limitations, the state provides a small economic contribution to the community radio sector through public aid to the media. Since 2002, public aid to the media rose from 100 million to 300 million FCFA. About forty media organs receive this assistance, as against an average of about twenty under the previous government. These include the regional press, national languages press and community radio stations, even though legal provisions governing this fund do not state that these stations are entitled to it. Some conditions stipulated by Article 59 of Law 96-04 of 2 February 1996, such as coverage of an administrative region, respect for provisions of guideline documents and the use of at least five professionals, are rarely met by community radio stations, that usually ignore the ban on commercial advertising, and tend to have fewer staff. It is only through the political will of ruling authorities that they are considered, despite the refusal by the Syndicat des Professionnels de l’Information et de la Communication du Sénégal (SYNPICS - Union of Senegalese Information and Communication Professionals), that unites salaried workers of the public radio and private
commercial radio station. The amount of government aid received by most community stations stood at 1.5 million FCFA for 2005 and 1 million FCFA in 2006. Initially suspended for at least two years by the President, under the pretext that he does not finance press organs that permanently insult him (sic.), public aid to the press was reinstated in 2009. Nevertheless, since the distribution of government aid is not officially published, it is difficult to clearly state the names of community radio stations that receive subventions as well as the amounts they receive.

In addition, under the Poverty Reduction Strategy Document (PRSD II –2006/2010), a community radio support programme was drawn up. However, it has not yet been implemented.

**Impact of the African Charter on Broadcasting**

The impact of the African Broadcasting Charter was assessed by a questionnaire carried out through interviews with social, media and political stakeholders. Results show that the level of awareness on the Charter is low among media practitioners and their organizations, advocates for the rights of the media and freedom of expression, media regulators and decision-makers, and politicians and parliamentarians.

Knowledge of the Charter was graded on a scale of one (not known at all) to ten (very well known) and the following results were recorded:

- 95% of those interviewed believe that politicians and parliamentarians have little or no knowledge of the Charter;
- 85% estimate that civil society organizations and the public in general have little or no knowledge of the Charter;
- 80% consider that journalists and their organizations have little or no knowledge of the Charters;
- 60% believe that media rights advocates, and regulators and decision-makers have little or no knowledge of the Charter.

On the whole, awareness of the Charter was thought to be highest among advocates of media rights and freedom of expression, as well as decision-makers and regulators. It is virtually unknown by civil society organizations and the public and by the vast majority of other stakeholders including journalists, politicians and policy-makers.
The reason for this lack of awareness was generally reported to be poor dissemination and explanation of the Charter and its contents.

However, more subtle responses were also provided. According to Mame Less Camara, lack of knowledge of the Charter it is due to the fact that the document did not benefit from as favourable a context as the Declaration of Windhoek of 1991. He specifies that at the time, the print media had just come into being (Conac, 1993) and media practitioners were awaiting the document before claiming the rights associated with it, in the face of a government regime that was resistant to freedom of the press and freedom of expression. He concludes that, “with regard to the radio, perhaps it should be said that the public has appropriated the radio without asking questions on the Charters that are behind it”.

Regarding journalists’ lack of awareness of the Charter, Naby Sylla32 of RFM/Saint-Louis believes that Senegalese journalists are not familiar with, and do not seek information on the laws governing their profession. Oumar Seck, Director of Radio-Senegal, acknowledging that he was not himself aware of the Charter before, despite working for over 20 years in the sector, explains that Senegalese journalists do not have time to seek such information as they are occupied with other activities. Other interviewees claimed that lack of formal training was the cause of this ignorance, as most journalists receive “on-the-job” training only.

Regarding the better promotion of the Charter, some interviewees suggested that it should be published at professional meetings (e.g. NGOs, resource centres, media support organizations, etc.). Others identified the need to organize national and international symposiums and seminars on the Charter. Souleymane Bâ stated that awareness-raising for journalists should be prioritized with Mame Less Camara suggesting that journalists’ training schools be used to spread awareness of the Charter. Souleymane Niang added that it should be obligatory to publish this document in editorial rooms.

32 Interview for this study: 05/04/2010.
Those consulted believe that broadcasting laws and regulations have changed little since 2001, and most of them argue that the Charter has had virtually no impact either on the legal and regulatory framework of the radio and television sector (95%); the public radio broadcasting sector (85%); or the community radio sector (90%), and even less impact on convergence and telecommunications (95%).

Questioned about the main factors affecting the impact of the Charter, interviewees identified only one, the lack of dissemination of information on this document in Senegal.

Relating to revision of the Charter, all responded that although the Charter, was generally relevant it still needs to be updated in light of current and future (foreseeable) developments in the area of radio and television broadcasting (e.g. digitization, radio/internet convergence, new technologies, and the rapid increase in number of frequencies available thanks to digital technology). They also insisted on the need to take the Charter into consideration in future media reforms.

In conclusion, the general view is that current laws and regulations applicable to the media sector in Senegal have seen little change. For almost forty years, the public broadcasting media remain subject to state interference to the detriment of pluralism. The regulatory bodies in existence since 1998, that are supposed to guarantee the principles of pluralism and freedom of speech have not sufficiently asserted their independence from the state. Any developments in the broadcasting sector are attributed to stakeholders operating within a legal void by usually presenting the state with a fait accompli. When the state does pass laws to legislate or regulate, it simultaneously implements mechanisms enabling it to effectively negate any concessions made. Procedures for the granting of television or radio licences are a prime example of this situation.
Case studies

Manooré FM

Set up towards the end of the 1990s and broadcasting in Grand-Dakar, an important working-class neighborhood in the Senegalese capital, Manooré FM can be categorized as an urban community radio station. The originality of Manooré FM’s broadcasting policy lies in the fact that it is one of the few Senegalese community radio stations focusing mainly on the promotion of the status of women, with programmes that offer forums for women to publicly state their points of view. For Manooré FM, the promotion of women equally involves denouncing all degrading acts committed against them, with the aim of raising awareness towards their eradication. Thus Manooré FM devotes most of its programmes to issues such as domestic violence, rape, female genital mutilation, issues strongly affecting some Senegalese women. The station also presents programmes to raise awareness on health issues, including the vulnerability of women with regard to HIV/AIDS. In the economic matters, its reports focus on women’s groups in order to support women as development actors. Key programmes of this radio includ “Pencum Jiggen Gni” (“Women in public”), “Deyok Askane Vi” (“Entrusting oneself to society”), and “Mélocanou Diamono” (“So goes the world”).

These programmes have a large listenership in Grand-Dakar and beyond, judging from the number of listeners that call in from areas such as Rufisque (a town about fifty kilometres from Dakar) to participate in the programmes. Due to its community focus, Manooré FM receives support from Oxfam, the Committee to End Violence against Women and the Konrad Adenauer Foundation.
Jeery FM

Jeery FM, set up during the same period as Manooré FM, is a rural community radio station. It broadcasts in Keur Momar Sarr, a village in the Louga region in northern Senegal. Installed in this village, the station covers four local regions, reaching almost 209 villages and 40,000 people over an area of 2,877 km$^2$. Its programmes, broadcast in the main languages of the area (Peul, Wolof and Maure) are on agriculture, livestock and fisheries, thus contributing towards the development of this forest area. Jeery FM also raises awareness about the environmental problems associated with these economic activities as well as issues such as desertification. Its programmes also focus on public welfare issues including health and education. Jeery FM’s most tangible impact is the role it has played in mediating tensions between breeders and farmers over cattle trespassing. In terms of funding, the station receives support from local groups such as the Association for Aid in Development Research.
People consulted

Amadou Samba Camara, Journalist, Manooré FM, Dakar
Ibrahima Benjamine Diagne, Correspondent, Radio RFM – Fatick
Babacar Ndaw, Journalist, Sud FM – Saint-Louis
Naby Syla, Journalist, Radio RFM – Saint-Louis
Mame Less Camara, Correspondent, BBC Africa, Dakar
Souleymane Ba, Director Afia FM, President of URAC, Dakar
Oumar Seck Ndiaye, President, AMARC-Africa, Dakar
Mbagnick Diop, Correspondent, Le Soleil, Saint-Louis
Gamby Diagne, Correspondent, La Voix Plus / La Sentinelle/ Lamp Fall FM, Saint-Louis
Mouslim Diba, Head of the Regional Office – Saint-Louis, Agence de presse sénégalaise (Senegalese Press Agency)
Sophie Khadidiatou Ly Sow, Consultant, Dakar
Oumar Seck, Director, Radio Sénégal, Dakar
Bouna Manel Fall, Adviser/Consultant, CNRA, Dakar
Alymana Bathily, Regional Coordinator, AMARC-Africa, Dakar
Younousse Diedhiou, Journalist, RTS – Ziguinchor
Ibrahima Khalilou Ndiaye, Spokesperson, SYNPICS, Dakar
Souleymane Niang, Executive Director, Comité pour l’Observation des Règles d’Éthique et de Déontologie, (Ethics Committee), Dakar
Mamadou Kasse, Technical Adviser, Ministry of Communication, Dakar
Thierno Diallo, Head of Station, RTS – Saint-Louis
Golbert Diagne, Director, Téranga FM, Saint-Louis
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Law 73-51 of 4 December 1973 on the creation of the “Office de Radiodiffusion Télévision du Sénégal” (ORTS);
Law of 1979 serving as Press Code;
Law 92-02 of 16 December 1991 on the creation of a national company known as “Radio Télévision Sénégalaise” (RTS);
Law 12-02 of 16 January 1992 relating to the status of the RTS;
Law 92-57 of 3 September 1992 relating to public broadcasting pluralism;
1994 specification documents applicable to private commercial radios;
Law 96-04 of 2 February 1996 relative to social communication organs and the professions of journalist and technician;
1996 specification documents relative to community radios;
Law 98-09 of 2 March 1998 on the creation of the High Broadcasting Council;
Law 2001-15 of 27 December 2001 creating the Telecommunications Code;
Law 2006-04 of 04 January 2006 creating the «Conseil National de la Régulation de l’Audiovisuel » (CNRA)
Decree N° 2003-64 of 17 February 2003 relating to frequencies and wired radio frequencies and to operators of this equipment.
Comparative analysis

Steve Buckley

This chapter brings together the results of the country studies, together with other comparative data, in order to make a broader assessment of progress since 2001 in implementation of the recommendations of the African Charter on Broadcasting, and of the impact of the Charter itself. It situates media reform and media development within country-level social, political and economic contexts and it examines the changes that have taken place in media policy and in the media landscape since the Charter was adopted in 2001. This chapter draws on data from other media freedom and media development surveys as well as results of the questionnaire survey of country-level experts and stakeholders conducted for this study.

Social, political and economic context

The five countries – Ghana, Mali, Niger, Nigeria and Senegal – that are the subject of this study have all been shaped by their 19th and 20th century colonial experiences which inform their political and legal systems as well as their territorial boundaries, and by the anti-colonial struggles from which were born their first post-independence governments. Ghana was the first to gain independence, under the leadership of Kwame Nkrumah and the Convention People’s Party, whose ten-year campaign of popular mobilization and civil disobedience led to British withdrawal in 1957. Nigeria gained its independence from Britain in 1960, while in the same year, Mali, Niger and Senegal all gained independence from France, whose West African territories were previously controlled through a governor general in Dakar, Senegal.

Since independence, the five countries have experienced varying degrees of political stability and development. Senegal became the model for stable government, under the Socialist Party of Léopold Senghor and his successor, from 1981, Abdou Diouf. Multi-party democracy was introduced in Senegal in the 1970s, although the party in power remained unchanged until the “alternance democratique” of 2000, when it suffered electoral defeat at the hands of the Bokk Sopi Senegal coalition, led by the current President, Abdoulaye Wade.
Ghana, Mali, Niger and Nigeria have all experienced lengthy periods of military rule. Nkrumah’s government in Ghana was toppled by a military coup in 1966 followed by a period of political instability until the return of constitutional government in 1993. Mali’s post-independence government under Modibo Keita was overthrown in 1968 by a military coup led by Moussa Traoré, whose repressive regime remained in place until the Malian revolution of 1991. Niger’s post-independence civilian government of Hamani Diori was ousted in 1974 by a military coup led by Seyni Kountché, who ruled until his death in 1987. Niger has experienced continuing political instability and frequent military intervention. After a relatively stable period following the proclamation of the “Fifth Republic” of 1999, and the election to the Presidency of Mamadou Tandja, the country experienced its latest military coup in February 2010.

Nigeria’s federal political settlement is a delicate balancing act between three dominant ethno-political groups that constitute Africa’s most populous nation, and military rule has been the norm since a series of military coups in 1966 escalated into a 30-month civil war in the southeastern region. In 1999, civilian rule returned to Nigeria when a former military Head of State, Olusegun Obasanjo, was elected as the new civilian president. The subsequent elections of 2003 and of 2007, when Obasanjo was replaced by his handpicked successor Umaru Yar’Adua, have been assessed by international observers as unfair and mired in corruption.

Mali has remained under stable civilian rule since 1991, under a succession of coalition governments. Alpha Oumar Konaré stood down as President in 2002 and was replaced in general election by the current President Amadou Toumani Touré. Ghana has held five general elections and experienced two peaceful changes of government since 1993.

The social and economic conditions of the five countries differ in major respects. Nigeria is economically by far the wealthiest country by virtue of its size and its oil revenues with total GDP of US$165.5 billion. GDP per capita in Nigeria is US$1,118 compared to US$900 for Senegal, US$646 for Ghana and US$556 for Mali. Niger is the poorest with per capita GDP of US$294 and total GDP of just US$4.2 billion. Nigeria’s wealth, however, is very unevenly distributed with much of it under the control of a corrupt political elite who have done little to alleviate the country’s
widespread poverty. Ghana and Senegal, at 30.0 per cent and 33.5 per cent respectively, have the lowest proportion of people living below the international poverty line of US$1.25 a day. In Mali, 51.4 per cent live below the international poverty line, while in Nigeria and Niger the figures are 64.4 per cent and 65.9 per cent respectively.

People living in Ghana and Senegal have the highest life expectancy at birth, at 56.5 years and 55.4 years respectively, with Nigeria having the lowest at 47.7 years. Adult literacy rates are lowest in Mali and Niger, at less than 30 per cent of the population, a factor of particular significance in assessing the relative importance of broadcasting and print media in enabling access to voice and information. Nigeria has the highest literacy rate, at nearly 70 per cent.

Table 1 provides a comparative summary of some key indicators of human development.

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Ghana</th>
<th>Mali</th>
<th>Niger</th>
<th>Nigeria</th>
<th>Senegal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population (millions)</td>
<td>22.9</td>
<td>12.4</td>
<td>14.1</td>
<td>147.7</td>
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<tr>
<td>Total GDP (US$ billions)</td>
<td>15.1</td>
<td>6.9</td>
<td>4.2</td>
<td>165.5</td>
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<tr>
<td>GDP per capita (US$)</td>
<td>646</td>
<td>556</td>
<td>294</td>
<td>1,118</td>
<td>900</td>
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<tr>
<td>Population living below US$1.25 a day (%)</td>
<td>30.0</td>
<td>51.4</td>
<td>65.9</td>
<td>64.4</td>
<td>33.5</td>
</tr>
<tr>
<td>Population living below US$2 a day (%)</td>
<td>53.6</td>
<td>77.1</td>
<td>85.6</td>
<td>83.9</td>
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<tr>
<td>Life expectancy at birth (years)</td>
<td>56.5</td>
<td>48.1</td>
<td>50.8</td>
<td>47.7</td>
<td>55.4</td>
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<tr>
<td>Female adult literacy rate (% aged 15 and above)</td>
<td>58.3</td>
<td>18.2</td>
<td>15.1</td>
<td>64.1</td>
<td>33.0</td>
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<tr>
<td>Male adult literacy rate (% aged 15 and above)</td>
<td>71.7</td>
<td>34.9</td>
<td>42.9</td>
<td>80.1</td>
<td>52.3</td>
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Media and press freedom indicators

The relative stability of democracy in Ghana, Mali and Senegal, compared with Niger and Nigeria, is broadly mirrored in the country scores on press freedom and media development found in the leading international media and press freedom indices. In the introductory chapter it was noted that the annual surveys of Freedom House and Reporters Sans Frontières focus more on press and journalism than on the broadcasting environment. They also rely on international expert opinion, as does the IREX Media Sustainability Index. The African Media Barometer is the only country survey that incorporates recommendations of the African Charter on Broadcasting. Unlike the other surveys mentioned it is also based on the perspectives of in-country experts, a methodology similar to that used in this study.

It is instructive to compare the results of these different surveys across the five focus countries both in terms of what they say about the country-level environment for media freedom and media development, but also to better understand the differences in their approach. Table 2 below provides comparative data from 2008 across the five countries, for each of these international surveys. The Reporters Sans Frontières Press Freedom Index gives the highest rating to Ghana and Mali, and the lowest to Niger and Nigeria, with Senegal in between. The Freedom House Freedom of the Press Index also scores Ghana and Mali equal highest, with Niger the lowest, although Senegal does not score significantly better than Nigeria. The IREX Media Sustainability Index puts Ghana ahead on those of its measured “objectives” which are most directly comparable to the other surveys considered here while it rates Nigeria last and the other countries not significantly different from one another. The African Media Barometer puts Ghana ahead, followed by Mali then Senegal, with Nigeria coming last and Niger not surveyed. Overall it is clear that the differences of methodology yield significantly different results. Of the two surveys that have been consistently carried out an annual basis – those of Reporters Sans Frontières and Freedom House – there is a correlation between the

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33 Except for Niger, for which there has not been an African Barometer survey.
34 The IREX Media Sustainability is a complex indicator set which also measures quality of journalism, business management and the functioning of supporting institutions. For comparative purposes, only two of the five MSI “objectives” have been used here, these being: “Legal and social norms protect and promote free speech and access to public information”, and “Multiple news sources provide citizens with reliable and objective news”. 

results, as might be expected, but there is also sufficient divergence to suggest that what they measure does not substantially coincide or that their ‘experts’ have different value sets, or both.

Table 2

<table>
<thead>
<tr>
<th>Country</th>
<th>RSF</th>
<th>FHP</th>
<th>MSI</th>
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<td>Senegal</td>
<td>40</td>
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<td>20</td>
</tr>
</tbody>
</table>


The Freedom House survey has been conducted annually since 1996, while the Reporters Sans Frontières survey has been undertaken annually since 2002. This enables the extraction of comparative data to demonstrate trends across the five countries. Table 3 and Table 4 provide trends analysis for each of these two press freedom indices for the period 2002 to 2008.

\textsuperscript{35} The Freedom of the Press 2009 report is based on 2008 data, as are the other three surveys here.

\textsuperscript{36} See note 33 above.
The Reporters Sans Frontières Press Freedom Index suggests that all five countries had a similar level of press freedom in 2002, three years after both Niger and Nigeria had returned to civilian rule, but that while Ghana and Mali improved, Niger and Nigeria experienced significant deterioration. Nigeria drops steeply in the two election years, 2003 and 2007, while Niger begins to deteriorate in the second term of the Tandja administration. Senegal also experiences some deterioration over the period 2002 to 2008 taken as a whole.


Comparative analysis

The Freedom House Freedom of the Press Index shows much less variation over the period as a whole. The survey takes a much less ‘optimistic’ view of the situation in Niger and Nigeria, with these two countries starting at a significantly lower level and staying there. Senegal is the only country in the Freedom House survey that shows a marked change, deteriorating to a similar level to Nigeria. Ghana and Mali are consistently higher over the period and show little change in position. The five countries end the period in the same order they began.

Country comparison for the African Charter on Broadcasting

In comparison with the surveys carried out by Reporters Sans Frontières and Freedom House, the country level experts and stakeholders consulted in the present study gave a generally more optimistic view of the overall trends. This may, in part, reflect conditions in the broadcasting and/or telecommunications environment that are not measured by the press freedom surveys – for example, changes in the performance of the state/public broadcaster, emergence of community broadcasting, and growth in mobile and internet. It may also reflect the inclusion of politicians, public officials and other local stakeholders among those consulted, who may be inclined to portray their own country more positively than external observers.

Drawing on the country analyses and other material, Table 5 provides a comparative summary of the status in each of the focus countries in relation to the recommendations of the African Charter on Broadcasting. This enables a quick overview of progress in achieving the recommendations of the Charter. It also provides a considerably more nuanced picture than is obtained from comparing country results on the main media and press freedom indices. It demonstrates, in particular, the extent to which composite indices tend to mask the relative strengths and weaknesses that are to be found among the focus countries and which enable a more strategic assessment that can contribute to strategies for media reform. The results lend weight to the methodological approach that is used by the African Media Barometer. This approach is less concerned with deriving an overall score or ‘league table’ and more on identifying specific challenges for media reform against a set of normative standards.
The following four sections are then structured around the main recommendations of the Charter, grouped in its four parts: general regulatory issues; public service broadcasting; community broadcasting; and telecommunications convergence. Each section is illustrated by observations drawn from the country studies and by comparative charts showing the results of the multiple choice responses to the questionnaire-based stakeholder consultation. It should be noted that the charts provided are only a reflection of expert and stakeholder opinion. They may be considered as broadly indicative but the results are susceptible to a similar critique as applies to the media and press freedom indices described above. That is to say the persons selected are neither a random sample nor a sufficiently large sample to be considered as a representative group. On the other hand they are country-based experts and stakeholders whose perceptions can be expected to reflect current thinking within their institutions or milieu concerning the strengths and weaknesses of their media landscape. From the practical advocacy perspective of implementing media reform in real-world environments, their views are significant, since they are opinion makers and decision makers in their own country.
Table 5 Country comparison for the African Charter on Broadcasting

<table>
<thead>
<tr>
<th>Recommendations of the African Charter on Broadcasting</th>
<th>Ghana</th>
<th>Mali</th>
<th>Niger</th>
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<th>Senegal</th>
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<tbody>
<tr>
<td>General Regulatory Issues</td>
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<tr>
<td>1. The legal framework for broadcasting should include</td>
<td>The 1992 Constitution guarantees freedom of expression and equal access to state media. Private broadcasting is permitted. Community radio is recognized at administrative level in 2007 NCA guidelines.</td>
<td>The 1992 Constitution guarantees freedom of expression and equal access to state media. Private broadcasting is permitted. Decree 02-227 of 2002 distinguishes between community and commercial services.</td>
<td>The 1999 Constitution guarantees freedom of expression and independence of the media. Private broadcasting is permitted. Ordinance 93-31 of 1993 distinguishes between commercial and non-commercial services.</td>
<td>The 1999 Constitution contains a general guarantee of freedom of expression however it reserves in the hands of state and federal governments, and the Presidency the power to authorize broadcasting services.</td>
<td>The 2001 Constitution guarantees freedom of expression. Private broadcasting is permitted. Community radio is recognized at administrative level by terms of reference (&quot;cahiers de charges&quot;).</td>
</tr>
</tbody>
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Comparative analysis

169
### General Regulatory Issues

<table>
<thead>
<tr>
<th>Recommendations of the African Charter on Broadcasting</th>
<th>Ghana</th>
<th>Mali</th>
<th>Niger</th>
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<th>Senegal</th>
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<tr>
<td>2. All formal powers in the areas of broadcast and telecommunications regulation should be exercised by public authorities which are protected against interference, particularly of a political or economic nature, by, among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party.</td>
<td>The 1992 Constitution provides for a National Media Commission (NMC). The NMC is made up of 18 members of which all but 2 are appointed by various independent bodies and organizations.</td>
<td>Three regulatory bodies have responsibilities in broadcasting and telecommunications however they lack the necessary powers to assure regulatory independence.</td>
<td>The Conseil Supérieur de Communication (CSC) consists of 11 permanent members representing a diversity of interests and tasked with regulation of the media independently of the political authorities.</td>
<td>The National Broadcasting Commission (NBC) is not independent of government and lacks decision making powers over broadcast licensing.</td>
<td>The Conseil National de la Regulation de l’Audiovisuel (CNRA) is responsible for content regulation and is susceptible to political interference. Broadcast licensing remains under government control.</td>
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### General Regulatory Issues

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<thead>
<tr>
<th>Recommendations of the African Charter on Broadcasting</th>
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<tr>
<td>3. Decision-making processes about the overall allocation of the frequency spectrum should be open and participatory, and ensure that a fair proportion of the spectrum is allocated to broadcasting uses. The frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting.</td>
<td>The National Communications Authority (NCA) is responsible for frequency assignment and operates under government control.</td>
<td>The authorization and withdrawal of frequencies remains under government control and is not transparent.</td>
<td>The CSC is responsible for the authorization and the withdrawal of broadcasting services and has overseen substantial expansion in all three tiers of broadcasting.</td>
<td>The allocation of frequencies is not transparent and no community radio services have been licensed other than campus radios operated by higher education institutions.</td>
<td>The Agence de Régulation des Télécommunications (ART) is responsible for frequency assignment and operates under government control.</td>
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**Comparative analysis**
### General Regulatory Issues

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<tr>
<th>Recommendations of the African Charter on Broadcasting</th>
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<tr>
<td>4. Licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content.</td>
<td>The NCA publishes guidelines on establishing and operating services but its decision making lacks transparency.</td>
<td>Frequencies for private commercial and community broadcasting are issued more or less on demand and have rarely been refused.</td>
<td>Frequencies for private commercial and community broadcasting are issued by the CSC on the basis of an open application process.</td>
<td>Frequency allocation has generally not been transparent. In 2009 the NBC offered national radio and television frequencies by an auction process.</td>
<td>Frequency allocation has generally operated under political patronage and is not transparent.</td>
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### General Regulatory Issues

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<th>Recommendations of the African Charter on Broadcasting</th>
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<tr>
<td>5. Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas. States should promote an economic environment that facilitates the development of independent production and diversity in broadcasting.</td>
<td>There is no specific provision requiring local content development or any facility to provide investment for independent production.</td>
<td>There is no specific provision requiring local content development however draft laws under consideration provide for quotas and a production fund for national content.</td>
<td>The CSC is tasked with contributing to the protection of the national culture and the promotion of national languages, but does not set specific quotas.</td>
<td>The Nigeria Broadcasting Code includes strict quotas on local content including 80 per cent Nigerian music on free to air services.</td>
<td>The CNRA is responsible, among other matters, for ensuring that broadcast content contributes to the preservation of cultural identity.</td>
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<td>Recommendations of the African Charter on Broadcasting</td>
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<td>General Regulatory Issues</td>
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<tr>
<td>6. The development of appropriate technology for the reception of broadcasting signals should be promoted.</td>
<td>Ghana has agreed to achieve digital TV switchover by 2015</td>
<td>Mali has agreed to achieve digital TV switchover by 2015</td>
<td>Niger has agreed to achieve digital TV switchover by 2015</td>
<td>Nigeria has agreed to achieve digital TV switchover by 2015</td>
<td>Senegal has agreed to achieve digital TV switchover by 2015</td>
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### Recommendations of the African Charter on Broadcasting

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<tr>
<td><strong>Public service broadcasting</strong></td>
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<tr>
<td>1. All state and government controlled broadcasters should be transformed into public service broadcasters, that are accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender.</td>
<td>Ghana Broadcasting Corporation (GBC) has some public service broadcasting characteristics but is not fully independent of government.</td>
<td>Office de Radiodiffusion et Télévision du Mali (ORTM) is a state broadcasting organization under government control.</td>
<td>Office de Radiodiffusion et Télévision du Niger (ORTN) is a state broadcasting organization under government control.</td>
<td>Nigerian Television Authority (NTA) and Federal Radio Corporation of Nigeria (FRCN) operate under federal government control. States also operate broadcasting services.</td>
<td>Radio Télévision Sénégalaise (RTS) operates under strong government influence.</td>
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<td>Recommendations of the African Charter on Broadcasting</td>
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<td>2. Public service broadcasters should, like broadcasting and telecommunications regulators, be governed by bodies which are protected against interference.</td>
<td>The GBC board is an independent body appointed by the National Media Commission.</td>
<td>The Board of ORTM is chaired by the Minister for Communications and Nteh Technologies. It is not independent.</td>
<td>ORTN is accountable to the government through the Ministry of Arts, Culture and Communication. It is not independent.</td>
<td>NTA and FRCN are accountable to the government through the Ministry of Information. They are not independent.</td>
<td>The majority (10 our of 12) of the RTS Board are appointed by the government.</td>
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<tr>
<td>3. The public service mandate of public service broadcasters should be clearly defined.</td>
<td>GBC has a public service mandate set out in general terms in the 1968 Ghana Broadcasting Corporation Decree.</td>
<td>ORTM statutes contain public service objectives. Its relations with the State are regulated in terms of reference adopted in 1996.</td>
<td>The establishment law of ORTN (67-011 of 1967) sets out a public function to provide information, education, culture and entertainment.</td>
<td>Both NTA and FRCN have a formal public service mandate under their respective laws of establishment - NTA Act of 1977 and FRCN Act of 1979.</td>
<td>The establishment law of RTS (Law 92-02 of 1992) sets out a mission to provide information, culture, education and entertainment.</td>
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### Recommendations of the African Charter on Broadcasting

<table>
<thead>
<tr>
<th>Public service broadcasting</th>
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<tr>
<td>4. The editorial independence of public service broadcasters should be guaranteed.</td>
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<td>Ghana</td>
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<tr>
<td>The editorial independence of GBC is not adequately guaranteed.</td>
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<td>Mali</td>
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<tr>
<td>ORTM is under the editorial control of the government.</td>
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<td>Niger</td>
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<tr>
<td>ORTN is under the editorial control of the government.</td>
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<td>Nigeria</td>
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<tr>
<td>Federal broadcasters operate under the editorial control of federal government.</td>
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<td>Senegal</td>
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<tr>
<td>RTS is not editorially independent of the government.</td>
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<thead>
<tr>
<th>5. Public service broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.</th>
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<tbody>
<tr>
<td>Ghana</td>
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<tr>
<td>GBC is dependent on direct government funding of staff salaries and on commercial revenue.</td>
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<td>Mali</td>
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<td>ORTM is funded by direct government subsidy, licence fees, service charges and other revenue.</td>
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<td>Niger</td>
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<tr>
<td>ORTN is funded by direct government subsidy and a levy on electricity bills.</td>
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<td>Nigeria</td>
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<td>Federal and state broadcasters are funded from federal and state funds. They also generate commercial revenue.</td>
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<td>Senegal</td>
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<td>RTS generates revenues through advertising and service charges.</td>
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### Recommendations of the African Charter on Broadcasting

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<th>Country</th>
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<td><strong>Public service broadcasting</strong></td>
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<td>6. Without detracting from editorial control over news and current affairs content and in order to promote the development of independent productions and to enhance diversity in programming, public service broadcasters should be required to broadcast minimum quotas of material by independent producers.</td>
<td>GBC programming content has been increasingly commercial in focus. It does not have independent production quotas.</td>
<td>ORTM is required to devote 80 per cent of its radio content and 60 per cent of its television to public service. It does not have independent production quotas.</td>
<td>ORTN does not have independent production quotas.</td>
<td>Federal and State broadcasters do not have specific quotas for independent production.</td>
<td>RTS does not have specific quotas for independent production</td>
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</table>
**Comparative analysis**

<table>
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<tr>
<th>Recommendations of the African Charter on Broadcasting</th>
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<tr>
<td><strong>Public service broadcasting</strong></td>
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<tr>
<td>7. The transmission infrastructure used by public service broadcasters should be made accessible to all broadcasters under reasonable and non-discriminatory terms.</td>
<td>Private broadcasters operate their own transmission system or have access to GBC infrastructure.</td>
<td>Private broadcasters operate their own transmission systems.</td>
<td>Private broadcasters operate their own transmission systems.</td>
<td>Private broadcasters operate their own transmission system or have access to federal or state broadcasting infrastructure.</td>
<td>Private broadcasters operate their own transmission systems.</td>
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<td><strong>Community broadcasting</strong></td>
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<tr>
<td>1. Community broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit.</td>
<td>Guidelines for community radio and their actual operation are broadly consistent with the definition in the Charter.</td>
<td>The legal definition and actual operation of community broadcasting is broadly consistent with the definition in the Charter.</td>
<td>The legal framework provides for non-commercial local radio but lacks a social definition consistent with the Charter.</td>
<td>The Nigeria Broadcasting Code describes community broadcasting in terms that make specific reference to the Charter, however no stations have been authorized that meet this definition.</td>
<td>Guidelines for community radio and their actual operation are broadly consistent with the definition in the Charter.</td>
</tr>
</tbody>
</table>
2. There should be a clear recognition, including by the international community, of the difference between decentralised public broadcasting and community broadcasting.

Community radio is recognized at the administrative level in 2007 NCA guidelines.

3. The right of community broadcasters to have access to the Internet, for the benefit of their respective communities, should be promoted.

Community radio has emerged but has not been promoted in public policy.
### Recommendations of the African Charter on Broadcasting

<table>
<thead>
<tr>
<th>Telecommunications and convergence</th>
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<tbody>
<tr>
<td>1. The right to communicate includes access to telephones, email, Internet and other telecommunications systems, including through the promotion of community-controlled information communication technology centres.</td>
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<tr>
<td>Ghana</td>
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<tr>
<td>Community information centres and community telecentres have been actively promoted.</td>
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<td>Policies promote universal access including a levy on fixed and mobile telecommunications operators and a universal access fund.</td>
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### Comparative analysis
### Recommendations of the African Charter on Broadcasting

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<td><strong>Telecommunications and convergence</strong></td>
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<tr>
<td>3. The international community and African governments should mobilise resources for funding research to keep abreast of the rapidly changing media and technology landscape in Africa.</td>
<td>ICT policy and strategy development has been extensive and received international support.</td>
<td>ICT policy and strategy development has been extensive and received international support.</td>
<td>ICT policy and strategy development has received international support.</td>
<td>ICT policy and strategy development has been extensive and received international support.</td>
</tr>
<tr>
<td>4. African governments should promote the development of online media and African content, including through the formulation of non-restrictive policies on new information and communications technologies.</td>
<td>ICT policies and laws allow for the establishment of online media.</td>
<td>ICT policies and laws allow for the establishment of online media.</td>
<td>ICT policies and laws allow for the establishment of online media.</td>
<td>ICT policies and laws allow for the establishment of online media.</td>
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<td>Recommendations of the African Charter on Broadcasting</td>
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<tr>
<td><strong>Telecommunications and convergence</strong></td>
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<tr>
<td>5. Training of media practitioners in electronic</td>
<td>ICTs have been introduced in education and vocational training and ICT skills are promoted.</td>
<td>ICTs have been introduced in education and vocational training and ICT skills are promoted.</td>
<td>ICTs have been introduced in education and vocational training and ICT skills are promoted.</td>
<td>ICTs have been introduced in education and vocational training and ICT skills are promoted.</td>
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<td>communication, research and publishing skills needs</td>
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<td>to be supported and expanded, in order to promote</td>
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<td>access to, and dissemination of, global information.</td>
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General regulatory issues

All five of the focus countries have constitutional guarantees of the right to freedom of expression. Ghana has explicit constitutional commitments to media freedom including provision for the establishment of an independent regulatory body for broadcasting. Ghana’s broadcasting regulatory body, the National Media Commission, has responsibilities for content regulation but lacks powers to authorize and withdraw broadcast licences. This is retained under government control through the National Communications Authority.

Mali has three regulatory bodies, but they lack the necessary powers to assure regulatory independence. The Comité National de l’Egal Accès aux Médias d’Etat is tasked with the constitutional provision to assure equal access to state media but does not have the power to enforce this. Both the Conseil Supérieur de la Communication and the Comité de Régulation des Telecommunications have responsibilities in relation to frequency allocation, but in practice the authorization and withdrawal of broadcast frequencies remains under the control of the Minister for Communications and New Technologies. In Senegal the Conseil National de la Regulation de l’Audiovisuel has powers to authorize and withdraw licences but is susceptible to political interference. Its members are all nominated by the government and it has taken a heavy-handed approach to the regulation of private and community broadcasting, while generally remaining silent on the ruling party bias of the public/state broadcaster.

Nigeria’s National Broadcasting Commission also lacks effective decision making powers although it has played an important role in developing regulatory norms and standards through the publication and updating of the Nigeria Broadcasting Code. Authorization of private broadcasting services in Nigeria remains a Presidential power under the 1999 Constitution while both federal and state governments are able to authorize their own broadcasting services without requiring the agreement of the country’s regulatory body.

Niger’s broadcasting regulator, the Conseil Supérieur de Communication, was, until 2009, the only regulatory body across the five focus countries with a nominally independent board and decision-making powers in the
authorization and withdrawal of broadcast licences. A controversial referendum in August 2009 adopted a new constitution which reduced the CSC’s membership from 11 to seven and gave the President power to appoint four of them including the CSC’s president. The constitution is expected to be changed again under a transitional plan to restore democracy following the military coup of February 2010.

All five of the focus countries recognize to some degree a three-tier model for broadcasting - public service, private and community. The public service broadcasting model, however, has not been strongly implemented and, except to a limited extent in Ghana, the state/publicly owned national broadcasters remain under the control of the government in power. Private broadcasting is present in all of the focus countries. Community radio is present in all except Nigeria, where it is recognized in the Nigeria Broadcasting Code, but not yet implemented.

Country-level stakeholders were asked to assess change since 2001 in the legal and regulatory framework for broadcasting and its impact on freedom of expression. For each country, responses were sought from around 20 media experts and stakeholders and the results were analyzed to provide an overall assessment and to assist in qualitative analysis. The respondents indicated significant improvement in Ghana, Mali, Niger and Nigeria (Table 6).

Ghana, Mali and Nigeria have all introduced, since 2001, formal recognition of community broadcasting as a sector distinct from private commercial broadcasting. This has been through administrative guidelines in the case of Ghana, law in the case of Mali, and the regulatory code in the case of Nigeria. Such recognition existed already in law in Niger and in regulatory terms of reference in Senegal. All five countries have also experienced significant growth in the number of private commercial and community broadcasting services, with the exception of Nigeria, which is yet to implement the licensing of community broadcasting services.

Despite constitutional guarantees of the right to freedom of expression, violations of this right remain commonplace, particularly in Niger and Nigeria. Ghana and Mali have had the most consistently permissive environments for broadcasting development although commercial broadcasting is increasingly dominant in Ghana and there are concerns about quality and diversity. Niger has developed a diverse broadcasting landscape but it has suffered a setback from the constitutional crisis of 2009 and the subsequent military coup in 2010 and there are also concerns about the sustainability of many of the country’s community radios. The emergence of private broadcasting in Senegal remains dependent on political patronage, despite recent regulatory reform, and opposition media and journalists have faced political harassment and physical attacks. In Nigeria private broadcasters face a high cost of entry as well as a
system that retains presidential control over broadcast licensing. Private broadcasters have been subject to political interference, which has increased during election times.

Public service broadcasting

None of the focus countries have a public service broadcaster in the terms described in the African Charter on Broadcasting. Ghana Broadcasting Corporation has some public service characteristics including an independent board that is appointed by the National Media Commission, itself a constitutionally mandated independent regulatory body on which a diversity of interests is represented. Its independence is compromised, however, by its funding arrangements, with staff employed as civil servants on the government payroll. Office de Radiodiffusion et Télévision du Mali and Office de Radiodiffusion et Télévision du Niger are state broadcasting organizations operating under direct government control. Radio Télévision Senegalaise operates under strong government influence. It is a government-owned corporation with the majority of the Board members appointed by the government. Nigeria has separate tiers of federal and state government broadcasting. At the national level, the Nigerian Television Authority, Federal Radio Corporation of Nigeria and the international service, Voice of Nigeria, all operate under federal government control. At state level, there is also a tier of radio and television services that are controlled by state governments.

In all of the focus countries, the public/state broadcasters have a broad public service mandate – in essence, an obligation to meet the public interest in information, education, culture and entertainment – but, to varying degrees, their political coverage tends to focus on government announcements and speeches and to give less attention to opposing perspectives.

Country-level stakeholders were asked to assess change since 2001 in the status and performance of the principal state-owned or public service broadcaster. The respondents indicated significant improvement in Ghana, Mali and Nigeria (Table 7).
In none of these countries, during this period, has there been significant legal or regulatory reform of the governance and funding arrangements for the public/state broadcaster. Where improvement is observed it is more likely, therefore, to be a result of increased competition for audience from the growing private broadcasting sector, changes in senior management of the broadcasting organization, and/or increased attention by the broadcasting regulatory body to the compliance of the public/state broadcaster with broadcast content obligations.

**Community broadcasting**

All of the focus countries have, to varying degrees, allowed the development of independent broadcasting. Community radio is present in all except Nigeria. Mali was the first, with the establishment in 1988 of the first independent radio, Radio Rurale Kayes, followed by the rapid growth of both private and community radio after the 1991 revolution. In 2009 Mali had around 300 functioning private and community broadcasting services, which is more than any of the other focus countries despite Mali also having the lowest population. Ghana and Niger have also experienced substantial growth in private and community broadcasting, each having around 150 private and community radio stations. In Ghana private commercial broadcasting predominates while in Niger community radio stations are more prevalent. Senegal and Nigeria have proceeded more cautiously. By 2009 there were around 50 private broadcasters in
Comparative analysis

Senegal, including 26 community radio stations. Nigeria had a similar number of private broadcasters but no community broadcasters other than campus radio services.

Country-level stakeholders were asked to assess change since 2001 in the legal and regulatory status and the range and diversity of community radio services. The respondents indicated significant improvement in Ghana, Mali, Niger and Nigeria (Table 8).

Table 8

<table>
<thead>
<tr>
<th>Country</th>
<th>Change Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ghana</td>
<td>2</td>
</tr>
<tr>
<td>Mali</td>
<td>1</td>
</tr>
<tr>
<td>Niger</td>
<td>0</td>
</tr>
<tr>
<td>Nigeria</td>
<td>-1</td>
</tr>
<tr>
<td>Senegal</td>
<td>-2</td>
</tr>
</tbody>
</table>

In Ghana the number of private broadcasting services has more than doubled and community radio has grown from four stations on air in 2001 to 17 on air in 2009. Community radio has gained regulatory recognition in the form of administrative guidelines published by the National Communications Authority in 2007. Mali has experienced continued rapid growth in the number of private commercial and community broadcasters. Decree 02-227 of 2002 introduced a legal distinction between commercial and community services. Niger has also experienced growth in the number of private commercial and community broadcasters and the legal framework has been improved by the removal of restrictions on news reporting for community radio. Nigeria has experienced growth in private commercial broadcasting and the introduction of campus radio services. Community radio has been recognized in the Nigeria Broadcasting Code since 2003 and the definition developed in the 2006 (fourth) edition, including reference to the African Charter on Broadcasting, but it is yet
to be implemented. Senegal has also experienced an increase in the number of private and community radio services. Community radio numbers have grown from around ten in 2001 to around 26 in 2009. The replacement of the Haut Conseil de l’Audiovisuel by the Conseil National de la Regulation de l’Audiovisuel in 2006, however, has not resulted in significant improvement to a licensing system based on political patronage and regulation prone to political interference.

**Telecommunications convergence**

All of the focus countries have adopted pro-active policies to promote access to information and communication technologies (ICT). While there have been variations in approach and pace of implementation this has proceeded within the framework of an integrated ICT market for West Africa and has led to harmonized ICT regulatory decisions concerning frequency management, ICT policy, interconnection, legal regime, numbering and universal access. The decisions were adopted as Supplementary Acts by ECOWAS Authority of Heads of State and Government during its thirty-first session, held in Ouagadougou on 19 January 2007.

Ghana has put in place measures to support ICT development under the Ghana ICT Policy for Accelerated Development and the National Telecommunications Policy including reform of the National Communications Authority, the establishment of the Ghana Investment Fund for Telecommunications (GIFTEL) and the promotion of community information centres in rural areas. In Mali, development has been driven by the public sector operator telecommunications Sotelma, under supervision of the Ministry for Communication and Information Technology and with assistance from several international development partners. In Niger the state telecommunications operator was privatized in 2001 and joined by other private mobile operators and Internet service providers under a liberalization strategy. Private telecommunications providers are obliged to contribute to a universal access fund. Nigeria’s telecommunications development has been largely private sector-driven under the supervision of the Nigerian Communications Commission. In Senegal, former state telecommunications operator, Sonatel, has been the main driver alongside other private providers, and under the supervision of the Agence de Régulation de Télécommunications et des Postes.
Country-level stakeholders consulted for this study were asked to assess change since 2001 in public access to and use of information and communication technology generally. The respondents indicated significant improvement in all five focus countries (Table 9).

Table 9

<table>
<thead>
<tr>
<th>Country</th>
<th>Ghana</th>
<th>Mali</th>
<th>Niger</th>
<th>Nigeria</th>
<th>Senegal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile subscribers per 100 people (2002)</td>
<td>1.89</td>
<td>0.42</td>
<td>0.49</td>
<td>1.20</td>
<td>5.30</td>
</tr>
<tr>
<td>Mobile subscribers per 100 people (2008)</td>
<td>49.55</td>
<td>27.07</td>
<td>12.91</td>
<td>41.66</td>
<td>44.13</td>
</tr>
<tr>
<td>Mobile subscribers % increase 2002-2008</td>
<td>2622</td>
<td>6445</td>
<td>2635</td>
<td>3472</td>
<td>833</td>
</tr>
<tr>
<td>Internet users per 100 people (2002)</td>
<td>0.83</td>
<td>0.23</td>
<td>0.13</td>
<td>0.32</td>
<td>1.01</td>
</tr>
<tr>
<td>Internet users per 100 people (2008)</td>
<td>4.27</td>
<td>1.57</td>
<td>0.54</td>
<td>15.86</td>
<td>8.35</td>
</tr>
<tr>
<td>Internet users % increase 2002-2008</td>
<td>514</td>
<td>683</td>
<td>415</td>
<td>4956</td>
<td>827</td>
</tr>
</tbody>
</table>


The rapid and substantial growth in access to ICTs since 2001 can be easily measured in terms of the number of mobile subscribers and the number of internet users. Table 10 shows the change in access per 100 people between 2002 and 2008 for each of the focus countries.

Table 10

<table>
<thead>
<tr>
<th>Indicators</th>
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<th>Mali</th>
<th>Niger</th>
<th>Nigeria</th>
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<tr>
<td>Internet users per 100 people</td>
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<td>Internet users per 100 people</td>
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<td>683</td>
<td>415</td>
<td>4956</td>
<td>827</td>
</tr>
</tbody>
</table>

From these indicators the scale and speed of ICT development at country level can be quickly compared. Ghana, Nigeria and Senegal have the highest mobile subscription rates ranging from 42 per cent (Nigeria) to 50 per cent (Ghana) compared to the African average for 2008 of around 33 per cent. Mali is catching up at 27 per cent and shows the highest percentage increase from 2002 to 2008. Niger lags behind but has also experienced substantial increase. Internet use is highest in Nigeria at 15.9 per cent, followed by Senegal at 8.3 per cent and Ghana at 4.3 per cent. Mali and Niger lag behind at 1.5 per cent and 0.5 per cent respectively. The African average for internet use at the end of 2008 was 4.2 per cent.

**Awareness of the Charter**

From the preceding analysis it is clear that there has been significant progress in all of the focus countries in relation to several of the recommendations of the African Charter on Broadcasting. It is less easy to establish whether, and to what extent, such progress is a result of the production and dissemination of the Charter itself. The recommendations of the Charter are not unique. In fact, as was demonstrated in the introductory chapter to this study, they overlap in significant respects with the Declaration of Principles on Freedom of Expression in Africa, as well as with other political statements, conference recommendations and scholarly analysis on media reform. In some cases, as with the Declaration of Principles on Freedom of Expression in Africa, there appears to be a direct lineage in the production of the text, which lends to the Charter a wider, indirect influence in the discourse of communications reform. One simple measure of recognition of the Charter is the frequency with which it is cited. A search on Google for the title of the Charter yielded 6,540 citations in English and 1,140 citations in French. In comparison, a similar search for the Declaration of Principles on Freedom of Expression in Africa yielded 9,310 citations in English and 5,420 in French.


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The persons consulted for this study were asked to assess the country-level awareness of the Charter among various stakeholder groups including media professionals and media organizations; media rights and freedom of expression defenders; media policy makers and media regulators; politicians and parliamentarians; and civil society organizations and the general public. The responses were graded on a scale of one (not known at all) to ten (very well known). The results by country and by stakeholder group are shown in Table 11.

Overall awareness of the Charter was perceived to be highest in Nigeria, followed by Mali, Ghana and Niger. Awareness was perceived to be lowest by stakeholders in Senegal. There were significant variations in the perceived awareness of different stakeholder groups. Across the five focus countries taken as a whole, awareness was perceived to be highest among media rights and freedom of expression defenders, with media policy makers and media regulators second, followed by media professionals and media organizations and then civil society organizations and the general public. Awareness was perceived to be lowest among politicians and parliamentarians, which suggests either a lack of effective advocacy to draw the Charter to their attention, or a skeptical view of politicians among those consulted.
Impact of the Charter

As the results above suggest, awareness of the Charter appears to range from rather low in Senegal to moderate levels of awareness in Ghana, Mali, Niger and Nigeria. Awareness was perceived to be highest in Nigeria, particularly among media rights and freedom of expression defenders, as well as among media policy makers and regulators. This observation is supported by qualitative evidence in so far as Nigeria is the only one of the focus countries in which there is explicit reference to the Charter in an official policy document, namely the Nigeria Broadcasting Code (fourth edition) 2006. The Charter has also been consistently cited as an African standard and reference point in various statements and declarations of Nigeria’s Community Radio Coalition and of its predecessor, the Initiative on Building Community Radio in Nigeria, which referred to the Charter in its founding statement in 2003.

It is reasonable to assume that if country level awareness of the Charter is low then its impact on broadcasting reform is also likely be low, since the former is a precondition for the latter. It does not follow, however that high awareness must lead to high impact. Indeed the case of Nigeria demonstrates that high levels of awareness of the Charter recommendations can not, by any means, be guaranteed to translate into political action. The Charter is one among several advocacy tools that have been deployed in Nigeria as part of a concerted effort to see community radio established. Yet that goal remains elusive in a country where civil society demands for broadcasting reform have been met by delay and political procrastination.

The persons consulted for this study were asked to assess the country-level impact of the Charter across its key policy areas: the general legal and regulatory framework, public service broadcasting, community broadcasting, and telecommunications convergence. The responses were graded on a scale of one (no impact) to ten (very high impact). The results by country and by each of the key policy areas are shown in Table 12.
Overall impact of the Charter was perceived to be highest in Mali, followed by Nigeria, Ghana and Niger. Impact was perceived to be lowest by stakeholders in Senegal. Variations across the key policy areas were not significantly different, except in Nigeria where the impact on broadcasting policy was perceived to be less than the impact on telecommunications. This may simply reflect the very substantial increase in Nigeria’s internet access compared to the slower pace of broadcasting development rather than any specific impact of the Charter.

In Ghana, Mali and Nigeria, there is a moderate level of awareness of the Charter, particularly among media rights and freedom of expression defenders, and among media policy makers and regulators. In each of these countries there has been significant progress towards implementation of at least some of the Charter’s recommendations. Country level-experts and stakeholders perceive the Charter to have contributed to progress and it is reasonable to accept that there is some grounding for that assessment. On the other hand, the detailed text of the Charter is not generally well known and its broad recommendations – an independent regulator, transformation of state into public service broadcasters, and provision for community broadcasting – are common to other normative models for media reform.
In Niger, the Charter is not well known, but it has probably still had some impact at least in terms of the formulation and defence of media reform proposals by media rights and freedom of expression defenders. The Senegal study for this report suggests that country-level impact of the Charter in Senegal has been negligible and that it is little known at country level.
Comparative analysis

References

Conclusions and recommendations

In 2001 the African Charter on Broadcasting was adopted in Windhoek, Namibia, by the international Windhoek+10 UNESCO conference of media experts and practitioners. The event itself marked the tenth anniversary of the Windhoek Declaration on Promoting and Independent and Pluralistic African Press. The present study is a review of the impact of the African Charter on Broadcasting, nearly ten years after its original adoption.

The study has examined the impact of the Charter at international level, with reference to Africa in particular, and at country level, with a focus on five countries of West Africa – Ghana, Mali, Niger, Nigeria and Senegal. This concluding chapter summarizes the main findings and makes recommendations that build on the objectives of the original Windhoek Declaration and the Charter to strengthen media pluralism and media freedom in Africa.

Contribution of the Charter to media development

At the international level the Charter has had direct impact on the drafting of the Declaration of Principles on Freedom of Expression in Africa, adopted in 2002 by the African Commission on Human and People’s Rights. It has been incorporated into the indicator set for the African Media Barometer, one of the first Africa-centred tools for country level assessment of media development; and it has been cited as an African media development and media freedom standard in numerous political declarations and statements, including statements endorsed by African governments and by the UNESCO General Conference, as well as in numerous scholarly texts. It can be concluded that the ACB has achieved significant recognition at the African and international level and that its recommendations have also been broadly accepted as normative standards for media freedom and media development.

At the country level the picture is somewhat different. Of the countries surveyed for this study, awareness and impact of the Charter was rather uneven. Awareness was highest in Nigeria where it has been endorsed by the National Broadcasting Commission as providing a definitional basis
for community broadcasting and where it is frequently referenced in
advocacy briefings and declarations. Impact was assessed to be greatest
in Mali, which continues to provide the most open environment for private
and community broadcasting. In contrast the Charter was little known and
perceived to have had little impact in Senegal. Its direct impact was also
perceived as low in Ghana and Niger. Despite these variations it is likely
that media policies in all of the focus countries have to some extent been
influenced by the Charter, if not directly, then indirectly through its impact
on other international standards and tools and the wider acceptance of
the Charter’s standard-setting recommendations.

Validity and durability of the Charter

It is inevitable that, to some extent, the Charter looks dated after a period
of nearly ten years in such a rapidly changing environment as broadcasting
and telecommunications. Its core recommendations – an independent
regulator, transformation of state into public service broad- casters, and
provision for community broadcasting – remain valid and widely accepted,
if not widely implemented. At a finer level of detail the text is lacking in
several respects and has to some extent been superseded. The part on
telecommunications convergence has been overtaken by rapid growth
in mobile telecommunications, harmonization strategies that are more
market- than public service-oriented, and the emergence of digital platforms
for radio and television. There is no attention to private broadcasting, where
media concentration is an emergent issue; to the role of distribution
providers - operators of satellite, cable and digital terrestrial platforms;
or to other forms of “gatekeeping” such as conditional access systems
and electronic programme guides, that increasingly influence viewer and
listener choice.

To revise the Charter is not a practical way forward. It is better that it
remains, and continues to be promoted, as an African standard-setting
document whose core recommendations should be implemented by African
governments. The Declaration of Principles on Freedom of Expression in
Africa elaborates on some of the key elements of independent regulation
and public service broadcasting, but unfortunately provides less detail
than the Charter on good practice in enabling community broadcasting.
One possible solution here is to develop a more elaborate set of principles for community broadcasting along the lines of, for example, the Principles for a Democratic Legislation on Community Broadcasting developed by AMARC (2008) and highlighted by the UN Special Rapporteur on Freedom of Opinion and Expression in his 2010 report to the UN Human Rights Council (United Nations, 2010).

At the same time a wider perspective on media development would have to address the challenges of digitalization and the impact of mobile and internet platforms on the distribution of media content. With international commitments to digital television switchover by 2015 for all African governments, but few with realistic migration strategies in place, there is a pressing need for a public interest assessment of the challenges and the development of an African model for digital broadcasting and utilization of the digital spectrum dividend.

**Strengthening recognition and implementation of the Charter**

One of the more striking results of the survey is the perceived lack of awareness of the Charter among politicians and parliamentarians. While it appears that media reformers and media regulators are somewhat better informed, those who are best placed to support media reform, or alternatively to block it, may also be among the least aware of the Charter.

**Recommendation 1**

Produce a resource manual for politicians, public officials and regulatory bodies on African and international standards on broadcasting policy, law and regulation and promote this with round tables and briefing events at country and regional level.

The Africa Media Barometer is the first country level assessment tool with indicators that are adapted, in part, from the recommendations of the Charter. The UNESCO media development indicators are also consistent with the recommendations of the Charter and draw, in part, on the Africa Media Barometer. Other widely recognized indices of media development and press freedom that are deployed in Africa, such as those developed by Freedom House, Reporters Sans Frontières and IREX remain silent on some key recommendations of the Charter such as the role and effectiveness of public service and community broadcasting.
**Recommendation 2**
Promote in West Africa a periodic country-level assessment mechanism that incorporates the recommendations of the Charter and that can assist in progress monitoring and recommendations for media reform and media development. This could be based on reinforcing the implementation of the Africa Media Barometer.

**Recommendation 3**
Consult with the promoters of other media development and press freedom indices on the adaptation of their methodologies to include the Charter recommendations.

The recommendations of the Charter on freedom of expression guarantees, independence of the regulator and public service broadcasting have been substantially elaborated in the Declaration of Principles on Freedom of Expression in Africa, an official standard-setting text. This needs to be supplemented by more detailed guidance on enabling community broadcasting which has not been elaborated in either the Charter or the Declaration.

**Recommendation 4**
Promote a “Declaration of Principles on Community Broadcasting in Africa” as a project of the African Commission on Human and People’s Rights, to provide more detailed guidance to African States on policies that can enable community broadcasting and contribute to its growth, sustainability and social impact.

The recommendations of the Charter could gain further governmental recognition in the context of regional steps towards harmonization within the framework of ECOWAS.

**Recommendation 5**
Strengthen regional co-operation between PIWA, Media Foundation West Africa, WAJA, and other organizations in West Africa with a view to promoting, within the framework of ECOWAS, the development of a regional protocol on good practice in media policy, law and regulation that builds on the Charter recommendations.
The Charter does not address or anticipate the transition from analogue to digital broadcasting and its profound consequences for the broadcasting landscape. African governments are struggling to develop plans to meet their commitment to digital television switchover by 2015 and the process of digitalization is also creating uncertainty for the future of radio.

**Recommendation 6**
Conduct a survey of digital switchover / digital dividend strategies in West Africa and assess their implications for media access and media pluralism. The survey should clearly differentiate the position of radio from that of digital television.

International recognition of the Charter and related standards would be strengthened if there were more concerted and joint effort to promote them within the structures of the African Union. At country level, joint international missions can also reinforce awareness of the Charter and are particular relevant in times of political transition. Cooperation could be facilitated through the networks of African freedom of expression and media support organizations.

**Recommendation 7**
Strengthen networks of African freedom of expression and media support organizations as cooperation platforms for engagement with the African Union, the African Commission on Human and People’s Rights and the African Court of Human Rights, and as a mechanism for organizing joint country missions with a focus on monitoring and stakeholder dialogue for countries in political transition.

The African Special Rapporteur on Freedom of Expression can play an important role in reinforcing awareness and implementation of the recommendations of the Charter. The Rapporteurship relies on the support of civil society organizations to function effectively including assistance with briefings and support to undertake country level monitoring.

**Recommendation 8**
Engage with and support the strengthening of the role and functioning of the African Special Rapporteur on Freedom of Expression and Access to Information and encourage their use of the Charter as a reference point for country level monitoring.
**Windhoek+20**

The 20th anniversary of the original Windhoek Declaration will take place in 2011. This provides an important opportunity to further address freedom of expression issues that were not addressed in the original declaration and to reinforce recognition of the Charter. Media Institute of Southern Africa (MISA) is convening a coalition of media support organizations to form the Africa Platform for Access to Information (APAI) with a view to holding a major conference in 2011 that will mark 20 years since the original Windhoek Declaration (Bergere, 2010). It is proposed that the Windhoek+20 conference should focus on promoting the right of access to information, a right which complements and facilitates freedom of the press and broadcast media. A successful Windhoek+20 along these lines could add to the cluster of African texts on freedom of expression and reinforce the Windhoek+10 Charter.

**Recommendation 9**
Support the holding of a major Windhoek+20 conference with a focus on the right of access to information as a contribution to broadening and deepening the body of African standards on freedom of expression.

Windhoek+20 is also, of course, the tenth anniversary of the African Charter on Broadcasting and, considering the Charter itself provided for a five-yearly review as part of its implementation strategy, it would be timely for key stakeholders to undertake an Africa-level review of the Charter and its implementation. This might include a round table or other special event linked to Windhoek+20, with the objective of developing a joint plan for broadening and deepening the impact of the Charter on the African media landscape.

**Recommendation 10**
Consult further with key stakeholders, including UNESCO, MISA, SACOD, Article 19 and AMARC on an Africa-wide review process for the Charter, culminating in a roundtable that could be linked to the Windhoek+20 conference in 2011.
References

Acronyms and abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACB</td>
<td>African Charter on Broadcasting</td>
</tr>
<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<td>ACCT</td>
<td>Agence de Coopération Culturelle et Technique</td>
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<td>AFMD</td>
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<td>AMARC</td>
<td>World Association of Community Radio Broadcasters</td>
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<td>AMDI</td>
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<td>APC</td>
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<td>AU</td>
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<td>BBC</td>
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<td>Conseil National de la Régulation de l’Audiovisuel (Senegal)</td>
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<td>CSC</td>
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<td>DPFEA</td>
<td>Declaration of Principles on Freedom of Expression in Africa</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EPA</td>
<td>Établissement public à caractère administratif</td>
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<td>FAJ</td>
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<td>GFMD</td>
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<td>HCA</td>
<td>Haut Conseil de l’Audiovisuel (Senegal)</td>
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<td>ICCPR</td>
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<td>Media Institute of Southern Africa</td>
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<td>Multi Media Distribution System</td>
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<td>NPP</td>
<td>National Patriotic Party (Ghana)</td>
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<td>Nigerian Television Authority</td>
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<td>OAU</td>
<td>Organization of African Unity</td>
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<td>Office de Radiodiffusion et de Télévision du Mali</td>
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<td>ORTN</td>
<td>Office de Radiodiffusion et Télévision du Niger</td>
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<td>Radio Télévision Sénégalaise</td>
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<td>SACOD</td>
<td>South Africa Communications for Development</td>
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<td>UNESCO</td>
<td>United Nations Scientific, Educational and Cultural Organization</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
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<td>URAC</td>
<td>Union des Radios Associatives et Communautaires (Senegal)</td>
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<td>URTEL</td>
<td>Union des Radiodiffusions et Télévisions Libres du Mali</td>
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Declaration of Windhoek

Adopted by the participants of the UN/UNESCO Seminar Seminar on Promoting an Independent and Pluralistic African Press, held in Windhoek, Namibia, on 3 May 1991.

Endorsed by the UNESCO General Conference at its twenty-sixth session - 1991

We the participants in the United Nations/ United Nations Educational, Scientific and Cultural Organization Seminar on Promoting an Independent and Pluralistic African Press, held in Windhoek, Namibia, from 29 April to 3 May 1991,

Recalling the Universal Declaration of Human Rights,

Recalling General Assembly resolution 59(I) of 14 December 1946 stating that freedom of information is a fundamental human right, and General Assembly resolution 45/76 A of 11 December 1990 on information in the service of humanity,

Recalling resolution 25C/104 of the General Conference of UNESCO of 1989 in which the main focus is the promotion of “the free flow of ideas by word and image at international as well as national levels”.

Noting with appreciation the statements made by the United Nations Under-Secretary-General for Public Information and the Assistant Director-General for Communication, Information and Informatics of UNESCO at the opening of the Seminar,

Expressing our sincere appreciation to the United Nations and UNESCO for organizing the Seminar,

Expressing also our sincere appreciation to all the intergovernmental, governmental and nongovernmental bodies and organizations, in particular the United Nations Development Programme (UNDP), which contributed to the United Nations/UNESCO effort to organize the Seminar,
Expressing our gratitude to the Government and people of the Republic of Namibia for their kind hospitality which facilitated the success of the Seminar,

Declare that:

1. Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.

2. By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.

3. By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community.

4. The welcome changes that an increasing number of African States are now undergoing towards multiparty democracies provide the climate in which an independent and pluralistic press can emerge.

5. The worldwide trend towards democracy and freedom of information and expression is a fundamental contribution to the fulfilment of human aspirations.

6. In Africa today, despite the positive developments in some countries, in many countries journalists, editors and publishers are victims of repression—they are murdered, arrested, detained and censored, and are restricted by economic and political pressures such as restrictions on newsprint, licensing systems which restrict the opportunity to publish, visa restrictions which prevent the free movement of journalists, restrictions on the exchange of news and information, and limitations on the circulation of newspapers within countries and across national borders. In some countries, one-party States control the totality of information.
7. Today, at least 17 journalists, editors or publishers are in African prisons, and 48 African journalists were killed in the exercise of their profession between 1969 and 1990.

8. The General Assembly of the United Nations should include in the agenda of its next session an item on the declaration of censorship as a grave violation of human rights falling within the purview of the Commission on Human Rights.

9. African States should be encouraged to provide constitutional guarantees of freedom of the press and freedom of association.

10. To encourage and consolidate the positive changes taking place in Africa, and to counter the negative ones, the international community—specifically, international organizations (governmental as well as nongovernmental), development agencies and professional associations—should as a matter of priority direct funding support towards the development and establishment of nongovernmental newspapers, magazines and periodicals that reflect the society as a whole and the different points of view within the communities they serve.

11. All funding should aim to encourage pluralism as well as independence. As a consequence, the public media should be funded only where authorities guarantee a constitutional and effective freedom of information and expression and the independence of the press.

12. To assist in the preservation of the freedoms enumerated above, the establishment of truly independent, representative associations, syndicates or trade unions of journalists, and associations of editors and publishers, is a matter of priority in all the countries of Africa where such bodies do not now exist.

13. The national media and labour relations laws of African countries should be drafted in such a way as to ensure that such representative associations can exist and fulfil their important tasks in defence of press freedom.
14. As a sign of good faith, African Governments that have jailed journalists for their professional activities should free them immediately. Journalists who have had to leave their countries should be free to return to resume their professional activities.

15. Cooperation between publishers within Africa, and between publishers of the North and South (for example through the principle of twinning), should be encouraged and supported.

16. As a matter of urgency, the United Nations and UNESCO, and particularly the International Programme for the Development of Communication (IPDC), should initiate detailed research, in cooperation with governmental (especially UNDP) and nongovernmental donor agencies, relevant nongovernmental organizations and professional associations, into the following specific areas:

(i) identification of economic barriers to the establishment of news media outlets, including restrictive import duties, tariffs and quotas for such things as newsprint, printing equipment, and typesetting and word processing machinery, and taxes on the sale of newspapers, as a prelude to their removal;

(ii) training of journalists and managers and the availability of professional training institutions and courses;

(iii) legal barriers to the recognition and effective operation of trade unions or associations of journalists, editors and publishers;

(iv) a register of available funding from development and other agencies, the conditions attaching to the release of such funds, and the methods of applying for them;

(v) the state of press freedom, country by country, in Africa.

17. In view of the importance of radio and television in the field of news and information, the United Nations and UNESCO are invited to recommend to the General Assembly and the General Conference the convening of a similar seminar of journalists and managers of radio and television services in Africa, to explore the possibility of applying similar concepts of independence and pluralism to those media.
18. The international community should contribute to the achievement and implementation of the initiatives and projects set out in the annex to this Declaration.

19. This Declaration should be presented by the Secretary General of the United Nations to the United Nations General Assembly, and by the Director General of UNESCO to the General Conference of UNESCO.
Annex

Initiatives and Projects Identified in the Seminar

I. Development of cooperation between private African newspapers:
   - to aid them in the mutual exchange of their publications;
   - to aid them in the exchange of information;
   - to aid them in sharing their experience by the exchange of journalists;
   - to organize on their behalf training courses and study trips for their journalists, managers and technical personnel.

II. Creation of separate, independent national unions for publishers, news editors and journalists.

III. Creation of regional unions for publishers, editors and independent journalists

IV. Development and promotion of nongovernmental regulations and codes of ethics in each country in order to defend more effectively the profession and ensure its credibility.

V. Financing of a study on the readership of independent newspapers in order to set up groups of advertising agents.

VI. Financing of a feasibility study for the establishment of an independent press aid foundation and research into identifying capital funds for the foundation.

VII. Financing of a feasibility study for the creation of a central board for the purchase of newsprint and the establishment of such a board.

VIII. Support and creation of regional African press enterprises

IX. Aid with a view to establishing structures to monitor attacks on freedom of the press and the independence of journalists following the example of the West African Journalists’ Association.

X. Creation of a data bank for the independent African press for the documentation of news items essential to newspapers.
African Charter on Broadcasting

Adopted by African media practitioners at a UNESCO Conference held on 3-5 May 2001 in Windhoek, Namibia, to celebrate the 10th anniversary of the Windhoek Declaration.

Acknowledging the enduring relevance and importance of the Windhoek Declaration to the protection and promotion of freedom of expression and of the media;

Noting that freedom of expression includes the right to communicate and access to means of communication;

Mindful of the fact that the Windhoek Declaration focuses on the print media and recalling Paragraph 17 of the Windhoek Declaration, which recommended that a similar seminar be convened to address the need for independence and pluralism in radio and television broadcasting;

Recognising that the political, economic and technological environment in which the Windhoek Declaration was adopted has changed significantly and that there is a need to complement and expand upon the original Declaration;

Aware of the existence of serious barriers to free, independent and pluralistic broadcasting and to the right to communicate through broadcasting in Africa;

Cognisant of the fact that for the vast majority of the peoples of Africa, the broadcast media remains the main source of public communication and information;

Recalling the fact that the frequency spectrum is a public resource which must be managed in the public interest;
We the participants of Windhoek+10 declare that:

Part I: General Regulatory Issues

1. The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: public service, commercial and community.

2. All formal powers in the areas of broadcast and telecommunications regulation should be exercised by public authorities which are protected against interference, particularly of a political or economic nature, by, among other things, an appointments process for members which is open, transparent, involves the participation of civil society, and is not controlled by any particular political party.

3. Decision-making processes about the overall allocation of the frequency spectrum should be open and participatory, and ensure that a fair proportion of the spectrum is allocated to broadcasting uses. The frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting.

4. Licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content.

5. Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas. States should promote an economic environment that facilitates the development of independent production and diversity in broadcasting.

6. The development of appropriate technology for the reception of broadcasting signals should be promoted.
Part II: Public Service Broadcasting

1. All state and government controlled broadcasters should be transformed into public service broadcasters, that are accountable to all strata of the people as represented by an independent board, and that serve the overall public interest, avoiding one-sided reporting and programming in regard to religion, political belief, culture, race and gender.

2. Public service broadcasters should, like broadcasting and telecommunications regulators, be governed by bodies which are protected against interference.

3. The public service mandate of public service broadcasters should be clearly defined.

4. The editorial independence of public service broadcasters should be guaranteed.

5. Public service broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.

6. Without detracting from editorial control over news and current affairs content and in order to promote the development of independent productions and to enhance diversity in programming, public service broadcasters should be required to broadcast minimum quotas of material by independent producers.

7. The transmission infrastructure used by public service broadcasters should be made accessible to all broadcasters under reasonable and non-discriminatory terms.

Part III: Community Broadcasting

1. Community broadcasting is broadcasting which is for, by and about the community, whose ownership and management is representative of the community, which pursues a social development agenda, and which is non-profit.
2. There should be a clear recognition, including by the international community, of the difference between decentralised public broadcasting and community broadcasting.

3. The right of community broadcasters to have access to the Internet, for the benefit of their respective communities, should be promoted.

Part IV: Telecommunications and Convergence

1. The right to communicate includes access to telephones, email, Internet and other telecommunications systems, including through the promotion of community-controlled information communication technology centres.

2. Telecommunications law and policy should promote the goal of universal service and access, including through access clauses in privatisation and liberalisation processes, and proactive measures by the state.

3. The international community and African governments should mobilise resources for funding research to keep abreast of the rapidly changing media and technology landscape in Africa.

4. African governments should promote the development of online media and African content, including through the formulation of non-restrictive policies on new information and communications technologies.

5. Training of media practitioners in electronic communication, research and publishing skills needs to be supported and expanded, in order to promote access to, and dissemination of, global information.

Part V: Implementation

1. UNESCO should distribute the African Charter on Broadcasting as broadly as possible, including to stakeholders and the general public, both in Africa and worldwide.

2. Media organizations and civil society in Africa are encouraged to use the Charter as a lobbying tool and as their starting point in the development of national and regional broadcasting policies. To this end media
organizations and civil society are encouraged to initiate public awareness campaigns, to form coalitions on broadcasting reform, to formulate broadcasting policies, to develop specific models for regulatory bodies and public service broadcasting, and to lobby relevant official actors.

3. All debates about broadcasting should take into account the needs of the commercial broadcasting sector.

4. UNESCO should undertake an audit of the Charter every five years, given the pace of development in the broadcasting field.

5. UNESCO should raise with member governments the importance of broadcast productions being given special status and recognized as cultural goods under the World Trade Organization rules.

6. UNESCO should take measures to promote the inclusion of the theme of media, communications and development in an appropriate manner during the UN Summit on the Information Society in 2003.
Declaration of Principles on Freedom of Expression in Africa


Preamble

Reaffirming the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

Reaffirming Article 9 of the African Charter on Human and Peoples' Rights;

Desiring to promote the free flow of information and ideas and greater respect for freedom of expression;

Convinced that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;

Convinced that laws and customs that repress freedom of expression are a disservice to society;

Recalling that freedom of expression is a fundamental human right guaranteed by the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as other international documents and national constitutions;

Considering the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy;

Aware of the particular importance of the broadcast media in Africa, given its capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy;
Noting that oral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting;

Noting the important contribution that can be made to the realisation of the right to freedom of expression by new information and communication technologies;

Mindful of the evolving human rights and human development environment in Africa, especially in light of the adoption of the Protocol to the African Charter on Human and Peoples’ Rights on the establishment of an African Court on Human and Peoples’ Rights, the principles of the Constitutive Act of the African Union, 2000, as well as the significance of the human rights and good governance provisions in the New Partnership for Africa’s Development (NEPAD); and

Recognising the need to ensure the right to freedom of expression in Africa, the African Commission on Human and Peoples’ Rights declares that:

I. The Guarantee of Freedom of Expression

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

II. Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.

2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.
III. Diversity

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

IV. Freedom of Information

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.

2. The right to information shall be guaranteed by law in accordance with the following principles:

- everyone has the right to access information held by public bodies;
- everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
- public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
- no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
- secrecy laws shall be amended as necessary to comply with freedom of information principles.

3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.
V. Private Broadcasting

1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.

2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
   - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
   - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
   - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
   - community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

VI. Public Broadcasting

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.
VII. Regulatory Bodies for Broadcast and Telecommunications

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.

2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.

3. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

VIII. Print Media

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.

2. Any print media published by a public authority should be protected adequately against undue political interference.

3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.

4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.
IX. Complaints

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
   • complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
   • the complaints system shall be widely accessible.

2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.

3. Effective self-regulation is the best system for promoting high standards in the media.

X. Promoting Professionalism

1. Media practitioners shall be free to organise themselves into unions and associations.

2. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

XI. Attacks on Media Practitioners

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.

2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.

3. In times of conflict, States shall respect the status of media practitioners as non-combatants.
XII. Protecting Reputations

1. States should ensure that their laws relating to defamation conform to the following standards:
   • no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
   • public figures shall be required to tolerate a greater degree of criticism; and
   • sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.

2. Privacy laws shall not inhibit the dissemination of information of public interest.

XIII. Criminal Measures

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.

2. Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

XIV. Economic Measures

1. States shall promote a general economic environment in which the media can flourish.

2. States shall not use their power over the placement of public advertising as a means to interfere with media content.

3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.
XV. Protection of Sources and other journalistic material

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.

XVI. Implementation

States Parties to the African Charter on Human and Peoples’ Rights should make every effort to give practical effect to these principles.
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