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THE AGA KHAN UNIVERSITY
Graduate School of Media and Communications

**REPORTING ON SEXUAL ORIENTATION AND GENDER IDENTITIES IN
KENYA: A STUDY OF FACTORS THAT INFLUENCE ETHICAL AND
LEGAL DECISION-MAKING BY PRINT MEDIA JOURNALISTS**

By

Paul Omondi Otieno
543466

A thesis submitted in partial fulfilment of the requirements for the degree of Master of
Arts in Digital Journalism

Nairobi, Kenya

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APPROVAL PAGE

The Aga Khan University
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A thesis submitted in partial fulfilment of the requirements for the degree of Master of
Arts in Digital Journalism

Members of the Thesis Evaluation Committee appointed to examine the thesis of PAUL
OMONDI OTIENO-543466, find it satisfactory and recommended that it be accepted.

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DECLARATION

I, **PAUL OMONDI OTIENO-543466**, declare that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university and that to the best of my knowledge it does not contain any material previously published or written by another person except where due reference has been made in the text. The editorial assistance provided to me has in no way added to the substance of my thesis, which is the product of my research endeavours.

Signature

Date

ACKNOWLEDGEMENTS

I wish to sincerely thank the Aga Khan University-Graduate School of Media and Communications for the scholarship to study for the Master of Arts in Digital Journalism. This has given me the opportunity to be part of an innovative programme that is keeping up with the rapidly changing media landscape in response to new audience demands and the digital revolution in journalism. My heartfelt gratitude goes to the Interim Dean, Prof. Nancy Booker, for her guidance, encouragement, and wise counsel. To my supervisors Prof. Peter Kimani and Dr. Erneo Nyakundi, thank you for your patience and insight, feedback, and ensuring that I stayed the course despite the many challenges and tos and fros to get it right. This thesis would not have been completed without the selfless assistance of Mr. Hesbon Owilla and Mr. Henry Kibira, who selflessly gave of themselves. Their technical and personal support when the going got tough and the challenges seemed insurmountable helped in smoothing out the bumps on this journey. I am indebted to you for making this possible. Thank you. To my family, I can't thank you enough for the support and cheering me on even when that meant sacrificing the valuable times we shared together. I love you. Just as important, I wish to extend my sincere gratitude to the participants who volunteered to respond to my enquiries with invaluable insights, and without whom I would not have completed this project. Asante!

ABSTRACT

The coverage of sexual minority groups like the lesbian, gay, bisexual, and transgender (LGBT) community by print media, tends to raise multiple legal and ethical questions for journalists in Kenya. This study sought to identify and explain the legal and ethical guidelines for print media journalists in Kenya, as well as the factors that influence journalists' ethical decisions. These decisions are subject to legal restrictions, professional ethics, personal values, religious and cultural bias. This raises ethical and legal debates for journalists since a democratic society and free media – both of which are billed as cornerstones of Kenya's constitution – uphold the voicing of personal and divergent opinions. How then do we eliminate perceived bias? The following were the objectives of the study: to establish the ethical and legal issues that emerged in the print media's coverage of the petition by the LGBT to have sections 162 and 165 of the penal code repealed to decriminalise homosexuality in Kenya, to determine the ethical decisions and legal considerations by Kenyan print media journalists when covering LGBT topics and individuals, and to evaluate how journalists deal with ethical and legal issues that emerge when reporting on LGBT. The study adopted a mixed method approach in which both quantitative and qualitative data was collected. Because the study only sampled Nairobi-based court reporters and editors, a random sample of 25 journalists was drawn from the four mainstream newspapers in Kenya and the weekly *The Nairobiian*. Quantitative data was collected using a semi-structured questionnaire, that was administered to 25 journalists, while qualitative data was collected through interviews with three key informants. The findings of the study indicate that objectivity, fair coverage, religious bias, cultural bias, and personal bias are the main ethical issues that emerged during the coverage of the LGBT case. The legal issues that emerged in the coverage of the case were the right to privacy, human rights and dignity, discrimination, coverage of an issue that is illegal, seeking of consent from LGBT subjects and exposure to defamation and libel. The journalists indicated that though they might be influenced by religious, cultural, and personal biases, they deal with emerging ethical and legal issues by referring to their in-house editorial policies, the Media Council of Kenya code of conduct and their training in media law and ethics.

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ABBREVIATIONS AND ACRONYMS

APA:	American Psychological Association
BBC:	British Broadcasting Corporation
GALCK:	Gay and Lesbian Coalition of Kenya
GLAAD:	Gay and Lesbian Alliance Against Defamation
ICPAD:	International Conference on Population and Development
KBC:	Kenya Broadcasting Corporation
KEG:	Kenya Editors Guild
KFCB:	Kenya Film Classification Board
KNEC:	Kenya National Examinations Council
LGBT:	Lesbian, Gay, Bisexual, and Transgender
MCK:	Media Council of Kenya
NACOSTI:	National Commission for Science, Technology and Innovation
NGLHRC:	National Gay and Lesbian Human Rights Commission
NGO:	Non-Governmental Organisation
NMG:	Nation Media Group
NUJ:	National Union of Journalists
NYARWEK:	Nyanza, Rift Valley & Western Kenya Network

SG:	Standard Group
TCA:	The Conversation Africa
TEA:	Transgender Education and Advocacy
UN:	United Nations
US:	United States
WEF:	World Economic Forum

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

The coverage of sexual minorities like the lesbian, gay, bisexual and transgender (LGBT) community by print media, tends to raise multiple legal and ethical questions for journalists in Africa because of the oft-association with homosexuality, which is banned in most parts of the continent. This study referred to landmark cases in Kenya, which formed the basis of the research. The decision-making processes by journalists – with reference to ethical considerations and legal restrictions - on the coverage of these cases informed the motivation for this work. For the purposes of this study, the term LGBT is used to represent the entire spectrum model of sex, gender, and sexuality, that extends to include groups that identify as LGBTQIAPP+. This is because the model is fluid, not comprehensive and has been criticised as limiting in its description of the full range of possible sexualities and genders (University of South Dakota, 2019). According to the University of Nebraska Omaha (2020), LGBTQIAPP+ is a summary collection of identities that stand for lesbian, gay, bisexual, trans, queer, questioning, intersex, asexual, aromantic, pansexual, polysexual (sometimes abbreviated to LGBT or LGBTQ+). Sometimes this acronym is replaced with “queer...”

In Kenya, the LGBT community has become increasingly vocal, as attested by the court case by one Eric Gitari against the Non-Governmental Organisations’ Coordination Board (EG v Non- Governmental Organisations Co-ordination Board & 4 others, 2015). The board lost the case for declining to register an NGO fronted by Mr Gitari. The

petitioner, in accordance with the requirements for the registration of an NGO in Kenya, sought to reserve with the NGOs board the following names: Gay and Lesbian Human Rights Council, Gay and Lesbian Human Rights Observancy and Gay and Lesbian Human Rights Organisation. The board however rejected the proposed names on the basis that they were unacceptable under the Kenyan law and should therefore be reviewed. The board invoked Regulation 8(3) (b)(ii) of the NGOs Regulations that gives power to the Director to reject a proposed NGO name if it's considered repugnant, undesirable or inconsistent with any law. According to the board, homosexuality is a taboo that is repugnant to the religious teachings, cultural values and morality of the Kenyan people and laws (EG v Non-Governmental Organisations Co-ordination Board & 4 others, 2013).

However, the board successfully appealed the judgement. Justice DK Musinga, ruled on March 22, 2019 that:

The Kenyan Constitution protects family and our culture. It is evident that there is a lot of pressure being exerted from within and without to disregard some of our constitutional, moral, religious and cultural values and embrace practices that are seen as more trendy, progressive and modern, all in the name of protecting constitutional liberties. There is a danger in so doing. As a sovereign nation, our 2012 Constitution (sic) came after many years of agitating for it and was subjected to a referendum. The values and principle that it espouses must be respected. (Non-Governmental Organisations Co-Ordination Board v EG & 5 others, 2015, para. 93)

In the same breath, one could argue that journalistic ethics are framed by the cultural and social mores of their society, which could be at odds with constitutional liberties. Ethical considerations by journalists reporting on LGBT can therefore be compounded by legal and constitutional provisions. The Kenyan constitution states that, “this Constitution recognises culture as the foundation of the nation and as the cumulative

civilisation of the Kenyan people and nation” (The National Council for Law Reporting, 2013, chapt. 2, article 11). This provision, if interpreted with the judgement above, can get journalists entangled in moral panic in the coverage of LGBT community, as implied by Critcher (2008). When the law appeals to religious, moral, and cultural convictions, it can become ethically problematic to journalists, and there is a possibility that coverage of the LGBT may be slanted to reflect the ‘societal norm’ and legally acceptable positions. Critcher (2008, p.1129) cites Cohen (1972) to explain the role of journalists in advancing moral panic:

Societies appear to be subject, every now and then, to periods of moral panic. (1) A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; (2) its nature is presented in a stylised and stereotypical fashion by the mass media; (3) the moral barricades are manned by editors, bishops, politicians and other right-thinking people...

Following the May 24, 2019 judgement that upheld sections 162 (a) (c) and 165 of the Penal Code that criminalises same-sex relationships between men (EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae), 2016); international media (Kushner, 2019; Bhalla, 2019; Ingber, 2019; Kyama & Pérez-Peña, 2019; Braun, 2019) reported the judgement from what may be interpreted as an activist position. Their coverage reflected that of Human Rights Watch, who reported the judgement with the headline, ‘Kenya: Court Upholds Archaic Anti-Homosexuality Laws’ (Human Rights Watch, 2019). They described the judgement as retrogressive and contrary to the progress Kenya had made toward achieving equality. Human Rights Watch’s LGBT rights researcher Neela Ghoshal was quoted as saying that the High Court in Kenya in essence had condemned people in same-sex relationships as inferior citizens by upholding a discriminatory penal code. The choice of words like

‘archaic’ and ‘absurd’ in these reports could however be interpreted as giving credence to the argument by Justice Musinga that external and internal pressure is being exerted to erode Kenya’s ‘traditional values’ in the guise of being progressive.

Local dailies’ coverage of the judgement was not as critical though, choosing instead to stick to strict reporting rather than analysis of the judgement (Kiplagat, 2019; Wambulwa, 2019). It could be argued that this is understandable, given that homosexuality is still considered illegal in the country. Whether this speaks to the professionalism of Kenyan journalism, political correctness of the reporters, moral neutrality or sticking within the parameters of Kenya’s law and societal norms, are some of the issues this study sought to investigate. Belsey and Chadwick (2006) argue that ethics is not just about negative, positive or biased coverage. They cite the example of ‘not lying’ as not being equivalent to telling the truth; because “lying can be avoided by silence, vagueness or changing the subject (p. 7)”. As such, not lying is an insufficient ethical principle. A newspaper can therefore also keep quiet in support of issues that might be considered sensitive, controversial or embarrassing. Nonetheless, the op-ed pages in some Kenyan newspapers prominently featured articles opposed to homosexuality and in support of the judgement (Oginde, 2019). The failure to publish rebuttals from contrary views can create the impression of imbalance or bias, by not affording others the right of reply.

1.2 Background to the Study

A 2019 Pew Research Centre poll on acceptance of homosexuality revealed that 86 per cent of Kenyans believed that homosexuality should not be accepted in the country (Poushter & Kent, 2020). This is consistent with a 2014 Gallup poll that showed that 88

per cent of Kenyans viewed homosexuality as “morally unacceptable” (Astraea Lesbian Foundation for Justice, 2015). The very low 14 per cent homosexuality acceptance rate was a slight rise from the one in 100 Kenyans who were in support of homosexuality in 2002. Such findings speak to a conservative society where the LGBT community face stigmatisation. Van Klinken (2019) noted, homophobia is rife in Kenya because gay rights are not recognised.

Astraea Lesbian Foundation for Justice (2015) cited cases of homophobia in which religious leaders use the Bible and Quran to incite violence against LGBT individuals. Kenyan politicians have also been accused of invoking religion and culture to make a case for their opposition to LGBT rights and decriminalisation of homosexuality. The former president Daniel arap Moi is on record for stating that Kenya had no room for homosexuals because it is against African norms, traditions and that it is a sin (Astraea Lesbian Foundation for Justice, 2015). Former Prime Minister Raila Odinga was also quoted by the media calling for the arrest of all homosexual people, because Kenya has more women than men, hence no need for same-sex relations (Astraea Lesbian Foundation for Justice, 2015; Barasa, 2010; Kassim and Leposo, 2010). Meanwhile, Deputy President William Ruto was castigated by LGBT activists for apparently equating homosexuals to dogs during a deputy presidential debate in 2013 (Astraea Lesbian Foundation for Justice, 2015; Capital FM Kenya, 2013; Mosoku, DP William Ruto: Homosexuals have no place in Kenya, 2015).

Kenyan media tend to give prominence to political news (Media Council of Kenya, 2021). Therefore, the framing and sensationalisation of LGBT stories that cite influential political sources are prone to elicit ethical and legal debates that inevitably bring to question the place of media ethics and the legal ramifications of such coverage. That was

the case when former Nairobi Governor Mike Sonko derogatorily took on Embakasi East MP Babu Owino, dismissing him as a “homosexual and dog,” in the run up to the repeat presidential elections in 2017 (Star Reporter, 2017).

Considering the cited pronouncements by prominent newsmakers, journalists may find themselves on a slippery slope when covering LGBT individuals and topics. They must be wary of the debate and agenda set by influential political leaders. Reporting on LGBT, therefore, potentially presents an ethical and legal challenge for journalists. These journalists have to uphold professional ethical standards, without being seen as unduly giving coverage to stories that might be interpreted as going against societal norms, religious beliefs, cultural convictions or legal provisions. In addition, they have to be cognisant of the rights of all news subjects and sources to be treated with dignity, as provided for in articles 27 and 28 of the Bill of Rights in the Constitution of Kenya (The National Council for Law Reporting, 2013). Ethics, as Davenport (1990) noted, is an integral part of journalism that should define journalistic training. The same applies to media law, the ignorance of which may end up in costly defamation and breach of privacy suits.

1.3 Statement of the Problem

Kenyan media, like in most other countries, are restricted by both criminal and civil law. Criminal law restrictions include official secrets, obscenity, sedition, and restrictions on reports on criminal acts such as terrorism. Civil restrictions include laws on libel, breach of confidence, confidentiality, and contempt of court. These and other infringements, real or perceived, might lead to gagging orders by the courts.

Journalists are also subject to a code of ethics, their individual moral values and societal norms, including cultural, religious and community beliefs. These restrictions and challenges can be magnified when reporting on topics like LGBT, especially in a conservative society like Kenya. Journalists reporting on LGBT therefore need to consider both ethical and legal issues when making decisions, as the media are expected to uphold professional ethical standards without being seen as unduly giving coverage to stories that might be interpreted as going against societal norms, religious beliefs, cultural convictions or legal provisions. Ethics, as Davenport (1990) noted, is an integral part of journalism that should define journalistic training. The same applies to media law, the ignorance of which may end up in costly defamation and breach of privacy suits.

This raises professional and ethical questions, like whether the law can be the decision-making standard for professional journalism, or whether journalists should instead rely on ethics and morality. Legal restrictions can however be tempered with constitutional guarantees of press freedom and freedom to access of information. As Belsey and Chadwick (2006) noted, even if most of the legal restrictions are waived, there is still need for ethics in journalism, and indeed this will elevate the ethical debate in media. Because sensitive topics like LGBT are bound to be offensive in a country like Kenya, journalists must be intentional and very clear on the ethical and legal considerations that guide their editorial decision-making processes. Belsey and Chadwick (2006, p. 6) rightly observed that:

Ethical discussion is essential because there are many ways in which the media can offend without straying beyond the law: in accuracy, distortations, bias, propaganda, favouritism, sensationalism, trivialisation, lapses of taste, vulgarity, sleaze, sexism, racism, homophobia, personal attacks, smears, character assassination, cheque-

book journalism, deception, betrayal of confidence and invasions of privacy.

Though it may be argued that a comprehensive professional code of ethics or conduct, such as the one by the Media Council of Kenya (MCK) should draw clear lines on coverage of sensitive topics like the LGBT, “it is the individual journalist who will come face to face with very difficult ethical dilemmas and have to make moral choices. No code of conduct can anticipate every situation” (Belsey & Chadwick, 2006, p. 7). As such, this study sought to underscore the importance of understanding the decision-making processes by journalists, especially the ethical and legal considerations that inform those processes.

Journalists must walk a tight rope that brings pressure to bear on a three-pronged decision-making model. This comprises personal moral and ethical convictions to balance society’s religious beliefs, cultural norms, and legal provisions (that they might be expected to mirror). It also entails the profession’s code of ethics and newsroom policies. In addition, journalists are expected to uphold and protect the rights of all their sources and subjects; and treat them with dignity as provided for in the Bill of Rights (The National Council for Law Reporting, 2013). The implied ethical problem here is one of bias against the LGBT, compounded by the legal challenge of not only contravening the law, but also infringing on individual rights that may lead to libel or breach of privacy suits. This further deepens the ethical and legal debate for journalists since a democratic society and free media – both of which are billed as cornerstones of Kenya’s constitution – uphold the voicing of personal and divergent opinions. How then do we eliminate perceived bias? According to Landusky (2014), one of the biggest ethical dilemmas for journalists is burying their own beliefs to serve audiences fairly. This means sacrificing personal lives for professional lives.

As Ochieng, Gachoka, and Mureithi (2014) noted, journalists are ethically obliged to give their audiences information that is of public interest. The implication is that journalists should not be blinded by personal biases like individual cultural and religious values. But what if that ‘public interest’ is also interpreted to imply the mirroring of prevailing cultural, religious, legal, and other societal norms? The ethical dilemma arises if these norms are deemed to be homophobic or can be challenged to be unconstitutional and a breach of individuals’ human rights.

Kenyan journalists make editorial decisions and judgement calls daily that are subject to legal constraints, respective media houses’ policies and the industry’s best practices as underscored by MCK’s Code of Conduct for the Practice of Journalism in Kenya (MCK, 2013). These decisions are also subject to institutional and individual censorships, as well as personal biases through the lens of individual cultural and religious values. Ideally, codes of ethics should be ethical beacons for good journalistic practice. But these, too, may exacerbate the problem and create confusion. They can increase the demand for higher standards by audiences and hence, may not necessarily be a solution to addressing the problem of LGBT coverage.

1.4 Objectives of the Study

This study sought to establish the ethical and legal deliberations print media journalists in Kenya consider when reporting on LGBT. Their decisions are weighed on the scales of prevailing cultural, moral, and religious beliefs in the country; MCK’s Code of Conduct for the Practice of Journalism in Kenya; legal provisions and the ‘internal’

professional character of individual journalists derived from their experiences and personal values.

1.4.1 Specific Objectives

The following were the objectives of this study:

1. To establish the ethical and legal issues that emerged in the print media's coverage of the petition by the LGBT to have sections 162 and 165 of the penal code repealed to decriminalise homosexuality in Kenya, leading to the landmark judgement on May 24, 2019 by the High Court of Kenya that upheld that same sex relationships in the country is illegal.
2. To determine the ethical decisions and legal considerations by Kenyan print media journalists when covering LGBT topics and individuals.
3. To evaluate how journalists deal with ethical and legal issues that emerge when reporting on LGBT.

1.4.2 Research Questions

The research questions for this study were:

1. What are the ethical and legal issues that emerged in print media's coverage of the petition by the LGBT community in Kenya and subsequent landmark judgement on May 24, 2019 by the High Court of Kenya that upheld that same sex relationships in the country is illegal?
2. What are the ethical decisions and legal considerations by Kenyan print media journalists when covering LGBT topics and individuals?

3. How do print media journalists deal with ethical and legal issues that emerge when reporting on LGBT?

1.5 Justification of the Study

There is a growing global consensus that discrimination based on sexual orientation and gender identity amounts to human rights abuse and violates fundamental human rights principles and international law (UN High Commissioner for Human Rights, 2011; Finerty, 2012). This, coupled by the LGBT community's increased visibility and vocal agitation globally that 'gay rights are human rights', have thrust journalists in the eye of the storm to provide coverage and highlight debate on the topic of LGBT.

Notably, the recent support of civil unions of same-sex couples by Pope Francis, as documented in the documentary *Francesco* (Vatican News staff writer, 2020; Reid, 2020; Tushnet, 2020; Alison, 2020; Horowitz, 2020; Rubio, 2020; Prange, 2020), not only gives this study global currency and credence, but poses a challenge for an audience and journalists, whose views and attitudes may have been formed and founded on religious conservatism.

In addition, the LGBT have annual Pride Parades with the month of June set aside as the annual Pride Month. These events and other stories related to the LGBT attract a lot of media attention. Therefore, Kenyan journalists cannot avoid their coverage, as was evident in the May 24 judgement that attracted a lot of local and international media interest. But in a largely conservative country where same-sex relationships are illegal, ethical, and legal considerations by journalists in Kenya become crucial in the coverage and presentation of LGBT stories.

This study is also timely, following the heightened agitation and advocacy by the LGBT for what they consider ‘positive’ and ‘objective’ coverage, as well as the arising debate and interest in the community following the May 24, 2019 judgement. It is also of great interest given the pronouncements by influential politicians in Kenya, whose coverage dominate print media pages.

1.6 Significance of the Study

The study is a good audit of the ethical and legal guidelines that journalists refer to when making decisions. In the absence of such guidelines, the findings of this study can form the basis for the development of an interconnected and structured decision-making model based on ethics and the law when covering LGBT issues. The findings of the study can therefore help in shaping and improving the editorial policies of media houses on the coverage of the LGBT and other minority groups.

This study will help in building of a body of knowledge on factors that influence the selection, positioning, publication, and distribution of content related to LGBT in print media in Kenya. These factors are largely subject to the law, professional code of conduct, societal norms, culture, media ownership, individual journalists’ values, and instruments like editorial policies. The study will also provide an opportunity for the LGBT to understand how the media works and bridge the gap between the LGBT and journalists regarding the coverage of LGBT topics.

1.7 Scope of the Study

The study focused on court reporters and editors who have covered or processed content on LGBT and minority groups in Kenya.

1.8 Limitations of the Study

This study was limited to professional and MCK-accredited, local print media journalists in Kenya. The choice of print media was because print media have been the training ground of most journalists and still employ the highest number of journalists in Kenya. In addition, print media have a long tradition of structured and procedural generation and production of content, guided by policies and frameworks that have served respective media houses for decades and attracted a certain calibre of audiences, with certain expectations of the media houses. Even though the Kenya Broadcasting Corporation (KBC) has a history that dates to 1928 (KBC, 2020), and hence broadcast could arguably be more developed because of historical establishment, KBC journalism was limited to airing of live state events, scheduled news bulletins and propagation of government position and messaging, hence lacked the depth and independence of free media that is not under government control, or liberalism of media that is not funded by public coffers.

Further, print media journalists have distinct attributes that can help in the determination of their general values. Davenport (1990) observed that:

The typical (newspaper) editor is a married man, in his late forties, with a child. All these personal attributes imply a characteristic set of values. Mass communication research shows that senior editors, copy editors and wire editors tend to, more than people in other fields, to have traditional

views about their business. Everything that such gatekeepers are (in terms of their values) affects what they decide is news, how they see an event or situation or programme, what they ask about, and how they organise what they perceive (p.82).

The assumption of the study was that these observations still prevail and are true of the Kenyan media. The findings from this study can therefore give an interesting insight into how these set of values present print media journalists with an ethical dilemma.

As Anderson and Fetner, whose argument was cited by Chen (2018) noted, the most progressive portion of a society is assumed to be its younger generation. Socially conservative attitudes, such as a negative opinion towards the LGBT community, are mostly found in older and religious groups.

The study was further limited to a few legal petitions by the LGBT community and anchored by the landmark case to repeal Penal Codes 162 and 165 that resulted in the May 24, 2019 judgement that upheld that same-sex relationships are illegal in Kenya.

A significant limitation of the study was the small number of journalists sampled. The sample comprised 25 court reporters based in Nairobi County out of the 47 counties in Kenya. A limited number of three key informants, also based in Nairobi, were sampled for qualitative data.

1.9 Operational Definition of Terms

Non-binary: Non-binary or genderqueer is an umbrella term for gender identities that are neither male nor female, i.e., identities that are outside the gender binary (GLAAD, 2016).

Sexual orientation: A term used to describe an individual's enduring physical, romantic and/ or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) orientations (GLAAD, 2016).

Homosexuality: Homosexuality is romantic attraction, sexual attraction, or sexual behaviour between members of the same sex or gender. As a sexual orientation, homosexuality is "an enduring pattern of emotional, romantic, and/or sexual attractions" to people of the same sex (GLAAD, 2016).

LGBTQIAPP+: A collection of identities short for lesbian, gay, bisexual, trans, queer, questioning, intersex, asexual, aromantic, pansexual, polysexual (sometimes abbreviated to LGBT or LGBTQ+). Sometimes this acronym is replaced with “queer” (University of South Dakota, 2019).

Gay: The adjective used to describe people whose enduring physical, romantic, and/ or emotional attractions are to people of the same sex (e.g., gay man, gay people). Sometimes lesbian is the preferred term for women (GLAAD, 2016).

Lesbian: A woman whose enduring physical, romantic, and/or emotional attraction is to other women. Some lesbians may prefer to identify as gay or as gay women (GLAAD, 2016).

Bisexual (also known as bi): A person who has the capacity to form enduring physical, romantic, and/ or emotional attractions to those of the same gender or to those of another gender. Bisexual people need not have had specific sexual experiences to be bisexual (GLAAD, 2016).

Transgender/Transexual: An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth (GLAAD, 2016).

Queer: An adjective used by some people, particularly younger people, whose sexual orientation is not exclusively heterosexual (e.g. queer person, queer woman). Typically, for those who identify as queer, the terms lesbian, gay, and bisexual are perceived to be too limiting and/or fraught with cultural connotations they feel don't apply to them. Some people may use queer, or more commonly genderqueer, to describe their gender identity and/or gender expression (GLAAD, 2016).

Intersex: An umbrella term describing people born with reproductive or sexual anatomy and/or a chromosome pattern that can't be classified as typically male or female. Those variations are also sometimes referred to as Differences of Sex Development (DSD.) While some people can have an intersex condition and identify as transgender, the two are separate and should not be conflated (GLAAD, 2016).

Pansexual: Pansexuality is sexual, romantic, or emotional attraction towards people regardless of their sex or gender identity. Pansexual people may refer to themselves as gender-blind, asserting that gender and sex are not determining factors in their romantic or sexual attraction to others (GLAAD, 2016).

Polysexual: Polysexual individuals are attracted to people of multiple genders. People who identify as polysexual often use that word because it suggests a greater variety of sexual orientations than traditional gender binaries of male and female, or hetero- and

homosexual. Both bisexuals and pansexuals fall under the polysexual umbrella (GLAAD, 2016).

Asexual: An adjective used to describe people who do not experience sexual attraction (e.g., asexual person). A person can also be aromantic, meaning they do not experience romantic attraction (GLAAD, 2016).

Heterosexual: An adjective used to describe people whose enduring physical, romantic, and/ or emotional attraction is to people of the opposite sex. Also, *straight* (GLAAD, 2016).

Homophobia: Fear of people attracted to the same sex. *Intolerance, bias, or prejudice* is usually a more accurate description of antipathy toward LGBT people (GLAAD, 2016).

Sexual minority: A sexual minority is a group whose sexual identity, orientation or practices differ from most of the surrounding society. Primarily used to refer to lesbian, gay, bisexual, or non-heterosexual individuals, it can also refer to transgender, non-binary or intersex individuals (GLAAD, 2016).

Moral Panic: An instance of widespread public anxiety or alarm in response to a problem or person regarded as threatening the moral standards, values, interests or well-being of society or a community (Cricher, 2008).

Journalistic ethics: Principles of ethics and good practice applicable to journalists (Davenport, 1990).

1.10 Summary

This chapter introduced the study by detailing the background of the study, stating the problem, presenting the purpose and objectives of the study, as well as clarifying the research questions. The chapter further highlighted the significance of the study and the basic assumptions and includes the scope and limitations of the study. Next, in chapter two, the focus is on literature review that is guided by the objectives of the study.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter critically looks at factors that influence editorial decisions that journalists make, with special reference to ethical considerations, legal restrictions and provisions, societal norms, as well as cultural biases, religious inclinations, and individual values. It also highlights local and international media coverage, and challenges journalists face in making decisions when covering LGBT topics and individuals. The chapter looks at these issues regarding journalism, but with special reference to print media. It also looks at studies on how the LGBT topic has been framed in the media and juxtapose those investigations against the current study to identify gaps to be addressed by the findings of this study. Ethical concepts, legal considerations and how they can influence decision-making are reviewed as part of the conceptual framework of this study. The underpinning theory on which this study was based is the theory of ethical decision making.

2.2 Theoretical Framework

Ethics, as Smith (2008) notes, is not just a set of moralising dos and don'ts, but rather a philosophical inquiry into the distinctions between right or wrong, virtuous and vicious, beneficial and harmful. Journalism, like other professions, then will exert specific ethical demands on its practitioners. Reflection on ethics is born out of dilemmas, often an internal struggle that requires decision making. It is therefore a reflective engagement, an inevitable human activity that Ward (2011) describes as an attempt by individuals and

societies to respond to quandaries created by changing conditions, unexpected issues and new ways of thinking.

2.2.1 Teleology vs Deontology

In discussion of ethics, scholars often refer to two classical categorisation of ethical theories – the consequentialist (teleological) theories that base moral judgements on consequences of actions; and deontological (non-consequentialist) theories that hold that actions are right or wrong regardless of their consequences (MacKinonn & Fiala, 2018). These are also referred to as ethics of “duty”. Ethical theories with relevance to journalism include consequentialist theories like utilitarianism, in which actions are judged in terms of promotion of human happiness; deontological theories like Kant’s moral theory that emphasises the notion of duty; and Aristotelian virtue theory that emphasises good character (Abubakar, 2019).

2.2.2 Afrocentrism

As Ward (2011) observes, ethics is practical because at its heart is the search of reasons to do certain actions or make certain decisions, not just believing in something. This is the basis of applied ethics, to which journalism ethics or media ethics is anchored. Smith (2008) summarises it concisely that journalistic thinking involves a great deal of moral reflection. But journalists cannot confine their decision-making to just a single teleological, deontological or virtue framework as highlighted above, given the complicated nature of ethical dilemmas. Indeed, divergent realities, experiences and cultures make it even harder to have a homogenous understanding of ethics across different

societies. Christians et al. (2008) acknowledge the existence of disagreements about the nature, possibility, and desirability of a global ethics.

Journalists in Africa must consider how the ethical framework underpinning their work is influenced by globalisation, which raises important questions: are journalistic ethics as practised in Africa distinct from other parts of the world? Can ethical values developed in the Global North be transported to African contexts? Should ethical values for journalism be seen as particular to the socio-cultural context in which journalism is practised, or are there universal values that could guide journalists around the world when they consider the ethical dimensions of their work (Christians et al., 2008)? These are pertinent questions with great import regarding concepts like LGBT that are often labelled as foreign and ‘unAfrican’ as earlier illustrated.

Abubakar (2019) highlights this by exploring scholarly works that attempted to ‘Africanise’ ethics for journalists. A bold attempt at this was made by (Kasoma, 1996) who argued that ethics is dependent on one’s culture. He berated African journalists for imitating foreign norms wholesale at the detriment of African values by postulating that:

The tragedy of facing African journalism of the 1990s and beyond... is that the continent’s journalists have closely imitated the professional norms of the North (formerly known as the West) which they see as the epitome of good journalism. Consequently, the African mass media’s philosophical (ethical) foundations, their aims and objectives have been blueprints of the media in the industrialised societies of the North. Some African journalists even claim that the Northern standards they follow are world journalism standards which every media person should observe. They refuse to listen to suggestions that journalism can have African ethical roots and still maintain its global validity and appeal (p. 95).

According to Kasoma (1996), African journalism (and by extension ethics) should be society-centred and avoid the Northern model that creates division and is driven by

selfish and individualistic agenda. He bases this argument on his conviction that journalism should be based on the socio-political and ethical tenets of the society it serves.

2.2.2.1 Ubuntu.

Kasoma's position has been criticised for lacking rigour and assuming that the African society has a homogenous culture (Tomaselli, 2003). According to Tomaselli (2003), the deification of Afrocentrism, moralistic prescriptions and the notion that authority is beyond critique are baseless. But there are many other scholars who have made a case for ethical relativism in media. Christians et al. (2008), for instance, acknowledge the significance of *ubuntu* as an ethical framework in southern African journalism. Rao and Wasserman (2007) noted that the South African concept of *ubuntu* and the Indian notion of *ahimsa* illustrate the importance of indigenous knowledge in the search of global media ethics.

Ubuntu offers an ethical framework of truth, justice and authority based on collective consciousness and provides a cultural interpretation of an ethical principle such as human dignity (Rao and Wasserman, 2007). According to Rao and Wasserman (2007), *ubuntu* can be likened to communitarian ethic in which the values of the community form the basis of ethical decision-making. They posit that *ubuntu* goes against “the way that social responsibility is currently viewed in many (Western-influenced) ethical codes in the mainstream South African media... since it would require the media to actively seek out ways of bridging persistent racial, economic and ethnic divides, instead of merely avoiding offence as is currently the case. (p. 41)” This can be extended to the treatment of LGBT content with respect to this study.

Rao and Wasserman (2007) also refer to the Indian concept of *ahimsa* (from Hinduism) in challenging the Western interpretation of non-violence. This is the notion from which the ethical obligation of ‘no harm to the innocent’ is formulated (Rao & Wasserman, 2007).

2.3 General and Empirical Literature Review

2.3.1 *Media Coverage in Africa*

In Africa, where homosexuality is illegal in most countries (Gender Links for Equality and Justice, 2015), the representation and coverage of LGBT is problematic. Pellet (2020), in research commissioned by Arcus Foundation, found that coverage of LGBT in most African countries tends to be incomplete and negative. A study by Gender Links for Equality and Justice, a Pan-African gender justice and advocacy non-governmental organisation, found that the LGBT community in most African countries complained about prejudiced coverage by the media. Gender Links for Equality and Justice (2015) noted that LGBT people remain largely absent from public discourse in Africa:

Majority of stories analysed about LGBT issues fail to incorporate the voices of those affected. In addition, many stories use only secondary sources... and feature discriminatory or stereotypical language. The sample (African media coverage) also presents a reliance on international news about this topic; only a handful of articles presented insightful background or analysis of the complex topic as it pertains to the African context (p. 1).

Uganda is one of the African countries that is often cited to highlight the ethical problem of covering LGBT topics by the media (Pellet, 2020). George (2016) observed that in many countries where homosexuality is illegal, such as Indonesia, Iran, and Uganda, media often prey on prejudice and ignorance by agitating against the LGBT community.

Sadgrove et al. (2012) argued that following the passing of an anti-homosexuality bill in Uganda in 2009, and the subsequent debate on the matter, it was still hard to pinpoint how and why anti-homosexual rhetoric gained so much ground in Uganda. They however noted that elite actors such as government officials, the media and religious leaders can manipulate social anxieties to further particular ends. This is a recognition of the important as well as ethically precarious and problematic position occupied by journalists when covering LGBT topics.

The anti-homosexuality law in Uganda is of great significance to the Kenyan situation because of the increased political and public debate it elicited in the East African region, with hundreds of Ugandans reportedly fleeing to Kenya and other neighbouring countries in the wake of its enactment (Human Rights Watch, 2014; Amnesty International, 2014; Senzee, 2014). An analysis by Sadgrove et al. (2012) of the reporting in Uganda's state-owned *New Vision* investigated how the issue of homosexuality was represented in relation to wider discourses regarding threats to public morality and national sovereignty. The study problematised the coverage of LGBT through moral, religious, cultural, and legal lenses.

The moral divide and cultural differences are clearly discernible between several African and international media coverage of LGBT and homosexuality. For instance, in the wake of debate on the anti-homosexuality bill in Uganda in 2009, McVeig, Harris and Among (2009) published an article in *The Guardian* titled 'Anti-gay bigots plunge Africa into new era of hate crimes,' turning the issue into a continental debate, by pointing out that homosexuality is a capital offence in 37 other African countries. To the contrary, according to Sadgrove et al. (2012, p. 105), "the dominant tone of Uganda's state media

reporting over the draft bill has framed the ‘threat’ posed by increasing lesbian and gay activism and presence in the country in relation to concerns over ‘Uganda’s moral decadence’ and ‘moral bankruptcy’.” This argument places the *New Vision* journalists at the very centre of a biased battle for control over moral influence within Uganda.

Gender Links for Equality and Justice (2015) expressed fear that sometimes journalists may become extreme:

In extreme situations, such as in examples from Uganda and Malawi, media reports have crossed serious ethical lines, calling for the arrest and murder of LGBT people. When former Malawian President Joyce Banda proposed repealing a law criminalising homosexuality, a majority of commentators published in *The Nation*, a (private) Malawian daily newspaper, opposed her move, basing their arguments on biblical teachings, with one saying, “Legalising same-sex marriage is pricking into Jehovah’s eyes.” Another example from Uganda is the *Rolling Stone* article calling for Uganda’s “top” homosexuals to be hanged... These “journalists” tarnish the profession with their discrimination. Even worse, they encourage hatred and contribute to the increase of violent attacks on LGBT people throughout the region (p. 2).

This is a typical case of moral panic, which Listiorini et al. (2019) described as news coverage with hatred, which has a negative impact on society. Such instances are morally weighty for journalists, who risk accusations of bias and hate speech. Luce (2013) elucidates the ethical dilemma in her citation of Critcher’s (2003) dimensions of moral panics as having identifiable process of definition and actions; and that they mark the moral boundaries of society. Journalists then find themselves caught up in the dicey position of working within socially acceptable parameters and the demands of the profession that might fall within the realm of deontological ethics (Quinn, 2007; Korkonosenko, 2013).

In journalism, according to Luce (2013), it’s often hard to distinguish between reporting that enhances the minds and morals of members of the public and reporting that

causes fear and panic, intentional or otherwise. This presents a moral dilemma for journalists trying to navigate that fine line. As journalists, Luce (2013) advises, “you shouldn’t sensationalise news events, let alone cause fear or panic about any issue, yet it happens. Moral panic emerges when there is a misrepresentation of an important social issue” (p. 393).

2.3.2 Media Coverage in Kenya

The delicate nature of LGBT coverage and representation in media could not have been more apparent when Hivos – East Africa, a human rights NGO based in Nairobi, proposed a breakfast meeting with the Kenya Editors’ Guild (KEG) in August 2019. This came in the wake of the High Court judgement, with the objective of sensitising the media on why the LGBT community went to court and their take on media coverage of the case. The proposed meeting generated a lot of comments on the KEG WhatsApp forum, resulting in a heated debate, with a section of members dismissing the meeting as a guide to promote the ‘gay agenda’ and kowtowing to the whims of a ‘sinful’ and ‘immoral’ group.

During the meeting, representatives from the LGBT community stated that Kenyan media tend to misrepresent and criminalise them for their sexual identity and orientation. They claimed that the media often sensationalise their stories as ‘evil’ or pepper them with scandal, without seriously interrogating LGBT-related issues - like the May 24, 2019, High Court judgement.

The discussion by the editors on the WhatsApp forum exposed the sensitivity of the LGBT topic, with journalists having to navigate moral, ethical, and legal pitfalls. This is particularly of great importance when subjects of media content like LGBT individuals

consider themselves victims of discrimination and hate speech that is perpetrated by journalists. According to Kelly Imathiu, the programme officer at Hivo - East Africa, the perception of the LGBT community has always been negative, and the media have been culpable in this. He cited the case of former Chief Justice Willy Mutunga's and his deputy Nancy Baraza's June 7, 2011 vetting. The denial by the two that they were not gay was splashed by all leading newspapers the following day, with scant attention paid to their otherwise stellar curricula vitae (Mutua, 2011; Nzioka, 2011; Mosoku, 2011).

But there have been several instances when the courts have made favourable rulings and judgements to protect LGBT persons and positions. In 2013, for instance, Alexander Ngugi Nthungi, who is intersex, was awarded KSh 200,000 by Lady Justice Mumbi Ngugi in damages. This was compensation for the forceful stripping by police to determine her gender identity. Astraea Lesbian Foundation for Justice (2015) hailed the judgement as progressive, citing Justice Ngugi's argument that "whatever Nthungi's choice was in relation to his mode of dressing and regardless of the fact that he perceived himself as a woman, he still retained his inherent worth and dignity to which all humans are entitled" (p.6). A report by *The Daily Nation* on the judgement was published with the headline, *Second 'woman' fights in a man's world*, in which Nthungi is described as a man with gender identity disorder (Ogemba, 2013).

The presentation of the story was contrary to guidelines by the Gay and Lesbian Alliance Against Defamation (GLAAD) on coverage of LGBT. It had "defamatory" language such as 'disordered' since the notion that being LGBT is a psychological disorder was discredited by the American Psychological Association (APA) and the American Psychiatric Association in the 1970s (GLAAD, 2016). This is relevant to Kenyan

journalists because the GLAAD and APA guidelines are referenced standards on coverage of LGBT by reputable media. Today, words such as ‘deviant’, ‘diseased,’ and ‘disordered,’ are often used to portray LGBTQ people as less than human, mentally ill, or as a danger to society (GLAAD, 2016). *The Daily Nation* article further implied confusion with reference to ‘woman’, which Nyanza, Rift Valley & Western Kenya Network (NYARWEK); Gay and Lesbian Coalition of Kenya (GALCK); and the National Gay and Lesbian Human Rights Coalition [NGLHRC] (2016) flagged as a reference to be avoided in their press package for journalists covering the case on the repeal of Section 162 of the penal code that outlaws same sex unions in Kenya.

According to the Kenya Human Rights Commission (2014), the 2010 ruling of the case of *RM vs Others*, Petition No 705 of 2007 (*R.M v Attorney General & 4 others* [2010] eKLR, 2010) was a turning point for the LGBT, when an intersex individual successfully petitioned the High Court and got declaratory orders that she had been subjected to intrusive body search by prison officials. For the first time in Kenya’s jurisprudence, a court defined what it is to be ‘intersex.’ Other landmark cases that gave the LGBT crucial wins in Kenya include a ruling by the High Court in favour of the Transgender Education and Advocacy (TEA) in 2014. TEA had sued the Non-Governmental Organisations’ Coordination Board for refusing to grant it an official status (Astraea Lesbian Foundation for Justice, 2015). In its argument, the board had declined to register TEA because the documents presented to it by its three transgender women as officials – Audrey Mbugua Ithibu (chairperson), Maureen Muia (secretary) and Annet Jennifer Muthoni Thiaya (organising secretary) – were invalid because their names did not match their gender. However, Justice G.V. Odunga of the High Court compelled the board to register the organisation on the basis that

the three had legally changed their names and the board could not deny the group its constitutional right to freedom of assembly and as such, acted in an unfair, unreasonable, unjustified and in breach of the rules of natural justice (*Republic v Non-Governmental Organisations Co-ordination Board & another ex-parte Transgender Education and Advocacy & 3 others* [2014] eKLR, 2014).

In the same year, the Kenyan High Court directed the Kenya National Examinations Council (KneC) to revise Audrey Mbugua's Kenya Certificate of Secondary Education certificate to reflect her changed name and remove the male gender marker (*Republic v Kenya National Examinations Council & another Ex-Parte Audrey Mbugua Ithibu* [2014] eKLR, 2014). Judgement in another landmark case that recognised intersex persons was made in December 2014. Justice Isaac Lenaola compelled the Kenyan government to issue a birth certificate to an intersex child and ordered the Attorney General to name an appropriate body to conduct a census of intersex Kenyans and develop guidelines for their recognition and support (*Baby 'A' (Suing through the Mother E A) & another v Attorney General & 6 others* [2014] eKLR, 2014).

The local media have been accused of indifferent, sensational, and even incorrect coverage of these cases and other LGBT stories. Mwachiro (2019), a writer, journalist, podcaster, and queer activist, alluded to this, stating that he hoped that media coverage of LGBTQ issues will improve in future to recognise and acknowledge that there isn't one single narrative to 'gayism.' According to Mwachiro (2019), when it comes to coverage of LGBT, there is a lot of misinformation and misreporting by journalists. However, journalists who have been trained to report on LGBT accuse their editors, who in turn cite

fear of the media owners, for incomplete coverage and moralising of such stories (Mwachiro, 2019).

Such was the case, for instance, in the coverage of Peter Nyong'o Junior's non-binary fashion that led to questions about his sexuality, which was given great prominence, being the Kisumu governor's son and brother to Hollywood star Lupita Nyong'o. Mwachiro (2019) also cites the case of *The Standard's* 2009 coverage of the marriage of a UK-based gay couple, noting that, once the story was picked up by other media houses, they hot-footed to the unsuspecting parent's home in Murang'a, and sought a reaction that was anything but shocking, with no one bothering to ask whether she even knew what homosexuality was. There's however the possibility that the journalists' reports were influenced by traditional Kikuyu culture, that has idioms and proverbs that counsel against the practice (Njoroge, 2014).

This kind of coverage is not limited to just one media house or newspaper in Kenya. For instance, *The Daily Nation* featured a story of a Kenyan who got married to a mathematics professor in the US with the headline: *Kenyan marries another man in USA* (Muriithi, 2016). The reporter then went ahead to explain that "soon after the event, the two were seen... kissing and fondling in public as friends and cheered" (para. 3). The story was moralised with a religious context in the following paragraph thus:

However, a respected marriage and family counsellor in Kenya immediately criticised the wedding. Pastor Philip Kitoto of the International Christian Centre, Nairobi, said: "Culturally and biblically, marriage and sexual relations between people of the same sex is a sin. The Bible is clear that God created us in his image; He created us male and female. Therefore, in the Book of Leviticus 18:22, He warns men: 'Do not have sex relations with a man as one does with a woman.' God calls this an abomination (para. 4).

According to Gitari (2019), the former executive director of NGLHRC, it's the religious and political elite who have been amplifying what he describes as 'rhetoric' against same-sex relations in Kenya. He blamed them for characterising homosexuality as alien and contrary to African traditions and biblical teachings. Gitari (2019) argues that the narrative that homosexuality is a foreign imposition on Africa is politically motivated, with the aim of criminalising same-sex sexualities in Africa and imposing a homogenous cultural identity.

But despite these challenges and obstacles, Gitari (2019) is optimistic, noting that courts, individuals, movements, state human rights organs and government health agencies have already established Kenya's legal consciousness on how continued criminalisation of homosexuality undermines Kenya's constitutional principles and goals. These sentiments are echoed by Astraea Lesbian Foundation for Justice (2015) who observed that the media have also begun to play a more positive role in raising the visibility of LGBT people, and frequently features debates and news about LGBT rights.

Still, however, LGBT activists are concerned that media coverage of the community and issues related to them tend to be poorly researched, often implying that sexual orientation and gender identity are lifestyle choices, thus perpetuating bias against the LGBT community (Astraea Lesbian Foundation for Justice, 2015). Notwithstanding the increasing sensitivity in the coverage of LGBT issues and individuals, journalists have to be wary of official attempts to stifle and censor LGBT stories by government agencies like the Kenya Film Classification Board (KFCB) that has flagged some stories as obscene and films like *Rafiki* as promoting homosexuality, contrary to what it considers national

norms and values (Astraea Lesbian Foundation for Justice, 2015). Consequently, the film was banned in Kenya, depriving many an opportunity to engage with the subject matter.

2.3.3 Factors Influencing LGBT Coverage

2.3.3.1 Codes of Conduct and Ethics.

Ochieng et al. (2014) emphasised the importance for Kenyan journalists to internalise and apply the code of ethics that guides the profession. This recognises the code as a beacon that can guide journalists from veering onto the path of personal biases such as individual cultural, moral, and religious beliefs. In the coverage of LGBT and other sensitive topics, Kenyan journalists make editorial decisions and judgement calls daily that are subject to legal constraints, respective media houses' policies, the industry's best practices as underscored by MCK's Code of Conduct for the Practice of Journalism in Kenya (MCK, 2013), institutional and individual censorships, as well as personal biases through the lens of individual cultural and religious values.

However, as earlier noted by Belsey and Chadwick (2006), a code of ethics cannot be absolute or exhaustive enough to anticipate every situation. Individual journalists will still be confronted by difficult decisions that would require ethical deliberations and moral choices that cannot be regulated. Ethics, after all, is not just about a code of conduct or rules that must be followed. Ethics is more to do with principles concerning the rights and wrongs of human conduct, principles which have some reasoned theoretical basis and which therefore apply objectively and impartially (Belsey & Chadwick, 2006). These principles cannot be handed down by an authority but must be discovered through the ingenious interplay of human reason and human experience, a process which while

producing results of great value, is both fallible and endless. Therefore, journalists are bound to make different editorial decisions on a similar event, topic or story.

Regarding the coverage of LGBT stories and individuals, the LGBT community has always referred to the journalistic duty and standard to raise issues of perceived bias or misrepresentation. This has inspired initiatives like the 2016 workshop by Religion News Foundation on the coverage of sexual and gender minorities and religion in Sub-Saharan Africa. According to Pellot (2017), the coverage of sensitive topics like LGBT is often distorted by cultural taboos, entrenched stereotypes, social hostilities, legal prohibitions, and editorial censorship. The Religion News Foundation workshop brought together 24 professional reporters and editors from 15 countries in Sub-Sahara Africa for a workshop on covering sexual, gender and religion minorities on the continent.

Pellot (2017) stated that journalists have the power to replace what he termed as dehumanising stereotypes with nuanced and accurate portrayals of persecuted minorities. This demands of journalists to rein in their biases and toe the line of ethical journalism that is mainly captured in the profession's code of ethics, stemming from the principles of honesty, fairness, accuracy, transparency, sensitivity, and thoroughness. Indeed, one of the highlighted resolutions from the Religion News Foundation workshop was that journalists should ensure that their personal beliefs and biases do not influence the objectivity of their reporting or limit the topics they cover; and that "if their beliefs somehow make covering a story impossible, they should pass it on to a colleague (Pellot, 2017).

The workshop also resolved to always consider the motivations and potential biases of sources. This should especially be of importance when covering politicians' and religious leaders' views on LGBT. The workshop further resolved that journalists should

carefully consider word choice and framing around sexual and gender minorities and use sources' preferred terminology when appropriate. Hate speech, sensationalisation, and capitalising on marginalised identities were also identified as pitfalls to be avoided (Pellet, 2017).

Ideally, codes of ethics should be paragons of journalistic practice. But these codes can also deepen ethical dilemma for journalists and create confusion. Additionally, they can heighten the demand for higher standards by audiences and hence, may not necessarily be a solution to addressing the problem of LGBT coverage. Quinn (2007) put this in context:

Journalists have long been expected to rely on external moral guidance such as institutional norms and principles typified in codes of ethics. These external methods – called external because they are imposed on agents rather than psychologically internalised within the agent – have left many journalists confused in terms of specific application of norms, rules, and principles in practice, which in turn has left the public wanting higher ethical standards and more consistent (good) behaviour (p. 168).

There have been suggestions by some scholars that perhaps a virtue ethics approach to morality should be adopted when dealing with ethical dilemmas (such as LGBT coverage). The argument is that this approach offers a principled action-guidance for journalistic roles, by largely focusing on guiding virtues of justice and integrity (Quinn, 2007). According to Quinn (2007), with this moral psychology, factors such as emotions, motives, and intentions, whose interdependence with the standard impartial or universal concerns of moral principles, culminate to create a complete professional character. This 'internal' viewpoint (internal because moral reasons and motivations originate in the journalist's thinking) does not require rejecting the various useful forms of external regulation (Quinn, 2007). Ideally, these virtues, values and principles are provided through

life experience, professional experience, and a university-based journalism education that would include a substantial moral component. Since experiences are as diverse as the journalists themselves, professional character may also vary, ultimately leading to relativism in approaching issues like the LGBT, despite the existence of a uniform, external regulatory ethical framework for journalists. This can end up further deepening the ethical dilemma for journalists.

Landusky (2014) raises another fundamental dilemma, that of journalistic independence and objectivity, when she poses: “How do we eliminate bias in the media when our country so fervently supports having the ability to voice our own opinions? One of the biggest ethical dilemmas for journalists is burying their own beliefs to serve audiences fairly. Here we have to sacrifice personal lives for professional lives” (para. 1),

2.3.3.2 Culture.

In reference to Fishman (1980), Gans (1979), Roscho (1975) Schudson, Sigal (1973) and Tuchman (1973, 1978); Meyers (1994) makes an insightful observation long held by communication scholars. He notes that news, rather than offer an objective recording of events, instead present a social construction of what occurred. Proponents of this position assert that the constructed societal reality is anchored on ideology that upholds, emphasises and justifies the prevailing or most prominent culture by presenting that culture’s views as logically legitimate and obvious. These arguments aptly apply to studies about representation of marginal groups in media. This includes representation of feminists pushing for more women’s voices in news to counter a predominantly male

narrative; as well as activists opposed to perceived stigmatisation and profiling of the LGBT by news outlets.

Journalists must balance their personal moral convictions, religious beliefs, cultural norms and professional expectations against the industry's ethical standards and legal provisions. Their training demands that they be objective and balanced in their coverage. However, journalists still must operate within respective societies that have certain expectations of them to mirror what could be described as a societal norm, that is, serve the public interest, so to speak. Some scholars have argued that journalists just reflect and reproduce the dominant ideology of their times, i.e., a societal construct (Meyers, 1994). This "construction of societal reality" is in reference to Berger and Luckmann's (1966) argument in *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. They posited that the constructed reality does not indicate an objective reality, but rather that the subjective interpretation of events constitutes a societal constructed reality dependent upon cultural and personal interpretations and understandings (Meyers, 1994). This has great implications on the profession and ethics of journalism.

Can a journalist therefore invoke the assertion by Ochieng et al. (2014) that it is the onus of journalists to feel ethically obliged to give their audiences information that is of public interest to justify a coverage that might be deemed offensive by LGBT activists? Does it matter if this coverage is offensive to the LGBT but considered acceptable by the larger society because it mirrors what is embraced as the prevailing societal norm? This is not a far-fetched ethical question. George (2016) captured it in his study of the dilemma journalists face when citing the enactment of an anti-gay law in Uganda in 2014. George (2016) referred to the publication of a list of 'top 200 homosexuals' in Uganda by the

tabloid *Red Pepper*. The paper's justification for the story, as featured in Al-Jazeera's *The Listening Post*, was that they were just reflecting the sentiment of the society they cover and the laws under which they work.

The mirroring of societal norm is not just confined to African case studies. Meyers (1994) alluded to it in her examination of how the *Washington Post* covered President Bill Clinton's attempt to lift the law prohibiting gay men and lesbians from serving in the US military. According to Meyers (1994), the representation of homosexuals in American media speaks to the ideology and values of American society at large. Kenya is therefore walking down a well-trodden path of gay rights, with attendant controversy that arise in perceived 'traditional' or 'conservative' societies. Media are caught up in a gust of what tend to be largely a moral rather than a legal debate on LGBT. The media are thus viewed as either influencers or mirrors. They are perceived as constructors or shapers with the power to influence people and affect the future of society (Hodkinson, 2011). Alternatively, they may be perceived as mirrors of society, reflecting to us events, behaviours, identities, social relations or values that already are important to us.

Many factors can influence the coverage and placement of LGBT content on print media. These include, but are not limited to, religious, cultural, moral, and ethical bias of editors who act as gatekeepers. Davenport (1990) observed that:

...the typical (newspaper) editor is a married man, in his late forties, with a child. All these personal attributes imply a characteristic set of values. Mass communication research shows that senior editors, copy editors and wire editors tend to have traditional views about their business more than people in other fields to. Everything that such gatekeepers are (in terms of their values) affects what they decide is news, how they see an event or situation or programme, what they ask about, and how they organise what they perceive (p. 82).

This observation still largely applies to the print media in Kenya. This insight, in relation to coverage of LGBT stories, was clearly elaborated by Anderson and Fetner, whose argument was cited by Chen (2018). He stated that often, the most progressive portion of a society is assumed to be its younger generation. Socially conservative attitudes, such as a negative opinion towards the LGBT community, are mostly found in older groups and religious groups. It thus follows that should these groups be in decision-making positions in print media as implied above, then chances of negative, insignificant or disregard of LGBT story placement would be high.

The idea that different societies view issues like LGBT differently, and that media reflect their respective societal norms, is a dilemma anchored on ethical and cultural relativism. Ethical relativism, as Velasquez et al. (1992) explain:

...is the theory that holds that morality is relative to the norms of one's culture. That is, whether an action is right or wrong depends on the moral norms of the society in which it is practised. The same action may be morally right in one society but be morally wrong in another. For the ethical relativist, there are no universal moral standards – the standards that can be universally always applied to all peoples. The only moral standards against which a society's practices can be judged are its own. If ethical relativism is correct, there can be no common framework for resolving moral disputes or for reaching agreement on ethical matters among members of different societies (p. 45).

However, human rights proponents and ethicists reject relativism and multiculturalism (Song, 2016). They argue that even though moral practices of societies may differ, the fundamental moral principles underlying these practices do not (Velasquez et al.,1992). Peter Tatchell, an LGBT campaigner, put this in the context of the LGBT in his argument that a big error by some multiculturalists has been to bow to demands for

cultural sensitivity by tacitly accepting that some peoples and communities can be exempt from the norms of universal human rights (Davis, 2009).

Tatchell (2009) makes the point that even though everyone deserves human rights, it doesn't mean that everyone's beliefs and traditions should also be respected. He singles out political and religious ideas based on racism, patriarchy, and homophobia as unworthy of respect and hence should be challenged and not tolerated. Could the dilemma of relativism and multiculturalism that journalists encounter be addressed by Tatchell's (2009) notion of a good, beneficial multicultural society? Such a society is one in which everyone has the freedom to pursue their own different ethics and lifestyles. In public, however, all citizens are treated as equals and are bound together by a shared commitment to universal human rights, regardless of the difference in their personal morality and private lives. This means that even though people of faith may not approve of homosexuality, they should not discriminate on the grounds of sexual orientation.

Yet, this is a contradiction that has been pointed out as a blight in Kenya's otherwise progressive constitution. Finerty (2012) points out that the LGBT in Kenya do not enjoy the rights guaranteed to them in the constitution because anti-homosexuality laws in the country codify and legitimise a general attitude of homophobia in the country. This implies that journalists, like any other Kenyans, could as a result be just as homophobic and entrench human rights abuses against the LGBT. These laws (and by extension biased media coverage or reports that excuse homophobia) instil fear, facilitate abuse, and prevent LGBT Kenyans from achieving the equality provided for in the constitution (McKenzie, 2008; Finerty, 2012).

Perhaps the most outstanding recent event in Kenya that exposed the dilemma journalists grapple with when covering matters related to the LGBT was the case by the LGBT to have sections 162 and 165 of the penal code repealed. The case led to the May 24, 2019 judgement that upheld sections 162 (a) (c) and 165 of the Penal Code that criminalise same-sex relationships between men, as detailed in chapter one. Another landmark event was the death of author Kenneth Binyavanga Wainaina three days earlier on May 21, 2019, the coverage of his death revealed mixed and sometimes conflicted reporting on the life and times of the late LGBT activist. International media primarily focused on Binyavanga as an author first and then LGBT activist (Flood, 2019; Al Jazeera, 2019; Dwyer, 2019; BBC, 2019; Smith, 2019; Mervosh, 2019). However, several articles in local newspapers reported on him first as a ‘gay man’ – even to the extent of sensationalism - before acknowledging his literary accomplishments (Nyota, 2019). Nonetheless, some local reports led with Binyavanga’s literary accolades without sensationalising his sexual orientation (Kimuyu, 2019).

Perhaps this variance in voice and coverage of LGBT by Kenyan media is due to the lack of specific guidance on how to report on sexual minorities. Editorial policies of local media largely echo MCK’s code of conduct for the practice of journalism in Kenya. Although the code has clauses that, if adhered to, should preserve the integrity of the profession of journalism, it has no specific direction on the coverage of sexual minorities. In fact, the code takes a binary approach to sex and gender, as is clear in clause 15 on gender non-discrimination that stipulates that: “women and men shall be treated equally as news subjects and news sources.” (Media Council of Kenya, 2013).

The Nation Media Group (NMG) however, tries to address the coverage of LGBT in its editorial policy, as spelt out in its guiding ethical principles. To deal with discriminatory bias, the policy states in part that the media should avoid prejudicial or pejorative references to a person's race, tribe, clan, religion, sex or sexual orientation or to any physical or mental illness, handicap or political orientation. (NMG, 2018). The closest The Standard Group (SG) comes to providing guidance on LGBT coverage is in clause xi of its policy guidelines that states that the media house will advocate and defend the rights and interests of the underprivileged and disadvantaged and those of rural, working, gender and other minorities (SG, 2020). This is a broad, non-specific guideline that, because of its ambiguity, may not adequately and clearly inform journalists how to approach LGBT coverage.

To the contrary, international media houses, particularly in Europe and the USA, tend to have explicit policies and guidelines on LGBT reporting. These policies are internal initiatives as well as the result of collaborations with organisations like GLAAD or efforts by fraternities like United Kingdom's National Union of Journalists (NUJ). This, as Sarah Kate Ellis, the president and chief executive officer of GLAAD noted, has led to fair, accurate, and inclusive news media coverage that plays an important role in expanding public awareness and understanding of LGBT people (GLAAD, 2016). Leading media houses, specifically Associated Press, Reuters, and *The New York Times*, have taken into consideration the interests and concerns of LGBT as represented by societies like GLAAD to develop guidelines on what they consider to be fair, accurate and ethical reporting on the LGBT. GLAAD (2016) acknowledge this in their updated media reference guidelines:

In recent years, the nation's leading media style books have published guidelines for language and terminology use when reporting on LGBTQ people and their lives, issues, and stories. The Associated Press, Reuters and *The New York Times* all restrict usage of the term "homosexual" – a word whose clinical history and pejorative connotations are routinely exploited by anti-LGBTQ extremists to suggest that people attracted to the same sex are somehow diseased or psychologically and emotionally disordered. Editors at the AP and *The New York Times* also have instituted rules against the use of inaccurate terminology such as "sexual preference" and "gay lifestyle" (p. 15).

In the United Kingdom, the NUJ developed guidelines on what they consider to be fair, accurate and inclusive reporting of life stories and concerns of gay, lesbian, bisexual, and transgender people. According to the NUJ (2014), though there has been significant progress on considerate reporting on the LGBT, there are still areas of concern regarding media's treatment of different sections of the LGBT community and use of certain LGBT-related terms. This means that even the Western media remain susceptible to what the LGBT audience might consider offensive reporting and coverage.

In her presentation to KEG following the May 24, 2019 judgement, Kituku (2019) explained that the basis of their legal argument was the violation of fundamental human rights and freedoms of a minority group. She contended that the provisions of the contested penal code sections were unconstitutional for violating the petitioners' fundamental rights and freedoms. She listed these rights and freedoms as the right to dignity, right to privacy, right to fair trial, protection against discrimination, right to health and freedom and security of person.

Professional journalism would demand that these issues be analysed by the media beyond the reports of the court judgement. However, these details were lacking in the coverage of subsequent stories in print media. Yet, the constitutional weight of the case

should have demanded a more insightful and interrogation of the judgement. The LGBT faulted what they considered a disproportionate application of Article 27 of the constitution and failure to apply the rules of constitutional interpretation. They felt that the principles and national values were considered superior to the Bill of Rights”. This is unlike political coverage and analyses that tend to be deeper, challenge and hold to account office bearers in all the three arms of the government of Executive, Legislature and Judiciary.

That is what objectivity would demand. But as Davenport (1990) correctly stated, no matter how hard we try, there really is no such thing as complete objectivity. Because of our individual upbringing, socialisation, and experience, we view everything with subjective eyes. This raises an ethical issue for journalists in the coverage of LGBT, which may still not be addressed by Davenport’s (1990) argument. The lack of objectivity should however not be an excuse for journalists not to be analytical in their reports.

Kituku (2019) argued that the May 24, 2019 judgement took a moral, rather than legal tangent. She challenged the State’s argument that the push to decriminalise sections 162 and 165 of the penal code was “a foreign agenda”. According to Kituku (2019), criminal law was used to regulate conduct that is ‘wrong’ and ‘immoral’ and which offends the common good and ‘traditional values.’ As such, if any rights of LGBT people are violated, it is because the society deems their sexual conduct immoral and against traditional values. In her opinion, these arguments should have come out clearly in media reports to contextualise the case. This could imply that the Kenyan media either subtly agreed with the High Court judgement or deliberately chose not to take a position on the matter.

But apologists of the ‘traditionalist’ school of thought would not fault the Kenyan media on their coverage of that judgement or other LGBT stories, by invoking the argument by Shaari (1997) that:

Studying the socio-cultural and political factors that influence the ethical conduct of news workers means acknowledging that virtually all cultures have their own tradition of norms and values that guide communications behaviour in a society. These values are generally considered more fundamental than the demands of media professionalism or media codes of ethics, deriving their obligation from the normative prescriptions of right and wrong of cultures (p. 1).

It would not be surprising, therefore, if print media journalists in Kenya are subject to these factors and, accordingly, give peripheral or pejorative coverage of LGBT issues. This ‘cultural’ influence was what President Uhuru Kenyatta was invoking when he dismissed gay rights in Kenya as a non-issue ahead of US President Barack Obama’s visit to the country in July 2015 (Martell, 2015). This was a direct jab at President Obama, whose liberal stance in support of gay rights as a Democrat was obvious. Indeed, the US president took on President Kenyatta during a joint press briefing in the country, categorically stating that: “When you start treating people differently, not because of any harm they’re doing to anybody, but because they are different, that’s the path whereby freedoms begin to erode...If somebody is a law abiding citizen...the idea that they are going to be treated differently or abused because of who they love is wrong” (Zirulnick, 2015, para. 6). But President Kenyatta countered that, “It is very difficult for us to be able to impose on people that which they themselves do not accept. That is why I repeatedly say for Kenyans today the issue of gay rights is really a non-issue. We want to focus on other areas that are day-to-day living for our people” (Zirulnick, 2015, para. 10). Kenyan

and international media prominently covered these exchanges because of the political controversy they raised and the personalities involved.

2.3.3.3 Religion.

The cultural ‘appropriateness’ that President Kenyatta was citing is what religious leaders have been invoking for long. These leaders have taken advantage of mainstream print media as influential platforms to render their voices on regular commentaries and op-eds. They are also given opportunities to comment on stories relating to LGBT. Bishop Dr David Oginde, for instance, has a weekly column with *The Standard on Sunday*. He has used that platform religiously to uphold the Church’s position on homosexuality. He, for instance, advanced a vocal ‘opposition’ to homosexuality through his column to protest ICPAD25, the International Conference on Population and Development that was hosted in Nairobi between November 12-14, 2019. His position was that the language of the conference’s intentions was vague and could promote practices like gay rights and abortion (Oginde, 2019b). He also used his column to applaud the May 24, 2019 High Court judgement (Oginde, 2019a). Even though the media are supposed to give voice to divergent views, the lack of rebuttals or contrary opinions to positions taken by religious leaders on LGBT topics raises an ethical issue of imbalance or bias.

However, the prominences of religious voices on matters to do with LGBT in mainstream media is not unique to Kenya. A study by Mason and Rosenholt (2012) in a liberal country like the US found that:

... the vast majority of positive messages in stories about LGBT issues were from sources with no religious affiliation identified...the analysis of 318 news stories found support of the gays vs. religion framing of

LGBT issues...media outlets consistently quoted sources from evangelical organisations to speak about LGBT issues, and the messages those sources conveyed were significantly more negative than positive...based on sourcing used, the media clearly framed stories as gay vs. religion (p. 4).

Mason and Rosenholt (2012) acknowledged that since the coverage is framed in terms of conflict, it can continue to perpetuate certain negative stereotypes - of LGBT people themselves, and of people who are consistently portrayed as lining up on one side or the other of the argument. According to Mason and Rosenholt (2012), the perpetuation of stereotypes is more entrenched in the depiction of religious voices in media coverage of LGBT issues.

However, GLAAD (2010) argue that the perceived conflict between LGBT and religion as presented in the media is misleading, noting that, "... a common myth about lesbian, gay, bisexual and transgender equality is that it is universally opposed by people of faith," and that more often than not, "media coverage...falsely positions LGBT equality and inclusion as a matter of 'gays vs. religion'" (p.30). This framing of religious voices has the potential to distort perceptions of religion, of LGBT people, and of the 'morality' of pro and antigay viewpoints, thus putting journalists in the dock for ethical failings.

According to Mason and Rosenholt (2012), media portrayals, such as a 'gays versus religion' frame, can reinforce cultural biases, as the media reflect and perpetuate dominant cultural assumptions." Because such frames can have far-reaching impact on public opinion, it is imperative to interrogate how such cultural assumptions are reinforced and the extent to which dominant frames are present in the media. This is what Siddiqi (1999) reiterates, when he states that both news and entertainment convey, reinforce, and are based on certain belief and value system. With respect to this study, that value system could be

pro, anti, ambivalent to, or indifferent to LGBT content, all of which have ethical connotations.

Siddiqi (1999) makes a case for an Islamic code of ethics for Muslim journalists. He refers to the first International Conference of Muslim Journalists in Indonesia in 1981. The conference endorsed a covenant for Muslim media professionals. It called for the adoption of Islamic rules of conduct as the basis for all Muslim media practitioners in their journalistic endeavours. The conference further urged Muslim media to work toward achieving integration of the Muslim individual's personality. It called for the consolidation of faith of the Muslim individual in Islamic values and ethical principles as the main obligation of Muslim media. This of course presents an ethical dilemma for journalists when covering topics that conflict with Islamic religious values, because looking through religious lenses engenders certain 'moral' and 'principled' biases, such as when confronted by issues related to LGBT.

Even Siddiqi (1999) acknowledged this dilemma despite the attempt to develop a workable Islamic code of journalism, observing that:

In practice, today, there is no journalistic code of ethics based on the principles of Islam, and few scholars have attempted to define an Islamic framework for mass media ethics. ...That is why the Muslim Ummah of more than one billion has no control over sources of information and the way it wants to disseminate news... (para. 12).

Siddiqi (1999) admits that it is challenging to develop and enforce the practice of an Islamic code of ethics among Muslim journalists. Such attempts have failed to attract support from Muslim governments and journalists. Garnering support from Muslim scholars and the Muslim society in general has also been difficult. But maybe Siddiqi

(1999) should have considered that journalism as a profession vault over religious bias and tenets, hence the dilemma journalists sometimes have to grapple with.

But Siddiqi (1999) still sees a place for an Islamic code of ethics for journalists and argues that:

Since a journalist's foremost concern is the dissemination of news, we have to agree upon a definition of news that is permissible within the framework of Quran and Sunnah. Not only that, but we have also to consider a process of news gathering, news making and news dissemination that is acceptable within an Islamic framework. And to compete with the existing information orders, we have to provide theoretical foundations and arguments, as well as a driving force that will ensure its implementation among Muslim journalists throughout the world (para. 20).

The notions of 'permissibility' and 'acceptability' within religious frameworks may of course clash with journalistic principles. These principles are mainly spelt out in codes of conduct. These notions may give justification for certain biases, thus presenting an ethical dilemma. Given the predominantly secular nature, cultural diversity of media workplaces and journalists' training to give voice to divergent views, a religious code may not be practical. Siddiqi (1999) recognises this dilemma, even as he advocates for an Islamic moral system that helps in the realisation of an Islamic worldview to guide Muslim journalists.

This religious slant may hinder a judicious and open-minded approach to issues like LGBT in media. As White (2007) reasoned, "religion is a personal response, seeking meaning in life and in one's universe. Religious expression is generally found within institutional religion, but the formal creed, rituals, devotions, and moral codes do not exhaust the personal experience of religion" (p. 3). Such expressions, given their

subjectivity, are bound to be infused with biases and further put journalists at a dilemma with topics such as LGBT.

2.3.3.4 Law.

Kenyan print media's coverage of the May 24, 2019 judgement was devoid of critical opinion or clear position. The coverage was restricted to strict reporting of the judgement (Kiplagat, 2019; Wambulwa, 2019), unlike the Western media. It could be argued that this is understandable, given that homosexuality is still illegal in the country. In the wake of the judgement, human rights activists and even the United Nations, sharply criticised the government and the judiciary. Kenya was chastised for upholding what was described as "archaic" and "backward" law that "discriminates" against the LGBT. The Human Rights Watch, for instance, reported the judgement with the headline, 'Kenya: Court Upholds Archaic Ant-Homosexuality Laws' (Human Rights Watch, 2019). They described the judgement as a step backward in the progress Kenya had made toward equality in recent years." The Human Rights Watch LGBT rights researcher Neela Ghoshal was quoted as saying that the judgement had relegated people in same-sex relationships to second-class citizenship by failing to strike out a discriminatory penal code. Human Rights Watch dismissed the penal code as a colonial relic that was imposed by British colonisers in 1897.

Is it justifiable to criticise Kenyan journalists for not being bolder and critical in their coverage of the judgement? Can the backdrop of a 'traditional' and conservative Kenyan society, as argued by President Kenyatta and amplified by Oginde (2019a), be used as sufficient reason to explain the subdued coverage? That is the ethical dilemma

journalists have to contend with. What of the Bill of Rights? Even in liberal US, it was not until 2015 that the Supreme Court ruled (by a close 5-4 vote) that the constitution guarantees a right to same-sex marriage (Chen, 2018). This was a historical judgement, and the Kenyan LGBT community would have embraced the far-reaching transformative reverberation had the May 24, 2019 judgement also gone their way. Such instances and historical moments are bound to generate a lot of coverage and media attention, just as was the case in the USA. As Chen (2018) noted, news stories concerning the historical victory thrust the LGBT community into the limelight. This caught the audiences' full attention and occupied all the headlines of news media. It was the same case with Caitlyn Jenner (formerly known as Bruce Jenner), the septuagenarian Olympic gold medallist, who came out as transwoman in April 2015.

Throughout the years, news stories of celebrities coming out have been attracting public attention and arousing endless discussions. With the June Pride Month gaining prominence every year to celebrate the impact of gay people in the world, there have been increasing coverage of LGBT, mainly in foreign media, with almost a celebratory tone. The BBC coverage of 90-year-old Kenneth Felts is one such instance (Tam, 2020). Such coverage is rare in local media as reporters would not actively go out to seek such stories, unless perhaps covering a protest, court case or something controversial. Understandably, Kenyan media is restrained from such coverage by the fact that homosexuality is illegal and journalists cannot be seen to be promoting proscribed activities. But even in liberal USA, as explained by Chen (2018), "the process of promoting LGBT rights, in effect, has gone through ups and downs in the last two decades, and the federal laws and states policies in favour of LGBT community or not have been reformed and resurrected several times"

(p. 83), Maybe the difference in the progression is more pronounced in media coverage, since the latitudinarian press was active in covering and interrogating the issues throughout the ‘battles.’

As recent as 2008, California passed Proposition 8 that restricted the definition of marriage to only heterosexual couples and eliminated the same-sex couple’s rights to marry. This evoked fierce feedback from both proponents and opponents (Chen, 2018). The difference that a libertarian media can make was obvious in Californian press’ response to the ruling, with newspapers opening columns to discuss it and major national networks serving as platforms for opening debate. Chen (2018) could not have summarised this better in his assertion that: “No matter whether various media tycoons picked the side or not, there is no doubt that the reality and media’s own editorial policies have mutually highlighted the importance of LGBT issues and prioritised this marginalised and stigmatised community on the social agenda” (p. 84).

If we are to subscribe to the view that media content is driven by audience preference, then the conclusion would be that the nature of coverage of LGBT issues in print media in Kenya is a response to audience sensibilities. This invokes the earlier argument by Hodkinson (2011) that media is a mirror of the society in which it exists. This cements the assertion by Chen (2018) that mass media reflects the mainstream of public opinions. It is an argument based on the position by McCombs and Shaw (1977) that: “Often time, mass media has to shape its content according to its audiences and advertising clients, which consequently confines and identifies media’s reporting perspective and position” (Chen, 2018, p. 84).

2.4 Conceptual Framework

These ethical frameworks highlighted above should ultimately influence how journalists make decisions when faced by a dilemma. These decisions can either be strictly deontological (based on duty ethics), teleological (based on consequence ethics) or subjective (based on personal ethics). This is clearly illustrated by Merrill (2011) in Figure 1 below, which presents a framework for ethical decision-making based on the three ethical conceptual frameworks indicated above.

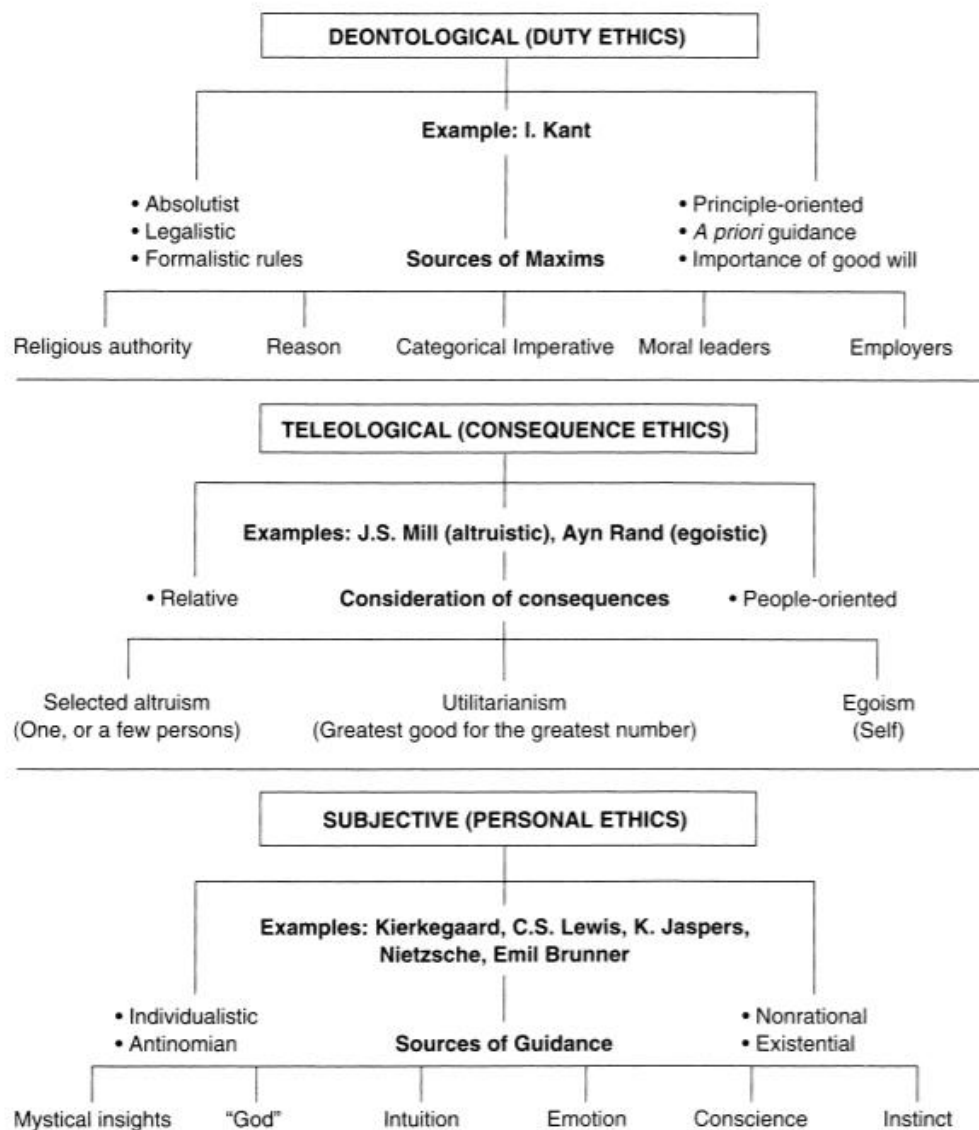


Figure 1: Theoretical concepts for ethical decision-making

Adapted from Merrill (2011)

However, because there's no single perfect model for making ethical decisions, journalists would most likely draw from all the three ethical concepts to make an informed decision to resolve a dilemma. This is the essence of the Potter's box, which is named after Harvard Divinity School Professor Ralph Potter and suggests that ethical decision making goes through four interrelated stages as indicated in Figure 2 below (Smith R. F., 2008).

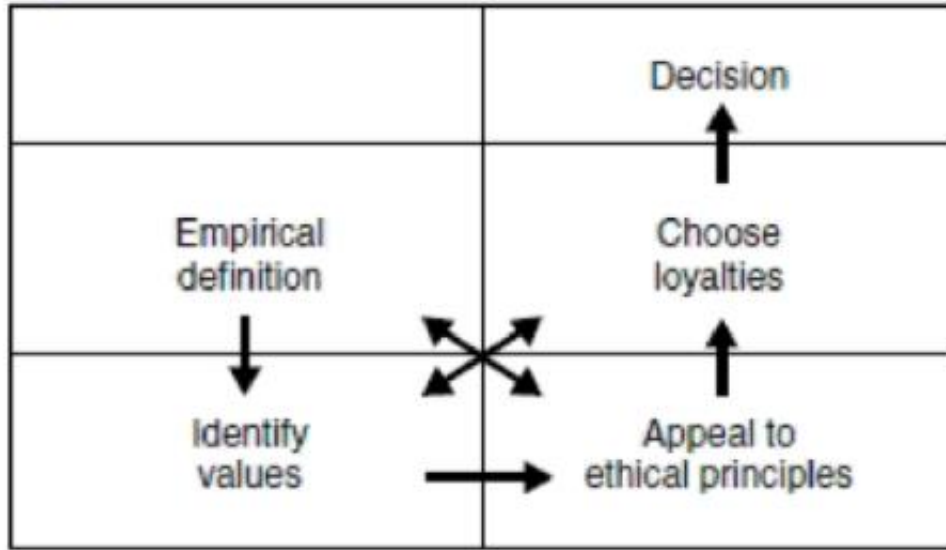


Figure 2: The Potter's Box model for ethical decision-making

Adapted from Smith (2008)

In making a decision guided by this model, a journalist would first have to identify the problem, or dilemma. But before making a decision, they have to seek more information to contextualise, background and gather evidence on the matter at hand. That is the 'empirical definition' stage. This may involve verifying the credibility of news source. After empirical definition comes identifying of values that would help in making an ethical decision. These values could be professional code of ethics, editorial policies, and personal values such as honesty, trust, and fairness.

After identifying the values, the journalist would then assess the dilemma from different ethical viewpoints like *ubuntu*; *ahmisa*; consequences in terms of the amount of good the decision may cause; the intention in deciding to publish, position or frame a story and so on. The journalist then must consider their loyalties before making the decisions. These loyalties could be to the ownership of the media house, advertisers or self in terms of conscience and personal safety, professional duty and so on. With all these considered,

the journalist can then make an ethical decision which may also include not pursuing a story. This model will not lead to the same conclusion even if different journalists are faced with the same dilemma, meaning that ethical decision-making still rests with individual journalists.

2.5 Summary

This chapter presented literature on ethics and law in journalism, which was further extended to focus on the coverage and processing of LGBT content by journalists in general and print media journalists. The literature looked at factors that may influence journalists' decision-making when reporting on LGBT. The theoretical grounding of these factors and decisions were also presented in this chapter to contextualise the decisions and how they might differ between local and international media.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter looks at the research methodology used to study the factors that influence ethical and legal decision-making by journalists when reporting on LGBT. It discusses the research design and approach adopted. The chapter also highlights how data for the study was collected, the sampling technique adopted, analysis and presentation of the data.

3.2 Research Approach and Research Design

3.2.1 Research Approach

The study employed mixed methods research approach. It combined both quantitative and qualitative methods. A qualitative approach focuses on processes and meanings and uses techniques such as in-depth interviews, focus groups and participant observation. Quantitative research involves a systematic scientific investigation of quantitative phenomena and their relationships by applying mathematical models to test theories and hypotheses (Opoku et al., (2016).

The mixed method enabled the researcher to take advantage of both quantitative and qualitative approaches and reduce any weakness that may be associated with one method. A mixed method approach is particularly important when carrying out a survey (Hitchcock et al., 2015). The researcher chose a mixed method for the purposes of triangulation and complementarity. As explained by (Onwuegbuzie & Combs, 2011)

triangulation involves the comparison of quantitative findings with qualitative results. Complementarity in this study entailed the interpretation of qualitative results to enhance, clarify, expand, and illustrate findings from quantitative analysis.

3.2.2 Research Design

Research design involves the plan of action that links the philosophical assumptions to specific methods. An appropriate research design, as elaborated by Saunders et al. is informed by the research questions, research objectives, amount of available knowledge, time and resources and the philosophical underpinnings of the researcher. A research design is the logic that links the data to be collected and the conclusions to be drawn to the initial questions of the study (Yin, 2003).

This study adopted an explanatory case study design, which, as defined by Given (2008), denotes that the research intended to explain, rather than simply describe, the factors that influence ethical and legal decision-making by print media journalists when reporting on LGBT. The study sought to explain the sensitivity of reporting on LGBT in Kenya by examining the ethical and legal influences. The main purpose of an explanatory research, as Neuman (2014) observed, is to explain why events occur. As expounded by Leavy (2017), an explanatory research design seeks to explain causes and effects, correlations, or why things are the way they are. It has been used in studies of sensitive issues like factors that shape people's attitudes about fracking, stem cell research or immigration policies. These touchy issues have strong similarity to the coverage of LGBT in Kenya, hence the choice of an explanatory design.

The research was a case study of print media journalists in Kenya, and the decisions they make when reporting on LGBT regarding ethical and legal considerations. Citing the work by Schramm (1971), Yin (2003) put this in context with the observation that the essence of a case study is that it tries to illuminate a decision or set of decisions by explaining why they were taken, how they were implemented, and with what result. Yin (2003) further explained that a case study investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clear. That was the case with this inquiry into the ethical and legal considerations by journalists when reporting on LGBT.

3.3 Population

The population for this study was print media journalists in Kenya. The findings of this study can therefore be generalised to reporters and editors working in Kenyan print newsrooms. Presently, there are four main daily print newspapers in Kenya that account for almost all professional print journalists in the country, namely *The Daily Nation*, *The Standard*, *The Star* and *People Daily*. In addition, the country has two main weekly newspapers, namely *The East African* and *The Nairobiian*. *The Daily Nation* has the highest readership in Kenya (48.3%), followed by *The Standard* (25.3%), *Taifa Leo* (6%), *Sunday Nation* (5.6%), *Saturday Nation* (5.6%), *The People Daily* (2.7%), *Saturday Standard* (2.5%), *The Nairobiian* (2.3%), *Sunday Standard* (2.3%) *Mwanaspoti* (1.8%) and *The Star* (1.2%). *The Daily Nation*, *Saturday Nation*, *Sunday Nation*, *Taifa Leo* and *Mwanaspoti* are all products of the Nation Media Group which also publishes *Business Daily* from Monday to Friday, while *The Standard*, *Saturday Standard*, *Sunday Standard* and *The Nairobiian* are owned by The Standard Group (MCK, 2021).

As of February 2021, the number of journalists across all platforms accredited to MCK, including foreign correspondents, was 1,675. It proved hard to establish the exact number of journalists in print currently in Kenya, further complicated by the continued shrinking of newsrooms by layoffs and change of journalists' terms to limited contracts. However, if the findings by Ileri (2017) that 33% of Kenyan journalists work in daily newspapers still hold true, then we can extrapolate that about 550 journalists accredited by MCK as at February 2021 are affiliated to newspapers. This is slightly lower than the figure that can be extrapolated from the findings by Obonyo and Owilla (2017), whose findings indicated that 25% (or 750) of the 3,000 journalists accredited by MCK at the time worked for the print media.

3.4 Target Population

The target population for this study was limited to Nairobi-based court reporters and editors. These journalists are drawn from the four mainstream newspapers in Kenya who covered the petition by the LGBT community, edited reports on the LGBT case, and have experience in reporting on or editing LGBT and other minority group stories. In determining the target population for this study, the researcher referred to the number of court reporters in the four main newspapers as of February 2021. The number of editors was estimated using the assumption that a reporter's article passes through at least two editors for substantive quality control - entailing editing for grammar, fact, house style and adherence to editorial policy - before publication. A target population of 28 was arrived at as per the illustration in Table 1 below:

Table 1: Determination of target population

Newspaper	Court reporters	No. editors processing story	Total
Star	6	2	8
Daily Nation	5	2	7
The Standard/The Nairobiian	5	2	7
People Daily	4	2	6
Total	20	8	28

3.5 Study Site

Due to Covid-19 restrictions, quantitative data for this study was collected virtually by way of a semi-structured questionnaires that was shared with Nairobi-based journalists by way of Survey Monkey. For the same reason, interviews with key informants were conducted on phone through WhatsApp calls.

3.6 Sample Size

In a quantitative study, the sample size is very important and must be representative of the population to make valid inferences and generalisations devoid of errors or biases (Taherdoost, 2017). There are several ways and formulas to determine and adequate sample size. As Taherdoost (2017), observed, though larger samples may reduce the chances of biased findings, “diminishing returns” sets in after specific number and hence need for balance against available resources as larger sample sizes increasingly have insignificant effect on sampling error.

Statistical formulas are used to address this issue to arrive at adequate sample sizes with marginal errors. In this study, the researcher used the Raosoft sample size calculator

software (Raosoft, Inc., 2020). The software calculates sample sizes based on the formula below on the normal distribution and a confidence level of 95%:

$$x = Z(c/100)^2 r(100-r)$$
$$n = N x / ((N-1)E^2 + x)$$
$$E = \text{Sqrt}[(N - n)x / n(N-1)]$$

Where n = sample size

E = margin of error

N = population size

r = fraction of responses

Z(c/100) = critical value for the confidence level c (95%)

Based on this formula and a presumed target population of 28 as per Table 1 above, the sample size of the study was determined as 27 (Raosoft, Inc., 2020).

Qualitative data was generated through non-probability sampling of key informants, all of whom are media professionals. The researcher purposively identified three key informants, based on their experience in newsroom management, positions as senior editors, training in law, expertise in promoting accuracy in public debate and the media in Africa, and authoritative writing on human rights, gender issues and minority groups.

3.7 Sampling Procedures

Sampling focuses on the who or what in a study and where the researcher is getting their data (Leavy, 2017). This study adopted a random sampling technique for the selection of reporters and editors for administration of the questionnaire, and purposive sampling for the identification of the three key informants. A sample size of 27 was arrived at based on the above formula as indicated above. The researcher used non-probability sampling method that employed convenience sampling of court reporters. Snowball sampling was used to select editors with interest in human rights and reporting on minorities.

3.8 Data Generation/Collection Tools

Quantitative data was collected first by means of a semi-structured Survey Monkey questionnaire, which as Lapan (2012) noted, is a suitable tool to capture the complexity of an investigation such as the moral and ethical considerations in decision-making regarding LGBT stories. Twenty-seven questionnaires were shared with journalists as per the determined sample size for quantitative data, while qualitative data was collected from the three key informants through phone interviews. All the interviews were recorded for quality purposes.

3.9 Data Collection Procedures

Given the nature, topic and framing of questions for this study, a mixed concurrent approach was adopted, in which both quantitative and qualitative data was collected (Terrell, 2012). Twenty-seven questionnaires were shared with journalists for the collection of quantitative data, while qualitative data was generated from three key

informants. The quantitative and qualitative data were collected in two concurrent phases and priority was equally given to each method.

3.10 Pretesting of Data Collection Tools

Since data for this research was collected by way of a semi-structured questionnaire and interview guide, it was important that the questions are designed such that the data collected is credible and useful for this study. Pre-test procedures were used to evaluate and improve the semi-structured questionnaire and interview guide. This included inspection of non-response patterns or unexpected distributions. According to Buschle et al. (2021), though these procedures are important, it is more useful to apply open forms of pretesting to get a deeper understanding of how and why certain questions might not be relevant or work as may have been intended originally. These open forms of pretesting are particularly relevant as soon as a general concept of the questionnaire, regarding e.g. topics and concepts, has been decided upon and the next step consists in developing and refining individual questions (Buschle et al., 2021).

In the case of this study, the researcher evaluated questionnaire and interview guide pretesting techniques that are commonly used following the initial drafting of questions, namely expert review and cognitive interviewing (Rothgeb et al., 2007). Expert review involved independent review by experts (researchers) to determine whether the questionnaire items are problematic (Buschle et al., 2021). The questionnaire and interview guide were also piloted to examine them in terms of length, flow, salience, ease of administration and response and acceptability to respondents to detect problems that might disrupt the response elicitation process (Collins, 2003). Pretesting questions enables the

researcher to determine whether respondents can understand the question concept or task, if they do so in a consistent way and in way that the researcher intends (Collins, 2003).

3.11 Validity and Reliability of Research Tools

Validity and reliability of a research is a necessity to ensure rigour, otherwise the research will be baseless and of no value (Morse et al.,2002). Besides adhering to professional standards for conducting a research, validity and reliability was ensured by identifying and correcting errors throughout the research process. This was done by constantly checking the data being collected and ensuring that the interview questions are aligned to the literature, methodology and approach taken by the research (Morse et al., 2002).

As explained by Morse et al. (2002), the researcher was also responsive. Verification involved ensuring methodological coherence and sampling sufficiency. Piloting of the questionnaire and interview guide was also crucial in ensuring that this study was valid and reliable. Sources were also triangulated to guarantee the validity and representativeness of the collected data. The questions were edited for clarity and completion rate assessed. All the interviews were analysed for common themes and recorded for quality.

3.12 Data Analysis and Presentation Plan

The quantitative and qualitative data were given equal priority. Because the approach adopted was a concurrent mixed method, the data was integrated for both analysis

and interpretation. This enabled the researcher to explain, confirm, corroborate, and validate the findings of the study using both the qualitative and quantitative data.

The researcher used IBM/SPSS to help in descriptive data analysis and presentation. After checking the questionnaire for consistency, the data was entered into SPSS and coded by assigning numerical values to the responses as labels on the SPSS software. The data was presented in graph and table formats and analysed using the SPSS descriptive function for frequencies and cross tabulation. The analysis and editing of the data entailed browsing of individual responses, creating, and exporting dynamic charts as well as categorising open-ended responses.

The analysis and presentation of the data was guided by the theoretical approaches and the research design of this study (Roulston & Choi, 2018). Qualitative data was analysed by identifying emergent themes, which were also came in handy in explaining some of the key statistical findings.

3.13 Ethical Considerations

The study did not proceed before a nod from Aga Khan University's ethical committee and approval from the National Council on Science, Technology, and Innovation (NACOSTI). The study adhered to strict ethical guidelines, such as seeking informed consent and guaranteeing confidentiality of the participants. As noted by Richards (2015), qualitative researchers are far more likely to impact and impede people's lives than researchers whose data are collected impersonally and recorded numerically. Their questions are more intimate, and their methods more intrusive. This is particularly

true for this study as it touched on gender identity, sexual orientation, presumption of possible bias, in addition to legal implications.

Confidentiality, affording participants the opportunity to review their responses to the questions, and declining to proceed or even withdrawing as a participant, were strictly observed, since the outcomes of qualitative research are more likely to risk harm or exposure (Richards, 2015; Richards, 2015). Given the nature and subject of this study, the sampled journalists who responded to the questionnaire preferred to remain anonymous even after giving their consent. The key informants however did not object to the use of their names. The researcher however decided to keep their identity anonymous for ethical reasons and refers to them as Key Informant 1, Key Informant 2, and Key Informant 3. The findings of the research will be shared with the sampled journalists, key informants, and other interested parties as part of this study's ethical obligation.

3.14 Summary

This chapter looked at the research approach taken by the study. It detailed the research design, highlighted the sampling process from a population of journalists and gave an overview of data collection. The chapter also explained how reliability and validity of the data was ensured. Also covered in this chapter is the ethical consideration of the study. The following chapter looks at the analysis and presentation of the data.

In analysing and interpreting the data collected in this study, the priority of analytical components was treated equally, i.e., the qualitative and quantitative components were given equal status (Onwuegbuzie & Combs, 2011).

4.2.1 Response Rate

The study targeted 27 Nairobi-based journalists from four daily and one weekly newspapers in Kenya for collection of quantitative data. Twenty-seven questionnaires were shared through Survey Monkey. Out of the 27 shared questionnaires, 25 journalists responded, which gives a response rate of 92.6%. The researcher interviewed three key informants and their response was sufficient for data saturation.

4.2.2 Findings

4.2.2.1 Research Objective One.

Ethical and Legal Issues that Emerged in Print Media's Coverage of the LGBT

Petition

Most of the respondents felt that though local media's coverage of the petition by the LGBT community to repeal sections 162 and 165 that criminalises same-sex relationships strived to be objective, they failed the ethical test for not giving context and analysing the case against Kenya's constitutional provisions. The findings also indicated that that local media's attempt at balanced coverage was blighted by subtle bias against the LGBT. Key Informant 3 explained this thus:

The coverage of the case in terms of the words tended to be objective and straight to the point. But the images that were used spoke 1,000 words. For instance, there was one image that focused more on the people

attending the court being gay, rather than the LGBT seeking to have a right that is guaranteed to them by the constitution. This was basically an attempt at sensationalising the story without really putting it in text but instead using photos to depict the LGBT community as a wonder, almost as if they are a pestilence. This said a lot about the perceptions and biases of reporters and editors in Kenyan newsrooms.

The respondents identified fair and objective coverage, analytical coverage, bias in favour of the LGBT, bias against the LGBT and average coverage as ethical issues that emerged during the coverage of the LGBT case by both local and international media. Data from the open-ended questions was categorised and analysed statistically to depict the ethical issues that emerged in the coverage of the LGBT case by both the local and international media as illustrated in figures 4 and 5.

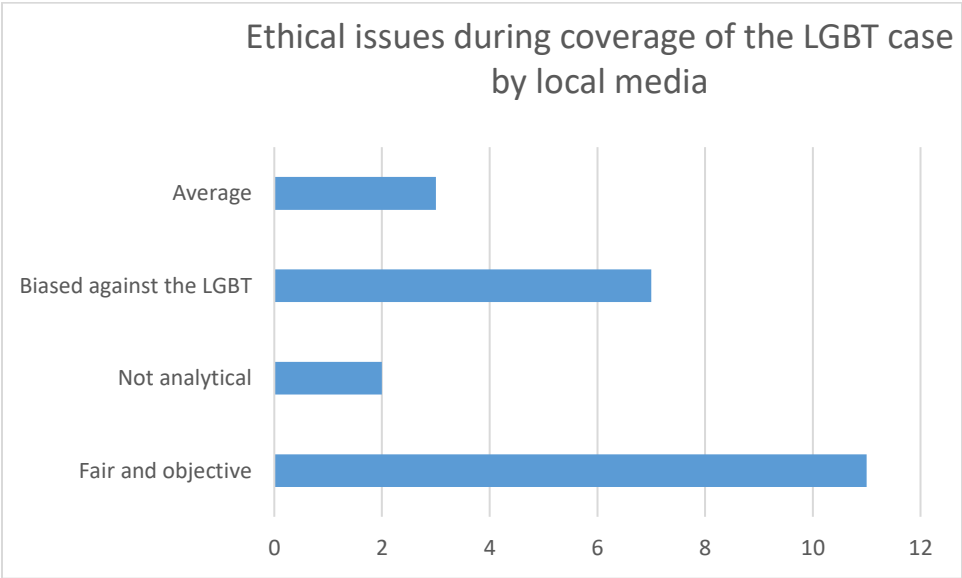


Figure 4: Ethical issues that emerged during coverage of LGBT case by local media

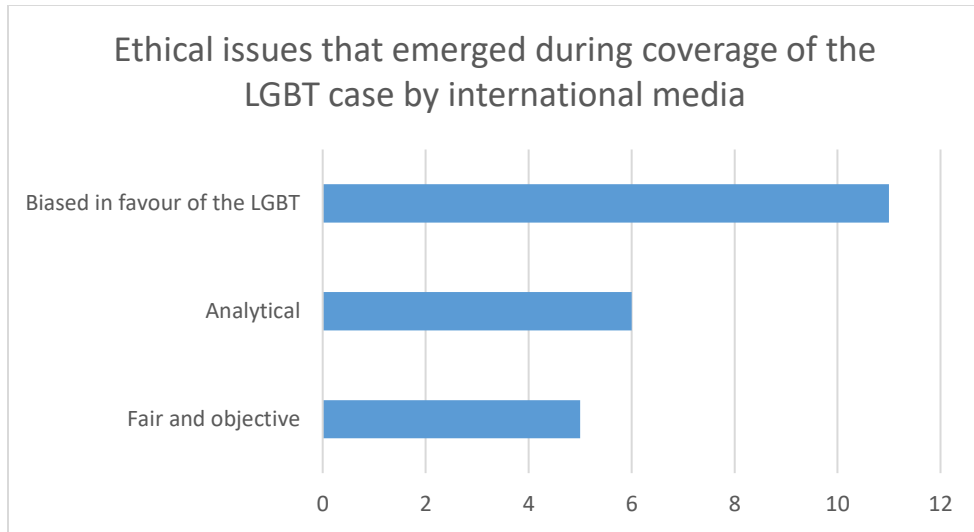


Figure 5: Ethical issues that emerged during coverage of LGBT case by international media

The study found that there was a disparity between the perceived ethical issues that emerged in the coverage of the LGBT case by the local and international media. The findings as illustrated in figures 4 and 5 above indicate that local media were more objective than the international media. The findings also indicate that the issue of bias was prominently manifest as an ethical issue with the local media being biased against the LGBT, while the international media was biased in favour of the LGBT. From the findings the level of bias was more pronounced in international media, with some of the respondents indicating that they were advocating for LGBT.

Key informants 1 and 2 indicated that Kenyan media, unlike those in the West cannot advocate for LGBT rights as the country has priority issues like health and infrastructure that the local media will ultimately focus on. The feedback from the key informants indicated that Kenyan media are sensitive to audience reactions and would not

want to tread on an ethical path that could lead to a backlash. Key Informant 2 underscored this with the observation that:

...in our historical and cultural environment, it would be awkward for the Kenyan media to start pushing for LGBT rights because we'll have to deal with a very strong conservative counterforce, especially around religious and cultural sensibilities.

Familiarity with LGBT Case to Repeal Sections 162 and 165 of the Penal Code

Almost all the respondents indicated that they were familiar with the case by the LGBT community to have sections 162 and 165 of the penal code repealed as per Table 4 below. This was of great importance to this study since most of these journalists have reported on or processed content on LGBT as illustrated in Table 2. These journalists will therefore be familiar with ethical and legal considerations that must be considered when reporting on LGBT.

Table 2: Familiarity with LGBT case to repeal sections 162 and 165 of penal code

	Frequency
Yes	23
No	2
Total	25

Table 3: Journalists who have reported on or processed LGBT content

	Frequency
Yes	21
No	4
Total	25

This was clear from their perceptions of local and international media coverage of the above-stated case. Almost half the respondents felt that local media’s coverage of the case was fair and objective. A significant number also felt that the reporting was biased against the LGBT.

Table 4: Journalists’ perception of local media coverage of the LGBT case

	Frequency
Fair and objective	11
Not analytical	2
Biased against the LGBT	7
Average	3
Total	23

Objectivity and bias as ethical concerns were also evident in the journalists’ perception of the international media’s coverage of the case, with half of the respondents indicating that the coverage was biased in favour of the LGBT. As indicated in Table 5, a significant number of the respondents however acknowledged that the international media’s coverage was more analytical while five of the respondents indicated that the international media’s coverage was fair and objective.

Table 5: Journalists’ perception of international media’s coverage of LGBT case

	Frequency
Fair and objective	5
Analytical	6
Biased in favour of the LGBT	11
Total	22

Ethical Issues that Tend to Emerge when Covering LGBT

The findings indicated that coverage of LGBT is often subject to bias because a significant number of the journalists felt that the topic of LGBT, which was mostly associated with homosexuality, is un-African and goes against their religious beliefs. The biases identified by the findings were cultural bias, religious bias, and journalists' personal biases. The other ethical issues that is likely to emerge is failing to seek consent from LGBT subjects, especially when taking their photos or identifying non-LGBT as LGBT as was the case during the LGBT petition. These ethical failures mean that fairness, accuracy, and objectivity is a big concern when covering the LGBT. This is illustrated in Figure 3 below, which depicts the ethical issues identified by the respondents and categorised for quantitative analysis:

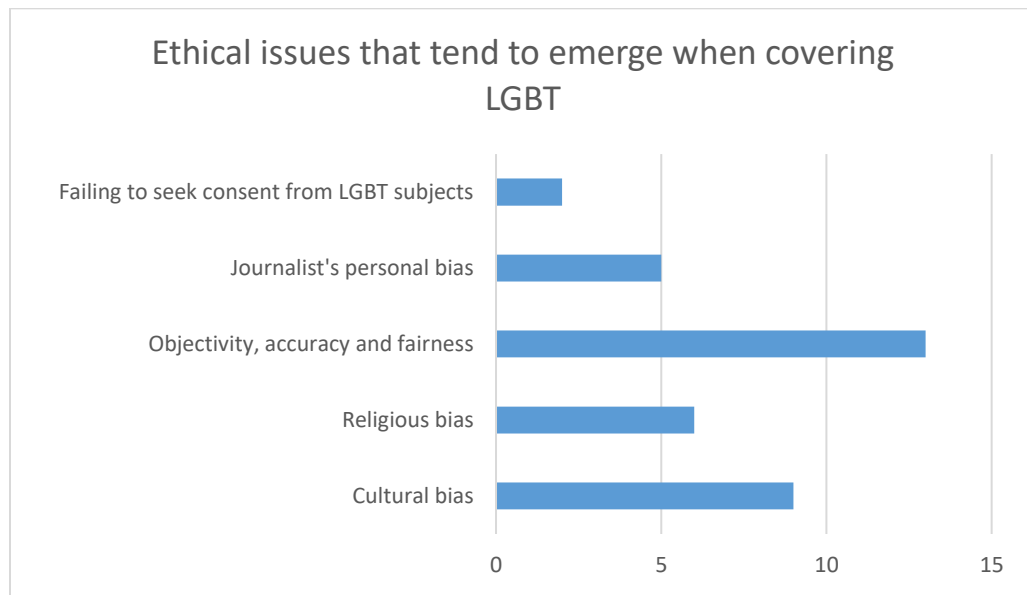


Figure 6: Ethical issues that tend to emerge when covering the LGBT.

Key informants 1 and 2 however indicated that consideration should be whether LGBT stories are newsworthy, rather than assessing their ethical coverage. They indicated that the coverage of LGBT should be seen in the context that homosexuality is illegal in Kenya and is a subject that is not acceptable to most audiences, including advertisers, hence the coverage might be seen as unethical by Western media, but may not necessarily be deemed as such by Kenyan audiences.

The emerging ethical issues calls for guidance of journalist’s coverage of LGBT. Because of biases identified above, including religious and cultural influences, journalists’ confidence in their media houses’ ethical guidelines on LGBT reporting is important in ensuring objective and fair coverage.

Competence to Make Right Ethical Decisions when Covering LGBT

Table 6: Journalists’ perception of their competence to make right ethical decisions when covering LGBT

	Frequency
Strongly agree	6
Agree	13
Neutral	2
Disagree	1
Strongly disagree	1
Total	23

An interesting finding of the study was the journalists’ rating of their confidence to make the right ethical decisions when covering LGBT. The findings indicate that six and 13 of the journalists strongly agree and agree respectively that they have the confidence to make the right ethical decisions when covering LGBT. This is a far better score compared

to the journalists' perceptions of their media houses ethical and legal guidelines on LGBT reporting and could be based on their personal views and cultural and religious convictions.

Legal Issues that Tend to Emerge when Covering LGBT

Table 7: Legal issues that emerge when covering LGBT

	Frequency
Right to privacy	5
Discrimination	3
Human rights and dignity	5
Exposure to libel/defamation suits	2
How to cover issues that are outlawed	6
I don't know	3
Total	24

Table 7 shows that the journalists who were sampled in this study identified the coverage of an issue that is outlawed (like homosexuality); right to privacy; and human rights and dignity, as issues of greater concern. Six of the journalists identified the coverage of an issue that is considered illegal as a matter that should be considered when covering the LGBT, while five of the journalists identified the right to privacy as an issue to be considered. A similar number identified human rights and dignity.

Key informants acknowledged that journalists should always keep in mind the human rights, right to privacy and dignity of LGBT subjects. Key Informant 3 stated that the LGBT are a special minority group that deserves protection irrespective of prevailing cultural and religious biases, arguing that:

The constitution gives everybody the right to be who they want to be and associate with who they want to associate with. It guarantees inalienable human rights to all individuals, irrespective of their race, creed, and even

sexual expression or orientation. Media coverage should therefore recognise this.

Key Informant 2 was in agreement with this position but contended that Kenyan media should not elevate LGBT issues above other human rights and legal challenges such as religious bigotry, ethnic prejudice, civic rights to vote, freedom of association which are just as pressing and immediate. The argument is that ethical and legal considerations when covering LGBT are matters of editorial judgement. Key Informant 2 says that such was the case when *Nation* for instance took a stand against KFCB for banning *Rafiki*:

Legal issues arise when we have to contend with issues such as the banning of *Rafiki* by KFCB. Our position as journalists was that even that though homosexuality is outlawed, it does not mean that you cannot talk about it, discuss it or lobby for or against it. At NMG, we decided that we cannot ignore that debate and how to report on gay rights.

4.2.2.2 Research Objective Two.

Journalists' Perception of Whether their Media Houses Have Sufficient Legal

Guidelines on LGBT Reporting

Table 8: How journalists feel about their media houses' legal guidelines on LGBT reporting

	Frequency
Strongly agree	3
Agree	8
Neutral	7
Disagree	3
Strongly disagree	1
Total	22

The findings of the study indicate that three journalists strongly agreed that their media houses have sufficient legal guidelines on LGBT reporting, while eight agreed that

their media houses had sufficient legal guidelines on LGBT reporting. The number of journalists who were neutral was seven.

How Journalists Deal with Ethical and Legal Issues that Emerge when Covering LGBT

In dealing with the ethical and legal issues that emerge when covering LGBT, most journalists indicated that they refer to the MCK code and their media houses' editorial policies, even though some indicated that their religious and cultural backgrounds might inform their decisions. Most of the journalists indicated that they strive to be objective when dealing with ethical and legal issues when covering the LGBT.

All the key informants agreed that journalistic ethics and principles should inform decisions by the journalists when dealing with ethical and legal issues that emerge when reporting on LGBT. Though culture, religion and personal biases may influence journalists, feedback from the study indicated that journalists should be dispassionate and not allow their feelings and biases get in the way. Key Informant 3 noted that:

Journalists just need to be journalists. They should stick to the demands and ethics of the profession when dealing with sources and stories, however sensitive they might be. You need to be objective, get both sides of the story and shouldn't let your personal biases interfere with your coverage.

This requires that journalists be familiar with the MCK code. Only one journalist indicated that they were unfamiliar with the MCK code as indicated in Table 9. It can therefore be deduced that this code largely guides the ethical decision-making in newsrooms regarding the reporting on LGBT. The study however found that in dealing with emerging ethical and legal issues, journalists are subject to other factors like editorial policies, religion, culture, and personal values as illustrated in Figure 7.

Table 9: Familiarity with MCK code of conduct for journalists

	Frequency
Yes	23
No	1
Total	24

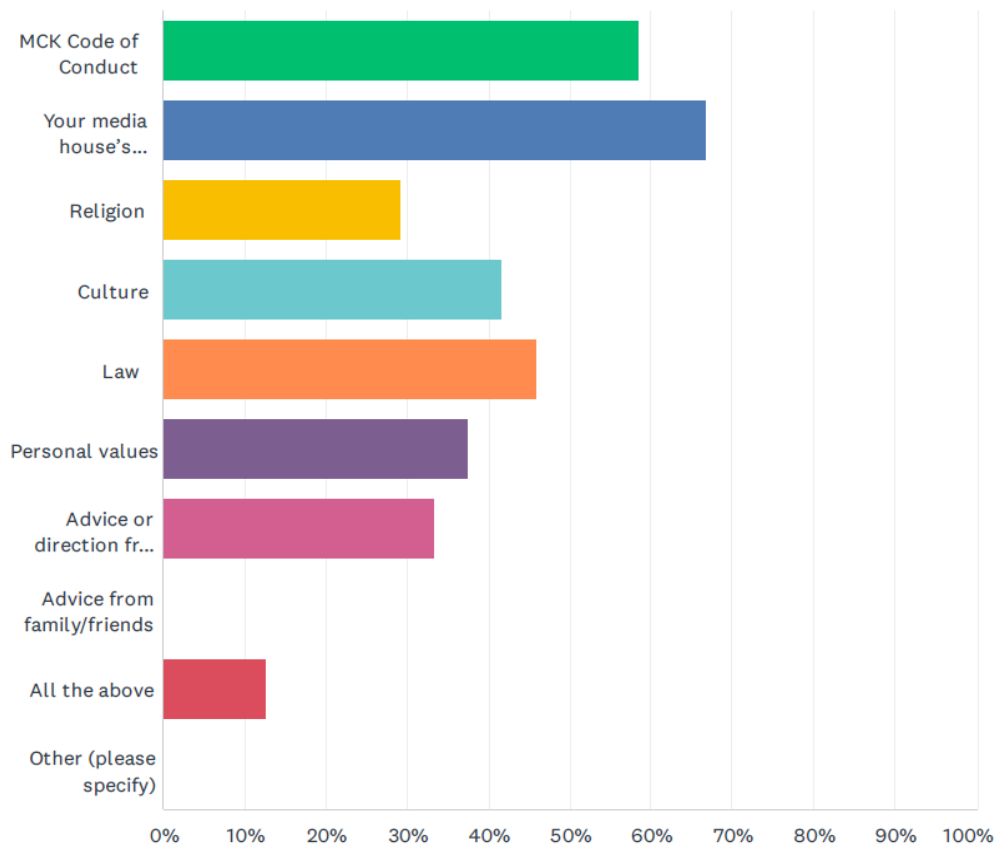


Figure 7: Factors likely to influence journalists' decisions when reporting on LGBT

Awareness of Media House Policies to Guide on LGBT Reporting

The study sought to find out if the journalists were aware of policies in their media houses to guide on LGBT reporting as an important factor in dealing with ethical and legal issues that emerge when reporting LGBT. Seventeen of respondents indicated that their

media houses did not have policies to guide on LGBT reporting, while six of the journalists did not know whether their media houses had specific guidelines to aid in LGBT reporting. Only one journalist indicated that their media house had a policy on LGBT reporting.

Table 10: Awareness of policy on LGBT reporting

	Frequency
Yes	1
No	17
I don't know	6
Total	24

Figures 8 and 9 below indicate that most journalists believed that they had the competence to make ethical and correct decisions to address legal issues when reporting on LGBT.

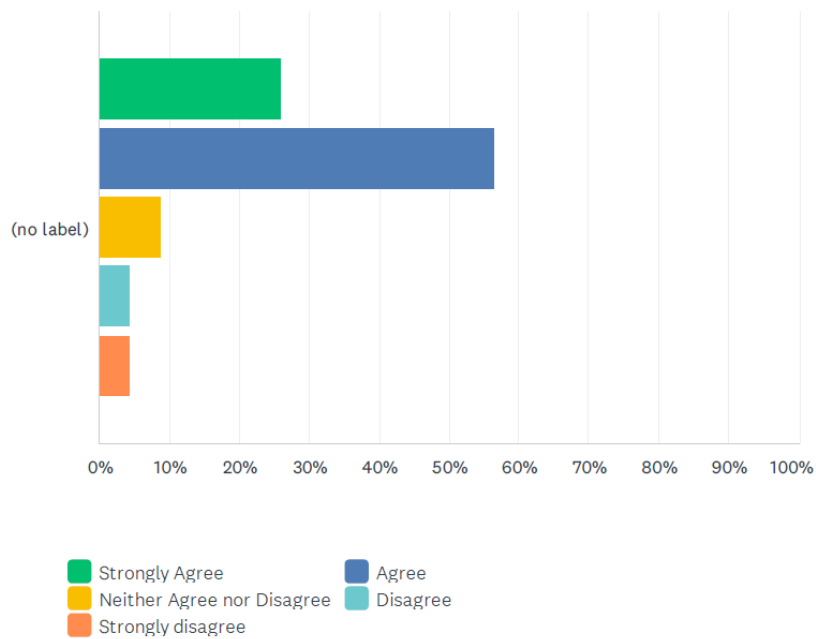


Figure 8: Journalists' perception of competence to make ethical decisions when reporting on LGBT

Table 11: Journalists' perception of competence to make ethical decisions when reporting on LGBT

	Frequency
Strongly agree	6
Agree	13
Neutral	2
Disagree	1
Strongly disagree	1
Total	23

These findings show that despite most journalists indicating that they did not have specific guidelines on how to report on LGBT, six of them strongly agreed and 13 agreed that they had the competence to make ethical decisions when reporting on LGBT. It's the same situation with their perception on competence to correctly address legal issues when making decisions on LGBT reporting.

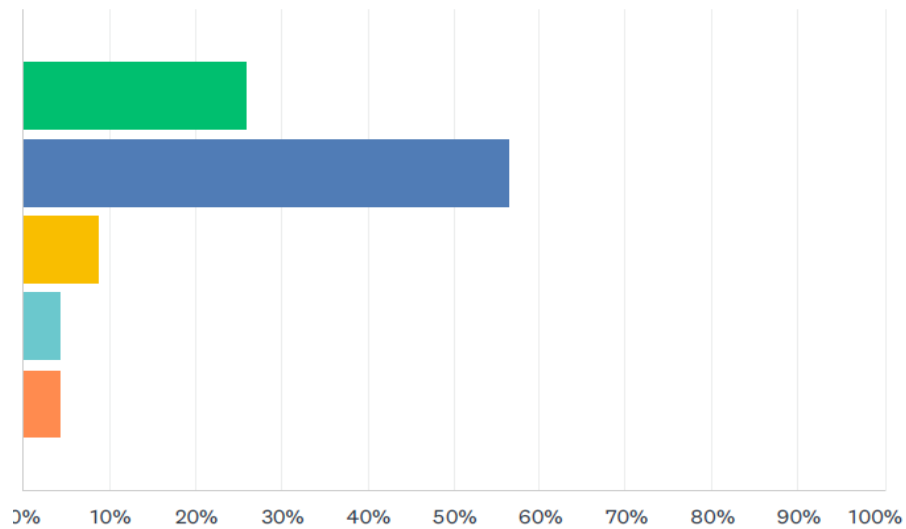


Figure 9: Journalists' perception of competence to correctly address legal issues when making decisions on LGBT reporting

These perceptions are most likely subject to the factors that influence their ethical decisions and legal considerations – MCK code of conduct, editorial policies of media houses, culture, and the law – as indicated above in Figure 8.

Position in Newsroom

The journalists interviewed for this study held different positions in the newsrooms, ranging from correspondents to managing editors as per the table below:

Table 12: Positions held by journalists

	Frequency
Correspondent	1
Reporter	5
Sub Editor	3
News Editor	4
Revise Editor	2
Production editor	2
Managing Editor	3
Editor	4
Other	1

The findings indicate that a majority of the respondents had the designation ‘editor’ to their positions in newsrooms, with reporters comprising five out of the 25 respondents, while one of the respondents was a correspondent.

A cross tabulation of journalists’ positions and perception of their confidence to make the right ethical decisions when reporting on LGBT as illustrated in Table 13 indicates that five reporters either agree or strongly agree that they can make the right ethical decisions, while three sub-editors either strongly agree or agree. This is an interesting finding as it’s the sub-editors who process the reporters’ articles and a lower confidence level could lead to changes in copies that reporters might not agree with how.

The lower score by the sub-editors could be because they are the ones who feel the pressure and often held to account for any misrepresentation or consequences like complaints and libel cases. Similarly, it's instructive that two out of the four news editors sampled strongly agree or agree that they have the competence to make the right ethical decisions, as their position come with even more responsibility and demand for extra caution.

Table 13: Journalist's position and competence to make ethical decisions on LGBT reporting

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	
Correspondent	0	1	0	0	0	1
Reporter	2	3	0	0	0	5
Sub Editor	1	1	1	0	0	3
News Editor	1	1	0	1	1	4
Revise Editor	0	1	0	0	0	1
Production editor	1	1	0	0	0	2
Managing Editor	1	2	0	0	0	3
Editor	0	3	1	0	0	4
Total	6	13	2	1	1	23

For the more senior positions of managing and production editor, all the journalists either strongly agreed or agreed that they had the competence to make the right ethical decisions when reporting on LGBT. This could be indicative of the decision-making responsibility in terms of commissioning of stories and being the final eyes before stories are approved and released for printing.

This however does not necessarily mean that the bosses – editorial or management - have the final say in decision when it comes to LGBT reporting. Table 14 below indicates that 12 of the journalists either strongly agree or agree that bosses at their media houses have the final say on LGBT stories coverage and angling. This implies that there's a

semblance of independence in the newsrooms that recognises the competence of journalists to make the right calls.

Table 14: Journalists perception that bosses have the final say on LGBT stories coverage and angling

	Frequency
Strongly agree	5
Agree	7
Neutral	5
Disagree	6
Total	23

4.2.2.3 Research Objective Three.

Competence of Journalists Who Have Reported on LGBT to Make Right Ethical

Decisions when Reporting on LGBT

The study found that 16 of journalists who have reported on LGBT and three of those who have not reported on LGBT either strongly agreed or agreed that they have the competence to make the right ethical decisions when reporting on LGBT as illustrated in Table 15. This could be interpreted that journalists who report on LGBT are more likely to take into account ethical considerations when reporting on the subject.

Table 15: Journalists who have covered LGBT and perception of their competence to make the right ethical decisions

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Total
Yes	5	11	1	1	1	19
No	1	2	1	0	0	4
Total	6	13	2	1	1	23

Journalist who Have Covered LGBT Stories and their Media Houses' Coverage of the LGBT Case that Sought the Repeal of Sections 162 and 165 of the Penal Code

Further, the study revealed that only nine out of 18 journalists who have covered LGBT stories or processed LGBT content strongly agreed or agreed that their media houses professionally and without bias, covered the LGBT case that sought to have sections 162 and 165 of the penal code repealed as illustrated in Table 16 below. This disconnect can perhaps be explained by reporters' high perception of their competency to make ethical decisions regarding LGBT coverage and the lower perception of competency by gatekeepers like sub-editors and news editors who process and angle their stories.

Table 16: Perception of journalists who have covered LGBT about how professional their media houses covered the LGBT case to repeal sections 162 and 165 of the penal code

	Strongly agree	Agree	Neutral	Disagree	Total
Yes	5	4	5	4	18
No	1	3	0	0	4
Total	6	7	5	4	22

Understanding of Media Ethics

Table 17: Journalists' rating of their understanding of media ethics

	Frequency
Excellent	9
Good	14
Average	1
Total	24

Most of the journalists indicated that their understanding of media ethics was either excellent or good. The findings of the study indicate that nine of journalists believed that their understanding of media ethics was excellent while 14 believed that their understanding of media ethics was good. Such high perception should ideally mean that coverage of LGBT in Kenya is objective and fair.

Understanding of Media Law

Table 18: Journalists' rating of their understanding of media law

	Frequency
Excellent	9
Good	13
Average	2
Total	24

The findings also indicated that 22 of the sampled journalists believed that their understanding of media law was either excellent or good, out of which nine believed that their understanding of media law was excellent.

4.3 Summary of Key Findings

The feedback from the key informants clearly indicates that reporting on LGBT tends to be sensitive and can sometimes be controversial. The ethical issues could pose a dilemma and present legal challenges and determine whether that coverage will be objective, factual, and fair; replete with cultural and religious bias; or violate the individual rights of an entire community or individuals who identify as LGBT.

The study established that though Kenyan journalists make efforts to be professional and objective when reporting on or processing content on LGBT as guided by the MCK code of conduct and editorial policies of their respective media houses, they are still susceptible to bias arising from their cultural backgrounds, religious grounding and legal provisions that outlaw same-sex relationships in the country.

International media were found to be more liberal, sometimes to the point of advocacy, as was evidenced in their coverage of the May 24, 2019 judgement. Their coverage was found to be more sympathetic of the LGBT community and critical of the Kenyan government for upholding ‘archaic’ laws that violate the rights of a marginalised group.

The study found out that reporters were more confident than sub-editors and news editors about their competency to address legal and ethical issues when covering LGBT. This variance could suggest that the LGBT content that is published in print media is not edited to the satisfaction of the reporters. This could explain why only half of journalists who have reported on LGBT strongly agreed or agreed that their media houses professionally and without bias covered the LGBT case to have sections 162 and 165 of the constitution repealed

4.4 Summary

This chapter presented the findings of the study. Quantitative data was analysed statistically, and the findings presented as frequency tables and graphs. Some of the data was cross tabulated to determine the relationship between some of the variables. Three main themes emerged from the interviews with the key informants - objectivity, fairness

and factual coverage; cultural and religious influences; and legal considerations with respect to human rights and privacy laws.

CHAPTER FIVE

DISCUSSIONS, CONCLUSIONS, AND RECOMMENDATIONS

5.1 Introduction

This chapter discusses the key findings of this study that sought to establish and explain the legal and ethical considerations by print media journalists in Kenya when reporting on LGBT. Specifically, the study sought to find out: the ethical and legal issues that emerged in print media's coverage of the petition by the LGBT community in Kenya seeking the repeal of sections 162 and 165 of the penal code, and subsequent landmark judgement on May 24, 2019 by the High Court of Kenya that upheld that same-sex relationships in the country is illegal; the ethical decisions and legal considerations by Kenyan print media journalists when covering LGBT topics and individuals; and how print media journalists deal with ethical and legal issues that emerge when reporting on LGBT.

5.2 Discussion of Key Findings

5.2.1 Ethical and legal issues that emerged in print media's coverage of the petition by the LGBT community in Kenya to have sections 162 and 165 of the penal code repealed

The first objective of the study sought to establish the ethical and legal issues that emerged in the print media's coverage of the petition by the LGBT community in Kenya and the subsequent landmark judgement on May 24, 2019 by the High Court of Kenya that upheld that same-sex relationships in the country are illegal. The journalists noted that objectivity, fairness and facts were put into question due to religious, cultural, and legal influences, as well as personal values. This is despite the existence and their awareness of

policies formalised through prescriptive guidelines like the MCK's Code of Conduct for the Practice of Journalism and respective editorial policies of their media houses.

The findings, as illustrated in Table 4, indicated that despite the existence of editorial guidelines by media houses and MCK code of conduct, only 11 respondents thought the coverage by local media was objective and fair. A significant proportion of the sampled journalists (seven) indicated that the local media coverage was biased against the LGBT, while three and two of the journalists indicated that the coverage was average and not analytical respectively.

Objectivity and bias as ethical concerns were also evident in local journalists' perception of international media's coverage of the case, with 11 of the respondents indicating that the coverage was biased in favour of the LGBT (Table 5). Six of the respondents however acknowledged that the international media's coverage was more analytical, while five indicated that the international media's coverage was fair and objective.

These findings corroborate the position taken by Belsey and Chadwick (2006), who argued that guidelines like a code of ethics or editorial policies are not sufficient and absolute to anticipate every situation. No doubt, given the legal situation that homosexuality is illegal in Kenya, coupled by the influence of personal values, religious and cultural beliefs, some of the journalists could have found themselves in an ethical dilemma that called for individual choices. These decisions have to ultimately align with their principles concerning 'right' and 'wrong,' which cannot be regulated. These principles are the subject of personal ethics or subjective ethics that were elaborated in the theoretical concepts for ethical decision-making.

These individual choices are however moderated by editorial policies of respective media houses, which could explain why only half of the journalists who have covered or processed LGBT stories strongly agreed or agreed that their media houses professionally and without bias, covered the LGBT case that sought to have sections 162 and I65 of the constitution repealed as illustrated in Table 16. This perception could be the result of gatekeeping and dictates of in-house editorial policies. The moderation of these views speaks to the Potter's Box model of decision-making. In this case, the journalists clearly had identified an ethical issue, which they subjected to their value system and ethical principle. However, their loyalty to their media houses ultimately informs their decisions by adhering to the ethical guidelines.

As Ochieng et al. (2014) noted, it is important for Kenyan journalists to internalise and apply the code of ethics that guides the profession, as it is a beacon that guards against veering off onto a path of personal biases. It is apparent from the findings of this study that on the coverage of LGBT, Kenyan journalists make editorial decisions and judgement calls that are subject to legal constraints, respective media houses' policies, MCK's Code of Conduct for the Practice of Journalism in Kenya, institutional and individual censorships, as well as personal biases through the lens of individual cultural and religious values.

The study found that 16 journalists who have reported on LGBT and three journalists who have not reported on LGBT either strongly agreed or agreed that they have the competence to make the right ethical decisions when reporting on LGBT as illustrated in Table 15. This could be interpreted that journalists who report on LGBT are more likely to take into account ethical considerations when reporting on the subject.

The findings of this study suggest that Kenyan journalists, because of their perceived competence to make the right ethical decisions when covering the LGBT as indicated in Table 6 and overwhelming reliance on the MCK code and in-house editorial policies as illustrated in Figure 7; do not prey on prejudice and ignorance by agitating against the LGBT community as was observed by George (2016) in his profiling of countries where homosexuality is illegal. This can be interpreted to mean that Kenyan journalists to some extent, are guided by the *ubuntu* and *ahmisa* ethical frameworks that advocate for human dignity and not harming the innocent respectively. As Pellot (2017) stated, the journalists need to “ensure that our personal beliefs and biases do not influence the objectivity of our reporting or limit the topics we cover.”

Even if both Kenyan and international journalists were to be accused of not being objective in their coverage of the LGBT case as indicated in the findings, that inferred bias does not mean professional failure. As Davenport (1990) explained, “today we realise that no matter how hard we try, there really is no such thing as complete objectivity. Because of our individual upbringing, socialisation, and experience, we view everything with subjective eyes.” That could explain the perceived conservative bias of the local media, and apparent liberal bias by international media in the coverage of the LGBT case to repeal sections 162 and 165 of the penal code.

5.2.2 Ethical Decisions and Legal Considerations by Kenyan Print Media Journalists when Covering LGBT Topics and Individuals

The second objective sought to determine the ethical decisions and legal considerations by Kenyan print media journalists when covering LGBT topics and

individuals. Ethics, as Davenport (1990) noted, is an integral part of journalism that should define journalistic training. And so is media law, which if overlooked may end up in costly defamation and breach of privacy suits.

The findings of the study indicate that Kenyan journalists are aware of ethical and legal pitfalls that are unique to LGBT coverage. However, such coverage should have news value even as the ethical and legal considerations are debated. Journalists, as Abubakar (2019) argued, face dilemmas in content selection, source relationship, framing stories and dealing with victims. Therefore, when news value – whether for the sake of impact, prominence, proximity, timeliness, the bizarre, currency, human interest or conflict – tempt journalists into excessive reporting, journalistic ethics should play a restraining role.

The findings of the study revealed that Kenyan journalists are committed to balanced, fair, and objective coverage of LGBT. However, they have to frame the reports in a way that does not seem to promote an illegality so as not to violate the law, since same-sex relationships are still illegal in the country. The respondents identified five legal considerations when covering the LGBT as listed below and illustrated in Table 7. These are: right to privacy, discrimination, human rights and dignity, exposure to libel or defamation suits and how to cover an issue like homosexuality that is outlawed in Kenya.

The study also found out that ethical decisions and considerations by journalist when covering LGBT are underpinned by a duty to avoid bias, which the study identified could be the result of cultural and religious convictions, and journalists' personal values. Kenyan journalists therefore primarily rely on the editorial policies of their media houses and MCK code of conduct, which helps in moderating any unethical influences.

The findings show that journalists are sometimes confronted with ethical dilemmas when covering LGBT. The significant influence of religion, culture and personal values as captured in Figure 7, even with moderating mechanisms like in-house editorial policies and the MCK code of conduct, could still raise ethical concerns. It is this interplay between religion, culture, ethics, and law that Kituku (2019) censured. She argued that the May 24, 2019 judgement took a moral, rather than legal tangent. She challenged the State's argument that the push to decriminalise sections 162 and 165 of the penal code was a foreign agenda"; that the criminal law appropriately regulates conduct that is 'wrong' and 'immoral' and which offends the common good and 'traditional values. According to Kituku (2019) if any rights of LGBT people are violated, it is because the society deems their sexual conduct immoral and against traditional values. The lawyer intimated that these arguments should have come out clearly in media reports to contextualise the case.

The study revealed that most Kenyan journalists strongly agreed or agreed that they have the competence to make correct ethical decisions when covering the LGBT. Most journalists also believe that they have the competence to correctly address legal issues when making decisions on LGBT coverage as illustrated in Figure 9. Coupled with the findings that the journalists believe that their understanding of media ethics and media law were either excellent or good as indicated in tables 17 and 18 above, it can be argued that Kenyan journalists are well-trained and regulated to make professional ethical decisions when covering the LGBT while considering the legal implications of such coverage.

It can also be argued that given the dwindling revenues that media houses have to contend with, especially from newspapers, these enterprises have invested in media law training for journalists to reduce costly libel and breach of privacy suits. In her presentation

to KEG following the May 24, 2019 judgement, Kituku (2019) explained that the basis of their legal argument was the violation of fundamental human rights and freedoms of a minority group because the provisions of the contested penal code sections “were unconstitutional for violating the petitioners’ fundamental rights and freedoms,” which she listed as: right to dignity, right to privacy, right to fair trial, protection against discrimination, right to health and freedom and security of person. Needless to say that a news organisation whose newspaper’s reports fall on the wrong side of these laws may be faced with stiff and costly penalties if found guilty.

5.2.3 How Journalists Dealt with the Ethical and Legal Issues that Emerged During Case by the LGBT to Repeal Sections 162 and 165 of the Penal Code

The third objective of this study sought to establish how journalists dealt with the ethical and legal issues that emerged during the case by the LGBT to repeal sections 162 and 165 of the penal code. Most of the journalists indicated that they have the competence to make ethical decisions and have the legal understanding and competency to professionally report on LGBT. This could probably explain the reason why very few of them have been sued regarding LGBT stories. Ironically, they were not as unanimous in their assessment of whether their media houses professionally covered the LGBT case.

Though about half of the journalists sampled either strongly agreed or agreed that their media houses have sufficient legal guidelines on LGBT reporting as illustrated in Table 8, it can be concluded that based on the findings of this study, most journalists dealt with the emergent ethical and legal issues by referring to their in-house editorial policies and the MCK code of conduct. The study also established that editorial policies do not have

specific provisions that guide on how to report on LGBT. Maybe this is because most of those policies are derived from the MCK Code of Conduct for the Practice of Journalism, which is also not specific on LGBT coverage.

Whether the MCK code needs to be updated to specifically speak to the special needs of the LGBT was an issue that the key informants agreed was contentious. Though all the key informants agreed that the code gives sufficient guidance that should ideally enable journalists to cover the LGBT objectively and fairly, Key Informant 3 felt that it nonetheless needed updating. This update, according to the key informant, should consider the reality of LGBT as a special marginalised group in the same way the code for instance is specific about victims of sexual violence and children.

The lack of specific guidance on reporting on sexual minorities could be the reason there is a variance in voice and coverage of LGBT by Kenyan media. Editorial policies of local media largely echo MCK's code of conduct for the practice of journalism in Kenya. Although the code has clauses that, if adhered to, should preserve the integrity of the profession of journalism, it has no specific direction on the coverage of sexual minorities. In fact, the code takes a binary approach to sex and gender, as is clear in clause 15 on gender non-discrimination that stipulates that women and men shall be treated equally as news subjects and news sources (MCK, 2013). Though it could be argued that MCK has no clear guidance on LGBT coverage because same-sex relationships are illegal in Kenya, but so is sexual violence and assault that are clearly provided for.

The Nation Media Group however tries to address the coverage of LGBT in its editorial policy, as spelt out in its guiding ethical principles. To deal with discriminatory bias, the policy states in part that: "In general, the media should avoid prejudicial or

pejorative references to a person's race, tribe, clan, religion, sex or sexual orientation or to any physical or mental illness, handicap or political orientation" (NMG, 2018, para. 15). The closest The Standard Group comes to providing guidance on LGBT coverage is in clause xi of its policy guidelines that states that: "We will advocate and defend the rights and interests of the underprivileged and disadvantaged and those of rural, working, gender and other minorities" (SG, 2020, para. 15). This is a broad, non-specific guideline that, because of its ambiguity, may not adequately and clearly inform journalists how to approach LGBT coverage.

The findings indicated that six and 11 journalists strongly agreed and agreed respectively that they have the confidence to make the right ethical decisions when covering LGBT. But since the confidence could be based on subjective ethics, religious or cultural influence, journalists have to forfeit their personal beliefs, opinions and convictions and instead adhere to their media houses' editorial policies even if they may not agree with them. This is the dilemma of journalistic independence that Landusky (2014) was referring to when she posed: "How do we eliminate bias in the media when our country so fervently supports having the ability to voice our own opinions? One of the biggest ethical dilemmas for journalists is burying their own beliefs to serve audiences fairly. Here we have to sacrifice personal lives for professional lives" (para. 1).

Given that most respondents cited in-house editorial policies, the MCK code of conduct, religion, culture, and personal values as factors that are likely to influence their reporting on LGBT, it can be argued that Kenya's print media journalists largely subscribe to the deontological (duty ethics) and subjective (personal ethics) schools of thought in their ethical decision making on the topic. With reference to the Potter's Box model, the

findings, as underscored by the theoretical leanings of deontology and subjective ethics, are indicative that in making ethical decisions regarding the coverage of LGBT, Kenyan journalists place high premium on principles that are determined by their culture and religion, though the final output is determined by loyalty to their respective media houses.

5.3 Conclusions and Implications for Practice

Kenyan print media journalists are aware of the ethical and legal challenges associated with LGBT coverage. Most of the journalists are competent to report on the topic of LGBT, even though they may be susceptible to cultural and religious bias. However, the journalists still strive to uphold professionalism by referring to the MCK code of conduct and their respective media houses' policies. This helps in minimising bias and guards against exposing their media houses to legal suits for violation of privacy laws or libel.

This study has revealed that Kenyan print media journalists are aware that the profession requires that their coverage to be objective, factual, fair, and considerate of the rights of LGBT sources and subjects of their reports. Nonetheless, they still find themselves faced with ethical dilemmas that pit their religious beliefs and personal values against coverage of topics that some of them may deem to be 'immoral.'

Though editorial policies and the MCK code may help in upholding objective and fair coverage, the lack of specific guidance on how to report on LGBT is a gap that may give room to slanted or stereotypical coverage of the LGBT. The study indicates that Kenyan journalists are likely to invoke deontological (duty) and subjective (personal) ethics when faced with a dilemma on how to report on LGBT. However, because their

loyalty in most instances lies with their respective media houses, and since they do not deliberately intend to denigrate the LGBT or cause them harm (as explained by the ethical concepts of *ubuntu and ahmisa*) their coverage cannot be described as hateful or excessive. Even if such coverage is stereotypical, the journalists will make an effort to consider the legal implications to avoid suits that may arise as result of violation of privacy laws and defamation.

5.4 Recommendations

The study has established that Kenyan print media journalists mostly rely on the MCK code of conduct and editorial policies of their respective media houses when reporting on the LGBT. However, because the MCK code does not specifically refer to the LGBT, and the existing editorial policies are not comprehensive in their guidance on how to cover sexual minorities, there is a need for training of journalists on how to cover this topic. This training should cover topics like media law, media ethics, refresher courses on the MCK code of conduct and editorial policies of respective media houses, and training on gender and sexual minorities.

This study also recommends that media houses and the MCK update their policies and code to specifically give guidance on how to cover and treat sexual minorities like the LGBT. Further, it is the recommendation of this study for media organisations to conduct continuous media law training for journalists to improve their court reporting, as well as understanding of libel and defamation laws to avoid suits that may arise as result of violation of individuals' rights or defamation.

For in-depth and analytical coverage of sexual minorities, it is the recommendation of this study that such training help journalist understand the different sexual minority groups beyond the categorisation of lesbians and gays.

5.5 Areas for Further Research

There are several implications for future research from the findings of this study. This study took a mixed approach that sampled journalists and key informants. Quantitative studies with larger sample sizes can be undertaken in future for a deeper understanding of sexual minorities coverage in Kenya beyond the stereotype of gays and lesbians.

Given the rapid transition to the digital space by media organisations, investigating how converged media, social media, citizen journalism and perceptions by online audiences affect or influence LGBT coverage will be an interesting study, as will the view of sexual minority groups about how they are perceived as a result of media coverage.

5.6 Summary of Chapter Five

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APPENDICES

Appendix A: In-depth Interview Guide

1. What ethical issues do you think emerged during the LGBT case to repeal sections 162 and 165 of the penal code and subsequent judgement on May 24, 2019 that upheld that same-sex relationships are illegal?
2. What are some of the legal issues for journalists that emerged during the case?
3. What's your view of local media coverage of the case?
4. What's your view of the international media coverage of the case?
5. What influences ethical decisions by journalists when covering LGBT?
6. Is MCK code sufficient even though it does not expressly make reference to LGBT on coverage of LGBT?
7. What legal considerations should be taken into account by journalists when covering LGBT?
8. How did you/would you deal with the ethical issues that emerged during the coverage of the LGBT case
9. How did you/would you deal with the legal issues that emerged during the coverage of the LGBT case?

Appendix B: Questionnaire

AGA KHAN UNIVERSITY

GRADUATE SCHOOL OF MEDIA AND COMMUNICATIONS

A Study of the Ethical and Legal Considerations by Print Media Journalists in Kenya
when Reporting on LGBT

SEMI-STRUCTURED QUESTIONNAIRE

<https://www.surveymonkey.com/r/667T3ZJ>

SECTION 1: GENERAL QUESTIONS

1. The position you hold at your media house is:

- Correspondent
 - Reporter
 - Sub-editor
 - News editor
 - Chief sub-editor
 - Revise editor
 - Production editor
 - Managing editor
 - Other (please specify)
-

2. How frequent is the newspaper you work for produced?

- Daily
 - Weekly
 - Fortnightly
 - Monthly
 - Other (please specify)
-

3. Does your media house have an editorial policy guideline on reporting on LGBT?

- Yes

- No
- I don't know

4. If yes, what does the policy say about reporting on LGBT?

5. Are you familiar with the Media Council of Kenya's Code of Conduct for the Practice of Journalism?

- Yes
- No

6. If yes, do you think it gives clear guidance on reporting on LGBT? (please explain)

7. Are you familiar with the case by the LGBT community that resulted in the May 24, 2019 ruling that upheld the ban on same sex relationships?

- Yes
- No

8. How would you describe the reporting on the case by local media (please explain)?

9. How would you describe the reporting on the case by international media (please explain)?

10. Have you ever reported on the LGBT?

Yes

No

11. If no, is there a specific reason, personal or otherwise, why you have not or chose not to cover LGBT stories? (please explain)

SECTION 2: ETHICAL/LEGAL DECISIONS

12. What informs your decisions when reporting on LGBT, and how do you resolve difficulties in such instances?

13. As a journalist, what would you or do you consider as important when making a decision on the coverage of LGBT?

Duty as a journalist to report on a story regardless of the consequences

Consequences of the coverage on multiple entities including sources, advertisers, media ownership,

Personal values including your conscience

Others (please specify)_____

14. How did the above influence yours and other journalists' coverage of the LGBT case that led to the May 24, 2019 judgement that upheld that same-sex relationships are illegal?

15. Which of the following factors are likely to influence your decisions when reporting on LGBT? (you may tick as many boxes as are appropriate).

- MCK Code of Conduct
- Your media house's editorial policy
- Religion
- Culture
- Law
- Personal values
- Advice from colleagues/boss
- Advice from family/friends
- All the above
- Other (please specify)

16. Has your boss ever influenced your reporting on LGBT - through briefing, editing etc? (Please explain)

- Yes
- No

Explain _____

17. From your experience, what ethical issues tend to emerge when covering LGBT?

18. How do you address those issues when making your decisions on the coverage of LGBT?

19. What ethical issues did you notice or dealt with individually regarding the coverage of the case by the LGBT that led to the judgement upholding the ban on same sex relationships?

20. How did your media house approach the coverage of the case from an ethical/legal/editorial policy perspective?

21. How did your media house address the legal and ethical issues that emerged from the coverage of that case?

22. From your experience, what legal issues tend to emerge when reporting on LGBT?

23. Have you ever been sued regarding a story about LGBT?

Yes

No

Explain

24. If yes, what steps have you taken to avoid being sued again?

25. Has your media house ever been sued regarding a story about LGBT?

Yes

No

Explain

26. If yes, what steps have the media house taken to avoid being sued again?

SECTION 3: Please indicate the degree to which you agree with each statement, where:

1 = Strongly agree

2 = Agree

3 = Neither agree nor disagree

4 = Disagree

5 = Strongly disagree

6 = Don't know/No answer

My media house has sufficient ethical guidelines on reporting on LGBT	1	2	3	4	5	6
My media house has sufficient legal guidelines on reporting on LGBT	1	2	3	4	5	6
My media house always put mitigating measures in place after a complaint or suit regarding LGBT stories						
Bosses at my media house have the final say on coverage and angling of LGBT stories	1	2	3	4	5	6
My media house professionally and without bias covered the LGBT case that led to the May 24 judgement that upheld the ban on same sex relationships	1	2	3	4	5	6

27. In your opinion, how can Kenyan print media journalists' coverage of LGBT be improved?

Please indicate the degree to which you agree with the statements below:

28. I have the competence to make the right ethical decisions when reporting on LGBT.

- Strongly Agree
- Agree
- Neither Agree nor Disagree
- Disagree
- Strongly disagree
- Don't know/No answer

29. I have the competence to make the right legal decisions when reporting on LGBT

- Strongly Agree
- Agree
- Neither Agree nor Disagree
- Disagree
- Strongly disagree
- Don't know / No answer

30. How would you rate your competence in/understanding of media ethics?

- Excellent
- Good
- Average

- Poor
- Very Poor
- Don't know / No answer

31. How would you rate your competence in/understanding of media law?

- Excellent
- Good
- Average
- Poor
- Very Poor
- Don't know / No answer

32. Please give your personal assessment of the quality of the news content that is being produced by your media house regarding coverage on LGBT.

33. Please give your personal assessment of the quality of news content regarding the coverage of the case by the LGBT that resulted in the May 24 2019 judgement that upheld the ban on same sex relationships.

Thank you for participating in this study. If you have any further questions or comments about this research, please contact: Paul Omondi at mokamedi.ke@gmail.com

Appendix C: Research Timelines

ACTIVITY	MAY/JUNE/JULY				AUG/SEPT				OCT/NOV				DEC/JAN 2021			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Topic selection & approval	■	■														
Produce draft proposal			■	■	■											
Working with supervisor			■	■	■	■	■	■	■	■	■	■	■	■		
Proposal defence					■											
Ethical approval – Internal and NACOSTI						■	■									
Data collection								■	■							
Analysis and writing								■	■	■						
Plagiarism check for final defence											■					
Final defenses and external examinations												■				
Corrections, sign-offs and submission of final document													■			

Appendix D: AKU Ethics Review Committee Approval Letter



THE AGA KHAN UNIVERSITY
Graduate School of Media and Communications

REF: AKU-GSMC/ERC/2021/002

Date: September 14, 2021.

Dear Paul Omondi (Student No. 543466)

**RE: A STUDY OF THE ETHICAL AND LEGAL CONSIDERATIONS BY PRINT
MEDIA JOURNALISTS IN KENYA WHEN REPORTING ON LGBT**

This is to inform you that Aga Khan University - Graduate School of Media and Communications Ethics Review Committee has reviewed and approved your above research proposal. Your approval period is September 14, 2021 to September 13, 2022 and your application's approval number is AKU-GSMC/ERC/2021/002.

This approval is subject to compliance with the following, under the supervision of your two supervisors:

1. Only the approved documents including the informed consent form and the data collection instruments will be used.
2. Any changes, made on the approved documents that may increase the risks or affect the welfare or safety of the participants or compromise the integrity of the study must be reported to GSMC within the shortest time possible. The amended documents will be taken through a fresh review and the due process of approval.
3. In the event that the research cannot be completed within the one year approved period, the researcher will request for renewal of approval 30 days prior to the end of the approved period.
4. The researcher will be required to submit a comprehensive progress report when applying for renewal of approval.
5. Submission of an executive summary report to the GSMC's Ethics Review Committee within 90 days of completion of the study.
6. Produce all the data collected using the approved tools as and when required by the Ethics Review Committee within the 90 days of completion of your study.

Prior to commencing your study, you will be required to obtain a research permit from National Commission for Science, Technology and Innovation (NACOSTI). You can access the application portal from the website on <https://www.nacosti.go.ke/>.

Please feel free to contact me should you require any further information.

Yours sincerely

For
Dr Nancy Booker
Director- Academic Affairs
GRADUATE SCHOOL OF MEDIA AND COMMUNICATIONS

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Appendix E: Introductory Letter from AKU



THE AGA KHAN UNIVERSITY
Graduate School of Media and Communications

National Commission for Science, Technology and Innovation
P. O. Box 30623 – 00100
Nairobi

September 14, 2021

Dear Sir/Madam.

PAUL OMONDI (STUDENT NO. 543466)

Paul Omondi is a registered student at the Aga Khan University, Graduate School of Media and Communications. He is enrolled in the Master of Arts in Digital Journalism Programme and has completed his course work. He is now working on his Master's thesis. Mr. Omondi's topic is "A Study of the Ethical and Legal Considerations by Print Media Journalists in Kenya When Reporting on LGBT."

The purpose of my writing is to request you to assist Mr. Omondi complete this important academic exercise. Any information collected will be used solely for academic purposes. Upon completion of the research, Mr. Omondi's thesis will be available at our library. He will also submit two hard copies and one soft copy in pdf of his completed work to your department.


We appreciate your support to our student towards his successful completion of his thesis research.

Please feel free to contact me should you require any further information.

Yours sincerely,

For
Dr. Nancy Booker
Associate Dean


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This is to Certify that Mr. Paul Omondi Otieno of Aga Khan University, has been licensed to conduct research in Nairobi on the topic: A Study of the Ethical and Legal Considerations by Print Media Journalists in Kenya When Reporting on LGBT for the period ending : 12/October/2022.

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