



THE STATE OF BLOGGING & SOCIAL MEDIA **IN KENYA**

2015 REPORT

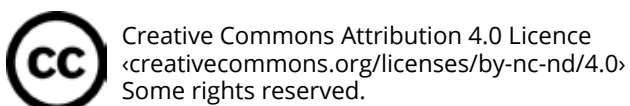


The Bloggers Association of Kenya (BAKE) is grateful to our partners and individuals working in the Internet Freedoms space who offered technical, advisory and financial support in this project. They include; HIVOS, Article 19 and Nanjira Sambuli.

This report was produced as part of BAKE's iFreedoms Kenya program. It is available for download on monitor.co.ke/iFreeKE

State of Blogging & Social Media in Kenya 2015 Report

Published by the Bloggers Association of Kenya (BAKE). June 2015



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INTRODUCTORY SUMMARY

Blogging in Kenya goes as far back as 2003 when Daudi Were started his blog, [mentalacrobatics.com](http://www.mentalacrobatics.com). In 2004, Daudi also started the [Kenyan Bloggers' webring¹](#) (KBW) – a website that aggregated all Kenyan bloggers' site addresses on a single platform in an alphabetical order as a way of bringing individual bloggers together in a community.

Kenya's pioneer bloggers were mainly Kenyans in the diaspora writing on varying topics from politics to social commentary.²

In 2011, the [Bloggers Association of Kenya \(BAKE\)³](#) was formed and has since made significant gains in bringing together the community of Kenyan online content creators. The members envisioned a body that would serve as a mouthpiece through which the gains, challenges and concerns by the Kenyan online community are made known with an amplified voice.⁴

Whereas BAKE is a membership based organisation that represents the interests of its members, it has continued to grow the general blogging community by carrying out free training workshops, seminars and talks on the benefits and opportunities in the Blogging and Social media. BAKE has also continued to recognize and award exemplary online content creators through the [Kenyan Blog Awards⁵](#) which are now in their fourth year.

In the course of the 4 years that BAKE has been in existence, the state of Internet freedoms and free speech in Kenya has experienced a slow but steady decline with bloggers and social media users becoming "*persons of interest*" to both government entities and to the Kenyan corporate sector.

This report seeks to vindicate our concerns as BAKE on the increasing cases of prosecution, intimidation and concerted efforts to discourage dissident Kenyan voices on social media.

This report also seeks to highlight the significant gains made by bloggers in the promotion of free speech as well as in the creation of quality and diverse content about Kenya on the internet.

We hope that the true state of internet freedoms, and the changing landscape can enable policy makers and human rights defenders join BAKE in the call for better laws that safe guard the freedom of expression.

1 http://www.mentalacrobatics.com/archives/2007/07/kbw_-_3_years_old_-_the_year_of_emergence.php

2 <http://www.afromum.com/kenyas-pioneer-bloggers/>

3 <http://www.bake.co.ke/>

4 <http://globalvoicesonline.org/2011/03/31/kenyan-bloggers-form-an-association-bake/>

5 <http://www.blogawards.co.ke/>

GROWTH OF BLOGGING AND SOCIAL MEDIA IN KENYA

Blogging in Kenya started in the year 2003. Since then, the blogging space has grown tremendously, in the number of bloggers as well as variety and quality of content created by bloggers about Kenya.

Kenya has seen a steady rise in the number of bloggers and social media opinion makers who exercise their freedom of speech on the internet on politics and on social issues affecting them.

BLOGS

According to BAKE's Chairman Kennedy Kachwanya, there is an estimated 15,000 registered blogs in Kenya with 3,000 being active blogs registered by Kenyans on the Wordpress, Blogger and Tumblr platforms.

Whereas the first Kenyan on twitter registered on 28th March 2007, the growth of twitter in Kenya peaked between 2012 and 2013 according to [Digital Rand's⁶ Social Media Status 2014 Report A002,](#)⁷

TWITTER

According to a recent report published by Kenyan technology writer and industry expert Moses Kemibaro⁸, Kenya has a confirmed 700,000+ monthly active users (MAUs) on Twitter. Of 1.4 million to 2.1 million users in total, 80% of Twitter users in Kenya access the service on a daily basis. In terms of Daily Active Users (DAUs) therefore the number is approximately 570,000+.

Twitter growth has been doubling in Kenya year on year (YoY). This means that around this time next year there will be around 1.4 million. Twitter MAUs in Kenya are anywhere between 2.8 million to 4.2 million users in total factoring in those who do not login

FACEBOOK

There are 4.3 million Kenyan users on the Facebook platform, this is according to Facebook's monetization platform.

MOBILE DATA INCREASE & SMARTPHONE PENETRATION

Kenya is one of the countries experiencing the highest smart phone growth rate as well as Internet penetration rate in Sub-Saharan Africa. Africa's mobile phone penetration is expected to rise by 79% by 2020 according to a new study by [Frost & Sullivan.](#)⁹

The [ICT Sector Statistics Report for the period October to December 2014 \(Q2 FY 2014/15\)](#)¹⁰ by the Communications Authority of Kenya (CA), Mobile penetration grew by 2.1 percent to stand at 82.6 percent during the quarter under review up from 80.5 percent reported last quarter

According to the report, the total number of data/internet subscriptions grew remarkably by 10.8 percent to reach 16.4 million from 14.8 million subscriptions reported last quarter. Compared to the same period of the previous year, the number of data subscriptions has grown by 24.8 percent. The estimated number of internet users during the quarter increased to 26.1 million up from 23.2 million subscriptions reported last quarter. This marked an increase of 4.8 million subscriptions when compared to the same quarter of the previous year. Consequently, the population with access to internet grew significantly to stand at 64.3 per 100 inhabitants up from last quarter's figure of 57.1 per 100 inhabitants. The growth in internet access and usage could be attributed to the numerous data promotions carried out by the various service providers during the quarter. For instance, one of the service providers offered free social media access by post-paid and prepaid subscribers on their network.

6 <http://digitalrand.com/>

7 <http://digitalrand.com/resources/reports/A002.pdf>

8 <http://www.moseskemibaro.com/2014/08/01/sizing-up-twitter-in-kenya/>

9 <http://ww2.frost.com/news/press-releases/frost-sullivan-mobile-connectivity-and-growing-data-services-drive-telecoms-market-africa/>

10 <http://ca.go.ke/images/downloads/STATISTICS/Sector%20Statistics%20Report%20Q2%202014-2015.pdf>

According to the same report, the data market in the country has grown significantly over time. During the period under review, the total number of data/internet subscriptions grew remarkably by 10.8 percent to reach 16.4 million from 14.8 million subscriptions reported in the previous quarter. Compared to the same period of the previous year, the number of data subscriptions has grown by 24.8 percent. This could be attributed to the massive investments by mobile operators and Internet Service Providers into base stations

and the last mile fibre optic transmission links to support the increasing bandwidth demand in the country.

The CA has in past reports attributed the rapid growth to increased use of mobile data services mainly by young people on social networking sites such as Facebook and Twitter. Many of the youth in Kenya are using smart phones and mobile data to catch up on what is happening around them as well as to engage in active discussions on social media.

THE ROLE OF BLOGS & SOCIAL MEDIA

Social media platforms such as blogs, Twitter and Facebook have, since their uptake in Kenya, continued to offer diversity in the variety of content available online.

Social media has also become an effective tool through which Kenyans can write on topics of interest to them as well as exercise their freedom to free speech as guaranteed in the Kenyan Constitution that was promulgated in 2010.

The diversity in the Kenyan blogging space has continued to be observed in the topics covered such as Technology, Fashion, Food, Health, Human Rights, Environment and County Governments as well as in the inclusion of Kenyans in other counties into the space through skills training programs carried out by BAKE around the country.

The growth of blogs in Kenya in depth on topics of choice and diversity have, in the last 4 years elicited interest from the Kenyan corporate sector with brands seeking to work with bloggers as an additional platform for advertising and marketing through banner advertisements, commissioned product reviews, promoted blog posts and social media campaigns.

The rise of Kenyan Social Media influencers was comprehensively researched and published in the first social media trends report written in Kenya. **The Nendo report**

2014¹¹ highlighted the rise and growing power of Social Media influencers.

The Nendo Report 2014 builds on the learnings from East Africa's most active Twitter community and the social media landscape to present predictions for 2014-2015.

According to the Nendo Report 2014; the Year 2014 was predicted to be the year of the influencers.

“This will also be the year of the influencers. The new range of content creators that have been put on a pedestal thanks to their wit, quips and commentary online. The backbone of Kenyans on Twitter, they've created fully-fledged careers, websites and contracts with brands as a result. The outcome however has been built on an atmosphere without full disclosure on the side of the brand, the influencer and the audience.”

Blogging is slowly becoming a viable business for many young people who are seeking careers in the digital space due to the lack of conventional blue collar jobs with a majority of **Kenyan youth failing to be absorbed**¹² to the existing Kenya work force.

The increase in fast, affordable and reliable

¹¹ <http://report.nendo.co.ke/>

¹² http://www.ihub.co.ke/ihubresearch/jb_RockefellerFoundationReportpdf2014-11-24-12-04-22.pdf

internet in Kenya's capital Nairobi as well as in other major towns has directly impacted the rise of blogs and social networks as an alternative to news & information. Citizens who only relied on mainstream news channels such as radio, newspapers and TV for their news and information now also have the Internet.

Indeed the changing reading trends can be confirmed by the dip in sales of print newspaper by two of the leading Kenyan newspapers the Nation and the Standard. The traditional media houses are finding themselves having to adopt to these changing trends by introducing alternatives such as mobile applications (mobile apps) for their publications to compliment the print version. In some instances, doing away with the print version all together as was the case recently with Nairobi news. The Nation Media Group publication was targeted at the Nairobi County. The publication had to shut down

its print version and is now only available exclusively on web.¹³

Despite the numerous gains made by Kenyan bloggers in creating unique and rich content about Kenya on the internet as well as in providing alternative employment to young people, the perceived threat posed by bloggers in Kenya can largely be attributed to the bloggers who write on politics and recently, on devolution as well as social media users who are outspoken about their political views and opinions on the current political leadership and governance in Kenya.

"More Kenyans are looking to blogs for news and information, like people do in the States," said Were¹⁴, who first began experimenting with blogs as a university student in Manchester, England, in the late 1990s.

13 <http://www.techweez.com/2014/11/21/nairobi-news-is-back/>

14 <http://www.mcclatchydc.com/2007/06/21/17159/native-voices-blog-out-of-africa.html#storylink=cpy>

KENYAN MEDIA AND THE 2007 & 2013 ELECTIONS

According to the *Freedom of the Press 2014 report*¹⁵ by Freedom House, Kenya's leading media outlets, especially in the print sector, are often critical of politicians and government actions¹⁶. They remain pluralistic, rigorous, and bold in their reporting, although they also frequently pander to the interests of major advertisers and influential politicians. This was particularly apparent in the run-up to the March 2013 general elections, as media owners aligned themselves with certain political personalities.

The concentration of media outlets in the hands of a small number of owners, often with strong political affiliations, contributed to this partisan reporting trend. Many local journalists admitted that their election coverage required self-censorship to accommodate the interests of their respective media houses. A case in point is the admission by a senior staff member of one of the media houses that perhaps they were *a little too trusting* of the IEBC, Kenya's electoral body in the 2013 general elections.

15 <https://freedomhouse.org/report/freedom-press/2014/kenya#.VW1k9ka7gjU>

16 <https://freedomhouse.org/report/freedom-net/2013/kenya#.VW9Um9Kqqko>

INTERNET FREEDOMS IN KENYA

According to Freedom House's [report on the state of Internet Freedom in Kenya 2014](#)¹⁷, despite robust constitutional protections for freedom of expression, Kenya's Parliament passed some of the most repressive media legislation in the country's 50-year history in 2013. The Kenyan Government is seemingly becoming intolerant of voices of dissent and dissident citizens online who have continued to become more vocal on social media and blogs.

Bloggers derive their constitutional security in Articles 33 and 34. Article 33 is on the freedom of expression while 34 freedom of the media¹⁸.

Kenya bloggers and social media users are at a crossroads. On the one hand, the government has been very progressive about digital migration, stating how it will unleash great hidden potential in local content and spur growth including creating jobs. On the other hand, the state is using repressive laws to stifle those who are vocal and occupying the online space to bring out salient issues, *inter alia* ignored by mainstream media or discussing issues of national concern.

However these robust regime has increasing been threatened as will be evidenced below. A provision that has yet to be tested but which affects freedom of expression, hence affecting bloggers is the Kenya Information and Communications (Amendment) Act 2013¹⁹. It created a Communication and Multimedia Appeals Tribunal which falls under state controlled Communications Authority of Kenya. The Tribunal has power to impose hefty fines on media houses and journalists, recommend de-registration of journalists and make any order on freedom of expression.

This vague order on freedom of expression should concern bloggers because with increase unease of government, this tribunal being under governments' armpit none should take obsolete comfort.

In addition, as noted on the increase of mobile penetration and their use to access the internet, it is becoming apparent that government regularly requests access to user communications data. This is according to Vodafone network and Google in their 2014 reports²⁰. They assert that the government made requests for user communications data and user account information. Vodafone has a 40 percent stake in Kenya's largest mobile phone company Safaricom.

THE CHANGING ROLE OF KENYAN BLOGGERS & SOCIAL MEDIA USERS; RISE OF CITIZEN JOURNALISM

Citizen Journalism in Kenya has not emerged from the kind of formal organisation with institutional support such as has been the case in South Africa. Instead it has been spontaneous, perhaps even *'indisciplined'*. As such, clear historical trajectory of its development in Kenya is almost impossible. However, Key moments in Kenya's political history provide opportunities for studying some of its most notable characteristics. Much work has been done on Kenya's 2007-2008 post- election crisis and specifically on the role that was played by social media.

The emergence of Citizen Journalism in Kenya has been comprehensively covered in the book, *The Future of News Journalism: A Cross-Continental Analysis* published by Routledge in 2013²¹.

17 <https://freedomhouse.org/report/freedom-net/2013/kenya#.VW9VCNKqkqk>

18 Constitution of Kenya 2010

19 <http://africanmediainitiative.org/content/2014/01/26/KICA-Act-2013.pdf>

20 <http://www.cipesa.org/2014/07/vodafone-reveals-government-requests-for-subscriber-information/>

21 <http://www.routledge.com/books/details/9780415532860/>

According to the *THE KENYAN 2007 ELECTIONS AND THEIR AFTERMATH: THE ROLE OF MEDIA AND COMMUNICATION* report published by the BBC World Service Trust²²;

“The second set of challenges facing the mainstream media are those facing most media in most countries. A booming media sector, built on an increasing advertising base, has gone through similar changes to other rapidly developing media markets. Fierce competition for breaking news stories and a 24 hours events driven news culture has squeezed out room for more reflective debate and analysis that provides perspective, clarity and makes sense of the rapid and turbulent changes in the country. The mainstream papers were “imagining that things would go smoothly,” says Absalom Mutere of the Media Council of Kenya. When violence broke out: “We missed a lot of the background and analysis of the source of the problem from a historical perspective. We saw the headlines of events, not the background to the events.” The trend is further exacerbated by competition from new technologies and blogs (see below). “With so much information being available, are we able to synthesize all this information and respond in a relevant manner,” says Mutere.

The Same BBC report notes that Kenya has as lively a blog culture as is likely to be seen anywhere. Many of these, such as Mashada.com, form online communities connecting people within the country with diasporic communities; they provide a key form of public debate and a source of investigation at a time when investigative journalism is under threat in the country. As such, blogs provide a growing form of democratic expression and accountability, and fresh opportunities for dialogue and debate across cultures and communities.

22 http://r4d.dfid.gov.uk/PDF/Outputs/MediaBroad/kenya_policy_briefing_08.pdf

According to the *Social Media and Post-Election Crisis in Kenya 2008*²³ report by University of Pennsylvania scholarly commons, It is during the 2007 Kenyan general elections, that power of blogs and social media platforms such as Facebook was first seen in the way that Kenyans were able to express their opinions, views and critique of the government and political leadership in a way that enabled many other Kenyans to read and share those views with such ease and speed. Indeed the first Kenyan blogs such as mentalacrobat.com, thinkersroom.com and kenyanpundit.com played a huge role in providing news and information following the 5 day live broadcast media ban that was declared on December 30th 2007 following the presidential results announcement. Due to the news blackout, many Kenyans turned to other means of getting and relaying information.

Blogs are becoming a tool for whistle blowers to employ on exposing corruption and misappropriation of public funds. Kenyan blogger Abraham Mutai²⁴ was in January 2015 detained in police custody for questioning and later released for exposing corruption in the Isiolo County through his blog and then tweeting about it. The role of Kenyan blogs is now increasing and filling the void of a platform that Kenyans can publish information on corruption as well as easily access and share such information

Twitter has continued to play a great role²⁵ in enabling Kenyan citizens to air their views publicly as well as engage the digital strategy and public relations arm of the government that has also taken to Twitter in great numbers.

The collective of Kenyans on Twitter has become famously known as *KOT* for their outspoken nature, not just in tackling domestic issues but also in dealing with its neighbors, fellow African countries, and for taking on international media houses such as CNN for

23 <http://repository.upenn.edu/cgi/viewcontent.cgi?article=1012&context=ictafrica>

24 <http://www.monitor.co.ke/blogger-abraham-mutai-arrested-and-released-for-reporting-on-corruption-in-isiolo-county/>

25 <http://www.aljazeera.com/indepth/opinion/2013/03/20133684021106816.html>

unrealistic reporting²⁶ on local happenings, in what is now known as twitter wars or 'Tweefs'. Using the hashtag #SomeoneTellCNN, which first appeared²⁷ almost a year ago, Kenyans criticized the representation of their country by CNN after they news channel aired a news package²⁸ from Kenya's Rift Valley showing a handful of residents performing exercises in the bush with machetes and homemade guns.

The Kenyan government is increasingly monitoring and using Twitter as a tool to shape conversations²⁹ and opinions that are favourable and less critical of the current leadership. In most instances, hashtags have been created such as #2yearsOfSuccess³⁰ to shape the narrative on Twitter among Kenyans in celebrating achievements by the current government.

Such efforts have been met with counter hashtags such as #2YearsOfFailure or a hijack of the initial hashtag to highlight the failures rather than the successes.

LAWS USED TO CHARGE BLOGGERS & SOCIAL MEDIA USERS

Two laws stick out as being used to suppress online freedom of expression. It should be noted that bloggers are conscious of the fact that freedom of expression which the Constitution guarantees are not absolute. They come with great responsibilities.

One is section 132 of the penal code. It states:

132. Undermining authority of public officer

Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints, publishes any words, or does any act or thing, calculated to bring into contempt, or

26 <http://stream.aljazeera.com/story/201303012208-0022578>

27 http://www.mediabistro.com/tvnewser/kenyans-ask-cnn-to-apologize-over-cnni-report_b116336

28 <http://edition.cnn.com/video/#/video/international/2013/02/28/elbagir-kenya-armed.cnn?iref=allsearch>

29 <http://www.the-star.co.ke/news/kot-highlights-failures-through-states-2yearsofsuccess-hashtag#sthash.mpXPjs9o.dpbs>

30 <http://www.standardmedia.co.ke/article/2000157851/2yearsofsuccess-hashtag-rattles-kenyans>

to excite defiance of or disobedience to, the lawful authority of a public officer or any class of public officers is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

Over the period, some bloggers³¹ have been arrested and either held to be investigated or charged in court. It is worth to note that the penal code was enacted in 1948. At that time, Kenya was still under the colonial rule. For a law that was used to impede freedoms like of movement, association and speech to be alive and 'thriving' in this new constitutional dispensation is unfortunate. It goes to show the lack of appreciation of the Constitution and drive by the state to muzzle that which the Constitution provides. .

Secondly, the other infamous charge is 'misuse of licensed telecommunications equipment'. It is under the Kenya Information and Communications Act (KICA) 2013.

Under its section 29,

"a person who by means of a licensed telecommunication system sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character or sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person commits an offence. The offence is punishable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both."

This charge is therefore criminalizing legitimate freedom of expression by criminalizing the use of tools such as smart phones, the internet, laptops for self-expression on social media platforms. These tools, when used to make certain assertions which are not in themselves derogatory or bordering of hate speech or defaming, for someone to be charged for using them is tantamount to criminalizing freedom of expression.

31 <http://www.monitor.co.ke/category/ifreedom/>

There have been 2 recent cases in which this section has been used. In the case brought against Willis Adika³² an employee of Sauti ya Mtaa³³, a citizen journalism platform housed by Pawa254 following a tweet that was published by Kenyan activist Boniface Mwangi following Adika's arrest.

Geoffrey Andare, a web developer was, early this year, charged under Section 29³⁴ of the Kenya Information and Communication (KICA) Act. Geoffrey Andare, filed a case which was mentioned in court on 19th of May 2015 before Justice Mumbi Ngugi, in which Article 19 organisation filed to be enjoined as an interested party.

Article 19, the organization joining the suit as an interested party in its filing documents³⁵ argues that the section should be, "declared unconstitutional because it does not comply with Article 33 (2) of the Constitution in that its provisions falls outside the prescribed criteria for limiting the right to freedom of expression."

Article 33 (1) (a) of the Constitution of Kenya (2010) provides that "every person has the right to freedom of expression which includes the freedom to seek, receive impart information or ideas."

Article 33 (2) states: "the right to freedom of expression does not extend to

- a) Propaganda for war;
- b) Incitement to violence;
- c) Hate speech; or
- d) Advocacy for hatred that;
 - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm or

32 <http://www.the-star.co.ke/article/man-wrongly-arrested-my-tweet-boniface-mwangi-says#sthash.DfHh5ids.dpbs>

33 <http://www.sautiyamtaa.com/>

34 <http://www.monitor.co.ke/2015/05/06/web-developer-charged-infamous-misuse-licenced-telecommunication-equipment/>

35 The fillings were made before the Constitutional and Human Rights Division of the High Court, in the matter of the contravention of the Constitution of Kenya 2010 and in the matter of the enforcement of the Bill of Rights particularly articles 33 and 50 (2) (n) of the Constitution and in the matter of Section 29 of the Kenya Information and Communication Act, CAP 411A.

(ii) based on any ground of discrimination as per Article 27³⁶."

Article 19 therefore contends that Section 29 of KICA is an unconstitutional limitation to the right to freedom of expression because it does not fall within the permitted (a,b,c and d above) limitations under Article 33 (2) and thus should be struck out of Kenyan statute books.

Article 19 further contends that the section is vague and unclear and thus unenforceable because an average citizen would not be able to know what exact conduct is tantamount to an offence. What exactly is "misuse of a licensed telecommunication device?" at what point does normal use become misuse?

LACK OF AWARENESS ON THE LAW

Many Kenyan bloggers and influencers are unaware of the existing Kenyan laws that touch on internet use, the freedoms provisioned for from the Kenyan Constitution 2010 as well as the limitation that are in the existing laws. These are the BAKE findings from a user survey conducted in the training workshop series - 'The Internet and Law in Kenya' carried out by Mugambi Laibuta an Advocate of the High Court in conjunction with BAKE in Nairobi³⁷, and Kisumu³⁸. Victor Nzomo, an intellectual property lawyer once authored that "A cardinal rule of criminal responsibility under the Penal Code is stated under section 7 which reads "ignorance of the law does not afford any excuse for act or omission...unless knowledge of the law by the offender is expressly to be an element of the offence." It means that ignorance of the law is neither defense nor that is allow someone to break the law Therefore it is imperative for all users of social media to familiarize themselves with the Penal Code."

36 Article 27 of the Constitution is on the Equality and freedom from discrimination. Article 27 (4) says the state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth.

37 <http://bloggers.or.ke/lessons-from-the-bake-training-on-the-internet-and-the-law/>

38 <http://bloggers.or.ke/law-and-social-media-training-kisumu-edition/>

INCREASED PRESSURE TO REGULATE BLOGGERS

There has been **increasing pressure**³⁹ from government through the Communications Authority (CA) and the Media Council to regulate bloggers and subject them to the same manner of strict regulation as journalists. At a forum⁴⁰ with bloggers representatives from CA and Kenic, two government bodies, affirmed the thinking of government to regulate bloggers. Officials from various government institutions have stated that this is something that needs to be done so as to regulate what bloggers say. They will not only find this difficult but impossible as it relates to freedom of expression. However should they consider this approach, they will be the losers because of the lost online opportunities both in creating narratives about Kenya and the economic potential many are tapping into,

39 <http://www.monitor.co.ke/2015/02/19/blogging-needs-no-regulation/>

40 <https://www.youtube.com/watch?v=goxvA85aZMI>

contributing to the economy and creating jobs. This freedom, beyond providing livelihoods to some, is also critical in correcting or putting to better contexts negative and inaccurate narratives about Kenya. Unlike like tradition media which they can easily including shutting down frequencies, the Internet is a whole world of its own, you will hardly nip it as you wish.

Media Council of Kenya CEO Harun Mwangi **argued that**⁴¹ prosecuting bloggers was a challenge since they cannot be tagged as journalists⁴².

"It becomes very hard when a complaint comes to our office that a blogger has defamed or abused a person online. This is because bloggers do not have any idea about journalism or the code of ethics," said Mr Mwangi.

41 <http://mobile.nation.co.ke/News/Bloggers-to-undergo-journalism-training/-/1950946/2031590/-/format/xhtml/-/5eiyw6z/-/index.html>

42 <http://www.kenyanpoet.com/2013/10/14/the-media-council-of-kenya-unable-to-manage-bloggers/>

REPORTED CASES & INCIDENTS

Some social media users have broken the law and felt the wrath of it. **Allan Wadi**⁴³ was charged and sentenced under section 132 of the penal code and also under Section 13 and 62 of the National Cohesion and Integration (NCIC) Act 2008, on January 2, 2015, which criminalize the offences of hate speech, racial and ethnic contempt. Wadi was sentenced to two years, one year for each charge with an option of paying Kshs 200,000 for the second charge of hate speech and being released. His undoing as Victor noted above, is lack of knowledge of his rights as an arrested person, albeit the words he stated on Facebook were against the law, he did not know how to respond to the accusations keepings in mind the implications thereunder.

43 <http://www.monitor.co.ke/2015/01/22/university-student-allan-wadi-gets-2-years-jail-term-for-hate-speech-on-facebook/>

ABRAHAM MUTAI - #FREEMUTAI

Blogger Abraham Mutai⁴⁴ was arrested and held incommunicado by police officers for publishing information on his personal blog as well as making this information available on his social media pages on alleged corruption within the Isiolo County government⁴⁵. His alleged crime was accessing and publishing publicly available information. **Mutai**⁴⁶ was held under the penal code, section 132: undermining authority of public officer. It was argued by the investigation officers that by him publishing the rot, he was causing anxiety likely to cause civil disobedience.

44 <http://www.monitor.co.ke/2015/01/22/blogger-abraham-mutai-arrested-and-released-for-reporting-on-corruption-in-isiolo-county/>

45 <http://www.standardmedia.co.ke/the-counties/article/2000148319/cid-release-blogger-abraham-mutai-arrested-for-belittling-big-people-in-govt>

46 <http://www.monitor.co.ke/2015/01/22/24-year-old-nancy-mbindalah-held-in-custody-then-pardoned-for-undermining-the-embu-governor/>

The case involving **blogger Abraham Mutai**⁴⁷ was the first in which public pressure through use of social media saw the release of an arrested person. Soon after his arrest in Mombasa and subsequent transfer to the CID offices in Nairobi, Kenyans online got to know that Abraham had been arrested due to twitter updates provided by his lawyer Mugambi Laibuta. Within hours of Mutai's arrival at the CID headquarters, a hashtag #FreeMutai was created on twitter and it is through this hashtag that Kenyans were able to make demands in great numbers demanding his release.

The hashtag **#freemutai** reached 7.2 million users⁴⁸ on twitter and facebook, with over 15 million people viewing that hashtag

NANCY MBIDALA

Nancy Mbidala⁴⁹, an intern at the Embu County government, was detained by police under the charge: 'misuse of licensed telecommunications equipment'. Her 'mistake' was posting on Facebook about the lack of water in the county government and other facilities, something which the Governor felt was wrong and ordered for her arrest. She was released after apologizing to the Governor.

ADIKA ADEYA

Adika Adeya, a citizen journalist writing for Sauti ya Mtaa, was arrested and charged under the misuse of licenced telecommunications equipment charge. Adika was called by his friend Julio Otieno who had been arrested on suspicion of holding a stolen laptop. Adika then alerted photojournalist Boniface Mwangi about the arrest.

On hearing it, Boniface tweeted about it. Information on the tweet angered the Officer In Charge of Station who bundled Adika with Julio in the cell over the charge. Adika's phone had no internet hence he could not put the information online. The case will be heard in August 2015.

GEOFFREY ANDARE

Geoffrey Andare⁵⁰, a web developer was charged under the same charge but he also filled a constitutional petition challenging it. Andare had published information on Facebook on a friend who uses sexual favors to provide scholarships to needy girls. Among the orders sought is to have the section struck out as it does not comply with Article 33 (2) of the Constitution, in that its provisions falls outside the prescribed criteria for limiting the right to freedom of expression and it is also vague Andare therefore wants the court to declare the section unconstitutional, a result of which will collapse his case and any other active case of anyone under the same charge. The case was certified as urgent and comes matter will be mentioned again on 12th June, 2015 to confirm compliance of orders and give directions on the way forward⁵¹.

One 'beneficiary' if this charge will be declared unconstitutional is blogger Robert Alai who has at least four cases⁵² under the same charge.

47 <http://www.monitor.co.ke/2015/01/22/blogger-abraham-mutai-arrested-and-released-for-reporting-on-corruption-in-isiolo-county/>

48 <http://www.monitor.co.ke/2015/03/25/ifreedom-kenya-timely-launch-during-world-internet-freedom-day-a-success/>

49 <http://www.monitor.co.ke/2015/01/22/24-year-old-nancy-mbindalah-held-in-custody-then-pardoned-for-undermining-the-embu-governor/>

50 <http://www.monitor.co.ke/2015/05/06/web-developer-charged-infamous-misuse-licenced-telecommunication-equipment/>

51 <http://www.monitor.co.ke/2015/05/06/web-developer-charged-infamous-misuse-licenced-telecommunication-equipment/>

52 http://www.khrc.or.ke/resources/publications/doc_details/67-the-internet-legislative-and-policy-environment-in-kenya.html

CHALLENGING EXISTING LAWS

Challenging these charges that are contrary to the Constitution in court is the only weapon available to bloggers and social media users. But many lack the knowledge and financial muscle to hire a lawyer. It is only under capital offences or offences carrying the death sentence in Kenya that the government is obliged to provide legal counsel to the suspect if one is needed or if the suspect cannot afford a lawyer. The government, on its part,

tries to 'clean' these allegations once made, using hashtags and have created over 100 Facebook and Twitter accounts to champion the narrative. When an issue arises, they come up with a counter hashtag and messaging, with their different social media accounts purporting that the reverse is true. When you search the hashtag, you see specific people or twitter handles, time and again, saying the same thing, word for word.

SUCCESS IN LITIGATION

As mentioned above that challenging the constitutionality of these cases in court remains the best solution, already success stories give credence to this belief. These were part of the laws declared unconstitutional by a five judge bench on the Security Laws (Amendment) Act (SLAA) 2014.

Section 12 of SLAA and Section 66A of the Penal Code are unconstitutional for violating the freedom of expression and the media guaranteed under Articles 33 and 34 of the Constitution. It had provided, by amending the Penal Code's Section 66 that;

66A. (1) A person who publishes, broadcasts or causes to be published or distributed, through print, digital or electronic means, insulting, threatening, or inciting material or images of dead or injured persons which are likely to cause fear and alarm to the general public or disturb public peace commits an offence and is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years or both.

(2) A person who publishes or broadcasts any information which undermines investigations or security operations by the National Police Service or the Kenya Defence Forces commits an offence and is liable, upon conviction, to a fine not exceeding five million shillings or a imprisonment for a term not exceeding three years, or both.

(3) The freedom of expression and the freedom of the media under Articles 33 and 34 of the Constitution shall be limited as specified under this section for the purposes of limiting the publication or distribution of material likely to cause public alarm, incitement to violence or disturb public peace.

TERRORISM

Kenyan blogger and photographer Msingi Sasis Bekko was arrested⁵³ in March 2015 at the Galleria Mall in Karen for taking pictures and taken to Langata Police station where he was booked in as a terror Suspect. Msingi Sasis who runs www.nairobinoir.com, a photography blog on Nairobi at night capturing the many different activities that take on in most parts of Nairobi after dark, was held for over 2 days without charges until his release soon after.

There is a need for Bloggers and social media users to be aware that some sections of the Security Laws Amendment Act⁵⁴ affect them in how they publish information. The Prevention of Terrorism Act was amended by inserting the following new sections immediately after section 30 (It appears in section 64 of the Security Laws (Amendment) Act;

30A. (1) A person who publishes or utters a statement that is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) For purposes of subsection

(1), a statement is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism if-

(a) the circumstances and manner of the publications are such that it can reasonably be inferred that it was so intended; or

(b) the intention is apparent from the contents of the statement.

30F. (1) Any person who, without authorization from the National Police Service, broadcasts any information which undermines investigations or security operations relating to terrorism commits an offence and is liable on conviction to a term of imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings, or both.

(2) A person who publishes or broadcasts photographs of victims of a terrorist attack without the consent of the National Police Service and of the victim commits an offence and is liable on conviction to a term of imprisonment for a period not exceed three years or to a fine of five million shillings, or both.

(3) Notwithstanding subsection (2) any person may publish or broadcast factual information of a general nature to the public.

The above amendments clearly impact on freedom of expression including access to information and publication of stories and information on security operations.

53 <http://www.monitor.co.ke/2015/04/22/kenyan-photography-blogger-msingi-sasis-arrested-as-a-terror-suspect/>

54 http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws_Amendment_Act_2014.pdf

DIGITAL ADVERTISING & BLOGGER CONTRIBUTION TO THE ECONOMY

According to the Nielsen Company, Digital advertising continues to grow as marketers follow fragmenting audiences across screens. Within the digital medium, which has traditionally been dominated by direct response advertising, brand marketing growth is now outpacing direct response.

This shift points to a more screen-agnostic approach to advertising. Instead of digital or TV-specific campaigns, marketers view each screen as an equal opportunity to reach their consumers with advertising that resonates with them and drives a desired reaction. This screen-agnostic approach also fuels marketers' continuing need for more brand-relevant metrics that go across screens in a world where agencies and media owners continue to offer digital-only measures of success.⁵⁵

In March 2014, the Kenyan Ministry of ICT and the Office of the Attorney General drafted amendments requiring state organisations to advertise on online platforms⁵⁶ as opposed to newspapers, reaching more people and saving money.

In May 2015, the Kenyan Government through the Ministry of Information, Communications and technology put up a tender for an Online Display Network. Details in the request for expression of interest were;

In order to enhance the accessibility, coverage and familiarization of the website (www.mygov.go.ke), the Ministry of Information, Communications and Technology is looking for an institution that can market the website. The institution should be able to reach at least 10 (ten) million impressions with at least one million (1) views on YouTube and serve forty six (46) million impressions on other digital advertising platform

55 <http://www.nielsen.com/us/en/insights/reports/2014/the-state-of-digital-brand-advertising.html>

56 <http://www.humanipo.com/news/41200/kenyan-government-to-go-digital-with-advertising/>

that span across websites in Kenya and across Kenya.⁵⁷

The Government expenditure on advertising is currently at Sh4 billion; Sh2.8 on print, Sh750 million on electronic media and about Sh50 million foreign advertising and public relations services take another Sh1 billion.⁵⁸

As digital advertising continues to grow in Kenya with more and more brands seeing the value of advertising online using Google Adwords, Adsense, blogs and Social Media due to the increase in smart phone penetration in Kenya, bloggers and social media users with large followings have become influencers on brands to consumers.

The value of online Kenyan advertising industry by the end of 2013 stood at Ksh.165 billion and this is forecast to rise to over Ksh.301 Billion by 2018. This is according to the Kenyan entertainment and media outlook: 2013 – 2017 report by PWC.⁵⁹

THE AGE OF THE INFLUENCERS

As predicted by the Nendo 2014 report, the age of the influencer is upon Kenya and agencies need to find better ways to spend on digital. Mobile will take precedence, naturally. For the influencers there will be more focus on content creation and crafting careers online as well as disclosure.⁶⁰

THE INFLUENCE BUBBLE BURSTS

As the idea of influence gains traction and influencers seek to make money off their social media audience there will be scrutiny on the influencers. Audiences won't be happy to be bombarded with branded content from individuals anymore.⁶¹

57 http://tendersunlimited.com/i/1538f4633b8f0a_46408f0ac

58 <http://www.capitalfm.co.ke/business/2014/07/online-advertising-to-save-kenya-sh3bn-annually/>

59 <http://www.pwc.com/ke/en/publications/entertainment-and-media-outlook.jhtml>

60 <https://memeburn.com/2014/03/15-key-trends-shaping-kenyas-social-and-digital-media-landscape/>

61 <https://memeburn.com/2014/03/15-key-trends-shaping-kenyas-social-and-digital-media-landscape/>

Brands are now appointing bloggers and influencers as brand ambassadors as has been the case with Sharon Mundia of www.thisisess.com who is now the brand ambassador for Store 66⁶² and the new face of Samsung A series in Kenya⁶³ and Robert Kunga of <http://mulikamwizi.com> as the Lumia Brand ambassador⁶⁴ in Kenya.

62 <http://www.thisisess.com/2014/09/sharon-mundia-as-brand-ambassador-for-store-66.html>

63 <http://niaje.com/sharon-mundia-is-the-face-of-samsung-a-series/>

64 <http://mulikamwizi.com/disclosure/>

Influencer marketing has had its fair share of faux pas in Kenya as influencers seem to be making the rules as they go along an indication that there is still room for professional growth on the part of influencers and better engagement terms on the part of brands⁶⁵

65 <http://www.qube.co.ke/blog/design/social-media-faux-pas/>

DISCLOSURE 101

For Kenya, the big challenge facing brand-influencer relations and public relations now is disclosure. In 2014, the report estimates that the audience will demand more transparency from brands, bloggers and influencers.⁶⁶

Although blogger disclosure has become a requirement in the United States through the Federal Trade Commission's Endorsement Guides⁶⁷, in Kenya, proper legislation and guides from organisations such as the Consumer Federation of Kenya are still lacking.

Few Kenyan bloggers have a disclosure policy published on their blogs and influencers are not obligated to disclose if their social media updates are brand endorsements

66 <https://memeburn.com/2014/03/15-key-trends-shaping-kenyas-social-and-digital-media-landscape/>

67 <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>

CONCLUSION

The rights of Kenyan bloggers and social media users –indeed the Kenyan citizenry in general, even as more people get online- are under threat in the face of new restrictive laws and the enforcement of obsolete or irrelevant laws. The increase in arrest and arraignment of Kenyan citizens for using social media to express their opinions online, which the authorities deem as a breach on existing laws, is a worrying trend.

In a 2014 report titled “*State of Internet Freedoms in Kenya 2014 – An Investigation into the Policies and Practices Defining Internet Freedom in Kenya*”⁶⁸ by Collaboration on International ICT Policy in East and Southern Africa (CIPESA), important recommendations are made. These recommendations are:-

- Kenya should expedite the enactment of the Access to Information law and the Data Protection law. Civil society should be given opportunity to provide meaningful inputs into these laws.
- The circumstances and laws under which individuals are charged over their online activities need to be clarified. The National Cohesion and Integration Act has improperly been applied to take action against individuals accused of propagating hate speech.
- There should be clear definitions of what constitutes hate speech and ‘causing annoyance’ as grounds for taking legal action against individuals.
- Conversations on what constitutes free speech and the distinction between blind control and respect for freedom of expression online should be fostered and should draw in civil society, the media, religious organisations and government departments.
- Create awareness among the media and human rights defenders on internet freedoms and encourage development of a network of advocates and educators on online freedoms.
- The NCIC, police and other security organs should make public all results of their surveillance of citizens’ communications, as well as investigations and prosecutions of hate speech and other offences and crimes committed via digital technologies.
- The law should clearly specify the responsibilities of intermediaries and other parties in relation to filtering, removing and blocking content, the steps that need to be followed in these processes as well as appeal processes where there is an attempt to filter, remove or block a site or content.
- Training workshops: BAKE is already hosting training workshops in select counties to ensure the awareness of the power of the Internet and the law. At this point we need support to expand the program to more counties in the country in order to reach more people.

As BAKE, we support CIPESA in these recommendations and we have started to implement those that are within our mandate. This constitutes, starting conversations on what constitutes free speech as well as in creating awareness among bloggers, and social media users on internet freedoms.

This is through our *iFreedoms programme*⁶⁹ launched in January 2015. The *iFreedoms* program promotes Internet freedom in the East African region through the documentation of incidents of threats to online freedoms in Kenya as well as through offering digital security and safety skills. Kenyans online can report threats through the email address and telephone numbers provided on the website.

There is however a need for concerted efforts and better collaborations amongst the Kenyan online content creator community, human rights defenders and groups, hackers, lawyers and the civil society dedicated to protecting the freedom of expression and access to information online by Kenyans.

68 www.cipesa.org/?wpfb_dl=180

69 <http://www.monitor.co.ke/>



Bloggers
Association
of Kenya



This report was produced as part of BAKE's iFreeoms Kenya program. It is available for download on monitor.co.ke/iFreeKE

State of Blogging & Social Media in Kenya 2015