





The Bloggers Association of Kenya (BAKE) is a community association of Kenyan bloggers and content creators that promotes online content creation & free expression in Kenya. Through iFreedoms Kenya, we promote digital rights and media rights in Kenya through archival of important events, research, public interest litigation, policy intervention, advocacy and training.

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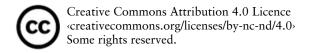
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The project aims to foster a democratic, safe, and inclusive digital environment in Kenya by addressing disinformation, misinformation, hate speech, and cyberbullying.

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#### LIST OF ABBREVIATIONS

AI	Artificial Intelligence		
BAKE	Bloggers Association of Kenya		
CA	Communications Authority of Kenya		
CMCA	Computer Misuse and Cybercrimes Act		
DCI	Directorate of Criminal Investigations		
DPA	Data Protection Act		
DPIA	Data Protection Impact Assessment		
ICT	Information and Communication Technology		
ISP	Internet Service Provider		
KFCB	Kenya Film Classification Board		
NIIMS	National Integrated Identity Management System		
ODPC	Office of the Data Protection Commissioner		
OSA	Official Secrets Act		

## **INTRODUCTION**

This piece of research aimed to analyze the digital rights and internet economy landscape in Kenya for the period of January 2020 to December 2024. The research goals were as follows:

- An assessment of legislative and policy changes affecting digital rights and freedoms in Kenya;
- Insights into trends in online censorship, surveillance, and data protection;
- A review of challenges and opportunities facing media freedom, tech workers in general and online content creators specifically
- An analysis of the digital economy's role in shaping Kenya's internet space;
- Documentation of significant public interest litigation cases and their impact on digital rights;
- An examination of threats to digital rights, including cyber threats and internet disruptions;
- An evaluation of misinformation and disinformation trends in Kenya, including their impact on democracy, public discourse, and digital rights.

By reviewing these shifts, both advantageous and detrimental, this analysis allows readers to evaluate the advancements or setbacks occurring within the realm of online liberties and entitlements.

It serves as a reference point for non-governmental actors, policymakers, individuals, and the broader tech sector to reflect on their roles and adapt accordingly to evolving circumstances.

Moreover, the publication functions as an educational tool aimed at enhancing comprehension of the normative, institutional, and political context surrounding the digital landscape.



## RESEARCH METHODOLOGY

The study adopted a mixed-methods design, integrating both qualitative and quantitative techniques for data gathering; namely document analysis and semi-structured interviews with stakeholders from the digital rights sector as well as content creators.

Conversations with experts in the field offered rich insights and helped situate the findings within a broader context. The document analysis consisted of a structured review of scholarly works, official policies, and pertinent case examples to develop the conceptual and legal foundation. Information from these various sources was cross-analyzed to strengthen the accuracy and trustworthiness of the results, enabling a well-rounded examination of the state of the internet in Kenya between 2020 and 2024.







#### **EXECUTIVE SUMMARY**

Between 2020 and 2024, Kenya's digital landscape underwent significant transformation, marked by both technological advancements and serious challenges to digital rights. This period saw Kenya solidify its position as a regional ICT leader, with expanded connectivity, growth in mobile and digital financial services, and a flourishing digital economy. However, this progress was accompanied by increasing government overreach, censorship, and surveillance, threatening constitutionally guaranteed freedoms and digital inclusion.

Key legislative developments included the enactment of the Data Protection Act (2019), a milestone for privacy rights, but weakened by broad exemptions and limited enforcement. Amendments to the Computer Misuse and Cybercrimes Act and other laws expanded state powers in ways that frequently infringed on free expression and media freedoms. Internet shutdowns, social media restrictions, and surveillance tactics, especially during protests and election periods, further eroded public trust in digital governance.

Civil liberties were curtailed through the arbitrary arrest, abduction, and harassment of journalists, bloggers, and online activists. Technology-Facilitated Gender-Based Violence (TFGBV) emerged as a persistent threat, disproportionately affecting women and marginalized groups. The Office of the Data Protection Commissioner (ODPC), while established, struggled with limited independence and enforcement capacity.

Despite these challenges, Kenya's digital economy continued to thrive. Innovations in mobile money, e-commerce, fintech, and AI-driven services spurred economic participation and opened new livelihood opportunities. A vibrant youth population leveraged digital tools for activism and entrepreneurship, exemplified by the Gen Z-led #RejectFinanceBill2024 movement.

Persistent challenges remain: the digital divide along geographic, gender, and socioeconomic lines; weak protections for digital workers; lack of clarity in regulatory frameworks; and the need for stronger institutional accountability.

This report concludes that while Kenya's internet ecosystem shows promise, urgent reforms are needed to safeguard digital rights, enhance accountability, and ensure inclusive, rights-respecting digital development. A balanced approach, protecting civil liberties while fostering innovation, will be critical in shaping a free, open, and equitable digital future for all Kenyans.







#### **COUNTRY CONTEXT:**

Kenya experienced a dynamic period between 2020 and 2024, marked by significant advancements in its digital landscape. During the intervening five years, Kenya continued to solidify its position as a regional leader in information and communication technology (ICT) and digital innovation in East Africa and beyond.

The country maintained robust mobile penetration, internet growth, and digital financial services adoption, driven largely by mobile money platforms like M-Pesa.

However, this period also saw increasing government scrutiny over digital rights, including concerns around data privacy, internet shutdowns, and restrictive legislation affecting online freedoms.

## ICT INDICATORS

Kenya's ICT landscape saw notable growth during this period. According to the Communications Authority, as of December 31st 2024, [1] Total Mobile (SIM) Subscriptions were 71,375,093; up from 49,501,000 five years previously. [2] Smartphones accounted for ,477,527 out of the 72, 057, 241 mobile devices connected to networks (amounting to 57.56%).[3]

Mobile money subscriptions stood at 42,302,833 in December 2024<sup>[4]</sup> compared to 31,627,000 five years before. [4] The KNBS 2023/24 Kenya Housing Survey Basic Report [6] revealed significant disparities in internet usage across Kenya.

Firstly, internet penetration is significantly higher in urban areas (56.5%) compared to rural areas (25.0%), with the national average at 35.0%. Secondly, while internet usage is more prevalent among males (37.8%) than females (32.2%) nationally, this gap widens in rural areas, where male internet usage (28.3%) surpasses female usage (21.7%) more significantly. [7]

The rollout of 5G services by providers like Safaricom<sup>[8]</sup> and Airtel<sup>[9]</sup> expanded connectivity, though challenges such as high costs and infrastructural limitations persisted.

1 SECOND QUARTER SECTOR STATISTICS REPORT FOR THE FINANCIAL YEAR 2024/2025(OCTOBER 1 ST -DECEMBER 31 ST,

2024) available at https://www.ca.go.ke/sites/default/files/2025-03/Sector%20Statistics%20Report%20Q2%20204-2025.pdf

<sup>81</sup> https://www.safaricom.co.ke/media-center-landing/press-releases/safaricom-becomes-largest-5g-network-in-kenya-with-over-1-000-sites-spreadacross-all-47-counties#:~:text=In%20October%202022%2C%20Safaricom%20became,and%20enabling%20innovation%20and%20scalability. [9] https://www.connectingafrica.com/5g-networks/airtel-launches-5g-in-kenya



<sup>2]</sup> SECOND QUARTER SECTOR STATISTICS REPORT FOR THE FINANCIAL YEAR 2018/2019 (OCTOBER - DECEMBER 2018) available at https://repository.ca.go.ke/server/api/core/bitstreams/19601aa7-4563-42b3-8042-e85443cd58bc/content

<sup>[3]</sup> https://www.ca.go.ke/sites/default/files/2025-03/Sector%20Statistics%20Report%20Q2%202024-2025.pdf

 $<sup>^{[4]}\</sup> https://www.ca.go.ke/sites/default/files/2025-03/Sector\%20Statistics\%20Report\%20Q2\%202024-2025.pdf$ 

<sup>[5]</sup> https://repository.ca.go.ke/server/api/core/bitstreams/19601aa7-4563-42b3-8042-e85443cd58bc/content

<sup>[6]</sup> https://www.knbs.or.ke/wp-content/uploads/2025/01/2023-24-Kenya-Housing-Survey-Basic-Report1.pdf

<sup>[7]</sup> https://www.kictanet.or.ke/digital-divide-in-kenya-ict-access-and-usage-data-reveals-disparities/



Kenya continues to strengthen its digital infrastructure, solidifying its position as one of East Africa's most connected nations. There are six submarine cables and 9000 km of Backbone, Metro and last mile connectivity through the National Optic Fibre Backbone Infrastructure (NOFBI) Project that cuts across the country, as well as private telecommunications sector connectivity. [10]

As for digital government services, the government made strides in digitizing services, with over 22,000 government services transitioned online through platforms like eCitizen. The stalled Huduma Namba digital ID program faced legal and privacy challenges. On July 25, 2024, the High Court temporarily halted the government's initiative to implement the Maisha card, which is the new third-generation ID.

This decision followed a legal challenge by Haki na Sheria Initiative. The petitioners raised concerns that sharing personal information without sufficient data protection could lead to discrimination against certain individuals. They also contended that the Maisha Namba system would exacerbate the marginalization of disadvantaged groups. [12] However, in August, the Milimani High Court overturned the orders blocking the rollout of Maisha Namba. [13]

#### Digital Rights and Internet Freedoms

The enactment of the Data Protection Act (DPA) in 2019 established a framework for safeguarding personal information. However, exemptions for national security and public interest under the auspices of the Preservation of Public Security Act, Cap 57 (PPSA) and the Official Secrets Act, Cap 187 (OSA) raised concerns about potential overreach and allowances for government surveillance.

In 2024, proposed amendments aimed to grant the Kenya Revenue Authority access to sensitive data without court orders, sparking debates over privacy rights.<sup>[14]</sup> The DPA established the Office of the Data Protection Commissioner (ODPC), but enforcement remained weak, with frequent breaches as well as reports of non-compliance by government agencies.<sup>[15]</sup>

Despite technological progress and the welcome enactment of the Data Protection Act, 2019, digital rights faced setbacks. In 2023, Kenya experienced its first documented internet shutdown in November when Telegram was blocked during national examinations.



<sup>[10]</sup> https://icta.go.ke/news?

node=296&type=news#:~:text=Kenya%20currently%20boasts%20of%20being,as%20various%20Private%20sector%20connectivity.

<sup>[11]</sup> https://accounts.ecitizen.go.ke/en

https://techweez.com/2024/07/31/high-court-halts-maisha-card/

<sup>[13]</sup> https://www.citizen.digital/news/court-overturns-orders-blocking-maisha-namba-rollout-n347624

<sup>14]</sup> https://www.kictanet.or.ke/should-kra-bypass-privacy-laws-to-collect-taxes/

<sup>[15]</sup> https://www.businessdailyafrica.com/bd/corporate/technology/data-protection-state-agencies-lead-in-non-compliance--4621110



This issue recurred in 2024 for which the government cited the prevention of exam cheating as the reason for the block, claiming Telegram was used for leaking exam papers. However, Access Now<sup>[16]</sup> and KICTANet have criticized this measure as ineffective and disproportionate, Access Now pointing out that internet shutdowns have not proven to be effective in combating exam cheating.<sup>[17]</sup>

The government's response to the #RejectFinanceBill2024 protests included internet throttling, notably on June 25, 2024, marking a nationwide blackout aimed at curbing dissent, [18] although service providers cited undersea cable issues. Activists reported abductions and intimidation, with dozens of cases linked to online activism.

The Kenya National Commission on Human rights reported that, between June and October 2024, the Commission, pursuant to its mandate, investigated 60 cases of extrajudicial killings and 71 cases of abductions and enforced disappearances.<sup>[19]</sup>

Insofar as the tech community welcomed the DPA 2019, other legislative measures raised concerns over freedom of expression. Proposed amendments to the Computer Misuse and Cybercrimes Act (CMCA) 2018 sought to expand definitions of cyber harassment, while the Assembly and Demonstrations Bill, 2024 sought to impose stricter controls on public gatherings. These developments prompted calls from organizations like APC and KICTANet for reforms to align laws with international human rights standards.

During the reporting period, there were clawbacks to online freedom of expression despite constitutional guarantees. Laws like the CMCA 2018 contained provisions that unduly restricted online speech, particularly concerning the publication of "false information." There were instances of individuals being arrested - such as Silvance Adongo Abeta, Cyprian Nyakundi and Pauline Njoroge<sup>[23]</sup> - for social media posts critical of public figures.

There were also reports of affronts to (data) privacy: There was documented use of surveillance technology by Kenyan state security agencies, including the military, to conduct communication interception and surveillance. There is evidence that they have in their possession, a variety of invasive technologies and techniques to monitor, intercept and store communications and surveil the activities of individuals and groups suspected of terrorism and other criminal activities.



<sup>[16]</sup> https://www.accessnow.org/press-release/authorities-in-kenya-must-restore-access-to-

 $telegram \#: \sim : text = This \% 20 is \% 20 the \% 20 second \% 20 time, CA\% 20 has \% 20 ordered \% 20 Telegram \% 20 blocked.$ 

<sup>|</sup> https://www.accessnow.org/press-release/authorities-in-kenya-must-restore-access-to-telegram/

<sup>118]</sup> https://www.businessdailyafrica.com/bd/corporate/technology/internet-services-disrupted-as-kenyans-stage-anti-tax-protests-4669422

<sup>[19]</sup> https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1206/Surge-of-Abductions-and-Killings-in-Kenya-A-Call-for-Immediate-Action-and-Accountability

https://www.kictanet.or.ke/proposal-to-block-websites-and-applications-threatens-kenyas-digital-ecosystem/

<sup>|211</sup> https://katibainstitute.org/wp-content/uploads/2025/02/Memorandum-on-the-Assembly-and-Demonstration-Bill-2024.pdf

<sup>|</sup> https://www.kictanet.or.ke/kenyas-digital-rights-under-scrutiny-report/?

<sup>[23]</sup> https://freedomhouse.org/country/kenya/freedom-net/2024



Examples of such technologies as reported by KICTANet<sup>[24]</sup> include 61 Blue Coat ProxySG devices and 316 PacketShaper appliances on public and government networks and SOMALGET, which is part of a broader programme called MYSTIC. The government also embarked on mass data collection programs, such as the Maisha Namba digital ID, which raised data privacy and security concerns.<sup>[26]</sup>

In addition, alleged data sharing by telecommunications providers, such as Safaricom, with law enforcement such as was suspected during the June 2024 protests, also contributed to these concerns.<sup>[26]</sup>

The "wacha tumsalimie" trend involved the casual sharing of contact details of Members of Parliament, members of the Executive, and other public figures on social media. This practice also extended to their family members. The trend sparked debates about the right to privacy, especially given that many of these public figures had previously made their contact details public.<sup>[27]</sup>

Technology-Facilitated Gender-Based Violence (TFGBV) also grew in prevalence during the time period. TFGBV, also known as Online Gender-Based Violence (OGBV), including cyberbullying, online defamation, cyberstalking, trolling, harassment, non-consensual sharing of intimate images, doxing, digital manipulation of images, body shaming, identity theft, and the non-consensual exposure of one's identity as a sex-worker or member of the LGBTQ+ community remained a pervasive issue, with platforms like Facebook and WhatsApp reporting high prevalence rates. [28]

Nearly 90% of young adults enrolled in Nairobi's tertiary institutions have witnessed TFGBV, with 39% having experienced it personally. While online violence has an extensive reach, a study showed that female students are disproportionately impacted. [29] Legal frameworks and enforcement mechanisms to address TFGBV are largely considered inadequate. Training of these groups on the potential risks online, how to safely navigate online platforms, how to report OGBV incidences and the relevant laws, regulations and policies that safeguard their digital rights contribute to enhancing safety on digital platforms. [30]

The Kenya Film Classification Board (KFCB) continued to censor digital content deemed "indecent," ordering takedowns of music videos<sup>[31]</sup> and reaching agreements with platforms like TikTok to blacklist users posting explicit content.<sup>[32]</sup>



 $<sup>^{[24]}\</sup> https://www.kictanet.or.ke/mdocs-posts/surveillance-laws-and-technologies-used-in-countering-terrorism-and-their-potential-impact-on-civic-space/flu$ 

 $<sup>^{[25]}\</sup> https://www.biometricupdate.com/202503/advocates-pick-privacy-inclusion-holds-in-kenyas-maisha-namba-digital-id-system$ 

<sup>[26]</sup> https://www.article19.org/resources/kenya-guarantee-internet-access-and-stop-surveillance-of-protesters/

<sup>[27]</sup> https://www.laibuta.com/data-protection/gen-z-right-to-privacy-and-a-revolution/

 $<sup>^{[28]}\</sup> https://www.kictanet.or.ke/mdocs-posts/unmasking-the-trolls-research-on-online-gender-based-violence-in-kenya/linear-based-violence-in-kenya/lin$ 

 $<sup>^{[29]}\</sup> https://kenya.unfpa.org/en/publications/rapid-study-technology-facilitated-gender-based-violence-tfgbv-kenyas-higher-based-violence-higher-based-violence-higher-based-violence-higher-based-violence-higher-based-violence-higher-based-violence-higher-based-violence-higher-based-violence-higher-based-higher-based-violence-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-higher-based-highe$ 

 $learning \#: \sim : text = Publication-, Rapid \% 20 Study \% 20 on \% 20 Technology \% 2D Facilitated \% 20 Gender \% 2D Based \% 20 Violence \% 20 (TFGBV, In \% 20 Kenya's \% 20 Higher \% 20 Learning \% 20 Institutions \& text = Nearly \% 20 90 \% 25 \% 20 of \% 20 young \% 20 adults, female \% 20 students \% 20 are \% 20 disproportionately \% 20 impacted.$ 

<sup>[30]</sup> https://www.kictanet.or.ke/safeguarding-women-online-addressing-tfgbv-in-kenya/

<sup>[31]</sup> https://kfcb.go.ke/kfcb-pulls-down-soko-

paedophilia#:~:text=Following%20an%20avalanche%20of%20complaints%20from%20members,music%20video%20titled%20'Soko'%20by%20Ethic%20Entertainment%2C

<sup>[32]</sup> https://techweez.com/2023/09/09/kfcb-tiktok-livestream-ban/



As concerns digital inclusion, significant digital divides persisted based on gender, location (urban/rural), and disability, hindering equal access to information, services, and opportunities. <sup>[33]</sup> The high cost of internet access, low literacy rates and the existence of data deserts <sup>[34]</sup> are also contributing factors.

Political tensions fueled misinformation, leading to crackdowns under cybercrime laws, sometimes targeting critics. During the reporting period, misinformation and disinformation spread about the COVID-19 pandemic, the 2022 elections, as well as anti-government protests. In addition, hate speech was prevalent especially during electioneering periods.

#### Media Freedoms

During the reporting period we saw the proliferation of Strategic Lawsuits Against Public Participation (SLAPPs). According to the Mzalendo Trust report, SLAPPs are legal actions, often framed as defamation suits, aimed at silencing, intimidating, or punishing individuals for speaking out on issues of public concern.

These lawsuits are commonly used by powerful entities to manipulate legal systems in order to suppress legitimate criticism of their actions or decisions. SLAPPs frequently involve threats of defamation and may also misuse data protection and privacy laws to stifle free expression. They can take various forms, such as civil and criminal suits, false accusations, or exaggerated claims for damages.

Although they may appear to defend individual rights, SLAPPs are ultimately used to undermine freedom of expression, restrict access to information, and weaken public participation. [35]

Litigation surrounding the composition of the Media Council of Kenya (MCK) Board involved at least two notable court actions: in March 2023, the High Court issued an injunction halting the recruitment of new board members until legal challenges were resolved; more recently, in June 2025, petitioners James Mutahi Muchiri and Robert Leroy Ochieng sought conservatory orders to stop the selection panel, launched by the Kenya Editors Guild, from finalizing its recruitment of a new chair and board members, though the court dismissed their petition and allowed the hiring exercise to proceed. [37]

In summary, Kenya remained a digital hub, making notable progress in expanding its ICT infrastructure and increasing internet penetration between 2020 and 2024. However, this period also saw significant challenges related to digital rights and internet freedoms, including restrictive legal provisions, instances of internet disruptions, concerns about surveillance and censorship, and the prevalence of misinformation and technology-facilitated gender-based violence.

<sup>[37]</sup> https://www.kenyaeditorsguild.org/to-all-members-of-kenya-editors-guild-interviews-for-the-chair-and-members-of-the-media/



<sup>[33]</sup> https://www.cigionline.org/static/documents/DPH-Paper-Okello.pdf

<sup>[34]</sup> https://cipit.strathmore.edu/kenyas-digital-deserts/

<sup>35]</sup> https://mzalendo.com/media/resources/Slapp\_Report\_2.pdf

https://allafrica.com/stories/202303080324.html



Addressing the digital divide and strengthening the protection of online rights remained critical areas for improvement. While innovation thrived, the restrictive regulatory environment attracted calls from civil society to respect digital rights in the country.

# Ambe v Onyango (Civil Case 174 of 2018) [2024] KEHC 6138 (KLR) (Civ) (24 May 2024)<sup>[38]</sup>

Dr. Sellina Vukinu Ambe, a resident of Machakos County, brought Civil Case 174 of 2018 against Cyllus Auma Godfrey Onyango (also of Machakos), claiming defamation over a WhatsApp message posted in their shared estate group on July 20, 2018.

The plaintiff alleged the defendant's message, criticising her court-ordered attempt to halt estate development, was defamatory. The plaintiff submitted that as a result of the publication she has been shunned by other residents who no longer interact with her.

She suffered serious injury to her dignity and self-confidence as she and her husband were removed from the said WhatsApp group which was a classical example of being shunned. It was submitted that the statement by the defendant were maliciously and recklessly published.

The wordings were disproportionate to the facts at hand as the defendant did not take his time to verify the correctness of any averments he made before he published the said words. He did not weigh the consequences such publication would have on the reputation of the plaintiff.

The plaintiff sought general damages, an injunction to prevent further postings, costs, and interest. The defendant denied these claims in his statement of defence dated September 10, 2018. The matter turned on whether the WhatsApp communication could reasonably be interpreted as defamatory under its ordinary meaning. Justice Ongeri, in May 2024, found that the Whatsapp message was indeed defamatory and was malicious, as it was made with the intention of eliciting negative comments from the group.

The Judge held that the impugned words had the effect of ruining the plaintiff's reputation. There was a civil way of handling the dispute other than to insult the plaintiff, and accordingly found that the plaintiff was entitled to damages for defamation assessed at KES. 2,000,000 (two million).<sup>[39]</sup>



<sup>[38]</sup> https://kenyalaw.org/caselaw/cases/view/290492/

https://kenyalaw.org/caselaw/cases/view/290492/

#### **KEY DEFINITIONS**

Bloggers: Individuals who regularly publish content (opinion pieces, news, commentary, entertainment) on personal or collective blogs or social media platforms. In Kenya, the term "blogger" has become a catch-all label for online users who post controversial or critical content.

Citizen Journalists: Ordinary individuals who gather, report, and share information (often via social media, blogs, or WhatsApp) without formal affiliation to mainstream media. Often seen in Kenya during protests, elections, or crises (e.g., #RejectFinanceBill2024 solidarity posts, live-streaming demos). They blur the line between public witnesses and journalists.

Online Commentators: Social media users who offer commentary on current affairs, politics, or social issues, often without original reporting. They might use X (Twitter), Facebook, or TikTok to share their views. They are influential in shaping public discourse but aren't necessarily "journalists" or "bloggers" by trade.

Influencers: Individuals with a significant following on digital platforms who shape public opinion, often through lifestyle, political, or advocacy content. In Kenya, this includes both commercial influencers (brand ambassadors) and political/activist influencers. They are often treated like media actors when they comment on public issues.

Kenyan authorities and the media frequently label social media users who post dissenting or controversial content as "bloggers." The legal implications under the Computer Misuse and Cybercrimes Act (CMCA) are as below:

Expanded criminal liability: The CMCA 2018 criminalizes publishing "false, misleading, or alarming" information (Sec. 22), "cyber harassment" (Sec. 27), and unauthorized disclosure of information.

Targeting dissent: By calling activists, commentators, or influencers "bloggers," authorities frame them as professional content creators, making it easier to charge them under the CMCA (especially Section 22 and 23).

Chilling effect: Fear of being branded a "blogger" (and thus subject to arrest) discourages ordinary citizens from engaging in online political discourse.



Key issues that arise because of this classification are as follows:

- No clear legal definitions: The CMCA doesn't clearly define "blogger" or "influencer." This vagueness enables broad and selective enforcement.
- Stigmatization: The term "blogger" in Kenyan media is often used pejoratively, implying irresponsibility or malice.
- Suppression of digital activism: Activists live-streaming protests or sharing leaked information (e.g., corruption exposés) can be criminalized as "malicious bloggers."

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# ICT LEGISLATIVE AND POLICY DEVELOPMENTS

#### Data Protection Act, 2019

Between 2020 and 2024, Kenya witnessed significant legislative and policy changes impacting digital rights and freedoms. They were at once progressive and regressive - while some reforms enhanced privacy and accountability, others raised concerns over government overreach and restrictions on free expression.

At the forefront of these legislative transformations is the enactment of the Data Protection Act, 2019<sup>[40]</sup> which stands out as arguably the most significant piece of legislation directly addressing digital rights during this period. Enacted in November 2019, the Act aims to protect individuals' privacy by regulating the collection, processing, storage, and use of their personal data.

It establishes principles for data processing, such as lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity, and confidentiality, aligning Kenya with global standards like the EU's GDPR.It also grants data subjects several rights, including the right to access their data, rectify inaccuracies, erase data, object to processing, and data portability.<sup>[41]</sup>

Moreover, the Act mandates the establishment of the Office of the Data Protection Commissioner, which is responsible for enforcing the Act, registering data controllers and processors, and handling complaints. The ODPC became fully operational during this period. The ODPC which has since investigated data breaches and issued fines for non-compliance, for instance KES 5 million fines (the maximum allowable by law) on Oppo, Whitepath, and Regus Kenya. The upshot of these determinations is to enhance user consent requirements for data collection.

Several regulations operationalizing the Act were also introduced, such as the Data Protection (General) Regulations, 2021, [45] and the Data Protection (Complaints Handling Procedure and Enforcement) Regulations, 2021. [46]

The Act has implications for various entities, including government agencies, businesses, and online service providers, requiring them to implement measures to comply with its provisions.

[43] https://www.businessdailyafrica.com/bd/economy/oppo-fined-sh5m-for-breaching-data-laws-

https://www.odpc.go.ke/wp-content/uploads/2024/03/THE-DATA-PROTECTION-COMPLAINTS-HANDLING-AND-ENFORCEMENT.pdf



<sup>|40||</sup> https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct\_No24of2019.pdf

<sup>[42]</sup> Ibid

 $<sup>-4063118\#: \</sup>sim : text = Mobile \% 20 phone \% 20 reseller \% 20 Oppo \% 20 Kenya, against \% 20 it \% 20 on \% 20 November \% 203. A phone \% 20 phone \%$ 

https://www.businessdailyafrica.com/bd/corporate/companies/whitepath-regus-slapped-with-sh5m-fine-for-breaching-data-laws-4196536

<sup>[45]</sup> https://www.odpc.go.ke/wp-content/uploads/2024/03/THE-DATA-PROTECTION-GENERAL-REGULATIONS-2021-1.pdf





#### The Computer Misuse and Cybercrimes Act, 2018

The CMCA 2018, operationalized post-2020, has significantly impacted Kenya's digital landscape. The law targets cybercrimes such as unauthorized access, data interference, and cyber harassment but has raised concerns over its potential to stifle freedom of expression and press freedom. Provisions criminalizing "false publications" and cyber harassment have been criticized for being overly broad, leading to cases where individuals faced charges for online dissent. Proposed amendments, including expanded definitions of cyber harassment, could further threaten digital freedoms.

Soon after its passage, the Bloggers Association of Kenya (BAKE) challenged the Computer Misuse and Cybercrimes Act (CMCA) in the High Court, leading to the suspension of 26 sections. BAKE argued that the Act limited fundamental freedoms. However, on February 20, 2020, Justice Makau issued a final judgment upholding the Act's constitutionality in its entirety. However, it must be noted that since the decision upholding the constitutionality of the contentious clauses, there has been a noted uptick in targeting of bloggers and citizen journalists who are critical of William Ruto's regime.

In 2021, amendments to the CMCA<sup>[48]</sup> removed some contentious clauses, such as the criminalization of "false" publications, following pushback from courts and civil society. However, concerns persist over vague definitions of cyber offenses, which authorities could misuse to suppress criticism. Judicial oversight has played a key role in safeguarding rights for example, in May 2021, the High Court struck down Section 66 of the Penal Code, which criminalized false information, deeming it unconstitutional and invalid for unjustifiably violating articles 33 and 50(2)(a) of the Constitution. The impugned section 66 of the Penal Code provided:

#### 66. Alarming publications

 Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanor.
 It shall be a defence to a charge under subsection (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of the statement, rumour or report as to lead him r

<sup>[50]</sup> Andama v Director of Public Prosecutions & 2 others; Article 19 East Africa (Interested Party) (Constitutional Petition 3 of 2019) [2021] KEHC 12538 (KLR) available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2021/12538/eng@2021-05-13



<sup>[47]</sup> https://cipit.strathmore.edu/the-computer-misuse-and-cybercrimes-act-judgment-a-digest/

<sup>[48]</sup> http://www.parliament.go.ke/sites/default/files/2021-

<sup>05/</sup>Computer%20Misuse%20and%20Cybercrimes%20%28Amendment%29%20Bill%2C%202021.pdf

<sup>[49]</sup> https://www.article19.org/resources/kenya-withdraw-proposed-amendments-to-cybercrimes-law/



The November 2024 amendments<sup>[51]</sup> empowered the National Computer and Cybercrimes Coordination Committee (NC4) to block websites or apps hosting "prohibited content," raising alarm about unchecked censorship. There were fears that granting NC4 with broad discretionary authority to issue directives for the restriction of access to websites or applications that are deemed to promote unlawful content, without a mechanism for judicial oversight, risks encroaching upon constitutionally enshrined rights, including freedom of expression and access to information. It is also imperative that the provision incorporates a clear framework for appeal to ensure due process and safeguard against potential misuse.<sup>[52]</sup>

Overall, while the CMCA aims to combat cybercrime, its implementation has been marred by risks to free expression and due process. This includes government repression, characterized by abductions and torture of individuals for online criticism, as noted by Freedom House. <sup>[53]</sup> Judicial interventions have provided some safeguards, but ongoing amendments and state actions suggest a shrinking space for online dissent in Kenya. Balancing security and freedoms remains a critical challenge.

According to Demas Kiprono, Deputy Executive Director of the Kenyan Section of the International Commission of Jurists stated that "the affirmation of the Computer Misuse and Cybercrimes Act by Justice Makau in February 2020 has by far been the most impactful policy change. Sections 22, 23 and 27 of the law that criminalise alternative views and criticising government have been weaponised against free speech in the country, leading to arrests, prosecutions and sometimes torture and enforced disappearances.

Because the high court endorsed it, it is often the "legitimate basis" for very bad actions such as the abduction and incognito detention of Kibet Bull, his brother and 2 others or what happened to Albert Ojwang."

#### Kenya Information and Communications (Amendment) Act, 2023

The Bill sought to strengthen consumer protections, including net neutrality provisions (preventing ISPs from throttling services) as well as enhancing data privacy safeguards for telecom users. It also sought to provide for a regulatory framework that will curb anti-competitive practices by the large industries in the sector. It further proposed measures to promote competition and ensure a level playing field for all providers. This includes separating non-core telecoms businesses, such as financial services, from core telecoms operations.<sup>[54]</sup>

KICTANet recommended<sup>[55]</sup> complete deletion of Section 29 of KICA on 'Improper use of system' as the provision of the law has been found unconstitutional by the Courts in the Geoffrey Andare case, <sup>[56]</sup> and is not in use by law enforcement authorities.

<sup>[56]</sup> Petition No. 149 of 2015 Geoffrey Andare v Attorney General & 2 others [2016] eKLR available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2016/7592/eng@2016-04-19



<sup>[[51]</sup> http://parliament.go.ke/sites/default/files/2024-

<sup>09/</sup>THE%20COMPUTER%20MISUSE%20AND%20CYBERCRIME%20%28AMENDMENT%29%20BILL%2C2024.pdf

<sup>&</sup>lt;sup>52]</sup> https://www.oraro.co.ke/the-computer-misuse-and-cybercrimes-amendment-bill-

<sup>2024/#:~:</sup>text=The%20amendment%20broadens%20the%20scope,%2C%20malware%2C%20and%20hacking%20tools.

<sup>[53]</sup> https://freedomhouse.org/country/kenya/freedom-net/2024

http://www.parliament.go.ke/node/22796#:~:text=The%20Bill%20also%20seeks%20to,Committee%20of%20the%20Whole%20House.

<sup>[55]</sup> https://www.kictanet.or.ke/mdocs-posts/memorandum-on-the-draft-kenya-information-and-communication-act-amendment-bill-2023/



In addition, legal experts<sup>[57]</sup> were of the opinion that if, according to the Bill, only the Communications Authority of Kenya (CA) can decide if a company is dominant, this raises concerns about duplication of roles as this is the domain of the Competition Authority of Kenya (CAK). The Bill also provided that dominant companies don't need to get approval for their tariffs and rates. This could potentially be a problem because dominant companies could change prices without any rules constraining them.

During the reporting period, four draft regulations governing Kenya's communication sector were also tabled, namely - the Kenya Information and Communications (Broadcasting) Regulations, 2022<sup>[58]</sup>; the Kenya Information and Communications (Registration of Telecommunications Service Subscribers) Regulations, 2022<sup>[59]</sup>; the Kenya Information and Communications (Access and Infrastructure Sharing) regulations; and, the Kenya Information and Communications (Interconnection) Regulations 2022.

#### National Information Communications and Technology Policy, 2019

In 2019,<sup>[60]</sup> Kenya's National ICT Policy, 2006 was reviewed and updated to the present iteration to address emerging issues regarding the digital landscape and ICT utilization in Kenya. Though not specifically centered on digital rights, it addresses pertinent issues such as access to information, inclusion, and cybersecurity. The policy endeavors to facilitate the growth of a safe and trusted digital space.

The policy is meant to act as a guide in the use and harnessing of information and communication technologies for the purpose of fast tracking national development, transforming the economy, and facilitating development for all. It is anchored on the country's Vision 2030 and hopes to achieve an ICT empowered society with proper infrastructural development, enhanced digital literacy and innovation.

It aims to achieve equal access to digital devices and services especially among marginalized groups as well as advancing the provision of e-government services to enhance the delivery of public services, transparency and efficiency. Another goal is the strengthening of advanced cybersecurity measures and data protection to safeguard online engagement and digital infrastructure.<sup>[61]</sup>

It emphasizes the need to bridge the digital gap and ensure that every citizen has access to, and benefits from ICT. Some of the targeted areas which need urgent attention are fostering broadband access through PPPs and incorporating use of ICTs in training by means of integrative approaches. [62]

<sup>| 61|</sup> https://dig.watch/resource/kenyas-national-information-communications-and-technology-ict-policy?



<sup>[57]</sup> https://koassociates.co.ke/insight/review-of-the-kica-regulations-and-its-potential-impact-on-the-industry/

<sup>[58]</sup> https://new.kenyalaw.org/akn/ke/act/ln/2009/187/eng@2022-12-31

<sup>[59]</sup> https://new.kenyalaw.org/akn/ke/act/ln/2014/10/eng@2022-12-31

<sup>[60]</sup> https://www.ict.go.ke/node/502



#### Digital Literacy and Opportunities Bill, 2024

It is described as "an Act of Parliament to provide a coordinated approach in the planning, designing, deployment and management of government digital literacy programs within the country." The aim of this bill is to streamline the approach taken in the country concerning matters of digital literacy. The bill seeks to enhance the digital skills of citizens. While this indirectly impacts digital rights, it enables people to take part in the digital world more actively.

#### Assembly and Demonstration Bill, 2024

On 15th May 2024, MP Hon. Ruku Geoffrey Kiringa of Mbeere North presented the draft Assembly and Demonstration Bill to Parliament. One organization reported that this bill is "fundamentally punitive, reactive, and retrogressive," and needs to undergo significant revisions if it is to comply with regional and international human rights norms. They argue that the bill, along with its proposed changes to the Public Order Act, Cap 56 (POA), is "deeply flawed." Subsequently, they argued that any changes to the POA must:

- Clearly define terms and address the various forms of assemblies and protests,
- Streamline notice channels and establish effective dispute resolution mechanisms for public order management,
- Prioritize explicit guidelines for de-escalation protocols and incorporate dialogue during assembly preparations,
- Steer clear off imposing criminal sanctions in the context of laws governing assemblies,
- Introduce sanctions only if they are not disproportionate or aimed at tightly controlling or penalizing organizers and conveners, and
- Be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society. [66]

### Information Communications and Technology Practitioners Bills, 2016, 2020, 2022, 2024

The ICT Practitioners Bills, in its various iterations, are a proposed law in Kenya that seeks to regulate professionals in the ICT sector by establishing a mandatory licensing and registration system.

While the bills aim to standardise qualifications and improve service delivery, it has faced significant backlash from tech stakeholders, civil society, and digital rights advocates over its potential to stifle innovation, restrict digital freedoms, and create barriers to entry in Kenya's thriving tech ecosystem.

<sup>[66]</sup> https://cff.or.ke/the-assembly-and-demonstration-bill-2024-an-analysis/



l62] http://www.parliament.go.ke/sites/default/files/2024-03/The%20%20Digital%20Literacy%20Opportunities%20Bill%2CNo.8%20of%202024.pdf

<sup>[63]</sup> http://www.parliament.go.ke/sites/default/files/2024-06/THE%20ASSEMBLY%20AND%20DEMONSTRATION%20BILL%2C2024.pdf

https://cff.or.ke/the-assembly-and-demonstration-bill-2024-an-analysis/

<sup>[65]</sup> https://cff.or.ke/the-assembly-and-demonstration-bill-2024-an-analysis/



#### Key Provisions of the 2016-2024 bill are:

Year/Bill	Key Provisions	Controversies	Sources
ICT Practitioners Bill, 2016	- Mandatory registration with an ICT Institute - Degree or diploma requirement - Annual licensing - Institute to regulate standards	- Barriers for self-taught professionals  - Duplication of regulatory roles  - Risk of stifling innovation	https://techweez.com/20 17/12/04/ke-ict- practitioners-bill-2016/
ICT Practitioners Bill, 2020	- Establishes ICT Practitioners Institute - Recognizes demonstrable expertise - Annual licensing and penalties - Oversight and discipline	- Vague criteria for expertise - Overbroad ICT definition - Risk of overregulation	https://www.techhivead visory.africa/insights/rev iew-of-the-kenyan-ict- practitioners-bill
ICT Practitioners Bill, 2022	- Repeats 2020 provisions - President rejected due to overregulation concerns	- Exclusion of self-taught professionals - Potential duplication and innovation stifling	https://thecondia.com/ke nya-uhuru-kenyatta- rejects-ict-bill/
ICT Authority Bill, 2024	- Introduces licensing under new authority  - Tiered accreditation system  - Heavy penalties for non-compliance	- Higher costs for businesses - May limit digital access and innovation	https://peopledaily.digita l/insights/why-ict- authority-bill-2024-is- bad-for-business

Figure 1: Table showing various iterations of ICT Practitioners Bills





# TRENDS IN ONLINE CENSORSHIP, SURVEILLANCE AND DATA PROTECTION

#### Data Protection, Exemptions, and Enforcement Challenges

The implementation of the Data Protection Act of 2019 was a key milestone in the effort to protect personal data. However, it was rendered ineffective due to wide exemptions and issues with enforcement.<sup>[67]</sup>

The 'public interest' and 'national security' provisions in the legislation pose a risk for state abuse as they are largely exempted from the law's protections. Furthermore, restrictions on the retention of data do not apply if the information must be kept by law or is 'reasonably necessary for a lawful purpose.' [68]

Entities such as Privacy International have raised alarm regarding the independence of the Office of the Data Protection Commissioner. Their concerns arise from the fact that, as a body corporate, the ODPC does not possess the level of control over its budget and administrative structure needed to independently carry out its duties under the new law - control that would be available if formed as a Statutory Commission instead of a State Office. [69]

In May 2024, the Finance Bill proposed an amendment to the DPA with the National Treasury proposing to grant the Kenya Revenue Authority (KRA) an exemption that would allow unrestricted access to taxpayers' sensitive information such as property and bank account details, without a court warrant for prosecuting tax evaders.<sup>[70]</sup>

Sam Altman, the CEO of OpenAI, along with Alex Blania and Max Novendstern co-founded Worldcoin which launched in May 2019 as a cryptocurrency designed to minimize fraud via a new form of identification. The initiative merges artificial intelligence (AI), cryptocurrencies, and blockchain technology within an open-sourced protocol, granting universal access to the global economy.<sup>[71]</sup>

Later, in 2023, ODPC directed Worldcoin to cease collecting biometric data from Kenyans until they complied with the data processing principles set out in Section 25 of the DPA, including ensuring adequate protection for data subjects - a directive the company disregarded.

Worldcoin enticed participants in Kenya with the promise of KES 7,000 (approximately \$50–55) if they agreed to scan their irises - claiming it aimed to create "the world's largest, most inclusive identity and financial public utility, owned by everyone." The Orb device that Worldcoin utilized to scan people's irises assigned a unique identification code which was stored on its decentralized blockchain. [72]

<sup>|</sup> https://iclg.com/news/22583-kenyan-high-court-delivers-landmark-biometric-data-ruling#:~:text=In%202023%2C%20Kenya's%20Ministry%20of,the%20ODPC%20within%207%20days%E2%80%9D.



<sup>[67]</sup> https://freedomhouse.org/country/kenya/freedom-net/2024

<sup>[68]</sup> https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct\_No24of2019.pdf

<sup>[69]</sup> https://privacyinternational.org/sites/default/files/2020-

 $<sup>02/</sup>Analysis\%20 of\%20 Kenya\%20 Data\%20 Protection\%20 Act\%2 C\%202019\_Jan2020.pdf$ 

https://www.businessdailyafrica.com/bd/economy/kra-seeks-data-protection-waiver-to-spy-on-tax-cheats--4621394

 $<sup>^{[71]}\</sup> https://www.techtarget.com/whatis/feature/Worldcoin-explained-Everything-you-need-to-know$ 



The parent company of Worldcoin, Tools for Humanity, faced a case filed by Katiba Institute and the Kenyan chapter of the International Commission of Jurists for allegedly violating the DPA. The case centered on claims that Worldcoin infringed the rights of Kenyans by collecting, processing, and transferring sensitive biometric data without conducting the required Data Protection Impact Assessment (DPIA) or obtaining informed user consent. [73][74]

As part of the countrywide SIM card registration directive by the Communications Authority in 2021, Safaricom began collecting biometric data during their SIM card registration process. <sup>[75]</sup> However, even after the CA updated its biometric data requirements, Safaricom persisted in requesting more user data than the law mandated. <sup>[76]</sup>

Following backlash from civil society, the telco halted biometric data from their SIM card registration requirements but did not make a comment on the data it had already collected.<sup>[77]</sup> Safaricom and the CA were also subject to a class action lawsuit for requiring subscribers to consent to a data privacy agreement that permitted the telecom company to collect their bank account information.<sup>[78]</sup>

In March 2024, the ODPC reached out to TikTok, requesting evidence of the platform's compliance with local privacy and user verification laws, citing concerns over its use to spread propaganda, fraud, and sexually explicit content.<sup>[79]</sup> The following month, in April, ODPC officials met with TikTok representatives to discuss the company's adherence to data protection regulations.<sup>[80]</sup>

Laws enacted ostensibly to safeguard national security such as the PPSA, the OSA, the National Intelligence Service Act, 2012, and the Prevention of Terrorism Act, 2012 limit the privacy of personal data.<sup>[81]</sup>

In 2020, an amendment to the OSA was signed by the president, mandating that individuals or entities possessing or managing telecommunications equipment for international data transmission must furnish this data to the government upon request. Authorization for such requests can come directly from the president's cabinet security, bypassing judicial oversight, and non-compliance carries a potential one-year prison term. [82]

<sup>6/</sup>Statute%20Law%20%28Miscellaneous%20Amendments%29%20Bill%2C%202020%281%29.pdf



<sup>[73]</sup> https://icj-kenya.org/news/high-court-to-deliver-judgment-on-worldcoin-case-in-may-2025/

<sup>[74]</sup> In May 2025, The Court affirmed that WorldCoin commenced data collection without valid consent from the Office of the Data Protection Commissioner (ODPC) and without conducting the required DPIA, in breach of Sections 25, 26, 29, 30, and 31 of the Data Protection Act, 2019. See https://x.com/ICJKenya/status/1919365505141383239

https://www.accessnow.org/press-release/open-letter-safaricom-privacy-

kenya/#:~:text=However%2C%20despite%20this%2C%20Safaricom%20misrepresented,registration%20requirements%2C%20and%20warning%20that

<sup>[76]</sup> https://www.accessnow.org/press-release/safaricom-privacy-kenya/

<sup>[77]</sup> https://www.accessnow.org/press-release/open-letter-safaricom-privacy-kenya/

<sup>178]</sup> https://www.businessdailyafrica.com/bd/corporate/companies/safaricom-ca-face-second-class-action-suit-over-sim-listing-4016004

<sup>&</sup>lt;sup>[79]</sup> https://www.reuters.com/technology/kenya-tells-tiktok-show-it-is-complying-with-privacy-laws-2024-03-21/

<sup>[80]</sup> https://x.com/ODPC\_KE/status/1776250824580006346

<sup>[81]</sup> https://www.apc.org/sites/default/files/Data\_protection\_in\_Kenya\_1.pdf

<sup>[82]</sup> http://www.parliament.go.ke/sites/default/files/2020-



#### Surveillance and Privacy Concerns

Article 31 of the 2010 Constitution protects the right to privacy. However, existing laws empower authorities to monitor internet usage and seize data in the name of national security, which directly undermines these privacy rights. The DPA further enables this by allowing officials to circumvent user consent and access private data if national security is invoked. [83]

In 2023, Kenya's Supreme Court ruled in favour of the CA, permitting the rollout of the Device Management System (DMS). This system is designed to monitor mobile devices and prevent counterfeit, stolen, and SIM-boxed devices from connecting to telecom networks. The Supreme Court's decision upheld a 2020 Court of Appeal ruling that had also approved the DMS development, though it mandated public involvement in shaping its guidelines.<sup>[84]</sup>

Civil society organizations acknowledged the potential benefits of the regulator's decision but warned of possible negative consequences. They raised concerns that implementing the system could undermine hard-won civil liberties, resulting in consequences such as enabling government surveillance or restricting access to communication services, among other risks. This is especially true because it also gives the CA access to mobile subscriber data, including call records. [86]

While the CA claims the system will only access device identifiers and subscriber numbers, telecom firms such as Safaricom worry it could allow the regulator to obtain additional customer information.<sup>[87]</sup>

This brought to the fore mass surveillance risks which violate fundamental rights, including privacy, freedom of expression, press freedom, and freedom of movement. It could also undermine political rights, access to healthcare and education, protection from discrimination, personal dignity, and the right to information. [88]

According to a 2021 CIPESA report, government surveillance undermines privacy and anonymity in digital communications. This erosion of rights often results in increased self-censorship and marginalization of certain individuals and groups from online discourse. [89]

A 2020 investigation by Citizen Lab<sup>[90]</sup> exposed the use of Circles surveillance technology in Kenya. The report describes Circles as a surveillance company that capitalizes on vulnerabilities in international mobile networks to intercept calls, text messages, and device locations worldwide. Linked to the NSO Group (creators of the controversial Pegasus spyware), Circles claims to sell its services exclusively to governments.



 $<sup>{}^{[83]}\</sup> https://freedomhouse.org/country/kenya/freedom-net/2024\#footnote19\_YcdrR2nzwDSEwsFtbrF0x5wmpInAKFuKig3EJEd-lMs\_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKfuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFuKig3EJEd-lMs_uDFh5uruaCoREwsFtbrF0x5wmpInAKFu$ 

https://www.businessdailyafrica.com/bd/economy/regulator-allowed-to-install-mobile-phone-spying-gadget--4215610

<sup>[85]</sup> https://www.kictanet.or.ke/device-management-system-by-communication-authority-the-privacy-perspective/

 <sup>1861</sup> https://www.standardmedia.co.ke/business/article/2001369322/devil-is-in-the-detail-on-phones-privacy-ruling
 1871 https://www.businessdailyafrica.com/bd/economy/regulator-allowed-to-install-mobile-phone-spying-gadget-4215610

<sup>[88]</sup> https://paradigmhq.org/wp-content/uploads/2024/05/The-state-of-Digital-Surveilance-1.pdf

https://cipesa.org/wp-content/files/State-of-Internet-Freedom-in-Africa-2021-Report.pdf

<sup>190]</sup> https://citizenlab.ca/2020/12/running-in-circles-uncovering-the-clients-of-cyberespionage-firm-circles/



The company offers two surveillance approaches: customers can either deploy equipment linked to domestic telecom infrastructure or utilize the "Circles Cloud" system, which interfaces with telecommunications providers globally. Notably, Circles' technology can monitor devices without requiring direct phone hacking, according to leaked documents cited in the report.<sup>[91]</sup>

In recent years, major urban centers including Nairobi, Kisumu, and Mombasa have implemented CCTV surveillance systems along with major highways to enhance public safety. Government authorities have subsequently formulated a draft CCTV policy framework that will significantly expand surveillance infrastructure nationwide.

The proposed National CCTV Policy mandates all public and private institutions to install surveillance systems, while private homeowners and businesses will be required to register their CCTV installations with authorities. This regulatory framework aims to standardize the deployment, operation, and administration of digital surveillance systems across Kenya, potentially leading to widespread proliferation of CCTV cameras throughout the country. [92]

Victor Kapiyo who is in charge of Digital Rights and ICT policy at KICTANet opined that, despite the National Intelligence Service Act setting up crucial oversight bodies namely the National Intelligence Service Council, parliamentary oversight, and the Intelligence Service Complaints Board, a key part of this framework remains missing.

The Complaints Board, designed to handle grievances against intelligence officers, still hasn't been created, even ten years after the law was passed. This significant delay prompted the Katiba Institute to take legal action against the government in 2018 for its inaction. [93]

He mentioned a report by KICTANet<sup>[94]</sup> that described how Kenya's National Intelligence Service (NIS) Act, particularly Section 42, grants broad surveillance powers that are susceptible to abuse. These laws lack specific limitations, allowing for surveillance against a wide range of individuals and not restricting such activities to only the most severe crimes. Furthermore, they do not mandate the use of less intrusive investigative methods before resorting to surveillance.

For instance, Section 36 of the NIS Act is ambiguously worded, failing to specify the offenses for which communication interference is permissible, thus creating a loophole that could be exploited to target civic activists. Similarly, Section 36 of the Prevention of Terrorism Act (POTA) broadly authorizes surveillance and interception, potentially allowing interception orders to affect multiple individuals, which violates the principle of proportionality.

<sup>|92|</sup> https://nairobibusinessmonthly.com/cctv-is-kenya-ready-for-the-evolution-and-revolution/#:~:text=Courtesy%20of%20the%20policy%2C%20the%20country%20is,will%20now%20have%20to%20install%20the%20systems.&text=A ccording%20to%20the%20policy%2C%20thos%20who%20install,with%20the%20government's%20own%20digital%20security%20network.
|93| Katiba Institute v Attorney General & 3 others; Kenya National Commission on Human Rights (Interested Party) [2019] eKLR http://kenyalaw.org/caselaw/cases/view/186822/





<sup>&</sup>lt;sup>[91]</sup> Ibid.



A 2017 report by Privacy International<sup>[95]</sup> highlighted that the NIS frequently conducted communication surveillance outside legal protocols and without adequate oversight, often leading to human rights violations. The report detailed shortcomings in both the provisions and the practical implementation of POTA and the NIS Act. By 2017, the NIS, Directorate of Military Intelligence (DMI), and Directorate of Criminal Investigations (DCI) were reportedly equipped with sophisticated devices, including International Mobile Subscriber Identity (IMSI) catchers (also known as Stingrays).

These devices can mimic legitimate cell towers to intercept and track mobile communications, pinpoint user locations, and even jam network signals. Additionally, the NIS operates its own Base Transmission Stations (BTS) in Nairobi and North Eastern areas, enabling direct call interception and geo-location through GPS or satellite technology.

The Kenya Information and Communications (Amendment) Bill, 2025, was introduced by Aldai MP Maryanne Keitany. It proposed the following amendment:

"Section 27A of the principal Act is amended by inserting the following new subsections immediately after subsection (3B)— (3C) An internet service provider shall operate a meter billing system which shall —(a) assign to each customer a unique and identifiable meter number;(b) monitor customer usage;(c) convert customer usage into readable details; (d) create invoices based on consumption; and (e) allow for user verification of invoices."

As per an analysis by ICJ-Kenya, the bill poses significant threats to the constitutional right to privacy. It introduces internet metering that assigns each user a unique identifier, enabling the Communications Authority of Kenya (CA) to collect detailed metadata on individuals' online activities without clear limits on the scope, use, or retention of this information. Additionally, the Bill mandates identity verification for all social media users and requires content creators sharing material "for public consumption" to register with the CA.

These measures eliminate online anonymity, expose personal data to state scrutiny, and give the government broad powers to monitor, regulate, or even restrict digital expression. Crucially, the Bill lacks adequate safeguards such as transparency requirements, judicial oversight, or user consent mechanisms, undermining both the Constitution's Article 31 and the Data Protection Act of 2019.

ICJ-Kenya warns that these provisions amount to a form of mass surveillance disguised as consumer protection reform, potentially creating an infrastructure for profiling and monitoring dissenters, activists, journalists, and other vulnerable voices.

<sup>[95]</sup> https://privacyinternational.org/sites/default/files/2017-10/track\_capture\_final.pdf







By linking online speech to real-world identities and centralizing control over content creators, the Bill risks chilling free expression and shrinking Kenya's digital civic space. ICJ-Kenya has therefore urged Parliament to either radically amend or reject the Bill, emphasizing that any measures affecting privacy must be lawful, necessary, proportionate, and subject to independent oversight.

Without such reforms, the Amendment risks entrenching state surveillance, eroding public trust, and undermining Kenya's democratic and human rights commitments.

Dr. Mugambi Laibuta, a lawyer and the chairperson of the Data Privacy and Governance Society of Kenya, stated that "a lot of this surveillance is done without court sanction because the law provides that for you to carry out digital communication surveillance, it is imperative that you first seek court orders, because it is a search; it is basically a search. But a lot of this is done without the sanction of the court.

Then also the allegations that telcos - especially Safaricom has been cited a lot - have been providing data to the government. There was even an exposé on that, and the Nation indicated that Safaricom was culpable for sharing, especially call-data records with the state actors unprocedurally, without court orders."

He was referencing the Daily Nation exposé in November 2024, where the newspaper published an investigation revealing that Safaricom allegedly allowed Kenyan security agencies almost unfettered access to its customers' call data records (CDRs) and location information, supposedly even bypassing court procedures, to aid in tracking, abductions, and extrajudicial killings.<sup>[1]</sup>

A rather serious accusation made in the article claims that Safaricom has repeatedly supplied inconsistent or potentially doctored data to courts in cases concerning disappearances and suspected extrajudicial killings. <sup>[96]</sup> The report specifically highlighted discrepancies in location data, with forensic experts finding that missing information from base stations and call logs pointed towards evidence of tampering - a claim which Safaricom rejected. <sup>[97]</sup>

Following the revelations, Safaricom vociferously denied the allegations<sup>[98]</sup> and threatened a SLAPP suit, suspended its advertising spend with Nation Media Group, and lodged a complaint with the Media Council of Kenya, accusing the paper of unethical reporting.<sup>[99]</sup>

Civil society organizations, including KHRC, MUHURI, and the Civic Freedoms Forum, denounced these moves as attempts to intimidate journalists and curb press freedom. Despite these denials, rights groups maintain that safeguards were routinely bypassed and demanded concrete answers such as who had access, which orders were issued, and what internal controls were in place.

https://www.citizen.digital/news/safaricom-we-do-not-share-customer-data-with-police-unless-n352229

<sup>[100]</sup> https://khrc.or.ke/press-release/safaricom-must-immediately-cease-its-attacks-against-khrc-muhuri-daily-nation-and-journalists-and-answer-grave-allegations-against-it/



<sup>[96]</sup> https://nation.africa/kenya/business/companies/why-safaricom-is-under-fire-from-mps-4818550#story

<sup>[97]</sup> https://tech-ish.com/2024/10/31/safaricom-daily-nation-police-surveillance/

<sup>[99]</sup> https://ifex.org/safaricom-and-nation-media-group-in-standoff-over-expose-on-widespread-surveillance/



#### Social Media & Content Restrictions

The Kenyan government instructed all social media companies operating in the country to set up physical offices locally. <sup>[101]</sup> Interior Principal Secretary Raymond Omollo announced the move on X, <sup>[102]</sup> framing it as a measure to enhance accountability amid growing concerns about disinformation and online abuse. <sup>[103]</sup>

However, the directive currently lacks legal force, as it is not backed by an executive order or parliamentary legislation. Interior Cabinet Secretary Onesmus Kipchumba Murkomen also weighed in, pledging to restore order on digital platforms by taking action against individuals who use them to insult public officials or spread harmful content.

He emphasized that such conduct undermines the dignity of government leaders and warned young people that online insults targeting officials are illegal and could attract serious consequences.<sup>[104]</sup> Meanwhile, ICT and Digital Economy Cabinet Secretary William Kabogo told Parliament during his vetting<sup>[105]</sup> that regulating social media would be his first priority if confirmed, though he has since denied any plans to shut down these platforms.<sup>[106]</sup>

Under successive administrations - first President Uhuru Kenyatta's government (until 2022), and later President William Ruto's - Kenyan authorities have intensified monitoring of digital platforms, particularly during electoral periods and public demonstrations.

During the 2022 election cycle, government officials warned of potential social media blackouts as a measure against hate speech and disinformation. Notably, in the months preceding the August elections, the National Cohesion and Integration Commission (NCIC) issued threats to ban Facebook, accusing the platform of inadequately combating inflammatory content. [107]

This threat came as a response to an incriminating report by Global Witness, an organization that challenges abuses of power to protect human rights, which pointed to the platform's apparent inability to detect hateful ads weeks before the election. Meta stated in response that they had engaged additional Swahili translators and were doing their best to take down videos violating terms and conditions. Even so, it should be noted that no full blackout occurred.

https://about.fb.com/news/2022/07/how-metas-preparing-for-kenyas-2022-general-election/



 $<sup>^{[101]}\</sup> https://www.theeastafrican.co.ke/tea/business-tech/kenya-demands-social-media-firms-to-set-up-offices-in-country-4891724$ 

The post was later changed and the statement removed the requirement for physical presence in the country by social media platforms https://www.business-humanrights.org/en/latest-news/kenya-state-orders-social-media-platforms-to-set-up-physical-offices-in-the-country-

<sup>[104]</sup> https://www.citizen.digital/news/cs-murkomen-vows-crackdown-on-social-media-misuse-amid-rising-debate-n355739

<sup>[105]</sup> https://www.youtube.com/watch?v=XoYksmCYjzA

https://www.the-star.co.ke/news/realtime/2025-01-28-cs-kabogo-refutes-plans-to-switch-off-social-media

<sup>[107]</sup> https://www.cigionline.org/articles/digital-giants-must-pay-more-heed-to-africa/

 $<sup>{}^{[108]}\</sup> https://global witness.org/en/campaigns/digital-threats/facebook-unable-to-detect-hate-speech-weeks-away-from-tight-kenyan-election/linear-lin$ 



The Films and Stage Plays Act (2018) was used to regulate online content, even as the Kenya Film Classification Board (KFCB) attempted to censor platforms like Netflix and YouTube for "immoral" content. In relation to the latter, KFCB requested Netflix to remove certain "offensive" content, citing worries that it did not align with Kenyan moral values and was likely to pose a threat to national security.

Specifically, KFCB expressed discontent with the manner in which Netflix rates and classifies content, arguing that their standards differ from Kenyan standards. This in turn led to KFCB threatening to block Netflix entirely if it did not comply with their requirements. [110]

Prompted by widespread public outrage over Ethic Entertainment's controversial 'Soko' music video, KFCB urgently petitioned Google for its removal in April 2020. The regulatory body argued the content allegedly glorified pedophilia and objectified women, leading to the video's subsequent takedown after Google approved the request. [111]

In a surprising May 2024 directive, KFCB initially gave prominent YouTubers - including Abel Mutua, Njugush, Jacky Vike, Terence Creative, and Oga Obinna - a 14-day ultimatum to obtain licenses for their audiovisual content. Acting CEO Paskal Opiyo had also mandated that creators submit their videos for KFCB review and classification before publication. [112]

However, Chairperson Njogu wa Njoroge swiftly retracted the notice, overturning the controversial requirement.[113]

#### **Internet Shutdowns & Throttling**

Internet shutdowns and localized restrictions violate human rights, expand the digital divide and allow government entities to escape accountability for human rights violations. Shutdowns also endanger citizen's lives during times of crisis, and cost national economies billions of dollars.[114]

More importantly, they are a mark of digital authoritarianism. Scholars of digital authoritarianism argue that governments increasingly leverage internet blackouts as instruments of information control and dissent suppression, often rationalized as necessary for national security or public stability.

Such measures have been documented in multiple cases where states aim to curb alleged misinformation or manipulate public discourse during periods of political tension. This practice, however, frequently creates tension between state security claims and the preservation of core democratic freedoms, particularly the rights to free expression and information access.[115]



<sup>[110]</sup> https://www.businessdailyafrica.com/Corporate-News/KFCB-maintains-position-on-

Netflix/-/539550/3041668/-/utvv0a/-/index.html#:~:text=KFCB%20board%20chairman%2C%20Bishop%20Jackson.odds%20with%20Ken ya's%20regulatory%20standards.

[111] https://kfcb.go.ke/kfcb-pulls-down-soko-paedophilia

https://www.citizen.digital/entertainment/uproar-as-kfcb-now-demands-youtube-content-creators-get-licences-n342758

<sup>[113]</sup> https://www.citizen.digital/entertainment/kfcb-chair-revokes-notice-to-youtube-content-creators-demanding-licences-n342769

<sup>[114]</sup> https://cipesa.org/wp-content/files/reports/SIFA23\_Report.pdf

<sup>[115]</sup> https://cipit.strathmore.edu/technology-facilitated-rights-and-digital-authoritarianism-examining-the-recent-internet-shutdown-in-kenya/

#### State of the Internet in Kenya 2020 - 2024



A notable escalation in censorship tactics was observed during periods of heightened political activity and social unrest. The #RejectFinanceBill2024 protests saw an unprecedented nationwide internet shutdown. Despite the public commitment from the <u>CA</u> not to shutdown the internet during the June 25th protests, the country experienced nationwide internet disruption, which also affected internet access in neighbouring countries like Uganda, Rwanda and Burundi.

Internet users experienced significant throttling to the internet and social media platforms<sup>[117]</sup> such as X (formerly Twitter), Signal, and other platforms on the Safaricom network. Airtel and Equitel customers faced intermittent connectivity during the same period. While Kenya's major telecom providers - Safaricom and Airtel - attributed the disruptions to undersea fiber cable failures, digital forensic evidence tells a different story.

Technical analyses from Cloudflare, OONI and IODA revealed patterns inconsistent with natural outages. The precise timing, selective nature of the disruptions, and unusually rapid resolution all strongly suggest intentional internet restriction by state authorities rather than genuine technical failures. [118]

These actions violated the right to internet access, which guarantees that everyone must be able to use the internet to fully exercise their rights to freedom of expression, opinion, and other essential human rights. Local and international digital rights organizations condemned the move as an infringement on citizens' rights to access information and collectively organize. <sup>[119]</sup> This marked a departure from Kenya's previous reputation for relatively uninterrupted internet access.

According to the Internet Society, such shutdowns or disruptions are "extremely disruptive to economic activity: they halt e-commerce, generate losses in time-sensitive transactions, increase unemployment, interrupt business-customer communications, and create financial and reputational risks for companies." [120]

During the reporting period, there were additional instances of social media restrictions. An unverified letter circulating online, allegedly from the CA and dated 31 October 2024, instructed service providers (including Safaricom, Airtel, Telkom Kenya, and Jamii Telecommunications) to "use all available mechanisms to suspend the operation of Telegram Inc in the country."

The suspension aimed to prevent exam cheating during the national examination period on weekdays through 22 November 2024. Furthermore, the internet disruptions were confirmed by web connectivity tests conducted by OONI, IODA and independent assessments by Tatua.

shutdown/#:~:text=As%20civil%20society%20organizations%20and%20stakeholders%20in,access%20to%20the%20Telegram%20social%20media%20platform.&text=The%20suspension%20was%20ordered%20to%20prevent%20cheating,period%20on%20weekdays%20until%2022nd%20November%20



<sup>[116]</sup> https://x.com/CA\_Kenya/status/1805311316719993274

https://techweez.com/2024/06/25/internet-throttling-amid-day-of-deadly-kenyan-protests/

<sup>[118]</sup> https://www.kictanet.or.ke/kenyas-internet-disrupted-during-protests-a-violation-of-human-rights/

<sup>[119]</sup> https://www.accessnow.org/press-release/kenya-protests-internet-shutdown/

https://www.internetsociety.org/blog/2023/06/the-real-impact-of-internet-shutdowns/

<sup>[121]</sup> https://www.kictanet.or.ke/civil-society-statement-on-kenyas-telegram-



There were reports of Telegram being rendered inoperable during the 2023 national examinations; prompting civil society organizations to reach out to the Ministry of ICT and ISPs in Kenya via an open letter<sup>[122]</sup> demanding clarification on how and why access has been blocked. Due to alleged leaks of examination papers on Telegram, access to the platform may have been restricted in an effort to curb exam cheating.

Reports indicate that the disruption was timed to coincide with daytime hours - when exams were taking place - as Telegram remained accessible at night, outside of exam periods. [123]

Human rights defenders and civil society organizations are not spared from social media restrictions. Nerima Wako of Siasa Place reported that her organization's social media posts were shadowbanned during the 2022 general elections because of use of the word 'election' even though the posts were providing civic and voter education.

## CHALLENGES AND OPPORTUNITIES FACING MEDIA FREEDOM AND ONLINE CONTENT CREATORS

#### Curtailment of Media Freedom

There are few rules restricting what Kenyans can publish on the internet. However, media outlets often rely on government advertising revenue, which can influence what they choose to publish. On top of that, journalists in both traditional and online media are facing challenges due to shrinking ad revenue and job cuts. There is also a worrying pattern of journalists being threatened with censorship and defamation lawsuits, which could make people hesitant to share their content online. [124]

On February 21, 2023, the Kenya Media Sector Working Group (KMSWG) issued a declaration on the State of Media Freedom in Kenya. In said declaration, the KMSWG noted there are about 22 different laws that are often used against the media and journalists whenever powerful forces, including State agents, want to silence the Fourth Estate.

#### They are as follows:

- 1. The Constitution of Kenya, 2010
- 2. The Media Council Act, No. 46 of 2013
- 3. Access to Information Act, No. 31 of 2016
- 4. The Kenya Information and Communications Act, No. 2 Of 1998
- 5. The Books and Newspapers Act, Cap. 111
- 6. Kenya Broadcasting Corporation Act, Cap. 221
- 7. Preservation of Public Security Act, Cap. 57
- 8. National Police Service Act, No. 11a of 2011
- 9. Prevention of Terrorism Act, No. 30 of 2012
- 10. The Official Secrets Act, Cap. 187
- 11. Public Archives and Documentation Act, Cap. 19



<sup>[122]</sup> https://www.accessnow.org/press-release/open-letter-clarification-on-telegram-blocking-in-kenya/

<sup>[123]</sup> https://ooni.org/post/2025-kenya-blocked-telegram-kcse-

 $exams/\#:\sim: text=Access \% 20 to \% 20 Telegram \% 20 was \% 20 intermittently \% 20 blocked \% 20 in \% 20 Kenya \% 20 in \% 20 November, attempt \% 20 to \% 20 prevent \% 20 exam \% 20 cheating.$ 

<sup>[124]</sup> https://freedomhouse.org/country/kenya/freedom-net/2023

https://kuj.or.ke/state-of-media-freedom-in-kenya-kmswg-declaration/



- 12. The Kenya Defence Forces Act, No. 25 Of 2012
- 13. The National Intelligence Services Act, No. 28 Of 2012
- 14. Defamation Act, Cap. 36
- 15. Computer Misuse and Cybercrimes Act, No. 5 of 2018
- 16. The Data Protection Act, No. 24 of 2019
- 17. Copyright Act, No.12 of 2001, No. 12 of 2001
- 19. Employment Act, No.11 of 2007
- 20. Labour Relations Act, No. 14 of 2007
- 21. Films and Stage Plays Act, Cap. 222<sup>[126]</sup>
- 22. Penal Code, Cap 63

The KMSWG also identified the Government Advertising Agency (GAA) as a huge hindrance to media freedom due to its implementation as a tool of 'soft censorship' to blackmail media enterprises. [127] Moreover, it noted other restrictions such as "attacks on journalists in the country, mainly by overzealous security officers and politicians who send goons to unleash terror on journalists and media workers".

It also enumerated gag orders and jailing of journalists as well as massive layoffs in the media sector as obstacles to freedom of the media in the country. The health crisis linked to the Covid-19 pandemic also led to the elimination of at least 300 journalist jobs and the replacement of news programmes with music on many radio stations, according to the Kenyan journalists' union. [129]

With regards to the political context, a significant portion of media in the country is owned by political figures or those closely connected to the government. Following William Ruto's election as president in August 2022, the media landscape faced challenges, leading to the politically-motivated dismissal of top executives and senior staff at major media groups, including Nation Media Group<sup>[130]</sup> and its flagship newspaper, the Daily Nation.<sup>[131]</sup>

There is a "huge concentration of political power in media ownership. With this, the media has pressure exerted on them from the market, state and political owners." [132] The government reportedly influences who gets hired as media managers and editors, and also controls the supposedly independent media regulator.

This significant government involvement often leads to media outlets self-censoring what they publish. [133]

In 2022, a Tuko.co.ke junior editor was sentenced to five days in jail for failing to comply with Court orders. Didacus Malowa, the editor, was imprisoned after allegedly declining to publish an apology for unfavorable coverage of government figures regarding the proceedings of the National Youth Service (NYS) corruption case. [134]

https://www.capitalfm.co.ke/news/2022/10/tuko-editor-jailed-for-5-days-after-failing-to-comply-with-court-orders/



 $<sup>^{[126]}\</sup> https://mediacouncil.or.ke/sites/default/files/downloads/MEDIA\%20SECTOR\%20LEGISLATIVE\%20REVIEW\%202021.pdf$ 

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<sup>[128]</sup> https://kuj.or.ke/state-of-media-freedom-in-kenya-kmswg-

declaration/#:~:text=According%20to%20the%20survey%2C%20there,spirit%20of%20media%20self%2Dregulation.

<sup>[129]</sup> https://rsf.org/en/analyse\_regionale/890

<sup>[130]</sup> https://www.bbc.com/news/world-africa-43558216

 $<sup>{}^{[131]}\</sup> https://www.theguardian.com/world/2016/jan/27/blow-to-kenyas-media-after-editor-sacked-for-criticising-president$ 

<sup>[132]</sup> https://www.the-star.co.ke/news/2019-05-03-press-freedom-reels-under-new-forms-of-censorship

<sup>[133]</sup> https://rsf.org/en/country/kenya?



Erasto Agwanda, a freelance journalist accredited by the Media Council of Kenya, challenged the constitutionality of Section 23 of the Computer Misuse and Cybercrimes Act, under which he faces four counts of publishing false information.

The charges stem from an incident on July 31, 2020, when Agwanda reported a party at the Pinecone Hotel in Kisumu, allegedly attended by the then Kakamega Governor, during the height of the COVID-19 pandemic. Concerned about violations of night curfew and social distancing protocols, Agwanda informed the Nyanza Region Police Commissioner via text before posting about it in a WhatsApp group. He argued that his subsequent arrest and prosecution were baseless because the legal provision itself is flawed.

Agwanda subsequently brought a petition before the High Court in Kisumu in 2023, in which he contended that Section 23 unconstitutionally curtails freedom of expression and undermines open governance by enabling harassment of journalists, whistleblowers, and human rights defenders.

He highlighted that this contradicts Articles 10 and 33 of the Constitution and fails to meet the criteria for limiting fundamental rights outlined in Article 24. Agwanda asserted that adequate civil remedies exist for false publications and that using the criminal justice system to regulate expression creates a "chilling environment" for the media.

He also claimed his arrest on November 25, 2020, led to the warrantless confiscation and forensic examination of his mobile phones, violating his rights to privacy and due process. Agwanda maintained he acted in the public interest and that the vague wording of Section 23 allows for arbitrary enforcement and further infringements on civil liberties.

There were other incidents where journalists were threatened with charges of publishing false information under the CMCA.

In March 2023, Ezra Chiloba, the director general of the CA, accused six TV stations (some of which also stream online) of violating broadcasting rules. The CA claimed their coverage of Raila Odinga's protests on March 20, 2023, could incite panic or unrest and endanger national peace. This move was widely criticized by civil society groups.

However, the High Court temporarily blocked the censorship of these stations after a challenge from the Katiba Institute. [136]

In June 2023, Cabinet Secretary Moses Kuria publicly threatened the Nation Media Group (NMG), including withdrawing government advertisements and firing officials who placed ads with them. This came after NMG published an investigation into an alleged cooking oil import scheme linked to government officials, leading Kuria to label NMG an "opposition party" and threatened to fire government officials who advertised with the media house. [137]



<sup>[135]</sup> https://www.standardmedia.co.ke/national/article/2001469544/civil-society-kuj-accuse-chiloba-of-gagging-press

<sup>[136]</sup> https://www.the-star.co.ke/news/2023-03-24-chilobas-decision-to-censure-six-tv-stations-suspended

https://www.citizen.digital/news/cs-kuria-now-wages-war-on-media-after-oil-scandal-expose-n321953



Subsequently, the Nairobi High Court issued an order preventing Kuria from further attacking or slandering the media. [138] Another instance of verbal attacks on the media included remarks from then Deputy President Rigathi Gachagua, in defence of Kuria, that the media ought to be gagged from criticizing the government. [139]

In March 2024, the government issued an order requiring all state bodies to place their TV and radio advertisements solely with the state-owned Kenya Broadcasting Corporation (KBC). This decision was made to increase KBC's income and bring down outstanding payments to other media companies. [141]

Several journalists were injured, and others arrested during the #RejectFinanceBill2024 protests in June 2024. In response, on 24th July 2024, media practitioners took to the streets to demand safety, and professionalism from the police. [142] According to the Media Council of Kenya, there were 69, 104, 124 and 74 violations of press freedom in 2021, 2022, 2023 and 2024 respectively. [143] The murder of prominent Pakistani journalist Arshad Sharif in October 2022 highlighted the critical challenge of the safety and security of journalists. [144]

#### The Plight of Tech Workers in Kenya

Tech workers in Kenya encompass a diverse and rapidly expanding group of individuals engaged in various roles within the digital economy, from software developers and IT professionals to those performing tasks facilitated by online platforms.

This section will specifically focus on the unique trends and legal challenges faced by three prominent segments of this workforce: content moderators, who review and filter online content; content creators, who produce digital media for various platforms; and the broader category of gig workers who undertake flexible, task based assignments through digital platforms such as data labelers and e-hailing workers.

According to Mercy Mutemi, prominent digital civil rights lawyer, the number of tech workers in Kenya has grown exponentially over the last five years. This growth has been spurred by several factors—

- (a) Increasing unemployment levels and harsh economic conditions pushing young people to seek opportunities online
- (b) Increasing internet penetration levels
- (c) Monetizing options on social media and a growing influencer culture.
- (d) Government policy to encourage young people to sign up for platform work and to increase the number of people employed through the Business Process Outsourcing model to carry out tech work.
- (e) Kenya being an early adopter of technology and being known as the digital hub continentally e.g Kenyans were amongst the first on the African continent to embrace e-hailing for rides and delivery.
- (f) Tech companies choosing Kenya as the destination of choice for tech work.



<sup>[138]</sup> https://cpj.org/2023/06/kenyan-government-minister-moses-kuria-insults-threatens-nation-media-group/

<sup>[139]</sup> https://ntvkenya.co.ke/news/dp-gachagua-wants-media-gagged-from-criticizing-government/

<sup>[140]</sup> https://www.citizen.digital/news/all-govt-agencies-now-ordered-to-exclusively-air-tv-radio-adverts-on-kbc-n338101

<sup>[141]</sup> https://freedomhouse.org/country/kenya/freedom-net/2024?

 $utm\_source = chatgpt.com\#footnote13\_EaEiKiTX0tAcZqn3B5Jh32Gcracp22dZE3mDvHVzdGg\_laTwn0GsuqQ3$ 

https://www.theelephant.info/analysis/2024/07/25/protests-to-defend-press-freedoms/

<sup>[143]</sup> https://mediacouncil.or.ke/node/445

<sup>[144]</sup> https://rsf.org/en/country/kenya



According to Kennedy Kachwanya, Kenya's regulatory environment has not kept pace with the rapid transformation affecting content creators, gig workers, and content moderators, leaving significant gaps in their protection.

The country's employment framework, particularly the Employment Act of 2007, was designed for traditional employer–employee relationships and does not adequately address the unique dynamics of gig work or digital content creation.

As a result, gig workers and content creators are typically classified as independent contractors rather than employees, excluding them from many fundamental labor protections such as minimum wage, paid leave, and safeguards against unfair termination.

This gap was tested in the landmark Meta Platforms, Inc. v Motaung & Others (2024) case, where the courts initially recognized content moderators as employees of Meta. However, the Court of Appeal later overturned this decision, highlighting the ongoing legal ambiguity surrounding the employment status of gig workers in Kenya.

Beyond labour law, other regulatory frameworks impact content creators and gig workers. The Kenya Information and Communications Act (1998) governs the communications sector under the Communications Authority of Kenya and intersects with the Films and Stage Plays Act (Cap. 222), enforced by the Kenya Film Classification Board (KFCB), which requires content creators to comply with content classification standards.

The Computer Misuse and Cybercrimes Act (2018), although primarily aimed at curbing cybercrime, has been widely applied against content creators, many of whom have faced arrest under its provisions. Proposed online content regulation policies also seek to curb harmful content but risk imposing heavy compliance burdens and restricting freedom of expression.

Finally, intellectual property rights, overseen by the Kenya Copyright Board and the proposed Intellectual Property Office of Kenya (IPOK), are central to protecting the creative outputs of content creators.

Despite these frameworks, the overall legal landscape remains fragmented and, at times, punitive. Several of these laws are not only insufficient in safeguarding gig workers' rights but have also been misused to harass, silence, or criminalize them, underscoring the urgent need for comprehensive reforms that reflect the realities of the digital economy.





#### Online content creators

Africa's creator economy is booming, fueled by a young population and wider access to digital tools. It was worth around \$3.08 billion in 2023 and is expected to reach \$17.84 billion by 2030, growing at an impressive 28.5% annually. This expansion is driven by more people using social media, better mobile internet, and easier digital payments, allowing creators to earn money from their work in many different fields. [145]

According to Kennedy Kachwanya - Chairperson Bloggers Association of Kenya, the creator economy is changing and growing everyday, mostly moving from the written to video and audio. We have seen the public sector joining the private sector to embrace the gig economy, with the Government counting it as its main job creation agenda.

David Indeje, journalist and communications expert, notes that the creator economy is vibrant and diverse. One key feature that stands out to him is the fact that, because of the plurality of information and content (e.g. videos, text, pictures, audio) we are seeing different consumption patterns. He states "years back, it was what was defined for consumers, but this time round, it is them who decide what they want and what they do not want."

There are a few benefits to participating in Kenya's creative and gig economy - it is a source of income for many young people, it provides a chance for Kenyans to show their talents to the world and it allows the government with means to further their job creation agenda.

Kenyan YouTubers typically earn between KSh 100–200 (approximately \$1) per 1,000 views, translating to about KSh 100,000–150,000 for a million views. This is significantly lower than earnings in countries like the U.S. or U.K., where creators can earn \$10–\$30 per 1,000 views. The disparity is primarily due to lower advertising rates in Kenya, influenced by factors such as local ad demand and viewer purchasing power.

TikTok's Creator Fund, which compensates creators based on video views and engagement, is currently unavailable in Kenya. While TikTok has introduced various monetization programs globally, many are not accessible to Kenyan creators.

With limited monetizing options and unstable income, content creators are often compelled to individually negotiate alternative income streams such as brand partnerships, sponsorships, ad revenue, brand deals, sponsorships, direct sales, subscriptions, and live gifting. As per Mercy Mutemi, brand deals frequently result in exploitative contracts concerning both compensation and intellectual property settlement.

Even where contracts are signed, content creators such as Mical Imbukwa report that there are frequent instances of delayed payment for work done. This is due to the legal grey area that content creators find themselves in as they are often classified as independent contractors or consultants as opposed to full-fledged employees.

<sup>[147]</sup> https://podcastle.ai/blog/how-much-does-youtube-pay-per-





<sup>[145]</sup> https://tmcon.live/creatorsreport2024/

<sup>[146]</sup> https://wingucreatives.co.ke/how-much-does-kenyan-youtubers-earn-from-youtube/?



This legal uncertainty also goes hand in hand with lack of legal protections for intellectual property resulting in content theft, according to Mical. In addition, it also means that creators do not have access to benefits such as health, minimum wage, social security and collective bargaining rights, says Kennedy Kachwanya.

#### Other challenges faced by digital creators is:

- Lack of job security,
- Burnout caused by perpetually looking for the next gig,
- Competition with other content creators,
- Undercutting by newer content creators who charge less,
- Difficulty in getting oneself established in order to contend with those who have been in the industry for long periods of time,
- Cost of equipment when starting out one's career, and
- Difficulty for women to equally participate due to systemic barriers in access to internet and devices.

Musician Nonini was awarded KSh 4 million in a copyright infringement case against social media influencer Brian Mutinda and electronics company Syinix. The dispute arose when Mutinda used a significant portion of Nonini's hit song "We Kamu" in a promotional video for Syinix TVs without obtaining proper permission. Nonini, whose real name is Hubert Nakitare, had initially sought compensation after discovering the unauthorized use of his intellectual property in 2022.

The Milimani Commercial Court in Nairobi ruled in Nonini's favor, declaring Mutinda and Syinix jointly and severally liable for copyright infringement and ordering them to pay the damages. This landmark ruling has been hailed by Nonini as a significant victory for artists' rights and a precedent for future copyright disputes in Kenya, emphasizing the importance of protecting intellectual property. [148]

Singer Mutoriah sued content creator Foi Wambui and Oppo Kenya after out-of-court settlement talks failed regarding the alleged copyright infringement of his song "Beta." Mutoriah accused Foi Wambui of using his song without a synchronization license in a promotional video for the OPPO Reno 12 5G, a video that Oppo Kenya subsequently shared on its official social media pages as a sponsored post.

While Foi Wambui's management reportedly offered a KSh 50,000 settlement, Mutoriah rejected it, stating the amount didn't reflect the true value of his intellectual property. Separately, Oppo Kenya also engaged Mutoriah's team but denied any wrongdoing, claiming they were not privy to the copyright infringement allegations and that their agency agreement was with Aifluence, who then contracted the influencer.

Oppo Kenya has stated its readiness to legally oppose any action brought against it. [149]



<sup>[148]</sup> https://nairobinews.nation.africa/brian-mutinda-goes-to-high-court-challenging-noninis-sh4-million-copyright-award/

https://nairobinews.nation.africa/mutoriah-now-to-sue-foi-oppo-kenya-after-failing-to-reach-out-of-court-settlement/



Mercy Mutemi explains that despite the severe issues faced by content moderators, significant legal and policy gaps persist in Kenya, exacerbating their vulnerability—

#### (i) ABSENCE OF MENTAL HEALTH AS A RECOGNIZED OCCUPATIONAL HAZARD

A critical gap in the current legal framework is the failure to explicitly recognize the severe mental health impact of content moderation as an occupational hazard. Existing occupational safety and health laws often focus on physical risks, leaving workers exposed to psychological trauma without mandated employer responsibility for comprehensive mental health care, preventative measures, or long-term support.

#### (ii) INADEQUATE REGULATION OF BPO PARTNERSHIPS

The reliance on BPO models by Big Tech companies allows them to circumvent direct employer obligations. The current regulatory environment does not sufficiently hold these global tech giants accountable for the labor practices and working conditions within their outsourced operations, particularly in countries like Kenya.

#### (iii) GOVERNMENT POLICY AND LACK OF OVERSIGHT

The Kenyan government's policy push to create jobs through the BPO sector, including a target of one million jobs, inadvertently contributes to this lack of care. BPO companies are often viewed favorably by the government for their role in job creation, leading to less stringent regulation and oversight of their labor practices. This focus on job numbers can overshadow the quality of employment and the protection of worker's rights, creating an environment where exploitative practices may go unchecked.

## (iv) AMBIGUITY IN EMPLOYMENT STATUS AND ABUSE OF FIXED TERM CONTRACTS

The pervasive use of short-term, renewable fixed-term contracts creates a precarious employment status for content moderators, where contracts can be terminated without cause upon expiry. This fosters a climate of fear, as moderators are often kept under perpetual fixed-term arrangements, making them easily disposable.

This vulnerability compels them to remain silent in the face of exploitative practices, unfair working conditions, or harassment, rather than risking their livelihood, thereby severely undermining their right to organize and collectively bargain for better conditions and mental health support.

These gaps collectively create a precarious working environment for content moderators, highlighting the urgent need for legislative reform and stronger enforcement mechanisms to ensure their well-being and protect their fundamental rights.

https://nairobinews.nation.africa/mutoriah-now-to-sue-foi-oppo-kenya-after-failing-to-reach-out-of-court-settlement/



<sup>[148]</sup> https://nairobinews.nation.africa/brian-mutinda-goes-to-high-court-challenging-noninis-sh4-million-copyright-award/



#### Content Moderation

Content moderators for global platforms, such as TikTok, Facebook and Instagram, such as Kauna Malgwi have reported harsh working conditions, primary of these being inadequate mental health support despite exposure to violence and disturbing images, videos and text. She also reported low wages and inadequate legal protections.

She attributed this to the use of Non-Disclosure Agreements (NDAs) and ambiguously worded contracts, which are sometimes blatantly misleading. Kauna described that the job that was advertised was for a call centre operative yet she found herself moderating horrific content on Facebook.

Ms. Malgwi stated "there should be a minimum wage on any form of tech work. In Kenya, we are paid around \$2 per hour. And in other parts of the world, from the US to the UK you see them being paid \$15 to \$25. Why are we being paid less? Because we are Africans, it should be seen as a form of colonialism. You can't really explain why we are paid less. We as Africans watching content that is graphic -violent, suicide content is sent to African content moderators to to review. And then the written content, the ones which are not as graphic are sent to the guys from the other side of the world. I think there should be regulations, there should be a whole body regulating everything happening with the tech work even for creators."

The death of a Nigerian content moderator in Kenya highlighted the dire circumstances faced by these workers.<sup>[150]</sup>



<sup>[50]</sup> https://apnews.com/article/kenya-nigerian-content-moderator-death-funeral-6658833d47bd8a16f628c5746d90cff3



i. A prominent trend is the increasing reliance of major global tech companies (often referred to as "Big Tech") on Business Process Outsourcing (BPO) firms for their content moderation needs. These BPOs are typically headquartered abroad but operate subsidiary branches in Kenya. Through these partnerships, content moderators are hired from all over Africa and brought to Kenya. This arrangement creates a complex employment relationship where the content moderator's direct employer is the BPO, yet their work, performance metrics, and often the tools they use are dictated by the Big Tech company.

This dual management structure can lead to ambiguity regarding employer responsibilities, particularly concerning labor rights, working conditions, and accountability for worker well-being. It allows Big Tech to distance itself from direct employment liabilities while maintaining control over the core function of content moderation.

- ii. Stemming from the complex BPO model and the nature of the work, significant concerns regarding the exploitation, potential human trafficking, and severe mental health harm to content moderators have emerged. These issues have gained prominence through legal challenges filed in Kenya.
- iii. The notable case of Daniel Motaung & Samp; Others v Samasource Kenya EPZ Limited t/a Sama, Meta Platforms, Inc., Meta Platforms Ireland Limited, and Majorel Kenya Limited (Constitutional Petition No. E071 of 2022) as consolidated with Constitutional Petition No. E052 of 2023; Kiana Moonique & Samp; 184 Others v Meta & Samp; Others, filed in the Employment and Labour Relations Court at Nairobi, highlights these critical concerns.

The Petitioners, former Facebook content moderators, allege exploitation through inadequate pay and unattainable targets, alongside claims of human trafficking and forced labor due to coercive NDAs and restrictive employment practices.

Furthermore, they assert severe mental health harm, including PTSD, from constant exposure to horrific content without adequate psychosocial support, compounded by a toxic work environment and alleged discrimination. This case underscores the urgent need for a robust legal and policy framework to protect content moderator's rights, mental health, and ensure fair labor practices.

-Mercy Mutemi







Content creators, a rapidly growing segment of Kenya's digital economy, operate within a diverse legal and policy landscape that governs their intellectual property, data handling, and advertising practices. However, this framework often struggles to fully accommodate the unique nature of content creation as a form of labor.

At the moment, the legal and policy framework governing content creation in the country is comprised the following statutes:

#### i. INTELLECTUAL PROPERTY

The Copyright Act, 2001 (Cap 130) The Trade Marks Act (Cap 506) The Industrial Property Act, 2001

#### ii. DATA PROTECTION AND PRIVACY

The Constitution of Kenya (Article 31)

The Data Protection Act, 2019

#### iii. ADVERTISING AND CONTENT REGULATION

The Consumer Protection Act, 2012

The Trade Descriptions Act Act (Cap 505)

The Competition Act, 2010

The Kenya Information And Communications Act, (KICA) 1998

The Films And Stage Plays Act (Cap 222)

The County Outdoor Advertising Control Act, 2020

The Computer Misuse And Cybercrimes Act, (CMCA) 2018

The National Cohesion And Integration Act, 2008

The National Authority For The Campaign Against Alcohol And Drug Abuse (NACADA) Act, 2012:

There is a significant gap in the policy and legal framework in that it fails to recognize the unique nature of content creation as a form of labor. This oversight leaves creators vulnerable to exploitative contracting, particularly concerning fair compensation and the settlement of intellectual property rights.

Without clear labour protections tailored to their unique work model, creators often face individual negotiation scenarios that can lead to unfavorable terms, unpredictable income, and limited recourse against powerful platforms or brands.





## Gig workers

According to Mercy Mutemi, the following are the challenges faced by gig workers in Kenya:

- i. Pervasive use of bossware, employee monitoring software and tattleware to monitor movement and performance which violates their privacy through constant surveillance and extensive data collection. This ultimately leads to exploitation via unrealistic performance targets, wage theft, algorithmic control and suppression of collective action.
- ii. The arbitrary and often unexplained pattern of random account shutdowns creates a coercive environment that traps them in forced labour by withholding earned payments and eliminating their means of livelihood.
- iii. The management of gig workers predominantly by algorithms and bots which contributes significantly to a hostile working environment by removing human empathy, transparency and the ability for workers to appeal unfair decisions, leading to increased stress, frustration and a sense of dehumanization.
- iv. Many gig workers are forced into algorithm training work which often exposes them to horrific and sexual content without adequate care structures, severely damaging the mental health of these predominantly young individuals.
- v. The use of AI has disrupted many aspects of the gig economy for academic writers and graphic designers who have seen their jobs being replaced by AI.

The gig and platform economy in Kenya operates within a substantial legal vacuum, as existing labor laws designed for traditional employment largely exclude gig and platform workers from fundamental protections. Their misclassification as independent contractors leaves them highly vulnerable to exploitation and precarious working conditions.

#### Others include:

- Exclusion from fundamental labour protections such as guaranteed minimum wage, lack
  of occupational health and safety protections (e.g., road accidents for drivers, exposure to
  harmful content for data labelers), lack of social security schemes like NSSF (pension) and
  NHIF (health insurance), hindrance to their ability to form or join trade unions and
  engage in collective bargaining, effectively disempowering them in negotiations with
  dominant platforms.
- Platforms often dictate terms of service unilaterally, with workers having little to no room for negotiation. These contracts can be highly imbalanced, favoring the platform.
- Payment algorithms can be complex and non-transparent, making it difficult for workers to understand how their earnings are calculated or to challenge discrepancies.
- Beyond basic pay, gig workers rarely receive benefits such as paid leave, sick days, or health insurance, which are standard in formal employment.



- The arbitrary and often unexplained pattern of random account shutdowns for gig and platform workers creates a coercive environment. Platforms can deactivate accounts based on algorithmic flags (e.g., low ratings, perceived inefficiency, or minor policy violations) without due process, clear explanations, or effective appeal mechanisms. This immediate loss of income effectively traps workers, as they lose their means of livelihood without warning or recourse, bordering on forced labor by withholding earned payments.
- The management of gig workers predominantly by algorithms and bots contributes significantly to a hostile working environment. This algorithmic control removes human empathy, transparency, and the ability for workers to appeal unfair decisions, leading to increased stress, frustration, and a pervasive sense of dehumanization. The ongoing case by Bolt drivers (Daniel Manga & 9 Others v Bolt ELRCPET/E066/2025) challenges bolt management of ride hailing workers and its implications on the drivers' access to fair administrative action.
- The pervasive use of bossware, employee monitoring software, and tattleware profoundly violates worker's privacy through constant surveillance (GPS tracking, keystroke logging, screen recording) and extensive data collection. This granular monitoring leads to exploitation through unrealistic performance targets, justification for lower wages based on perceived 'idle' time, and the suppression of any attempts at collective action by identifying and penalizing dissent.
- The constant pressure, lack of control, and exposure to potential harassment or difficult situations can severely impact the mental health of gig workers, often without any mandated support structures from the platforms.

These profound gaps collectively create a precarious and often exploitative working environment for gig and platform workers in Kenya, highlighting an urgent need for legislative reform that recognizes their unique employment status and ensures their fundamental labor rights and well-being.

According to Kennedy Kachwanya, reliable internet is the backbone of gig work, whether for ride-hailing drivers using apps like Uber or Bolt, delivery workers on platforms like Glovo, or content creators uploading videos to YouTube or TikTok.

Workers with better access to reliable internet, affordable data, and modern equipment can earn more, widening the gap with rural or low-income workers. A 2023 study by the Alexander von Humboldt Institute<sup>[151]</sup> noted that gig workers in Nairobi earn 20–30% more than those in rural areas, partly due to connectivity disparities.

<sup>[151]</sup> https://www.hiig.de/wp-content/uploads/2023/05/Executive-Summary-%E2%80%93-Regulation-of-Digital-Platforms-for-a-Socially-Just-Gig-Economy-in-Kenya.pdf





## Violations against bloggers and citizen journalists

The swift growth of digital media has left our laws behind. Regulations for online journalism, social media, and internet content are either fragmented or out of date. This legal gap leaves journalists and online creators vulnerable to unpredictable enforcement and frequent lawsuits.

<sup>[152]</sup> The motivation behind arresting bloggers or online content creators, according to a recent report by Paradigm Initiative, is to silence critical voices from both county and national governments. These arrests frequently involve accusations of defamation, spreading misinformation, or committing cybercrimes. <sup>[153]</sup>

#### Deaths

In December 2023, Daniel Muthiani, also known as 'Sniper'—a political blogger and outspoken critic of Meru County Governor Kawira Mwangaza—was found dead. His badly decomposed body was discovered several days after his disappearance. [154] Police arrested four suspects close to the Governor including her brother. [155] They were charged in court and the case is ongoing.

In March 2024, Peris Mugera, a Tharaka Nithi County political blogger, was found dead on the Makutano-Sagana Highway in Kirinyaga County. [156] She went missing on 29th of February after leaving to meet her friends, but she never returned home. The case has gone cold as no arrests have been made.

In April 2024, the lifeless body of Kisii-based blogger Duke Nyabaro was discovered hanging with a rope around his neck. However, a postmortem examination revealed that he died from strangulation, effectively dismissing initial claims of suicide. The blogger commented on political issues, especially those affecting Bonchari Constituency in Kisii County. No updates on police investigations have been issued.

In November 2023, Kericho blogger Isaka Maritim 'Babaafrika' was reported on X to have died mysteriously at the hands of criminals in Kipsitet. He was allegedly beaten to death in what is believed to be a directed attack for his online advocacy work. There have been no reports from the police.

In 2022, Frank Obegi, a well-known blogger, was found murdered under circumstances that sparked fears over the safety of online commentators. When the bodies of Obegi, Omeka, and Nyachae were discovered in Kijabe Forest, police reported that they had been severely mutilated. [160]

<sup>[160]</sup> https://nation.africa/kenya/news/unexplained-lavish-lifestyle-of-four-who-were-killed-3855512 However, according to Africa Uncensored, the four were involved in a life of cybercrime which may have led to their brutal murders. See <a href="https://www.youtube.com/watch?v=KOw6AfSg484">https://www.youtube.com/watch?v=KOw6AfSg484</a>



<sup>[152]</sup> https://mountkenyatimes.co.ke/negligence-of-laws-on-media-by-kenya-a-risk-to-press-freedom-and-accountability/?

https://paradigmhq.org/wp-content/uploads/2025/03/Devolved-Impunity-Report.pdf

https://www.standardmedia.co.ke/health/national/article/2001494743/how-slain-meru-blogger-sniper-was-lured-to-his-death

https://nation.africa/kenya/counties/meru/meru-governor-kawira-mwangaza-s-brother-among-five-suspects-arrested-in-blogger-sniper-s-murder-4483258

 $<sup>\</sup>frac{\text{[}^{156]}}{\text{https://nation.africa/kenya/counties/tharaka-nithi-/who-wanted-blogger-peris-mugera-dead-and-why--4549854}}{\text{(}^{156]}}$ 

https://www.article19.org/resources/kenya-justice-for-murdered-blogger-duke-nyabaro/

https://x.com/kipkorirngeno69/status/1723997695092613332

https://x.com/BettKMax/status/1724322545770332411?lang=bg



Augustus Mutuku Mwathe, a popular political blogger and grassroots campaigner known for his political commentary was killed on February 2, 2021 in Kibwezi. According to the Directorate of Criminal Investigations (DCI), Mutuku died after being ambushed by unknown attackers. Police say Mutuku was killed after allegedly falling out with an aspiring candidate for a political seat in Kibwezi [162].

#### Physical attacks

Richard Otieno from Molo had raised concerns about being followed and had earlier survived an attack in November 2024, which remained under investigation. On November 8, 2024, Geoffrey Mavado and John Ndegwa were arrested and charged with assaulting Otieno, receiving a one-year probation sentence. Tragically, Richard Haga Otieno was later found brutally murdered on the night of January 18, 2025. According to police reports, Mavado and Ndegwa were among those taken into custody in connection with his death. [163]

In September 2024, Mombasa blogger Bruce John Khajira 'Chawa – 001' was abducted and sexually abused. Bruce is known to consistently call for accountability from the Mombasa County Government. The police arrested suspects and arraigned them in court. It was reported in November 2024 that the lead suspect was been charged with abduction, gang rape and conspiracy to commit a felony. [166]

#### Arrests and abductions

Digital cartoonist Gideon Kibet, also known as Kibet Bull, famous for his viral caricatures of President William Ruto, was released following his abduction in Nairobi. Kibet had been taken by suspected security personnel on December 24, 2024, shortly after meeting Busia Senator Okiya Omtatah at his Nairobi office. Four others namely Billy Mwangi, Rony Kiplangat (Kibet's brother), content creator Bernard Kavuli, and Peter Muteti were also released. [168]

In December, 2024, blogger David Oaga Mokaya, known online as "Landlord Bozgabi", was charged in court for allegedly sharing an image on his X (formerly Twitter) account depicting President William Ruto in a casket. He was accused of cyber harassment and publishing false information. <sup>[169]</sup>



<sup>[161] &</sup>lt;u>https://x.com/dci\_kenya/status/1408124785180266506</u>

https://nairobinews.nation.africa/police-arrest-three-over-bloggers-death/

https://nationalpolice.go.ke/suspects-richard-otienos-murder-arrested

https://x.com/DCI Kenya/status/1854604399215042716

<sup>[165]</sup> https://x.com/DCI\_Kenya/status/1838290453495484674

https://www.citizen.digital/news/cartoonist-kibet-bull-freed-two-weeks-after-abduction-n355416

 $<sup>\</sup>frac{\text{[}^{168]}}{\text{https://www.capitalfm.co.ke/news/2025/01/silhouettes-cartoonist-kibet-bull-found-alive-after-nairobi-abduction/}{\text{https://www.capitalfm.co.ke/news/2025/01/silhouettes-cartoonist-kibet-bull-found-alive-after-nairobi-abduction/}}$ 

https://x.com/ODPP\_KE/status/1858510684591653323?lang=en

In June 2024, Billy Simani 'Crazy Nairobian' was abducted by the authorities and released later. He had been vocal on X over the Gen Z protests and subsequent abductions of Kenyans who were active during the protest. [170]

Activist Nuru Maloba Okanga was detained on June 11, 2024, and held in police custody for five days after being charged with disseminating false information on a YouTube channel about former Deputy President Rigathi Gachagua. [171] Okanga, a vocal supporter of Raila Odinga, faced charges for spreading false information and offering telecommunications services without a proper license.

The court was informed that between June 7 and 10, 2024, the accused unlawfully shared defamatory, false, and threatening content online using the TikTok account Riba News @ribanews and siasa.tv.ke.backup. The prosecution argued that the false information was deliberately intended to incite fear and panic among the public while tarnishing the reputation of the country's executive leadership. [172]

This was not Okanga's first encounter with detention by the authorities. On November 20, 2023, the Bunge la Wananchi member pleaded not guilty when he appeared before a Court facing charges for publishing false information on his YouTube channel, Riba News. He was accused of sharing a video titled "Nuru Okanga on Fire," in which he allegedly made derogatory remarks about the President. [173]

In August 2024, Michael Nyangala, a blogger in Taita Taveta County was arrested and held at the Voi Police Station, OB number 45, for criticizing the Taveta County Governor Andrew Mwadime online. He was interrogated and later released. He has not been charged in court.

In August 2024, blogger Scorphine Aoko, also known as Maverick Aoko, was arrested and held incommunicado for several days. Known for her outspoken views on governance and corruption on her X account, she gained support from Kenyans who rallied under the hashtag #FreeAoko.

She was eventually released on a KES 100,000 cash bail after being charged with cyber harassment, fraudulent use of electronic data, and spreading false information. Milimani Chief Magistrate Susan Shitubi granted her an alternative personal bond of KES 200,000, as the prosecution failed to provide adequate grounds to deny her bail before trial. [176]

<sup>[170]</sup> https://www.amnestykenya.org/statement-on-the-arbitrary-arrest-of-content-creators/

https://www.standardmedia.co.ke/politics/article/2001497501/activist-nuru-okanga-charged-with-spreading-lies-about-dp-gachagua?utm\_cmp\_rs=amp-next-page

 $<sup>\</sup>underline{^{[172]}}\ \underline{https://nairobinews.nation.africa/nuru-okanga-charged-with-\underline{publishing-false-information/}}$ 

<sup>[173]</sup> https://ntvkenya.co.ke/news/nuru-okanga-charged-with-insulting-president-ruto/

https://x.com/Wesley\_Kibande/status/1825959836145553594

https://x.com/\_James041/status/1826158671576899991

<sup>[176]</sup> https://www.standardmedia.co.ke/health/nairobi/article/2001501260/maverick-aoko-released-on-bail-after-allegations-of-cyber-harassment

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Graham Kituri 'Maeresho Shomoto', a blogger in Taita Taveta, was arrested in September 2024. [177] Six officers from DCI arrested and questioned him for asking the Members of County Assembly about unaccounted for funds totaling to KES 17 million [178] in statutory deductions that had informed a strike by the health care workers online.

In November 2024, Kisii Blogger Justin Siocha was abducted by people believed to be from DCI. He has raised concerns over an alleged embezzlement of KES 19.7 million by the County online. [179]

In January 2025, and on several occasions in 2024, blogger Francis Gaitho was either arrested and detained or actively pursued by authorities. In one unusual incident in 2024, veteran journalist Macharia Gaitho was mistakenly arrested while authorities were actually targeting social media influencer and politician Francis Ng'ang'a Gaitho. Francis was later charged with spreading false information, alleging that the DCI had arrested the wrong individual as the primary suspect in connection with the Kware killings. <sup>[180]</sup> The police through the DCI put out a notice for him to appear before them to answer some questions related to his online posts.

Silvance Adongo Abeta, who operates a parody account on X (formerly Twitter), was arrested on allegations that former Deputy President Rigathi Gachagua attempted to harm Kiharu Member of Parliament Ndindi Nyoro. Abeta, running the parody account under the name Karen Wanjiku HSC (@WanjikuHSC), was detained on Friday. Detectives claim he spread propaganda against former Deputy President Gachagua and other government officials and organizations. Abeta's charge sheet revealed that he is facing charges related to cyber crimes, including cyberbullying and spreading false information. [181]

In August 2023, Adam Kenneth Nthiga, a teacher at Muthambi Primary School in Meru County, was abducted by two men and taken to an undisclosed location in Tharaka Nithi County. He was stripped, beaten, and injured, seemingly in retaliation for his posts and comments about the poor condition of roads in Muthambi Ward, which he had shared on a Facebook group called Marima Sweet Home. [182] Muthambi Ward Member of County Assembly (MCA) Morris Maugu Gitonga was arraigned in court in September for the alleged abduction of the teacher. The MCA as well as two others were charged with the offence of abducting in order to subject to grievous harm. [183]

In April 2021, human rights defender and community organizer, Mutemi Wa Kiama was arrested and charged under the CMCA. Kiama had posted on his social media pages calling for the International Monetary Fund (IMF) to cease issuing loans to the Kenyan government using the hashtag #IMFStopLoaningKenya<sup>[184]</sup>.

The Court ordered that Kiama's social media accounts be suspended and prohibited him from commenting on issues related to COVID-19 loans. The court also instructed Kiama to report to the investigating officer at DCI daily until April 18, 2021, and imposed a punitive cash bail of Ksh 500,000 (USD 4,575), even though no formal charges had been filed against him. Kiama was eventually released without charges.

https://www.article19.org/resources/kenya-cease-attacks-on-and-release-edwin-mutemi-wa-kiama/



https://x.com/KwaelaDotCom/status/1887089921963282530

<sup>| 1789 |</sup> https://kwaela.co.ke/breaking-news-arrest-of-taita-taveta-deputy-speaker-for-embezzlement-of-kshs-17-million-in-a-bonding-trip-to-zanzibar-by-30-officials/

 $<sup>^{|179|}</sup> https://www.facebook.com/kenyandailypost/posts/whistleblower-justin-siocha-narrates-how-he-was-abducted-by-rogue-dci-officers-a/1014991504006807/$ 

<sup>[180]</sup> https://www.standardmedia.co.ke/health/national/article/2001499198/francis-gaitho-charged-with-publication-of-false-information

 $<sup>^{[181]}</sup> https://www.citizen.digital/news/kenyan-twitter-user-arrested-over-dp-gachagua-mp-nyoro-claims-n327267$ 

<sup>[182]</sup> https://www.article19.org/resources/kenya-justice-for-murdered-blogger-duke-nyabaro/

<sup>[183]</sup> https://www.standardmedia.co.ke/health/news/article/2001480955/teacher-takes-mca-to-court-over-kidnapping-and-assault



Earlier, in June 2020, Kiama had been arrested after a raid on his home, during which his phone and laptop were confiscated, following a controversial thread he posted on Twitter. He was accused of illegally distributing a book digitally.<sup>[185]</sup>

Charles Gichuki, also known as Chaos Kibe, was arrested on August 20, 2020, and held incommunicado, prompting civil rights groups to demand his immediate release. On the day of his arrest, a fake tweet began circulating on social media, claiming that the DCI was pursuing him. Shortly afterward, the police raided his home, confiscating his mobile phone and laptop. The reasons for Gichuki's arrest remain unclear, though some Kenyans speculated that it was related to a website he had created, which allegedly exposed links between powerful government officials and corruption. His site, which featured corruption statistics about President Kenyatta's government, was also taken down. [186]

Blogger Milton Were was re-arrested, a few days after the Director of Public Prosecution, Noordin Haji refused to approve his charges. This was a few days after Were and his colleague Jack Okinyi were freed after being abducted and detained by DCI officers, over an expose linking Kenya Rural Roads Authority with corruption. The two journalists, Okinyi of Business Illustrated and Were of Kenya Today were abducted and tortured by the police after they were lured to a hotel in Upper Hill in August of 2020. [187]

#### Other violations

On 21st October 2021, unidentified men bombed renowned activist Boniface Mwangi's incomplete house in Machakos County. Boniface Mwangi's residence was attacked by unknown men allegedly armed with pistols. According to the police, the attackers accosted the site workers and blasted the building still under construction with detonators causing three holes. Mwangi blamed Machakos Governor Alfred Mutua of shelling his residence over his social media posts about his recent separation with Lilian Ng'ang'a who is rumoured to be in a relationship with Julius Owino alias Juliani. [189]

In November, 2024, notable blogger and BAKE chairman Kennedy Kachwanya successfully challenged the ICT Authority over what he claimed was an unwarranted social media blocking. The issue began on August 30 of the previous year, when Kachwanya exercised his right to free speech by criticizing a post from the ICT Authority regarding the safety of public Wi-Fi. As a result, he was promptly blocked [191] on X (formerly Twitter). [192]

In response, the Bloggers Association of Kenya wrote to the ICT Authority of Kenya through Bond Advocates to direct them to unblock @kachwanya on Twitter, asserting that the continued blocking of access to their Twitter account was a violation of Kachwanya's constitutional rights. The ICT Authority later confirmed that Kachwanya's X account has been unblocked, giving him "full access to view, comment, and interact" with posts on ICT Authority's account.

https://www.article19.org/resources/kenya-cease-attacks-on-and-release-edwin-mutemi-wa-kiama/



<sup>[177]</sup> https://www.standardmedia.co.ke/health/news/article/2001480955/teacher-takes-mca-to-court-over-kidnapping-and-assault

https://www.article19.org/resources/kenya-cease-attacks-on-and-release-edwin-mutemi-wa-kiama/

https://www.kenyans.co.ke/news/54127-activist-mutemi-wa-kiama-arrested-after-police-raid-his-home-video

https://ifreedoms.co.ke/2020/08/charles-gichuki-arrested-and-later-freed-without-charge-because-of-a-corruption-tracker-website/

https://ifreedoms.co.ke/2020/08/blogger-milton-were-re-arrested-days-after-dpp-refused-to-approve-his-charges/

<sup>11]</sup> https://www.standardmedia.co.ke/health/news/article/2001480955/teacher-takes-mca-to-court-over-kidnapping-and-assault



Makueni Governor Kivutha Kibwana sued blogger Cyprian Nyakundi for defamation. According to reports, the governor took offence with a controversial article touching on his alleged lifestyle that ran on Nyakundi's blog in September 2019. Through a civil suit filed by Prof Kibwana, Nyakundi was ordered to cease from further publishing defamatory content.

## Opportunities for Journalists and Online Content Creators

In the past decade, due to the ubiquity of internet penetration, we have witnessed the growth of digital platforms. The five leading (local) news websites are the Daily Nation, The Standard, Tuko.co.ke, Kenyans.co.ke and The Star (in 2024). (It however should be noted that Tuko and Kenyans are 'pure play' digital news media and do not have traditional media platforms.)<sup>[195]</sup>

Having said that, independent platforms like The Elephant<sup>[196]</sup> and Africa Uncensored<sup>[197]</sup> have gained traction, offering in-depth analyses and investigative reporting on underreported issues, in response to challenges faced by traditional media. More independent digital platforms should be established in order to rival the state capture of the Kenyan media. Kenya's rapid digital transformation means a growing audience for online news and information, potentially diversifying revenue streams beyond traditional advertising.

The Media Council of Kenya (MCK) highlights the media's role in advancing digital public infrastructure and the need to empower the public with understanding of the digital landscape. "Digital transformation goes beyond platforms and fibre cables. It's about crafting stories that engage citizens. The media must demystify complex digital policies, highlight those affected by these innovations, and empower the public to demand accountability," [198] according to MCK Chief Executive Officer David Omwoyo.

AI is also becoming increasingly relevant as a tool. It offers opportunities for journalists to automate tasks like transcription and summarization, freeing up time for investigative reporting and human-driven narratives. [199] It can also enhance storytelling and expand the reach of factual reporting. Some media houses in Kenya such as The Star and Daily Nation are already using AI-driven chat tools and data visualizations to make complex stories accessible. [200]

With reference to online creators, a look at the landscape reveals a thriving digital ecosystem. Kenya has a significant and growing number of internet users, with mobile broadband being the primary mode of access.

There were 22.71 million internet users in Kenya in January 2024; while internet penetration rate stood at 40.8% of the total population at the beginning of 2024. [201] Moreover, Kenya's youthful population is tech-savvy and media-hungry, making them a receptive audience for diverse online content. [202] To leverage this, the government is actively training youth in technology skills to leverage the online space. [203]

<sup>[203]</sup> https://www.kbc.co.ke/govt-completes-tech-training-of-180-youth-in-baringo-county/



 $<sup>{}^{[195]}\</sup> https://moseskemibaro.com/2024/08/11/a-comprehensive-analysis-of-kenyas-leading-news-websites-for-the-period-april-to-june-2024/#:~:text=I%20wanted%20to%20get%20a,not%20have%20traditional%20media%20platforms.$ 

<sup>[196]</sup> https://www.theelephant.info/?tztc=1

<sup>[197]</sup> https://africauncensored.online/

<sup>[199]</sup> https://iawrt.or.ke/empowering-journalism-in-the-age-of-ai-2/

 $<sup>{}^{[200]}\</sup> https://thechanzo.com/2025/05/26/journalism-in-the-brave-new-world-let-us-choose-a-future-where-ai-serves-truth-not-power/ai-serves-truth-not-power-ai-serves-truth-not-power-ai-serves-truth-not-power-ai-serves-tr$ 

<sup>[201]</sup> https://datareportal.com/reports/digital-2024-kenya

<sup>[202]</sup> https://www.ai-fluence.com/blog/leveraging-ai-and-influencer-marketing-in-kenya/



In 2024, President Ruto reportedly instructed the Ministry of Information Communication Technology to set up a digital hub in every ward in the country, where youth will be equipped with ICT skills. Additionally, CS Eliud Owalo informed that a total of 139,000 digital jobs have been created through the ministry of ICT. [204]

This is in addition to the establishment of Ajira digital hubs, which aim to boost youth employment through online job opportunities. Its goal is to provide essential training on how to earn money online from the comfort of one's home. [205]

However, this rosy picture was questioned by Nerima Wako, Executive Director of Siasa Place. Her organization, through its programme Fuatilia Ahadi, conducted a study<sup>[206]</sup> of Ajira centres in 3 counties and established that only 51.85% were in existence and operational. She added "even these 'Ajira hubs' that they advertise, we have done work around it and interviewed about 100 people who graduated from these courses and a number of them have felt that; yes, there are some skills that they have learned but not really skills that they can utilize.

So, we are still seeing a bit of a disconnect in terms of the labour market and how they are feeding young people into this global labour market. ... [the question is] how can you give people skills that will not be replaced in a year or two because of AI."

Content creators can now diversify their income streams and explore various monetization avenues. For instance, Meta has launched two new ways for eligible Kenyan creators to make money on its platforms: In-Stream Ads on Facebook and Facebook Ads on Reels. These features allow creators to earn income from their original video content and from building engaged online communities. [207]

Programs like the Ganjisha Content Program aim to empower young creators to monetize their content and create sustainable livelihoods. The Ganjisha Content Program is a collaborative effort between the Africa Digital Media Foundation (ADMF) and Digital Opportunity Trust (DOT) Kenya, supported by Google.org. The program aims to reduce youth unemployment in Kenya, through training in practical content creation skills, leading to increased skills, confidence, and more sustainable livelihoods over time. [208]

We are also witnessing the growth of influencer marketing - it offers content creators opportunities for sponsored content, brand partnerships, and affiliate marketing. Both celebrity and micro-influencers are being leveraged by brands, with the latter often providing higher engagement rates. [209]

<sup>[209]</sup> https://www.ai-fluence.com/blog/leveraging-ai-and-influencer-marketing-in-kenya/



<sup>[204]</sup> https://www.the-star.co.ke/news/realtime/2024-06-12-government-determined-to-connect-internet-to-every-village-says-cs-owalo

<sup>[205]</sup> https://ajiradigital.go.ke/#/about-ajira-program

<sup>[206]</sup> https://drive.google.com/file/d/1Qy2Llknbvbsckfwb\_setxgfG6rHuuh3C/view

<sup>[207]</sup> https://cioafrica.co/meta-rolls-out-ads-on-facebook-reels-in-

kenya/#:~:text=Meta%20has%20announced%20the%20availability,the%20end%20of%20videos)%E2%80%9D.

<sup>|</sup> https://kenya.dotrust.org/ganjisha-content-program-empowering-kenyas-young-content-creators-boosting-livelihoods/

#### State of the Internet in Kenya 2020 - 2024



Platforms such as Wowzi<sup>[2101]</sup>, Zaumu<sup>[211]</sup> and Aifluence<sup>[212]</sup> have come up to connect brands to content creators. The content creator economy is further supported by traditional PR & media agencies who now have fully fledged digital divisions. It is not without its problems, Wowzi has been accused of underpaying content creators and late payments. It is a common sentiment when working with third parties on a campaign.

Influencers and content creators who work with Wowzi, an African marketing platform that connects brands with nano- and micro-influencers, are reporting that the company is not honoring its financial commitments.

Creators claim they successfully completed campaigns but have experienced unexplained and lengthy delays in receiving their payments, with some waiting for months. One influencer stated that Wowzi partners with creators to promote campaigns, including events, but has been remiss in paying them for their work.<sup>[213]</sup>

Ezra Chiloba, the former Director General of the CA, noted that the ongoing digital transformation significantly impacts both the broadcasting and creative industries, opening up huge opportunities for expansion.

'The creative economy contributes about 5.3% of the country's GDP with the number projected to increase to about 20% in the next five to seven years," said Mr. Chiloba. He added the government is "determined to elevate the creative economy into a mega cog in the wheel of the Kenyan economy." [214]

## Initiatives by the Bloggers Association of Kenya to support Bloggers

- 1.BAKE Business, a 100% Kenyan-owned digital agency under the Bloggers Association of Kenya (BAKE), operating as B.A.K.E. Kenya Limited, facilitates partnerships between bloggers and brands through its content campaign services. The process involves:
- Client Brief: Brands provide BAKE Business with a detailed brief outlining their campaign objectives and information about their products or services.
- Blogger Collaboration: BAKE selects bloggers with relevant audiences and platforms to create sponsored content that aligns with the client's goals.
- Content Creation and Publication: Bloggers craft authentic content, such as blog posts or articles, to educate the public about the brand's products or services. The content is published on the bloggers' platforms, leveraging their reach to promote the brand effectively.

This ensures brands achieve targeted promotion while bloggers are compensated for their creative efforts.

<sup>| 214|</sup> https://www.ca.go.ke/play-more-kenyan-content-cs-namwamba-urges-broadcasters



<sup>[210]</sup> https://www.wowzi.co/

<sup>[211]</sup> https://www.zaumu.com/

<sup>[212]</sup> https://www.ai-fluence.com/

<sup>[213]</sup> https://www.bana.co.ke/2024/12/wowzi-app-late-payments.html



#### 2. Drafting of Code of Conduct for Digital Publishers<sup>[215]</sup>

BAKE in conjunction with the Media Council of Kenya jointly developed a code of conduct for digital media practitioners that outlines ethical guidelines for online content creation and dissemination. Key principles include accuracy, fairness, respect for privacy, and responsible use of technology. These guidelines help ensure digital media practitioners uphold journalistic integrity, protect vulnerable individuals, and contribute to a healthy online environment.

## Use of technology by online content creators in 2024

In response to the controversial Finance Bill 2024, younger Kenyans (Gen Z and to some extent, millennials) leveraged digital tools and social media for widespread online mobilization and protests. They used these platforms to dissect the bill, voice their opposition, and coordinate their actions.

Research by KICTANet highlighted an innovative use of technology for organizing the protests, as well as for broader civic purposes such as providing information and education, managing community funds transparently, and directly communicating with lawmakers about the bill.<sup>[216]</sup>

• The digital affordances brought about by Kenya's digital transformation were harnessed rather creatively during the #RejectFinanceBill2024. Kenya's youth, particularly Gen Z, harnessed digital platforms for activism, using satire, memes, viral humour and online organizing to demand accountability and envision a more just society. [217]

Feature	Description
Platform-First Strategy	Gen Z organized on Twitter (now X), TikTok, and Instagram, using hashtags and trends to draw attention.
Decentralized & Anonymous	Most campaigns were not led by formal organizations or known figures, reducing vulnerability to state retaliation.
Creative Protest	Memes, short videos, TikTok challenges, spoken word, and graphic design were used to make activism more engaging.
Issue-Agnostic but Justice-Oriented	Issues range from taxes and corruption to police brutality, mental health, and digital rights—but with a shared demand

Figure 2: Key features of Gen Z activism in Kenya

<sup>[217]</sup> https://www.theguardian.com/global-development/2025/may/01/kenyans-tortured-for-a-tweet-president-ruto-satire-x-youth-gen-z



<sup>[215]</sup> https://mediacouncil.or.ke/sites/default/files/downloads/Code%20of%20Conduct%20for%20Media%20Practitioners.pdf

<sup>|</sup> https://www.kictanet.or.ke/mdocs-posts/generational-shifts-civic-tech-in-kenyas-anti-finance-bill-protects/





## ANALYSIS OF THE DIGITAL ECONOMY'S ROLE IN SHAPING KENYA'S INTERNET SPACE

Kenya is often called "Africa's Silicon Savannah," a term that highlights its strong digital economy and its appeal for investment. This moniker reflects how deeply technology and the digital world are woven into the country's society and economy.

This transformation can be traced back to three foundational developments: the government's deliberate push for fiber optic connectivity between 2003 and 2007, which drastically reduced reliance on costly satellite internet; the revolutionary launch of M-Pesa in 2007, which redefined mobile financial inclusion; and the establishment of iHub, a tech incubator that birthed innovations like Ushahidi, proving Kenya's potential as a hub for homegrown digital solutions.

Today, these pillars have evolved into a thriving digital ecosystem where mobile networks are the backbone for commerce, governance, and social interaction. Beyond transforming lives and livelihoods, these developments foster a dynamic internet culture, encouraging citizens to explore digital spaces for creativity, business, and activism. The digital economy is tangibly shaping an active utility of the internet among citizens. In addition, according to Victor Kapiyo, it has also enabled more to engage and participate in the figural economy and access opportunities.

## **Digital Economy**

The Kenyan digital economy is rapidly transforming the country's internet space, driving innovation, connectivity, and economic growth. The key factors driving this momentum include mobile money, tech startups, government policies, and improved internet access.

The telecommunications sector is at the heart of this digital expansion, led by giants like Safaricom, which continues to drive 4G and 5G adoption while supporting fintech innovations. The government has further amplified this growth by digitizing public services from business registration on e-Citizen to tax collection via digital platforms. The private sector is also responding with remarkable dynamism.

For instance, Kenya now boasts 60 active tech hubs and remains Africa's top destination for startup funding, attracting \$800 million in 2023 alone. Companies like Twiga Foods (agri-tech) and Ilara Health (health-tech) illustrate how digital solutions are reshaping traditional industries, while platforms like Sendy optimize logistics through mobile technology.

https://dalberg.com/our-ideas/kenyas-digital-economy-a-peoples-perspective/



<sup>[218]</sup> https://www.gsma.com/about-us/regions/sub-saharan-africa/wp-content/uploads/2024/10/KENYA-DIGITAL-ECONOMY-REPORT-17TH-OCTOBER-V2.pdf

https://kippra.or.ke/building-a-robust-digital-economy-in-kenya/

<sup>|</sup> https://www.trade.gov/country-commercial-guides/kenya-digital-economy



The influence of the digital economy on Kenya's internet space is most visible in six key areas:

- Mobile Money and Financial Inclusion. M-Pesa (launched in 2007) revolutionized digital payments, enabling millions to transact online. Platforms like Lipa Na M-Pesa, Pochi La Biashara, and bank integrations have expanded e-commerce and online business. Fintech startups (e.g., Tala, Branch, Pezesha) leverage mobile money to offer loans and financial services, increasing internet-based transactions. [222]
- Expansion of Internet and Mobile Connectivity. The country has high mobile penetration (over 100% SIM ownership) with affordable smartphones. 4G & 5G rollout by Safaricom, Airtel, and Telkom Kenya is boosting internet speeds. This is made possible by undersea reliability. (e.g., TEAMS, EASSy, LION2), which lower data costs and improve reliability.
- Growth of E-Commerce and Digital Marketplaces. GSMA has cited<sup>[224]</sup> continued digitization as contributing to certain sectors of the economy that drive the digital economy. These sectors are agriculture, trade, healthcare, government, construction, creative industry, transport, manufacturing, and Medium, Small, and Micro-Enterprises (MSME).

Platforms like Jumia, Kilimall, and Sky. Garden are driving online shopping. Social media platforms such as WhatsApp, Facebook, and Instagram are booming among SMEs, enabling them to market and sell their wares. In addition, logistics tech firms like Sendy and Lori Systems are enabling faster deliveries and supporting digital trade.

- Government Policies and Digital Infrastructure. The government is equally playing a supportive role in different ways.
- 1. First, there are many regulations and laws that enable the digital economy to thrive. The legal framework includes the Data Protection Act (2019), Kenya Vision 2030, Digital Economy Blueprint, National ICT Policy, National Digital Masterplan, National Cybersecurity Strategy, and National Payments Strategy, which are key in transforming Kenya into a knowledge-based economy.
- 2.Secondly, e-Citizen is digitizing government services such as business registration, passports, and driving licenses, making access to services easier and faster. [225] The current government plans to ensure that 5,000 services are available online.
- 3. Thirdly, there are some infrastructure development initiatives like the Konza Technopolis (Africa's "Silicon Valley") attracting tech investments. [226]



<sup>[222]</sup> https://www.m-pesa.africa/products-services

https://www.businessdailyafrica.com/bd/corporate/technology/fourth-sea-cable-linking-east-africa-goes-live-2003864

<sup>| [224]</sup> https://www.gsma.com/about-us/regions/sub-saharan-africa/wp-content/uploads/2024/10/KENYA-DIGITAL-ECONOMY-REPORT-17TH-OCTOBER-V2.pdf

https://accounts.ecitizen.go.ke/en

<sup>[226]</sup> https://konza.go.ke/



• Startup Ecosystem and Innovation Hubs. Nairobi is a top African tech hub, hosting iHub, Nailab, and Africa's Talking. Kenya has 60 active tech hubs supporting the growth of digital innovations, with the country being a top destination for technology-related funding. [6] In 2023, Kenyan entrepreneurs attracted close to \$800 million in funding, primarily in technology, making it the top destination for startup capital on the continent.

Ten years ago, the country had 40,000 ICT startups, creating about 160,000 jobs. Agritech firms like Twiga Foods, Apollo Agriculture, and health-tech MyDawa and Ilara Health rely on internet connectivity. In addition, AI and blockchain startups such as BitPesa<sup>[2]</sup> and Grassroots Economics are gaining traction.

• Digital Content and Social Media Influence. The country has a fledgling blogging and influencer marketing ecosystem that monetizes its content via ads and sponsorships. Streaming services (Netflix, Showmax, and Boomplay are growing due to cheaper data.

Online news and citizen journalism are reshaping public discourse and public affairs accountability. The ability of Kenyans to monetize content online is influencing an increase in citizens going online to start their craft to earn a living. There is also the fame that comes with it, which many are attracted to.

## Challenges

Kenya still lags in global digital GDP rankings due to a significant digital divide. Disparities in technology access, socioeconomic factors, and infrastructural challenges primarily drive this divide. This is because rural and remote areas often lack adequate internet connectivity due to insufficient investment in telecommunications infrastructure.

The costs of internet services and digital devices further exacerbate this divide, making it difficult for lower-income households to afford them. Additionally, many individuals lack the necessary digital literacy skills to use digital tools and platforms effectively. These factors prevent large population segments from fully participating in the digital economy. [230]

While stakeholders compare the growth of Kenya's internet space, both in terms of high connectivity and digital economy, to world powers and above most countries on the continent, there is still uneven connectivity. This explains why part of the government plans to implement the 100,000 kilometers digital superhighway. [231][232]

More connectivity increases internet access, which deepens the digital economy, improving livelihoods and life outcomes. KIPPRA postulates<sup>[233]</sup> that Kenya has the potential to lead the continent in exploiting the US\$180 billion digital economy by 2025.

Kenya will continue to be a citadel for emerging technologies, including cloud and artificial intelligence (AI), which could ensure the realization of Silicon Savannah.

<sup>&</sup>lt;sup>[233]</sup> https://kippra.or.ke/building-a-robust-digital-economy-in-kenya/



<sup>[227]</sup> https://kippra.or.ke/building-a-robust-digital-economy-in-kenya/

https://www.trade.gov/country-commercial-guides/kenya-digital-economy

<sup>[229]</sup> https://www.bitpesa.io/

 $<sup>{}^{[230]}\,</sup>https://vellum.co.ke/bridging-the-digital-divide-kenyas-journey-towards-inclusive-digital-transformation/$ 

<sup>[231]</sup> Ibid.

 $<sup>^{[232]}\</sup> https://www.mygov.go.ke/ministry-information-classify-internet-essential-service$ 



A study revealed that a third of Kenyans report rising incomes from digital services, while 44% of self-employed/business owners use digital services to support their businesses. <sup>[234]</sup> This growth in ICT has led the government to introduce a digital services tax (DST) in recent years on income from services provided through a digital marketplace in Kenya at the rate of 1.5% on the gross transactional value.

Deepening this, Kenya plans to classify the internet "as a vital and essential service so that it is exempt from wayleaves demand to accelerate connectivity". [235] This elevates the importance of the internet among other essential services like health, housing, and education, and tangibly contributes to affirming it as a human right, in line with the UN Human Rights Council.

This illustrates how the digital economy transforms policy and the country's internet culture. Ultimately, Kenya's digital economy is reshaping the internet space and redefining how citizens interact with technology, fueling innovation, enhancing inclusion, and cultivating a digitally empowered society. It is creating pull and push factors, which, with strong mobile adoption, fintech leadership, and government support, Kenya remains at the forefront of Africa's digital transformation.

## SIGNIFICANT PUBLIC INTEREST LITIGATION CASES AND THEIR IMPACT

Litigants or civil society face challenges when using the courts to advance digital rights. Miriam Beatrice Wanjiru, Programmes Officer, East Africa at Paradigm Initiative stated that the following are hindrances when pursuing public interest litigation:

- Courts can take months or even years to resolve digital rights cases, especially when urgent matters like internet shutdowns require immediate relief.
- Most CSOs working in the digital rights space operate with limited legal budgets and rely on external support to file or sustain petitions, especially across multiple jurisdictions.
- Some judges lack technical understanding of issues like biometric data, algorithmic harm, or AI bias, making them hesitant to rule boldly in favor of emerging digital rights.
- Where courts rule in favor of rights (e.g., halting a digital ID rollout), implementation may be inconsistent.
- Kenya's legal framework on digital issues (e.g., surveillance, AI, biometric data) is still evolving.



<sup>|234|</sup> https://mzalendo.com/media/resources/Policy\_Brief\_on\_Digital\_and\_Data\_Policies\_for\_an\_Inclusive\_and\_Secure\_economy.pdf | (235) https://www.mygov.go.ke/ministry-information-classify-internet-essential-service



Below are the most significant PIL cases during the reporting period:

Republic v Tools for Humanity Corporation (US) & 8 others; Katiba Institute & 4 others (Exparte Applicants) [2025] KEHC 5629 (KLR) $^{[236]}$ 

This case arose from a judicial review application by five public interest organizations - including the Katiba Institute, ICJ Kenya and Law Society of Kenya - challenging the operations of Worldcoin and its affiliates in Kenya. The Applicants alleged that the Respondents, including Tools for Humanity Corporation (US), Tools for Humanity GmbH (Germany), Worldcoin Foundation (Cayman Islands), and others, unlawfully collected and transferred biometric data (specifically, iris scans) from Kenyans using a device called the Orb, without conducting a lawful Data Protection Impact Assessment (DPIA) and using inducements such as cryptocurrency to secure consent.

The key allegations by the applicants were twofold: 1. Violation of the DPA - specifically failure to conduct a proper DPIA as per Section 31; use of invalid or coerced consent induced by cryptocurrency (Worldcoin) and non-registration of some entities as data controllers or processors. 2. The applicants claimed breach of Constitutional Rights i.e. violation of Article 31 of the Constitution (right to privacy) and alleged abuse of administrative power under Article 47 and the Fair Administrative Action Act.

The relief sought was prohibition of further biometric data collection/transfer; certiorari to quash Worldcoin's data processing decisions; mandamus to compel destruction of unlawfully collected data and a structural interdict for the State to formulate practice guidelines on commercial data use.

The Data Protection Commissioner (the 6th respondent) supported the applicants, affirming that:

- TFH US and TFH GmbH did not provide adequate DPIAs.
- Consent obtained was bundled, uninformed, and improperly induced.
- ODPC lacked jurisdiction over such complaints by non-natural persons, hence judicial review was proper.

The Communications Authority (the 8th respondent) held that Worldcoin used unapproved communication devices and failed to apply for type approval for the Orb, breaching Kenyan regulations.

<sup>[236]</sup> https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/5629/eng@2025-05-05





The court found that Worldcoin and its affiliates processed sensitive data without a lawful DPIA and obtained defective consent. Moreover, the inducement of cryptocurrency undermined the voluntariness of the data subject's consent.

The orders issued were - prohibition restraining continued biometric data processing and transfer; certiorari quashing the data collection decisions; a declaration that consent was not lawfully obtained; and a structural interdict mandating the Cabinet Secretary and ODPC to issue data use guidelines within 12 months.

This judgment is significant because it reaffirms the primacy of constitutional rights over procedural technicalities and interprets data protection laws robustly to protect privacy. It also clarifies that public interest litigants can access judicial review where statutory mechanisms exclude them due to technical standing restrictions.

Bloggers Association of Kenya (BAKE) v Attorney General & 3 Others; Article 19 East Africa & Another (Interested Parties) [2020] KEHC 7924 (KLR)<sup>[237]</sup>

The Bloggers Association of Kenya (BAKE) challenged the constitutionality of several provisions of the Computer Misuse and Cybercrimes Act, 2018. The petitioner alleged that the Act infringed multiple rights and fundamental freedoms guaranteed under the Constitution, including freedom of expression (Art. 33), freedom of the media (Art. 34), and the right to privacy (Art. 31).

The issues for determination were:

- 1. Constitutionality of sections 5, 16, 17, 22-24, 27-28, 31-37, 38-39, 41, and 48-53 of the Act.
- 2. Whether Standing Order 133 of the National Assembly violated Article 118 (public participation).
- 3. Whether the Act unjustifiably limited rights under Articles 27, 31, 32, 33, 34, and 50.

### **Key Findings:**

- The court upheld Sections 22 & 23 (False publication & false information) as reasonable and justifiable limitations under Article 24. The court distinguished these from previously invalidated provisions like Section 29 of KICA, noting that the impugned sections were more precise and specifically targeted harmful online content.
- The court found Section 24 (Child pornography) constitutional, ruling that while the language might appear broad, the legislative intention clearly targeted child pornography, and that the words used ("erotic", "lewd") were sufficiently context-dependent to allow judicial interpretation.



<sup>[237]</sup> https://new.kenyalaw.org/akn/ke/judgment/kehc/2020/7924/eng@2020-02-20



- The court held that Sections 27 & 28 (Cyber harassment & cybersquatting) were justified limitations. Harassment was treated as unprotected speech, and cybersquatting infringed intellectual property rights, which the State had a duty to protect under Article 40(5).
- Section 37 (Distribution of obscene/intimate images) was upheld as constitutional. The court found that the terminology used was not vague, and that the State had a legitimate interest in preventing harm through non-consensual image distribution.
- With regard to Sections 16, 17, 31, 32, 34-36, 38-39, 41 (Mens rea), the petitioner argued these provisions lacked the mental element of intent, making them unconstitutional. The court rejected this, finding that most provisions used terms like "intentionally", "knowingly", or "wilfully", thus establishing mens rea.
- Sections 48-53 (Privacy & warrants) were challenged for authorizing warrantless access to personal data. The court found that the Act sufficiently provided for judicial oversight (e.g., through court-issued warrants), and that the limitations on privacy were proportionate and justifiable under Article 24.
- The court dismissed the challenge relating to Public Participation (Standing Order 133), finding no violation of Article 118. The petitioner failed to prove lack of public participation in the legislative process.

The High Court upheld the constitutionality of all challenged provisions of the Computer Misuse and Cybercrimes Act, 2018. It emphasized the doctrine of separation of powers, the presumption of constitutionality of statutes, and the necessity for real (not hypothetical) disputes in constitutional litigation.

BAKE has appealed the High Court's decision, with the case pending before the Court of Appeal. [238] In the meantime, civil society continues to monitor the enforcement of the CMCA, documenting its impact on freedom of expression and privacy.

Despite the ruling, the case did have a positive impact on digital rights in Kenya. For one, it set a legal precedent affirming the state's authority to regulate digital spaces, setting a precedent for future cases involving online expression and privacy. Despite the setback, BAKE and partners intensified advocacy efforts, appealing the decision and engaging in public awareness campaigns about digital rights. [239]

The case also had policy influence, in that it highlighted the need for clearer definitions and safeguards in cyber laws, influencing discussions on amendments to the CMCA and related legislation.

In conclusion, while the High Court's ruling was a setback for digital rights advocates, it has spurred continued legal and policy efforts to ensure that Kenya's cyber laws align with constitutional freedoms and international human rights standards.

<sup>[238]</sup> https://www.the-star.co.ke/news/2020-02-20-court-dismisses-bloggers-case-against-cybercrimes-law?







-Aura v. Cabinet Secretary, Ministry of Health & 11 Others; Kenya Medical Practitioners & Dentists Council & Another (Interested Parties), Constitutional Petition E473 of 2023 [2024] KEHC 8255<sup>[240]</sup>

Joseph Enock Aura petitioned the High Court challenging the constitutionality of three Acts passed in 2023:

- 1. Social Health Insurance Act (SHIA), 2023
- 2. Digital Health Act (DHA), 2023
- 3. Primary Health Care Act (PHCA), 2023

These laws were intended to implement Article 43(1)(a) of the Constitution (right to health), replacing the NHIF framework with a more universal, mandatory system. The petitioner argued they were enacted without proper public participation and violated various constitutional rights.

#### **Key Issues**

- Whether the petition was sub judice (due to similar pending cases)
- Whether there was sufficient public participation in the legislative process;
- Whether Parliament complied with legislative procedures (Articles 110(3), 118, 205);
- Whether provisions in SHIA (sections 26(5), 27(4), 38) infringed constitutional rights;
- Whether failure to consult the Commission on Revenue Allocation rendered the laws unconstitutional.

The court found the case was not sub judice and the petition was found to be distinct in scope, parties, and reliefs from the other cited petitions, and therefore not barred under section 6 of the Civil Procedure Act. In addition, the court held that the three Acts were passed with inadequate, rushed, and exclusive participation.

Public notices were too brief, poorly publicized, and failed to include Kiswahili versions. There was no deliberate outreach to the broader population, particularly the marginalized. It further found that there indeed was a violation of Legislative Procedure due to the fact that there was no proper concurrence between the Speakers of both Houses as required under Article 110(3). It also held that the Commission on Revenue Allocation was not consulted, violating Article 205(1).

Lastly, the court found that the publication timelines were arbitrarily reduced, undermining transparency and access.

<sup>[240]</sup> https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/8255/eng@2024-07-12





More importantly, the court found that there was indeed a violation of constitutional rights: Sections 26(5) and 27(4) of SHIA, which made compliance a precondition to accessing health services, were found to violate Article 43(2) (right to emergency medical treatment).

It also held that Section 38, which addressed fund balances, failed the transparency test under Article 201(a) and was declared unconstitutional. The court accepted that mandatory contributions could be justified under Article 24, but any restriction must exclude emergency services. The petition was hence allowed.

#### **Orders:**

- 1. Parliament must undertake inclusive public participation and rectify unconstitutional provisions within 120 days (i.e., by 11 October 2024).
- 2. The Acts are suspended during that period.
- 3. If not rectified, the entire SHIA, DHA, and PHCA will be declared unconstitutional, invalid, and void.

This decision underscores the judiciary's vigilance in safeguarding public participation, fiscal transparency, and procedural propriety in legislative processes—even when the ends sought are constitutionally desirable.

Judicial Review Application No. E1138 of 2020 – Katiba Institute & Yash Pal Ghai v. Cabinet Secretaries & Attorney General<sup>[241]</sup>

The case arose from the rollout of the Huduma Card, which is part of the National Integrated Identity Management System (NIIMS), established through amendments to the Registration of Persons Act via the Statute Law (Miscellaneous Amendments) Act No. 18 of 2018. The system aimed to harmonize personal identification databases for citizens and foreigners.

Katiba Institute and Prof. Yash Pal Ghai, as applicants, challenged the decision to roll out Huduma Cards (announced on 18 November 2020), alleging that:

- 1. The rollout contravened Section 31 of the Data DPA, which mandates a DPIA before processing personal data likely to pose high risks to individuals' rights.
- 2. It violated prior court orders issued in Nubian Rights Forum & Others v. Attorney General, which allowed NIIMS implementation only after a comprehensive regulatory framework compliant with constitutional standards was enacted.

<sup>| 241|</sup> https://kenyalaw.org/caselaw/cases/view/220495/#:~:text=Case%20Summary%3A,on%20data%20protection%20impact%20assessment.&text=The%20Statute%20Law%20(Miscellaneous%20Amendments)%20Act%2C%20No.





#### **Key Legal Findings:**

- Section 31 of the Data Protection Act applies retrospectively to the data collected under NIIMS. This is because the Act was enacted to operationalize Article 31 of the Constitution, which guarantees the right to privacy.
- The rollout of Huduma Cards without conducting a DPIA was unlawful and in breach of both the Data Protection Act and the earlier Nubian Rights decision.
- The state's failure to establish a protective legal framework before data processing was incompatible with constitutional obligations.

As for final orders the court granted:

- Certiorari quashing the decision to roll out Huduma Cards.
- Mandamus directing the respondents to conduct a DPIA before proceeding.

In conclusion, this case reaffirmed the constitutional requirement for data privacy, the importance of regulatory compliance before implementing large-scale data systems, and clarified the standing of public interest groups in judicial review matters.

## Nubian Rights Forum & 2 Others v Attorney General & 6 Others [2020] eKLR (Consolidated Petitions 56, 58 & 59 of 2019)[1242

The petitioners - Nubian Rights Forum, Kenya Human Rights Commission, and Kenya National Commission on Human Rights - challenged amendments to the Registration of Persons Act introduced by the Statute Law (Miscellaneous Amendments) Act No. 18 of 2018. The amendments established the National Integrated Identity Management System (NIIMS), also known as Huduma Namba.

The key legal and constitutional issues raised were as follows:

- 1. **Right to Privacy**: The petitioners argued that the collection of biometric data, including DNA and GPS coordinates, violated Article 31 of the Constitution. They noted the lack of a comprehensive legal framework for data protection at the time the system was being implemented.
- 2. The Nubian Rights Forum highlighted that communities like the Nubians face systemic discrimination in acquiring identification documents. Linking access to government services to Huduma Namba would further exclude such communities.
- 3. Petitioners challenged the manner in which the amendments were passed using a miscellaneous amendments bill that bundled numerous unrelated legal changes without adequate public participation or Senate involvement. They argued this contravened Articles 10 and 118 of the Constitution.



<sup>[242]</sup> https://kenyalaw.org/caselaw/cases/view/189189/



- 4. They also challenged the procurement process as the implementation of NIIMS involved IDEMIA (formerly Morpho), a company accused of delivering flawed biometric systems in other countries. Petitioners questioned the transparency and legality of the procurement process.
- 5. Expert witness Anand Venkatanarayanan compared NIIMS to India's Aadhaar system, warning of exclusion risks, security vulnerabilities, and the fallibility of biometrics. He argued that Kenya's system lacked transparency, oversight, and cost-benefit analysis.

The reliefs sought by the petitioners were: declarations that the amendments to Sections 3, 5 & 9 of the Registration of Persons Act are unconstitutional; orders suspending implementation of NIIMS until privacy safeguards are established; a directive compelling the State to comply with decisions of African regional human rights bodies that found Kenya's identity practices discriminatory toward Nubians.

The State opposed the petition, joined by several interested parties including Child Welfare Society and Terror Victims Support Initiative. However, human rights organizations like Muslims for Human Rights, the Law Society of Kenya, and Inform Action supported the petitioners' position. Members of the Nubian community testified to historical and systemic challenges in obtaining identity documents and expressed fears that NIIMS would institutionalize their exclusion from essential services.

The High Court consolidated the three petitions and heard them jointly. The Court later invited submissions on the implications of the new Data Protection Act, 2019, which was enacted after the hearing concluded but before judgment was delivered.

In its judgment delivered on 30th January 2020, the High Court issued the following final orders:

- 1. Declaration on DNA and GPS Coordinates: "A declaration that the collection of DNA and GPS coordinates for purposes of identification is intrusive and unnecessary, and to the extent that it is not authorised and specifically anchored in empowering legislation, it is unconstitutional and a violation of Article 31 of the Constitution."
- 2. Invalidation of Statutory Provisions: "Consequently, in so far as section 5(1)(g) and 5(1) (ha) of the Registration of Persons Act requires the collection of GPS coordinates and DNA, the said subsections are in conflict with Article 31 of the Constitution and are to that extent unconstitutional, null and void."
- 3. Conditional Continuation of NIIMS Implementation: "The Respondents are at liberty to proceed with the implementation of the National Integrated Identity Management System (NIIMS) and to process and utilize the data collected in NIIMS, only on condition that an appropriate and comprehensive regulatory framework on the implementation of NIIMS that is compliant with the applicable constitutional requirements identified in this judgment is first enacted."



#### State of the Internet in Kenya 2020 - 2024



HCCHRPET.276.2025 - Kenya Union of Journalists and International Commission of Jurists (Kenyan section) and 2 others vs Bharti Airtel Network (Kenya) Limited and Cabinet Secretary Ministry of ICT and 6 others<sup>[243]</sup>

The petition narrates a constitutional challenge filed by the International Commission of Jurists – Kenya Chapter (ICJ Kenya) against the Communications Authority of Kenya (CA). The core of the case is the alleged unlawful shutdown and interference with internet services and social media platforms in Kenya in June 2024, during a period of nationwide protests primarily led by Kenyan youth.

#### ICJ Kenya contends that:

- 1. The shutdown was unannounced, arbitrary, and disproportionate, disrupting essential communication platforms such as WhatsApp, Facebook, Instagram, Telegram, and TikTok.
- 2. This action violated multiple constitutional rights, specifically freedom of expression (Article 33); freedom of the media (Article 34); right to access information (Article 35); right to fair administrative action (Article 47); and participation in governance (Article 10)
- 3. The CA did not issue any official statement or justification, and there was no legal notice or Gazette publication as required by law.
- 4. The disruptions were said to have had wide-ranging impacts, including: hindering communication between families and service providers; suppressing public participation and debate and damaging business and educational activities dependent on the internet.

The Petition also relied on international human rights standards, including provisions of the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR).

ICJ Kenya argued that internet shutdowns are never justifiable under these international frameworks, especially when they are not anchored in law, lack necessity, and are not proportionate.

The petitioners sought declarations that the CA's actions were unconstitutional, illegal, and an abuse of power, and they urged the court to issue orders barring any future shutdowns unless they comply strictly with constitutional and statutory requirements.

A judge issued a ruling on Wednesday, May 14 2025, preventing the government and related parties from shutting down or interfering with internet access. This injunction will remain in effect until a lawsuit filed on May 13 regarding the matter is fully heard and decided. The order specifically prohibits any form of internet shutdown, throttling, or disruption of digital communications. [244]



<sup>[243]</sup> Summary obtained from Applicant's petition and the Court's judgment

https://www.kenyans.co.ke/news/112042-court-orders-communications-authority-kenya-not-shut-down-internet



## Katiba Institute & 8 others v DPP & 2 others; Ayika (Interested Party) [2024] KEHC 2890 (KLR)<sup>[245]</sup>

On 16 July 2022, Joshua Otieno Ayika tweeted suggesting a potential army takeover of the government. He was arrested and charged with 1. Subversive activities under section 77(1)(a) of the Penal Code and 2. publication of false information under the Computer Misuse and Cybercrimes Act.

Katiba Institute and eight other petitioners challenged the constitutionality of section 77 of the Penal Code, arguing it unjustifiably limited freedom of expression and was vague and overbroad.

#### The key issues were as follows:

- 1. Whether section 77(1) and (3) of the Penal Code infringed on the freedom of expression protected under Article 33 of the Constitution.
- 2. Whether such a limitation satisfied the requirements of Article 24 that any limitation must be reasonable and justifiable in an open, democratic society.
- 3. Whether the terms in section 77 met the standard of clarity, precision, and predictability required of criminal law.

The court first analyzed vagueness and overbreadth. It found that Section 77 criminalized "utterance of words with subversive intention" without defining "subversive" with sufficient clarity. The Court found the definitions in section 77(3) excessively broad and vague, sweeping in legitimate expression and failing to specify prohibited conduct.

With regards to the principle of legality, it held that a criminal statute must be precise, accessible, and foreseeable and consequently found that Section 77 lacked these qualities and thus failed the legality test under Article 50(2)(n).

As for disproportionality, the court found that the penalty (up to 7 years in prison) was disproportionate given the existence of less restrictive laws like the Defamation Act, National Cohesion and Integration Act, and the Public Order Act that serve similar protective functions. It also held that the section was a colonial relic aimed at suppressing dissent, incompatible with the democratic ideals of Kenya's 2010 Constitution.

Lastly, on the failure to justify, it found that the State did not demonstrate that the limitation served a legitimate aim or was strictly necessary.

Section 77(1) and (3)(a)-(g) of the Penal Code were declared unconstitutional for violating the right to freedom of expression, rendering enforcement of section 77 against any person unconstitutional. The court ordered that the Director of Public Prosecutions may only proceed against Ayika under alternative legal provisions, if applicable.



<sup>&</sup>lt;sup>[245]</sup> https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/2890/eng@2024-03-18



The judgment reaffirms the judiciary's role in guarding against vague criminal statutes that chill fundamental freedoms, particularly freedom of expression. The decision aligns Kenya's jurisprudence with international human rights standards and its own constitutional aspirations under Article 33 and Article 24.

## Motaung v Samasource Kenya EPZ Ltd. t/a Sama & 2 others (2023) 320 K.L.R. [246]

In May 2022, a lawsuit was filed in Kenya by Daniel Motaung, a South African former content moderator hired by Sama, a contractor working for Meta (Facebook). The case was filed before the Kenyan Employment and Labour Relations Court and is ongoing.

Motaung's main allegations were as below

- Misleading Recruitment: Motaung claims he was recruited under false pretenses. He was
  told the job was a "call centre" role, without being warned that it involved viewing
  extremely graphic and violent content, including beheadings, child sexual abuse, and
  torture.
- Mental Health Harm: After being exposed to such content, Motaung was diagnosed with post-traumatic stress disorder (PTSD), depression, anxiety, and epilepsy.
- Union Busting: Motaung was dismissed after trying to form a union. Sama allegedly accused him of intimidating his colleagues.

The lawsuit accuses Meta and Sama of violating several provisions of the Kenyan Constitution, including the right to dignity; fair labour practices; freedom of association and expression; the right to privacy and the right to fair remuneration and reasonable working conditions. It also alleged that the recruitment practices constituted forced labour and human trafficking under Kenyan and international law.

Meta argued it is not liable because it was not the direct employer of Motaung—Sama was an independent contractor. The Plaintiff's lawyers countered by arguing that Sama was effectively Meta's agent. They note that Sama's employees used Meta's internal systems and were monitored via Meta's software.

In September 2024, the Kenyan Court of Appeal ruled that Meta can be sued in Kenya, rejecting Meta's argument that, as a foreign company, it is not subject to Kenyan court jurisdiction. This paved the way for not just Motaung's case, but also for a class action filed by 185 former moderators, who are seeking \$1.6 billion in damages for unlawful dismissal and trauma. [247]

The case has had interesting political developments - Kenyan President William Ruto has supported proposed legislation that would shield outsourcing firms like Sama—and indirectly companies like Meta—from such lawsuits in Kenya. Critics argue the bill prioritizes foreign corporate interests over Kenyan workers' rights. [248]

<sup>[247]</sup> https://new.kenyalaw.org/akn/ke/judgment/keca/2024/1152/eng@2024-09-20







The case could have broader implications, in that, it could set a landmark precedent for the accountability of Big Tech firms for the working conditions of their outsourced content moderators, particularly in the Global South.

It raises serious questions about corporate responsibility, trauma-informed work environments, and human rights in digital labour.

## THREATS TO DIGITAL RIGHTS IN KENYA (2020-2024) Cyber Threats

The CA 2024 Q4 Cybersecurity Report<sup>[249]</sup> revealed the following trends in the cyber threat landscape:

- Ransomware, Distributed Denial-of-Service (DDoS), and social engineering attacks, including phishing, remained widespread and evolving threats in the global cybersecurity landscape.
- Ransomware continued to target essential infrastructure across various sectors like ICT, telecommunications, banking, finance, healthcare, and manufacturing. Cybercriminals used advanced methods to encrypt data and demand large sums of money, causing significant disruptions.
- DDoS attacks increased in scale and complexity. Attackers used botnets and exploited vulnerabilities in connected devices, such as smartphones and household appliances, to disrupt online services and critical operations.
- Social engineering remained a major risk, with cybercriminals employing tactics like impersonation and pretexting to trick individuals into revealing sensitive information or gaining unauthorized access to systems.
- Phishing attacks were more targeted and convincing with the help of AI and automation, exploiting human vulnerabilities to steal credentials and financial information. This trend was fueled by the rise of inherently insecure Internet of Things (IoT) devices, the continued use of botnets for large-scale operations, and the growing adoption of AI by cybercriminals to make their attacks more sophisticated, harder to detect, and more effective. DDoS attacks, in particular, can lead to severe service disruptions, financial losses, and reputational damage for organizations.



<sup>[248]</sup> https://time.com/7201516/kenya-president-meta-lawsuits/

<sup>|</sup> https://ke-cirt.go.ke/wp-content/uploads/2025/01/2024-25-Q2-Cyber-Security-Report.pdf



According to Freedom House's Freedom on the Net reports from 2020-2024, there were cyberattacks on financial institutions and government ministries, as shown in the table below:

Year	Cyber threats Detected	Primary Targets	Notable Incidents	Source
2020	Data not specified	Financial institutions	Continued activities of "SilentCards" targeting banks	https://freedomho use.org/country/ke nya/freedom- net/2020
2021	143 million (Jul– Sep 2021)	No major attacks reported	Significant increase in detected threats	https://freedomho use.org/country/ke nya/freedom- net/2022
2022	278 million (Jul– Sep 2022)	Government ministries, political figures	Technical attacks on government entities	https://freedomho use.org/country/ke nya/freedom- net/2023
2023	123 million (Jul– Sep 2023)	Government ministries, parastatal organizations	Decrease in detected threats compared to previous year	https://freedomho use.org/country/ke nya/freedom- net/2024
2024	Data not specified	Government platforms, financial institutions	eCitizen platform DDoS attack; KEBS ransomware breach	https://freedomho use.org/country/ke nya/freedom- net/2024

Figure 3: Table listing cyber attacks from 2020 - 2024

The data above revealed that Kenya experienced a significant rise in cyber threats from 2019 to 2024, with detected incidents peaking at 278 million in 2022. In addition, while financial institutions were the primary targets in earlier years, there was a noticeable shift towards government ministries and political figures in 2022, 2023 and 2024.

The "SilentCards" group was active in 2020, targeting local banks in collaboration with unscrupulous bank officers. Notably, there was a decline in detected cyber threats in 2023, dropping to 123 million from the previous year's 278 million.





## **Internet Disruptions**

As noted above, Kenya has experienced internet shutdowns and throttling during the recording period. Below is a summary of the disruptions experienced between 2020 and 2024.

Date(s)	Type of Disruption	Cause/Context	Impact	Source
June 25, 2024	Nationwide internet blackout (approx. 7 hours)	Government response to #RejectFinanceBill202 4 protests; officially attributed to undersea cable	Disrupted mobile money services, e- commerce, and communication; estimated economic loss of \$4 million	https://www.kictan et.or.ke/kenyas- internet-disrupted- during-protests-a- violation-of- human-rights/
Nov 8-29, 2024	Telegram app blocked (504 hours)	Preventing exam leaks during national school examinations	Disrupted mobile money services, e- commerce, and communication; estimated economic loss of \$4 million	https://en.sputnikn ews.africa/2025011 3/internet- shutdowns-during- school-exams-and- protests-cost- kenya-75-million- in-2024-research- says- 1070163210.html
May 12,	Regional internet slowdown	Faults in SEACOM and EASSy submarine cables	Moderate impact in Kenya; significant disruptions in neighboring countries	https://www.reuter s.com/business/me dia-telecom/east- africa-sees- internet- connectivity- disruption-
Dec 18,	Internet disruption due to power outage	Nationwide blackout affecting internet infrastructure	Reduced connectivity for several hours; also impacted Tanzania	https://www.reuter s.com/world/africa /major-power- outage-hits-kenya- affects-internet-
Nov 1, 2	Telegram app inaccessible (16 days)	Unofficial measures to curb exam paper leaks during KCSE exams	No official acknowledgment; raised concerns over transparency	https://freedomho use.org/country/ke nya/freedom- net/2024
2024 (General)	Increased surveillance and digital repression	Government's response to online activism and dissent	Reports of abductions, torture, and surveillance of digital activists	https://www.thegu ardian.com/global- development/2025 /may/01/kenyans- tortured-for-a- tweet-president-

Figure 4: Table listing internet disruptions in Kenya (2020–2024)





Defining false information				
Disinformation	Disinformation is information that is false, and the person who is disseminating it knows it is false. "It is a deliberate, intentional lie, and points to people being actively disinformed by malicious actors".			
Misinformation	Misinformation is information that is false, but the person who is disseminating it believes that it is true.			
Mal-information	Mal-information is information that is based on reality but it is used to inflict harm on a person, organisation or country.			

Figure 5: Table describing definitions of key terms<sup>[250]</sup>

Loosely organized "bloggers for hire" or "online mercenaries" leveraged their collective social media influence to manipulate online information and shape public opinion among Kenyan X (formerly Twitter) users.<sup>[251]</sup> A sample of such hired bloggers were interviewed between May and June 2021.

These individuals coordinated through WhatsApp groups and received \$10-\$15 daily to promote pro-government narratives on Twitter (now X). Mozilla Foundation researchers discovered that these extensive campaigns, involving over 23,000 posts from 3,700 accounts, negatively affected genuine activism on the social media site. [252]

According to Demas Kiprono, the reason these online campaigns are successful are because social media nature allows people to form echo chambers which prevents proper diversity of opinions.

#### 2022 Elections

The 2022 election period in Kenya witnessed well-coordinated and monetized mis/dis/mal-information campaigns, which leveraged digital tools to manipulate public opinion, incite division, and challenge electoral integrity. These campaigns contributed to an erosion of trust in democratic institutions, highlighting the urgent need for regulation, public education, and platform accountability.

It highlights the need for enhanced efforts to empower the public to be more vigilant and capable of identifying disinformation and finding factual and accurate information online.<sup>[253]</sup>



<sup>[250]</sup> https://www.mediadefence.org/ereader/publications/modules-on-litigating-freedom-of-expression-and-digital-rights-in-south-and-southeast-asia/module8-false-news-misinformation-and-propaganda/misinformation-disinformation-and-mal-information/?tztc=1

<sup>[251]</sup> https://freedomhouse.org/country/kenya/freedom-net/2024#footnote8\_-oU8vksSUHwDIMODId3u0Q8CQoTZJnPNseEGg3nqR8\_aq5g8PlJ3LKT

 $<sup>{}^{[252]}\</sup> https://assets.mofoprod.net/network/documents/Report\_Inside\_the\_shadowy\_world\_of\_disinformation\_for\_hire\_in\_Kenya\_5.\_hcc.pdf$ 

<sup>[253]</sup> https://cipesa.org/wp-content/files/Disinformation-in-Kenyas-Political-Sphere-Actors-Pathways-and-Effects.pdf



Social media's increasing political influence has turned it into a major driver of false information during major political moments. Evidence suggests that deceptive videos and posts are spread through complex, hidden networks of videos and posts using shadowy and sophisticated networks of fake accounts, artificial hashtags, and well-paid influencers and bloggers.

These tactics are used to manipulate public opinion and sway political decisions even during electioneering periods. Consequently, the spread of this misinformation erodes voters' trust in the electoral process and its results, as there's a clear link between false messaging and growing skepticism about elections. [254]

While disinformation was present in earlier elections (notably 2017), it was more widespread and sophisticated in 2022. It spanned the campaign period, voting day, and post-election phase. Influential bloggers in Kenya stated that key political players regularly hired their services to operate fake accounts, influence public opinion and fan tensions during elections. [255]

Platforms like TikTok, Facebook, and Twitter<sup>[256]</sup> were heavily used to spread false information. Indeed, a Mozilla Foundation study found 130 misleading TikTok videos with over 4 million views,<sup>[257]</sup> and over 550,000 toxic posts were identified on Facebook alone by Code for Africa.<sup>[258]</sup>

A review of a project on detecting misinformation before the election, using an AI tracking tool, showed that, on average, 15% of social media posts that were tracked weekly contained some elements of false information. This increased to 20% in the first week of September when the Supreme Court judgment made a pronouncement on the election. [259]

Political campaigns purchased administrative rights to existing Facebook groups to disseminate favourable content. These groups, along with WhatsApp channels, were used to target specific ethnic communities, often communicating in vernacular languages to bypass content moderation. [260]

In addition, campaign strategists created multiple fake or inauthentic accounts, known as sock puppers, to impersonate news outlets or political figures. These accounts amplified specific narratives and hashtags, creating an illusion of widespread support or opposition. [261]

Moreover, a survey revealed that participants admitted to using or having used fake or dummy social media accounts during the election period. These accounts were instrumental in spreading disinformation and manipulating public opinion. Disinformation campaigns employed coded language, local dialects, and intentional misspellings to circumvent automated content moderation systems. For instance, terms like "madoadoa," a derogatory term in Swahili, were used to incite ethnic tensions while avoiding detection.

https://www.mozillafoundation.org/en/blog/new-research-disinformation-on-tiktok-gaslights-political-tensions-ahead-of-kenyas-2022-elections/



<sup>[254]</sup> https://www.swp-berlin.org/assets/afrika/publications/policybrief/MTA\_PB14\_Agbele\_Disinformation\_in\_Kenyas\_2022\_election.pdf

<sup>|</sup> https://factcheck.afp.com/doc.afp.com.364Z8FB

<sup>[256]</sup> https://africacheck.org/fact-checks/blog/new-evidence-thriving-disinformation-industry-twitter-worrying-kenya-gears

https://www.mozillafoundation.org/en/campaigns/kenya-tiktok/

https://medium.com/code-for-africa/unmasking-hate-speech-in-kenyan-elections-with-ai-and-collaboration-576e37d4ccb5

 $<sup>{}^{[259]}\</sup> https://www.swp-berlin.org/assets/afrika/publications/policybrief/MTA\_PB14\_Agbele\_Disinformation\_in\_Kenyas\_2022\_election.pdf$ 

<sup>|</sup> https://savv.app/read/article/qt857it68i-how-social-media-was-used-to-influence-the-2022-kenyan-elections?

 $<sup>^{[261]}\</sup> https://disinfo.africa/early-detection-and-countering-hate-speech-during-the-2022-kenyan-elections-e0f183b7bdd1$ 

<sup>[262]</sup> https://www.swp-berlin.org/assets/afrika/publications/policybrief/MTA\_PB14\_Agbele\_Disinformation\_in\_Kenyas\_2022\_election.pdf



## Civil Society, Judicial and Electoral Institutional Delegitimization

In May 2021, a coordinated online campaign emerged on Kenyan Twitter (now X) using the hashtag #AnarchistJudges. This campaign, seemingly orchestrated by faceless bots, and retweeted by a series of sock puppet accounts, spread false accusations about the competence and integrity of senior High Court of Kenya judges.

These judges had recently blocked the Constitutional Amendments Bill of 2021 also known as the Building Bridges Initiative (BBI). The tweets baselessly alleged the judges were involved in drug trafficking, bribery, and political bias, quickly making the hashtag a top trending topic in the country. [264]

Strategists utilized sock puppets - fake online personas impersonating news outlets or election officials - to disseminate misleading and inflammatory information on social media. This tactic systematically pushed narratives aimed at swaying public opinion before elections, notably by suggesting key government institutions like the IEBC and NCIC were politically compromised due to vested interests.

These campaigns frequently included sub-narratives about election rigging, often blaming foreign actors or ethnic groups with distorted facts about past post-election violence, eventually escalating to incitement to violence and, after the elections, morphing into betrayal narratives accusing specific ethnic communities of voting against certain candidates. [265]

The proliferation of paid disinformation campaigns in Kenya eroded public trust in institutions, polarized communities, and suppressed legitimate discourse. The strategic use of social media to manipulate narratives posed significant challenges to democratic processes and the protection of digital rights. According to Bridget Andere, senior policy analyst at Access Now, "movements have become scarily effective at coordinated nauthentic behaviour (CIB) to derail conversations, shift narratives and discredit activists."

Prominent activists under the Linda Katiba movement voiced their opposition towards the Building Bridges Initiative and petitioned the courts against it. As a result, they faced acute attacks against them in early May which had the specific goal of discrediting their campaign. [266]

Ms. Daisy Amdany, a co-founder of the Linda Katiba Movement ("Protect the Constitution"), stated that opponents attacked their group by claiming they "don't care about peace" and are "foreign agents paid to destabilize the nation." She added that they were also labeled as "unaccountable," "evil," "noisemakers," and "loudmouths," all of which served to "mobilise hatred and cast aspersions on the intent and character" of those involved in their campaign. [267]

https://www.bbc.com/news/world-africa-58474936?





<sup>[264]</sup> https://www.wired.com/story/opinion-in-kenya-influencers-are-hired-to-spread-disinformation/?

<sup>[265]</sup> https://disinfo.africa/early-detection-and-countering-hate-speech-during-the-2022-kenyan-elections-e0f183b7bdd1

 $<sup>{}^{[266]}\</sup> https://assets.mofoprod.net/network/documents/Report\_Inside\_the\_shadowy\_world\_of\_disinformation\_for\_hire\_in\_Kenya\_5.\_hcc.pdf$ 



There have been other online campaigns on platforms such as Facebook and X (formerly Twitter) that have targeted human rights defenders and civil society writ large as part of #EvilSociety<sup>[268]</sup> campaign.

The phrase 'evil society' came about in public discourse when it was claimed that human rights and democracy NGOs conspired with the ICC against Kenyan politicians, particularly former President Uhuru Kenyatta and deputy-president William Ruto who stood accused of orchestrating the 2007/2008 post-election violence.

This was also used as justification for reducing NGO freedoms and access to funds. [269] Here, those working in the human-rights sector were depicted as foreign lackeys. Critics on social media resorted to "crude imagery depicting rights leaders as traitors and money scavengers chasing foreign cash." [270]

Since the #EvilSociety campaign that took place around 2013, the negative sentiment has continued in earnest. For instance, Hanifa Adan Farsafi and Boniface Mwangi, prominent human rights activists were recently branded as "NIS Rats"<sup>[271]</sup> for their work during the #RejectFinanceBill2024 campaign and beyond.<sup>[272]</sup> They were also branded as 'financiers of chaos' funded by the Ford Foundation in 2024.<sup>[273]</sup> Another moniker bestowed on human rights defenders such as Bunge La Wananchi was 'agents of anarchy'.<sup>[274]</sup>

## Disinformation surrounding the #RejectFinanceBill2024 protests

Kenyan journalist Hanifa Adan experienced harassment and censorship attempts while reporting on fatal protests and fundraising for the injured<sup>[274]</sup>. On July 20th, she tweeted that both the government and its adversaries were targeting her,<sup>[275]</sup> aiming to make it appear as though authorities had harmed her. Government-affiliated bloggers falsely accused Adan, a journalist for Eastleigh Voice, of being an "economic terrorist and anarchist" funded by the Ford Foundation.

While President Ruto had previously accused the foundation of destabilizing Kenya, the organization maintained it had a strict non-partisan grant-making policy and denied funding or sponsoring the protests. [276]

The targeted disinformation campaigns against Gen Z activists underscore the challenges facing digital rights and freedom of expression in Kenya. The use of AI-generated content and coordinated online attacks to suppress dissent threatens democratic principles and highlights the need for robust protections for activists and journalists.



<sup>&</sup>lt;sup>[268]</sup> https://x.com/StarTimesKenya/status/1189455397079400448

<sup>[269]</sup> https://theconversation.com/kenyas-clampdown-on-civil-society-is-against-its-self-interest-62019

<sup>| 1270|</sup> https://www.opendemocracy.net/en/openglobalrights-openpage/in-kenya-averting-move-to-strangle-civil-society-with-financial-noose/

<sup>[271]</sup> https://x.com/FGaitho237/status/1938979453390172670

<sup>[272]</sup> See also #ChaosCartel for 2025 protest organization

<sup>&</sup>lt;sup>[273]</sup> https://x.com/PeterKariukiKE/status/1812820914586735059

<sup>&</sup>lt;sup>[274]</sup> https://x.com/KKCommetary/status/1937745321183883378

<sup>&</sup>lt;sup>[275]</sup> https://x.com/Honeyfarsafi/status/1805869851493212210

<sup>| 1276 |</sup> https://x.com/Honeyfarsafi/status/1814604321218064535



As Kenyan youth increasingly get their news from alternative sources, fact-checkers struggle more to fight misinformation. For example, during the June protests, Kenyans on X (formerly Twitter) started an "aura for aura" trend. They would create their own fabricated, satirical versions of what they saw as government propaganda from official sources like the presidency and police. [278]

These satirical posts often got more engagement than the original government information. The "aura for aura" posts weren't limited to X; they also spread to platforms like Instagram and Facebook. On these other platforms, audiences lacked the context of X users, who understood that these posts were meant as counter-propaganda against perceived government misinformation. [279]

## Covid-19 Infodemic<sup>[280]</sup>

A recent study's<sup>[281]</sup> results indicated that while Kenyans did not create hashtags specifically to spread misinformation, the tweets within various analyzed hashtags did contain false information. The findings also reveal that verified X accounts participated in either originating or spreading COVID-19 misinformation.

Furthermore, entirely false claims were found to spread more rapidly than partially false claims within these misleading tweets. Compared to a general collection of COVID-19 tweets, those containing misinformation were more frequently aimed at discrediting other information found on social media. [282]

WhatsApp, due to its encrypted and private nature, became a significant channel for spreading COVID-19 misinformation in Kenya. Another study exploring Kenyans' interactions with misinformation on WhatsApp found that users often encountered and shared false information, including unverified remedies and conspiracy theories. [283] False health information, particularly concerning COVID-19 treatments and vaccines, proliferated during the pandemic.

Reports indicated a surge in false claims linked to COVID-19 in Kenya, following existing misinformation trends in the country. These included myths about immunity, the origin of the virus, and the safety and efficacy of vaccines, contributing to vaccine hesitancy among the population. [284]

The widespread presence of disinformation in Kenyan mass media poses a significant concern for public health efforts, particularly in managing the COVID-19 pandemic. A Reuters survey revealed that approximately 75% of Kenyans found it challenging to distinguish between genuine and fake news online. Furthermore, over 50% of those surveyed reported encountering false health or COVID-19 information via Kenyan mass media. [285]

https://www.researchgate.net/publication/382947397\_Exploring\_Kenyans'\_interactions\_with\_misinformation\_on\_WhatsApp

<sup>[285]</sup> https://mediaengagement.org/blogs/three-ways-covid-19-affected-kenyan-media-and-how-the-country-is-trying-to-counter-the-fallout/



<sup>[277]</sup> https://www.fordfoundation.org/news-and-stories/news-and-press/news/ford-foundation-statement-in-response-to-recent-events-in-kenya/

<sup>| 278|</sup> https://reutersinstitute.politics.ox.ac.uk/news/how-young-kenyans-turned-news-influencers-when-protesters-stormed-countrys-parliament#:~:text='Aura%20for%20aura'&text=For%20instance%2C%20at%20the%20height,'

<sup>&</sup>lt;sup>[280]</sup> An infodemic is too much information including false or misleading information in digital and physical environments during a disease outbreak (https://www.who.int/health-topics/infodemic)

<sup>823</sup>y9YOizVnt1PKcW8BLRTsBkQot29kaeL8wO10&

<sup>[282]</sup> Ibid

<sup>1284]</sup> https://meedan.com/post/false-health-information-in-kenya?



The Kenyan government took legal measures against individuals spreading COVID-19 misinformation. Notably, in March 2020, Kenyan authorities took action against several bloggers for allegedly spreading false information related to the pandemic. Cyprian Nyakundi was arrested for publishing such content, though he was initially released on bail. However, a warrant was later issued for his re-arrest due to his failure to appear in court. [5]

Also in March, Robert Alai, another prominent blogger, faced charges for posting false information about alleged coronavirus deaths on social media. He was granted bail after three days, with the condition that he cease publishing any further COVID-19 related information. <sup>[6]</sup> Separately, Elijah Muthui Kitonyo was arrested the same month under the Computer Misuse and Cybercrimes Act for "publishing misleading and alarming information" on Twitter. His post suggested the government was deceiving the public about coronavirus-related data. <sup>[7]</sup>

#### Government Initiatives To Curb Mis/Disinformation

Ahead of the 2022 general elections, Kenya launched the National Action Plan Against Hate Speech to combat hate speech and disinformation. This plan was part of its long-term Roadmap for Peaceful Elections in conjunction with the United Nations, focusing on real-time monitoring of online content and informing counter-messaging strategies to mitigate the spread of harmful narratives.<sup>[290]</sup>

In July 2022, the Media Council of Kenya, in collaboration with the United Nations Development Programme (UNDP), launched the iVerify fact-checking platform. This tool facilitates real-time fact-checking and verification of information, particularly during election periods, to curb the spread of fake news and misinformation. [291]



 $<sup>^{[286]}\</sup> https://www.standardmedia.co.ke/article/2001365603/blogger-cyprian-nyakundi-arrested-over-covid-19-post$ 

<sup>[287]</sup> https://www.the-star.co.ke/news/realtime/2020-04-21-dci-declares-blogger-cyprian-nyakundi-a-wanted-man

<sup>[288]</sup> https://freedomhouse.org/country/kenya/freedom-net/2020#footnote1\_QjC1HLOunwBpavjtHCYWvPE7K7JVARNrHB12kzm6Ylg\_otPkmdqNS7il

https://www.standardmedia.co.ke/article/2001364432/kenyan-man-arrested-for-fake-corona-virus-post-on-social-media

<sup>[290]</sup> https://news.un.org/en/story/2023/10/1140862?

https://mediacouncil.or.ke/media-center/mck-newsroom/news/new-fact-checking-tool-counter-fake-news?



#### RECOMMENDATIONS

#### 1. Legal and Policy Reforms

- Amend repressive laws (e.g., CMCA, OSA, PPSA) to uphold digital rights and freedom of expression.
- Strengthen the Data Protection Act by removing broad exemptions and ensuring judicial oversight.
- Ensure inclusive public participation in ICT law-making processes.
- Repeal unconstitutional legal provisions already invalidated by courts.
- Amend the employment act to address the status of gig workers.
- Improve the copy rights law for stronger protection of the gig workers.

#### 2. Institutional Strengthening

- Transform the ODPC into a fully independent statutory commission.
- Equip regulatory bodies (ODPC, CA) with adequate resources and enforcement powers.
- Operationalise the oversight board of the NIS.

#### 3. Surveillance and Data Privacy

- Enforce proper Data Protection Impact Assessments (DPIAs) and informed consent for data collection.
- Audit and regulate government use of surveillance technologies.
- Enact a legal framework to govern surveillance, ensuring oversight and accountability.

#### 4. Digital Rights & Internet Freedoms

- Prohibit internet shutdowns and throttling through clear legislation.
- Protect online activists and content creators from arbitrary arrest and intimidation.
- Promote platform transparency and content moderation policies that respect local laws and human rights.
- Introduce legal protections for whistleblowers, independent reporting, and anti-strategic lawsuits against public participation (SLAPPs).
- Increase access to legal aid services.

#### 5. Gender-Based Online Safety

- Introduce laws specifically targeting Technology-Facilitated Gender-Based Violence (TFGBV).
- Provide training on digital safety, reporting mechanisms, and legal protections for vulnerable groups.

#### 6. Digital Inclusion

- Prioritize rural connectivity and affordable internet access.
- Promote digital literacy programs, especially for women, youth, and people with disabilities.
- Treat internet access as a public utility to support national development.

#### 7. Media Freedom

- Safeguard journalists and media houses from political and financial coercion.
- Ensure media independence by diversifying revenue streams beyond state advertising.
- Support independent and community-based digital media platforms.



#### 8. Support for Digital Economy & Creators

- Expand monetization options for Kenyan content creators on global platforms.
- Regulate working conditions for content moderators and gig workers.
- Recognize the digital economy as a growth pillar and invest in digital infrastructure.

#### 9. Regulatory Coordination

- Harmonize mandates between CA and CAK to avoid overlap in telecom regulation.
- Ensure ICT practitioner legislation does not impose barriers to entry or stifle innovation.

#### 10. Civic Engagement and Innovation

- Promote and protect civic tech platforms and digital activism.
- Ensure online spaces remain open for organizing, expression, and public participation.





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ifreedoms.co.ke/reports

# STATE OF THE INTERNET

IN KENYA 2020 - 2024



