

# Kenya

PARTLY FREE

# 66

  
/100

|                                     |        |
|-------------------------------------|--------|
| A. <u>Obstacles to Access</u>       | 16 /25 |
| B. <u>Limits on Content</u>         | 27 /35 |
| C. <u>Violations of User Rights</u> | 23 /40 |

## LAST YEAR'S SCORE & STATUS

68 /100    **Partly Free**

Scores are based on a scale of 0 (least free) to 100 (most free). See the research methodology and report acknowledgements.



## Overview

Internet freedom in Kenya declined slightly during the coverage period. Hate speech and information manipulation circulated online before and after the August 2022 general elections. Revelations that an Israel-based firm had gained access to the accounts of senior officials in William Ruto's presidential campaign with cooperation of a local service provider raised suspicions that the hack was state sponsored, as part of a larger effort to undermine the credibility of the election results. The government moved towards greater censorship of LGBT+ content online after signing an agreement with Netflix to restrict such content on its platform, and the threat of government surveillance resurfaced after the Supreme Court allowed the Communications Authority (CA) to install a system to collect customer data from service providers.

Kenya holds regular multiparty elections. However, pervasive corruption and brutality by security forces remain serious problems. The country's media and civil society sectors are vibrant, even as journalists and human rights defenders remain vulnerable to restrictive laws and intimidation.

## **Key Developments, June 1, 2022 - May 31, 2023**

- The government acquired Telkom, Kenya's third largest mobile service provider, in October 2022 (see A4).
- In February 2023, Netflix signed an agreement with the Kenya Film Classification Board (KFCB) to restrict the LGBT+ content available on the streaming platform in Kenya and classify content according to the KFCB's ratings system (see B2).
- During the August 2022 general elections, Kenya's information landscape saw an increase in false and manipulated information, particularly on TikTok and Facebook. Anonymous bloggers with potential links to an Israeli hacking firm shared forged documents online that undermined the credibility of the presidential election results (see B5).
- In April 2023, the Supreme Court allowed the CA to move forward with installing its Device Management System (DMS), which may grant the regulator access to personal customer data from service providers (see C5).
- An Israeli firm hacked the accounts of several senior officials on William Ruto's presidential campaign, allegedly with cooperation from a

telecommunications service provider, raising suspicions of state involvement (see C8).

- In May 2023, forensic analysis uncovered that a Chinese state-affiliated hacking group had breached at least eight Kenyan government ministries to access data related to the country's debts to China (see C8).

## A. Obstacles to Access

**A1** 0-6 pts

**Do infrastructural limitations restrict access to the internet or the speed and quality of internet connections?**

**3/6**

Internet access is somewhat limited by poor infrastructure, but penetration rates and connection speeds continue to improve.

According to DataReportal's *Digital 2023* report, Kenya's internet penetration rate was 32.7 percent as of January 2023. <sup>1</sup> The CA, the national telecommunications regulator, reported that the total number of data and internet subscriptions increased to 48.4 million in September 2022 from 44.88 million in September 2021.

<sup>2</sup> The regulator also reported 65.46 million mobile phone subscriptions, representing a mobile penetration rate of 132.5 percent as of September 2022, down from 133.3 percent the previous year. <sup>3</sup> A country-wide update of the SIM card registration process, which resulted in the deactivation of noncompliant SIM cards, contributed to this decline. <sup>4</sup> A penetration rate above 100 percent indicates that some users have more than one mobile subscription. Third- and fourth-generation (3G and 4G) mobile network subscriptions respectively stand at 23.84 percent and 38.6 percent of Kenya's population, measured at 49.4 million.

Average connection speeds increased to 12.42 megabits per second (Mbps) in 2022, from 11.27 Mbps in 2021, according to Cable, a British telecommunications company. <sup>5</sup>

In March 2021, Safaricom, Kenya's leading telecommunications company, activated 5G services in four major urban centers and planned to expand service to 150 additional sites over the following 12 months. <sup>6</sup> However, in May 2022, Safaricom's chief executive officer announced it would slow the expansion of 5G

mobile services due to high mobile phone costs and would instead focus on delivering 5G services to residences and offices covered by fiber-optic infrastructure. <sup>7</sup> According to the CA, there are currently 299,904 5G subscriptions in Kenya. <sup>8</sup>

The National Optic Fibre Backbone Infrastructure (NOFBI) project aims to increase internet connectivity across the country and improve the delivery of e-government services. <sup>9</sup> In the first phase of the NOFBI, only 6,000 of the planned 50,000 kilometers of fiber were implemented, though a planned addition of 2,500 kilometers was outlined in the 2018–2023 National Broadband Strategy. <sup>10</sup>

Under the Kenya Vision 2030 development plan, the government has prioritized the expansion of information and communication technology (ICT) capacity, including plans to expand the country's optic fibre infrastructure and internet connectivity. <sup>11</sup> The concept note for the fourth phase (2023–2027) of the Vision 2030 plan was published in February 2022. <sup>12</sup>

Internet users in Kenya occasionally experience outages in internet services. In January 2022, Telkom users experienced a nationwide disruption, which lasted a few hours. <sup>13</sup> Aging infrastructure and deteriorating supply lines have made electricity interruptions more common across several regions in Kenya, <sup>14</sup> subsequently interrupting home internet connections. The Kenya Power and Lighting Company reported major outages in October and November of 2022 and March of 2023. <sup>15</sup> <sup>16</sup>

**A2** 0-3 pts

**Is access to the internet prohibitively expensive or beyond the reach of certain segments of the population for geographical, social, or other reasons?**

**1/3**

Internet access remains prohibitively expensive for much of the population, despite significant investments meant to improve rural connectivity.

As of March 2023, the average monthly price of fixed-line broadband internet in Kenya was \$49.13, according to Cable. <sup>17</sup> Cable ranks Kenya 115th out of 219 countries for the price of broadband. Mobile data is relatively affordable in

comparison, at an average of \$0.84 for one gigabyte (GB), and Kenya ranks 61st out of 237 countries in Cable's list of global mobile data prices, released in July 2022. **18**

A report by the Friedrich Naumann Stiftung Foundation found that the high cost of data in the country excludes lower-income Kenyans from benefiting from the digital economy. **19**

In the Alliance for Affordable Internet's 2021 Affordability Drivers Index, Kenya ranks 12th out of the 34 African countries surveyed, a drop from its ranking in 2020. **20**

Following a lawsuit against Safaricom, Airtel, and Telkom for their data-expiration practices, **21** Safaricom rolled out non-expiry data bundles in October 2019, and Airtel rolled out its own in December. **22** However, Safaricom's non-expiry data plans cost the same amount as expiring data packages but include half the amount of data. Crucially, this impacts more affordable bundles and not more expensive ones, affecting subscribers with less disposable income for data. **23**

The finance act signed by then-president Uhuru Kenyatta in September 2018, increased the tax on telephone and internet data from 10 percent to 15 percent.

**24** In response to the tax, ISPs raised prices for both mobile data bundles and fixed-line home internet connections, **25** making internet access unaffordable for many poorer Kenyans.

The affordability and availability of internet services vary between urban and rural areas. A gender-based digital divide also persists, with more men than women using mobile and internet services. **26** In a 2022 survey, the Global System for Mobile Communications (GSMA) found that only 39 percent of women in Kenya are mobile internet users, compared to 59 percent of men. **27** Many rural areas have not benefited from Kenya's high-capacity bandwidth, in part due to market disparities and weaknesses in last-mile connectivity, which is expensive and requires basic infrastructure such as electricity and roads that are often poorly developed.

The Universal Service Fund (USF), which was established in 2013, aims to expand mobile and internet service in a bid to close the digital divide. **28** The Voice Infrastructure and Services Project, a USF initiative administered by the CA, had

connected 75 rural sublocations to basic mobile telephony as of June 2021. <sup>29</sup> The CA awarded 1.57 billion Kenyan shillings (\$12.7 million) in contracts to develop further infrastructure for the project in February 2021. <sup>30</sup> The Education Broadband Connectivity Project, another USF initiative, provided 887 secondary schools with five Mbps internet connections as of October 2019. <sup>31</sup>

**A3** 0-6 pts

**Does the government exercise technical or legal control over internet infrastructure for the purposes of restricting connectivity?**

**6/6**

There were no reports of the government using control over internet infrastructure to limit connectivity during the coverage period. In June 2021, then interior minister Fred Matiang'i said the government would not disrupt connectivity during the August 2022 elections. <sup>32</sup> After the release of a Global Witness report that detailed Facebook's failure to curb hate speech on its platform in Kenya, and just days before the August 9 polls, the National Cohesion and Integration Commission (NCIC) gave Facebook seven days to comply with regulations to tackle hate speech on its platform or face suspension (see B7). <sup>33</sup> Although Facebook did not announce any policy changes during that seven-day period, multiple ministers stated that the government would not disrupt connectivity or suspend the platform. <sup>34</sup>

Kenyans were able to access the internet without interruptions during the August 2022 general election. Kenya's decentralized internet infrastructure and nongovernmental control of the Kenya Internet Exchange Point (KIXP) make it unlikely that the government could exercise technical control over the internet.

Kenya connects to the international internet via six main undersea cables—SEACOM, the East African Marine System (TEAMS), the Eastern Africa Submarine Cable System (EASSy), and the Lower Indian Ocean Network 2 (LION2), Pakistan and East Africa Connecting Europe (PEACE) Cable, and Djibouti Africa Regional Express 1 (DARE1); two others, Africa-1, and 2Africa, will be completed by 2024. <sup>35</sup>

The KIXP is operated by the Telecommunication Service Providers of Kenya (TESPOK), a nonprofit organization representing the interests of ISPs. The KIXP keeps domestic Kenyan internet traffic within the country, lowering the cost of

connectivity. With support from the African Union, a backup IXP was established in 2016 to further lower the costs of connectivity for ISPs. **36**

**A4** 0-6 pts

**Are there legal, regulatory, or economic obstacles that restrict the diversity of service providers?**

**4/6**

Economic obstacles restrict the diversity of service providers in Kenya. There are five mobile service providers: Safaricom (which holds a 66.0 percent market share as of December 2022), Airtel (26.3 percent), Telkom (4.9 percent), Equitel (2.3 percent), and Jamii Telecommunication (0.5 percent). **37** Safaricom also dominates the fixed data market with a 46.1 percent of subscriptions, closely followed by Wananchi Group Limited (31.1 percent) and Poa Internet Kenya Ltd (14.9 percent). **38**

In March 2022, Airtel and Telkom were fined 26.3 million shillings (\$213,000) and 11.4 million shillings (\$92,300), respectively, because they did not provide sufficiently high-quality service as stipulated by the CA. **39**

In December 2021, a proposed merger between Airtel and Telkom collapsed; the National Treasury had previously been warned by parliament not to approve the deal. **40** A court had ruled the companies had sufficient regulatory approval to proceed and quashed an inquiry from an anticorruption commission in February 2021. **41** The CA initially approved the merger in September 2019. **42**

The Kenyan government owns 35 percent of Safaricom, **43** and in October 2022 the government increased their stake in Telkom to become its sole owner, putting a halt to its listing in the Nairobi Securities Exchange. **44** Because Safaricom holds a majority of the market, there have been calls to declare it a dominant player, which could force the company to separate from its mobile money service in an effort to foster greater competition. **45** A bill introduced in March 2021 and revived in November 2022 could have compelled Safaricom, Airtel, and Telkom to split their telecommunications businesses from their mobile money holdings. **46** **47** If passed, telecommunications companies would have six months to comply. **48** The bill has yet to undergo its first reading. **49** Previously, in January 2018, the CA abandoned plans to split Safaricom amid fierce resistance from the company and other powerful business interests. **50**

In July 2018, the Parliamentary Committee on Communication, Information, and Innovation opened an investigation into the mobile sector to identify legislative and regulatory gaps that may lead to anticompetitive behavior or restrict growth.

**51**

In July 2019, the ICT Authority introduced a regulation that requires all owners of fiber-optic infrastructure to register existing networks and seek approval for any new installations. **52** The ICT Authority is likely to treat the registration process for existing networks as a de facto approval process that could prove cumbersome, rather than a straightforward registration mechanism, though it is unclear whether the regulation will involve the imposition of fees. **53**

The CA is the regulatory body that licenses all communications systems. **54** As of January 2023, it listed 4 providers with submarine-cable landing rights and 136 network facility providers. **55** These licensees provide, among other things, facilities for internet, voice, and mobile virtual operations. Cybercafés are licensed as business units by local governments, and there are no special regulatory or economic obstacles to their establishment.

**A5** 0-4 pts

|                                                                                                                                                     |              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <b>Do national regulatory bodies that oversee service providers and digital technology fail to operate in a free, fair, and independent manner?</b> | <b>2 / 4</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------|

The regulatory bodies that oversee service providers generally operate in a fair manner, but there have been some encroachments on regulators' independence in the past.

The CA's management is vested in a board of directors that consists of a chairperson appointed by the president, three principal secretaries hired by the Public Service Commission, and seven persons appointed by the cabinet secretary of the Ministry of Information, Communications and The Digital Economy (MOIC-DE). **56** The day-to-day operations of the regulator are managed by a director general who is appointed by the board to a four-year term, renewable only once.

**57** The director general is an ex officio member of the board without any voting rights.

While the authority's independence is provided for under Section 5 of the Kenya Information and Communications Act (KICA), tensions between the MOIC-DE and the board of directors on one side, and the director general of the CA on the other, have flared up in recent years.

The CA was managed by an acting director general between August 2019 and October 2021, amid leadership struggles within the regulator. The August 2019 exit of the previous director general, Francis Wangusi, was marred by confusion. In July 2019, MOIC-DE Cabinet Secretary Joe Mucheru announced four new board members for the CA. <sup>58</sup> In November 2019, a court found the appointments unconstitutional and contrary to the Public Service Commission Act, 2017, which requires advertisement for positions and competitive recruitment procedures. The ruling produced some confusion regarding the appointment of a successor for Wangusi, as it cast doubt on whether the board tasked with making the new appointment was properly constituted. <sup>59</sup>

Wangusi had clashed with the board and the MOIC-DE on a variety of topics. For instance, the two sides disagreed about how to implement a report on Safaricom's market dominance. <sup>60</sup>

In October 2021, former Independent and Electoral Boundaries Commission (IEBC) chief executive Ezra Chiloba was appointed CA director general. <sup>61</sup> During his tenure at the IEBC, Chiloba oversaw a controversial election marred by technical disruptions. <sup>62</sup>

In December 2022, a few months into his term, President Ruto appointed businesswoman Mary Wambui Mungai as the chair of the CA board and replaced board members who had only been recently appointed. <sup>63</sup> <sup>64</sup>

## B. Limits on Content

**B1** 0-6 pts

Does the state block or filter, or compel service providers to block or filter, internet content, particularly material that is protected by international human rights standards?

6/6

Political and social content is generally not subject to blocking in Kenya. Testing by the Open Observatory of Network Interference (OONI) revealed no signs of websites blocking or censorship of political content as of May 2023. <sup>65</sup> Social media platforms and communication applications such as Facebook, Twitter, YouTube, and LinkedIn were also fully accessible. <sup>66</sup>

In June 2022, the High Court ordered ISPs to block live sports streaming sites for infringing on copyrighted material after MultiChoice Kenya, a leading entertainment company, argued in court that these sites continue to limit their revenues from paid subscriptions. <sup>67</sup>

In July 2022, the NCIC, Kenya's ethnic cohesion watchdog, threatened to suspend Facebook's operations if the platform did not take steps to eliminate hate speech (see B7). In August 2022, the MOIC-DE minister clarified that the ministry would not block social media platforms during the election and stated it was not clear what legal framework would be used to suspend Facebook. <sup>68</sup> Later that month, Access Now reported that it received no reports of disruption during the polls. <sup>69</sup>

The internet remained unrestricted during the tense period following the contested 2017 presidential election, including when the government jammed the broadcast signals of three leading television stations that were planning to air then-opposition leader Raila Odinga's unofficial inauguration in January 2018. <sup>70</sup> The networks' websites were not blocked, enabling them to stream the event online. <sup>71</sup>

**B2** 0-4 pts

**Do state or nonstate actors employ legal, administrative, or other means to force publishers, content hosts, or digital platforms to delete content, particularly material that is protected by international human rights standards?**

**2 / 4**

Although censorship is not systematic, the state has increasingly sought to remove online content that it deems immoral or defamatory.

The Kenya Film Classification Board (KFCB) prohibited online and offline distribution, exhibition, and broadcast of the films *Badhaai Do* in February 2022 and *I Am Samuel* in September 2021. <sup>72</sup> <sup>73</sup> The KFCB claimed the films were

inappropriate for Kenyan audiences because they attempted to normalize same-sex relationships. The penal code criminalizes same-sex sexual activity, and the KFCB routinely censors LGBT+ content. <sup>74</sup> In February 2023, Netflix signed an agreement to restrict LGBT+ content in Kenya and classify content according to the KFCB's ratings system. Talks were ongoing with other local streaming services to restrict LGBT+ content available in Kenya. <sup>75</sup> <sup>76</sup>

In March 2021, then-KFCB chairman Ezekiel Mutua ordered comedian Eric Omondi to take down episodes of his YouTube show *Wife Material*, calling the videos pornographic. Omondi complied. Prior to the removal of the videos, Omondi and 15 *Wife Material* cast members were arrested on Mutua's orders (see C3). Omondi was charged with violating the Film and Stage Plays Act, which requires certification from the KFCB to exhibit or distribute films. Omondi and Mutua reached an out-of-court settlement over the charges. <sup>77</sup>

In August 2020, during a previous coverage period, a website that tallied the amount of money lost to corruption during the Kenyatta administration went offline after Charles Gichuki, who ran the website, was arrested (see C3). <sup>78</sup>

The government also occasionally requests content removals for reasons other than morality. Between July and December 2022, Google received five takedown requests from Kenyan authorities and removed content in response to four of them. <sup>79</sup> Between January and June 2022, Meta reported no content restrictions specifically imposed in Kenya. <sup>80</sup>

Authorities have sometimes compelled ordinary users and online journalists to delete content from their social media profiles and websites. In December 2018, a court ordered blogger Cyprian Nyakundi to remove an article on his website that allegedly defamed politician Steve Mbogo. <sup>81</sup>

**B3** 0-4 pts

**Do restrictions on the internet and digital content lack transparency, proportionality to the stated aims, or an independent appeals process?**

**3/4**

Restrictions on the internet are largely transparent, but censorship of online content sometimes lacks fairness or proportionality.

In March 2021, Aden Duale, a parliamentarian with the ruling Jubilee Coalition, introduced a bill in the National Assembly to empower the National Computer and Cybercrimes Coordination Committee (NC4) to “recommend websites to be rendered inaccessible” within Kenya if they are pornographic in nature, promote terrorism, or encourage cults or religious activities deemed extreme. <sup>82</sup> The NC4 is a government-appointed body that lacks transparency and public oversight mechanisms (see C2). The bill was still being considered during the coverage period. <sup>83</sup>

The KFCB has justified banning advertisements that contain sexual content and promote abortion services by invoking a law that prohibits the airing of sexual content before 10 p.m. Those found to have distributed video content without KFCB approval face fines of up to 100,000 shillings (\$810) and prison terms of up to five years, <sup>84</sup> as outlined in the Films and Stage Plays Act, 2012. <sup>85</sup>

In advance of the 2017 election, the CA implemented guidelines to curb online abuse in partnership with the NCIC, a statutory body that works to reduce interethnic conflict. <sup>86</sup> The broadly worded guidelines prohibit political messages that “contain offensive, abusive, insulting, misleading, confusing, obscene, or profane language,” and analysts warned that they could be used to limit legitimate online expression. The guidelines also require administrators of social media pages to “moderate and control the content and discussions generated on their platform” and give mobile service providers the power to block the transmission of political messages that do not comply with the guidelines at their discretion. <sup>87</sup> In addition, bulk political messages require prior approval from the NCIC.

Internet intermediaries in Kenya can be held liable for illegal content, such as copyright infringements and hate speech, though they are not required to actively monitor traffic passing through their networks unless they are made aware of illegal content. <sup>88</sup> Under the National Cohesion and Integration Act, 2008 (NCIA) which outlaws hate speech, a media enterprise can be fined up to one million shillings (\$8,100) for publishing hate speech, which is broadly defined in the legislation. <sup>89</sup> This provision can be invoked to block or take down online content, according to the Association for Progressive Communications. <sup>90</sup>

**Do online journalists, commentators, and ordinary users practice self-censorship?**

**3/4**

Arrests of online journalists and statements by media regulators have prompted concerns about self-censorship by the press. The importance of government purchases of advertising to the financial survival of media outlets, including those that publish online, results in some self-censorship among journalists (see B6).

In March 2023, statements from Senate Majority Leader Aaron Cheruiyot that referred to the media as a “powerful and influential cartel” that needed to be “crushed” were seen as further confirmation of diminishing press freedom in Kenya. **91 92**

Journalists covering the August 2022 elections expressed their concerns and fears of the political environment become increasingly hostile for the media, resulting in journalists practising self-censorship and brown-envelope journalism. **93**

According to the Media Council of Kenya, there were 44 violations of press freedom from January to May of 2023, compared with 104 violations in 2022 and 70 in 2021. The police and other government authorities are reportedly responsible for most of the attacks against journalists. **94** Such attacks have a chilling effect on speech and can lead to self-censorship online.

**B5** 0-4 pts

**Are online sources of information controlled or manipulated by the government or other powerful actors to advance a particular political interest?**

**2/4**

During the coverage period the information landscape experienced increased levels of disinformation, with state sponsored disinformation being observed before, during and after the August 2022 general election.

The Media Council of Kenya reported that during the 2022 general election digital platforms were inundated with misinformation and propaganda, spread by both media houses and influential social media users. **95** Presidential front-runners’

political campaign teams also ran active disinformation campaigns that tech platforms failed to curb. **96 97**

A Mozilla Foundation report released in June 2022 revealed that TikTok was being used to spread hate speech, incitement, and manipulated content ahead of the August 2022 elections. Researchers identified several videos that were widely viewed and contained manipulated content, including a falsified Kenya Television Network bulletin discussing a nonexistent opinion poll, a video of an inauthentic tweet from US President Joe Biden, and videos displaying fake newspaper covers.

**98**

In the aftermath of the 2022 elections, reports emerged of a disinformation and hacking campaign that sought to undermine the credibility of Kenya's presidential election results. An Israel-based firm hacked the Telegram and email accounts of staff members on the Ruto campaign ahead of the election (see C8) and may have also been involved in disinformation operations that sought to sow doubt in the official election results. After Ruto was declared the winner, an anonymous source claimed that the Ruto campaign had hacked the IEBC to steal the election and submitted forged logs from the electoral commission's servers as forensic evidence supporting Raila Odinga's appeal to overturn the results. **99** Although the Supreme Court rejected Odinga's petition, efforts to undermine public faith in the integrity of the election continued as anonymous bloggers, some of whom were connected to the Odinga campaign, uploaded documents that allegedly contained "authentic" election results. **100** These election-rigging narratives continued to impact public debate in Kenya throughout the coverage period as Odinga held multiple public demonstrations disputing the election results (see B7).

In February 2022, researchers from the Mozilla Foundation revealed that CitizenGO, a right-wing group based in Spain, used disinformation and inflammatory language to influence Twitter conversations about Kenyan reproductive health policy. Twitter subsequently suspended 240 accounts connected to this group. According to the report, CitizenGO likely coordinated 11 Twitter campaigns by sending instructions, money, and content to Kenyan users, who would spread messaging via Twitter and WhatsApp. **101**

Loosely organized “bloggers for hire” use their collective social media clout to shape public opinion and manipulate the online information landscape. <sup>102</sup> A network of accounts amplified content that discredited then deputy president Ruto in order to support Kenyatta and former prime minister Odinga, according to a June 2020 report. The accounts sought to influence the content in the top trending topics in Kenya that May. <sup>103</sup> Commentators also alleged that the government coordinated social media users <sup>104</sup> to discredit protesting healthcare workers in December 2020; the workers mobilized over working conditions after a young doctor, whose salary had gone unpaid for months, died of COVID-19. <sup>105</sup>

Researchers identified at least eight disinformation campaigns aimed at Kenyan Twitter users between May and June 2021. The campaigns amplified narratives that supported the constitutional review process (see C1), discredited civil society activists opposed to the review, and delegitimized judges perceived as opponents of Kenyatta. In some cases, participants in the disinformation campaigns were coordinated over WhatsApp groups and paid the equivalent of \$10 to \$15 a day to boost the narratives on Twitter. The researchers found that the extent of the campaigns—over 23,000 posts distributed by 3,700 accounts—impacted legitimate activism on Twitter. <sup>106</sup>

**B6** 0-3 pts

**Are there economic or regulatory constraints that negatively affect users’ ability to publish content online?**

**2/3**

There are few regulatory constraints that negatively affect users’ ability to publish content online. However, media outlets’ reliance on revenue from government advertisements constrains their publication of certain content. Declining advertisement revenue and layoffs have impacted both traditional and digital media journalists. A trend of journalists being threatened with gag orders and defamation charges may also constrain individuals from posting online.

In February 2023, Kenya Union of Journalists Secretary-General Erick Oduor, quoting a report released by the Kenya Media Sector Working Group (KMSWG), said there are 22 laws used by influential actors, including political leaders, that restrict the independence of the media. The KMSWG report found a growing

trend of gag orders and exorbitant defamation charges in civil suits, which journalists view as violations of media freedom. <sup>107</sup>

In March 2023 the director general of the CA, Ezra Chiloba, published a statement asserting that six TV stations, some of which also broadcast programs online, had violated the programming code in their coverage of demonstrations organized by Raila Odinga on March 20, 2023. <sup>108</sup> In a move that immediately drew criticism from civil society, the CA alleged that the channels' coverage of the protests could cause public panic or incitement and threatened the country's peace and cohesion. Enforcement of the censure of the six TV stations, however, was suspended by the High Court following a petition from the Katiba Institute. <sup>109</sup>

The Government Advertising Agency (GAA) was established in 2015 to manage government advertising purchases. In August 2018, the Directorate of Criminal Investigation began an investigation of the GAA for allegedly failing to pay 2.8 billion shillings (\$23 million) in advertising fees owed to media outlets. <sup>110</sup> The KMSWG claimed in May 2019 that the GAA was actively working to muzzle the media by starving outlets of needed revenue. <sup>111</sup> In July 2019, Cabinet Secretary Mucheru assured the media that all debts owed by the government would be paid. <sup>112</sup> As of March 2020, the MOIC-DE reportedly owed media houses up to 2.5 billion shillings (\$20 million). <sup>113</sup> The debts remained pending as of July 2022. <sup>114</sup> In December 2022, MOIC-DE cabinet secretary Eliud Owalo expressed concerns over major media layoffs and guaranteed that the GAA would settle its outstanding debt of 1.15 billion shillings (\$9.31 million) with media houses. <sup>115</sup> While Owalo expressed commitment to ensuring media outlets have sufficient funding, the current government has slashed its advertising budget by 75 percent. <sup>116</sup>

The government has been known to use its advertising budget to influence media outlets' editorial choices, resulting in financially induced self-censorship (see B4). <sup>117</sup> Some online outlets also adjust the tone of their content to avoid upsetting other major advertisers, <sup>118</sup> though this phenomenon has been more frequently observed among traditional media outlets. For instance, in September 2020, the Council of Governors suspended advertising with Nation Media Group after the media house published a story on graft. <sup>119</sup>

Powerful, politically influential media owners have affected the editorial lines and reporting of their outlets to advance their own interests. <sup>120</sup>

**B7** 0-4 pts

**Does the online information landscape lack diversity and reliability?**

**3/4**

The online information landscape is diverse and vibrant, with outlets reporting on many issues and offering a wide range of viewpoints. Social media platforms have become an important means for journalists to gather and share news. Traditional broadcast outlets have increasingly utilized social media and other digital platforms to interact with users in real time. However, recent reports have revealed that social media and digital platforms are being used to share misinformation that stokes ethnic rivalries (see B5).

During the 2022 general elections the online information landscape was filled with misinformation and disinformation that made it difficult for Kenyans to distinguish between false and credible information. Online platforms like Facebook, Twitter and TikTok made content moderation promises but failed to curb misinformation on their platforms (see B5).

In July 2022, the NCIC threatened to suspend Facebook's operations in Kenya if the platform could not address hate speech and inciting language being disseminated during the run-up to the August 2022 elections, after it was revealed that Facebook had approved 20 political advertisements containing hate speech.

**121**

Following the August 2022 elections, Raila Odinga's claims of election fraud were amplified online by anonymous bloggers, who leaked what they claimed were "authentic" election forms and forged documents that attempted to discredit William Ruto's victory (see B5). Mass protests held in March 2023 over alleged fraud in the 2022 elections led to three deaths, several hundred injuries, and the looting of a number of businesses. **122**

Since 2018, Facebook has partnered with Africa Check, Africa's first independent fact-checking organization, and Agence France-Presse (AFP) to help assess the accuracy of information being disseminated on its platform. **123**

**B8** 0-6 pts

Online tools for civic mobilization are freely available to users, but the authorities' suppression of some forms of digital dissent limits their effectiveness. Social media, especially Twitter, continues to be a critical platform for debate, advocacy, and mobilization on issues of public interest.

During the coverage period, Kenyans on Twitter used the hashtag #KenyaDecides2022 to provide crucial general election updates. In March 2023, as opposition leader Raila Odinga led the country in nationwide protests against alleged electoral misconduct, the high cost of living, and government corruption, <sup>124</sup> Kenyans used the hashtag #maandamano to participate in the protest both online and offline.

In May 2022, Twitter suspended the accounts of 22 activists who had participated in the #NjaaRevolution campaign, an online campaign protesting increasing food and commodity prices. Several of these accounts were suspended without a clear explanation from Twitter. Civil society organizations voiced concerns that these suspensions constituted censorship during the critical pre-electoral period. <sup>125</sup>

Kenyan users also engaged in other hashtag campaigns during the coverage period, such as #JusticeForEbbie, which sought justice for a high school girl murdered on school premises. <sup>126</sup> During the last coverage period, users mobilized around the #ProtectQueerKenyans and #JusticeForSheila campaigns, which started after a member of the LGBT+ community was murdered in their home in April 2022. <sup>127</sup>

In May 2020, social media users organized around the hashtag #EndPoliceBrutalityKE, reporting and tracking police brutality in Kenya and pushing for accountability. <sup>128</sup> This online mobilization resulted in physical protests. <sup>129</sup> In the face of exceptionally high youth unemployment, <sup>130</sup> Kenyans also use the hashtag #IkoKaziKE as a resource to find jobs and share hiring opportunities.

## C. Violations of User Rights

**Do the constitution or other laws fail to protect rights such as freedom of expression, access to information, and press freedom, including on the internet, and are they enforced by a judiciary that lacks independence?**

**4/6**

Freedom of expression is enshrined in Article 33 of the 2010 constitution and includes the rights to seek, receive, or impart information and ideas. However, these rights are frequently violated in practice, including for online journalists and other internet users.

The judiciary is relatively independent. However, since the new presidential administration assumed office in September 2022 several court cases against high-profile individuals charged with corruption and murder have been withdrawn, raising questions about the courts' ability to act independently. <sup>131</sup> One such case is a \$60 million corruption case against sitting deputy president Rigathi Gachagua.

**132**

Despite this, the judiciary still exercises checks on government. In March 2023 Kenya's Supreme Court ruled that it was discriminatory for the government to prevent the registration of LGBT+ associations, a decision that has been met with great opposition from the government and religious groups. <sup>133</sup>

In April 2022, the Supreme Court ruled that the constitutional review process advanced by then president Kenyatta was unconstitutional. <sup>134</sup> Known as the Building Bridges Initiative (BBI), the proposal sought to expand the executive arm of the government and was widely understood as an attempt by Kenyatta and former prime minister Odinga to consolidate power at William Ruto's expense. A High Court panel previously found that the development of the BBI lacked sufficient public participation, though this decision was contested several times.

**135**

In October 2020, the High Court invalidated 23 laws on the grounds that they were passed by the National Assembly, the lower house of the Parliament, without consultation from the Senate, the upper house, violating the constitution. The ruling ordered both chambers to consult on the 23 laws before July 2021; the

deadline was later extended to November. <sup>136</sup> These laws were later reinstated by the Court of Appeal, which ruled that because the bills did not contain provisions affecting the functions of county government, they did not need senate consultation. <sup>137</sup>

**C2** 0-4 pts

**Are there laws that assign criminal penalties or civil liability for online activities, particularly those that are protected under international human rights standards?**

**2** / 4

Laws on hate speech and defamation are frequently used to prosecute online critics of the government, though courts have occasionally invalidated such provisions on constitutional grounds.

In May 2021, the High Court invalidated Section 66 of the penal code, which barred the publication of false information, in response to charges brought against blogger Cyprian Nyakundi over controversial social media posts in 2018. The court found that the provision violated constitutional free-expression protections. Section 66 carried a penalty of up to three years' imprisonment, a fine of up to five million shillings (\$40,500), or both. <sup>138</sup>

The Computer Misuse and Cybercrimes Act (CMCA), which was adopted in May 2018 and subsequently challenged in court, threatens to further restrict freedom of expression online. According to the act, anyone who “knowingly publishes information that is false in print, broadcast, data, or over a computer system, that is calculated or results in panic, chaos, or violence among citizens of the Republic,” or which is likely to discredit someone’s reputation, can be sentenced to a fine of as much as five million shillings (\$40,500) and up to 10 years in prison. <sup>139</sup>

Shortly after the law was promulgated, the Bloggers Association of Kenya (BAKE) sued to overturn 26 problematic provisions, <sup>140</sup> which were suspended until the court could hear the case. <sup>141</sup> A High Court judge ultimately dismissed BAKE’s case in February 2020, ruling that the law does not violate freedom of expression and allowing the suspended provisions to take effect. Later that month, BAKE and the Law Society of Kenya appealed the High Court’s ruling to the Court of Appeal. <sup>142</sup> This case has not yet been heard at the end of the coverage period.

In March 2021, a bill was introduced to Parliament that proposed amending the CMCA to prohibit the sharing of pornographic materials, punishable by a fine of up to 20 million shillings (\$162,000), as much as 25 years in prison, or both. The bill would ban any use of a computer to publish, produce, transmit, or store pornography. <sup>143</sup> The bill was yet to undergo its second reading at the end of the coverage period. <sup>144</sup> <sup>145</sup>

In 2017, the High Court struck Section 132 of the penal code on constitutional grounds; the section criminalized “undermining the authority of public officers” and had been used to prosecute both online and offline speech. <sup>146</sup> Section 29 of KICA was separately ruled unconstitutional in 2016. <sup>147</sup> It had penalized bloggers and social media users for disseminating messages deemed “grossly offensive” or to cause “annoyance, inconvenience or needless anxiety to another person,” carrying a fine of up to 50,000 shillings (\$405), three years in prison, or both. <sup>148</sup>

Hate speech is penalized under the NCIA, which was passed in response to widespread ethnic violence following the 2007 general elections. <sup>149</sup> Individuals found guilty of spreading hate speech, which is broadly defined, can face a fine of as much as one million shillings (\$8,100), a prison term of up to three years, or both.

**C3** 0-6 pts

|                                                                                                                                           |            |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <b>Are individuals penalized for online activities, particularly those that are protected under international human rights standards?</b> | <b>4/6</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------|

During the coverage period, individuals were arrested for publishing false information online. Arrests and prosecutions occurred less frequently compared to previous coverage periods.

In March 2023, two journalists with the online investigative media outlet Africa Uncensored were detained by police while interviewing motorcycle taxi drivers during antigovernment protests. They were held for 30 minutes in a police van before being released without charges. <sup>150</sup>

In March 2023, the Directorate of Criminal Investigations (DCI) summoned then interior minister Fred Matiang’i, for spreading false news about an alleged raid of his residence by police officers. <sup>151</sup> His lawyer Danstan Omari was also summoned

by the DCI for his suspected involvement. Kenyan media subsequently repeated the unsubstantiated claims about the raid in their news coverage and were censured by the Media Council for “rejecting accountability” and undermining the credibility of media. <sup>152</sup>

In August 2022 legislator Moses Kuria was also summoned by the DCI over remarks he made on social media insinuating that there was a plot to rig the general election. He was asked to make a formal statement to investigators regarding his claims of election fraud. <sup>153</sup>

In January 2022, during the previous coverage period, a teacher was arrested and charged with cyberharassment and publishing false information after he posted on Facebook that the head of the Teachers Service Commission was dead. <sup>154</sup> The status of his case was unknown at the end of the coverage period.

In August 2021, a businessman and his son were charged under the CMCA for saying that the brother of Mombasa’s governor hired individuals to carry out an attack in a social media post. Authorities alleged that the two knowingly published false information and that the information damaged the governor’s reputation. <sup>155</sup>

In August 2020, Charles Gichuki was arrested and released without charge for publishing a website that tallied the amount of money lost to corruption during then-president Kenyatta’s tenure. <sup>156</sup> The site has since gone offline, but an archived version still exists (see B2). <sup>157</sup>

In March 2021, then KFCB chairman Mutua ordered the arrest of comedian Eric Omondi and 15 cast members of Omondi’s YouTube show *Wife Material*. Omondi was charged with violating the Film and Stage Plays Act, which requires certification from the KFCB to exhibit or distribute films. Omondi and Mutua reached an out-of-court settlement over the charges. Omondi later removed the *Wife Material* videos from YouTube after Mutua demanded he do so (see B2). <sup>158</sup>

**C4** 0-4 pts

**Does the government place restrictions on anonymous communication or encryption?**

**3/4**

Kenyans can freely use encryption tools, but a number of regulations and monitoring systems limit anonymous communication.

Anonymity is compromised by the expanding scope of mandatory SIM-card registration and efforts to track the illicit sale of mobile phones. In March 2022, the CA announced that all unregistered SIM cards would be deactivated by April 2022, and urged individuals with SIM cards more than 10 years old to reregister.

**159** During the reregistration process, authorities collected pictures of identification documents, **160** even though they were not required to do so under the regulation governing the registration of SIM cards. **161** In addition, individuals under the age of 18 were required to present a copy of their birth certificate to register their SIM cards. **162** The government stated that those in possession of unregistered SIM cards would face fines of up to 300,000 shillings (\$2,430), a six-month prison sentence, or both. **163** The deadline for registration was later pushed to October 2022. **164** The SIM cards of subscribers who failed to register by October 15, 2022 were deactivated. **165**

In 2017, Safaricom began keeping records of anyone registering for or renewing a SIM card, in compliance with the existing SIM-card registration requirement. **166** **167** Regulations also grant the communications regulator access to service providers' offices and records without a court order, raising concerns about the lack of judicial oversight. **168**

**C5** 0-6 pts

**Does state surveillance of internet activities infringe on users' right to privacy?**

**2/6**

Article 31 of the 2010 constitution provides for the right to privacy. However, authorities surveil internet activities under laws that enable them to search and seize data on national security grounds, directly infringing on users' privacy rights. The Data Protection Act, 2019 (DPA) leaves room for officials to continue to bypass user consent and access private data for national security reasons (see C6).

In April 2020, the Court of Appeal overturned a 2018 High Court decision, thus permitting the government to implement the Device Management System (DMS).

The DMS is a mechanism for identifying counterfeit and illegal phones, but also gives the CA access to mobile subscriber data including call records. <sup>169</sup> In June 2020, the Law Society of Kenya appealed the case to the Supreme Court over concerns that the DMS would infringe on subscribers' right to privacy. <sup>170</sup> In April 2023, the Supreme Court rejected the petition, allowing the CA to move forward with the implementation of the DMS. <sup>171</sup> The CA has stated that it will only be able to access unique phone identifiers and subscriber numbers, but telecommunication companies like Safaricom have raised concerns that the system would grant the regulator access to other customer data. <sup>172</sup>

In January 2020, a High Court ruling barred the government from proceeding with the implementation of the National Integrated Identity Management System (NIIMS), a biometric registration system, until it developed a comprehensive regulatory framework. The court also prohibited the collection of genetic and satellite-based location data under NIIMS, finding that such collection would violate Article 31 of the constitution. <sup>173</sup>

Despite the ruling, registration activities for the biometric identification cards, better known as Huduma cards, continued. <sup>174</sup> The Huduma Namba Bill was ruled incompatible with the Data Protection Act by the High Court in October 2021, which halted registrations until a data protection impact assessment could be conducted. <sup>175</sup> In July 2022, the National Assembly cancelled a scheduled special sitting to discuss the revised Huduma Namba Bill. <sup>176</sup>

In the wake of the failed Huduma Namba Bill, newly elected president Ruto said the government would learn from the exercise and allocate digital identities to Kenyans by the end of 2023. <sup>177</sup> By March 2023, the budget for the NIIMS was cut by 84 percent, effectively ending the service, <sup>178</sup> while the Ruto administration began to roll out the Unique Personal Identifier (UPI), a new digital register of births and deaths. The government committed to rolling out the UPI by September 2023. <sup>179</sup>

Section 48 of the CMCA allows the authorities to search and seize stored computer data and to collect and intercept data in real time. <sup>180</sup>

KICA prohibits many forms of monitoring and interception of communications, <sup>181</sup> though the Prevention of Terrorism Act, 2012 (PTA) allows authorities to limit

constitutional freedoms, such as the right to privacy, during investigations into terrorism. <sup>182</sup> Amendments to the PTA in 2014 explicitly enabled national security bodies to intercept communications “for the purposes of detecting, deterring, and disrupting terrorism,” <sup>183</sup> though this must be authorized through an interception order from the High Court. <sup>184</sup>

Independent research has revealed various surveillance technologies that authorities or other actors may employ to monitor citizens. A December 2020 investigation by Citizen Lab identified the Kenyan government as a likely customer of Circles, a surveillance company. Circles products allow customers to monitor calls, texts, and cell phone geolocation by exploiting weaknesses in mobile telecommunications infrastructure. <sup>185</sup>

Evidence of unlawful or disproportionate state surveillance has emerged in recent years. According to 2018 research published by Citizen Lab, Kenya is one of 45 countries worldwide where the use of Pegasus, a surveillance software tool developed by the Israeli technology firm NSO Group, has been detected. The spyware has targeted customers of Safaricom and Simbanet, and it is known to be used by governments elsewhere to intrusively monitor journalists, human rights defenders, and political opponents. <sup>186</sup>

In 2017, researchers identified a “middlebox” on a Safaricom network, which led to concerns over potential privacy violations. <sup>187</sup> Safaricom denied using a middlebox, and subsequent tests returned negative results. Researchers concluded the technology was no longer in use.

The British nonprofit organization Privacy International (PI) separately revealed in a 2017 report that Kenyan national security agencies, especially the National Intelligence Service (NIS), have unlawful direct access to communications systems, allowing for the interception of both traffic data and content. <sup>188</sup> Based on interviews, PI found that law enforcement and national security agents have a physical presence in the facilities of telecommunications providers. The report also indicated that intercepted information could be freely shared with other government agencies.

PI also assessed two NIS cybersecurity projects, the Network Early Warning System and the National Intrusion Detection and Prevention System, which aim to

monitor telecommunications traffic for cybersecurity threats. PI raised concerns that the two systems could monitor content as well as traffic, based on internal documents it received. <sup>189</sup> Given the national security framework in which the systems are being implemented, transparency and oversight will be limited.

**C6** 0-6 pts

**Does monitoring and collection of user data by service providers and other technology companies infringe on users' right to privacy?**

**4/6**

Service providers and other technology companies are not usually required to aid the government in monitoring the communications of their users, although at times authorities have reportedly requested their assistance. A data protection law passed in November 2019 offers safeguards for user data but includes broad exemptions that allow the government to sidestep the protections, endangering the right to privacy.

The Data Protection Act (DPA) regulates the collection, processing, storage, use, and disclosure of information relating to individuals. <sup>190</sup> Processing that is “necessary for national security or public interest” is broadly exempted from the law’s protections, opening the door to government abuse. There are also exemptions to limits on data retention if retaining the data is required by law or “reasonably necessary for a lawful purpose.” <sup>191</sup>

The DPA established the Office of the Data Protection Commissioner (ODPC) to oversee implementation, but the entity has not been classified as an independent office under the constitution, raising concerns about its autonomy. <sup>192</sup> In October 2020, Immaculate Kassait, a former IEBC commissioner, was made Kenya’s first data commissioner. <sup>193</sup>

The Data Protection (General) Regulations, 2021, passed in February 2022, operationalize the DPA and set out procedural guidelines for data controllers and data processors. Under the regulations, data controllers and data processors are required to ensure users give consent for their personal data to be used and to process personal data through servers located in Kenya. <sup>194</sup> Draft regulations to implement the DPA, including the Data Protection (General) Regulations, 2021, were previously criticized for inadequately protecting the rights of data subjects and not creating exemptions to data processing requirements for journalists. <sup>195</sup>

Under KICA and the SIM Card Registration Regulations, licensed providers are required to retain registration information on subscribers and SIM cards, and to retain call data records for a period stipulated by the CA. Licensees can be required to disclose customer data when presented with a court order or an act of parliament, or to the CA or law enforcement agencies. **196**

Other laws, like the Preservation of Public Security Act; the Official Secrets Act, 1968 (OSA); the National Intelligence Service Act, 2012; and the PTA limit the privacy of personal data, ostensibly to safeguard national security. **197**

In December 2020, the president signed a law that amended the OSA to require “any person who owns or controls any telecommunications apparatus used for the sending or receipt of any data to or from any place outside Kenya” to provide such data to the government. Such requests may be authorized by the president’s cabinet security, rather than through the courts. Those who refuse risk a one-year prison sentence, a fine of one million shillings (\$8,100), or both. **198** The High Court invalidated the law in October 2020, along with 23 others, for being passed through an unconstitutional procedure; it was reinstated in November 2021 (see C1).

PI has reported that Safaricom routinely supplies data to authorities without a warrant for intelligence purposes. Safaricom claims that it only cooperates when authorities present a court order. **199**

In May 2022, the Kenya Review Authority (KRA) announced that it planned to purchase a software that could scan data in emails, computers, smartphones, and social media accounts to combat tax and financial fraud. **200** Kenyans have protested, saying that the KRA’s monitoring would be intrusive and unconstitutional.

A 2021 study conducted by South African research firm World Wide Worx found that only 36 percent of Kenyan companies were aware of the Data Protection Act. The study found 77 percent of businesses had well-documented data protection policies, though only 56 percent were strictly applying them. **201**

In December 2022, mobile phone reseller OPPO was fined five million shillings (\$40,500) for breaching data laws. **202** This comes after the ODPC began investigating 40 digital lenders after receiving complaints from members of the

public that they had engaged in questionable practices when processing personal data. **203**

As part of the countrywide SIM card registration directive by the Communications Authority in 2021, Safaricom began collecting biometric data in their SIM card registration process. However, after the CA revised its requirements for biometric data, Safaricom continued asking users for more data than was legally required.

**204** After backlash from civil society the telecommunications company dropped biometric data from their SIM card registration requirements, but did not comment on the data it had already collected. **205** Safaricom and the CA also faced a class action suit for requiring subscribers to sign a data privacy agreement that allowed the telecommunications company to collect bank account details.

**206** Safaricom and other businesses are also at risk of facing hefty fines for collecting personal data when users make payments using the “Lipa Na M-Pesa” feature. Currently, when customers pay for goods and services their contact details are revealed, potentially allowing their data to be traded to advertisers and fraudsters. **207**

**C7** 0-5 pts

**Are individuals subject to extralegal intimidation or physical violence by state authorities or any other actor in relation to their online activities?**

**3/5**

Bloggers and internet users have faced increasing intimidation and violence in retaliation for their online activities in recent years. Journalists faced increased physical threats during the August 2022 elections and mass protests that took place in March 2023.

In March 2023, Ngina Kirori, a journalist for NTV Kenya, which broadcasts programming both on television and online, was confronted by a police officer while recording footage of mass protests. The officer damaged her press pass and deleted a video she had taken of police in the area from her phone after grabbing it. **208** More than twenty journalists were injured by police, protesters, or both during the mass protests; some had their equipment stolen or damaged while filming the demonstrations. **209**

In October 2021, Boniface Mwangi accused Machakos County governor Alfred Mutua of ordering the bombing of Mwangi’s house, which was under construction.

Mwangi alleged he was targeted in retaliation for his social media posts about Governor Mutua's personal separation from Lillian Ng'ang'a. Mutua subsequently threatened to sue Mwangi for defamation. **210**

In November 2020, blogger Edgar Obare accused Kenyan police of kidnapping and assaulting him while he was traveling to a hearing; Obare faced charges of unlawfully disclosing personal information online (see C3). **211**

More than a quarter of Kenyan women have experienced some form of online gender-based violence, according to an August 2020 report from Pollicy, a technology consulting firm. **212** In April 2020, Brenda Cherotich, one of the first Kenyans to be publicly identified as a person who recovered from COVID-19, faced extensive online harassment, including the nonconsensual sharing of her private chats and photos. **213** Women in politics encountered especially harsh online harassment during the pandemic, according to a brief from the Kenya ICT Action Network (KICTANet). **214**

During the 2022 election period, at least 43 journalists reported incidents of harassment, most of which involved denying journalists access to polling places. **215**

Female candidates faced rampant online harassment throughout the 2022 elections. During the elections nearly 56 percent of female candidates experienced online violence, compared to 35 percent of male candidates, according to a study from Pollicy published in May 2023. Pollicy also found that 25.7 percent of female candidates on Facebook and 43.1 percent on Twitter experienced sexualized online harassment. **216**

Ordinary users can face retaliation for online activity that impacts their livelihoods. In February 2019, the Machakos County government suspended Alice Kasyoka from practicing medicine after she criticized county officials in a Facebook post. During her suspension, Kasyoka was paid half of her salary. **217**

**C8** 0-3 pts

Are websites, governmental and private entities, service providers, or individual users subject to widespread hacking and other forms of cyberattack?

**1/3**

*Score Change: The score declined from 3 to 1 due to suspected Chinese state sponsorship of hacks on multiple government ministries and suspicions of Kenyan state involvement in the hacking of the opposition presidential candidate's campaign staff in the August 2022 elections.*

Hacking and other forms of cyberattack are a growing problem in Kenya. The National Computer Incident Response Team detected 278 million cyberthreats between July and September 2022, up from 143 million during the previous year.

**218** Financial institutions are frequent targets; however, during the coverage period, technical attacks were reported against government ministries and political figures.

In May 2023, Reuters reported that at least eight government ministries had been infiltrated by a group of hackers based in China with ties to the Chinese government between 2020 and 2022, in a years-long operation to gather information on debts owed by Kenya to China. **219** The office of the president stated that none of the attacks had been successful, and the principal secretary for internal security and national administration referred to the Reuters report as “sponsored propaganda.” **220**

In February 2023, a consortium of investigative journalists reported that an Israel-based hacking and disinformation firm led by Tal Hanan had demonstrated it had hacked the email and Telegram accounts of Dennis Itumbi and Davis Chirchir, two senior members of William Ruto's campaign staff. **221** Through these accounts, Hanan and his team had also gained access to the United Democratic Alliance (UDA)'s internal website for tracking polling results. A local cell provider allegedly cooperated with Hanan's team to facilitate the intrusion, **222** which raised suspicions of state involvement in the attempt to surveil and undermine the Ruto campaign. These attacks on the opposition presidential campaign constituted part of a larger effort to undermine the credibility of Kenya's election results (see B5) and have had continued negative impacts on the peaceful transfer of power in Kenya.

In February 2023, the Kenya Airports Authority (KAA) was the victim of a ransomware attack by the hacking group Medusa. The KAA confirmed the breach but claimed that no sensitive data was stolen. The KAA stated that they did not pay the ransom demanded by the group. **223**

In June 2022, Kaspersky Lab reported on SessionManager, a backdoor that was used to target nongovernmental organizations, government entities, medical firms, and transportation companies. Kaspersky experts found that the backdoor had been used in Kenya, though its targets were not identified. **224**

Under the CMCA, hackers face a fine of up to five million shillings (\$40,500), up to three years in prison, or both for: unauthorized access to, interference with, or interception of data on computer systems; unauthorized disclosure of passwords; and cyberespionage, among other offenses. **225**

## Footnotes

- 1** Simon Kemp, “Digital 2023: Kenya,” Data Reportal, February 13, 2023, <https://datareportal.com/reports/digital-2023-kenya>.
- 2** “Quarterly Sector Statistics Report: Q1 FY2022/2023 (July-September 2022),” Communications Authority of Kenya, November 2022, <https://www.ca.go.ke/wp-content/uploads/2022/11/Sector-Statistics-Report....>
- 3** “Quarterly Sector Statistics Report: Q1 FY 2022/2023 (July-September 2022),” Communications Authority of Kenya, November 2022, <https://www.ca.go.ke/wp-content/uploads/2022/11/Sector-Statistics-Report....>
- 4** “Quarterly Sector Statistics Report: Q4 FY 2021-2022 (April – June 2022),” Communications Authority of Kenya, September 2022, <https://www.ca.go.ke/wp-content/uploads/2022/09/Sector-Statistics-Report....>
- 5** “Worldwide Broadband Speed League 2022,” Cable, accessed March 1, 2023, <https://www.cable.co.uk/broadband/speed/worldwide-speed-league/#regions>.

More footnotes



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Country Facts

Global Freedom Score

52/100      Partly Free

Internet Freedom Score

66/100      Partly Free

Freedom in the World Status

Partly Free

Networks Restricted

No

Social Media Blocked

No

Websites Blocked

No

Pro-government Commentators

Yes

Users Arrested

Yes

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