
DIGITAL RIGHTS IN KENYA

UNIVERSAL PERIODIC REVIEW SUBMISSION SESSION 49

SUBMITTING ORGANISATIONS

KICTANet is a Kenya-based multi-stakeholder Think Tank for people and institutions interested and involved in ICT policy and regulation. The network focuses on reform in the ICT sector, guided by four pillars of Policy Advocacy, Capacity Building, Research, and Stakeholder Engagement. KICTANet is a platform for public participation by being a space for translating the ideas into meaningful proposals for resolution of challenges facing the ICT sector.

The Collaboration on International ICT Policy For East and Southern Africa (CIPESA) works to defend and expand the digital civic space to enable the protection and promotion of human rights and to enhance innovation and sustainable development. With a focus on disparate actors including the private sector, civil society, media, policy makers and multinational institutions, our work aims to engender a free, open and secure internet that advances rights, livelihoods, and democratic governance. CIPESA's work responds to a shortage of information, research, resources and actors consistently working at the nexus of technology, human rights and society. Indeed, CIPESA's establishment in 2004 was in response to the findings of the Louder Voices Report for DFID, which cited the lack of easy, affordable and timely access to information about ICT-related issues and processes as key barriers to effective and inclusive ICT policy making in Africa.

Small Media is a UK-based organisation that works to support the free flow of information in politically closed societies. The non-profit engages in research, advocacy, and training activities to support global advocates to uphold citizens' rights to freedom of expression and access to information. The Uproar programme is a Small Media initiative championing digital rights in over 34 countries across Africa, MENA region and Central Asia through the Universal Periodic Review.



INTRODUCTION

1. As Kenya approaches its Universal Periodic Review (UPR) in January 2025, it is essential to assess the current state of digital rights in the country. This report provides an overview of Kenya's progress and challenges related to digital rights, media freedom, and freedom of expression between 2020 and 2024, focusing on key issues such as internet shutdowns, access to information, censorship of online content, surveillance, privacy and data protection, freedom of opinion and assembly, and media freedom.
2. It also highlights Kenya's adherence to its international obligations under various human rights instruments, including in the implementation of national legal frameworks. It concludes with recommendations aimed at strengthening Kenya's human rights commitments.
3. Kenya has made some strides in promoting digital rights, particularly through the adoption of the Data Protection Act (2019), efforts to improve access to information, and by expanding mobile and internet access. However, there have also been concerning developments, such as heightened surveillance and privacy breaches, increasing restrictions on online speech, rise of disinformation and the use of internet shutdowns to suppress dissent during political protests.
4. The COVID-19 pandemic further intensified these issues, as government measures to control the pandemic often collided with privacy rights and freedom of assembly.
5. The country has been ranked as "Partly Free" in the Freedom of the Net 2023 report, which notes that internet freedom has declined since 2022.¹
6. Kenya has ratified numerous international human rights instruments that obligate the country to uphold freedom of expression, privacy, and media freedom in the digital space. These include: International Covenant on Civil and Political Rights (ICCPR, 1966), African Charter on Human and Peoples' Rights (1981). Kenya is yet to be a party to the African Union Convention on Cyber Security and Personal Data Protection.
7. The Constitution of Kenya,² 2010 guarantees several key rights relevant to digital rights and media freedom, including by making international

¹ Freedom of the Net 2023 report <https://freedomhouse.org/country/kenya/freedom-net/2023>

² Constitution of Kenya, 2010, see http://www.parliament.go.ke/sites/default/files/2023-03/The_Constitution_of_Kenya_2010.pdf

treaties/instruments that Kenya has ratified part of the laws of Kenya. These include Article 31, which guarantees the right to privacy, ensuring that individuals are protected from unreasonable searches and seizure of their property or communications; Article 33 which protects freedom of expression, including the right to seek, receive, and impart information; and Article 35, which ensures the right to access information held by the state or private entities where that information is required for the exercise of another right.

8. As of January 2024, Kenya had 22.71 million internet users, representing an internet penetration rate of 40.8%.³ There were also 66.04 million active cellular mobile connections equivalent to 118.7% of the total population. The country also has 13.05 million active social media user identities, representing 23.5% of the population, while 57.5% of the total internet users base use at least one social media platform. Kenya's population increased from 52.21 million in 2020, to 56.43 million in 2024, with the median age being 19.8 years.⁴
9. The most popular platforms by user numbers are Facebook (13.05 million), TikTok (10.6 million), YouTube (9.79 million), LinkedIn (4.3 million), SnapChat (3.16 million), Instagram (3.05 million), and X (formerly Twitter) (1.87 million). Most institutions at the national and county level have websites, while the government delivers services through the eCitizen Portal.⁵ However, access is not uniform across the country as rural and marginalised areas remain underserved, and high cost of digital devices and internet data bundles as well as limited digital infrastructure remain key barriers to access.

UPDATES FROM THE PREVIOUS REVIEW

10. In the third UPR cycle that took place in January 2020, several recommendations were made to Kenya regarding the protection and promotion of digital rights, freedom of expression, and media freedom.⁶ Kenya

³ Digital 2024: Kenya <https://datareportal.com/reports/digital-2024-kenya#:~:text=The%20state%20of%20digital%20in%20Kenya%20in%202024&text=Kenya%20was%20home%20to%2013.05,percent%20of%20the%20total%20population.>

⁴ Population of Kenya (2024 and historical) <https://www.worldometers.info/world-population/kenya-population/>

⁵ eCitizen Portal www.ecitizen.go.ke

⁶ Matrix of recommendations https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session35/KE/UPR35_Kenya_Recommendations_E.docx

accepted 263 of the 319 recommendations from the 118 state delegations.⁷

11. Some of the key recommendations included: strengthening freedom of expression and taking measures to enhance safety and strengthen independence of the media (Australia, Greece, Uruguay, Czechia, Greece); respect assembly rights and guarantee freedom of association including through operationalising the Public Benefit Organisations Act (Uruguay, France, Norway, Ireland, Tunisia, Norway, Greece, Poland); revise and enact a data protection law that guarantees the rights to privacy and ensures judicial oversight for surveillance (Estonia, Germany); combat hate speech (Mexico and Afghanistan); and implement the Access to Information Act.
12. Between 2020 and 2024, Kenya saw a wave of protests and demonstrations, particularly in response to economic challenges, such as rising cost of living, increasing taxes proposed by the government amidst widespread unemployment and public discontent with poor delivery of government services.
13. These protests were often met with excessive force, arrests, and government crackdowns on organisers and participants. The #OccupyParliament and #RejectFinanceBill2024 protests in June 2024 were particularly notable, as the government not only used physical force to disperse protestors but also imposed a nationwide internet shutdown to limit citizens' ability to organise and communicate.

FREEDOM OF EXPRESSION, OPINION AND THE MEDIA

14. Article 33 of the Constitution guarantees freedom of expression, including the right to seek, receive, and impart information, while Article 34 guarantees the freedom and independence of electronic, print and all other types of media.⁸
15. Kenya is rated as Partly Free in the Freedom House Freedom in the World Report⁹ with a score of 52/100 in 2024, up from 48 in 2020. In 2020, Kenya ranked 69th globally in the Reporters Without Borders' World Press Freedom Index; however, by 2023 this ranking fell dramatically downwards—to 116th

⁷ KNCHR 3rd Cycle Universal Periodic Review (Upr) Mid-Term Report

<https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/midtermreports/nhrismidtermreports/upr-3rd-cycle-mid-term-KNCHR.pdf>

⁸ Constitution of Kenya, 2010, Articles 33 and 34, see

http://www.parliament.go.ke/sites/default/files/2023-03/The_Constitution_of_Kenya_2010.pdf

⁹ Kenya <https://freedomhouse.org/country/kenya>; Kenya <https://freedomhouse.org/country/kenya/freedom-world/2024>

place—reflecting a deteriorating environment for media operations where journalists face increasing threats from both state actors and non-state actors alike.¹⁰

16. Despite constitutional guarantees, between 2020 and 2024, there were numerous incidents of harassment, intimidation, and arbitrary arrests of journalists, particularly those critical of the government. The Media Council of Kenya reported a total of 612 cases of press freedom violations since 2013. In 2021 alone, there were 69 cases, which increased to 104 in 2022, 124 in 2023 and 74 as of September 2024.¹¹
17. Journalists continue to face significant risks when reporting on politically sensitive topics such as corruption, government mismanagement of public funds, handling of COVID-19 pandemic and human rights abuses. Notable incidents include threats made against journalists covering protests against government policies where police have been reported using excessive force against reporters attempting to document events accurately.¹²
18. During the March 2023 and June 2024 protests, several journalists were detained or injured while covering the events.¹³ In March 2023, at least 25 journalists reported being attacked by both protesters and police forces, including being tear-gassed, sprayed with water cannons and equipment being damaged.¹⁴
19. Police have also been criticised for posing as journalists during protests, and for the fatal shooting in October 2023 of Arshad Sharif, a Pakistan journalist who had fled to Kenya to escape persecution.¹⁵ Media outlets that were perceived to be sympathetic to or covering the protests faced warnings and threats of closure or financial penalties, further contributing to a repressive

¹⁰ Kenya <https://rsf.org/en/country/kenya>

¹¹ Press Freedom Violations: Current Status <https://mediacouncil.or.ke/node/445>

¹² The year since Kenyan president's election marked by new hostility towards media <https://rsf.org/en/year-kenyan-president-s-election-marked-new-hostility-towards-media>

¹³ The year since Kenyan president's election marked by new hostility towards media <https://rsf.org/en/year-kenyan-president-s-election-marked-new-hostility-towards-media>; Statement On Safety Of Journalists Covering Protests Over The Finance Bill <https://www.kenyaeditorsguild.org/statement-on-safety-of-journalists-covering-protests-over-the-finance-bill/>

¹⁴ Journalists punched, kicked and tear-gassed: inside 'the darkest month for Kenyan media' <https://reutersinstitute.politics.ox.ac.uk/news/journalists-punched-kicked-and-tear-gassed-inside-darkest-month-kenyan-media>

¹⁵ Light must be shed on Pakistani journalist's murder in Kenya three months ago <https://rsf.org/en/light-must-be-shed-pakistani-journalist-s-murder-kenya-three-months-ago>

media environment.¹⁶

20. There has also been significant hostility against the media, with the Media Council noting that government threats were the main challenge to the media in 2023.¹⁷ For example, in July 2024, the Communications Authority cautioned media houses against broadcasting content surrounding the ongoing anti-government protests and to refrain from perpetuating violence that could lead to widespread civil unrest.¹⁸
21. Consequently, many media outlets avoided live streaming protests in both years. In June 2023, a former Cabinet Secretary referred to one of Kenya's biggest independent media groups, the Nation Media Group as "prostitutes" and accused them of being corrupt and biased. In October 2020, the National Security Advisory Committee issued much criticised guidelines "to monitor, document, and enforce compliance" with media broadcasting laws and social media usage guidance ahead of the 2022 general election.¹⁹
22. The country has several media organisations such as the Media Council of Kenya, the Kenya Editors Guild, Kenya Union of Journalists, and the Media Owners Association to champion the rights of journalists and the media. The Communications Authority regulates broadcasting. However, these institutions face challenges such as limited political independence and resource capacity to promote free and independent media.
23. Overall, these attacks on journalists, as well as threats and arrests have created a climate of self-censorship, limiting the scope of independent reporting and critical journalism. The restrictive environment also undermines freedom of the media as it constricts the ability of journalists to report on matters of public interest without fear of reprisal. They also limit the public's access to accurate and timely information, particularly on issues related to governance, corruption, and human rights abuses.

¹⁶ Kenya's communications regulator warns media houses as protests continue on Thursday <https://techcabal.com/2024/07/18/kenyas-media-houses-warned-against-covering-protests/>

¹⁷ State of the Media Report 2023/2024

https://mediacouncil.or.ke/sites/default/files/downloads/MCK_%20State%20of%20the%20Media%202023%20Survey%20Report.pdf

¹⁸ Communications Authority Cautions Media To Be Responsible In Coverage Of Protests

<https://www.citizen.digital/news/communications-authority-warns-kenyan-media-over-coverage-of-anti-govt-protests-n346101>

¹⁹ Kenya: Freedom in the World 2020 <https://freedomhouse.org/country/kenya/freedom-world/2021>

FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION ONLINE AND OFFLINE

24. The Public Order Act (2012)²⁰ governs public assemblies, protests, and demonstrations. It empowers the state to impose restrictions on gatherings, particularly if the gatherings are deemed a threat to public order.
25. In addition to physical crackdowns, the government increasingly relied on digital surveillance to monitor protest organisers and participants. Activists and human rights defenders reported being surveilled through their digital communications, and several were abducted or arrested for their involvement in organising protests online. Also, the government's use of the Public Order Act to justify restrictions on peaceful protests fueled concerns about the shrinking space for civic engagement and the criminalization of dissent.
26. According to the Kenya National Commission on Human Rights (KNCHR),²¹ as of 16 July 2024, 50 people were reported to have died, 413 injured, 59 abducted, and 682 arbitrarily arrested in relation to the protests countrywide. There were also 42 cases of enforced or involuntary disappearances with 10 bodies recovered in a dumpsite in Mukuru Kwa Njenga and another of Denzel Omondi a student whose body was recovered in a quarry in Juja days after the protest.²²
27. Many organisers of the protests went into hiding due to threats on their lives by unknown persons. In September, the High Court declined to block Nairobi County government from disposing of at least 120 bodies from the Nairobi City Funeral Home as sought by the Law Society of Kenya.²³
28. Similar trends were reported during the *Azimio la Umoja* protests in March 2023, which saw the arrest of at least 300 protestors and extra-judicial killing of at least 30 people across the country.²⁴ Also, 20 media workers were injured or arrested by police during the protests. The government has frequently

²⁰ Public Order Act, Cap 56, see <https://www.nis.go.ke/downloads/Public%20Order%20Act,%20Cap%2056.pdf>

²¹ Statement on Mukuru Murders and Updates on the Anti-Finance Bill Protests <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1201/Statement-on-Mukuru-Murders-and-Updates-on-the-Anti-Finance-Bill-Protests>

²² Denzel Omondi Murder: Calls For Justice As Slain JKUAT Student Is Laid To Rest <https://www.citizen.digital/news/denzel-omondi-murder-calls-for-justice-as-slain-jkuat-student-is-laid-to-rest-n346402>

²³ Court rejects LSK bid to block Nairobi City from disposing of 120 unclaimed bodies <https://nation.africa/kenya/news/court-rejects-lsk-bid-to-block-nairobi-city-from-disposing-of-120-unclaimed-bodies-4750992>

²⁴ Kenya <https://freedomhouse.org/country/kenya/freedom-world/2024>

resorted to excessive force, including surveillance and arrests, to suppress peaceful protests, particularly those critical of government policies.

29. During the 2024 protests, various unions such as Kenya Union of Journalists, Bloggers Association of Kenya, Kenya Medical Practitioners Pharmacists and Dentists Union, the Kenya Medical Association, Missing Voices Alliance and the Police Reforms Working Group, and Law Society of Kenya (LSK) collaborated to defend the rights of their members and the general public.²⁵ In particular, the Law Society was instrumental in following up and securing the release of detained protestors.
30. Concerningly, police excesses including use of force, extra-judicial killings and arbitrary arrests and detentions to suppress protests are yet to be fully investigated, or responsible officials held to account. There is also widespread concern about the criminalization of online organising. In particular, the Assembly and Demonstrations Bill, 2024²⁶ has been criticised for creating the offence of “unlawful assembly” with penalties and fines for participating in such assemblies while also granting police excessive powers to impose various conditions on organisers of protests.²⁷
31. The government’s crackdown on protests, both through physical force and digital repression, has significantly limited citizens’ ability to express their opinions and participate in peaceful assemblies. The use of surveillance to target and abduct protest organisers has created a climate of fear, discouraging citizens from exercising their right to organise online and participate in demonstrations.

INTERNET SHUTDOWNS AND CENSORSHIP IN KENYA

32. Internet shutdowns and restrictions on digital platforms have become a growing concern in Kenya. Despite calls from the international community and local civil society organisations, the Kenyan government implemented several significant restrictions on online communication between 2020 and 2024.

²⁵ KMPDU, KMA, Missing Voices Alliance, PRWG-K, BAKE, KUJ Award Certificate of Appreciation to all Law Society of Kenya Advocates <https://www.amnestykenya.org/kmpdu-kma-missing-voices-alliance-prwg-k-bake-kuj-award-certificate-of-appreciation-to-all-law-society-of-kenya-advocates/>

²⁶ The Assembly and Demonstrations Bill, 2024 <http://www.parliament.go.ke/sites/default/files/2024-06/THE%20ASSEMBLY%20AND%20DEMONSTRATION%20BILL%2C2024.pdf>

²⁷ Joint Memorandum on the Assembly and Demonstrations Bill, 2024 <https://www.kictanet.or.ke/?mdocs-file=50336>

33. In July 2022, the National Cohesion and Integration Commission issued a statement threatening to suspend Facebook (now Meta) operations if the platform failed to take steps to eliminate hate speech, incitement, misinformation and disinformation from its platform within seven days of the notice.²⁸ This was following a report in June 2022 by Global Witness stating that Facebook had failed to detect inflammatory and violent hate speech ads in Kenya.²⁹ During the election period, the government provided assurances that the internet or social media applications would not be blocked, and no such blockage was reported.³⁰
34. In November 2023, the Kenyan authorities blocked access to Telegram to prevent the use of the platform for exam cheating during the national secondary school examinations. While the stated purpose was ostensibly to maintain the integrity of the exams, the decision had a far-reaching impact on communication, civil liberties and the economy. It is estimated that the disruptions cost Kenya approximately KES four billion (USD 27.02 million).³¹
35. In June 2024, Kenya implemented its first nationwide total internet shutdown during the peak of the #RejectFinanceBill2024 protests in response to increased taxation measures in the Finance Bill 2024.³² Despite a public notice from the Communications Authority of Kenya (CA) that no shutdown was planned, the disruptions contradicted these statements.
36. The timing raised suspicions about government involvement aimed at stifling dissent to prevent the coordination of the nationwide protests, which were organised through social media platforms like TikTok, X, WhatsApp, and Telegram. The shutdown severely impacted not only access to information, political and digital rights, but also restricted access to essential services across Kenya, Uganda, Burundi and Rwanda such as mobile payments, healthcare, and education, which rely on internet connectivity.

²⁸ Kenya orders Meta's Facebook to tackle hate speech or face suspension <https://www.reuters.com/world/africa/kenyas-cohesion-watchdog-gives-meta-7-days-comply-with-regulations-2022-07-29/>

²⁹ Facebook approves ads calling for ethnic violence in the lead up to a tense Kenyan election <https://www.globalwitness.org/en/press-releases/facebook-approves-ads-calling-ethnic-violence-lead-tense-kenyan-election/>

³⁰ Matiang'i: Kenya will not shut down internet during 2022 elections <https://nairobinews.nation.africa/matiangi-kenya-will-not-shut-down-internet-during-2022-elections/>

³¹ Kenya lost Sh4bn in Telegram shutdown <https://nation.africa/kenya/business/kenya-lost-sh4bn-in-telegram-shutdown--4489996>

³² Kenya Internet Disrupted Amidst Protests <https://pulse.internetsociety.org/blog/kenya-internet-disrupted-amidst-protests>

37. Local and international human rights organisations, including Access Now, CIPESA and KICTANet, condemned the shutdown as a disproportionate response to peaceful protests and urged the government to avoid using internet disruptions as a tool for political control.³³ Consequently, the internet disruptions incidents underscore the violations of international and constitutional obligations to protect digital rights. The fact that the restrictions were implemented arbitrarily, in disregard of the legal framework and in the absence of judicial oversight is problematic. Kenya has no specific law that enables the government to shut down the internet or block specific apps.
38. Misinformation and disinformation remain a key problem in the country. During the 2022 general election period, disinformation surged across social media platforms, exacerbating tensions in an already polarised political environment.³⁴
39. Disinformation narratives largely funded by political actors explored the divisions around ideological, ethnic, economic, and demographic lines while harnessing the power of social media. Studies³⁵ have shown that disinformation in Kenya is a sophisticated and lucrative commercial enterprise driven by political, economic and personal interests.³⁶ In 2020, it was reported that some of the bloggers for hire, “36 bloggers” were associated with the Executive Office of the President.³⁷ Perpetrators such as paid influencers rely on text and manipulated video, photos and audio clips, whose persuasiveness could be enhanced with the use of generative artificial intelligence (Gen-AI).
40. Social media platforms such as Facebook, Instagram, TikTok and X, have been criticised for their lax enforcement of their guidelines to contain harmful content on their platforms, especially on content moderation practices.³⁸ Meta

³³ Urgent Concerns Regarding Internet Shutdown in Kenya during the #RejectFinanceBill2024 demonstrations <https://www.kictanet.or.ke/urgent-concerns-regarding-internet-shutdown-in-kenya-during-the-rejectfinancebill2024-demonstrations/>; Joint Statement – A Call Against Internet Shutdowns in Kenya during June 2024 demonstrations <https://www.kictanet.or.ke/joint-statement-a-call-against-internet-shutdowns-in-kenya-during-june-2024-demonstrations/>; Authorities in Kenya must immediately restore internet access and #KeepItOn throughout protests and unrest <https://www.accessnow.org/press-release/kenya-protests-internet-shutdown/>

³⁴ KICTANet Tech Election Observer report <https://www.kictanet.or.ke/kictanet-tech-election-observer-report/>

³⁵ Disinformation in Kenya's Political Sphere: Actors, Pathways and Effects <https://cipesa.org/wp-content/files/Disinformation-in-Kenyas-Political-Sphere-Actors-Pathways-and-Effects.pdf>

³⁶ Fellow Research: Inside the Shadowy World of Disinformation-for-hire in Kenya <https://foundation.mozilla.org/en/blog/fellow-research-inside-the-shadowy-world-of-disinformation-for-hire-in-kenya/>

³⁷ Freedom of the Net 2021: Kenya <https://freedomhouse.org/country/kenya/freedom-net/2020>

³⁸ Disinformation in Kenya's Political Sphere: Actors, Pathways and Effects <https://cipesa.org/wp-content/files/Disinformation-in-Kenyas-Political-Sphere-Actors-Pathways-and-Effects.pdf>

Platforms Inc in particular has been sued in Kenya over the alleged poor working conditions of content moderators based in Kenya.³⁹

41. In response, the government increased its efforts to combat false information by issuing warnings and developing guidelines.⁴⁰ However, these efforts have raised concerns about censorship, particularly as the government has used disinformation as a pretext to suppress legitimate political expression. In particular, it used the Computer Misuse and Cybercrimes Act (2018) (CMCA)⁴¹ as a censorship tool to target government critics, bloggers, and political activists. The law had been challenged by the Bloggers Association of Kenya (BAKE) resulting in the temporary suspension of 26 of its provisions in 2018, but the suspension was lifted in February 2020 by the High Court.⁴²
42. Section 22 of the law prohibits the publication of false publications, and carries a penalty of not more than five million shillings (USD 38,720) or imprisonment not exceeding two years, or both. Section 23 prohibits the publication of false information and carries a penalty of no more than USD 38,720 or imprisonment not exceeding 10 years, or both. The broad provisions of the CMCA have been used disproportionately to target government critics, bloggers, journalists, and activists who criticise government policies or actions. Notably, other forms of harmful speech, such as incitement by political leaders, go unpunished.
43. During the COVID-19 pandemic period, authorities between March and April 2020, arrested four individuals and charged them under section 22 and 23 of the CMCA.⁴³ For example, Elijah Kitonyo, was arrested for publishing claims on Twitter (X) that the government was telling lies about the COVID-19 situation in the country.⁴⁴ Robert Alai was arrested and charged under section 22(1) of the CMCA for his Twitter post which claimed that two people had died of

³⁹ Kenya court finds Meta can be sued over moderator layoffs <https://www.reuters.com/world/africa/kenya-court-rules-meta-can-be-sued-over-layoffs-by-contractor-2024-09-20/>

⁴⁰ Guidelines On Prevention Of Dissemination Of Undesirable Bulk And Premium Rate Political Messages And Political Social Media Content Via Electronic Communications Networks July 2017 <https://www.ca.go.ke/sites/default/files/2023-06/Guidelines-on-Prevention-of-Dissemination-of-Undesirable-Bulk-and-Premium-Rate-Political-Messages-and-Political-Social-Media-Content-Via-Electronic-Networks-1.pdf>

⁴¹ CMCA, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ComputerMisuseandCybercrimesActNo5of2018.pdf>

⁴² Court dismisses bloggers' cybercrime law case <https://nation.africa/kenya/news/Court-dismisses-bloggers-case-challenging-cybercrime-law/1056-5462136-51snt7/index.html>

⁴³ State of Internet Freedom in Africa, 2020, <https://cipesa.org/wp-content/files/The-State-of-Internet-Freedom-in-Africa-2020-Report.pdf>

⁴⁴ DCI arrests man over COVID-19 tweet, <https://www.nation.co.ke/news/DCI-arrests-man-over-COVID-19-tweet/1056-5492720-bgpj5kz/index.html>

COVID-19 in Mombasa.⁴⁵ Likewise, John Kiarie, a Member of Parliament, was detained over his tweets about mandatory quarantine measures imposed by the government.⁴⁶ Also, blogger Cyprian Nyakundi was detained over his posts on Twitter.⁴⁷

44. During the period, the Cabinet Secretary for Health issued various warnings against misinformation about the virus and threatened arrests.⁴⁸ According to the Bloggers Association, more than 60 bloggers were arrested in 2020 alone.⁴⁹
45. In May 2020, the Kenyan Film Classification Board (KFCB) complained to YouTube about a song "Soko" by the Gengetone group Ethic, stating that it promoted rape, prostitution, and pedophilia.⁵⁰ The music video was subsequently removed from YouTube and a revised "clean" version uploaded.⁵¹ In March 2021, the board arrested comedian, Eric Omondi and some of his cast members and ordered him to take down episodes of his YouTube show "Wife Material," terming them pornographic and in violation of the Films and Stage Plays Act.⁵² Censorship of online content undermines citizens' ability to engage in political discourse and participate fully in democratic processes.
46. The fear of reprisals has led some journalists and media organisations to self-censor their reporting on sensitive topics like corruption or human rights abuses out of concern for their safety or job security. Civil society organisations have called for a balanced approach to regulating online

⁴⁵ Blogger Alai to be charged over alarming coronavirus post, <https://www.nation.co.ke/kenya/news/blogger-alai-to-be-charged-over-alarming-coronavirus-post--280580>

⁴⁶ MP John Kiarie grilled at DCI office over fake coronavirus tweet, <https://citizentv.co.ke/news/cs-kagwe-blasts-dagoretti-south-mp-john-kiarie-over-fake-7000-kenyans-in-quarantine-tweet-328364/>

⁴⁷ Police hold blogger Nyakundi over COVID-19 post, <https://www.nation.co.ke/kenya/news/police-hold-blogger-nyakundi-over-COVID-19-twitter-post-281064>

⁴⁸ Police hold blogger Nyakundi over COVID-19 Twitter post, <https://www.nation.co.ke/kenya/news/police-hold-blogger-nyakundi-over-COVID-19-twitter-post-281064>

⁴⁹ 60 bloggers arrested in Kenya this year - report <https://nation.africa/kenya/news/60-bloggers-arrested-in-kenya-this-year-report-332512>

⁵⁰ Ezekiel Mutua speaks out on Ethic's new song 'Soko' <https://www.standardmedia.co.ke/ureport/article/2001368587/ezekiel-mutua-speaks-out-on-ethic-s-new-song-soko>

⁵¹ Ethic - Soko (Official Video) <https://www.youtube.com/watch?v=K8AB9RuGasw>

⁵² Kenya: Don't use the censorship law to prosecute comedian Eric Omondi <https://www.article19.org/resources/kenya-dont-use-the-censorship-law-to-prosecute-comedian-eric-omondi/>

content, arguing that measures to combat disinformation must not infringe on the right to freedom of expression.

47. The arrest of bloggers and activists under the CMCA for sharing political opinions or criticising government policies has further fueled concerns about the misuse of the law to stifle dissent. On a positive note, several organisations have embarked on conducting fact-checking training to combat misinformation and disinformation. Several organisations have also formed coalitions, such as the National Coalition on Freedom of Expression and Content Moderation in Kenya (FECOMO).⁵³

ACCESS TO INFORMATION

48. Article 35 of the Constitution guarantees the right to access information held by the state or private entities where that information is required for the exercise of another right. The Access to Information Act (2016) further provides a legal framework for exercising the right to information in Kenya.
49. Kenya is ranked 21 out of 140 countries in the Global Right to Information Rating.⁵⁴ However, the implementation of the Access to Information law has been inconsistent and there is still widespread secrecy especially around major government projects.
50. Public institutions often delay or outrightly refuse to provide requested information such as on the Standard Gauge Railway (SGR),⁵⁵ Nairobi Expressway⁵⁶ or deals with Adani Group.⁵⁷ Many agencies cite national security or political sensitivity to withhold information, and weak institutional accountability exacerbates these delays.
51. Additionally, many citizens face significant bureaucratic hurdles and resistance from officials which hinder the timely access and proactive release of critical information, especially regarding corruption and government spending. Public

⁵³ FECOMO www.fecomo.org

⁵⁴ Global Right to Information Rating <https://www.rti-rating.org/country-data/>; The index analyses and measures the strength of legal frameworks based on the right of access, scope, requesting procedures, exceptions and refusals, appeals, sanctions and promotion measures.

⁵⁵ Court orders state to disclose secret Sh450bn SGR contract <https://www.businessdailyafrica.com/bd/economy/kenyan-court-orders-state-to-disclose-secret-sgr-deal-3814666>

⁵⁶ Budget experts want Nairobi expressway deal disclosed <https://www.the-star.co.ke/news/2021-09-17-budget-experts-want-nairobi-expressway-deal-disclosed>

⁵⁷ Senators Angered As CS Chirchir Declines To Provide JKIA-Adani Deal Documents <https://www.citizen.digital/news/senators-angered-as-cs-chirchir-declines-to-provide-jkia-adani-deal-documents-n349403>

institutions, especially at the County level, struggle with record-keeping as the systems are not digitised, leading to delays in information retrieval and sharing. Underfunding and non-investment in comprehensive information systems further impedes access to information.

52. Notably, the government commitment to digitise 5,000 services via the eCitizen portal has provided an opportunity to streamline service delivery. Further, during the COVID-19 pandemic, the government provided timely and accurate information, including regular updates and reports through online platforms such as the Ministry of Health websites and social media handles and offline platforms such as TV and radio.⁵⁸
53. However, the shift toward digitising government services has exposed Kenya's deep digital divide, particularly affecting rural areas, women, youth, elderly and persons with disabilities. This divide was exacerbated during the COVID-19 pandemic (2020 - 2021), as in-person services were suspended and many government services moved online without adequate consideration of the digital divide.
54. Whereas mobile and internet access is growing, rural and marginalised areas lack internet access, adequate infrastructure, and digital literacy which prevent groups in those areas from accessing critical information about government policies, health services, and social welfare programs, as they lack reliable internet access or digital literacy.
55. Kenya established a Universal Service Fund in 2009,⁵⁹ to support widespread access to ICT services, promote capacity building and innovation in ICT services in the country. The Fund has supported voice infrastructure projects in 179 sub-locations, broadband connections to 884 public secondary schools, e-Resource centres in 56 public libraries, and the digitisation of education content. However, the fund has been criticised for underperformance for accumulating KES 18.2 billion as of June 2023, which remains unspent thus limiting planned activities.⁶⁰

⁵⁸ State of Internet Freedom in Africa, 2020, <https://cipesa.org/wp-content/files/The-State-of-Internet-Freedom-in-Africa-2020-Report.pdf>

⁵⁹ Universal Access Overview <https://www.ca.go.ke/universal-access-overview>

⁶⁰ Report of the Auditor-General on Communication Authority of Kenya Universal Service Fund for the Year Ended 30 June 2023 <http://libraryir.parliament.go.ke/handle/123456789/25597>

PRIVACY AND DATA PROTECTION

56. Article 31 of the constitution guarantees the right to privacy, ensuring that individuals are protected from unreasonable searches and seizure of their property or communications. The enactment of the Data Protection Act (2019) was a milestone for Kenya in safeguarding individuals' privacy rights.⁶¹
57. The law established the Office of the Data Protection Commissioner (ODPC), tasked with regulating the collection, storage, and use of personal data. The office has taken various steps to enforce the act including enhancing its capacity, stakeholder engagement, developing regulations and issuing determinations and fines for non-compliance. However, despite this progress, enforcement remains a challenge such as budgetary constraints of the ODPC, significant concerns with the data handling practices of public sector entities and in the financial services sector, weak regulator coordination and low public awareness on privacy rights.⁶²
58. State surveillance in Kenya has expanded significantly in recent years, with the government investing in sophisticated digital tools to monitor citizens under the justification of maintaining national security and public safety. This is particularly concerning in counter-terrorism operations and the intelligence space, which continue without adequate oversight, as national security exemption exists under section 51 of the Data Protection Act.⁶³
59. The state is yet to appoint members of the Intelligence Service Complaints Board despite a High Court order⁶⁴ to do so and more than a decade since the civilian oversight body was established under the National Intelligence Service Act (2012).⁶⁵
60. Another significant development was the controversial rollout of the *Huduma Namba* (National Integrated Identity Management System) in 2019.⁶⁶ One of

⁶¹ Data Protection Act (2019) http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct_No24of2019.pdf

⁶² Five Years of Kenya's Data Protection Act: Reflections and Considerations for the Future <https://www.kictanet.or.ke/?mdocs-file=49655>

⁶³ Surveillance laws and technologies used in countering terrorism and their potential impact on the civic spaces in Kenya <https://www.kictanet.or.ke/?mdocs-file=49126>

⁶⁴ Katiba Institute v Attorney General & 3 others; Kenya National Commission on Human Rights (Interested Party) [2019] eKLR <http://kenyalaw.org/caselaw/cases/view/186822/>

⁶⁵ Civilian team to keep an eye on spy agency <https://www.standardmedia.co.ke/nairobi/article/2001358039/civilian-team-to-keep-an-eye-on-nis>

⁶⁶ Implementing Huduma Namba: Challenges and Prospects <https://www.kictanet.or.ke/?mdocs-file=42661>; Huduma Namba - Time to Get it Right <https://www.kictanet.or.ke/?mdocs-file=42680>; Digital Identification Law in Kenya: The State of Play <https://www.kictanet.or.ke/?mdocs-file=42671>

the most notable issues related to data protection has been the rollout of the *Huduma Namba* system, which aims to create a centralised digital identity for all Kenyans, and runs parallel to the national identity database.

61. Although the government claims it is designed to improve access to government services, it has faced legal challenges over concerns that it is exclusionary especially for marginalised communities, could be used for state surveillance, has inadequate safeguards in place to protect citizens' personal data such as failing to undertake privacy impact assessments and limited public participation in the exercise.
62. The High Court's 2021 ruling temporarily suspended its rollout⁶⁷ due to these concerns. The new administration subsequently resumed implementation of the *Huduma Namba* rebranding it as *Maisha Namba* in November 2023, but has still failed to adequately address stakeholder concerns. Consequently, a new case was filed in December 2023.⁶⁸
63. The COVID-19 pandemic increased the scope of state surveillance, as the government adopted various restrictive measures including the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 that provided for contact tracing.⁶⁹ The government also deployed contact tracing apps and used mobile phone data to track individuals' movements and enforce quarantine measures.⁷⁰
64. Although these measures and tools were expedient for public health purposes, they did not comply with privacy and international standards, were not subjected to adequate oversight as the Office of the Data Protection Commission (ODPC) was not yet in place and were not transparent or accountable.⁷¹
65. In March 2022, the Communications Authority issued a public notice stating that all unregistered SIM-cards would be deactivated by the end of April 2022,

⁶⁷ High Court declares Huduma Namba illegal <https://www.businessdailyafrica.com/bd/news/high-court-declares-huduma-namba-illegal-3582926>

⁶⁸ Haki na Sheria Initiative challenges Maisha Namba in court <https://www.kictanet.or.ke/haki-na-sheria-initiative-challenges-maisha-namba-in-court/>

⁶⁹ Ministry of Health (2020) Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020; <https://www.kenyachamber.or.ke/wp-content/uploads/2020/04/COVID-19RULES.pdf>

⁷⁰ State of Internet Freedom in Africa, 2020, <https://cipesa.org/wp-content/files/The-State-of-Internet-Freedom-in-Africa-2020-Report.pdf>

⁷¹ Unseen Eyes, Unheard Stories: Surveillance, data protection, and freedom of expression in Kenya and Uganda during COVID-19 <https://www.kictanet.or.ke/?mdocs-file=43606>

but was later extended to October 2022.⁷² During the registration process, Safaricom Plc, the largest mobile network in the country was sued for collecting pictures of subscribers, despite that not being a requirement under the Kenya Information and Communication (Registration of SIM cards) Regulations 2015.⁷³

66. In August 2023, there were reports that over 350,000 Kenyans enrolled on Worldcoin (Tools for Humanity), a cryptocurrency company that was collecting iris data and paying users a token of KES 7,000 (USD 54).⁷⁴ The government suspended the operations of the company, which was founded by OpenAI boss Sam Altman and had been operating in Kenya for a year.⁷⁵ The Office of the Data Protection Commission (ODPC) subsequently obtained an injunction against the company from operating in Kenya and preservation order of the personal data it had collected in Kenya between April 2022 and August 2023.⁷⁶
67. In June 2024, it was reported that the company would resume operations after the Director of Public Prosecutions dropped its case against the company.⁷⁷ It remains unclear whether the concerns about the company's operations and threats to privacy will be addressed. The incident raised concerns regarding the capacity of the ODPC around data collection in the digital age.
68. The government continues to implement Integrated Command and Control System (ICCS) , a network of CCTV cameras with facial recognition technology in major cities, including Nairobi and Mombasa.⁷⁸ While these measures have been promoted as a way to reduce crime, they have raised significant privacy concerns. Also, following numerous legal challenges, the Court of Appeal and the Supreme Court in April 2020 and in April 2023, respectively, allowed the

⁷² Kenya stands firm on SIM registration deadline

https://www.connectingafrica.com/author.asp?section_id=761&doc_id=781111#:~:text=The%20SIM%20registration%20process%20was, and%20other%20mobile%20money%20services. SIM card registration extended by six months https://www.the-star.co.ke/news/2022-04-15-sim-card-registration-extended-by-six-months#google_vignette

⁷³ LSK wants Safaricom compelled to delete subscribers photos https://www.the-star.co.ke/news/2022-04-19-lsk-wants-safaricom-compelled-to-delete-subscribers-photos#google_vignette

⁷⁴ Kenya suspends Worldcoin cryptocurrency, data protection probe <https://www.africanews.com/2023/08/02/kenya-suspends-worldcoin-cryptocurrency-data-protection-probe/#:~:text=On%20Tuesday%2C%20in%20the%20capital,immediately%20resold%20their%20%22tokens%22.>

⁷⁵ Worldcoin suspended in Kenya as thousands queue for free money <https://www.bbc.com/news/world-africa-66383325>

⁷⁶ Miscellaneous Criminal Application E315 of 2023 <https://kenyalaw.org/caselaw/cases/view/278706/>

⁷⁷ Worldcoin to resume Kenya operations after police drop investigation <https://www.reuters.com/world/africa/worldcoin-resume-kenya-operations-after-police-drop-investigation-2024-06-20/>

⁷⁸ Kenyan police launch facial recognition on urban CCTV network <https://www.biometricupdate.com/201809/kenyan-police-launch-facial-recognition-on-urban-cctv-network#:~:text=Kenya's%20National%20Police%20Service%20; Surveillance laws and technologies used in countering terrorism and their potential impact on the civic spaces in Kenya> <https://www.kictanet.or.ke/?mdocs-file=49126>

Communications Authority to implement the controversial Device Management System which enables the authority to access mobile subscriber data, including call records despite fears that it would infringe subscribers privacy.⁷⁹

69. More recently, there have been widespread concerns regarding the handling of health data following the transition to the Social Health Insurance Fund (SHIF) which replaces the National Health Insurance Fund. Many Kenyans were enrolled to the new Fund without notice⁸⁰ even as questions remain about whether a data protection impact assessment was conducted, and the use of automated decision-making in determining household contributions to the fund.⁸¹
70. The government in August ordered all school-going children to be registered with the fund before opening dates in October.⁸² The implementation of the new fund has been challenged before the High Court, which found some of the provisions of its enabling law unconstitutional, although the decision was stayed by the Court of Appeal in October 2024.⁸³
71. Human rights organisations have continuously raised alarms about the data breaches and the misuse of personal data by both public and private entities which threaten citizens' right to privacy, particularly as the adoption of digital systems and services by the government become more prevalent. Moreover, the expansion of surveillance technologies, particularly without adequate oversight, poses a significant threat to individuals' right to privacy. Hence, there is a need to strengthen oversight of data processing operations of state and private entities.

RECOMMENDATIONS

While Kenya has made some progress in improving its legal frameworks for digital rights, data protection, and access to information, significant challenges remain in the

⁷⁹ Freedom of the Net 2021: Kenya <https://freedomhouse.org/country/kenya/freedom-net/2020>; Freedom of the Net 2023: Kenya <https://freedomhouse.org/country/kenya/freedom-net/2023>

⁸⁰ Enrolling Kenyans From NHIF To SHIF Without Consent Is Legal – MoH <https://posts.kictanet.or.ke/enrolling-kenyans-from-nhif-to-shif-without-consent-is-legal-moh-10/>

⁸¹ Kenyan Citizen Questions Transparency In SHIF Operations https://www.capitalfm.co.ke/business/2024/08/kenyan-citizen-questions-transparency-in-shif-operations/#google_vignette

⁸² Gov't Orders All Students To Register For SHIF Before Schools Re-Open <https://www.citizen.digital/news/govt-orders-all-students-to-register-for-shif-before-schools-re-open-n348224>

⁸³ Court of Appeal Greenlights Operationalisation of SHIF <https://aln.africa/insight/court-of-appeal-greenlights-operationalisation-of-shif/>

areas of internet freedom, media freedom, censorship, and surveillance. The COVID-19 pandemic and subsequent political unrest have further highlighted the government's tendency to use digital tools for repression, often at the expense of fundamental human rights. We therefore recommend that the government of Kenya:

72. **Prevent Internet Shutdowns:** Enact clear legal safeguards to prevent arbitrary internet shutdowns and restrictions on communication platforms, particularly during protests and elections. The government should commit to maintaining open and secure internet access in accordance with international human rights standards.
73. **Protect Media Freedom:** The government should strengthen legal protections for journalists and media outlets online and offline and take concrete steps to end impunity for attacks, harassment, arbitrary arrests, and the intimidation of critical voices in the media. The government should ensure that journalists and media outlets can independently report on matters of public interest without fear of reprisal.
74. **Guarantee the right to peaceful protests and assembly both online and offline and hold to account all those found in violation of these rights.**
75. **Strengthen Access to Information:** Improve the implementation of the Access to Information Act by ensuring timely responses to information requests, particularly in relation to the management of public funds and government projects. The government including at the county level should continue to invest in the digitization of public records to facilitate transparency and accountability.
76. **Amend the Computer Misuse and Cybercrimes Act:** The Act should be amended to narrow its scope and ensure that response measures comply with the three-part test and the law is not used to censor or suppress freedom of expression or opinion, and to target bloggers, journalists or government critics. The government should also invest in media information literacy and digital literacy.
77. **Enhance Data Protection Enforcement:** Strengthen the capacity of the Office of the Data Protection Commissioner to ensure comprehensive enforcement of the Data Protection Act across both public and private sectors. The government should also ensure that the Maisha Namba digital identity systems and other government digital initiatives are implemented with

adequate safeguards to protect citizens' personal data. The government should also immediately constitute the Intelligence Service Complaints Board to enhance oversight of the National Intelligence Service. Judicial oversight should be strengthened to prevent the misuse of personal data and surveillance tools.