Freedom of the Press 2014 - Kenya

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2014 Scores

Press Status: Partly Free
Press Freedom Score: 57
Legal Environment: 2
Political Environment: 23
Economic Environment: 17

Despite robust constitutional protections for freedom of expression, Kenya's Parliament passed some of the most repressive media legislation in the country's 50-year history in 2013. Threats and attacks against journalists rose during the year, in part due to press coverage of major events such as the terrorist attack at Westgate Mall in Nairobi. Fears of a repeat of 2007-08 postelection violence following the March 2013 general elections prompted government restrictions on election coverage as well as self-censorship on the part of media professionals.

Kenya's 2010 constitution was widely praised for expanding freedoms of expression and of the press, specifically by prohibiting the state from interfering with the editorial independence of individual journalists and both state-owned and private media outlets. The constitution also binds Kenya to a series of international and regional legal instruments governing free expression, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. While the constitution does contain potential curbs on press freedom with regard to privacy, incitement, hate speech, and antigovernment propaganda in times of war, they are not as severe as those in the previous charter.

The progressive constitution appeared to conflict with two restrictive laws passed in December. The Kenya Information and Communication (Amendment) Act (KICA) and the Media Council Act threaten to silence critical and investigative reporting through new regulatory bodies and the possibility of heavy fines. Among other provisions, the laws create a government-appointed Communication and Multimedia Appeals Tribunal with the power to hear appeals on complaints initially handled by the statutory Media Council of Kenya. The tribunal would be authorized to withdraw media accreditation and seize any property or other assets to cover fiscal penalties. Individual journalists face fines of up to 500,000 shillings ($5,750), and media companies up to 20 million shillings ($230,000), if they are found in breach of a government-dictated code of conduct, to be drafted by legislators. The KICA allows the tribunal to launch investigations on the basis of anonymous complaints. Another entity created by the new law, the Communications Authority of Kenya, will replace the Communications Commission of Kenya as the broadcast and online media regulator, responsible for tasks including licensing and frequency allocation. That provision of the KICA was widely criticized for giving the communications secretary and the president the power to appoint the authority's board and chairperson without stakeholder input. Kenyan journalists expressed concerns that the new legislation could curtail critical and investigative reporting and induce self-censorship, and vowed to file a constitutional challenge against both laws through the High Court.

Although rarely used, several anachronistic laws remained on the books in 2013. The 1967 Preservation of Public Security Act gives the president sweeping powers to censor, control, or prohibit information that is deemed a security risk. The majority of libel and defamation cases are tried under civil law, but defamation is still a criminal offense under the penal code. Observers argue that the mere possibility of criminal defamation charges is often used to intimidate journalists. In May, newly elected deputy president William Ruto threatened to sue the *Sunday Nation* for defamation over a story about his use of a luxury private jet to visit several African countries.

The Information Ministry's 2007 draft freedom of information bill has yet to be presented to Parliament, but access to information improved with the passage of the 2010 constitution. New rights constitutionally guaranteed to the media effectively weakened laws such as the Official Secrets Act, which prevented the release of information on national security grounds.

Kenya's leading media outlets, especially in the print sector, are often critical of politicians and government actions. They remain pluralistic, rigorous, and bold in their reporting, although they also frequently pander to the interests of major advertisers and influential politicians. This was particularly apparent in the run-up to the March 2013 general elections, as media owners aligned themselves with certain political personalities. The concentration of media outlets in the hands of a small number of owners, often with strong political affiliations, contributed to this partisan reporting trend. Many local journalists admitted that their election coverage required self-censorship to accommodate the interests of their respective media houses.

Given the experience of postelection violence in 2007-08, many journalists covered the March elections with extreme caution, often avoiding sensitive issues such as election irregularities and even incidents of violence. When a gang ambushed police officers and election officials in Mombasa on polling day, for example, no broadcaster provided live coverage or reported the events in detail. Similarly, potential problems with the electoral process that were identified prior to the balloting were not investigated by the media. For its part, the government leaned heavily on hate speech laws to monitor and curtail inflammatory reporting ahead of the elections. In January, a National Steering Committee on Media Monitoring was set up to monitor hate speech, particularly on blogs and social media, and several people were arrested. Authorities also issued warnings to the foreign press to avoid incendiary reporting. In March, information ministry official Joseph Owiti threatened to deport foreign journalists who did not have proper accreditation, despite the fact that authority over accreditation rests with the independent Media Council, not the Information Ministry.

The number of attacks and threats against the press declined compared with the last elections, with 14 cases reported by early March. Most incidents were linked to accusations of journalists harboring a political agenda. In Homa Bay, a town in western Kenya, paramilitary police attacked *Star* newspaper reporter Habil Onyango and his colleague when they tried to take pictures of a dispute that had broken out between supporters of two rival candidates. A group of the partisans accused the reporters of taking sides and told them they were "marked men." Onyango said many of his colleagues were afraid to cover the elections and had no confidence that the police would defend them.

Threats and attacks against journalists during 2013 as a whole still represented an increase over the preceding years. Journalists were threatened, intimidated, and beaten in at least 21 different incidents across the country; in almost half of the cases, the perpetrators were police, while a quarter were perpetrated by government officials. In January, residents in the restive Tana River Delta area, in southeastern Kenya, attacked several journalists with machetes and other weapons when they went to cover a peace meeting organized by a local human rights group; the reporters were forced to flee. In another case, investigative journalists for the private KTN television station received death threats from suspected security agents shortly after airing a program that suggested foul play in a helicopter crash that killed former interior minister George Saitoti. Critical coverage of the September 2013 terrorist attack at the Westgate shopping mall in Nairobi was also met with threats and intimidation by authorities. In one incident, Inspector General of Police David Kimaiyo singled out two journalists during an October press conference, accusing them of "provoking propaganda" and threatening to "deal with [them] firmly" for their investigative reports on security operations at the mall.

Several journalists reported being harassed and receiving threats over their coverage of the ongoing International Criminal Court (ICC) case against three high-profile suspects – including President Uhuru Kenyatta and Ruto – accused of crimes against humanity in relation to the 2007-08 postelection violence. In one case, a journalist felt compelled to flee the country after being routinely followed and monitored by unknown individuals.

There are four daily newspapers, one business daily, and several regional weekly newspapers in Kenya. In addition, a number of independent tabloids that are highly critical of the government publish irregularly. Six private television broadcasters and one state broadcaster operate alongside a myriad of private and community radio stations. There has been a significant expansion of FM radio outlets in recent years, particularly ethnic stations, and their call-in shows have fostered increasing public participation as well as commentary that is critical of the government. Two private companies, the Standard Media Group and the Nation Media Group, run independent television networks and respected newspapers. International news media, including the British Broadcasting Corporation and Radio France Internationale, are widely available in Kenya, as are newer international media players such as the Chinese government's China Central Television (CCTV).

About 39 percent of Kenyans accessed the internet in 2013. Kenya is the leader in usage in East Africa and boasts a thriving online community, including a series of critical blogs. Due to lack of infrastructure and electricity, internet availability is still limited in rural areas, though expanding mobile-phone usage has increased access.