

Freedom on the Net 2018 - Kenya

Publisher [Freedom House](#)

Publication Date 1 November 2018

Cite as Freedom House, *Freedom on the Net 2018 - Kenya*, 1 November 2018, available at: <https://www.refworld.org/docid/5be16b0ba.html> [accessed 14 February 2019]

Key Developments, June 1, 2017 – May 31, 2018

- Overt tensions with the ICT ministry tested the independence of the Communications Authority (see Regulatory Environment).
- Online manipulation and disinformation tactics on social media proliferated during the 2017 elections season, including coordinated pro-government bloggers who effectively manipulated conversations on Twitter and Facebook (see Media, Diversity, and Content Manipulation).
- The new Computer Misuse and Cybercrimes Act, 2018, passed in May 2018, imposes penalties of up to 10 years in prison for the publication of "false" or "fictitious" information that results in "panic" or is "likely to discredit the reputation of a person (see Legal Environment).
- A number of citizens were arrested for alleged hate speech or criticizing the government online (see Prosecutions and Arrests for Online Activities).
- The High Court of Kenya ruled unconstitutional in April 2018 the regulator's plan to implement a system that would have provided access to mobile subscriber data (see Surveillance, Privacy, and Anonymity).
- The 2017 elections period saw multiple hacking attempts of the election commission's website (see Technical Attacks).

Introduction:

Internet freedom in Kenya declined in the past year due to coordinated online misinformation campaigns that effectively manipulated information during the 2017 elections season, as well as the passage of a cybercrime law that penalizes the publication of false news with prison sentences up to ten years.

As one of the most wired countries in sub-Saharan Africa, Kenya boasts a growing tech savvy population and a vibrant online information landscape. Political content is not systematically censored, though content is periodically targeted for violating the country's social mores. For example, the movie "Rafiki" was banned from web and TV broadcasts in April 2018 for ostensibly promoting homosexuality in violation of "moral values."

In the past year, Kenya's vibrant online sphere has seen the proliferation of semi-organized "bloggers for hire" who use their collective clout on Twitter and Facebook to manipulate the online information landscape and shape public opinion. Online manipulation was particularly pronounced

during the 2017 elections season. Propaganda, hate speech, and social media campaigns targeted individuals or organizations affiliated with the opposing side, including via paid Google Ads and Facebook sponsored posts. The controversial firm Cambridge Analytica was revealed to have been behind two websites that were used extensively during the general elections campaigns, one of which spread hate speech; the other spread positive narratives favoring the incumbent candidate, President Uhuru Kenyatta.

The new Computer Misuse and Cybercrimes Act, 2018, passed in May 2018, threatens to further restrict online freedom of expression. The law imposes penalties of up to 10 years in prison for the publication of "false" or "fictitious" information that results in "panic" or is "likely to discredit the reputation of a person." In June 2018, the Bloggers Association of Kenya (BAKE) successfully appealed the problematic provisions of the law, which were subsequently suspended until the court could hear the case.

Despite the negative trajectory, Kenya's civil society has been active in pushing back against internet freedom violations. The Kenyan judiciary is also independent and has protected the fundamental rights of citizens online when activists have filed cases against government infringements. Most recently in April 2018, the High Court of Kenya ruled unconstitutional the Communication Authority's plan to implement a Device Management System that would have provided the authority with access to mobile subscriber data, including call data records.

Obstacles to Access:

Access to the internet continued to improve, particularly on mobile devices. Overt tensions with the ICT ministry tested the independence of the Communications Authority.

Availability and Ease of Access

Kenya's Vision2030 Medium Term Plan (2013-2017), the second phase in the implementation of the country's development plan, considers information and communication technologies (ICT) as a key foundation for national transformation.^[1] Focusing on devolution (decentralization) and building equity across the country, the government has prioritized the expansion of ICT capacity, with internet connectivity being a key pillar.^[2]

Access has continued to grow due to the increasing affordability of internet service. According to government data by the Communications Authority, broadband penetration grew to 43 percent in March 2018, up from 40 percent at the end of 2017.^[3] The regulator also reported nearly 43 million mobile phone subscriptions for a penetration rate of 95.1 percent as of March 2018, up from 88.2 percent the previous year.^[4] Nevertheless, subscription statistics may not reflect actual usage. Many Kenyans have more than one mobile subscription, and the numbers reported by the Communications Authority include corporate registrations. Actual mobile usage by private individuals is thus much lower.^[5] The data also contrasts sharply with the latest figures from the International Telecommunications Union (ITU), which estimated Kenya's internet penetration at 26 percent in 2016.^[6]

Internet speeds in Kenya have also made great strides. According to a report by the Worldwide Broadband Speed League, Kenya had the second fastest internet in Africa, following Madagascar, and ranked 64th globally with average download speeds of 10.1 Mbps in 2018.^[7]

Nonetheless, internet access and affordability varies between urban and rural areas, and there is a digital divide based on gender, with more male mobile and internet users than women.^[8] Large rural areas have not been able to benefit 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 *National Optic Fibre Backbone Infrastructure* (NOFBI) aims to improve telecommunications across the country's newly devolved governance structures and increase delivery of e-government services, such as applications for national identity cards or passports and registration of births and deaths.^[9] The Universal Service Fund (USF) established in 2013 also aims to expand mobile and internet services to close the digital divide.^[10]

Restrictions on Connectivity

During the year under review, there were no reports of the government controlling the internet infrastructure to limit connectivity. Disruptions were last reported in April 2017 when Safaricom networks were offline between 9am and 5pm, which the company attributed to technical failures.^[11] The outage affected over 30 million subscribers who rely on the operator's voice, SMS, data, web-hosting, and mobile money services.^[12]

Kenya connects to the international internet via four undersea cables – SEACOM, the East Africa Marine System (TEAMS), EASSY, and Lower Indian Ocean Network (LION2), with three others (Africa1, Djibouti Africa Regional Express (DARE), and Liquid Sea) landing in Mombasa.^[13] License provision for access to the international gateway was liberalized in 2004.^[14]

The Kenya Internet Exchange Point (KIXP) is run and operated by the Telecommunication Service Providers Association of Kenya (TESPOK), a non-profit organization representing the interests of internet service providers (ISPs). The KIXP keeps Kenyan internet traffic in the country, lowering the cost of connectivity. A second IXP was established in Mombasa, but its failure to attract enough users led to its closure.^[15] With support from the African Union, a backup IXP was established in 2016 to further lower costs of internet connectivity among ISPs.^[16]

ICT Market

The Communication Authority of Kenya (CA) is mandated with licensing all communication systems and services in a liberalized market structure. Due to the hybrid nature of communication systems, the regulator set up a Unified Licensing Framework (ULF), which is technology and service neutral.^[17] As of April 2018, the regulator listed 3 submarine cable landing rights operators and 57 network facilities providers (3 of which are national providers while the remaining 54 are regional).^[18] 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.

There are six mobile service providers – Safaricom, Airtel, Equitel, Telkom, Mobile Pay Limited, and Sema.^[19] The Kenyan government has partial ownership of Safaricom Limited (35 percent) and Telkom Kenya (40 percent).^[20] Safaricom dominates the mobile market with 71 percent of all mobile subscriptions and 68 percent of internet subscriptions. As such, there have been calls to declare Safaricom a dominant player, which would trigger safeguards against dominance abuse.^[21] This has been met with stiff opposition from the company, the competition authority, the ICT

cabinet secretary, and some legislators who claim Safaricom's market share does not amount to abuse under the Competition Act 2011.^[22] The sector regulator, despite commissioning a report on the issue, was clear that it did not favor splitting Safaricom, one of the report's recommendations.^[23] In January 2018, the regulator dropped plans to split Safaricom.^[24] In July 2018, the Parliamentary Committee on Communication, Information and Innovation opened investigations on the mobile sector to identify legislative and regulatory gaps that may lead to anti-competitive behavior or restrict growth within the sector.^[25]

Regulatory Bodies

Kenya's telecommunications sector is regulated by the Communications Authority of Kenya (CA), established as an independent agency by the Kenya Information and Communications Act (KICA).^[26] The management of the authority 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 ICT ministry.^[27] The day-to-day operations of the regulator are managed by a director general who is appointed by the board for a four-year term, renewable only once.^[28] The director general is an *ex officio* member of the board without any voting rights.

While the authority's independence and interaction procedures with other government bodies are provided for under section 5 of KICA, there were overt displays of tension in the past year between the ICT ministry and the board of directors on the one side, and the regulator's director on the other side. Top issues of contention between the two sides included the contested implementation of the telecommunication dominance report, requests from the permanent secretary for out-of-line funds such as the presidential swearing-in, and the president's April 2018 transfer order of KES 1 billion (USD \$10 million) from the Universal Service Fund (USF) managed by the CA to the Directorate of Criminal Investigation (DCI) to fight cybercrime.^[29]

In January 2018, the CA board sent the director general on a three-month compulsory leave, ostensibly to allow for an independent audit on the regulator's hiring processes. A labor court lifted the suspension, pending a full hearing and determination of a case filed by the director general.^[30] In an affidavit, the director general stated that he was "being victimised after rejecting interference in the running of the authority from . . . the Ministry of Information and Communication (ICT)."^[31]

The CA board and the director general have entered in and out of talks to resolve their differences, but not without further friction – for example, police officers refused the director general access to his office, prompting a contempt case against the CA board and the ICT ministry.^[32] Judicial intervention may have reinstated some semblance of order in the institution, but the highly publicized differences between the regulator's board and its administration have eroded both its public perception of independence and functional integrity.

Limits on Content:

Content is periodically restricted for violating Kenyan social mores, though censorship is not systematic. The 2017 elections season saw the proliferation of online manipulation and disinformation tactics on social media, including coordinated pro-government bloggers who effectively manipulated conversations on Twitter and Facebook. Digital activism remained vibrant.

Blocking and Filtering

Political and social content is not generally subject to blocking in Kenya. Network measurements to detect Internet censorship conducted between June 2017 and July 2018 indicates no censored website out of the tested list.^[33] This was a continuation of research findings made in a December 2016 report, by the Centre for Intellectual Property and Information Technology Law (CIPIT) in partnership with Open Observatory of Network Interference (OONI). Out of the 1,357 websites tested on four of the country's leading networks, there were no observed signs of censorship. Social networking platforms and communication applications such as Facebook, Twitter, YouTube, and LinkedIn were also fully accessible.^[34] Nonetheless, the government periodically polices the internet for content that is perceived to be morally objectionable (see Content Removal).

The internet remained unrestricted during the contested post-election period, including when the government jammed the signals of three leading television stations for planning to air opposition leader Raila Odinga's unofficial inauguration in January 2018.^[35] The networks' websites were not blocked, enabling them to stream the events online.^[36]

Content Removal

The state has increasingly sought to have content removed online, with government officials, politicians, and religious leaders pointing to certain laws, religion, or morality as justification.

In April 2018, the Kenya Film Classification Board (KFCB) restricted the distribution, exhibition, or broadcast of the "Rafiki" film in any form or on any platform, including online, in Kenya on the grounds that the film promoted homosexuality.^[37] The previous June, the KFCB also banned six children's television programs for ostensibly promoting homosexuality "against our Kenya's moral values and culture."^[38] The programs had aired on broadcast and online channels. The Kenyan penal code criminalizes same sex relationships, and the KFCB routinely discriminates against LGBTI (lesbian, gay, bisexual, transgender, or intersex) projects.^[39]

The government also requests for content to be removed from popular online platforms, such as Facebook and Google. Between July and December 2017, Facebook reportedly restricted access to 13 items in Kenya for allegedly violating the country's hate speech and election laws during the 2017 presidential elections.^[40] During the same period, Google reported receiving two takedown requests from the executive branch for blogs marked as hate speech, though none were taken down.^[41]

Some reports indicate that the authorities may force users to remove certain content from their social media profiles. In one example, blogger Robert Alai removed content from his Facebook page in August 2017 in relation to a report that got him arrested (see Prosecutions and Detentions for Online Activities).^[42]

Internet intermediaries in Kenya can be held liable for illegal content, such as copyright and hate speech, though they are not required to actively monitor traffic passing through their networks unless they are made aware of illegal content.^[43] Under the National Cohesion and Integration Act of 2008, which outlaws hate speech, a media enterprise can be fined up to KES 1 million (US\$11,000) for publishing "utterances" that can be characterized as hate speech under the law's

broad definition.^[44] This provision can be invoked to block or take down online content, according to the Association of Progressive Communications.^[45]

Media, Diversity, and Content Manipulation

Kenya's online information landscape is diverse and vibrant, representing a wide range of issues and viewpoints. Social media has become an influential platform for journalists to source and share news. Traditional broadcast media have increasingly adapted their programming to align with social media and interact with viewers in real time on Twitter or Facebook.

This vibrant landscape has also seen the proliferation of semi-organized "bloggers for hire" who use their collective clout on Twitter and Facebook to shape public opinion and manipulate the online information landscape.^[46] One such grouping is known as the "36 Bloggers," referring to the number of members on the alleged team of bloggers within the Office of the President Directorate of Digital Communication. Another group is known as the "527 militia," with 527 ostensibly signifying the amount of Kenyan shillings paid to each blogger to tweet certain hashtags. M-PESA, the supposed channel used to pay the bloggers, charges 27 shillings as a transaction fee, so it is believed that the bloggers receive 500 shillings (approximately US \$5) for their work and paid 527 shillings to cover the transaction fee.^[47]

During the 2017 elections season, social media enabled opinion influencers to proliferate, unfortunately leading to online manipulation and overt disinformation. A number of news websites were registered with legitimate-sounding names to disseminate false news, such as CNN Channel 1 (cnnchannel1.com),^[48] undermining the quality of information available online.

Propaganda, hate speech, and social media campaigns targeting individuals or organizations affiliated with the opposing side was common during the elections, including via paid Google Ads and Facebook sponsored posts.^[49] In an investigative piece, Channel4 UK recorded Cambridge Analytica staff admitting their role in the Kenyan election.^[50] The company was linked to two websites that were used extensively during the general elections campaigns – therealraila.com and uhuruforus.com.^[51] The former spread hate speech and negative ads against the main opposition candidate, Raila Odinga, while the latter site spread positive narratives favoring the incumbent.^[52]

July 2018 research analyzing social media trends in Africa found that political bots during the 2017 elections were highly influential in shaping Kenya's political discourse online. During both the August elections period and the October re-election, bots had 25 percent and 28 percent influence, respectively, on online discourse, according to the "How Africa Tweets" report. Though the researchers were unable to identify the parties behind the bot armies, the automated communications worked to "undermine the influence of media outlets, independent bloggers, government entities, and even messages from politicians and campaigners themselves."^[53]

In advance of the elections, the Communications Authority gazetted in June 2017 new guidelines to curb online abuse in partnership with the National Cohesion and Integration Commission (NCIC), a statutory body which seeks to reduce inter-ethnic conflict.^[54] However, the guidelines included broad wording as the basis for penalties, prohibiting political messages that "contain offensive, abusive, insulting, misleading, confusing, obscene or profane language," which could be used to limit legitimate online expression. The guidelines also required administrators of social media pages to "moderate and control the content and discussions generated on their platform," and gave mobile

network operators the power to refuse at their discretion the transmission of political messages that do not comply with the guidelines.^[55] In addition, bulk political messages required prior approval from the NCIC.

There are no economic constraints on online media in Kenya, which has helped online outlets thrive, though the government has been known to use its advertisement spending to influence the media's editorial choices, resulting in financially-induced self-censorship.^[56] Media outlets also determine the tone of their content out of fear of upsetting other primary advertisers.^[57]

Bloggers and social media personalities have gained influential status over the past few years. Fast and affordable internet in major cities and towns has enabled Kenya's growing class of digitally skilled citizens to create content and alternative sources of news and information. According to the Bloggers Association of Kenya (BAKE) – formed in 2011 to support Kenya's blogging community – their annual blog awards have grown from 400 blogs in 2011 to 10,000 in 2017.^[58] The exponential growth in blogs has created an economically viable industry for bloggers who are increasingly sought by Kenyan businesses as a platform for advertising.^[59]

Digital Activism

Social media, especially Twitter, continues to be a critical platform for socio-political debate, organization, and mobilization around topical issues in Kenya. The examples below point to key instances this was exemplified during the period under review:

- Twitter adopted #ElectionsKE and #KenyaDecides as the supported "official" hashtags for the 2017 elections, together with the Kenyan flag emoji.^[60] The hashtag allowed for simplified aggregation of dynamic election news.
- In late 2017, the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) deployed the hashtag #LipaKamaTender to inform the Kenyan citizenry on the dysfunctional health ecosystem while also pushing the government to honor its commitment to a collective-bargaining agreement that committed the government to increase pay and restore dilapidated public health facilities, among other issues.^[61] After a protracted doctor's strike, the government ceded to some key labor demands. KMPDU continues to use the hashtag to organize around healthcare in Kenya.^[62]
- The hashtag #SwitchoffKPLC has been used to create awareness and mobilize citizens around the Kenya Power and Lighting Company, a company that owns and operates most of the electricity transmission and distribution system in the country, on inflated consumer bills.^[63] Online activism urged Kenyans to submit their power bills to a Nairobi lawyer, who used them as evidence to file a petition against the company in court.^[64] In July 2018, 20 KPLC managers were charged in court over sub-standard transformers, partly vindicating the city lawyer's petition, which is still in court as of mid-2018.^[65]
- Other prominent campaigns include #SGRSlavery – a campaign to amplify an investigation conducted by Standard Media Group on the state of the Chinese-built and operated railway – and #SomeoneTellChathamHouse – a campaign to pushback against Chatham House's invitation to a Kenyan governor whose tenure as a Cabinet Secretary was tainted with corruption scandals.^[66]

Violations of User Rights:

The new Computer Misuse and Cybercrimes Act, 2018, passed in May 2018, penalizes the publication of false information with up to 10 years in prison. A number of citizens were arrested for alleged hate speech or criticizing the government, with several incidents occurring around the 2017 elections period. The elections period also saw multiple hacking attempts of the election commission's website.

Legal Environment

Freedom of expression is enshrined in Article 33 of Kenya's 2010 constitution and includes the right to seek, receive, or impart information and ideas, while Article 31 provides for the right to privacy. These rights, however, do not extend to propaganda, hate speech, or incitement to violence. Hate speech is penalized under the 2008 National Cohesion and Integration Act, a law that was passed in response to widespread ethnic violence following the 2007 general elections.^[67] Individuals found guilty of spreading hate speech, broadly defined, can be fined up to KES 1 million (US\$11,000), sentenced to up to three years in prison, or both.

The new Computer Misuse and Cybercrimes Act, 2018, passed in May 2018, threatens to further restrict online freedom of expression. The law imposes penalties of up to 10 years in prison for the publication of "false" or "fictitious" information that results in "panic" or is "likely to discredit the reputation of a person."^[68] In June 2018, the Bloggers Association of Kenya (BAKE) successfully appealed 26 problematic provisions of the law,^[69] which were subsequently suspended until the court could hear the case.^[70] A high court judge ruled in October 2018 that the provisions would remain suspended until November,^[71] despite the government's efforts to seek a judicial review of the ruling, arguing that the judiciary erred in its suspension.

The Kenyan judiciary is independent and has made several moves to protect the fundamental rights of citizens online in the past few years. In April 2018, the High Court of Kenya ruled unconstitutional the Communication Authority's plan to implement a Device Management System – introduced in January 2017 – that would have provided the authority with access to mobile subscriber data, including call data records (see also Surveillance, Privacy, and Anonymity).

Previously in April 2017, the High Court ruled Section 132 of the penal code unconstitutional,^[72] which had penalized "undermining the authority of public officers" and had been used to prosecute online and offline speech.^[73] Section 29 of the Kenya Information and Communications Act (KICA) was separately ruled unconstitutional in April 2016.^[74] Section 29 had penalized bloggers and social media users for using ICTs to disseminate messages deemed to be "grossly offensive" or to cause "annoyance, inconvenience or needless anxiety to another person," with a fine of up to KSH 50,000, three years in prison, or both.^[75]

Other proposed laws seek to protect the rights of Kenyan internet users. The Data Protection Bill 2013, though still in draft form and in need of critical revisions as of mid-2017, aims to regulate the collection, processing, storing, use, and disclosure of information relating to individuals processed through automated or manual means.^[76] The current absence of a strong data protection law threatens citizens' privacy rights amid rising concerns over unchecked government surveillance (see Surveillance, Privacy, and Anonymity).

Prosecutions and Detentions for Online Activities

Numerous Kenyan bloggers and social media users were arrested or summoned for questioning during this report's coverage period, continuing an alarming trend that has grown in recent years.

A number of arrests, prosecutions, or legal repercussions for online activities were for alleged hate speech, with several incidents occurring around the 2017 elections period:

- In July 2017, blogger Paul Odhiambo was arrested for spreading alleged hate speech on Facebook and WhatsApp.^[77]
- In August 2017, Robert Alai, a popular blogger and social media influencer, was arrested in connection with information he published about the health of a family member of President Kenyatta.^[78] Content posted on his Facebook page in relation to the story was removed without explanation (see Content Removal). Alai has been arrested numerous times for online speech.
- Shortly after the August 2017 elections, Japeth Mulewa was arrested for being an administrator of a WhatsApp group that was allegedly spreading hate.^[79]
- Another WhatsApp group administrator, Longton Jamil, was arrested in August 2017 for allegedly spreading false information on the platform.^[80]
- In September 2017, Oliver Nyabwazi Moraira was arrested for allegedly posting hate speech on her Facebook page.^[81]
- Yet another blogger, Cyprian Nyakundi, was arrested in May 2018 for allegedly "alarming" posts on his blog and Twitter account about senior civil servants. Some of the posts included allegations from a whistle-blower about bribes some civil servants received for land deals for public schools in Nairobi, which could be prosecuted under the penal code for publishing false statements that "cause fear and alarm to the public."^[82]

Surveillance, Privacy, and Anonymity

The government's unlawful and disproportionate surveillance capabilities have become more evident in the past couple of years, particularly as the country prepared for national elections in August 2017.

The Kenya Information and Communications Act (KICA) prohibits unlawful monitoring and interception of communications,^[83] though the Prevention of Terrorism Act 2012 allows the authorities to limit constitutional freedoms, such as the right to privacy, during terrorist investigations.^[84] Amendments to the Prevention of Terrorism Act in 2014 explicitly enable national security bodies to intercept communications "for the purposes of detecting, deterring and disrupting terrorism,"^[85] which must be authorized by an interception order granted by the High Court.^[86] The UK-based nonprofit Privacy International (PI) reported that Safaricom, Kenya's leading mobile internet provider, routinely provides data to authorities without a warrant for intelligence purposes; Safaricom said it only cooperates based on court orders.^[87]

Independent research in recent years has revealed various types of surveillance technologies that the Kenyan authorities or other actors may employ to monitor citizens. Most recently in September 2018, The Citizen Lab published findings on the presence of Israeli-based NSO Group mobile phone spyware on two Kenyan ISPs, Safaricom and SimbaNet.^[88] In March 2017, research published by the Centre for Intellectual Property and Information Technology Law (CIPIT) revealed the presence of a "middle-box" on a Safaricom cellular network.^[89] While middle-boxes have legitimate functions such as network optimization, they can also be used to manipulate traffic

and assist in surveillance, raising alarms about possible privacy violations. Safaricom denied the existence of the box, and subsequent tests returned negative results, leading the researchers to conclude that it was withdrawn.

PI separately revealed that national security agencies in Kenya, especially the NIS, have unlawful direct access to communication systems in Kenya that allows for the interception of both data and content.^[90] Based on interviews, PI found that law enforcement and national security agents have a physical presence in the telecoms' facilities. The report also indicated that intercepted information could be freely shared with other government agencies.

In a follow-up report published in July 2017, PI assessed two of the NIS's new 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 internet traffic, based on internal documents it received.^[91] Given the national security framework in which the systems are being implemented, transparency and oversight will be limited.

In a positive development, in April 2018, the High Court of Kenya ruled unconstitutional the Communication Authority's plan to implement a Device Management System – introduced in January 2017 – that would have provided the authority with access to mobile subscriber data, including call data records. The government argued that the system was necessary for identifying illegal devices. The High Court ruled that the system would infringe on subscribers' right to privacy.^[92]

Anonymity is compromised by the expanding scope of mandatory SIM card registration requirements. In 2017, Safaricom began documenting anyone registering for or renewing a SIM card.^[93] This was an extension of the existing SIM card registration requirements under the Kenya Information and Communications (Registration of SIM-Cards) Regulations, 2015, which prescribes penalties of up to KES 300,000 (US\$3,500) or imprisonment of up to six months, or both, for failure to abide by the registration requirements.^[94] The regulations also grant the communications regulator with access to service providers' offices and records without a court order, raising concerns over the lack of judicial oversight.^[95]

Intimidation and Violence

Bloggers and internet users have faced increasing intimidation and violence for their online activities in recent years. During the elections, the authorities often destroyed cameras and phones of journalists to suppress reporting on the elections violence and the documentation of human rights violations.^[96]

Technical Attacks

During the 2017 elections period, there were multiple hacking attempts of the election commission's website,^[97] while the opposition claimed the electoral results were hacked, leading to the opposition candidate's loss.^[98] None of the hacking claims were substantiated. The mysterious sudden death of the electoral commission's IT manager, Chris Msando, days before the August elections did little to dispel concerns about the security and integrity of the electoral polling systems.^[99]

Otherwise, there were no reported cases of politically motivated technical violence against civil society, independent news, or opposition websites during the coverage period. However, a technical attack against opposition politicians may have been attempted in the past.^[100]

Notes:

¹ GoK, 2013: Second Medium Term Plan, 2013 – 2017: Transforming Kenya: Pathway To Devolution, Socio Economic Development, Equity And National Unity. Page 21

² See for example, Ministry of ICT Strategic Plan (2013-2017) and Master Plan (2013/14 – 2017/18), <http://www.ict.go.ke/downloads-2/>

³ Communications Authority of Kenya, Quarterly Sector Statistics Report: Q3 FY 2017/2018 (January-March 2018), <https://ca.go.ke/document/sector-statistics-report-q3-2017-18/>

⁴ Communications Authority of Kenya, Quarterly Sector Statistics Report: Q3 FY 2017/2018 (January-March 2018).

⁵ For more on this, see Chapter 5 of Measuring the Information Society, 2016, by ITU, <http://www.itu.int/en/ITU-D/Statistics/Pages/publications/mis2016.aspx>

⁶ International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2016," <http://bit.ly/1cblxxY>. NB: ITU data published in 2016 retroactively revised its timeseries data for Kenya's internet penetration. In its 2015 dataset, internet penetration was estimated at 45.6 percent. The 2016 dataset revised the 2015 figure to 21 percent. No explanations were provided for the revisions.

⁷ <https://www.capitalfm.co.ke/business/2018/07/kenya-has-second-fastest-internet-in-africa-survey/>

⁸ Based on Kenya National Bureau of Statistics Economic Survey, 2017. For gender disparity, see page 249, accessed on 4 June 2017, <http://www.devolutionplanning.go.ke/images/hb/Economic%20Survey%202017.pdf>

⁹ ICT Authority, "National Fibre Optic to cover all 47 counties by December 2015" <http://www.icta.go.ke/nofbi-update/>.

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<http://ca.go.ke/images/downloads/TELECOMMUNICATION/LicenseeRegister/Register%20of%20ULF%20Licencees-%20March%202017.pdf>

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