



Freedom of the Press 2016 - Kenya

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Press Freedom Status: Partly Free

Legal Environment: 17 / 30 (0 = best, 30 = worst)

Political Environment: 24 / 40 (↓1) (0 = best, 40 = worst)

Economic Environment: 17 / 30 (0 = best, 30 = worst)

Press Freedom Score: 58 / 100 (↓1) (0 = best, 100 = worst)

Quick Facts

Population: 44,306,000

Net Freedom Status: Free

Freedom in the World Status: Partly Free

Internet Penetration Rate: 43.4%

Overview

Kenya's constitution includes wide protections for freedom of the press, and the country's private media provide critical reporting and a diversity of views. However, restrictive new legislation continued to pose a threat to media freedom in 2015, and journalists faced an environment of increased intimidation and pressure from the authorities. Many local outlets have unstable revenue models, and low pay leads some journalists – particularly those outside of urban areas – to accept compensation from the entities that they cover.

Key Developments

- A number of bloggers were arrested under a section of the Kenya Information and Communication Act (KICA) that criminalizes the transmission of "offensive" or "menacing" messages over telecommunications networks.
- Journalists reported an increasing environment of self-censorship due to government pressure, with some facing disciplinary measures as a result of critical reporting; the cartoonist Godfrey Mwampembwa, or Gado, left the National Media Group in March amid allegations of government pressure on the media house.
- At least 19 cases of threats or violence against journalists were reported in the first half of 2015; among them was the murder of John Kituyi, the founder of the *Mirror Weekly* newspaper, who was beaten to death by unknown attackers in April.
- The centralization of all government advertising into one agency caused concerns about economic pressure on outlets, while a problematic transition to digital broadcasting threatened television access for many households.

Legal Environment: 17 / 30

The country's 2010 constitution was widely praised for expanding freedoms of expression and the press, specifically by prohibiting the state from interfering with the editorial independence of individual journalists and both state-owned and private media outlets. Kenya is also a party to several international legal instruments governing free expression, including the International Covenant on Civil and Political Rights as well as 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, these provisions are not as severe as those in the previous charter.

A number of recent laws have threatened constitutional protections through broad provisions restricting the media's ability to report about the government and the country's security situation. In 2014, the government passed the Security Laws (Amendment) Act. Through a series of amendments to existing laws, the legislation introduced lengthy prison sentences and hefty fines for the unauthorized dissemination of information that undermines counterterrorism investigations or operations, or of photographs showing the victims of terrorist attacks. Other provisions in the law grant broad surveillance powers to Kenyan security forces. In February 2015, following a legal challenge from opposition politicians and the Kenyan National Commission on Human Rights, the High Court found several parts of the legislation – including restrictions on the publication of sensitive content – to be unconstitutional. However, the expanded powers of the security forces remained intact.

In 2013, the government adopted the Kenya Information and Communication (Amendment) Act and the Media Council Act. Among other things, they created a government-appointed Communication and Multimedia Appeals Tribunal with the power to hear appeals on complaints initially handled by the Media Council of Kenya (MCK), the country's principal media regulatory body. The tribunal is authorized to withdraw media accreditation and seize any assets to cover fiscal penalties. Individual journalists face fines of up to 500,000 shillings (\$5,000), and media companies up to 20 million shillings (\$200,000), if they are found in breach of a code of conduct drafted by legislators. In 2014, media groups challenged both pieces of legislation in court and obtained an order blocking their implementation until a final determination of their constitutionality could be reached. This has affected the functioning of regulatory mechanisms – the terms of several MCK board members have expired, and replacements cannot be named while the court order is in effect. As of late 2015, the situation remained unresolved and had resulted in a backlog of complaints.

Although the 2013 amendments to the Kenya Information and Communication Act (KICA) remained blocked in 2015, the law was otherwise in effect, and authorities used several of its provisions to undermine freedoms of expression and the press. During the year, police arrested a number of bloggers under a section of the law that criminalizes the transmission of "offensive" or "menacing" messages over telecommunications networks. Prominent blogger Abraham Mutai was arrested in January for "causing public anxiety" after writing about corruption in eastern Kenya. Authorities blocked Mutai's blog and Twitter account while he remained in custody, but reinstated both when he was released a day after his arrest.

The National Assembly, the lower legislative house, passed the Parliamentary Powers and Privileges Bill in October, requiring journalists to seek permission from the parliament before publishing information about the government body. The bill prescribes up to two years in prison and fines of 500,000 shillings (\$5,000) for the contravention of this requirement or for the publication of information deemed defamatory toward the parliament, its committees, or its proceedings. Shortly after its passage by the National Assembly, President Uhuru Kenyatta asked legislators to review the legislation in order to ensure that it does not curtail constitutional guarantees of freedoms of speech and the media. The bill had not been fully adopted at year's end.

State officials occasionally pressure journalists to reveal their sources. In November, John Ngirachu, an editor for the *Daily Nation* newspaper, was arrested for allegedly publishing confidential information in an investigative report on financial mismanagement by the interior ministry. Police threatened to detain him until he revealed his source, but Ngirachu maintained that the report was based on public information; he was released shortly amid a public outcry. Ngirachu was also questioned by police and pressured to reveal his sources prior to his arrest, as were two journalists from other outlets that had reported on the story.

Although rarely used, several anachronistic laws concerning media freedom remain on the books. 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 defamation cases are tried under civil law, but

defamation is still a criminal offense under the penal code. Observers have reported that the mere possibility of criminal defamation charges is often used to intimidate journalists.

While the 2010 constitution protects some aspects of access to information, laws like the Official Secrets Act weaken those protections. Efforts to pass a formal and comprehensive freedom of information law have been stalled for nearly 15 years.

Political Environment: 24/ 30 (↓1)

Kenya's leading media outlets, especially in the print sector, often provide rigorous and critical coverage of politics and political figures. In 2015, however, journalists reported concerns about government intimidation and the potential of the country's restrictive media laws to curtail critical reporting. These concerns have contributed to increased self-censorship on sensitive topics, including criticism of the president, deputy president, and other prominent officials. Major news outlets have also reportedly refused to publish controversial articles or dismissed journalists who have published them. The cartoonist Godfrey Mwampembwa, known as Gado, left the National Media Group in March 2015, reportedly amid pressure on the media house from the Kenyatta administration. Gado is known for his bold critiques of leading political figures.

Journalists are routinely beaten, intimidated, and threatened by both state and nonstate actors, and at least 19 cases were reported in the first half of 2015 alone. After reporting on a court case in which a legislator faced fraud accusations, journalist Paul Gitau received anonymous death threats. In April, police beat two journalists at a state-owned ranch who were investigating a story about the seizure of cattle from private ranchers. Also in April, John Kituyi, the founder of the *Mirror Weekly* newspaper, was beaten to death by unknown attackers in western Kenya. A week before the attack, Kituyi had published an article on a case in the International Criminal Court against Deputy President William Ruto, who stood accused of committing crimes against humanity by orchestrating the country's 2007 post-election violence. Several journalists in recent years have reported harassment and threats linked to their coverage of the case. Journalists in areas close to the Somali border have also reported threats and attacks by members of the Shabaab militant group. These conditions are exacerbated by the fact that many reporters in the country's remote regions are freelancers operating without adequate protection.

Economic Environment: 17 / 30

There are at least five daily newspapers, one business daily, and several regional weekly newspapers in Kenya, as well as a number of tabloids that publish irregularly. Several private television broadcasters and one state broadcaster operate alongside numerous 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 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 popular newspapers. International news media, including the British Broadcasting Corporation and Radio France Internationale, are widely available in Kenya, as are newer foreign groups such as the Chinese government's China Central Television. Many traditional media houses have voiced concerns about the viability of their revenue models, particularly following an announcement in 2014 that the government would increasingly move advertising to online platforms. Due to low pay, many journalists outside of major urban centers accept remuneration from the entities that they cover.

In 2015, the government announced plans to streamline all government advertising through a new agency, the Government Advertising Agency (GAA). Previously, each public body was responsible for and could control its own advertising decisions. Under the new policy, a government entity must place a request for advertising through the GAA, which is responsible for allocating funding. Observers voiced concerns about such a high concentration of power in one agency.

In 2015, Kenya completed a transition to digital broadcasting. The process was marred by tensions between state officials and private broadcasters. The government's initial decision to award signal distribution licenses to two providers – a state-owned entity and a Chinese firm – had led to concerns that the transition could be used to harm critical outlets, but a Supreme Court ruling in late 2014 required the authorities to provide licenses to private Kenyan broadcasters as well. The scheduled shutdown of analog broadcasts in February 2015 led four major private television outlets – KTN, Citizen TV, NTV, and QTV, a subsidiary of NTV – to

refuse to broadcast digitally in protest of what they viewed as a prohibitive transition timeline; the stations had requested an extended deadline in order to supply more viewers with set-top boxes. All four outlets remained off the air for three weeks but began broadcasting digitally in March. According to the Media Council of Kenya, as of August, the number of set-top boxes available to Kenyan households remained insufficient, leaving many without access to digital television.

Internet penetration in Kenya stood at nearly 46 percent in 2015. Although infrastructural problems limit connectivity in rural areas, there is a growing online community, including a number of critical blogs and news platforms.

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