

Freedom of the Press 2017 - Kenya

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Press Freedom Status: Partly Free
Total Score: 58/100 (0 = Most Free, 100 = Least Free)
Legal Environment: 17/30
Political Environment: 24/40
Economic Environment: 17/30

Quick Facts

Population: 45,400,000
Freedom in the World Status: Partly Free
Net Freedom Status: Free
Internet Penetration Rate: 45.6%

Key Developments in 2016:

- In August, President Uhuru Kenyatta signed a new Access to Information Law that codified procedures for requesting government information and contained penalties for public officials who improperly withhold it. However, it also contained exemptions, including for vaguely defined national security concerns.
- In January, a number of journalists and bloggers were arrested under a section of the 2013 Kenya Information and Communications (Amendment) Act (KICA) that criminalized the transmission of "offensive" or "menacing" messages over telecommunications devices. However, in April, the High Court found that section unconstitutional.
- A number of journalists were harassed or attacked throughout the year, including by politicians, police, and opposition protestors.
- In September, freelance photographer and journalist Dennis Otieno was killed at his home by unknown assailants.

Executive Summary

Kenya's constitution includes protections for freedom of expression and of the press, and the country's media provide critical reporting and a diversity of views. However, government officials have exhibited intolerance for critical media, including through the introduction and approval of restrictive legislation that has been invoked to arrest media workers. Journalists risk harassment and attacks while carrying out their work and in retaliation for it, and some observers have expressed concern that both legal and extralegal harassment will increase in the lead-up to the 2017 general elections.

In 2016, there were several legal developments that contributed to a freer media environment. In April, the High Court struck down a provision of the KICA that criminalized the transmission of "offensive" or "menacing" messages over telecommunications devices, a measure that had been used to prosecute journalists who reported on sensitive topics including those related to national security. The decision came after more than a dozen journalists had been arrested under the provision in January alone. In August, President Kenyatta signed an Access to Information Law that codified procedures for requesting government information, and which allowed for officials who improperly withhold information to be penalized. However, the law also includes exemptions, including for cabinet deliberations and for vaguely defined national security concerns.

Acts of violence against journalists continued in 2016. A number of journalists were attacked while covering opposition protests. In September 2016, Dennis Otieno, a freelance photographer and journalist, was killed by unidentified attackers who raided his home. While the motive for the killing was unclear, Otieno's wife, who was home at the time, said the attackers had demanded certain pictures from his camera before fatally shooting him, and stole some of his equipment.

In 2015, the government began redirecting a large portion of its advertising to online platforms, making the economic situation for traditional media outlets more tenuous. However, a proliferation of online outlets has increased the diversity of news content available to the growing number of people who have access to the internet.

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. 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.

The Media Act protects the confidentiality of sources, though intimidation of journalists by officials and others undermines this legislation. In March 2016, police threatened two parliamentary reporters with arrest if they did not reveal their sources for a story – which was based on information available in the public domain – about procurement processes in the military. Police eventually stopped harassing the reporters following pushback from journalists' organizations.

A number of recent laws threaten press freedom, and have contributed to growing self-censorship. The 2014 Security Laws (Amendment) Act introduced lengthy prison sentences and hefty fines for 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. While the High Court in 2015 found several parts of the legislation unconstitutional, including restrictions on the publication of sensitive content, the expanded powers of the security forces remained intact.

In 2013, the government adopted the KICA and the Media Council Act. Among other things, they created a government-appointed Communications 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 assets to cover fiscal penalties. Individual journalists face fines of up to 500,000 shillings (\$5,000), and media companies of up to 20 million shillings (\$200,000) if they are found in breach of a code of conduct drafted by legislators. Moreover, Section 29 of the KICA criminalized the transmission of "offensive" or "menacing" messages over telecommunications networks. More than dozen people were reportedly arrested for violating that section of the law in January 2016 alone, though few of them actually ended up in court.

Media groups had challenged both the KICA and the Media Council Act in 2014, and in 2016 decisions were finally handed down. In April, the High Court found Section 29 of KICA unconstitutional. Then, in May, the High Court found two provisions of the Media Council Act unconstitutional: one section which the court said failed to adequately define what constitutes a national security threat, and another that placed certain requirements on the composition of the Communications and Multimedia Appeals Tribunal. However, it upheld the other sections of both the Media Council Act and the KICA, including a measure that allowed fines for breaching the code of conduct drafted by lawmakers, which has been criticized as vague.

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.

In August 2016, President Kenyatta signed the new Access to Information Law, which lays out procedures for requesting government information and penalizes public officials – including with prison sentences or fines – for withholding information. However, the law also includes exemptions, including for cabinet deliberations and ambiguously defined cases of national security. In the past, obtaining information had been difficult; most government records are classified as secret, and officials worry about suffering reprisals for releasing information.

The MCK is legally tasked with regulating media standards, but is considered weak. The Communications Authority of Kenya (CAK), the primary regulator of broadcast media, is appointed by the information minister, and its chair by the president; it is generally considered to be politicized. Legal challenges of the appointment of its board members continued in 2016.

The MCK issues press cards, and typically does so based on the educational programs individuals have completed and their practical experience as a journalist. A number of different journalists' associations operate, with some speaking out regularly in defense of journalists. However, these associations have struggled to coordinate activities both amongst themselves and with civil society organizations.

Political Environment: 24 / 40

Kenya's leading media outlets, especially in the print sector, provide rigorous and critical coverage of politics and political figures. However, editorial pressure shapes coverage at many outlets, and reporters can face repercussions for critical coverage. Major news outlets have refused to publish controversial articles, or have dismissed journalists who have produced them. For example, in January 2016, an editor at the *Daily Nation* newspaper was suspended, and then fired, after writing an editorial criticizing the president. Many journalists and activists have turned to online outlets and social media platforms to bypass political and business influences at established media groups. The government controls board appointments at the state broadcaster, the Kenya Broadcasting Corporation (KBC), and while it is generally perceived as progovernment, in practice the KBC attempts to provide balanced coverage.

Editorial pressure, corporations' ability to withdraw advertising contracts in response to critical coverage, concerns about prosecution under restrictive laws, and demands to reveal sources all contribute to increasing self-censorship among journalists.

Despite political pressures, the Kenyan media is diverse and provides a breadth of content and viewpoints. At the same time, many Kenyans lament the constant focus by mainstream outlets on the two main political parties, and have increasingly turned to blogs and social media in search of coverage of more diverse coverage of political and social issues. To some extent, social media platforms are becoming greater agenda setters than traditional media outlets.

Journalists are routinely intimidated, threatened, attacked, and obstructed by both state and nonstate actors while doing their jobs. In 2016, a number of journalists were attacked while covering opposition protests, including by demonstrators. At a May protest against electoral reforms, police reportedly threw canisters of tear gas inside a car carrying several journalists. In October, a journalist with the Kenya News Agency was attacked by police while covering an attempt by a group of workers to claim allegedly unpaid wages from the office of the governor of Tana River County. In December, the Africa correspondent for the British newspaper the *Times*, who had reported from Kenya since 2012, was detained upon arrival at Jomo Kenyatta International Airport, and his phones were confiscated before he was released. While the reason for his detention was unclear, he had recently written an investigative piece about the alleged murder in Kenya of a British real estate developer.

Journalists also face intimidation and attacks as a result of their work, with most such violations carried out by politicians or police officers in 2016. In March, a journalist from Kass FM was threatened by the governor of Elgeyo Marakwet County, who took issue with the journalist's critical coverage and told him he was being watched closely. The same month, a journalist with the Nation Media Group (NMG) was threatened by a parliamentarian in connection with a story implicating the lawmaker in the disappearance of some 5 million shillings' (\$50,000) worth of public funds.

Many journalists are concerned that harassment and attacks both during the course of their work and as a result of it will become more common in the lead-up to the 2017 general elections.

Also, in September 2016, freelance photographer and journalist Dennis Otieno was killed in Kitale after three unknown men raided his home. While a motive was not clear, Otieno's wife, who was

home at the time, said the attackers demanded certain pictures from his camera before fatally shooting him, and stole some of his equipment.

Economic Environment: 17 / 30

There are at least four 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, NMG and the Standard Media Group, run a number of independent television networks and popular newspapers.

Most media outlets are owned by politicians or politically connected people. While the ownership of these outlets is generally known, there are no legal provisions in place requiring ownership transparency. Five media companies capture over 70 percent of all media consumers.

In 2015, Kenya completed a transition to digital broadcasting, which facilitated access to a wider variety of television channels. However, the costs associated with a set-top box, which is needed to access digital broadcasting, is prohibitively high cost for many Kenyans, particularly those in rural areas. International news media, including the British Broadcasting Corporation (BBC) and Radio France Internationale (RFI), are widely available, as are newer foreign outlets such as the Chinese government's China Central Television (CCTV). Meanwhile, there are some 3,000 active blogs, according to the Bloggers Association of Kenya (BAKE). According to the International Telecommunication Union (ITU), 26 percent of people in Kenya accessed the internet in 2016. However, figures from other organizations that explicitly include internet access via mobile phones report rates that are much higher.

In 2015, the government began redirecting a large portion of its advertising to online platforms, making the economic situation for traditional media outlets more tenuous. In 2015, the government announced plans to streamline all of its advertising through the new Government Advertising Agency (GAA). Observers have voiced concerns about such a high concentration of power in one agency. Separately, in July 2016, NMG indicated that it would file a lawsuit against the government for unpaid advertising fees in the order of 123 million shillings (\$1.2 million).

Due to low pay, many journalists outside of major urban centers accept remuneration from the entities that they cover. In June, NMG announced that it would consolidate two of its Kenyan television stations, citing a need to embrace a digital model. A number of journalists lost their jobs as a result of the move, with some saying NMG had violated the law by failing them to give them adequate notice ahead of the layoffs.