KENYA

	2009	2011
INTERNET FREEDOM STATUS	**Partly Free**	**Partly Free**
Obstacles to Access	13	12
Limits on Content	11	9
Violations of User Rights	10	11
Total	**34**	**32**

POPULATION: 40.1 million
INTERNET PENETRATION: 10 percent
WEB 2.0 APPLICATIONS BLOCKED: No
SUBSTANTIAL POLITICAL CENSORSHIP: No
BLOGGERS/ONLINE USERS ARRESTED: No
PRESS FREEDOM STATUS: Partly Free

INTRODUCTION

Use of the internet and mobile telephones is relatively unfettered in Kenya, and access to the technology continues to grow. Although a lack of infrastructure and high costs still hamper connectivity for many Kenyans, the installation of two undersea cables in 2009 has dramatically improved bandwidth, and prices are starting to come down. Since 2008, there have been no confirmed incidents of government filtering or interference with online communication. However, in January 2009, the government passed a controversial Communications Amendment Act despite warnings from civil society groups that it could hinder free expression.

The internet was first made available in Kenya in 1993, and the first commercial internet-service provider (ISP) began operating in 1995.[1] Mobile phones were introduced in 1992, but only became widely available and affordable after the Communications Commission of Kenya (CCK) was established and two service providers—Safaricom and Kencell—were licensed in 1999.[2]

---

[1] Francisca Mweu, "Overview of the Internet in Kenya," International Telecommunication Union (prepared for African Internet & Telecom Summit, Banjul, The Gambia, June 5–9, 2000), http://www.itu.int/africainternet2000/countryreports/ken_e.htm.

[2] Export Processing Zones Authority, *Kenya's Information & Communications Technology Sector 2005* (Nairobi: Export Processing Zones Authority, 2005), http://www.epzakenya.com/UserFiles/File/ictKenya.pdf.

OBSTACLES TO ACCESS

Internet penetration in Kenya has continued to rise gradually, from 7.9 percent in 2008 to nearly 10 percent, or about four million users, in 2009, according to the International Telecommunication Union and the CCK.[3] This trend is expected to continue in the coming years due to increased internet access through mobile phones and improved bandwidth via undersea cables.[4] In 2009, the installation of cables known as Seacom and The East African Marine System (TEAMS) increased connection speeds to 13 times the total bandwidth available during the previous year,[5] and raised hopes of greater connectivity in the future. However, costs for the average user did not drop dramatically, as providers claimed that they needed to recoup the cost of investment in the infrastructure before reducing prices.[6]

The mobile-phone penetration rate was estimated at 60 percent as of mid-2010, significantly higher than internet penetration. An additional 28 percent of Kenyans have access to another person's mobile phone, indicating even broader usage.[7] According to the CCK's latest statistics, 1.98 million Kenyans, or 4.75 percent of the population, have accessed the internet via their mobile phones.[8] This group forms the vast majority of users with their own internet subscriptions, as opposed to those who access the internet at cybercafes or other public access points.[9] A recent study by Opera, a software company that monitors trends in mobile browsing, showed that Kenya has the most intensive mobile-internet user community in Africa, with each user browsing an average of 525 pages per month.[10]

Despite these advances, the spread of the internet is hampered by a poor telecommunications infrastructure and lack of electricity, particularly in rural areas. This partly explains the disproportionately high concentration of internet subscribers in Kenya's two largest cities, Nairobi and Mombasa. The government is currently working to remedy the disparity between rural and urban access through the introduction of Pasha digital

---

[3] International Telecommunication Union (ITU), "ICT Statistics 2009—Internet," http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx, accessed February 11, 2011; Communications Commission of Kenya (CCK), "Quarterly Sector Statistics Report, Second Quarter Oct-Dec 2009/2010," http://www.cck.go.ke/resc/statistics/Sector_Statistics_Report_Q2_2009-2010.pdf, accessed August 23, 2010

[4] Ian Mansfield, "3G Services and MNP to Drive Kenyan Telecom Sector," *cellular-news*, May 31, 2010, http://www.cellular-news.com/story/43566.php.

[5] CCK, "Quarterly Sector Statistics Report, Second Quarter Oct-Dec 2009/2010."

[6] Catherine Riungu, "No Hope of Cheap Internet with Providers Locked into 25-yr Deals," *East African*, October 5, 2009, http://www.theeastafrican.co.ke/news/-/2558/667644/-/qy9vnkz/-/index.html.

[7] Gunnar Camner, Caroline Pulver, and Emil Sjoblom, *What Makes a Successful Mobile Money Implementation? M-Pesa in Kenya and Tanzania* (Nairobi: Financial Sector Deepening Kenya, 2009), http://www.fsdkenya.org/pdf_documents/09-08-28_MPESA_in_Kenya_Tanzania.pdf.

[8] CCK, "Quarterly Sector Statistics Report, Second Quarter Oct-Dec 2009/2010."

[9] CCK, "Quarterly Sector Statistics Report, Second Quarter Oct-Dec 2009/2010."

[10] Victor Juma, "Mobile Internet on Course to Becoming Top Earner for Firms," *Business Daily*, April 22, 2010, available at http://allafrica.com/stories/201004210995.html.

villages—small public access sites similar to cybercafes.[11] The facilities are estimated to have increased rural usage from 4 percent to 9 percent between 2007 and 2009.[12]

There have been no reports of the government using control over internet infrastructure to limit connectivity. Kenyans have unrestricted access to the social-networking site Facebook, the YouTube video-sharing site, and the blog-hosting site Blogger, all of which rank among the 10 most popular sites in the country.[13]

Reform of Kenya's information and communications sector in 2008 led to a new licensing framework—part of a regulatory strategy that has seen a shift from licensing based on a bidding process to open, market-based licensing.[14] Competition has been introduced in most segments of the telecommunications market, though Safaricom currently dominates mobile-phone services, holding nearly 80 percent of the market.[15] In May 2010, the CCK published the Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations of 2010, whose objective was to reduce the gap between Safaricom and its competitors. However, in June 2010 the CCK reportedly withdrew the regulations following strident complaints from Safaricom.[16] In addition, the third-generation (3G) mobile service licensing model remains controversial, as only one of the four mobile operators, Safaricom, was able to hold a 3G license until recently. Later in June 2010, the CCK announced that it would be lowering the upfront fees for a 3G license. Safaricom protested, arguing that since it had paid the full KSh 1.9 billion (US$23.4 million) for its license, it should receive compensation from the government if other providers are allowed to pay less.[17] Nevertheless, Zain that month became the second Kenyan operator to receive a 3G license.[18] Another company, Telkom (Orange), obtained a license in November 2010 to launch its own 3G service in the first part of 2011.[19]

Under the Communications Amendment Act, passed in January 2009, the CCK rather than the independent and professional Media Council of Kenya is responsible for

---

[11] "Kenya Investing Ksh 16.3 Billion in Rural ICT," *Information Policy* (blog), July 30, 2009, http://www.i-policy.org/2009/07/kenya-investing-ksh163-billion-in-rural-ict.html.

[12] Russell Southwood, "Internet Is Creeping Up on Television for Key 18–24 Demographic, Says New National Survey," Balancing Act, February 4, 2010, available at http://allafrica.com/stories/201002050912.html.

[13] Alexa, "Top Sites in Kenya," http://www.alexa.com/topsites/countries/KE, accessed August 23, 2010.

[14] "CCK Heeds Call, Slashes 3G Upfront Fees," KenTV, http://www.kentv.net/news-archive/2511-cck-heeds-callslashes-3g-upfront-fees, accessed February 11, 2011.

[15] Macharia Kamau, "Safaricom Raises Concerns Over Competition Rules," *Standard*, May 3, 2010, http://www.standardmedia.co.ke/InsidePage.php?id=2000008960&cid=14.

[16] Kui Kinyanjui and Mark Okuttah, "Firm Picked to Guide Telcos Regulation," *Business Daily*, June 8 2010, http://www.businessdailyafrica.com/Company%20Industry/Firm%20picked%20to%20guide%20telcos%20regulation/-/539550/933998/-/60qhtd/-/index.html.

[17] Evelyne Njoroge, "Zain Kenya Happy with Move on 3G Licenses," Capital Business, June 18, 2010, http://www.capitalfm.co.ke/business/Kenyabusiness/Zain-Kenya-happy-with-move-on-3G-licenses-4320.html.

[18] Michael Karanja, "Another Kenyan Firm Gets 3G License," Capital Business, June 25, 2010, http://www.capitalfm.co.ke/business/Kenyabusiness/Another-Kenyan-firm-gets-3G-license-4348.html.

[19] Duncan Miriri, "Telkom Kenya Gets Shareholder Loan for 3G License," Reuters, June 23, 2010, http://af.reuters.com/article/investingNews/idAFJOE65M0EU20100623. George Mwangi, "Telkom Kenya Gets 3G License," *Wall Street Journal,* November 24, 2010, http://online.wsj.com/article/BT-CO-20101124-707873.html.

regulating both traditional and online media. The formal independence of the CCK is enshrined in the 1998 Kenya Communications Act, and in 2005 several independent commissioners, including a civil society representative, joined the CCK board. However, most of the commissioners remain government appointees, and their independence is somewhat limited in practice.[20] The CCK's recent withdrawal of the proposed fair competition regulations has reinforced the perception that the commission is subject to the undue influence of powerful companies like Safaricom.[21] As the CCK has yet to make any decisions affecting the internet, its autonomy and professionalism in making determinations on the topic remain to be seen. Access providers have formed organizations such as the Kenyan ISP Association, the Telecommunications Service Providers of Kenya, and the Kenya Cybercafe Owners to lobby the government for better regulations, lower costs, and increased efforts to improve computer literacy.

LIMITS ON CONTENT

The government does not employ technical filtering or any administrative censorship system to restrict access to political or other content. Citizens are able to access a wide range of viewpoints, with the websites of the British Broadcasting Corporation (BBC), the U.S.-based Cable News Network (CNN), and Kenya's *Daily Nation* newspaper being the most commonly accessed online news outlets.[22] Despite concerns over the use of the internet to propagate hate speech during postelection violence in late 2007 and early 2008, and fears that the authorities might use this to justify imposing greater controls on online content, no such restrictions have been introduced. Individual internet users generally seem comfortable expressing themselves freely online, though mainstream media organizations practice some self-censorship.

The internet has emerged as an increasingly important forum for political debate, particularly during the run-up to an August 2010 referendum in which voters approved a new constitution. Political and civic organizations used the internet to distribute educational material such as pamphlets, videos, and statements about their positions on the draft constitution, as well as to publicize rallies related to the referendum. However, as in the run-up to the 2007 elections, there were also concerns that the internet was being used by nonstate actors for detrimental purposes. Some of those opposed to the draft constitution, for instance, spread misinformation about controversial aspects of the document, such as claims that it would legalize abortion. (In fact it contained a clause similar to one in the

---

[20] Rebecca Wanjiku, "Kenya Communications Amendment Act 2009: Progressive or Retrogressive?" Association for Progressive Communications, September 2009, http://www.apc.org/en/system/files/CICEWAKenya20090908_EN.pdf.

[21] Jevans Nyabiage, "Kenya: Storm Brews Over New CCK Telecoms Rules," *Daily Nation*, May 3, 2010, available at http://allafrica.com/stories/201005031247.html.

[22] Juma, "Mobile Internet on Course to Becoming Top Earner for Firms."

current penal code that allows a doctor to conduct an abortion when the mother's life is in danger.) Aside from the constitutional referendum, the blogging community in recent years has mostly focused on apolitical topics such as the booming technology sector in Nairobi. Meanwhile, print outlets, television, and radio continue to be the main sources of news and information for most Kenyans, though there are increasing efforts to extend mainstream news to online platforms. All major television stations use YouTube to rebroadcast news clips and also have accounts on Facebook and the Twitter microblogging site.

VIOLATIONS OF USER RIGHTS

The constitution protects freedom of expression and the "freedom to communicate ideas and information." However, it also grants the government the authority to punish defamation, protect privileged information, and restrict state employees' freedom of expression "in the interest of defense, public safety, public order, public morality or public health." Criminal defamation laws remain on the books, but there do not appear to have been any cases aimed at online commentators. In January 2009, the president approved the controversial Communications Amendment Act despite significant opposition from local media workers and international press freedom watchdogs. The act established that any person who publishes, transmits, or causes to be published in electronic form obscene information commits an offense. It also outlines other forms of illegality associated with the use of information and communication technologies (ICTs).[23] The prescribed punishments include up to KSh 200,000 (US$2,460) in fines and two years' imprisonment. In July 2009, an amendment to the legislation repealed provisions that had restricted broadcast media. The law's effects on online communications remain unclear,[24] and as of the end of 2010, the measure had not been used to prosecute anyone for online expression.

Surveillance of internet and mobile phones is not a serious concern in Kenya. In June 2010, the CCK announced a requirement for all mobile-phone subscribers to register their SIM cards with their service providers. By September, approximately 60 percent of users had registered and the authorities extended the deadline to allow the remainder time to do so before having their lines disconnected.[25] There have been no reported cases of bloggers or other activists having their communications monitored. There were no reports of extralegal intimidation of journalists, bloggers, or other ICT users by state authorities or any other actor in 2009–10.

---

[23] Republic of Kenya Office of Public Communications, "The Kenya Communications (Amendment) Act 2009," http://www.communication.go.ke/Documents/media.pdf, accessed February 15, 2011.
[24] International Freedom of Expression eXchange (IFEX), "Triumph for Journalists as Government Agrees to Amend Media Law," news release, May 20, 2009, http://www.ifex.org/kenya/2009/05/20/govt_to_amend_law/.
[25] CCK, "It's now mandatory to register your SIM card," June 21, 2010, http://www.cck.go.ke/news/2010/news_21june2010.html; Simon Davies, "Kenya Extends SIM Card Registration Deadline," Cellular News, September 22, 2010, http://www.cellular-news.com/story/45530.php.