



KENYA

	2012	2013
INTERNET FREEDOM STATUS	FREE	FREE
Obstacles to Access (0-25)	10	9
Limits on Content (0-35)	7	7
Violations of User Rights (0-40)	12	12
Total (0-100)	29	28

POPULATION: 43 million
INTERNET PENETRATION 2012: 32 percent
SOCIAL MEDIA/ICT APPS BLOCKED: No
POLITICAL/SOCIAL CONTENT BLOCKED: No
BLOGGERS/ICT USERS ARRESTED: No
PRESS FREEDOM 2013 STATUS: Partly Free

* 0=most free, 100=least free

KEY DEVELOPMENTS: MAY 2012 – APRIL 2013

- Kenya’s first general election, under the new 2010 constitution was held on March 4, 2013, which saw citizens and politicians alike using ICTs to disseminate information and prevent electoral violence (see **LIMITS ON CONTENT**).
- Fearful of election-related unrest, the government blocked thousands of allegedly inflammatory text messages, mandated bulk texts be pre-screened, and hired a team to proactively monitor social media for inciting language (see **LIMITS ON CONTENT**).
- Service providers were required to install internet traffic monitoring equipment known as the Network Early Warning System (NEWS) by December 2012 to detect cyber threats, such as online hate speech (see **VIOLATIONS OF USER RIGHTS**).

INTRODUCTION

Over the past decade, Kenya has made notable strides in the field of information and communication technologies (ICTs), spurred by the government's commitment to economic development and an engaged civil society. Among several success stories are the start of construction for the Konza Techno City, dubbed "Africa's Silicon Savannah," in January 2013,¹ the launch of the National ICT Master Plan 2017,² and an impressive rise in both internet and mobile usage. The large-scale adoption of the M-Pesa mobile money platform, both domestically and regionally, has made the country a global leader in mobile money transfer services.³ Additionally, two SMS-based applications that have become internationally known—Ushahidi and Frontline SMS—are based in Nairobi and paving the way for the integration of mobile and internet content development.⁴ Together with Nigeria and Morocco, Kenya has risen to become one of Africa's major tech hubs.

Kenya held its first general election on March 4, 2013 under the new 2010 constitution. As a result of the political violence that ensued after the last general election in 2007, there were many concerns that ICTs would be used to propagate hate speech in the lead-up to the polls. The electioneering period saw the spread of political propaganda and incendiary speech through social media,⁵ leading to ramped up efforts to limit speech and content that could incite violence. In September 2012, for example, the Communications Commission of Kenya (CCK) issued guidelines which mandated the pre-screening and approval of bulk messages containing political content before transmission.⁶

While there were no known incidents of government filtering or interference with online content in the past year, the Blue Coat PacketShaper appliance—a device that can help control undesirable traffic by filtering application traffic by content category—was discovered in Kenya alongside 18 other countries around the world, including China, Bahrain, and Russia in January 2013, though it

¹ "Kenya Begins Construction of 'Silicon' City Konza," BBC News, January 23, 2013, <http://www.bbc.co.uk/news/world-africa-21158928?print=true>.

² Joseph McOluch (ed.), *Connected Kenya 2017, National ICT Master Plan* (Kenya: ICT Board, 2012), <http://www.ict.go.ke/docs/MasterPlan2017.pdf>.

³ Wolfgang Fengler, "How Kenya Became a World Leader for Mobile Money," *Africa Can...End Poverty* (blog), World Bank, July 16, 2012, <http://blogs.worldbank.org/africacan/how-kenya-became-a-world-leader-for-mobile-money>.

⁴ David Souter and Monica Kerretts-Makau, "Internet Governance in Kenya -- An Assessment for the Internet Society," ICT Development Associates Ltd, September 2012, 32, <http://www.internetsociety.org/sites/default/files/ISOC%20study%20of%20IG%20in%20Kenya%20-%20D%20Souter%20%26%20M%20Kerretts-Makau%20-%20final.pdf>.

⁵ A report by the Kenya Human Rights commission pointed out that "Kenyans on Twitter and Facebook, ran amok with all manner of accusations and counter-accusations mainly laced on choice epithets betraying raw ethnic chauvinism or blind political party loyalty." See, "Report: Election Propaganda Widespread in Social Media," *African Seer*, March 28, 2013, <http://www.africaseer.com/news/african-news/265133-report-election-propaganda-widespread-in-social-media.html>.

⁶ According to article 9.4, "Political Messages shall not contain inciting, threatening or discriminatory language that may or is intended to expose an individual or group of individuals to violence, hatred, hostility, discrimination or ridicule on the basis of ethnicity, tribe, race, colour, religion, gender, disability or otherwise." See: "Guidelines for the Prevention of Transmission of Undesirable Bulk Political Content/Messages via Electronic Communications Networks," CCK, September 2012, http://www.cck.go.ke/regulations/downloads/Guidelines_for_the_prevention_of_transmission_of_undesirable_bulk_political_content_via_sms.pdf.

is uncertain whether the device has been implemented. Meanwhile, over 300,000 text messages were reportedly blocked a day during the March 2013 elections for allegedly containing speech that had the potential to incite violence. Precautionary surveillance measures were also implemented to curb the spread of provocative and inflammatory speech, which involved a requirement announced by the CCK in March 2012 for service providers to install the internet traffic monitoring equipment known as the Network Early Warning System (NEWS) by December 2012, citing a rise in cyber threats.⁷

Citizen and civil society efforts to monitor electoral activities and outcomes through innovative ICT tools played an instrumental role during the elections period. The Uchaguzi crowd-sourcing platform, for example, monitored trends as they were reported in real-time by citizens via SMS, and highlighted instances of political violence and electoral malpractice.⁸

OBSTACLES TO ACCESS

The spread and use of ICTs is increasing in Kenya, in no small part due to the government's commitment to developing the country's ICT infrastructure as a tool for economic growth. According to the latest CCK data from the last quarter of 2012, the percentage of the population with access to the internet stood at over 41 percent, increasing from 28 percent in 2011, though the International Telecommunications Union (ITU) estimated a 2012 rate of 32 percent.⁹ Meanwhile, Kenya's mobile data and internet subscriptions stood at 8.5 million as of December 2012, with an estimated 17.4 million users,¹⁰ while 34 percent of the population accessed the internet via mobile phones.¹¹ Mobile phone subscribers stood at over 30 million,¹² with a 78 percent penetration rate (72 percent according to ITU data¹³), though many people have more than one subscription to take advantage of lower prices or expand their geographic coverage, putting the actual number of users much lower. Nevertheless, the growth in mobile subscribers can be attributed to the popularity of mobile handsets as a medium of communication and the increasing availability of value-added mobile services such as internet, entertainment, and mobile money transfer.

⁷ Okuttah Mark, "CCK Sparks Row with Fresh Bid to Spy on Internet Users," *Business Daily Africa*, March 20, 2012, <http://www.businessdailyafrica.com/Corporate-News/CCK-sparks-row-with-fresh-bid-to-spy-on-Internet-users/-/539550/1370218/-/item/0/-/edcfmsz/-/index.html>.

⁸ Juliana Rotich, "Uchaguzi Overview Report for March 4, 2013," Uchaguzi, March 4, 2013, <http://sitroom.uchaguzi.co.ke/2013/03/04/uchaguzi-overview-report-for-march-4-2013/>.

⁹ Communications Commission of Kenya, "Quarterly Sector Statistics Report, Second Quarter of the Financial Year 2012/13 (Oct-Dec 2012)," 21, http://www.cck.go.ke/resc/downloads/Sector_statistics_for_Quarter_2_-_2012-2013.pdf; International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2012," <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

¹⁰ "Kenya ICT Board launches Julisha ICT Survey report 2013," *Humanipo*, February 19, 2013, <http://www.humanipo.com/news/4084/Kenya-ICT-Board-launches-Julisha-ICT-Survey-report-2013>.

¹¹ Communications Commission of Kenya, "Mobile Penetration in the Country Continues to Increase," January 21, 2013, http://www.cck.go.ke/mobile/news/index.html?nws=/news/2013/Mobile_penetration.html.

¹² Communications Commission of Kenya, "Mobile Penetration."

¹³ International Telecommunication Union, "Mobile-cellular Telephone Subscriptions, 2000-2012."

Kenya is also said to have comparatively low-priced mobile service for Africa, with monthly costs averaging KES161 (\$1.90) for 30 calls and 100 SMS test messages.¹⁴ These relatively affordable costs are largely the result of strong regulatory interventions that have led to the implementation of the lowest mobile termination rates across the continent.¹⁵ In November 2012, the CCK slashed the mobile termination rate from Sh2.21 to Sh1.44 per minute, which drove down prices for mobile phone users.¹⁶ Nevertheless, the CCK also initiated a crackdown against the use and sale of counterfeit mobile devices in 2012, setting a deadline of September 30 for users to verify the authenticity of their handsets through a database of IMEI numbers created in collaboration with device manufacturers.¹⁷ Millions of unverified handsets were deactivated from networks on October 1, 2012.¹⁸

Data bundles are now available for prepaid mobile customers, while mobile broadband subscriptions on GPRS/EDGE and 3G networks have continued to increase as well. By the last quarter of 2012, broadband subscriptions stood at over one million users, representing approximately 12 percent of total mobile internet subscriptions.¹⁹ By contrast, the number of fixed broadband subscriptions numbered less than 43,000 at the end of 2012, for a penetration rate of 0.1 percent, according to ITU data.²⁰ The growth in mobile internet subscriptions can be attributed to competitive mobile internet tariffs, special offers and promotions, and the rising use of social media, particularly among the youth population.

While internet penetration continues to increase across the country, there is still a large disparity in access between rural and urban areas. A 2012 study by the Internet Society noted that internet use in Kenya is largely concentrated in Nairobi and that significant action is still needed to address issues of access outside of the capital.²¹ Further, the cost of mobile devices and internet subscriptions remains a stumbling block for many impoverished Kenyans to access the web.²² For example, the average user pays about \$36 per month for 1-2 Mbps of unlimited data services and \$37 for unlimited internet through a USB dongle (3G modem),²³ while the average monthly wage of an unskilled employee is about KES 4,258 (\$53).²⁴

¹⁴ Frankline Sunday, "Lack of Expertise Slows Down ICT Growth," *Standard Digital*, December 22, 2012,

http://www.standardmedia.co.ke/?articleID=2000073463&story_title=lack-of-expertise-slows-down-ict-growth.

¹⁵ Mobile termination rates are a measure of the costs that mobile operators charge each other for terminating inter-network calls.

¹⁶ Sunday, "Lack of Expertise Slows Down ICT Growth."

¹⁷ The International Mobile Equipment Identifier (IMEI) of counterfeit phones is either duplicated in many other phones or does not conform to the recognized GSMA structure. IMEI is a 15-digit number that is unique to each mobile handset. See, Communications Commission of Kenya, "Counterfeit Mobile Phones," <http://www.cck.go.ke/counterfeit-campaign/>.

¹⁸ Muthoki Mumo, "Booming Business for Shops as CCK Shuts Fake Phones," *Daily Nation*, October 1, 2012, <http://www.nation.co.ke/business/news/Fake-phones-shut/-/1006/1522804/-/bbovmqz/-/index.html>.

¹⁹ Communications Commission of Kenya, "Quarterly Sector Statistics Report, Second Quarter of the Financial Year 2012/13 (Oct-Dec 2012)."

²⁰ International Telecommunication Union, "Fixed (Wired)-broadband Subscriptions, 2000-2012."

²¹ David Souter and Monica Kerretts-Makau, "Internet Governance in Kenya -- An Assessment for the Internet Society," ICT Development Associates Ltd, September 2012, 28.

²² "Costly Smart Devices and Internet Keep Users Away," *Daily Nation*, February 19, 2013, <http://bit.ly/XrYk0o>.

²³ Orange, "Orange Launches Unlimited Internet Bundles," press release, January 18, 2011, <http://oran.ge/1bWXY5i>.

²⁴ "Minimum Wage Rates in Kenya," *Wage Indicator*, as of June 2012, accessed June 22, 2013, <http://www.wageindicator.org/main/minimum-wages/kenya>.

Both the government and private sector are working to remedy the disparity between rural and urban access through the introduction of digital villages and *Pasha* (“Inform”) Centers, which are small public access sites similar to cybercafes.²⁵ In November 2012, Kenya’s ICT board announced that it had set aside 27 million Kenyan shillings to establish an additional 27 digital villages across the country by the end of the year,²⁶ adding to the 63 centers that have already been built since the initiative’s launch in 2009. The board aims to establish centers in 290 constituencies in the long term.²⁷

The Konza Techno City is another government initiative that aims to foster the growth of Kenya’s ICT industry and place the country on the map as “Africa’s Silicon Savannah.” Designed to include a central business district, a university campus, urban parks, and housing for up to 185,000 people, the multi-billion dollar project hopes to create nearly 100,000 jobs in the ICT sector by 2030. Construction of the city began in January 2013 on a 5,000-acre plot located some 60 kilometers from Nairobi.²⁸

Kenya has four submarine cables that cumulatively provide the country with a capacity of about 8.56 Tbps, and a fifth cable announced in November 2012 will soon double the country’s capacity to around 15 Tbps.²⁹ These infrastructural developments have improved available bandwidth, but unreliable or slow connections in many areas of the country, power outages, and issues of cost remain obstacles to access. Nevertheless, there have been no reports of the government controlling the internet infrastructure to limit connectivity.

Through the country’s open market-based licensing process instituted in 2008, competition is present in most segments of the telecommunications market, though Safaricom still dominates the market for mobile phone services with a 63 percent share of all mobile subscriptions.³⁰ Safaricom also has a dominant position in the ISP market, commanding a 69 percent share of internet subscriptions as of June 2012, though its dominance has decreased over the past year with Airtel, Orange, and Essar gaining market share.³¹

Under the 2009 Communications Amendment Act, the CCK is responsible for regulating both broadcast and online media. Its independence is formally enshrined in the 1998 Kenya Communications Act, and the body has endeavored to work independently even though most of the commissioners remain government appointees and the appointment process is not sufficiently open

²⁵ “Kenya Investing Ksh 16.3 Billion in Rural ICT,” *Information Policy* (blog), July 30, 2009,

<http://www.ictworks.org/2009/07/29/kenyan-government-investing-ksh163-billion-rural-ict/>.

²⁶ Frederick Obura, “ICT Board to Release Funds for Digital Villages,” *Standard Online*, November 1, 2012,

http://www.standardmedia.co.ke/?articleID=2000069710&story_title=Kenya-ICT-Board-to-release-funds-for-digital-villages.

²⁷ Obura, “ICT Board to Release Funds for Digital Villages.”

²⁸ “Kenya Begins Construction of ‘Silicon’ City Konza.”

²⁹ Muthoki Mumo, “Internet Capacity to Double Soon After Fifth Fibre Optic Cable Lands,” *Daily Nation*, November 19, 2012,

<http://www.nation.co.ke/business/news/Fifth-fibre-optic-cable-lands/-/1006/1624478/-/item/0/-/1uv0vy/-/index.html>.

³⁰ Communications Commission of Kenya, “Quarterly Sector Statistics Report, First Quarter of the Financial Year 2012/13,” 15,

http://www.cck.go.ke/resc/downloads/SECTOR_STATISTICS_REPORT_Q1_12-13.pdf.

³¹ Souter, “Internet Governance in Kenya,” 13.

and transparent.³² In February 2013, however, the government for the first time publicly advertised the consumer representative position of the CCK board in accordance with Kenya's new 2010 constitution,³³ which states that board positions must be filled competitively.

The proposed Independent Communications Commission of Kenya Bill, 2010 further seeks to expand the independence of the country's ICT regulatory regime by replacing the CCK with the Independent Communications Commission of Kenya, which will be expected to function without any political or commercial interference.³⁴ Under the new body, all board positions will be publicly advertised, and the four government officials who currently sit on the CCK board will be removed and replaced by seven commissioners appointed by the president,³⁵ but only on the recommendation of the Public Service Commission.³⁶ It is expected that the proposed bill will be implemented in 2013 in accordance with the fifth schedule of Kenya's 2010 constitution,³⁷ which provides for media legislation to be enacted within three years of promulgation.³⁸

Meanwhile, service 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 elections period in March 2013 saw the widespread use of ICTs, social media tools, and innovative crowd-sourcing platforms by citizens and politicians alike to disseminate information. Nevertheless, concerns over potential electoral unrest led the government to take various preemptive actions to curb the spread of hate speech via ICTs, mandating the pre-screening and approval of bulk text messages, blocking thousands of other allegedly inflammatory SMS messages, and hiring a team to proactively monitor social media sites for inciting language.

Up until 2013, there were no reports of the Kenyan government employing any form of technical filtering or administrative censorship to restrict access to political or other content. However, in

³² Open Society Foundations, "Public Broadcasting in Africa Series: Kenya," 2011, 65,

<http://www.afrimap.org/english/images/report/MAIN%20report%20final%20web%20res.pdf>.

³³ Communications Commission of Kenya, "Govt Advertises Consumers Representative Seat on CCK Board," press release, February 14, 2013, http://www.cofek.co.ke/index.php?option=com_content&view=article&id=1362%3Agovt-advertises-consumers-representative-seat-on-cck-board&catid=1%3Alatest-news.

³⁴ "Independent Communications Commission of Kenya Bill 2010," available at Kenya Correspondents Association, <http://www.kca.or.ke/attachments/article/125/INDEPENDENT%20COMMUNICATIONS%20COMMISSION%20OF%20KENYA%20BILL-CN1.pdf>.

³⁵ Article 5 (1), "Independent Communications Commission of Kenya Bill 2010."

³⁶ This is the body that appoints persons to hold or act in public offices. See, "Public Service Commission of Kenya," Mandate, http://www.publicservice.go.ke/index.php?option=com_content&view=article&id=20&Itemid=61.

³⁷ "The Constitution of Kenya, Revised Edition 2010," 178, available at Embassy of the Republic of Kenya, <http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf>.

³⁸ Article 34 (5) of Kenya's constitution states that Parliament shall enact legislation that provides for the establishment of a body, which shall be independent of control by government, political interests or commercial interests, and set media standards and regulate and monitor compliance with those standards.

January 2013, the Citizen Lab internet research group discovered evidence of the Blue Coat PacketShaper appliance—a device that can help control undesirable traffic by filtering application traffic by content category—in Kenya alongside 18 other countries around the world, including China, Bahrain, and Russia.³⁹ No further reports or evidence have surfaced to reveal the extent to which the filtering device has been implemented, though its discovery in Kenya is noteworthy given the government’s concern over the spread of hate speech and inflammatory content via ICTs in the lead-up to the March 2013 elections.

Intermediaries are responsible for filtering, removing and blocking content considered illegal, such as hate speech via text messages, though they are under no obligation to actively monitor traffic passing through their networks unless they are made aware of illegal content. Otherwise, Kenyans have unrestricted access to social-networking sites such as Facebook, Twitter, YouTube, and the blog-hosting site Blogger, all of which rank among the 10 most popular sites in the country.⁴⁰

As a result of the political crisis that ensued after the 2007 general elections, the government ramped up its efforts to curb the spread of content that could trigger unrest or incite violence prior to March 2013. In September 2012, for example, the CCK issued “Guidelines for the Prevention of Transmission of Undesirable Bulk Content/Messages via Electronic Communications Networks,”⁴¹ rules targeting licensed content service providers seeking to communicate messages to the electorate on behalf of politicians or political parties.⁴² Under the guidelines, these providers must submit a request to a mobile network operator that includes the verbatim content of the message and a signed authorization letter from the sponsoring party for approval before a bulk political message can be transmitted.⁴³ The operator then screens and vets the proposed message for any inflammatory, provoking, or hateful language, and relays its decision within 18 hours. The guidelines also include a complaints handling process for aggrieved parties.⁴⁴

Earlier in June 2012, Safaricom, the dominant mobile phone provider, issued its own guidelines for mobile advertising through its various media services to rein in negative political messages ahead of

³⁹ Morgan Marquis-Boire et al., “Planet Blue Coat: Mapping Global Censorship and Surveillance Tools,” Citizen Lab, Munk School of Global Affairs, University of Toronto, January 15, 2013, <https://citizenlab.org/2013/01/planet-blue-coat-mapping-global-censorship-and-surveillance-tools/#4>.

⁴⁰ Alexa, “Top Sites in Kenya,” <http://www.alexa.com/topsites/countries/KE>, accessed February 20, 2013.

⁴¹ According to Article 9.4 of the guidelines, “Political Messages shall not contain inciting, threatening or discriminatory language that may or is intended to expose an individual or group of individuals to violence, hatred, hostility, discrimination or ridicule on the basis of ethnicity, tribe, race, colour, religion, gender, disability or otherwise.” See: Communications Commission of Kenya, “Guidelines for the Prevention of Transmission of Undesirable Bulk Political Content/Messages via Electronic Communications Networks,” September 2012.

⁴² “Short Message Service (SMS) & The Kenyan General Elections,” *Africa Speaks 4 Africa* (blog), accessed June 22, 2013, <http://www.africaspeaks4africa.org/?p=2550>.

⁴³ CSPs are defined in Article 2.1.9 as “a person authorized by the Communications Commission of Kenya to provide content services.” See: “Guidelines for the Prevention of Transmission of Undesirable Bulk Political Content/Messages via Electronic Communications Networks,” CCK, September 2012; MNOs are defined in Article 2.1.10 as “a person authorized by the Communications Commission of Kenya to build and commercially operate Mobile Telecommunications/Electronic Communications Systems.” See: “Guidelines for the Prevention of Transmission of Undesirable Bulk Political Content/Messages via Electronic Communications Networks,” CCK, September 2012. “Bulk content” means content that is transmitted on a one-to-many configuration via SMS, MMS and any other similar medium that is capable of providing bulk messaging services.

⁴⁴ Article 9.2.

the March 2013 election.⁴⁵ Developed in consultation with the CCK and the electoral commission, Safaricom's guidelines indicated that it would suspend or terminate CSP contracts for noncompliance with its bulk message approval process, which is identical to the CCK's process outlined above.

During and after the March 4 elections, the authorities also asked mobile phone providers to block any text messages that could incite violence.⁴⁶ To do so, service providers installed a firewall that could detect messages containing particular words, such as "kill," which were automatically flagged for further scrutiny. According to the permanent secretary of the Ministry of Information and Communication, Dr. Bitange Ndemo, mobile phone service providers were blocking more than 300,000 text messages per day during the electioneering period to prevent electoral violence.⁴⁷

Individual internet users are generally comfortable expressing themselves freely online and through mainstream media organizations. Nonetheless, during the March 2013 elections, news outlets admitted to practicing self-censorship as part of a "gentleman's agreement" made by media leaders to withhold from reporting on news that could incite ethnic tensions, according to Kenya's Media Owners Association.⁴⁸ The agreement to self-censor raised local debate on the balance between the national interest and the public's right to know.

There are no known state-run, government-influenced, or partisan online news/media outlets to date. Citizens are able to access a wide range of viewpoints, and the websites of the BBC, the CNN, and Kenya's *Daily Nation* newspaper are the most commonly accessed online news outlets.⁴⁹ While print outlets, television, and radio continue to be the main sources of news and information for most Kenyans, all major television stations have live-stream features and use YouTube to rebroadcast news clips. They also have accounts on Facebook and Twitter. Notably, there has been an increase in the number of blogs in recent years, with a wide range of topics covered from entertainment, fashion, and photography, to technology and business.⁵⁰ The Bloggers Association of Kenya was formed in 2011 to promote the domestic development of online content.⁵¹

⁴⁵ "Guidelines for Political Mobile Advertising Safaricom's Premium Rate Messaging Network," Safaricom, http://www.safaricom.co.ke/images/Downloads/Resources_Downloads/POLITICAL_MOBILE_ADVERTISING_NOTICE_FULL_PAGE_2b.pdf.

⁴⁶ "Short Message Service (SMS) & The Kenyan General Elections."

⁴⁷ Fred Mukindia, "Phone Firms Block 300,000 Hate Texts Daily, says Ndemo," *Daily Nation*, March 21, 2013, <http://www.nation.co.ke/News/Phone-firms-block-300-000-hate-texts-daily-says-Ndemo/-/1056/1726172/-/ktkiafz/-/index.html>.

⁴⁸ Jason Straziuso, "Kenya Media Self Censoring to Reduce Vote Tension," Associated Press, March 7, 2013, <http://bigstory.ap.org/article/kenya-media-self-censoring-reduce-vote-tension>.

⁴⁹ Victor Juma, "Mobile Internet on Course to Becoming Top Earner for Firms," *Business Daily Africa*, April 22, 2010, <http://www.businessdailyafrica.com/Mobile-internet-on-course-to-becoming-top-earner-for-firms/-/539444/903924/-/5e9tqa/-/index.html>.

⁵⁰ "The Kenyan Blog Awards 2013 Nominees," BAKE, March 27, 2013, <http://bloggers.or.ke/the-kenyan-blog-awards-2013-nominees/>.

⁵¹ BAKE is a body that promotes content creation on the web in Kenya and represents a group of content creators who are of Kenyan origin, descent or are based in Kenya and want to syndicate their content, network among other fellow content creators, or get legal and communal representation from the Bloggers Association of Kenya.

Meanwhile, the internet continues to be an important platform for political debate and mobilization around critical issues. For example, in October 2012, hundreds of Kenyans took to Twitter to protest against members of parliament who had voted to award themselves with a substantial send-off bonus, using the hashtag, #KOTAgainstMPsBonus.⁵² Their proposal was ultimately tabled, though this was not specifically due to the Twitter campaign, as there were many protests from different groups occurring simultaneously both on and offline.

Digital media has also revolutionized the ways in which human rights and civil society groups in Kenya network and share information.⁵³ In early 2013, for example, a partnership of civil society organizations launched Uchaguzi,⁵⁴ a crowd-sourcing platform designed to help Kenya achieve a free, fair, peaceful, and credible general election by empowering Kenyans with the ability to monitor the voting process and report on significant incidents in real time via SMS. During the election, the platform received over 3,000 messages from ordinary citizens around the country.

VIOLATIONS OF USER RIGHTS

As a result of concerns over increasing cybercrime and potential electoral unrest, service providers were required to install internet traffic monitoring equipment known as NEWS, the Network Early Warning System, by December 2012. Fourteen bloggers were reportedly targeted for posting hate speech during the March 2013 elections period, though no prosecutions were pursued.

Freedom of expression is enshrined in Article 33 of Kenya's 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, incitement to violence, and advocacy of hatred. Criminal defamation laws remain on the books, waiting to be repealed or amended to conform to Kenya's 2010 Constitution. Meanwhile, existing laws that are inconsistent with it are considered unconstitutional.⁵⁵

The 2012 Data Protection Bill is currently being considered in parliament and aims to regulate the collection, processing, storing, use, and disclosure of information relating to individuals that is processed through automated or manual means.⁵⁶ Meanwhile, the 2012 Freedom of Information Bill is undergoing stakeholder consultation as of mid-2013.⁵⁷ Both bills promise to enhance internet freedom in Kenya, illustrating the country's commitment to the development of its ICT sector and the use of ICTs to enhance public sector accountability.

⁵² "#KOTAgainst Mps Bonus: Dozens Protest Against Kenyan MPs Vote for \$110,000 Bonuses," *Blottr* (blog), October 9, 2012, <http://www.blottr.com/breaking-news/kotagainstmppsbonus-dozens-protest-kenyan-mps-vote-110000-bonuses>.

⁵³ Larry Diamond, *In the Spirit of Democracy* (New York: Henry Holt and Company LLC, 2009).

⁵⁴ Swahili for elections. <https://uchaguzi.co.ke/>.

⁵⁵ The Constitution of Kenya, Article 4.

⁵⁶ Commission for the Implementation of the Constitution "The Data Protection Bill, 2012," accessed April 16, 2013, <http://www.cickenya.org/index.php/legislation/item/174-the-data-protection-bill-2012#.UW10zaj-bvE>.

⁵⁷ Commission for the Implementation of the Constitution, "The Freedom of Information Bill, 2012," accessed April 16, 2013, <http://www.cickenya.org/index.php/legislation/item/173-the-freedom-of-information-bill-2012#.UW178KJ-be>.

Nevertheless, the government appears determined to crack down on cybercrime, which includes the spread of hate speech online,⁵⁸ though prosecutions for web activity have not appeared to be politically motivated. During the electioneering period in March 2013, 14 bloggers were reportedly targeted for posting hate speech online, six of whom were investigated.⁵⁹ The other eight were not summoned since they had used pseudonyms that made them difficult to identify. No prosecutions were ultimately pursued given a lack of sufficient evidence.⁶⁰

Meanwhile, controversial blogger Robert Alai⁶¹ was arrested in April 2013 for posting an allegedly “offensive tweet” that falsely accused a former gubernatorial candidate of domestic violence against his wife.⁶² He was charged under Article 29(b) of the 2009 Kenya Information and Communications Act, which proscribes the transmission of a message that is known “to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person.”⁶³ He was later acquitted on KES 50,000 (\$560) cash bail,⁶⁴ though a guilty charge could have yielded a penalty of up to three years in prison and a fine up to 1 million Kenyan Shillings (over \$11,500).

While surveillance of the internet and mobile phones was not previously a serious concern in Kenya, worries over increasing cybercrime and potential unrest surrounding the March elections led the government to implement precautionary surveillance measures to curb the spread of hate speech. In March 2012, the CCK announced that telecom service providers needed to install the internet traffic monitoring equipment NEWS, which would help establish early responses to detected cyber threats.⁶⁵ A KES32.2 million (\$402,500) joint venture between the CCK and the ITU, the system reportedly works by assigning a unique internet protocol (IP) identity to individual gadgets, effectively making any communication traceable to its device of transmission. In their attempts to reassure consumers that the CCK would not proactively spy on internet users, officials noted that the system “does not have to read and disclose people’s information” and “will only monitor traffic.”⁶⁶ In September, service providers were given the deadline of December 2012 to comply with the installation requirement. Providers failing to comply would be cut off by

⁵⁸ Muna Wahome, “New Internet Version to Deepen Spying on Users,” *Business Daily*, September 2, 2012, <http://www.businessdailyafrica.com/New-internet-version-to-deepen-spying-on-users/-/539546/1493584/-/fc2470z/-/index.html>.

⁵⁹ Fred Mukinda, “14 bloggers Linked to Hate Messages,” *Daily Nation*, March 28, 2013, <http://www.nation.co.ke/News/14-bloggers-linked-to-hate-messages/-/1056/1732288/-/cut5kvz/-/index.html>.

⁶⁰ “Hate Messages ‘Still Rampant on Social Sites,’” *Daily Nation*, April 17, 2013, <http://www.nation.co.ke/News/Hate-messages-still-rampant-on-social-sites/-/1056/1751340/-/56mc1h/-/index.html>.

⁶¹ “Twitter Goes Silent As Robert Alai Is Arrested,” *Nairobi Wire*, August 22, 2012, <http://www.nairobiwire.com/2012/08/twitter-goes-silent-as-robert-alai-is.html>.

⁶² “Robert Alai Arrested for Alleged ‘Libelous’ Twitter Post,” *Jambo News Pot*, May 15, 2013, <http://www.jambonewspot.com/robert-alai-arrested-for-alleged-libelous-twitter-post/>; “Tech Blogger and Twitter Bigwig Robert Alai Arrested Again Over Annoying Tweets,” *Vibe Weekly*, May 16, 2013, <http://vibeweekly.com/new-vibe/1158-tech-blogger-and-twitter-bigwig-robert-alai-arrested-again-over-annoying-tweets.html>.

⁶³ Communications Commission of Kenya, “The Kenya Information and Communications Act,” 2009, <http://www.cck.go.ke/regulations/downloads/Kenya-Information-Communications-Act-Final.pdf>.

⁶⁴ Mukinda, “14 Bloggers Linked to Hate Messages.”

⁶⁵ Okuttah Mark, “CCK Sparks Row with Fresh Bid to Spy on Internet Users,” *Business Daily Africa*, March 20, 2012, <http://www.businessdailyafrica.com/Corporate-News/CCK-sparks-row-with-fresh-bid-to-spy-on-internet-users/-/539550/1370218/-/item/0/-/edcfmsz/-/index.html>.

⁶⁶ Lilian Nduati, “We Will Not Spy on Kenyans Online, says Internet Watchdog,” *Sunday Nation*, March 22, 2012, <http://bit.ly/18Gcsb0>.

international backbone operators.⁶⁷ As of May 2013, no further information is known about the extent to which service providers have complied with the installation requirement or how the system has been put into practice. Nevertheless, the interception of messages or the disclosure of their content remains a criminal offence.⁶⁸

On February 4, 2013, the National Cohesion and Integration Commission unveiled a toll-free Safaricom number for the reporting of hate speech and announced that it had trained and deployed about 100 hate speech monitors across the country to keep abreast of statements made by politicians or their supporters that could inflame tensions.⁶⁹ The government also hired bloggers to monitor websites for inflammatory content, in addition to enlisting the help of the Umati Project—a civic initiative based at Nairobi’s iHub research center—and Kenya’s National Human Rights Commission to report on online hate speech.⁷⁰ Despite the increased monitoring, there were no reported instances of any flagged content being blocked or removed.

In June 2009, the government announced a new SIM card registration requirement in collaboration with service providers, which was followed by various public awareness campaigns aimed at informing consumers of the security imperative behind the new requirement. A final deadline of December 31, 2012 was set for the SIM card registration exercise,⁷¹ after which point 2.4 million unregistered cards were disconnected, including those used in tablets and internet modems.⁷² To ensure compliance with the new regulation, the government amended the Kenya Information and Communications Act (KICA) to place the onus on mobile providers to record and maintain an index of all subscribers.⁷³

Otherwise, there were no reported cases of government abuse of online surveillance in the past year, nor are there any known requirements for ICT service providers to proactively monitor their users. In addition, netizens did not face any extralegal intimidation or violence, nor were there any politically motivated cases of technical violence against civil society or opposition websites.

⁶⁷ Muna Wahome, “New Internet Version to Deepen Spying on Users,” *Business Daily*, September 2, 2012, <http://www.businessdailyafrica.com/New-internet-version-to-deepen-spying-on-users/-/539546/1493584/-/fc2470z/-/index.html>.

⁶⁸ Alice Munyua, Grace Githaiga and Victor Kapiyo, “Intermediary Liability in Kenya,” Association of Progressive Communications, October 2012, 11, <http://www.apc.org/en/pubs/intermediary-liability-kenya>.

⁶⁹ Roselyn Obala, “NCIC Hires 100 to Monitor Hate Speech,” *Standard Online*, February 4, 2013, http://www.standardmedia.co.ke/?articleID=2000076656&story_title=ncic-hires-100-to-monitor-hate-speech.

⁷⁰ Drazen Jorgic, “Kenya tracks Facebook, Twitter for Election ‘Hate Speech,’” Reuters, February 5, 2013, <http://news.yahoo.com/kenya-tracks-facebook-twitter-election-hate-speech-122621161.html>.

⁷¹ Communications Commission of Kenya, “No Extension for Sim-registration,” December 31, 2012, http://www.cck.go.ke/news/2012/Sim_card_registration_deadline.html.

⁷² Communications Commission of Kenya, “More than 2.4m Unregistered Mobile Lines Disconnected,” January 11, 2013, http://www.cck.go.ke/mobile/news/index.html?nws=/news/2013/Unregistered_lines.html.

⁷³ Communications Commission of Kenya, “The Kenya Information and Communications (Registration of Subscribers of Telecommunication Services) Regulations, 2012,” January 4, 2013, <http://bit.ly/1blT2KP>.