

# Kenya

|                                  | 2014      | 2015      |                                          |              |
|----------------------------------|-----------|-----------|------------------------------------------|--------------|
| <b>Internet Freedom Status</b>   | Free      | Free      | <b>Population:</b>                       | 43.2 million |
| Obstacles to Access (0-25)       | 9         | 9         | <b>Internet Penetration 2014:</b>        | 43 percent   |
| Limits on Content (0-35)         | 7         | 7         | <b>Social Media/ICT Apps Blocked:</b>    | No           |
| Violations of User Rights (0-40) | 12        | 13        | <b>Political/Social Content Blocked:</b> | No           |
| <b>TOTAL* (0-100)</b>            | <b>28</b> | <b>29</b> | <b>Bloggers/ICT Users Arrested:</b>      | Yes          |
|                                  |           |           | <b>Press Freedom 2015 Status:</b>        | Partly Free  |

\* 0=most free, 100=least free

## Key Developments: June 2014 – May 2015

- Blogging has become an economically viable industry for bloggers who are increasingly sought by Kenyan businesses as a platform for advertising (see **Media, Diversity, and Content Manipulation**).
- Government officials in Kenya twice turned to the courts to compel intermediaries to take action against defamatory content about them posted online (see **Content Removal**).
- An unprecedented number of Kenyan bloggers and social media users were arrested and in some cases charged with “misuse of licensed telecommunications equipment” in 2015, mainly for their online commentary criticizing government officials (see **Prosecutions and Detentions for Online Content**).
- In the context of the fight against terrorism, several developments led to increasing concerns over the government’s surveillance powers (see **Surveillance, Privacy, and Anonymity**).

## Introduction

In 2014-2015, Kenya's information and communication technologies (ICT) sector continued to be vibrant, characterized by laudable growth due to investments from global ICT companies and the country's strong environment for innovation. The capital, Nairobi, was ranked in January 2015 as the "most intelligent" city in Africa by the Intelligent Community Forum for the city's efforts to build "inclusive, prosperous economies on a basis of information and communication technologies."<sup>1</sup> Nairobi is also the center of the global mobile money revolution, with nearly 60 percent of Kenya's adult population using mobile money platforms.<sup>2</sup> Further, Nairobi has become an incubator for local content creators, home to the world-renowned technology community for tech entrepreneurs and programmers, "i-Hub." Meanwhile, blogging has become an economically viable industry for bloggers who are increasingly sought by Kenyan businesses as a platform for advertising.

Nonetheless, sensitivities around hate speech since the tumultuous 2008 elections and growing terrorist threats have led the government to take steps to limit online freedom of expression and violate user privacy in recent years. In December 2014, the government hurriedly passed the Security Laws (Amendment) Act 2014 with little stakeholder consultation, granting power to national security organs to intercept communications without proper judicial oversight in order to detect, deter, or disrupt terrorist activities. The law was challenged in court in late December, resulting in the suspension of eight controversial provisions in February 2015, including a provision that imposed high fines and a possible jail term for journalists who publish or broadcast images of terror attacks. Nonetheless, the law still contains vaguely worded provisions that may violate freedom of expression.<sup>3</sup>

Online freedom of expression is also threatened by a provision in the 2013 Kenya Information and Communications Act (KICA) that penalizes the "misuse of licensed telecommunications equipment" for disseminating "offensive" or "annoying" messages, which was frequently used to arrest and prosecute several bloggers and social media users in 2015, mainly for posts that criticized government officials. Officials also applied legal pressure on intermediaries for objectionable content.

## Obstacles to Access

*Steadily increasing access to the internet was fueled in large part by relatively low-priced mobile services and expanding mobile broadband networks in Kenya. The telecommunication regulator's murky independence was questioned following irregularities in the board's appointment process.*

## Availability and Ease of Access

Information and communication technologies (ICTs) are continuing to spread 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 available government data from December 2014, the percentage of the population with access to the internet stood at over 64 percent, increasing from 52 percent

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1 Alex Court, "What makes Nairobi Africa's 'most intelligent' city," *CNN*, February 10, 2015, <http://cnn.it/1CPLrUQ>.

2 GSMA, "The Kenyan Journey to Digital Financial Inclusion," 2005-2014, <http://bit.ly/1BI7pUO>.

3 ARTICLE 19 remains concerned that the provision that criminalizes the adoption or promotion of "extreme belief systems" for the purpose of "facilitating ideologically based violence to advance political, religious or social change" remains on the statute book. Article 19, "Kenya: High Court ruling on security amendment act a victory for free speech," press release, February 26, 2015, <http://bit.ly/1RRJj3j>.

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recorded a year earlier,<sup>4</sup> driven in large part by internet-enabled mobile phones that provide value-added mobile services such as social media, entertainment, mobile money transfer, and lower cost text messaging applications.<sup>5</sup> Data from the International Telecommunications Union (ITU) from 2014, which may not count mobile internet access, estimated a lower penetration rate of 43 percent, up from 39 percent in 2013.<sup>6</sup>

The government reported a figure of over 31 million mobile phone subscriptions in 2014,<sup>7</sup> equating to a mobile phone penetration rate of 80 percent (73 percent according to 2014 ITU data<sup>8</sup>), though many people have more than one subscription with different providers to take advantage of lower prices or expand their geographic coverage, putting the actual number of users much lower.<sup>9</sup> The mobile sector is the predominant provider of data and internet services to Kenyan users, accounting for 99 percent of total internet subscriptions.<sup>10</sup> Penetration for fixed-line broadband subscriptions remained very low at 0.2 percent in 2014.<sup>11</sup>

In November 2014, the government announced a promise to increase access to affordable high speed broadband throughout the country in an effort to lower data transmission costs.<sup>12</sup> In line with the 2013 National Broadband Strategy, Kenya anticipates that the country will have national minimum speeds of 5 Mbps by 2017,<sup>13</sup> compared to current average speeds of 1.4 Mbps.<sup>14</sup> In light of this, different data providers are working towards connecting major urban centers with fiber optic cabling.<sup>15</sup> However, the lack of a regulatory framework to allow for infrastructure sharing has resulted in inefficient duplication in the construction of towers, ducts, and access roads.

Kenya has comparatively low-priced mobile services in Africa, with monthly costs averaging KES 161 (US\$1.90) for 30 calls and 100 SMS text messages.<sup>16</sup> Data bundles are available for prepaid mobile customers, while mobile broadband subscriptions on GPRS/EDGE and 3G networks have also continued to increase. The growth in mobile internet subscriptions can be attributed to competitive mobile internet tariffs, special offers and promotions, competition between the various cell phone providers, and the rise in social media use, particularly among the youth population. In 2014, Kenya was ranked by the Alliance for Affordable Internet as the fifth most affordable country in Africa for internet access.<sup>17</sup>

4 Communications Authority of Kenya, *Quarterly Sector Statistics Report: Second Quarter of the Financial Year 2014/2015 (Oct-Dec 2014)*, Communications Commission of Kenya (CCK), <http://bit.ly/1GVtBzy>.

5 CCK, "Local internet subscriptions record first-ever negative growth," January 16, 2014, <http://bit.ly/1kjRdrg>.

6 International Telecommunication Union, "Percentage of Individuals Using the Internet," 2000-2014, <http://bit.ly/1cblxxY>.

7 Communications Authority of Kenya, *Quarterly Sector Statistics Report: Second Quarter of the Financial Year 2014/2015 (Oct-Dec 2014)*.

8 International Telecommunication Union, "Mobile-cellular Telephone Subscriptions," 2000-2014, <http://bit.ly/1cblxxY>.

9 Communications Authority of Kenya, *Quarterly Sector Statistics Report: First Quarter of the Financial Year 2014/5 (July-Sep 2014)*, CCK, <http://bit.ly/1M1i3ki>.

10 Communications Authority of Kenya, *Quarterly Sector Statistics Report: Second Quarter of the Financial Year 2014/2015 (Oct-Dec 2014)*.

11 International Telecommunication Union, "Fixed (Wired)-Broadband Subscriptions," 2000-2014, <http://bit.ly/1cblxxY>.

12 Jackson Okoth, "State rolls out sh 225 b plan to improve internet speeds," *Standard Digital*, November 18, 2014, <http://bit.ly/1GOVibr>.

13 Republic of Kenya, *The National Broadband Strategy*, 2013, 9, <http://bit.ly/1kjSGxC>.

14 Akamai, "Average Connection Speed: Kenya," map visualization, *The State of the Internet Q3 (2014)*, accessed on March 22, 2015, <http://akamai.me/1PBZSB9>.

David Souter and Monica Kerretts-Makau, *Internet Governance in Kenya -- An Assessment for the Internet Society*, ICT Development Associates Ltd., September 2012, <http://bit.ly/1M0d9xv>.

15 Okoth, "State rolls out SH225 b plan to improve internet speeds."

16 Frankline Sunday, "Lack of expertise slows down ICT growth," *Standard Digital*, December 22, 2012, <http://bit.ly/1NQijJu>.

17 A4AI, *The Affordability Report*, 2014, <http://bit.ly/1Lk6LUw>.

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While internet penetration continues to increase across the country, there is still a large urban-rural divide in access, with internet use mainly concentrated in Nairobi.<sup>18</sup> In addition, large rural areas of the country 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 pricey and requires basic infrastructure such as electricity and roads that are often poorly developed in rural areas. This prompted the government to establish the Universal Service Fund (USF) in 2013 to raise KES 1 billion yearly from the industry in order to expand mobile and internet services.<sup>19</sup> As of March 2015, the Communications Authority of Kenya reported that the USF had exceeded targets and stood at KES 2.5 billion raised from different telecom companies, with the dominant player Safaricom contributing KES 1.3 billion.<sup>20</sup> The funds will be used for the development of communications infrastructure in remote areas where private companies are less likely to invest.

### Restrictions on Connectivity

During the year under review, there were no reports of the government controlling the internet infrastructure to limit connectivity. Kenya connects to the international internet via four undersea cables—Seacom, the East Africa Marine System (TEAMS), EASSY, and Lower Indian Ocean Network (LION2)—which has enabled increases in high speed broadband and improved internet speeds over the past several years. License provision of the internet gateway was liberalized in 2004.<sup>21</sup>

### ICT Market

Kenya's ICT sector is competitive and comprised of over ten internet service providers (ISPs) and three mobile phone providers. In 2015, Safaricom continued to dominate the market for mobile phone services with a market share of 76 percent for voice services, 93 percent for SMS, 70 percent for mobile data, and 67 percent for mobile money.<sup>22</sup> The two other mobile operators—Airtel Networks and Telkom Kenya (Orange)—served the other share of the mobile market. There are no limitations on the number of operators permitted to launch and operate telecommunications infrastructure, with both data carriers and cellular licenses allowed to run domestic fiber networks.<sup>23</sup>

Associations such as the Kenyan ISP Association, the Telecommunications Service Providers of Kenya (TESPOK), and the Kenya Cybercafe Owners enable ICT providers to lobby the government for better regulations, lower costs, and increased efforts to improve computer literacy.

### Regulatory Bodies

Kenya's telecommunications sector is regulated under the Kenya Information and Communication

18 Souter and Kerretts-Makau, *Internet Governance in Kenya -- An Assessment for the Internet Society*, 28.

19 Muthoki Mumo, "Sh74 billion needed to bridge Kenya's yawning digital divide," *Daily Nation*, May 28, 2013. <http://bit.ly/1IPvXUo>.

20 Richard Mungai, "Communications regulator raises Sh2.5 billion, surpasses fund's target," *The Star*, March 16, 2015, <http://bit.ly/1Gepsu3>.

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

22 Communications Authority of Kenya, *Quarterly Sector Statistics Report: First Quarter of the Financial Year (July-Sep 2014)*.

23 Robert Schuman and Michael Kende, *Lifting barriers to Internet development in Africa: suggestions for improving connectivity*, Internet Society, May 2013, 35, <http://bit.ly/1s1sL10>.

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Amendment Act (KICA) 2013, which established the Communications Authority of Kenya (CA) as the country's regulator for both broadcast and online media.<sup>24</sup> While KICA explicitly enshrines the independence of the CA, the act was widely criticized for the power it granted to the Cabinet Secretary to appoint the new authority's board without stakeholder input as well as the presidential appointment of the board's chairperson. The regulator's murky independence was questioned in May 2015 when the High Court disbanded the CA's board after what it determined were irregularities in the appointment process.<sup>25</sup> The Ministry of ICT responded by appealing the decision.<sup>26</sup>

## Limits on Content

*No websites were blocked during the coverage period, though a number of blogs and social media profiles were targeted for removal. 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.*

## Blocking and Filtering

Kenya does not actively block or filter internet content, and Kenyans have unrestricted access to social networking platforms and communication applications such as Facebook, Twitter, YouTube, and Wordpress, all of which rank among the 20 most popular websites in the country.<sup>27</sup>

However, the Blue Coat PacketShaper appliance—a device that can help control undesirable traffic by filtering application traffic by content category—was detected in Kenya in January 2013, as well as in 18 other countries around the world, including China, Bahrain, and Russia.<sup>28</sup> There has been no further evidence to reveal the extent to which the filtering device has been implemented, though its discovery in Kenya is noteworthy given the government's increasing concern over the spread of hate speech and inflammatory content via ICTs.

## Content Removal

Despite the lack of website blocking in Kenya, a number of blogs and social media profiles were targeted for removal during the coverage period, including the blog and Twitter page of Abraham Mutai in January 2015 following his arrest for his reporting on government corruption (see "Prosecutions and Detentions for Online Activities").<sup>29</sup> Mutai's blog and Twitter account were reinstated upon his release on bond. Blogger Robert Alai also had his Twitter account suspended in December 2014 after he allegedly insulted the Kenyan president and publicly shared the personal mobile numbers of

24 Republic of Kenya, "The Kenya Information and Communication (Amendment) Bill, 2013," *Kenya Gazette Supplement No. 105 (National Assembly Bills No. 19)*, July 22, 2013, <http://bit.ly/1vyJYiY>.

25 Otiato Guguyu, "High Court disbands Communications Authority board," *Daily Nation*, May 31, 2015, <http://bit.ly/1LGgS7B>.

26 Lilian Ochieng, "Ministry faults High Court move to disband telcos regulator board," *Daily Nation*, June 3, 2015, <http://bit.ly/1AP6uHE>.

27 Alexa, "Top Sites in Kenya," accessed March 19, 2015, <http://www.alexa.com/topsites/countries/KE>.

28 Morgan Marquis-Boire et al., *Planet Blue Coat: Mapping Global Censorship and Surveillance Tools*, Citizen Lab, January 15, 2013, <http://bit.ly/1hNzLcN>.

29 "#FreeSpeechStories: Arrested for a tweet," *BBC Trending*, January 22, 2015, <http://bbc.in/1W2ftW>; Njeri Wangari, "Blogger Abraham Mutai Arrested and Released for reporting on Corruption in Isiolo County," *Kenya Monitor*, January 22, 2015, <http://bit.ly/1PTUjpt>.

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government officials, the latter of which was seen as being in line with Twitter's policy against posting another person's private and confidential information.<sup>30</sup>

Intermediaries 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.<sup>31</sup> Under the National Cohesion and Integration Act of 2008, which outlaws hate speech, a media enterprise can be fined up to KES 1 million (nearly US\$11,000) for publishing "utterances" that can be characterized as hate speech under the law's broad definition.<sup>32</sup> According to analysis by the Association of Progressive Communications (APC), this provision can be invoked to either block or take down online content.<sup>33</sup> Issues of intermediary liability are further complicated by the fact that the Kenyan judicial system and media are not fully conversant of legal norms involving the internet.

In recent years, government officials in Kenya have increasingly turned to the courts to compel intermediaries to take action against defamatory content about them posted online. In September 2014, an administrator of a Facebook group page called "Dead Beat Kenya" was issued an injunction under a libel suit, restraining the administrator from publishing information about Kiambu county assembly member, Paul Karungo. Dead Beat Kenya is a Facebook group dedicated to naming and shaming spouses who abdicate parental responsibilities.<sup>34</sup> The assembly member had sued the Dead Beat Kenya administrator for a defamatory post that claimed he had failed to provide child support for his child.<sup>35</sup> Karungo also sued the mother of the child who had authored the allegedly defamatory post on Facebook and sought to have all offending posts and associated comments from the Facebook group's page taken down.<sup>36</sup>

Another ongoing intermediary liability case began in July 2014 when Cabinet Secretary Anne Waiguru sued Google Kenya and Google Inc. over an April 2014 story she claims defamed her on the Kenyan news and gossip blog, *Daily Post*, which is hosted on Google's Blogger.com platform.<sup>37</sup> Ms. Waiguru sued the search engine to obtain the identities of *Daily Post's* owners, against whom she sought to take legal action for the defamatory story.<sup>38</sup> Citing the 2014 European Union Court of Justice case that established the so-called "right to be forgotten" principle in the EU,<sup>39</sup> she also wanted Google to take down the article from its search engine and remove it permanently from the *Daily Post's* website. On its part, Google Kenya argued that it was in no position to take down the offensive article or supply the information sought by Ms. Waiguru given its role as a commercial agent of

30 "Blogger Alai Twitter Account Suspended," *Nairobi News*, December 18, 2014, <http://bit.ly/1M0gcWp>.

31 Alice Munyua, Grace Githaiga and Victor Kapiyo, "Intermediary Liability in Kenya," (research paper, commissioned by Association for Progressive Communication) <http://bit.ly/1GOXHDa>.

32 Section 62 (1) defines hate speech as "words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race." Section 62 (2) holds: "A newspaper, radio station or media enterprise that publishes the utterances referred to in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings." See: National Cohesion and Integration Act, 2008, section 62, accessed September 12, 2014, <http://bit.ly/1ZR1dbX>.

33 Munyua, Githaiga and Kapiyo, "Intermediary Liability in Kenya."

34 Dead Beat Kenya Updates, Facebook Page, <https://goo.gl/LDRpKi>.

35 Vincent Agoya, "MCA sues Facebook group Dead Beat Kenya for defamation," *Daily Nation*, September 17, 2014, <http://bit.ly/1GOZlz7>.

36 "Dead Beat Kenya Founder Sued by MCA Paul Karungo," Mashada (blog), September 18, 2014, <http://bit.ly/1hNCitX>.

37 "Confirmed: It was Anne Waiguru who wanted to sleep with Janet Mbugua's boyfriend Gor Semelango," *Okoa News*, April 14, 2014, <http://bit.ly/1NKjqYu>.

38 "CS Anne Waiguru to sue the owner of Kenya Daily Post for defamation," *Daily Mail Kenya*, December 2014, <http://bit.ly/1DMqBH7>.

39 Google Spain, Google Inc vs AEPD and Mario Costeja Gonzalez.

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Google Inc.<sup>40</sup> In December 2014, the Constitutional and Human Rights court ruled that the information brought to court was insufficient as to determine with certainty Google Kenya's responsibility and if it had been in a position to prevent publication of the offensive material, leaving the case on hold until a further hearing.<sup>41</sup>

### Media, Diversity, and Content Manipulation

Kenya's online information landscape is diverse and vibrant, representing a wide range of issues and viewpoints. There are no state-run online news outlets, and the most popular news websites include the BBC, CNN, and Kenya's *Standard Online* and *Daily Nation*. 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 and actively engage audiences on Facebook and Twitter.

Bloggers and social media personalities have become highly influential over the past few years, as the increase in fast and affordable internet in major cities and towns across the country has enabled Kenya's growing class of digitally skilled citizens to become content creators and alternative sources of news and information. According to the Bloggers Association of Kenya (BAKE)—formed in 2011 to support Kenya's blogging community—there are an estimated 15,000 registered blogs in the country as of mid-2015,<sup>42</sup> covering a diverse range of topics such as fashion, the environment, food, politics, health, and human rights. 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.<sup>43</sup>

The government does not impose any economic constraints on online media in Kenya, which has helped online outlets thrive. In recent years, the sale of many print newspapers has been eclipsed by online news sources, a trend which led the president to announce in March 2015 that government advertising would be shifted to digital platforms to cut down on government spending and reliance on newspapers and television stations for advertising. In his directive, the president opined that digital platforms are cheaper and effective given their broad reach.<sup>44</sup>

Individual internet users are generally comfortable expressing themselves openly online, though the use of digital technologies to spread ethnic, racist, and xenophobic commentary continues to pose a serious challenge to freedom of expression in Kenya, particularly during politically contentious periods such as national elections. In this complex debate, and in the absence of a suitable framework to regulate online hate speech, many feel that the emphasis should be on self-regulation by internet users, with the government stepping in when needed to address hate crimes on the internet.<sup>45</sup> Nonetheless, observers worry that self-censorship may rise as the growing number of bloggers and ordinary users targeted by the government for arrest over the past year has led to increasing caution among internet users in criticizing the government.

40 Brian Wasuna, "Google loses round one of court battle with Waiguru," *Business Daily*, December 10, 2014, <http://bit.ly/1LkaFwM>.

41 Petition 333 of 2014. Anne Waiguru v Google Inc & 2 others [2014] eKLR, <http://kenyalaw.org/caselaw/cases/view/104246/>.

42 Bloggers Association of Kenya (BAKE), *The State of Blogging & Social Media in Kenya 2015 Report*, pg2, <http://bit.ly/1JXAG4>.

43 Bloggers Association of Kenya (BAKE), *The State of Blogging & Social Media in Kenya 2015 Report*, 3.

44 Charles Wokabi, "Uhuru directs State firms to place all their adverts on digital outlets," *Daily Nation*, March 3, 2015, <http://bit.ly/1DSZFCv>.

45 Centre for Human Rights and Policy Studies (CHRIPS) And Centre for Human Rights and Peace, *Report of the Experts' Meeting on Addressing the Challenge of Hate Crimes on the Internet in Kenya*, (Nairobi, Kenya: University of Nairobi, 2013) 4.

## Digital Activism

The internet continues to grow as an important platform for political debate and mobilization around critical issues in Kenya. Additionally, digital media has revolutionized the ways in which netizens and civil society groups in Kenya network, share information, and effect change.

Kenya has an estimated 700,000 active Twitter users (out of over 2 million total internet users),<sup>46</sup> many of whom frequently take to the social media platform to comment on social and political issues. One instance of successful digital activism took place a few days before the inauguration of Nigerian President Muhammadu Buhari in May 2015, which Kenyan President Kenyatta planned to attend. Social media users expressed outrage when it was leaked that Kenyatta's trip to Nigeria entailed an 84-person delegation that would cost the taxpayers KES 20 million.<sup>47</sup> The uproar forced the president to cancel his trip and instead send the deputy president.<sup>48</sup>

Another successful social media campaign involved the hashtag #MyDressMyChoice in November 2014, which was sparked by an online video that captured a mob of men assaulting and stripping a Kenyan woman whom they claimed was indecently dressed.<sup>49</sup> The hashtag campaign corresponded with public demonstrations in the streets of Nairobi calling for action against the perpetrators<sup>50</sup> and ultimately resulted in an estimated 90 arrests of individuals suspected of their involvement in the assault.<sup>51</sup>

## Violations of User Rights

*An unprecedented number of Kenyan bloggers and social media users were targeted for arrest or summoned for questioning in 2014–2015, mainly for their online commentary criticizing government officials. Several developments in 2014 and 2015 led to growing concerns over the government's surveillance powers and increasing restrictions on anonymity, undertaken in response to the growing threat of terrorism.*

## 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, passed in response to widespread ethnic violence that ensued after the 2007 general elections.<sup>52</sup> Individuals found guilty of spreading hate speech, broadly defined, can be fined up to KES 1 million (nearly US\$11,000), sentenced to up to three years in prison, or both.

46 Nendo, "A to Z of Kenyan twitter," <http://atoztwitter.nendo.co.ke>.

47 1 US\$ is approximately Kes. 96

48 Oliver Mathenge and Dominic Wabala, "Uhuru cancels Abuja travel, sends Deputy President William Ruto," *The Star*, May 29, 2015, <http://bit.ly/1jxe2HV>.

49 "Kenyans hold miniskirt rally after assault," *Aljazeera*, November 17, 2014, <http://bit.ly/1Kk78us>.

50 Howard Koplowitz, "Kenya Miniskirt Protest: My Dress, My Choice Supporters Show Support For Woman Beaten By Men over 'Indecent' Outfit," *International Business Times*, November 17, 2014, <http://bit.ly/1M0qCoZ>.

51 Maureen Waruinge, "90 suspects arrested for stripping Kenyan women," KissFM, <http://bit.ly/1LkcCtc>.

52 Milly Lwanga, "Freedom of expression and harmful speech: The Kenyan situation," Article 19, September 27, 2012, <http://bit.ly/1M0qSEJ>.

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Section 132 of the penal code, which penalizes “undermining the authority of public officers,” also constrains freedom of expression, both online and off.<sup>53</sup> Meanwhile, criminal defamation laws remain on the books, waiting to be repealed or amended to conform to Kenya’s 2010 constitution.

Online expression is specifically targeted under Section 29 of the Kenya Information and Communications Act (KICA) 2013, which penalizes the use of ICTs to disseminate messages deemed to be “grossly offensive” or that cause “annoyance, inconvenience or needless anxiety to another person” with a fine of up to KSH 50,000, three years in prison, or both.<sup>54</sup> Section 29 of KICA was used to arrest and, in some cases, charge an unprecedented number of bloggers and social media users for their online activities in 2015 (see “Prosecutions and Detentions for Online Activities”).

A number of positive laws have been proposed in recent years to protect the rights of Kenyan internet users. The Data Protection Bill 2012, though still in draft form as of mid-2015, aims to regulate the collection, processing, storing, use, and disclosure of information relating to individuals processed through automated or manual means.<sup>55</sup> The 2013 Freedom of Information Bill underwent stakeholder consultation in mid-2013 and awaits further consideration in parliament as of mid-2015.<sup>56</sup> Both bills promise to strengthen internet freedom in Kenya, though 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

An unprecedented number of Kenyan bloggers and social media users were targeted for arrest or summoned for questioning in 2014-2015, mainly for their online commentary criticizing government officials. In previous years, arrests usually involved well-known and controversial blogger Robert Alai, who was arrested in 2012 for tweeting about a government spokesman<sup>57</sup> and again in 2013 for making allegedly false accusations on Twitter.<sup>58</sup>

Alai was arrested once again in December 2014 for insulting the president by calling him an “adolescent president” on Twitter after it emerged that President Kenyatta had proceeded to go watch the Formula One race in Abu Dhabi on the day an Al-Shabaab terror attack had hit Mandera County,<sup>59</sup> killing 28 people on a school bus in November. He was also accused of posting the personal phone numbers of government officials on Twitter.<sup>60</sup> Released on bail in December, Alai still faces the charge of undermining the presidency as of mid-2015.<sup>61</sup> Adding to the ongoing case against him, Alai was arrested yet again in February 2015 for discussing a land-grab controversy in the country on his Facebook wall.<sup>62</sup>

53 The Republic of Kenya, Penal Code, chapter 63, <http://bit.ly/1jxeeH7>.

54 Republic of Kenya, The Kenya Information and Communications Act, chapter 411A, 2009, <http://bit.ly/1LyMfxo>; amended in 2013: The Kenya Information and Communications (Amendment) Act, 2013, <http://bit.ly/1M1zTDB>.

55 Commission for the Implementation of the Constitution, “The Data Protection Bill, 2012,” <http://bit.ly/1hNGLGB>.

56 “The Freedom of Information Bill, 2012,” <http://bit.ly/1LGqDCY>.

57 “Twitter Goes Silent As Robert Alai is Arrested,” *Nairobi Wire*, August 22, 2012, <http://bit.ly/1PtT2P7>.

58 See Freedom House, “Kenya,” *Freedom on the Net*, 2013, <http://bit.ly/1M0swGi>.

59 “Photo emerge of Uhuru in Abu Dhabi in the aftermath of Al Shabaab KILLINGS in Mandera,” *Kenya Today*, November 24, 2014, <http://bit.ly/1PC5dsj>.

60 “Kenyan blogger charged with undermining presidency on Twitter,” *Aljazeera*, December 17, 2014, <http://bit.ly/1Gew6AB>.

61 John Karume, “Blogger Robert Alai charged for allegedly undermining the Presidency,” *The Standard Digital*, December 17, 2014, <http://bit.ly/1RkdYFJ>; “Robert Alai: Kenya blogger charged over Uhuru Kenyatta slur,” *BBC*, December 17, 2014, <http://bbc.in/13cykh5>.

62 “Blogger Robert Alai arrested over Lang’ata land grabbing saga,” *Business Today*, February 5, 2015, <http://bit.ly/1MPnKR0>.

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A number of other bloggers and social media users were arrested and in some cases prosecuted for the “misuse of licensed telecommunications equipment” under section 29(a) of the 2013 Kenya Information and Communications Act (KICA) during the coverage period.<sup>63</sup>

- Allan Wadi Okengo, a university student, was arrested in December 2014 and later found guilty of insulting the president and inciting ethnic hatred on his Facebook wall. He was sentenced to two years in prison and fined KES 200,000 (approximately \$2,200) in January 2015<sup>64</sup> and subsequently released on appeal in July 2015.<sup>65</sup>
- Abraham Mutai, a blogger known for his investigations on corruption, was arrested for posting a blog about corruption and charged with “using a media platform to cause public anxiety” in January 2015. He was released a day later after significant social media attention called for his release.<sup>66</sup>
- Nancy Mbidala, an intern at the Embu county government office, was arrested in January 2015 for a series of posts she wrote on her Facebook wall from 2013-2014 that allegedly abused a local governor. She was later released and pardoned of all charges after apologizing to the governor.<sup>67</sup>
- Geoffrey Andare, a web developer, was charged in March 2015 with improper use of ICTs for his Facebook post that accused an employee of a nonprofit educational organization of trading scholarships for sexual favors. Andare used the charge as an opportunity, in partnership with Article 19, to file a petition challenging the constitutionality of section 29 of the KICA, which violates Kenyan citizens’ constitutional right to freedom of expression. The petition had not been heard as of mid-2015.<sup>68</sup>

## Surveillance, Privacy, and Anonymity

The Kenyan government has stepped up its surveillance efforts in the past couple of years to deal with the threat of terrorism, which became particularly pronounced following the September 2013 Al-Shabab terrorist attack on the Westgate mall in Nairobi. Several developments in 2014 and 2015 led to growing concerns over the government’s surveillance powers and increasing restrictions on anonymity:

- In February 2014, SIM card registration requirements became more restrictive under the Kenya Information and Communications (Registration of Subscribers of Telecommunications Services) Regulations, 2013, which prescribed higher penalties than the previous regulations of up to KES 300,000 (approximately US\$3,500) or imprisonment of up to three years for

<sup>63</sup> “Confirmed! Robert Alai Has Been Arrested,” *Kenya Digest* (blog), February 5, 2015, <http://bit.ly/1M1Cq0y>.

<sup>64</sup> Other cases include: Boniface Mwangi, “Ph God!! Young Man Arrested for Carrying His Laptop without a Receipt. He Refused to Bribe Police,” *Jobs Kenya Hapa*, <http://bit.ly/1M0usyB>; Shitemi Khamadi, “Patrick Safari aka ‘Modern Corps’ arrested and charged for ‘annoying tweet’,” *Kenya Monitor*, July 30, 2015, <http://bit.ly/1PC5YBq>.

<sup>65</sup> “Kenyan jailed for insulting President Uhuru Kenyatta,” *BBC*, January 2, 2015, <http://bbc.in/1xoMrMf>.

<sup>66</sup> Njeri Wangari, “Student Allan Wadi freed from a 2 year jail term after successful appeal,” *Kenya Monitor*, July 3, 2015, <http://bit.ly/1LkeT7u>.

<sup>67</sup> “#FreeSpeechStories: Arrested for a tweet.”

<sup>68</sup> Njeri Wangari, “24 Year old Nancy Mbindalah Held in Custody then Pardoned for Undermining the Embu Governor,” *Kenya Monitor*, January 22, 2015, <http://bit.ly/1M0vF9a>.

<sup>69</sup> Shitemi Khamadi, “Web developer challenges constitutionality of infamous charge ‘misuse of licensed telecommunication equipment’,” *Kenya Monitor*, May 6, 2015, <http://bit.ly/1GP5jFR>.

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failure to abide by the registration requirements.<sup>69</sup> The new regulations also granted the communications regulator with access to service providers' offices and records without a court order, raising concerns over the blatant lack of judicial oversight.<sup>70</sup>

- In November 2014, the government contracted Kenya's largest mobile service provider Safaricom to develop a security communication and surveillance system, known as the National Police Integrated Public Safety Communication and Surveillance Project (IPSCSS), to boost the capacity of the country's national security agencies to fight terrorism.<sup>71</sup> Among the project's various components, the surveillance system will connect 195 police stations with high speed internet, and develop a 4G LTE network for the police with 80 base stations. The system is expected to be completed in 2016. Stakeholders have raised numerous concerns over the Safaricom contract with the government, including doubts about the integrity of the system, the company's independence, and the apparent conflict of interest. There are also worries that, in the absence of strong data protection standards, law enforcement agencies will be able to freely access Safaricom's database of over 20 million subscribers to match with a facial recognition system also being developed under the surveillance project.<sup>72</sup>
- In December 2014, the government hurriedly passed the Security Laws (Amendment) Act 2014 with little stakeholder consultation,<sup>73</sup> granting power to national security organs to intercept communication in the interest of detecting, deterring, or disrupting terrorist activities without proper judicial oversight.<sup>74</sup> The law was challenged in court in late December, resulting in the suspension of eight controversial provisions in February 2015, including a provision that imposed high fines and a possible jail term for journalists who publish or broadcast images of terror attacks.<sup>75</sup> Nonetheless, the law still contains vaguely worded provisions that may violate freedom of expression.<sup>76</sup>
- In July 2015, Wikileaks published leaked emails from the Italian surveillance company Hacking Team, which revealed efforts by Kenya's National Intelligence Service (NIS) to acquire Hacking Team's sophisticated spyware known as Remote Control Systems (RCS) in April and May 2015.<sup>77</sup> The leaked emails also included a request by a government representative to

69 Kenya Information and Communications (Registration of Subscribers of Telecommunications Services) Regulations, 2014; Privacy International, *The Right to Privacy in Kenya*, <http://bit.ly/1LkeJ04>.

70 Section 13. "A licensee shall grant the Commission's officers access to its systems, premises, facilities, files, records and other data to enable the Commission inspect such systems, premises, facilities, files, records and other data for compliance with the Act and these Regulations." The Kenya Information and Communications (Amendment) Act, 2013, <http://bit.ly/1M1zTDB>.

71 Beatrice Obwocha, "Government, Safaricom sign deal for Sh15 billion security surveillance system," *Daily Nation*, November 26, 2014, <http://bit.ly/1QMqwFU>.

72 Michael Rispoli, "Kenyans face new privacy threats as State expands surveillance powers," Privacy International, January 8, 2015, <http://bit.ly/1NQwPKP>.

73 Jane Goin, "Investigative journalists on the spot in new security Bill," *Capital News*, December 9, 2014, <http://bit.ly/1yyLbT4>.

74 Republic of Kenya, "The Security Laws (Amendment) Act, 2014, No. 19," *Kenya Gazette Supplement No. 167 (Acts No. 19)*, December 22, 2014, <http://bit.ly/1HeTwFa>.

75 See, Petition 628, 630 of 2014 & 12 of 2015 (Consolidated), <http://kenyalaw.org/caselaw/cases/view/106083/>; Paul Ogemba, "Security laws illegal, declares High Court," *Daily Nation*, February 23, 2015, <http://bit.ly/1MOez1V>; and Peter Kagwanja, "Ruling on anti-terrorism law a triumph for Kenya's judiciary," *Daily Nation*, February 28, 2016, <http://bit.ly/1DIsSjx>; Republic of Kenya, "The Security Laws (Amendment) Act, 2014, No. 19," *Kenya Gazette Supplement No. 167 (Acts No. 19)*, December 22, 2014, <http://bit.ly/1HeTwFa>.

76 According to ARTICLE 19, the provision that criminalises the adoption or promotion of "extreme belief systems" for the purpose of "facilitating ideologically based violence to advance political, religious or social change" remains on the statute book. Article 19, "Kenya: High Court ruling on security amendment act a victory for free speech," press release, February 26, 2015, <http://bit.ly/1RRJj3j>.

77 Vincent Achuka and Walter Menya, "Wikileaks: NIS purchased software to crack websites," *Daily Nation*, July 11, 2015, <http://bit.ly/1LyRP2U>.

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take down controversial blogger Robert Alai's anti-corruption news website, Kahawa Tungu, as "proof of concept" of Hacking Team's capabilities.<sup>78</sup> Later emails from July 2015 revealed that Hacking Team ultimately rejected the government's requests out of concerns over the Kenyan government's intentions.<sup>79</sup>

### Intimidation and Violence

Violence against online journalists and ordinary internet users is not common in Kenya, though a few incidents over the past couple of years have created cause for concern. As of mid-2015, the chief editor of the controversial news blog *Jackal News*, Dickson Bogonko Bosire, remained missing after he mysteriously disappeared in September 2013.<sup>80</sup> Bosire had periodically experienced threats in response to his blog's coverage of corruption investigations and scandals, which had led him to go into hiding or flee Nairobi on several occasions.

In June 2015, Twitter activist Wanjeri Nderi was assaulted at a shopping mall by an unidentified individual who had reportedly demanded her to "stop making noise" before attacking her. Known for her Twitter posts about corruption and injustice in Kenya, Nderi and her supporters believe she was targeted for her frequent criticisms of the government.<sup>81</sup>

### Technical Attacks

There were no politically motivated cases of technical violence against civil society, independent news, or opposition websites during the coverage period, though leaked emails published by Wikileaks in June 2015 revealed the government's intentions to launch a technical attack against blogger Robert Alai's anti-corruption news website in April 2015 (see "Surveillance, Privacy, and Anonymity").

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78 "Italians reject bid to close Kahawa Tungu," *Daily Nation*, July 12, 2015, <http://bit.ly/1PtYtnw>.

79 Daniel Finnan, "Kenyan government asked Hacking Team to attack dissident website," *Radio France Internationale*, July 17, 2015, <http://rfi.my/1Kkbq4V>.

80 Ndesanjo Macha, "Kenyan Blogger Bogonko Bosire is Still Missing, Nearly Two Years After His Disappearance," *Global Voices Advocacy*, June 18, 2015, <http://bit.ly/1W0Xl3b>.

81 Shitemi Khamadi, "Wanjeri Nderu assaulted for tweeting on corruption," *Kenya Monitor*, July 3, 2015, <http://bit.ly/1NkoWkI>.