

KENYA

	2011	2012
INTERNET FREEDOM STATUS	Partly Free	Free
Obstacles to Access (0-25)	12	10
Limits on Content (0-35)	9	7
Violations of User Rights (0-40)	11	12
Total (0-100)	32	29

* 0=most free, 100=least free

POPULATION: 43 million
INTERNET PENETRATION 2011: 28 percent
WEB 2.0 APPLICATIONS BLOCKED: No
NOTABLE POLITICAL CENSORSHIP: No
BLOGGERS/ ICT USERS ARRESTED: No
PRESS FREEDOM STATUS: Partly Free

INTRODUCTION

Kenya continues to experience growth in the information and communication technology (ICT) sector as demonstrated by the increasing number of internet users, mobile phone subscribers, and broadcasting stations in 2011. The Global Internet Speed Report released in March 2012 ranked Kenya after Ghana as the second country in Africa with the highest internet speed.¹ Nevertheless, lack of infrastructure, high costs, and low purchasing power—which was exacerbated in 2011 when high inflation put pressure on disposable incomes—still hamper connectivity for many Kenyans.

The internet was introduced in Kenya in 1993, and the first commercial internet service provider (ISP) began operating in 1995.² Mobile phones were introduced in 1992 but only became widely available and affordable after the country's telecommunications industry regulator, the Communications Commission of Kenya (CCK), was established and two service providers, Safaricom and Kencell, were licensed in 1999.³

Since 2008, there have been no confirmed incidents of government filtering or interference with online communication. However, in March 2012, the CCK announced its intention to set up a surveillance system aimed to monitor private emails, citing a rise in cyber security

¹ "Top 10 African Countries With Fastest Broadband Speed [REPORT]," TechLoy, March 12, 2012, <http://techloy.com/2012/03/12/africa-top-broadband-speed/>.

² 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.

³ 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>.

threats as justification.⁴ The installation of the internet traffic monitoring equipment known as the Network Early Warning System (NEWS) will be set up by International Telecommunication Union (ITU) experts and is expected to be operational in mid-2012.

OBSTACLES TO ACCESS

Kenya is one of Africa's fastest growing internet markets with internet penetration increasing from 7.5 percent in 2006 to 28 percent in 2011.⁵ Much of this growth can be attributed to increases in mobile internet connections, improved internet bandwidth capacity,⁶ and intensified promotions on social media applications by mobile operators.⁷

The mobile phone subscription rate in Kenya also increased from 60 percent in mid-2010 to 71.3 percent in December 2011, with 28.1 million mobile phone subscriptions, according to the CCK.⁸ This is due to the growing popularity of mobile handsets as a medium of communication in addition to increasing popularity of value-added services such as data and internet, entertainment, and mobile money transfer. Mobile subscriptions on GPRS/EDGE and 3G networks continued to show an upward trend in 2011,⁹ closing the year with 6.1 million subscriptions.¹⁰ Further, CCK reports indicate that mobile data/internet subscriptions represent 99 percent of total internet subscriptions, an indication that the mobile handset has become a popular mode of accessing internet.¹¹

While internet penetration continues to increase across the country, there is a large disparity in access between rural and urban areas. In most urban areas, the rate of access is above 15 percent, whereas penetration is less than 3 percent in some rural areas.¹² The spread of internet to underserved areas is hampered by high operation and maintenance costs, especially due to the lack of electricity, high license and spectrum fees, limited access to roads, and poor security against vandalism for the infrastructure deployed.¹³

⁴ Mark Okuttah, "CCK sparks row with fresh bit to spy on internet users," Business Daily, March 20, 2012, <http://www.businessdailyafrica.com/Corporate+News/CCK+sparks+row+with+fresh+bid+to+spy+on+Internet+users+/-/539550/1370218/-/item/1/-/4gnw15/-/index.html>.

⁵ International Telecommunication Union (ITU), "Percentage of individuals using the Internet, fixed (wired) Internet subscriptions, fixed (wired)-broadband subscriptions," 2006 & 2011, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

⁶ International Telecommunication Union (ITU), "Measuring the Information Society," 2011.

⁷ CCK, "Quarterly Sector Statistics Report, 2nd Quarter, October-December 2011/2012," 22.

⁸ *Ibid.*, 8.

⁹ CCK, "Quarterly Sector Statistics Report, 1st Quarter, July-Sept 2011/2012," http://www.cck.go.ke/resc/downloads/SECTOR_STATISTICS_REPORT_Q1_11-12.pdf.

¹⁰ CCK, "Quarterly Sector Statistics Report, 2nd Quarter, October-December 2011/2012," 21.

¹¹ CCK, "Quarterly Sector Statistics Report, 1st Quarter, July-Sept 2011/2012," 19.

¹² CCK, "Analysis of 2010 ICT Survey released in September 2011," http://www.cck.go.ke/resc/downloads/ANALYSIS_OF_THE_NATIONAL_ICT_SURVEY_2010.pdf.

¹³ CCK, "Study on ICT Access Gaps in Kenya 2011," http://www.cck.go.ke/news/downloads/Access_Gaps_Final_Report.pdf.

The impediments to ICT infrastructural development partly explain the disproportionately high concentration of internet subscribers in Kenya's two largest cities, Nairobi and Mombasa. 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 (Swahili for "inform") Centers, which are small public access sites similar to cybercafes.¹⁴ In April 2010, Kenya's ICT Board began granting loans to entrepreneurs to set up Pasha Centers equipped with five computers and an internet connection in each of Kenya's 210 constituencies.¹⁵ By September 2011, 37 Pasha Centers had been approved.¹⁶ From the private sector, the telecommunications company Safaricom aims to set up 500 digital villages across the country, and 147 centers have been established as of early 2012.¹⁷ However, owners of both digital villages and Pasha Centers complain of high tariffs, and the ICT Board's promise to provide Pasha owners with a year of free internet connectivity is yet to materialize.¹⁸

Competition is present in most segments of the telecommunications sector as a result of the country's open market-based licensing process instituted in 2008, though Safaricom still dominates mobile phone services with nearly 68 percent of the market as of September 2011.¹⁹ Increased competition among providers have decreased tariffs on mobile-cellular services, and in early 2011, the telecom Airtel sparked a price war by reducing voice call, text messaging, and termination fee rates, prompting Safaricom and Orange to follow suit.²⁰

Under the Communications Amendment Act passed in January 2009, responsibility for the regulation of both broadcast and online media was passed from the Media Council to the CCK. While the 1998 Kenya Communications Act formally enshrines the CCK's independence, most of the body's commissioners are government appointees, and the appointment process is not sufficiently open or transparent.²¹ Further, a 2009 CCK customer satisfaction survey found some concern among respondents who believe that the CCK does not work independently, is controlled by "outside forces," and is biased towards

¹⁴ "Kenya Investing Ksh 16.3 Billion in Rural ICT," *Information Policy* (blog), July 30, 2009, <http://www.informationpolicy.org/2009/07/kenya-investing-ksh163-billion-in-rural-ict.html>.

¹⁵ Kenya ICT Board, "About PASHA," March 11, 2010, http://www.ict.go.ke/index.php?option=com_content&view=article&id=160&Itemid=182.

¹⁶ Warigia Bowman, "Digital Villages," 2011, accessed January 10, 2012, <http://www.kictanet.or.ke/?p=2716>.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ CCK, "Quarterly Sector Statistics Report, 1st Quarter, July-Sept 2011/2012.,"; Macharia Kamau, "Safaricom raises concerns over competition rules," Standard Media, <http://www.standardmedia.co.ke/InsidePage.php?id=2000008960&cid=14>.

²⁰ Duncan McLeod, "Inside Kenya's brutal mobile price war," Tech Central, January 19, 2011, <http://www.techcentral.co.za/inside-kenyas-brutal-mobile-price-war/20445/>.

²¹ Open Society Foundations, "Public Broadcasting in Africa Series: Kenya," 2011, 65, <http://www.afrimap.org/english/images/report/MAIN%20report%20final%20web%20res.pdf>.

some players in the market.²² There is no evidence that the opinions from the survey were significantly different in 2011 and early 2012.

The CCK has yet to make any decisions affecting the internet, thus its autonomy and professionalism in making determinations on the topic remain to be seen. Two draft bills—the Media Council Bill 2011 and Independent Communications Commission of Kenya Bill 2010—aimed at aligning the CCK and Media Council under Kenya’s 2010 Constitution are undergoing internal review and stakeholder consultation as of early 2012.²³

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.²⁴ Despite concerns over the use of the internet to propagate hate speech during the post-election 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. Nonetheless, in January 2012, the National Integration Cohesion Commission (NCIC) announced that one of the new areas of focus for the commission’s work will be to monitor hate speech on the internet ahead of Kenya’s next general elections, which have been postponed from August 2012 to March 2013.²⁵

Individual internet users generally seem comfortable with expressing themselves freely online. Some mainstream media organizations, commentators, and bloggers practice limited self-censorship,²⁶ but this is mainly due to business implications. For example, in July 2010

²² “Customer Satisfaction and Perception Survey – 2009,” Ace Research & Field Management Services, accessed January 10, 2012, http://www.cck.go.ke/consumers/downloads/Customer_Satisfaction_Report2009.pdf.

²³ “Bill Tracker,” Commission for the Implementation of the Constitution, http://www.cickenya.org/bill_tracker?page=1.

²⁴ Victor Juma, “Mobile Internet on Course to Becoming Top Earner for Firms,” *Business Daily*, April 22, 2010, <http://allafrica.com/stories/201004210995.html>.

²⁵ Moreen Majiwa, “NCIC Monitoring Social Media for Hate Speech,” *Mzalendo*, March 26, 2011, <http://www.mzalendo.com/tag/mzalendo-kibunja/>.

²⁶ Interview with Rebecca Wanjiku, online journalist, January 3, 2010.

one blogger had to take down a post critical of a mobile provider because the company he worked for was a contractor at the mobile firm. The mobile firm called the blogger's supervisor, who subsequently gave the blogger an ultimatum to either take down the post or be fired.²⁷

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. Kenyans have unrestricted access to the social-networking site Facebook, the video-sharing site YouTube, and the blog-hosting site Blogger, all of which rank among the ten most popular sites in the country.²⁸ All major television stations now use YouTube to rebroadcast news clips and have accounts on Facebook and Twitter.

Kenya is known to be the birthplace of Ushahidi.com (Swahili for "testimony"), the crowdsourcing website that was created in the aftermath of the country's disputed 2007 presidential election to document and map eyewitness reports of violence around the country, which were collected via text messages. The Ushahidi open source software and platform has since become a popular tool for social activism and citizen journalism around the world.

The internet continues to be an important platform for political debate and mobilization around critical issues such as the rising cost of living and insecurity affecting ordinary citizens.²⁹ For example, the Unga (Flour) Revolution protests against rising food and fuel prices throughout 2011 were organized largely through Twitter, Facebook and other websites. In July 2011, a demonstration against Kenya's Minister of Education over unaccounted funds from the Free Primary Education Fund was also organized through text messages, Twitter, and Facebook.³⁰ Nevertheless, the Unga Revolution protests did not translate into a reduction of food prices, and the Minister of Education did not resign, reflecting the limits of ICT activism in affecting change in Kenya.

Digital media has revolutionized the way that human rights groups in Kenya network and share information.³¹ For example, groups such as Bunge La Mwananchi (People's Parliament) used to meet in person to organize events; today, they mobilize its members and discuss issues primarily through listservs and on Facebook. In February

²⁷ Interview conducted during the 2011 Bloggers Association of Kenya (BAKE) meeting.

²⁸ Alexa, "Top Sites in Kenya," accessed January 24, 2012, <http://www.alexa.com/topsites/countries/KE>.

²⁹ Kenfrey Kiberenge, "More Food Protests Expected in Nairobi," *The Standard*, April 23, 2011, <http://www.standardmedia.co.ke/?id=2000033874&cid=4&articleID=2000033874>.

³⁰ Grace Githaiga, "Technological advancement: new frontiers for Kenya's media?" in Pudderphatt et al., *A New Frontier, An Old Landscape* (United Kingdom: Global Partners and Associates, November 2011), 194, <http://participatorymedia.lab.asu.edu/files/NewFrontierOldLandscape.pdf>.

³¹ Larry Diamond, *In the Spirit of Democracy* (New York: Henry Holt and Company LLC, 2008).

2012, Mzalendo.com re-launched its portal designed to allow citizens to communicate with their representatives in parliament and rate their services. The website is expected to play a key role in online debates, and Mzalendo comments are currently moderated to guard against abuse.³²

VIOLATIONS OF USER RIGHTS

Freedom of expression is enshrined in Article 33 of Kenya's Constitution and includes the right to seek, receive, or impart information and ideas. The right, however, does not extend to propaganda, hate speech, incitement to violence, and advocacy of hatred. Criminal defamation laws with penalties of at least Ksh 400,000 (approximately US\$4,680) remain on the books,³³ waiting to be repealed or amended to conform to Kenya's 2010 Constitution. Existing laws that are in conflict with any article of the 2010 Constitution will be declared unconstitutional.³⁴

While defamation cases are occasionally brought against journalists in traditional media, jurisprudence is now catching up online with a few legal actions being taken against internet users in recent years. An example is that of blogger Dennis Itumbi, who in April 2012 accused blogger Robert Alai of defamation through what he considered malicious tweets. Itumbi is seeking compensation, an apology, and a retraction of "similar prominence and or any other remedies, the court may deem fit,"³⁵ grounding his case on the premise that bloggers "have to be responsible for what we say on social media."³⁶

In January 2009, the government passed a controversial Communications Amendment Act despite warnings from civil society groups that it could hinder free expression. The Act established that any person who publishes or transmits obscene information in electronic form commits an offense. It also outlines other forms of illegality associated with the use of ICTs.³⁷ The prescribed punishments include up to KSh 200,000 (approximately US\$2,340) in fines and two years' imprisonment.

³² Rebecca Wanjiku, "Kenyan Government Takes Cautious Approach Toward Social Media," PC World, March 2, 2012, <http://www.pcworld.com/article/251194/kenyan-government-takes-cautious-approach-toward-social-media.html>.

³³ Chapter 36: The Defamation Act, Laws of Kenya, Revised edition 2009 (1972), [http://www.kenyalaw.org/Downloads/Acts/Defamation%20Act%20\(Cap.36\).pdf](http://www.kenyalaw.org/Downloads/Acts/Defamation%20Act%20(Cap.36).pdf).

³⁴ Article 4 of Kenya's 2010 Constitution.

³⁵ "Journalist Itumbi sues blogger Alai," The Star, April 13, 2012, <http://www.the-star.co.ke/national/national/71340-journalist-itumbi-sues-blogger-alai>.

³⁶ Dennis Itumbi, "Why I am moving to court against a blogger," Dennisitumbi.com (blog), March 18, 2012, <http://www.dennisitumbi.com/?p=297>.

³⁷ Republic of Kenya Office of Public Communications, "The Kenya Communications (Amendment) Act 2009," accessed February 15, 2011, <http://www.communication.go.ke/Documents/media.pdf>.

As of early 2012, however, many laws such as the 2009 Communications Amendment Act are undergoing internal review and stakeholder consultation. The aim is to repeal or amend them in order to bring them in conformity with Kenya's new Constitution passed in 2010.³⁸ The Freedom of Information Bill and the ICT Sector Policy Guidelines 2011³⁹ are some of those undergoing internal review. The process is being spearheaded by the Commission for the Implementation of the Constitution.⁴⁰

Surveillance of the internet and mobile phones has become a growing concern in Kenya over the past year. In March 2012, the CCK announced its intention to set up a surveillance system aimed to monitor private emails, citing a rise in cyber security threats.⁴¹ The regulator has notified telecom service providers on the need to cooperate with the installation of the internet traffic monitoring equipment known as the Network Early Warning System, which will be set up by International Telecommunication Union (ITU) experts and is expected to be operational in mid-2012. This is being viewed as a breach of Article 31 of Kenya's Constitution, which grants citizens the right to privacy, including preventing infringement of "the privacy of their communication."

One potential case of online surveillance was reported in March 2012, when blogger Dennis Itumbi was arrested on suspicions that he had hacked the International Criminal Court (ICC) website. While no evidence was produced to prove Itumbi guilty, it was suspected that his communications had been monitored.⁴² However, he was never arraigned in court and was released after questioning, pending further investigations.

In June 2010, the CCK announced a requirement for all mobile phone subscribers to register their SIM cards with their service providers. By September 2011, approximately 60 percent of users had registered, and in April 2012, the authorities extended the deadline to August 2012 to allow everyone to register.

There were no reports of extralegal intimidation of journalists, bloggers, or other ICT users by state authorities or any other actor in 2011. Furthermore, ICT users in Kenya have not been subject to widespread technical violence; however, in early 2012, 103 Kenyan

³⁸ "Bill Tracker," Commission for the Implementation of the Constitution, http://www.cickenya.org/bill_tracker.

³⁹ Ministry of Information and Communications website:

http://www.information.go.ke/index.php?option=com_content&task=view&id=392&Itemid=535.

⁴⁰ "Bill Tracker," Commission for the Implementation of the Constitution."

⁴¹ Mark Okuttah, "CCK sparks row with fresh bit to spy on internet users," Business Daily, March 20, 2012,

<http://www.businessdailyafrica.com/Corporate+News/CCK+sparks+row+with+fresh+bid+to+spy+on+Internet+users+/-/539550/1370218/-/item/1/-/4gnw15/-/index.html>.

⁴² Cyrus Ombati, "Kenya Police go to Hague over hacking," The Standard, March 26, 2012,

<http://www.standardmedia.co.ke/?id=2000054909&cid=&articleID=2000054909>.

government websites were defaced by an Indonesian hacker,⁴³ and cyber security threats have become a growing concern to the CCK in recent years.⁴⁴

⁴³ Lilian Nduati, "Massive cyber attack hits 100 State websites," Daily Nation, January 17, 2012, <http://allafrica.com/stories/201201180434.html>.

⁴⁴ Mark Okuttah, "CCK sparks row with fresh bit to spy on internet users," Business Daily, March 20, 2012.