



ARTICLE 19



# **Silenced and Intimidated:** Attacks on Freedom of Expression in Kenya

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January - September 2015

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ARTICLE 19 would appreciate receiving a copy of any materials in which information from this report is used.

Cases in this review are from reports filed by journalists and monitors in Kenya, and analysis of reports by local, regional and international media, and nongovernmental organisations, as well as consultation with relevant experts. The list of cases might not be exhaustive, but it is based on reports monitored and filed by ARTICLE 19 and verified as deliberate attacks on freedom of expression, i.e. where the intention of the perpetrator was to silence the journalist or social media users.

See Annex 1 for full Methodology.

ARTICLE 19 appreciates the generous funding support the Dutch Ministry of Foreign Affairs as part of our Dutch Human Rights Fund project, which has not only enabled the research and production of this report, but ensured we continuously engage in pushing for greater freedom of expression in Kenya.

The views and conclusions do not necessarily reflect the position of the funders.



Ministry of Foreign Affairs of the  
Netherlands

# Executive Summary

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Attacks on journalists have increased substantially in number in 2015, with ARTICLE 19 recording 65 individual attacks on journalists and social media users. Only 42 incidents were officially reported or recorded from January to September 2015. Attacks were carried out by government officials, security agents and organised mobs - including college or university students in a manner which clearly demonstrates a sustained crackdown - to stifle and control the press, and limit the free flow of information.

This report aims to expose the disturbing trend towards deterioration of freedom of expression and media in Kenya which, ultimately, has far-reaching consequences for the country's democracy, security, and economic growth.

Corruption and protest remained the most sensitive stories for journalists to cover in 2015. Introduction of devolution has also opened journalists to a barrage of new sensitivities and security challenges: they are being forced to grapple with competing political and inter-ethnic interests, hindering objective reporting on complex local politics.

The determined assault on the media is undermining press freedom, and the safety and security of journalists. Failure to bring those responsible for attacks on journalists to account sends the signal that the media can be silenced through violence, and will ultimately lead to many journalists resorting to self-censorship, hampering the realisation of the right to free expression.

The Kenyan government must take the necessary steps to ensure that journalists are free to carry out their work. A free press cannot thrive in an environment in which journalists are under severe and constant attack: this undermines freedom of expression, and democracy, in the country.

# Silence and Intimidation by Numbers

## Violation of journalists' Freedom of Expression

Male

Female



58

7

## Violations by media group affiliation

|                                 |    |
|---------------------------------|----|
| Nation Media Group              | 13 |
| Standard Media Group            | 9  |
| Royal Media Services            | 8  |
| Media Max                       | 6  |
| Radio Africa Group              | 8  |
| Kass Media Group                | 1  |
| Mirror Weekly                   | 1  |
| West FM radio/ TV and Newspaper | 1  |
| Monitor Press newspaper         | 1  |
| Mugambo FM radio                | 1  |
| Radio Mambo                     | 1  |
| Imani TV                        | 1  |
| Mwaria FM and TV                | 1  |
| County Times newspaper          | 1  |
| Freelance journalists           | 2  |
| Online/bloggers                 | 7  |
| Xinhua News Agency              | 1  |

## Type of violation

| Murder              | Physical Attack       | Threat by Telephone | Legal Threat       |
|---------------------|-----------------------|---------------------|--------------------|
|                     |                       |                     |                    |
| 1                   | 30                    | 10                  | 6                  |
| Summured by Police  | Arrest, charged with: | Criminal Defamation | Civil Defamation   |
|                     |                       |                     |                    |
| 5                   |                       | 8                   | 4                  |
| Defamation Cases    | Journalists           | Media Houses        | Social Media Users |
| Criminal Defamation | 1                     | 0                   | 7                  |
| Civil Defamation    | 1                     | 4                   | 0                  |

## Story being investigated at time of violation



## Perpetrator of Violation



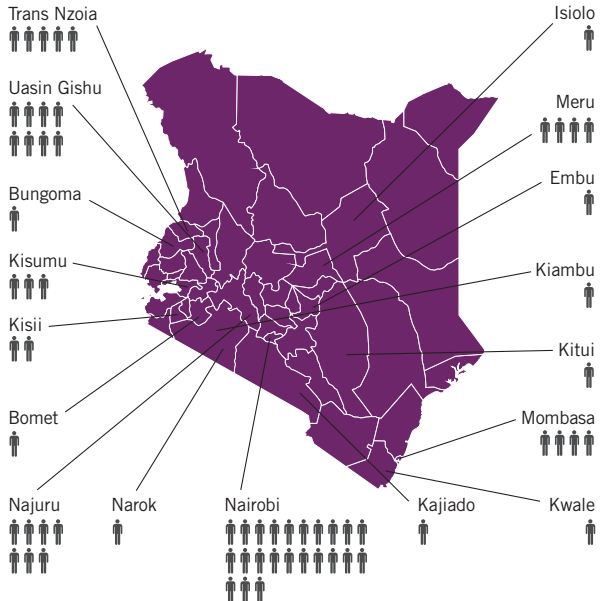
|                     |    |
|---------------------|----|
| Police              | 10 |
| State Officials     | 7  |
| Politicians         | 5  |
| Football Stewards   | 3  |
| Mob                 | 6  |
| Unknown Individuals | 7  |

## Violations by Month



|           |   |
|-----------|---|
| January   | 3 |
| February  | 2 |
| March     | 6 |
| April     | 9 |
| May       | 5 |
| June      | 2 |
| July      | 2 |
| August    | 9 |
| September | 4 |

## Violations in each County





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# 1. Murder, Threats and Attacks on Journalists

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“You are never sure which story will be seen as offensive, and put you on the target list as one of those who need to be toned down or silenced.”<sup>1</sup>

From January to September 2015, 65 individual journalists and social media users were attacked, in 42 different incidents. Seven attacks targeted female journalists and 58 targeted their male counterparts.

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## Violations on Journalists' Freedom of Expression

Male

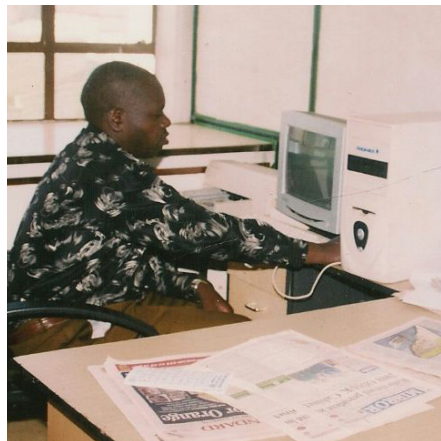
Female



58



7



John Njakusi Kituyi

One journalist was killed in the line of duty, and 30 others physically attacked and injured, with their equipment damaged. Eleven cases were of arbitrary arrest, 10 telephone threats, five police summons and six were threatened with legal notices.

On April 30, three days before 2015 World Press Freedom Day, Kenyans and journalists woke up to shocking news of the murder of veteran journalist, John Njakusi Kituyi (see image above), editor and owner of *The Mirror Weekly*, an independent regional publication published in Eldoret, Uasin Gichu County.

Kituyi was murdered by two unidentified assailants on a motorbike at around 7:30pm, as he walked home from a social occasion close to his house. The attackers stole the journalist's mobile phone and office keys, but left money and other valuables.

<sup>1</sup> An anonymous journalist working with the Standard newspaper



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The 62 year-old editor and father of seven died an hour after sustaining repeated blows to the head with a blunt object, according to the postmortem report. ARTICLE 19 has established that *The Mirror Weekly* was investigating the network behind alleged witness interference in the case against Deputy President William and the former radio journalist Joshua arap Sang before the International Criminal Court (ICC). This article was never published.

The human rights violations against journalists were mostly carried out by security agents. For example, Nehemiah Okwemba of Nation Media Group and Reuben Ogachi Citizen TV were attacked and their cameras destroyed by paramilitary service men (General Service Unit) on 18 April 2015, while investigating a complaint by local pastoralists regarding the confiscation of over 200 heads of cattle by the same officers near a state-owned Ranch in Tana River. The two journalists sustained serious injuries which caused bone fractures: one GSU officer told them they would have killed them had their commander not intervened. On April 21, the Independent Policing Oversight Authority commenced investigations into the assault but by the time of writing this report, the agency said it was still investigating the case.

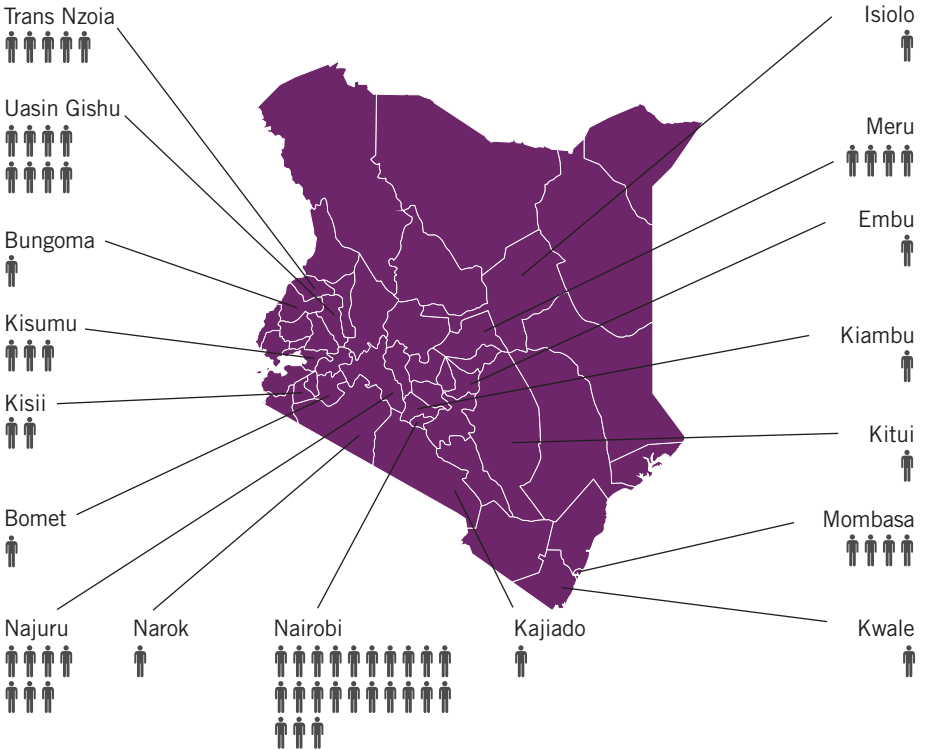
Exposing corruption was the most dangerous story for both journalists and bloggers with 22 cases of attacks reported by those covering these issues. Nairobi County is the most dangerous county for journalists to work, having recorded the highest number of cases (23). It is followed by Uasin Gichu, Nakuru and Trans Nzoia Counties.

Lack of accountability for those who target journalists has led to self-censorship. “Honestly, right now there are stories that I would think twice before writing. Any ICC story or corruption especially involving prominent people or land for that matter is a no go zone for me,” a journalist with the Kenya’s leading Daily Nation told ARTICLE 19. “Twice I have been asked to pursue an ICC story on the latest developments and another one on land in Rift Valley and have had to come up with all manner of excuses not to do these stories anymore.”

Journalists working for, or attached to Nation Media Group, suffered the most attacks (12) followed by those working for Standard media group.

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## Violations in each County



## 2. Censorship Online

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Seven male and one female social media users were arrested, some charged with 'improper use of licensed telecommunication gadget' under Section 29 of the Information and Communications Act, which criminalises publishing information online which is deemed unlawful by the authorities. Others were charged with “undermining authority of public officer,” for criticising government officials on social media pages, a charge under section 132 of the penal code (Chapter 63 Laws of Kenya), which was enacted in 1948 during the colonial rule.

The increase in the number of those charged for their online work shows the Government's determination to crackdown on critical online voices, who have continued to be vocal on social media and blogs because of media establishments reluctant to publish controversial content of public interest.

Allan Wadi, a student at Moi University was charged and sentenced under section 132 of the Penal Code and also under Section 13 and 62 of the National Cohesion and Integration (NCIC) Act 2008, on January 2, 2015, which criminalise hate speech, racial and ethnic contempt. He was sentenced to two years, one year for each charge, with an option to pay Ksh 200,000 (\$2000) for the second charge of hate speech. He has since been released.

Abraham Mutai, a prominent blogger, was arrested in Mombasa and taken to Nairobi by officers from the Directorate of Criminal Investigations, for posting on his Twitter account allegations of corruption, and misuse of public funds in Isiolo, Wajir and Mombasa counties. Mutai was held under the same penal code as Wadi: the accusation was undermining the authority of public officer, and that his posts were intended to cause public anxiety, and likely to cause civil disobedience

Another social media user, Nancy Mbindalah, a university student, was arrested in January for criticizing Embu County governor, Martin Wambora over an alleged lack of water in a local hospital and, a corrupt tendering process. She was later released on bail of Sh. 30,000 or (300 US dollars), but her case was dropped after she apologised to the Governor.

# 3. Impunity

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Of the 42 violations recorded by ARTICLE 19, only three have been investigated with the perpetrators subsequently being taken to court. This is a 7% rate of effective investigation, suggesting a high level of impunity regarding attacks on journalists.

On May 27, politician Peter ole Osono was charged for shooting at a group of journalists with the intent to kill or injure, and incitement to violence. Osono drew a gun, aiming at journalists who were covering public protests about his own alleged land-grabbing. Osono was arraigned in court, but released on a Sh500, 000 (\$5000) bonds.

In late June, two suspects were arrested and charged for assaulting four journalists in Trans Nzoia County. The two were part of the group which attacked journalists covering a protest over alleged corruption at the County government. These journalists sustained physical injuries and their cameras were damaged.

On March 3 2015, Deputy Corporate Manager at Geothermal Development Company, Eric Wamanji, was charged with sending a threatening SMS to Star Newspaper Managing Editor Charles Kerich.

Lack of accountability for reported threats and attacks on journalists has a damaging effect on freedom of expression, and has undermined the productivity of media workers, in some cases forcing them to completely stop from pursuing sensitive stories that otherwise might have fostered accountability in an environment of impunity.

## 4. Fear and Self-Censorship

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*Mirror Weekly's* offices have remained closed since May 2015. A number of their staff has remained apprehensive about pursuing sensitive stories, others have switched careers, i.e. to public relations, or quit journalism entirely and have ventured into private business.

“[The death of Kituyi] was scaring to the journalism fraternity in Eldoret. The nature of the murder, the events that came prior and the publication he had churned out in his last edition of the *Mirror Weekly* and ICC related cases of abduction, murder and threatening of witnesses left me so scared,” the reporter who had worked with Kituyi told ARTICLE19. “You are never sure sometimes which story will be seen as offensive and put you on the target list of detractors who need to be toned down or silenced,” a journalist working with the *Standard* newspaper told ARTICLE 19.

These, and many other threats and attacks, underscore the stark reality of how reporters, editors and publishers in the country have become targets for those averse to an independent and self-regulated media environment.

“I have become apprehensive about security agents. I am so insecure that every time I see police officers I get flashbacks of the beating. There are certain stories I cannot do now because of fear,” a recently assaulted journalist told ARTICLE 19. “Such fears have prevented me from doing my journalistic work,” another victim of such attacks added.

Impunity has also affected families of the journalists and social communicators: “They [Kituyi's assailants] did not only kill my husband and the father of my children but they have destroyed our source of livelihood,” says Esther Kituyi in an interview with ARTICLE 19. “Life will never be the same again for us.”

Another journalist told us, “I would not want this matter to be carried in news because the threats could come from any quarter the story touched. Publicising it will further jeopardize my safety and that of my family.”

“It's traumatizing when you realize that someone lurks in the shadows targeting to harm or eliminate you. You can't do your routine work well. The fact that someone has threatened you, it throws you off the balance,” a journalist told ARTICLE 19.

# 5. Legal Threats and Action

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“While there are very few instances of journalists in jail...there is still concern with the Act of Parliament or pieces of legislations that include Criminal Defamation that [would] make life difficult for journalists,” said David Ohito, Digital Content Editor at the Standard Group.

Kenya retains and enforces laws on criminal defamation, used to suppress the media, despite the African Court’s decision in the case of *Konate V Burkina Faso*, finding criminal defamation to be inconsistent with Article 9 of the African Charter. Thirteen defamation cases against journalists, media houses and social media users have been filed this year. Five of these are civil defamation cases, and eight criminal.

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| <b>Defamation Cases</b> | Journalists | Media Houses | Social Media Users |
|-------------------------|-------------|--------------|--------------------|
| Criminal Defamation     | <b>1</b>    | <b>0</b>     | <b>7</b>           |
| Civil Defamation        | <b>1</b>    | <b>4</b>     | <b>0</b>           |



Kurgat Marindany of the *Star* newspaper, a publication of *Radio Africa Group* was accused on April 14 2015 of publishing a defamatory matter contrary to Section 194 as read with Section 36 of the Penal code (Kajiado criminal case number 501/15). He has since filed a Constitutional reference case at the High Court, challenging the constitutionality of criminal defamation.

On June 22, the Chief Justice Dr. Mutunga, in a separate case, had filed a civil suit against *Nairobiian*, a publication of the Standard Group Ltd after it published a story which the Chief Justice called defamatory and malicious. In the suit, Dr Mutunga said the story was not only false and malicious but also highly defamatory of him, both as a person and as the head of the Judiciary and president of the Supreme Court.

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On July 3, 2015 National Bank of Kenya filed a defamation case against Nation Media Group over newspaper articles it termed 'malicious'. The bank, owned by the government, demanded more than Ksh1 billion (\$10 million) in damages. The lawsuit arose from a story carried in the Sunday Nation of June 20 which portrayed the bank negatively.

On July 13, seven judges of the Supreme Court filed a case against *Star* newspaper owned by Radio Africa Group claiming one of its articles had portrayed them as corrupt judicial officers. Chief Justice Willy Mutunga, Deputy Chief Justice Kalpana Rawal, Justice Jackton Ojwang, Justice Philip Tunoi, Justice Mohamed Ibrahim, Justice Smoking Wanjala and Justice Njoki Ndungu claimed that an article published in the *Star* newspaper implied that they receive bribes to make certain key decisions.

Criminal Defamation laws are inherently disproportionate, and have a chilling effect on free expression. Individuals face being arrested, held in pre-trial detention, subjected to expensive criminal trials, and then saddled with a criminal record, fines and imprisonment. Criminal defamation laws are often used to punish legitimate criticism of powerful people, rather than to protect the right to a reputation.

Civil Defamation laws have the potential to exert less of a chilling effect on free expression if they are formulated in a way that prevents abuse, allows proper defences, and sets reasonable limits on compensation. However, on June 29 2015, the High Court in Civil suit NO. 420 of 2011, fined Nation Media Group Kshs 20,000,000 (\$200,000) in defamation case **Samuel Ndung'u Mukunya v Nation Media Group Limited & another**. This award is high and disproportionate, and Nation Media Group has appealed it.

Nairobi Governor, Evans Kidero, sued two media houses on March 12 2015, for linking him to the financial mismanagement of Mumias Sugar Company. On September 21, the High Court issued a ruling which barred Standard Group and Nation Media Group from publishing articles linking Dr. Kidero to a draft report by audit firm KPMG, which had alleged financial misappropriation.

On February 4, Aviation College was granted an order by the High Court to begin Contempt of Court proceedings against Nation Media Group, over an article alleging that the institution issues fake certificates to students. The Court has further banned *Nation Media Group* from airing the feature 'Certificate of Doom' until the case has been heard and determined.

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Five journalists including editors were summoned this year over the publication of certain stories with which the government was not happy, demonstrating yet another worrying trend against the independence of media in the country.

In April 2015, former *Nation Media Group* editors Macharia Gaitho and Bernard Namunane, were summoned to appear at the criminal investigations headquarters over two articles relating to the deportation by the Dutch government of a National Intelligence Service officer. The two did not obey the summons because, according to their lawyer, the letter summoning them failed to comply with the Constitution in several respects, and also did not disclose identity of the aggrieved party.

In the same month, *K24 TV* investigative reporter Purity Mwambia and her Swahili managing editor Frankline Wambugu were summoned and interrogated by detectives from the anti-terror police unit over an investigative story “Bweta La Uhalifu” (Den of Crime) which would have exposed security lapses at the GSU headquarters. The story was never aired.

In May 2015, Deputy News Editor and Nakuru Bureau Chief for Standard newspaper Alex Kiprotich was summoned to the Criminal Investigations Department (CID) to reveal sources of information in a story about senior police officers who narrowly escaped death, when they were ambushed by bandits at Kalpat in Nadome, Baringo County.

Journalistic sources and their protection are crucial elements of freedom of expression, since the media depends on contacts and information from sources for information-gathering and reporting. It is thus crucial for sources to remain unidentified by the authorities and the public, as their disclosures and testimony might have repercussions for them. Public access to critical information often relies on these sources, and their willingness to share information is regularly conditional on confidentiality.

Whether they are summons or prosecutions against individual journalists or their media house, the effect is far-reaching for the independence of the media. “Nothing is more frightening than being summoned over an article you wrote as reporter, or edited, regarding which you have no doubt observed all the journalistic rules. Such experiences are forcing some of us to adopt self-censorship mechanisms in order to survive in the business,” a journalist summoned by police told ARTICLE 19.



# Conclusion

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The determined assault on the media is significantly undermining press freedom and the safety and security of journalists in Kenya. Failure to bring those responsible for attacks on journalists to justice has ultimately lead to a climate of fear, intimidation and self-censorship, hampering the realisation of right to free expression.

There is thus a pressing need for the Kenyan government to do more to hold to account those who violate the rights of journalists. It must take sufficient measures to ensure that journalists are free to carry out their work. A free press can cannot thrive in an environment where journalists are under constant and severe attack.

# Annex 1: Methodology

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**Field research and analysis:** Detailed interviews with selected journalists, media managers, and editors on the state of freedom of expression and information in Kenya, using a tailored questionnaire. Data was also collected from around 150 journalists trained on safety and protection in Kenya across the country in 2015.

**Case studies:** Interviews were conducted with media practitioners from different parts of the country whose journalistic right to freedom of expression has been violated.

**Data comparison:** Field data was collated and analysed to establish patterns and conclusions. Cases and information were corroborated by other media monitoring groups: Committee to Protect Journalists (CPJ) Media Council of Kenya (MCK), Kenya Union of Journalists (KUJ), Kenya Correspondent Association (KCA).

**Literature review:** A comprehensive review of relevant literature, including newspapers and reports from nongovernmental organizations, which corroborated details or patterns of abuses described in the report.

The data, analysis and conclusions made are those of ARTICLE 19 and do not in any way reflect the views of collaborating organisations.

## How was data collected?

- Cases reported directly to ARTICLE 19 by journalists, often while seeking assistance;
- Monitoring and documentation of cases on a daily basis by ARTICLE 19;
- Newspaper, Television, and Radio News reviews;
- Direct interviews with selected journalists; and
- Review of police case files.

## Terminology

- Violation: any threat or action which limits or intends to limit the freedom of expression of an individual;
- Attacks: aggressive and/or violent action against a person or media house;
- Critical social media users: netizens, bloggers, and others whose medium of expression or communication is commonly online.
- Impunity: lack of punishment or freedom from the injurious consequences of an action, specifically failure to bring the perpetrators and instigators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings.
- Arbitrary Arrest: arrest and detention without reasonable accusation or likelihood of a subsequent court case.

# Annex 2: Data and Statistics

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**Chart 1: Violation against journalists by gender**

| Male | Female | Total |
|------|--------|-------|
| 58   | 7      | 65    |

**Chart 2: Category of Violation**

|  | Female | Male |
|--|--------|------|
| Murder   | 0      | 1    |
| Physical attack                                      | 2      | 28   |
| Threats made by phone or text                        | 0      | 10   |
| Legal threat   | 1      | 5    |
| Summons by police                                    | 1      | 4    |
| Arrest, charged with:<br>– Criminal Defamation       | 1      | 7    |
| – Civil Defamation                                   | 1      | 3    |
| Convictions for 'misuse of telecommunication gadget' | 0      | 1    |

**Chart 3: Category of Perpetrator**

| Assailants                    | Female | Male |
|-------------------------------|--------|------|
| Police                        | 11     | 1    |
| State officials               | 7      | 0    |
| Politicians                   | 3      | 2    |
| Football stewards             | 1      | 0    |
| Unknown Individuals or Groups | 12     | 1    |

**Chart 4: Violations by month**

| January | February | March | April | May | June | July | August | Sept |
|---------|----------|-------|-------|-----|------|------|--------|------|
| 3       | 2        | 6     | 9     | 5   | 2    | 2    | 9      | 4    |

**Chart 5: Violations by affiliation or employment to media groups**

| Media affiliation              | Female | Male |
|--------------------------------|--------|------|
| Nation Media Group             | 0      | 13   |
| Standard Media Group           | 0      | 9    |
| Royal Media Services           | 1      | 7    |
| Media Max                      | 1      | 5    |
| Radio Africa Group             | 2      | 6    |
| Kass Media Group               | 1      | 0    |
| Mirror Weekly                  | 0      | 1    |
| West FM radio/TV and Newspaper | 0      | 1    |
| Monitor Press newspaper        | 0      | 1    |
| Mugambo FM radio               | 1      | 0    |
| Radio Mambo                    | 0      | 1    |
| Imani TV                       | 0      | 1    |
| Mwaria FM and TV               | 0      | 1    |
| County Times newspaper         | 0      | 1    |
| Freelance journalists          | 0      | 2    |
| Online/bloggers                | 1      | 6    |
| Xinhua News Agency             | 0      | 1    |
| Football stewards              | 1      |      |
| Unknown Individuals or Groups  | 12     | 1    |

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### Chart 7: Violations in each County

| County      |    |
|-------------|----|
| Nairobi     | 23 |
| Uasin Gishu | 8  |
| Nakuru      | 7  |
| Trans Nzoia | 5  |
| Mombasa     | 4  |
| Meru        | 4  |
| Kajiado     | 1  |
| Kisii       | 2  |
| Kisumu      | 3  |
| Bomet       | 1  |
| Kitui       | 1  |
| Kwale       | 1  |
| Kiambu      | 1  |
| Bungoma     | 1  |
| Isiolo      | 1  |
| Embu        | 1  |
| Narok       | 1  |

### Chart 8: Critical Social Media Users charged with 'misuse of telecommunication gadget'

| Critical social media users                     | Female | Male |
|---|--------|------|
| Charged with misuse of telecommunication gadget | 1      | 7    |

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**Chart 9: Defamation cases**

|                     | Journalists | Media House | Social media users |
|---------------------|-------------|-------------|--------------------|
| Criminal Defamation | 1           | 0           | 7                  |
| Civil Defamation    | 1           | 4           | 0                  |

**Chart 10: Journalists summoned by police, by media group**

|                | Nation Media Group | Media Max Limited | Standard Media Group |
|----------------|--------------------|-------------------|----------------------|
| Police Summons | 2                  | 2                 | 1                    |



DEFENDING FREEDOM  
OF EXPRESSION AND INFORMATION

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