



HUMAN RIGHTS WATCH / ARTICLE 19 | MAY 2017

Kenya | "Not Worth the Risk"

Since the 2013 general elections that brought President Uhuru Kenyatta to power, journalists and bloggers reporting on issues Kenyan authorities consider sensitive have faced an array of abuses, including being threatened, harassed, targeted for online and telephone surveillance, physically attacked, and trumped-up criminal charges. Such issues include corruption, land, abuses in counterterrorism operations, and the lack of accountability for the 2007-2008 post-electoral violence. And as Kenya heads to the polls in August 2017, freedom of expression is under increasing threat.

Based on four months of research and interviews with 92 individuals, including journalists, witnesses to abuses, human rights activists and government officials, "Not Worth the Risk" documents abuses against journalists and bloggers between 2013 and 2017 and the government's failure to investigate these abuses and prosecute those responsible. No one in the past five years has been held accountable for threatening, intimidating, or physically attacking a journalist and at times, police have been complicit in abuses.

The report documents 17 separate incidents in which 23 journalists and bloggers were physically assaulted between 2013 and 2017 by government officials or individuals believed to be aligned to government officials; at least two died under circumstances that may have been related to their work. The report also documents other incidents of direct death threats against journalists across the country between 2013 and 2016.

Protecting free expression rights is critical to Kenya's ability to hold free and fair elections in 2017. Human Rights Watch and ARTICLE 19 call on Kenyan authorities to amend laws to bring them into line with Kenya's international obligations, adequately investigate threats and physical attacks against journalists and bloggers, and hold those responsible to account.

(above) An anti-riot police officer aims a teargas canister while journalists cover an anti-corruption protest in Kenya's capital, Nairobi. November 3, 2016.

© 2016 REUTERS/Thomas Mukoya

(front cover) A Kenyan journalist participates in a protest in the capital, Nairobi, against draconian new laws restricting media freedom that were presented in parliament, December 3, 2013.

© 2013 REUTERS/Thomas Mukoya



"Not Worth the Risk"

Threats to Free Expression Ahead of Kenya's 2017 Elections

HUMAN
RIGHTS
WATCH

ARTICLE 19

hrw.org

www.article19.org



“Not Worth the Risk”

Threats to Free Expression Ahead of Kenya’s 2017 Elections

Copyright © 2017 Human Rights Watch

All rights reserved.

Printed in the United States of America

ISBN: 978-1-6231-34761

Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>

ARTICLE 19 Eastern Africa is an independent not-for profit organization that promotes freedom of expression and access to information as a fundamental human right as well as an empowerment right. ARTICLE 19 Eastern Africa was registered in Kenya in 2007 as an affiliate of ARTICLE 19 international. ARTICLE 19 Eastern African has over the past 10 years implemented projects that included policy and legislative advocacy on media and access to information laws and review of public service media policies and regulations. The organization has also implemented capacity building programmes for journalists on safety and protection and for a select civil society organisation to engage with United Nations (UN) and African Union (AU) mechanisms in 14 countries in Eastern Africa. Countries of focus in 2017 are Kenya, Tanzania, Rwanda, Uganda, Burundi, South Sudan, Somalia, Djibouti, Ethiopia and Eritrea.

For more information, please visit ARTICLE 19 website: <http://www.article19.org/>



MAY 2017

ISBN: 978-1-6231-34761

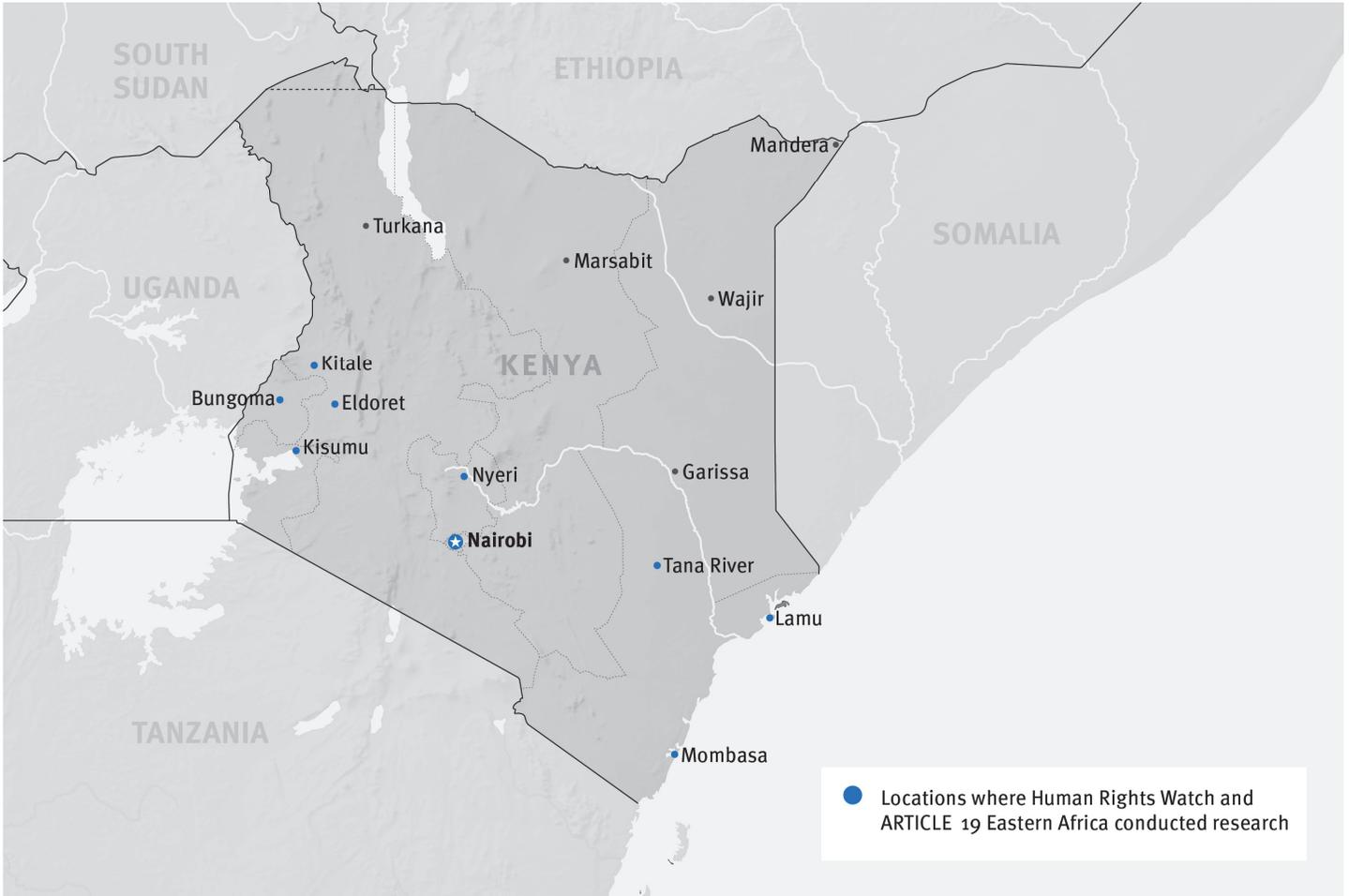
“Not Worth the Risk”

Threats to Free Expression Ahead of Kenya’s 2017 Elections

- Map of Kenya I**
- Acronyms and Abbreviations II**
- Summary 1**
- Recommendations..... 4**
 - To the President and Government of Kenya4
 - To the Parliament of Kenya5
 - To the Inspector General of Police, National Police Service Commission, Independent Policing Oversight Authority.....5
 - To Political Party Officials 6
 - To International Partners, including the United Nations, European Union and African Union 6
 - To Kenya Union of Journalists, Bloggers’ Association of Kenya, and Other Journalist Groups 6
- Methodology..... 7**
- I. Background..... 9**
 - Elections and the Media 9
 - Media Ownership 14
 - Sensitive Subjects for Media..... 19
- II. Abuses against Journalists 27**
 - Killings and Other Assaults27
 - Threats 31
 - Intimidation of Foreign Journalists33
 - Criminal Charges Designed to Harass.....34
 - Surveillance36
 - Withholding and Withdrawal of Advertising..... 40
 - Self-Censorship44
- III. Lack of Accountability for Abuses 46**
- IV. Kenya’s Legal Obligations 49**
 - International Law..... 49

National Laws Affecting Freedom of Expression	51
Acknowledgments.....	53
Appendix 1: Chart of Abuses against Journalists and Bloggers	54
Appendix 2: Letter to ICT Ministry.....	64
Appendix 3: Letter to Police.....	67
Appendix 4: Letter to the Aga Khan.....	72
Appendix 5: Letter to NMG CEO.....	74
Appendix 6: Police Response	75
Appendix 7: NMG Response.....	77

Map of Kenya



Acronyms and Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AP	Administration Police, one of two branches of National Police Service
CA	Communications Authority, state agency in charge of frequency allocation and regulation of the broadcasting sector
CA	Communications Authority of Kenya
CIPEV	Commission of Inquiry into the Post-Election Violence of 2007-2008 in Kenya
CORD	Coalition on Reforms and Democracy, a coalition of opposition parties in Kenya which was formed in advance of the 2013 elections.
COTU	Central Organization of Trade Union, the umbrella trade union in Kenya
CPJ	Committee to Protect Journalists
CS	Cabinet Secretary, the political head of a government ministry
DCI	Directorate of Criminal Investigations, a criminal investigations unit within the regular police, one of two branches of the National Police Service
DPP	Director of Public Prosecutions
ECK	Electoral Commission of Kenya, the former electoral management body disbanded after the 2007-2008 post-election violence
GAA	Government Advertising Agency, a state body created in 2014 to centralize advertising
GSU	General Service Unit, a paramilitary unit within the police in charge of riot control
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICT	Information, Communications and Technology
IEBC	Independent Electoral and Boundaries Commission, the national elections management body
IGP	Inspector General of Police

IPOA	Independent Policing Oversight Authority, a civilian police oversight body
K24	A television station owned by the family of President Kenyatta
KANU	Kenya African National Union, Kenya’s ruling party from 1963-2002
KBC	Kenya Broadcasting Corporation, the state broadcaster
KCA	Kenya Correspondents Association, journalists’ union representing all correspondents across the country
KDF	Kenya Defense Forces
KICA	Kenya Information and Communications Act
KTN	Kenya Television Network, owned by the family of ex-President Daniel Moi
KTS	Kenya Television Service, owned by Moi University in Eldoret
KUJ	Kenya Union of Journalists
MCA	Member of County Assembly
MCK	Media Council of Kenya
NASA	National Super Alliance, a coalition of opposition political parties created in January 2017, and fielding candidates in the August 2017 elections
NCIC	National Cohesion and Integration Commission, a statutory body created after the 2007-2008 post-election violence to forge ethnic cohesion and curb hate speech
NMG	Nation Media Group
NPSC	National Police Service Commission
NTV	Nation Television, owned by Nation Media Group
SLAA	Security Laws (Amendment) Act, 2014
SLDF	Sabaot Land Defense Forces, a private militia in western Kenya that emerged in 2007 to fight for redress of land grievances in Mt. Elgon county
TJRC	Truth, Justice and Reconciliation Commission, created after the 2007-2008 post-election violence

Summary

On November 3, 2015, Joseph Nkaissery, Kenya's cabinet secretary for interior and national coordination, appeared before the Parliamentary Accounts Committee to answer questions about millions of dollars his ministry allegedly paid irregularly to suppliers, the bulk on the last day of the budget year.

Journalists from several Kenyan media outlets attended the session and published articles the following day. The fallout was swift. Nkaissery warned journalists who reported the proceedings they faced arrest if they failed to disclose their sources, and that leaking such information to the media could jeopardize national security. The minister either forgot or seemed to ignore the fact that the committee's sessions were open, and journalists were present when members of parliament questioned him.

Soon after Nkaissery's warning, police from the Directorate of Criminal Investigations (DCI) attempted to summon journalists who wrote the stories for interrogation regarding their sources, but they did not comply. Days later, the police bundled the *Daily Nation's* John Ngirachu, who was among those summoned, into an unmarked vehicle, and drove him to the DCI headquarters in Nairobi for interrogation. The police denied him access to a lawyer, but released him without charge after four hours.

The state-orchestrated intimidation of journalists after Nkaissery's committee session is symptomatic of risks and challenges they have faced under President Uhuru Kenyatta, who took office in April 2013, and is seeking reelection in general elections scheduled for August 8, 2017. As the election nears, Kenyan government officials are increasingly scrutinizing media reporting and the impact it has on public perceptions of governance, health and education services, security, land rights, state management of public funds and the ongoing lack of accountability for the 2007 post-elections violence.

An independent media is crucial for Kenya's ability to hold free and fair elections. But rather than protecting free expression and media rights – guaranteed by Kenya's Constitution and international human rights law – Kenyan officials have responded to critical press coverage with harassment, threats, criminal charges, withholding of advertising revenue and even violence against journalists and media outlets.

Based on four months of research and interviews with journalists, editors, bloggers, human rights activists, and government officials throughout Kenya by Human Rights Watch and ARTICLE 19 Eastern Africa (“ARTICLE 19”) – the regional office that monitors and documents violations of freedom of expression – this report documents abuses by government officials and agents and other actors against journalists and bloggers in the run-up to the 2017 general election. It highlights the government’s failure to fulfill its constitutional and international human rights obligations to protect freedom of expression and media freedoms.

Human Rights Watch and ARTICLE 19 research found that local and international journalists and media outlets in Kenya have come under pressure since Kenyatta assumed office in 2013. The government has attempted to obstruct critical journalists with legal, administrative, and informal measures, including threats, intimidation, harassment, online and phone surveillance, and in some cases, physical assaults.

Human Rights Watch and ARTICLE 19 documented 17 separate incidents in which 23 journalists and bloggers were physically assaulted between 2013 and 2017 by government officials or individuals believed to be aligned to government officials; at least two died under circumstances that may have been related to their work. Human Rights Watch and ARTICLE 19 further documented 16 incidents of direct death threats against journalists and bloggers across the country between 2013 and 2017. In addition, police arbitrarily arrested, detained, and later released at least 14 journalists and bloggers.

Despite receiving formal complaints from journalists, police have rarely investigated the attacks or threats. There is no evidence that any state actor has in the past five years been held accountable for threatening, intimidating, or physically attacking a journalist or blogger in Kenya.

Police have themselves been implicated in online surveillance and, at times, in directly threatening and physically attacking journalists. In some cases, police have arbitrarily arrested, intimidated, or harassed journalists, such as John Ngirachu. In 2015, Kenyan authorities threatened to ban two foreign journalists working for an international media outlet for reporting on alleged police death squads implicated in extrajudicial killings.

Senior editors of media outlets critical of the government say that authorities have called for specific journalists to be sacked. In some instances, the authorities have withdrawn or withheld advertising revenue, demanding apologies for specific editorial content, or asked to tone down coverage of a range of politically sensitive topics, including land, corruption and security issues.

Kenyan authorities have often invoked alleged national security concerns as a basis to obstruct free expression and access to information, particularly as elections near. While national security can be a basis for limiting free expression under internationally-accepted principles, governments must use the least restrictive means possible in prohibiting such speech and the national security interests should be legitimate. Obstructing access to information regarding mismanagement of state funds, for example, is not a legitimate basis to restrict free expression.

The International Covenant on Civil and Political Rights, to which Kenya is a party, provides for the right to hold opinions without interference and the right to free expression. The government harassment and intimidation of independent reporting, and lack of police investigations into such abuses, threaten to undermine Kenya's 2017 elections. For free, fair, and credible elections to take place, the government should protect freedom of expression and work to ensure that no government or security official seeks to silence journalists or arbitrarily obstruct their access to information.

The government should respect and uphold its obligations under international human rights law, and voters' right to receive and obtain information at this critical time.

Recommendations

To the President and Government of Kenya

- Publicly restate the government’s commitment to upholding freedom of expression and media freedom ahead of the 2017 elections.
- Publicly condemn physical attacks, killings, threats, harassment, obstruction, intimidation and arbitrary arrests of journalists and bloggers, and direct government officials and security forces to stop harassing threatening or physically attacking journalists and bloggers.
- Direct the inspector general of police to ensure prompt, thorough, independent and effective investigation of attacks, including the deaths of, and threats against, journalists and bloggers, and to adopt a plan that would address the failure to adequately investigate such cases.
- Ensure full respect for international law by allowing full, open reporting and commentary on any issues of pressing public interest, including security, corruption, and accountability for past election-related violence.
- Propose amendments to recent laws, such as aspects of Kenya Information and Communications Act, Media Council of Kenya Act and Security Laws Amendment Act, and administrative measures introduced since 2013 to bring them into line with Kenya’s obligations under international law regarding freedom of expression. Ensure that all laws enacted before the passage of the 2010 constitution such as the Official Secrets Act, Preservation of Public Security Act, and the penal code are amended or repealed to meet Kenya’s international legal obligations.
- Ensure all government agencies, including the Government Advertising Agency, do not use threats of loss of government-sponsored advertising in exchange for favorable coverage or as punishment for critical reporting.
- Ensure that officials, regardless of rank or position, who threaten, harass, or arbitrarily arrest individuals on the basis of unlawfully intercepted or acquired information are appropriately disciplined or prosecuted.
- Act to ensure that authorities investigate allegations of illegal surveillance by government officials as well as private actors.

- In advance of the 2017 elections, publicly respond to the 2015 request from the UN Special Rapporteur on Freedom of Opinion and Expression to visit Kenya.

To the Parliament of Kenya

- Amend the penal code, the Preservation of Public Order Act, the Official Secrets Act, the Prevention of Terrorism Act, and other laws to bring them into line with Kenya's obligations under international law regarding freedom of expression.
- Review laws establishing all official media regulatory bodies, such as the Media Council of Kenya and Communications Authority, to ensure they can provide oversight free from government interference.
- Enact protections to the right to privacy to prevent abuse and arbitrary use of surveillance, national security, and law enforcement powers as guaranteed by international law applicable to Kenya. Ensure surveillance occurs only as provided by law, is necessary and proportionate to achieve a legitimate aim, and is subject to judicial and parliamentary oversight.
- Enact legislation to regulate the use of personal information that may be collected by state agencies and to guarantee the right of individuals to request any information the state may collect about them.

To the Inspector General of Police, National Police Service Commission, Independent Policing Oversight Authority

- Direct all police officers, particularly those attached to county offices, to ensure respect for media freedom.
- Investigate all reported cases of attacks, threats, and harassment of journalists and ensure those found responsible are appropriately held to account.
- Investigate police officers involved in intimidation, threats, arbitrary arrests, and physical attacks, targeting of journalists and bloggers, and appropriately refer cases for disciplinary measures or prosecution.
- Investigate any reported cases of officials, regardless of rank or position, threatening, harassing or arbitrarily arresting individuals based on unlawfully intercepted or acquired information, and appropriately discipline or prosecute those responsible.

To Political Party Officials

- Direct candidates not to interfere with the freedom of expression of candidates and parties, and respect everyone’s right to seek, receive and impart information and opinions, irrespective of political leanings.

To International Partners, including the United Nations, European Union and African Union

- Publicly speak about the importance of free expression and other fundamental freedoms associated with Kenya’s electoral process, and urge the Kenyan government to direct government officials not to harass or threaten journalists and bloggers.
- Enhance monitoring and reporting of media freedom violations related to the election and post-election period, particularly outside Nairobi.
- Call on the government to review all laws that impact media freedom, including regulatory institutions such as the Communications Authority of Kenya, to ensure they comply with Kenya’s human rights obligations.
- Support domestic nongovernmental organizations working to promote freedom of expression and other fundamental liberties in the context of the election.

To Kenya Union of Journalists, Bloggers’ Association of Kenya, and Other Journalist Groups

- Support education for journalists and bloggers on the right to freedom of expression and the Johannesburg Principles on National Security, and Freedom of Expression and Access to Information.
- Assist journalists and bloggers with information and skills on responding to security challenges and protecting themselves in the event of work-related threats, intimidation, arbitrary arrest, and physical attacks.

Methodology

This report is based on research by Human Rights Watch and ARTICLE 19 in Nairobi, Uasin Gishu, Trans Nzoia, and Kisumu counties in Kenya between September 2016 and January 2017.

Human Rights Watch and ARTICLE 19 interviewed over 92 individuals, including 60 journalists, 10 bloggers, three lawyers specializing in free expression matters, two members of civil society organizations, three members of political parties, two senior journalists, police, and government officials in the Office of the President, Ministry of Information, Communications and Technology (ICT), and the Independent Policing Oversight Authority (IPOA).

Interviews were conducted with journalists and bloggers in the capital, Nairobi, where most of Kenya's media organizations and journalists are concentrated, but also in other towns. In recent years, many FM radio stations have been established in many of the nation's 47 counties, by politicians close to the current or former ruling parties. Human Rights Watch and ARTICLE 19 interviewed journalists in Eldoret town in Uasin Gishu county, Kitale town in Trans Nzoia county, both in the Rift Valley, and Kisumu town in Kisumu county in western Kenya. We did additional telephone interviews with journalists based in Bungoma and Siaya counties in western Kenya, Elgeyo Marakwet and Nakuru counties in the Rift Valley, Mombasa and Lamu counties at the coast, and Nyeri county in central Kenya. These towns were selected for research to cover the geographic breadth of Kenya, and because each has a concentration of journalists and bloggers. In total, we spoke to 60 journalists and 10 bloggers in eleven of the 47 counties, four print media outlets, six television stations and three FM stations.

We interviewed journalists from print and electronic media, from both public and independent stations, but a large proportion of those interviewed work for independent newspapers and FM stations. We also interviewed bloggers and a few television journalists.

All interviews were conducted in English and typically lasted one hour and were all one-on-one interviews.

No compensation or any form of remuneration was given to any interviewee.

Many interviewees voiced concern for their safety or fear of possible loss of employment or business if authorities learned that they had spoken to a human rights organization. As a result, we have not disclosed their names and other identifying details.

On April 5, 2017, Human Rights Watch and ARTICLE 19 shared initial research findings with the cabinet secretary in the Ministry of Information and Communications Technology, and the inspector general of police (see Appendix 2 and 3), requesting information on the wide range of human rights concerns contained in this report. We also requested for a meeting to discuss the findings. On April 27, the Inspector General of Police responded to our inquiries (see Appendix 6) but at time of writing we were still awaiting a response from the ICT cabinet secretary after he requested, via a telephone call to Human Rights Watch on May 2, 2017, more time to consult with the Attorney General.

On March 27, 2017, we shared our findings with the Aga Khan, the largest individual shareholder at Nation Media Group (NMG), regarding allegations of state pressure on its journalists (see Appendix 4). On April 13, 2017, we followed this up with another inquiry to the NMG chief executive (see Appendix 5). On April 24, 2017, the NMG chief executive officer responded saying he was not in a position to respond to our inquiries (see Appendix 7). At time of writing, the Aga Khan had not responded to our inquiries.

I. Background

Elections and the Media

Against the backdrop of the failure, by successive Kenyan governments, to address persistent long-standing and deep seated grievances by communities over land ownership and discrimination in accessing government services and opportunities which have caused divisions among communities since independence, Kenya is scheduled to hold general elections on August 8, 2017, as required under the 2010 constitution.¹ This will be the second under this constitution and since the controversial presidential election of December 27, 2007. The conflict that engulfed Kenya following those elections left over 1,000 dead and up to 500,000 internally displaced, marring the reputation of a country long viewed as a bastion of economic and political stability in a volatile region.²

In a political environment traditionally polarized along ethnic lines, general elections in Kenya have often been characterized by heightened tensions and competition among ethnic groups.³ Kenyan journalists said the media must delicately navigate a fragile and often hostile environment while reporting on issues of national interest, such as security, land ownership, and corruption during the election period.⁴

Some editors pointed out that in December 2007, just before the then-electoral management body, the Electoral Commission of Kenya (ECK), declared the final presidential results, senior government officials summoned media managers and editors for an impromptu meeting in a bid to stop media organizations from broadcasting live, results from polling stations, in order for government to help prepare the public for the impending official announcement of the results.⁵

¹ Constitution of Kenya, 2010, art. 101(1), states that “a general election of members of Parliament shall be held on the second Tuesday in August in every fifth year.” (accessed February 17, 2017).

² Human Rights Watch, “Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance,” March 2007, <https://www.hrw.org/sites/default/files/reports/kenya0308web.pdf>.

³ Sigrid Archer, “Why do Kenyans vote along ethnic lines,” *Master Thesis*, University of Oslo, 2009; <https://www.duo.uio.no/bitstream/handle/10852/15069/si-ax-xmasteroppgave.pdf?sequence=2> (accessed May 1, 2017).

⁴ “Kenya: Can civility permeate election period,” *Daily Nation*, February 6, 2017, <https://africajournalismtheworld.com/tag/kenya-media-and-elections/> (accessed February 17, 2017).

⁵ Human Rights Watch and ARTICLE 19 interview with former *Daily Nation* news editor, Nairobi, December 7, 2016; The Electoral Commission of Kenya (ECK) was disbanded as part of the wider electoral reforms to prevent future violence as

Shortly after the December 2007 meeting, all television stations, including the three leading independent stations – NTV, KTN, and Citizen TV – discontinued airing the tallying of presidential results from around the country.⁶ Television stations also stopped live broadcast of the heated arguments between representatives of the opposition and ruling party at the tallying center in Nairobi, ostensibly about accuracy of the presidential results that were being announced.⁷

Since the violence surrounding the 2007 elections, government officials have frequently blamed the media for contributing to post-election violence, particularly by broadcasting live, the presidential election results, which government claimed raised questions about the reliability of the official results.⁸

A number of Kenyan politicians blamed the questioning of reliability of results – laid bare by the live broadcasts – for the ensuing inter-communal violence during which communities in rival political parties fought each other in the Rift Valley, Nyanza, Nairobi and at the coast. However, the commission that investigated the 2007 violence attributed it to numerous factors, including hate-filled and ethnically charged broadcasts by vernacular FM stations that capitalized on long-standing grievances by communities over land and discrimination in accessing government services and opportunities.⁹ Radio journalist Joshua Sang was one of the six Kenyans who faced crimes against humanity

recommended by the Commission of Inquiry into Post-Election Violence of 2007-2008. The ECK was replaced by the Interim Independent Electoral Commission (IIEC), which paved the way for the current electoral management body, the Independent Electoral and Boundaries Commission (IEBC).

⁶ Human Rights Watch and ARTICLE 19 interview with former *Daily Nation* news editor, Nairobi, December 7, 2016.

⁷ Ibid.

⁸ Human Rights Watch and ARTICLE 19 interview with former editor of *Daily Nation*, Nairobi, December 7, 2016; “The Kenya 2007 elections and their aftermath: the role of media and communication,” BBC World Service Trust Policy Briefing, April, 2008, http://downloads.bbc.co.uk/worldservice/trust/pdf/kenya_policy_briefing_08.pdf (accessed February 17, 2017). The government established Commission of Inquiry into Post-Election Violence (CIPEV) of 2007-2008 concluded that the violence was triggered by public perception that the presidential results rigged. This was after ECK’s declared winner appeared not to be consistent with the results that had for days been streamed live by television stations. “Kriegler and Waki Commission reports: Summarized Versions,” Konrad-Adenauer Foundation, 2008, http://www.kas.de/wf/doc/kas_16094-1522-2-30.pdf (accessed February 17, 2017). The Commission of Inquiry into Post-Election Violence (CIPEV) was the outcome of the Kenya National Dialogue and Reconciliation Accord of February 28, 2008, negotiated by Kofi Annan and the Panel of Eminent African Personalities, and its sister agreement of March 4, 2008, known as Agenda Item 4, which called for the establishment of a number of bodies of inquiry to address justice and accountability and longer-term issues of governance and the rule of law (accessed, February 17, 2017).

⁹ Kriegler and Waki Commission reports: Summarized Versions,” Konrad-Adenauer Foundation, 2008, http://www.kas.de/wf/doc/kas_16094-1522-2-30.pdf (accessed February 17, 2017).

charges at the International Criminal Court in The Hague for his alleged role in broadcasting hate messages.¹⁰

In the 2013 election, various state agencies and commissions focused on the role of media in averting the potential for violence and ensuring that rivals accepted the officially announced outcome of the elections.¹¹ As a result, the media did not have live broadcasts of presidential results from the polling centers – an apparent effort to avoid contributing to potential unrest, even if it meant underreporting alleged electoral malpractices.¹² In March 2017, the Communications Authority of Kenya announced it would not allow media outlets to live-broadcast presidential results from polling centers in the 2017 elections.¹³

Civic groups and the political opposition have criticized Kenyan media for sacrificing independence and freedom at the behest of government officials and peace campaigners.¹⁴ In his acceptance speech soon after being declared winner of the March 2013 election, President Uhuru Kenyatta praised the press for being “patriotic” for not being critical of how the election was managed.¹⁵

¹⁰ “6 Prominent Kenyans accused of crimes against humanity,” VOA News, December 14, 2010; <http://www.voanews.com/a/six-prominent-kenyans-accused-of-crimes-against-humanity--111924229/132303.html>.

¹¹ Jessica Gustafsson, “Media and the 2013 Kenyan Election: From Hate Speech to Peace Preaching,” *Conflict and Communication Online* No.1, 2016, http://www.cco.regener-online.de/2016_1/pdf/gustafsson2016.pdf; Ben Lumsdaine, Trixie Akpedonu, and Aminata Sow, “Keeping The Peace: Lessons Learnt from Preventive Action Towards Kenya’s 2013 Elections,” Geneva Peace Building Platform Paper No.10, 2013, <http://www.gpplatform.ch/sites/default/files/PP%2010%20Kenya%20-%20Keeping%20the%20peace.pdf> (accessed February 17, 2017).

¹² These actions have continued to be both criticized and praised. See Rasna Warah, “Did the Kenyan Media Do Justice to the 2013 Election Coverage?” *Sahan Journal*, August 26, 2013, <http://sahanjournal.com/kenyan-media-election-coverage/#.WLQarYWcFPY> (accessed February 17, 2017).

¹³ Patrick Vidija, “We Wont Let Media Houses Relay Parallel Election Results to Avoid Violence - CA,” *The Star*, March 08, 2017; http://www.the-star.co.ke/news/2017/03/08/we-wont-let-media-houses-relay-parallel-election-results-to-avoid_c1520245; “No TV station will broadcast 2017 election results,” *Kenya News*, March 8, 2017; <https://www.kenyans.co.ke/news/media-houses-will-not-be-allowed-relay-2017-election-results-communication-authority-declares>.

¹⁴ Warah, “Did the Kenyan Media Do Justice to the 2013 Election Coverage?”; Katherine Bruce, “From Incitement to self-censorship: the media in the Kenyan elections of 2007 and 2013,” *Free Speech Debate*, February 14, 2014, <http://freespeechdebate.com/discuss/124451/>.

¹⁵ President-Elect Uhuru Kenyatta’s full acceptance speech, Nairobi, March 9, 2013, https://www.youtube.com/watch?v=wFou27v_JNc (accessed February 17, 2017); Michela Wrong, “To Be Prudent Is To Be Partial,” *New York Times*, March 14, 2013, https://latitude.blogs.nytimes.com/2013/03/14/erring-on-the-side-of-caution-kenyas-media-undercovered-the-election/?_r=0 (accessed March 1, 2017).

Elections and Hate Speech in Kenya

Section 13 of Kenya's National Cohesion and Integration Act defines hate speech, including publishing or using language that incites ethnic hatred. The National Cohesion and Integration Commission (NCIC) is the statutory body mandated to address hate speech and ethnic polarization by evaluating laws and policies for discrimination and promoting ethnic tolerance. Members of the public can submit complaints of ethnic or racial discrimination, and the commission can investigate and make recommendations to the attorney general and the Human Rights Commission for further action.¹⁶

In late March 2017, the NCIC announced plans to deploy 206 staff with surveillance equipment across the country,¹⁷ to improve its capacity to monitor and investigate hate speech in political meetings, social and traditional media during an election cycle.

Many journalists and bloggers have raised concerns that government officials accuse the media of hate speech as a pretext to crack down on free expression.¹⁸ Civil society organizations and opposition political parties have accused authorities of selectively applying Kenya's law on hate speech to target writers critical of the government but ignoring similar content published by government-friendly writers.¹⁹

¹⁶ <https://www.cohesion.or.ke/index.php/about-us/powers?id=73#full>, (accessed March 1, 2017).

¹⁷ George Kithuka, "NCIC unveils surveillance gadgets to track hate speech," KBC Online, March 14, 2017; <http://www.kbctv.co.ke/blog/2017/03/14/ncic-unveils-surveillance-gadgets-to-track-hate-speech/>; Lewis Nyaundi, "NCIC worried about lack of convictions in hate speech cases, says Kaparo," Star, March 16, 2017; http://www.the-star.co.ke/news/2017/03/16/ncic-worried-about-lack-of-convictions-in-hate-speech-cases-says-ole_c1525312.

¹⁸ Human Rights Watch and ARTICLE 19 interview with official of Kenya Correspondents Association, Oloo Janak, Nairobi, November 6, 2017.

¹⁹ Dennis Odunga, "ODM Leaders Cry Foul Over the War on Hate Speech," *Daily Nation*, November 4, 2015; <http://allafrica.com/stories/201511040436.html>; Julius Kithuure, "Crackdown on Bloggers Ignites Freedom of Expression Debate," Sabahi online, January 8, 2015; <http://allafrica.com/stories/201501091603.html>.

Kenya's ICC cases

Ethnic-based attacks and reprisals that often appeared to be meticulously organized, as well as police use of excessive force, killed at least 1,100 people during Kenya's 2007-2008 post-election violence, injured thousands more, and forced as many as 650,000 people from their homes.²⁰ Officials say there were at least 900 cases of sexual violence, but the actual figure is likely much higher.²¹

On December 15, 2010, the International Criminal Court (ICC) prosecution announced that it was seeking summonses on crimes against humanity charges for six people including now-President Kenyatta, and the current deputy president, William Ruto, for their alleged role in the violence.²²

Cases against only four of the six individuals were sent to trial, and, by 2015, charges against two of these, including President Kenyatta, had been withdrawn prior to trial, for lack of evidence. While short-cuts in ICC investigations may have been a factor, the Kenyan government also stoked hostility against the court, leading, in the prosecution's view, to the withdrawal of a number of witnesses due to security concerns.²³ ICC judges also ruled that the government obstructed the prosecution's investigation.²⁴

On April 5, 2016, ICC judges vacated crimes against humanity charges against Ruto and a former broadcaster, Joshua arap Sang, ending the last ICC prosecution directly related to the post-electoral violence.²⁵

Witness interference was a clear factor in compromising the Ruto and Sang trial. The prosecution claimed 16 of its witnesses withdrew, most citing threats, intimidation, or fear of reprisals.²⁶ A man claimed by

²⁰ Human Rights Watch, "Ballots and Bullets: Organized Political Violence and Kenya's Crisis of Governance," March 1, 2007; <https://www.hrw.org/sites/default/files/reports/kenyao308web.pdf>.

²¹ Human Rights Watch, "I just sit and Wait to Die: Reparations for Survivors of Kenya's 2007 – 2008 Post Election Sexual Violence," February 15, 2016; <https://www.hrw.org/report/2016/02/15/i-just-sit-and-wait-die/reparations-survivors-kenyas-2007-2008-post-election>.

²² "6 Prominent Kenyans accused of crimes against humanity," *VOA News*, December 14, 2010; <http://www.voanews.com/a/six-prominent-kenyans-accused-of-crimes-against-humanity--11924229/132303.html>.

²³ "ICC: Kenya Deputy President's Case Ends," Human Rights Watch news release, April 5, 2016, <https://www.hrw.org/news/2016/04/05/icc-kenya-deputy-presidents-case-ends>.

²⁴ "ICC: Countries Should Press Kenya on Obstruction," Human Rights Watch news release, September 19, 2016, <https://www.hrw.org/news/2016/09/19/icc-countries-should-press-kenya-obstruction>.

²⁵ "International Criminal Court case against Kenya's William Ruto," *New York Times*, April 5, 2016; <https://www.nytimes.com/2016/04/06/world/africa/william-ruto-kenya-icc.html>.

²⁶ "ICC: Kenya Deputy President's Case Ends," Human Rights Watch news release, April 5, 2016, <https://www.hrw.org/news/2016/04/05/icc-kenya-deputy-presidents-case-ends>.

Ruto's defense as a witness was murdered in late December 2014 or early January 2015.²⁷ An ICC pretrial chamber issued arrest warrants for three people on charges of witness tampering in the case starting in August 2013.²⁸ An ICC statement described the witness tampering charges as stemming from an alleged "criminal scheme devised by a circle of officials within the Kenyan administration."²⁹ Kenyan authorities have not surrendered the three men to the ICC. A legal challenge to one man's surrender remains pending before the Kenyan Court of Appeals.

Journalists and bloggers who reported on Kenyan ICC cases at the time or called for accountability for post-election violence faced threats and intimidation. A number of writers in Nairobi, Central Kenya, and the Rift Valley are known to have gone into temporary exile inside and outside Kenya due to threats relating to the ICC cases. At least one journalist in the Rift Valley who was reporting on the ICC cases, John Kituyi, was killed by unidentified gunmen in 2015.³⁰ One pro-government blogger, Bogonko Bosire, has been missing since 2013, days after a controversial Facebook post that was deemed to have exposed a witness that at that time was set to testify in the Kenyatta case.³¹ At the same time, social media and blogs exposed people to threats by erroneously branding them witnesses for the ICC against Kenyatta and Ruto, and were also used to spread hostility toward human rights defenders perceived to support the ICC process. Even though the Kenyan authorities knew the identities of some of those behind the blogs, there were no apparent efforts to stop the threats.

To date, there have been only a handful of convictions in Kenya's courts for serious crimes related to the post-election violence.

Media Ownership

While Kenya's Information and Communications Act empowers the Communications Authority to either issue or deny frequencies to both individual and institutional

²⁷ Elizabeth Evenson (Human Rights Watch), "Answers Need in Eldoret," commentary, *International Justice Monitor*, May 27, 2015, <https://www.ijmonitor.org/2015/05/answers-needed-in-eldoret/> (accessed March 29, 2017) .

²⁸ "ICC issues arrest warrant against journalist Walter Barasa," *Daily Nation*, October 2, 2013; <http://www.nation.co.ke/news/politics/ICC-issues-arrest-warrant-against-Kenyan-over-witness-tampering-/1064-2015748-4dntcvz/index.html>.

²⁹ "Kenyan accused of bribing Ruto ICC witnesses," eNews Channel Africa, October 2, 2013; <https://www.enca.com/africa/kenyan-accused-bribing-ruto-icc-witnesses>.

³⁰ "Kenyan editor murdered by unknown assailants in Eldoret town," Committee to Protect Journalists, May 1, 2015; <https://cpj.org/2015/05/kenyan-editor-murdered-by-unknown-assailants-in-el.php>.

³¹ "Two years of anguish mark family's search for missing blogger," *The Standard*, December 20, 2015; <https://www.standardmedia.co.ke/article/2000185799/two-years-of-anguish-mark-family-s-search-for-missing-blogger-bogonko-bosire>.

applicants, it fails to provide clear safeguards against political favoritism in the allocation of frequencies, and the broadcasting sector has largely been dominated by individuals close to government.³² This has negatively impacted media freedom and diversity of editorial content in the country.

Government-owned Kenya Broadcasting Corporation (KBC) – both radio and television – was the sole broadcaster until 1989 when then-President Daniel Moi and his political allies established the first private television station, Kenya Television Network (KTN), at a time when the government denied frequencies to other applicants for private television and radio stations.³³ The Ministry of Transport and Communications, which issued broadcasting licenses, and the then-Kenya Posts and Telecommunications, which officially allocated frequencies, both rarely provided reasons for denials.³⁴ It was not until 1995 that, in response to local and international concerns over media ownership environment, other independent broadcasters were allowed to begin setting up broadcast stations, particularly FM radio stations owned by individuals aligned to the then-government.³⁵ In 1998 the new Kenya Information and Communications Act (KICA) was adopted,³⁶ splitting the Kenya Posts and Telecommunications to create, among others, a communication agency, currently known as the Communications Authority of Kenya, to handle both the issuance of broadcasting licenses and frequency allocations.³⁷

³² Edwin Okoth, “The Emergence and Growth of Vernacular Radio in Kenya: A case study of radio having a positive economic impact,” Reuters Institute Fellowship Paper University of Oxford, 2015, <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/The%20emergence%20and%20growth%20of%20vernacular%20radio%20in%20Kenya.pdf> (accessed, February 22, 2017); Nyanjom, “Factually True, Legally Untrue: Political Media Ownership in Kenya.”

³³ Njeri Ng’ang’a, “The media scene in Kenya,” Music Africa, August 11, 2016, <http://musicinafrica.net/media-scene-kenya> (accessed February 22, 2017).

³⁴ “Kenya: Background and General Statistics,” Press Reference, March 2000; <http://www.pressreference.com/Gu-Ku/Kenya.html>

³⁵ Njeri Ng’ang’a, “The media scene in Kenya,” Music Africa, August 11, 2016, <http://musicinafrica.net/media-scene-kenya> (accessed February 22, 2017).

³⁶ Section 36, Kenya Information and Communications Act, still requires television and radio frequency applicants to first obtain a license while the Frequency Spectrum Management Guidelines of 2009/2010 provide procedures for frequency allocation; <http://www.ca.go.ke/images/downloads/FrequencySpectrum/LicensingProcedures/Procedures%20for%20licensing%20use%20of%20Radio%20Frequencies.pdf>.

³⁷ “Interview with Hon Ndolo Ayah, Chairman of Kenya Posts and Telecommunications,” World Investment News, June 1999; <http://www.winne.com/kenya/to17.html>.

The government continues to maintain tight control over the allocation of radio and television frequencies.³⁸ Despite many television and radio outlets, the allocation of frequencies remains skewed in favor of individuals who are influential in the government or are sympathetic to it.³⁹ For example, Ali Chirau Mwakwere, whose family operates Kaya FM at the coast, and Koigi Wamwere, who owns Sauti Ya Mwananchi Radio and TV Ltd in the Rift Valley, acquired frequencies when they both served as ministers in the Mwai Kibaki government between 2003 and 2007. Samuel Poghio, whose wife owns Elgonet Communication Technologies Ltd., which operates a radio station in the Rift Valley, acquired frequencies while he served as information and communications minister under Kibaki between 2007 and 2013.⁴⁰

By October 2012, according to the Communications Authority, Kenya had 300 radio frequencies operational or on air.⁴¹ Of these, the government-owned KBC was allocated 85 (22 percent) of the frequencies.⁴²

Five big media groups own and operate the nation's 22 television stations. The groups are KTN, owned by the family of former president Moi; NTV, which is part of the Nation Media Group (NMG) of which the Aga Khan, the global spiritual leader of Shia Ismaili Muslims, is the largest individual shareholder⁴³; the government-owned Kenya Broadcasting Corporation (KBC); K24, owned by the family of President Kenyatta; and Citizen TV owned by Royal Media Services of Samuel K. Macharia, a businessman and politician who has in

³⁸ Othieno Nyanjom, "Factually True, Legally Untrue: Political Media Ownership in Kenya," *Internews*, 2012, https://internews.org/sites/default/files/resources/Internews_FactuallyTrue_Legally_Untrue-MediaOwnership_Kenya2013-01.pdf (accessed, February 22, 2017).

³⁹ Othieno Nyanjom, "Factually True, Legally Untrue: Political Media Ownership in Kenya." *Internews*, 2012, https://internews.org/sites/default/files/resources/Internews_FactuallyTrue_Legally_Untrue-MediaOwnership_Kenya2013-01.pdf (accessed, February 22, 2017).

⁴⁰ *Ibid*, pp 25.

⁴¹*Ibid*, pp, 27.

⁴² *Ibid*.

⁴³ In recent years the Aga Khan has faced accusations of acquiescing to political leaders in East Africa at the expense of his own media outlets' independent reporting. See Catrina Stewart, "Aga Khan accused of squeezing Kenya press freedom after newspaper sacks cartoonists and journalists," *Independent*, March 20, 2016; <http://www.independent.co.uk/news/world/africa/daily-nation-aga-khan-accused-over-squeezing-kenya-press-freedom-after-newspaper-sacks-cartoonist-a6943171.html> (accessed, May 11, 2017). See also, "Monitor Boss Fired after M7-Aga Khan telephone chat," *Chimpreports*, November 11, 2011; <http://www.chimpreports.com/3343-monitor-boss-fired-after-m7-aga-khan-telephone-chat/> (accessed, May 11, 2017).

recent decades oscillated between supporting the government and the opposition.⁴⁴ All these five major television operators also operate radio stations with considerable geographic reach, which means that, unlike the other media houses, each of the five have countrywide coverage.

Although recent market surveys in Kenya show that radio has the largest audience across the country,⁴⁵ most FM radio stations generally reproduce content from newspapers and television. As such, most of the documented abuses in this report and more broadly involve newspaper and television journalists because they produce original content.

Print media in Kenya has for decades been dominated by the *Daily Nation* and its weekend editions, all owned by NMG of the Aga Khan and the *Standard* newspapers that is predominantly owned by the family of former president Moi, whose family has publicly expressed support for President Kenyatta.⁴⁶ The other two daily newspapers, *The Star*, owned by Radio Africa Group, closely associated with Kiprono Kitony, a relative of former President Moi, and *The People*, owned by the Kenyatta family, reach a small, mainly urban based, segment of newspaper readers.⁴⁷ All these newspapers are Nairobi-based with a print run of around 130,000 copies per day for the *Daily Nation* and its weekend editions, 80,000 for the *Standard*, 40,000 for *Star* and around 10,000 for *The People*.⁴⁸

⁴⁴ Othieno Nyanjom, "Factually True, Legally Untrue: Political Media Ownership in Kenya," Internews, 2012, https://internews.org/sites/default/files/resources/Internews_FactuallyTrue_Legally_Untrue-MediaOwnership_Kenya2013-01.pdf (accessed, February 22, 2017).

⁴⁵ Othieno Nyanjom, "Factually True, Legally Untrue: Political Media Ownership in Kenya," Internews, 2012, https://internews.org/sites/default/files/resources/Internews_FactuallyTrue_Legally_Untrue-MediaOwnership_Kenya2013-01.pdf (accessed, February 22, 2017).

⁴⁶ Ng'ang'a, "The Media Scene in Kenya," *Music Africa Magazine*, August 11, 2016; Justus Wanga, "Ruto camp uneasy with Kenyatta secret deal with Moi and Kanu," *Daily Nation*, February 19, 2017; <http://www.nation.co.ke/news/politics/1064-3818734-rtv2mmz/>. (accessed, May 11, 2017).

⁴⁷ "History of Print Media," Legend Touch Network, May 17, 2012, <https://legentouch.wordpress.com/2012/05/17/history-of-print-media-in-kenya/> (accessed February 23, 2017); Between 2003 and 2009, Macharia acquired 67 radio frequencies, making him the largest individual holder of radio frequencies, most of which he has used to set up vernacular language FM stations countrywide In the 2002 and 2007 elections, businessman and politician S.K Macharia and his media outlets actively supported Kibaki, but in 2013 shifted to support, Raila Odinga of the leading opposition party, Cord.

⁴⁸ Audit Bureau of Circulations, 2013; <http://www.auditbureau.org/new-membership-publishers.html>.

Kenya's Media Regulatory Bodies

Print and broadcast media are subject to the Media Council Act, 2013, which established the Media Council of Kenya (MCK). The MCK is mandated to protect press freedom and independence and is the main regulator of the media sector.⁴⁹

The Media Council Act, 2013, further established the Complaints Commission, which is operationally under the Media Council of Kenya.⁵⁰ While the Media Council Act establishes the Media Council of Kenya and a Complaints Commission, a body vested with powers to adjudicate in disputes between public, government and media, Kenyan authorities introduced provisions that subject media to tight executive control.

The act gives the cabinet secretary wide powers in appointing commission members, including the ability to select the panel to recruit council and commission members and to reject any names they forward to him for appointment. The government is the main financier of the MCK, which also has the mandate to enforce the journalism code of conduct.⁵¹

The body empowered to handle appeals from those dissatisfied with the commission's decisions – the Multimedia Appeals Tribunal – is tightly controlled by the Communications Authority (CA), whose chairperson is appointed by the president.⁵² Other board members include the principal secretaries of the ministries of finance, security, media/broadcasting matters and seven other people appointed by the cabinet secretary. Under KICA, the Communications Authority has the mandate to enforce the broadcasting code.

Journalists found guilty by either the Complaints Commission or the Appeals Tribunal for any of the offenses under Media Council Act and KICA could face six months in jail or fine of Kes200,000 (US\$2,000) – Kes1 million (US\$10,000); media outlets could pay up to US\$20,000.⁵³ Although the law establishing Multimedia Appeals Tribunal was enacted in 2013, its establishment was held back until 2016 by a Kenya Union of Journalists' petition

⁴⁹Media Council of Kenya Act, 2013.

⁵⁰ Media Council of Kenya Act, 2013, section 27.

⁵¹ Ibid.

⁵² Kenya Information and Communications (amendment) act, 2013, section 102.

⁵³ Media Council Act, No46 of 2013, section 48, <http://kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/M/Media%20Council%20Act%20-%20No.%2046%20of%202013/docs/Media%20Council%20Act%20-%20Act%20No.%2046%20of%202013.pdf> (accessed February 23, 2017).

challenging its constitutionality, which the union lost. It therefore has yet to hear any appeals against journalists or the media.

Print media is governed by the Books and Newspapers Act, which establishes the Office of the Registrar of Books and Newspapers in the Attorney General's Office. New publications must seek registration from the Office of the Registrar of Books and Newspapers, deposit a cash bond of Kes1 million (US\$10,000) and two copies of the new publication before they could be allowed to publish.⁵⁴

Sensitive Subjects for Media

If you have written about security agencies or corruption-related stories, you have to know that you are being followed or your phone is being listened into.

— *Nation Media Group* reporter, Nairobi, December 2016

I no longer write stories relating to corruption or irregularities in the Land Ministry. It is not worth the risk.

— *Standard* reporter, Eldoret, January 2017

Many of the senior editors, journalists, and bloggers interviewed by Human Rights Watch and ARTICLE 19 said that since 2013 they no longer report freely on land issues and other subjects in which senior government officials and other influential individuals have an interest. Such issues include corruption in national and county governments; security-related matters; and the 2007-2008 post-election violence and lack of justice for victims in the Rift Valley and Central Kenya. They said they were concerned they could face increased threats or physical attacks for writing about these sensitive subjects in the pre-election period.⁵⁵

⁵⁴Books and Newspapers Act, 1968.

⁵⁵ Human Rights Watch and ARTICLE 19 interview with media manager, *Star*, November 7, 2016; interview with editor, *Business Daily*, November 10, 2016; interview with media manager, *Nation Media group*, November 10, 2016.

Land

Owing to unresolved historical injustices, land ownership has traditionally been a sensitive subject in Kenya, especially during election periods.⁵⁶ Since independence, the family of President Kenyatta and other influential individuals in successive governments have traded accusations of irregular land acquisitions in the Rift Valley and the coast.⁵⁷ The 2015 Truth, Justice and Reconciliation Commission (TJRC) report documented injustices between communities across Kenya and linked incidents of election-related violence since 1992 to land-related grievances.⁵⁸ Land conflict was cited as one of the underlying causes of the 2007-2008 post-election violence when the Kalenjin and Kikuyu ethnic groups in the Rift Valley clashed over historical disagreements originating in the 1960s regarding government land allocation and lack of compensation to some communities.⁵⁹ During the 2013 election campaigns, then-Inspector General of Police David Kimaiyo barred politicians from discussing land ownership as a campaign subject because he argued it risked sparking ethnic violence.⁶⁰

The administration of President Kenyatta has not implemented the TJRC's far-reaching recommendations on land, including revocation and recovery of all irregularly and illegally acquired land since 1963.⁶¹ According to a journalist working with a leading media outlet in Eldoret: "Since unknown people kidnapped me in 2015 for reporting on land, I decided never to write land related stories. It is not worth the risk."⁶²

⁵⁶ "Why Land is an Issue in Kenya's general election," UN-Habitat's Global Land Tool Network, January 27, 2017, <http://www.glttn.net/index.php/media-centre/glttn-news/72-why-land-is-an-issue-in-kenya-s-general-election> (accessed February 25, 2017).

⁵⁷ "Kenyatta Led Elite in Land Grabbing," Daily Nation, May 21, 2013; <http://www.nation.co.ke/news/politics/Kenyatta-led-elite-in-land-grabbing-/1064-1859262-7fe9vsz/index.html>.

⁵⁸ See "Summary, Truth, Justice and Reconciliation Commission Report, pp 16," *Kenya Transitional Justice Network*, August 2013, <http://www.acordinternational.org/silo/files/kenya-tjrc-summary-report-aug-2013.pdf> (accessed February 25, 2017).

⁵⁹ Mara Roberts, "Conflict Analysis of 2007 Post Election Violence in Kenya," September 2009, http://ndpmetrics.com/papers/Kenya_Conflict_2007.pdf (accessed February 25, 2017).

⁶⁰ Walter Menya, "Kenya: Raila Ignores Police Directive on Land," *Star*, February 6, 2013, <http://allafrica.com/stories/201302061526.html> (accessed February 27, 2017).

⁶¹ See "Summary, Truth, Justice and Reconciliation Commission Report, pp 16," *Kenya Transitional Justice Network*, August 2013, <http://www.acordinternational.org/silo/files/kenya-tjrc-summary-report-aug-2013.pdf> (accessed February 25, 2017).

⁶² Human Rights Watch and ARTICLE 19 interview with reporter with a leading Kenyan media outlet, Eldoret, January 16, 2017.

Corruption

Civil society organizations and the political opposition have accused the Kenyatta administration of failing to act on rising reports of mismanagement of state funds and alleged corruption by government officials.⁶³ Since 2015, for example, Kenyan authorities have failed to explain the whereabouts of part of US\$2.5 billion that accrued from the “Eurobond” sale scandal in 2014,⁶⁴ as well as to justify the tripling of the cost of construction of the Standard Gauge Railway line between Nairobi and Mombasa.⁶⁵ Allegations of unaddressed corruption in the Ministry of Health have also been at the heart of a labor dispute and ultimately, a three-month strike by Kenya’s doctors that began in December 2016.⁶⁶

Many journalists and bloggers said that Kenyan authorities have tried to suppress media reporting on government corruption.⁶⁷ A senior editor with the Nation Media Group said at least four of its senior reporters writing on corruption issues had been targeted by state intelligence, which surveilled and monitored their calls and social media:

As a result of the surveillance, senior government officials officially complained to us in late 2015 that some of our journalists were working

⁶³ AFP, “Corruption in Kenya Worse than Ever, says veteran campaigner John Githongo,” *Daily Nation*, August 2, 2015, <http://www.nation.co.ke/news/Corruption-in-Kenya-worse-than-ever-John-Githongo/1056-2817194-neh2grz/index.html> (accessed February 25, 2017); John Githongo, “Kenya’s rampant corruption is eating away at the very fabric of democracy,” *Guardian*, August 6, 2015, <https://www.theguardian.com/global-development/2015/aug/06/kenya-barack-obama-visit-anti-corruption-plan-democracy> (accessed February 25, 2017).

⁶⁴ In 2014, Kenyan authorities issued \$2.5 billion bond at the Irish Stock market, which was basically a loan to Kenya by international investors. Controversy started in 2015 when the auditor raised queries about the whereabouts of \$1.5 billion accrued from the Eurobond sale, as there was no evidence of the money having been received by the government or spent. Aggrey Mutambo, “Cord cites unanswered queries in Eurobond, insists on audit,” *Daily Nation*, February 12, 2016, <http://www.nation.co.ke/news/Declare-Eurobond-saga-national-disaster-Raila-says/1056-3072984-8bph6l/index.html> (accessed February 25, 2017); Paul Wafula, “Audit: Sh215b Eurobond cash unaccounted for,” *The Standard*, September 8, 2016 <https://www.standardmedia.co.ke/article/2000215138/audit-sh215b-eurobond-cash-unaccounted-for>.

⁶⁵ Njenga Hakeenah, “Kenyans Duped on Standard Gauge Railway – The Economist,” *Hivi Sasa*, June 2016, <http://www.hivisasa.com/posts/151201> (accessed February 25, 2017).

⁶⁶ “As striking Kenyan doctors dig in, patients are forgotten and a baby dies,” *Los Angeles Times*, January 13, 2017, <http://www.latimes.com/world/africa/la-fg-kenya-doctors-strike-20170113-story.html> (accessed, May 11, 2017).

⁶⁷ Human Rights Watch and ARTICLE 19 interview with senior Nation Media Group editor who was threatened for publishing stories on corruption, Nairobi, November 14, 2016; interview with senior Standard editor who came under state pressure to pull down stories on corruption, Nairobi, October 5, 2016; interview with senior editor with *The Star*, Nairobi, November 7, 2016.

with the opposition to undermine the government with corruption stories. We had to let go of some of the journalists.⁶⁸

Journalists and bloggers said that government officials routinely threaten those reporting on corruption and exerted pressure on media outlets to fire or find other ways of containing journalists reporting on corruption.⁶⁹ Senior editors said that Kenyan authorities believe that journalists and bloggers reporting on corruption are working for leading figures in the political opposition.⁷⁰

Security and Counterterrorism

Discussing security and counterterrorism issues has been particularly sensitive in Kenya since 2011, when Kenyan troops entered Somalia in pursuit of the Islamist armed group Al-Shabab.⁷¹ Opposition politicians have criticized the deployment. They question abuses by security forces and if the deployment is worth the lives of Kenyan soldiers lost in Somalia, and the killings of hundreds of Kenyan civilians in Al-Shabab reprisal attacks carried out in Kenya.⁷² Government authorities have said that Kenyan troops will remain in Somalia until Al-Shabab is defeated.⁷³

Journalists and bloggers writing about Al-Shabab attacks in various parts of Kenya and the government's abusive response have been accused by senior government officials of

⁶⁸ Human Rights Watch and ARTICLE 19 interview with senior Nation Media Group Editor, Nairobi, November 14, 2016.

⁶⁹ See Hivos report, "Safety and protection of Kenyan journalists: Is it common sense or common cents?" April 2013, https://www.hivos.org/sites/default/files/baseline_survey_report_final.pdf (accessed, May 11, 2017); see also, "Journalists in Kenya threatened: rights group," *CapitalNews*, July 15, 2015, <http://www.capitalfm.co.ke/news/2015/07/journalists-in-kenya-threatened-rights-group/> (accessed, May 11, 2017).

⁷⁰ Human Rights Watch and ARTICLE 19 interview with senior editor at Nation Media Group, Nairobi, October 11, 2016; interview with senior editor at Nation Media Group, Nairobi, October 31, 2016; interview with senior editor at *The Star*, Nairobi, November 7, 2016.

⁷¹ Human Rights Watch and ARTICLE 19 interview with Kenya Correspondents' Association Chairman, Oloo Janak, Nairobi, November 6, 2016.

⁷² Drazen Jorgic and George Obulutsa, "Kenya opposition demands troops quit Somalia after attacks," *Reuters*, July 7, 2014, <http://www.reuters.com/article/us-kenya-politics-idUSKBN0FC0720140707> (accessed, May 11, 2017). See also; Rawlings Otieno, "ODM demands KDF troops withdrawal from Somalia to save lives," *Standard*, May 5, 2014 <https://www.standardmedia.co.ke/article/2000110983/odm-demands-kdf-troops-withdrawal-from-somalia-to-save-lives> (accessed, May 11, 2017).

⁷³ Daniel Howden, "Kenya sends in troops to Somalia in pursuit of Al-Shabab militants," *Independent*, October 16, 2011; <http://www.independent.co.uk/news/world/africa/kenya-sends-in-troops-to-somalia-in-pursuit-of-al-shabaab-militants-2371620.html>. (accessed, May 11, 2017).

being Al-Shabab sympathizers.⁷⁴ They have been threatened by police and other government officials, arrested and detained, sometimes without charge, and allegedly subjected to unlawful surveillance.⁷⁵ In December 2015, for example, the cabinet secretary for interior, Joseph Nkaiserry, threatened to arrest journalists who reported about the alleged involvement of security forces in extrajudicial killings and mass graves in response to Al-Shabab attacks.⁷⁶ Nkaiserry's warning had a chilling effect on media investigations into the allegations and many questions regarding human rights abuses in the context of Kenya's counterterrorism efforts remain unanswered.⁷⁷

Political Parties

Senior editors said that journalists who regularly call leading opposition figures, even just as news sources, have been subjected to phone and online surveillance by the state, and that government communications and public relations officers regularly send money to journalists to encourage or reward positive coverage or agree to ignore negative stories.⁷⁸

An editor with one leading Kenyan daily said that during the ruling Jubilee party delegates' conference in Nairobi in September 2016, delegates "resorted to chaos to demand allowances that the party had promised them."⁷⁹ Government officials asked him not to report the controversy on the front pages. He explained that one government communications officer transferred Kes20,000 (US\$200) to his phone to thank him for downplaying the story by not running it as the main front page article. "I called him and

⁷⁴ Philip Muyanga, "Nkaiserry warns of sharing photos of slain soldiers," *Daily Nation*, January 16, 2016, <http://www.nation.co.ke/news/Nkaiserry-warns-over-sharing-photos-of-slain-soldiers/1056-3036472-1tpbdqz/index.html> (accessed February 25, 2017).

⁷⁵ Human Rights Watch and ARTICLE 19 interview with senior manager, Radio Africa Group, November 7, 2016; interview with senior editor with Nation Media Group, November 11, 2016; Interview with *Daily Nation* reporter, Kisumu, January 20, 2017.

⁷⁶ Aggrey Mutambo, "Nkaiserry Links Manderu Woman to Al-Shabab," *Daily Nation*, December 9, 2015, <http://www.nation.co.ke/news/Nkaiserry-links-Mandera-woman-to-Shabaab/1056-2990624-gu68lmz/index.html> (accessed February 25, 2017).

⁷⁷ Human Rights Watch, "Deaths and Disappearances: Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya," July 20, 2016, <https://www.hrw.org/report/2016/07/19/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and> (accessed, May 11, 2017). See also; "Error of Fighting Terror with Terror," Kenya National Commission on Human Rights, September 2015. <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf> (accessed, May 11, 2017).

⁷⁸ Human Rights Watch and ARTICLE 19 interview with media manager, *Star*, November 7, 2016; interview with editor, *Business Daily*, November 10, 2016; interview with media manager, Nation Media group, November 10, 2016.

⁷⁹ Human Rights Watch and ARTICLE 19 interview with an editor with a leading Kenyan daily, Nairobi, October 31, 2016.

politely declined to take the money ... but this is what they always do with our journalists,” he said.⁸⁰

Another journalist described how police interrogated him about his alleged association with opposition leaders and their spouses in early January 2016 and detained him for hours.⁸¹ A broadcast journalist who in early 2016 was arrested, interrogated, and released without charge said:

Some of the questions I was asked had nothing to do with what I was arrested for, my post on social media. Police officers instead asked me about my tribe and how I am related to the opposition leader, Raila Odinga, and his wife.⁸²

Journalists also said that leading opposition Cord party supporters physically attacked reporters working with K24, a station associated with President Kenyatta, in July 2016, injuring them and destroying their cameras.⁸³

With heightened competition in the pre-election period, media outlets and journalists face pressure regarding how much prominence they give to stories that portray rival political parties positively.⁸⁴ Journalists and bloggers said that both the ruling party and the opposition have profiled journalists based on their ethnicity, their employers, and the nature of stories they write.⁸⁵ This means that journalists either have privileged access to certain politicians depending on their perceived political leaning, some of which is determined based on the ethnicity of individual journalists.⁸⁶

⁸⁰ Ibid.

⁸¹ Human Rights Watch and ARTICLE 19 interview with broadcast reporter who was arrested, detained, and released without charge, Nairobi, November 11, 2016.

⁸² Human Rights Watch and ARTICLE 19 interview with a television reporter, Nairobi, November 30, 2016.

⁸³ Kenneth Okwach, “K24 journalist beaten, camera broken in ODM rally,” *Nairobi News*, July 20, 2016, <http://nairobinews.nation.co.ke/news/k24-journalist-beaten-camera-broken-odm-rally/> (accessed February 26, 2017).

⁸⁴ Human Rights Watch and ARTICLE 19 interview with senior editor, *The Star*, Nairobi, November 7, 2016.

⁸⁵ Human Rights Watch and ARTICLE 19 interview with official of Kenya Union of Journalists, Nairobi, November 14, 2016.

⁸⁶ Human Rights Watch and ARTICLE 19 interview with senior editor, *The Star*, Nairobi, November 7, 2016.

County Governments

With the 2017 elections approaching, county governors and other locally elected leaders are keen to burnish their public image. Media reporting that negatively portray the governor or the county government can lead to problems for the journalists, according to some of the journalists interviewed for this report.⁸⁷

The 2010 constitution divided Kenya into 47 counties and abolished the 8 administrative provinces that existed since independence in 1963.⁸⁸ Each county is headed by an elected governor who is mandated to appoint a cabinet that runs the county's affairs.⁸⁹ Elected members of the county assembly (MCAs) debate and approve county budgets and bylaws and are meant to serve as the representatives of the county residents.⁹⁰

One journalist said he had to stop covering functions of a senior county government official in the Rift Valley in early 2016 after the official persistently threatened he would either personally discipline the journalist or he would ensure his supporters did so over what the senior official perceived to be negative stories about the county.⁹¹ In Trans Nzoia county, a journalist with a daily newspaper said hired individuals and county security guards attacked him in 2014 for reporting on a demonstration by county workers demanding better remuneration.⁹²

Four journalists in Uasin Gishu county said that county government officials openly discriminate against non-local journalists whom they view as outsiders with no right to work there or write about the county.⁹³ A journalist with Kenya Television Service (KTS) said:

The governor ... once tried to force me out of his function because I don't come from his county. On the other hand, local journalists are reminded to

⁸⁷ Human Rights Watch and ARTICLE 19 interview with journalist, Kitale county, Kitale town, January 18, 2017; interview with *Daily Nation* journalist, Eldoret county, January 16, 2017; interview with *Star* journalist, Kisumu, January 22, 2017.

⁸⁸ First Schedule of the Constitution of Kenya, 2010, art. 6(1).

⁸⁹ Constitution of Kenya, 2010, art. 180(1).

⁹⁰ Constitution of Kenya, 2010, arts. 185 and 186.

⁹¹ Human Rights Watch and ARTICLE 19 interview with journalist with *Standard* newspaper, Eldoret, January 16, 2017.

⁹² Human Rights Watch and ARTICLE 19 interview with West FM journalist, Kitale, January 18, 2017.

⁹³ Human Rights Watch and ARTICLE 19 with *Daily Nation* reporter, Eldoret, January 16, 2017; interview with a *Standard* correspondent, Eldoret, January 17, 2016; interview with KTS reporter, Eldoret, January 17, 2017; interview with *Star* reporter, Eldoret, January 17, 2017.

be patriotic to the home county and not write negative reports. The county withholds adverts for any negative reports.⁹⁴

A senior editor at the *Standard* newspaper described the county governments and governors as “vicious”:

Some of them have sent their militias to attack journalists. The most worrying thing is that police do nothing even when journalists report the attacks on them. Journalists can no longer criticize governors.⁹⁵

Reporters and correspondents working in the eleven counties where we conducted interviews told Human Rights Watch and ARTICLE 19 that senior county officials persistently accuse journalists of working against the county’s interests in exposing corruption or other malpractices there, and that journalists have faced threats and intimidation.

⁹⁴ Human Rights Watch and ARTICLE 19 interview with KTS journalist, Eldoret, January 17, 2017.

⁹⁵ Human Rights Watch and ARTICLE 19 interview senior editor with Standard Group, Nairobi, October 5, 2016.

II. Abuses against Journalists

Killings and Other Assaults

Human Rights Watch and ARTICLE 19 documented 17 incidents in which 23 journalists and bloggers were physically assaulted between 2013 and 2017. In at least two of these incidents, journalists died in apparent work-related circumstances.

A family member said that, on April 30, 2015, unidentified assailants repeatedly hit John Kituyi, editor of the Eldoret-based *Mirror Weekly*, with blunt objects and killed him.⁹⁶ Former colleagues at the newspaper told Human Rights Watch and ARTICLE 19 that at the time of his killing, Kituyi was investigating the killing of Meshack Yebei, whom William Ruto's defense asserted was their witness.⁹⁷ Kituyi was also looking into allegations of tampering with witnesses in the ICC case against Deputy President William Ruto for alleged crimes against humanity during the 2007-2008 post-election violence.⁹⁸

Kituyi and some of his colleagues had been threatened over these investigations and colleagues said some of them had to leave town because the threats persisted even after Kituyi's death.⁹⁹ In July 2015, authorities arrested a serving military officer and charged him with Kituyi's murder and violent robbery. He was released on bond pending further police investigations.¹⁰⁰ Nearly two years later, the case is still pending in a court in Eldoret.

On September 7, 2016, unidentified assailants forced themselves into the house of photojournalist Denis Otieno in the town of Kitale, Rift Valley, and demanded photos in his

⁹⁶ Human Rights Watch and ARTICLE 19 interview with John Kituyi's family member, Nairobi, December 14, 2016; "Kenya editor murdered by unknown assailants in Eldoret town," Committee to Protect Journalists, May 1, 2015, <https://cpj.org/2015/05/kenyan-editor-murdered-by-unknown-assailants-in-el.php> (accessed February 26, 2017).

⁹⁷ Human Rights Watch and ARTICLE 19 interview with journalist friend of John Kituyi, Eldoret, January 17, 2017; interview with Kituyi's former workmate, Eldoret, December 14, 2016; interview with human rights activist close to Kituyi, Eldoret, January 16, 2017.

⁹⁸ Human Rights Watch and ARTICLE 19 interview with journalist friend of John Kituyi, Eldoret, January 17, 2017; interview with Kituyi's former workmate, Eldoret, December 14, 2016; interview with human rights activist close to Kituyi, Eldoret, January 16, 2017.

⁹⁹ Ibid.

¹⁰⁰ Michael Olinga, "Suspected journalist killer arraigned in court," *Standard*, July 24, 2015, <http://www.standardmedia.co.ke/article/2000170215/suspected-killer-of-journalist-charged-in-eldoret-court> (accessed February 26, 2017).

camera before shooting him dead.¹⁰¹ The photos were apparently ones that Otieno had taken of police officers shooting to death a motorcycle taxi rider at a Kitale bus station earlier in September. A family member said that before his murder, Otieno had expressed alarm about death threats.¹⁰² No one had been arrested in relation to his killing at time of writing.

A Kitale journalist close to the Otieno family said: “The family recorded a statement with police. We all tried to give police information about the threats he had received and likely suspects. We have no evidence that anyone has been questioned by police. Investigations seem to have stalled.”¹⁰³

Human Rights Watch and ARTICLE 19 documented several other incidents in which journalists were physically attacked apparently because of their work. A *Standard* newspaper journalist in Eldoret town said he was kidnapped outside his house on March 22, 2015 by people who questioned him about stories he had been writing about irregular land acquisitions by individuals in positions of influence.¹⁰⁴ He said:

The kidnappers asked me how much I earned at *Standard* newspaper to make me endanger my life by writing land stories. They questioned me over a range of land stories I had written but then zeroed in on Dagir Farm which has controversy between the owner and squatters and which is where some senior government officials are believed to be putting up multi-million shilling homes.¹⁰⁵

The journalist said he was threatened, drugged, and discovered unconscious two days later more than 40 kilometers away.¹⁰⁶

¹⁰¹ Human Rights Watch and ARTICLE 19 interview with witness to the attack on Denis Otieno, Kitale, January 18, 2017.

¹⁰² Human Rights Watch and ARTICLE 19 interview with relative of Denis Otieno, Kitale, January 18, 2017.

¹⁰³ Human Rights Watch and ARTICLE 19 interview with journalist, Kitale, January 18, 2017.

¹⁰⁴ Human Rights Watch and ARTICLE 19 interview with kidnapped journalist, Eldoret, January 16, 2017; interview with official of the Correspondents' Association, Nairobi, November 6, 2016.

¹⁰⁵ Human Rights Watch and ARTICLE 19 interview with journalist who survived kidnapping, Eldoret, January 16, 2017.

¹⁰⁶ Human Rights Watch and ARTICLE 19 interview with journalist, Eldoret, January 16, 2017.

A *Daily Nation* newspaper journalist said he was kidnapped and detained in a secret cell at a Kisumu police station in 2015 by police officers who expressed anger about his stories exposing their alleged involvement in crime in western Kenya.¹⁰⁷

In Kitale town, the northern Rift Valley, a reporter described a journalist who in 2015 moved away from Kitale and abandoned journalism after individuals linked to officials in the Kitale county government kidnapped and beat him allegedly because of stories he had written about labor rights demonstrations by county employees.¹⁰⁸ On March 22, 2017, in Siaya county, in western Kenya, officers from the Quick Response Team of the administration police allegedly arrested, assaulted and badly injured *Standard* newspaper journalist Isaiah Gwengi for what Gwengi and his bureau chief believe was related to his stories on police brutality, extortion and involvement in illegal charcoal business in the area.¹⁰⁹

While local human rights groups have in some cases offered relocation support for journalists and bloggers, they have called on journalists' unions to establish a special fund to assist freelance journalists in the counties address their protection needs.¹¹⁰

Police Involvement in Physical Attacks

Since, 2013, police, other government officials, and agents have been involved in at least 21 incidents of assaults and other abuses against journalists and bloggers documented by Human Rights Watch and ARTICLE 19 across Kenya.¹¹¹ There is no evidence that the attacks by police officers on journalists and bloggers reflect government policy, though in several instances they appeared to be acting on the instructions of others. In general, officers seemed emboldened by the hostility of senior government officials to the media, the

¹⁰⁷ Human Rights Watch and ARTICLE 19 interview with the journalist attacked by police, Kisumu, January 21, 2016.

¹⁰⁸ Human Rights Watch and ARTICLE 19 separate interviews with three reporters, Kitale, January 18, 2017.

¹⁰⁹ Human Rights Watch and ARTICLE 19 phone interview with Isaiah Gwengi, Siaya, March 27, 2017; interview with Chairman of Kenya Correspondents' Association, Nairobi, March 27, 2017; Nelcon Odhiambo, "Police beat up and strip Standard journalist in Siaya," *Daily Nation*, March 23, 2017; <http://mobile.nation.co.ke/counties/Police-Siaya-beat-arrest-journalist/1950480-3861056-format-xhtml-61cu152/index.html>. (accessed, May 11, 2017).

¹¹⁰ Human Rights Watch and ARTICLE 19 interview with official of the Kenya Correspondents Association, Nairobi, November 6, 2016; interview with *Standard* newspaper journalist, Eldoret, January 17, 2017; interview with Qwetu FM journalist, Kitale, January 18, 2017; interview with Nation Media Group journalist, Kisumu, January 21, 2017.

¹¹¹ Human Rights Watch and ARTICLE 19 interview with official of the Kenya Union of Journalists, Nairobi, November 14, 2016; interview with official of Kenya Correspondents Association, Nairobi, November 6, 2016; interviews with multiple victims and witnesses across Kenya, September 2016-January 2017.

dysfunction of the National Police Service’s internal accountability mechanism, and the widespread impunity enjoyed by police officers who commit abuses.

On April 17, 2015, officers from Kenya’s anti-riot police, the General Service Unit (GSU), beat and kicked *Nation* journalist Nehemiah Okwembah and *Citizen* television cameraman Rueben Ogachi at Bombi village on the outskirts of the government-owned Kulalu Galana Ranch in Tana River county.¹¹² The journalists had interviewed local residents who complained that GSU officers had driven away 200 of their cattle for allegedly trespassing onto the ranch. The officers beat other government officials who tried to intervene on the journalists’ behalf.¹¹³

Also in Tana River county, on October 13, 2016, Administration Police officers beat Emmanuel Masha, a reporter with the government-owned Kenya News Agency for filming contractors who had stormed county offices to demand delayed pay.¹¹⁴

Police have also obstructed, arbitrarily arrested, and detained journalists covering news stories. On May 7, 2016, a senior officer attached to the Directorate of Criminal Investigations (DCI) pushed, confiscated cameras and attempted to arrest journalists for filming officers at the scene of the killing of a prominent businessman.¹¹⁵ In May 2015, officers from DCI interrogated *The Standard’s* Nakuru county bureau chief, Alex Kiprotich and demanded details of sources for articles regarding an incident in which senior police officers narrowly escaped death after bandits in Baringo county shot at their helicopter.¹¹⁶

In a few instances, police appeared to be acting on instructions from other people. On October 17, 2016, officers from the DCI arrested and detained blogger Dennis Owino, who

¹¹² Ibid.

¹¹³ Galgalo Bocha, “Attack on journalists, county officials by GSU men sparks outrage,” *Daily Nation*, April 20, 2015, <http://www.nation.co.ke/counties/mombasa/Tana-River-attack-journalists-outrage/1954178-2691176-7pfdutz/index.html>.

¹¹⁴ Alphonse Gari, “Mungatana condemns KNA attack in Tana River, calls for arrest,” *Star*, October 16, 2016, http://www.the-star.co.ke/news/2016/10/16/mungatana-condemns-kna-journalist-attack-in-tana-river-calls-for_c1438602 (accessed March 9, 2017).

¹¹⁵ Officer Martin Nyunguto of Directorate of Criminal Investigations was being questioned by family and friends of the late Kenyan businessman Jacob Juma, who had been fatally shot by unknown assailants, on the time needed to secure the crime scene.

¹¹⁶ Vincent Mabatuk, “The Standard journalist questioned by CID over reporting on Nadome attacks,” *The Standard*, May 13, 2015; <https://www.standardmedia.co.ke/article/2000162007/the-standard-journalist-questioned-by-cid-over-reporting-on-nadome-attacks>.

used to blog on corruption issues, for six hours as they consulted with an unidentified individual on phone.¹¹⁷ They later released him without charge. The officers did not disclose his offense or his accuser.¹¹⁸ On November 10, 2015, DCI officers who demanded *Daily Nation* parliamentary editor John Ngirachu's sources for a corruption story arrested him, and consulted with other people over the phone while he was detained.¹¹⁹

Threats

Journalists and bloggers who have criticized the performance of public officials or generally written about sensitive subjects such as public sector corruption have reported being threatened with physical violence. They said that these threats have most often occurred when they wrote about senior national officials, county governors, and police and other security officers.¹²⁰ Human Rights Watch and ARTICLE 19 documented 16 incidents of direct death threats against journalists and bloggers across the country between 2013 and 2016, though the actual number is likely to be far higher.

Some of the journalists interviewed said that those who threatened them questioned them about, or warned them against, writing about certain issues or individuals – nearly always national or county-level officials.¹²¹ Journalists and bloggers said they believe the assailants themselves are often members of militia gangs in Nairobi, Kisumu, Kisii and Central Kenya, or known “hit squads,” such as in Nairobi and Eldoret, which seem to be acting at the behest of those who hire them, especially politicians in the lead-up to an election period.¹²²

¹¹⁷ Human Rights Watch and ARTICLE 19 interview with victim, Nairobi, October 17, 2016.

¹¹⁸ Ibid.

¹¹⁹ Human Rights Watch and ARTICLE 19 interview with John Ngirachu, Nairobi, October 30, 2016.

¹²⁰ Human Rights Watch and ARTICLE 19 interview with *Standard* journalist, Eldoret, January 16, 2017; interview with *Daily Nation* journalist, Kisumu, January 22, 2017; interview with official of the Kenya Union of Journalists, Nairobi, November 14, 2016. “Kenyan Journalists have been dealing with a violent run up to next year’s elections,” *Quartz Africa*, October 6, 2016, <https://qz.com/799636/kenyan-journalists-have-been-dealing-with-a-violent-and-life-threatening-run-up-to-next-years-elections/> (accessed February 25, 2017).

¹²¹ Human Rights Watch and ARTICLE 19 interview with *Daily Nation* reporter, Kisumu, January 21, 2017; interview with *Standard* photojournalist, Eldoret, January 16, 2017; “Kenyan journalists have been dealing with a violent run up to next year’s elections,” *Quartz Africa*, October 6, 2016, <https://qz.com/799636/kenyan-journalists-have-been-dealing-with-a-violent-and-life-threatening-run-up-to-next-years-elections/> (accessed February 25, 2017).

¹²² Human Rights Watch and ARTICLE 19 interview with *Standard* photojournalist, Eldoret, January 17, 2017; interview with *Star* newspaper journalist, Eldoret, January 16, 2017; interview with *Standard* photojournalist, Kisumu, January 22, 2017.

In at least three reported incidents – in Kisumu, Eldoret, and Nairobi – journalists said they later learned police officers had been privately hired or tasked by government officials to intimidate and harass them.¹²³ One journalist based in a county in the Rift Valley said:

At the end of November 2016, a friend from police in Eldoret showed me an internal circular directing officers to monitor journalists and human rights activists involved in election related activities in this region. On December 10, 2016, I met an intelligence officer based at the National Assembly who told me my name was in the list of journalists and human rights activists being monitored.¹²⁴

In Kisii town, Kisii county, a journalist recounted how police, angry about his corruption stories recruited Sungu sungu militia, an ad hoc gang often used by police and local politicians – to track him down, forcing him to flee the town:

Days after police warned me over my pictures of an officer who had run over four villagers with a truck, Sungu sungu leaders twice came to my house asking for me. They were in a police car. A friendly police officer asked me to leave Kisii immediately to save my life.¹²⁵

In Eldoret, two journalists said they had to relocate to another county after a politician angered by their writing about the Kenyan ICC cases allegedly hired hitmen. The journalists believed the hitmen were linked to the Sabaot Land Defense Forces (SLDF), a private militia, to track them down.¹²⁶ They said that with upcoming elections just months away, there have been renewed threats linked to their past reports on Kenyan ICC cases.¹²⁷

¹²³ Human Rights Watch and ARTICLE 19 interview with kidnapped reporter, Eldoret, January 16, 2017; interview with reporter who was attacked, Kisumu, January 21, 2017; interview with journalist who went into exile, Nairobi, December 14, 2016.

¹²⁴ Human Rights Watch and ARTICLE 19 interview with bureau chief of a leading Kenyan media outlet, Rift Valley, January 17, 2017.

¹²⁵ Human Rights Watch and ARTICLE 19 interview with journalist from a leading media outlet, Nyanza, January 22, 2017.

¹²⁶ Human Rights Watch and ARTICLE 19 separate interviews with two journalists facing threats, Eldoret, January 16, 2017. Sabaot Land Defense Forces is a private militia that operated in the Mt. Elgon region, western Kenya, to fight what they considered injustice and corruption in land allocations in the region. It drew its members from the Sabaot community, a sub-tribe of the Kalenjin community in the Rift Valley. Human Rights Watch, "All The Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict," July 27, 2017, <https://www.hrw.org/report/2008/07/27/all-men-have-gone/war-crimes-kenyas-mt-elgon-conflict> (accessed, May 11, 2017).

¹²⁷ Ibid.

In Kisumu town, a photojournalist said individuals known to be members of the “China Squad” and “American Marine” gangs threatened to beat him, as they had done to other journalists and bloggers, if he continued to write negatively about them or the politicians the gangs are associated with.¹²⁸ In central Kenya, two journalists said individuals believed to be members of the Mungiki militia gang were routinely hired by politicians and business people.¹²⁹ They said the gang members have in the past year intimidated them due to their reporting on upcoming elections and security in the region.¹³⁰ In 2016, Inspector General of Police Joseph Boinett warned that armed militia gangs had proliferated in various parts of Kenya and could cause violence in the 2017 elections.¹³¹

On September 18, 2015, a journalist with a leading daily newspaper said he was threatened while investigating a corruption story involving a judicial officer.¹³² A caller, who did not identify himself, warned the journalist to keep clear of matters that did not concern him or face consequences that would include being “shot very many times.”¹³³

Intimidation of Foreign Journalists

Foreign journalists have also faced intimidation from officials. In December 2014, Kenyan authorities threatened to ban two Al Jazeera journalists for airing a documentary that exposed police death squads implicated in extrajudicial killings of those suspected of links with the militant group Al-Shabab.¹³⁴

¹²⁸ Human Rights Watch and ARTICLE 19 interview with photojournalist, Kisumu, January 22, 2017. China Squad is a gang based in Kisumu town and is believed to be linked to the ruling Jubilee party; American Marine is a rival gang in the town believed to be linked to the leading opposition party, Cord.

¹²⁹ Wamue Ngare, “Evolution of Ethnic Based Gangs in Kenya: With emphasis on Mungiki,” Kenyatta University Institutional Repository, 2013, <http://ir-library.ku.ac.ke/handle/123456789/7887> (accessed February 25, 2017).

¹³⁰ Human Rights Watch and ARTICLE 19 joint interview with central Kenya based journalists, Nairobi, December 14, 2016.

¹³¹ Angira Zadock, “Interior Cabinet Secretary Outlaws 89 Criminal Gangs,” *Daily Nation*, December 31, 2016, <http://www.nation.co.ke/news/Government-bans-89-criminal-gangs/1056-3502650-t8jv2iz/>; Mwangi Muraguri, “Rise of gangland attacks worry police ahead of 2017 elections,” *Standard*, April 3, 2016, <https://www.standardmedia.co.ke/article/2000196970/rise-of-gangland-attacks-worry-police-ahead-of-2017-elections> (accessed February 25, 2017).

¹³² Human Rights Watch and ARTICLE 19 interview with journalist with leading Kenyan media outlet, Nairobi, November 15, 2016; interview with official of the Bloggers’ Association of Kenya, March 16, 2016.

¹³³ Human Rights Watch and ARTICLE 19 interview with official of the Bloggers Association of Kenya, Nairobi, March 16, 2016.

¹³⁴ “Kenya Investigates Aljazeera over death squad report,” BBC, December 10, 2014; <http://www.bbc.com/news/world-africa-30406061>; Joseph Akwiri, “Kenya to investigate aljazeera allegations of death squads,” Reuters, December 10, 2014; <http://www.reuters.com/article/us-kenya-security-media-idUSKBNJO1OV20141210>; “Kenya goes after Al-Jazeera as government expands powers,” Huffington Post, December 19, 2014, http://www.huffingtonpost.com/2014/12/19/kenya-al-jazeera_n_6356280.html. (all accessed, May 11, 2017).

In December 2016, a British journalist with *The Times*, Jerome Starkey, was detained overnight at Nairobi's Jomo Kenyatta International Airport, denied access to lawyers, and later deported for undisclosed reasons, despite having a valid visa in addition to a pending work permit application.¹³⁵

Criminal Charges Designed to Harass

The Kenya Information and Communication Act (KICA), the Media Council Act of 2013, the Penal Code, and the Security Laws Amendment Act of 2014 contain repressive provisions that include heavy fines for media outlets, journalists, and bloggers.¹³⁶ The laws have permitted criminal charges under vaguely worded provisions, including “misuse of a communications gadget,” “annoying a public official,” and “undermining the authority of a public officer.”¹³⁷ In an important ruling, on April 26, 2017, a Kenyan High Court declared unconstitutional section 132 of the Penal Code, which criminalizes “undermining authority of a public officer,” and said it violates the fundamental right to freedom of expression.¹³⁸

On January 23, 2016, former Nation TV journalist Yassin Juma, according to media reports, was arrested under section 29 of KICA for the offense of “misuse of a communications gadget.”¹³⁹ He was detained for two days at Nairobi's Muthaiga Police station, and interrogated over his social media updates about an Al-Shabab attack on the Kenyan military camp at El Adde, Somalia.¹⁴⁰ His Facebook posts included pictures of the attack,

¹³⁵ Katharine Houreld, “Kenya police to deport British journalist detained at airport,” BBC, December 9, 2016, <http://uk.reuters.com/article/uk-kenya-britain-journalist-idUKKBN13Y2AK> (accessed February 21, 2017).

¹³⁶ “Kenya: Tension between human rights and security, and the shrinking space for civil society,” *Tom Lantos Human Rights Commission Briefing*, March 26, 2015, <https://humanrightscommission.house.gov/sites/tlhr.house.gov/files/documents/1SHRINKING%20CIVIC%20SPACE%20IN%20KENYA%20March%202015%20v.2.pdf> (accessed February 20, 2017); “Kenya: Controversial Legislation on the Media Under Consideration,” *Library of Congress*, December 6, 2013, <http://www.loc.gov/law/foreign-news/article/kenya-controversial-legislation-on-the-media-under-consideration/> (accessed February 20, 2017).

¹³⁷ Kenya Information and Communications Act, 1998, section 29; Penal Code, 1931.

¹³⁸ Maureen Kakah, “High Court: Law on undermining authority of public officer illegal,” *Daily Nation*, April 26, 2017, <http://www.nation.co.ke/news/Law-on-undermining-authority-of-public-officer-illegal/1056-3905194-12uvq2bz/> (accessed May 8, 2017).

¹³⁹ “Blogger and Journalist Yassin Juma arrested over social media posts on Al-Shabab attack,” KTN, January 24, 2016; <https://www.standardmedia.co.ke/ktn/m/video/2000102711/blogger-and-journalist-yassin-juma-arrested-over-social-media-posts-on-the-alshabab-attack>.

¹⁴⁰ Angira Zadock, “Journalist arrested after posting photos of attack on KDF camp,” *Nairobi News*, January 24, 2016, <http://nairobinews.nation.co.ke/news/journalist-arrested-after-posting-photos-of-attack-on-kdf-camp/> (last accessed February 24, 2017); On January 15, 2016, the Somali-based Islamist group, Al-Shabab, attacked and overran the Kenyan

which the cabinet secretary for interior and national coordination, Joseph Nkaissey, had warned would result in the arrest of anyone who disseminated such images.¹⁴¹ Juma was released without charge after two days.

Four days earlier, on January 19, blogger Edwin Reuben Illah was arrested, according to his own and media accounts, under section 29 of KICA and detained for his Facebook posts about the same attack.¹⁴² He was also released without charge.¹⁴³

On January 5, 2016, Judith Akolo, a Kenya Broadcasting Corporation (KBC) reporter, was arrested and detained for hours for retweeting a tweet by a prisons officer questioning the fairness of an internal job advertisement posted by the Directorate of Criminal Investigations.¹⁴⁴ Although Akolo was the 40th person to retweet, and even though she was not charged, she was the only one arrested.¹⁴⁵

At least seven journalists were arrested and detained between January and February 2016 for condemning corruption and calling for accountability in their respective county governments.¹⁴⁶ In April 2016, a judge ruled section 29 of KICA to be unconstitutional, resulting in all charges pending in court under this section at the time being dropped.¹⁴⁷

military base in El Adde, southern Somalia. Al-Shabab claimed more than 100 Kenyan soldiers were killed. Kenyan authorities denied this without releasing official figures.

¹⁴¹ Nancy Agutu, "Nkaissey warns against graphic content after Al-Shabab attack on KDF in Somalia," *Star*, January 16, 2016; http://www.the-star.co.ke/news/2016/01/16/nkaissey-warns-against-graphic-content-after-al-shabaab-attack-on-kdf_c1277343.

¹⁴² Human Rights Watch and ARTICLE 19 interview with blogger, Nairobi, October 29, 2016; Larry Madowo, "Crackdown on bloggers augurs badly for freedom of expression," *Daily Nation*, January 27, 2016, <http://www.nation.co.ke/lifestyle/DN2/-Crackdown-on-bloggers-augurs-badly-for-freedom-of-expression/957860-3050444-b66n2j/index.html> (accessed February 24, 2017).

¹⁴³ Ismail Einashe, "Kenya clamps down on journalists covering war Al-Shabab," *Guardian*, June 27, 2016; <https://www.theguardian.com/world/2016/jun/27/kenya-clamps-down-on-journalists-covering-war-on-al-shabaab>.

¹⁴⁴ Miriam Gathiga, "Grilled for a retweet: Press Freedom in Kenya," *Inter Press Service*, May 2, 2016, <http://www.ipsnews.net/2016/05/grilled-for-a-retweet-press-freedom-in-kenya/> (accessed February 24, 2017).

¹⁴⁵ Human Rights Watch and ARTICLE 19 interview with previously arrested and detained journalist, Nairobi, October 30, 2016.

¹⁴⁶ Larry Madowo, "Crackdown on bloggers augurs badly for freedom of expression," *Daily Nation*, January 27, 2016, <http://www.nation.co.ke/lifestyle/DN2/-Crackdown-on-bloggers-augurs-badly-for-freedom-of-expression/957860-3050444-b66n2j/index.html> (accessed February 25, 2017).

¹⁴⁷ Lilian Mutegi, "Justice Mumbi Ngugi Declares Section 29 (b) of the Kica Act Unconstitutional," CIO East Africa, April 19, 2016, <http://www.cio.co.ke/news/main-stories/justice-mumbi-ngugi-declares-section-29-b-of-the-kica-act-unconstitutional> (accessed February 25, 2017).

In nearly all the cases documented, police denied the arrested or detained journalists access to lawyers. In December 2014, blogger Allan Wadi was charged for demeaning the authority of President Kenyatta and within two hours sentenced without legal representation to two years in prison.¹⁴⁸ In January 2016, police turned down KBC's Judith Akolo's request for a lawyer as they interrogated her.¹⁴⁹ Another journalist who was arrested and detained for hours over a story on corruption in the Ministry of Interior and National Coordination told Human Rights Watch and ARTICLE 19 that he specifically asked for a lawyer before writing a statement and was denied:

I told them I could not write a statement in the absence of my lawyer. They told me I did not need a lawyer. We argued for about two hours and my case was referred to their boss who also declined my request of a lawyer. Later I asked a friendly officer what this was all about. He told me it was all intimidation.¹⁵⁰

Surveillance

Although Kenyan law bars security agencies from intercepting communications without a court order, research by Human Rights Watch and ARTICLE 19 found that Kenyan authorities have in recent years rarely sought court orders to carry out telecommunications surveillance.¹⁵¹

Security agencies appear to exploit ambiguities in national laws that regulate interception of communication. While sections 36 and 42 of the National Intelligence Act require security officers to obtain a court order before intercepting any communication,¹⁵² section 36 of the Prevention of Terrorism Act is not clear on this point. Section 36 makes a court order mandatory but section 36(A)(1) allows interception of communication by any security officer

¹⁴⁸ Richard Munguti, "University student jailed for insulting president Uhuru Kenyatta," *Daily Nation*, January 2, 2015, <http://www.nation.co.ke/news/Allan-Wadi-University-student-jailed-insulting-Uhuru-Kenyatta/1056-2576650-125cboc/index.html> (accessed February 25, 2017).

¹⁴⁹ Miriam Gathiga, "Grilled for a retweet: Press Freedom in Kenya," *Inter Press Service*, May 2, 2016, <http://www.ipsnews.net/2016/05/grilled-for-a-retweet-press-freedom-in-kenya/> (last accessed February 25, 2017).

¹⁵⁰ Human Rights Watch and ARTICLE 19 interview with *Daily Nation* journalist, Nairobi, December 6, 2016.

¹⁵¹ Human Rights Watch and ARTICLE 19 interview with National Intelligence Service officer, Nairobi, January 25, 2017; interview with journalist whose said his communication was being intercepted, Eldoret, January 16, 2017.

¹⁵² National Intelligence Service Act, 2012, arts. 36 and 42.

in accordance with procedures prescribed by the cabinet secretary.¹⁵³ Police and Interior Ministry officials could not confirm whether these procedures have been finalized.¹⁵⁴

With a general election in August, security agencies appear to have been using this ambiguous provision to carry out surveillance of civil society activists and journalists reporting on sensitive issues.¹⁵⁵

In February 2017, the Communications Authority directed mobile phone service providers to allow a private company contracted by the government to listen to private calls, read text messages, and review mobile money transactions.¹⁵⁶ In the absence of a data protection law in Kenya, the Communications Authority's request is prone to abuse, especially during the pre-election period when journalists face increased scrutiny.¹⁵⁷ Although a judge later stopped the Communications Authority from enforcing the directive, ruling that it violated the constitution,¹⁵⁸ there is little evidence that Kenyan authorities will discontinue a practice that has been going on for so long.

Journalists and bloggers told Human Rights Watch and ARTICLE 19 that, even before this latest government directive to phone companies, that Kenyan authorities, without court orders, were already tapping calls and text messages of critics, opposition politicians, and journalists. Their statements are backed up by recent research by Privacy International,

¹⁵³ Prevention of Terrorism Act, 2012, section 36(A)(1).

¹⁵⁴ Human Rights Watch and ARTICLE 19 phone interview with police spokesman, Charles Owino, Nairobi, March 24, 2017; phone interview with ministry of interior communications officer, Nairobi, March 23, 2017.

¹⁵⁵ Security Laws (Amendment) Act, 2014 No.19 of 2014, December 19, 2014, http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2014/SecurityLaws_Amendment_Act_2014.pdf; Prevention of Terrorism Act, 2012, Section 36(A)(1) http://www.kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/P/Prevention%20of%20Terrorism%20Act%20No.%2030%20of%202012/subsidiary%20legislation/docs/PreventionofTerrorismAct30of2012_subsidary.pdf (accessed February 24, 2017).

¹⁵⁶ Edwin Okoth, "Big Brother Could Start Tapping Your Calls, Texts from Next Week," *Daily Nation*, February 17, 2017, <http://mobile.nation.co.ke/news/Government-likely-to-start-phone-tapping/1950946-3816372-d7wrd9z/index.htm> (accessed February 24, 2017).

¹⁵⁷ Human Rights Watch and ARTICLE 19 interview with official of Kenya Union of Journalists, Nairobi, November 14, 2016; interview with official of Kenya Correspondents Association, Nairobi, November 6, 2016; interview with senior editor, Nation Media Group, Nairobi, November 14, 2016.

¹⁵⁸ "Court stops communications agency from phone tapping," *Daily Nation*, February 21, 2017, <http://mobile.nation.co.ke/news/1950946-3821000-format-xhtml-avbxsp/index.html#> (accessed March 9, 2017).

which notes that intelligence service officers intercept both communication content and acquires call data records without warrants.¹⁵⁹

Five senior editors at Nation Media Group (NMG) said that when the group founder and majority individual shareholder, the Aga Khan, visited Kenya to attend independence day celebrations on December 12, 2015, President Kenyatta presented him with a report containing phone data of several NMG journalists.¹⁶⁰ The president accused the journalists, most of whom were writing regularly about the controversy surrounding the government's failure to account for more than half of the \$2.5 billion raised from the sale of Eurobond in 2014, of working with the opposition to undermine his government.¹⁶¹

One senior editor who attended a meeting with the Aga Khan said:

The Aga Khan talked about the president's report and told us what Kenyatta's concerns were. Experts were brought to that meeting to lecture us on how to criticize the government without siding with the opposition.¹⁶²

The five senior editors in separate interviews said that although a qualitative and quantitative analysis by a South African and a Kenyan company of all NMG stories found no evidence that NMG was leaning towards the opposition,¹⁶³ NMG management allegedly fired three journalists mentioned in the State House report three months after the visit.¹⁶⁴

¹⁵⁹ "Track, Capture, Kill: Inside Communications Surveillance and Counterterrorism in Kenya," Privacy International, March 2017 file:///C:/Users/User/Desktop/track_capture_final.pdf (accessed March 9, 2017).

¹⁶⁰ Human Rights Watch and ARTICLE 19 interview with NMG senior manager, Nairobi, October 31, 2016; interview with senior manager, Nairobi, October 4, 2016; interview with NMG senior manager, Nairobi, October 11, 2016; interview with NMG senior manager, Nairobi, November 14, 2016.

¹⁶¹ Eurobond scandal refers to the failure of the Kenyan authorities to satisfactorily account for US\$2.5 billion raised from the sale of Eurobond in 2014. See David Ndii, "How Eurobond Cash Was Stolen," *Saturday Nation*, January 16, 2016, <http://www.kenya-today.com/opinion/here-is-a-simple-explanation-of-eurobond-scandal-by-economist-david-ndii-how-cash-was-stolen> (accessed March 9, 2017).

¹⁶² Human Rights Watch and ARTICLE 19 interview with NMG senior manager, Nairobi, October 31, 2016.

¹⁶³ Human Rights Watch and ARTICLE 19 interview with senior manager, Nation Media Group, Nairobi, October 4, 2016; interview with manager with Nation Media Group newspaper division, Nairobi, October 31, 2016; interview with senior manager, Nation Media group, Nairobi, November 14, 2016; interview with director at Radio Africa, Nairobi, November 7, 2016; interview with manager, Standard Group, October 5, 2016.

¹⁶⁴ Catrina Stewart, "Aga Khan accused of squeezing Kenya press freedom after newspaper sacks cartoonist and journalists," *Independent*, March 20, 2016, <http://www.independent.co.uk/news/world/africa/daily-nation-aga-khan-accused-over-squeezing-kenya-press-freedom-after-newspaper-sacks-cartoonist-a6943171.html> (accessed March 9, 2019).

They believed the journalists were fired, at least in part, on the basis of the government's displeasure with the content of their private communications – all collected without a warrant. The CEO of *Nation Media Group* in Nairobi Joe Muganda, wrote to Human Rights Watch that NMG was “not privy to any meetings between His Highness the Aga Khan and Kenyan government officials and hence not competent to comment about the same.”¹⁶⁵ At time of writing, the Aga Khan's office in Geneva had not responded to our letter regarding these allegations.

In October 2016, the media reported that the principal secretary at the Ministry of Health, Dr. Nicholas Muraguri, had during a recorded phone interview threatened *Business Daily* reporter Stella Murumba over a story regarding corruption involving Kes5 billion (US\$50 million) in the ministry.¹⁶⁶

According to excerpts of the threats published by the *Daily Nation*, Muraguri told the reporter:

If that is the thesis of your story, then it puts you at risk. I am following you. You proceed. You don't know government. We can get what you write even before you publish it, including getting print shots and screenshots of the story. Someone can be reading your messages while sitting here.¹⁶⁷

Although Muraguri apologized to the reporter following the media's publication of his threats, Kenyan authorities made no attempts to deny Muraguri's claims about the government's involvement in surveillance of journalists.¹⁶⁸

Human Rights Watch and ARTICLE 19 documented five other incidents in which the phones of journalists and bloggers appear to have been tapped between 2014 and 2016. One

¹⁶⁵ Letter from Joe Muganda, Nation Media Group Chief Executive Officer to Human Rights Watch, April 24, 2017. On file with Human Rights Watch.

¹⁶⁶ Eunice Kilonzo, “Kenyan outraged over Nicholas Muraguri's threats to journalist over Sh5bn scandal story,” *Daily Nation*, October 26, 2016, <http://www.nation.co.ke/news/Outrage-over-PS-threat-to-journalist-over-story-on-Sh5b-scam/1056-3430798-i1piod/> (accessed March 9, 2017).

¹⁶⁷ Ibid.

¹⁶⁸ William Mwangi, “Muraguri apologizes for threatening journalist after Sh5bn expose,” *Star*, October 28, 2016, http://www.the-star.co.ke/news/2016/10/28/muraguri-apologises-for-threatening-journalist-after-sh5bn-expose_c1445870 (accessed March 9, 2017).

broadcast journalist said that people who introduced themselves as DCI officers called back three separate times in 2016 after she conducted phone interviews to question her on the specifics of her call.¹⁶⁹

Another reporter with a leading Kenyan media outlet said senior officers from the Kenyan military questioned him in 2015 about a story related to the military that he had yet to publish but had just finished discussing with his supervisor by phone.¹⁷⁰ Puzzled over how the military could have known about the story within minutes of their phone call, the editor and the journalist opted not to publish, fearing for the journalist's safety.¹⁷¹

Withholding and Withdrawal of Advertising

In Kenya, government advertising accounts for between 60 to 70 percent of all advertising to media, which accounts for more than half of total media revenue.¹⁷²

In February 2017, Kenyan authorities banned government ministries, departments, and agencies from placing state advertisements in private media.¹⁷³ President Kenyatta's chief of staff and head of the civil service, Joseph Kinyua, directed state accounting officers, who are responsible for placing government advertisements, to advertise only in a new government publication, My.Gov, which was initially created in 2015 as an online portal.¹⁷⁴ The government publication is now being published as paid inserts in the four newspapers, *The Daily Nation*, *The Standard*, *The Star* newspaper and *People Daily*, the latter owned by the Kenyatta family.

¹⁶⁹ Human Rights Watch and ARTICLE 19 interview with broadcast journalist, Nairobi, November 30, 2016.

¹⁷⁰ Human Rights Watch and ARTICLE 19 interview with editor of leading Kenyan newspaper, Nairobi, December 6, 2016.

¹⁷¹ Ibid.

¹⁷² Tom Rhodes, "Advertising and Censorship in East Africa's Press," Committee to Protect Journalists, 2014 <https://cpj.org/2014/02/attacks-on-the-press-advertising.php> (accessed March 9, 2017).

¹⁷³ Bernard Namunane, "Government sets own paper, bans adverts," *Daily Nation*, February 27, 2017, <http://www.nation.co.ke/news/Government-sets--paper-bans-adverts/1056-3828976-format-xhtml-fb2mwk/index.html>; Jay Tee, "Kenyan Government Bans Advertising in Private Owned Newspapers," TransAfrica Radio, February 27, 2017, <http://www.transafricaradio.net/index.php/2017/02/27/kenya-government-bands-advertising-private-owned-newspapers/> (accessed March 9, 2017).

¹⁷⁴ Bernard Namunane, "Government sets own paper, bans adverts," *Daily Nation*, February 27, 2017, <http://www.nation.co.ke/news/Government-sets--paper-bans-adverts/1056-3828976-format-xhtml-fb2mwk/index.html> (accessed March 9, 2017).

While Kinyua portrayed this as a cost-cutting measure, media professionals interpreted it as part of government's strategy to avoid remitting long-delayed payments for advertising already published.¹⁷⁵

Editors, reporters, and sales executives told Human Rights Watch and ARTICLE 19 that Kenyan authorities started withholding advertising and payment for published advertisements in 2013.¹⁷⁶ Several senior editors and a media analyst said that soon after Kenyatta took office in 2013, the government, contravening the contract according to which all advertisements should be paid for within three months of being published¹⁷⁷ – withheld payment for advertising already published for more than six months until newspapers agreed to an array of demands. Such demands include toning down criticism of the government, especially in matters related to unfulfilled election promises from 2013 and other sensitive topics such as corruption, security, and land.¹⁷⁸ When the Kenyatta administration agreed to start paying for advertising already published, payment was piecemeal and mostly conditional on positive coverage.

Senior editors said that as of November 2016, the government was withholding Kes2 billion [US\$20 million] in advertising money owed, some dating back more than 18 months.¹⁷⁹ Of this, Standard Group estimates that its print and electronic outlets were jointly owed Kes400 million [US\$4 million],¹⁸⁰ Nation Media Group Kes500 million [US\$5 million],¹⁸¹ Royal Media Services Kes200, million [US\$2 million], and Radio Africa Group Kes90 million [US\$900,000].¹⁸²

¹⁷⁵ Ibid.

¹⁷⁶ Human Rights Watch and ARTICLE 19 interview with human rights activist, Nairobi, March 21, 2016; interview with sales executive, Nation Media Group, Nairobi, November 30, 2016; interview with senior manager, Media Council of Kenya, Nairobi, December 6, 2016; interview with senior manager, Radio Africa Group, Nairobi, November 7, 2016; interview with senior manager, Standard Group, Nairobi, October 30, 2016; interview with *Standard* reporter, Eldoret, January 16, 2017.

¹⁷⁷ Human Rights Watch and ARTICLE 19 interview with Nation Media Group sales executive privy to the contract between NMG and the government, Nairobi, November 30, 2016.

¹⁷⁸ Human Rights Watch and ARTICLE 19 interview with senior editor with *Daily Nation*, Nairobi, October 31, 2016; interview with senior manager with Radio Africa Group, Nairobi, November 11, 2016; interview with senior editor with The Standard Group, Nairobi, October 5, 2016.

¹⁷⁹ Human Rights Watch and ARTICLE 19 interview with media manager with Radio Africa Group, Nairobi, November 7, 2016; interview with senior media manager with Nation Media Group, Nairobi, November 14, 2016; interview with senior editor with *Daily Nation*, October 31, 2016; interview with senior editor, Standard Group, November 5, 2016.

¹⁸⁰ Human Rights Watch and ARTICLE 19 interview senior editor with Standard Group, Nairobi, October 5, 2016.

¹⁸¹ Human Rights Watch and ARTICLE 19 interview with senior manager with Nation Media Group, Nairobi, November 14, 2016.

¹⁸² Human Rights Watch and ARTICLE 19 interview with senior manager with Radio Africa Group, Nairobi, November 7, 2016.

At time of writing, we did not receive a reply from Joseph Mucheru, the cabinet secretary for Information, Communications and Technology, to our research queries. On May 2, 2017, he said by telephone that he needed to consult with the Attorney General on whether to respond to our questions, including about alleged withdrawal of advertising and withholding of revenue. On May 3, while addressing journalists during a World Press Freedom Day event, Mucheru denied that the government was using advertising to stifle press freedom.¹⁸³

On April 11, Denis Itumbi, senior director of innovation, digital and diaspora communication in the office of the president, told Human Rights Watch and ARTICLE 19 that the government was not using advertising to exert pressure on the media. He said: “There is no advert that media agrees to run without a signed Local Service Order. They are saying by signing the LSOs that they agree to delayed payment. Media houses agreed without coercion to sign LSOs that are not time bound.”¹⁸⁴

A senior editor at Standard Media said:

Any time we publish anything negative about Kenyatta and Ruto, we receive threats from government officials and then all government advertisements to Standard Group gets frozen.

The situation appeared to have worsened with the new government policy of centralized advertisement, which the Ministry of Information and Communications Technology started to implement in July 2015. The then Cabinet Secretary Dr. Fred Matiangi announced in May 2015 the establishment of a new state agency, the Government Advertising Agency (GAA), to handle all government advertising and payments to media outlets for advertising already published.

One NMG editor recounted how senior government officials made frantic efforts, including withdrawing advertising and withholding advertising revenue by the GAA, to stop media

¹⁸³ Bernadette Khaduli, “CS Mucheru Urges Media to Report Responsibly,” KNA, Nairobi, May 4, 2017 <https://kenyanewsagency.go.ke/en/cs-mucheru-urges-media-to-report-responsibly-2/>; Edward Kabasa, “Media challenged to practice responsible reporting,” KBC, Nairobi, May 4, 2017; <http://www.kbctv.co.ke/blog/2017/05/03/media-challenged-to-practice-responsible-reporting/>. (accessed May 11, 2017).

¹⁸⁴ Human Rights Watch and ARTICLE 19 phone interview with Denis Itumbi, April 11, 2017.

reporting on the disappearance of Kes150 billion (US\$1.5 billion), part of what had been realized from Eurobond sale.¹⁸⁵ Another NMG editor said the GAA withheld advertising after one of its publications, *Business Daily*, revealed the misappropriation of Kes5 billion [US\$50 million] in the Health Ministry.¹⁸⁶

Another *Standard* editor said:

GAA decides where to take their revenue based on how you have carried your stories. *Standard* now is being denied advertising because of a recent photo in the *Nairobiian*, our sister publication, showing one of President Kenyatta's sons carrying about Kes2 million [US\$20,000] in cash and dishing it out to patrons in a Nairobi club.¹⁸⁷

He said that Denis Itumbi asked him to remove the story from the *Standard* website. "I declined," the editor said.

Once this kind of thing happens more than once and advertising starts diminishing, editors start coming under pressure from the CEO to go slow on the government. That is what brings about self-censorship. If you don't go slow, you get fired.¹⁸⁸

When contacted, Itumbi denied the allegation saying: "What story is big enough for us to want to pull it down? This government and Denis Itumbi in particular has no interest in asking any journalist or media outlet to pull down a story."¹⁸⁹

¹⁸⁵ Human Rights Watch and ARTICLE 19 interview with senior editor at Nation Media Group, Nairobi, December 2, 2016.

¹⁸⁶ Human Rights Watch interview with senior editor at Nation Media Group, Nairobi, November 14, 2016.

¹⁸⁷ Human Rights Watch and ARTICLE 19 interview with senior editor with Standard Group, Nairobi, October 17, 2016.

¹⁸⁸ Human Rights Watch and ARTICLE 19 interview with senior editor with Standard Group, Nairobi, October 17, 2016.

¹⁸⁹ Human Rights Watch and ARTICLE 19 phone interview with Denis Itumbi, April 11, 2017.

Self-Censorship

Facing threats, intimidation, physical attacks, and criminal prosecution, journalists and bloggers said they self-censor to stay safe.¹⁹⁰ Journalists' decisions to curtail reporting on sensitive or controversial issues could have a pronounced effect on Kenyans' access to information on key issues prior to the August elections.

Some journalists said that they steer clear of any reporting that may attract government attention or sanction. About three dozen reporters in Uasin Gishu, Trans Nzoia, and Kisumu counties told Human Rights Watch and ARTICLE 19 that, although there are many cases of irregular land transactions and corruption in both the national and county governments, they felt it was too dangerous to report on these issues.¹⁹¹

Journalists said that several media outlets in Kenya are reconsidering the value of having investigative desks that, among other things, expose government abuses.¹⁹² At least two mainstream media outlets have either disbanded or scaled-down investigative desks because of security concerns and the financial costs of running such desks. To avoid conflict that could affect the newspaper's financial stability, one senior editor wrote to the office of the president in February 2015 promising never to write negative stories about the president and his family.¹⁹³

Journalists said that as of November 2016, senior editors in at least three media outlets in Nairobi urged their staff to tone down reportage on corruption in the government as well as security operations and abuses by security agencies.¹⁹⁴ A Nairobi-based editor said:

Whenever we write articles critical of security agencies or exposing corruption in the government, our reporters receive death threats from security and other government officials. This is usually followed up with

¹⁹⁰ Human Rights Watch and ARTICLE 19 interview with Nation reporter, Kisumu, January 21, 2017; interview with Standard reporter, Eldoret, January 16, 2017; interview with Kenya Television Service reporter, Eldoret, January 17, 2016.

¹⁹¹ Human Rights Watch and ARTICLE 19 interviews with 15 journalists, Eldoret, January 16 and 17, 2017; interview with 10 journalists, Kitale, January 18 and 19, 2017; interview with 10 journalists, Kisumu, January 20 and 21, 2017.

¹⁹² Human Rights Watch and ARTICLE 19 interview with Nation Media Group editor, Nairobi, November 14, 2016.

¹⁹³ Human Rights Watch and ARTICLE 19 interview with senior manager, Nairobi, November 7, 2017.

¹⁹⁴ Human Rights Watch and ARTICLE 19 joint interview with two Nation Media Group journalists, Nairobi, October 16, 2016; interview with *Standard* journalist, November 30, 2016; interview with *Standard* editor, Nairobi, November 1, 2016.

withdrawal of government advertising or withholding of revenue from advertising. We now have to assess carefully whether such stories are worth the cost.¹⁹⁵

Journalists said that the government's insistence on conditioning advertising and release of payment for advertising on positive coverage meant they routinely come under pressure from sales executives and editorial senior editors to tone down criticism of the government. Just months before the government announced a total ban on advertising to private media, one editor conceded: "We have started acceding to the demands to tone down. Otherwise we lose government advertising or the money for adverts already published gets withheld."¹⁹⁶

¹⁹⁵ Human Rights Watch and ARTICLE 19 interview with editor with Standard Group, Nairobi, October 31, 2016.

¹⁹⁶ Human Rights Watch and ARTICLE 19 interview with senior editor, Nairobi, October 31, 2017.

III. Lack of Accountability for Abuses

The United Nations Human Rights Committee has stated that governments “should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.” Attacks on journalists including arbitrary arrest, torture, threats to life, and killing because of the exercise of their activities is inconsistent with a free media. As the committee noted, “All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.”¹⁹⁷

Journalists and bloggers alleged that, despite reporting incidents to police, existing accountability institutions such as the National Police Service Commission (NPSC), Independent Policing Oversight Authority (IPOA), Internal Affairs Unit (IAU), and the office of the Inspector General of Police (IGP) have failed to ensure accountability for abuses against the media.¹⁹⁸ This lack of police response is not limited to attacks on the media: Kenyan police have a history of either not responding adequately to crimes or failing to investigate them.¹⁹⁹ Officials from journalist associations attributed the lack of credible investigations by the police into attacks against journalists and bloggers to the hostile media environment in the country.²⁰⁰

In the cases of the two journalists who died under suspicious circumstances, Human Rights Watch and ARTICLE 19 found that the police investigations had been inadequate. Police had at time of writing not interviewed possible prime suspects, despite having useful leads. Friends and relatives of John Kituyi in Eldoret said they had given police several possible leads into his killing, but that there was no indication that any of these individuals had been questioned.²⁰¹

¹⁹⁷ UN Human Rights Committee, General Comment No. 34 on the right to freedom of expression, para. 23.

¹⁹⁸ Human Rights Watch and ARTICLE 19 interview with official of Kenyan Union of Journalists, Nairobi, November 14, 2016; interview with official of the Kenya Correspondents Association, Nairobi, November 6, 2016.

¹⁹⁹ Julius Kithuure, “Kenya police ill-equipped to investigate crimes, pursue convictions,” AllAfrica.Com, July 28, 2014 <http://allafrica.com/stories/201407291082.html> (accessed February 27, 2017).

²⁰⁰ Human Rights Watch and ARTICLE 19 interview with official of Kenya Correspondents Association, Nairobi, November 6, 2016; interview with official of Kenya Union of Journalists, Nairobi, November 7, 2016.

²⁰¹ Human Rights Watch and ARTICLE 19 interview with journalist close to John Kituyi family, Nairobi, December 14, 2016.

A journalist in Kisumu said that after he repeatedly inquired about the progress of investigations into his assault by two police officers in October 2014, police took him into custody and detained him in a secret cell at a police station.²⁰² In Eldoret, a journalist who was kidnapped outside his house in March 2015, and briefly held by unknown assailants, said he gave up pursuing a police investigation due to lack of response.²⁰³

In Nairobi, Florence Wanjeri Nderu, a renowned human rights and anti-corruption blogger who in 2015 was injured around her left eye by unknown assailants, said that even though she made a detailed report of her attack at Langata police station in Nairobi, police have failed to investigate the case. “They have never even visited the scene of my attack or followed up with me,” she said. “Yet I have seen the same man who attacked me four times around the same place where he attacked me.”²⁰⁴

However, there has been limited progress in some cases. IPOA’s director of Investigations, Elema Halake, said his authority has been investigating at least three cases of police beatings of journalists.²⁰⁵ He cited investigations in the case in which alleged GSU officers beat and injured journalists Nehemiah Okwembah and Reuben Ogachi Ogada in Tana River in 2015 that are now complete. The files are due to be forwarded to the Director of Public Prosecutions for prosecution.²⁰⁶

In one case a victim received some limited redress, but no actual justice: Duncan Wanga, a cameraman with the Kenyatta family-owned K24 television, was beaten by a senior police officer in Uasin Gishu county and his camera damaged while covering demonstrations in September 2016.²⁰⁷ The officer apologized and compensated him for the damaged camera.²⁰⁸

²⁰² Human Rights Watch and ARTICLE 19 interview with journalist victim of police beating, Kisumu, January 21, 2017.

²⁰³ Human Rights Watch and ARTICLE 19 interview with journalist who survived a kidnapping, Eldoret, January 16, 2017.

²⁰⁴ Human Rights Watch and ARTICLE 19 interview with Wanjeri Nderu, human rights activist and blogger, April 21, 2017.

²⁰⁵ Human Rights Watch and ARTICLE 19 email communication with Elema Halake, Nairobi, April 18, 2017.

²⁰⁶ Ibid.

²⁰⁷ Hillary Kimuyu, “Police boss roughs up K24 journalist, smashes hi camera,” *Star*, September 28, 2016, <http://nairobinews.nation.co.ke/news/police-boss-roughs-up-k24-journalist-smashes-his-camera-photos-video/> (accessed February 24, 2017).

²⁰⁸ Human Rights Watch and ARTICLE 19 interview with journalist, Eldoret, January 16, 2017; interview with journalist, Eldoret, January 17, 2017.

George Kinoti, director of communications at the National Police Service, said that, in the event that all the accountability mechanisms fail to investigate or prosecute attacks, affected journalists and bloggers should escalate the matter with the Inspector General of Police.²⁰⁹

But journalist associations have unsuccessfully attempted to raise their concerns about lack of police investigations with the Inspector General of Police. The secretary general of Kenya's Union of Journalists, Eric Oduor, told Human Rights Watch and ARTICLE 19 that following an increase in attacks against journalists, the union wrote in 2015 to both the Director of Public Prosecutions and the Inspector General of Police about the apparent lack of prosecutions of the perpetrators. Oduor said: "The DPP ... said the problem was with the police because they do not investigate these cases.... We have never received a response from the IGP more than a year later."²¹⁰

The chairman of the association of freelance journalists, Oloo Janak, said: "Security officers were up to 2013 restrained. But now they are not.... Police keep boasting to journalists that they can harass the correspondents as much as they want but nothing can be done to the police."²¹¹

²⁰⁹ George Kinoti, Kenya National Police Service, Nairobi, April 27, 2017. Kinoti was responding to a Human Rights Watch and ARTICLE 19 letter to the Inspector General of Police.

²¹⁰ Human Rights Watch and ARTICLE 19 interview with Eric Oduor, secretary general of the Kenya Union of Journalists, Nairobi, November 14, 2016.

²¹¹ Human Rights Watch and ARTICLE 19 interview with official of Kenya Correspondents Association, Nairobi, November 6, 2016.

IV. Kenya's Legal Obligations

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other ... rights. It constitutes one of the cornerstones of a democratic society.

– UN Human Rights Committee, General Comment No. 34, para. 13

The Kenyan government is obligated to respect the rights to freedom of expression and media freedom under international law and the country's 2010 constitution. However, several national laws and recent administrative measures are inconsistent with these obligations.

International Law

Kenya is a party to the International Covenant on Civil and Political Rights (ICCPR),²¹² which under article 19 imposes legal obligations on states to protect freedom of expression and information:

Everyone shall have the right to hold opinions without interference;
Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.²¹³

The ICCPR permits governments to impose certain restrictions or limitations on freedom of expression if such restriction is provided by law and is necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order or of public health or morals.²¹⁴

²¹² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Kenya became a party to the ICCPR in 1972.

²¹³ *Ibid.*, art. 19.

²¹⁴ *Ibid.*, art. 19(3).

The United Nations Human Rights Committee, which monitors state compliance with the ICCPR, has stated that "the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democracy, democratic tenets and human rights."²¹⁵

Kenya is also a party to the African Charter on Human and Peoples' Rights (ACHPR),²¹⁶ which in article 9 states "every individual shall have the right to receive information"²¹⁷ and "every individual shall have the right to express and disseminate his opinions within the law."²¹⁸

The African Commission's 2002 Declaration of Principles on Freedom of Expression in Africa sets out regional norms guaranteeing free expression.²¹⁹ The commission has held that governments should not enact provisions that limit freedom of expression "in a manner that override constitutional provisions or undermine fundamental rights guaranteed by the [Charter] and other international human rights documents."²²⁰

A group of experts in international law, national security, and human rights issued the Johannesburg Principles on National Security, Freedom of Expression and Access to Information on October 1, 1995. The principles set out guidelines on restrictions on free speech, including the principle that governments must use the least restrictive means possible in prohibiting speech that is contrary to legitimate national security interests.²²¹

²¹⁵ UN Human Rights Committee, *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994), para. 9.7.

²¹⁶ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Kenya on January 3, 1992.

²¹⁷ Banjul Charter, art. 9.

²¹⁸ *Ibid.*

²¹⁹ Kenya is a member of the African Union, the successor to the Organization of African Unity (OAU), whose commission adopted the 2002 Declaration of Principles on Freedom of Expression at its 32nd Ordinary Session in Banjul, the Gambia, from October 17-23, 2002.

²²⁰ *Ibid.*

²²¹ The Johannesburg Principles set out standards for the protection of freedom of expression in the context of national security laws. They were adopted on October 1, 1995, by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg. They have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression. Johannesburg Principles on National Security, Freedom of Expression, and Access to Information (Johannesburg Principles), adopted on October 1, 1995, <http://www1.umn.edu/humanrts/instreet/johannesburg.html> (accessed January 4, 2017).

According to the principles, national security interests do not include “protect[ing] a government from embarrassment or exposure of wrongdoing.”²²²

In 2016, Kenya, as a member of the UN Human Rights Council, cosponsored a resolution on journalists, media and elections. The resolution adopted stated that: “all states [should] pay particular attention to the safety of journalists during periods of elections.”²²³ By threatening, harassing or arresting and detaining journalists who write about government corruption or irregular land deals, Kenyan authorities are in violation of these international standards.

National Laws Affecting Freedom of Expression

The 2010 constitution of Kenya guarantees the right to freedom of expression, which includes the freedom to seek, receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.²²⁴ The constitution limits the right to freedom of expression with respect to propaganda for war, incitement to violence, and advocating hatred on ethnic or other discriminatory grounds.²²⁵

Notably, the constitution also provides that the government should not exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium or penalize any person for any opinion or view, or the content of any broadcast, publication or dissemination.²²⁶

Broadcasting and other electronic media may be freely established, subject to necessary licensing procedures that are independent of control by government, political, or commercial interests.²²⁷ The constitution also requires all state-owned media be free to determine the editorial content of their broadcasts or other communications; impartial;

²²² Ibid. principle 2(b).

²²³ HRC Resolution 33/2 (2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/33/2 (accessed May 17, 2017).

²²⁴ Constitution of Kenya, 2010, art. 33(1), “Every person has the right to freedom of expression, which includes: freedom to seek, receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.”

²²⁵ Ibid., art. 33(2) “The right to freedom of expression does not extend to propaganda for war; incitement to violence; hate speech; or advocacy of hatred.”

²²⁶ Ibid., art. 34(2).

²²⁷ Ibid., art. 34(3).

and afford fair opportunity for the presentation of divergent views and dissenting opinions.²²⁸ Every citizen has the right to access state-held information, and information held by another person and required for the exercise or protection of any right or fundamental freedom.²²⁹

Some of Kenya’s laws, such as the Books and Newspapers Act, have restrictive provisions that date to the colonial era, such as requiring publishers to deposit high amounts of money as bond and submit sample copies of the publications to the office of the registrar of newspapers for approval,²³⁰ and have been used by successive governments since independence against critical medi.²³¹

Despite the 2010 constitution’s recognition of freedom of information, Kenyan authorities continue to use the Official Secrets Act of 1968, which restricts access or disclosure of government information for periods of up to or more than 50 years.²³² Government officials have on several occasions cited the Official Secrets Act to deny journalists and activists access to crucial government information on subjects of national interest, but where there is no apparent national security reason to withhold.²³³

And, as discussed above, the Kenya Information and Communication Act (KICA) – which a judge found the applicable section to be unconstitutional – the Media Council Act of 2013, and the Security Laws Amendment Act of 2014 permit criminal charges against media outlets, journalists and bloggers under vague and overbroad provisions, including “misuse of a communications gadget.”²³⁴

²²⁸ *Ibid.*, art. 34(4).

²²⁹ *Ibid.*, art. 35(1).

²³⁰ Books and Newspapers Act, cap 111, 1960, http://www.kenyalaw.org/lex/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/B/Books%20and%20Newspapers%20Act%20Cap.%20111%20-%20No.%2027%20of%201960/subsidiary%20legislation/docs/BooksandNewspapersAct32of1930_subsubsidiary.pdf (accessed February 24, 2017). Section 11(1) of the act, requires a publisher to deposit a \$10,000 bond.

²³¹ Othieno Nyanjom, “Factually True, Legally Untrue: Political Media Ownership in Kenya,” *Internews*, 2012.

²³² Official Secrets Act, cap 187, Laws of Kenya, 1968 (2012), <http://kenyalaw.org/lex/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/O/Official%20Secrets%20Act%20Cap.%20187%20-%20No.%2011%20of%201968/docs/OfficialSecretsAct11of1968.pdf>.

²³³ Mnjama Nathan, “Access to records and archives in Kenya,” *African Research and documentation*, 2017, <https://www.questia.com/library/journal/1P3-1704077691/access-to-records-and-archives-in-kenya> (accessed February 24, 2017).

²³⁴ Kenya Information and Communications Act, 1998, Section 29; Media Council of Kenya Act, 2013, Sections 47 and 48.

Acknowledgments

This report was researched and written by Otsieno Namwaya, researcher at Human Rights Watch's Africa division, and edited by Maria Burnett, associate director in the Africa division; and Danielle Haas, senior editor in the Program Office. James Ross, legal and policy director, and Babatunde Olugboji, deputy program director, provided legal and program review, respectively. Elizabeth Evenson, associate director for International Justice Program at Human Rights Watch, Henry Maina, regional director at ARTICLE 19 Eastern Africa, and Demas Kiprono, legal officer at ARTICLE 19 Eastern Africa, also reviewed the report and provided content.

Abdullahi Abdi, research assistant in the Africa division, provided editorial and production assistance. Olivia Hunter, publications and photography associate, Fitzroy Hepkins, administrative manager, and Jose Martinez, senior coordinator, provided production assistance.

Human Rights Watch would like to thank the journalists and media managers in Nairobi, Uasin Gishu, Trans Nzoia, Kisumu, and Mombasa counties who shared their experiences, and others from other regions such as Lamu, central Kenya, Nakuru, and the Rift Valley region who participated in various ways, including assisting the researcher identify the relevant journalists and legal experts who shared their insights.

Appendix 1: Chart of Abuses against Journalists and Bloggers

	Name	Media/ Location	Nature of violation	Incident Date	What happened?	Investigation Status
1.	John Kituyi	<i>Mirror Weekly</i> , Eldoret	Killed	April 30, 2015	Attacked by unknown assailants outside his house.	Investigations are incomplete, no one has been arrested or charged.
2.	Denis Otieno	Freelance photojournalist, Kitale	Killed	September 7, 2016	Attacked by unknown assailants inside his house at night.	No one has been arrested or charged.
3.	Emmanuel Masha	KNA, Tana River	Assaulted	October 13, 2016	Administration Police officers attacked but did not destroy his camera.	No official investigations were opened.
4.	Duncan Wanga	K24 TV, Eldoret	Assaulted and his camera destroyed	September 27, 2016	Uasin Gishu Deputy OCS assaulted him and destroyed his camera.	No investigations, but the OCS later apologized and compensated Wanga for the damaged camera.
5.	Julius Kareithi	Royal Media, Murang'a	Assaulted	September 4, 2016	Security guards of private company attacked and injured him.	No investigations so far and no one held to account.

6.	James Mburu	Royal Media, Murang'a	Assaulted	September 4, 2016	Security guards of private company attacked and injured him.	No investigations so far and no one held to account.
7.	Grace Gitau	Nation Media Group, Nyeri county	Assaulted, equipment confiscated	August 23, 2016	Nyeri members of county assembly attacked them for focusing only on negatives.	No evidence of investigations or prosecution.
8.	Lydia Nyawira	Standard Group, Nyeri county	Assaulted, equipment confiscated	August 23, 2016	Nyeri members of county assembly attacked them for focusing only on negatives.	No evidence of investigations or prosecution.
9.	Jane Wangechi	The <i>Star</i> , Lamu county	Assaulted	August 22, 2016	Lamu Member of County Assembly attacked her for supplying NCIC with evidence on hate speech.	No evidence of investigations or prosecution.
10.	Moses Masinde	Mediamax, Busia county	Assaulted	July 20, 2016	Allegedly Attacked and injured by supporters of Kenya's leading opposition party.	No evidence of investigations or prosecution.
11.	Reuben Ogada	Citizen TV, Tana River	Assaulted	April 18, 2015	Beaten by GSU officers, camera destroyed.	Investigations opened, no evidence of anyone being held to account.

12.	Nehemiah Okwembah	Nation TV, Tana River	Assaulted	April 18, 2015	Beaten by GSU officers, camera destroyed.	Investigations opened, no evidence of anyone being held to account.
13.	Wanjeri Nderu	Blogger, Nairobi	Assaulted	June 29, 2015	Unknown assailants attacked and warned her not. to talk about corruption	No investigations.
14.	Moses Odhiambo	<i>Daily Nation</i> , Kisumu county (now with Star, Nairobi)	Assaulted	September 23, 2015	Beaten by people linked to county government officials and working with police.	Reported to police but no investigations happened.
15.	Faith Matete	The <i>Star</i> , Kisumu county	Assaulted	September 23, 2015	Beaten by hired men linked to county government officials and working with police.	Reported to police but no investigations happened.
16.	Justus Ochieng	<i>Daily Nation</i> , Kisumu county	Detained in a secret cell and beaten	October 2014	Police Officers from flying quad unit arrested, detained and beat him.	Matter reported to police but no investigations. Officers transferred.
17.	Kevin Omollo	Standard, Kisumu county	Teargassed	May 23, 2016	Anti-riot police deliberately lobbed teargas canisters in their van twice.	Reported to police and Kisumu county commissioner. No investigations.

18.	Wycliffe Odera	Qwetu radio	Teargassed	May 23, 2016	Anti-riot police deliberately lobbed teargas canisters in their van twice	Reported to police and Kisumu county commissioner. No investigations
19.	Leonard Wamalwa	West FM, Kitale	Slapped, kicked, camera damaged	June 9, 2015	Hired men led by a county government security guard attacked him.	Two men arrested, charged in court, but charges dropped by police.
20.	Duncan Waswa	Imani TV, Kitale	Slapped, kicked, camera damaged	June 9, 2015	Hired men led by a county government security guard attacked him.	Two men arrested, charged in court, but charges dropped by police.
21.	George Wanyama	Nyota FM, Kitale	Beaten	2014	Unknown people beat him.	Reported to Kitale police station, no investigation.
22.	Michael Olinga Oruko	Standard, Eldoret	Kidnapped and drugged	March 22, 2015	Unknown people angry over land stories bundled him in a car and drove. Found after two days, drugged.	No evidence of investigations or prosecutions.
23.	Godfrey Wamalwa	African Press International, Bungoma	Assaulted	September 30, 2015	Unknown people angry with negative stories about Bungoma country sprayed his face with a chemical.	Reported to Webuye police station, no one has been charged.

24.	Isaiah Gwengi	Standard newspaper	Arrested, assaulted	March 22, 2017	Administration Police officers arrested and assaulted him for his stories.	Reported to Usenge police station, Siaya. IPOA Investigation ongoing.
25.	Amos Wasai	<i>Trans Nzoia Weekly</i> , Kitale	Threatened	June 2014	Threatened for story on land.	No investigations.
26.	Roseleen Lusweti	<i>Weekly Citizen</i> , Kitale	Threatened	November 2016	Threats over story on defilement of minor.	No investigations.
27.	Paul Letiwa	<i>Daily Nation</i> , Samburu county	Threatened	June 15, 2016	Phone threats over a story on corruption	No investigations.
28.	Charles Njama	Gukena 92.8 FM, Nyeri county	Threatened	May 11, 2016	Phone threats over a story on environmental pollution.	No investigations.
29.	Charles Lwanga	Nation Media Group, Kilifi county	Threatened	March 22, 2016	Threats by phone call from Ganze legislator, Peter Shehe.	Reported to police but no investigations.
30.	Timothy Chemno	Kass FM, Elgeyo Marakwet	Threatened	March 15, 2016	Face to face threat by the Elgeyo Marakwet governor, Alex Tolgos, over “negative” stories on county.	No investigations.

31.	Mathew Ndanyi	The <i>Star</i> , Eldoret	Threatened	Continuous threats from 2013 to 2016	Threats on phone, parcels. Warned about writing on ICC cases and DP Ruto's Sh1.2 bn home.	No investigations.
32.	Fred Kibor	<i>Standard newspaper</i> , Eldoret	Threatened	March 2016	Threatened by a senior Elgeyo Marakwet politician over a story on corruption.	No investigations.
33.	Peter Ochieng	Standard photographer, Eldoret	Threatened	2016 and 2017	Phone threats from unknown callers.	Reported to police but no progress in investigations.
34.	Eliud Kipsang Kosgey	KTN TV cameraman, Eldoret	Threatened	September 15, 2014	Summoned and threatened by Eldoret county secretary over nurses' strike, stopped adverts to Standard.	No investigations. Adverts to KTN resumed after several months.
35.	Elvis Wasike	Education Newspaper, Eldoret	Threatened	Early 2016	Phone and face to face threats by a Uasin Gishu county leader over a story on land.	No investigations.
36.	Robert Wafula	<i>Mirror Weekly</i>	Threatened	December 24, 2013	Confronted and threatened by men who introduced themselves as CID officers in Eldoret and threatened on ICC related issues.	No investigations.

37.	Godfrey Mwampembwa	Formerly with <i>Daily Nation</i>	Threatened, sacked	2015 and 2016	Faced persistent threats and pressure over editorial cartoons.	Gone to court for wrongful dismissal.
38.	Stella Murumba	<i>Business Daily</i> , Nation Media Group	Threatened	October 26, 2016	Threats by health ministry Principal Secretary over corruption story there.	Principal Secretary apologized.
39.	Kitavi Mutua	<i>Daily Nation</i> , Kitui	Threatened	April 2015	Threatened by education officer.	No evidence of investigation.
40.	Ali Abdi	<i>Standard</i> , Isiolo	Threatened	May 2015	Threatened by police officers.	No evidence of investigation.
41.	John Ngirachu	<i>Daily Nation</i> , Nairobi	Harassed, detained, questioned over a story on corruption. Denied access to lawyer	November 9, 2015	Waylaid on duty at parliament by CID officers and taken to CID head office for interrogation.	Not charged with any offense. Not told of complainant.
42.	Alphonse Shiundu	<i>Standard</i> , Nairobi.	Harassed, detained, questioned over a story on corruption. Denied access to lawyer	November 9, 2015	Summoned to CID head office for interrogation	Not charged with any offense. Not told of complainant

43.	James Mbaka	The <i>Star</i> , Nairobi	Harassed, detained, questioned over a story on corruption. Denied access to lawyer	November 9, 2015	Summoned to CID head office for interrogation.	Not charged with any offense. Not told of complainant.
44.	Judith Akolo	Kenya Broadcasting Corporation (KBC)	Detained, questioned, denied access to lawyer	January 5, 2015	Summoned by CID to Nairobi Central Police station and questioned over retweeting a tweet about an internal CID job advert published on day of expiry.	Not charged.
45.	Robert Alai	Blogger, Nairobi	Summoned and questions by CID	March 2013	Questioned over a tweet that a senior government official had met a judge at the height presidential election petition.	Charged with “annoying a public officer”.
46.	Robert Alai	Blogger, Nairobi	Arrested by police	May 2013	Arrested for tweeting that a county opposition candidate was ruling clique mole.	Charged with misuse of communication gadget and annoying the candidate.

47.	Allan Wadi	Blogger, Coast region	Arrested by police over a tweet about President Kenyatta	December 2014	Charged with demeaning the authority of a public officer	Sentenced within 2 hours to 2 years. Released after 8 months on appeal by ARTICLE 19.
48.	Nancy Mbindala	Blogger, Meru county	Arrested over tweets on corruption tweets against Meru county governor	January 2014	Charged with spreading hate and inciting the public against the governor.	Charges dropped after the mother pleaded with the governor.
49.	Abraham Mutai	Blogger, Isiolo	Arrested from Mombasa over tweets about corruption in Isiolo county and quickly airlifted to Nairobi. Blog post taken down and tweet page deactivated	January 2015	Charged with misusing a licensed communication gadget and undermining public authority.	Charges on misuse of communication gadget dropped.
50.	Adika Adeya	Blogger, Nairobi	Arrested released, then rearrested and charged	March 2015	Charged with misuse of a licensed communication gadget, his phone.	Charges dropped.
51.	Msingi Bekko	Photographer and blogger, Nairobi	Arrested for taking pictures of a Nairobi mall	March 23, 2015	Held at a Nairobi police station on alleged terrorism charges	Released without charge.

52.	Mbuvi Kasina	Blogger, Kitui county	Arrested and questioned over blog on corruption	February 3, 2016	Charged with six counts of misuse of licensed of communication gadget.	Charges dropped.
53.	Brian Odhiambo Otieno	Blogger and journalist, Kisumu	Arrested over a tweet on corruption	2016	Charged with misuse of a licensed communication gadget.	Charges dropped.
54.	Yassin Juma	Journalist and blogger	Arrested over tweets on Al Shabab attack on Kenya military camp in Somalia	January 23, 2016	Held for two nights under section 29 of KICA, misuse of communications gadget.	Released after two days.

Appendix 2: Letter to ICT Ministry

April 5, 2017

Hon Joe Mucheru,
Cabinet Secretary,
Ministry of Information and Communications Technology,
Reliance Centre, 3rd Floor,
P.O Box 55476 – 00200,
Nairobi, Kenya.

H U M A N
R I G H T S
W A T C H

HRW.org

Email:

Dear Sir,

I am writing to solicit your input regarding our ongoing research on media freedom and free expression in the run-up to the August 2017 general elections.

As you may know, Human Rights Watch is an international non-governmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective. Article 19 is an international non-governmental organization that works on freedom of expression and media.

Although we have been in contact with some of your staff in the course of our research, we have not yet had an opportunity to meet with you since you were appointed to the ministry. Given the importance of your sector to our current research, we would very much appreciate an opportunity to meet and discuss our ongoing concerns for media freedom, as well as the specific queries attached to this letter.

In order for us to include your response in our work, we would very much appreciate a written answer to the questions below by April 27, 2017. Alternatively, we would be happy to collect a written response at your convenience, prior to April 27.

We seek your input on specific concerns regarding the role of the Government Advertising Agency (GAA), which is under your ministry. Media managers and sales executives allege

that when media houses publish articles critical of the government or senior officials, the GAA either withdraws advertising or withholds payment for advertisements already published. As of November 2016, media managers put the total amount owed to all private media by government and related agencies at Ksh2 billion or (US\$20 million).

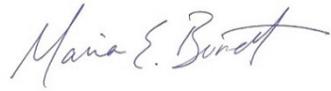
We are also concerned that some of Kenya's laws regulating the media, particularly the Media Council Act of 2013 and the Kenya Information and Communications Act 2013 violate Kenya's constitution and international law, regarding protection for free expression. Specifically, the laws allow government tight control on media regulatory bodies and enhance powers of governmental agencies in the enforcement of codes of journalists and broadcasting code.

Questions

- 1) What measures is the ministry taking to ensure that government policies and laws initiated by government do not infringe on freedom of expression and that the media is guaranteed freedom to report on issues of national interest?
- 2) Prior to March 2017 when government stopped advertising in private media, how did the GAA set payment schedules for media outlets and were there any content-based clauses in contracts to encourage or discourage media outlets running government advertising from reporting on certain topics? If so, what were those topics and who decided how such a framework was established?
- 3) Is there any formal or informal government policy that informs delays of payments of advertising revenue to media outlets by the GAA?
- 4) If and when GAA delays to pay media outlets for advertising, what is the best procedure for media houses and managers to follow in order to be paid advertising revenue which is overdue?
- 5) Could you kindly share how much the GAA owes to which media outlets in total from 2015 to present?
- 6) Does the ministry have any plans of reviewing the Official Secrets Act, Preservation of Public Security Act, the Penal Code, Media Council Act and Kenya Information and Communications (Amendment) Act with the view to initiating bills to parliament for repeal of provisions that are inconsistent with Kenya's constitution and international laws on freedom of expression/media?

Please communicate your response to **Maria Burnett** at...or Henry Maina at... We would also be pleased to discuss the research findings in person should you be available to meet with us.

Sincerely,

A handwritten signature in cursive script that reads "Maria E. Burnett". The signature is written in a dark ink and is positioned above the printed name and title.

Maria Burnett
Director, East and Horn of Africa, Human Rights Watch

Appendix 3: Letter to Police

April 5, 2017

Joseph Kipchirchir Boinett,
The Inspector General,
Kenya Police Service,
Nairobi (Kenya).



HRW.org

Tel: +254 020 3341411

Email:

Dear Sir,

I hope this letter finds you doing well in the New Year. Thank you for our meeting in July 2016 with my colleagues to discuss our reporting on allegations of abuses during counterterrorism operations in northeastern Kenya and Nairobi. Investigations into those who are missing and last seen in government custody remain important and we look forward to continued dialogue with your office and Kenya's accountability institutions.

Given our commitment to producing material that is comprehensively documented, verified, and objective, I am writing to solicit your input regarding ongoing research into free expression and media freedom in the run-up to the forthcoming elections.

Given the breadth of our work in Kenya and the important role of the police in protecting human rights, we would very much appreciate an opportunity to meet and discuss our ongoing concerns for human rights abuses in Kenya as well as the specific queries attached to this letter.

Your response to the attached inquiry is especially important so that we can accurately reflect your views in our forthcoming research on freedom of expression in Kenya. In order for us to include your response in our work, we would very much appreciate a written answer to the questions below by April 27, 2017. Alternatively, we would be happy to collect a written response at your convenience, prior to April 27.

Please communicate your response to **Maria Burnett** at...or Henry Maina at.... We would also be pleased to discuss the research findings in person should you be available to meet with us.

Sincerely,



Maria Burnett

Director, East and Horn of Africa, Human Rights Watch

Summary of allegations

Over the last four months, we have interviewed over 92 individuals, including 70 Kenyan journalists as well as government officials and police. We are concerned that police are increasingly using a range of tactics to undermine free expression rights in Kenya. We have found that over the past five years, police have arrested, detained and later released without charge or charged several journalists and bloggers with a range of criminal offences to silence their reporting on issues deemed sensitive to political elites.

In addition, we found that there have been cases where police officers or, in some instances, unidentified people, have allegedly physically attacked, harassed or threatened journalists and bloggers. Police allegedly intercept some journalists' and bloggers' communications without a court order. We are concerned that police have not effectively investigated threats and attacks on journalists and bloggers even when such cases have been reported.

In some instances, police officers have themselves physically attacked or threatened journalists, bloggers and other internet users. We found no evidence that police officers have been held to account for attacks on journalists and bloggers. In one case in Eldoret an OCS voluntarily agreed to compensate a journalist whose camera the OCS had damaged.

Questions

- 1) Could you please share your understanding of what happened in the following cases of deaths of journalists and whether there has been any progress with police investigations?
 - a. John Kituyi, publisher of Mirror Weekly, killed on April 30, 2015 by unknown attackers outside his home in Eldoret town, Uasin Gishu county.
 - b. Joseph Masha, a reporter with Standard newspaper, died on September 3, 2016 at his home in Kilifi county.
 - c. Denis Otieno, a photojournalist, killed on September 7, 2016 by unknown attackers in his house in Kitale town, Trans Nzoia county.
- 2) We have documented the following cases of physical attacks on bloggers and members of the traditional media. We understand some of the cases have been reported to various police stations in the jurisdictions where the incidents took place. We would appreciate if you could review the cases listed below and let us know whether they have indeed been reported to the police? Could you share with us progress of investigations, if any?
 - a. Emmanuel Masha, alleged to have been assaulted by administration police officers in Tana River on October 13, 2016.
 - b. Duncan Wanga, alleged to have been assaulted in Eldoret and his camera destroyed by a deputy OCS in Uasin Gishu county on September 27, 2016.
 - c. Julius Kareithi, alleged to have been assaulted in Murang'a by private security guards of Kakuzi Ltd on September 4, 2016.
 - d. James Mburu, assaulted in Murang'a by private security guards of Kakuzi Ltd on September 4, 2016.
 - e. Grace Gitau, alleged to have been assaulted in Nyeri by a member of the county assembly on August 23, 2016.
 - f. Lydia Nyawira, alleged to have been assaulted in Nyeri by a member of the county assembly on August 23, 2016.
 - g. Jane Wangechi, alleged to have been assaulted in Lamu by a member of the county assembly on August 22, 2016.
 - h. Moses Masinde, alleged to have been assaulted in Busia by opposition party supporters on July 20, 2016.

- i. Reuben Ogada, alleged to have been assaulted in Tana River by GSU officers on April 18, 2015.
 - j. Nehemiah Okwemba, assaulted in Tana River by GSU officers on April 18, 2015.
 - k. Wanjeri Nderu, a blogger assaulted in Nairobi by unknown people on June 29, 2015.
 - l. Moses Odhiambo, alleged to have been assaulted in Kisumu by people known to him on September 23, 2015.
 - m. Faith Matete, alleged to have been assaulted in Kisumu by people known to her on September 23, 2015.
 - n. Justus Ochieng, alleged to have been assaulted in Kisumu by Flying Squad police officers in October 2014.
 - o. Leonard Wamalwa, alleged to have been assaulted in Kitale by people suspected to be linked to the county government of Trans Nzoia on June 9, 2015.
 - p. Duncan Waswa, alleged to have been assaulted in Kitale by people suspected to be linked to the county government of Trans Nzoia.
 - q. George Wanyama, alleged to have been assaulted by unknown people in 2014.
 - r. Michael Olinga Oruko, alleged to have been kidnapped from Eldoret town and later released by unknown people on March 22, 2015.
 - s. Godfrey Wamalwa, alleged to have been assaulted in Bungoma by unknown people on September 30, 2015.
 - t. Isaiah Gwengi, alleged to have been assaulted in Siaya both during arrest and in detention by officers from Quick Response Team of the Administration Police on March 22, 2017.
- 3) What should members of the media do if they feel they are being threatened or physically attacked to silence their reporting?
 - 4) What measures do police have in place to ensure journalists and bloggers can report and receive protection if faced with threats, intimidation, phone and online surveillance, harassment and physical attacks during the 2017 election campaign period?

- 5) Are there any ongoing police investigations into cases of hate speech across the country? Could you please share with us details of these investigations?

Appendix 4: Letter to the Aga Khan

March 27, 2017

His Highness, The Aga Khan
Aga Khan Development Network
Geneva
Tel: 41 22 909 7200

The logo for Human Rights Watch, consisting of a dark blue square with the words "HUMAN RIGHTS WATCH" in white, uppercase, sans-serif font, arranged in three lines.

HUMAN
RIGHTS
WATCH

HRW.org

Email:

Dear Sir,

I am writing to solicit your views and input regarding our ongoing research on freedom of expression in Kenya over the past five years.

As you may know, Human Rights Watch is an international non-governmental organization that documents human rights abuses in more than 90 countries around the world. Human Rights Watch is committed to producing material that is comprehensively documented, verified, and objective. ARTICLE 19 is an international non – governmental organization that works on freedom of expression and media.

In the course of our research, we learned of a meeting between the Aga Khan and Kenyan government officials which occurred in December 2015. We seek your input as to what transpired in that meeting to better understand how the Kenyan government is managing concerns for media freedom and free expression.

We would appreciate your response to these questions.

1. In the course of a meeting in December 2015, or at any other time, have any Kenyan government officials presented documents to any one from the Aga Khan foundation alleging that Nation Media Group (NMG) journalists are believed to be working with Kenya’s political opposition to undermine the government?

2. At any time has any Kenyan government official presented any Aga Khan Foundation or NMG officer with records of phone communications or documentation of journalists by any government agency?
3. Did President Uhuru Kenyatta himself present any such reporting to the Aga Khan at any time? Have any Kenyan government officials ever explicitly or implicitly suggested that specific NMG journalists should lose their jobs? And if so, could you please share in what context and what the outcome of such discussions was?

We have been in communication with the Aga Khan Foundation in Nairobi and have been advised that the questions can only be handled in Geneva. Your response to these questions is therefore particularly important so that we can accurately reflect your views in our forthcoming research on freedom of expression in Kenya. In order for us to include your response in our work, we would very much appreciate a written answer by April 15, 2017. We would also be pleased to discuss the research findings on phone should you find this more convenient.

Please communicate your response to **Maria Burnett** at...or Henry Maina at....

Sincerely,



Maria Burnett
Associate Director, Africa Division
Human Rights Watch

Appendix 5: Letter to NMG CEO

April 13, 2017

Joe Muganda,
Chief Executive Officer,
Nation Media Group,
Nairobi.

The logo for Human Rights Watch, consisting of a dark blue square with the words "HUMAN RIGHTS WATCH" in white, uppercase, sans-serif font, arranged in three lines: "HUMAN", "RIGHTS", and "WATCH".

HUMAN
RIGHTS
WATCH

HRW.org

Dear Sir,

We are writing to follow up on the phone conversation with your staff and to therefore share with you a copy of the letter that we sent to His Highness the Aga Khan. The letter has questions that are certainly of interest to the Nation Media Group (NMG) management and we would appreciate if you will take a moment to respond to aspects of it, especially to the issue of whether there were any journalists fired by NMG management as a result of pressure from government as explained in the summary of some of our research findings in the attached letter.

Sincerely,

A handwritten signature in cursive script that reads "Maria E. Burnett".

Maria E. Burnett

Maria Burnett
Associate Director, Africa Division
Human Rights Watch

Appendix 6: Police Response



OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI – KENYA

Telegraphic Address: "IG, NPS"
Telephone: Nairobi 020-2221969
When replying please quote

Jogoo House 'A', 4th Floor
P.O. Box 44249 – 00100
NAIROBI

Ref. No. NPS/IG/SEC/2/11/4/VOL.11 (120)

27rd April, 2017

The Director,
Human Rights Watch,
East and Horn of Africa

Dear Maria,

RE: RESPONSE TO HUMAN RIGHTS CONCERNS

Dear Maria,

The Inspector General is in receipt of your letter dated April 5, 2017 requesting for an opportunity to meet and discuss ongoing concerns for human rights abuses in Kenya and respond to an attached inquiry.

We appreciate and thank you for thinking to work in partnership with the National Police Service on this critical issue on our Humanity.

We have perused your attached inquiry questions that you wanted answered. Kindly note:

For every death of a person on suspicious circumstances or reasons where it is believed another person was criminally responsible, an inquest is opened and proceedings subjected to cross examinations in a competent court of law. The court guides the Police on culpability and final disposal of the inquest.

On questions 1 (a), (b) and (c), it would be easier for us if you established with the Directorate of Criminal Investigations Officer or Officer Commanding police Division of the respective areas of crime. If no response is given, at this point, we can intervene.

On question 2 (a) to (t), it would be fair equally to check from the respective areas of jurisdiction and give contacts of the victims or their next of kin for purposes of contacting them.

Question 3, on what should members of the media do if threatened or physically attacked to silence their reporting:

Immediately report to the nearest police station, DCIO office, OCPD and in the event there are reasons one is not comfortable, report to the National Police Service- Internal Affairs Unit and IPOA. If no action is taken, the matter can be brought directly to the attention of the Inspector General.

Question 4, The NPS has elaborate measures that include as explained in question 3. We also have NPS tweeter account and website where we can interact and consult one another on any issue.

Question 5, I believe this question can best be handled by the National Cohesion and Reconciliation Commission (NCRC).

A handwritten signature in black ink, appearing to read 'G. Kinoti', written over a light blue background.

GEORGE KINOTI (AIG)
For: INSPECTOR GENERAL
NATIONAL POLICE SERVICE



Nation Media Group Limited

Nation Centre
Kimathi Street
P.O.Box 49010 G.P.O.
Nairobi 00100
Kenya
Telephone: 3288000/1/2/337710/221222/211448
Telefax:2214565/213946/313332/2219882
Email:customer@nation.co.ke
Website:<http://www.nationmedia.com>

Appendix 7: NMG Response

Directors
W.D.Kiboro,Chairman
J.Muganda,Group Chief Executive
D.Aluanga
R.Dowden (British)
S.Gitagama
L.Huebner (American)
Y.Jetha (British)
S.Kagugube (Ugandan)

N. Karago
J.Montgomery (British)
T.Mshindi(Alternate)
O.Mugenda
L.Mususa(Tanzanian)
F.O.Okello
A.Poonawala (Swiss)
G.M Wilkinson (Irish)

April 24, 2017

Maria Burnett
Associate Director, Africa Division
Human Rights Watch.

Dear Madam,

We refer to your letter dated April 13, 2017.

Nation Media Group is a publicly listed company in Kenya, Uganda and Tanzania. We operate under a Board of Directors to which management reports to. As you would expect, given that we are a publicly listed company, our Board operates independent of the ownership structure.

We are not privy to any meetings between His Highness the Aga Khan and Kenyan government officials and hence are not competent to comment about the same.

Yours Faithfully,

For Nation Media Group Limited

Joe Muganda
Group Chief Executive Officer