

moving forward while looking back
freedom online in Kenya's 2017 election



KICTANet (2018)

All parts of this publication may be reproduced freely provided that KICTANet is duly acknowledged.

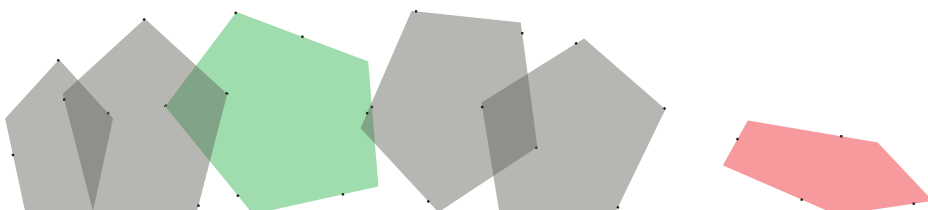
kictanet.or.ke
info@kictanet.or.ke
@KICTANet

acknowledgement

Grace Mutung'u, the author, is an Open Technology Fund Fellow at the Berkman Klein Center for Internet and Society. She is grateful to the feedback and support received from j. Siguru Wahutu, Adam Lynn, Peter Micek and Grace Githaiga. KICTANet is grateful to Liz Orembo for design and layout of the report.

Contents

| | |
|---|-----------|
| Introduction | 1 |
| Executive summary | 2 |
| Background | 4 |
| i. Access to the internet | 6 |
| ii. Assembly and association | 8 |
| iii. Freedom of expression and access to information | 10 |
| iv. Security online | 13 |
| Recommendations | 15 |



introduction

On 8 August 2017, Kenya held its second general election under the new 2010 Constitution for six national and sub national positions. This was followed by the Supreme Court nullification of the presidential election, and a repeat election on 26 October of the same year. These elections relied on the internet in two main ways. First, the internet provided a means for access to electoral information and education, while social media provided and continues to advance a space for participation in political discourse. Second, the internet was key in the operation of Kenya Integrated Electoral Management System (KIEMS), the technology used for the registration and identification of voters, candidate management and transmission of results.

This report explores the intersection of the internet and elections. It highlights some of the events that took place during Kenya's election season and their effects on freedom online. It begins with a brief background on use of technology in elections in the country followed by a discussion of election related events from four prongs- access to the internet; freedom of expression and access to information; freedom of assembly and association; and security online.

Access encompasses internet penetration and distribution, choice and competition for services, and supporting infrastructure for internet use such as electricity. Freedom of expression and access to information discusses how facilitative the online environment was for users to freely express themselves. Events that affect the ability to freely choose and associate with others online are covered under freedom of assembly and association, while those that impact security online are discussed in the last section.

Kenya is among a handful of developing countries delivering public services through mobile internet. While such progress is laudable, the 2017 experience provoked policy questions about the country's vision for an open internet. For instance, election processes such as voter registration and results transmission were a massive data collection exercise. Such data is an asset, yet there is no data protection framework or digitilisation policy to guarantee public benefit. During the election period, there was misemployment of data for political gain as well as over-policing the internet, practices reminiscent of Kenya's one party state. This report aims to create awareness on freedom online in line with Kenya's new constitutional dispensation that envisages a plural society.

Kenya is among Africa's most connected countries with over 25 million mobile internet subscriptions. The country's 2017 elections, held in August and repeated in October, tested deliverability of government services through mobile networks. They also exposed gaps in access and affordability of the internet. Among them that access is mainly in towns and hardly in underserved areas and that there is limited choice of providers for consumers and government. For meaningful access, universal internet provision ought to be implemented in tandem with other supportive services such as electricity and digital literacy.

The level of misinformation and disinformation online during the election period was unprecedented. There was a spike in false news and negative campaigning towards August 2017 and thereafter. The responses to such content included legal guidelines by the communications regulator, public notices by social media platforms, public education as well as calling out fake news by social media users and the media. False content kept social media users busy online and the process of interrogating the truth of posts often led to discussions on the history of Kenya and causes of current problems. A promising solution to mis and disinformation online is inculcation of national value systems. An example of such a course is the truth, justice and reconciliation process that proposes national reparations for historical injustices.

It is noteworthy that there was no internet shutdown during the elections period. Instead, the government investigated over 250 persons for hate speech and prosecuted about 30. The prosecutions targeted normal users and it was mainly after public pressure that politicians and influential social media users were followed. Kenya decriminalised several speech offences. Nevertheless, a trend of content control and resurrection of speech crimes from the colonial and one-party eras are a cause for concern. Public offices such as the police faced challenges in engaging online with a very active social media public. While the electoral management body- IEBC periodically shared information, it would have been more meaningful if key facts and figures were complete, accurate, transparent and timely.

There are numerous reports on state surveillance that require comprehensive responses from the government. During the period, political parties used data mining companies in their campaigns. This occurred in the absence of a data protection framework to protect and promote rights of data subjects and define duties for those who collect, process and retain personal data. Beyond data protection, there is need for deliberation on Kenya's strategy in the data economy and to develop the country's position on among others, equitable sharing of benefits from data and local capacity for digitalisation.

Policy makers depicted social media as a breeding ground for mis and disinformation that required policing. This narrative ignores the benefits of the space for political, social and cultural development. More research is required on the unique usage of the internet in Kenya to develop localised solutions for challenges of social media use. Data from social media platforms and the government on the content that was removed over the election period as well as information on surveillance projects would be useful in understanding Kenya's internet culture.

Kenya's population is estimated to be over 43 million, with over 70% of the society being youth under the age of 35¹. The country has densely populated urban areas. It attained independence from Britain in 1963 and started off with a decentralised system of government. This was quickly replaced by a centralised, one-party state that over the years implemented inequitable development. In the early 1990s, there was a return to multiparty democracy and in 2010, a new Constitution that devolved power to two levels of government was promulgated. The Constitution has an elaborate Bill of Rights as well as principles and particularised provisions for matters such as elections, largely drawn from experiences of the one-party state. ²

With political reforms came liberalisation of the economy. The information and communications technology (ICT) sector benefited from government support for internet infrastructure such as undersea fibre optic cable. Presently, the country is among the most connected in Africa with official statistics estimating an internet penetration of 74.2 per 100 inhabitants³. With a youth bulging population, social media has become a key space for political engagement and a source of news for mainstream media. In the 2017 election season, mis and disinformation kept many present on social media to discuss, discount and counter the false information. A significant part of mis and disinformation was disseminated through private messaging apps such as Whatsapp and Telegram.

The country has a long history of instrumentalising ethnic identities during elections and post-election violence⁴. Following the worst violence after the 2007 polls, the Krieglar Commission investigating the election found that although technology was deployed, it was uncoordinated and compartmentalised. Their report noted that operational procedures were bureaucratic and uncodified, staff was poorly trained and election information was not disseminated⁵.

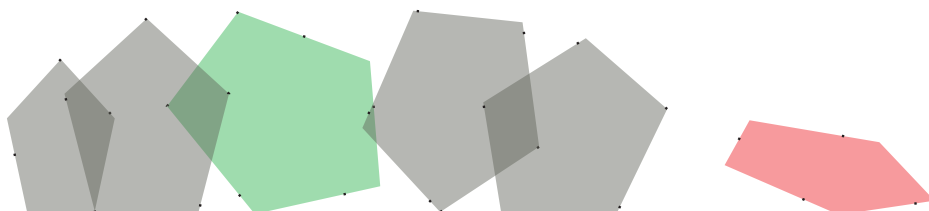
Thereafter followed the 2010 referendum for a new Constitution that was largely undisputed. Next was the 2013 election where the indictment of a presidential candidate and his deputy at the International Criminal Court (ICC) was a huge controversy.⁶ In that election, voter registration, voter identification and results transmission employed technology. Registration of voters was successfully undertaken using biometric identification. On voting day, voter identification failed in most areas. Devices ran out power, others crashed and electoral staff did not effectively respond to technology failure. Transmission of results on specially configured phones was also discontinued after a bug that multiplied rejected votes during the tallying process was discovered ⁷.

The 2017 election period began with protracted protests for reform of election management in early 2016. A bipartisan parliamentary committee developed a framework for the polls that included use of technology for voter registration and identification as well as results transmission. Later in December 2016, the law was amended to provide for a complimentary mechanism in the event of failure of technology⁸.

In January 2017, new commissioners were appointed to the electoral management body- the Independent Electoral and Boundaries Commission (IEBC) to oversee the upcoming election. Their first tasks included procurement of the integrated system for elections management⁹, data centres¹⁰ as well as provision of network and internet services for the constituency tallying centres¹¹. IEBC faced several challenges, including numerous court cases. One such case resulted in the disbandment of the multistakeholder Elections Technology Advisory Committee (ETAC) whose mandate included regularly engaging with the public on the elections technology¹².

The Kenya Integrated Electoral Management System (KIEMS) comprises the electronic voter registration system, electronic voter identification system, results transmission system and candidates management system. On election day, officers at polling stations received tablets through which they logged into KIEMS for opening and closing of polling stations. At opening of the polling station, officers connected to the polling station register through a QR code on the physical register. This required access to the internet. The tablet was then used for biometric identification of voters. At the close of the polling station, and the number of voters identified using the system was displayed therein. Voting and counting were performed manually after which the tally, together with an image of the results form were transmitted electronically to constituency and national tallying centre¹³. That processes also required connectivity.

Tight time lines, lack of information from IEBC, and litigation were among challenges that eroded public trust in the system. There were questions by candidates on procurement of the ballot papers, accusations of use of state resources and personnel in political campaigns, delay in publication of the voter register, discrepancies in the voter register and a breach of the results transmission system. These challenges were widely discussed on social media and some of them became subject of a petition at the Supreme Court that led to invalidation of the presidential results¹⁴. This report discusses the effect of these and other election related events on freedom online. The freedom is considered from four aspects: access to the internet; freedom of assembly and association; freedom of expression and access to information and security online.



i. access to the internet

The development aspirations for Kenya's ICT sector are described in the 2006 ICT policy and subsequent papers such as the ICT master plan, broadband strategy and cybersecurity policy. Kenya is among Africa's most connected countries with official statistics placing internet penetration at 74.2 per 100 inhabitants⁵. This represents over 25 million internet subscriptions. Internet access for over 99% is through mobile¹⁶. The 2017 election was a practical demonstration of gaps in access to ICT services¹⁷. It piloted deliverability of government services such as countrywide elections through mobile internet. Other factors that determine quality of access such as affordability and digital literacy were also put to the test.

Prior to the elections, IEBC published an analysis of network availability in the over 40,000 polling stations across the country¹⁸. About 27%, predominantly in rural and underserved areas, did not have access to 3G networks. While IEBC had procured satellite technology for the areas without 3G coverage, the satellite phones did not work, leading to delays in transmission of results in some of those areas¹⁹.

Access to the internet is increasingly crucial for political rights. The candidates, parties and supporters set up social media campaigns through which they engaged politically²⁰. There were also vibrant discussions on social media on among others public finance, governance and other issues that may determine an election. Media picked up these discussions, an indication of the symbiotic relationship between social media and traditional outlets²¹. This therefore afforded those with access to the internet a broader opportunity for public participation in governance.

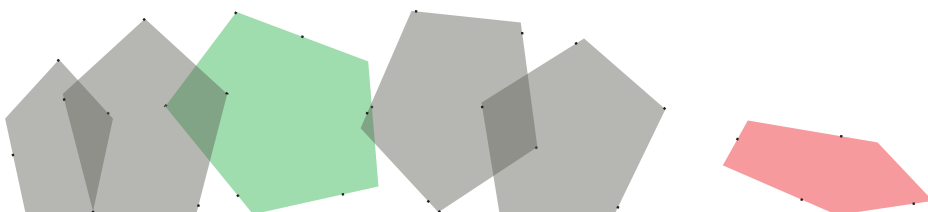
Choice

Kenya is served by three mobile network operators with the largest, Safaricom having a subscriber base of 72% plus the widest geographical coverage²¹. In April 2017 Safaricom experienced a three-hour network outage affecting voice, data, text messaging, mobile money and commerce services²². The incident demonstrated the country's dependence on one service provider, and it heightened fears on the effect of unavailability of Safaricom during elections. Fortunately, there were no other outages.

In some parts of the country, electoral officials had to travel to areas with better coverage in order to transmit results via the results transmission system²³. This undermined the objective of using technology to increase efficiency and decreased trust in electoral processes. To correct this, during the presidential re-run election in October, all KIEMs tablets were fitted with two SIM cards- a Safaricom one; and one of the other two (Airtel or Telkom)²⁴. Electoral officers were instructed to choose the network with the strongest signal. The opposition party raised concerns about Safaricom interfering with election data²⁵. This however would have been difficult to address due to the limited choice of providers in most areas of the country.

Electoral observers noted that a good number of electoral officials took time to comfortably interact with elections technology. Some showed distress when the tablets did not respond as expected. Younger officers were noted to be generally more at ease with the technology and many were observed offering support to their seniors ²⁶. This shows capacity gaps in digital literacy in addition to other competencies required for delivery of public services.

Alongside access to the internet, other factors that support being online include availability of power. The Kenya Power Company is the sole supplier of power in the country. Due to inefficiencies as well as unforeseen circumstances²⁷, there were several nationwide blackouts, besides the usual and constant localised outages ²⁸. Additional resources were required for procurement of electoral material included back-up systems such as power banks for the KIEMs kits, pressure lamps for lighting and generators at constituency and county tallying centres ²⁹. Long blackouts deny the public access to the internet as many rely on power to charge their devices³⁰. Power outages were anticipated during the election period reportedly to stall protests in hot spot areas³¹. Social media users reported blackouts in several areas, and it was difficult to ascertain whether they are linked to elections given the power supplier's inefficiencies.



ii. assembly and association

The Constitution of Kenya guarantees freedom of association (article 36), assembly, demonstration, picketing and petition (art. 37), political rights (art. 38) and freedom of movement (art. 39). Public participation in governance is among Kenya's national values and principles outlined in article 10 of the Constitution. These rights are also achieved online and enhanced by social media which easily connects those with similar interests.

Over the past few years, adoption of internet based messaging apps such as Whatsapp and Telegram has been on the rise in Kenya ³². These apps enable formation of private groups where varied content is shared and discussed. Among downsides of such groups is people finding themselves added to groups without their consent, a practice that was particularly common during the campaign period. People also complained of receiving unsolicited messages from political candidates, and leaking of information from closed groups to the public was common³³.

“Fake News”

Each of the political parties had organised online campaigns. Officers from the Presidential Strategic Communications Unit (PSCU) and government supporters often engaged in heated online debates with opposition bloggers and leaders. Negative campaigning and rumours abounded in these exchanges. The debates were sustained throughout the campaigning period, leading to an inference that political parties dedicated resources for influencing online conversations.

Data mining companies, Cambridge Analytica³⁴ and Aristotle³⁵ were contracted by the ruling and opposition political coalitions respectively. Cambridge Analytica³⁶ describes itself as using data to change behaviour while Aristotle³⁷ states that it is a pioneer in political technology. It is not clear what particular services the companies provided as their operations were covert. The history of Cambridge Analytica's use of targeted messaging and media manipulation in other elections is a cause for concern, given Kenya's turbulent history of ethnically mobilised elections³⁸.

During the election period, there was a spike in false information presented as true³⁹. This was packaged in form of mimicry of legitimate news sites, fake breaking news, leaked communications from institutions, cherry picked and distorted facts from real news, humorous memes, fake screenshots of private communications, fake communication from institutions, pictures from old events with captions of current events, negative campaigning involving family and personal ties, use of parody accounts, campaigns against institutions and on and on. The content was widely spread through private messaging apps such as Whatsapp and Telegram. Some of it eventually surfaced on public networks such as Facebook and Twitter. In July and early August 2017, targeted political attack ads on Google search appeared ⁴⁰.

Such content diminished the freedom to seek, develop, reject and consider ideas individually and in community with others online. It also resulted in banding of people with similar beliefs and deepening of gulfs among different groups. However, the mis and disinformation also sparked discussions on both private and open online platforms on root causes of the problems that manifest during elections. On its part, the government responded with attempts to regulate content and ICT professionals.

Reactions

Where content was hate speech, it was often called out and reported by social media users to either the National Cohesion and Integration Commission (NCIC) or platforms. Prominent social media posts containing mis and disinformation attracted a lot of discussion, leading to topics such as the history of Kenya, marginalisation, corruption, ethnic violence, economic crimes, violation of human rights and the emotive land question. These are among issues in the Kenya truth, justice and reconciliation report whose recommendations are yet to be implemented⁴¹. The report recommends reparation for victims of past injustice. Some of the its suggested processes such as memorialisation and public apologies can also be implemented in digital spaces.

BBC and CNN ran posts distinguishing fake news involving their brands ⁴². Facebook ⁴³and Google⁴⁴, carried out public education campaigns. The government through NCIC investigated hate speech and carried out public engagements⁴⁵. A wide circulation newspaper, Daily Nation, ran a weekly column featuring popular fake news of the week⁴⁶. Fact checking initiatives such as Africacheck are taking root ⁴⁷.

The Communications Authority in conjunction with NCIC published Guidelines on Prevention of Dissemination of Undesirable Bulk and Premium Rate Political Messages and Political Social Media Content Via Electronic Communications Networks ⁴⁸ that require take-down of political messages with “undesirable content”. The definition of undesirable content is borrowed from one of the authority’s licence conditions ⁴⁹ and it includes unlawful messages; violence; foul language; immorality including prostitution; inaccurate, ambiguous or misleading information; unreasonable invasion of privacy; and incitement likely to cause ethnic or racial disharmony or debase, degrade and demean.

The guidelines apply to the whole spectrum of bad information- misinformation (unintentional false content), disinformation (false content intended to harm) and malinformation (factual content intended to harm) ⁵⁰. Lumping together different subjects without consideration of the intent and consequences endangers freedom of expression for legitimate speech such as artistic and academic content. During a high contest as was the case of the election period, there ought to have been an independent, impartial process for taking down content.

Regulation of ICT professionals

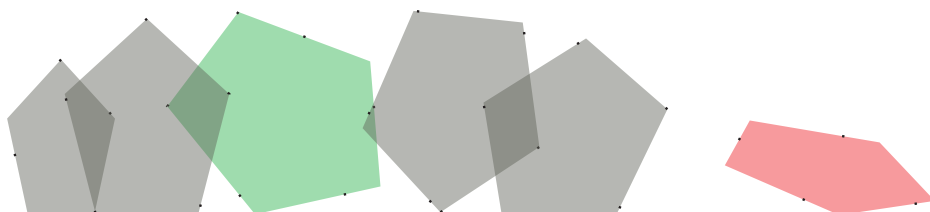
Since the previous election period, there was consistent debate online about public finance and governance ⁵¹. News of several mega corruption scandals such as the collapse of two commercial banks, loss of public funds raised through Eurobond, pilferage of funds at the National Youth Service and misappropriation of resources at the Health Ministry were broken on social media. Analysis of such news also took place when people assembled online. In the case of the commercial banks, the government blamed bloggers for manipulating public sentiment⁵². Consequently, there were several attempts to regulate ICT professionals. In June 2016, an ICT Practitioners Bill was introduced in Parliament ⁵³.

The ICT Authority, an executive branch agency, announced another regulatory mechanism for ICT practitioners in December 2016 ⁵⁴. In July 2017 when the Communications Authority published guidelines for political content on social media⁵⁵, bloggers protested them as an attempt by the authority to regulate persons that it did not have a licensing relationship with⁵⁶. The government hinted at strategies to regulate bloggers ⁵⁷ including creation of cybercrimes for misuse of the platforms ⁵⁸. The newly elected Parliament has joined this cause⁵⁹.

Public participation and petition online

Public bodies are required to carry out consultation before making decisions, under the constitutional principle of public participation. Outside the formal processes of such consultation, interesting discussions on many governance issues takes place online ⁶⁰. The media takes note of the discussions with most radio and TV programmes integrating social media for user feedback. Some of the shows discuss trending topics on social media. There were some examples of public offices using social media to disseminate information to the public. There were however very few examples of public bodies using social media to get input from the public on their policy and decision making processes.

The related right to petition public bodies was also exercised online when social media users called for action from leaders or institutions. For instance there were calls for arrest of politicians spreading inflammatory speech and for accountability of police for deaths that occurred during election protests⁶¹. There was also public mourning and calls for justice following the murder of IEBC's ICT manager Chris Msando. It is not always that public officials responded to social media calls. On the contrary, many public officials depict social media as a space full of rumours requiring policing.



iii. freedom of expression and access to information

Kenya's 2010 Constitution has broad protections for rights of speech and access to information. Before promulgation of the Constitution, the country favoured tight information controls⁶². As more expression goes online, there is inclination towards content control. During the election period, this was observed in proposed laws as well as the resurrection of old laws, some from as far back as the colonial period.

Freedoms of expression, conscience, belief, opinion, media and access to information are enshrined in articles 32 to 35 of the Constitution of Kenya. Freedom of expression covers artistic creativity, academic freedom and scientific research. It excludes propaganda for war, incitement to violence, hate speech and advocacy for vilification and discrimination. The National Cohesion and Integration Act and Penal Code outlaw hate speech and incitement to violence. Electoral laws require candidates to promote peace and shun violence.

The Access to Information Act was enacted in 2016 and many of its aspects such as proactive disclosure of information are yet to be implemented. In the election period, the notion of election information was skewed to content from the IEBC and media focus was greatly on poll results. The government sought to solely control release of results⁶³, warning the media against publishing independent tallies⁶⁴. IEBC published results in a results transmission portal that was heavily criticised for having inaccurate and incomplete information. It also restricted users to very limited views of the data. Following election observer recommendations, media was invited to independently monitor and tally the results⁶⁵ during the October presidential re-run election. Besides results, information on campaign financing⁶⁶ would enhance freedom to choose as the public was aware of online campaign budgets. Disclosure of origin of paid and targeted advertisements would also enhance the freedom to seek information as users would be aware of the source of the information.

It is noteworthy that Kenya did not have an internet disruption during the elections, unlike other over 10 African states that disrupted communications during political events in the past two years⁶⁷. This may be attributed to advocacy efforts that urged the government to commit unconditionally to keeping the internet open⁶⁸. However, an incident in December 2016 where the internet and phone networks were jammed at Parliament buildings remains unexplained⁶⁹. This was during debate on a controversial amendment⁷⁰ to the elections law that introduced a manual complementary system to elections technology. Data from the Open Observatory on Network Interference (OONI) shows a general decrease of speed of internet speeds a few days before and during the elections⁷¹. During the October 2017 rerun election, very slow internet speeds were also observed in some parts of the country. There is need for further research to establish the factors that led to slackening of the internet.

Content control

There was massive mis and disinformation online, especially from the ruling and main opposition parties ⁷². Where content involved ethnic vilification, the NCIC opened investigations. By September 2017, NCIC reported about 250 cases under investigation of which nearly 30 were prosecuted in court ⁷³. Politicians and influential social media users were only investigated and prosecuted after public pressure. There were complaints about the government's soft approach⁷⁴ to its own party politicians recorded uttering hateful content ⁷⁵ when compared to treatment of opposition politicians⁷⁶.

In July 2017 Communications Authority in conjunction with NCIC issued guidelines on political messaging⁷⁷. Guideline 13.6 requires administrators to moderate content and discussion in their groups while Guideline 13.7 requires social media platform owners to take down accounts disseminating undesirable political content within 24 hours.

The Kenya Film Classification Board (KFCB) also called for vetting of panellists appearing on television programmes as political analysts ⁷⁸. KFCB has previously favoured content regulation. A 2016 draft bill on film regulation, proposed intermediary liability for pornography, radicalisation and hate speech content on ISP networks ⁷⁹. Still in 2016, KFCB pursued takedown of a YouTube video which it deemed immoral ⁸⁰. Since then, social media users frequently refer disagreeable content to the social media accounts of the board's chief executive officer. Similarly, the Kenya Copyright Board proposed intermediary liability after a take-down notice for copyright infringing content in a 2017 Bill ⁸¹.

Speech offences

The country made progressive strides in decriminalisation of speech offences with three separate successful High Court petitions. The first, determined in April 2016, found section 29 of Kenya Information and Communications Act ambiguous and prone to misuse. The provision made it illegal to send a grossly offensive, indecent, obscene, menacing, annoying, inconvenient or anxiety creating message ⁸². In February 2017, criminal defamation in section 194 of the Penal Code was also found unconstitutional⁸³. Section 197 of Penal Code - the offence of undermining the authority of a public officer- was also nullified in April 2017⁸⁴.

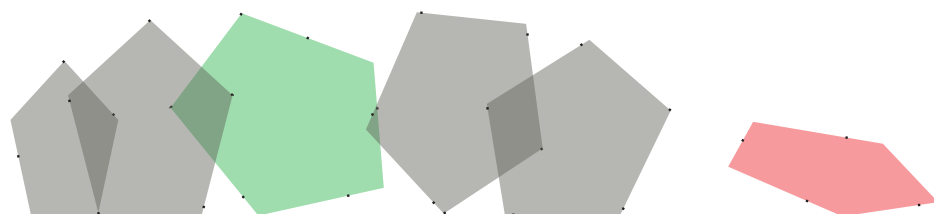
The Penal Code speech offences were created during the colonial era and had been largely unused since Kenya reintroduced multipartyism in the 1990s. Their resurrection is a cause for concern because they clawback on expanded constitutional rights such as freedom of expression. Examples of other such revivals include a charge for 'offensive conduct conducive to breach of peace' contrary to section 94 (1) of the Penal Code ⁸⁵, subversion charges for speech ⁸⁶ and invocation of the Preservation of Public Order Act (1950) to ban protests after the elections⁸⁷. Interest in speech offences has advanced to subnational units where several journalists and influential social media users were arrested or intimidated after critiquing county governors. Even where there are no civil or criminal prosecutions, these cases attract long investigations during which computers and other personal property are scrutinized by detectives, depriving their owners of a means of livelihood ⁸⁸.

Responses

Social media platforms responded to freedom of expression issues through education campaigns. When content was reported to them, they took it down in compliance with the guidelines on political messaging. Some users however complained of finding their accounts pulled down without notice or appeal mechanisms ⁸⁹.

The Media Council of Kenya published guidelines on election reporting that included among others, provisions on conflict sensitive journalism ⁹⁰. The media generally avoided live coverage of campaign rallies, alleged police brutality, armed confrontations, dead bodies and related controversies. Such content was however shared online for instance during protests after announcement of presidential results. With such posts, was difficult for the public to decipher the truth from disinformation due to lack of editorial authority ⁹¹.

The heightened political temperatures, mis and disinformation made access to information from public bodies particularly important. IEBC made periodic state of election preparedness reports where information was shared online ⁹². Observers recommended improvement of IEBC's communication and the results transmission portal to offer timely, accurate, comprehensive, transparent and accountable information⁹³.



iv. security online

The right to security and that of privacy are entrenched in articles 29 and 31 of the Constitution. The state has given two main rationales for recent security strategies- anti-terrorism and control of hate speech. Terrorism threats prompted an increase in policing, surveillance systems and security legislation. Examples of anti-terrorism measures include the Integrated Public Safety Communication and Surveillance System (IPSCSS) launched in 2014 is a street camera surveillance system in the biggest cities- Nairobi and Mombasa ⁹⁴. The Security Laws (Amendment) Act of 2014 introduced surveillance and limitation to the right of privacy and freedom of expression in suspected cases of terrorism⁹⁵.

Several reports implicate state use of mass surveillance. Citizen Lab reported evidence of Kenya's National Intelligence service running Finfisher, mass spyware sold exclusively to governments⁹⁶. A 2015 Wikileaks report shows correspondence between government operatives and The Hacking Team⁹⁷ discussing an attack to a local news site, kahawatungu.com. Links between the government and Israeli web intelligence company webintPro were reported by Privacy International in a research that linked surveillance to extra judicial killings ⁹⁸. In March 2017, Safaricom denied a report alleging presence of middleboxes in its network ⁹⁹.

The history of post-election violence is the reason for elaborate security and anti-hate speech measures before general elections¹⁰⁰. In the 2013 election period, for example, text messages were monitored ¹⁰¹. In 2015, regulations requiring mandatory registration of SIM cards were introduced ¹⁰². In January 2017 the Communications Authority announced acquisition of a social media monitoring system¹⁰³. This was in addition to a device monitoring system (DMS) obtained to whitelist mobile phones and devices thereby denying network access to counterfeit devices¹⁰⁴. DMS is currently subject of litigation with activists contending that is an invasion of privacy ¹⁰⁵. NCIC also has a social media monitoring system and a hate speech reporting portal ¹⁰⁶.

Data protection

There is no general law for data protection. The Kenya Information and Communications Act (KICA), proscribes interception and disclosure of messages by licensees in sections 31 and 83W. Regulations under the Act also prevent licensees from monitoring information sent by consumers through licensed systems. These duties apply to licensees of the Communications Authority which many of the data collecting platforms such as social media companies, state agencies and contractors are not.

During the massive voter registration exercise in January 2017, there were public reports of local government administrators in some regions making phone calls to voters within their jurisdiction. It was not disclosed how phone data was obtained and whether it is protected from misuse¹⁰⁷. Later in April 2017, during party nominations, people found themselves registered as members of political parties without their knowledge and consent¹⁰⁸. Parties had held membership drives where smart cards were used. The cards were obtained in bulk by aspirants who in turn populated them with personal information of prospective party members for enrollment¹⁰⁹. There were no rules on how such personal data was to be collected, processed and used.

The two main political parties contacted data mining firms, Cambridge Analytica and Aristotle Inc. in their campaigns. There is no information on how the companies interacted with citizens data in the custody of political parties. It was common to receive unsolicited messages from political parties, candidates and supporters. When guidelines for political communication were published, a question that arose was how law enforcement is able to investigate closed Whatsapp groups¹¹⁰ for hate speech content without breaching the privacy of those to be investigated¹¹¹.

On publication of the voter register online in July 2017, a query to the database with random numbers returned details such as the person's full names and identity card number. The database had no security measures to prevent automated copying of the database. This was however corrected through integration of human authentication after stakeholders raised the issue with IEBC¹¹².

During the presidential petition hearing, it emerged that election data was hosted in France. This led to debate on data residency and transborder data flow. In subsequent submissions to Parliament, stakeholders urged the state to ensure that biometric data resided in the country¹¹³. Other issues in the data economy include transfer of knowledge when publicly funded data projects such as the election is contracted to foreign firms. The importation of labour for data jobs as happened during the election period shows a need for deliberate policies to prepare Kenyan youth to be useful in the digital economy. Also, the election project resulted in a massive data set that could have derivative uses. The data should therefore be considered a resource that can benefit Kenyans equitably. Elections, being among the digitalisation projects by the government of Kenya, provide many lessons that could assist the country to benefit from the data economy.

recommendations

Many of the challenges observed during the election period and widely discussed on social media can be blamed on poor preparedness for the election. Since elections are highly contested, their preparation should be done as early as practicable to allow sufficient time for public input, political negotiation and technical deployment.

The government of Kenya has made impressive strides in providing infrastructure for internet access to about three quarters of the country. The underserved areas therefore require urgent attention through mechanisms such as the universal service fund.

Infrastructure alone does not guarantee access to the internet. Availability of choice for consumers as well as digital literacy skills are also required. Development of infrastructure ought to go hand in hand with support systems such as distribution of electricity.

The government's blanket response to take down all potentially inappropriate information reveals gaps in the conceptual framework for content regulation. There is need for open dialogue among stakeholders on issues such as the different types of content, their producers, intentions, and effect. Any attempts at content regulation must be narrow and conscious of the constitutional aspirations for a plural society that is informed by Kenya's past experience of a one-party state.

The country is still in the early stages of reform, having only promulgated the current Constitution ten years ago. State agencies should encourage meaningful discussions through more public engagement as opposed to policing content. The recommendations of the truth, justice and reconciliation commission should be adopted in resolving problems manifest on social media. Bodies such as NCIC should shift the paradigm on misinformation by amplifying alternative views to cohesion and integration in Kenya. The youth, who are a significant number of social media users should be given more avenues to voice their ideas on Kenya's future.

During tense moments such as Kenyan elections, public offices should provide timely information and engage on topical issues. While this may not always be an easy task, particularly with social media protests and petitions, public bodies ought to build public relations through sustained engagement and meaningful communication.

The public could have benefitted from more meaningful communication on preparations and deployment of technology. Access to technical information should be availed in future to enhance trust in the technical systems. While appreciating IEBC's improved communication, this should be deepened to provision of more comprehensive, transparent, timely and accurate information.

Responses by platforms should go beyond public education campaigns to more holistic engagement with social media users. For instance, issues such as culture, the social media economy and the youth have not been given as much attention, yet they are important facets of the reform agenda in Kenya. The platforms should work more closely with local researchers not only to understand how Kenyans uniquely use social media but also to creatively develop localised solutions to misuse of social media.

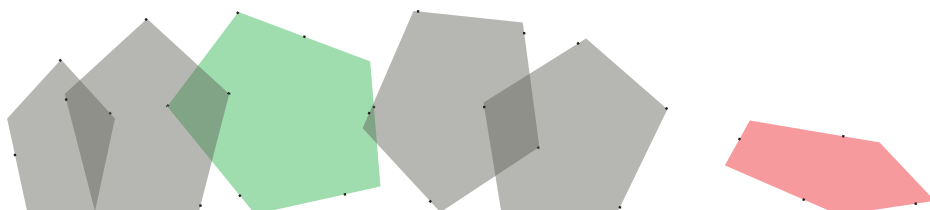
Social media platforms should create awareness on the policies and procedures for take-down and develop appeal mechanisms for users whose content or accounts are removed. After the election period, they should share data on removed content and suspended accounts as this will offer insights into type of content taken down, profiles of sharers of such content, possible motivations, profiles of owners of such accounts, their networks and so on.

The media has capacity to steer Kenyan conversation to more critical thinking about the society's future. It should deliberately change the course of public discourse from being dominated by pop politics to other issues that also matter to Kenyans. Interventions such as local fact checking and calling out fake news should be encouraged as countermeasures.

The numerous reports about government surveillance require that the state give a comprehensive response explaining the nature, extent, benefits and pitfalls of surveillance that it undertakes.

There is urgent need for a comprehensive data protection framework in Kenya. The framework should address among others, principles of data protection, the rights of data subjects as well as duties of the public and private persons controlling data.

Beyond data protection, Kenya and other developing countries need to envisage their role in big data economies. For instance, they are producing data but not processing it. Countries need to interrogate the long term benefits of such an arrangements, alternatives to such arrangements as well as benefit sharing of data products for the common good.



1 Republic of Kenya, "Kenya Population Situational Analysis" (Nairobi, 2013), https://www.unfpa.org/sites/default/files/admin-resource/FINALPSAREPORT_0.pdf.

2 Media Development Association, *History of Constitutional Making in Kenya* (Nairobi: Konrad Adeneur Stiftung, 2012), http://www.kas.de/wf/doc/kas_32994-1522-2-30.pdf?121206115057.

3 "Kenya's Mobile Penetration Hits 88 per Cent," accessed November 3, 2017, <http://www.ca.go.ke/index.php/what-we-do/94-news/366-kenya-s-mobile-penetration-hits-88-per-cent>.

4 Okedeji Tade and J. Siguru Wahutu, "The Role of Ethnicity in Political Formation in Kenya: 1963-2007," in *Dissent, Protest and Dispute in Africa* (New York: Routledge, 2017), 133-51.

5 Waki Commission, "Report of the Commission of Inquiry into the Post Election Violence (CIPEV)" (Nairobi, 2008), http://www.kas.de/wf/doc/kas_16094-1522-2-30.pdf.

6 Mahmood Mamdani, "Kenya 2013: The ICC Election," accessed November 3, 2017, <http://www.aljazeera.com/indepth/opinion/2013/03/20133982222657687.html>.

7 Republic of Kenya, *Raila Odinga v. Independent Electoral and Boundaries Commission and 3* (Supreme Court of Kenya October 24, 2013).

8 Republic of Kenya, "Election Laws Amendment Act" (2017), http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2016/ElectionLaws_Amendment_Act_No1of2017.pdf

9 Independent Electoral and Boundaries Commission, "Tender for the Supply, Delivery, Installation, Testing, Commissioning and Support of the Kenya Intergrated Elections Management System (KIEMS)," December 2016, <https://www.iebc.or.ke/uploads/tenders/Rfk59ELzw9.pdf>.

10 Independent Electoral and Boundaries Commission, "Tender No IEBC/34/2016-2017: Supply, Delivery, Installation, Testing, Commissioning and Support of the IEBC Primary and Secondary Data Centre Equipment," January 16, 2017.

11 Independent Electoral and Boundaries Commission, "Tender for Delivery, Installation, Implementation and Commissioning of Wide Area Network in 290 New Locations, 18 Existing Sites and Provision of Dedicated Internet Services," January 9, 2017, 290, <https://www.iebc.or.ke/uploads/tenders/MFwFEJ5iKJ.pdf>.

12 Republic of Kenya, *Kenneth Otieno v Attorney General and anor* (June 16, 2017).

13 Republic of Kenya, "The Elections (Technology) Regulations" (2017), <https://www.iebc.or.ke/uploads/resources/8IJsH5aTCd.pdf>.

14 Republic of Kenya, *Raila Amolo Odinga and Kalonzo Musyoka v. Independent Electoral and Boundaries Commission* (Supreme Court of Kenya September 1, 2017).

15 "Kenya's Mobile Penetration Hits 88 per Cent."

16 Communications Authority of Kenya, "Third Quarter Statistics Report for the Financial Year 2016/17" (Nairobi: <http://www.ca.go.ke/images/downloads/STATISTICS/SECTOR%20STATISTICS%20REPORT%20Q3%20FY%202016-2017.pdf>, n.d.), <http://www.ca.go.ke/images/downloads/STATISTICS/SECTOR%20STATISTICS%20REPORT%20Q3%20FY%202016-2017.pdf>.

17 Intelcon, "ICT Access Gaps Final Study" (Communications Authority of Kenya, March 11, 2016), <http://ca.go.ke/images/downloads/RESEARCH/ICT%20Access%20Gaps%20Report-April%202016%20.pdf>.

18 Independent Electoral and Boundaries Commission, "Summary of 3G Coverage," accessed October 27, 2017, https://www.iebc.or.ke/resources/?Summary_of_3G_Coverage.

19 George Ogola, "How Social Media and Fake News Are Battering Traditional Media in Kenya," *The Conversation*, accessed November 1, 2017, <http://theconversation.com/how-social-media-and-fake-news-are-battering-traditional-media-in-kenya-82920>.

20 George W. Gathigi, "How the Media Covered Kenya's General Election," *The Conversation*, accessed November 1, 2017, <http://theconversation.com/how-the-media-covered-kenyas-general-election-82324>.

21 Communications Authority of Kenya, "Third Quarter Statistics Report for the Financial Year 2016/17."

22 Macharia Kamau and Frankline Sunday, "Safaricom's Outage and Its Crippling Effect," *The Standard*, accessed June 17, 2017, <https://www.standardmedia.co.ke/article/2001237542/safaricom-s-outage-and-its-crippling-effect>.

23 Republic of Kenya, *Raila Amolo Odinga and Kalonzo Musyoka v. Independent Electoral and Boundaries Commission*.

24 Independent Electoral and Boundaries Commission, "Update on Election Preparedness: 10 Things That IEBC Shall Do Differently," *Tweets, Twitter*, October 17, 2017, <https://twitter.com/iebckenya/status/920303610818449408?lang=en>.

25 Nasa Drags Safaricom into Poll Results Transmission Row," *Business Daily*, accessed November 3, 2017, <http://www.businessdailyafrica.com/news/Nasa-drags-Safaricom-into-anti-IEBC-dispute/539546-4113574-ajikOu/index.html>.

26 Kenya ICT Action Network, "KICTANet Preliminary Observations on Technology Deployment in Kenya's General Election 2017," n.d., <https://lists.kictanet.or.ke/pipermail/kictanet/2017-August/052424.html>.

27 "Monkey Caused Nationwide Blackout, KenGen Says," *Daily Nation*, accessed November 10, 2017, <http://www.nation.co.ke/news/Monkey-caused-blackout/1056-3239366-nk0g6jz/index.html>.

28 "Suspicious Kenyans Blast IEBC after Blackout at Headquarters | The Star, Kenya," accessed November 1, 2017, http://webcache.googleusercontent.com/search?q=cache:58mV1Q3TrbsJ:www.the-star.co.ke/news/2017/07/24/suspicious-kenyans-blast-iebc-after-blackout-at-headquarters_c1602863+&cd=4&hl=en&ct=clnk&gl=us&client=ubuntu.

29 Independent Electoral and Boundaries Commission, "Tender for the Supply, Delivery, Installation, Testing, Commissioning and Support of the Kenya Intergrated Elections Management System (KIEMS)."

30 "Ensure Steady Power Supply during Polls, Migori Residents to Kenya Power - CitizenTV.Co.Ke," accessed November 1, 2017, <https://citizentv.co.ke/news/ensure-steady-power-supply-during-polls-migori-residents-to-kenya-power-172350/>.

31 Mercy Asamba, "KDF Confirms NASA Claim on Military Preparations," *The Standard*, accessed November 1, 2017, <https://www.standardmedia.co.ke/article/2001249568/kdf-confirms-nasa-claim-on-military-preparations>.

32 Bloggers Association of Kenya, "State of the Internet in Kenya 2016" (Nairobi, November 2016), <https://ifree.co.ke/wp-content/uploads/2016/11/State-of-Internet-Report-Kenya-2016.pdf>.

33 "The Good and Ugly Side of WhatsApp," *Daily Nation*, accessed November 2, 2017, <http://www.nation.co.ke/news/The-good-and-ugly-side-of-WhatsApp/1056-4160098-133qx8vz/index.html>.

34Daily Nation, "State Deports Experts over Work Permits," accessed November 1, 2017, <http://mobile.nation.co.ke/news/Foreigners-working-for-Nasa-face-deportation/1950946-4046072-43metkz/index.html>.

35"Uhuru Hires Data Firm behind Trump, Brexit Victories," The Star, Kenya, accessed November 3, 2017, http://www.the-star.co.ke/news/2017/05/10/uhuru-hires-data-firm-behind-trump-brexit-victories_c1557720.

36"Cambridge Analytica – Data Drives All That We Do.," accessed November 27, 2017, <https://cambridgeanalytica.org/>.

37"Aristotle Political Technology to Power Democracy," accessed November 27, 2017, <http://aristotle.com/>.

38Privacy International, "Voter Profiling in the 2017 Kenyan Election," Privacy International (blog), June 6, 2017, <https://medium.com/@privacyint/voter-profiling-in-the-2017-kenyan-election-8d9ac1e52877>.

39"The Reality of Fake News in Kenya - Portland Communications," Portland, accessed November 1, 2017, <https://portland-communications.com/publications/reality-fake-news-kenya/>.

40"Kenya's Social Media Election: Attack Ads and Data Mining," accessed November 1, 2017, <https://www.timeslive.co.za/news/africa/2017-07-17-kenyas-social-media-election-attack-ads-and-data-mining/>.

41Republic of Kenya, "The Final Report of the Truth, Justice and Reconciliation Committee" (Nairobi: Truth Justice and Reconciliation Commission, 2013), <http://digitalcommons.law.seattleu.edu/tjrc/>.

42"Kenya Election: Fake CNN and BBC News Reports Circulate - BBC News," accessed November 2, 2017, <http://www.bbc.com/news/world-africa-40762796>.

43"Counterspeech Efforts in Kenya," accessed November 2, 2017, <https://counterspeech.fb.com/en/locations/kenya/>.

44"Google | Ulinzi Dhidi Ya Kuvamiwa Dijitali," Google | Linda Uchaguzi Wako | Ulinzi dhidi ya kuvamiwa dijitali, accessed November 2, 2017, <https://protectyourelection.withgoogle.com/intl/sw>.

45"Agency Creates 'Hate' Reporting Web Portal - Business Daily," accessed November 1, 2017, <http://www.businessdailyafrica.com/corporate/Agency-creates-hate-reporting-web-portal/539550-4085704-rr2iuoz/index.html>.

46"This Week's Fake News," Daily Nation, accessed November 2, 2017, <http://www.nation.co.ke/news/this-week-fake-news/1056-3924856-cirpnz/index.html>.

47"Africa Check | Sorting Fact from Fiction," Africa Check, accessed November 2, 2017, <https://africacheck.org/>.

48Communications Authority of Kenya, Guidelines On Prevention Of Dissemination Of Undesirable Bulk And Premium Rate Political Messages And Political Social Media Content Via Electronic Communications Networks.

49Communications Authority of Kenya, "Content Service Provider Licence" (Communications Authority of Kenya, 2015), <http://www.ca.go.ke/images/downloads/TELECOMMUNICATION/templates/Modified%20CSP%20Licence-2015.pdf>.

50Wardle Claire and Derakhshan Hossien, "Information Disorder: Toward An Interdisciplinary Framework For Research And Policymaking" (Shorenstein Center on Media, Politics and Public Policy, October 31, 2017), <https://shorensteincenter.org/information-disorder-framework-for-research-and-policymaking/>.

51Kagwanja Peter, "Africa Is Suffering a New Bout of Populism," Daily Nation, 26 November 2016 edition, accessed May 10, 2017, <http://www.nation.co.ke/oped/Opinion/africa-is-suffering-a-new-bout-of-populism/440808-3465976-udmn59z/>.

52"CBK Chief Blames Bloggers for the Collapse of Chase - Business Daily," accessed November 10, 2017, <http://www.businessdailyafrica.com/markets/CBK-chief-blames-bloggers-for-the-collapse-of-Chase-/539552-3150404-f3hpd0/index.html>.

53Leader of Majority Party, "The Information Communication Technology Practitioners Bill" (2016).

54"ICT Authority to Weed out Quacks."

55Communications Authority of Kenya, "Guidelines On Prevention Of Dissemination Of Undesirable Bulk And Premium Rate Political Messages And Political Social Media Content Via Electronic Communications Networks" (2017), <http://ca.go.ke/images/downloads/GUIDELINES/Guidelines%20on%20Prevention%20of%20Dissemination%20of%20Undesirable%20Bulk%20and%20Premium%20Rate%20Political%20Messages%20and%20Political%20Social%20Media%20Content%20Via%20Electronic%20Networks.pdf>.

56James Wamathai, "Statement by BAKE on CA's 'Guidelines for Prevention of Dissemination of Undesirable Political Messages,'" IFreedoms Kenya (blog), July 5, 2017, <https://www.ifree.co.ke/2017/07/statement-by-bake-on-cas-guidelines-for-prevention-of-dissemination-of-undesirable-bulk-political-sms-and-social-media-content-via-electronic-communications-networks/>.

57"Govt to Prepare Law on How Kenyans Use Facebook, Twitter - Itumbi - Nairobi News," accessed November 13, 2017, <http://nairobinews.nation.co.ke/news/govt-prepare-law-kenyans-use-facebook-twitter-itumbi/>.

58Kisika Samuel, "Laws to End Social Media Abuse to Be Passed before 2017 Polls," The Star, August 23, 2016, http://www.the-star.co.ke/news/2016/08/23/laws-to-end-social-media-abuse-to-be-passed-before-2017-polls_c1408301.

59Odongo Dannish, "MPs Mull Regulating Social Media after the Death of Nyeri Governor," Capital FM News, November 9, 2017, <https://www.capitalfm.co.ke/news/2017/11/mps-mull-regulating-social-media-after-the-death-of-nyeri-governor/>.

60Sambuli Nanjira, "Social Media Has Led to Louder, More Informed Citizen," Daily Nation, December 17, 2014, <http://www.nation.co.ke/oped/opinion/social-media-citizen-engagement-public-participation/440808-2560240-11bb0tqz/index.html>.

61"Police Haven't Used Excessive Force during Anti IEBC Demos Says Boinett» Capital News," Capital News, October 20, 2017, <https://www.capitalfm.co.ke/news/2017/10/police-havent-used-excessive-force-during-anti-iebc-demos-says-boinett/>.

62Lewis Odhiambo, "The Media Environment in Kenya Since 1990," African Studies 61, no. 2 (June 17, 2010): 295–318.

63Murimi James, "Only IEBC Can Announce Results, Warns Chiloba," The Star, July 26, 2017, https://www.the-star.co.ke/news/2017/07/26/only-iebc-can-announce-results-warns-chiloba_c1604130.

64"CS Mucheru Sends Warning to Media Houses," Daily Nation, accessed November 11, 2017, <http://www.nation.co.ke/news/CS-Mucheru-sends-warning-to-media-houses/1056-4038724-q5f3a8z/index.html>.

65Independent Electoral and Boundaries Commission, "10 Things IEBC Will Do Differently during Repeat Presidential Election," Facebook post, Accredited Media, October 18, 2017, <https://www.facebook.com/IEBCKenya/photos/pcb.1657418147662650/1657417460996052/?type=3&theater>.

66Republic of Kenya, "Election Campaign Financing" (2013), <http://kenyalaw.org/lex/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/E/Election%20Campaign%20Financing%20Act%20-%20No.%2042%20of%202013/docs/Election%20Campaign%20Financing%20Act%20-%20No.%2042%20of%202013.pdf>.

67*The Digital Enemy: Why Are African Governments So Afraid Of Social Media And The Internet? - Africapedia," accessed November 1, 2017, <http://www.africapedia.com/2017/03/07/the-digital-enemy-africa/>.

68Kenya ICT Action Network, "Building Trust between the State and Citizens. A Policy Brief on Internet Shutdowns and Elections in Kenya" (Kenya ICT Action Network, July 2017), https://www.kictanet.or.ke/?sdm_downloads=kenya-policy-brief-on-internet-shutdowns.

69Edwin Mutai, "Internet, Phones Blocked as House Debates Election Laws," Business Daily, December 20, 2016, <http://www.businessdailyafrica.com/Internet-phones-blocked-as-House-debates-election-laws/539546-3493404-item-0-I9ge6u/index.html>.

70Republic of Kenya, "Order Paper for Special Sitting on Election Laws Amendment" (Parliament of Kenya, December 22, 2016), http://parliament.go.ke/the-national-assembly/house-business/item/download/3270_c114db22df094e0b1642d94341d949cf.

71Robert Muthuri, "Internet Speed Throttling Surrounding Repeat Election? | CIPIT Blog," accessed November 11, 2017, <http://blog.cipit.org/2017/10/29/internet-speed-throttling-surrounding-repeat-election/>.

72"The Reality of Fake News in Kenya - Portland Communications."

73"Agency Creates 'Hate' Reporting Web Portal - Business Daily."

74"Hate Talk: Muthama and Kuria Arrested," Daily Nation, accessed November 3, 2017, <http://www.nation.co.ke/news/Moses-Kuria-Muthama-arrested/1056-4091146-u5xvcy/index.html>.

75"Master of Hate' Says He Has No Apologies," Daily Nation, accessed November 3, 2017, <http://www.nation.co.ke/news/1056-4089322-9ay7m4/index.html>.

76"Babu Owino Faces Subversion Charges," Daily Nation, accessed November 3, 2017, <http://www.nation.co.ke/news/Babu-Owino-charged-court/1056-4112452-ihdaiw/index.html>.

77Communications Authority of Kenya, Guidelines On Prevention Of Dissemination Of Undesirable Bulk And Premium Rate Political Messages And Political Social Media Content Via Electronic Communications Networks.

78"Why Ezekiel Mutua Wants Political Analysts 'Vetted' before Going on Air - Nairobi News," accessed November 1, 2017, <http://nairobinews.nation.co.ke/news/mutua-political-analysts-vetted/>.

79Kenya Film Classification Board, "Review of the Film and Stage Plays Act Cap222," 2016, <http://jadili.ictpolicy.org/docs/kfcb2016>.

80"Five Times Ezekiel Mutua Has Annoyed Kenyans," Nairobi News (blog), September 30, 2016, <http://nairobinews.nation.co.ke/news/five-times-ezekiel-mutua-has-annoyed-kenyans/>.

81Republic of Kenya, "Copyright (Amendment) Bill" (2017), http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2017/Copyright_Amendment_Bill_2017No33.pdf.

82Republic of Kenya, Geoffrey Andare v Attorney General & 2 others (High Court of Kenya at Nairobi April 14, 2016).

83Jacqueline Okuta and anor v Attorney General, No. Petition 397 of 2016 (February 6, 2017).

84Republic of Kenya, Robert Alai v Attorney General and anor (High Court at Nairobi April 26, 2017).

85Republic of Kenya, "Charge Sheet for Babu Owino," September 26, 2017, <https://www.facebook.com/CitizenTVKe/posts/10159373422865405>.

86"Babu Owino Faces Subversion Charges."

87Cyrus Ombati and Protus Onyango, "Controversy over Matiang'i Ban on Demos in CBD," The Standard, accessed November 13, 2017, <https://www.standardmedia.co.ke/article/2001257219/controversy-over-matiang-i-ban-on-demos-in-cbd>.

88Bloggers Association of Kenya, "State of the Internet in Kenya 2016."

89Wednesday, July 12, and 2017 18:05, "Gap in Kenyan Law Stokes Hate Speech on Social Media," Business Daily, accessed November 1, 2017, <http://www.businessdailyafrica.com/corporate/companies/Gap-Kenyan-law-stokes-hate-speech-social-media/4003102-4012060-9gsi41/index.html>.

90Media Council of Kenya, "Media Council of Kenya Election Reporting Guidelines," 2017, <http://kenyacurrent.com/media-council-kenya-election-reporting-guidelines-2017/>.

91George W. Gathigi, "Media Handling of Kenya's Election Protests Calls for Some Soul-Searching," The Conversation, accessed November 1, 2017, <http://theconversation.com/media-handling-of-kenyas-election-protests-calls-for-some-soul-searching-82705>.

92"IEBC - Media," accessed November 1, 2017, <https://www.iebc.or.ke/media/?press>.

93European Union Election Observation Mission, "Recommendations for the Re-Run Based on Findings Since the 8 August Election Day," September 14, 2017, https://eeas.europa.eu/sites/eeas/files/eu_eom_kenya_2017_interim_statement_14_september_4.pdf.

94Githaiga Grace and Kapiyo Victor, "Is Surveillance a Panacea to Kenya's Security Threats?" (Global Information Society Watch, 2014), <https://giswatch.org/en/country-report/communications-surveillance/kenya>.

95The security laws amendment gave search and seizure powers and arrest without a warrant powers to police under s. 57 and 8 of the Police Service Act and limitation of freedoms of expression the media and of conscience, religion, belief and opinion to prevent an act of terrorism under the National Intelligence Act, section 35(3) (c).

96"Mapping FinFisher's Continuing Proliferation," The Citizen Lab, October 15, 2015, <https://citizenlab.ca/2015/10/mapping-finfishers-continuing-proliferation/>.

97"WikiLeaks - The Hackingteam Archives," accessed November 2, 2017, <https://www.wikileaks.org/hackingteam/emails/?q=kensi.org&from=&mto=&title=¬itle=&date=&nofrom=¬o=&count=50&sort=0#searchresult>.

98Privacy International, "Track, Capture, Kill: Inside Communications Surveillance and Counterterrorism in Kenya" (Privacy International, March 2017), https://privacyinternational.org/sites/default/files/track_capture_final.pdf.

99Centre for Intellectual Property and Information Technology Law, "Safaricom and Internet Traffic Tampering" (Nairobi: Strathmore University, March 2017), <http://blog.cipit.org/wp-content/uploads/2017/03/Final-March-Brief-pages.pdf>.

100Republic of Kenya, "Pre-Election Economic and Fiscal Report" (The National Treasury, 2017), <http://www.treasury.go.ke/fiscalreport2017/PRE-ELECTION%20ECONOMIC%20AND%20FISCAL%20REPORT%202017.pdf>.

101"Phone Firms Block 300,000 Hate Texts Daily, Says Ndemo," Daily Nation, accessed October 22, 2017, <http://www.nation.co.ke/news/Phone-firms-block-300-000-hate-texts-daily-says-Ndemo-/1056-1726172-bysv8uz/index.html>.

102Republic of Kenya, "Kenya Information and Communications (Registration of SIM-Cards) Regulations" (2015), http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/163-Kenya_Information_and_Communications_Act_Registration_of_Sim-Cards_Regulations_2015.pdf.

103"Kenya to Monitor Social Media during Elections - The East African," accessed November 2, 2017, <http://www.theeastafrican.co.ke/news/Kenya-to-monitor-social-media-during-elections/2558-3515588-cwdl3i/index.html>.

104Friday, February 17, and 2017 9:55, "CA Sparks Storm with Plan to Spy on Users of Mobile Telephones," Business Daily, accessed November 2, 2017, <http://www.businessdailyafrica.com/news/Government-Communications-Authority-spy-on-mobile-telephones/539546-3816552-9ijgs9/index.html>.

105"Court Stops Agency from Phone Tapping," Daily Nation, accessed November 2, 2017, <http://www.nation.co.ke/news/1056-3821000-3bnjlfz/index.html>.

106"Agency Creates 'Hate' Reporting Web Portal - Business Daily."

107Francis Ngige, "Revealed: Inside Jubilee's Vote Machine to Beat Raila Odinga," The Standard, accessed November 3, 2017, <https://www.standardmedia.co.ke/article/2001228175/revealed-inside-jubilee-s-vote-machine-to-beat-raila-odinga>.

108James Wamathai, "Registered as a Political Party Member without Your Consent? Here's How to Deregister," HapaKenya (blog), March 5, 2017, <https://www.hapakenya.com/2017/03/05/registered-as-a-political-party-member-without-your-consent-heres-how-to-deregister/>.

109Daily Nation App, "Digital Registration Causes Headache for Parties," accessed November 2, 2017, <http://mobile.nation.co.ke/news/politics/Digital-registration-causes-headache-for-parties/3126390-3847302-format-xhtml-10nrfka/index.html>.

110"We Are Coming for You, Kaparo Tells WhatsApp Admins over Hate Messages," The Star, Kenya, accessed November 2, 2017, http://www.the-star.co.ke/news/2017/07/17/we-are-coming-for-you-kaparo-tells-whatsapp-admins-over-hate-messages_c1598363.

111Saruni Maina, "Can Communications Authority of Kenya and NCIC Monitor WhatsApp Groups for 'Hate Speech'?", Techweez(blog), July 17, 2017, <http://www.techweez.com/2017/07/17/ca-kenya-ncic-monitor-whatsapp-groups-hate-speech/>.

112"IEBC 2017 Register of Voters-Data Protection/Privacy Laws," Kenya ICT Action Network, July 2017, <https://lists.kictanet.or.ke/pipermail/kictanet/2017-July/052309.html>.

113Kenya CitizenTV, Citizen News: Public ,Private Institutions Make Submissions, accessed November 2, 2017, <https://www.youtube.com/watch?v=bxY5GMx3lhQ>.

i"History of QR Code | QRcode.Com | DENSO WAVE," accessed November 27, 2017, <http://www.qrcode.com/en/history/>.

ii"Chebukati Throws Chiloba under the Bus," Daily Nation, accessed November 27, 2017, <http://www.nation.co.ke/news/politics/IEBC-fallout-as-Chebukati-memo-disowned-/1064-4087062-119b7ujz/index.html>.

iii"OONI API," accessed November 27, 2017, https://api.ooni.io/files/by_country/KE.

snapshot of election related events

| Event | Date |
|--|------------------|
| Amendment of security laws through Security Laws (Amendment) Act | December 2014 |
| Publication of regulations on mandatory registration of SIM-Cards | August 2015 |
| Cybercrimes Draft Bill by the Ministry of ICT | Feb 2016 |
| High Court Ruling invalidating s.29 KICA. The provision created the offence of improper use of a system | April 2016 |
| Amendment of election laws to provide for use of technology | December 2016 |
| Phones, internet blocked during elections law debate | December 2016 |
| Procurement of elections technology system (KIEMS) | January 2017 |
| Massive voter registration exercise | January 2017 |
| High Court ruling invalidating criminal defamation under s.194 Penal Code | February 2017 |
| Announcement of the device monitoring system (DMS) acquired to whitelist all non-counterfeit devices | February 2017 |
| Political party primaries | April – May 2017 |
| National outage of mobile network operator Safaricom | April 2017 |
| High Court ruling invalidating offence of undermining authority of a public officer under s.197 Penal Code | April 2017 |
| Breaking news that Cambridge Analytica was providing services for Jubilee political party | May 2017 |
| Communications Authority publishes guidelines on political speech online | July 2017 |
| Deportation of Aristotle Inc staff. Aristotle Inc was providing data services to NASA political party | August 2017 |
| General elections for six national and sub national positions | August 2017 |
| Nullification of presidential election | September 2017 |
| Launch of hate speech reporting portal by NCIC | September 2017 |
| High Court determination on government portal delivery.go.ke that showcased government projects during election period | September 2017 |
| Repeat presidential election | October 2017 |