



## Executive Summary

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The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bill Number 61) should be withdrawn. It is unconstitutional and will have devastating ramifications on the Sovereignty of the People, the Supremacy of the Constitution and democracy.

### **Recommendation:**

The Bill should be withdrawn entirely. Its premise is unconstitutional because regulating bloggers equals regulating the news, people's views and free speech and invading their privacy.

It goes against the Constitution of Kenya, 2010 under article 31 which guarantees the right to privacy, article 32 which guarantees the freedom of belief and opinion, article 33 that guarantees the freedom of expression, article 34 that gives the people freedom of the media and lastly article 35 that guarantees us the access to information.

Furthermore, the regulation of bloggers and social media in general creates a chilling effect on free speech and freedom of the media in the country. These freedoms go to the root of our democracy. Once the government is allowed to chip away at these freedoms, we will quickly cease to become a democratic state.

Clause	Provision	Proposal	Justification
<b>Section 2</b>	Amends Section 2 of the Kenya Information and Communications Act to include definitions of:  "blogger" means any person who is registered as such by the Commission under section 84D;	We recommend that this section should be deleted.	The definition of blogger here insists that for one to be a blogger they must be licensed to do so. It is not constitutionally sound to insist that for one to share news online they require to be registered first. It goes against everything that Article 33 and Article 34 stand for. The freedom of expression and the media respectively are pillars of our democracy. The definition of blogging fails to articulate the definitions of some of the terms used such as 'news or news articles'. It leaves too much room for misinterpretation by law enforcement.
	"blogging" means collecting, writing, editing and presenting of news or news articles in social media platforms or in the internet;	This section should be deleted .	Also, this definition leaves out an entire group of persons who run blogs that are informative but not news or newsworthy for that matter.
<b>Section 84IA</b>	This is among the new sections introduced into the Act to regulate social media platforms	We propose that this section be deleted .	It is unclear whether the section means that the social media platform users will require licenses or the platforms will require licenses to operate in Kenya.

	<p>1) The Commission may on application in a prescribed manner and upon payment of a prescribed fee, grant a licence authorising any person to establish a social media platform for purposes of communication</p>		<p>The words ‘for communication’ insinuate that persons using social media platforms will need licenses to communicate with persons in their lives.</p>
	<p>(2) A licence granted under this Part may be issued by an applicant subject to such terms and conditions as the Commission may think fit, and may include—</p> <p>(a) the establishment of a physical office in the country;</p>	<p>We recommend that this section be deleted .</p>	<p>Having this section as is, gives the Commission unchecked discretionary power to determine what a company or an individual is required to do to be licensed.</p>
	<p>(b) the registration of all users of the social media platform using legal documents;</p>	<p>This section needs to be deleted.</p>	<p>It is impractical to require that every social media user in the country be registered. It would result in a number of absurdities and waste of resources. It is also a veiled attempt at muzzling Freedom of Expression.</p>
	<p>(c) a requirement that the licensee shall keep all the data of the users of its platform and shall submit the same to the Commission when require</p>	<p>This section should be deleted .</p>	<p>This is a threat to the Right to Privacy enshrined in Article 31(c) of the Constitution of Kenya that guarantees citizens the right not to have their information unnecessarily required or revealed.</p>

			The users of the platform should be guaranteed the right to be forgotten and not have their data retained by any person.
<b>Section 841B</b>	A licensee may collect, use, preserve, and share information of its user where it is reasonably necessary to respond to a legal process	This section should be deleted .	It is a dangerous threat to the Right to Privacy. There is no definition of the word ‘reasonably’
<b>Section 841C</b>	<p>(1) A social media user shall ensure that any content published, written or shared through the social media platform--</p> <p>(a) does not degrade or intimidate a recipient of the content;</p> <p>(b) is not prejudicial against a person or group of people based on their race, gender, ethnicity, nationality, religion, political affiliation, language, ability or appearance; and</p> <p>(c) is fair, accurate and unbiased</p>	This section should be deleted .	<p>It is impractical to task users of social media platforms who only have control over what they post to ‘ensure’ that only appropriate content is posted on the platforms they are a part of.</p> <p>This threatens Freedom of Expression because the criterion of the expression that is being restricted is vague and subjective from person to person.</p>
	<p>(2) Where a social media platform is created for a group of persons, it shall be the responsibility of the group administrator to—</p> <p>(c) approve the content to be</p>	This section should be deleted .	This section is unclear as to who the administrator is. It creates an absurdity because some groups can have more than one administrator, does the task then fall on each of them. In addition, the section is unclear as

	<p>published in the platform; and</p> <p>(d) control undesirable content and discussion.</p>		<p>to what ‘undesirable’ content and discussion is. It gives the administrator (s) unchecked powers to determine what it is people can talk about which is a threat to the Freedom of Expression.</p>
	<p>(3) Any person who contravenes the provision of this section commits an offence and shall be liable upon conviction to a fine not exceeding two hundred thousand shillings, or to an imprisonment of a term not exceeding one year</p>	<p>This section should be deleted .</p>	<p>The crime is not clear. There is no clarity as to what crime is being punished or why.</p>
<p><b>Section 841D</b></p>	<p>(1) The Commission may upon application in a prescribed manner and subject to such conditions as it may deem necessary, grant a licence authorizing any person to blogs.</p>	<p>This section should be deleted .</p>	<p>It is unconstitutional to make it a requirement for persons to register to post news online. It is a threat to Freedom of Expression and a means to muzzle free speech. In addition, this section gives the Commission unfettered powers to determine the conditions necessary for licensing</p>
	<p>(2) The Commission shall keep a register of bloggers in a prescribed manner.</p> <p>(3) Any person who blogs without a licence is guilty of an offence.</p>	<p>This section should be deleted .</p>	<p>This section is a threat to the Freedom of Expression and Freedom of the Media. It will allow the government to monitor all persons posting news and</p>

			commenting on news items.
	(4) Any person who contravenes the provision of this section commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings, or to an imprisonment of a term not exceeding two years.	This section should be deleted .	Punishing persons for failing to register as a blog is excessive and unnecessary as well as being a threat to Freedom of Expression.
<b>Section841E</b>	1) The Commission shall develop a bloggers code of conduct	This section should be deleted .	Controlling the ‘conduct’ of bloggers is an attempt to control the news and by extension controlling the people.