



DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

KENYA
COUNTRY REPORT

2024

Kenya



Executive Summary

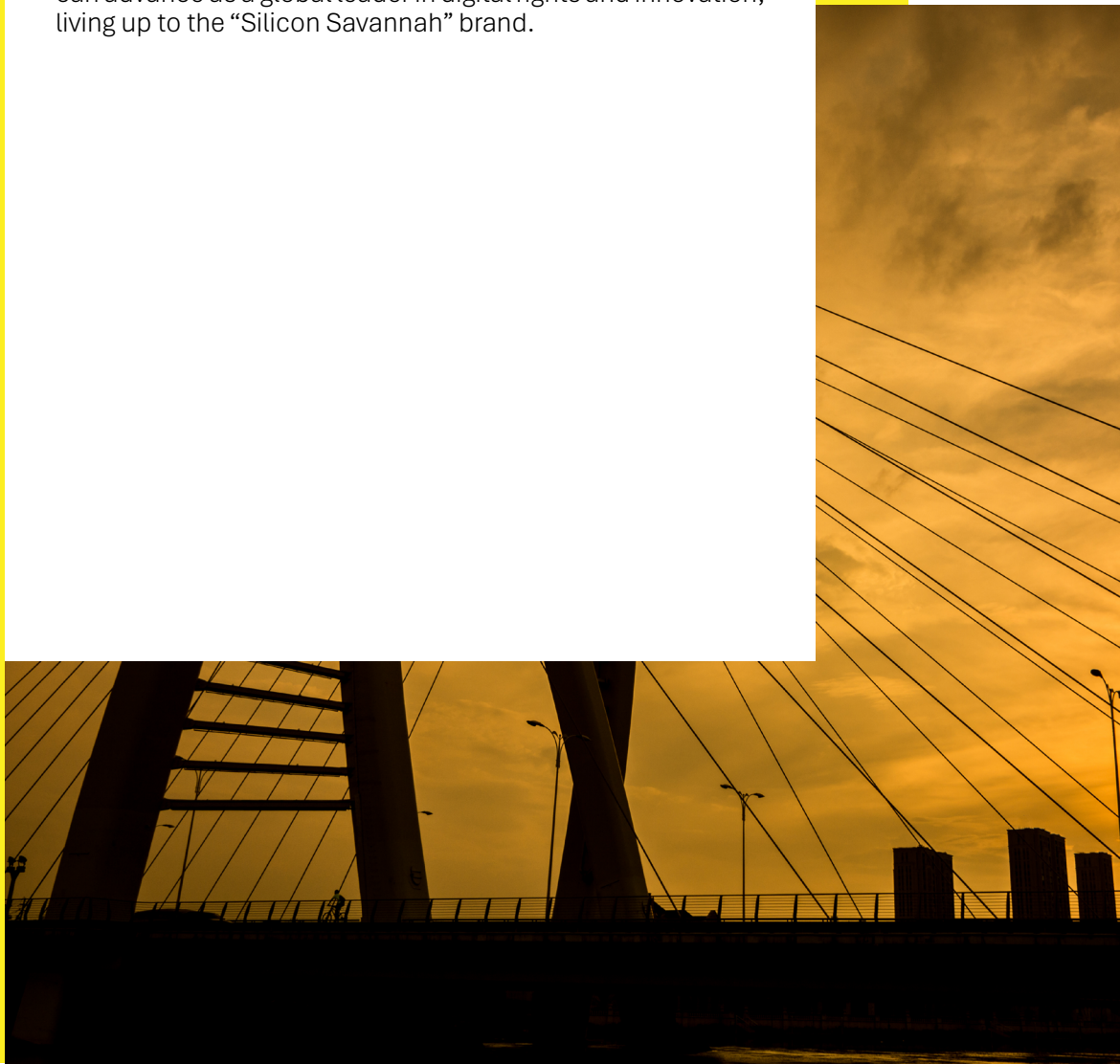
This report examines Kenya's digital rights and inclusion landscape, highlighting achievements and challenges across key areas such as internet access, freedom of expression, data protection, and access to information. It discusses significant issues like internet shutdowns, privacy violations, and censorship while acknowledging the country's rapid technological growth and increasing digital connectivity. The research adopts a qualitative analysis approach, including case studies, policy reviews, and in-depth analysis of journals and publications. The author of this report analyses Kenya's performance using TheScore Index, which measures country compliance against the African Commission on Human and People's Rights (ACHPR) Declaration of Principles on Freedom of Expression and Access to Information in Africa, with Kenya scoring 34 out of 60, in the year 2024 indicating mild compliance.

The report recommends urgent actions to uphold constitutional freedoms, enhance digital inclusion, and strengthen governance frameworks. Key proposals include leveraging digital infrastructure to expand affordable internet access, revising restrictive laws, and promoting inclusive policymaking to support marginalised groups. By addressing these gaps and embracing its technological potential, Kenya can advance as a global leader in digital rights and innovation, living up to the "Silicon Savannah" brand.

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DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

LONDA 2024

Located in East Africa, with an estimated population of 55.1 million as of December 2024, Kenya holds immense economic and social potential. Given its strategic location and technology prowess with inventions like M-pesa, Kenya has been dubbed the “Silicon Savannah” of Africa.⁴⁰⁶ In recent years, the country has experienced a demographic shift, with an increased number of educated, tech-savvy, and connected young people.⁴⁰⁷ Kenyans rank highest globally⁴⁰⁸ in average daily time spent online, with social media platforms like Facebook, TikTok, and WhatsApp serving as vital tools for communication, commerce, and activism.

This is partly a result of the growing internet landscape in recent years. Fixed and wireless internet subscriptions increased by 7.3% to 52 million in 2023, while the number of licensed Application Service Providers (ASPs) grew by 13.2% to 533.⁴⁰⁹ At the same time, the ongoing expansion and enhancement of broadband infrastructure has facilitated significant data flow per person, as evidenced by the rise in bits per second (bps) per capita from 144,400 in 2022 to 241,000 in 2023.³

In 2024, there were several human rights violation cases recorded in Kenya that bruised the country’s democratic integrity and progress. Top on the list is the Internet disruption that took place on June 25th, 2024 despite prior assurances from the Communications Authority of Kenya (CA) that there were no plans to interfere with internet connectivity.⁴¹⁰ Internet disruption is the intentional restriction of connectivity that limits people’s ability to access the Internet or specific websites and applications. This can involve various tactics, such as bandwidth throttling or blocking access to certain services, which may not completely cut off internet access but significantly impair its usability.⁴¹¹

In Kenya, the disruption was recorded by platforms such as OONI and NetBlocks, indicating a sharp drop in internet connectivity from 100% to 42%.⁴¹² Further, privacy and surveillance concerns also came up with different local and international entities such as the International Commission of Jurists (ICJ)⁴¹³ and Amnesty International⁴¹⁴ documenting the use of surveillance technology to trace and abduct digital activists and protestors who participated in the GenZ-led protests in 2024. Further, the Kenyan government threatened the closure of

406 CBS News ‘How Kenya became the “Silicon Savannah” (2024) <https://www.cbsnews.com/news/how-kenya-became-the-silicon-savannah-60-minutes/> (accessed on 29 November 2024).

407 Emissary ‘Kenya Is at an Inflection Point. It Needs a New Path to Progress’ (2024) <https://carnegieendowment.org/emissary/2024/08/kenya-genz-protests-progress-tech-corruption?lang=en> (accessed on 29 November 2024).

408 The Star ‘Countries that spend most time on social networks’ (2024) <https://www.the-star.co.ke/news/infographics/2024-11-06-countries-that-spend-most-time-on-social-networks> (accessed on 10 February 2025).

409 Kenya National Bureau of Statistics ‘Economic survey 2024’ (2024) <https://www.knbs.or.ke/wp-content/uploads/2024/05/2024-Economic-Survey.pdf> (accessed on 29 November 2024).

410 Citizen Digital ‘No internet shutdown,’ Communication Authority of Kenya says amid Finance Bill demos’ (2024) <https://www.citizen.digital/news/no-internet-shutdown-communication-authority-of-kenya-says-amid-finance-bill-demos-n344620> (accessed on 14 January 2024)

411 AccessNow Website (2024) <https://www.accessnow.org/no-internet-shutdowns-lets-keepit-on/> (accessed on 15 January 2025)

412 Business Daily ‘Internet services disrupted as Kenyans stage anti-tax protests’ (2024) <https://www.business-dailyafrica.com/bd/corporate/technology/internet-services-disrupted-as-kenyans-stage-anti-tax-protests-4669422> (accessed on 06 November 2024).

413 ICJ ‘Joint statement by the human rights community in Kenya on the state of the nation following protests on the 2024 Finance Bill’ (2022) <https://icj-kenya.org/news/a-call-for-accountability-return-to-constitutionalism-and-cessation-of-violations/> (Accessed on 14 January 2025).

414 Amnesty International ‘Joint Statement on Nationwide Demonstrations’ (2024) <https://www.amnesty.org/en/latest/news/2024/06/joint-statement-on-nationwide-demonstrations/> (accessed on 14 November 2025)

top media outlets, such as KTN News, for airing anti-government demonstrations⁴¹⁵.

Digital inclusion seems to be lagging behind with limited infrastructure to provide affordable internet services in marginalised areas. In light of these developments, Kenya's overall compliance based on this research report is 34 out of 60 in accordance with *TheScore Index* by Paradigm Initiative. This rating means Kenya is mildly compliant with the African Commission on Human and People's Rights Declaration of Principles on Freedom of Expression and Access to Information in Africa.⁴¹⁶

Internet Access

Internet access facilitates interaction through online platforms for information, communication, entertainment, and commercial purposes. In 2024, Kenya faced unprecedented internet disruptions contrary to Kenyan laws. During the mass demonstrations against the Finance Bill (2024/2025) that culminated in youth storming parliament buildings in Nairobi, various parts of the country reported slow internet and interruptions on Kenya's major networks.⁴¹⁷ Data from NetBlocks revealed that on Tuesday evening, June 25, 2024, internet connectivity strength dropped sharply from 100% to 42%, severely straining internet access in the country.⁴

Any form of internet disruption directly violates Articles 33, 35, and 37 of Kenya's 2010 Constitution on access to information and freedom of expression. This interruption equally eroded trust in the government's commitment to uphold fundamental rights and respect digital rights.⁴¹⁸ The Internet is an indispensable tool for digital civic engagement in Kenya and has repeatedly been used for organising social movements and demanding government accountability. By disrupting internet access, the government makes it impossible for protesters to organise and express their views both online and offline. The Internet is also a critical conduit for Kenya's e-commerce and digital economy. As such, for every hour of total internet shutdown, the country lost about Shillings (Shs) 1.8 billion of its GDP (equivalent to 10% of GDP).⁴

The government, through the Communication Authority of Kenya (CA), in a letter dated October 31st, 2024, directed the Internet Service Providers (ISPs) to suspend the operation of Telegram in the country during Kenya Certificate of Secondary Education (KCSE) examination hours until November 22nd, 2024.⁴¹⁹ The reason given for this suspension was to curb the alleged examination cheating through the application. Telegram is used by at most 13% of the Kenyan population and has become an essential tool.⁴²⁰ Individuals, businesses, civil society, journalists, and the general public rely on the platform for business and communication, as one can reach a broad audience with ease and access information freely. By limiting access to Telegram, the government directly violated provisions postulated in the Constitution, 2010.

Furthermore, there are notable gaps in laws, policies, and frameworks on affordable access to the Internet, specifically for marginalised groups. As it stands, Kenya lacks specific regulations that mandate internet service providers to offer affordable pricing structures for marginalised groups. While the Universal Service Fund aims to promote access, there is no enforceable policy that ensures reduced rates for low-income users.⁴²¹ The nation equally lacks policies promoting the development and distribution of affordable assistive technologies that enable persons with disabilities to access the Internet effectively.⁹

415 KTN News 'Reject finance bill: Government threatens to shut down KTN' (2024) <https://www.youtube.com/watch?v=i-HVOPIGTty0> (accessed on 07 November 2024).

416 African Commission on Human and Peoples' Rights 'Declaration of Principles on Freedom of Expression and Access to Information in Africa' (2019) https://www.chr.up.ac.za/images/researchunits/dgdr/documents/ati/Declaration_of_Principles_on_Freedom_of_Expression_ENG_2019.pdf (Accessed on 14 January 2025)

417 Nation Africa 'Kenyans experience interrupted and slow internet connections' (2024) <https://nation.africa/kenya/news/kenyans-experience-interrupted-and-slow-internet-connections--4669366>(accessed on 12 November 2024).

418 International Commission on Jurists 'Digital rights: Internet access crucial to a vibrant democracy' (2024) <https://icj-kenya.org/news/digital-rights-internet-access-crucial-to-vibrant-democracy/> (accessed on 06 November 2024).

419 KICTANet 'Telegram Access Blocked in Kenya' (2024) <https://www.kictanet.or.ke/telegram-access-blocked-in-kenya/> (accessed on 11 November 2024).

420 Nation 'Gen Z protests raise social media use to record levels' (2024) <https://nation.africa/kenya/business/technology/gen-z-protests-raise-social-media-use-to-record-levels-4706970> (accessed on 10 February 2025).

421 A. Wang'ang'a 'Social Economic Barriers to Information Communication Technology (ICT) Access for Persons with Disabilities in Africa: Literature Review' (2024) <https://doi.org/10.37284/eajit.7.1.2235> (accessed on 06 November 2024).

Freedom of Expression

Freedom of expression is a fundamental constitutional right in Kenya, as enshrined in Article 33.⁴²² However, Kenya's Computer Misuse and Cybercrimes Act, 2018 in sections 22, 23, and 27 criminalises the publication of false or misleading information. This Act remains a significant regression for online speech since these provisions effectively revive criminal defamation by penalising reputational harm as a result of vague terms like "apprehension or fear of violence" which leaves room for subjective interpretation by authorities.⁴²³ Notwithstanding, defamation should be addressed through civil law, as outlined in the Defamation Act,⁴²⁴ rather than criminal sanctions.

Subsequent to this, the Penal Code of Kenya addresses sedition primarily under sections 47 and 77, stating that any act, speech, publication, or expression that incites disaffection against the government, promotes hostility among communities, or undermines public order and authority is considered seditious.⁴²⁵ Sedition laws are controversial as they may be used as tools for suppressing free speech, silencing political opposition, or stifling legitimate criticism of the government. In Justice Muhochi's ruling on the 18th of March 2024, he noted that Section 77(1) and (3) of the Penal Code is a colonial legacy that limits freedom of expression through the vague provision of the offence of subversion.⁴²⁶ The provisions of Section 77 were overly broad and vague, limiting the right to freedom of expression. Besides, the Kenyan government often leverages such statutes to facilitate communication interception and surveillance of targeted people. Other problematic and vague laws include the National Intelligence Service Act 2012 and the Prevention of Terrorism Act 2012.⁴²⁷

The cybercrime law also positions the state as the arbiter of truth by criminalising what it defines as "false news," raising concerns about potential abuse in curbing free expression. The spread of fake news, particularly during the Anti-Finance Bill 2024 protests, involved the dissemination of false reports of violence or criminal activity attributed to protesters.⁴²⁸ This trend is concerning, and stakeholders, including government, should proactively disclose information during times of unrest using social media platforms to counter false narratives and also invest in capacity building on fact-checking as strategies to address information disorders. Criminal penalties for disseminating false news are currently excessive and do not seem to have any positive impact.

In terms of arbitrary arrests, assaults, intimidation, harassment, and abductions, the cumulative data in Kenya throughout 2024 reveals a troubling situation. At least 65 individuals were confirmed dead due to police violence during protests⁴²⁹, while over 361 people were reported injured⁴³⁰. Additionally, approximately 1,574 individuals were unlawfully arrested, including protesters and Human Rights Defenders (HRDs). There were also reports of at least 60 cases of enforced or involuntary disappearances, with many individuals still unaccounted for.⁴³¹ The cases were a result of a strong response from security forces aimed at suppressing dissent. By the same token, different media houses were issued with threats from the government. For instance, on June 25,

422 Kenya Law Reform Commission 'Constitution of Kenya: Article 33 Freedom of expression' (2024) <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/199-33-freedom-of-expression> (accessed on 07 November 2024).

423 International Commission of Jurists 'Kenya's Growing Digital Landscape and the Boundaries of Free Expression' (2024) <https://icj-kenya.org/news/kenyas-growing-digital-landscape-and-the-boundaries-of-free-expression/> (accessed on 07 November 2024).

424 Kenya Law 'Defamation Act' (2012) http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/DefamationAct__Cap36.pdf (accessed on 07 November 2024).

425 Kenya Law 'Penal Code' (2012) https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PenalCode_Cap63.pdf (accessed on 07 November 2024).

426 Kenya Law 'Petition E016 of 2023' (2024) <https://kenyalaw.org/caselaw/cases/view/284070/> (accessed on 07 November 2024).

427 KICTANet 'Surveillance Laws and Technologies Used in Countering Terrorism and their Potential Impact on Civic Space' (2024) <https://www.kictanet.or.ke/?mdocs-file=49126> (accessed on 07 November 2024).

428 The Elephant 'Journaling a revolution' (2024) <https://www.theelephant.info/opinion/2024/07/07/elephant-series-journaling-a-revolution/> (accessed on 07 November 2024).

429 Lethal in Disguise 'Kenya: deadly repression at anti-finance bill protests' (2024) <https://lethalindisguise.org/case-studies/kenya-anti-finance-bill/> (accessed on 15 January 2025)

430 Aljazeera 'Tax hike protests in Kenya killed at least 39 people, says rights watchdog' (2024) <https://www.aljazeera.com/news/2024/7/1/tax-hike-protests-in-kenya-killed-at-least-39-people-says-rights-watchdog> (Accessed on 15 January 2025)

431 Lethal in Disguise 'Kenya: deadly repression at anti-finance bill protests' (2024) <https://lethalindisguise.org/case-studies/kenya-anti-finance-bill/> (accessed on 15 January 2025)

2024, KTN News decried threats of being shut down for airing anti-government demonstrations.⁶ This is despite Article 34 of the Kenyan Constitution, which guarantees media freedom.

Data Protection and Privacy

Data protection in Kenya is regulated by the Data Protection Act, 2019 (the DPA).⁴³² Sections 25, 26, and 32 of the DPA provide for the principles of data protection, the rights of a data subject, and the conditions of consent for processing data. In the now-defunct Finance Bill 2024/2025, Clause 63 sought to exempt the Kenya Revenue Authority (KRA) from the provisions of the Data Protection Act.⁴³³ Although the bill was withdrawn, KRA issued new directives that allow the state authority to monitor all locally-made and imported mobile phones sold in Kenya to ensure tax compliance from January 1, 2025, which grants the state access to a phone user's activities, including location patterns, transactions, and communication history.⁴³⁴ The KRA also announced an ambitious plan to integrate its system with banks, money remittance firms, and payment service providers, aiming to boost revenue collections and foster tax compliance by January 2025. Part of KRA's strategy includes using AI to detect tax evasion which is problematic as it provides the taxman unfettered access to personal data, including bank accounts, cash transfers, and property owned.⁴³⁵ Such an approach at the expense of the DPA 2019, erodes public trust and can lead to tax evasion or reluctance to comply.

The KRA would not be the first government agency to have access to citizen's personal data. In October 2024, one of Kenya's leading newspapers, the Daily Nation, reported that the country's security agencies had virtually unfettered access for years to mobile phone customers' sensitive call data records, along with location data, helping them to track and capture suspected criminals.⁴³⁶ This raises concerns of potential misuse of call data records by the government which might aid in abductions and extrajudicial killings - both of which have become prominent in Kenya. Even so, and despite the DPA 2019 being in place, several members of parliament complained of their phones being spammed by messages and calls from their constituents demanding their opposition to the Finance Bill 2024.⁴³⁷

In terms of laws and standards to protect workers in the digital economy, Kenya currently lacks a clear and comprehensive framework for protecting digital and platform workers' rights. Even though digital platforms, such as TikTok, Facebook, and X, are a source of livelihood for a great percentage of Kenyan youths, the country lacks a clear and comprehensive framework for fair pay and humane treatment.⁴³⁸ In 2023, over 180 online content moderators working for Facebook and Sama, its subcontractor in Kenya, sued the two companies for unlawful and unfair dismissal. Fast forward to September 20, 2024, Kenya's Court of Appeal ruled that Meta could be taken to trial in Kenya, with the former moderators seeking USD1.6 billion as compensation. This ruling has set a precedent for how international labor disputes involving tech companies may be handled in local jurisdictions.⁴³⁹

432 Kenya Law 'Data Protection Act of 2019' (2019) http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct__No24of2019.pdf (accessed on November 2024).

433 Amnesty International 'Data Protection Act Amendment in the Finance Bill is classic "big brother", illegal and must be rejected by the National Assembly and Kenyans' (2024) <https://www.amnestykenya.org/data-protection-act-amendment-in-the-finance-bill-is-classic-big-brother-illegal-and-must-be-rejected-by-the-national-assembly-and-kenyans/> (accessed on 07 November 2024).

434 Kenya Revenue Authority Website (2024) <https://kra.go.ke/helping-tax-payers/facts-about-kra/category/8> (accessed on 07 November 2024)

435 The Business Daily 'KRA starts integrating tax system with banks, telcos' (2024) <https://www.businessdailyafrica.com/bd/economy/kra-starts-integrating-tax-system-with-banks-telcos-4804430> (Accessed on 14 January 2025)

436 Nation 'Exclusive: How Kenyan police use mobile phones to track, capture suspects' (2024) <https://nation.africa/kenya/news/exclusive-how-kenyan-police-use-mobile-phones-to-track-capture-suspects-4804416#story> (accessed on 07 November 2024).

437 Business Daily 'Digital activism: Delicate balance in public officials' right to privacy' (2024) <https://www.businessdailyafrica.com/bd/corporate/technology/digital-activism-delicate-balance-in-public-officials-privacy-4667266> (accessed on 07 November 2024).

438 Kenya Human Rights Commission 'Taptengelei: Why government must do more to protect dignity and human rights of digital platform workers' (2024) <https://khrc.or.ke/press-release/taptengelei-why-government-must-do-more-to-protect-dignity-and-human-rights-of-digital-platform-workers/> (accessed on 07 November 2024).

439 Reuters 'Kenya court finds Meta can be sued over moderator layoffs' (2024) <https://www.reuters.com/world/africa/kenya-court-rules-meta-can-be-sued-over-layoffs-by-contractor-2024-09-20/#:~:text=Last%20year%20the%20content%20moderators,trying%20to%20organise%20a%20union.> (accessed on 07 November 2024).

Censorship and Content Moderation

Kenyans are reported to spend the most time on social media than any other country, on average, 3 hours 43 minutes a day.⁴⁴⁰ In the third quarter specifically, the use of social media platforms in Kenya grew exponentially. Facebook, for instance, rose to 52% of the population, with TikTok, WhatsApp, and X at 28.1%, 48.5%, and 12.8%, respectively.⁴⁴¹ Internet use by Kenyans aged between 18 and 24 also increased by a percentage point to 78%, while those aged 25 to 34 went to 77% from 76% the previous quarter. Access to the Internet by smartphones increased to 98.6% from previously 87.2% in the second quarter.

Kenya's online scene is regulated by several principles and laws in the Constitution of Kenya (CoK), 2010, particularly in Articles 33 and 35. These articles emphasize the importance of freedom of expression and access to information, which are crucial for a democratic society. However, there have been attempts to curtail the use of these platforms in the country, citing the promotion of violence, vulgar language, explicit content, and offensive behavior. In August 2024, a Kenyan citizen presented an appeal to the Parliament requesting the ban of TikTok in Kenya.⁴⁴² TikTok senior officials in charge of its operation in Sub-Saharan Africa then represented the platform in the Kenyan Parliament to defend the platform of the pending ban and the parliamentary committee ultimately rejected the petition on September 28, 2024.³² On the other hand, a Kenyan senator challenged the operations of Elon Musk's X (formerly Twitter) in the country on October 2024. In her submissions, Senator Gloria Orwoba made reference to the suspension of X in Brazil, indirectly comparing it to Kenya.⁴⁴³ This would however infringe on the citizens' rights to use the platform as provided in the CoK, 2010.

Access to Information

Kenya's Constitution, under Article 35, guarantees every citizen the right to access information held by the state and obligates the government to publish and publicize any critical information affecting the nation. Kenya's Access to Information Act provides a legal framework for operationalizing this constitutional right.⁴⁴⁴ However, in practice, the government frequently falls short of meeting the standards outlined in the law, particularly in proactively disclosing information related to procurement and public deals.

Instances of inadequate disclosure, such as the government's plan to lease Jomo Kenyatta International Airport (JKIA) and grant control of transmission lines from the Kenya Electricity Transmission Company (KETRACO) to the Indian firm Adani Group for 30 years, have raised significant concerns about transparency and adherence to legal requirements for public participation.⁴⁴⁵ While the ATI law establishes a strong foundation for transparency, its effectiveness is undermined by inconsistent implementation and limited proactive disclosure of critical government agreements. On both occasions, the then Cabinet Secretary Mr. David Chirchir, admitted the government's failure to disclose the details of the lease agreement to the public.⁴⁴⁶

Artificial Intelligence (AI) and Emerging Technologies

Artificial intelligence (AI) uses computer systems and machines to perform human tasks and

440 We Are Social 'Digital 2024: 5 Billion Social Media Users' (2024)

<https://wearesocial.com/uk/blog/2024/01/digital-2024/> (accessed on 7 November 2024).

441 Nation 'Gen Z Protests Raise Social Media use to Record Levels' (2024)

<https://nation.africa/kenya/business/technology/gen-z-protests-raise-social-media-use-to-record-levels-4706970> (accessed on 7 November 2024).

442 The Standard 'TikTok Takes Fight to Block Kenya Ban to Parliament' (2024)

<https://www.standardmedia.co.ke/business/business/article/2001492965/tiktok-takes-fight-to-block-kenya-ban-to-parliament> (accessed on 7 November 2024).

443 Citizen Digital 'Senator Gloria Orwoba Questions Elon Musk's X Operations in Kenya' (2024)

<https://www.citizen.digital/news/senator-gloria-orwoba-questions-elon-musks-x-operations-in-kenya-n350689> (accessed on 7 November 2024).

444 Kenya Law Reform Commission (KLRC) '35. Access to information - Kenya Law Reform Commission (KLRC)' (2024)

445 Nelson Amenity (2024)

https://x.com/amenya_nelson/status/1811458518861644006 (accessed on 11 November 2024).

446 Citizen Digital 'Adani-JKIA Deal: CS Chirchir Admits Gov't Failure, Insists No Agreement Signed' (2024)

<https://www.citizen.digital/news/adani-jkia-deal-cs-chirchir-admits-govt-failure-insists-no-agreement-signed-n349348> (accessed on 11 November 2024).

emulate their intelligence through simulation, self-learning, and correction. AI use has steadily risen in Kenya, including healthcare, education, transport, and other government services. While relatively novel, AI is progressively being understood and accepted in the country despite gaps in laws governing its use. Through its legislative arm, the government of Kenya (GoK) introduced a bill in August 2024 aimed to control the use of AI and robotics in the country. However, many experts in the AI and robotics space did not support the bill, citing a lack of stakeholder involvement in the drafting of the bill and, thus, ignorance of the needs and requirements of the consumers of the developing technology.⁴⁴⁷ As a result of this backlash, the bill was ultimately rejected by Parliament.

Kenya has always been among the top countries in Africa in terms of infrastructure and technological development.⁴⁴⁸ However, six African countries, including South Africa, Tunisia, Rwanda, Morocco, Senegal, and Benin, are ranked more prepared than Kenya regarding AI readiness.⁴⁴⁹ Additionally, a report by Huawei dubbed Global Digitalization Index (GDI) 2024 ranked Kenya 65th out of 77 countries in ICT infrastructure growth. The study, which used over 42 indicators, placed the country in the third category of three.⁴⁵⁰ The categories included Frontrunners, Adopters, and Starters, respectively. The ranking shows the country's formative stage of understanding and learning how to coexist with AI. The experts on AI technology argued that the country is still in the budding stages of AI and that a bill like the one proposed would be a big blow to the sector, potentially scuttling AI growth.

A key concern regarding the AI and Robotics Bill is over-regulation which has the potential to stifle innovation and hinder technological progress rather than promote it as it would have imposed overly stringent requirements that could create barriers for startups and other entities involved in AI and robotics, potentially limiting Kenya's competitiveness in the global technology landscape. It is also worth noting that limited inclusion in policy-making processes such as the unclear space and position of women and persons with disabilities in AI frameworks in the country need to be looked into.⁴¹

In terms of adopting new technology, Kenyans have welcomed the new satellite internet provider, Starlink, which is reported to have a market share of 0.5% as of November 2024⁴⁵¹. Safaricom remains with the highest market share at 36.4%.⁴⁵² Other technologies like blockchain are on an upward curve as more Kenyans, especially the youth, venture into emerging digital markets and try new technologies. The Central Bank of Kenya (CBK) announced in February 2024 that it would be working on new regulations to guard cryptocurrencies such as Bitcoin due to money laundering risks and potential terrorism funding.⁴⁵³ The number of Kenyans that use cryptocurrency exchanges like Binance, Paxful, and BingX, among others, is continuously rising.

Child Online Protection

Child online safety is a growing concern globally especially in the wake of emerging technology. Kenya currently builds on existing frameworks such as The Data Protection Act of 2019 which plays a crucial role by requiring parental consent for processing children's personal data and mandating age verification mechanisms. Additionally, the Computer Misuse and Cybercrimes Act of 2018 criminalizes activities like child pornography and online child grooming, providing legal recourse

447 Business Daily 'Why IT experts want State to reject the new robotics bill' (2024)

<https://www.businessdailyafrica.com/bd/economy/why-it-experts-want-state-to-reject-the-new-robotics-bill-4516274> (Accessed on 6 November 2024).

448 International Trade Administration 'Kenya - Information Communication Technology' (2024) <https://www.trade.gov/country-commercial-guides/kenya-information-communications-and-technology-ict> (accessed on 10 February 2025).

449 Citizen Digital 'Kenya's National AI strategy in the pipeline' (2024) <https://www.citizen.digital/tech/kenyas-national-ai-strategy-in-the-pipeline-n341385> (accessed on 6 November 2024).

450 Huawei 'Global Digitalization Index (GDI) 2024' (2024) <https://www.huawei.com/en/gdi#:~:text=The%20GDI%20measures%20the%20maturity,%2C%20cloud%2C%20and%20green%20energy.> (accessed on 6 November 2024).

451 Business Daily 'Starlink gains 0.5pc of Kenya's internet market in first year' (2024) https://www.businessdailyafrica.com/bd/corporate/technology/starlink-gains-0-5pc-of-kenya-s-internet-market-in-first-year-4793878#google_vignette (accessed on 15 January 2025).

452 Business Daily 'Starlink gains 0.5pc of Kenya's internet market in first year' (2024) <https://www.businessdailyafrica.com/bd/corporate/technology/starlink-gains-0-5pc-of-kenya-s-internet-market-in-first-year-4793878> (accessed on 12 November 2024).

453 Business Daily 'Kenya moves to regulate Bitcoin trade on grey listing risk' (2024) <https://www.businessdailyafrica.com/bd/economy/kenya-moves-to-regulate-bitcoin-trade-on-grey-listing-risk-4529684> (accessed on 12 November 2024).

against offenders.⁴⁵⁴

Kenya is also part of broader regional initiatives, such as the African Union Child Online Safety and Empowerment Policy, adopted in February 2024. This policy aims to provide a framework for protecting children's rights in the digital environment across Africa, emphasizing the need for strong legal frameworks, public awareness, and international cooperation⁴⁵⁵. Furthermore, Kenya's National Strategy on Justice for Children 2023-2028 focuses on safeguarding children's rights, including those related to digital safety, by leveraging laws like the Children Act 2024.⁴⁵⁶

Digital Inclusion

Digital inclusion entails equitable, accessible, and meaningful use of digital services and technologies and their attendant opportunities. A digital divide isolates a key component of society from opportunities the global economy offers, like information, education, and services.⁴⁵⁷ Digital illiteracy in Kenya poses a significant hurdle in narrowing the digital gap, with limited accessibility of digital tools across various settings contributing to this divide.⁴⁵⁸ While urban areas have seen faster adoption, with Nairobi County reporting over 80% internet penetration, some rural counties still lag below 20%.⁴⁵⁹ Thus, urban dwellers in Kenya have utilised the increased connectivity to work, socialize, and access information compared to many rural areas with limited or nonexistent internet infrastructure.

It is not lost that the Kenyan government has adopted a digitalisation agenda to enhance public service delivery by establishing a robust digital infrastructure that facilitates high-speed internet connectivity and digital access for its citizens.⁴⁶⁰ Despite that, the absence of publicly available data on the Universal Service Fund which is dedicated to digital inclusion poses a significant challenge to tracking the utilisation of the funds. In light of this, various shortcomings arise in fostering digital inclusion in Kenya.

On a positive note, Kenya's digital space and telecommunications sector has been making good strides towards innovation and overall contribution to the country's economy.⁴⁶¹ However, women are still underrepresented in the digital job market, particularly in leadership roles.⁴⁶² Additionally, the barriers that deny people living with disabilities access to the digital world in Kenya include misconceptions about disability needs, outdated traditions, stereotyping, and digital illiteracy.⁴⁶³

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Conclusion

Kenya's progress in digital connectivity and innovation contrasts sharply with its struggles in safeguarding digital rights and inclusivity. The documented internet disruption, inadequate policy frameworks, and persistent digital divides hinder the nation's democratic and socio-economic potential. As such, the government, media, and civil society must collaborate to protect constitutional freedoms, promote digital inclusion, and address gaps in legislation governing digital spaces. Policies prioritizing affordability, accessibility, and transparency will not only bridge the digital divide but also foster a resilient and rights-respecting digital ecosystem.

With proper intervention and adherence to global and regional human rights standards, Kenya can harness its "Silicon Savannah" identity to become a model for equitable and inclusive digital development.

Recommendations

Government should:

-
- Uphold, respect, and protect constitutional provisions on access to information and freedom of expression that advance democratic values.
- Leverage the digital infrastructure initiative and the national broadband strategy to provide affordable internet access, including to marginalised populations.
- The Communications Authority of Kenya should make available annual reports on the usage of universal service funds.
- Offer incentives and subsidies to telecommunication companies to provide affordable internet in underserved areas.
- Revise sections 22, 23, and 27 of the cybercrime law—the Computer Misuse and Cybercrimes Act 2018 by decriminalising defamation and addressing reputational harm through civil law.
- The Independent Policing Oversight Authority (IPOA), the Commission on Administration of Justice, the National Committee on the Administration of Justice, and the National Police Service Commission (NPSC) should impartially and objectively entrench policing oversight and accountability as demanded by their distinct constitutional provisions.
- Establish a digitization fund to drive the attainment of digitisation as per the government's 2022-2032 Digital Master Plan.
- Develop and expand internet infrastructure in underserved rural areas to increase connectivity and access to information.
- Implement policies that bridge the digital divide gap, make digital technologies affordable, and provide digital literacy skills training to underserved and unserved communities.
- Pursue and implement alternative tax compliance methods that do not infringe on user privacy or ascend to surveillance, like IMEI and financial services monitoring.
- Formulate a clear and comprehensive policy framework for digital workers who work for social media platforms to ensure fair and humane treatment by digital platforms.
- Promote stakeholder and expert involvement in formulating policies that govern AI and emerging technology use and frameworks on associated risks and crimes.
- Collaborate with social media platform companies to ensure that content posted is not harmful without flouting fundamental freedom of expression.
- Prioritise public participation, regularly update and publish on issues of national interest, and ensure information access restriction adheres to limitations under Article 24 of the Constitution.

The Media should:

- Set the agenda for public debate and policymakers' action on issues such as internet access, Internet shutdowns, and AI and emerging technologies.
- Advocate for press freedom and raise awareness of the trampling of fundamental rights and freedoms of the citizens.
- Discard stereotyping, and include channels that are inclusive, especially by people with different disabilities.
- Remain steadfast as a trusted public interest watchdog that unravels truths that impact society, promoting accountability and transparency.

Civil Society Organisations should:

- Foster the essence of a more inclusive digital and democratic landscape that enriches socio-economic and political development.
- Raise awareness among the public about the dangers of repressive laws on democratization and good governance.
- Embolden citizens to demand accountability, transparency, and rule of law from the government.
- Actively lobby and advocate for digital inclusivity through targeted policies and technologies for marginalized groups.
- Develop and implement capacity-building programs that enhance equitable, accessible, and meaningful use of digital services and technologies.
- Provide legal assistance to individuals whose digital rights have been violated, including censorship and unlawful surveillance.

The Private Sector should:

- Implement an internal transparency framework requiring ISPs to disclose any government shutdown requests.
- Develop and fund programs aimed at enhancing the digital skills of youth and marginalized groups, empowering them for the digital economy.
- Implement stringent data privacy policies and practices that foster client trust and respect user rights.
- Allocate resources to bridge the digital divide and advance inclusivity by expanding internet connectivity in underserved areas.
- Create products and services that are affordable and accessible, especially to marginalized groups.

| Londa 2025 Key Indicators | ACHPR Declaration (P stands for Principle) | Score | Justification |
|---|---|-------|--|
| Internet Shutdowns | P38(2) | 2 | Various parts of the country reported slow internet and interruptions on June 25th, 2024, from youth mass demonstrations against the Finance Bill (2024/2025). Data showed a sharp drop in internet connectivity from 100% to 42%. Additionally, Telegram was restricted during the national exams following orders by the Communications Authority of Kenya. |
| Inexistent laws, policies and other measures to promote affordable access to the internet for marginalised groups such as children, women, and persons with disabilities. | P37 | 4 | In Kenya, the Universal Service Fund (USF) was set up to finance connectivity in underserved areas and for vulnerable groups. |
| False News Criminalisation | P22(2) | 1 | Computer Misuse and Cybercrimes Act 2018 criminalizes the publication of false or misleading information. This Act is a significant regression in freedom of speech. |
| Sedition Legislation | P22(2) | 3 | The High Court of Kenya outlawed Section 77(1) and (3) of the penal code on the basis that it limited freedom of expression through its broadly and vaguely worded offense of subversion. |
| Arbitrary Arrests and Harassments of the Media, HRDs and Citizens | P6 and P20 | 1 | Several digital activists, journalists, HRDs, bloggers and citizens were arbitrarily arrested at the height of anti-government demonstrations. Hundreds of activists and citizens are still missing. |
| Data Protection Legislation. | P42 | 5 | Kenya has a comprehensive Data Protection Act 2019, which entails data protection principles, data subject rights, and consent conditions for processing data. |
| States interfere and require the removal of online content by internet intermediaries. | P38 and P39(4) | 3 | During the Anti-finance bill protests, content on some user's accounts especially on X was taken down under the guise of protecting national security. |
| Invasion of Privacy of Communications | P41 | 2 | The government's effort to attain tax compliance has led to privacy and surveillance infringement through the International Mobile Equipment Identity (IMEI number) and monitoring of financial services. |

| | | | |
|---|--------|----|--|
| Failure by the government to proactively disclose and disseminate information digital technologies. | P29(3) | 4 | Kenya has an existing Access to Information law that allows stakeholders to seek information from different public and private entities including those in the digital ecosystem. |
| AI and Emerging Technologies National Strategies | P39(6) | 3 | Parliament rejected passing of the proposed Robotics and Artificial Intelligence Society Bill 2023. The Central Bank of Kenya is working on regulations to protect cryptocurrencies from criminal activities. |
| Adoption of specific child laws, policies and measures promoting children's digital safety and privacy online | | 3 | Kenya's legal framework for child protection is grounded in the Constitution of Kenya (2010). While there is no stand-alone policy on child online safety, the Children Act is the primary statute that operationalizes child rights. Additional frameworks such as the Data Protection Act of 2019, and Kenya's National Strategy on Justice for Children 2023-2028 mention the safety of children online though not distinctively. |
| Digital Inclusion | P37(3) | 3 | While internet penetration and mobile device usage continue to rise, efforts to track digital inclusion remain ineffective, particularly through the Universal Service Fund (USF). Notably, there is no available data on how the funds were utilized in 2024, raising concerns about transparency and accountability in promoting equitable access. |
| TOTAL (up to 60) | | 34 | |

