

GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

Focus on freedom of expression and association online



This edition of Global Information Society Watch is dedicated to the people of the Arab revolutions whose courage in the face of violence and repression reminded the world that people working together for change have the power to claim the rights they are entitled to.

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Swedish International Development Cooperation Agency (Sida)

The views expressed in this publication are those of the individual authors and not necessarily those of APC or Hivos

Printed in Goa, India
by Dog Ears Books & Printing

Global Information Society Watch
Published by APC and Hivos
South Africa
2011

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ISSN: 2225-4625
APC-201111-CIPP-R-EN-PDF-0105
ISBN: 978-92-95096-14-1

APC and Hivos would like to thank the Swedish International Cooperation Agency (Sida) for its support for Global Information Society Watch 2011.



KENYA

PERCEPTIONS AND MISCONCEPTIONS: THE ROLE OF NEW AND TRADITIONAL MEDIA IN KENYA'S POST-ELECTION VIOLENCE (2007)



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Introduction

Kenya has a mosaic of 42 ethnic communities, and although it is frequently cited as a model for political stability and economic development in Africa, the extent of violence experienced after the elections in 2007 was unprecedented. The violence left about 1,300 Kenyans dead and about 500,000 people displaced.

Elections in Kenya have been associated with violence for almost two decades; but in 2007 the tensions escalated as mobile phones and the internet became additional means used for political discussions that took on an ethnic dimension and a political bias on a scale that had not been experienced before. This high level of violence set back Kenya's democratic progress gained after multiparty politics was introduced in 1991.

The post-electoral ethnic violence ended after local and international pressure and extensive international mediation efforts under the leadership of former UN Secretary-General Kofi Annan. The government and the opposition agreed to form a grand coalition, which has entered its last lap before the general elections due next year.

A 2008 UN High Commissioner for Human Rights report notes that while "irregularities in the election process were the primary trigger of the violence, a number of underlying causes – including discrimination, poverty, inequalities and disenfranchisement – fuelled the crisis." The violence in 2007 must also be looked at in the context of the contested nature of land resettlement schemes following Kenya's independence, and the associated political violence.¹

Although the role of media and social media is believed to have been significant enough to impact on the levels of violence (both positively and negatively), it was not the defining factor. Hate speech in Kenya was not the responsibility of media alone – on previous occasions it has emanated directly

from politicians and government offices. Government propaganda and ineffective dialogue can have a key – even if unintentional – role in encouraging polarisation, exacerbating tensions and escalating violence during an election period.

In addition, the use of media to spread violence and encourage a particular ideology is not new to Kenya. Politics has been used to polarise for decades, and various actors in the political arena have stoked this division, using the media to their political advantage.

The media in general, and local language radio stations in particular, undoubtedly played a role in hyping the election in a manner that contributed to the tensions that became the background to the violence. Local stations often broadcasted uncensored statements made by politicians on their campaign trails that amounted to hate speech and helped to fuel tensions. Mobile phone short message service (SMS) and the internet (email, mailing lists, websites and blogs) were also used to propagate hate speech and incite acts of violence in both the pre-election and post-election period. There has been too little discussion on what constitutes hate speech when it comes to online, SMS and broadcast content, or how governments should address the challenge when it occurs. The best antidote to prevent the spread and influence of genocidal information is to have more positive and analytical information.

Policy and political background

The three sources of press and freedom of information laws in Kenya include the new Constitution of Kenya, the Statutory Law, and the Common Law. The Constitution of Kenya, the supreme law, guarantees the right to freedom of expression. Article 35 also guarantees access to reliable information:

- (1) Every citizen has the right of access to (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.
- (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
- (3) The State shall publish and publicize any important information affecting the nation.

¹ Anderson, D. and Lochery, E. (2008) Violence and Exodus in Kenya's Rift Valley, 2008: Predictable or Preventable?, *Journal of East African Studies*, 2 (2).

While the Constitution ensures that the freedom and independence of electronic, print and all other types of media are guaranteed, it does not extend to address issues of ethnic incitement, hate speech, incitement to violence, propaganda for war, incitement to cause harm or content that is discriminatory or amounts to the vilification of others. However, Chapter Four of the Bill of Rights in the Constitution states that the right to freedom of expression does not give anyone a right to use hate speech.

The Constitution provides for the right to access information held by the state and information held by another person required for the exercise or protection of any right or fundamental freedom. The values and principles of the right to state-held information include transparency and the provision to the public of timely, accurate information. The government has made huge steps in implementing this aspect of the Constitution, having launched an open data portal in July 2011, making Kenya the first African country to release government data to the public through a single online platform. The portal aggregates government-held information on budget spending, allocation of funds for constituency development, parliamentary proceedings and other detailed statistics on service delivery and demographics.

The Constitution also guarantees that the state shall not exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium, or penalise any person for any opinion or view or the content of any broadcast, publication or information disseminated.

Kenya has a plural, sophisticated and robust mass media and communications sector that serves the various competing political, social, economic, cultural and technological needs of diverse interest groups. The key independent print media are the Nation Media Group, the Standard Group, People Limited, and the Times Media Group. Nairobi hosts approximately 120 foreign correspondents representing 100 media organisations. There is no government-owned or controlled newspaper.

In addition, Kenya has several hundred FM radio stations, broadcasting in Swahili or in local languages. Radio has a wide reach in Kenya, especially in rural areas. Some major international broadcasters, including the British Broadcasting Corporation (BBC), Voice of America (VOA) and Radio France International (RFI), rebroadcast their programming in Kenya.

Meanwhile, a Communications Commission of Kenya (CCK) report stating quarterly statistics for October to December 2010 notes that mobile

subscriptions have grown from 22.3 million to 24.96 million. Overall teledensity is 64.2%. The number of SMS text messages recorded was 665 million. The total number of internet subscriptions increased from 3.2 million to 4.7 million by end of December 2010. The number of internet users is estimated at 10.2 million.²

Identifying the challenge: The responsibility of new and traditional media

Information and communications technologies (ICTs) did not necessarily alter the rumours and stereotypes about different ethnic groups that have been propagated for decades in Kenya. Rumours and stereotypes became central in much of the violence, and technology only speeded up the ways in which these messages penetrated communities and mobilised individuals and groups for action against each other.³

Kenya's post-election violence demonstrated the effects that new technology can have. Despite a history of violence associated with elections, these were the first elections where mobile phones and access to vernacular radio stations were widely available. Mobile phones and media (including social media) can play the roles of mirroring events and providing an important opportunity for reflection and insight into political dynamics. They can analyse the level of dialogue, the polarisation, and progress towards reconciliation, including possible avenues for the peaceful resolution of disputes.

However, media institutions regarded as being locked into the power structure acted largely in line with the dominant political ideology of institutions. The media merely amplified institutional viewpoints, drawing on tribalised political views and assumptions as the natural perspective, rather than providing alternative views. The media were polarised and co-opted during election and post-election violence, and ownership tended to influence the kind of partisanship a media house would adopt.

The government imposed a ban on live broadcasting on 30 December 2008 largely because of the perception that the media had failed to responsibly manage broadcasting during the initial hours of post-election violence. This was presented as a temporary measure to stop vernacular FM stations hijacked by politicians from continuing to incite hatred. The government had also considered closing down the SMS messaging system that was being used to send hate messages. In an interview with

² www.cck.go.ke

³ Anderson and Lochery (2008) op. cit.

the *Daily Nation*, Safaricom CEO Michael Joseph is said to have persuaded the government to instead allow providers to send messages of calm and peace provided by the service providers themselves, which they did. However, while Kenya did not have a law to prosecute hate speech, the names of individuals believed to have used SMS text messages to promote mob violence were forwarded to the government and Parliament began to consider reviewing legislation to create a new law against hate speech.

Following the initial shock of the eruption of violence, in line with mobile service providers such as Safaricom and Celtel, the media and social networks began to put out calls for Kenyans to shun violence and keep the peace. Journalists were urged to adhere to ethical standards. Many stations began to consistently devote their airtime to promoting non-violence and peace building and supported the mediation process by calling for an urgent settlement of the crisis. The mainstream media provided live coverage of the signing of the power-sharing pact and have continued to monitor and highlight the negotiation of long-term challenges, such as creating national dialogue and fostering reconciliation.

Many Kenyans had also begun to use digital tools to voice their concerns and challenge the mainstream media and government reports, raising local citizen journalism to another level. Kenyan blogs and virtual networks like KICTANet, KE-users, Skunkworks and iHaveNoTribe, among others, became a critical part of the information flow in the country, reacting to the initial ban on live broadcasts. Ushahidi combined mobile phones and the internet to crowdsource information on human rights violations during the post-election violence. Broadcasters began to read entries from influential bloggers over the airwaves, helping them reach 95% of Kenyans.

In these cases, the media, internet and mobile phones acted as enablers providing a positive role in mediating divergent perspectives, and creating a national vision of reconciliation; a space for dialogue that helped to reduce polarisation and supported transitional justice processes.

One of the impacts of the post-election conflict was the move by government to create policy legislation and regulation to address the lack of perceived self-regulation. Several policies were developed or reviewed including the Information and Communication Master Plan (2008), the National ICT Policy (2008) and Freedom of Information Policy (2008), and the Kenya Information and Communications Act, which established the Broadcasting Content

Advisory Council launched in 2010. The council is meant to advise the CCK board in the regulation of broadcast content; but it does not provide direction on online and user-generated content.

The Kenyan media are passionate proponents of self-regulation, but no practical implementation mechanisms have been agreed upon. While the media council launched a code of conduct in 2005 for print, television and radio journalists, it lacks enforcement mechanisms. In addition, there is a challenge on developing mechanisms to legislate and regulate hate speech and good taste as a standard upon which a broadcaster can be held criminally liable. The media have argued that Kenya's culturally diverse society does not have a universal value of what is good or hateful, and therefore the discretion of the editor, guided by professional ethics and the existing laws on public nuisance and morality, are adequate.

Bitange Ndemo, the permanent secretary in the Ministry of Information and Communications, argues that freedom to communicate should be moderated by the values that we hold as a society, because managing hate speech through legislation in the absence of a value system would not solve the problems. He further states that it is not in the government interest to, for example, consider censoring internet-related content. He notes that Kenya needs to deal with more deeply seated problems, which include inequalities and poverty, among others. However, he also notes that there is a need to implement broadcast regulations and the broadcast code of conduct before the next elections in 2012 to avoid more violence.⁴

In relation to the internet, as mentioned, Kenya has not yet addressed issues of online and user-generated hate speech, defamation and incitement among others in the legal and regulatory frameworks currently in operation. The new Constitution provides for data protection and privacy, but it does not specify the kind of data that should be protected. With the current technological advancements, geo-location software enables the identification of internet service providers (ISPs) used by an individual and could undermine fundamental rights of freedom of expression and the protection of carriers against content carried over their networks by third parties. Solutions must therefore be found to protect not only ISPs, but also other intermediaries, like mobile service providers and online service providers such as search engines, among others. A code of conduct for intermediaries may be required as well as a regulatory regime that places certain

⁴ KICTANet mailing list discussions: www.kictanet.or.ke

levels of responsibilities on them, but it needs to protect them as a platform for expression in order to promote an open and free online culture.

Conclusions

Kenya's election violence revealed the role of media, social media and mobile telephones in fostering the spread of violence; but equally it showed their role in spreading peace-related messages and offering a space for reconciliation.

While forms of social media can be important catalysts for political and social mobilisation, and can be used to exacerbate violence or promote peace, they are not the defining factor. However, the unpredictable nature of new technology affects how media policy and regulation in situations of civil unrest are approached. There are therefore very real concerns about elections making violent conflict more likely and how media liberalisation impacts on this.

Post-election media policies need to be addressed prior to elections, which would include policies on introducing restrictions on live broadcasts of violence, to shutting down radio stations, the internet or SMS services in the case of evidence of incitement to violence.

Events around the world indicate that issues of post-election conflict and violence and their relationship to media, social networks and SMS are relevant. Avoiding both pre- and post-election violence also depends on the legitimacy of institutional processes and trust among citizens. If this is not present, close attention needs to be given to media structures, political allegiances and their performance during election periods.

The International Criminal Court has summoned six Kenyans, one of them the chief executive of KASS Radio, to The Hague on charges of crimes against humanity for their alleged roles in the post-election violence. This sets a precedent for the prosecution of others in the future for their role as media in violence.

Action steps

- Multi-stakeholder discussions are necessary, including at the Internet Governance Forum, about the appropriate response to media of all types being used to incite hatred and violence.
- Empirical research to inform policy discussions in the area of intermediary liability needs to be conducted in order to contribute to the development of an appropriate regulatory model to govern intermediaries as common carrier networks.
- Advocacy for policies that protect intermediaries as a platform for freedom of expression is necessary.
- There is a need to advocate for national values that respect human life and diversity. ■

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

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GISWATCH is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

GLOBAL INFORMATION SOCIETY WATCH

2011 Report

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