

COVID-19 Response in Africa: Together for Reliable Information

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Kenya: Briefing on attacks against journalists

March 2020–July 2021

At a glance

Global Expression
Report 2021 score:

61/100

5

journalists
physically attacked

4

journalists arrested
and detained

2

laws passed

About this briefing

Journalists play a vital role in ensuring the right to freedom of expression and access to information, which is protected under international human rights law, Kenya's [Constitution](#), and national legislation. The protection of media freedom becomes even more relevant during a pandemic.

However, changes made to laws and regulations in Kenya during the first year of COVID-19 – as well as attacks and arbitrary arrests against journalists – violated this fundamental right and put media freedom and journalists' safety at grave risk, as this briefing shows.

While this briefing focuses on human rights violations against journalists in the context of COVID-19, the incidents reported here are part of a broader context in which journalists are specifically and consistently targeted because of their work. Between 12 March and 31 August 2020 alone, ARTICLE 19 Eastern Africa [documented](#) 48 incidents in which 34 male and 14 female journalists and media workers faced various forms of violations, including physical assault, arrest, telephone or verbal threats, online harassment, and lack of access to public information, officials, and buildings.

We urge the Government of Kenya to follow the recommendations in this briefing to ensure the right to freedom of expression and the safety of journalists are guaranteed – especially in the COVID-19 pandemic.



Figure 1: Police beating up ferry commuters for allegedly violating curfew rules. Some journalists who reported on the incidents were also beaten, and their equipment confiscated. (Photo: Nation Media Group)

Physical attacks against journalists

The protection of journalists and human rights defenders, and ending impunity for attacks against them, is a global priority for safeguarding freedom of expression. Threats, attacks, arbitrary arrests, and detentions – and, in the gravest cases, enforced disappearance or killings – constitute a violation of not only the right to freedom of expression but also a violation of the right to life, bodily integrity, and sometimes the right to health. Physical attacks are those that inflict pain, harm, or injury, including death, against a person.

Police officers assault journalists reporting on police brutality

On 27 March 2020, [Peter Wainaina](#), a cameraman with Nation Media Group NTV, was reportedly covering a story in Mombasa, where police officers were beating commuters who were attempting to board the ferry before the dusk-to-dawn COVID-19 curfew the government had imposed that day. As Wainaina filmed the scene, an Administration Police officer brutally attacked him, while Wainaina's colleague recorded the assault. The assault was roundly condemned by [Kenya Editors Guild](#), Kenya Union of Journalists, and other human rights organisations. No action is known to have been subsequently taken against the officer.

Two days later, on 29 March, police officers attacked Weru TV cameraman, George Muriithi, as he filmed police officers and government administrators using violence to enforce social-distancing rules on traders in Mitunguu market, Meru County.

A similar attack reportedly occurred on 2 April, when security guards from the County Government of Kiambu [assaulted](#) and arrested Mukoya Aywah and confiscated his camera.

“ I was actually doing my work and it caught me by surprise by the brutality this policeman netted on me. I did not provoke him, and it was uncalled for. ”

[Peter Wainaina](#), cameraman, Nation Media Group NTV



Figure 2: Police beating up ferry commuters for allegedly violating curfew rules. Some journalists who reported on the incidents were also beaten, and their equipment confiscated. (Photo: Nation Media Group)

Education Cabinet Secretary's bodyguard caught on camera assaulting two journalists

The bodyguard of Education Cabinet Secretary George Magoha was caught on camera [assaulting](#) two journalists, Ondari Ogega (Nation Media Group) and Viola Kosome (People Daily), in Kisumu on 20 November 2020. They were trying to take a photograph of the Cabinet Secretary, who was at Kosawo Primary School inspecting new desks distributed as part of the COVID-19 response. The Media Council of Kenya, Kenya Editors Guild, and Kenya Union of Journalists [condemned](#) the incident. At the time of writing (October 2021), no further information was available regarding investigations, if any, into this case.

Arbitrary arrests and detentions of journalists

An arbitrary arrest or detention is one carried out, among other things, when it is clearly impossible to invoke any legal basis justifying the arrest, without due regard for international fair-trial standards, or in response to the legitimate exercise of human rights – including the right to freedom of expression. They are violations of the right to liberty and/or a fair trial.

Journalists arrested for violating curfew, despite being exempt

In Uasin Gishu on 29 March 2020, police [arrested](#) John Wanyama and Charles Kerecha, journalists from Citizen TV, for apparently violating the curfew brought in two days earlier to curb COVID-19. This was despite journalists and other media workers being exempt from the curfew regulations because they are essential service workers.

Responses to 'misinformation' and 'disinformation'

Under international human rights standards, freedom of expression and information cannot be suppressed purely because information is considered false, non-objective, or even deeply offensive. As the UN Special Rapporteur and other monitors for freedom of expression and opinion information pointed out at the start of the pandemic, criminalising 'false information' related to COVID-19 may merely ['create distrust in institutional information, delay access to reliable information and have a chilling effect on freedom of expression'](#).

Blogger charged with publishing 'false information' for tweeting about COVID-19 deaths

On 20 March 2020, blogger Robert Alai was [arrested](#) and put in a police cell for allegedly publishing 'false news' on COVID-19 in Kenya. He had questioned the government on the actual number of cases in the country by allegedly tweeting that two people had died of COVID-19 in Mombasa. His [charge sheet](#) stated:

'On the 19th day of March 2020 at an unknown place within the Republic of Kenya, posted on your twitter account @RobertAlai to wit "Coronavirus: Is the Kenyan government hiding COVID-19 related deaths at the Port of Mombasa" knowing it to be false and calculated to cause panic and fears among citizens of the Republic of Kenya.'

The tweet was reportedly pulled down after the Directorate of Criminal Investigations summoned Alai and charged him with publication of false information, contrary to Section 23 of the Computer Misuse and Cybercrimes Act. Alai denied the charges and was freed on bail.

Blogger arrested for tweet about official failing to quarantine

On 25 March 2021, blogger Cyprian Nyakundi was arrested for tweeting that a senior Kenya Revenue Authority official had left and returned to the country without undergoing mandatory quarantine, in contravention of the government's COVID-19 regulations. He was accused of posting false news, in contravention of the Computer Misuse and Cybercrimes Act 2018. He was freed on cash bail.

Laws regulating access to information and media freedom during COVID-19

Pandemic Response and Management Bill, 2020

This Bill was adopted on 14 April 2020 and addresses various socioeconomic issues related to the pandemic. While portions of the legislation provide for justified disaster response and economic relief during the pandemic, it falls short on several counts, as ARTICLE 19 has pointed out.

The Bill recognises journalists and media professionals as essential service providers (Section 39), but fails to make specific provisions to enable journalists and media houses to work in a sustainable environment that allows for free and independent reporting during a pandemic. Additionally, the Bill fails to specify a time limit for its emergency provisions, giving the Cabinet Secretary and President broad discretion to limit individuals' fundamental freedoms for an indefinite and unspecified duration.

Kenya Computer Misuse and Cybercrimes Act, 2018

Anyone publishing information about COVID-19 online risks contravening the Computer Misuse and Cybercrimes Act 2018. Notably, sections 23 and 24 of the Act carry punitive criminal sanctions of two and ten years, respectively.

Since the onset of COVID-19 in March 2020, ARTICLE 19 has documented at least 10 journalists (including online communicators and human rights defenders) who have been arrested or threatened with prosecution under Section 23 of the Act for allegedly publishing and spreading 'false and alarming information' on social media about the coronavirus.



These provisions are stifling the rights to freedom of expression, access to information, and privacy in Kenya. We call on the ... Kenyan government to repeal or reform the Computer Misuse and Cybercrimes Act in its entirety.

– ARTICLE 19



The Law Society of Kenya (LSK), alongside a number of other organisations, challenged the constitutionality of 26 provisions that infringe on freedom of expression. However, on 20 February 2020, the High Court held that these provisions were constitutional in Petition No. 206 of 2019.

The LSK further tried to get a court order to suspend the enforcement of the 26 provisions, or at least sections 22 and 23 (on false publications and the publication of false information). It argued that any blogger, journalist, or whistleblower publishing information about COVID-19 online risked contravening these sections, which, as mentioned, carry punitive criminal sanctions. However, on 7 August 2020 a three-judge bench [dismissed](#) this request, which they said was based on presumptuous and futuristic events.

The LSK filed a subsequent [application](#) for a review on 11 August 2020, which, at the time of writing (October 2021), is still pending hearing.

Sharing 'false information' on COVID-19 becomes a prosecutable offence

On 19 March 2020, a few days after the government imposed stringent containment measures, Health Cabinet Secretary Mutahi Kagwe issued a statement warning against what he termed "false reporting" on COVID-19.

He [announced](#) that the COVID-19 emergency response committee had resolved that anyone spreading 'false information' on the virus in Kenya would be arrested and [prosecuted](#).

New social-media guidelines pose a threat to media freedom and the right to information

On 14 April 2020, the Pandemic Response and Management Bill, 2020 was adopted. Under the government's new guidelines, social-media users and media organisations would be held liable for posts deemed to jeopardise public safety, while administrators of social-media platforms would be held responsible for moderating and controlling any content deemed undesirable. However, the guidelines failed to clarify what kinds of content would be deemed as undesirable or jeopardising public safety. As such, the guidelines gave the government carte blanche to crack down on social-media content.

On 12 October 2020, media stakeholders issued a [protest note](#) to the government, complaining that COVID-19 guidelines posed a serious threat to media freedom (which is protected in [Section 34](#) of Kenya's Constitution) and the right of access to information (protected in [Section 35](#)).

The State shall not--

(a) 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

(b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

Constitution of Kenya,
[Section 34\(2\)](#)

Freedom of expression under international law

Everyone has the right to express themselves freely – orally, in writing, and online. The right to freedom of expression includes the right to access information, which is particularly important in a pandemic. It is guaranteed under the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#) (ICCPR), the [African Charter on Human and Peoples' Rights](#), the [African Commission's Declaration of Principles on Freedom of](#)

[Expression and Access to Information in Africa](#), and the Kenyan Constitution (sections [33](#) and [35](#)).

While the right to freedom of expression is fundamental, it is not absolute. Under [Section 33\(2\)](#) of Kenya's Constitution, it does not extend to propaganda for war, incitement to violence, hate speech, or advocacy of hatred, ethnic incitement, or discrimination.

Under international law, freedom of expression can be limited for the purposes of protecting public health – but any limitation must be **legitimate, necessary, and proportionate** (Article 19 of the ICCPR).

Recommendations

ARTICLE 19 calls on the Government of Kenya to:

- **Review existing media laws and regulations**, such as the Computer Misuse and Cybercrimes Act 2018, and ensure they are brought in line with international human rights standards, or repeal provisions that violate freedom of expression and the right to information, including those relating to the criminalisation of misinformation.
- **Apply the test of legality, necessity, and proportionality** before limiting freedom of expression in cases of public health threats.
- **Carry out investigations into all reports of human-rights violations perpetrated against journalists**, and ensure that all perpetrators – including law-enforcement and army personnel – are brought to justice in a trial meeting international fair-trial standards.
- **Remind all law-enforcement and army personnel of their duty to protect communities** and allow the media to play their critical role of informing the public.
- **In collaboration with media organisations**, ensure, wherever possible, trauma counselling for journalists who need it.
- **Adopt the recommendations of the [resolution on the safety of journalists](#)**, adopted by the UN Human Rights Council on 6 October 2020, which provide guidance on ensuring the safety of journalists in the context of the COVID-19 pandemic.

The evidence presented in this briefing was sourced from media houses, media watchdogs, journalists' unions, and legal analysis between March 2020 and July 2021. It is limited to human rights violations against journalists in the context of COVID-19 during that time (rather than non-pandemic-related violations against journalists, or violations against non-journalists during COVID-19). For our methodology, see www.article19.org/covid-19-response-in-africa/.