

## Constraints in Kenya's information landscape

Recent accusations of Kenyan government media repression suggest researchers and investors will need to exercise caution when sourcing data on the east African nation.

US President Barack Obama's visit to East Africa in July 2015 confirmed his star status in the region but will also have sounded alarm bells for some African leaders. In successive speeches Obama addressed systemic issues of poor governance and social injustice, messages calibrated to demonstrate government is a process of continual improvement rather than an end in itself.

Obama drew attention to the crucial role of the media and civil society in the first address by a serving US president to the African Union. 'When journalists are put behind bars for doing their jobs or activists are threatened as governments crack down on civil society', said Obama, 'then you may have democracy in name, but not in substance.'<sup>1</sup>

This will have resonated with many in the region, not least Kenyans, whose government stands accused of fomenting a new climate of fear and censorship in what has for many years been a robust and resilient media environment.

*Sovereign Data* looks at the Kenyan situation and explores the implications for data quality, media prospects, the legitimacy of the Kenyan government and the visibility of Kenya to the outside world.

### Kenyan media landscape

The media landscape in Kenya is the most diverse and populous in east Africa, with six national daily newspapers, numerous weeklies, 120 registered radio stations and 20 television stations.<sup>2</sup> The state-owned Kenya Broadcasting Corporation runs two television stations and local and national radio services in multiple languages.<sup>3</sup> The private sector is dominated by the Nation Media Group and the Standard Group, which together own thirteen daily and weekly newspapers, three television stations and three radio stations. The sector continues to expand. Standard Group, for example, recently announced a new multi-channel 24-hour news station, KtnNews, the first of its kind in east Africa.<sup>4</sup>

Internet penetration is also increasing rapidly. The Kenya National Bureau of Statistics estimates there were 26.2 million internet users in 2014, roughly 59% of the population and significantly above the global average of 40%. These users are served by 185 internet service providers.<sup>5</sup> Online news providers reach roughly one million users a day, a 25% increase year-on-year.<sup>6</sup> Kenyans also access news media through multiple online social media platforms not captured by these statistics.<sup>7</sup> Despite recent advances in digital media platforms, radio remains the most popular news and entertainment medium, reaching 93% of Kenyans in native languages, English and Kiswahili.<sup>8</sup>

The expansion of the Kenyan media sector is rooted in post-Cold War democratisation and commercial deregulation. Its current rude health – relative to many of its neighbours – is the result of protections enshrined in the 2010 constitution.<sup>9</sup> Article 34 guarantees the 'freedom and independence' of all media and their employees from government interference. Adjacent articles guaranteeing freedom of expression and citizens' rights to access state information reinforce presumptions against government media intervention. This encourages media diversification and emboldens those taking critical lines against the sharp practices of public figures and government.

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The Kenyan government asserts the 'media has never been freer'.<sup>10</sup> In July 2013, President Uhuru Kenyatta assured editors directly of his personal commitment to media freedom.<sup>11</sup> These statements distance Kenya from pre- and post-independence experiences of media repression and from its neighbours. Ethiopia and Somalia, in particular, feature regularly amongst the worst offenders against freedom of movement and expression for journalists and their employers.

## Intimidation

Despite the apparent robustness of the media sector and its constitutional protection, Kenyan media are subject to significant constraints and external pressures. Reporters Without Borders ranks Kenya 100th of 180 countries on its 2015 World Press Freedom Index (Ethiopia, by comparison, is 142nd).<sup>12</sup> It claims Kenyan journalists 'live in fear of costly lawsuits, arrests, attacks, intimidation, and even murder'.<sup>13</sup> The Freedom House watchdog finds the Kenyan internet 'free' but its press only 'partly free'.<sup>14</sup> Immediately prior to Obama's visit, a Committee to Protect Journalists (CPJ) report cited a 'deteriorating climate' for the Kenyan media and numerous examples of government media interference.<sup>15</sup>

In 2006, the Kibaki government famously raided the offices of the Standard newspaper and its sister television network, KTN. Thousands of copies of the newspaper were burned and the television station taken off-air. Citing national security reasons, the government accused Standard media organisations of fabricating stories about government corruption.<sup>16</sup> A decade after he described the raids as a 'dark day' for Kenya, President Kenyatta now displays this same authoritarian impulse, despite his rhetorical protestations to the contrary.

As CPJ and others record, journalists are threatened with arrest and violence should they stray into 'undesirable' territory, specifically 'national security, extrajudicial killings, the International Criminal Court, corruption, and land-grabbing'.<sup>17</sup> Kenyatta and vice-president William Ruto were cited by the ICC for their roles in post-election violence in 2007-8 in which 1200 people died.<sup>18</sup> Charges against Kenyatta were dropped in December 2014 but the issue remains sensitive to an administration long accused of corruption and other criminal activities.

## Legislation

The principal methods of repression and control are less obvious than crude intimidation and coercion. In December 2013, Kenyatta pushed through parliament the Media Council Act and the Kenya Information and Communication (Amendment) Act, against a backdrop of media and civil society protest. The legislation founded a new government media regulator capable of levying substantial fines against entities breaching a new government code of media conduct. These new laws were deemed 'draconian' by most observers concerned about the self-censorship required to avoid fines and continue operating below the level of government censure.<sup>19</sup> One correspondent stated baldly before the bills' passage that 'no one will attempt investigative journalism ... it is indirectly telling people not to join the profession'.<sup>20</sup>

Two months later, the Kenyan High Court upheld media representatives' challenge to the constitutionality of the acts, specifically with reference to Article 34.<sup>21</sup> They remain in legislative limbo today but the CPJ notes over a dozen laws already on the books degrade or ride roughshod over the constitution. One particularly vexatious piece of legislation is the Security Laws (Amendment) Act (SLAA), signed into law by Kenyatta in December 2014. Among multiple measures bolstering counter-terrorism operations the act criminalises journalism 'deemed to undermine terror investigations'. This vague definition could deter criticism of Kenya's poor track record in preventing and prosecuting terrorist actions.<sup>22</sup> The High Court again came to the rescue in February 2015, finding eight sections of the SLAA unconstitutional. This decision was welcomed by interest groups but concerns remain about other aspects of the SLAA infringing constitutional rights.<sup>23</sup> Despite these setbacks, government enthusiasm for media repression is undimmed and sufficient legal methods exist to threaten journalists, however quietly, and to inculcate self-censorship.

## Subtle coercion

A third opportunity to exert pressure on the media stems from media ownership structures and the relative influence wielded by advertisers. The CPJ alleges various ways in which politicians influence media organisations, although the actual impact on editorial policy is unclear.<sup>24</sup> President Kenyatta holds stock in private media companies like Mediamax, which owns popular television station K24, and

former president Daniel arap Moi has interests in the Standard Group. Advertisers stand accused of direct editorialising, one journalist alleging leading companies like Safaricom, Kenya Airways and Equity Bank are effectively ‘untouchable’, an assertion denied strenuously by all three.<sup>25</sup>

One example concerns the Nation Media Group (NMG), founded and majority-owned by the Aga Khan. Since 2013, the group’s flagship publications, *Daily Nation* and *Sunday Nation*, have been sufficiently critical of the Kenyatta-Ruto ‘Jubilee’ coalition to elicit threats from the presidency that they decrease or lose advertising revenue. In March 2015, leading cartoonist Gado left the Nation, allegedly after the Aga Khan met with Kenyatta in Nairobi. Neither Gato nor NMG have explained this abrupt departure, fuelling suspicions that government pressure on the Aga Khan was directly responsible.<sup>26</sup> Given that the suspended media laws would require media companies to derive 45% of their advertising revenue from ‘local’ sources, this emerging trend may continue.<sup>27</sup>

## Outlook

The accusations levelled at the Kenyan government and its partners remain poorly documented and unsubstantiated. Yet, the evidence suggests Kenyan elites utilise methods to pressure journalists and media companies for political ends. These interventions contradict the letter and spirit of the 2010 constitution and the Jubilee coalition’s stated commitment to press freedom. Public polling in Africa indicates greater freedom of expression and increased public trust in government are closely correlated.<sup>28</sup> If the assessment of the Kenyan situation is correct, the government seems willing to risk damaging its legitimacy by degrading constitutional press protection.

The same polls suggest 78% of Kenyans think their news media is ‘effective in revealing government mistakes and corruption’, the lowest proportion in the region, although not by much.<sup>29</sup> This percentage may simply be too high for Kenyan elites that have avoided censure for decades by manipulating the political, legal and commercial landscape. It follows that government might pursue measures to influence the media, leveraging individuals’ economic interests, as well as government’s legislative and regulatory muscle.

The Kenyan case is additionally unfortunate in that it follows an established pattern. Kenyan government policy since independence has prioritised short-term political goals over public accountability and development. The media have been complicit in this process as members of social elites closely intermeshed with the political.<sup>30</sup> Scholars identify a lack of genuine democratisation over this period and a dogged adherence to older patronage structures not eclipsed by multi-party politics but actually entrenched by it.<sup>31</sup>

The future trajectory of government media intervention is uncertain. The situation will deteriorate if proposed laws enter force and harassment of journalists continues with impunity. The commercial influence of leading politicians affords relatively quiet avenues through which to protect their own interests. The wider concern with Kenya is that its regional dominance might bolster neighbouring countries’ existing media regimes, most of which are already far more corrosive by comparison.

Kenya’s relative media exuberance has ordinarily been its best defence against intervention but this may be eroded if current trends continue. This will not enhance the regional and international legitimacy of a regime already beleaguered by unanswered accusations of criminality. Social media and ‘citizen journalism’ may partly offset the trimming of the mainstream media’s sails but few observers suggest this rebalancing would be altogether desirable or sufficient.

## Conclusion

Current conditions suggest external parties may encounter problems sourcing accurate, reliable data from Kenyan media sources. East Africa is relatively well served by international outlets but global media infrastructures are often staffed by local personnel with invaluable local knowledge and lines of enquiry. If this situation is degraded, Kenya may become more opaque to foreign investors and researchers in need of timely and trustworthy sources of information. Kenya is far from ‘going dark’ in informational terms but the negative externalities of media repression are sufficiently well understood that its leaders would be wise to avoid any such eventuality.

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## ABOUT SOVEREIGN DATA

*Sovereign Data* (or “SD”) is a monthly journal of politics, data and risk in emerging markets. Published by Thesigers, the research and advisory firm, SD is part of a larger initiative focused on the “know-ability” of information and its influence on political and market processes.

Thesigers defines “sovereign” and “data” broadly, in order to more fully understand the risks and opportunities associated with knowledge in all its tributary forms – “information”, “data”, “evidence”, “intelligence”, and so on.

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