



Broken promises

How Kenya is failing to uphold its commitment
to a free press

A special report by the Committee to Protect Journalists



Committee to Protect Journalists

REPORTS

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Kenya's constitution guarantees freedom of the media, but President Uhuru Kenyatta's Jubilee coalition has introduced several bills that undermine rather than enforce that principle. Journalists are vulnerable to legal harassment, threats, or attack, while news outlets are manipulated by advertisers or politician-owners. The deteriorating climate comes at a crucial time for Kenya's democracy, security, and economy. **A CPJ special report by Sue Valentine and Tom Rhodes**

Published July 15, 2015

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Corruption, the government, and press freedom are frequent subjects for Godfrey "Gado" Mwampembwa, a political cartoonist in East and Central Africa. Gado, whose work appears in *The Nation* and other Kenyan and international newspapers, shares a selection of cartoons on the 2013 Kenyan election and problems facing the country's press.

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(Cover photo by CPJ/Tom Rhodes)

Introduction

On April 18, two journalists arrived near a state-owned ranch in Tana River County in southeast Kenya to investigate residents' claims that local paramilitary police had impounded a large herd of cattle for allegedly trespassing and were demanding bribes to release the animals. Before the journalists got out of their car, about 15 officers attacked them, beating them with wooden clubs and metal rods, according to one of the journalists, news reports, and video footage of the attack. Both journalists were hospitalized, one with a broken leg.

“If we had broken the rules, they should have arrested us instead of breaking our bones,” one of the journalists, Reuben Ogachi of privately owned station Citizen TV, told the press after filing a statement with police.

The assault was emblematic of the deteriorating state of press freedom in Kenya. Though it did not achieve its immediate purpose—designed to suppress media coverage, the assault was instead aired on more than one television channel—such attacks, if carried out with impunity, can intimidate journalists into censoring their own reporting, CPJ has found. At the time of writing, no action had been taken against those who carried out the assault in Tana River County.

While most of the risks that Kenyan journalists face today are more subtle than an attack with a metal rod, they are nonetheless effective. In interviews with more than a dozen journalists and reviewing published accounts, CPJ found that Kenyan reporters, editors, and publishers are exposed to threats of being hurt, prosecuted, imprisoned, or simply having crucial advertising withdrawn. Media are manipulated by dominant corporations, and news outlets are subject to the whims of their politician-owners or publishers who want to cozy up to power.

“Something that was meant for the public good [is subverted] to something for sectarian interests,” said veteran journalist and columnist Kwamchetsi Makokha.

Since President Uhuru Kenyatta’s Jubilee coalition came to power in 2013, several laws have been drafted (and some have passed) that undermine the media’s self-regulation, allow for heavy fines, restrict the handling of classified information, and would impede reporters’ access to Parliament. The legislation has been introduced despite Kenya having adopted a new constitution in 2010 that guarantees freedom of the media and specifies 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 dissemination.”

“This is one of the most hostile regimes we have seen to press freedom,” said David Ohito, digital content editor at the Standard Group. “Consider the number of laws proposed, those enacted, and those that we have challenged in court and remain suspended, and you see a media situation in Kenya that is worse than in the single-party era.”



Journalists hang a banner over railings as part of a protest against repressive media laws in December 2013. (CPJ/Tom Rhodes)

The deteriorating climate for the media comes at a time when press scrutiny and public discussion are essential for continued development of Kenya’s democracy and economy. As

evidenced by the April massacre at Garissa University that killed at least 147 people and the 2013 terror attack on Nairobi's Westgate Mall, the country faces a strong security threat from Al-Shabaab militants based in neighboring Somalia. The country's deputy president is under indictment from the International Criminal Court (ICC) in The Hague for alleged crimes against humanity, while the ICC withdrew similar charges against the country's president in December 2014. The economy is one of the fastest-growing in Africa, and the government is spending billions of dollars a year on infrastructure, but growth has been uneven and the country has the greatest inequality in East Africa. The high price of land has led to evictions and exacerbated corruption.

"Pursuing mega projects while shrinking the space for freedoms and rights and failing to strengthen governance institutions is the weakest link in our development agenda," Karuti Kanyinga of the Institute for Development Studies at the University of Nairobi wrote in January. Whether induced by fear of repercussions or outright bribery, the media's watchdog role in development projects has been weakened, Makokha and *Nation* columnist George Kegoro wrote. Instead, questionable tender processes are seldom scrutinized, which can enable abuses such as over-spending, Makokha said.

Yet security operations, anti-terror operations, the ICC case, state spending, land deals, and corruption are the most sensitive topics most likely to get journalists in trouble, CPJ found.



Kenyan soldiers search the roof of Westgate Shopping Center after gunmen open fire on shoppers. The government has moved to restrict reporting on terror attacks. (Reuters/Noor Khamis)

Kenyan government Information Secretary Ezekiel Mutua disagrees. “The media has never been freer,” Mutua told CPJ. “There is no reason for journalists to fear.” He said Kenyatta has held more press conferences in the two years that he has been in office than the three presidents before him combined. In July 2013, in what news reports described as a first-ever exchange of views between a sitting president and editors, Kenyatta made assurances of his commitment to media freedom, saying he wanted to be “partners” with the media, according to the reports.

What happens in Kenya has ramifications beyond its borders. Kenya is a role model for economic development in East Africa, and—given the feisty, independent nature of many of its journalists—could also be a model for freedom of the press. A Brookings Institute analysis of the country’s economy described Kenya as an “anchor” in the region with “wider democratic space compared to its neighbors.” Yet, to fulfil its promise as a leader in the democratic arena, Kenya needs to further distinguish itself from some of its neighbors. The government of Ethiopia has chosen to imprison critical journalists; Somalia ranks second on

CPJ's Impunity Index, which spotlights countries where journalists are murdered regularly and their killers go free. In Rwanda, censorship and self-censorship are pervasive, CPJ has found.

Kenya's 2010 constitution commits it to a higher path—one that acknowledges citizens' fundamental right to freedom of expression and the value of an open and robust exchange of critical views. It is unclear, however, whether Kenya's ruling coalition will live up to that commitment.

1. How media ownership and advertising curb critical reporting

Attempts to control the media in Kenya date back to at least 1929, with transmission of the first radio signal by the British East African Broadcasting Corporation, which served the interests of the colonial government. Throughout the country's history, including independence in 1963 and the end of one-party rule in 1992, the press has largely served the interests of those in power, with leaders expecting loyalty and support, Kenyan media scholar Wilson Ugangu wrote in an essay published this year.



Signs are made for streets that were renamed after independence. One year after taking power, President Jomo Kenyatta nationalized the country's radio and television services. (AFP)

During the eight-year state of emergency from 1952 until Britain conceded Kenya's right to independence, all vernacular magazines and newspapers were closed, according to historian Charles Hornsby. At independence, the new government continued to rely on existing British colonial legislation that gave it significant control over the media, Hornsby wrote.

One year into independence, then-President Jomo Kenyatta—father of the current president—eager to control the media that reached the majority of Kenyans, nationalized the Kenya Broadcasting Corporation, renamed it the “Voice of Kenya,” and made the radio and television service answerable to what was then called the Ministry of Information Broadcasting and Tourism. Two companies dominated the newspaper market: the Nation Media Group, which was established in 1959 and financed by the Aga Khan, the wealthy spiritual leader of Shia Ismaili Muslims worldwide; and the Standard Group, owned by the multinational conglomerate Lonrho and later sold to Mark Too, a nephew of former authoritarian President Daniel arap Moi, who ruled Kenya from 1978 to 2002.

Those two media houses are still the biggest players in Kenya’s market, having added TV and radio. Between them, the companies own 13 daily and weekly newspapers, three TV stations (NTV, QTV and KTN), and three radio stations, according to a 2014 report by the Media Policy Research Centre. The country’s most popular broadcasters are Citizen TV and Radio Citizen—owned by Royal Media Services under the chairmanship of businessman S.K. Macharia.

Although Kenya has six daily newspapers, according to a 2014 report by the Media Policy Research Centre—*Daily Nation*, *The Standard*, *The Star*, *Business Daily*, *People Daily*, and *Taiifa Leo* (the only Swahili-language national newspaper)—radio is the most popular medium, as in many African countries. More than 115 radio stations reach 93 percent of Kenyans in their mother tongues as well as in the official languages of Swahili and English, according to news reports citing research company Ipsos Synovate. Television is largely concentrated in the main cities due to a lack of electricity in rural areas.

The state-owned and -controlled Kenya Broadcasting Corporation broadcasts nationally and operates two TV channels, more than a dozen radio services in English, Swahili and other local languages, and numerous regional newspapers.

China has also invested heavily in Kenya’s media, to build influence and counter a perceived negative bias toward both China and Africa from Western news outlets. In January 2012, the first African news hub of state-owned China Central Television (CCTV) was launched in Kenya; *China Daily Africa*, a weekly version of the country’s leading English-language

paper, started in December the same year; and China Radio International has an AM station covering all of Kenya. China's news agency Xinhua has also formed partnerships with Kenya's local press. The impact on Kenyan audiences of all this Chinese investment is not clear, and the authoritarian country is hardly a model for press freedom. One local reporter for CCTV, who asked not to be identified for fear of repercussions, told CPJ that critical reporting on China, such as the country's demand for ivory that fuels Kenya's wildlife poaching crisis, would not be aired.

Low-cost Internet access, facilitated by undersea fiber-optic cables, has enabled significant information and communications technology innovation in Kenya, notably the M-pesa mobile payment system and Ushahidi, which began as a crowd-mapping platform during deadly violence that followed the December 2007 elections.

Between 2002 and 2010, Kenya's exports of technology-related services grew from \$16 million to \$360 million, according to news reports, and government support for the sector has assisted its growth.

Yet the technological advances have not brought greater access to objective or critical news. The government intrudes into newsgathering and dissemination and the concentration of ownership across media platforms adversely affects press freedom and diversity.

Many politicians have invested in media ownership, independent media and development researcher Othieno Nyanjom told CPJ. Preoccupied with converting broadcasters from analogue signals to higher quality and more efficient digital transmission, the Communications Authority of Kenya has failed to sufficiently regulate the allocation and use of frequencies, leading to the continued dominance of a handful of big media companies over other outlets, Nyanjom said.

Where do Kenyans get their news?



Source: Afrobarometer

The majority of Kenyans (88 percent) receive their news from radio, followed by television (54 percent), newspapers (39 percent) and the Internet (17 percent), according to Afrobarometer, an independent public survey group. Note that percentages add up to greater than 100%

The family of President Kenyatta himself has an indirect controlling stake in Mediamax, which in recent years bought up once-feisty outlets such as Mombasa-based Pili-Pili FM and the private Swahili-language station Milele FM. Listenership for Milele FM steadily declined after the popular independent station changed ownership, according to data from the Kenya Audience Research Foundation, with 3.3 million listeners at the end of 2014 compared with 4.9 million in the first quarter of 2013. Milele FM head Jerry Obege said the station has changed its focus to cater more to the middle class, as opposed to its formerly more diverse audience, but he said its editorial tone has not changed since Mediamax's purchase. Pili-Pili FM's news head Tina Masika likewise said her station has maintained the same editorial stance despite changing ownership.

The media industry offers opportunities for "self-enrichment, motivated by potential commercial returns or likely political harvest," the independent researcher Nyanjom wrote in a 2012 Internews study on media ownership. Nyanjom cited extensive ownership of radio stations by politicians; Kenyan government's control of the Kenya News Agency; ease of "access to State House" facilitated by the Aga Khan's majority stake in the Nation Media Group; and former President Daniel arap Moi's influence in the Standard Group.

Another factor limiting press freedom, according to Kenyan journalists and commentators who spoke with CPJ, is the power of advertisers to quash stories that may reflect negatively on them.

According to the Standard Group's David Ohito, major corporations can plant stories, influence editorial decisions, and even ask that stories be spiked. "You will now see things I never saw in my first decade of journalism—a group of CEOs walking into the editor's office," he said. "That sort of formalizing intimidation of newsrooms has become normal."

One investigative journalist, who asked not to be named, alleged that three of Kenya's top companies—Safaricom, Kenya Airways, and Equity Bank—are "untouchable" and can influence print or broadcast content with a phone call. All three companies denied interfering with editorial policies. "We have a healthy respect for the robust media in the region and, as a policy, never use our leverage as a big advertiser in this market to influence editorial decisions," Safaricom Corporate Affairs Director Stephen Chege told CPJ. Spokespeople for Kenya Airways and Equity Bank denied that the companies interfere with editorial content but declined to be named.

The government has also exerted its muscle: "We remain a society where the government is still the dominant player, the biggest advertiser, and wields control through this influence," freelance journalist and *Nation* columnist Murithi Mutiga said.

In July 2014, the government even told a press conference that all advertising for state agencies would be channelled away from print publications to online platforms, in line with digital migration generally, and "nothing to do with squeezing the industry or stifling the media," according to Information Secretary Ezekiel Mutua, but it has not followed up on the threat.

After journalist Mark Kapchanga published a *Standard* story alleging excessive expenditure for a presidential retreat in March 2014, editors were summoned to State House, where a communications officer reminded them of the government's 70 million Kenyan shilling (US\$723,500) advertising deal and said the revenue would continue so long as the paper published an apology, four journalists familiar with the episode told CPJ. The newspaper published an apology for allegedly inflating the cost of the retreat, despite a consensus in the

newsroom that the story was accurate, according to two of the journalists. The *Standard* subsequently fired Kapchanga and Managing Editor Chacha Mwita, news reports said. CPJ's requests for comment to two *Standard* editors were declined, and Chief Executive Sam Shollei of the Standard Group did not reply to an email or phone calls.



A cell phone shop in the Kibera slum in Nairobi. Despite the country's advances in technology Kenyans do not have greater access to objective news. (AP/Khalil Senosi)

Mutua denied allegations that the government threatened to withdraw *Standard* advertising. "Uhuru Kenyatta's government is not interested in those old tactics—blackmailing the media to toe the line," Mutua said. "If decisions are made for advertising, that is the decision of the guy in charge of procurement, it is not State House."

Meanwhile, the stake that many current and former politicians have in the media, and the proximity to power of other media owners who are members of the country's elite, increase the risk that owners may use the media "to advance their own commercial and political agendas," cautioned the Kenya Media Policy Centre in its 2014 report.

As an example, Makokha described how, for a time, there was an agreement that former President Moi would not interfere in editorial content—but then he was angered by a pair of stories alleging that he had taken bribes. “As the walls of civility quickly came down, the political preferences of the Moi family would be divined by editors almost like a seer would, and taken care of,” Makokha told CPJ.

Within newsrooms, deference to power sometimes influences what gets published or broadcast, wrote Boni Odinga of Internews in 2013. “In my career as a TV journalist, for example, I knew who not to give prominence to in my stories, how to treat stories from the owner[s] and generally who the untouchables were, and that it was my duty to know that any information adversely affecting them would invariably affect me.”

Ethnic bias can also influence news coverage, Mutiga said. “Journalists with ethnic affiliations have a horse in the race—they support someone because of kinship ties, and you don’t get independent reportage,” he said. Such biases can also influence how news is read and received, he said. “People look at someone’s second name and then can tell which ethnic group they’re from. Then they assume they can predict what you will say.”



Q radio presenters during a broadcast in March 2015. The station is owned by Nation Media Group, one of the ‘big five’ privately owned Kenyan news outlets. (AFP/Simon Maina)

Njeri Wangari, director of programs at the Bloggers Association of Kenya, asserted that online journalists increasingly provide stories not covered by the mainstream press. “Many Kenyans no longer think that media houses are giving them accurate coverage of news and stories, especially on governance, corruption and anything that might paint the current government in a bad light,” Wangari said. She pointed to an incident in which two members of parliament insulted attendants at a weighbridge who had refused to process their vehicle because it lacked proper credentials. An officer who filmed the scene with his mobile phone sent the video not to the mainstream media but to bloggers, and it was widely shared.

“Trust has dissipated, as many view the mainstream media as co-opted and owned by the government,” said Shitemi Khamadi, managing editor of the citizen journalism news site *Kenya Monitor*. But as Internet journalism has grown, so has the government’s desire to control it. “We are seeing a deliberate attempt to dissuade dissident voices online,” Khamadi said. “Any time you have someone speaking out against the government or corruption on social media, there’s intimidation, and when intimidation fails, there’s outright arrest and jailing.”

In other cases, government supporters counter criticism via social media by waging a virtual war against government detractors. “There are many other bloggers out there, some on the state’s payroll, who spend all their time and energy hurling similar insults at opposition leader Raila Odinga,” wrote *Nation* special projects managing editor and columnist Macharia Gaitho.

Kenya’s senior director for digital innovation, Dennis Itumbi, denied that the government hires bloggers to criticize politicians, but he said it does react to negative narratives found on social media by providing factual rebuttals.

In Kenya’s nascent democratic era, the Media Council of Kenya (MCK) is responsible for self-regulation of media content, while the Communications Authority of Kenya regulates the country’s communications sector.

The MCK is funded by the government and by membership fees for local and foreign journalists of 2,000 Kenyan Shillings (US\$24) and 10,000 Kenyan Shillings (US\$120) per year, respectively. In addition to accrediting local and foreign journalists, the MCK espouses a commitment to “promote and protect the freedom and independence of the media” and regulate “media and the conduct and discipline of journalists.”



A Kenyan listens to the latest election results on a radio in 2013. More than 115 stations broadcast across the country. (Reuters/Siegfried Modola)

Officially, journalists must have a license from the MCK before they can practice, “certifying their competence, authority or credibility against official standards based on the quality and training of journalists in Kenya. ...” Because the accreditation process is fairly new—it began in 2009—and not stringently enforced, some journalists have not yet applied or been approved, MCK Deputy Chief Executive Victor Bwire told CPJ. Bwire said the major Kenyan and foreign media houses pay for their journalists’ accreditation across the country in lump sums. “Official functions require the council’s accreditation, so most journalists comply,” he said.

Most Kenyan journalists who spoke to CPJ did not voice objections to the accreditation process except for when it was used arbitrarily by officials to exclude reporters. Indeed, according to CPJ research, such provisions run counter to best democratic practices because they are open to abuse. In 1985, while examining a case in Costa Rica, the Inter-American Court of Human Rights found that giving licenses to some journalists and denying them to others deprived individuals of "the full use of the mass media as a means of expressing themselves or imparting information."

“There has been more and more political interference [toward journalists] since 2013,” freelance investigative journalist Argwings Odera told CPJ. “Previously, I needed just one accreditation—either from a media house or the Kenya Union of Journalists or from the Foreign Correspondents Association, but now for me to practice as a journalist, [the] government must register me.”

Kenya’s 2010 constitution obliges the national government to pass new legislation to ensure that the country’s laws affecting media are in keeping with the principles of freedom of expression and media freedom. But as of June 2015, those media-related laws that have been introduced have had the opposite effect.

2. Media contend with lawsuits, restrictive bills, legal limbo

Instead of passing new legislation in keeping with the new constitution's guarantees for freedom of the press, the government has introduced a series of laws that undermine self-regulation and allow for harsh fines and even jail terms for journalists who commit perceived transgressions.



Local papers report on the Garissa college massacre in April. Under proposed media laws, journalists may face fines for showing victims of attacks without police permission. (AFP/Carl de Souza)

“We have a hostile ministry, a hostile regulator, a hostile presidency and a hostile national assembly that seeks to block the media through separate pieces of legislation,” said the Standard Group’s Ohito.

Several of the laws have stalled or been tied up in court since being challenged by the Kenya Editors Guild, the Kenya Union of Journalists, and the Kenya Correspondents Association. Nonetheless, CPJ found that the mere threat of punitive action and the uncertainty surrounding the laws' implementation is enough to make journalists pause before airing or publishing sensitive stories.

The most troubling legislation is a pair of laws that sailed through Parliament in just half an hour in December 2013, despite widespread protests. Press freedom groups criticized the Media Council Act for imposing a statutory code of conduct; journalists could be removed from the register and lose the right to work for not following such vague prescriptions as "sticking to the issues." Journalists are also, for example, not allowed to "encourage or glorify social evils, warlike activities, ethnic, racial or religious hostilities."

"The code of ethics is our [the Media Council of Kenya's] problem. It shouldn't be part of the law," said Victor Bwire, the council's deputy chief executive.

The same groups opposed the Kenya Information and Communications (Amendment) Act, 2013 (known as KICA) because it undermined the process of self-regulation by creating a government-appointed Communications and Multimedia Appeals Tribunal answerable to the state-controlled regulator, the Communications Authority of Kenya. Under the act, the tribunal could impose hefty fines on individual journalists (500,000 Kenyan shillings or US\$5,500) and media companies (20 million shillings or US\$230,000) for breaching the code of conduct.

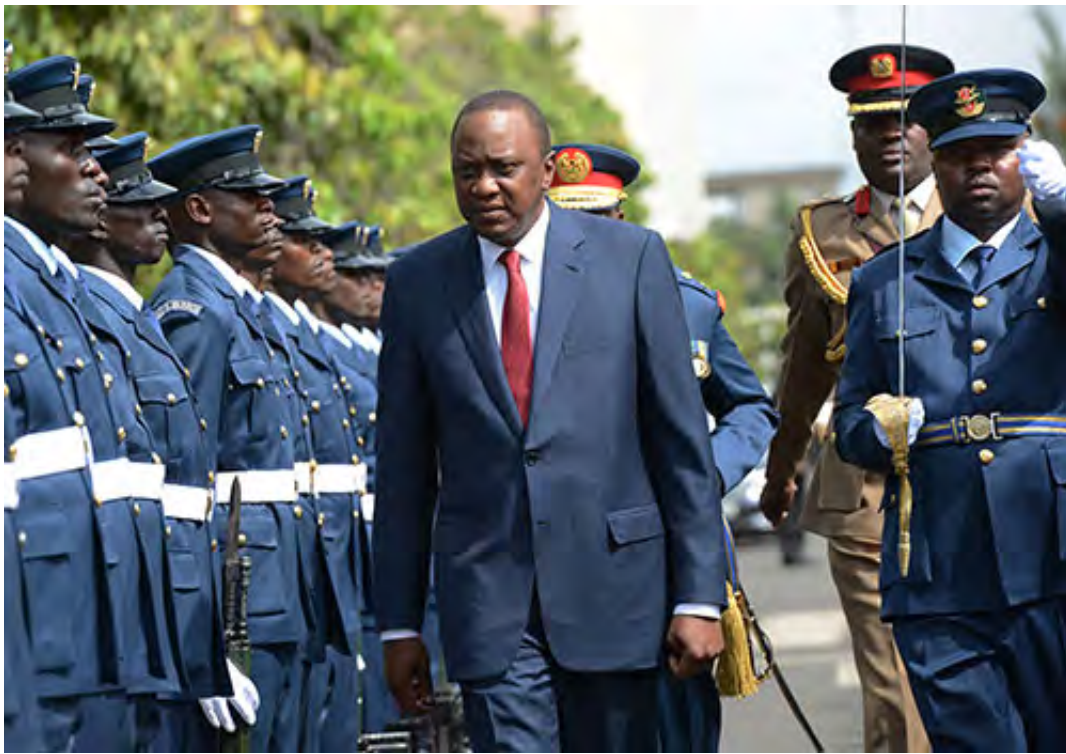
Members of the Media Council of Kenya are chosen by a selection panel nominated through an "industry driven ... and participatory process," provided for in the law, while the cabinet secretary has the power to select members of the Communications Authority and thus exert direct government influence over the appeals tribunal.

Thanks to the challenge by journalists' groups, the high court suspended the laws in February 2014, according to news reports. They remain tied up in court 15 months later.

In the meantime, more than a dozen other laws on the books are at odds with the constitutional guarantee of media freedom, according to the Media Council's Bwire. Citing the Kenya Defence Forces Act, the Police Act, and the Official Secrets Act, all of which conflict with the new constitution, he said such laws should be consolidated, abolished, or improved upon. For instance, the Official Secrets Act, prohibits the possession or dissemination of official information despite Article 35 of the constitution allowing public access to information, Bwire said.

Criminal defamation also remains on Kenya's statutes, despite a call by the African Commission on Human and People's Rights' special rapporteur on freedom of expression and access to information and by the Pan-African Parliament's 2013 Midrand Declaration in support of the Table Mountain Declaration, which calls for libel and insult laws to be abolished.

The executive branch under Uhuru Kenyatta has been particularly litigious. Before his election, Kenyatta, who is listed by *Forbes* magazine as among Africa's 40 richest, had filed more lawsuits against the press than any other public figure, veteran media defense lawyer Paul Muite told CPJ. An executive at one prominent news outlet told CPJ that legal challenges became so taxing that the outlet curtailed critical stories about the president. "No-go zones include personal criticism of Uhuru Kenyatta and land issues," the executive said.



President Uhuru Kenyatta arrives at parliament in March 2015. His rule has been described as hostile to press freedom, local journalists say. (AFP/Simon Maina)

The private daily *Star* has faced more than 100 lawsuits since the daily was launched in July 2007, legal officer Linda Musita told CPJ. “Ultimately we are caught between avoiding costly lawsuits that eat into the *Star*’s profits and telling Kenyans the truth,” Musita said. “Lawsuits affect the ability to report freely.”

Accusations of insult and defamation can reach beyond large news outlets to social media users. In January 2015, police arrested former Mt. Kenya University student Nancy Mbindalah for five Facebook entries that criticized Embu County Governor Martin Wambora, according to news reports. Questioning the lack of water in a local hospital and the governor’s county-tendering process was viewed as a criminal offense and Mbindalah was jailed for nearly four days before being released on 30,000 Kenyan Shillings (US\$313) bail. She was eventually pardoned by the governor, reports said.

A law passed in 2012, the National Intelligence Surveillance Act, makes it illegal for journalists to handle classified information and allows for fines of up to five million Kenyan shillings (US\$51,000) and five years in prison. The law gives the Intelligence Service wide latitude to determine what can be considered classified, said *Standard* journalist Juma

Kwayera.

At the end of 2014 came another troubling piece of legislation: an amendment to the Security Laws Bill, which would impose a fine of five million Kenyan Shillings (US\$50,540) or three years in jail, or both, for journalists whose stories are “deemed to undermine terror investigations, [and] a similar fine for media which publish pictures of terror victims without the permission of the police,” according to news reports. Parliament passed the legislation in December, but in February Kenya’s constitutional court threw out sections of the bill, including clauses that restricted the media from publishing material “likely to cause fear or alarm,” news reports said.

The raft of restrictive legislation appears to be a defensive reaction to critical local and foreign coverage of Kenya’s security operations, particularly in response to large terrorist attacks. The press has routinely characterized government counter-terrorism operations as slow and mismanaged or otherwise botched—from the September 2013 attack on the popular Nairobi shopping center Westgate to the April 2015 attack on students at northeastern Garissa University, both of which resulted in scores of civilian deaths and both of which were carried out by Al-Shabaab militants.

Another bill, the draft Parliamentary Powers and Privileges Bill 2014, has not yet come before lawmakers, but the draft law would restrict the media’s access to covering the legislature, according to the Kenya Union of Journalists. The media would be “at the mercy of the Speaker or the chairpersons of committees to access information or transmit proceedings in the august House or the committees,” the KUJ said in a statement.

“Denying the public access to information and oversight of the parliament is an affront to this country’s hard-earned democracy,” the chair of the Kenya Correspondents Association, William Oloo Janak, said.



Police arrest a protester at a rally against proposed security laws which threaten fines and jail over reports deemed to 'undermine terror investigations.' (AFP/Simon Maina)

The 2014 Public Audit Bill is also still under discussion, and despite a constitutional commitment to transparency, contains a provision that would prohibit access to audits that might “unduly jeopardize state security.” Spending on military, intelligence, and police services would not be open to public scrutiny, according to news reports, and security expenditure would only be shared with the president and a select parliamentary committee, which would effectively preclude outside review of potential misuse of funds, the *Standard's* Kwayera said. “Stories concerning misappropriated spending on substandard jet fighters, armoured personnel carriers and military boots for the Kenya forces fighting in Somalia will not reach the light of day,” Kwayera told CPJ, referring to recent news stories.

The bill is troubling to Sheila Masinde, research and learning manager with Transparency International, because the auditor-general's reports are the best way to track expenditure, she said. “Sometimes one may officially request information from a public authority but get a flat-out refusal,” she said.

“The media is key for us in highlighting and exposing the devastating effects of corruption and giving citizens information to fight it,” Masinde said.

For example, some media outlets questioned the cryptic bidding process that resulted in the awarding of a tender to build a standard-gauge railway from Mombasa to Nairobi—the biggest investment in Kenya’s history, according to *Foreign Policy*—to a Chinese company, China Road and Bridge Corporation, after the World Bank had blacklisted the company from projects it finances for eight years for participating in graft. Yet the local press remained largely silent after the government contracted with the same company to start building another major project, the Lamu port and oil refinery, estimated to cost US\$23 billion.

“Kenya seems to have a large corpus of good, discerning journalists but unfortunately they are sometimes part of the cover up—through co-option, self-censorship or fear, especially in relation to big stories with big actors involved,” said Makokha, who is now working as a media consultant.

Increasingly, bloggers are taking the lead in publishing information on corruption, and need greater protections, Masinde said.

Press freedom advocates aren’t the only ones alarmed by the legislation that would restrict transparency: Kenya’s auditor general, Edward Ouko, has criticized sections of the Public Audit bill, saying it is a threat to the “functional independence” of his office and contradictory to “international auditing best practices,” according to news reports.

In the meantime, the disputed Media Council Act and KICA have undermined the country’s media regulator, according to Janak. “The Media Council is grinding to a halt; it cannot operate at optimal capacity,” he told CPJ, adding that the legal uncertainty has stalled the nomination of new members to the council.

As long as the future of this tangle of legislation is unclear, news outlets may be wary of pushing the boundaries. One example came in July 2014, when television channels chose not to cover a rally of around 10,000 people led by the opposition Coalition for Reforms and Democracy (CORD) calling for a national dialogue on security and ethnic tensions, according to news reports. The demonstration in Nairobi was the culmination of a series of events in which CORD criticized the Jubilee coalition government’s poor record on security and the high cost of living, according to news reports.



A police officer responds to a mass shooting in Nairobi's Westgate Shopping Center in September 2013. In the aftermath of the shooting, the government is trying to restrict reporting on terror attacks. (Reuters/Siegfried Modola)

Given the media's intensive coverage of CORD's previous rallies, "Kenyans were expecting to watch the CORD rally live on television," said a report by the Institute for War & Peace Reporting and Capital FM. The report pointed out that CORD's leader, former Prime Minister Raila Odinga, had addressed in May a similar rally in the same venue, which was aired "live on five channels, including the government broadcaster."

However, the day before the Nairobi event, the Communications Authority of Kenya issued a statement reminding broadcasters that constitutional guarantees of freedom of expression do not extend to "hate speech, propaganda for war, incitement to violence, advocacy of hatred that ... constitutes ethnic incitement," news reports said. Editors of Kenya's four major TV channels met and agreed not to broadcast the rally due to "fears that politicians might make inflammatory comments or incite supporters to violence," according to the report by Institute for War and Peace Reporting and Capital FM.

The compliance of media houses disillusioned many Kenyans, Janak said. It was “a wrong decision” and amounted to self-censorship, a senior editor at Kenya's Nation Media Group, Macharia Gaitho, told the Institute for War & Peace Reporting. "It is the right of editors to make decisions, but they also have to check the news value of something. In this case, I don't think anything else could have been more newsworthy than that rally," Gaitho said.

Concerns over media independence in Kenya have seeped into regulatory processes that usually would be considered issues of business or technology. The lead-up to Kenya's migration from analogue to digital television broadcasting, scheduled for June 2015 but not completed, has been particularly fraught following a regulatory decision to award two signal distribution licences to the Chinese-owned Pan Africa Network Group (PANG) and to Signet, a subsidiary of Kenya's state broadcaster, according to news reports. In a series of legal battles, including a case before the Supreme Court, the country's three leading television owners, the Standard Group, Nation Media Group, and Royal Media, fought to gain a signal distribution license. The three argued that the award of licences to the Chinese and state companies carried the risk that the private broadcasters' content would be controlled by companies loyal to the government, endangering the free flow of information. In September 2014, the Supreme Court ruled in their favour, cancelling PANG's licence; ordered the then-regulator, Communications Commission of Kenya, to be reconstituted as the Communications Authority of Kenya; and directing the Communications Authority to reopen discussions with the three media houses on digital migration and additional signal distribution licensing, according to legal commentator Wachira Maina.

Maina, a constitutional lawyer, expressed his concern that although the Supreme Court ruled in favor of the private broadcasters, its judgment showed a “shallow” understanding of media freedom and the need to ensure a truly independent regulatory authority. “Kenya does not have a history where a body not independent of government ever applied fair procedures,” wrote Maina. “Kenyans know from bitter experience that a mere declaration that procedures are fair guarantees nothing about a fair decision if the judicial officer is a lackey of the powers that be.”

Sidebar: Press phobia

By Argwings Odera

Journalists with foreign media credentials are finding it increasingly difficult to gain accreditation for covering events involving President Uhuru Kenyatta.

The Jubilee Alliance, which ascended to power in March 2013 under Kenyatta and his running mate, William Ruto, accused foreign journalists early on of expecting a gory repeat of the 2007 post-election violence that left more than 1,000 dead and landed Kenyatta and Ruto in the International Criminals Court (ICC) at The Hague. (Charges against Kenyatta were eventually dropped, but Ruto is still under investigation).

I experienced the administration's reticence firsthand in July 2014, while freelancing in Kisumu city. Armed with my press card, I was on my way to cover a seemingly innocuous event—the town's July trade fair, known as the Kisumu Agricultural Society of Kenya Show, in which lettuce and bovines are annually showcased.

Normally, officials beg and even pay journalists to cover such mundane annual events. But that was not the case with the 2014 Kisumu fair. There was speculation that the president would preside over the function's August opening, and show officials were nervous. The previous day's *Standard* newspaper bore the headline: "Kisumu Youth Urge Uhuru to Visit Kisumu During ASK Show." If the president graced the occasion, he faced the potential for a less-than-friendly reception in the opposition party stronghold, and judging from the security preparations, it appeared he would make a defiant entry into the lakeside town. Security bordered on the absurd, with mass stop-and-search operations throughout the poorer settlements.

When a show official scrutinized my credentials at length, I assumed he was searching for a reason to deny me a pass. Eventually, he said that I did not have a credential from the Kisumu County director of information, despite the fact that aside from journalism associations, only the Media Council of Kenya is legally mandated to accredit journalists.

The then-secretary general of the Kenya Union of Journalists, Jared Obuya, intervened, only to be told that the county director of information would veto any journalist wishing to cover the event - a claim that was undermined by the fact that there was no county director of information. In the end, the president was a no-show, anyway.

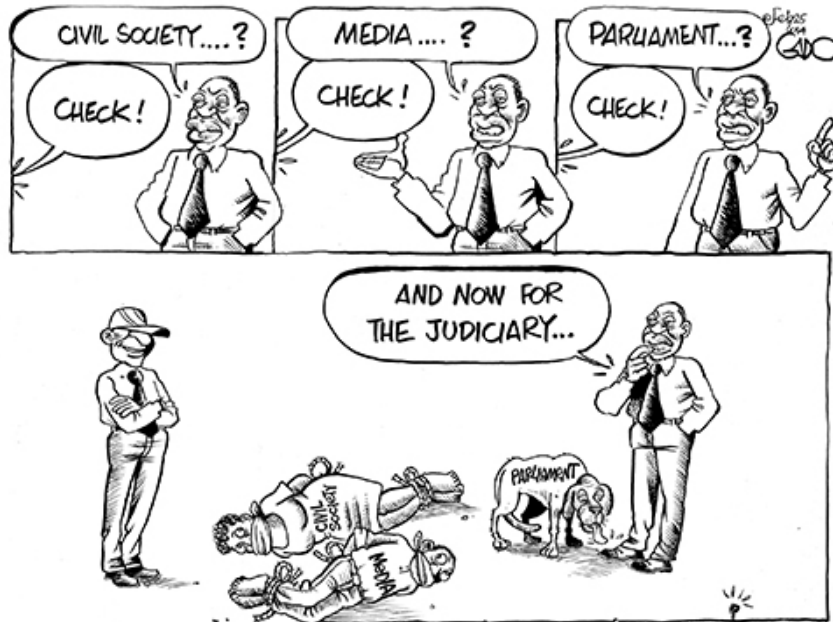
Argwings Odera is a freelance investigative journalist based in Nairobi.

Cartoon gallery

Corruption, the government, and press freedom are frequent subjects for Godfrey "Gado" Mwampembwa, a political cartoonist in East and Central Africa. Gado, whose work appears in *The Nation* and other Kenyan and international newspapers, shares a selection of cartoons on the 2013 Kenyan election and problems facing the country's press.



Kenyan cartoonist Gado shows the presidential car propped up on claims of corruption and incompetence leveled at the Jubilee coalition since it took power in 2013. Instead of addressing problems such as graft, the party's leadership is shown blaming the media in this December 2014 cartoon.



In this February 2014 cartoon Gado shows the Jubilee coalition stifling potential critics, with figures representing civil society and the media shown bound and gagged at the leadership's feet. Since coming to power, the party has passed restrictive legislation to silence the press.



In this June 2013 cartoon Gado shows the press, represented as a dog, burying its head in the sand over allegations of malpractice by the Independent Electoral Boundaries Commission during the election, and then acting as a lapdog to President Uhuru Kenyatta and Deputy President William Ruto, shown in shackles in a nod to the ICC charges.



In this March 2013 cartoon Gado shows how social media can be used to further inflame ethnic tensions, which often increase around election time. The government has routinely pledged to crackdown on those using social media platforms to spread hate speech.



Attempts by the government to muzzle the press through repressive laws is illustrated in this November 2013 cartoon. Gado created it after parliament attempted to enact a series of anti-press laws.



In this September 2014 cartoon Gado illustrates the news agenda of local and international media, who appear to be uninterested in covering more remote areas of the country such as northeastern Manderla county.

3. Critical journalists silenced by threats of arrest or violence

Harassment of the press from official quarters does not begin or end with the passage of troublesome legislation. Journalists say they are routinely threatened, intimidated, and even attacked, and that government authorities are the culprit more often than not.

According to research by CPJ and the Media Council of Kenya, there were an estimated 19 cases of threats or attacks against the press between January and May 2015, almost one a week, and all but three involved police or other state officials, including members of county assemblies.

What's more, the attacks take place in a climate of almost total impunity, with few officials ever held to account.

"Journalists have been exposed for a very long time," said former Nation Media Group editorial director Wangethi Mwangi. "There is hardly any mechanism to give journalists the comfort they need when they are out in the field."

A 2013 survey by the Kenya Media Programme polled 282 journalists across the country and found that the media is regularly induced to self-censor on crucial issues such as politics, corruption, and land.

More threats against the press are made over the phone than by any other means, according to the survey. "Repeated threats over the phone can really silence a journalist, since you never know when the caller may act on that threat," said freelance journalist Robert Wanjala, who formerly contributed to the regional independent *Mirror Weekly* in Eldoret in the Rift Valley in Western Kenya.

Wanjala is familiar with one rare case where death threats directly preceded a journalist's murder.

John Kituyi was the editor and publisher of the *Mirror Weekly*; he was killed on April 30, 2015, when unknown assailants on a motorcycle attacked him as he was walking home from work in the evening. They hit Kituyi repeatedly with a blunt object and seized his phone, but did not take his money or his watch, according to news reports and the journalist's family members and local journalists who spoke to CPJ.

“John received phone threats countless times throughout his career to the point he grew numb to them,” his brother, David Wabwile, told CPJ. “But on April 28 he had confided to me that he was scared and was considering leaving Kenya altogether.”



A news stand in Nairobi. Between January and May 2015, at least 19 threats or attacks against journalists were recorded. (AFP/Tony Karumba)

Two local journalists in Eldoret are still investigating the motive for the murder, but they told CPJ they suspect it is linked to Kituyi’s reporting into the International Criminal Court case against Deputy President William Ruto. The ICC has accused Ruto, whose hometown is Eldoret, of crimes against humanity relating to the ethnic violence following the December 2007 elections, which resulted in more than 1,000 deaths and the displacement of hundreds

of thousands of people. Ruto denies the charges. (A similar case against President Kenyatta was withdrawn in late 2014 for lack of evidence; the prosecutor accused the Kenyan government of harassing witnesses.)

A week before his death, the *Mirror Weekly* published a story headlined “Now ICC plot to jail Ruto,” that described the latest developments in the ICC case against the deputy president. Furthermore, “[Kituyi] was compiling information on an ICC witness who had disappeared and had planned to release the story in the next edition,” Wanjala told CPJ. The next edition was never published.

Asked for comment, a spokesman for Ruto, David Mugonyi, dismissed claims of a connection between Kituyi’s death and his reporting on the ICC case. “I doubt the journalists’ ability to investigate [Kituyi’s] death. This is the province of the police and the journalists cannot purport to claim they know the reason or motive,” he told CPJ. “Mainstream newspapers, which have a huge circulation, publish all manner of stories day in day out on the ICC and the deputy president, they are free to do so. Nothing happens to them.”

Since the ICC process began in 2010, CPJ has helped three journalists relocate from the Rift Valley area because they feared attack for their coverage of the case.

Kituyi’s murder was the first one CPJ has confirmed as directly related to a Kenyan journalist’s work since 2009, when the body of Francis Nyaruri, a reporter for the privately owned *Weekly Citizen* in Nyanza Province, was found decapitated and bearing marks of torture in a forest. (Another journalist, Bernard Wesonga, died in suspicious circumstances in 2013, but CPJ has been unable to confirm a link with his work.)



Josephine Nyaruri, above, says no arrests have been made in the murder of her husband, Francis, a reporter killed in 2009. (CPJ/Tom Rhodes)

Nyaruri had written stories accusing top police officers of fraud in a construction project, according to the *Weekly Citizen*. Local journalists told CPJ at the time that individuals had threatened him in response to the articles. A CPJ investigation, which included a review of law enforcement documents and interviews with people involved in the case, found evidence that senior officials engaged in a large-scale effort to obstruct the investigation into Nyaruri's murder. No one has been convicted for the crime, and the case is at a standstill, according to Nyaruri's widow, Josephine, who has consistently attended court hearings.

Nyaruri's murder came against the backdrop of what the United Nations in 2009 called "systematic, widespread and carefully planned" extrajudicial killings by police—a topic that can also lead to trouble for investigative journalists.

John-Allan Namu and Mohammed Ali head an award-winning team for the privately owned broadcaster KTN that has covered suspected extrajudicial police killings as well as other sensitive security issues like the response to terror attacks on Westgate Mall in 2013 and in the coastal town of Mpeketoni in 2014. Their pieces, aired in Swahili as "Jecho Pivu" and in English as "The Inside Story," have routinely resulted in threats—both anonymous death

threats via social media or text message and direct confrontations, such as when Kenya's inspector general of police singled them out at an October 2014 press conference, saying authorities would “come for you, we will deal with you firmly.”

According to Ali, he went into temporary hiding in December 2014, after receiving death threats for his involvement in producing an Al-Jazeera documentary that focused on alleged extrajudicial killings by Kenyan police.



Friends and family gather for the funeral of Bernard Wesonga in April 2013. The journalist died in suspicious circumstances in 2013, but CPJ has not been able to confirm a link to his work. (CPJ/Tom Rhodes)

Namu and Ali told CPJ that most of the threats they receive via social media result from their having cast the government in a negative light, and not because the commenters are questioning the facts presented. Nonetheless, KTN eventually took its investigative pieces on terrorism off YouTube in response to pressure from government authorities and from their supporters on social media, Namu claimed. CPJ’s calls and emails to two editors at KTN and the chief executive of the Standard Group, which owns the station, were not answered. Namu said his team has become “more choosy” about which topics it covers.

Such circumspection ultimately leads to Kenyans being deprived of important information about their own country. Security failures were at the heart of an investigation by K24 journalist Purity Mwambia, who attempted a daring feature for a TV segment called “Bweta la Uhalifu” (Signs of Crime). As part of her research, Mwambia said she acquired explosives and transported them from Garissa, in northeast Kenya, to Nairobi (about 228 miles or 336km), passing through more than a dozen police stations and checkpoints without any officer noticing the material, she said.

“My objective was to expose the loopholes in our security system, something that desperately needs attention given all the terrorist attacks Kenya has faced of late,” Mwambia told CPJ. But the day the piece was scheduled to run, April 27, 2015, officials with Kenya’s anti-terror police summoned her to their headquarters, according to a letter of summons reviewed by CPJ. She was questioned for four hours and threatened with arrest on charges of treason if the piece aired, she said. She noted that she was not charged for smuggling explosives. The piece has not been broadcast, and Mwambia went into hiding due to fears that she was being monitored by disgruntled officers, she told CPJ. Mwambia’s colleague, cameraman Francis Mwangi, told CPJ he had similar fears about police surveillance and also went into hiding.

In northern Kenya close to the border with Somalia, journalists trying to cover security are sometimes squeezed between pressure from Al-Shabaab militants and local Kenyan officials vying for control of the news narrative. Investigative journalist Noor Ali, who covers the area, said authorities warned journalists in March to be “patriotic” and to refrain from reporting increased youth recruitment by Al-Shabaab, despite the need for local officials and society to address the problem. Star FM journalist Hussein Salesa said journalists fear the kinds of deadly reprisals witnessed in neighboring Somalia, where dozens of journalists have been murdered. According to CPJ research, the situation conforms to a global trend in which journalists face pressure both from suspected terrorist groups and from authorities whose job is to protect against terrorism.

Another sensitive issue with potential to go underreported, journalists say, is land, a hotly contested topic for more than half a century, according to analysts. Kenya’s first president, Jomo Kenyatta, used land grants as political patronage, writes academic Kathleen

Klaus. Injustices in land allocation “have been a recurring factor in outbreaks of violence,” particularly when politicians seek electoral support from the communities involved, according to freelance journalist Wanja Gathu. The violence that erupted after the 2007 elections partly reflected tensions over land access, according to a report by the Kenyan Truth, Justice and Reconciliation Commission.

Furthermore, investment in land is a lucrative business, with the average price in 2014 more than five times the price seven years earlier, according to the local Hass Property Index. News reports have alleged illegal acquisitions by politicians and powerful business interests. And the Switzerland-based Internal Displacement Monitoring Centre has reported that thousands of people from the coastal region face displacement and forced evictions due to land grabs.



Jomo Kenyatta celebrates Kenya’s newly found independence with Prince Philip at a ceremony in December 1963. Land grants issued by Kenyatta after independence continue to be a sensitive issue. (AFP)

“If the media refrains from addressing land issues,” photojournalist and activist Boniface Mwangi said, “then land grabbing and corruption by individuals in government and others will continue as they have done since independence, at the expense of [the] populace.” But if

the media refrains, it is perhaps for good reason.

On March 22, three unknown assailants bundled into a car *Standard* reporter Michael Olinga as he was walking home from watching a soccer match, he told CPJ. In the car, the kidnapers, two men and one woman, questioned his reporting on land allegedly stolen from a public school in Uasin Gishu County, in western Kenya. Olinga believes he was drugged because he later awoke lying on the floor of an empty room. “They kept me from Sunday until Tuesday morning. I have no idea what happened on Monday,” he said. “I have avoided covering land stories since then.” The assailants took Olinga’s phone and wallet, but he is convinced the attack was an act of intimidation to keep him silent, not a robbery.

In May, an opposition party chairman accused of land-grabbing in the western town of Gilgil was captured on camera firing a gun at journalists who attempted to report on the matter, according to news reports. A court charged the politician with attempted murder and incitement of violence in late May.

However, journalists say that action against perpetrators of anti-press violence is not the norm, and many consider reporting them to be a futile exercise. In 38 percent of cases, the KMP survey found, journalists do not report the threats they have faced.

To date, no action has been taken against the paramilitary police who beat journalists Nehemiah Okwembah and Reuben Ogachi when they tried to cover the corruption case involving cattle in Tana River County, even though they filed a police statement and the attack was caught on camera.

Instead, Okwembah said, he believes individuals have since been following him. “I think that some forces are working hard to stop us from pursuing justice in court,” he told CPJ. “So now I stay at home and take taxis when needed; I do not want to appear in public.”



Newspapers reporting on the ICC dropping charges against President Kenyatta are sold in a Nairobi street in 2014. Journalists working outside the city are more vulnerable to attacks and harassment. (AFP/Simon Maina)

For some journalists, particularly those outside of Nairobi who operate under informal employment arrangements, the problem of harassment and attacks is exacerbated by the negligible support received from media houses.

Janak, chairman of the Kenya Correspondents Association, said the lack of infrastructural or financial support for correspondents, who are essentially treated as freelancers, makes them particularly vulnerable to threats and bribes. “Despite producing 70 percent of the daily news content, Kenyan correspondents working for media houses receive no contracts, no benefits,” he told CPJ.

“They are hired by phone and fired by phone,” said Kenya Union of Journalists Secretary-General Erick Oduor, and are paid only when their stories are used. Therefore, when officials offer to pay correspondents’ travel costs or provide transportation to press conferences, the journalists typically accept, compromising their ability to report critically about the officials, he said.

According to Mwangi, politicians in some cases are co-opting journalists, editors, and media owners at both the national and county level. StandardGroup's digital content editor Ohito said the paying of journalists by officials has created animosity and distrust within the press corps, pitting those who support the government against those who remain independent and critical.

“Many county governments have communications divisions that pay certain journalists monthly ‘compensation,’” said veteran journalist and former chief editor of the *Star* Catherine Gicheru. She added that while government officials deny the existence of any such arrangements, the results can be seen in the superficial nature of some reports.

In one example of a close relationship between journalists and authorities—albeit one that may not have protected the journalist from official intimidation—in September 2014, Siaya County Governor Cornel Rasanga physically assaulted *Star* reporter Eric Oloo and Radio Mayienga reporter Javan Onyango after the two covered a dispute between local officials, according to the KUJ. In denying the allegations, Rasanga claimed that Oloo was actually employed by the county, according to news reports. Oloo confirmed to CPJ that he had worked for the county but on a temporary basis and had finished the work contract prior to the attack.

There is no longer solidarity among journalists in defending press freedom, Gicheru told CPJ. “Before we look at fences built around us [by government], we need to see the fences that we are building between ourselves,” she said.

Sidebar: Covering the International Criminal Court

By Robert Wanjala

When the International Criminal Court (ICC) began its investigations into the 2007-2008 post-election violence that killed over 1,000 people, it had wide public support. Kenyans desperately wanted to see justice for the atrocities that followed the disputed presidential election results in December 2007.

However, in the Rift Valley, where I am based, that support quickly diminished after the ICC announced charges against senior members of the government and other popular figures in the region.

My own troubles, which included death threats, began soon after the ICC confirmed charges against four Kenyans in early 2012, among them President Uhuru Kenyatta and his deputy, William Ruto. Ruto's supporters were the primary challengers of the charges (charges against Kenyatta were later dropped). Meanwhile, victims of the violence remained optimistic that they would receive justice at the ICC.

My woes deepened after I began receiving text messages such as: "There are no victims." I was accused of "manufacturing" the voices of victims—people who had been forced to flee the violence and were now living as displaced refugees in their own country. Increasingly, people become reluctant to speak about their concerns.

As Kenyans later found, some members of the public (including journalists) were threatened while others received "invitations" from state agencies to be interviewed, and afterward changed their narrative to oppose the court. While the political campaigns for the 2013 general elections got underway, opposition to the court increased and intimidation and threats become more evident. Political rallies quickly became hostile for me because of my reports focusing on victims' efforts to receive justice at the ICC. The hostility grew worse after Kenyatta and Ruto won election in March 2013. I was labeled an ICC sympathizer and a court spy hired by Western governments.

Though none of these insinuations bothered me, two individuals visited the *Mirror Weekly* in October 2013, pretending to be a relative of a colleague, and took photocopies of our publications. Then, in December 2013, unidentified people confronted me in public on separate days and interrogated me on a number of ICC issues.

They also questioned me about my relationship with one ICC suspect and warned me to stop writing about the ICC, saying it “wasn’t in the interests of the country.” Early this year, anonymous callers using blocked numbers told me to meet with police to provide statements, but they didn’t specify which police stations.

Covering the ICC issue has been a tough duty. While most journalists have tried to be independent and objective throughout the process, others have deliberately characterized us as supporters of the ICC.

I am for justice for the atrocities that shook the conscience of this country in 2007 and 2008. I am a supporter of truth. As I have always said, I am a patriotic citizen of this great country and would almost do anything to defend it. And there is nothing more patriotic than fighting hard to end the vicious cycle of impunity.

Robert Wanjala is a freelance journalist and former contributor to the regional independent Mirror Weekly in Eldoret in the Rift Valley.

Conclusion

The late political scientist Joel D. Barkan wrote in 2013: “Kenya is the anchor of eastern Africa and the region’s geopolitical and economic hub; conditions there determine the region’s stability, security, and prosperity.” Though Kenya’s 2010 constitution sought to ensure that the country’s media and its information, communications, and technology sectors develop and thrive, there are worrying signs that old efforts to control the media are undermining this freedom through the passage of poorly drafted and restrictive legislation, commercial pressures, and threats and attacks on individual journalists and bloggers.

There is also a dangerous temptation to use the security threats facing Kenya to censure or silence the press—as witnessed after the attack on Westgate mall and other violent incidents. As U.N. Secretary General Ban Ki-moon observed at a White House summit on countering violent extremism: “Governments should not use the fight against terrorism and extremism as a pretext to attack one’s critics.”

Veteran journalist and lecturer at the University of Nairobi’s School of Journalism George Nyabuga told CPJ that if issues of national concern are not addressed and exposed by an independent media, abuses will continue. “How can we project positive development if left in the dark?” Nyabuga asked. “A censored press contributes to curbed development and a dangerous status quo, allowing inimical elements in Kenyan society to thrive.”

Government Information Secretary Ezekiel Mutua said Kenya is an open society, committed to freedom. “Freedom of media and access to information: These are values the president has made me believe he cherishes; as his employee, I say the same thing,” Mutua told CPJ.

Yet as this report illustrates, a multitude of threats is undermining those freedoms and putting at risk Kenya’s promising economic growth. Freelance journalist and Nation columnist Murithi Mutiga wonders whether Kenya will further curb its freedoms, or stay true to the letter and spirit of openness envisaged in its 2010 constitution.

“The instinct of those in power is that we should have a stronger state,” Mutiga told CPJ. “They admire Putin more than Obama. Now you have people ... with a very good spin operation, one of the smoothest in the region. They are the sons of Moi. We have a progressive constitution, but a constitution in the hands of a man can be manipulated in different ways.”

CPJ's Recommendations

To the Kenyan Government

1. Given the legal challenge by media houses and civil society to laws passed in 2013, President Uhuru Kenyatta should publicly reaffirm his government’s commitment to the role of an independent and robust press as a cornerstone of Kenya’s democracy and a vital part of its socio-economic and political development.
2. Amend the Parliamentary Powers and Privileges Bill and the Public Audit Bill to include press freedom principles, aligning it to the letter and spirit of the 2010 constitution and international best practice.
3. Expeditiously investigate the April 2015 murder of John Kituyi, and renew the investigation into the 2009 murder of Francis Nyaruri.
4. Repeal sections of the penal code so that defamation is no longer a criminal offence, in accordance with the 2010 call by the African Commission on Human and Peoples’ Rights and international best practice.
5. In consultation with the Media Council of Kenya develop and include a module in the police training program on the rights and role of the press.
6. Create and maintain information channels for systematic, prompt, and detailed communication between officials—at national and county level—and the media.

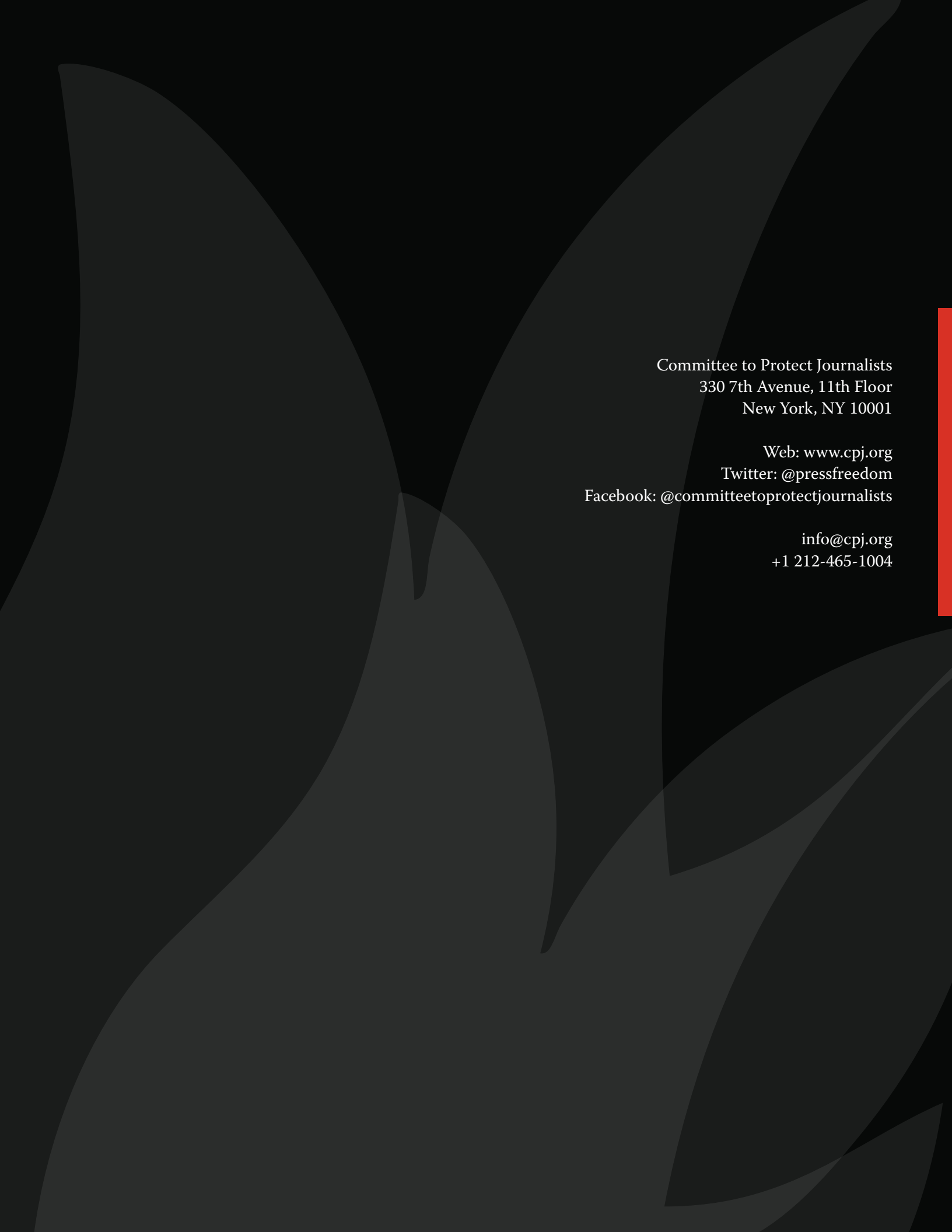
To the Media Council of Kenya

1. Amend the accreditation process so that it is not linked to qualifications, nor the right to work as a journalist, and does not amount to licensing of journalists.

2. Set up a dedicated system to document and support journalists who have received threats in relation to their work and engage the authorities to pursue justice.
3. Roll out a systematic series of meetings between county officials, journalists, and editors to build a common understanding of press freedom and the role of the media in a democratic society, informed by Kenya's constitutional safeguards.

To Media Organizations

1. Ensure a clear separation between editorial and commercial departments so that journalists are free to investigate and report without fear of influence from special or powerful interests.
2. Embrace the “Global Safety Principles and Practices” and provide appropriate security and hostile environment training for staff and freelance journalists, support them in the event of threats or attacks, and hold police accountable for thorough investigations.



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