



United Nations
Educational, Scientific and
Cultural Organization

IPDC THE INTERNATIONAL PROGRAMME
FOR THE DEVELOPMENT OF COMMUNICATION

Supporting Safety of Journalists in

KENYA

*An assessment
based on UNESCO's
Journalists' Safety
Indicators*



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Foreword

Societies rely upon public interest journalism for their supply of current information and knowledge. This is why UNESCO gives special attention to press freedom, which is based on the universal human right to free expression. To be meaningful, however, press freedom requires that journalists should not have to fear being attacked for doing their job.

Threats to the safety of those doing journalism amount to censorship by intimidation and force. The results are widespread self-censorship and a public that is deprived of the right to know. The rule of law is weakened when citizens see the lack of protection and justice for those who use the right to free expression on a public platform.

Safety is a long way from being secured. A total of 178 journalists, most of whom were locally based, were murdered worldwide in 2013 and 2014, according to UNESCO's recent study *World Trends in Freedom of Expression and Media Development*. Less than one in ten of these has been judicially resolved. Yet no journalist deserves to be killed simply for their exercise of freedom of expression, and no society can afford to live in information darkness.

This is why the safety of journalists has increasingly become a matter of common concern in the international community, and among state actors, NGOs, and media themselves. These different groups are increasingly co-operating within the framework of the 'United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity'. Each party recognises that the problem is bigger than what any single actor can do, and that despite differences and even tensions, almost everyone can still find a shared interest in securing safety and justice for journalists.

To initiate joint and/or complementary strategies for action across the different constituencies, it is necessary to have a knowledge base from which to work. This is where the Journalist's Safety Indicators (JSIs) come in. This unique research tool was developed under the auspices of UNESCO's International Programme for the Development of Communication (IPDC), which is governed by a 39-Member State intergovernmental council.

The JSIs expand on existing references to safety within the IPDC's broader Media Development Indicators. When this research instrument is applied, the findings serve as a baseline against which changes can be measured over time. Application of the JSIs is done methodically and professionally, with attempts to reflect all perspectives and produce as verifiable findings as possible.

Mirroring the stakeholders addressed by the UN Plan of Action, the JSIs examine the roles being played by the UN and other international organisations, the national state and its branches, civil society, and the media itself. Is there at least an overlap concerning statistics about cases gathered by different agencies? Are police doing better in providing protection and in prosecuting attackers? Is government condemning killings and providing funding for dedicated judicial investigations? Do journalism schools teach safety to their students? Are media employers developing and implementing safety policies? These are the kinds of points that are assessed in the JSI.

The findings are a snapshot at a particular point in time, which reveals where further work is needed. Progress can be comprehensively measured from that point on. After a reasonable period, a follow-up JSI study can show where there has been change. In this way, the JSIs are a challenge for all actors to do better, so as to ensure that there has indeed been change and that it has been positive. In summary, the JSI findings are both a knowledge resource and a milestone.

The Kenya JSI study was ably carried out by African Media Initiative (AMI), in consultation with UNESCO. Feedback on the draft findings has been incorporated into the final edition. We encourage widespread uptake of this study, and suggest that it is a point of reference for local activities to mark the anniversary of the International Day to End Impunity for Crimes Against Journalists, on 2 November. UNESCO therefore commends this study to stakeholders in Kenya, and pledges its continuing support for assisting the country in freeing its information environment from violence and threats against journalists.

Working together to stop attacks and to end impunity for the perpetrators, we can make a difference.

Guy Berger

Director for Freedom of Expression and
Media Development
Paris, May 2016

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List of Abbreviations and Acronyms

AJEA	Annual Journalism and Excellence Awards
AMI	African Media Initiative
AMWIK	Association of Media Women in Kenya
ATPU	Anti-Terrorism Police Unit
CA	Communication Authority of Kenya
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CIPESA	Collaboration on International ICT Policy for East and Southern Africa
CORD	Coalition for Reform and Democracy
CPJ	Committee to Protect Journalists
CSO	Civil Society Organisation
CTV	Citizen TV
DCI	Directorate of Criminal Investigations
EAC	East African Community
GAA	Government Advertising Agency
GSU	General Service Unit
ICC	International Criminal Court
IFEX	International Freedom of Expression Exchange
IGAD	Inter-Governmental Authority on Development
IPOA	Independent Police Oversight Authority
IFJ	International Federation of Journalists
IMS	International Media Support
JSI	Journalists' Safety Indicators
KBC	Kenya Broadcasting Corporation
KCA	Kenya Correspondents Association
KEG	Kenya Editors Guild
KICTANet	Kenya ICT Action Network
KMP	Kenya Media Programme
KMWG	Kenya Media Working Group
KNCHR	Kenya National Commission of Human Rights
KUJ	Kenya Union of Journalists
KTN	Kenya Television Network
MCK	Media Council of Kenya
MOA	Media Owners Association
MPRC	Media Policy Research Centre
NCHRD-K	National Coalition of Human Rights Defenders – Kenya

NGO	Non-Governmental Organisation
NIS	National Intelligence Service
NMG	Nation Media Group
NPS	National Police Service
NTV	Nation Television
OHCHR	Office of the High Commissioner for Human Rights
ODPP	Office of the Director of Public Prosecutions
OSCE	Organisation of Security and Cooperation in Europe
PAC	Public Accounts Committee
RMS	Royal Media Services
SG	Standard Group
UN	United Nations
UNCT	United Nations Country Team
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
USIU-A	United States International University-Africa

Executive Summary

This report, *Supporting Safety of Journalists in Kenya – An assessment based on UNESCO's Journalists' Safety Indicators*, maps threats against journalists in Kenya between August 2014 and September 2015. Divided into five key indicator categories, the report first provides an overview of the safety situation of journalists, giving in this section the safety and impunity statistics; followed by the discussion of the roles and response of State and political actors; the roles and response of civil society organisations (CSOs) and academia; the roles and response of media and intermediaries; and the roles and response of the United Nations (UN) system and other extra-national actors with a presence in the country in relation to safety matters.

The JSI study finds that Kenyan journalists face serious challenges in the course of their work. Further, both State and non-State actors have contributed to a deteriorating climate for journalists. The number of threats, incidents of harassment and intimidation as well as legal and personal attacks, has grown within the period under study.

Despite recent political and legal intimidations, threats, incidents of harassment and personal attacks on journalists in Kenya, and the fact that both State and non-State actors have contributed to a somewhat deteriorating climate for journalists, the country is still considerably safe for journalists. Moreover, even though organisations like Freedom House that conduct annual surveys on the state of press freedom ranked Kenya in 2015 only as partly free, there is an overarching view that the country's media environment is largely safe and remains robust and dynamic.¹

Freedom House itself, which is often critical of the State's commitment to the protection of journalists, believes that Kenya's media environment is pluralistic, rigorous, and bold in its journalism.² These observations, coupled with this study's conclusions based on both the number of threats and responses from primary research indicating that most journalists feel safe working in Kenya, illustrate the idea that Kenya remains a relatively safe place for journalists. In addition, given that many of the threats emanate from security agencies, including the police, the fact that the National Police Service (NPS) has developed a strategy to improve the working relations between the police and journalists, is a welcome development.

1 See Freedom House ranking for 2015 at <https://freedomhouse.org/report/freedom-press/2015/kenya> [Accessed 6 April 2016].

2 Ibid.

This development, together with the measures and strategies developed by the Kenya Media Working Group (KMWG), indicate the fact that issues of the security and safety of journalists are important and that various institutions and individuals are proactively working towards making the working environment for journalists better and conducive.

Two other significant points are worth noting;

- (i) The involvement of various bodies like the Media Council of Kenya (MCK), Media Owners Association (MOA), Kenya Editors' Guild (KEG), Kenya Correspondents Association (KCA) and Kenya Union of Journalists (KUJ) in the legislative process, and;
- (ii) These organisations' vociferous opposition to legislation they feel is a threat to the work of journalists.

Both these activities are indicative of the fact that many actors are working towards ensuring the protection of journalists and safeguarding or upholding constitutional provisions that protect the freedom of expression and of the media. Furthermore, in summary, this report finds the following.

Threats to journalists

- A journalist was killed at the end of April 2015. Some media and other stakeholders believe this was for his coverage of the controversial trial of Deputy President William Ruto at the International Criminal Court (ICC) at The Hague in the Netherlands.
- More than 60 journalists, seven of them women, were assaulted, attacked, harassed and intimidated in the course of their work during the study period.
- The police (11 incidents), followed by State officials (seven incidents), mobs (six incidents), and politicians (five incidents) are listed as posing the most common threats against journalists.³

Journalists' perceptions on safety

- Most of the journalists surveyed, almost 87 per cent of a sample of 120 who returned survey questionnaires conducted for this assessment, say their work has not had any adverse effects on their lives.
- Most of the respondents, almost 75 per, feel safe working as journalists in Kenya.

³ Please note the difference in the number of incidents and the exact number of journalists threatened. For example, in one incident on 23 May 2015, six journalists were involved.

- Half of the journalists (50 per cent) in Kenya say their work never causes them security concerns.
- Almost 67 per cent of respondents feel being personally threatened is the biggest challenge to journalists in the country.
- Half of the journalists (50 per cent) fear being sacked, demoted or reprimanded at work.
- Only about 17 per cent of journalists in Kenya fear being arrested or detained by authorities.

Women journalists

- Most women journalists surveyed, 90 per cent, have never faced any threats specifically because of their gender.
- The State does not recognise that women journalists may be particularly at risk of sexual harassment and violence, and thus has not developed any appropriate measures to protect them.
- There is no explicit requirement on the State to consult with human rights/ other relevant organisations on the appropriate policies and frameworks to counter specific threats to women journalists.
- Women journalists in Kenya do not enjoy any special privileges and thus are subject to the same working conditions as any Kenyan.
- Kenya does not have any special protection for women journalists, even those undertaking dangerous assignments.
- There is no CSO in Kenya that specifically monitors and reports the harassment of women journalists or other specifically targeted groups.

Roles and response of State and political actors

- More than 83 per cent of the surveyed journalists feel the government does not offer them sufficient protection.
- Kenya has legal protection for the freedom of expression and the media. This is contained in the country's Constitution.
- Despite the protections offered by the Constitution, journalists still face threats. The sources of these threats include, among others, State actors, members of security agencies, politicians and the corporate sector.
- Demonstrating growing intolerance with constitutional guarantees of freedom of expression, the Government in December 2014 passed the Security Laws (Amendment) Bill. This was quickly signed into law by President Uhuru Kenyatta on 19 December 2014 despite protests from the Opposition, CSOs and the media. However, eight clauses in the

controversial Security Laws Act were declared unconstitutional by the High Court in Nairobi. Among others, the court ruled on 23 February 2015 that Section 12 of the Security Laws (Amendment) Act and Section 66A of the Penal Code were unconstitutional because they violated freedom of expression and that of the media as guaranteed under Articles 33 and 34 of the Constitution.

- Political actors have become increasingly intolerant of press freedom and have attempted to draw up legislation, including the Security Laws (Amendment) and Parliamentary Powers and Privileges Bill 2014 that would curtail press freedom. For example, Clause 34 of the Parliamentary Powers and Privileges Bill 2014 says: 'A person commits an offence if that person, a) publishes any false or scandalous libel on Parliament, its committees, or its proceedings; or, b) speaks words defamatory of Parliament, its committees or its proceedings.' President Uhuru Kenyatta, however, rejected the legislation after widespread protests, and called on Members of Parliament to amend the Bill given press freedom is protected by the Constitution. Parliament later removed the anti-media clauses from the Bill.
- The State does not provide any special protection for journalists.
- Threats against journalists, as those against any individual/citizen or institution, are prohibited broadly under existing laws. This means that credible threats to journalists' physical safety do not receive special attention from the police and courts.
- There are no mechanisms for determining linkages between journalists' professional activities and violence or threats against them. Such crimes are investigated as ordinary crimes and thus not given any special treatment.

Roles and response of media actors

- Most of the surveyed journalists, almost 90 per cent, say their employers do not offer any safety and security measures to protect them.
- Not all media organisations have written safety policies for staff. What is available is ad hoc, and is applied whenever security incidents arise.
- Where safety policies exist they do not extend to freelance journalists, their assistants, local employees and support personnel.
- Most journalists are not at liberty to refuse dangerous assignments.

Roles and response of the UN system and other extra-national actors

- The UN system works closely with numerous organisations and contributes to the monitoring of journalists' safety issues.
- International Non-Governmental Organisations (NGOs) often support local efforts to promote safety.

Given the above findings, this research concludes that the safety of journalists in Kenya is not fully guaranteed and press freedom has significantly declined in the past one year. This is despite the fact that the Constitution of Kenya 2010 guarantees both the freedom of expression and of the media and that Kenya has made significant democratic strides since the reintroduction of multiparty democracy in 1991. The legal amendments and insertions stated above could have had the effect of limiting press freedom and freedom of expression with serious ramifications on media and journalistic practices in Kenya if they had passed constitutional muster. The legislation and other existing laws, as well as statements from various State officials demonstrate the difficult environment journalists now work in.

Introduction



Photo taken at the launching event for Journalists' Safety Indicators Assessment in Nairobi, Kenya, 22 May 2015, by John Otieno Okande. Copyright UNESCO.

Introduction

Kenya's media industry is considered one of the most dynamic and robust in Africa and generally regarded to be free despite the pressures brought about by political, legal and economic challenges. For these reasons, Freedom House, for example, considers Kenya's press status as partly free.⁴ Indeed, Freedom House believes that Kenya's media is 'pluralistic, rigorous, and bold in their reporting ... [despite] political pressure coupled with threats and intimidation [which] has encouraged self-censorship on sensitive topics such as security operations and major political events'.⁵

Kenya currently has 139 radio stations, 62 television stations and numerous daily and weekly newspapers.⁶ However, the media in Kenya is dominated by five large commercial entities, namely, Nation Media Group (NMG), Standard Group (SG), Royal Media Services (RMS), Radio Africa, and Mediamax Network. All these run a number of platforms comprising newspapers, television and radio stations as well as online operations, mostly in English but some also in Swahili. The Kenya Broadcasting Corporation (KBC) is the public broadcaster with a television station and two national radio stations.

According to MCK, Kenya has more than 15,000 journalists, although only 3,219 of them are registered with the Council. MCK is required by law to accredit and keep a register of all journalists working in the country. However, about a third of those registered, 934 according to our count, are students in various journalism schools, including institutions such as the University of Nairobi, Multimedia University, Masinde Muliro University, Moi University, Technical University of Kenya, Zetech University, Kenya Institute of Mass Communication, Mombasa Aviation College, and Media School Africa, among others.⁷ Nonetheless, some of these universities and colleges run their own radio stations. In the register are also journalists working for non-governmental organisations, for instance, Journalists for Justice, and even public relations companies, e.g. Gina Dina Group.

The fact that almost 75 per cent of a sample of 120 who returned survey questionnaires for this assessment feel safe working as journalists, is illustrative of the fact that overall,

⁴ Freedom House. Op. cit.

⁵ Ibid.

⁶ For the statistics on radio and television, see Communications Authority of Kenya (CA) (2016) Quarterly Sector Statistics Report Second Quarter for the Financial Year 2015/2016 (October-December 2015). Nairobi: CA. Also available online at <http://www.ca.go.ke/images/downloads/STATISTICS/Sector%20Statistics%20Report%20Q2%20FY%202015-2016.pdf> [Accessed 6 April 2016].

⁷ See the list of 2016 accredited journalists at <http://www.mediacouncil.or.ke/en/mck/index.php/programs/mck-accreditation/2015-list-of-accredited-journalists> [Accessed 6 April 2016].

the environment in Kenya, despite the rising cases of threats, is safe for many journalists. This may also be supported by the fact that only about 17 per cent of journalists surveyed for this research fear being arrested or detained by authorities because of their professional practices.⁸

Yet, Kenya's media and journalists continue to face serious security and safety challenges in the course of their work. The period under study between August 2014 and September 2015 saw at least 66 journalists attacked, harassed, threatened, and jailed, and one killed. These figures are those that were recorded by Article 19, the Committee to Project Journalists (CPJ), and the Media Council of Kenya (MCK).⁹ This figure (66) includes six legal threats, however, which are not part of this research.

Some cases may have gone unrecorded because the victims did not report them or they occurred in places where both local and international CSOs and others interested in such data are not present. Article 19 says in its report *Silenced and Intimidated: Attacks on Freedom of Expression in Kenya January-September 2015*, that only 42 of the incidents they recorded were officially reported or recorded.¹⁰

These incidents happened despite the fact that the Constitution of Kenya explicitly protects freedom of expression and freedom of the media. This is also despite the fact that Kenya is a democracy where human rights are ostensibly respected and where State institutions – including the security apparatuses – and political leadership often promise to uphold the Constitution.

While journalists in independent Kenya have always faced threats, and have been physically attacked, arrested, harassed and intimidated in the course of their work, the fact that members of the State and its various agencies are sources of some of these threats, may suggest a level of governmental incapacity and unwillingness to defend press freedom and freedom of expression as human rights.

This position is especially elaborated in reports by some CSOs, and primary information generated from journalists in the course of this research. For example, the CPJ and Article 19 produced reports in 2015 detailing assaults on both journalists, freedom of expression

⁸ This is based on responses from the questionnaire used in this study.

⁹ The Media Council of Kenya is a statutory body established by the Media Council Act No. 20 of 2013 to regulate the media and the conduct and discipline of journalists. The Council started as a self-regulating body in 2004 to regulate the media industry in Kenya. It became a statutory body through the Media Act 2007 although it adopted a co-regulation media approach given its funding from both the government and industry. See <http://www.mediacouncil.or.ke/en/mck/index.php/about-us/who-we-are>, for more details [Website accessed 10 February 2016].

¹⁰ Article 19 (2015b) *Silenced and Intimidated: Attacks on Freedom of Expression in Kenya January-September 2015*. Nairobi: Article 19.

and media in Kenya and concluded largely that the country's record of press freedom is worsening.¹¹

The CPJ report says, *inter alia*, that, '[Although] Kenya's Constitution guarantees freedom of the media ... 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 attacks ...'.¹² The above points to the serious flaws in the government's respect for and protection of journalists and media. As the report notes, the threats to safety come from political actors, advertisers, owners and even editors who often do not care much about the work of journalists, particularly in their routine work of collecting information.

While numerous contributing factors are cited in the CPJ report, prominence is given to the threats facing journalists in the everyday practice of their profession and the impunity enjoyed by perpetrators, particularly political elites and those close to government, as well as public servants and State security agents. CPJ found that threats were generally a consequence of investigative journalism and publication of information relating to corruption, abuse of power, human rights violations, land grabbing and other matters that powerful individuals in government and society do not want exposed to the public.

In addition to the CPJ report, interviews with various journalists and editors, civil society activists, the KUJ, KCA and others indicate that many journalists are now fearful of their safety as a consequence of growing political intolerance of journalism.

This particular report is an assessment on the safety situation of journalists in Kenya based on UNESCO's Journalists Safety Indicators (JSI). In 2012, the UN Plan of Action on the Safety of Journalists and the Issue of Impunity was endorsed by the chief executives of all component UN bodies and later welcomed at the UN General Assembly. It aimed to mobilise UN agencies and other stakeholders, including UN Member States, regional intergovernmental human rights bodies, non-governmental organisations and media actors to work together to create a safer environment for journalists.

The JSIs were developed within the context of the endorsement of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity and the Plan's implementation strategy for 2013-2014. The purpose of the JSI indicators is to support a structured assessment of the state of journalists' safety and related issues, including partnerships among all stakeholders within a country. Broadly, the indicators allow for assessment of the problem, of the systems in place and of the actions taken by concerned institutions.

11 See CPJ (2015) *Broken Promises: How Kenya is Failing to Uphold its Commitment to a Free Press*. New York: CPJ. This report was launched slightly more than a week before the visit to Kenya by American President Barack Obama and was meant to highlight the challenges journalists in Kenya face in their course of doing their work. See also, Article 19 (2015b) *Silenced and Intimidated: Attacks on Freedom of Expression in Kenya January-September 2015*. Nairobi: Article 19.

12 CPJ (2015). *Op. cit.* p.1.

This report examines the issues raised above and others relating to the safety of journalists. Using various methods, including document analysis and interviews with key informants, this research documents the actors and actions in place for the protection of journalists in Kenya, grouped around four key indicator categories, namely: The roles and response of the State and other political actors; the roles and response of civil society and academia; the roles and response of media and intermediaries; and the roles and response of the UN system and other extra-national actors with a presence in Kenya. In an overview of the situation of journalists' safety in Kenya, this report also provides statistics on the number of threats and attacks on journalists in the course of their work. Appendix one describes the methodology and sources of data.

Category A

Overview of the situation of journalists' safety in Kenya



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Key Indicators

1. SAFETY AND IMPUNITY STATISTICS

- 1.1 Number and types of threats against the lives and limbs of journalists
- 1.2 Number and types of other threats to journalists
- 1.3 Number and types of non-fatal actual attacks on journalists
- 1.4 Number and types of killings of journalists
- 1.5 Number and types of threats against media institutions
- 1.6 Number and type of attacks on media institutions
- 1.7 Disaggregated data on the above indicators relating to gender, fulltime-freelance-citizen status of journalist, media platform (print, radio, TV, online), and other criteria as may be significant (e.g. rural/urban; minority group, etc.).

2. SHARED UNDERSTANDINGS AND ACTIVITIES OF VARIOUS STAKEHOLDERS

- 2.1 Amongst national stakeholder groups, there is an accurate understanding of the extent and nature of the problems
- 2.2 A national strategy exists that identifies targets and role-players responsible for these issues
- 2.3 Good practices are widely shared through online and offline stakeholder group networks
- 2.4 Information materials are available in the key national languages
- 2.5 Stakeholders collaborate in practice in regard to key public events
- 2.6 Safety issues have visibility in relevant days and events

Category A

Overview of the situation of journalists' safety in Kenya

This first chapter discusses the overall safety situation of journalists in Kenya. The data for this chapter is drawn from reports of international and local NGO's, as well as from a journalists' survey that was conducted for the purposes of this study. The chapter is structured around the JSI indicators.

1. Safety and impunity statistics

1.1 Number and types of threats against the lives of journalists

Of the 60 recorded threats (excluding the six legal incidents) by three organisations, namely, the MCK, the CPJ and Article 19, between August 2014 and September 2015, one led to the death of a journalist in April 2015. Available data includes threats to people practising as journalists and not their friends, family or sources.

Despite the existence of such attacks, half of the journalists (50 per cent) of a sample of 120 who returned survey questionnaires conducted for this assessment, say their work does not cause them security concerns. Almost 67 per cent of respondents feel being personally threatened is the biggest challenge to journalists in the country.

In fact, most of those who responded to the questionnaire, almost 87 per cent, say their work has not had any adverse effects on their personal safety or security in the past 12 months.¹³ Almost 75 per cent feel safe working as journalists, which is illustrative of the fact that overall, the environment in Kenya, despite the rising cases of threats, is safe for many journalists.

1.2 Number and types of other threats to journalists¹⁴

Statistics from the CPJ, Article 19, and the MCK show that 10 journalists were threatened on phone. There were seven cases of threats to citizen journalists and bloggers, done as a

¹³ This is based on responses from the questionnaire used in this study.

¹⁴ These threats may include surveillance or trailing, harassing phone calls, arbitrary judicial or administrative harassment, aggressive declarations by public officials, or other forms of pressure that can jeopardise the safety of journalists in pursuing their work.

consequence of their work. In addition, Kenya Monitor lists a number of bloggers and citizen journalists arrested and prosecuted for publishing material online.¹⁵

1.3 Number and types of non-fatal actual attacks on journalists¹⁶

Thirty-one journalists were physically attacked, with one killed, during the study period. Data offered by the CPJ, the MCK, and Article 19 show that a majority of the journalists were attacked, harassed, threatened, and jailed for reporting on corruption, land grabbing, the ICC, and crime, among other issues. These issues, according to interviews with the KCA, KUJ, the CPJ, the MCK, Article 19, and journalists in Kenya, touch mainly on the elite, State actors, powerful politicians, members of security agencies and other people. Table 1 below lists some of the cases recorded specifically by CPJ, MCK and Article 19. Some of the cases in the Article 19 report do not contain the exact details of the attacks (see Table 2 for the number of threats by type according to Article 19). Other cases were generated from online sources.

Article 19, in its *Silenced and Intimidated: Attacks on Freedom of Expression in Kenya January-September 2015* report, indicates that from January to September 2015, 22 journalists, for example, were attacked because of their investigations into corruption, seven due to their reports on land issues, and four for their work on the ICC. These journalists were threatened using various means, including physical attacks, summons by police and threats on phone (see Table 2 below).

1.4 Number and types of killings of journalists.¹⁷

In the period under study, one journalist was killed. The editor and publisher of the *Mirror Weekly* in Eldoret, John Kituyi, 63, was bludgeoned to death at about 8pm on 30 April, 2015, while walking home. Kituyi was killed by two unidentified assailants riding a motorbike. They stole his mobile phone and office keys but not his money and other valuables.

It is reported that Kituyi's paper was investigating the network behind alleged ICC witness interference in the case against Kenya's Deputy President William Ruto and radio journalist Joshua Arap Sang. The paper was based in Eldoret, the administrative and commercial capital of Uasin Gishu County. Eldoret is at the heart of Ruto's support base. Ruto was charged with crimes against humanity for allegedly organizing part of the deadly violence that followed

15 See Kenya Monitor, available at <http://www.monitor.co.ke/category/ifreedoms/> for details of people arrested and prosecuted for posting annoyance messages and misusing electronic devices [Website accessed 2 March 2016].

16 Types of actual attacks may include actual physical or mental harm, kidnapping, invasion of home/office, seized equipment, arbitrary detention, failed assassination attempts, etc.

17 Types of killings may include being killed in cross-fire, assassinated, killed in a bomb explosion, beaten to death, etc.).

Table 1: Attacks on journalists and media from August 2014 to July 2015

No.	Date of incident	Location	Journalist/Media House	Media Type	Media Affiliation	Type of Attack	Assailant
1	October	Kisumu	Justus Ochieng	Newspaper	The Star	Attack	Police
2	November	Nairobi	Mohammed Ali	Television	KTN	Threat	Unknown
3	December	Nairobi	Robert Alai	Social media	Blogger	Arrest	Police
4	January	Muranga	Martin Mwaura, Dennis Kabiru, Wambui Mwangi, Gitaura Waweru	Broadcast	Nation, Citizen TV, K24, Inooro FM	Attack	Police
5	January	Nairobi	The Star	Newspaper	The Star	Threat	Official
6	January	Mombasa	Abraham Mutai	Social Media	Blogger	Threat	Police
7	January	Busia	Allan Wadi	Social Media	Blogger	Arrest	Police
8	January	Embu	Nancy Mbindalah	Social Media	Blogger	Arrest	Police
9	January	Nairobi	NTV, QTV, KTN, CTV	Broadcast	NTV, QTV, KTN, CTV	Attack and threat	Official
10	February	Isiolo	Noor Ali Farah	Online	Freelance	Threat	Police
11	February	Nairobi	Robert Alai	Social media	Blogger	Arrest	Police
12	February	Nairobi	Nation Media House	Various	Nation	Attack	Thugs
13	March	Nairobi	Charles Kerich	Newspaper	The Star	Threat	Official
14	March	Laikipia	Muchiri Gitonga	Newspaper	Nation	Attack	Official
15	March	Narok	John Mwangi	Broadcast	Citizen Radio	Threat	Police
16	April	Tana River	Nehemiah Okwembah, Reuben Ogachi	Broadcast	NTV, Citizen	Attack	Police
17	April	Bungoma	Francis Kasaya	Broadcast	Mambo FM	Attack	Official
18	April	Nairobi	Msingi Sasis	Online	Freelance	Harassment	Police
19	April	Nairobi	Purity Mwambia, Francis Mwangi	Broadcast	K24	Threat	Police
20	April	Eldoret	John Kituyi	Newspaper	Mirror Weekly	Killed	Unknown
21	April	Nairobi	Macharia Gaithe Bernard Namunane	Newspaper	Nation	Threat	Police
22	April	Kitui	Kitavi Mutua	Newspaper	Nation	Threat	Official
23	April	Bomet	Amos Kimutai	Various	Freelance	Attack	Group
24	May	Kisii	Denish Ochieng	Newspaper	Standard	Attack	Police
25	May	Vihiga	Francis Onguko	Broadcast	Citizen	Attack	Teacher
26	May	Gilgil	Raphael Munge, Evans Asiba and four others	Various	Various	Attack	Official
27	May	Eldoret	Michael Olinga	Newspaper	Standard	Harassment	Yet to be identified
28	May	Nakuru	Alex Kiprotich	Newspaper	Standard	Threat	Official
29	May	Mombasa	Philip Onyango, Laban Walloga	Newspaper	Nation	Attack	Football supporters
30	May	Ruiru	Patrick Safari	Social media	Blogger	Arrest	Police
31	June	Kitale	Richard Saka, Duncan Waswa, Leonard Wamalwa, David Musundi	Broadcast	Milele, West FM, Citizen, Imani TV	Attack	Thugs

Source: Various, including CPJ, MCK and online sources.

Table 2: Threat by type

Threat type	Number
Murder	1
Physical attack	30
Threat by telephone	10
Summoned by police	5

Source: Article 19 (2015b) *Silenced and Intimidated: Attacks on Freedom of Expression in Kenya January-September 2015*. Nairobi: Article 19, p.2.

the disputed presidential poll of December 2007. About 1,300 people died and hundreds of thousands were displaced during the violence that lasted until early 2008.¹⁸

1.5 Number and types of threats against media institutions.

Officially sanctioned threats are mainly in the press freedom dimension, but may create a climate that weakens safety as well. In December 2014, the Qatar-based media network, Al-Jazeera, was threatened with sanctions for reporting on issues of abuse of human rights and extra-judicial killings particularly by State security agents. In the investigative report titled, *Inside Kenya's Death Squads*, Al-Jazeera detailed the possible extrajudicial killings of alleged terrorists and critics of government by Kenya's Anti-Terrorism Police Unit (ATPU). Kenya's Interior Ministry announced that it would investigate the station for the report and threatened unspecified sanctions. In January 2015, *The Star* was threatened by the MCK with closure for what it called 'persistent publishing of offensive stories and pictures'. In January 2015, the Communication Authority of Kenya (CA) threatened three media houses, namely the NMG, SG and Royal Media (under its digital broadcasting consortium, the Africa Digital Network) that it would revoke their licenses for broadcasting 'misleading' and 'illegal' infomercials purporting that Startimes and GOtv were illegally carrying their content thereby infringing on copyright rights. These threats were followed by statements by political leadership castigating the media for their criticisms of poor governance.

¹⁸ See, for example, Article 19 (2015b) *Silenced and Intimidated: Attacks on Freedom of Expression in Kenya January-September 2015*. Nairobi: Article 19, pp.6-7. In April 2016, ICC terminated the case against Ruto and ended his trial, saying there is insufficient evidence he was involved in deadly violence that erupted after his country's 2007 presidential elections (see e.g. <http://www.aljazeera.com/news/2016/04/kenya-ruto-hear-icc-case-dropped-160405065408564.html>) [Website accessed 6 April 2016].

1.6 Number and type of attacks on media institutions.

In the period under study, there were threats by the CA to the NMG, SG and Royal Media. Officials from the regulator on 14 February 2015 raided the transmission sites of Nation Television (NTV) and its sister station QTV, Citizen TV and Kenya Television Network (KTN) and switched off their analogue signals. The stations went off air until 5 March 2015. In addition, on 21 January 2015, the CA withdrew the permit allowing KTN, NTV and Citizen TV to carry their own signal on a digital platform. In the withdrawal of licence notice, CA Director-General Francis Wangusi said the withdrawal was part of a raft of administrative actions being taken against the three media houses for broadcasting an advert he said was misleading the public, and 'in gross violation of the legal and regulatory framework governing the sector'.¹⁹

1.7 Disaggregated data on the above indicators relating to gender, fulltime-freelance-citizen status of journalist, media platform (print, radio, TV, online), and other criteria as may be significant (e.g. rural/urban; minority group, etc.).

Most of the total of sixty victims were men. Only seven women are recorded to have suffered threats in the course of their work. Data offered by the CPJ, Article 19 and MCK show that most of the journalists (28) worked fulltime for newspapers (23 cases), nine for broadcast media, including radio and television, and five for online platforms. Some of the journalists, however, work for both online and offline media. Most of them work for urban, and especially Nairobi-based, media although journalists working in towns such as Bomet, Kisii, Malindi and Kitale were not spared.

Granted, most of the 35 female journalists surveyed for this assessment, 90 per cent, have never faced any threats because of their gender.

¹⁹ See CA (2015) 'CA action against NTV, KTN AND CTV'. CA [online], 21 January. Available at <http://ca.go.ke/index.php/what-we-do/94-news/284-press-statement-by-mr-francis-wangusi-director-general-communications-authority-of-kenya-ca-on-the-advertisement-by-nation-media-group-standard-group-and-royal-media-services-relating-to-media-transmission-services> [Accessed 6 April 2016].

2. Shared understandings and activities of various stakeholders

2.1 Amongst national stakeholder groups, there is an accurate understanding of the extent and nature of the problems.

All those interviewed, including journalists and key informants, understand the nature of the problem although the issue of safety is often taken to mean only security and related challenges. Accordingly, it has become clearer in the last two years as threats against journalists, particularly from State and non-State actors, rise. Interviewees say the threats are exacerbated by growing cases of terrorism and insecurity as well as rising cases of corruption. Terrorism makes it dangerous for journalists to report from some locations such as the country's north-eastern region, which borders Somalia and comprises Garissa, Wajir and Mandera counties. The KUJ, KCA and MCK also say devolution of governance in the country has engendered new threats to journalists operating at the grassroots.

2.2 A national strategy exists that identifies targets and role-players responsible for these issues.

There is no national strategy at the moment. However, the Kenya Media Working Group (KMWG),²⁰ which brings together various organisations, namely, African Media Initiative (AMI), Twaweza Communications, CPJ, MCK, Article 19, National Coalition of Human Rights Defenders – Kenya (NCHRD-K),²¹ Kenya Media Programme (KMP)²² and Protection International²³, has worked on a strategy aimed at improving the safety and protection of journalists by addressing the policy, legislative and work environment for journalists, and

20 Kenya Media Working Group was set up in 2012 in Nairobi by a group of individuals from the AMI, Twaweza Communications, the CPJ, MCK, Article 19, NCHRD-K, KMP and Protection International. They were brought together by their desire to examine the situation of journalists in Kenya and what they can do to improve the context in which the journalists work. In the course of its work, the KMWG has held consultations and meetings with media owners, editors and journalists in attempts to find solutions to challenges facing journalists in Kenya.

21 The NCHRD-K was established in 2007 and works to strengthen the capacity of human rights defenders to work effectively in Kenya and to reduce their vulnerability to the risk of persecution, including by advocating for a favourable legal and policy environment in the country. See <http://nchrdk.org/about-us/> for more details [Website accessed 29 March 2016].

22 The KMP is a programme of Hivos. It seeks to strengthen the existing media landscape in Kenya by providing interventions aimed at improving the professionalism and effectiveness of the media in Kenya. It is funded by several organisations including the United Kingdom's Department for International Development (DFID), Danish International Development Agency (DANIDA), Canadian Development Agency (CIDA) and the Royal Netherlands Embassy, Nairobi. See http://www.kmp.or.ke/index.php?option=com_content&view=article&id=58&Itemid=420 for more details [Website accessed 29 March 2016].

23 Protection International is an international, non-profit organisation that brings protection strategies and security management tools to human rights defenders at risk. It works with partners in over thirty countries, including Kenya. See <https://protectioninternational.org/about/> for more details [Website accessed 29 March 2016].

consequently produced a manual, *Staying Safe: A Manual for the Safety and Protection of Journalists in Kenya*, aimed at providing guidelines to journalists and media workers on how to protect themselves and safeguard their safety. A total of 1,822 copies were printed both in English and Swahili. The manual was given out in workshops and newsrooms. It was also given to the libraries of journalism schools. The KMWG's partner organisations also have copies, which they can give out to journalists and interested parties. The manual is also available online.²⁴

2.3 Good practices are widely shared through online and offline stakeholder group networks.

Good practices have been shared through online and offline stakeholder group networks. This includes websites and meetings organised especially by the MCK and other stakeholders. For example, the MCK organised a conference during the 2015 World Press Freedom Day to discuss issues relating to journalism. During the conference, speakers were invited to address a number of issues. The websites of, for example, MCK (<http://www.mediacouncil.or.ke>), KCA (<http://www.kca.or.ke>), and Article 19 (<https://www.article19.org/pages/en/kenya.html>) contain a range of publications that can be downloaded for free.

2.4 Information materials are available in the key national languages.

Material, most of it in English, is available to journalists. For example, Article 19 has published reports on the right to information, and attacks on the freedom of expression in Kenya (Article 19, 2015a). The Media Policy Research Centre (MPRC) published a report detailing the state of the media in 2014. The KCA published two books, *My Tribe is Journalism: Conflict Sensitive Journalism* in 2008, and in 2009, *Healing the messenger: A journalist's trauma booklet*. The MCK publishes a quarterly magazine called *The Observer*. The CPJ published its report in 2015 titled *Broken Promises: How Kenya is Failing to Uphold its Commitment to a Free Press*.

These examples, and others, provide readings on the state of the media in Kenya. Other organisations like the KMP/Hivos, and the KMWG have also published reports that share information on the media and journalism in Kenya. The *Staying Safe: A Manual for the Safety and Protection of Journalists In Kenya* done by the KMWG, is also available in Swahili.

24 The manual is available as a free download on various websites, including that of Protection International, at <http://protectioninternational.org/wp-content/uploads/2014/09/Safety-Protocol-and-Manual-for-journalists-ENGLISH.pdf>, and National Coalition of Human Rights Defenders-Kenya, at <http://nchrdk.org/2014/08/staying-safe-a-protection-guide-for-journalists-in-kenya/> [Websites accessed 29 March 2016].

2.5 Stakeholders collaborate in practice in regard to key public events.

Stakeholders often collaborate in practice in regard to key public events. One of the events that brought stakeholders together was the World Press Freedom Day that was celebrated on May 4, 2015. Media actors also plan to convene stakeholder forums every November 2 when the International Day against Impunity for Crimes against Journalists is marked to take stock of, and address the state of journalists' safety and protection. Organisations that have often participated in the World Press Freedom Day in Kenya, for example, include the MCK, KCA, KUJ, Article 19, the CPJ, and UNESCO.

The MCK is often at the forefront and organizes a conference to discuss issues relating to media and journalism. This leads to the Annual Journalism and Excellence Awards (AJEA). The MCK set up the AJEA to identify, acknowledge, inspire, support and promote media excellence in Kenya. The award is open to Kenyan journalists working in a diverse range of platforms, including print, television, radio, and online. It has a number of categories, including ICT and Telecommunications, Children and Youth Affairs, Business, Good Governance, Gender Reporting, Environment Reporting, Health Reporting, Young Journalist of the Year, and Journalist of the Year. The first awards were given out in 2012.

2.6 Safety issues have visibility in relevant days and events.

There was significant interest in safety issues during the World Press Freedom Day. Presenters, including those from the KEG, a professional association of editors set up to promote the standards of journalism in the country, raised issues relating to threats facing journalists.

Category B

The roles and response of State and political actors



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Key Indicators

1. STATE HAS LAWS WHICH CAN PROTECT JOURNALISTS

- 1.1 The State has laws and policies to protect safety of journalists, including community media and citizen journalists.
- 1.2 Attacks on the safety of journalists (including community media and citizen journalists) are recognised by the State as a breach of human rights law and the criminal law, and in the case of armed conflicts, humanitarian law.
- 1.3 With relevance to armed conflict situations, the State is a signatory to the Geneva Conventions and additional protocols, and human rights instruments such as the International Covenant on Civil and Political Rights, the UN Convention against Torture, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Rome Statute of the ICC.
- 1.4 With further relevance to armed conflict situations, the State recognises journalists as civilians in accordance with Geneva Convention and additional protocols.
- 1.5 The State's laws do not include sweeping or arbitrary provisions on treason, terrorism, state security or insult/ defamation offences etc. that are susceptible to misuse for the purpose of intimidating or prosecuting journalists.

2. THERE ARE APPROPRIATE NORMATIVE STATEMENTS, POLICIES, AND INSTITUTIONAL FRAMEWORKS THAT SAFEGUARD THE IMPORTANCE OF JOURNALISTS' SAFETY

- 2.1 The State is well informed on the subject through adequate mechanisms (institutions, programmes and budgets) being in place for monitoring and reporting on threats, harassment and violence towards journalists.
- 2.2 The State has specific policies to support the protection of journalists and the implementation is assured of sufficient resources and expertise.
- 2.3 The State refrains from endorsing or promoting threats to journalists, including through judiciary, police, fiscal, administrative, military and intelligence systems.
- 2.4 Guidelines are issued to military and police prohibiting harassment, intimidation or physical attacks on journalists; effective channels of communication exist between journalists' organisations and security forces concerning coverage of street protests, public events, etc.

- 2.5 Government officials, law-enforcers, military officials, civil servants and representatives from the (independent) judiciary make clear statements recognising the safety of journalists and condemning attacks upon them.
- 2.6 The State has indicated commitments and support for journalists' safety in international fora.
- 2.7 The State recognises that women journalists may be particularly at risk from sexual harassment and violence, and adopts appropriate measures to ensure safety on an equal basis between women and men.
- 2.8 The State enables the work of NGOs on safety issues and cooperates with them in appropriate ways.

3. THE CRIMINAL AND CIVIL JUSTICE SYSTEM DEALS EFFECTIVELY WITH THREATS AND ACTS OF VIOLENCE AGAINST JOURNALISTS

- 3.1 Protection measures are provided to journalists when required in response to credible threats to their physical safety.
- 3.2 Where there is violence or threats against a journalist, due account is given by the authorities to any evidence showing linkage to the journalist's professional activities.
- 3.3 The State has specific institutions/units dedicated to investigations, prosecutions, protection and compensation in regard to ensuring the safety of journalists and the issue of impunity.
- 3.4 Investigations of crimes against journalists, including intimidation and threats, are investigated promptly, independently and efficiently.
- 3.5 Successful prosecutions for violence and intimidation are carried out against the full chain of actors in attacks, including the instigators/masterminds and perpetrators.
- 3.6 The State establishes specialist units that can deal appropriately with attacks on women, including women journalists.
- 3.7 The State monitors the performance of specific State institutions and processes set up in relation to safety at national and local levels.
- 3.8 The State ensures that appropriate training and capacity is provided to police, prosecutors, lawyers and judges.

Key Indicators *(continued)*

4. THE STATE TAKES OTHER EFFECTIVE MEASURES IN REGARD TO JOURNALISTS' SAFETY

- 4.1 The State publishes updated data about attacks on journalists and impunity.
- 4.2 The State recognises that protections applying to journalists may also be required to protect persons who represent sources of information for journalists and human rights defenders.
- 4.3 The State consults with human rights/other relevant organisations on the appropriate policies and frameworks to counter specific threats to women journalists.
- 4.4 In cases of electronic surveillance, the State respects, and ensures respect for, freedom of expression and privacy, through international standards of transparency, proportionality and legitimate purpose.
- 4.5 The State reports on attacks to the appropriate UN agencies, including responses to the UNESCO Director-General's requests for information on judicial follow-up to any killing/s of journalists.
- 4.6 The State has measures to support and compensate families of murdered journalists.

Category B

The roles and response of State and political actors

It is widely recognised that the primary responsibility for the protection of journalists, as with any other citizen, rests with the State. The Organisation of Security and Cooperation in Europe (OSCE) has called for 'coordinated and consistent State policies and practices', and goes on to say that, 'it is necessary to ensure that national laws, administrative and judicial systems, protect and promote freedom of expression and safeguard the lives and professional rights of journalists'.²⁵

It is also accepted in international law that the State is responsible for all the actions of its officials and organs, even if they are acting outside of the law and/or are formally independent. The State is also responsible if non-State actors violate journalists' safety when under the direction or control of the State, and may be held responsible if it is negligent in upholding its human rights responsibilities when those rights are threatened by non-State actors such as criminals or terrorists.

Much of the State's responsibility for journalists' safety is inherent in general State obligations to uphold human rights. More specifically, States can be seen as having specific responsibilities, for example, by ensuring that journalists working in conflict areas are treated as civilians and protected as such, rather than as combatants.

It is also necessary for the State to investigate threats and acts of violence against journalists effectively; to ensure control over its military, judiciary and law-enforcing agencies based on the rule of law; and to proactively counter impunity. States need to develop and implement appropriate laws, regulations and policies that enable journalists' safety to be protected. Those who hold political offices in government or political parties are included in this section of the indicators as well.

25 Horsley, William (2012) OSCE Safety Of Journalists Guidebook. Vienna: OSCE, p.25. Also available online at <https://www.osce.org/fom/85777?download=true> [Accessed 6 April 2016].

1. State has laws which can protect journalists

1.1 The State has laws and policies to protect safety of journalists, including community media and citizen journalists.

Kenya's supreme law, the Constitution, protects the safety of journalists, including community media and citizen journalists. The Constitution of Kenya 2010 and, specifically, Articles 33 and 34, guarantee the freedom of expression and of the media respectively, while Article 35 promotes access to information. Article 34 specifically holds that the 'freedom and independence of electronic, print and all other types of media is guaranteed' and 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'.

Although these laws do not specify which type of journalist or media are protected, it is assumed that, because the Constitution specifically mentions electronic, print and all other types of media, the rights and safety of community media and citizen journalists are guaranteed.

1.2 Attacks on the safety of journalists (including community media and citizen journalists) are recognised by the State as a breach of human rights law and the criminal law, and in the case of armed conflicts, humanitarian law.

Attacks on the safety of journalists (including community media and citizen journalists) are recognised by the State and Constitution as a breach of human rights law and the criminal law, and in the case of armed conflicts, humanitarian law. However, this is not because they are journalists. The law applies to all Kenyans. In other words, journalists do not receive special protection. The rights of all citizens are protected by the Constitution, irrespective of their profession or institutional affiliation. Article 10 (2) (b) of the Constitution indicates that Kenya has national values, which include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.

1.3 With relevance to armed conflict situations, the State is a signatory to the Geneva Conventions and additional protocols, and human rights instruments such as the International Covenant on Civil and Political Rights, the UN Convention against Torture, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Rome Statute of the ICC.

Kenya is a signatory to numerous international legal provisions. These include the Geneva Convention and additional protocols, and human rights instruments such as the International Covenant on Civil and Political Rights, the UN Convention against Torture, the CEDAW, the Rome Statute of the ICC, and the African Charter on Human and Peoples' Rights.

1.4 With further relevance to armed conflict situations, the State recognises journalists as civilians in accordance with Geneva Convention and additional protocols.

There is no specific law or policy stating that in armed conflict situations, journalists should be recognised as civilians. However, as Kenya is a signatory to the Geneva Convention, the African Charter on Human and Peoples' Rights and other international protocols, it is assumed that people, including journalists, who are not armed combatants, are protected as per those international instruments.

1.5 The State's laws do not include sweeping or arbitrary provisions on treason, terrorism, state security or insult/ defamation offences etc. that are susceptible to misuse for the purpose of intimidating or prosecuting journalists.

Despite constitutional protections, several laws take away some of the freedoms guaranteed by the Constitution. The constitutional guarantees themselves have caveats. Section 2 of Article 33 states that: 'The right to freedom of expression does not extend to propaganda for war, incitement to violence, hate speech; or advocacy of hatred that constitutes ethnic incitement, vilification of others or is based on any ground of discrimination.' In addition, defamation is considered a criminal offence.

The passing of various legislations, particularly the Security Laws (Amendment) Act in December 2014, have marked the interest of political actors in reduced space for freedom of expression and media freedom. Several clauses in the Act prevented the publication of material deemed offensive or threatening to national security. For example, before the High Court declared the sections unconstitutional, Section 66A on the publication of obscene, gory or offensive material stated:

‘A person who publishes, broadcasts or causes to be published or distributed, through print, digital or electronic means, insulting, threatening, or inciting material or images of dead or injured persons which are likely to cause fear and alarm to the general public or disturb public peace, commits an offence and is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years, or both.’

Before some sections were declared unconstitutional, the law was considered detrimental to press freedom.

In addition, the Parliamentary Powers and Privileges Bill 2014 attempted to curtail press freedom. The legislation was rejected by President Kenyatta – after widespread protests from the media and civil society organisations – who asked for the anti-media clauses to be removed from the Bill. For example, Clause 34 says: ‘A person commits an offence if that person, a) publishes any false or scandalous libel on Parliament, its committees, or its proceedings; or, b) speaks words defamatory of Parliament, its committees or its proceedings.’

Furthermore, under the Prevention of Terrorism Act, amendment 75 inserted new sections immediately after section 30 of the Act, with reference to the publication of offending material. The insertions held that:

‘A person who publishes or utters a statement that is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.’

For purposes of subsection (1), a statement is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism if —

- a) the circumstances and manner of the publications are such that it can reasonably be inferred that it was so intended; or
- b) the intention is apparent from the contents of the statement.

Perhaps the most contentious and punitive article in the Act was under insertions 30F (1) and (2). These state that:

‘Any person who, without authorisation from the NPS, broadcasts any information which undermines investigations or security operations relating to terrorism, commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or to a fine not exceeding five million shillings, or both.

A person who publishes or broadcasts photographs of victims of a terrorist attack without the consent of the NPS and of the victim, commits an offence and is liable

on conviction to imprisonment for a period not exceeding three years or to a fine of five million shillings, or both.'

These amendments and insertions could have had the effect of limiting press freedom and freedom of expression with serious ramifications on media and journalistic practices in Kenya if they had passed constitutional muster.

Journalists are still subject to sedition or seditious libel under the Penal Code, Cap. 63, Article 194. The Penal Code offers special protection from scrutiny to the President, Cabinet Secretaries and Parliamentary officials. Section 132 of the penal code penalises those 'undermining the authority of public officers' through words or deed.

Other laws like the Books and Newspapers Act (Cap 111 of the Laws of Kenya), Official Secrets Act (Cap 187 of 1968), and Preservation of Public Security Act impact press freedom in Kenya. The Books and Newspapers Act requires publishers and printers to execute a bond of Ksh1 million (about US\$10,000) as well as deposit two copies of each publication with the Attorney General. The law allows for publications to be banned and vendors to be arrested if they are caught selling banned publications.

The Official Secrets Act bans the publication of 'official secrets' so as to preserve what it calls 'State secrets and State security'. This includes entering and photographing a 'prohibited place'. In addition, the Preservation of Public Security Act permits the arrest and detention of journalists on grounds of 'compromising public safety, public order, morality or internal defence'.

The Kenya Information and Communications Act 2013 penalises the 'misuse of licensed telecommunications equipment' for disseminating messages that are 'grossly offensive, indecent, obscene, or those that are false and are intended to cause annoyance, inconvenience or needless anxiety on others'.

2. There are appropriate normative statements, policies, and institutional frameworks that safeguard the importance of journalists' safety

2.1 The State is well informed on the subject through adequate mechanisms (institutions, programmes and budgets) being in place for monitoring and reporting on threats, harassment and violence towards journalists.

The State-funded MCK monitors and reports on threats, harassment and violence towards journalists. This is taken to mean that the State is, at least on paper, keen on protecting journalists against threats, harassment and violence. However, some threats emanate from

State actors and this may demonstrate a level of inability and/or unwillingness to sometimes uphold the rights of journalists and press freedom.

2.2 The State has specific policies to support the protection of journalists and the implementation is assured of sufficient resources and expertise.

Kenya does not have any specific policies to support the protection of journalists. The constitutional guarantees mentioned above are often considered sufficient in terms of protecting journalists. The set-up of the MCK, which broadly looks at issues affecting journalists, may be taken to mean, however, that the State has invested resources meant to promote and protect journalism and media interests in the country.

Moreover, the MCK also dedicates 15 per cent of the monies generated from the accreditation of journalists to the protection of media workers. It also runs a safety programme and a hotline through which it handles safety issues.

2.3 The State refrains from endorsing or promoting threats to journalists, including through judiciary, police, fiscal, administrative, military and intelligence systems.

Kenya does not explicitly endorse or promote threats to journalists, including through judiciary, police, fiscal, administrative, military and intelligence systems. However, journalists have in the past been publicly threatened by politicians such as former President Daniel arap Moi, and former ministers John Michuki and Fred Gumo.

More recently, on 23 April, 2015, the office of the Director of Criminal Investigations (DCI) wrote to the NMG summoning two of its editors for questioning. The Managing Editor, Special Projects, Macharia Githo, and Political Editor Bernard Namunane were summoned over the publication of two articles in the *Daily Nation* issues of April 21 and April 22 about the arrest and deportation of a senior spy officer working with the Kenya National Intelligence Service (NIS) from the Netherlands for attempting to contact an ICC witness based at The Hague.

This relates to Deputy President William Ruto's and radio journalist Joshua Arap Sang's case at the ICC.²⁶ K24 TV reporters were also summoned by the DCI for questioning over their coverage of terror attacks in the north-eastern region of the country. On 2 April, 2015, terrorists allied to the Somalia-based Islamist al-Shabaab group attacked the Garissa University College at dawn and killed 148 people during the day-long siege on the campus in

26 Nation Reporter (2015) 'Nation editors summoned over articles'. Nation, 27 April [online]. Available at <http://www.nation.co.ke/news/Nation-editors-summoned--over-articles/-/1056/2699300/-/12vmcupz/-/index.html> [Accessed 8 September 2015].

the north-eastern town. Subsequently, the government warned that it would crack down on what it called reckless media, including social media users.²⁷

In addition, NMG's Parliamentary editor, John Ngirachu, was arrested by DCI officers on 10 November, 2015, for writing a story highlighting questionable spending within the Interior ministry. The story questioning the spending of Sh3.85 billion by the Ministry was based on the proceedings of the Public Accounts Committee (PAC) of the National Assembly.²⁸

These findings may be supported by the sentiments of those surveyed. As the results from the study questionnaire show, more than 83 per cent of journalists feel the state does not offer them sufficient protection given their fear that state agents pose serious threats to recalcitrant journalists. However, half of the journalists indicate that they do not fear repercussions from government and state agents given that they do not cover controversial or sensitive issues.²⁹ Only about 17 per cent of journalists in Kenya fear being arrested or detained by authorities.

2.4 Guidelines are issued to military and police prohibiting harassment, intimidation or physical attacks on journalists; effective channels of communication exist between journalists' organisations and security forces concerning coverage of street protests, public events, etc.

There are no explicit guidelines issued to military and police prohibiting harassment, intimidation or physical attacks on journalists. Constitutional provisions are protective of journalists. This means that any harassment, intimidation or physical attacks on journalists by the military and police is criminal. This is aided by the fact that the military and police often have a good working relationship with media houses and journalists, and have established effective channels of communication. It should be noted, however, that there are no formal arrangements between journalists and security agencies for coverage of security operations. For example, the ad hoc working relationship between journalists and the military is evidenced by the fact that the journalists covering the Kenya Defence Forces' incursion into Somalia were embedded with the soldiers. Similarly, the NPS often invites journalists to accompany them to various operations. These help media's coverage of street protests, public events, etc. although this does not always work, particularly when the police or military feel the reports would be unfavourable to their image and reputation.

27 See Star Reporter (2015) 'Nkaiserry warns media on terror reporting, images'. The Star, 28 May [online]. Available at <http://www.the-star.co.ke/news/nkaiserry-warns-media-terror-reporting-images> [Accessed 20 June 2015].

28 Nation Reporter (2015) 'Nation Parliamentary Editor John Ngirachu released after recording statement'. Nation, 10 November [online]. Available at <http://www.nation.co.ke/news/Nation-editors-summoned--over-articles/-/1056/2699300/-/12vmcupz/-/index.html> [Accessed 10 November 2015].

29 This is based on responses from the questionnaire used in this study.

2.5 Government officials, law-enforcers, military officials, civil servants and representatives from the (independent) judiciary make clear statements recognising the safety of journalists and condemning attacks upon them.

Government officials, law-enforcers, civil servants and representatives from the judiciary regularly make statements recognising the safety of journalists. Some of these have condemned attacks on journalists whenever it happens, although this often depends on who is perpetrating the attacks. This was the case, for example, in the attacks of journalists from NTV and CTV on 18 April, 2015, by officers of the paramilitary General Service Unit (GSU) in Tana River County. On that day, Nehemiah Okwembah of NTV and Reuben Ogachi of CTV were attacked by the GSU officers while reporting on a story in Galana Kulalu Ranch in Tana River County. The attack was captured and broadcast on numerous television stations. The then Cabinet Secretary for information, Fred Matiang'i, condemned the attack, saying the government was committed to media freedom.

2.6 The State has indicated commitments and support for journalists' safety in international fora.

Kenya has co-sponsored the Human Rights Council Resolution A/HRC/RES/21/12 that was adopted in 2012. The resolution called on parties to respect their obligations under international human rights law and international humanitarian law as well as on States to promote a safe and enabling environment for journalists to perform their work independently and without undue hindrance.³⁰

2.7 The State recognises that women journalists may be particularly at risk from sexual harassment and violence, and adopts appropriate measures to ensure safety on an equal basis between women and men.

The State does not provide any indications that it recognises that women journalists may be particularly at risk from sexual harassment and violence. Thus it has not adopted appropriate measures to ensure their safety. Women and men are considered equal and thus whatever recognition is offered is irrespective of gender. However, the Sexual Offences Act, for example, deals specifically with crimes against women generally.

2.8 The State enables the work of NGOs on safety issues and cooperates with them in appropriate ways.

The State often values and facilitates the work of NGOs as per the Non-Governmental Organisations Co-ordination Act (Cap 19) of 1990. The Act has enabled the setting up of the Non-Governmental Organisations Co-ordination Board, which has the responsibility of regulating and enabling the NGO sector in Kenya. However, there is no special preference given to issues of safety. The cooperation offered is based on generic issues, rather than specifically safety matters.

For example, the Kenya National Commission on Human Rights (KNCHR), an autonomous national Human rights institution established under article 59 of the Constitution of Kenya 2010 responsible for furthering the promotion and protection of human rights in Kenya, and the MCK works with numerous NGOs to protect the rights of Kenyans irrespective of professional affiliations. These often work closely with Twaweza Communications, CPJ, Article 19, NCHRD-K, KMP, and Protection International. For example, the MCK is part of the KMWG, which also includes Twaweza Communications, CPJ, Article 19, NCHRD-K, KMP, and Protection International.

3. The criminal and civil justice system deals effectively with threats and acts of violence against journalists

3.1 Protection measures are provided to journalists when required in response to credible threats to their physical safety.

The State does not provide any special protection for journalists. Threats to journalists, like to any other Kenyan citizen, are prohibited broadly under existing laws. Credible threats to journalists' physical safety would be investigated by the NPS, DCI and sometimes by the Independent Police Oversight Authority (IPOA). However, the Office of the Director of Public Prosecutions (ODPP) is in charge of prosecutions. The office indicates it is committed to prosecuting any criminal case irrespective of one's position or status in society and can order investigations where it feels not enough has been done to bring culprits to book. However, there are feelings among journalists and journalism organisations that some cases filed to the police are not followed up. This is especially so when the cases involve high-ranking politicians, governmental officials and/or influential businessmen.

3.2 Where there is violence or threats against a journalist, due account is given by the authorities to any evidence showing linkage to the journalist's professional activities.

There are no mechanisms for determining linkages between journalists' professional activities and violence or threats against them. Often, such crimes are investigated as ordinary offences and are thus not given any special treatment or priority. This was confirmed by both the ODPP and the police during this study. Officials interviewed for this research indicated that they do not discriminate in their investigation of crimes against people in Kenya. In short, their investigation of crimes against Kenyans is not determined by professional affiliation.

3.3 The State has specific institutions/units dedicated to investigations, prosecutions, protection and compensation in regard to ensuring the safety of journalists and the issue of impunity.

The NPS, ODPP and the Judiciary all exist to investigate and prosecute anybody charged with criminal offences, including assault. The IPOA can sometimes order investigations where it feels the police are dragging their feet or are unwilling to investigate crimes. Such was the case with the investigations into the assault of Nehemiah Okwembah of NMG and Reuben Ogachi of CTV, who were attacked by paramilitary GSU officers in Tana River County.

This does not, however, specifically touch on journalists, whether male or female. This thus means that the State does not have specific institutions/units dedicated to investigations, prosecutions, protection and compensation in regard to ensuring the safety of journalists and the issue of impunity.

3.4 Investigations of crimes against journalists, including intimidation and threats, are investigated promptly, independently and efficiently.

Crimes against journalists, including intimidation and threats, are hardly investigated promptly, independently and efficiently merely because they involve journalists. Oftentimes, the crimes against journalists are treated like any other crime and thus investigations are done as per their standard procedures. For example, investigations into the 30 April, 2015, killing of John Kituyi have been slow and may serve to illustrate the speed with which crimes against journalists are investigated and prosecuted. Besides, the killers of Francis Nyaruri on 29 January, 2009 have never been brought to book. These examples illustrate the fact that crimes in Kenya, including those against journalists, can sometimes take years to resolve, if at all.

3.5 Successful prosecutions for violence and intimidation are carried out against the full chain of actors in attacks, including the instigators/masterminds and perpetrators.

The success of prosecutions for violence and intimidation depend not on special State provisions or mechanisms, but the extent of general police investigations and prosecution in courts of law. This also means there is no guarantee that the full chain of actors in attacks, including the instigators/masterminds and perpetrators, will be arrested and/or prosecuted because the victims are journalists. A good example of this is the investigations into the murder of John Kituyi detailed above, which at the time of writing had neither found the culprits nor any mastermind.

3.6 The State establishes specialist units that can deal appropriately with attacks on women, including women journalists.

The NPS has a special unit, the Kenya Police Gender Desk, to deal with crimes against women, particularly those of a sexual nature. The police also formed the Anti Stripping Squad in November 2014 to deal with cases involving the public stripping of women, and several people were prosecuted. The Directorate of Gender in the Ministry of Devolution and Planning, the National Gender and Equality Commission, and Anti-Female Genital Mutilation Board all deal with women issues. These bodies handle issues relating to women irrespective of their professional or institutional affiliations.

3.7 The State monitors the performance of specific State institutions and processes set up in relation to safety at national and local levels.

Even though the MCK exists to look at the media in general and is usually concerned with the welfare of journalists, including their safety, there are no mechanisms in place to monitor its performance and processes in relation to the safety of journalists. Its reports are shared with the government as is expected of any government agency.

3.8 The State ensures that appropriate training and capacity is provided to police, prosecutors, lawyers and judges.

Kenya does not offer any special training to the police, prosecutors, lawyers and judges to handle cases touching on journalists.

4. The State takes other effective measures in regard to journalists' safety

4.1 The State publishes updated data about attacks on journalists and impunity.

The State funded MCK records threats against journalists operating in Kenya. The organisation manages a reporting facility on its website through which it records and publishes information relating to threats against journalists.³¹

4.2 The State recognises that protections applying to journalists may also be required to protect persons who represent sources of information for journalists and human rights defenders.

Whilst the Constitution guarantees freedom of the media, this does not necessarily extend to sources of information. However, the rights of all citizens are protected by the Constitution, irrespective of their profession or institutional affiliation. Article 10 (2) (b) indicates that Kenya has national values, which include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. This can be taken to signify that sources of information and human rights defenders are by default protected. However, a few cases demonstrate that the State does not always respect this doctrine.

For example, on 13 May, 2015, Alex Kiprotich, *The Standard's* Deputy News Editor and Nakuru Bureau Chief, was interrogated by a Nakuru County Criminal Investigations unit, which wanted him to reveal the sources of his story about bandit attacks and killings in Nadome in Baringo County.³² In addition, on 10 November, 2015, NMG's Parliamentary editor, John Ngirachu, was arrested by DCI officers for writing a story highlighting questionable spending within the Interior ministry. The story questioning the spending of Sh3.85 billion by the Ministry was based on the proceedings of the PAC of the National Assembly.³³ Despite the pressure, the journalists did not reveal the sources of their stories. In fact, the journalists received support from both Parliament and the Commission for the Implementation of the Constitution. The Speaker of the National Assembly Speaker, Justin Muturi, said that police had no powers to arrest journalists within the precincts of Parliament. On its part, the Commission for the Implementation of the Constitution said the police had no powers to force journalists to reveal

31 See the facilities at <http://www.mediacouncil.or.ke/en/mck/index.php/quick-contacts?view=contact> and <http://www.mediacouncil.or.ke/alerts/> [Accessed 6 April 2016].

32 See, Mabatuk Vincent (2015) 'The Standard Journalist questioned by CID over reporting on Nadome attacks'. *The Standard*, 13 March [online]. Available at <http://www.standardmedia.co.ke/article/2000162007/the-standard-journalist-questioned-by-cid-over-reporting-on-nadome-attacks> [Accessed 12 February 2016].

33 *Nation Reporter* (2015). Op. cit.

sources or arrest them because of the refusal as such moves contravened the freedom of the press enshrined in the Constitution.

4.3 The State consults with human rights/other relevant organisations on the appropriate policies and frameworks to counter specific threats to women journalists.

There is no explicit requirement on the State to consult with human rights/other relevant organisations on the appropriate policies and frameworks to counter specific threats to women journalists. Besides, there is no law delineating journalists in terms of gender. Accordingly, no special protection is offered to female journalists.

4.4 In cases of electronic surveillance, the State respects, and ensures respect for, freedom of expression and privacy, through international standards of transparency, proportionality and legitimate purpose.

There is evidence suggesting that the State engages in electronic surveillance, including of journalists. This may thus offend international law particularly the freedom of expression and privacy. There are reports that the government regularly requests access to user communications data. According to reports from Vodafone³⁴ networks, and Google, the government in 2014 made several requests for user communications data and user account information.³⁵

Other reports indicate that the NIS has often engaged in surveillance. A report in various media, based on leaked emails published by WikiLeaks, indicate that the NIS in 2015 sought the services of Italian surveillance company Hacking Team to 'intercept private communication and bring down websites deemed offensive to the government'.³⁶

³⁴ Vodafone has a 40 per cent stake in Kenya's largest mobile phone company Safaricom.

³⁵ See the 2014 Freedom House report, available at <https://freedomhouse.org/report/freedom-net/2014/kenya> [Accessed 25 January 2015].

³⁶ See Achuka, Vincent and Menya, Walter (2015) 'WikiLeaks: NIS purchased software to crack websites'. Nation, 11 July 2015 [online]. Available at <<http://www.nation.co.ke/news/NIS-WikiLeaks-Hacking-Team-Surveillance/-/1056/2784358/-/o1hyp2/-/index.html>> and Finnan, Daniel (2015) 'Kenyan government asked Hacking Team to attack dissident website'. Radio France International, 17 July [online]. Available at <http://www.english.rfi.fr/africa/20150717-kenyan-government-asked-hacking-team-attack-dissident-website> [Websites accessed 30 July 2015].

4.5 The State reports on attacks to the appropriate UN agencies, including responses to the UNESCO Director-General's requests for information on judicial follow-up to any killing/s of journalists.

The State does respond to the UNESCO Director-General's requests for information on judicial follow-up to any killing/s of journalists. This is evidenced, for example, by reports detailing the killing and assault of journalists in Kenya, including the murder of John Kituyi in April 2015 and, before that, that of Francis Nyaruri, who was killed on 29 January, 2009. This is normally done by the Ministry of Foreign Affairs through its Permanent Delegation to the United Nations (this is officially called the Permanent Delegation of the Republic of Kenya to the United Nations). The Nyaruri case was, for example, contained in the 2010 UNESCO Director-General's report to the Intergovernmental Council of the International Programme for the Development of Communication (IPDC).³⁷

4.6 The State has measures to support and compensate families of murdered journalists.

There is no provision for support and/or compensation of families of murdered journalists.

³⁷ UNESCO 2010. See report at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/ipdc2010_safety_of_journalists_report.pdf [Accessed 29 March 2016].

Category C

The roles and response of civil society organisations and academia



Photo taken at World Press Freedom Day celebrations, Nairobi, Kenya, 4 May 2015, by John Otieno Okande. Copyright UNESCO.

Key Indicators

1. CSOS AND ACADEMIA MONITOR SAFETY AND SHARE INFORMATION

- 1.1 CSOs research and monitor safety issues of journalists.
- 1.2 CSOs analyse data to produce high quality understanding of circumstances and causes of killings and impunity.
- 1.3 CSOs provide information to the media and wider public.
- 1.4 CSOs monitor and report upon specific attacks upon or harassment of women journalists or other specifically targeted groups.
- 1.5 CSOs provide information to UN agencies and to Universal Periodic Review process about journalists' safety.

2. NATIONAL CSOS PROMOTE COORDINATED APPROACHES TO JOURNALISTS' SAFETY ISSUES

- 2.1 CSOs have resources to work on safety issues.
- 2.2 CSOs co-operate among themselves and with other stakeholders.
- 2.3 National NGOs have significant consultation and co-ordination with international NGOs.
- 2.4 CSOs co-operate effectively with State, legislative bodies, UN and others in contributing to law and policy making.

3. CSOS AND ACADEMIA BUILD KNOWLEDGE AND CAPACITY

- 3.1 Academic and other journalists' training courses include adequate professional training on safety issues.
- 3.2 CSOs provide relevant information, including about training opportunities and resources, to journalists.
- 3.3 CSOs provide legal advice and services to journalists on safety issues, including counselling and assistance to journalists under threat and to families of murdered journalists.
- 3.4 CSOs develop programmes that provide specific support for women journalists.
- 3.5 CSOs evaluate and report on the training and support initiatives undertaken.
- 3.6 CSOs provide safety equipment for vulnerable media workers.
- 3.7 CSOs provide, where appropriate, places of refuge or safe houses, for media workers under severe threat.
- 3.8 CSOs participate in humanitarian relief efforts for journalists under threat or who have been killed or injured.

Category C

The roles and response of civil society organisations and academia

In the UN Plan of Action, civil society and academics are recognised as important actors as regards journalists' safety. Civil society groups/NGOs and academics working in the field of media development and the protection of free expression or related fields of human rights share a responsibility to take what steps they can to protect journalists from risks that they face on account of their work.

Civil society groups lack the formal authority and powers of State institutions, but they can warn, advice and counsel the range of other actors about the nature of the problem and possible solutions. They can also lead public opinion, and may provide direct support, including training, to journalists. Nothing civil society does, however, should be taken as reducing the responsibility of the State.

The research engaged with a number of local CSOs with the aim of determining their roles in terms of journalists' safety. The study consulted the KCA, the KUJ, Association of Media Women in Kenya (AMWIK), Article 19³⁸, CPJ and Kenya ICT Action Network (KICTANet). These represent all the journalists working in Kenya with the KCA, for example, representing the largest group, the correspondents, who operate throughout the country. AMWIK represents female journalists although they also work with women in their various programmes. In addition to the CSOs, the research also engaged with seven scholars from four public and two private universities on the role of academia in advancing the safety of journalists through training and research.

1. CSOs and academia monitor safety and share information

1.1 CSOs research and monitor safety issues of journalists.

A number of organisations regularly research and monitor the safety of journalists in Kenya. Some of the most active are the local chapter of Article 19, the KCA, the KUJ, and AMWIK. Even though the MCK is a government-funded agency, it regularly commissions studies and

³⁸ Some of these organisations, like Article 19 and CPJ, are international NGO's, but they also work locally in country, and are therefore in this report discussed as local CSO's as well.

monitors the safety of journalists. The MCK has an online facility that allows journalists to log in and indicate the types of threats they face. These organisations regularly share the information with the media. However, in the year under review, no organisation researched and reported on specific attacks or harassment of women journalists or other specifically targeted groups.

There have not been any reports produced by universities, colleges or any other educational institutions looking at the safety issues of journalists in the year under study.

1.2 CSOs analyse data to produce high quality understanding of circumstances and causes of killings and impunity.

During the research period, no local CSO had conducted quality understanding of circumstances and causes of killings and impunity. The only report, which was produced by the MPRC, looked broadly at the state of the media in Kenya and not the circumstances and causes of killings and impunity. Article 19 and the CPJ conducted studies that are cited elsewhere in this report.³⁹ The one killing experienced during the study period, that of Eldoret-based journalist John Kituyi, received only a cursory mention from local organisations and no serious report on the cause of his death.

A 2014 Article 19 report titled *The impact of Kenya's legal and institutional frameworks on media freedom*, looked broadly at the legal and institutional regime that the media operates in, rather than specific threats against journalists.

1.3 CSOs provide information to the media and wider public.

CSOs regularly share information with the media. In the study period though, other than the government funded MCK, and the MPRC, no other organisation did any serious study to share with the media and public. The work of the aforementioned organisations is often in the public domain especially via their websites. The KMP did a report in 2013 looking at the safety and protection of journalists in Kenya. The report found that, inter alia, there is no strategy on the protection of journalists within government institutions, the media industry or civil society.⁴⁰

1.4 CSOs monitor and report upon specific attacks upon or harassment of women journalists or other specifically targeted groups.

There is no CSO in Kenya that specifically monitors and reports the harassment of women journalists or other specifically targeted groups. The reports are often not gender specific. Even AMWIK, which is specifically set up to take care of women issues, has not produced

³⁹ Article 19 (2015b). Op. cit.; CPJ (2015). Op. cit.

⁴⁰ See Hivos (2013) *Safety and Protection of Kenyan Journalists: Is it Common Sense or Common Cents?* Nairobi: Kenya Media Programme.

any reports on the harassment of, or threats against female journalists. This could be due to lack of awareness or sensitisation on the need to monitor threats against female journalists.

1.5 CSOs provide information to UN agencies and to Universal Periodic Review process about journalists' safety.

The various CSOs in Kenya regularly share information with UN agencies and these have been mentioned in the Universal Periodic Review (UPR) of human rights. For example, recommendation 143.52 asked for the review of the Kenya Information Communication (Amendment) Act of 2013 to comply with international standards on freedom of expression, create an enabling environment for journalists and bloggers and decriminalise media offences and defamation. In addition, local international organisations working in Kenya often hold formal and informal meetings at which such information is shared.

2. National CSOs promote coordinated approaches to journalists' safety issues

2.1 CSOs have resources to work on safety issues.

Recent events indicate that some CSOs have started to work together in a bid to promote the safety of journalists in Kenya. For example, the KMWG, which brings together various CSOs, namely AMI, Twaweza Communications, CPJ, MCK, Article 19, NCHRD-K, KMP, and Protection International, provides a coordinated approach to journalists' safety issues. The KMWG partners work together to advance the protection of journalists in Kenya through training and lobbying with media managers. However, the group lacks resources of its own and is wholly dependent on donor funding.

2.2 CSOs co-operate among themselves and with other stakeholders.

There is evidence that several CSOs operated among themselves and with other stakeholders specifically on issues of the safety of journalists. One such effort was commissioned by the KMP, and was led by the KMWG. This collaboration led to the publication of a journalists' protection manual that offers practical advice on safety and protection. The manual covers, among other matters: the issues that all journalists need to know, assignment preparedness, responding to risk, how to contend with death threats. It also offers specific advice for women journalists.⁴¹

⁴¹ See Kenya Media Working Group (2014) *Staying Safe: A Manual for the Safety and Protection of Journalists in Kenya*. Nairobi: Kenya Media Working Group. Available online at <http://protectioninternational.org/wp-content/uploads/2014/09/Safety-Protocol-and-Manual-for-journalists-ENGLISH.pdf> [Accessed 10 February 2016].

2.3 National NGOs have significant consultation and co-ordination with international NGOs.

National NGOs often have very good working relations with international NGOs and regularly coordinate to develop various strategies aimed at empowering journalists. The KCA, KUJ, MCK, the MPRC, AMWIK, KMP and others work with international NGOs like Article 19, the AMI, Protection International, and CPJ to map and address threats against journalists.

2.4 CSOs co-operate effectively with State, legislative bodies, UN and others in contributing to law and policy making.

In the study year, the State took an antagonistic stand particularly towards the media given the perception that some media houses are keen on reporting negatively on government goings-on, particularly on issues related to corruption, the ICC, land grabbing and abuse of human rights emanating from clampdowns on sections of society perceived to be supportive of terrorism and related activities. For this reason, the working relations between CSOs, the State and legislative bodies have deteriorated. Nonetheless, CSOs regularly contribute to legislation as part of public participation in the legislative process, and this is illustrated by, for example, submissions made to Parliament by a number of organisations, including MCK, Media Owners' Association (MOA), KEG, KCA and KUJ expressing their opposition to the Security (Amendment) Bill 2014. In their submission, they maintained that the war on terror cannot be used as an excuse by the State to silence the media. However, despite such participation and protestations, legislation such as the Security Laws (Amendment) Bill 2014 and the Parliamentary Powers and Privileges Bill 2014, went through Parliament.

3. CSOs and academia build knowledge and capacity

3.1 Academic and other journalists' training courses include adequate professional training on safety issues.

During the period under study, no academic institutions or CSO offered any professional training on safety issues. Currently, no university or college in Kenya offers any specific course on the safety of journalists. Organisations like the MCK offered some training during the study period.

Further, on 18 August 2014, the MCK, together with the AMI, Twaweza Communications, CPJ, Article 19, NCHRD-K, KMP and Protection International, under the aegis of the KMWG,⁴² launched a protection guide and manual for journalists titled *Staying Safe: A Manual for the Safety and Protection of Journalists In Kenya*.⁴³

⁴² In 2013, the KMWG launched a report on the safety and protection of Kenyan journalists. See Hivos (2013). Op. cit.

⁴³ Kenya Media Working Group (2014) Op. cit.

The protection guide and manual arose because of, among other things, the realisation that media and non-media actors in Kenya have invested little in the safety and protection of journalists.⁴⁴ The manual tells journalists how to protect themselves in the course of their work. It is divided into two parts. According to the Foreword, the first part contains what it calls a national Protocol, which sets the framework for the safety guide. There is a 10-point Charter for Media Owners and Managers, which commits them to a number of obligations intended to make the journalists' environment safer than it is currently. The second part offers what the organisation calls practical and tested guidelines that journalists should adopt to secure their safety.

Funded by the KMP, the Protocol was based on what the organisation reckoned were increasing cases of harassment and threats to journalists in the country 'which made them vulnerable while in the course of duty while at the same time noting that most media houses in Kenya do not have safety and protection measures for their staff'.⁴⁵

The launch of the protection guide and manual for journalists was based on recommendations of the *Safety and Protection of Kenyan Journalists: Is it common sense or common cents?* -report.

Besides, a MCK project called 'Enhancing and Up-scaling Media Safety and Journalistic Professionalism in Kenya' supported by the International Media Support (IMS) responds to the needs for mechanism and capacities related to ensuring the safety and protection of media practitioners in Kenya. Journalists received training on safety, security and trauma counselling after terror attacks in Nairobi, particularly at the Westgate Mall, Lamu and Tana River.⁴⁶

On 18-19 January, 2015, the MCK also trained journalists on ethics, safety and security in Kisumu. Similarly, on 10 March, 2014, Article 19, in collaboration with the MCK, trained 15 journalists on their role as vanguards of Kenya's devolution system of governance. The training, held in Mombasa, Kenya, was part of an ongoing training exercise also conducted in three other towns: Machakos, Nyeri and Kisumu. The journalists were trained on their role in ensuring access to information and citizen participation in Kenya's governance process.⁴⁷

⁴⁴ Ibid. p.ii.

⁴⁵ Media Council of Kenya (2014) 'Launch of the Journalists' Safety and Protection Protocol' [online]. Nairobi: Media Council. Available at <http://www.mediacouncil.or.ke/en/mck/index.php/programs/safety-and-protection-of-journalists> [Accessed 10 August 2015].

⁴⁶ Ibid.

⁴⁷ See Article 19 (2014) 'Newsletter: Freedom of Expression in East Africa'. Article 19 [online]. Available at <https://www.article19.org/resources.php/resource/37508/en/newsletter:-freedom-of-expression-in-east-africa> [Accessed 10 February 2016].

3.2 CSOs provide relevant information, including about training opportunities and resources, to journalists.

CSOs often provide relevant information, including about training opportunities and resources, to journalists. Some of the training opportunities and resources are in fact provided by the CSOs themselves or their associates, and are often communicated to the media houses which select who are to attend. The examples detailed in 3.1 above relate to the various trainings offered by CSOs in Kenya, which often share the information with the media houses they work with.

3.3 CSOs provide legal advice and services to journalists on safety issues, including counselling and assistance to journalists under threat and to families of murdered journalists.

KCA and KUJ regularly give legal advice and services to journalists on safety issues, including counselling and assistance to journalists under threat and to families of murdered journalists. This is largely because a majority of those facing threats are members of both bodies.

3.4 CSOs develop programmes that provide specific support for women journalists.

AMWIK is the only women media CSO in Kenya. Its membership comprises female employees of various media houses, public relations professionals, independent content producers, students of journalism and communication and employees of non-governmental organisations and other institutions with a background study in communication. According to the 'About AMWIK' section on its website (<http://amwik.org/about-amwik/>), even though its membership is drawn mainly from women in communication in Kenya, its focus is beyond its membership.

It is interested in 'building the capacity of journalists to understand women's issues, how the issues affect women and to positively package and widely disseminate information on women in a way that enables communities to make informed choices and change negative attitudes towards women'. It is also interested in 'enhancing the visibility of women in the society and promoting their participation in leadership and decision-making'. The organisation further states that it seeks to use the media to create public awareness around key issues affecting women to ensure public support and appreciation of women as leaders.

3.5 CSOs evaluate and report on the training and support initiatives undertaken.

CSOs have not during the period under review evaluated or reported on the training and support initiatives.

3.6 CSOs provide safety equipment for vulnerable media workers.

CSOs in Kenya have not provided safety equipment for vulnerable media workers.

3.7 CSOs provide, where appropriate, places of refuge or safe houses, for media workers under severe threat.

CSOs in Kenya do not generally provide places of refuge or safe houses for media workers under severe threat. Instead, some like the KCA and KUJ work with international bodies such as The Correspondents Fund, Amnesty International and IMS to provide safe houses, mostly out of the country, for journalists facing threats. The MCK also facilitates the protection of journalists and the organisation reports having taken journalists to safe houses.

3.8 CSOs participate in humanitarian relief efforts for journalists under threat or who have been killed or injured.

Local CSOs in Kenya have not participated in humanitarian relief efforts for journalists under threat or those who have been killed or injured.

Category D

The roles and response of media actors and intermediaries



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Key Indicators

1. MEDIA ORGANISATIONS ADOPT SPECIFIC MEASURES TO PROTECT THE SAFETY OF JOURNALISTS

- 1.1 Media organisations monitor safety issues and have a safety policy that is written and available to staff.
- 1.2 Safety policies extend to freelance journalists, their assistants, local employees and support personnel.
- 1.3 Journalists, including freelancers, have contracts with proper terms of employment, including with respect to safety and personal risk.
- 1.4 Media organisations ensure that workplace and working conditions are safe and secure.
- 1.5 Journalists have the right to refuse dangerous assignments.
- 1.6 Safety policies include risk assessment provisions to establish levels of danger facing employees on particular assignments.
- 1.7 Media organisations provide hostile environment and risk awareness training before journalists are sent on dangerous assignments.
- 1.8 Media organisations provide adequate insurance and necessary safety equipment to journalists on dangerous assignments including equipment that is appropriate to women.
- 1.9 Media organisations provide adequate back-up to journalists on dangerous assignments.
- 1.10 Media organisations liaise with security forces where appropriate to establish guidelines on treatment of journalists before entering a dangerous area.
- 1.11 Media organisations recognise that women employees face specific risks and undertake specific mitigation strategies.
- 1.12 Community media operate safety protocols as appropriate to their circumstances.

2. JOURNALISTS' UNIONS AND PROFESSIONAL BODIES TAKE SPECIFIC MEASURES TO PROMOTE THE SAFETY OF JOURNALISTS

- 2.1 Journalists' unions/associations monitor safety issues and advocate to employers and the authorities to have effective policies about these.
- 2.2 Journalists' unions/associations provide information resources and promote good practices, also in regard to media professionalism.
- 2.3 Journalists' unions/associations provide practical advice and access to specialist resources to media staff working on dangerous assignments.
- 2.4 Journalists' unions/associations provide training and stress counselling to journalists.

- 2.5 Journalists' unions/associations make support available to community media and citizen journalists.
- 2.6 Journalists' unions/associations establish programmes for women journalists that take account of specific risks they will face on dangerous assignments.

3. ALL MEDIA ACTORS, INCLUDING INDIVIDUAL JOURNALISTS, PROMOTE SAFETY IN DIGITAL COMMUNICATIONS

- 3.1 Journalists are aware of digital dangers and protection measures.
- 3.2 Journalists effectively use protection in digital communication including appropriate software and other precautionary measures.
- 3.3 Employers and others provide software, equipment and training that enable journalists to protect communications.

4. MEDIA ACTORS COVER SAFETY ISSUES

- 4.1 The media community demonstrates its own concern on the issues of safety and impunity, is not afraid to report on those issues as matters of public interest, and recognises the common interests with community media and citizen journalists in those matters.
- 4.2 Media acts as a community advocate for these issues.
- 4.3 Media actors work with non-media stakeholders to ensure adequate policies and attention to the issue.

5. INTERMEDIARY ENTITIES RESPECT JOURNALISTS' SAFETY

- 5.1 Internet, IT and telecoms companies have secure facilities that protect journalists' data from hackers.
- 5.2 Internet, IT and telecoms companies have clear, transparent and proportionate policies in line with international standards on privacy as regards releasing private data to law-enforcement authorities and others.
- 5.3 Internet, IT and telecoms companies report transparently and periodically on items 5.1 and 5.2 above.
- 5.4 Internet, IT and telecoms companies have data-protection policies that entitle clients to track any third party engagement with their data.
- 5.5 Internet, IT and telecoms companies have a policy to inform their users about data requests by government agencies.

Category D

The roles and response of media actors and intermediaries

Media organisations employing journalists or who are using freelancers have a particular professional responsibility for the safety of their journalists. This responsibility embraces providing the necessary support and training to journalists on dangerous assignments, adequate risk assessment procedures and appropriate planning. Intermediary organisations, including search engines, Internet Service Providers, email/software/application providers, or social networks play an increasing role as gatekeepers and conveyors of content and thus have increasing responsibilities in terms of privacy issues, digital data security, etc.

Journalists themselves have a responsibility to not endanger themselves or others by taking unnecessary risks, and, in the case of international journalists, to be mindful of the dangers to which they may expose those local staff that support them on their assignments. Journalists' trade unions and professional bodies also have a responsibility to ensure that their members are prepared for the dangers involved in reporting.

1. Media organisations adopt specific measures to protect the safety of journalists

1.1 Media organisations monitor safety issues and have a safety policy that is written and available to staff.

Major media organisations do not have written safety policies for staff. What is available is ad hoc, and is applied whenever security incidents arise. Those interviewed say safety guidelines offered often come from other sources and not the media houses themselves. This is the case with the Safety Protocol and Manual produced by the KMWG.

As most of the journalists surveyed for this assessment, almost 90 per cent, estimate, media houses do hardly offer any safety and security measures to protect them. Besides, half of the journalists (50 per cent) fear being sacked, demoted or reprimanded at work and thus consider media organisations culpable of the challenges they currently face.⁴⁸

48 This is based on responses from the questionnaire used in this study.

1.2 Safety policies extend to freelance journalists, their assistants, local employees and support personnel.

The few policies that exist do not extend to freelance journalists, their assistants, local employees and support personnel. Some of the policies extend to correspondents, but these must have some form of contracts with the media houses they work for. In such cases the policies only cover the correspondents and not those working with them.

1.3 Journalists, including freelancers, have contracts with proper terms of employment, including with respect to safety and personal risk.

Other than full-time journalists, freelancers do not have contracts. This means any safety policies do not apply to them. Those working in dangerous situations often do so at their own risk. Even contracts for full time members of staff do not specifically deal with issues of safety and personal risk. It is often assumed that employers provide a safe or secure environment for all their employees.

1.4 Media organisations ensure that workplace and working conditions are safe and secure.

Except in offices managed by the media organisations, other places outside such workplaces are not secured by the media companies. Their responsibilities, including ensuring that workplaces and working conditions are safe and secure, are limited to premises that they rent or manage. Media companies often employ the services of security companies to secure their premises. Besides, staff use access cards to enter premises, especially those run by major media houses. The KBC premises are guarded by armed police as most government buildings.

1.5 Journalists have the right to refuse dangerous assignments.

Journalists interviewed indicate they are often not at liberty to refuse dangerous assignments. Some full-time employed journalists indicated that they could refuse assignments they deemed too dangerous, but that it was rare. The same does not apply to correspondents, freelancers and stringers. Their refusal to cover such assignments might mean losing their contracts. This is exacerbated by the fact that there are increasing threats from both terror and criminal groups and gangs from whom they are not adequately protected.

1.6 Safety policies include risk assessment provisions to establish levels of danger facing employees on particular assignments.

The media houses interviewed indicated they do not conduct risk assessments. This is based largely on what they said is the transitory nature of risk. Any risk assessment is done on a case-by-case basis rather than explicitly making general risk assessments.

1.7 Media organisations provide hostile environment and risk awareness training before journalists are sent on dangerous assignments.

Media houses sometimes provide risk awareness training before journalists are sent on dangerous assignments. This is done on a need-basis. In addition, CSOs like the AMI, Twaweza Communications, CPJ, MCK, Article 19, NCHRD-K, KMP and Protection International, under the aegis of the KMWG, are working at resolving some the safety and protection challenges facing journalists. Some media houses are beginning to partner with these organisations as they now take the safety and security of journalists seriously in the face of growing security concerns in Kenya and neighbouring countries like Somalia and South Sudan. In many instances, such partnerships work with urban and mostly Nairobi-based media organisations.

1.8 Media organisations provide adequate insurance and necessary safety equipment to journalists on dangerous assignments including equipment that is appropriate to women.

The media houses interviewed indicated they offer work-related and accident insurance to staff journalists. Medical cover is offered to these journalists and their families, often the spouse and children, as part of the standard employment benefits offered to every employee not only journalists. Some of the media houses indicated that their insurance is restricted to injuries sustained while at work, and hardly takes care of dangerous assignments. Such risks are mitigated by the fact that dangerous assignments such as those involving tracking down cattle rustlers or criminals, involve the police or military, who offer some 'protection'. The media houses and journalists interviewed indicated that insurance cover is not extended to stringers, freelance journalists and their families, fixers, bloggers, and others.

Whatever cover is offered, however, is not gender sensitive. Thus women journalists are not accorded special protection. Neither is there appropriate equipment given to women journalists.

1.9 Media organisations provide adequate back-up to journalists on dangerous assignments.

Journalists in Nairobi and a few urban areas with bureaus might sometimes offer back-up, although this is rare. Journalists, however, rely on colleagues in field assignments. For example, reporters are often accompanied by photographers and cameramen. Besides, colleagues from different media houses take care of each other while in the field and may offer support when necessary. This is, however, not guaranteed, particularly in extreme situations.

1.10 Media organisations liaise with security forces where appropriate to establish guidelines on treatment of journalists before entering a dangerous area.

There are no formal arrangements between security forces and media houses. In fact, according to feedback from respondents, the deteriorating relationship between the media and the government means security forces are sometimes reluctant to establish guidelines for the treatment of journalists covering dangerous assignments, something the NPS acknowledges. Where guidelines exist, those interviewed said this is arranged on an ad-hoc basis and depends on each media house's relationship with different security agencies. The NPS has now developed a strategy aimed at improving the working relations between the police and journalists.

1.11 Media organisations recognise that women employees face specific risks and undertake specific mitigation strategies.

Media organisations in Kenya do not recognise that women employees face specific risks and thus do not undertake specific mitigation strategies to protect them. Moreover, as one female respondent put it in the questionnaire, 'Such strategies may be seen as being sexist in an era when media houses want to treat both men and women equally. Journalism and professional hazards are not gendered. Journalists are journalists irrespective of their gender. Equality means we are able to deal with whatever situations we find ourselves in. We don't want any special favours because we are women'.

1.12 Community media operate safety protocols as appropriate to their circumstances.

Besides dealing with criminal activities, community media do not operate safety protocols. Community media operatives interviewed indicate that they do not face serious risks as a consequence of their work and do not invest much in safety protocols. This is because many of them do not engage in sensitive issues, particularly those relating to security, corruption and divisive party politics which are often the source of threats.

2. Journalists' unions and professional bodies take specific measures to promote the safety of journalists

2.1 Journalists' unions/associations monitor safety issues and advocate to employers and the authorities to have effective policies about these.

The KUJ and KCA regularly monitor safety issues and advocate to employers and the authorities for them to have effective policies to protect journalists. KUJ regularly meets with media managers to discuss and negotiate for better working conditions, including pay (through collective bargaining agreements) and safety, for their members.

2.2 Journalists' unions/associations provide information resources and promote good practices, also in regard to media professionalism.

KUJ and KCA have attempted on numerous occasions to provide information and resources necessary for the practice of professional journalism. These regularly partner with others, given their limited resources, to offer such support. In the study period, for instance, they worked with the MCK in attempts to promote media professionalism through training especially on the code of ethics, and production of reports on remuneration and working conditions of journalists in Kenya.

2.3 Journalists' unions/associations provide practical advice and access to specialist resources to media staff working on dangerous assignments.

Besides information, KUJ and other associations do not provide access to any special resources to media staff undertaking dangerous assignments. This is largely due to the resource constraints the organisations themselves face.

2.4 Journalists' unions/associations provide training and stress counselling to journalists.

The KUJ and KCA have previously, particularly after the post-election violence of 2007/2008, offered training and trauma counselling to journalists, such as after terror attacks in Nairobi, particularly at the Westgate Mall, Lamu and Tana River.⁴⁹ These interventions are ad-hoc and thus are based on specific needs.

2.5 Journalists' unions/associations make support available to community media and citizen journalists.

Whatever support given by the union and associations is offered to members and not to all journalists. Besides, citizen journalists are hardly considered journalists in Kenya and thus do not benefit from any support. Community media members interviewed said they fend for themselves, although the Association of Alternative Media in Kenya attempts to offer support from time to time. Such support is also offered on an ad hoc basis and thus is hardly planned.

2.6 Journalists' unions/associations establish programmes for women journalists that take account of specific risks they will face on dangerous assignments.

The KUJ and KCA do not have any programmes to take care of women journalists. AMWIK is concerned with its members and regularly takes care of women journalists. However, even this does not have an established programme to take care of women journalists undertaking dangerous assignments.

3. All media actors, including individual journalists, promote safety in digital communications

3.1 Journalists are aware of digital dangers and protection measures.

All the journalists surveyed said they were aware of the dangers posed by using modern technologies. However, only a third (40 of those who completed the questionnaire) said they were aware of, and had employed any protection measures. Twenty of those interviewed said risks are part of professional hazards they face in the course of their work and are consequently willing to take risks for what they would consider good stories.

3.2 Journalists effectively use protection in digital communication including appropriate software and other precautionary measures.

As indicated above, only a third of those who completed the study questionnaire are aware of and employ precautionary measures. However, most of the measures are basic and include ignoring calls from unknown numbers and using applications like Truecaller to identify callers.

3.3 Employers and others provide software, equipment and training that enable journalists to protect communications.

The media houses interviewed have provided software, equipment and some training aimed at protecting their communications. This is especially because they now rely on, for example,

the Internet to transmit material from different bureaus or offices. On 17-18 June, 2015, the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) in partnership with KICTANet trained 24 journalists on digital safety. The training focused on the use of such tools such as anonymous internet navigation settings, data encryption, virtual private networks, the use of IP anonymisation and anonymous email services.⁵⁰

4. Media actors cover safety issues

4.1 The media community demonstrates its own concern on the issues of safety and impunity, is not afraid to report on those issues as matters of public interest, and recognises the common interests with community media and citizen journalists in those matters.

The media in Kenya is bold enough to report and demand action against people threatening journalists. This was demonstrated, for example, during the assault on journalists in Tana River as well as after the murder of a journalist in Eldoret. In essence, the media community demonstrates its own concern on the issues of safety and impunity, and is not afraid to report on those issues as matters of public interest. This includes issues affecting community media and citizen journalists.

4.2 Media acts as a community advocate for these issues.

The media in Kenya is not afraid to criticise and stand up to the State, for example, when it feels the freedom of expression and media are being trampled upon. This is evidenced by, for example, their vociferous protests against attempts to curtail press freedom through the Security (Amendment) Act and other government policies and pronouncements. For example, when President Kenyatta signed into law the Security Laws (Amendment) Bill 2014 on 19 December 2014, several organisations, including media organisations especially the MCK, MOA, KEG, KCA, and KUJ protested the move, calling the laws unconstitutional and draconian. The organisations supported a case filed by the Coalition for Reform and Democracy (CORD) and KNCHR challenging the laws. On 23 February, 2015, five High Court judges in Nairobi declared eight offensive clauses in the controversial Security Laws Act unconstitutional.

Moreover, the Freedom House reported in its 2015 that the Kenya media are prone to self-censorship. The organisation says that 'several laws restrict press freedom, and the government and security forces harass journalists, leading to self-censorship in some

50 See Vernon, Marilyn and Orembo, Liz (2015) 'CIPESA Promotes Digital Safety Awareness and Skills for Media Practitioners in Kenya'. CIPESA [online]. Available at <http://www.opennetafrika.org/cipesa-promotes-digital-safety-awareness-and-skills-for-media-practitioners-in-kenya/> [Accessed 11 February 2016].

cases. Media outlets avoid reporting on issues such as official corruption or misconduct, counterterrorism operations, or the ICC proceedings, often under threat of reprisals'.⁵¹

Also some sources for this report indicate that threats emanate from within the media organisations themselves. One respondent, for instance pointed out that, 'Often editors and other reporters are "bought" by politicians to ensure positive coverage and even act as spies on their colleagues. Divisions within the media community are one of the key areas affecting press freedom in Kenya today.' It must be notified that verified empirical evidence of such practices is not available for this study.

4.3 Media actors work with non-media stakeholders to ensure adequate policies and attention to the issue.

Media actors often work with non-media stakeholders, particularly civil society, to not only draw adequate attention to the issues, but also to take action on issues they deem unfriendly to the media and the public. As indicated above, the media and non-media stakeholders, through various strategies, including protests and legal interventions, were key to the suspension of legislative clauses in the Security (Amendment) Act that were deemed a threat to press freedom.

5. Intermediary entities respect journalists' safety

5.1 Internet, IT and telecoms companies have secure facilities that protect journalists' data from hackers.

Those interviewed indicate that facilities in Kenya are susceptible to hacking from State and non-State agents, and the Internet, IT and telecoms companies have been unable to protect journalists' data from hackers. This is especially prevalent when the media offer coverage of controversial issues. The NIS is reported to regularly hack the emails and devices of journalists as well as monitor their social media accounts, for example Twitter, as a way of enhancing their surveillance against media workers.⁵² That said, the major media houses have invested in their own security, particularly of their data. Granted, they still use local Internet, IT and telecoms companies for Internet connection and data transmission, which are susceptible to hacking.

⁵¹ Freedom House. Op. cit.

⁵² See Achuka, Vincent and Menya, Walter (2015) 'WikiLeaks: NIS purchased software to crack websites'. Nation, 11 July 2015 [online]. Available at <<http://www.nation.co.ke/news/NIS-WikiLeaks-Hacking-Team-Surveillance/-/1056/2784358/-/01hyp2/-/index.html>> and Finnian, Daniel (2015) 'Kenyan government asked Hacking Team to attack dissident website'. Radio France International, 17 July [online]. Available at <http://www.english.rfi.fr/africa/20150717-kenyan-government-asked-hacking-team-attack-dissident-website>. [Websites accessed 30 July 2015].

5.2 Internet, IT and telecoms companies have clear, transparent and proportionate policies in line with international standards on privacy as regards releasing private data to law-enforcement authorities and others.

There is no law in Kenya preventing the Internet, IT and telecoms companies from releasing private data to law-enforcement authorities. Often, editors interviewed said they fear the government snoops on them using security agencies.

5.3 Internet, IT and telecoms companies report transparently and periodically on items 5.1 and 5.2 above.

There is no evidence of the Internet, IT and telecoms companies reporting transparently and periodically how and whether they protect journalists against data hacking. Neither have they reported on their policies regarding releasing private data to law-enforcement authorities and others. Besides, there is no law requiring them to do that.

5.4 Internet, IT and telecoms companies have data-protection policies that entitle clients to track any third party engagement with their data.

Internet, IT and telecoms companies in Kenya do not have data-protection policies to help clients track those who have either hacked their systems or to aid in tracking third party engagement with their data.

5.5 Internet, IT and telecoms companies have a policy to inform their users about data requests by government agencies.

Internet, IT and telecoms companies in Kenya hardly inform their users about data requests by government agencies. Those interviewed said information on such requests are made by the companies based on their working relationships with the media houses and not because of existing policies.

Category E

The roles and response of
the UN system and other
extra-national actors with
presence within the country



Photo taken at the Pan-African Workshop for Professional Media Production, Addis Ababa, Ethiopia, 19 October-13 November 2015, by Edouard Joubaud. Copyright UNESCO.

Key Indicators

1. UN WITHIN THE COUNTRY MONITORS JOURNALISTS' SAFETY ISSUES AND SHARES INFORMATION

- 1.1 UN system at national level maps relevant instruments, actions and actors, and establishes partnership and communication channels with specialized monitoring organisations (such as in-country International Federation of Journalists (IFJ) and International Freedom of Expression Exchange (IFEX) members).
- 1.2 UN system supports specific projects and activities on building and reinforcing the capacity to monitor and assess safety.
- 1.3 UN system at national level has a relevant awareness raising strategy and makes statements about killings of journalists.
- 1.4 UN system at national level publishes information about journalists' safety issues and makes this available in the key national languages.
- 1.5 UN system organisations at in-country level promote the existence and scope of relevant normative standards.
- 1.6 Promotion takes cognizance of the fact that women journalists may be subject to specific sexual harassment and violence.
- 1.7 UN system at national level requests information from the State about the safety of journalists and the issue of impunity.
- 1.8 UN system at national level makes available information on journalists' safety and impunity to the UN at global level.

2. UN SYSTEM WITHIN THE COUNTRY IMPLEMENTS EFFECTIVE CO-ORDINATION AND RESPONSES TO SAFETY INCIDENTS AND PROBLEMS

- 2.1 UN system organisations have joint, complementary and co-ordinated activities in support of the safety of journalists as per the UN Action Plan.
- 2.2 UN system encourages multi-stakeholder co-operation with non-UN actors on safety and impunity, and contributes to formulation of national strategies.
- 2.3 Safety of journalists issues are reflected in the UN Development Assistance Frameworks and other country programming documents, and are discussed within UN Country Teams including both resident and non-resident agencies.
- 2.4 UN system organisations [at the national level] integrate journalism safety into areas in where they work such as the rule of law, environmental protection, sustainable development, etc.

3. UN WITHIN THE COUNTRY BUILDS KNOWLEDGE AND CAPACITY

- 3.1 UN system promotes safety issues in contacts with local stakeholders, disseminates knowledge of relevant good practices and encourages local adaptation.
- 3.2 UN system organisations provide advice and capacity building to stakeholders on issues such as the treatment of journalists; investigation of crimes against journalists; and prosecution and protection measures.
- 3.3 UN system organisations at national level have, or fundraise for, specific budgets for their safety activities.
- 3.4 UN organisations provide safety training to journalists such as on reporting in conflict zones, legal rights, self-protection techniques, first aid, etc. and assist with provision of safety equipment.
- 3.5 UN system has a rapid response mechanism at the national level to assist journalists who are attacked or are under threat.

4. WITHIN THE COUNTRY, OTHER INTERNATIONAL INTERGOVERNMENTAL AND NON-GOVERNMENTAL AGENCIES PROMOTE SAFETY OF JOURNALISTS

- 4.1 These international actors within the country monitor journalists' safety issues and share information
- 4.2 These international actors promote co-ordinated approaches to safety issues
- 4.3 The international actors within the country build knowledge and capacity

Category E

The roles and response of the UN system and other extra-national actors with presence within the country

An implementation strategy for the United Nations (UN) Plan of Action was agreed for 2013-2014, listing activities that include those by the UN system within any given country interested in receiving support under the auspices of the Plan.

In order for the UN Plan of Action to be fulfilled, it will be of importance to the UN system comprising its agencies, funds and programmes, to provide effective support to Member States, and to professional media organisations and civil society, so as to promote journalists' safety. Alongside this support, the UN and its agencies should foster the normative view that free expression standards include safety of journalists and measures against impunity. The categories of indicators set out below are organised around these functions.

1. UN within the country monitors journalists' safety issues and shares information

1.1 UN system at national level maps relevant instruments, actions and actors, and establishes partnership and communication channels with specialized monitoring organisations (such as in-country International Federation of Journalists (IFJ) and International Freedom of Expression Exchange (IFEX) members).

The UN system, through UNESCO, works closely with numerous organisations and contributes to the monitoring of journalists' safety issues. It has established good working partnerships with local and international organisations such as the Amnesty International, Article 19, with whom they collaborate in mapping threats against journalists. These relationships are based on common interest and are often not formalised.

1.2 UN system supports specific projects and activities on building and reinforcing the capacity to monitor and assess safety.

UN system in Kenya has not supported any specific projects and activities on building and reinforcing the capacity to monitor and assess safety, with this study marking a new initiative.

1.3 UN system at national level has a relevant awareness raising strategy and makes statements about killings of journalists.

The UN system does not have a national strategy. This is often at the global level. Nonetheless, the UNESCO local office regularly consults with other local organisations to protest threats to journalists and has published statements, often emanating from the international office, at the local level. This was the case of the statement issued by the UNESCO Director-General Irina Bokova on the killing of Eldoret-based journalist John Kituyi, which is a good illustration of the UN system's statements regarding threats against journalists in Kenya. However, this seems a global strategy rather than a national one.

1.4 UN system at national level publishes information about journalists' safety issues and makes this available in the key national languages.

The UN system in Kenya does not publish information about journalists' safety issues. However, news on various activities held by agencies such as UNESCO are published on their websites. For example, meetings held as part of this study were published at <http://www.unesco-ci.org/ipdcprojects/aggregator/sources/1>. In addition, this JSI report will be published both at international and at the national level. Most often, information on the safety issues is published from, for example, the UNESCO headquarters in Paris.

1.5 UN system organisations at in-country level promote the existence and scope of relevant normative standards.

The UN system in Kenya does promote the existence and scope of relevant normative standards. There is a Senior Human Rights Adviser from the Office of the High Commissioner for Human Rights (OHCHR) with the mandate of strengthening the capacity of the UN Country Team (UNCT) in Kenya to integrate human rights in their programmes and policies.

1.6 Promotion takes cognizance of the fact that women journalists may be subject to specific sexual harassment and violence.

This does not apply to women journalists specifically but to all female workers. The UN Women in Kenya, for instance, also seeks to advance gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women.

1.7 UN system at national level requests information from the State about the safety of journalists and the issue of impunity.

The UNCT indirectly through the OHCHR often requests information from the State about the safety of journalists and the Issue of impunity through confidential letters to the Permanent Mission of Kenya in Geneva.

1.8 UN system at national level makes available information on journalists' safety and impunity to the UN at global level.

The UN system gives a report at the global level on the safety and security of journalists through the special rapporteur on freedom of association and expression supported by the OHCHR in Geneva. The UNCT also submits confidential reports to treaty body committees and UPR Working Group on infringement of media freedoms that affect the safety of journalists and on matters of impunity.

2. UN system within the country implements effective co-ordination and responses to safety incidents and problems

2.1 UN system organisations have joint, complementary and co-ordinated activities in support of the safety of journalists as per the UN Action Plan.

The UN Plan of Action on the Safety of Journalists and the Issue of Impunity has been effected in Kenya especially by the MCK and IMS which work closely with UNESCO. Thus while the UN system organisations may not separately engage in activities to support the safety of journalists, they work with local partners to effect the UN Plan of Action.

2.2 UN system encourages multi-stakeholder co-operation with non-UN actors on safety and impunity, and contributes to formulation of national strategies.

The UN system encourages and works closely with many stakeholders in Kenya and has, perhaps indirectly, contributed to the formulation of national strategies and especially the documents developed by the KMWG.

2.3 Safety of journalists issues are reflected in the UN Development Assistance Frameworks and other country programming documents, and are discussed within UN Country Teams including both resident and non-resident agencies.

There is no evidence that the safety of journalists issues are reflected in the UN Development Assistance Frameworks and other country programming documents. The issue of threats to the freedom of expression and journalists are reflected in the UPR documents. UNESCO also produces documents relating to the threats to journalists, and has done so particularly when condemning the killing of journalists in the country.

2.4 UN system organisations [at the national level] integrate journalism safety into areas in where they work such as the rule of law, environmental protection, sustainable development, etc.

The UN system organisations in Kenya are interested in the safety of people in their areas of work. Accordingly, this is not done because of specific concerns for the safety of journalists but due to interest in the rule of law, environmental protection, and sustainable development, among other issues.

3. UN within the country builds knowledge and capacity

3.1 UN system promotes safety issues in contacts with local stakeholders, disseminates knowledge of relevant good practices and encourages local adaptation.

UNESCO works closely with local stakeholders to disseminate information on relevant good practices, and has done this especially during the World Press Freedom Day celebrations. This has happened, for example, via the MCK and other organisations that actively engage in the promotion of relevant good practices.

3.2 UN system organisations provide advice and capacity building to stakeholders on issues such as the treatment of journalists; investigation of crimes against journalists; and prosecution and protection measures.

The UN system organisations often offer support, advice and capacity building to stakeholders on the safety of journalists. The work itself is often carried out by other stakeholders. The MCK, for instance, has worked closely to offer trainings to journalists although these did not touch on investigation of crimes against journalists, and prosecution and protection measures.

3.3 UN system organisations at national level have, or fundraise for, specific budgets for their safety activities.

The UN system in Kenya does not have regular budgets for their safety activities.

3.4 UN organisations provide safety training to journalists such as on reporting in conflict zones, legal rights, self-protection techniques, first aid, etc. and assist with provision of safety equipment.

UN organisations have not by themselves provided safety training to journalists on reporting in conflict zones, legal rights, self-protection techniques, first aid, etc. This is often done by

other stakeholders although this has not been done during the study period. Neither have the organisations assisted with provision of safety equipment.

3.5 UN system has a rapid response mechanism at the national level to assist journalists who are attacked or are under threat.

The UN system in Kenya does not by itself have a rapid response mechanism at the national level to assist journalists who are attacked or are under threat.

4. Within the country, other international intergovernmental and non-governmental agencies promote safety of journalists

4.i One or more relevant regional intergovernmental organisations promote safety issues in the country.

Regional intergovernmental organisations have been concerned about safety issues in Kenya, particularly given cases of insecurity and terrorism. For example, the East African Community (EAC) in 2015 developed the EAC Peace and Security Protocol in attempts to promote peace, security and stability within the community.⁵³ In addition, the African Union, while condemning the terror attack at the Garissa University College, said the Djibouti Process on the Enhancement of Security Cooperation in East Africa, launched by the first meeting of the heads of intelligence and security services of the member states of the Inter-Governmental Authority on Development (IGAD) and the EAC, held in Djibouti from 28 February to 1 March 2015, was meant to enhance the efforts of African countries to prevent and combat terrorism and violent extremism.⁵⁴ This includes threats to both journalism and the general security of the country and people.

4.ii International NGOs support local efforts to promote safety.

International NGOs often support local efforts to promote safety. These include, for example, the CPJ, Article 19, Human Rights Watch, Amnesty International, and KMP/Hivos.

⁵³ See, for example, Ligami, Christabel (2014) 'New EAC Security Protocol set to Fight Terror, Crime'. The EastAfrican [online], 18 January. Available at <http://www.theeastafrican.co.ke/news/New-EAC-security-protocol-set-to-fight-terror-crime/-/2558/2150914/-/item/0/-/ne9evbz/-/index.html> [Accessed 6 April 2016]. See also East African Community (2013) Protocol on Peace and Security. Arusha: EAC.

⁵⁴ See press release issued by the AU to condemn the terrorist attack at Garissa at <http://www.peaceau.org/uploads/african-union-strongly-condemns-the-terrorist-attack-at-garissa-kenya.pdf>. See the conclusions of the meeting at <http://www.peaceau.org/uploads/auc.conclusions.1st-meeting.hiss.igad.eac.ms.djibouti.pdf> [Websites accessed 6 April 2016]. The members of IGAD are Djibouti, Eritrea, Ethiopia, Somalia, Sudan, Uganda and Kenya. Burundi, Kenya, Rwanda, Tanzania, Uganda and South Sudan form the EAC. South Sudan joined the regional bloc in March 2016.

4.1 These international actors within the country monitor journalists' safety issues and share information

4.1.1 At national level, they map relevant instruments, actions and actors.

International actors often map relevant instruments, actions and actors as a way of detailing issues that affect the media and journalists. This can be seen in the annual reports of such organisations as CPJ, IFJ and IFEX.

4.1.2 They have a relevant communication strategy and make statements about killings of/attacks on journalists.

The organisations have relevant communication strategies, including using both traditional and new media, to make statements about killings of/attacks on journalists. In the study year, for example, there is evidence that organisations like CPJ, IFEX, Amnesty International, and Article 19 made several statements about threats to journalists, including the killing of one journalist in the country.

4.1.3 They publish information about safety of journalists and the issue of impunity, and make them available in the key national languages.

International organisations regularly publish information about the safety of journalists and the issue of impunity. The reports are often in English which is an official language in Kenya. The other official language is Swahili, in which international organisations often do not publish their reports.

4.1.4 They promote the existence and scope of relevant normative standards.

The organisations do actively promote the existence and scope of relevant normative standards. The most active organisations in this regard are Article 19 and CPJ.

4.1.5 They make available information on journalists' safety and impunity to the UN at global level.

The information collected by international organisations is available at both local and international levels and is shared by numerous bodies, including the UN.

4.2 These international actors promote co-ordinated approaches to safety issues

4.2.1 They have focal points who communicate with each other on a periodic basis.

Many international actors have local focal points who communicate with each other on a periodic basis. In the last 12 months, for example, many of these actors have come together to deliberate on legislative, political and other threats obtaining in the country. Their interest has been piqued by numerous actions, especially those considered to be a threat to press freedom. In this regard, their common interest brought them together to oppose such legislation as the Security Laws (Amendment) 2014, and the Parliamentary Powers and Privileges Bill 2014.

4.2.2 They have joint, complementary and co-ordinated activity with the UN, and other non-UN actors including the State, in regard to journalists' safety issues.

Many of the international organisations working in Kenya work closely with the UN agencies, notably UNESCO, and State actors, especially the MCK, on journalists' safety issues. Whilst they work closely together, their work is not always joint, complementary and co-ordinated.

4.2.3 They contribute to the formulation of national strategies.

Their work has contributed to the formulation of national strategies although many of strategies are ad hoc rather than long term.

4.3 The international actors within the country build knowledge and capacity

4.3.1 These actors disseminate knowledge of relevant good practices and encourage local adaptation.

International organisations, for example, the Article 19, and IMS have participated in dissemination of knowledge of relevant good practices. However, the organisations always partner with local collaborators to build capacity. This was the case in training conducted by Article 19 on Kenya's devolution system of governance on 10 March 2014.

4.3.2 These actors provide advice and capacity building to stakeholders on issues such as: the treatment of journalists; investigation of crimes against journalists; and prosecution and protection measures.

The actors, in collaboration with local organisations, provide advice and capacity building to stakeholders on the safety of journalists. As indicated above, under the CSOs co-operating among themselves and with other stakeholders, the KMWG, an informal grouping of media CSOs, namely AMI, Twaweza Communications, CPJ, MCK, Article 19, NCHRD-K, KMP, and Protection International, works together both local and international organisations to build capacity on safety issues.

4.3.3 They have, or fundraise for, specific budgets for their safety activities.

International actors working in Kenya have to fundraise for their activities and programmes. These funds are, however, not exclusively for safety activities.

4.3.4 These actors provide safety training to journalists such as on reporting in conflict zones, legal rights, self-protection techniques, first aid, etc. and assist with provision of safety equipment.

Although several organisations conduct trainings on reporting in conflict zones, there are no records of any training carried out during the study period. The trainings are often conducted on an ad hoc basis. For example, the IMS has previously supported the training on safety, security and trauma counselling after terror attacks in Nairobi, particularly at the Westgate Mall, Lamu and Tana River. The training was conducted by the MCK.

4.3.5 They operate or participate in a joint rapid response mechanism at the national level and/or international level/s.

There is no record of any rapid response at the national level and/or international level/s during the study period.

Conclusion

Review of Journalists' Safety Indicators Kenya

Does the report give an accurate description of the situation in Kenya?
Does it grasp the core elements/issues of the situation in Kenya?
Does the report cover the most important/central issues in place in Kenya for this particular category?
Does the report cover the most important/central issues of journalists?
Are the important actors/actions left out?
What should be added and why?
What are the greatest challenges at the moment?
What are the actions of this category?

Photo taken at the Journalists' Safety Indicators Stakeholder Workshop, Nairobi, Kenya, 23 February 2016, by John Otieno Okande. Copyright UNESCO.



Conclusion

While the safety of journalists is critical to society and the advancement of freedom of expression, media freedom and consolidation of democracy, there is an overarching view that press freedom in Kenya is declining. As the arguments above indicate, despite constitutional guarantees, particularly Articles 33 and 34 of the Constitution of Kenya 2010 explicitly protecting freedom of expression and freedom of the media, journalists now face serious challenges as a consequence of political intolerance, impunity, and as part of State/government clampdowns on what they consider recalcitrant journalists who sometimes do not tow the official line.

This becomes even more serious given the important role the media plays in the development and consolidation of democracy, the rule of law, respect for human rights, good governance characterised by accountable, transparent and responsible leadership, among others imperatives. Attacks on journalists, assaults on press freedom as well as the weakening of the opposition and civil society, mean that there are few actors to hold the government to account and ensure adherence to democratic principles of good and accountable governance and respect for the rule of law.

In addition to the foregoing is the notion that pieces of legislations like the Security Laws (Amendment) Act 2014, the Books and Newspapers Act (Cap 111 of the Laws of Kenya), Official Secrets Act (Cap 187 of 1968), and Preservation of Public Security Act, and the sedition or seditious libel under Penal Code, Cap. 63, Article 194, continue to negatively impact press freedom in Kenya and reduce the capacity of journalists to investigate wrongdoing. The passing of various legislations, particularly the Security Laws (Amendment) Act in December 2014, marked the interest in reduced space for freedom of expression and media freedom. Several clauses in the Act prevented the publication of material deemed offensive or threatening to national security. Furthermore, under the Prevention of Terrorism Act, amendment 75 inserted new sections immediately after section 30 of the Act, with reference to the publication of offending material.

Had they been passed, the amendments and insertions could have had the effect of limiting press freedom and freedom of expression with serious ramifications on media and journalistic practices in Kenya.

The move to also cut spending by channelling government advertising via the newly established GAA under the Ministry of Information and Communication Technology is seen as a ploy to assault press freedom and curtail growth and sustenance.

The year in review reveals a number of cases of assaults on journalists and media workers, including bloggers, and the killing of John Kituyi, an Eldoret-based journalist. 60 journalists were attacked, harassed, threatened, and even jailed. In one instance, security agents attacked NMG, and CTV journalists. Even though the attack was captured on video, and thus the culprits could be identified, action has not been taken against the attackers. This is despite statements from the Police as well as the ODPP that crimes in Kenya are investigated and prosecuted irrespective of the position of the culprits or perpetrators.

These threats are exacerbated by state officials' sanctioned threats. The interrogation of NMG's Parliamentary editor John Ngirachu and *The Standard's* Alex Kiprotich by the DCI in attempts to have them reveal sources of stories demonstrates the dangers journalists and their sources face. It is even worse that the arrest of Ngirachu was at the behest of the Cabinet Secretary for Internal Security and Coordination of National Government Joseph Nkaissery who has, however, despite evidence denied issuing the order. The Police and its various organs including the DCI and the NSI fall under the Ministry of Internal Security and Coordination of National Government. The Ministry is itself domiciled within the Presidency. This may serve to demonstrate the enormity of the threats facing journalists in what has become a risky society aggravated by such matters as terrorism and rising organised criminality.

The assaults, intimidations and harassment are captured in various reports, including those of the MCK that runs an alert system that reports incidents in real-time. MCK also manages another facility that allows people to report on media freedom infringements. In addition, the CPJ and Article 19 have produced a report detailing the falling standards of press freedom and safety of journalists in Kenya. In addition, despite protestations and condemnation from UN agencies like UNESCO and international bodies like the CPJ, little action is taken to bring the perpetrators to book and assure journalists of their safety.

The context described above is therefore one in which parallel challenges exist in the realm of press freedom and safety in Kenya. While the State is a major factor in both, as this report notes with regard to safety, media houses themselves have responsibility too. There are accusations from the KCA and KUJ, for example, indicating that the media houses have not put in place measures to promote and support the safety and security of journalists. Neither have they invested enough resources in protecting their journalists.

This is evidenced by the fact that journalists are poorly paid; they have no safety guarantees for covering dangerous assignments, and that correspondents, freelancers and stringers do not have insurance or other safety cover. Moreover, media houses have not, in the main, invested in the training of journalists covering dangerous assignments. Most of the training is often conducted by non-governmental organisations and bodies like the MCK. Furthermore, the fact that they have invested little in the protection of journalists and have not set up funds to offer safety nets to journalists under threat is telling evidence of lack of duty of care.

In addition, the fact that the MCK has set up a fund (and set aside 15 per cent of the monies generated from the accreditation of journalists to the protection of media workers), a safety programme and a hotline through which it handles safety issues, is indicative of the media houses' incapacity or unwillingness to on its own develop strategies to safeguard its workers. This is especially bad for correspondents and freelancers who often do not have contracts and as such do not benefit from facilities such as insurance covers, security and safety equipment, and security training opportunities.

It is noteworthy that organisations such as the KMWG have come with a manual which should offer journalists advice on how to maintain their safety in the face of increasing threats. The manual, in addition to trainings offered by bodies like the MCK, CIPESA and KICTANet, may offer journalists the knowledge they need to protect themselves against physical and cyberattacks. These initiatives are, however, not enough given the security and safety challenges journalists continue to encounter in Kenya. In essence, there is an urgent need to do more to monitor threats against journalists' safety, and to ensure protection and an end to impunity. It is also important to promote press freedom in Kenya in the face of rising political and State actors' belligerence, as well as the evident incapacity of media houses to take serious care of their media workers.

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Legislations

Books and Newspapers Act

Kenya Information and Communication Act 1998

Kenya Information and Communication (Amendment) Act 2013

Media Council Act 2007

Media Council Act 2013

Non-Governmental Organisations Co-ordination Act (Cap 19) 1990

The Officials Secrets Act 1968

Parliamentary Powers and Privileges Bill 2014

Penal Code Revised Edition 2014 [2012]

Preservation of Public Security Act 1960

Prevention of Terrorism Act 2012

Security (Amendment) Act 2014

Appendices

Appendix 1: Research Methodology

The purpose of this research, as per the *Journalists' Safety Indicators (JSI) Guidelines for Researchers* (UNESCO, 2015a), was to 'pinpoint significant matters that show, or impact upon, the safety of journalists and the issue of impunity (...) allowing for a mapping of some key features that indicate the extent to which journalists are or are not able to carry out their work under safe conditions, and determine whether adequate follow-up is given to crimes committed against them (...). The JSIs serve to identify the actions that are taken by the various relevant stakeholders in promoting journalists' safety and fighting impunity at national level. These actors include the UN, State and political actors, civil society organisations (CSOs) and academics, and media and intermediaries'.¹

The statement above thus gave us direction on what kind of data was required to inform the research into the safety and security dangers that journalists face in their everyday professional practices. It also helped in the formulation of the research methodology. Several steps were followed during the research as detailed below.

Research process and design of methodology

Meetings

Two meetings were held in the process to, first, understand the assignment and, second, to share the work with stakeholders whose support was required especially during the data collection period.

The first meeting, on 21 May 2015, between UNESCO, Africa Media Initiative (AMI) representatives and the lead researcher, discussed the assignment. The meeting also gave us an opportunity to start to interrogate the nature of the assignment, its requirements and deliverables.

The second meeting, on 22 May 2015, was designed as a much larger forum to which the following organisations considered key stakeholders in Kenya's media environments were invited: Media Council of Kenya (MCK), Kenya Union of Journalists (KUJ), Kenya Editors Guild (KEG), Media Owners Association of Kenya (MOA), Kenya Correspondents Association (KCA), the Association of Media Women in Kenya (AMWIK), Kenya Media Programme (KMP), Media Policy Research Centre (MPRC), Kenya National Human Rights Commission (KNHRC),

1 UNESCO (2015) JSI Guidelines for Researchers. Paris: UNESCO, p. 1.

Kenya Police Spokesperson, Committee to Protect Journalists (CPJ), Ministry of Information, Communication and Technology, Kenya National Commission for UNESCO, and Article 19. However, some of the organisations did not send representatives.

During the meeting, the JSI research objectives and details were shared with the stakeholders. Their interrogation of the assignment, given the disparate interpretations of the study, as well as inputs, helped the researchers further understand the work. The views expressed at the meeting further helped refine the various strategies used in the collection of both primary and secondary information and material. In short, the two meetings offered an opportunity to deliberate on the issues in the JSI research and the instruments. It was also at the meetings, especially the second, that the stakeholders offered to assist in generating data to support the study.

The research

The second phase of the research entailed the formulation of various methods that were used in the study. This was conceived as a mixed-method study as per the final framework of JSIs. The use of multiple methods enabled this study to benefit from the strengths of various techniques by ensuring that any information left out by one method was captured and/or corroborated by information generated by another. Specifically, the study entailed analysing existing published material as well as generation of primary data using various methods as detailed below.

Sampling

This research used purposive sampling technique. This was mainly because the material the study used as well as primary research conducted were aimed at determining the safety of journalists in Kenya. This determined the selection of literature and documents as well interviewees.

Secondary and primary research

The research was interested in existing relevant material, particularly legislation, reports by various local and international groups on freedom of expression, civil society, and media organisations, news articles, among others (see further discussion below in the secondary material section). In effect, while the research used second-hand material to understand broadly the issues facing journalists in Kenya, this was corroborated by fresh information from stakeholders like journalists, international organisations in the country, local CSOs, editors and media workers, journalists, academics and training organisations, among others. This information was generated using specifically designed interviews and questionnaires.

Secondary material

A number of documents were analysed. This included the Constitution of Kenya 2010, various pieces of legislation and laws (including, for instance, the Security (Amendment) Act, Officials Secrets Act, the Media Council 2007, the Media Council Act 2013, the Kenya Information and Communication Act of 1998, the Kenya Information and Communication (Amendment) Act, 2013, and the Penal Code). These were meant to determine the legal framework within which the media and journalists in Kenya operate as well as draw the challenges obtaining from the same.

The research also examined documents and reports produced by organisations such as Article 19, CPJ, MCK, Amnesty International, AMI, KMP and Hivos, MPRC, and UNESCO. Many of these documents were available online. In addition, the report looked at news articles, particularly those relating to policy and political pronouncements, including statements on existing legislations or actions on threats to journalists and related issues.

Primary research

Two methods were used to collect primary information.

1. Questionnaires

The research drew and sent out a questionnaire (see Appendix 2 for a copy of the questionnaire) to journalists all over the country. The questionnaire was distributed mainly to members of the KCA, KUJ, and those in the database of the CPJ. The organisations sent out the questionnaires directly to respondents. Some of the filled questionnaires were sent back to them and others to the researchers.

KCA members are particularly vulnerable considering they work across the country, are prone to attacks, intimidations, harassment from various actors, and are often poorly paid. Out of these, 120 completed questionnaires were returned, 35 of them from female journalists. Eighty-three of those who responded to the questionnaire said they were correspondents and freelance journalists often covering general issues. Two respondents work for the public broadcaster, the Kenya Broadcasting Corporation (KBC) and seven for the state run Kenya News Agency. The rest work for numerous organisations including SG, Mediamax, and Nation Media Group (NMG) as staff journalists. Most of these say they cover politics and governance. Even though many of the respondents were correspondents and freelance journalists, and some may harbour negative feelings towards corporatist media houses, their sentiments were not extreme and could be tempered with responses from other journalists. Accordingly, their responses could not skew the findings. Moreover, their sentiments could be corroborated by information generated from interviews with experts and documents and reports used in the study.

The questionnaires were analysed using basic content analysis. This entailed looking at the answers provided and placing the figures gained specifically within some of the indicator categories, namely the safety statistics, the roles and response of state and political actors, and media and intermediaries. This was mainly useful in determining, for example, how many journalists feel the media or state offer sufficient protection against threats, in defining journalists' perceptions on their own safety, as well as finding out about journalists' use of technologies and how journalists protect themselves against digital threats. This quantitative data was complimented by qualitative information generated mainly through interviews as detailed below.

2. Interviews

Non-standardised (both semi-structured and unstructured, but mostly semi-structured in-depth) interviews were used to extract information from key players in Kenya's media environment. Interviews were conducted with numerous stakeholders. This was largely to generate views as well as corroborate information collected from various other sources, mainly the documents analysed.

Interviews were conducted with media editors of the main media houses in Kenya, namely:

- i. NMG (owners of the *Nation* newspapers and broadcasting stations Nation TV and Nation FM, among other products);
- ii. Standard Group (SG) (owners of the *Standard* newspapers and broadcasting stations Kenya Television Network (KTN) and Radio Maisha, among other products);
- iii. Mediamax Network (publishers of the *People Daily* newspaper, and owners of broadcasting stations K24 television, Milele, and Kameme radio, among other products);
- iv. Radio Africa Group (owners of *The Star* newspaper and broadcasting stations Kiss TV, Classic FM and Kiss FM, among other products);
- v. Royal Media Services (RMS) (owners of Citizen TV (CTV) and many radio stations, including Citizen Radio), and
- vi. KBC, the State broadcaster.

Ten editors were interviewed during the study: Three from the NMG, two from the SG, two from the Star, and one each from RMS, MediaMax/The People and KBC. These were sampled because of the positions they occupy in Kenya's media and journalism scene.

We also interviewed key stakeholders in Kenya. Altogether seven officials from the MCK, KCA, KUJ, Article 19, CPJ, AMWIK, KEG, and Ministry of Information and Communication Technology. We also had interviews with the NPS, and the ODPP.

Lastly, we interviewed seven academics drawn mainly from universities offering journalism and media related courses to determine whether the programmes they offer contain material on the safety and security of journalists. These were drawn from both private and public universities namely the University of Nairobi, Multimedia University, Moi University, St. Paul's University, and United States International University-Africa (USIU-A).

The qualitative data generated from the respondents was analysed using the basic level of content analysis. This means the study picked what was said based on relevance and placed in the appropriate categories used in this research, i.e. the roles and response of state and political actors, CSOs and academia, media and intermediaries, and UN system and other extra-national actors with presence within the country.

Conclusion

The data collected from the various methods detailed above helped inform the research. The discussions were also informed by the *JSI Guidelines for Researchers*.

The methodological limitations were due largely to monetary resource constraints. Accordingly, this was a 'light JSI assessment'. Granted, the information and conclusions generated from this research are still valid although a longer and more in-depth study would have given us the opportunity to interrogate further and more deeply the issues covered in this study.

Appendix 2: Questionnaire

Journalists' Safety Indicators Research - Questionnaire

UNESCO is conducting research to determine the safety of journalists in Kenya and thus help draw the Journalists' Safety Indicators (JSIs). The purpose of the JSI indicators is to pinpoint significant matters that show, or impact upon, the safety of journalists and the issue of impunity. They allow for a mapping of some key features that indicate the extent to which journalists are or are not able to carry out their work under safe conditions, and determine whether adequate follow-up is given to crimes committed against them – meaning that the perpetrators are identified and brought to justice. The JSIs serve to identify the actions that are taken by the various relevant stakeholders in promoting journalists' safety and fighting impunity at national level. These actors include the UN, State and political actors, civil society organisations and academics, and media and intermediaries.

To help inform this research, you have been identified as a key respondent and thus request you to take a few moments to respond to the questions below. You are hereby assured that any information that you provide shall remain confidential, and usage of the same shall be for research purposes only.

If you have any questions please contact Dr. George Nyabuga (contact details have been deleted from the report). Thank you in advance for agreeing to participate in this important research.

How would you describe your current occupation?

Freelancer

Correspondent

Staff Journalist

Professional Blogger

Citizen Journalist / Blogger

Other

Please describe the type of stories you primarily cover:

Politics and Governance

Security and Crime

Accidents and Disasters

Human Rights (including women, children, minority and LGBT rights)

Health

Education

Business

Arts and Entertainment

Technology and Innovation

Religion and Culture

Sports

Others (please specify)

Which technologies and tools do you use in your work?

Desktop PC

Laptops/Tablets

Mobile Phones

Email and collaborative tools (e.g. Google Docs) Internet

Networking websites (Facebook, LinkedIn etc.)

Video/Audio recording devices

Others (please specify)

Does your journalism/blogging include meeting 'sensitive' contacts/informants?

Yes

No

Don't Know

Does your journalism/blogging include meeting individuals or organisations that may be wanted by authorities/gangs/criminals?

Yes

No

Don't Know

Which of the following do you think is the biggest threat facing journalists and bloggers? (Check-box)

- Being arrested or detained by authorities
- Being personally threatened
- Having their identities exposed against their wishes
- Having their websites hacked or attacked
- Having their emails intercepted or data stolen
- Having their friends or family threatened
- Being sacked, demoted or reprimanded at work
- Having their publications attacked or publication site hacked
- Others
- Don't know
- No reply

Has your work as a journalist/blogger ever caused you any security concern?

- Yes
- No
- Don't know

If yes, what types of issues are of concern to you?

- Personal safety
- Security of information
- Security of people I work with
- Security of informants
- Security of family
- Others
- Don't know

In the past 12 months, have you experienced any negative consequences due to your journalism/blogging activities?

Yes

No

Don't Know

If yes, please select what is relevant from below:

I was personally threatened

I was threatened by email

I was threatened by SMS

I was physically attacked

My friends or family were threatened

I was arrested or detained

My computer got a computer virus and my data was affected

My identity was exposed against my wishes

I was sacked, demoted or reprimanded at work

My publication, website or blog was attacked or hacked

I had my emails intercepted or data stolen

Any other

If you are a female journalists, have you ever faced any threats because of your gender? What is the source of that threat?

What is the biggest source of threats (please list, e.g. police or any other security agents, government officials, including provincial administration like chiefs, county officials, etc.)?

Does your employer offer any safety and security measures to protect you?

Yes

No

Don't know

If yes, what security measures are put in place to protect you?

Do you think the government offers sufficient protection to journalists in Kenya?

Please explain your answer

Yes/No/Don't know

Supporting Safety of Journalists

To be meaningful, press freedom requires that journalists do not fear attack for doing their work. Threats to the safety of those doing journalism amount to censorship by intimidation and force. The results are widespread self-censorship and a public that is deprived of the right to know. In this context, the Journalists' Safety Indicators have been developed, under the auspices of UNESCO's International Programme for the Development of Communication. They extend the broader Media Development Indicators, and provide a baseline against which changes in safety can be measured over time.



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