

HUMAN RIGHTS ANALYSIS OF THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2025

The Kenya Information and Communications (Amendment) Bill, 2025¹ introduces far-reaching provisions that, while seemingly aimed at enhancing regulatory oversight and child protection, pose serious threats to fundamental human rights as guaranteed under Kenya's Constitution and international human rights law.

1) Right to Privacy (Article 31 of the Constitution of Kenya)²

The Bill mandates Internet Service Providers (ISPs) to collect and submit detailed personal data, including names, ID numbers, addresses, and usage patterns, to the Communications Authority of Kenya (CA). This poses a direct threat to the right to privacy, which is constitutionally protected under Article 31 and further enshrined in the Data Protection Act, 2019.

Negative Impacts:

- Mass surveillance: Linking individuals to traceable meter numbers and tracking their internet use in real-time enables the government to monitor citizens' online activity³.
- Profiling and targeting: State actors may misuse data to monitor activists, journalists⁴, dissenters, and political opponents.
- Data misuse and breaches⁵: With no clear data protection protocols, the collected data is at risk of unauthorized access, leaks, or commercial exploitation.

2) Freedom of Expression and Access to Information (Article 33 and 35)

The implementation of metered internet billing based on consumption will increase the cost of internet access. This creates a financial barrier to digital participation, especially for youth, low-income communities, and rural populations.

¹ Accessed on 15/07/2025, see the link http://www.parliament.go.ke/sites/default/files/2025-05/The%20Kenya%20Information%20and%20Communications%20%28amendment%29%20Bill%2C%202025_0.pdf

² Constitution of Kenya 2010 Article 31

³ Sidhu, Dawinder S., The Chilling Effect of Government Surveillance Programs on the Use of the Internet By Muslim-Americans (June 27, 2011). University of Maryland Law Journal of Race, Religion, Gender and Class, Vol. 7, p. 375, 2007, Available at: <https://ssrn.com/abstract=1002145>

⁴ Tenove, Chris and MacLellan, Stephanie, Confronting Disinformation: Journalists and the Conflict over Truth in #Elxn43 (January 1, 2021). Tenove, Chris, and Stephanie MacLellan. forthcoming. "Confronting Disinformation: Journalists and the Conflict over Truth in #Elxn43." In Cyber-Threats to Canadian Democracy, eds. Holly Ann Garnett and Michael Pal. McGill-Queen's University Press., Available at: <https://ssrn.com/abstract=3817640>

⁵ Malone, Matt, On the (Data) Breach of Confidence (February 11, 2021). Malone, Matt, 'On the (Data) Breach of Confidence,' Alberta Law Review 58:4 (2021), Available at: <https://ssrn.com/abstract=3784070>

Negative Impacts:

- Digital exclusion: High costs will reduce access to social media, educational content, e-governance services, and economic opportunities⁶.
- Suppression of online voices⁷: Fear of monitoring and retribution may lead to self-censorship, weakening democratic discourse.
- Restricted civic engagement: Human rights defenders and civil society groups that rely on digital platforms may face operational constraints.

3) Child Protection vs. Right to Non-Discrimination and Inclusion

The Bill proposes mandatory age verification using national IDs for social media access. While child safety online is critical, the use of national IDs as a blanket requirement could exclude many legitimate users, particularly youth without ID cards or those from vulnerable groups.

Negative Impacts:

- Digital disenfranchisement: Many Kenyan youth below 18, especially those from informal settlements⁸, may be denied access to online platforms for education, innovation, and expression.
- Overreach in regulation: The lack of alternative age-appropriate verification measures results in an overly broad restriction that affects even adults' access and autonomy⁹.

4) Equality and Non-Discrimination (Article 27¹⁰)

The shift to consumption-based internet billing risks exacerbating existing social and economic inequalities. Wealthier individuals and urban dwellers will retain access, while disadvantaged groups will be excluded from meaningful online participation.

Negative Impacts:

- **Widening the digital divide:** This measure undermines efforts toward digital inclusion, particularly for rural communities, persons with disabilities, and marginalized youth.
- **Violation of socio-economic rights:** The internet is now a critical enabler of rights such as education, work, healthcare, and access to justice. Limiting access infringes upon these rights.

⁶ PUBLICATIONS, IJCERT, Opportunities and threats of E-commerce in Social Media: Perspective of Bangladeshi female seller (January 26, 2021). Md. Obaidullah, Abdullah Al Zubayer. " Opportunities and threats of E-commerce in Social Media: Perspective of Bangladeshi female seller ". International Journal of Computer Engineering In Research Trends (IJCERT) ,ISSN:2349-7084 ,Vol.8, Issue 02,pp.40-45, February - 2021, URL :<http://ijcert.org/ems/i>, Available at: <https://ssrn.com/abstract=3814219>

⁷ Singh, Kumar Bal Govind, The Debate Over Freedom of Speech and Censorship in India (January 18, 2024). Available at: <https://ssrn.com/abstract=4698993> or <http://dx.doi.org/10.2139/ssrn.4698993>

⁸ van Tuijl, Erwin and Franssen, Jan and Kiriro, Samuel and Kioko, Harrison and Menya, Alice, Platforms for the Urban Poor: Platform Domains, Frugal Innovation and Resource Constraints in Mathare Informal Settlement. Available at: <https://ssrn.com/abstract=4949947> or <http://dx.doi.org/10.2139/ssrn.4949947>

⁹ Humain-Lescop, Alexandre, Towards Harmonised Online Age Verification? A Comparative Study of French and EU Legal Frameworks (January 02, 2025).

Pre-publication. Access to the final version published in May 2025 on the Sciences Po website (open access): <https://www.sciencespo.fr/public/chaire-numerique/en/2025/05/20/research-paper-towards-harmonised-online-age-verification/> Available at: <https://ssrn.com/abstract=5123971> or <http://dx.doi.org/10.2139/ssrn.5123971>

¹⁰ Constitution of Kenya 2010 Article 27

Conclusion

From a human rights perspective, the Kenya Information and Communications (Amendment) Bill, 2025, is deeply problematic. It introduces regulatory mechanisms that risk undermining constitutional rights, entrenching state surveillance, shrinking the digital civic space, and deepening digital inequality in Kenya.

The Kenyan Parliament, regulators, and civil society must:

- Demand transparency and public consultation before passage;
- Insist on amendments to align with constitutional protections;
- Call for a human rights impact assessment prior to implementation;
- Push for robust data protection, transparency, and oversight mechanisms.

By Charles Jaika

A lawyer & Digital Rights & Inclusion Transformation Lead at ICJ Kenya