

Tackling Online Hate Speech in Kenya

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Concealed web identities and free speech concerns make it hard for officials to identify exactly who is stirring up trouble.

As the Kenyan government steps up efforts to curb hate speech in the run-up to the March 4 elections, observers say it remains extremely difficult to control what people say online.

Internet use in Kenya has doubled every year since 2010. A major problem in combating hate speech on the web is the anonymity that users can exploit.

In some cases, fake accounts are opened using the names of popular leaders who command a lot of respect, particularly among their own ethnic communities.

"A fake Makau Mutua account on Twitter talks about how he hates a particular tribe," said Ngahira Gitahi of Strathmore University Law School in Nairobi. "People don't know it's a fake account, so they follow what he says because he's an influential member of society."

The real Makau Mutua is a lawyer and a well-known columnist for Kenya's Sunday Nation newspaper.

The internet is now much more widespread compared with the situation at the time of the last presidential election in December 2007, and there are fears that left unchecked, online hate speech could exacerbate tensions and trigger violence around the polls.

"It will definitely affect the forthcoming elections and may lead to bloodshed," Gitahi said.

Months of violence after the 2007 election left over 1,100 people dead and forced 600,000 others from their homes.

Four individuals, including one journalist, will go on trial at the International Criminal Court, ICC, in The Hague in April for orchestrating the 2007/08 unrest. Two of the suspects, Uhuru Kenyatta and William Ruto, are running together for the presidency and vice-presidency, respectively.

In 2008, the government established the National Cohesion and Integration Commission, NCIC, to promote peace and reconciliation. The National Cohesion and Integration Act passed the same year criminalised hate speech. Section 13 of the law makes it illegal to use threatening, abusive or insulting words, acts or materials liable to stir up ethnic hatred. Section 62 outlaws speech intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race.

For offences of this kind, the law sets out fine of up to one million Kenyan shillings, 10,000 US dollars, a three-year prison term, or both.

Kenya's new constitution, voted in two-and-a-half years ago, protects freedom of expression, but the National Cohesion and Integration Act sets certain limits to this.

"The Constitution of Kenya 2010 guarantees fundamental rights including the freedom of expression," NCIC vice-chairperson Milly Odongo explained. "Freedom of expression is, however, not absolute and can be limited when exercised in a manner that violates the rights of others."

While a few individuals have been arrested, none have been prosecuted for hate speech. A major problem facing the authorities is that when incriminating material is disseminated online, they are frequently unable to prove who was responsible.

Police can track the IP address of a computer used to post offensive material online, and potentially this can help them identify the individual who sent or uploaded it. But this is of little use if the computer is in an internet café, where it will be used by many different people in the course of a day.

"Even if you use an IP address to locate the device used to post hate speech online, you cannot be able to prove your case because most computers are shared, especially in the case of a cyber café," Michael Kiprotich, an IT expert based in Nairobi, said.

When suspects are identified, the investigators' task is still not complete. Since it is easy to set up an account on Facebook or Twitter, offenders can deny all knowledge of accounts bearing their names, so that no case can be built against them.

"In many cases the accused persons are set free because of lack of sufficient evidence to prove that they

own social media accounts that have been used to propagate hate speech," Kyalo Mwengi, a senior legal officer at the NCIC, said.

Ahead of the election, Kenyan police have been issued with recording devices to help them monitor hate speech at political rallies or public meetings, but tracking communications on the internet is much harder. The police force is also short of staff with specialised IT skills.

"We are trying our best to combat hate speech online, but it's hard for us because many officers fighting cyber crime have insufficient or no knowledge at all about the dynamics of technology," said one senior officer based at police headquarters in Nairobi, who did not want to be named.

The NCIC is working with the police's Criminal Investigations Department and with the Director of the Public Prosecutions, and the three have formed a Task Force on Hate Speech. The task force meets regularly to discuss current cases and seek solutions.

"We are working with government security organs like the cyber-crime unit of the CID," said Halakhe Waqo of the NCIC. "We are also linked up to telephone providers and telecommunication system providers, among other institutions, that have the capacity to monitor and control negative communications like SMS."

Kenya's communications and information ministry has warned internet service providers not to allow IP addresses to be used to spread inflammatory and divisive messages as the March election approaches. The ministry's permanent secretary, Bitange Ndemo, says provider firms will be held accountable for any such messages communicated via their systems. He also warned them against allowing multiple users to share a single IP address, as this makes tracing offenders harder.

Tom Makau, a telecoms professional in Nairobi, doubts this approach is workable.

"Unless CCK [Communications Commission of Kenya] changes the license conditions to include responsibility of the licensee on what type of content traverses their network, CCK cannot legally monitor what's passing through an internet service provider's pipes to the internet," Makau said.

Legal experts, meanwhile, warn that tracking web traffic could be seen as an invasion of privacy. Luka Sawe, a lawyer based in Nairobi, says Article 31 of Kenya's constitution grants all citizens the right to privacy, including in the sphere of communications.

Enforcing the rules may also be impractical when websites are hosted on servers outside Kenya.

"With the international nature of the internet, CCK is bound to run into jurisdiction problems when enforcing their proposed monitoring," Makau said. "If a Kenyan ISP hosts a server in a data centre in the UK, that server is technically under the UK's jurisdiction and not Kenya's."

Kenyan lawyer Grace Mutungu has called on the government to design mechanisms to take offensive material off the internet once it is there.

Ndemo says that this, too, is impossible, since the authorities can only act against the individual who creates content, not the website that hosts it.

"Nobody has power to take down any website without following correct procedures," Ndemo said. "One needs to make a formal complaint to the host, and if they consider the material offensive, they can pull it down."

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