

Freedom of Expression in Kenya

The Constitutional and Legislative Background

Constitution, Law and Economy Programme

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Introduction

1. Definition

The right to **seek, receive** and **impart** information and ideas

(Kenya; includes freedom of artistic creativity, academic freedom and freedom of scientific research)

All persons (Individual or community) should be able to articulate their opinion and ideas without fear of **retaliation, censorship** or **legal action**

2. Rationale

- i. Self-government
- ii. Marketplace of Ideas
- iii. Individual autonomy
- iv. Reinforces other rights

The Law

The Constitution of Kenya (2010)

Art 33 (1) Every person has the right to freedom of expression which includes:

- a. Freedom to seek, receive or impart information or ideas
- b. Freedom of artistic creativity
- c. Academic freedom and freedom of scientific research

Art 33(2) The Right to Freedom of Expression does not extend to:

- a. Propaganda for war
- b. Incitement to violence
- c. Hate speech or
- d. Advocacy of hatred

Related Rights

Article 32 Freedom of conscience, religion, belief and opinion

Article 34 Freedom of the Media

Article 35 Right of Access to Information

Article 36 Freedom of Association

Article 37 Right to Assembly, demonstration, picketing and petition

Article 38 Political Rights

Article 31 Right to Privacy

Every person has the right to privacy, which includes the right not to have

(c) information relating to their family or private affairs unnecessarily required or revealed

International Law

International Covenant on Civil and Political Rights (ICCPR)

Article 19

19 (1) Right to hold opinions without interference

19 (2) Right to seek, receive and impart information

19 (3) Necessary restrictions

Legislation

1. Kenya Information and Communications Act, 1998
2. Computer Misuse and Cybercrimes Act, 2018
3. National Cohesion and Integration Act, 2008
4. Access to Information Act, 2016

Implementing Agencies

1. Communications Authority (KICA, 1998)
2. Director of Public Prosecutions
3. National Cohesion and Integration Commission (National Cohesion and Integration Act, 2008)
4. The Judiciary
5. Commission on Administrative Justice

Case Law

1. Cyprian Andama vs The Director of Public Prosecution and Another (Article 19 East Africa, Interested Party) (Petition 214 of 2018)

Held: Section 84D of KICA is unconstitutional and invalid

2. Bloggers Association of Kenya vs Attorney General and 3 Others
(Petition 206 of 2019)

Held: The Computer Misuse and Cybercrimes Act 2018 is valid and does not violate, infringe or threaten fundamental rights and freedoms and is justified under Article 24 of the constitution

Petition dismissed

Conclusions

- Why Freedom of Expression?
 1. Foundation for other rights
 2. Stronger democracies
 3. Promotes transparency and Accountability
 4. Representation of marginalized and minority communities

References

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Thank You

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