

# The GLOCEPS

## Policy Paper

Research and Analysis in Defence and Security

### Social media disinformation and Kenya's 2022 general elections: mitigation options

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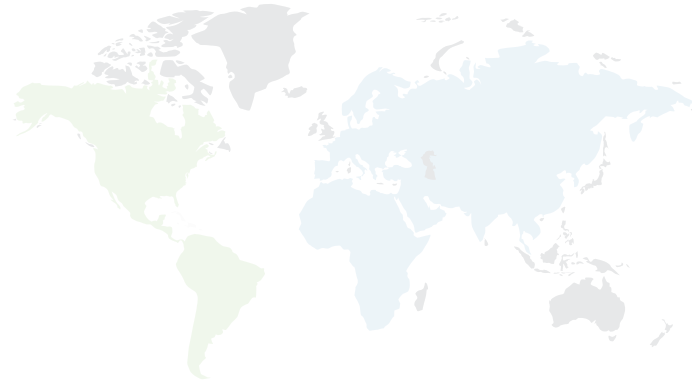
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#### Executive Summary

This policy paper addresses the prevailing social media trends, opportunities, and threats as well as the effectiveness of the existing legislative frameworks governing social media spaces within the context of the upcoming and highly competitive 2022 general elections. The most noteworthy threat is the upsurge of disinformation and misinformation by political actors as they advance their agenda. This is occasioned by the limited capacity to fact-check, regulate, and prosecute the adversities of social media disinformation and misinformation. Even with a myriad of laws governing various aspects on the social media space, experts opine that their

implementations are disjointed, ambiguous, and inadequate to the prevailing realities. In order to mitigate these threats to Kenya's democracy, the paper proposes a multi-sectoral approach against disinformation and misinformation. This should be undertaken continually, before, during, and after elections. There is also need for continued public awareness on social media misuse and harmonization of the legislative frameworks, which will be needed to legalize the proactive interventions like lawful surveillance of the social media space, prosecution of offenders, mandating social media companies to self-regulate, and institutionalize fact checking.





## Introduction

Social media, often described as the new media, plays an influential role in shaping and influencing socio-political change including election processes. Political actors in both local and global spaces appreciate the immense reach and influence that can be derived from these platforms. As such, they employ considerable resources and strategies to gain and maintain a foothold on social media. Their preference is influenced by the fact that the platforms are mostly unregulated and considerably cheaper to operate compared to mainstream media. With more internet connectivity and proliferation of savvy communication devices, like smart phones, there is a high and ever growing presence of the citizenry on these forums. Moreover, social media platforms are proving highly effective in reaching out to a new, underserved, and influential voting base-the youth.

The scope and influence of social media is bound to be massive and continuous throughout the electioneering period in Kenya. Formally, it has been positively employed to undertake civic engagements, mobilize for voter registrations and campaign fundraising, including influencing voting patterns and opinions. In the United States, social media was credited with a surge in voter turnout among the youth in the 2016 elections. Early voters, under 30 years of age, who voted for the first time in 2016, more than doubled the number of first-time voters. With these complimentary benefits of social media to elections, political actors continue to exhaustively utilize social media platforms to promote their agenda, disseminate campaign advertisements and communications. The aforementioned realities inform and influence similar actions by actors in the Kenyan political space.



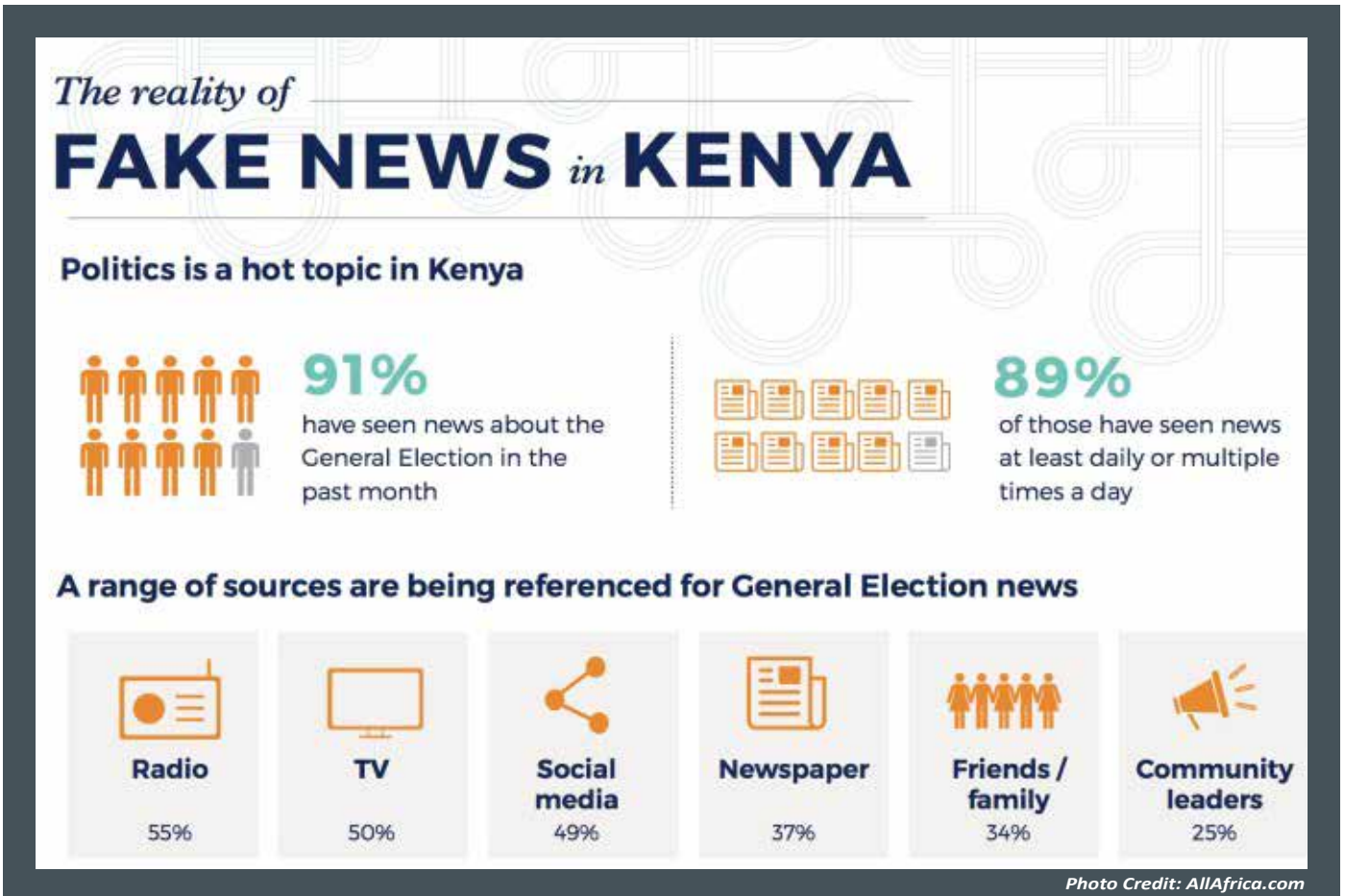
Photo credit:Youtube





## Key Issues

This section analyses key topical issues around social media and disinformation ahead of the 2022 general elections.



## Social media's influence on Kenya's political landscape

Kenyan politicians have over the past few years used social media platforms to promote their political agendas. Through social media, many politicians have been linked to the spread of disinformation, targeting vulnerable voters. Social media disinformation continues to gain prominence in the sphere of national elections. It has been widely used to disseminate disinformation in order to undermine political opponents, manipulate the voting process, and change the political perceptions of the voting public. Indeed, disinformation aids greatly in the process of undermining public trust in a country's political systems.

In Kenya, political biases are often rooted in ethnicized conversations. In effect, the likelihood

of fact-checking is low since the propagated information validates partisan opinions. With the highly competitive 2022 upcoming elections, the role of disinformation would be to elevate a particular candidate while delegitimizing the political order in order to guarantee a win for the preferred contender. With the current pervasive use of social networking sites, political mobilization will be ubiquitous. Deep-fakes (digitally altered or fabricated videos or audio that are increasingly lifelike), micro targeting (using consumer data, to send different information to different groups), manufactured amplification (artificial boosting of the reach of information by manipulating search engine results, promoting hashtags or links on social media), and bots (social media accounts totally controlled by





computer programs) are among the new tools available for disinformation campaigns.

During the last three elections, (2007, 2013, and 2017), social media continued to provide new outlets for political debates, as well as being used by politicians to promote and resist hate speech, provocation, and violence mobilization. In 2017, the depth of fake news penetration had significantly increased from 2013. This could be attributed to the dominant role of Cambridge Analytica in the 2017 Kenya elections. The firm is alleged to have engaged in the spread of fake news, manipulation and entrapment techniques to influence Kenyan elections. It is alleged that the firm obtained data from Kenyan Facebook users via a third party application and used the information to conduct its activities.

Kenyan political actors have intensively relied on social media to further their political interests due to the immense reach and influence that can be derived from these platforms. The targeted population for political aspirants in Kenya majorly consist of the youth. The youth make up

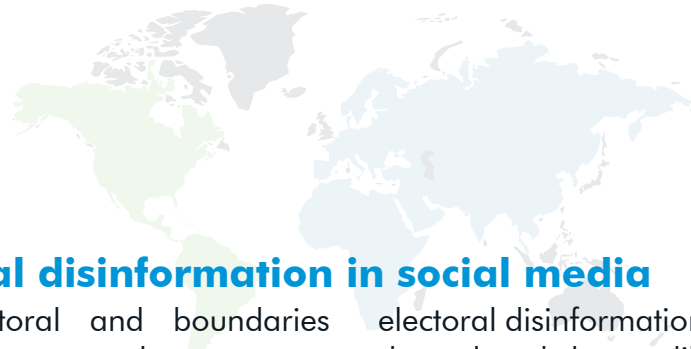
an estimated 75 percent of the total population and mostly engage in the use of social media platforms such as Facebook, WhatsApp and Instagram. The increased adoption of these platforms by political aspirants has been influenced by the fact that they are unregulated, considerably cheap, and easy to operate. The increased availability of internet in Kenya has also played a significant role in enhancing the use of social media platforms.

Between 2013 and 2017, social media had been used by political figures to promote hate speech and mobilize political violence in Kenya. The scramble for the youth votes in the highlighted electioneering years, saw presidential aspirants intensify their campaigns on social media platforms such as Facebook, Twitter and WhatsApp. On these online spaces, they posted updates about their activities, media statements, and their campaign schedules. Through disinformation, social media has been in the past deployed as a tool to manipulate public opinion and propagate violence, mostly amongst the youth.



Photo Credit: Council on Foreign Relations





## IEBC and electoral disinformation in social media

The Independent Electoral and boundaries Commission (IEBC) seeks to conduct transparent, efficient, and impartial elections in an effort to promote sustainable democracy. Over the years, the Commission has gradually adopted and utilized social media as part of its communication strategies. It has a role to disseminate official information that counter the spread of falsified electoral data. In mitigating such challenges, the commission has a critical role in monitoring and countering electoral disinformation on social media. However, in the 2013 and 2017 general elections, the spread of

electoral disinformation by Cambridge Analytica downplayed the credibility of IEBC's mandate. The two electioneering periods exposed its institutional weaknesses. A key weakness then was related to inadequacies in its legal enforcement capabilities, which diminished the institution's credibility. Some of the key options available for IEBC would include, collaborations and partnerships with various actors looking to counter electoral disinformation. Furthermore, it should enhance its verification of electoral based information on its social media platforms.



Photo Credit: Kenya News Agency

## Social media platforms and self-regulation

Social media platforms have a responsibility to identify and minimize threats associated with falsified information. With reference to electoral based disinformation, these platforms have instituted policies and mechanisms towards curbing the growing concern. Despite the existence of such policies, social media platforms face challenges in managing disinformation during electioneering periods.

A key challenge contributing to the amplification of disinformation on social media spaces is the existence of algorithms. These systems allow for

the rapid spread of harmful content, as they reward content that elicits engagement with more viewership. Due to the ease of accessibility of 'trending politically oriented videos' that may be promoted by algorithms, individuals with preconceived attitudes towards either a political party or political institution are susceptible to online manipulation. Perpetuators of disinformation would exploit the potentials of algorithms to influence their intended audiences.

In an effort to address such challenges, social media platforms such as Facebook, Twitter and





YouTube are among the pioneering bodies that have applied measures to counter electoral based disinformation. Facebook, for instance, has introduced machine learning tools to detect spam messages and fraudulent fake accounts. It has also partnered with certified independent third-party fact-checkers to make it easier for users to report and enhance the fact checking of information online. Up to November 2020, Facebook prohibited posting of new political advertisements to counter disinformation.

Twitter on the other hand, updated its civic integrity policy after the Washington riots that broke out ahead of the USA 2020 elections. The policy addresses four key categories, underlining that Twitter will not support actions associated with; misleading information on how people should participate in an election; misleading information intended to intimidate or dissuade people from participating in elections or civic duties; creation of false accounts with the intent of misrepresenting affiliation and lastly misleading information on electoral outcomes. Failure of compliance to the highlighted issues, results to disciplinary actions that include deletion of posts, temporary or permanent suspension of accounts, and account locks. The online space additionally flags false claims,

enabling its users to identify fake information. Twitter in the latest development, has introduced Birdwatch, a new service to tackle misinformation by allowing users to add notes, and provide informative context to misleading tweets.

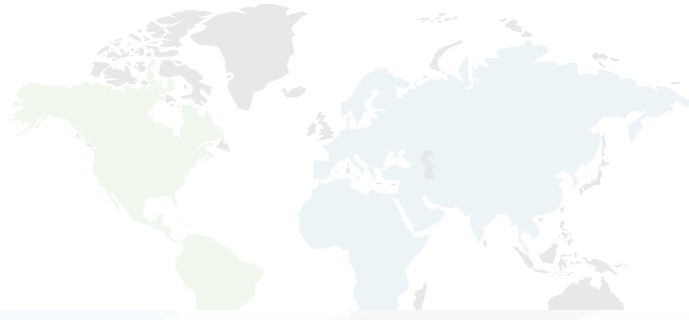
Similarly, YouTube has policies prohibiting hate speech, harassment and incitement to violence. The platform takes down misleading electoral information. Additionally, the site has measures preventing the impersonation of channels, misrepresentation of one's country, or hiding their association to government actors in order to improve their analytics. To ensure that its users maintain transparency on issues surrounding elections and electoral proceedings, it has provided viewers with previews of verified news articles in its search engine.

WhatsApp is equally countering disinformation practices by limiting the amount of groups one may share forwarded messages, and empower users to fact check information shared on their platforms. These approaches have been put in place after recognizing loopholes associated with its end-to-end encryption privacy policy that facilitated the spread of disinformation on the platform.



Photo credit: makeawebsitehub.com





# OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK FOR THE ICT SECTOR IN KENYA

## Enabling Development in the ICT Sector

Photo credit: slideshare.net



### Kenya's legal and policy framework

Globally, social media is highly unregulated and therefore there is relativity of what is considered offensive and unacceptable in the formal media landscape. The regulation of illegal online content is not a new invention, but one that is driven by the availability of information and communication technologies and the anonymity features of the social media platforms. The regulation of online content has taken many forms including legislation, penalties, shutdown of traditional media houses and internet as part of attempts to police the cyber space. In the Kenyan context, disinformation has been cited as dominating the Kenyan cyberspace, especially during the Covid-19 pandemic.

Kenya has witnessed a rapid increase in internet access and usage over the past decade. This has resulted in the rapid growth of the digital space as a platform for online content creation, including interactive news content. A study on the Kenyan social media landscape in 2020

indicated that biased and inaccurate information meant to deliberately misinform had become common. Cognizant of the threats posed by adverse usage of social media, including disrupting public order, the government has put in place various legislative and policy strategies to regulate the cyber space.

The Communication Authority of Kenya (CAK) plays a critical role in the management of electoral disinformation on social media. The body employs modern and lawful surveillance techniques to detect and counter disinformation. It regulates activities of licensees to enforce compliance with the license terms and conditions as well as laws protecting consumer rights within the communications environment. CAK additionally acts as a watch dog on political messages aired on media platforms by regulating content service providers, mobile network operators, and mobile virtual network operators.





CAK harmonizes, enforces and relies on existing laws such as the Constitution of Kenya (COK); the Kenya Information and Communications Act (KICA); the National Cohesion and Integration Act (NCIA); the Media Act; the Elections Act; Penal Code and the Political Parties Act (PPA) to ensure elections coverage is conducted appropriately. As part of its mandate, CAK plays an advisory and monitoring role in transmission of elections results by IEBC. In an effort to manage disinformation during electioneering periods, CAK creates awareness by sensitizing the public on the positive usage of social media while advocating against negative uses of these platforms.

Other overarching legislations to counter disinformation in Kenya include the Kenya Information and Communication Act 2019, and the Computer Misuse and Cybercrimes Act 2018 that criminalizes improper use of telecommunications systems and the spreading of false information respectively. There is also the Data Protection Act of 2019 and the National

Intelligence Service (NIS) Act (Act No. 28 of 2012). The legislations attach various sanctions to the breach of the stipulated cyberspace code of conduct. Nonetheless, criminalizing and prosecution of perpetrators of disinformation has not been effective.

Despite the existing legal frameworks, most of the online disinformation cases have had low prosecution and conviction rates. These have been attributed to insufficient evidence, and perceived ineffectiveness of the judiciary in prosecuting high profile individuals. Perception abound that only ordinary citizens have been convicted while prominent politicians get away with lenient penalties such as public apologies and reconciliation. The Kenyan government continues to face hurdles in regulation of disinformation due to disinformation spreading on private and closed groups.

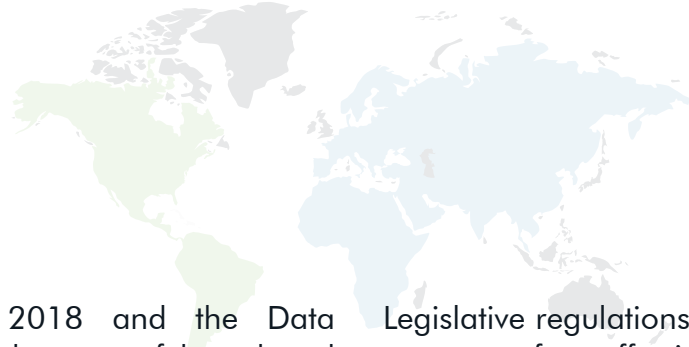
The effectiveness of the existing laws in curbing disinformation continue to face numerous challenges. For instance, the Computer Misuse



Photo Credit: digitalvidya.com







and Cybercrime Act 2018 and the Data Protection Act 2019 makes use of broad and vague terminologies such as 'publish', 'public interest', 'compelling legitimate interest', 'chaos', 'panic', 'grossly offensive', and 'detrimental', among others thereby exposing the legislations to subjective interpretation. Similarly, the persistent court cases on the social media bills challenging their constitutionality has continuously undermined their effective implementation. The legal options of conciliation instead of following the due process in law has made regulating disinformation in Kenya very difficult especially when high profile individuals are culpable.

Legislative regulations on their own cannot be a panacea for effective regulation of online content use. There is a concerted need for strengthening media literacy among the Kenyan citizenry to counter disinformation on social media platforms. The approach has the potential to foster responsible online content creation and dissemination. Evidence from other jurisdictions such as the UK and Australia on enhancing the regulatory mandates on disinformation, observes that promoting media literacy education enhances a safe, respectful, and inclusive cyber environment for their citizens.



Photo Credit: LSE blogs

## Conclusion

The existing legal loopholes on policies meant to mitigate social media disinformation is a critical dilemma in the run up to the 2022 general elections in Kenya. Social media is still being used to propagate "fake news", disparage opponents, influence the voting process, malign electoral institutions, and even mobilize for electoral violence. The social media disinformation is exacerbated by the low-cost, rapid internet connectivity, a hyper-partisan media, the proliferation of data mining firms, and the continued reliance on social media as a source of election news. More so, the vagueness in legal frameworks allows perpetrators to get away due to 'insufficient evidence'. The judiciary has been faulted for ineffectiveness and awarding of lenient penalties to prominent personalities. While some actors of disinformation do so unintentionally, this paper argues that disinformation and misinformation is likely to breed political polarization and violence. There is therefore need to up-scale the legal framework and enforcement architecture to manage the looming threats to national security.





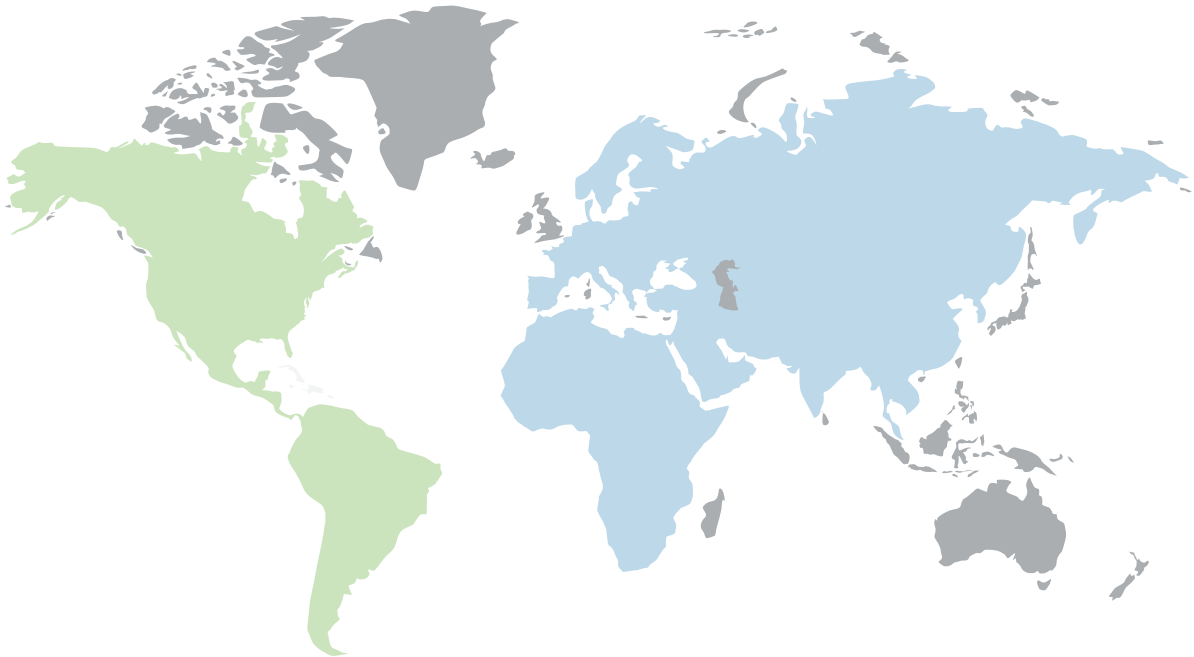
## Recommendations

1. The Ministry of ICT Kenya should;
  - a) develop and institutionalize social media literacy strategies as part of the Kenyan regulatory framework and lead in contextual and targeted social media literacy campaigns to counter social media disinformation as we approach the 2022 general elections
  - b) invest in modern but lawful surveillance techniques to detect and counter disinformation on social media sites
  - c) to collaborate with IEBC and Ministry of Interior towards enforcement of existing laws and policies to counter disinformation.
  - d) to partner with the Ministry of Interior to incorporate in the newly established National Computer and Cyber-Crimes Coordination Committee a multi-agency team, non-state actors to steer inter-sectoral collaborations and multi-stakeholder involvement to empower Kenyan internet users. This will enhance a greater sense of social responsibility and create a surveillance system that acts as a watchdog in the cyberspace.
  - e) empower private sector and social media platforms to heighten self-regulation and invest in and support fact-checking interventions to counter disinformation on social media platforms.
2. The National Assembly should review the various laws on social media regulations to expunge ambiguity in definition of various terminologies.
3. The Independent Electoral and Boundaries Commission should regularly appraise its strategic communication plans to pre-empt and counter-disinformation on a real time basis.





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