



TERMS OF REFERENCE (TOR) FOR RESEARCH AND DEVELOPMENT OF A GUIDEBOOK FOR JOURNALISTS

Background

Katiba Institute (KI) in partnership with the Kenya Correspondents Association (KCA) with the support of UNESCO is in the process of implementation of a project on ‘enhancing the protection and operational environment of journalists through strategic litigation.’

Katiba Institute is a research and litigation not-for profit organization that was established in 2011 to promote implementation of Kenya’s constitution and assist in developing a culture of constitutionalism. The principal objective of KI is to achieve social transformation through the constitution. The KCA is a national journalists’ organization that provides training, defends the rights of correspondents and champions press freedom.

Purpose of the Assignment

Freedom of the media is a fundamental pillar of democracy. Article 34 of Kenya’s Constitution guarantees protection of the freedom and independence of all types of media in Kenya. Press freedom is also a critical element for the realization of other rights such as freedom of expression since the media plays a critical role in imparting and enabling access to information by the public. Yet the reality falls far behind the ideal. According to the *World Trends in Freedom of Expression and Media Development 2021/2022 Report*,¹ levels of press freedom have declined globally over the past five years. Onset of the COVID-19 pandemic posed new threats to freedom of the media including closing civic space and decreased financial independence due to decreased revenue streams. The report also cites adoption of regressive laws that curtail freedom of the media, threats of internet shutdowns and increased surveillance particularly in the digital space.

These trends reflect the situation in Kenya. Despite progressive constitutional protections, threats against journalists and media in general have continued unabated. The Computer Misuse and Cybercrimes Offences Act was passed in 2018 despite public concerns about some of its provisions such as those criminalizing false publications due to their broadness and ability to be applied by the governments to restrict free expression.² A petition that was filed before the High Court to challenge the constitutionality of various provisions of the Act was not successful.³ These concerns were not

¹ <https://www.unesco.org/reports/world-media-trends/2021/en>

²² Sections 22 and 23 of the Act available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%205%20of%202018>

³ Bloggers Association of Kenya (BAKE) v Attorney General & 3 others; Article 19 East Africa & another (Interested Parties) Petition 206 of 2019[2020] eKLR <http://kenyalaw.org/caselaw/cases/view/191276/>

unfounded since there have been subsequent incidences of arrests and prosecutions under section 23 of the Act on allegations of publication of false information.⁴

In the 2021 *Freedom in the Net* report by Freedom House, Kenya is ranked partly free with a 66% score. The report notes the declining internet freedom particularly in light of the elections in August 2022.⁵ Kenya scores more poorly, at 48%, in the global freedom scale published in the *Freedom in the World*, 2022 report, which highlights, as one of the subsistent concerns, the vulnerability of journalists and human rights defenders to restrictive laws and intimidation.⁶ Onset of COVID-19 in Kenya in 2020 led to increased harassment, intimidation and arbitrary arrests of journalists and members of the public in general. The government-imposed curfews and restrictions on gatherings and movements, leading to a constricted civic space and a more difficult operating environment for media to access and share information.

It is against this background that KI and KCA are partnering in a project that will undertake several activities seeking to contribute to addressing some of the mentioned concerns. The project involves public interest litigation to set norms that promote international human rights standards in protecting freedom of expression and safety of journalists in Kenya.

The project also involves an aspect of research and development of a guidebook for journalists. The research will involve carrying out an environmental scan of the situation of media freedom in Kenya to identify priority issues affecting journalists and cases pending before court, affecting journalists. The aim of the guidebook is to provide journalists with information that touches on the legal and policy framework on media freedom and protection for journalists in Kenya. It will also contain tools that can be applied by journalists to represent themselves in situations of conflict with the law.

Deliverables

The consultant is expected to assist in the research and development of a guidebook for journalists. More specifically, the consultant will be expected to deliver on the following:

- Report detailing preliminary research on some of the pending court cases affecting journalists, that will be used to guide in subsequent public interest litigation.
- Guidebook for journalists detailing:
 - (i) The legal framework applicable to the exercise of journalism including in what relates to litigation
 - (ii) Case studies and case law enhancing the legal protection of journalists and media practitioners.

⁴ Kenya: Blogger Alai Charged for Publishing 'Alarming' Claims On Coronavirus <https://allafrica.com/stories/202003230966.html> and <https://advox.globalvoices.org/2021/03/19/kenya-police-turn-to-twitter-pr-as-the-arrest-of-a-blogger-goes-against-public-opinion/>

⁵ <https://freedomhouse.org/country/kenya/freedom-net/2021>

⁶ <https://freedomhouse.org/country/kenya/freedom-world/2022>

- (iii) Key steps for a journalist to apply when representing him or herself before a court of law or relevant law enforcement mechanisms where so required.

The guidebook should give special attention to risks, threats and attached faced by women journalists in Kenya. Practical case studies will be infused in the content of the guidebook to provide practical examples on how to apply the law in real-life situations.

The consultant undertakes to deliver to Katiba Institute the abovementioned deliverables, on the dates that will be agreed upon at the inception meeting with the Katiba Institute and Kenya Correspondence Association.

Qualifications or specialized knowledge/experience required

1. Degree in a relevant field.
2. Minimum of five (5) years' experience in research and writing.
3. Evidence of successfully undertaking similar work.
4. Ability to deliver high quality output.
5. Ability to maintain high level of professionalism.
6. Knowledge of the laws governing journalists and on laws on self-representation will be an added advantage.

Submission of Expression of Interest

Qualified candidates are requested to submit their application for expression of interest, detailing their understanding of the assignment; knowledge and expertise in undertaking a similar assignment; and their proposed fees by **close of business on Thursday 8th September 2022** to careers@katibainstitute.org.