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Executive Summary

The Internet represents one of the most important technological developments in the digital age.

Increase in access to digital technologies such as smartphones, tablets and other Wi-Fi enabled devices means more people are getting access to the Internet and using it for various purposes in a way previously undreamed of. Paramount among these uses is information-gathering and dissemination.

Despite affirmation by the United Nations, in 2012 that “the same rights people have offline must be protected online,” digital rights and freedoms are being restricted. State actors, through surveillance and monitoring, censorship, criminalisation of online content and the shutting down of news websites, are suppressing online freedoms.

In a bid to help stem the rising incidents of digital rights violations in the region, the Media Foundation for West Africa (MFWA) has been monitoring and tracking developments in the digital environment in West Africa.

This bi-annual policy brief compiles and analyzes data from the monitoring and gives an insight into the state of the Internet in the region.

During the first half of the year, nine incidents of digital rights violations were recorded in seven countries namely Benin, Burkina Faso, Guinea, Liberia, Mali, Nigeria and Senegal. Out of the nine digital rights violations, five of them were arrest and detention of journalists and a blogger as a result of their online activities. The rest were two incidents of ban/shutdown of online media outlet, one physical attack and threat and a social media blackout.

Findings show that journalists, bloggers, activists and individuals, who use the Internet for their work or criticise officials, are increasingly coming under attacks from state officials and individuals. Also, governments in the region, in an attempt to control Internet use and public activism, are formulating policies to regulate Internet and particularly social media.

Based on the above findings, the MFWA calls on governments in West Africa to adopt a multi-stakeholder approach towards the formulation of Internet-related policies to ensure that such policies are human rights-respecting. We also urge governments to collaborate with relevant stakeholders to adopt frameworks and policies that will enhance the development of broadband infrastructure, reduce cost of Internet services and improve quality of service for their people.

Introduction

The Internet has affected the way people communicate and share information. It has also shaped governance as it has become a tool for advocacy and holding leaders accountable. Mobile phones, Wi-fi and Internet-enabled devices have increased the number of Internet users.

The Internet is also enhancing the enjoyment of human rights such as freedom of expression, access to information, education and economic rights. Freedom of expression and opinion rights is a fundamental human right that is enshrined in the International Covenant on Civil and Political Rights (ICCPR). This right should be protected against undue infringement by the state.

Restrictions on freedom of expression and opinion rights must be backed by law, be necessary and proportional and must have a legitimate aim such as national security or respecting the rights of others. Recently, however, there have been unlawful interferences with the freedoms of expression and opinion in the online space by both state and non-state actors in West Africa.

Some governments have shown a persistent refusal to accept that the right to freedom of expression and opinion applies not just to the information and ideas that are neutral or favourable to them, but to those that are critical of the state, or the government, and reveal shocking happenings in the country. Such intolerant governments have adopted various measures, including surveillance, content filtering and blocking, criminalization of online content and Internet and network shutdowns, to curtail online expressions.

These mechanisms employed by governments and state actors create a chilling effect that dissuades individuals from expressing themselves freely online for fear of being reproached or worse, face criminal charges.

Many Internet-related developments took place during the first half of the year. While some positive developments were recorded, there were some incidents of digital rights violations.

This bi-annual policy brief presents findings on current and emerging issues in the digital environment in nine countries in West Africa.

Overview of the Digital Environment in West Africa

In West Africa, the Internet serves as a dynamic space for communication and a medium to receive, create and share content. The increased availability of smart phones and other Internet-enabled devices and different broadband packages has led to an increase in the number of Internet users in the region.

Lack of infrastructure, low Internet speeds and unreliable services continue to exclude many people from the digital world. Cost of data also remains high in the region. The cost of one gigabyte of data ranges from US\$4 to US\$14 in West Africa. The cost of one gigabyte of data in Nigeria and Ghana is about US\$ 4. Mali seems to be among the countries in the region with the highest data prices with one gigabyte of data selling for about US\$ 13.5.

Internet access still remains a challenge in rural areas. People in the rural areas have less access to the Internet, compared to those in the urban areas, and are left on the fringe of the digital revolution.

The cyberspace in the region is also confronted with other challenges. Internet users whose work is critical of government or powerful people are being arrested and detained. Governments are also interfering in the online activities of their people. These interferences are usually in the form of bans and shutdown of news websites, intrusive monitoring and surveillance and Internet and Network shutdowns. Repressive laws are also being used to repress freedom of expression and opinion rights online.

Despite these challenges, there are some positive developments in the online environment in West Africa. Governments are putting in place various measures such as investment in Internet infrastructure to address some of the challenges that people face when accessing and using the Internet. Stakeholders are also adopting a multi-stakeholder approach to discuss and address issues related to Internet access, usage and digital rights and freedoms. Civil society actors are increasingly involving governments, departments and agencies in meetings and conferences aimed at discussing some of the issues surrounding access to the Internet.

Policy/Regulatory Environment

The digital environment in West Africa is free and minimally regulated. Looking at the current trends of technological developments, the policy environment in the region is lagging behind in terms of addressing current issues in the digital environment.

Most countries in West Africa do not have laws protecting the right of Internet users. Sections of some existing laws in some countries, however, have provisions on Internet access and use. For instance, Nigeria's Cybercrime Act 2015 has provisions on Internet usage in Nigeria. Ghana's Electronic Communications Act 2008 and Electronic Transactions Act 2008 also have sections on Internet usage in the country. At the national levels, legislatures are working to formulate policies to shape Internet use and courts are also battling repressive laws that suppress free speech online.

In an effort to protect Internet rights and freedoms, some countries are formulating Internet-specific policies. Benin had its first Internet-specific law coming into force on March 20, 2018. The law, Law 2017-20 (also known as Code Numérique), was passed by the National Assembly (Parliament) in June 2017. The law has been assented to by President Patrice Talon.

In Nigeria, The Digital Rights and Freedom Bill was approved by the Upper Chamber of the National Assembly. The Bill, which is expected to protect Internet users in the country, was approved by the House of Representatives on December 19, 2017. The Bill is now awaiting Presidential assent to become Law. When passed into law, it will become the country's first specific law on Digital Rights and Internet freedoms.

The authorities in Burkina Faso have also started the process of drafting a law to address the needs of Internet users and issues of cybercrime in the country.

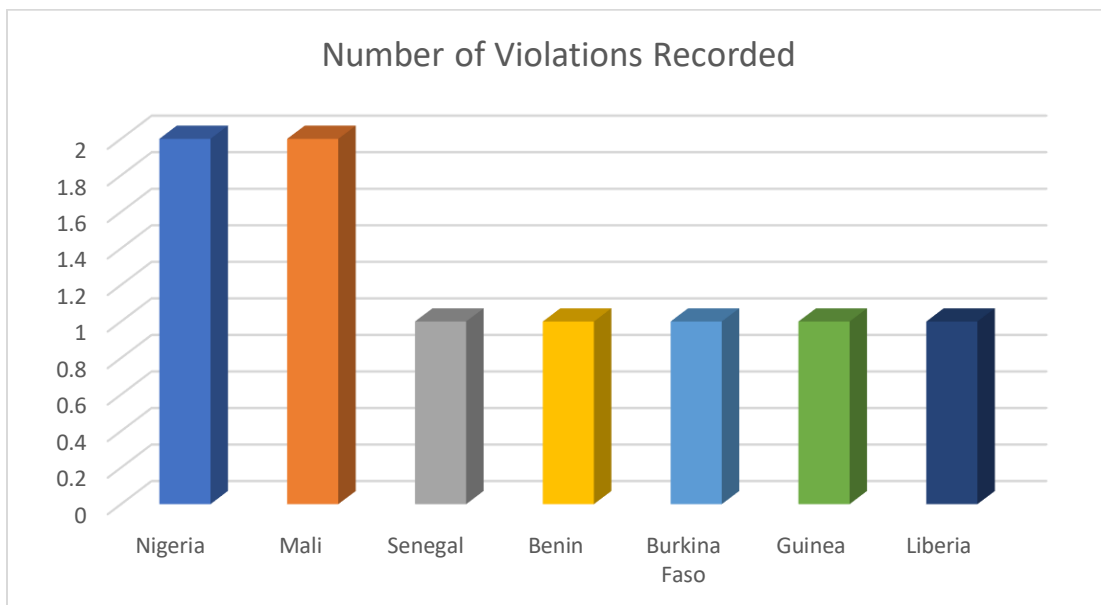
Digital Rights Violations

With the Internet comes diverse platforms for information communication and sharing. Social media use for information sharing continues to grow rapidly. The rapid growth in citizen journalism, and the use of online picture and video platforms have redefined the media environment. Anyone can post news to these platforms as well as share opinions and comment on issues.

State officials and individuals are devising various means to curtail online expressions. Increasingly, news websites and blogs are being shut down, individuals' online activities are being monitored and online content is being criminalised. There are also instances where journalists, bloggers and other individuals who use the Internet in their work have come under attack by both state and non-state actors.

Nine digital rights violations were recorded during the first half of 2018 in eight countries. Chart 1 below shows the countries and number of violations that were recorded in each country.

Chart 1: Country and Number of Violations Recorded



As indicated in the above chart, Nigeria and Mali recorded two violations each. Benin, Burkina Faso, Liberia, Guinea and The Gambia all recorded a violation each.

These incidents of abuses were mainly against online journalists, bloggers and individuals who wrote on critical issues. The violations recorded were in the form of shutdown/ban of news website, arrest and detention of Internet users and activists over their content, abduction and defamation suits.

It is worth noting that these violations were perpetrated not only by state actors, but by non-state actors as well.

Arrest and Detentions

Guinea: On June 20, 2018, the founder and editor of *Nouvellesdeguinee.com*, Mamadou Saliou Diallo, was arrested and detained by the judicial police directorate on the orders of Guinea's Justice Minister, Cheick Sako. Diallo's arrest followed a defamation complaint by Cheick Sako over an article the editor wrote in which he accused Sako of taking bribes and obtaining an apartment in Spain in return for the award of a contract to build a new prison. The article was later removed from the website.

Burkina Faso: On June 14, 2018, Naim Toure, an activist, was arrested after he criticized the National Gendarmerie in a Facebook, for the alleged neglect of Henry Traore, a gendarme who was critically wounded during an operation in a building occupied by alleged terrorists in the capital, Ouagadougou. He was accused of using his Facebook to incite the armed forces to revolt.

Mali: On February 22, 2018, the Malian Police arrested three journalists from privately-owned *MaliActu* news website and also seized equipment from the news website's office in the capital, Bamako. The three journalists -Salif Diarra, Aliou Hasseye, and Issa Coulibaly- were held by the Police in Bamako, following a complaint of alleged blackmail lodged by Amadou Kallossi, the mayor of the town of Koumaniana. According to the mayor, he received several messages from the news website's phone number, threatening to publish a compromising video about him. The journalists and the management of *MaliActu*, however, denied the accusation and insisted their phone was hacked. Hasseye and Coulibaly were released two days later without charge. Salif Diarra was, however, released on February 26, 2018 on condition that he reports to the prosecutor's office every Friday pending the conclusion of the investigation.

Nigeria: Daniel Elombah, chief executive of an online newspaper, *Elombah.com*, and his brother, Timothy Elombah who is the editor-in-chief, were arrested on January 1, 2018 for publishing an alleged defamatory article about the country's Inspector-General of Police (IGP) on their website. The article, titled, "IGP Ibrahim Idris's Unending Baggage of Controversies", was originally authored by one Ebiowei Dickson and published on *opinionnigeria.com*.

Following wide condemnations and social media campaigns for their release, Daniel was released the same day, while Timothy spent 25 days in detention. The two were charged with cybercrime on March 1, 2018. This was despite the Vice-President, Yemi Osibanjo, querying the Inspector-General of Police, Ibrahim Idris, over the arrest and detention.

Senegal: Assane Diouf, a Senegalese was arrested upon his arrival from the United States of America. Diouf was accused of using social media to defame and insult state officials and other prominent individuals in Senegal, including President Macky Sall. He was brought before a senior judge on April 9, 2018 where he pleaded guilty to the charges levelled against him. However, judgement is yet to be passed and he is still in prison.

Bans and Media Outlet Shutdowns

Benin: On February 8, 2018, the state's media and communications regulator, Haute Autorité de l'audiovisuel et la Communication (HAAC), suspended indefinitely a privately-owned daily, *L'Andace Info*, after the newspaper published an article about the country's president, Patrice Talon, titled "Talon

Sucks Beninois to the Marrow.” The article, which compared and highlighted disparities in wages of civil servants and those of high-level public officials, was judged by the HAAC to be insulting of President Patrice Talon.

Liberia: On April 9, 2018, FrontPageAfrica (FPA), a leading online newspaper, was shut down in relation to an advertiser’s announcement published in the March 16, 2018 edition of the newspaper, which had become the subject of a defamation suit. Seven members of staff at the online newspaper were taken away by sheriffs of a Civil Law Court in Monrovia and held for some three hours before they were released on a US\$350,000 bail bond. Mr. Henry A. K. Morgan, and Moses T. Konah, who filed the defamation suit against the newspaper, claimed they had been defamed by the said publication which stated they were not authorized to transact business in relation to the “Estate of Christine Morgan-Richards,” of which they were the administrators. The suit was in spite of the newspaper having published a correction to the announcement on March 23, 2018, at the request of lawyers of the plaintiffs.

Social Media Blackout and Network Disruption

Mali: On June 4, 2018, there were reports of a social media blackout in the country. On that same day, subscribers of Malitel, which is one of the public telecommunication operators in the country, did not have connectivity. The disruption followed banned opposition demonstrations ahead of a referendum on political reforms.

Physical Attacks and Threats

Nigeria: On May 29, 2018, Saint Mienpamo, a blogger, escaped death when persons suspected to be militants broke into his house. The suspected militants went to the blogger’s house in the company of two policemen under the guise of effecting his arrest over an alleged illegal post. He was beaten by his attackers and taken to the house of a popular militant leader where he was threatened with death. The attack is suspected to be in connection with a report on his blog about an alleged attack on the boat of a former militant leader and recent Caretaker Chairman of Southern Ijaw Local Council, Joshua Machiver, by some suspected members of the State Waterway Security. The incident has since been reported at the Ekeki Police station.

Emerging Issues

Aside these violations, there are persistent issues of cybersecurity. Some countries, in attempt to solve perceived issues of hate speech and misuse of the Internet, have resorted to initiating processes to introduce legislations that are intended to resolve the issues. However, as legitimate as these concerns are, these processes have most often than not either been veiled attempts to curtail critical citizen participation in governance processes or so stringent that the rights they were to protect end up being violated. Another emerging issue is the hacking or attempts to hack social media accounts of individuals and institutions who are critical.

In Nigeria, the Minister of Defence, Mansur Dan-Ali, directed the nation's security agencies to screen social media communications of notable Nigerians to monitor hate speech. The security agencies have since begun monitoring the social media, although this activity goes against Section 39(1) of the 1999 Constitution of Nigeria. Although this activity has received a lot of criticism from civil society organisations and individuals, the government is yet to reconsider its decision.

Also, the legislature in Nigeria is considering a Bill on hate speech. According to the sponsor of the bill, Senator Aliyu Sabi Abdullahi, the Bill seeks to 'eliminate' hate speech on the grounds of ethnicity, religion or race, among others. The Hate Speech Bill also seeks to establish an Independent National Commission for Hate Speeches, whose mandate would be to enforce hate speech laws across the country. The Bill, which proposes extreme sanctions, including death sentence for any person found guilty of any form of hate speech that results in the death of another person, will gravely restrict online expression when passed into law.

The Twitter account of Ahmed Salkida, a Nigerian journalist with deep insight into the workings of Boko Haram, was compromised. The Twitter account was interfered with on June 8, 2018 after a tweet by Salkida in which he rebuked the Federal Government for falsely raising the hopes of parents of some [Chibok girls](#) who had died in captivity and argued that the parents of the girls should be told the truth about the fate of their children and helped to deal with it. The journalist also revealed his account was locked few hours after he received an exclusive report, adding he had always been targeted because of his reports. The account is currently unlocked but it remains unknown who might have attempted to hack his account thereby leading to a lock by Twitter to protect the account.

Although governments are developing responses to tackle this menace, more needs to be done. Inadequate management of these cyber threats and abuses will undermine trust in the Internet and put not only those online at risk but also those offline.

Positive Developments

The region also recorded some significant efforts by some governments and regional mechanisms to affirm their commitments to and uphold freedom of expression rights. The ECOWAS Court of Justice on February 14, 2018 ruled on the legality of The Gambia's laws on sedition, criminal defamation, false publication on the Internet and false publication and broadcasting. The ECOWAS Court of Justice, in its ruling, ordered The Gambian government to repeal or amend the said laws as the enforcement of these anti-free speech laws were in violation to freedom of expression rights and press freedom in The Gambia.

Usually, freedom of expression rights is disregarded with impunity; however, there was one incident of redress. A high court in Abuja, Nigeria awarded N5 million (about US\$13,833), against the Nigerian Police Force over the arrest and detention of two journalists, Daniel Elombah and Izuchukwu Elombah, in relation to a publication that criticised Mr. Ibrahim Idris, Inspector General of Police. The court also granted an injunction restraining the respondents from further arresting and restraining the movement of the applicants. It further ordered the release of any property in the custody of the Police.

In other positive developments, a number of workshops, forums and conferences were held to discuss issues bothering around Internet access and use, improvement in infrastructure, addressing consumer needs among others.

Increasingly, governments are also putting in efforts to ensure a multi-stakeholder model of engagements in the formulation of Internet-related frameworks. Also, measures are being put in place to protect the rights of Internet service providers and consumers, and ensure adequate safeguards are put in place against abuses.

Conclusion and Recommendations

The MFWA's monitoring shows that over the last six months, West Africa has witnessed some positive developments in its digital rights legislative environment. These include the Supreme Court ruling in The Gambia that will bring a major boost to the enjoyment of Internet rights in the country. Currently, the government is initiating process to repeal some problematic pieces of legislations in the country based on the Court's ruling and also Law and policy interventions by the MFWA's partner organisation in the country, the Gambia Press Union.

Some governments are also formulating policies to shape the digital environment in their respective countries and, by extension, the sub-region. Again, the introduction of the Internet-specific law in Benin, the "Code Numérique" will greatly improve the digital rights environment in the country.

There are also efforts by stakeholders to improve Internet access and use through improvements in infrastructure, Internet speeds and addressing consumer concerns in relation to tariffs and data cost. Despite these improvements, Internet cost remains relatively high for the average individual in West Africa. There continues to exist a digital gap between urban and rural communities and between men and women.

The nine digital right violations recorded from January to June are a challenge to an environment that remains very porous. The arrests and detentions, physical attacks, and threats against journalists, bloggers and other users of the Internet for their online content are very worrying. Bans/shutdown of media outlets who are critical of governments and powerful people may lead to media that strictly self-censors and does not hold duty-bearers accountable. It also has the potential to affect developmental and investigative journalism.

It is however worthy to note that while some governments are ensuring that Internet rights and freedoms are protected and better enjoyed, others are also finding ways of either taking back freedoms already given by the state or further worsening the repressive environment for human rights. Other governments also in an attempt to resolve legitimate issues such as hate speech online and issues of cybercrime are putting in place excessive measures that will end up affecting all Internet users. Some policies and initiatives by governments such as the proposed Hate Speech Bill in Nigeria may curtail online freedoms if implemented.

Personal rights and freedoms online, including freedom of expression, the right to opinion, privacy and anonymity, face an uncertain future. Ensuring a better digital environment and better Internet access will depend on a number of significant policy decisions. It is therefore recommended that;

- Governments must adopt a multi-stakeholder approach towards the formulation of Internet-related policies.
- Internet-specific policies must be human rights respecting and promote the exercise of human rights online.
- Governments and Internet service providers must ensure Internet infrastructure is distributed evenly to ensure no one's location becomes a barrier to their access to the Internet.
- Governments must collaborate with stakeholders to adopt frameworks and policies that will enhance the development of broadband infrastructure, reduce cost of Internet services and improve quality of service.
- Internet users must report incidents of abuses for redress.
- Individuals, civil society organisations and activists must continue to use national, regional and international human rights mechanisms to advocate for the enjoyment of Internet rights and freedoms.



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