



INTERNET RIGHTS SITUATION IN WEST AFRICA

A Report on Internet Rights Monitoring
Conducted from October to December 2015

INTERNET RIGHTS SITUATION IN WEST AFRICA: OCTOBER TO DECEMBER 2015

Introduction

The increase in internet penetration and usage in Africa is contributing to the continent's development in the areas of communication, commerce, governance and regional integration, among others. Unfortunately, some governments are passing new laws and/or applying existing ones to limit freedom of expression online and control the internet. It has therefore become necessary for relevant stakeholders, especially civil society, to engage governments to ensure that safeguards are put in place to protect human rights online.

The Media Foundation for West Africa (MFWA), with support from UK-based Global Partners Digital, has been engaging stakeholders in the internet ecosystem in West Africa on internet freedom over the past three years. The MFWA also undertakes monitoring exercises to assess the internet freedom situation in the region. The exercise is aimed at generating evidence-based reports on internet freedom developments in the respective countries in West Africa, to serve as reference material and to inform advocacy work by the organisation and other human rights defenders and online activists.

The monitoring tracks and reports on online rights violations; introduction of new legislation; review or repeal of existing laws; and other developments (positive and negative) which impact the online environment in the region. The monitoring is carried out by experienced human rights and freedom of expression rights monitors in all 16 countries in the region. The monitors submit monthly reports which are analysed on a quarterly basis by the MFWA and shared with the public through available media to inform advocacy on online freedoms.

This report covers findings from the monitoring exercises undertaken in the last quarter of 2015 (October to December). Specifically, the report presents an overview of the regulatory environment governing online activities in the region with analysis of new Bills introduced in the quarter under review. It also covers specific incidents of violations recorded during the monitoring period. The report ends with a number of recommendations for different stakeholders.

Findings

The findings presented in this report are based on data gathered by MFWA's monitors working in the 16 West African countries and online reports from other human rights organisations in the last quarter of 2015 (October-December 2015). Even though the monitoring was done in all the countries, the findings presented below focus mainly on the countries in which specific incidents were recorded.

Overview: Internet Rights and Freedoms Regulatory Environment

Analysis of the reports received during the monitoring period indicate that the right to freedom of expression (FoE) is generally respected offline and online, but with occasional incidents of

violations except in The Gambia where FoE rights are generally not respected. Many of the countries do not have specific laws governing internet activities. In those countries, access, usage, and rights and freedoms of online users are defined by sections of existing laws and regulations, for example, freedom of expression and press laws. This shows that the online regulatory landscape has not change much since the [previous quarters' \(April – September 2015\) report](#). Few of the countries have however passed specific internet-related laws while others have bills pending passage in their national parliaments as elaborated below.

In the quarter under review (October – December 2015), both Ghana and Nigeria witnessed the passage, and introduction of bills with potential negative impact on internet freedom in December 2015. In each of the two countries, the respective bills presented had a number of ramifications for free expression online. As a result, the bills elicited reactions from different civil society groups.

Nigeria: A Bill titled “An Act to Prohibit Frivolous Petitions and Other Matters Connected Therewith”

On December 2, 2015 above mentioned Bill passed the second reading in the upper Chambers of Nigeria’s Parliament, the Senate. The content of the Bill makes it mandatory for Nigerians writing petitions against public officers or institutions to first depose to, and accompany their petitions with an affidavit from the High Court of a State or the Federal High Court confirming the content to be true and correct. Any petition or complaint not accompanied by a sworn affidavit, according to the proposed law *“shall be incompetent and shall not be used by any government institution, Agency or bodies established by any law....”*

The Bill creates four offences and imposes penalties for each of them. On online related issues, the Bill in Section 3 (4) criminalises the use of any new media platform including text messaging, tweets, WhatsApp or any social media platform to post *“any abusive statement knowing same to be false with intent to set the public against any person and/or group of persons, an institution of Government or such other bodies established by law”*. This offence, on conviction carries a penalty of two years imprisonment or a fine of N2,000,000.00 (about US \$10,000) or to both fine and imprisonment.

Following the second reading, national, regional (including the MFWA) and international civil society groups and individuals roundly condemned the Bill as undemocratic and censorial and strongly called for it to be rejected. On December 8, civil society groups gathered at the gate of the National Assembly Complex to protest the Bill and called for it to be withdrawn. The Bill is still before the Nigerian Parliament.

Ghana: National Media Commission (Content Standards) Regulations, 2015

On December 9, 2015, the Parliament of Ghana passed the National Media Commission (Content Standards) Regulations, 2015 - Legislative Instrument (LI 2224). LI2224 states that authorisation must be sought from the National Media Commission (NMC) before broadcasting content on any public electronic communications network, public electronic communications service and broadcasting service. Failure to do so will attract *“a fine not less than five thousand units or a term of imprisonment of not less than two years and not more than five years or to both the fine and term of imprisonment.”*

The LI 2224 contravenes Article 162 of Ghana's 1992 Constitution which guarantees Freedom and Independence of the Media. Its broad scope of maintaining standards in the content of public electronic communications network, public electronic communications service and broadcasting service also has implications for online freedoms in information creation, sharing and relevance.

LI 2224 suggests that

- Media organisations and other entities which may want to share information via the internet may have to seek authorisation first before broadcasting – which may in some instances amount to prior censorship. The process may also discourage content creation.
- Network operators may also have to obtain content authorisation for transmitting clients content since they are liable for transmitting unauthorised content.

The MFWA is still engaging the NMC on LI 2224 to safeguard online freedoms. Meanwhile, the Ghana Independent Broadcasters Association (GIBA) has taken the LI to the Supreme Court for review.

Internet Rights and Freedoms Violations Recorded

From the reports received over the three-month monitoring period, two (2) incidents of online rights violations were recorded in two (2) countries – Niger and Ghana.

Niger: Facebook Blackout over Political Tensions

In Niger, there was a two-week blackout of Facebook in November 2015. This affected freedom of expression rights massively. The blackout was linked to a rise in political tensions and the use of intemperate language by political activists in the heady period of the return of the opposition leader, Hama Amadou, from exile.

Ghana: Suspension of News Anchor over Twitter Prank

In October 2015, a popular private TV station based in Accra, Ghana, TV3 network, suspended one of its lead news anchors, Nana Aba Anamoah for altering and passing off photos of some friends on twitter as her own to create an impression that she was at Old Trafford Stadium to watch a Manchester United match, which was in fact not the case. After the incident, Nana Aba trended on Twitter as followers mocked her and photo-shopped her images into different photo scenarios. The TV3 network subsequently suspended her for her action explaining “*as a broadcast network that prides itself in upholding high ethical standards and delivering credible and trustworthy content to its viewers,*” Nana Aba Anamoah’s actions on Twitter put the company in a bad light.

Other developments

Workshops and conferences on internet-related issues present opportunities for awareness creation and sensitisation about issues concerning the internet and how it can be best tailored to meet the needs of citizens. During the three-month monitoring period, four workshops/forums were organised which contributed positively to the internet landscape in four countries.

In Benin, an Internet Freedom Coalition was set up in December, 2015 after a one-day Stakeholders' Forum. The Coalition, made up of 23 organisations from government, industry, civil society, and the media, was set up to promote freedom of expression online and influence policies that are favourable for online freedoms in Benin. The Forum was organised by the MFWA in partnership with its partner in Benin, L'Observatoire de la Déontologie et de l'Éthique dans les Médias (ODEM) with support from UK-based Global Partners Digital. The Forum built the capacity of stakeholders on trending and emerging internet issues and effective strategies for engaging relevant stakeholders in the sector.

In October 2015, the MFWA organised a youth forum for over 200 young Ghanaians in the capital of the Western Region, Takoradi. The Forum introduced participants to internet freedom issues and urged the youth to join advocacy around internet freedom and the African Declaration on Internet Rights and Freedoms. The Forum was also used to encourage the youth to take advantage of Ghana's internet environment to venture into ICT's entrepreneurship.

In Nigeria, the Alliance for Affordable Internet (A4AI) organised a Forum in Lagos on broadband accessibility and affordability in November 2015. The Forum was attended by Nigeria's Minister of Communications, Abdur-Raheen Adebayo Shittu and leading civil society groups.

The Senegalese Data Protection Commission in collaboration with Computech Group also organised a sensitisation campaign for school children in 10 schools across Dakar on the theme, *The Internet, I Decide* in December 2015.

In a separate development, the Senegalese telecoms regulator, Autorité de Régulations des Télécoms et des Postes (ARTP), in October, gave the country's three mobile operators – Orange Senegal, Tigo Senegal and Sudatel Senegal – a 60-day extension of the deadline for its mandatory SIM registration programme. The extension was from October 1 to December 1, 2015 was to give opportunity to citizens who had not complied as at October deadline before switching off their services.

Conclusion and Recommendations

Findings from the October - December 2015 monitoring indicate that even though there were no internet-specific laws regulating online activities in many West African countries, internet rights and freedoms were generally respected in the region. This is evident from the findings of the monitoring as presented above.

However, findings from the monitoring also point to the fact that gradually (even though not widespread), some African governments are beginning to adopt policies, regulations and laws to control the internet as noted by the African Declaration on Internet Rights and Freedoms. The Content Regulation LI passed in Ghana could have widespread implications for online media organisations, intermediaries and users in the country. The same can be said of the Frivolous Petitions Bill in Nigeria which could also result in self-censorship out of fear of the penalties and also the bureaucracy in getting an affidavit for a petition.

It is important to have policy and regulatory mechanisms in place to help shape the internet ecosystem. However, the regulatory frameworks should respect and protect human rights norms and principles with adequate safeguards. Policies and regulations that are proscriptive in nature nurtures intimidation, fear and self-censorship which are counterproductive to innovation, social inclusion and national development.

The incident in Niger where Facebook was blocked for two weeks in response to political tensions and intemperate language is also an issue of concern. Blocking access to specific internet platforms is not a solution to political tensions; sensitisation about peaceful coexistence and tolerance is what is rather key. Online platforms should always be accessible as it gives voice to the voiceless and the marginalised in society to also participate in political debates and governance processes. People should rather be encouraged to use more conciliatory speeches to fight hate speech online rather than being denied access to selected social media platforms.

In consideration of the findings from the monitoring exercise of the last quarter of 2015, a number of recommendations are made below to help create a rights-based online environment in the region:

- Governments are encouraged to adopt online policies and regulations that respect human rights online and equally respond to equitable and affordable access to a free, open and secure internet. In line with that governments in the region are also encouraged to adopt the African Declaration on Internet Rights and Freedoms and use it as a guide in policy formulation.
- The Parliament of Nigeria should reject the Frivolous Petitions Bill which seeks to criminalise online speech offenses.
- The Government of Ghana and the NMC in particular should reconsider how the Media Content Law will be implemented to ensure that the LI does not limit innovation, creativity and information sharing online.
- Civil society organisations (CSOs) and groups are encouraged to proactively engage governments to influence draft bills and policies before they are passed or adopted. CSOs in Ghana and Nigeria in particular are urged continue engaging the NMC and the Senate respectively until online rights and freedoms are guaranteed in the bills.
- Netizens countries in the region are also encouraged to support internet freedom advocacy by supporting civil society and other stakeholders to resist internet policies and interventions that do not respect human rights online. They should also urge their governments to endorse and adopt the African Declaration on Internet Rights and Freedoms to ensure that their rights offline are protected online as well.