



# **Bi-Annual Policy Brief on Internet Rights in West Africa**

**July-December, 2018**

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# Executive Summary

The rapidly evolving digital environment and digital technologies offer countless opportunities to gather and share diverse information of public interest. The Internet offers important possibilities for the fulfillment of the 2030 Sustainable Development Agenda and enhances the enjoyment of other human rights such as freedom of expression, access to information and association. This, among other opportunities presented by the internet and its applications, provides vast and unprecedented possibilities for personal development and national economic growth.

Despite the important role the internet plays in modern societies, some governments have started to explore and deploy various measures to control Internet access and use. The Media Foundation for West Africa's (MFWA) monitoring of the digital environment in West Africa has revealed that some governments are using measures including arrest and detentions, internet and network shutdowns, surveillance and monitoring, filtering and blocking and the passage and use of existing legislations to curtail freedom of expression online.

This edition of the policy brief on the state of internet freedom in West Africa called, "*The West Africa Internet Rights Monitor*", takes a look at online developments and abuses that were recorded during the last half of 2018 and some actions by civil society, activists and citizens to protect themselves and contest digital rights and Internet freedom violations.

This policy brief contains an analysis of the policy and regulatory framework governing the internet in West Africa; online violations and internet-related developments in the sub-region which have implications for freedom of expression and access to information online. Our second bi-annual policy brief on internet rights in West Africa covers the period July-December, 2018.

This report highlights developments in nine countries in the sub-region where critical internet-related developments were recorded. These countries are Burkina Faso, Ghana, Mali, Niger, Nigeria, Senegal, Sierra Leone, The Gambia and Togo. It concludes with recommendations on the way forward to promote digital rights and freedoms in the sub-region.

In all, nine incidents of online violations were recorded. These incidents include seven incidents of arbitrary arrests and detentions, one incidents of attack and threat and one incident of social media blackout. Findings from the six months monitoring show that the policy environment in the region has improved as a number of governments are putting in place frameworks to enhance infrastructure, expand and improve internet access and shape the digital space.

There is however a growing concern over some government policies relating to multiple taxation which have resulted in high cost of telecommunication services. Based on the findings, it is recommended that governments avoid tax pay-off, and reach for longer term digital dividends as these taxes increase the cost to connect and contributes to a growing digital divide. The MFWA also calls on governments in West Africa to adopt and implement appropriate internet policies that respect and advance the exercise of people's rights online.

## Introduction

The internet and its associated digital technologies since its emergence have empowered people to access and disseminate information, communicate with a wide audience across borders and participate in democratic processes. The internet also provides opportunities for advancing human rights especially freedom of expression and access to information.

Despite the opportunities the Internet provides for human development and the enhancement of human rights, it brings threats with it as well. The phenomenon of fake news, cyber bullying, trolling, cyber stalking, identity theft and other digitally-enhanced vices continue to pose a threat to internet users across the globe. This has provided a pretext for some autocratic governments to restrict freedom online under the guise of fighting cybercrimes. Free expression and privacy are thus under threat in certain countries.

Measures such as surveillance, filtering and blocking, social media shutdowns, prosecutions, arbitrary arrests and detentions, imprisonment, and other forms of harassment are being used to violate and restrict users' internet freedom. These measures can make internet users self-censor their online activities and behavior especially on sensitive topics for fear of being punished/victimised.

During the second half of the year, a number of positive internet related developments took place in the region. Some incidents of violations were also recorded. This second biannual policy brief presents findings on the violations that were recorded, the current issues in the digital environment in West Africa as well as emerging issues.

## Overview of the Digital Environment in West Africa

The use of Information and Communications Technology (ICT) in West Africa is fast growing. The Internet has become a tool for people to exchange and engage on issues and ideas in ways they could not before. It has also enhanced citizens' participation in democratic processes as information can now be accessed and shared everywhere via the internet.

Internet access and usage in the sub-region is growing steadily as ICT tools such as smartphones and internet-enabled devices are becoming more affordable. Also, governments in the region have, in partnership with the private sector, taken key steps towards implementing strategies to expand telecommunication infrastructure to enhance connectivity.

In spite of these positive developments, there still remains significant segments of the population who are unconnected. Despite the spread of telecommunications services across West Africa, basic telephony infrastructure is still very much concentrated in major economic centers.

Cost of broadband continues to be high and unaffordable for many. The high cost of data continues to keep majority of the people offline. Also, some of the people living in rural areas usually face barriers

such as lack of access and capacity to utilize these technologies. This digital divide undermines opportunities for wider development and threatens to entrench existing patterns of inequality.

During the period, there were some incidents of online violations such as arrests and detentions of internet users, internet and social media shutdown, and the formulation of legislations that have the potential to undermine and stifle free expression and civic participation.

The period also witnessed the introduction of taxes on Telecommunication services by some governments. Although the rationale for these taxes may be good, government must find a way to balance the competing goals of promoting connectivity and mobilizing revenue as these taxes can restrict network access.

## Policy/Regulatory Environment

The regulatory environment plays a defining role in supporting the digital environment. A country's policy context is one of the most significant factors in determining accessibility, connectivity cost, online safety, among others. However, the pace of positive policy change in the region remains far too slow to ensure affordable access and protect the online population.

Slow as policy progress has been over the past few years in West Africa, the second half of the year saw some progress. Some governments are in the process of formulating policies that will shape the digital environment. A number of new laws and policies were passed during the second half of the year.

Niger passed laws that regulate the provision of electronic communication services in the country as part of measures to develop the ICTs sector. These are - Law N°2018-45 which seeks to regulate Electronic Communications and Law N°2018-47 which seeks to manage the operations of the Regulatory Authority for Electronic Communications and Postal services (l'Agence de Régulation de la Communication Electronique et de la Poste-ARCEP).

Benin passed a law Decree No. 2018-341 of July 25, 2018 imposing a 5% tax on telecommunication services. After series of demonstrations by telecommunication service users and activists, the tax was repealed.

On November 15, 2018, Togolese parliamentarians adopted the draft law relating to the Haute Autorité de l'Audiovisuel et la Communication (HAAC) which is the broadcasting and communication regulatory body and a draft law authorizing privatization of TogoCom electronic communication holding. The draft law on the Haute Autorité de l'Audiovisuel et la Communication (HAAC) among other things seeks to allow the institution to adapt to switchover requirements from analogue to digital transmission. This adopted Bill also gives the HAAC the necessary tools to regulate the new communication mediums and outlets including online media. The other Bill passed gives authorization for the privatization of TogoCom to promote widespread broadband access throughout the country.

On the other hand, the Senegalese National Assembly adopted the draft Electronic Communications Bill on November 28, 2018. Introduced by the Council of Ministers on June 6, 2018, the Bill attracted concerns and criticisms from citizens, civil society organisations and other activists working to

promote freedom of expression. The Bill was withdrawn for consideration and examination on October 15, 2018. The announcement of the adoption of this Bill by the parliamentary majority, sparked a lot of controversy, particularly with regard to Article 27 of the Bill which states that “the regulatory authority can authorize or enforce any data management measure it deems necessary to notably preserve competition in the electronic telecommunications sector and ensure the impartial treatment of similar services”.

Despite government’s assurances that Article 27 is intended to strengthen the digital ecosystem by ensuring the provision of quality electronic communications services and that government has no intention of misapplying that provision in the Bill, many have expressed serious concerns about its possible abuse.

This is because the provision gives the regulatory body extensive powers to adopt measures that may restrict freedom of expression. This is because measures such as taxation for social media use, network disruptions etc could be employed to protect the ‘interest’ of the telecommunication sector.

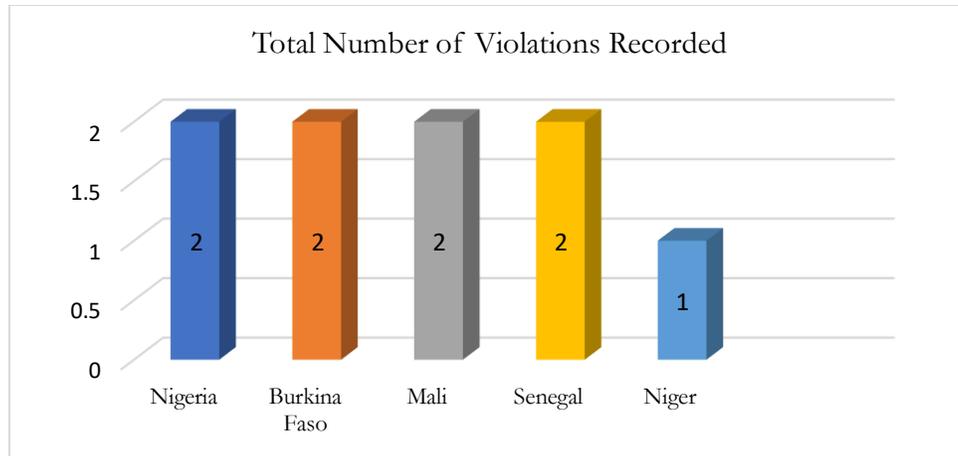
## Digital Rights Violations

The Internet has become a major tool for social and political activism in many countries as it gives them the opportunity to exchange ideas and information and to mobilise for various causes. An open and free online environment is a major boost to democratic participation as it enables citizens to join public discourse and demand accountability for the use of public funds and better public service delivery.

Unfortunately, not all governments cherish the empowerment of their citizens that has been made possible by the internet. In West Africa, there seems to be an emerging trend of governments adopting mechanisms to restrict the online space, freedom of expression, freedom assembly, association and other internet freedoms.

Governments are adopting measures including arrests and detentions of internet users for their online posts and activities, illegal mass and targeted surveillance, filtering and blocking of websites, internet and network shutdowns and the use of existing and new legislations and policies to legitimize their actions of restricting the online space. These measures are usually used to silence dissent and discourage citizen mobilization and civil discourse online.

Nine digital right violations were recorded during the second half of the year in five countries. Just like the first half of the year, issues of arrest and detentions of internet users for their online content continue to be the major digital right violation. Chart 1 below shows the countries and the number of violations that were recorded.



As indicated from the chart above, Nigeria, Burkina Faso, Mali and Senegal recorded two violations each while Niger recorded a violation over the six months period.

It is worth noting the major perpetrators of these abuses were mainly state actors.

## Arrest and Detentions

**Burkina Faso:** On July 3, 2018, a high court in Ouagadougou sentenced Naïm Touré, an activist, to two months imprisonment for criticising the Burkina Faso Military on Facebook. Touré who was arrested and detained on June 14, 2018, was sent to the House of Arrest and Correction of Ouagadougou (la Maison d'Arrêt et de Correction de Ouagadougou) on June 19, 2018. He was convicted for broadcasting content disturbing public order, participating in and demoralising the Defense and Security Forces (DSF) and inciting the DSF to conspire against state security. He was released on August 19, 2018.

The head of a defunct weekly newspaper *L'Opinion*, Issaka Lingani, was on September 18, 2018, summoned for questioning by the police in relation to an alleged claim of terrorists' attacks in the Eastern part of the country. In a Facebook post on September 16, 2018, an account attributed to Lingani claimed the terrorist group al-Qaeda posted a message where they declared responsibility for recent attacks in the eastern part of the country. Issaka Lingani is said to have been released after questioning by the police.

**Nigeria:** On December 3, 2018, Obong Ndutim, the publisher of an online news portal, *FactsReporter.com*, was arrested by the Criminal Investigations Department (CID) of the Nigeria Police Force over an article he published titled "*CBN Probes Akpabio's N865b Unrecorded Despites in Three Banks.*" The journalist's arrest followed a petition by a former governor of Akwa Ibom State, Godswill Akpabio, who alleged that Ndutim's article sought to blackmail and defame him. Obong has been remanded in police custody and yet to be prosecuted.

On November 28, 2018, civil activist Deji Adeyanju and two others Daniel Abobama and Boma Williams were arrested and arraigned before the Karshi Magistrates' Court. The three were remanded on charges ranging from public disturbance to criminal defamation. The activists were holding a protest to demand the police and other security agents to be non-partisan during the 2019 elections when they were arrested. The police claim Adeyanju, had announced his Facebook Page that his group

would embark on the march tagged: “Police are not politicians”. Police spokesperson Jimoh Moshood said Adeyanju’s activities on social media, which portrayed the institution in bad light, have been documented and would be used as exhibit in his trial. The police spokesman said Adeyanju, Abobama, and Williams had committed offences contrary to the criminal statutes by their conduct both physically and online.

**Niger:** On December 19, 2018, Dr. Halidou Yacouba who is a teacher and researcher was arrested by the judicial police for a publication on his Facebook page in which he questioned the conditions in which the death of a young cadet officer occurred and compared it to the Rwandan genocide. Dr. Yacouba was placed under an arrest warrant and transferred to the Niamey civil prison on December, 24, 2018 where he was charged with “attack, conspiracy and other offenses against the authority of the State and the integrity of the national territory”.

**Senegal:** On July 9, 2018, Moustapha Diakhaté and Bassirou Fall were arrested by the Criminal Investigation Division of the police for defaming public officials and disturbing public order through their social media content. The two after being interrogated at the headquarters of the Judicial Police, were charged with “disturbing public order, insults through a computer system and defamation.” Diakhaté and Bassirou still remain in detention.

On December 27, 2018, a correctional judge in Dakar convicted Assane Diouf of “public insult by means of a computer system, spreading false news and insulting agents in the performance of their duties.” Diouf was sentenced to 2 years. In addition, Diouf is prohibited from television appearances public debates and appear on social networks for a period of 3 years. Diouf however denied all the charges levelled against him. Diouf case if from April 9, 2018, Assane Diouf when he was arrested and brought before a judge after he was accused of using social media to defame and insult state officials and other prominent individuals in Senegal, including President Macky Sall.

## **Social Media Blackout and Network Disruption**

**Mali:** On July 29, 2018 during the presidential elections, Malians experienced a partial shutdown of social media platforms. Social media applications such as Twitter and WhatsApp were blocked on Orange Mali network, the main network operator in the country. Some websites were also inaccessible during the period.

## **Physical Attacks and Threats**

**Mali:** El Hadji Hamidou Touré, the editor of news website *Malimedias.com* was assaulted at the country’s Truth, Justice and Reconciliation Commission headquarters in the capital Bamako on November 29, 2018 after a Facebook post. Colonel Abdoulaye Makalou who is the secretary General of the Commission, summoned Touré to his office but the two agreed to meet at a public space. Makalou subsequently picked up and sent the journalist to his office when his car broke down on the way to meeting him (the colonel) at the agreed public space. Upon his arrival at the office, Makalou’s bodyguard abused Toure and forced him to drink his own urine. Touré later reported the incident to Mali’s gendarmerie. Makalou resigned from his position following that, but denied any wrongdoing.

## **Introduction of Tax on Telecommunication Services**

**Benin:** In July 2018, the government of Benin adopted Decree No. 2018-341 of July 25, 2018 introducing a tax on electronic communications in the country. The short-lived social media tax, which imposed a 5 CFCA per megabyte fee to access social media sites, messaging, and Voice-over-IP applications, led to an increase in the price of broadband. This increase in data costs led to the use of the hashtag “TaxePaMesMo” (don’t tax my megabytes) by bloggers and Internet users and series of demonstrations to call on the government to repeal the new regulation. Responding to public pressure, the government withdrew the tax within days of its implementation.

**Ghana:** On November 1, 2018, telecommunication operators in Ghana reviewed their tariffs by 5% following the implementation of the new tax laws - VAT (ACT 970), NHIL (ACT 971) and GETFund (ACT 972) which applied to telecommunication companies in the country. The rate of the new tax levies was put on consumers and this has resulted in the increase of the cost of telecommunication services in the country.

Although countries may gather additional revenues from these taxes, the taxes on telecommunication further increases the cost to connect and limit digital inclusion.

## Emerging Issues

In an attempt to enhance internet access and usage and to control the digital landscape, several countries are drafting and passing legislations. In Niger for instance, two laws were passed to regulate the online space in the country. Law N°2018-47 of July 12, 2018 which seeks to create and manage the operations of the regulatory authority for electronic communications and post (l’Agence de Régulation de la Communication Electronique et de la Poste (ARCEP) and Law N°2018-45 of 12 July 2018 which seeks to regulate electronic communications.

These two laws aim to promote competition in the Electronic Communications sector and enable the electronic communications sector in Niger to comply with the ECOWAS Additional Acts and the West African Economic and Monetary Union (WAEMU) Directives. They also make it possible to consider technological, economic and legal changes in the telecommunications sector.

## Positive Developments

Despite the violations that were recorded during the second half of the year, the digital environment in West Africa witnessed some positive developments aimed at improving Internet access and use in the region.

The President of Sierra Leone Julius Maada Bio, expressed his commitment to the repeal of the criminal libel and sedition laws. Part Five of Sierra Leone’s Public Order Act of 1965 criminalises any publication that is deemed defamatory or seditious and has been used to unduly target and imprison media practitioners and silence dissident views,” The President made this announcement on

December 5, 2018 during his maiden cocktail meeting with the media. The section of the laws which is likely to be repealed provides that a person who publishes defamatory material is guilty of libel and, on conviction, is punishable by a fine and/or imprisonment not exceeding two years. Its decriminalisation will, therefore, promote the enjoyment of expression rights both offline and online.

The government of Ghana launched the second phase of a mobile money interoperability platform. The aim of this system is to facilitate money transfers across mobile telephone networks in order to promote a cashless society and alternative channels for access to digital financial services.

Despite the spread of telecommunications service and basic telephony infrastructure across West Africa, these services are still very much concentrated in major economic centers. To help expand ICT services, a number of stakeholders in the region are taking steps to address this challenge. For instance, in Nigeria, Google launched a public Wi-Fi service. This initiative is expected to contribute to addressing issues of affordability, access to data, as well as broadband penetration in Nigeria. In Ghana also, a rural telephony project was inaugurated in Abenaso in the Eastern Region of Ghana. The project is expected to provide data and voice connectivity to unserved communities across the country.

Also, governments are taking measures to halt incidents of cybercrime in the region. In Ghana for example, the Financial Forensics Unit (FFU) of the Criminal Investigations Department (CID) of the Ghana Police Service halted a major cyber fraud attempt on July 30, 2018. The suspects who are believed to be part of a wider cybercrime syndicate, attempted transferring a sum of GH¢326 million (USD65,659,627.47) from the treasury of Universal Merchant Bank (UMB) electronically. The Financial Forensics Unit of the CID was alerted when the bank suspected that its information technology security infrastructure had been compromised. Twelve suspects were subsequently arrested out of which eleven were remanded by a Circuit Court.

A number of workshops and conferences were also held by key stakeholders in the digital economy including government actors and civil society to discuss ways of improving the digital space. After a six-year break due to the repressive nature of the Jammeh regime, The Gambia held its first Internet Governance Forum (IGF). The 4<sup>th</sup> IGF was held under the theme, “Internet Governance in The New Gambia.” During the event, the government expressed its commitment to building a digital economy in The Gambia. In Nigeria, the 2018 edition of the Nigeria Internet Governance Forum was held under the theme, “Internet: An Enabler for good Governance”. Again, in Nigeria, a conference on curbing fake news ahead of the country’s 2019 general elections was held under the theme, “Democracy and Disinformation: How Fake News Threatens our Freedom and Democracy in Nigeria”.

Other events that took place in the region included the International Telecommunication Union (ITU) African Regional Development Forum which highlighted the need for African countries to build digital economies and enhance regional integration.

The fifth edition of the Forum on Internet Freedom in Africa (FIFAfrica) was also organised by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) in partnership with Media Foundation for West Africa on September 27 and 28, 2018. The second African Summit for Women and Girls in Technology was also held from October 9 – 11, 2018 in Ghana under the theme “Unlocking Africa’s digital future.”

## Conclusion and Recommendations

Internet access and use in West Africa is fast improving and growing. This is as a result of interventions by government and service providers in expanding access to internet enabled devices. More and more people in West Africa are using the Internet to participate in local, regional and international discourse on diverse issues as well as hold governments accountable. However, the space that the internet offers for freedom of expression and access to information is gradually being restricted by state and non-state actors.

Monitoring of the cyberspace in West Africa shows that mobile penetration continues to grow in the region. However, the differential spread of internet infrastructure and the high cost of data is widening the gap in internet access and use between urban and rural areas.

In the second half of 2018, the digital rights and Internet freedom environment in West Africa had four issues dominating the discussions - arrest and detention of Internet users, physical attack and threat, social media Shutdown, and formulation of policies that have the potential to stifle online expression.

All these infringements can undermine the confidentiality and protection of internet users who are using the internet to talk about and share sensitive issues and information. These acts of repression go a long way to create a chilling effect and undermine public access to information and freedom of expression.

The MFWA calls on governments in West Africa to:

- Avoid tax pay-off, and to reach for longer term digital dividends as these taxes increase the cost to connect and contributes to a growing digital divide.
- Adopt and implement appropriate internet policies that respect and advance the exercise of people's rights online.
- Take a second look at Internet legislations and policies to ensure they are rights-respecting.
- Ensure trust in the Internet as a safe channel for expressing one's views.
- Promote infrastructure and resource sharing to reduce industry costs.

The MFWA also call on Internet users to:

- Take proactive measures to protect themselves from online threats.
- Use the internet responsibly and desist from misusing the internet to perpetrate crime and other anti-social activities.

The MFWA wishes to urge Internet Service Providers to:

- Adopt policies and initiatives that seek to ensure affordable and quality internet access.
- Expand Internet access to underserved and unserved communities.



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