

Introduction

This paper provides a brief background of the context, issues and trends in Internet regulation and Internet rights so as to stimulate further reflection on the importance of freedom of the Internet in Africa, especially in the face of recent developments which have thrown into question the role of this vital communication medium.

Some of the important policy challenges facing the continent are discussed in the lead-up to the development of an African Union Declaration on Internet Freedom/Rights. These challenges relate mostly to how governance regimes foster *internet access* and how they can manage the threat of arbitrary state *surveillance*. The main issue identified is to reconcile the necessity of controlling and managing the Internet infrastructure while providing adequate protection and facilitation of the human rights of citizens.

The current “internet access” and “right to communicate” movement carries with it the ethical and legal dimensions of the freedom of opinion and expression (FoEx) movement against state censorship that has animated Africa since the 1980s. As a result, in the process of identifying a set of core principles that will help to define an African Union Declaration on Internet Freedom/Rights, many of the existing premises, principles and actors remain relevant.

1. Context and Current Developments

In taking stock of the progress made in the implementation of the World Summit on the Information Society (WSIS)¹ it is appropriate to pause and consider the aspirations for development of the Internet in the coming years, especially as it applies to Africa.

If we are to reflect on the past decade and consider potential scenarios a few years from now, a number of features are apparent:

a. The Internet has become a Global Experience:

The first is that the Internet has become a global resource and a uniquely important information and communication platform, and which continues to evolve in sophistication and in the ways it is put to use. It is now a central enabling tool of modern day society, having revolutionised the way we communicate and collaborate as individuals, in the way business is done and in the way governments develop policy and interact with their citizens.

This notion of a global and open Internet relates to a large extent on its architecture as borderless, open and decentralised, with the 'intelligence' of the network located in the end-user devices. The Internet's value is user-centric and readily gives voice to end-users, allowing them

¹ The WSIS was a pair of United Nations-sponsored conferences aimed at fostering the development of the Internet as a global resource accessible to all citizens which took place in 2003 in Geneva and in 2005 in Tunis. One of its chief aims was to bridge the so-called global digital divide separating rich countries from poor countries by spreading access to the Internet in the developing world. The conferences established the 17 May as World Information Society Day. The first phase in Geneva adopted a [Declaration of Principles](#) which is a road map for achieving an information society accessible to all and based on shared knowledge, as well as a [Plan of Action](#) that set out a goal of bringing 50 percent of the world's population online by 2015.

African Declaration on Internet Freedom/Rights

APC Background Paper

Eric Mazango

08-02-2014

to communicate and innovate without having to ask for permission to a central authority. This is having tremendous impact on freedom of expression and other human rights.

b. Access to the Internet is still a Challenge:

There are still billions of people who have yet to experience the Internet, and many of them are found in Africa. While there have been significant improvements to Africa's internet connectivity in the last few years following the enormous investment in infrastructure such as wireless and terrestrial fibre networks, this has not always translated into a corresponding improvement in services experienced by users, through lowered prices or increased coverage and quality.

Therefore, while Africa is undeniably at a crossroads as connectivity improves, several challenges remain as many national policies still inhibit affordable and widespread access, thus undermining the full enjoyment of freedom of expression and other human rights. In October 2013 the Alliance for Affordable Internet (A4AI)² released an Affordability Index which considers internet affordability across 46 emerging and developing countries.

Although a few countries, such as Mauritius, Morocco, Nigeria, Uganda and Kenya, scored highly, the report warns that for the two billion people living on US\$2 per day in the countries surveyed, affordable internet remains entirely unattainable (the cost of internet across the countries studied on average exceeding 40 per cent of income for the those living on US\$2 daily). The report points to lack of market competition, lack of infrastructure expansion and barriers to investment as some key factors to access to internet in many countries.

In many African countries, the cost of internet exceeds 80 to 100 per cent of income for the lowest income bracket, far above the United Nations (UN) Broadband Commission's target of entry-level broadband access for all at no more than five per cent of daily income. This state of affairs calls for a need to re-emphasise citizen's rights of access to the means of communication as articulated in key documents such as the 1948 [Universal Declaration of Human Rights](#) (UDHR) as well as the 2004 [WSIS's Geneva Declaration of Principles and Plan of Action](#).

c. An open Internet without restrictions is under threat:

Around the world both government and corporate forces have started to use the regulation and control of infrastructure to actively undermine the Internet's global and open nature. Excessive technical and legal restrictions,³ done in both a covert and an overt manner, are bringing to the forefront the struggle of how to strike a balance between technology and national security and between legal frameworks and human rights.

The year 2013, for example, brought to our attention the sheer size of state surveillance and the pervasiveness of mass monitoring programs going on in some countries such as the United States and the Five Eyes Alliance (Australia, Canada, New Zealand, the United Kingdom

² The Alliance for Affordable Internet (A4AI), a diverse global coalition of over 50 members committed to driving down the cost of Internet access in developing countries via regulatory and policy reform. Launched in October 2013, A4AI's primary focus is to support the achievement of the UN Broadband Commission's Broadband Target of entry-level broadband services priced at less than five per cent of average monthly income.

³ Censorship of data and unauthorized access to private information, control of certain aspects of information such as domain registration, IP address control and more.

African Declaration on Internet Freedom/Rights

APC Background Paper
Eric Mazango

08-02-2014

and the United States)⁴ which were thought to abide by their strong founding laws and institutions that guaranteed citizen's right to freedom of expression and to privacy. According to the EFF's annual reviews on surveillance practices, states around the world are demanding private data in ever-greater volumes—and getting it. They are recognizing the value of personal information created by modern ICTs, and pursuing ever easier, quicker, and more comprehensive access to our data.

As a result there is now a global policy debate on the value of always-on state surveillance vis-a-vis our rights to basic privacy, freedom of expression, and freedom of association.

Global and African Internet Regulatory Contexts

The Internet has so far enjoyed a history of light touch regulation from most governments around the world. A key supporting framework to this open Internet has been a multi-stakeholder model of policy and standards development where not only governments but also civil society, the technical community, and business have worked in an inclusive manner under the ambit of multilateral bodies such as the UN through the [Internet Governance Forum](#) (IGF)⁵ (that was born out of the World Summit on the Information Society (WSIS) process in order to help shape the Internet's evolution). Together with other international jurisdictional bodies such as the [Internet Corporation for Assigned Names and Numbers](#) (ICANN), the Internet Engineering Task Force (IETF), the [International Telecommunication Union](#) (ITU), and the [World Wide Web Consortium](#) (W3C) these groups work in a generally open and transparent manner to ensure the system's functionality.

In Africa, at the direction of the Assembly of Heads of State, the African Union has been working to support the development of various ICT and Internet enabling policy and regulatory frameworks in member states. The ITU, with financial support from the European Union, has been helping to shape national cybersecurity laws with human capacity building in sub-Saharan Africa region (HIPSSA). The African Union is also currently working on a draft policy to guide electronic commerce and data privacy rules⁶, and identifying key ICT infrastructure investment and policy needs to ensure an interconnected continent. At the level of the regional economic communities (principally ECOWAS, SADC, EAC, COMESA, UMA, ECCAS), many have adopted guidelines for their member states on cybersecurity, e-commerce, universal service and other aspects to support the development of the Internet in their regions. The extent to which these decisions and guidelines are implemented at the national level is very varied, with some countries much further along the process of transposition than others.

⁴ The US government through the National Security Agency (NSA) and with assistance from major carriers has engaged in mass surveillance of domestic communications and communications records of millions of Americans since at least 2001. See the [Electronic Frontier Foundation \(EFF\)](#)'s website for coverage and analysis of these issues. http://en.wikipedia.org/wiki/Five_Eyes

⁵ The [Internet Governance Forum](#) was formed after the WSIS Tunis summit of 2005 to support the United Nations Secretary-General in carrying out the mandate from the World Summit on the Information Society (WSIS) with regard to convening a new forum for multi-stakeholder policy dialogue. It is an interactive, collaborative space where all stakeholders can air their views and exchange ideas.

⁶ Draft African Union Convention on The Confidence and Security in Cyberspace

African Declaration on Internet Freedom/Rights

APC Background Paper
Eric Mazango

08-02-2014

The need to protect and promote the Internet and the limitations on the State in the regulation of this medium were set forth in a joint declaration signed in June 2011 by the Special Rapporteurs for Freedom of Expression of the Americas, Europe, Africa, and the United Nations⁷. This statement maintains that, “States have the obligation to promote universal access to the Internet and cannot justify for any reason the interruption of that service to the public, not even for public safety or national security reasons⁸”.

Subsequent to the WSIS Declaration of Principles of Geneva and the Tunis Agenda for the Information Society, in 2006 APC developed an Internet Rights Charter and in 2013 the Internet Rights & Principles Dynamic Coalition, an international network of individuals and organizations working to uphold human rights in the online environment and across the spectrum of internet policy-making domains also developed another one.

In developing an AU African Declaration such initiatives have to be taken into consideration. Principles outlined in these documents help in analysis of ongoing events such as provisions of the “cybersecurity” bills that are being enacted in different African countries. Some of them may have loopholes in privacy laws as they grant legal immunity for governments to snoop on citizens and for companies to share private information, emails and text messages with little or no judicial oversight.

One example is the implementation of mandatory SIM card registration policies in many countries in Africa where it is not possible buy a SIM card for a mobile phone without producing an ID document and proof of address. South Africa was one of the first African countries to do this but many have followed including Kenya, Ghana, Nigeria and many others and no less than 35 African countries have implemented obligatory SIM card registration justified as necessary in order to assist law enforcement agencies in tracking down criminals⁹.

2. Principles Underlying Internet Freedom and Internet Rights

Current attempts to inhibit citizen’s access to the Internet in some countries through state legislation and surveillance activities or cybersecurity regulations, and even in debate over the technical standards for the smooth operation of critical infrastructure, have triggered tensions on how the borderless nature of the internet can be preserved in existent international instruments under the UN ambit, in national laws, and in other emergent forms of Internet governance.

As the tussle continues between securing systems from cyber attacks, on one hand, and their fair usage on the other, internet and freedom of speech activists in many countries are rethinking how best to ensure the Internet remains open and unencumbered whilst driving forward the emerging paradigm of enshrined internet rights that will be binding on all state parties.

⁷ Joint Declaration on Freedom of Expression and the Internet by the UN Special Rapporteur on Freedom of Expression, along with the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and the African Commission on Human and People’s Rights (ACHPR) special Rapporteur on Freedom of Expression and Access to Information.

⁸ Organization of American States press release prefacing the Declaration

⁹ Donovan, K.P. and Martin, A.K. (2012). The Rise of African SIM Registration: Mobility, Identity, Surveillance & Resistance. *Information Systems and Innovation Group Working Paper* no. 186, London School of Economics and Political Science, London, UK.

African Declaration on Internet Freedom/Rights

APC Background Paper
Eric Mazango

08-02-2014

At the inaugural WSIS in 2003, global attention turned to the notion of Internet governance. The initiation of a multi-stakeholder convention on internet governance reaffirmed universal human rights and has resulted in an attempt to establish an internet governance regime codifying the basic rights applicable to the internet and to be made legally binding in international law. Particular emphasis has been put on relevant clauses in the UDHR such as the rights to freedom of expression (Article 19)¹⁰, freedom of association (Article 20)¹¹, and the right to privacy (Article 12)¹².

Throughout the WSIS process many civil society groups have taken a rights-based approach to Internet development that recognises ICT as a global public good and a common heritage of humanity which must be provided as part of a global public commitment to equality, and where access to it is in the public interest.

In the recommendations on Internet governance summarized ahead of the summit in Tunis in November 2005, the APC argued that the internet is a global public space and infrastructure that should be open and accessible to all on a non-discriminatory basis and where access must be made universal and affordable. In 2006 the APC also developed an Internet Rights Charter which states that the ability to share information and communicate freely using the internet is vital to the realisation of human rights.

In October 2008 the Global Network Initiative (GNI) was founded upon its "Principles of Freedom of Expression and Privacy" and is based on internationally recognized laws and standards for human rights on freedom of expression and privacy set out in the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

More recently, a number of other Charters have been developed by various groupings to reassert these principles. Examples include the "Declaration of Internet Freedom" of 2012 a broad online document also known as a digital Bill of Rights that outlines five basic principles¹³ aimed at keeping the internet free and open.

However, one of the most articulate statements on this issue has been the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted to the Human Rights Council in August of 2011 which declares that while the internet itself is not a human right, its reliable, affordable and universal

¹⁰ Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

¹¹ (1) Everyone has the right to freedom of peaceful assembly and association.(2) No one may be compelled to belong to an association.

¹² No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

¹³ Centered on core principles of free expression, access, openness, innovation, and privacy, this document, signed by more than 85 organisations, aims to spark a global discussion among Internet users and communities about the Internet and our role in it.

African Declaration on Internet Freedom/Rights

APC Background Paper

Eric Mazango

08-02-2014

functioning is vital to support most basic human rights, and that the human rights framework, including freedom of expression, applies to the Internet.

3. Developing an African Charter

Developing a Declaration of Principles on Freedom of Expression in Africa takes place within the context described above. The ongoing WSIS+10 review process provides an opportune context to relook at previous Declarations on Internet Freedoms, developed by government and intergovernment bodies and by civil society, and to conduct an issue comparison that will lead to a better understanding of the issues that are currently influencing Internet governance debates and bringing a diverse group of actors together. The results of this work and the analysis that follows can serve as a rich substrate for regional collaboration in setting locally relevant principles to guide advocacy and policy making in the region.

An analysis of the different policy-making and policy-attracting activities taking place within different African countries can become part of a comprehensive observatory of unfolding events to guide any work on lobbying for the development and adoption of an African Charter on Internet Freedoms. For example, one developing event is the the 2011 African Union (AU) draft convention on cyber security - to provide legislation and guidance on “organization of electronic transactions, protection of personal data, promotion of cyber security, e-governance and combating cybercrime”- that was originally slated to be passed at January’s AU meeting, but is now tabled for July 2014 or January 2015 at the latest.

In developing such an observatory the continent can use its experience with freedom of expression initiatives and networks previously developed to challenge surveillance policies and practices and sweeping invasions into individual’s personal lives that are not consistent with international human rights standards. A number of regional declarations such as the 1991 Windhoek Declaration on Press Freedom, issued by the Media Institute of Southern Africa (MISA) and its partners, and other review statements can help to form a normative and a pragmatic backdrop to galvanize the internet rights movement in Africa.

A combining of fronts between traditionally media rights organisations and more technology or ICT4D focused groups can strengthen cross-cutting networks in demanding that governments adopt more positive regulation to foster universal access to services and become more transparent about their use of the Internet in state surveillance as per international covenants and regional agreements, such as the African Charter on Internet Freedom/Rights.

The protection for freedom of the internet is increasingly a call for political action to:

1. Reaffirm support for fundamental legal instruments
2. Assert the applicability of legal norms across national borders
3. Promote the development of technology to protect free expression, and
4. Encourage citizen participation in decision-making

Strategies here

African Declaration on Internet Freedom/Rights

APC Background Paper

Eric Mazango

08-02-2014

The ongoing WSIS+10 review process is an opportunity to lobby for the full development and adoption of a Declaration of Internet Rights and Freedoms by all African governments that reaffirms democracy and the universality of all human rights and fundamental freedoms.

The success of the Internet can be attributed to its openness. As such, governments must be reminded of their responsibility to maintain the open and free character of the global Internet and to supply open access to the Internet, guaranteeing internet freedom, and securing the rule of law online. Although this responsibility exists at the national level regional and global level, intergovernmental initiatives and multi-stakeholder forums that include civil society, the private sector and academia, with their interpretation of human rights principles, provide a solid backdrop for promoting online freedom and internet governance.

Therefore, an African Declaration on internet freedoms drawing from regional observations is a useful procedure to remind governments and other enacting parties on the responsibilities and to help cast light on any impediments to human rights. The challenge for the coming years will be to implement these principles in practice, by translating them to concrete strategies for African internet governance.