



# State of Internet Freedom in Africa 2017

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## Intermediaries' Role in Advancing Internet Freedom – Challenges and Prospects

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### Overview of Report

#### Brief background information

Internet intermediaries include internet search engines and portals (e.g. Google, Yahoo, Bing), Internet Service Providers (ISPs) such as network operators and mobile telecommunication providers, web hosting providers, social media platforms, and media houses that provide platforms where users can comment and blog. Intermediaries play a mediating role between producers of content and audiences. However, there have been concerns when intermediaries are held liable for the content of others. 'Intermediary liability' therefore arises when intermediaries are held legally responsible for content posted on their platform or transmitted using their infrastructure, instead of the individual producing, accessing, or sharing the content being held liable.

#### Summary of the Purpose of Research Study

Different countries and intermediaries around the world continue to develop measures to regulate the use of the internet and associated technologies. CIPESA therefore felt the need to understand the evolving approaches and practices in different African countries. The objective of the study was to examine the legal, policy, institutional and practice landscape, focusing on Botswana, Burundi, Democratic Republic of Congo (DR Congo), Ghana, Kenya, Malawi, Tanzania, Uganda, Zambia and Zimbabwe.

Also, the study sought to identify the in-country approaches to intermediary liability, and develop recommendations to reinforce internet freedom on the continent. The study also paid special attention to the role of intermediaries with regards to internet shutdowns, surveillance, filtering and censorship, with regards to challenges such as hate speech, fake news, child and women rights, and terrorism. Moreover, it is expected assist in drawing lessons towards developing best practice for intermediaries to enable them play a more positive role in advancing internet freedom.

#### Summary of Method of Data Gathering and Analysis

This study adopted a qualitative research methodology which involved the description of the country and sector contexts, followed by analysis of the legal and regulatory regimes in which the intermediaries operate. It focused on developments over the last three years. Researchers working in each of the focus countries conducted field work, including administering questionnaires and conducting interviews with key informants. Desk research was also conducted to review media reports, academic works, legal and policy documents, and other available literature. The information obtained was thereafter analysed and compiled into the various country reports. The overall findings were further analysed and distilled into this regional report.

## Overview of Findings

The study found that all countries under review are parties to a number of international, continental and regional instruments such as the UDHR, ICCPR and ACHPR that guarantee freedom of expression, right to privacy, and the right to information. Further, national constitutions also provide for these rights. However, the implementation of these rights and guarantees especially on the internet, are at variance with best practice.

The countries studied recognise the concept of intermediaries and define them in various ways, with the common definition based on the role they play in giving access to, hosting, transmitting and indexing content originated by third parties or providing internet-based services to third parties. These activities include provision of internet access as service providers (ISPs), data processing and web hosting providers, Internet search engines and portals, e-commerce platforms, Internet payment systems, and social networking platforms.

The study found that states and intermediaries are facing challenges in tackling unlawful conduct online, such as violence against women, fake news, hate speech, child rights violations, and terrorism. Unfortunately, where states and internet intermediaries have attempted to respond to these challenges, they have often undermined citizens' rights to free expression, privacy and the right of access to information.

Further, that the expanding civic space facilitated by the internet has not been welcome in all states, with governments seeking to control this space on various ways. The responses by governments include, among others, the arrest, intimidation, prosecution and detention of critics; imposition of liability on internet intermediaries for not complying with information or surveillance requests; and censorship of content that do not approve. Such actions have often been at the expense of users' rights to privacy, expression and access to information.

Caught in the middle of these challenges are intermediaries. These include instances where intermediaries are encouraged to censor content they host or transmit in order to avoid liability, or intermediaries closing down the option of 'user generated content' out of fear of facing penalties or lawsuits. Such actions significantly reduce the space for free expression and access to information online. However, some intermediaries have developed policies and practices that in some cases violate users' rights as opposed to safeguarding them. In this regard, specific gaps include transparency and accountability with respect to the retention and disclosure of user information and activity to authorities and third parties.

## Summary of the Recommendations

The report calls for greater protection of free expression, as well as the rights to access to information and privacy online. Further, compliance with international human rights standards, including the three-part test provided by the Report of the Special Rapporteur on the Promotion and Protection of the right to Freedom of Opinion and Expression, and the UN Guiding Principles on Business and Human Rights are crucial starting points and a useful compass to safeguard human rights online.

Intermediaries are particularly encouraged to be more proactive in safeguarding the rights of users including by making user terms and conditions simpler and widely accessible; implementing measures to improve complaints handling; and ensuring transparency and accountability in how government requests for disclosure of users' information or content removal are handled.

For civil society, it is recommended that interventions for monitoring human rights pay greater attention to violations on the internet including government procurement that threatens human rights. All stakeholders should challenge the enforcement of bad laws, including policies and practices by intermediaries.

The academia is encouraged to conduct more research to inform advocacy, policy and legislative development while the media is encouraged to profile and raise awareness on violation of human rights online.