



NIGERIA: Universal Periodic Review (UPR) Session 31 Digital Rights Advocacy Briefing Document

By Collaboration on International ICT Policy for East and Southern Africa (CIPESA), Paradigm Initiative and Small Media

At a Glance

| | Households with a computer % ¹ | Households with internet access at home % ² | Mobile subscription per 100 inhabitants | broadband per 100 | Mobile phone subscriptions/penetration rate ^{3,4} | Individuals using the internet % ^{5,6} |
|------------------------------------|---|--|---|-------------------|--|---|
| At time of 1st cycle review (2009) | XX % | XX % | XX / 100 | | 74,518, 264/53.23% | 9.30 % |
| At time of 2nd cycle review (2013) | XX % | XX % | 6/ 100 ⁷ | | 127,606,629/91.15% | 19.10 % |
| Current statistics (2018) | 10.6 % | 15.2 % | 22.9/100 ⁸ | | 245,059, 514/103.61% | 25.70 % |

¹ “Measuring the Information Society Report 2017 – Volume 2”, International Telecommunications Union. https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2017/MISR2017_Volume2.pdf

² ibid

³ “Subscriber Teledensity Data”, Nigerian Communications Commission. <https://www.ncc.gov.ng/stakeholder/statistics-reports/industry-overview#annual-2002-2017>

⁴ “Measuring the Information Society Report 2017 – Volume 2”, International Telecommunications Union. https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2017/MISR2017_Volume2.pdf

⁵ International Telecommunications Union (ITU) Statistics: Percentage of People Using the Internet https://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2018/Individuals_Internet_2000-2016%20Jan2018.xls

⁶ “Measuring the Information Society Report 2017 – Volume 2”, International Telecommunications Union. https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2017/MISR2017_Volume2.pdf

⁷ The National Broadband Plan as a Catalyst for social and economic transformation: the NCC mandate (page 6) <https://ncc.gov.ng/documents/763-facilitating-broadband-penetration-for-social-and-economics-transformation/file>

⁸ “Measuring the Information Society Report 2017 – Volume 2”, International Telecommunications Union. https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2017/MISR2017_Volume2.pdf

Freedom of Expression

Overview

Section 39 of the [Nigerian Constitution, 1999](#) protects the right to freedom of expression and press freedom. It states, “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”. It also allows for the operation of media houses, stating, “Every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions”.

However, other laws restrict freedom of expression in Nigeria, among them, the 2015 [Cybercrime \(Prohibition, Prevent\) Act](#). Section 24 of the Cybercrime Act which speaks to cyber stalking has been used by powerful individuals in Nigeria to silence critics and block accountability requests. Section 24 (1b) states, “Any person who knowingly or intentionally sends a message or other matter by means of computer systems or network that he knows to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent commits an offence under this Act”. The penalty, upon conviction is a fine of not more than Nigerian Naira (₦) 7,000,000.00 (USD 19,500) or imprisonment for a term of not more than 3 years or to both such. In November 2015, the [Fivolous Petitions \(Prohibitions\) Bill](#) was introduced to the Nigerian senate. The proposed bill had provisions for social media regulation. Following criticism and public outcry, the bill was stepped down, with the Chairman Senate Committee on Judiciary, Human Rights and Legal Matters Senator David Umaru saying the bill would do [more harm than good](#).

The 2015 Cybercrime Act has become the principal instrument used to arrest and intimidate citizens, journalists, bloggers and others for comments made online, with at least 24 individuals arrested between January 2016 and April 2018. Meanwhile, allocations of up to USD 2.8 million in the [2018 Federal Government budget proposal](#) for an undisclosed “social media mining suite” suggests government’s determination to monitor social media networks.

Examples

In April 2017, popular blogger Austin Okai was [arrested](#) in Abuja for critical social media posts deemed unacceptable to the Kogi State government. His arrest was at the orders of the Kogi State governor, who Austin alleged inflated contracts. Austin was arraigned before the Magistrate Court in Lokoja the State capital.

On New Years’ day 2018, Daniel Elombah was [arrested](#) by the security services for online criticism of Nigeria’s Inspector General of Police. He was released the same day without charges.

In a similar case to the above, primary school teacher, Biodun Baba, was [arraigned](#) before a magistrate court in Ilorin in July 2017 for allegedly insulting Senate President Bukola Saraki on Facebook. The case against him was withdrawn although he lost his job as a teacher.

In June 2017, Danjuma Katsina, a journalist, was [arrested](#) in Katsina over comments questioning the legitimacy of a newly elected member of Nigeria’s House of Representatives from the state. He has was later [released without charges](#).

Charles Otu, a correspondent with Guardian Newspaper, was [assaulted](#) by unknown individuals in Abakaliki for Facebook comments critical of the Ebonyi state government. He was taken to the hospital by sympathizers.

Recommendations

| Session | Recommending State | Recommendation | Response | Implemented? |
|---------|--------------------|---|----------------------------|--|
| 2009 | Portugal | Fully investigate abuses by law enforcement officials, namely extra judicial killings, acts of torture and ill-treatment of detainees and arbitrary detentions and human rights violations and ensure that the perpetrators are duly punished | Supported: Specific Action | This recommendation has not been implemented. As noted above, law enforcement officers still engage in arbitrary detentions of journalists, bloggers and citizens for comments made online, typically criticisms of public officials. The legal instrument often used is the Cybercrime Act, 2015. |
| 2009 | Tunisia | Guarantee a favourable climate for the activities of human rights defenders, journalists and other actors in civil society | Supported: General Action | This recommendation has been partly implemented. There is a relatively favourable climate for the activities of human rights defenders, journalists and other actors in civil society, although severe threats still exist. |
| 2009 | Canada | That the rights of journalists to report, comment on and criticize government policy freely and without fear, be respected. | Supported: General Action | Whereas journalists who criticize government policy in Nigeria are largely free to do so, the atmosphere around freedom of expression remains tenuous. As highlighted in the examples above, the arrest and prosecution of critical journalists and individuals remains a restriction to freedom of expression in the country. |
| 2009 | France | Ensure that freedom of expression is respected and that Nigerian journalists may take on their mission of providing information without suffering harassment | Supported: General Action | |

Freedom of information and censorship of content

Overview

Further to the right to receive and impart information without interference which is provided for under Section 39 of the Nigerian Constitution, the 2011 Freedom of Information (FOI) Act guarantees citizens' access to information. The 2011 Act mandates public institutions and "private companies utilising public funds, providing public services or performing public functions" to make public records and information freely available, guarantee citizens' right to be duly informed of facts relevant to them and maintain records of all activities, operations and businesses. Entities are also required to proactively disclose information related to adjudication of cases, and update and

review relevant information in the public domain. It is a criminal offence punishable with a minimum of one year imprisonment for any officer in an institution envisaged under the Act to willfully destroy or attempt to doctor any records kept.

The FOI Act does not stipulate a specific form or format for making information requests. For administrative convenience, however, information requests are made in writing and although online platforms such as email and social media might seem more convenient, government agencies and parastatals in Nigeria do not have a track record for responding online. Furthermore, the Act provides that in certain circumstances institutions may charge for duplication and transcription to make information accessible. The response time for requests is within 7 days. This time frame may however be extended if the application is for a large number of records. Time limit may also be extended where consultations which cannot reasonably be completed within 7 days need to be made. Notice of extension should be given to the applicant.

Information exempt from access under the act includes any information the disclosure of which may be injurious to the conduct of international affairs and the defence of the country. Also, information in the custody of law enforcement agencies which, if disclosed, will generally interfere with investigations and fair hearing or the right to anonymity is exempted. The Act also protects from disclosure, personal information on users, employees, applicants or licensees, tax payers as well as whistleblowers or a complaint lodger. Additionally, information on research materials, test questions, scoring keys, trade secrets, information shared between lawyers and their clients, health workers and their clients, journalists and other professional privileges are allowed to be exempted as well. However, where denial of access is deemed wrongful, the defaulting officer or institution commits an offence and is liable on conviction to a fine of ₦ 500, 000 (USD 1,400). Citizens also have the option to seek redress for denied applications before court.

Since the law's enactment in 2011, citizens have actively exercised their right through making information requests and entities either proactively disclosing information or being responsive to citizen requests. According to official statistics available from the [official FOI Act website](#) there is a declining trend in the number of requests made by citizens. In 2013, 1,183 requests were reported to have been made. In 2014, the number of requests dropped to a meagre 314 and in 2015, an even poorer figure of 217 requests were recorded. These, however, are figures derived only from public institutions that actually submit this data.

Overall, obtaining public information remains a challenge in Nigeria, with freedom of information requests routinely refused or ignored with requesters compelled to seek court orders. For example, following [unsuccessful](#) freedom of information requests to the Public and Private Development Centre on details of a World Bank funded project, the Nigerian Contract Monitoring Coalition, initiated a court case and succeeded in compelling the Power Holding Company of Nigeria, the Electricity Distribution Company Plc and The Nigerian National Petroleum Corporation to release the requested information.

The Internet in Nigeria is largely uncensored, and diverse content is available, including that related to sexual minorities. The availability of content related to the LGBTI community online in Nigeria is perhaps surprising given the provisions of section 4 of the [Same Sex Marriage Prohibition Act](#) which prohibits the "registration of gay clubs, societies and organisations" as well as "the public show of same sex amorous relationship directly or indirectly". If found guilty, the penalty is 10 years imprisonment.

In October 2017, the Nigerian Communications Commission (NCC) ordered Internet Service Providers (ISPs) to block access to 21 websites related to agitation for the secession of parts of eastern Nigeria. According to a copy of the letter sent to the relevant ISPs obtained, restriction of access to the websites was to "prevent the commission of an offence under Section 146 of the Nigerian Communications Act 2003." The section states:

- 1. A licensee shall use his best endeavour to prevent the network facilities that he owns or provides or the network service, applications service or content application service that he provides from being used in, or in relation to, the commission of any offence under any law in operation in Nigeria.*
- 2. A licensee shall, upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law in operation in Nigeria or otherwise in enforcing the laws of Nigeria, including the protection of*

the public revenue and preservation of national security.

3. Any licensee, shall not be liable in any criminal proceedings of any nature for any damage (including punitive damages), loss, cost or expenditure suffered or to be suffered (whether directly or indirectly) for any act or omission done in good faith in the performance of the duty imposed under subsections (1) and (2).

Examples

In March 2018, Nigeria’s foremost human rights lawyer Femi Falana submitted an information request to the financially opaque Nigerian National Petroleum Corporation (NNPC), only to be [refused](#) on the grounds that the NNPC is “not a public institution”. The requested information related to aspects of the NNPC’s commercial, financial and trade activities

Nigerian court [rejects](#) Freedom of Information request on the costs of the President’s overseas medical bills

Freedom of Information Request to the Office of the National Security Advisor on capital expenses [ignored](#)

Among the websites listed in NCC’s October 2017 order to block access to are biafraradio.com, biafranet.com, biafrainc.com, and gobiafra.com. According to [internet measurement tools](#), the websites are blocked by the three major operators (MTN, Globacom and Airtel). Surprising, there was no pushback or statements from the owners of the websites.

Recommendations

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|------|--------|--|---------------------------|--|
| 2009 | Canada | That the rights of journalists to report, comment on and criticize government policy freely and without fear, be respected. | Supported: General Action | Whereas journalists who criticize government policy in Nigeria are largely free to do so, the atmosphere around freedom of expression remains tenuous. As highlighted in the examples above, the arrest and prosecution of critical journalists and individuals remains a restriction to freedom of expression in the country. |
| 2009 | France | Ensure that freedom of expression is respected and that Nigerian journalists may take on their mission of providing information without suffering harassment | Supported: General Action | |

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|------|----------|--|------------------------------|--|
| 2013 | Botswana | Within the framework of its national Inter-Religious Council and the Institute for Peace and Conflict, continue its commendable efforts in promoting the interethnic, inter-communal and inter-religious harmony | Supported: Continuing action | There have been efforts but improve inter-religious harmony in Nigeria, which have yielded little fruit. Inter-religious violence still claims hundreds of lives in Nigeria. Violence between Shia and Sunni muslims also claims several lives in Nigeria. |
|------|----------|--|------------------------------|--|

Equality and barriers to access

Overview

According to [Nigerian Communications Industry Statistics](#), the telecommunications market is dominated by GSM mobile technology, which provides access to services to 99.7% of Nigerians. There are four major players namely – MTN, Globacom, Airtel and 9Mobile with a market share of 41%, 25%, 24% and 10%, respectively. Whereas teledensity and internet penetration continue to grow, majority of this access is centred in urban areas, where private telecommunications services investment are concentrated. Access in rural areas is limited, as a result of private sector underinvestment in these areas.

Moreover, [research](#) by the World Wide Web Foundation has also revealed a digital gender gap in Nigeria with poor urban women 50% less likely to access the Internet than men in Nigeria’s capital Lagos. The report noted that the key driver for this gender inequality was education levels, with women having at least a secondary education more likely to access the Internet than those with primary education and below.

Nigeria’s [Universal Service Provision Fund](#) (USPF), created to bridge the access gap in Nigeria and which has rightly focused on rural areas, has also been criticized by stakeholders as being critically [underutilized](#), and as a result being ineffective in its operation.

Affordability is also a challenge. The average monthly cost of 1GB data bundle across [MTN](#), [Globacom](#) and [Airtel](#) is ₦ 1,000 (USD 2.77). Indeed, according to the [Alliance for Affordable Internet \(A4AI\)](#), the cost of 1GB of pre-paid mobile phone data in Nigeria represents 8% of Gross National Income (GNI) per capita - four times the [global benchmark](#) of one gigabyte of data for 2% or less of GNI per capita.

Meanwhile, the national communications regulator - the NCC - is considered to be ineffective in enforcing standards and regulatory requirements. The commission last conducted a customer satisfaction survey back in 2012, so there is no current, nationally representative record of the quality of telecommunications services. In the [2012 survey](#), quality of service challenges such as slow Internet speeds and poor call quality came to the fore.

Examples

Among the [criticism](#) against Nigeria’s Universal Service Provision Fund (USPF) are projects initiated without community consultation to understand prevailing needs. This

has led to low uptake of some facilities.

[The 2012 NCC customer satisfaction survey](#) recorded mixed user satisfaction levels that 44% indicating that their internet connection was slow or very slow, compared to 41% who stated that internet connections were fast or very fast.

Recommendations

| Session | Recommending State | Recommendation | Response | Implemented? |
|---------|--------------------|--|------------------------------|--|
| 2009 | The Vatican | Continue to invest in education in order to reduce the illiteracy rate further, especially among girls and young women. | Supported: Continuing action | Nigeria's budgetary allocations to the education sector over the years continues to fall below the UNESCO recommendation, with only 7.04% allocated to education in the 2018 budget proposal. Meanwhile, only limited interventions targeted at women and girls ICT literacy are executed. |
| 2009 | Ireland | Implement specific legislation to protect women against sexual and gender-based violence and ensure that Nigerian women benefit from full equality before the law | Supported: Specific action | The Gender and Equal Opportunities Bill has made slow progress in Nigeria's Legislature due to diverse opposition. Women are still considered inferior to men in Nigeria, and are still marginalized sexually, culturally and economically. |
| 2009 | Italy | Intensify efforts in guaranteeing women's rights, including by implementing CEDAW observations to this end, and strengthen measures to fight against the practice of Female Genital Mutilation (FGM) | Supported: Specific action | |
| 2009 | Tunisia | Take measures to tackle discrimination and to promote gender equality in the field of education | Supported: General Action | |
| 2009 | Yemen | Continue its efforts in supporting education and providing equal opportunities to boys and girls in the rural and urban areas | Supported: Continuing action | This recommendation has not been implemented. Rural areas are the worst hit by the chronic underinvestment in education. |

Right to data protection and privacy on the Internet

Overview

Section 37 of the [Nigerian Constitution](#) states that “the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”. Although the Constitution guarantees the privacy of citizens’ correspondence, Nigeria has no legislation which protects data privacy of citizens offline and online. The absence of legislation specifically addressing data privacy has left a regulatory gap which has been exploited by private entities and government agencies alike. The National Identity Management Company (NIMC), Independent National Electoral Commission (INEC) and the Central Bank of Nigeria (CBN) manage huge datasets of millions of Nigerians and sometimes data breaches occur. Some of the personal identifiable data collected by these agencies includes date of birth, home address and phone numbers.

Meanwhile, some legislation and policies threaten privacy, particularly online. For example section 38 of the [Cybercrime Act](#) mandates service providers to preserve all traffic data and subscriber information and provide access to it to law enforcement agencies. Section 46 provides that failure to comply with law enforcement requests for access is an offence punishable with two years imprisonment or ₦500,000 (USD 390) or both. The provisions of section 38 of the Cybercrime Act have been [challenged by civil society](#), and although the Court of Appeal recently dismissed the case, efforts are underway to further appeal to the highest court - the Supreme Court.

Under provisions on unlawful access to a computer, the Cybercrime Act also protects data. Under section 6 of the Act, any person who intentionally and without authorization gains access to either a part or the whole of a computer system or network for fraudulent purposes and obtains data commits a crime. This provision however only extends to data vital to national security and industrial secrets or classified information. There are no provisions protecting personal data in the event of an unlawful access as envisaged in this section. The section however criminalises engaging in trafficking passwords or information through which a computer may be unlawfully accessed and by such access, public, private or individual interest is affected.

Two bills focused on data privacy are however in the process of becoming law. The first is the [Data Protection Bill 2017](#). Clauses 5 – 7 of the bill provide for the prevention of the misuse of personal data of individuals by data controllers. Among other provisions, the bill proposes that personal data should not be used for direct marketing, under an automated decision-making process or any process that may cause damage or distress to the individual. The second bill is the [Digital Rights and Freedom Bill](#). Sections 3, 4 and 5 of the Digital Rights and Freedom Bill have detailed provisions related to privacy of data. For example section 3(2) specifically states that “the integrity and confidentiality of personal data and information of citizens is inviolable and therefore guaranteed” while section 3(3) states that “there shall be clear procedures by which the private data of individuals, stored by intermediaries, can be accessed”. Section 4 guarantees anonymity online while section 5 guarantees the integrity and confidentiality of personal data. The Digital Rights and Freedom Bill is currently awaiting Presidential assent to become law.

Examples

In late 2016, a website, voters.ng uploaded complete voters registration details - information which could only have been [obtained](#) from the Independent National Electoral Commission (INEC) of Nigeria. The website was quickly taken down after civil society outcry.

Nigeria is [one of many countries](#) in Africa to mandate compulsory SIM card registration and there have been instances of [double](#) SIM registration.

The government of Nigeria is among the [leading African countries](#) to make user information requests to Internet companies. In the period January 2013 to December 2017, the government of Nigeria made 17 [user information requests to Facebook](#). Facebook reports a 50% compliance rate with Nigeria's requests to date. Nigeria also made 8 [user information request to Google](#) in the period January 2013 to December 2016 with a compliance rate of 100% for one request during the second half of 2016.

Recommendations

| Session | Recommending State | Recommendation | Response | Implemented? |
|---------|--------------------|----------------|----------|--------------|
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Freedom of creation and innovation

Overview

Under the leadership of the National Information Technology Development Agency (NITDA), Nigeria has enjoyed a free and open environment for creation and innovation online. The challenges faced by potential creators and innovators online are those normally associated with developing economies such as [poor infrastructure](#), and are not as a result of specific government policies restricting creation and innovation. The Nigerian technology ecosystem has seen the creation of widely used online services platforms and apps such as [hotels.ng](#) and [Gokada.ng](#) - a online hotel booking website and a mobile app for booking motorcycle rides respectively. In 2016, a number of private and public sector organizations were invited by the Presidency to form the ICT Working Group of the Nigerian Economic Summit, thus demonstrating government support for the ICT sector.

Nigeria has a [National ICT Policy](#), which includes targets such as "ensuring by end of 2015, at least 50% of Personal Computers in use within Nigeria will be made in Nigeria" and "by the end of 2017, at least 50% of Internet enabled device used in Nigeria will be made in Nigeria". Both targets have not yet been achieved but the government has announced [plans to update](#) the Policy.

Examples

[Aso Villa Demo Day](#) (AVDD), an initiative of the Office of The Vice-President of Nigeria was initiated to stimulate start-ups in the ICT sector through scaling grants.

Yaba, a suburb in Lagos is home to one of Africa's most recognized Information and Technology [clusters](#) where regular camps and hubs for technology entrepreneurs are hosted.

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Recommendations

| Session | Recommending State | Recommendation | Response | Implemented? |
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SUGGESTED RECOMMENDATIONS

| KEY ISSUE/S | RECOMMENDATION TEXT |
|--|---|
| Freedom of Expression | In light of its use in the arrests of citizens, journalists and bloggers, section 24 of Nigeria's Cybercrime Act 2015 should be amended or repealed to stop it from being used to prosecute journalists. In the present digital age where we increasingly live our lives online, government's laws and policies must demonstrate respect for human rights online. In this regard, it is recommended that the Digital Rights and Freedom Bill, which offers comprehensive protection for human rights online, including for women, girls and minority groups, be signed by the President and be made law of the land. |
| Freedom of Information and Censorship of Content | The government must exercise its authority in ensuring that entities comply with FOI requests, beginning from government agencies to provide example and leadership. As the document shows, some of the institutions involved in the disregard for FOI requests are government agencies. It is also recommended that the Same Sex Marriage Prohibition Act be reviewed, in light of it being the legal basis for the discrimination of the LGBT community. |
| Equality and barriers to Access | It is recommended that the Nigerian Communications Commission (NCC) as a matter of urgency updates the Customer Satisfaction Survey 2012 in order to provide the most current information on customer satisfaction in Nigeria. Also, policy hurdles which work together to increase the price of data beyond the affordability of millions of Nigerians. The government is encouraged to remove "right of way" charges on Internet cable infrastructure, demand greater infrastructure sharing among Internet Service Providers, formulate more efficient spectrum management policy amongst others. There is also a need for the Universal Service Provision Funds to be |

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| | repositioned for greater effectiveness. Communities where USPF projects are to be sited should be consulted before, during and after the execution of the projects for greater community buy-in. The National Broadband Plan (2013 - 2018) which expires at the end of this year should be reviewed for greater impact. The government should pay more attention in implementing the National ICT Policy, and seek the broadest input in the development of future ICT policies. |
| Right to Data Protection and Privacy on the Internet | It is recommended that the Data Protection Bill and Digital Rights and Freedom Bill, both which guarantee robust data protections, be passed into law. |
| Freedom of Creation and Innovation | There is an urgent need for massive infrastructure investments, particularly in power and broadband infrastructure. This will greatly reduce the costs for doing business for start-ups and creative ventures. The National ICT Policy should be updated to reflect current best practices and state of the art. |