



MY VOICE
YOUR VOICE
OUR FREEDOM

EDITORIAL

Enhancing access to online platforms can scale up levels of free expression

Zoé Titus

MEDIA LAW AND POLICY

Media Reform and the Arab Spring: a tale of struggle and hope

Fatima el Issawi

GENDER, MEDIA & SOCIETY

Women, culture, war and media: Sticking out in Mogadishu

Farhia Mohamed Kheyre

MEDIA LAW AND POLICY

Media Policy and Reform in a Political Transition: The Case of Ethiopia

Henock Fente

MEDIA LAW AND POLICY

Digital authoritarians attack African online spaces

Fredrico Links

MEDIA LAW AND POLICY

Africa's citizens fight back

Unpacking the ECOWAS court ruling on Togo's internet shutdown

Victor Mabutho

VIDEO

Creativity Subverted

Commercial Pop To Political Protests

Takunda Mafundikwa

EDITORIAL

Greetings and welcome to another edition of the iSPEAK newsletter.

There are so many facets to social media that we can and should appreciate, just as there are features we should be concerned about. So, this month a few of our writers are looking at how enhancing access to online platforms can scale up levels of free expression.

There is no doubt that we have to celebrate how the use of social media to uplift voices and share stories, create awareness, while building and strengthening relationships creates a space where organisations, activists, and citizens are able to demand justice. It is for this reason that writer Links expresses concern as he points out the shrinking of African civic space, both offline and online and argues for a rights-based approach to social media regulation.

We then crisscross the continent to unpack media reforms and examine how social media has been harnessed to facilitate democratic change - from the Arab Spring to political transition in Ethiopia. El Issawi's tale of struggle and hope speaks more specifically to the lessons we can derive from the so-called Arab Spring revolutions, and the struggle between autocratic structure and democratic change that took place in the media landscape.

In a corresponding piece, Fente writes on the case of Ethiopia's media reform process, one that is seen to aspire to and could serve as a replicable model for other African countries.

In 'Sticking out in Mogadishu' Farhia recounts the challenges of practicing journalism in Somalia. Given the precarious times presented by COVID-19, government continue to intimidate journalists dissuading them from any critical reporting often portrayed as anti-government and promoting terrorism.

Zimbabwean filmmaker Takunda Mafundikwa's video presentation illustrates how recent social justice campaigns like **#FeesMustFall** and **#EndSARS** have gained traction from the involvement of celebrities like Drake, Burna Boy and others. He narrates how a new generation with a steely resolve has emerged who are ready to challenge the status quo. Takunda speaks with youthful activists Ethiopia's Lily Workneh and Zimbabwean Nyasha Musandu about how social media has made people connect on issues that matter, and how it has become a point of convergence for online activism and offline grassroots mobilisation.

Enjoy this and more in our October edition of iSPEAK.

Remember, the iSPEAK newsletter is free so please share the word far and wide with others who may have an interest in reading the analyses provided, and who may wish to participate in our monthly event. We are focused on providing the African context and narrative on freedom of expression issues, and look forward to providing challenging views on current debates that inform or change the way you think.

Make sure you don't miss out on our monthly edition by signing up on **WhatsApp** or joining the **mailing list**. Feel free to get in touch with us via email on info@ispeak.africa.

See you next month.

The iSPEAK team

My Voice | Your Voice | Our Freedom

Media Reform and the Arab Spring: a tale of struggle and hope

By Fatima el Issawi

The struggle between autocratic structures and democratic change took place in the media landscape as much as it developed in the political arena in post Arab uprisings. The nascent agency developed by journalists transformed them into full political actors, in a hybrid media scene coloured by a continuous wrestle between continuity and change, exacerbating the uncertainty about the future.

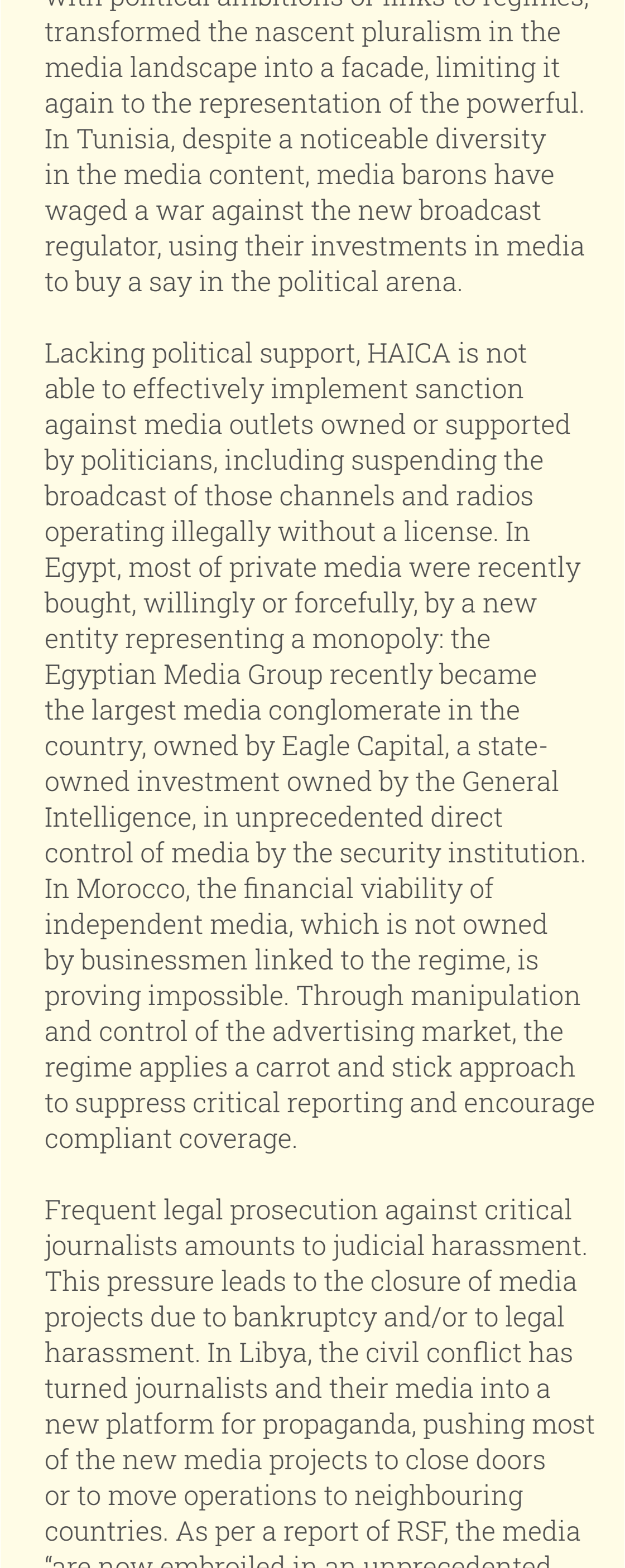
The lessons from the so-called Arab Spring revolutions raised questions about the media's ability to support democratic change and renewed questions about journalism's ambiguous role, undermining the inherited structures of autocracy and supporting them at times. This ambiguity of the role of the media in bringing about change in North Africa is that, the expected democratic reforms and "gains" of the Arab Spring revolutions are being easily undone by the recent renewal of autocracy and the survival of repressive regulation in dealing with expressing dissent via the old press codes or the penal codes and the newly introduced anti-terrorism regulation.

Charges such as belonging to illegal or terrorist groups or aiding terrorist activities are becoming a trend in quelling dissent through unlawful detention of journalists and activists. What follows are flawed trials based on vaguely worded charges. Egypt leads in the crackdown on critical reporting as part of a larger repression of rights and freedoms unseen in the modern history of the country. In their report on Egypt for 2019, Amnesty International denounced "a range of repressive measures against protesters and perceived dissidents, including enforced disappearance, mass arrests, torture and other ill-treatment, excessive use of force and severe probation measures citing arrests and detention of at least 20 journalists solely for peacefully expressing their opinions".

Unlike experiences of transitions to democracy around the world, the media landscape in the North Africa region manifests a continuous confrontation between structural constraints and a nascent autonomous journalistic agency supported by a dynamic civil society active in counter balancing attempts of political co-optation and the return of the traditions of the past. This struggle seems to signal a victory of the former autocratic cultures over a genuine change as elites continue to consider the media as a positive messenger of their activities. However, the resilience of the claims for freedom and dignity, including independent and professional media, means the struggle is not yet settled. Low performance in terms of freedom of the press paints a bleak picture all over North Africa. Tunisia continues to lead as the best-performing North African country in the World Press Freedom Index compiled by Reporters Without Borders with most of North African countries showing negative performance: Algeria is at 146th and Egypt at 166th.

Media Structures: continuity or change?

Tunisia continues to present a leading example in media regulatory reform although this reform is fragile and subjected to continuous shifts in political alliances and unstable governments. The adoption of decree-Laws 115 on print media and 116 on audiovisual media, were crucial in dismantling the old system as they replaced restrictive legislation that used to limit journalists' activities to reporting on the ruling clan. The establishment of an independent broadcast regulator (the High Independent Authority of the Audiovisual Commission, HAICA) in 2013 presents a genuine achievement in view of the political co-optation of similar bodies in the North Africa region. For instance, the newly formed state institutions in Egypt in 2017 are nothing else than a new censorship tool controlled by the military regime. The three new authorities (the Supreme Council for Media Regulation, the National Press Authority, and the National Media Authority) are under the control of the regime who has the final say on the nomination of their members.



The introduction of private media ownership has helped challenge the entrenched state control over media in the region. However, a chaotic marketisation accompanied by instrumentalisation of these new media projects by businessmen with political ambitions or links to regimes, transformed the nascent pluralism in the media landscape into a facade, limiting it again to the representation of the powerful. In Tunisia, despite a noticeable diversity in the media content, media barons have waged a war against the new broadcast regulator, using their investments in media to buy a say in the political arena.

Lacking political support, HAICA is not able to effectively implement sanction against media outlets owned or supported by politicians, including suspending the broadcast of those channels and radios operating illegally without a license. In Egypt, most of private media were recently bought, willingly or forcefully, by a new entity representing a monopoly: the Egyptian Media Group recently became the largest media conglomerate in the country, owned by Eagle Capital, a state-owned investment owned by the General Intelligence, in unprecedented direct control of media by the security institution. In Morocco, the financial viability of independent media, which is not owned by businessmen linked to the regime, is proving impossible. Through manipulation and control of the advertising market, the regime applies a carrot and stick approach to suppress critical reporting and encourage compliant coverage.

Frequent legal prosecution against critical journalists amounts to judicial harassment. This pressure leads to the closure of media projects due to bankruptcy and/or to legal harassment. In Libya, the civil conflict has turned journalists and their media into a new platform for propaganda, pushing most of the new media projects to close doors or to move operations to neighbouring countries. As per a report of RSF, the media "are now embroiled in an unprecedented crisis, with several media outlets being press-ganged into serving the various warring factions."

The digital space: activism versus policing

The cyber space became a contested arena between activists and autocratic regimes increasingly investing in surveillance to police the public sphere and to create fake public opinion, disputing its initial function during the uprisings and their aftermath as an engine of liberation. The use of the "fake news" as an excuse to quell dissenting narratives and jail activists and journalists has been further exacerbated with the global pandemic of COVID-19. According to a report by Freedom House, forms of widespread repression include removing content, blocking access to websites, arrests and unlimited detention, widespread surveillance, and new laws that further restrict internet freedom, in the name of protecting the public health and fighting misinformation in the coverage of the pandemic. New restrictive laws have been proposed or implemented in Egypt, Morocco and Tunisia with overly broad and vaguely written provisions limiting online speech and activism, according to the same report.

However, policing cyberspace by autocratic regimes precedes the pandemic. Recently, journalists and activists were subjected to surveillance from malicious spyware programmes granting regimes the ability to monitor their activities in real time.

According to a large study by the Citizen Lab, Pegasus spyware developed by the Israeli firm NSO Group communicating has been used in an abusive manner to target civil society in Morocco among other countries. It is believed that this programme used in digital espionage, was employed by the Saudi regime to spy on the critical journalist Jamal Khashoggi facilitating his killing.

Agency and professionalism

My research with Arab journalists on how they perceive their role as reporters on the political change and inherent conflicts has demonstrated rejection among them to embrace universal values in the model of neutral reporting on opponents. While representation of diverse views is acknowledged as indication of quality in their reporting, most journalists interviewed see their professional identity as solidly linked to their political loyalties, personal background and where they locate themselves within the political struggle.

This rejection of neutrality or impartiality by a majority of journalists, considering their work as contributing to shaping the public opinion and not only reporting facts, questions the efficiency of training schemes modelled on the western values of good journalism. While these schemes provided journalists with important knowledge and exposure to different experiences, they failed to help journalists embed these new practices in their working environment that remain not impacted by this new culture. Suffering weak job security and subjected to multiple pressure, this nascent journalistic agency continues to fight the entrenched model of the journalist obedient to power. While domesticating western values of good journalism has led in some cases to the transformation of local media norms, the culture of production in newsrooms is hybrid, bringing together the local and the global in search for an answer on how best to report on complex and often irreconcilable conflicts.

Dr Fatima el Issawi is a Reader in Journalism and Media Studies at the University of Essex and Senior Visiting Fellow Firoz Lalji Centre for Africa (London School of Economics & Political Science).

Women, culture, war and media: Sticking out in Mogadishu

By *Farhia Mohamed Kheyre*

Somalia is experiencing a turbulent political process with seemingly no end in sight.

The anticipated parliamentary and presidential elections, planned for December 2020 and February 2021 respectively, did not take place, putting the country in a political vacuum that has often turned violent. Moreover, with the second wave of COVID-19 ravaging lives and the economy, drought and famine in parts of the country such as the Gedo region, and Al-Shabaab's rampant attacks - Somalia is in dire straits.

This political and humanitarian crisis has an impact on media freedoms.

Freedom of the media

Practicing journalism in Somalia is very dangerous. Journalists face numerous threats and attacks from government officials, private individuals, and the Islamist armed group Al-Shabaab.

Given the precarious times presented by COVID-19 pandemic, government continue to intimidate journalists dissuading any critical reporting often portrayed as anti-government and promoting terrorism.

An **Amnesty 2020 report** captures the daily lives of journalists in Somalia states: "We live in perpetual fear: Violations and abuses of freedom of expression in Somalia." The incumbent government regularly harasses, arrests journalists for posting critical comments on social media. All this leads to self-censorship, as journalists stay clear of anything that may be deemed controversial. This self-censorship is often higher amongst female journalists who face far more discrimination and contend with personal attacks simply because of their gender. Other journalists are bribed to support the government and its positions.

To make matters worse, cases of journalists' harassment and killing are not thoroughly investigated and perpetrators are rarely punished, even though the country established an office and **appointed a special prosecutor** for crimes against journalists in September 2020. The conditions of Somali journalists remain bleak. You work alone and can die alone, no one cares.

A media law signed by President Mohamed Abdullahi Farmaajo on 26 August 2020, has become a serious area of concern for Somali journalists. Media activists describe it as a draconian law and found it contained various problematic provisions that were vaguely worded and open to interpretation in ways that could be detrimental to media freedom and expression. The law does not only impose censorship and threaten critical reporting, it also forces journalists to be registered in a government database. Failure to be registered can be used to ban or harass journalists.

Women, culture and journalism

Female journalists face far more impediments than their male counterparts.

Culture is one of the chief impediments to female journalists' professional success. Somalian patriarchal society makes it hard for young girls to pursue a journalism career. Somali parents believe that journalism is not an appropriate career for the girl child – the deterring factor that is referenced is how female journalists mingle with their male counterparts and even travel away from homes to report stories from distant places – and thus parents discourage their daughters from seeking careers in the media.

In essence a woman who travels from home to work, and interacts with male journalists cannot be trusted and less likely to be married - which is an embarrassment for the whole family. At least that's what is insinuated.

As a female journalist and media rights activist, I have witnessed first-hand, young female journalists change their family names just to avoid being seen or heard by their families while working as journalists. The first point of silencing women journalists in Somalia is to deny them their identity. Culturally very few Somali men want their wives or girlfriends to work as journalists, so marriage often means an end to a career for most Somali women journalists. For the country to attract talented young female journalists, such stereotypes and harsh culture towards them must change.

Security is a key concern as to why competent young girls do not want to join the media. Many journalists, including females have lost their lives reporting on issues that are of utmost interest to the public. Al-Shabaab is the main perpetrator behind many of those killings. For instance, on 1 March 2021, a freelance journalist Jamal Farah Adan was killed in Galkayo city, in the Somali state of Puntland. This is the first reported case of a journalist being killed this year (2021), while many others have been killed in the past. It is this kind of violence that frustrate aspiring female journalists from following their dreams.

The country has a long way to go when it comes to the protection of journalists and freedom of expressions, as it is ranked among the most dangerous countries for media professionals to work.

Somali female journalists are not well paid and they are under-represented in senior media management positions. Regardless of qualifications, media owners would rather hire a less qualified man than appoint a qualified woman to a management position. Many female journalists are leaving media houses to join government or private business sectors where opportunities for professional growth are much better.

Sexual harassment is driving skilled female journalists away from media houses. Many of these women are not willing to publicly share their stories for fear of reprisals. The Gender Based Violence (GBV) against female journalists in Somalia needs critical investigation. Anecdotal evidences suggest that more effort needs to be made by media directors and editors to curb such despicable behaviour in newsrooms. While culturally conservative, women journalists have to contend with sexually suggestive talk or cope with unwanted and inappropriate intimate behaviour. Women journalists are sometimes coerced into intimate relations to protect their jobs. This, I have both witnessed and experienced as a journalist.

Journalism is a sector in transition that has been massively impacted by technological development to which it has to adapt. Many Somali female journalists have no formal training in journalism, media or creative industries because they joined the field with degrees in management or social sciences. Because of cultural barriers, many professional training opportunities are dominated by male journalists, even those conducted by progressive development partners. Somali women journalists are at the low end of the pecking order for training opportunities and fail to get promoted because of lack of appropriate skills and patriarchy.

Advocacy and Somali female journalists' rights

My colleagues and I established the **Somali Women Journalists** (SWJO) in 2013 solely to address the plight of female journalists mentioned above. SWJO has 215 members drawn from all regions of Somalia and the diaspora. Our aim is to continue sticking out as female journalists, pushing back against both industry and cultural prejudices.

Since SWJO inception, we have embarked on training programmes for female journalists on a range of subjects including ethical journalism, safety and reporting in hostile situations, digital storytelling, writing for television and radio, gender equality and many other topics.

We have collaborated with the United Nations Assistance Mission in Somalia (UNSOM), United States of America's Embassy in Somalia and International Media Support (IMS) – FOJO to build capacity for female journalists.

One of the major achievements to date is the drafting of the **Gender Respect Declarations** supported by International Media Support (IMS) – FOJO. The Gender Respect Declarations addresses issues of female journalists' recruitment, promotion, remuneration, leave, elimination of all forms of violence and sexual harassment.

So far, 47 media stations in Mogadishu and the regions, and media rights organizations such Federation of Somali Journalists (FESOJ) and Somali Media Associations (SOMA) have signed the declaration.

Since signing the declaration, many media houses have taken actions that created a positive change, somewhat restoring the hope of the female journalists and encouraging them to stand for their rights.

Also, some of the notable actions taken by the media organizations in this regard include; promotion of female journalists, provision of educational advancement and professional development to all employees, especially female journalists, gender equitable recruitment, adoption of policies that address sexual harassment and violence. Some also established gender departments led by a woman, which deal with female specific issues in male dominated media houses. Progress is low but we have taken the first step and we can only move forward.

Windhoek Declaration

As we celebrate 30 years of the Windhoek Declaration on 3 May 2021, all I hope for is a free, independent and pluralistic media in Somalia. I call upon the Federal Government of Somalia and its federal member states to adopt and uphold the principles enshrined in the document.

The country has a long way to go when it comes to the protection of journalists and freedom of expressions, as it is ranked among the most dangerous countries for media professionals to work. This image can be changed when authorities put in place stringent mechanisms to investigate and prosecute individuals behind the killings and intimidations of journalists. Somali female journalists should be afforded equal rights and opportunities like their male counterparts. The government and international partners should provide more support in building the capacity of the Somali journalists, particularly female journalists in the areas of online media, human rights, freedom of expression and ethical journalism. This is my hope towards the upliftment of the quality of journalism in Somalia. Regardless, we remain committed as the few women journalists to practice, our presence brings hope to young girls who want to be journalists.

Farhia Mohamed Kheyre is a journalist and chairperson of Somali Women Journalists Organization (SWJO)

Media Policy and Reform in a Political Transition: The Case of Ethiopia

By Henock Fente

Ethiopia’s media reform process could serve as a replicable model for other African countries, writes Henok Fente, an Ethiopian journalist and media educator who was involved in the drafting of three major media related laws. However, the author cautions, a successful implementation of the legislative reform requires a close monitoring and engagement of key media actors in the Horn of Africa nation.

In 2018, Ethiopia’s new Prime Minister, Abiy Ahmed, ushered in an era of reform with a promise of institutionalising democratic governance. The reform agenda, however, has been difficult to achieve and the impact thereof yet to be fully realised. The reform process is one to aspire for and could serve as a replicable model for other African countries, albeit with the notable challenges faced in a country in transition.

For starters, in the summer of 2018, the government of Ethiopia established an independent secretariat under the Attorney General’s office with a mandate to overhaul the country’s legal and regulatory mechanisms. Led by respected legal experts and professors; the Legal and Justice Affairs Advisory Council (LJAAC) began reviewing and improving more than 30 pieces of legislation, effecting institutional reform processes, by establishing independent volunteer groups composed of human rights, media, government and civil society leaders. One of these volunteer groups is the Media Law Working Group that was mandated to draft the media, access to information and computer crime proclamations.

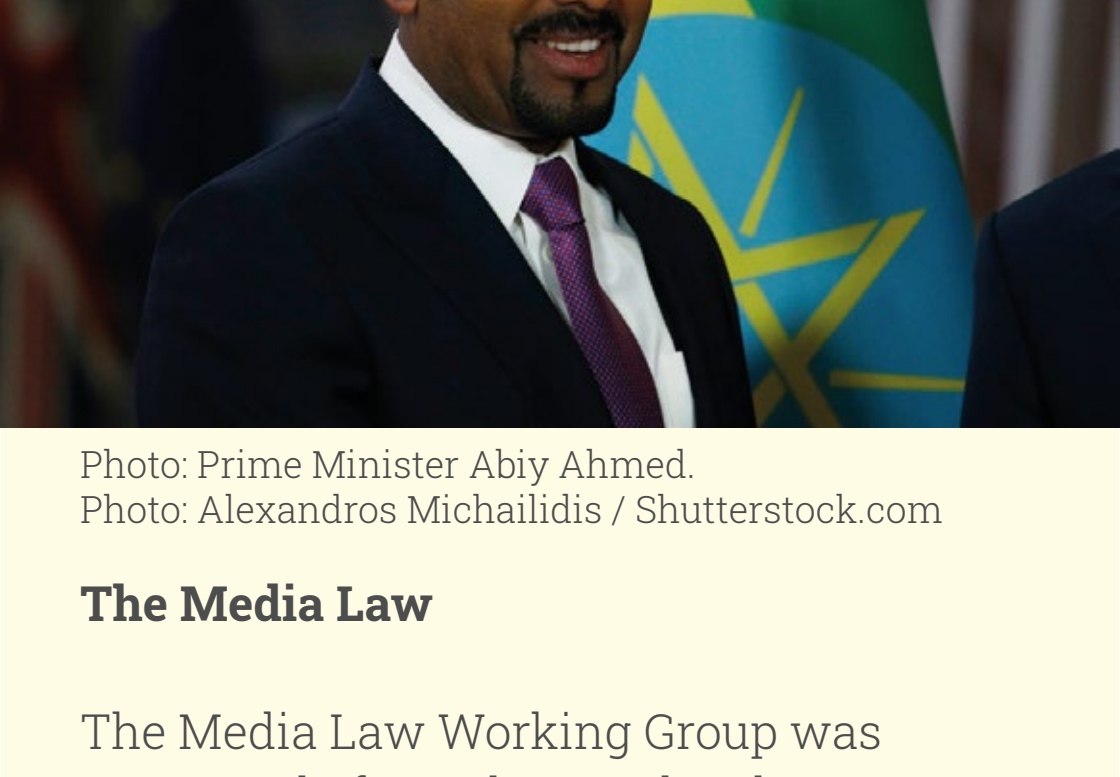


Photo: Prime Minister Abiy Ahmed.

Photo: Alexandros Michailidis / Shutterstock.com

The Media Law

The Media Law Working Group was composed of 15 volunteer legal experts, media sector leaders, journalists, civil society leaders and gender specialists. The first task the group undertook was to identify gaps associated with media laws and make a research-based analysis and set of recommendations for the drafting of the three (3) laws. The final report that came to be known as “a diagnostic study” presented its findings evaluating gaps in existing media related laws and challenges faced in implementing such provisions.

The drafting process started following a series of consultations with key media stakeholders based on the diagnostic analysis conducted by the independent volunteer group. Inputs from media actors and a comparative study of the experiences of media legislation in Ghana, Kenya, South Africa, Australia, Canada and the UK served as guiding principles.

The working group then developed a zero-draft that led to the convening of stakeholder consultations with the aim of soliciting feedback from key media actors in the capital Addis Ababa and major regional towns. This participatory and independent format of the media law reform process is what I think could serve as a replicable model for other countries, especially in Africa.

The drafting of media and freedom of information proclamations included the redrafting of as well as substantive alterations to existing legal frameworks and more importantly the incorporation of new provisions that were deemed critical for the establishment of independent media regulatory framework and institutions in the country.

For instance, government media regulatory mechanisms are to be established with clearly mandates and structures, with specifically articulated division of powers.

Eventually, the Media Law was passed by parliament in February 2021, providing a pathway for the establishment of a non-statutory co-regulation of the media sector with the legal backing to put in place a self-regulatory mechanism. The two media related legislations, namely, Freedom of Information and Computer Crime Proclamation, are expected to undergo public consultations prior to being tabled before parliament for approval. It is also important to mention that a newly drafted government Media Policy was adopted by the country’s principal decision making executive body – the Council of Ministers in late 2020.

This participatory and independent format of the media law reform process is what I think could serve as a replicable model for other countries, especially in Africa.

Next steps and concerns

Policy and regulatory reform processes in the context of a political transition are characterized by a brief window of opportunity before consolidation of democracy or otherwise. So it is essential that major media policy, legal and regulatory reform processes in Ethiopia take advantage of the opportunities presented during this transitional period.

It is also of paramount importance that key media stakeholders remain engaged in the implementation of the Media Law and the consultation process of other remaining media related reform processes. Media stakeholder engagement in the formulation of media related directives and codes is a key component to success.

The establishment of a functional self-regulatory media body in Ethiopia is an important milestone to ensure the consolidation of an independent regulatory system. The presence of strong journalists associations and media civil society could help shore up self-regulation and ethical journalistic practices.

Media and human rights defenders have expressed concern at some of the provisions contained in Ethiopia’s newly passed anti-hate speech proclamation which is said to be aimed at ensuring peace and security in the country. While dialogue continues on this matter, it is important for governments to understand that in maintaining peace and stability, especially in the context of a political transition with deep political and social fractures, it is equally essential to ensure that the implementation of such laws does not infringe upon the rights of citizens to free expression.

For almost 2 decades, Ethiopian journalist, Henok Fente, has worked as an editor, media, creator and educator along with managing broadcasts for VOA and BBC. He is the founder and executive director of MERSA Media Institute—a non-profit think tank and a member of Ethiopia’s Media Law Working Group - a group tasked to review and draft media legislation.

Digital authoritarians attack African online spaces

by *Fredrico Links*

The ether is alive with the sounds of youth demands and activism.

But the old-guard are digging in, using every means at their disposal to quell the demand for change on the part of those they perceive to be an unruly cohort of disrespectful young ones.

Digital authoritarianism has become the worrying and defining trait of many African governments' responses to growing digital civic mobilisation and online activism across the continent.

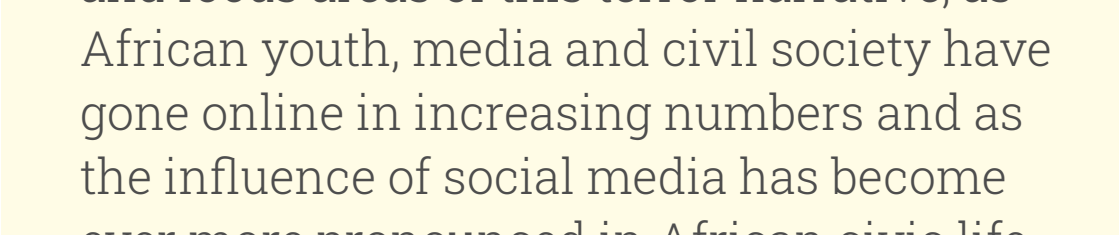
But as the groundswell of demands for a better, more inclusive Africa have increased, so too have the repressive practices and tendencies of a number of African governments been coming increasingly to the fore.

In March 2021, the Nigeria-based Paradigm Initiative reported that from 2016 to 2017, 22 African governments have ordered internet disruptions or shutdowns. Aside from the human rights violations, these have cost their countries tens of millions of dollars in lost economic activity at a time when African leaders have been touting the socio-economic promises of the Fourth Industrial Revolution.

This increased use of repressive tactics has coincided with the rising tide of youth activism and protests across the continent over the last decade.

Caught up in the repression and online silencing are not just youthful agitators, but also journalists and civil society actors, both sectors that numerous African governments and leaders have long considered a threat to their absolute command and control of their societies.

A February 2021 report, titled 'Digital Rights in Closing Civic Space: Lessons from Ten African Countries', by the UK-based Institute of Development Studies noted that the "five tactics used most often to close online civic space in Africa are digital surveillance, disinformation, internet shutdowns, legislation, and arrests for online speech".



Criminalised communication

To justify the deployment of such repressive tactics, governments have been using youth radicalisation as an excuse, among others. This scare narrative is largely a consequence and legacy of the war on terror that was globalised in the wake of the September 11, 2001 terrorist attacks in the US.

Since about 2010, cybersecurity and cybercrime have become significant locus and focus areas of this terror narrative, as African youth, media and civil society have gone online in increasing numbers and as the influence of social media has become ever more pronounced in African civic life. In tandem, digital surveillance and restrictive social media regulations have become ever-present and disturbing realities for many Africans.

Surveillance concerns have been heightened as reports emerged over the last decade of various African countries having purchased and deployed sophisticated communications and digital surveillance technologies.

Similarly, over the last decade or so, most African countries have, as part of their cybercrime measures, enacted SIM card registration regimes, that have become central to state surveillance efforts in the digital age, which in Africa is experienced primarily via mobile phones.

In 2019 Privacy International reported that 50 African countries had implemented SIM card registration regulations, while only Cabo Verde and the Comores did not have laws or intentions to create such laws. In two other countries - Namibia and Djibouti - the issue of SIM card registrations remained unresolved.

Privacy International stated that "while governments justify mandatory SIM card registration laws on the grounds that they assist in preventing and detecting crime, "there is no convincing empirical evidence that mandatory registration in fact systematically lowers crime rates," and "no robust empirical studies that show that such measures make a difference in terms of crime detection."

On top of this, cybercrime laws - from Nigeria to Egypt - have also used vague language to criminalise some forms of online expression. Since 2015/16 countries, from Benin to Tanzania, have used or introduced social media regulations that effectively served the same purpose.

Prompted by these concerns, UN Special Rapporteur on free expression, David Kaye, stated in a 2018 report: "Broadly worded restrictive laws on "extremism", blasphemy, defamation, "offensive" speech, "false news" and "propaganda" often serve as pretexts for demanding that telecommunications companies suppress legitimate discourse."

In March 2021, the Nigeria-based Paradigm Initiative reported that from 2016 to 2017, 22 African governments have ordered internet disruptions or shutdowns. Aside from the human rights violations, these have cost their countries tens of millions of dollars in lost economic activity at a time when African leaders have been touting the socio-economic promises of the Fourth Industrial Revolution.

Shrinking space

The logical consequence of all of this has been a shrinking of African civic space, both offline and online, over recent years.

In its 2020 report on the state of civic space, global civil society monitor CIVICUS found that out of the 49 African countries monitored only two - Cabo Verde and Sao Tome and Principe - displayed open civic spaces.

African governments have increasingly been using violence, intimidation and harassment to counter youth protests as well as arresting journalists who cover such protests, which is also contributing to wholesale regression of media freedom by many states.

In the same vein, the COVID-19 pandemic has been a boon for digital authoritarians, providing them the cover to further strangle already squeezed civic spaces, offline and online, across the continent.

Under the guise of countering COVID-19 disinformation, many African governments have tightened existing social media regulations by further restricting the freedoms of speech, including the media, and association.

This has led to brutal crackdowns in some cases - the state responses to the primarily youth-sustained #ZimbabweanLivesMatter protest and the #EndSARS movement in Nigeria of 2020 have been illustrative in this regard.

In its 2020 State of Internet Freedom in Africa report, the Uganda-based Collaboration on International ICT Policy for East and Southern Africa (CIPESA) said: "Several governments enacted vague and overly broad laws and implemented repressive practices that curtailed freedom of expression and restricted access to information through censorship, filtering of content, closure of media houses, threats, arbitrary arrests, illegal detentions, prosecution, intimidation and harassment of journalists, online activists and bloggers."

However, these oppressive measures have not had the effect of discouraging youth uprisings. Even so, with protests and uprisings rolling on in 2021, and probably beyond, many of these state practices and responses will continue to be rolled out across the continent.

Heavy-handed and repressive social media regulation and invasive surveillance appear to be set to remain features of many African state responses to agitated continental civic spaces for the foreseeable future.

A human rights based approach to social media regulation

In 2018, then UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, submitted a report on social media regulation and content moderation to the UN Human Rights Council.

The report's main recommendations concerning state actions were:

- States should repeal any law that criminalises or unduly restricts expression, online or offline.
- Smart regulation should be the norm, focused on ensuring transparency and remediation to enable the public to make choices about how and whether to engage in online forums. States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy.
- States should refrain from imposing disproportionate sanctions, whether heavy fines or imprisonment, on Internet intermediaries, given their significant chill effect on freedom of expression.
- States and intergovernmental organisations should refrain from establishing laws or arrangements that would require the "proactive" monitoring or filtering of content, which is both inconsistent with the right to privacy and likely to amount to pre-publication censorship.
- States should refrain from adopting models of regulation where government agencies, rather than judicial authorities, become the arbiters of lawful expression. They should avoid delegating responsibility to companies as adjudicators of content, which empowers corporate judgment over human rights values to the detriment of users.
- States should publish detailed transparency reports on all content-related requests issued to intermediaries and involve genuine public input in all regulatory considerations.

Frederico Links is a research associate with the Institute for Public Policy Re-search (IPPR) in Namibia since 2009 and a co-founder and current chairperson of ACTION Namibia which campaigns for greater ATI in Namibia.

Africa's citizens fight back

Unpacking the ECOWAS court ruling on Togo's internet shutdown

By Victor Mabutho

In an attempt to tighten their grip on dwindling power during moments of political crisis, some African governments revert to their default setting of shutting down the internet. In 2020 alone there were a total of 18 internet blackouts in 10 countries on the African continent. Three months into 2021, there have already been four shutdowns. In Togo a woman journalist and seven rights organisations put up a regional legal challenge. Victor Mabutho spoke to the applicants and legal and digital rights experts to get an understanding of the impact of the historical challenge and subsequent judgement.

When on 25 June 2020, the Economic Community of West African States Community Court of Justice (ECOWAS CCJ) handed down its historic ruling that Togo's 2017 internet shutdowns were illegal and violated citizens' rights, the news reverberated around the world.

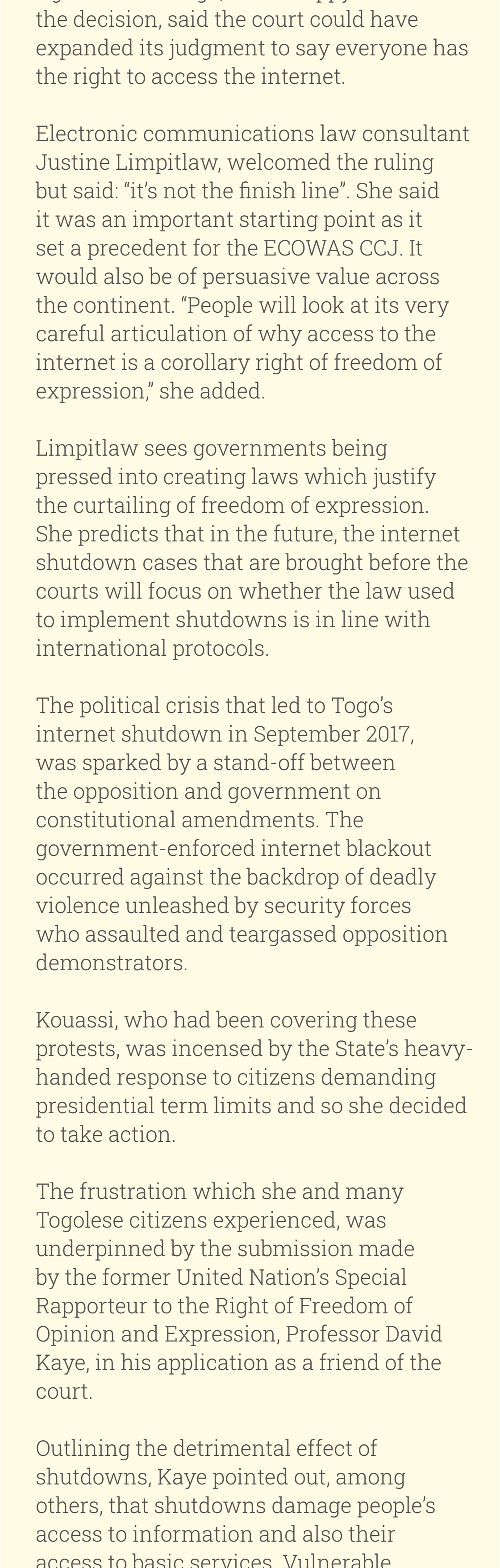
"The shutting down of internet access by the Respondent state of Togo violated the rights of the Applicants to freedom of expression," read the court's binding decision. It pointed out that Togo had failed to prove that it had a law in place to justify switching off the internet.

The Togo government had shut down the internet twice during September 2017, claiming that it's Law on the Information Society and the Law of 2011.27 were in place to justify the shutdowns.

The court directed the government to formulate laws respecting citizens' right to freedom of expression and access to information in line with international human rights standards such as the **International Covenant on Civil and Political Rights** (ICCPR) and the **African Charter on Human and People's Rights** (ACHPR).

The CCJ went on to award financial compensation to each applicant. The legal challenge against the government was brought to the West African regional court by woman journalist, Fabbi Kouassi and seven Togolese organisations, Amnesty International Togo, L'institut Des Medias Pour La Democratie Et Les Droit De L'homme, La Lanterne, Action Des Crechretiens Pour L'abolition De La Torture, Association Des Victim De Tortur Au Togo, Ligue Des Consommateurs De Togo and L'association Togolaise Pour L'education Aux Droits De L'homme Et La Democratie.

The historical judgement placed the right to freedom of expression at centre stage and as the first court challenge on internet shutdowns at international level, it set a precedent, not just on the African continent but globally too.



The media and digital rights lawyer who represented the applicants, Mojirayo Ogunlana-Nkanga, while happy with the decision, said the court could have expanded its judgment to say everyone has the right to access the internet.

Electronic communications law consultant Justine Limpitlaw, welcomed the ruling but said: "it's not the finish line". She said it was an important starting point as it set a precedent for the ECOWAS CCJ. It would also be of persuasive value across the continent. "People will look at its very careful articulation of why access to the internet is a corollary right of freedom of expression," she added.

Limpitlaw sees governments being pressed into creating laws which justify the curtailing of freedom of expression. She predicts that in the future, the internet shutdown cases that are brought before the courts will focus on whether the law used to implement shutdowns is in line with international protocols.

The political crisis that led to Togo's internet shutdown in September 2017, was sparked by a stand-off between the opposition and government on constitutional amendments. The government-enforced internet blackout occurred against the backdrop of deadly violence unleashed by security forces who assaulted and teargassed opposition demonstrators.

Kouassi, who had been covering these protests, was incensed by the State's heavy-handed response to citizens demanding presidential term limits and so she decided to take action.

The frustration which she and many Togolese citizens experienced, was underpinned by the submission made by the former United Nation's Special Rapporteur to the Right of Freedom of Opinion and Expression, Professor David Kaye, in his application as a friend of the court.

Outlining the detrimental effect of shutdowns, Kaye pointed out, among others, that shutdowns damage people's access to information and also their access to basic services. Vulnerable groups, he added, such as those with disabilities, women and racial minorities often depended on critical online resources. Businesses reliant on electronic transactions were particularly affected, he added.

Deprived of her right to work as a journalist, Kouassi joined forces with Amnesty International Togo (AIT). 'We decided to challenge the government, but instead of using local courts, we decided to approach the ECOWAS CCJ based in Abuja, Nigeria'.

The case was filed with the regional court in Abuja in December 2018 which had its first sitting in February 2019. An attempt to get it dismissed on the grounds that the seven organisations, save for Kouassi, were not individuals, failed. The Togo government had interpreted the rules as only allowing persons who are victims to stand before the court and not organisations. The court in turn allowed the seven organisations to represent those violated by the internet shutdown, after they proved their interests in protecting freedom of expression.

Along with Kaye, expert submissions were also **made** by several civic and digital rights groups such as Access Now and Article 19 in their capacity as 'friends of the court', in support of the applicants' suit.

Executive director of Media Rights Agenda, Edetean Ojo, drew a link between this court ruling and decades of lobbying which has created the current legal framework that protects media rights and freedom of expression.

"One can confidently say that the judgment ... is evidence of the continually evolving long-term vision of the Windhoek Declaration (adopted in 1991) on the need for the establishment, maintenance and fostering of an independent, pluralistic and free media environment in Africa, that is essential to the development and maintenance of democracy and for economic development," said Ojo.

The then African Commission Special Rapporteur on Freedom of Expression and Access to Information, Lawrence Mute, pointed out that the internet had empowered African people with a voice, and urged government not to take that voice from them.

A year since the judgment has been passed, the Togo government is yet to fulfil requirements of the ECOWAS CCJ's ruling.

"There is the issue of enforcement of judgments. ECOWAS (regional bloc) is not sanctioning countries such as Togo which have not complied with regional court decisions," points out Ogunlana-Nkanga who says punitive regional consequences could stop governments from shutting down the internet.

Limpitlaw points out that if African governments want to attract investment, the pragmatic approach would be to adopt a softer stance on human rights and freedoms. "Investors really take a very hard look at human rights issues, particularly on freedom of expression, because it impacts their own ability to do business."

Victor Mabutho is a freelance journalist and social media consultant based in Harare, Zimbabwe. He has a keen interest in Africa and has researched and published on a broad spectrum of issues affecting the continent, including politics, freedom of expression, elections and tech. He can be found on Twitter at @Victor_Mabutho



new episode!

By Takunda Mafundikwa

CREATIVITY SUBVERTED: COMMERCIAL POP TO POLITICAL PROTESTS

WATCH ON



YOUTUBE

The use of social media to uplift voices and stories, create awareness, and build and strengthen relationships creates a space for organisations, activists, and citizens to demand justice. Many social justice campaigns have benefited from the involvement of celebrities who have used their large social media following to amplify social justice issues. Zimbabwean filmmaker Takunda Mafundikwa's video presentation illustrates how recent social justice campaigns like **#FeesMustFall** and **#EndSARS** have gained traction from the involvement of celebrities like Drake, Burna Boy and others. He narrates how a new generation with a steely resolve has emerged who are ready to challenge the status quo. Takunda speaks with youthful activists Ethiopia's Lily Workneh and Zimbabwean Nyasha Musandu about how social media has made people connect on issues that matter, and how it has become a point of convergence for online activism and offline grassroots mobilisation.
