

1. Introduction

This paper provides background to 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 growing controversies over the governance of cyberspace. These are being largely driven by state-based activities around national security which are being manifested in increased forms of surveillance programmes such as large-scale internet filtering, restricted access to local content, intermediary liability and blocking, digital surveillance and cyber attacks. Such developments, seen together with already existing problems of limited access to internet connections and relevant online content, are raising questions of how to regulate and manage this vital communication medium, something that necessitates a re-articulation of internet rights and freedoms.

Some of the important internet policy challenges facing the continent are discussed as a backdrop to work on developing an African Declaration on Internet Rights and Freedoms. These challenges relate mostly to how governance regimes can be developed that foster *internet access* while at the same time attenuating the threat of arbitrary state *surveillance*. The major dilemma for policymakers is how to reconcile the function of regulating and securing the internet infrastructure whilst providing adequate protection and facilitation of citizens' human rights.

The current "internet access" and "right to communicate" movement carries with it the normative and legal dimensions of the right to freedom of opinion and expression (FoEx) movement against state censorship that has animated Africa since the 1980s and that led to the Windhoek Declaration of Press Freedom in 1991 and its various mutations such as the African Platform on Access to Information (APAI) formed in 2011. In the process of identifying a set of core principles that will help to define an African Declaration on Internet Rights and Freedom, many of the existing premises, principles and actors of the FoEx movement remain instructive.

2. 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 applied 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: 2.1 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, 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

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 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% of the world's population online by 2015.

African Declaration on Internet Rights and Freedoms

APC Background Paper

Eric Mazango

March 2014

we communicate and collaborate as individuals, the way business is done and the way governments develop policy and interact with citizens.

This notion of a global and open internet relies 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 to communicate and innovate without having to ask for permission from a central authority. This is having tremendous impact on freedom of expression and other human rights, not least in Africa.

2.2 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 in ICT adoption as connectivity improves, several challenges remain as many national policies are weak on adequate funding for national broadband projects and clear directives, inhibiting affordable and widespread access and 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 assesses 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 USD 2 per day in the countries surveyed, affordable internet remains entirely unattainable (the cost of internet across the countries studied on average exceeded 40% of income for those living on USD 2 daily). In many African countries, the cost of internet exceeds 80% to 100% of income for the lowest income bracket. This is far above the United Nations (UN) Broadband Commission’s target of entry-level broadband access for all at no more than 5% of daily income. The report points to lack of market competition, lack of infrastructure expansion and barriers to investment as some key factors limiting access to internet in many countries. 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

²The Alliance for Affordable Internet (A4AI) is 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 5% of average monthly income. Other reports looking at the impact of internet connectivity in Africa include: International Telecommunication Union. (2013). *Measuring the Information Society 2013*. www.itu.int/en/ITU-D/Statistics/Pages/publications/mis2013.aspx; Dalberg. (2013). *Impact of the Internet in Africa*. www.impactoftheinternet.com/pdf/Dalberg_Impact_of_Internet_Africa_Full_Report_April2013_vENG_Final.pdf; McKinsey Global Institute. (2013). *Lions go digital: The Internet’s transformative potential in Africa*. www.mckinsey.com/insights/high_tech_telecoms_internet/lions_go_digital_the_internets_transformative_potential_in_africa; Deloitte LLP (for Facebook). (2014). *Value of connectivity: Economic and social benefits of expanding internet access*. https://fbcdn-dragon-a.akamaihd.net/hphotos-ak-ash3/t39.2365/851546_1398036020459876_1878998841_n.pdf

African Declaration on Internet Rights and Freedoms

APC Background Paper
Eric Mazango

March 2014

[Universal Declaration of Human Rights](#) (UDHR) as well as the 2004 [WSIS Geneva Declaration of Principles and Plan of Action](#).

2.3 An open internet without restrictions is under threat

Around the world both government and corporate interests have started to use regulation and control of infrastructure to actively undermine the internet's global and open nature. Excessive technical and legal restrictions,³ carried out in both a covert and an overt manner, are bringing to the forefront the struggle between technology and national security and between legal frameworks and human rights. The year 2013, for example, brought to our attention the sheer scale of state surveillance and the pervasiveness of mass monitoring programs going on in some countries such as members of the Five Eyes Alliance (Australia, Canada, New Zealand, the United Kingdom and the United States)⁴ which were thought to abide by laws and institutions that guaranteed citizens' rights to freedom of expression and to privacy. More generally, according to the Electronic Frontier Foundation (EFF)'s annual reviews on surveillance practices, states around the world are demanding access to private data held by private companies in ever-greater volumes—and getting it. They are recognising the value of personal information captured by modern ICTs, and pursuing ever easier, quicker, and more comprehensive access to our data. Governments now have at their disposal a suite of tools that broaden their capabilities considerably: mobile phone tracking, deep packet inspection, and even surreptitious computer and network penetration.⁵ Often products and services that are first developed and offered to Western law enforcement, defence and intelligence agencies find their way into the hands of the world's authoritarian regimes, which are using them to monitor and disable their own citizens' networks which for these regimes constitute the predominant security threat. As a result there is now a global policy debate on the impact of pervasive state surveillance of cyberspace and the monitoring of communications networks *vis-a-vis* our rights to basic privacy, freedom of expression, and freedom of association.⁶

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

4The US government through the National Security Agency (NSA) and with assistance from major carriers has engaged in mass surveillance of domestic communications and the 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. See also en.wikipedia.org/wiki/Five_Eyes .

5Deibert, R. J. (2013). *Bounding Cyber Power: Escalation and Restraint in Global Cyberspace*. CIGI Internet Governance Papers. www.cigionline.org/publications/2013/10/bounding-cyber-power-escalation-and-restraint-global-cyberspace

6See Jones, S., & Gapper, J. (2014, January 14). Expert panel to investigate internet governance. *Financial Times*. www.ft.com/intl/cms/s/0/52327396-8359-11e3-aa65-00144feab7de.html#axzz37BOJbo00 .For in-depth analysis of some of these issues see the internet governance research series by the Centre for International Governance Innovation (CIGI), Canada (www.cigionline.org) and the Royal Institute of International Affairs (Chatham House), London (www.chathamhouse.org.uk).

3. Internet governance

3.1 Internet light-touch regulation

The internet has so far enjoyed a history of light touch regulation from most governments around the world as the free flow of information remains vital to life of the web. 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 businesses work in an inclusive manner, such as at the [Internet Governance Forum](#) (IGF).⁷ The IGF 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 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), it is a mixed group bringing together various governments and stakeholders to ensure the internet's functionality.

3.2 The WSIS multi-stakeholder process and beyond

Global attention turned to the notion of internet governance at the inaugural WSIS in 2003. The initiation of a multi-stakeholder process towards internet control reaffirmed universal human rights, resulting in an attempt to establish an internet governance regime codifying the basic rights applicable to the internet 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),⁸ freedom of association (Article 20),⁹ and the right to privacy (Article 12).¹⁰ 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. For example, in the recommendations on internet governance summarised ahead of the summit in Tunis in November 2005, APC argued¹¹ that the internet is a global public space and infrastructure that should be open and accessible to all on a

7 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.

8 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.

9(1) Everyone has the right to freedom of peaceful assembly and association.(2) No one may be compelled to belong to an association.

10 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.

African Declaration on Internet Rights and Freedoms

APC Background Paper
Eric Mazango

March 2014

non-discriminatory basis and where access must be made universal and affordable. Subsequent to the WSIS Declaration of Principles of Geneva and the Tunis Agenda for the Information Society, in 2006 APC also developed an Internet Rights Charter which states that the ability to access and share information and to communicate freely using the internet is vital to the realisation of human rights as enshrined in the UDHR (1948) and other international covenants. This Charter emphasises that the internet can only be a tool to empower the people of the world if certain important themes and rights are recognised, protected and respected.¹²

3.3 Important freedom of expression charters

The need to protect and promote the internet and the limitations on state 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 Nations.¹³ This important 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 reasons.”¹⁴

3.3.1 Windhoek Declaration (1991) and African Broadcasting Charter (2001)

This brings to mind previous Declarations and Charters such as the Windhoek Declaration agreed upon by African journalists in May 1991 and later endorsed by UNESCO’s General Conference.¹⁵ Its main assertion is that a free, independent, plural and diverse press is a fundamental human right essential to democracy and development, finding its basis in article 9 of the African Charter on Human and Peoples’ Rights (Banjul Charter).¹⁶ This provision is also in accordance with article 19 of the UDHR, which enshrines media and press freedom; as well as with article

11 Wikipedia entry on World Summit on the Information Society:
en.wikipedia.org/wiki/World_Summit_on_the_Information_Society

12The seven themes are, Theme 1: Internet access for all, Theme 2: Freedom of expression and association, Theme 3: Access to knowledge, Theme 4: Shared learning and creation (free and open software and technology development), Theme 5: Privacy surveillance and encryption, Theme 6: Governance of the internet, and Theme 7: Awareness, protection and realisation of rights.

13Joint 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.
www.osce.org/fom/78309

14Organization of American States press release prefacing the Declaration.

15For different reflections on the process see: Berger, G. (2011). *Media in Africa: Twenty years after the Windhoek Declaration on Press Freedom*. Windhoek: Media Institute of Southern Africa (MISA).
www.misa.org/researchandpublication/democracy/MIA.pdf

African Declaration on Internet Rights and Freedoms

APC Background Paper
Eric Mazango

March 2014

19 of the International Covenant on Civil and Political Rights.¹⁷ Several regional instruments were adopted following the Windhoek Declaration aimed at strengthening the principles affirmed in that document, and on the basis of these regional instruments and their recommendations a number of African countries have incorporated the principles into their national constitutions and other more specific legal provisions and regulations. The Media Institute of Southern Africa (MISA) and its partners (such as Article XIX among others) have done much to contribute to the body of jurisprudence and advocacy materials on press freedom, media freedom and information rights. Through the “Open the Waves” campaign the organisation has been very influential in the implementation of the African Charter on Broadcasting (ACB), adopted in Windhoek in 2001. Along with the 1991 Windhoek Declaration, the ACB’s provisions have been incorporated in the document adopted by the African Commission of Human and Peoples’ Rights (ACHPR) in 2002, titled the “Declaration on Freedom of Expression in Africa”.

3.3.2 African Platform on Access to Information (APAI) Declaration

Further to this, in 2009 leading African media and rights organisations formed a working group to develop a coordinated Access to Information Campaign for the African continent.¹⁸ The Campaign reached its first milestone when the African Platform on Access to Information (APAI) Declaration was adopted at the Pan-African Conference on Access to Information held in Cape Town in September 2011.¹⁹ Through APAI’s efforts there have been significant developments which have changed the legislative landscape in Africa around access to information, the adoption of the African Union’s “Model Law on Access to Information (ATI) for Africa” by the African Commission on Human and Peoples’ Rights (ACHPR) being a major example.

3.3.3 Statement by Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

These civil society movements show that important results can be reaped even in the international forums and they are a useful background to the development of a Declaration on Internet Freedom in Africa project; especially as many participants in the current initiative were also part of the earlier processes discussed above. As is evident from these processes the African Declaration on Internet Rights and Freedoms would support the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa and the ACHPR in general to advance freedom of expression and access to information on the internet.

¹⁶Article 9 provides for the right to freedom of expression and opinion as well as the right to receive information.

¹⁷Article 19 contemplates the right to seek, receive and impart information and ideas within the restrictions provided by law for the protection of legitimate interests which are truly necessary.

¹⁸Read more at www.africanplatform.org

¹⁹www.africanplatform.org/index.php/apai-declaration

African Declaration on Internet Rights and Freedoms

APC Background Paper
Eric Mazango

March 2014

One of the most articulate statements on the issue of freedom of expression and the internet have been the reports 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 and the United Nations General Assembly in 2011. The reports declare that while the internet itself is not a human right, its reliable, affordable and universal functioning is vital to support most basic human rights, and that the human rights framework, including freedom of expression, applies to the internet.²⁰ 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 principles²¹ aimed at keeping the internet free and open. In the same vein, in 2013 the Internet Rights & Principles Dynamic Coalition, an international network of individuals and organisations working to uphold human rights in the online environment and across the spectrum of internet policy-making domains, also developed another Internet Charter.**3.4 Transition in internet governance?**

A multi-stakeholder model which tries to balance differing views is, however, undergoing strain. A desire to extend state control over internet governance is now widely shared by many governments, even by some advanced industrial economies, although there are significant differences among states with respect to the nature of governance.²² An example of this was seen during the December 2012 World Conference on International Telecommunications (WCIT) held in Dubai which confirmed the existence of complex fault lines in the international community where a broad coalition led by Russia and China engineered the adoption of resolutions affirming an expanded state role in internet governance, and empowering the International Telecommunication Union (ITU) to further debate and discuss internet issues. This coalition attracted broad participation from the developing world, including key support from Arab states and emerging economies such as South Korea, Indonesia, Turkey, Brazil, Argentina and Mexico. However, a smaller group of states including key advanced industrial democracies joined by a number of other states refused to accept either the new ITRs or the accompanying non-binding ITU resolutions.

More recently, given concerns that the internet is largely in the grip of western powers, especially the US, India has called for setting up a global agency to manage the internet, something along the lines of the OECD Committee for Information, Computer and Communications Policy, as it pushes for a more direct multi-government role in formulating

20La Rue, F. (2011). *Promotion and protection of the right to freedom of opinion and expression*.

Submitted to the United Nations General Assembly, 10 August.

www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf

21Centred 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.

22Lewis, J. A. (2013). *Internet Governance: Inevitable Transitions*. CIGI Internet Governance Papers, Paper No. 4.

African Declaration on Internet Rights and Freedoms

APC Background Paper

Eric Mazango

March 2014

[internet governance](#) rules.²³ At the same time, while the EU reaffirms its commitment to general principles of an open, borderless web reinforced by the multi-stakeholder and global Internet Governance Forum (IGF) it is also seeking to use these governance platforms to wrest some control from the US over the regulation of key web functions such as top level domain name registration and the routing of web traffic. For example, in early 2014 the European Commission started calling for the need to widen the group of actors engaged in web regulation, and in particular to accelerate the globalisation of ICANN.²⁴

4. Developing an African Declaration on Internet Rights and Freedoms

4.1 Picking up from the WSIS process

Developing a declaration on internet freedom in Africa takes place within the context described above. The ongoing WSIS+10 review process²⁵ provides one opportune context to look again at previous declarations on internet freedoms, developed by multinational and multi-stakeholder bodies and to conduct an issue comparison that will lead to a better understanding of the matters 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 resource to influence learning and collaboration in setting locally relevant principles to guide advocacy and policy making in Africa.

The internet governance space in Africa was very active during the WSIS process with regional meetings held in different capitals from 2002 to 2005. Moreover, within the global IGF process, Africa has twice been host – in Egypt (2009) and in Kenya (2011). Presently, there are five regional IGFs that are ongoing in Africa. These are the West Africa Internet Governance Forum, the East Africa Internet Governance Forum, Forum de Gouvernance de l'Internet en Afrique Centrale, the Southern Africa Internet Governance Forum and the African Internet Governance Forum (AfIGF).

There is a need to strengthen the AfIGF in ways that will support and promote the consolidation of the on-going regional initiatives and also foster inclusive and open governance globally, rather than the state-led model being advocated by some countries as discussed above. As the stakes over control of the internet grow, along with the presence of governments and cyberspace-related laws, regulations and policies, the AfIGF can become a useful platform to reach out to continental and global stakeholders to guide their engagement in continental, regional and national initiatives for internet rights. The hosting of its secretariat by the United Nations Economic Commission for Africa (UNECA) means the African Union Commission will support its activities to fulfil its mandate.

23Parbat, K. (2014, March 4). India wants global panel for greater say in web rules. *Economic Times of India*.

24Byrne, A. (2014, February 14). Modest reforms to globalise the net. *Financial Times*.

blogs.ft.com/brusselsblog/2014/02/14/modest-reforms-to-globalise-the-net (Announcement by European Commission Vice-President Neelie Kroes on her desire to reform and globalise how the internet is run.)

25This process is reviewing the progress made in the implementation of the WSIS outcomes under the mandates of participating agencies and will take stock of achievements in the last ten years. The multi-stakeholder open consultation process started in July 2013 and includes six phases running to March 2014.

African Declaration on Internet Rights and Freedoms

APC Background Paper
Eric Mazango

March 2014

An analysis of the different policy-making activities taking place within different African countries can also become part of a comprehensive analysis and observatory of unfolding events to guide any work on lobbying for the development and adoption of an African Declaration on Internet Rights and Freedoms. In developing such an observatory the Declaration partners can use their previous experience with freedom of expression initiatives and networks to challenge surveillance policies and sweeping invasions into individuals' personal lives that are not consistent with international human rights standards. Regional declarations such as the 1991 Windhoek Declaration on Press Freedom, APAI and other review statements provide an important normative and pragmatic backdrop to galvanise the internet rights movement in Africa.

A combining of fronts between traditional 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.

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

- Reaffirm support for fundamental human rights instruments
- Assert the applicability of human rights norms across national borders
- Promote the development of technology to protect free expression
- Encourage citizen participation in decision making.

4.2 Key policy issues to consider for Africa

Key issues to consider when crafting the African declaration include, among others, *internet access, cyber security, and surveillance*.

4.2.1 Internet access

Access to the internet is a multifaceted concept and includes access to infrastructure and content, including innovations in content creation and sharing.²⁶ It can also be broken down into the 3A's rubric of access, affordability, and availability and cover issues related to access to appropriate content in understandable languages; the opening up of information; reasonable cost to access services; and an obligation to provide or facilitate access to networks. Violation of access through physical or technical means directly raises issues of censorship and freedom of expression.

4.2.2 Cyber security and surveillance

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 cyber security laws with human capacity building in sub-Saharan Africa (HIPSSA

²⁶For further discussion on these issues see Liddicoat, J. (2012). *Internet Rights Are Human Rights: Freedom of Expression, Freedom of Association and Democracy: New Issues and Threats*. Association for Progressive Communications (APC) Issue Paper.

www.apc.org/en/system/files/APC_IRHR_FOEandFOAissuepaper_2012_web_EN.pdf; see also the APC Internet Rights Charter: <https://www.apc.org/en/pubs/about-apc/apc-internet-rights-charter>

African Declaration on Internet Rights and Freedoms

APC Background Paper
Eric Mazango

March 2014

– Harmonisation of the ICT Policies in Sub-Saharan Africa). The draft AU convention on cybercrime provides legislative guidance on “organisation of electronic transactions, protection of personal data, promotion of cyber security, e-governance and combating cybercrime.”²⁷The African Union is also currently working on a draft policy to guide electronic commerce and data privacy rules,²⁸ and identifying key ICT infrastructure investment and policy needs to ensure an interconnected continent. The extent to which these decisions and guidelines are implemented at the national level is very varied, with some countries being much further along the process of transposition than others. At the level of the regional economic communities (principally ECOWAS, SADC, EAC, COMESA, UMA, ECCAS), many have adopted guidelines for their member states on cyber security, e-commerce, universal service and other aspects to support the development of the internet in their regions. However, we should realise that African governments are engaging in cyberspace policy against the backdrop of the mistrust and suspicion caused by the recent Snowden/NSA revelations which feed into a desire to place security at the top of state agendas and reassert state control. It is, therefore, likely that some countries in Africa will use cybercrime laws and regulations that attempt to control the “dark side” of the internet (fraud, identity theft, and the creation and operation of illegal botnets) to place more priority on controlling what content citizens can access and they are likely to put in place broad internet filtering and surveillance regimes that undermine citizens’ privacy rights with little or no judicial oversight.

²⁷Draft African Union Convention on the Confidence and Security in Cyberspace. Version 01/01.2011 (AU Draft0 010111). It was originally slated to be passed at January’s AU meeting, but is now tabled for July 2014 or January 2015 at the latest.

²⁸Draft African Union Convention on the Confidence and Security in Cyberspace.
pages.au.int/infosoc/pages/cyber-security

African Declaration on Internet Rights and Freedoms

APC Background Paper
Eric Mazango

March 2014

For countries with political governance challenges and those which face persistent domestic insecurities, greater state control of cyberspace will remain appealing on a number of levels.²⁹ Another example of the potential undermining of privacy rights is the implementation of mandatory SIM card registration policies in many countries in Africa where it is not possible to buy a SIM card for a mobile phone without producing an identity 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. Now a majority of African countries have implemented obligatory SIM card registration, justifying these as necessary in order to assist law enforcement agencies in tracking down criminals.³⁰ As seen in countries in North Africa during the Spring Revolution protests, such arrangements open up the possibility of controlling the exercise of freedom of peaceful assembly and association.

Conclusion

The internet is an important enabling platform for delivering freedom of expression and other socio-economic rights and public services. The African Declaration on Internet rights and Freedoms is needed to clarify issues and concerns regarding the governance of the internet and to define an overarching policy on unhindered access to ICTs in Africa.

In developing an African Declaration on Internet Rights and Freedoms, existing work done by FoEx activists remains important in steering the course of internet governance back from falling into increased state-control and towards a multi-stakeholder framework that maintains the open and free character of the global internet, ensuring open access to the internet, with guaranteed internet freedoms while securing the rule of law online.

²⁹Deibert, R.J. (2013). Op. cit.

³⁰Donovan, K. P. & Martin, A. K. (2012). *The Rise of African SIM Registration: Mobility, Identity, Surveillance & Resistance*. London, UK: London School of Economics and Political Science.