

Universal Periodic Review of Nigeria

Joint Stakeholder Submission

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF NIGERIA

Executive Summary

1. This submission is made by Fantsuam Foundation¹, Paradigm Initiative Nigeria² and the Association for Progressive Communications.³ Fantsuam Foundation is a Nigerian organisation whose mission it is to eliminate poverty and disadvantage through integrated development programs. Its main objectives relate to sustainable livelihoods, health services and education. Paradigm Initiative Nigeria (PIN) is a social enterprise that connects Nigerian youth with ICT-enabled opportunities. APC (which has general ECOSOC consultative status) is an international network focused on ensuring all people have access to an open and free internet access to improve their lives and create a more just world.
2. The UPR must include a review of State performance in relation to the promotion and protection of human rights and fundamental freedoms on the internet, particularly freedom of expression and freedom of association.⁴ In 2011 the Human Rights Committee noted that freedom of expression (including the right to information) includes internet based expression.⁵ Member States' existing human rights obligations⁶ extend to taking steps to ensure access to the internet and that limitations or restrictions on freedom of expression comply with agreed international standards, including women's human rights.⁷
3. This submission focuses on freedom of expression and freedom of information highlighting how the internet is being used to promote and protect human rights in Nigeria, and the danger to human rights posed by lack of protection for journalists in Nigeria.

Progress and follow-up on recommendations made in the first UPR of Nigeria

4. In its first review, Nigeria accepted the recommendation made by France to “Ensure that freedom of expression is respected and that Nigerian journalists may take on their mission of providing information without suffering harassment.”⁸ Nigeria also agreed to take steps to pass the Freedom of Information Bill, which was before the National Assembly, into law and to take measures in relation to the national Human Rights Commission.
5. The Government of Nigeria is to be commended for its support for the adherence to human rights

¹ www.fantsuam.org.ng

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⁴ Human Rights Committee, General Comment 34, Freedoms of Opinion and Expression, (21 July 2011, CCPR/C/GC/34).

⁵ Ibid, para 12.

⁶ The UPR monitors existing human rights obligations: Human Rights Council, Institution-building of the United Nations Human Rights Council (18 July 2007, A/HRC/RES/5/1, affirmed in Resolution A/HRC/RES/16/21).

⁷ Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27).

⁸ Final Report of the Working Group at page 11 para 49

http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/A_HRC_11_26_NGA_E.pdf

standards on the internet at the Human Rights Council. On 29 June 2012, during HRC 20, the Government of Nigeria signed a joint resolution affirming that the same human rights which apply offline, also be protected online, particularly freedom of expression⁹ and recognising that the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms. Civil society welcomed this stance by the Government, but is concerned to see the Government take active steps to realise its affirmation in practice particularly in relation to internet access and freedom of association within Nigeria.

6. While these developments are positive and welcome, there is a need to encourage development to an active promotion and protection of internet related human rights, so that in practice Nigerian citizens can enjoy the protection and promotion of their rights online.

Protection of Journalists

7. The Freedom of Information Bill had a chequered history partly due to poor political culture of information sharing, high levels of corruption and the refusal to release information, ostensibly in the interests of “national security”. Investigative journalism is still in its early stages of development in the country; whistle blowing is a dangerous undertaking and has little or no constitutional protection. During the UPR period there have been significant developments relating to freedom of information in Nigeria.
8. On 30 November 2010, media reported that 4,598 sensitive diplomatic discussions involving the United States of America (USA) Embassy in Nigeria were among some 251,287 items released by the online whistle blower WikiLeaks.¹⁰ While WikiLeaks claimed that “the cables show the extent of US spying on its allies and the UN; turning a blind eye to corruption and human rights abuse in ‘client states’” and White House press secretary Robert Gibbs labelled the WikiLeaks a “reckless and dangerous action,” in Nigeria the cables were recognised as one of the most authentic and accurate accounts of the history of Nigeria’s governance in one of the most difficult periods of its existence as a nation.¹¹ And, inadvertently, they helped to confirm the credibility of a variety of Nigerian media and online platforms such as Premium Times Nigeria and Sahara Reporters, which was established in 1996 and has been championing the right to information and challenging government secrecy in Nigeria.
9. In particular, during the tense period of the last few months of former President Yar’adua’s life there was no effective flow of information from the Presidency regarding the state of the president’s health, and the statutory body that could rescue the situation, the FEC, remained paralysed.¹² Denial by the respective governments of the documented illnesses of the First Lady, and a number of governors, including those of Taraba, Enugu, and Cross Rivers has an adverse effect, with the public reliant on news leaks released by Nigeria media (for example Sahara Reporters and its volunteer whistle blowers were the first to alert the nation to the president’s terminal illness). Yar’adua’s team strenuously denied many of the media claims. WikiLeaks provided confirmation of many of these leaks and allowed Nigerians to know more about the details of the political intrigues that attended Yar’adua’s last days. The role of the media, including Sahara Reporters, in defending the right of people to know was critical especially in being consistent in

⁹ HRC Resolution: A/HRC/20/L.13

¹⁰ www.cablegate.wikileaks.org

¹¹ John Dada and Bidi Bala “Impact of the Wikileaks Cables on Nigeria: transparency in governance and forums for citizens voice” *Global Information Society Watch* (Hivos and APC, 2011) at 206-207.

¹² Ibid.

revelations of the Nigerian government's abuse of power, and the abuse of power by individuals in government.¹³

10. While the current situation is improved, it is vital that the Government assure citizens that statements that have been denied but were credited to senior government officials about censorship of online communication will not inform the policy of government, and that citizens can continue to freely express opinion and their interest in how they are governed using online channels, including social media platforms.

Freedom of Information Bill

11. The Freedom of Information Bill had wide-spread civil society support and in May 2011 was finally passed into law. This is a welcome development, with Edetaen Ojo of Media Rights Agenda, a key figure in the successful campaign for the law in Nigeria, describing it as "one of the best in the world".¹⁴
12. A recent report on internet intermediary liability in Nigeria notes that:¹⁵

The increased availability of internet access and telecommunication facilities has led to the democratisation of information, which has been further helped by the introduction of the Freedom of Information (FoI) Act in 2011. The FoI law is increasingly becoming a popular legal channel for public information request in a country whose Official Secrets Act was often used to conceal public information. Public information is increasingly available online due to the role played by social media and other sharing platforms. This was a major contributor to the flow of information that led to the public protests that followed the removal of fuel subsidies in Nigeria in January 2012.

13. Proper implementation of the new law is needed including public awareness raising, monitoring and support for officials responsible for due administration. will be seriously impeded if there are insufficient resources to make it meaningful in practice or there is a lack of political leadership to ensure access to information is not obstructed. The next cycle of UPR reporting will be critical to ensure uptake of support for the new law and its successful implementation.

The internet and women's human rights

14. In the first UPR the Government of Nigeria accepted a recommendation from Ireland to "Implement specific legislation to protect women against sexual and gender-based violence and ensure that Nigerian women benefit from full equality before the law". New research on violence against women indicates that the internet is a critical space in the struggle for fundamental rights and freedoms, including for rural women.¹⁶ The contribution of women in rural areas could be far greater if they had equal access to essential resources and services, including information. Rural women have even less access to information and new technologies than men and thus at a disadvantage when it comes to making informed choices about what to produce and how best to market their products. Lack of information also limits their influence in their communities and their ability to participate in decision-making. Yet unless researchers and policymakers give due attention to gender and unless women have a voice in developing

¹³ Ibid.

¹⁴ <http://www.freedominfo.org/2011/06/nigeria-law-one-of-the-best-says-advocate-edetaen-ojo/>

¹⁵ Gbenga Sesan, (Paradigm Initiative Nigeria) "Intermediary Liability in Nigeria" (APC 2012) at p 5.

¹⁶ Kee and Moolman, *Sexuality and women's rights: GISWatch 2011*

available opportunities, the new technologies could serve merely to exacerbate existing inequalities.¹⁷

15. At the same time, it is important to address the dangers that the internet and ICTs¹⁸ pose to women and marginalised groups.¹⁹ In recent years the media have published many cases where women have been the victims of violence and where ICTs were used as the means to carry out such attacks. However, these cases are not recognized as such and the role of the ICT in relation to violence is often neglected or ignored. It is important to highlight this issue and for the media, policy institutions, communication companies and social organizations to include in their own agendas urgent measures to prevent gender violence perpetuated through ICTs.
16. We recommend that legislation intended to combat violence against women extend to include violence against women online.

National Human Rights Institution

17. The government is to be commended for the reinstatement of the Nigerian Human Rights Commission “A” accreditation status in October 2012 and the Governing Council of the Commission has recently been inaugurated. This progress is also to be commended.

Internet Governance and Human Rights

18. In September 2012, the national Internet Governance Forum was convened in Abuja providing a multi-stakeholder forum for discussion of internet governance and internet related public policy issues in Nigeria. The Forum communique made a range of recommendations including that multi-stakeholder and inter-agency efforts be renewed to promote domestic input into internet governance matters. The growing interest in and leadership on internet governance is to be commended.
19. In September 2012, the national Internet Governance Forum was convened in Abuja providing a multi-stakeholder forum for discussion of internet governance and related issues in Nigeria. The Forum communique made a range of recommendations including that multi-stakeholder and inter-agency efforts be renewed to promote domestic input into internet governance matters. The government’s growing interest in and leadership on internet governance is also to be commended.

Internet related human rights issues

Internet and human rights

20. The Government of Nigeria is to be commended for its support for the adherence to human rights standards on the internet at the Human Rights Council. On 29 June 2012, during HRC 20, the

¹⁷ Brenda Zulu, Women Farmers Advanced Network <http://www.genderit.org/content/icts-break-sharia-compliances-africa>

¹⁸Technology and tools that people use to share, distribute, gather information and to communicate with one another, one on one, or in groups. ICTs can be grouped into three categories. Information technology uses computers, which have become indispensable in modern societies to process data and save time and effort. Telecommunications technologies include telephones (with fax) and the broadcasting of radio and television, often through satellites. Networking technologies, of which the best known is the internet, also extend to mobile phone technology, voice over IP telephony (VoIP), satellite communications, and other forms of communication that are still in their infancy.

¹⁹<http://www.soyperiodista.com/tecnologia/nota-5855-la-violencia-se-refleja-redes-sociales>

Government of Nigeria signed a joint resolution affirming that the same human rights which apply offline, also be protected online, particularly freedom of expression²⁰ and recognising that the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms. Civil society welcomed this stance by the Government, but is concerned to see the Government take active steps to realise its affirmation in practice particularly in relation to internet access and freedom of association within Nigeria.

21. While these developments are positive and welcome, there is a need to encourage development to an active promotion of internet related human rights, so that in practice Nigerian citizens can enjoy the protection and promotion of their rights online.

Internet access

22. Good progress has been made with internet access, which has increased rapidly during the second UPR cycle (from 6.8% in 2010 to 28% by mid-2012).²¹ With the exponential increase in net users in Nigeria, the internet is set to be a major tool in the quest to combat corruption and ensure accountable governance. Civil society is well placed to lead this effort. Yet the cost of internet access in Nigeria, particularly broadband, remains exorbitant, effectively limiting access to information and freedom of expression. The Special Rapporteur on Freedom of Expression recommended States take steps to develop national plans for internet access.²² These should also be linked to national plans of action on human rights. The Minister of Communication Technology, Mrs. Omobola Johnson, has said the Ministry is working hard to ensure better and affordable internet connectivity for all Nigerians and the government's efforts are to be commended.²³ The National Broadband Plan (2013-2018) was recently submitted to the Minister it appears the Minister has submitted this to the Federal Executive Council for approval.²⁴
23. However, more progress is needed particularly to ensure that government speedily approves the Broadband Plan (2013 - 2018) that has been developed for Nigeria, and resume immediate implementation of the recommendations of the plan to improve access, reduce cost, increase quality and connect more citizens to government services and others online.

Internet Intermediary Liability

24. The Special Rapporteur on Freedom of Expression has called on States to ensure that measures relating to internet intermediaries comply with Article 19 of the ICCPR and noted intermediaries' responsibilities to uphold due process and the rule of law and not take steps which interfere with the human rights of Internet users.²⁵ In Nigeria, several new laws touching on intermediary liability have been proposed including the Copyright Amendment Bill, the Telecom Facilities (Lawful Interception of Information) Bill and the Cybersecurity Bill. All of these measures will lead to discussions on the role of intermediaries. The Special Rapporteur has advised that termination of internet access for violation of intellectual property laws is contrary to article 19 of the ICCPR

²⁰ HRC Resolution: A/HRC/20/L.13

²¹ <http://www.internetworldstats.com/stats1.htm>

²² Frank La Rue "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (26 April 2011, A/HRC/17/27) at page 18, para 66 and page 22 para 88.

²³ "Minister Ensure Internet Connectivity For All Nigerians, 4 November 2012

http://www.leadership.ng/nga/articles/39180/2012/11/04/minister_ensure_internet_connectivity_all_nigerians.html

²⁴ <http://www.humanipo.com/news/4580/Nigerias-broadband-roadmap-submitted-for-presidential-approval>

²⁵ Ibid, at pages 1-13.

and that termination should not be used as a punitive measures. We recommend the government agree to ensure that all new laws comply with the recommendations of the Special Rapporteur and meet human rights standards.

Cyber Crime Legislation

25. The escalation in computer and internet related crime has tarnished Nigeria's international reputation and has been used as a rationale for government to introduce invasive measures which raise human rights concerns. In 2010, for example, the Government introduced a real name registration requirement for mobile phones and instigated closer scrutiny of individuals who use cyber cafes. A Cybercrime Bill has been proposed by the offices of the Attorney General and National Security Adviser. The objective is to combat the security problems faced by Nigeria, but there concerns about the wide ambit of the bill. We recommend the Government agree to ensure that all such measures comply with the rule of law and requirements for limitations on rights and freedoms to be rational, proportionate and necessary.

Recommendations:

26. We recommend the State of Nigeria:

- (a) Consider practical measures to affirm the HRC Resolution on freedom of expression and the internet for example through active promotion and protection of internet related human rights, so that in practice Nigerian citizens can enjoy the protection and promotion of their rights online.
- (b) Ensure constitutional protections make it clear that freedom of expression in Nigeria includes internet related expression, in accordance with the Human Rights Council Resolution on freedom of expression and the internet and General Comment 34 on Article 19 of the Human Rights Committee.²⁶
- (c) Ensure that internet access and internet related human rights issues are included in the National Plan of Action on Human Rights.
- (d) Ensure the speedy approval of the Broadband Plan (2013 - 2018) that has been developed for Nigeria, and resume immediate implementation of the recommendations of the plan to improve access, reduce cost, increase quality and connect more citizens to government services and others online.
- (e) Uphold the rights of Omoyele Sowore, the editor of Sahara Reporters, to safe unencumbered passage whenever he chooses to return to or visit Nigeria.
- (f) Continue to ensure the Freedom of Information Act is properly implemented.
- (g) Extend laws intended to combat violence against women to include ICTs and violence against women online.
- (h) Continue efforts to support the National Human Rights Commission.
- (i) Ensure that all new laws related to the internet comply with the recommendations of the Special Rapporteur on Freedom of Expression and meet human rights standards.
- (j) Reconvene national dialogue on internet intermediary liability and copyright law reform and ensure that termination of internet access is not a penalty for violation of intellectual property laws.

²⁶ Frank La Rue "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (26 April 2011, A/HRC/17/27) at page 21, note 3.