HUMAN RIGHTS AND THE INTERNET: LEGAL FRAMEWORK AND MECHANISMS

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QUICK POLL: WHAT DO YOU THINK?

QUES 1: SHOULD THE RIGHT TO FREEDOM OF EXPRESSION BE ABSOLUTE?

(A) YES.

(B) NO.

QUES 2: SHOULD THERE BE A SELF-STANDING RIGHT TO THE INTERNET?

(A) YES.

(B) NO.

QUICK POLL: WHAT DO YOU THINK?

QUES 3: WHICH OF THE FOLLOWING DO YOU THINK IS THE MOST SIGNIFICANT BARRIER TO ACCESS TO THE INTERNET?

(A) COST OF ACCESS (DATA, DEVICES, TAXES, ETC).

(C) INTENTIONAL NETWORK DISRUPTIONS.

(D) LACK OF DIGITAL LITERACY SKILLS.

QUES 4: WHICH OF THE FOLLOWING DO YOU THINK IS THE MOST SIGNIFICANT CHALLENGE TO THE FREE ENJOYMENT OF THE INTERNET?

(A) THREATS AND HARASSMENT ONLINE.

(B) HATE SPEECH ONLINE.

(C) SURVEILLANCE ONLINE.

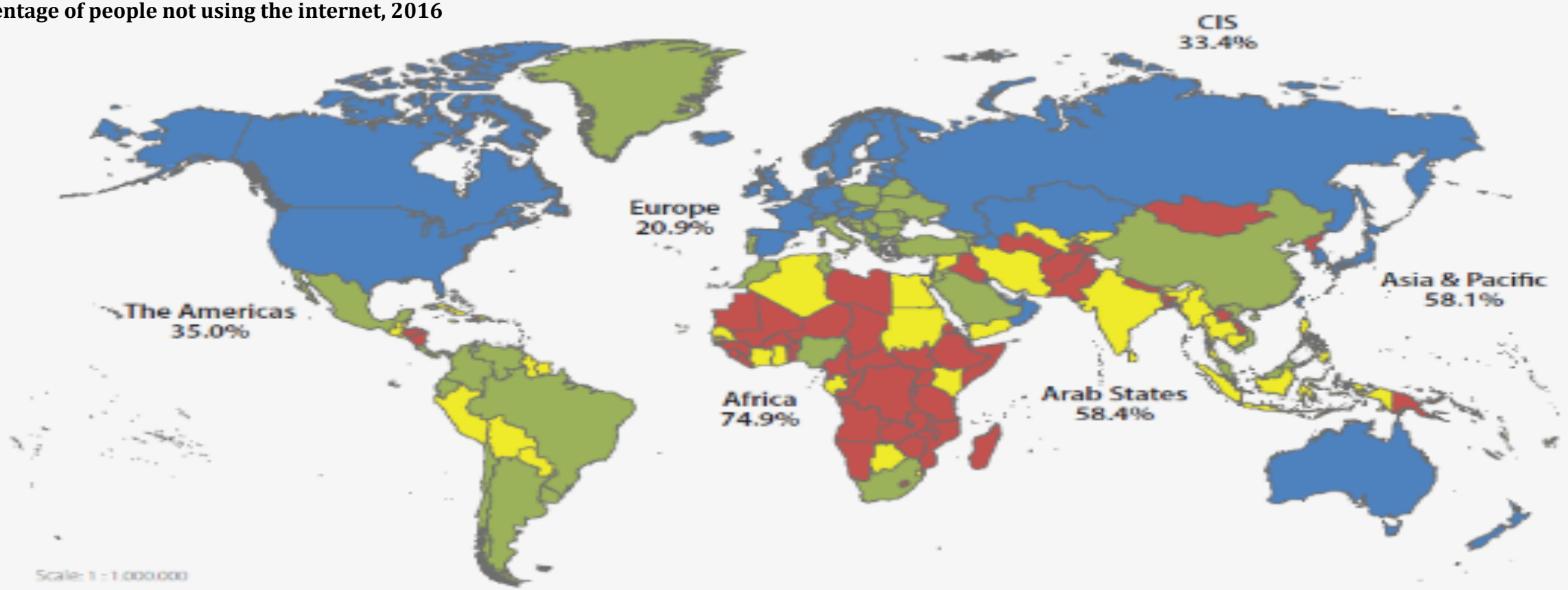
IMPORTANCE OF FREEDOM OF EXPRESSION

- Repeatedly recognised as a **core value of a democratic society**, and deserving of the **utmost protection**
- Supreme Court of Zimbabwe: Freedom of expression has four broad objectives to serve:
  - It helps an individual to obtain **self-fulfilment**
  - It assists in the discovery of **truth** and in promoting **political and social participation**
  - It strengthens the capacity of an individual to **participate in decision making**
  - It provides a mechanism by which it would be possible to establish a reasonable **balance between stability and change**
- First session of the United Nations General Assembly in 1946: "Freedom of information is a **fundamental** human right and … the **touchstone of all of the freedoms** to which the UN is consecrated"

"While the Internet has been in existence since the 1960s, its current use throughout the world across different age groups, and incorporation into virtually every aspect of modern human life, has been unprecedented. … **[T]he Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies.** Indeed, the recent wave of demonstrations in countries across the Middle East and North African region has shown the key role that the Internet can play in mobilizing the population to call for justice, equality, accountability and better respect for human rights. **As such, facilitating access to the Internet for all individuals, with as little restriction to online content as possible, should be a priority for all States."**

Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue | 16 May 2011, A/HRC/17/27

Percentage of people not using the internet, 2016



Percentage of individuals NOT using the Internet

- 0 - 25
- 26 - 50
- 51 - 75
- 76 - 100

By end 2016, 3.9 billion people - 53% of the world's population – is not using the Internet.

In the Americas and the CIS regions, about one third of the population is offline.

While almost 75% of people in Africa are non-users, only 21% of Europeans are offline.

In Asia and the Pacific and the Arab States, the percentage of the population that is not using the Internet is very similar: 58.1 and 58.4%, respectively.

Accessible at: http://www.internetlivestats.com/internet-users-by-country/

TOPICS TO DISCUSS

- Basic principles and duties under international law
- Content of the right to freedom of expression
- Content of the right to privacy
- African Declaration on Internet Rights and Freedoms
- Derogations of rights
- Limitations of rights and prohibited speech
- Regional and international mechanisms to enforce rights
- A right to [access] the internet[?]
- Questions and discussion

BASIC PRINCIPLES OF INTERNATIONAL LAW

BASIC PRINCIPLES OF INTERNATIONAL LAW

- All rights are **universal**, **indivisible**, **interdependent** and **inalienable**
- Distinguish between: (i) civil and political rights; and (ii) socio-economic rights
- Binding and non-binding **sources** of international law
  - **Binding:** Treaties
  - **Non-binding:** Resolutions, commentary
- Rights are **not absolute** and may be subject to limitations
- States have **duties** under international law to respect, protect and fulfil human rights
- Required to develop laws and policies to enforce rights at the **domestic level**; cannot rely on domestic laws to justify non-compliance
- **Access to remedies** for violations of rights

DUTIES UNDER INTERNATIONAL LAW

WHAT ABOUT PRIVATE ACTORS?

Respect	Protect	Fulfill
Governments must not deprive people of a right or interfere with persons exercising their rights.	Governments must prevent private actors from violating the human rights of others.	Governments must take positive action to facilitate the enjoyment of basic human rights.
For example, governments can: • Create constitutional guarantees of human rights. • Provide ways for people who have suffered human rights violations by the government to seek legal remedies from domestic and international courts. • Sign international human rights treaties.	For example, governments can: • Prosecute perpetrators of human rights abuses, such as crimes of domestic violence. • Educate people about human rights and the importance of respecting the human rights of others. • Cooperate with the international community in preventing and prosecuting crimes against humanity and other violations.	For example, governments can: • Provide free, high-quality public education. • Create a public defender system so that everyone has access to a lawyer. • Ensure everyone has access to food by funding public assistance programs. • Fund a public education campaign on the right to vote.

Source: Human Rights Basics, published by Advocates for Human Rights

FREEDOM OF EXPRESSION

ARTICLE 19 OF THE UDHR

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**.

ARTICLE 19 OF THE ICCPR

(1) Everyone shall have the right to **hold opinions without interference**.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to **seek, receive and impart** information and ideas of all kinds, **regardless of frontiers**, either orally, in writing or in print, in the form of art, or through **any other media** of his choice.

[Human Rights Committee General Comment 34]

ARTICLE 9 OF ACHPR

(1) Every individual shall have the right to **receive information**.

(2) Every individual shall have the right to **express and disseminate** his opinions **within the law**.

[African Commission's Declaration of Principles on Freedom of Expression in Africa – currently being updated]

ARTICLE 21 OF THE CRPD

States Parties shall take all appropriate measures to ensure that **persons with disabilities** can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and **ideas on an equal basis with others and through all forms of communication of their choice**, as defined in article 2 of the present Convention, including by:

a) Providing information intended for the general public to persons with disabilities **in accessible formats and technologies appropriate to different kinds of disabilities** in a timely manner and without additional cost;

b) Accepting and facilitating the use of **sign languages, Braille, augmentative and alternative communication**, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

c) **Urging private entities** that provide services to the general public, including through the Internet, to provide information and services in **accessible and usable formats** for persons with disabilities;

d) Encouraging the **mass media, including providers of information through the Internet**, to make their services **accessible** to persons with disabilities;

e) Recognizing and promoting the use of **sign languages**.

ARTICLE 7 OF THE ACRWC

Every **child** who is capable of communicating his or her own views shall be assured the rights to **express his opinions freely in all matters and to disseminate his opinions** subject to such restrictions as are prescribed by laws.

WHAT DOES THE RIGHT INCLUDE?

- The right to hold opinions without interference → **Freedom of opinion**
- The right to seek and receive information → **Access to information**
- The right to impart information of all kinds through any media regardless of frontiers → **Freedom of expression**
  - **The right to offend, shock or disturb** (Handyside v United Kingdom):

"[The right to freedom of expression] is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. **Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'.** This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued."

RIGHT TO PRIVACY

ARTICLE 17 OF THE ICCPR

(1) No one shall be subjected to **arbitrary or unlawful interference with his privacy, family, home or correspondence**, nor to **unlawful attacks on his honour and reputation.**

(2) Everyone has the right to the **protection of the law** against such interference or attacks.

ARTICLE 22 OF THE CRPD

(1) No person with **disabilities**, regardless of place of residence or living arrangements, shall be subjected to **arbitrary or unlawful interference** with his or her privacy, family, home or correspondence or other types of communication or to **unlawful attacks on his or her honour and reputation.** Persons with disabilities have the right to the **protection of the law** against such interference or attacks.

(2) States Parties shall protect the privacy of **personal, health and rehabilitation information** of persons with disabilities on an **equal basis** with others.

ARTICLE 10 OF THE ACRWC

No child shall be subject to **arbitrary or unlawful interference** with his privacy, family home or correspondence, or to the **attacks upon his honour or reputation**, provided that parents or legal guardians shall have the right to **exercise reasonable supervision over the conduct of their children.** The child has the right to the **protection of the law** against such interference or attacks.

AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS

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- African Declaration was developed in response to the challenge of how to **protect human rights and freedoms on the internet** in the digital age
- Pan-African initiative to **promote human rights standards and principles** of openness in **internet policy formulation and implementation**
- Builds **on existing human rights instruments**, including the ACHPR
- **African Commission Resolution on the Right to Freedom of Information and Expression on the Internet in Africa** - ACHPR/Res. 362(LIX) (2016):

  "**Taking note** of the African Declaration on Internet Rights and Freedoms, which was **developed by a coalition of African civil society organizations and adopted during the 9th Internet Governance Forum in Istanbul, Turkey, in September 2014**, which elaborates on the principles which are necessary to uphold human and people's rights on the Internet, and to cultivate an Internet environment that can best meet Africa's social and economic development needs and goals"

AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS

Key principles:

- Openness
- Internet access and affordability
- Freedom of expression
- Right to information
- Freedom of assembly and association and the internet
- Cultural and linguistic diversity
- Right to development and access to knowledge
- Privacy and data protection
- Security, stability and resilience on the internet
- Marginalised groups and groups at risk
- Right to due process
- Democratic multi-stakeholder internet governance
- Gender equality

Accessible at: http://africaninternetrights.org

AFRICAN DECLARATION

Article 1: Openness

The Internet should have an **open and distributed architecture**, and should continue to be based on open standards and application interfaces and guarantee interoperability so as to enable a common exchange of information and knowledge.

Opportunities to share ideas and information on the Internet are **integral to promoting freedom of expression, media pluralism and cultural diversity**.

Open standards support innovation and competition, and **a commitment to network neutrality promotes equal and non-discriminatory access to and exchange of information** on the Internet.

Article 2: Access and Affordability

Access to the Internet should be **available and affordable to all persons in Africa without discrimination** on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Access to the Internet plays a vital role in the **full realisation of human development**, and **facilitates the exercise and enjoyment of a number of human rights and freedoms**, including the right to freedom of expression and information, the right to education, the right to assembly and association, the right to full participation in social, cultural and political life and the right to social and economic development.

AFRICAN DECLARATION

Article 8: Privacy and Personal Data Protection

Everyone has the right to **privacy online**, including the right to the **protection of personal data** concerning him or her.

Everyone has the right to **communicate anonymously on the Internet**, and to **use appropriate technology to ensure secure, private and anonymous communication**.

The right to privacy on the Internet should not be subject to any **restrictions**, except those that are **provided by law**, pursue a **legitimate aim** as expressly listed under international human rights law, and are **necessary and proportionate** in pursuance of a legitimate aim.

Principle 9: Security, Stability and Resilience of the Internet

Everyone has the right to benefit from **security, stability and resilience of the Internet**. As **a universal global public resource**, the Internet should be a **secure, stable, resilient, reliable and trustworthy network**.

Different stakeholders should continue to **cooperate** in order to ensure effectiveness in addressing risks and threats to security and stability of the Internet.

Unlawful surveillance, monitoring and interception of users' online communications by state or non-state actors fundamentally **undermine the security and trustworthiness of the Internet**.

DEROGATION OF RIGHTS

DEROGATIONS: ARTICLE 4 OF THE ICCPR

- **Requirements:**
  - Public **emergency**
  - Threatens the **life of the nation**
  - Existence is **officially proclaimed**
- Derogations from obligations permitted to the **extent strictly required** by the exigencies of the situation
- Derogations may **not be discriminatory**
- Must inform the **United Nations Secretary-General and the other states parties** to the ICCPR and provide **reasons** for the derogation
- Following articles **cannot be derogated** from: Articles 6, 7, 8, 11, 15, 16 and 18 of the ICCPR

LIMITATIONS OF RIGHTS

LIMITATIONS CLAUSES

- **Article 29(2) of the UDHR:** "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."
- **Article 19(3) of the ICCPR:** "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

  (a) For respect of the rights or reputations of others;

  (b) For the protection of national security or of public order, or of public health or morals."
- **Article 27(2) of the ACHPR:** "The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."

LIMITATIONS ANALYSIS

REQUIREMENTS FOR A JUSTIFIABLE LIMITATION OF A RIGHT	UDHR	ICCPR	ACHPR
Determined by law	X	X	X
Rights of others	X	X	X
Morality	X	X	X
General welfare	X		
Public order	X	X	
Public health		X	
National / collective security		X	X

LIMITATIONS: THREE-PART TEST

Limitations of the right to freedom of expression should be decided according to the following test:

- **Step 1:** Any restriction on a right must be **prescribed by law**
- **Step 2:** The restriction must serve one of the **prescribed purposes** listed in the human rights instrument, i.e. **pursue a legitimate aim**
- **Step 3:** The restriction must be **necessary** to achieve the prescribed **purpose**
  - **Proportionate** – should not sacrifice freedom of expression to an inordinate extent when compared to the advantages to be had from protecting the aim pursued
  - **Effective** – appropriate for attaining the legitimate interest pursued
  - **Least restrictive measure** available to pursue the legitimate end pursued
  - Is there an **overriding public interest** in making the information available?

LIMITATIONS: THREE-PART TEST (STEP 3)

Attorney-General v 'Mopa, Lesotho Court of Appeal (2002):

> "There are, in my view, **three important components** of a proportionality test. First, the measures adapted must be **carefully designed to achieve the objective** in question. They must not be **arbitrary, unfair or based on irrational considerations**. In short, they must be **rationally connected to the objective**. Secondly, the means, even if rationally connected to the objective in this first sense, **should impair as little as possible the right or freedom** in question … Thirdly there must be a **proportionality between the effects of the measures** which are responsible for limiting the Charter right or freedom, and the **objective** which has been identified as of sufficient importance."

LIMITATIONS ANALYSIS: KEY PRINCIPLES

- The internal limitation of "within the law" under article 9 of the ACHPR means "**within international law**" – domestic law cannot be used to justify non-compliance with international law obligations
- Law must be **clear, concrete and unambiguous**
- Limitations should **not put the right itself in jeopardy**
- The **state bears the onus** to prove that a limitation of a right is **justifiable**
- A **higher degree of tolerance** is expected when it is **political speech** and even **higher threshold** is required when it is **directed towards the government and government officials**

LIMITATIONS ANALYSIS: NATIONAL SECURITY

- **UN Special Rapporteur on Freedom of Expression**: "The use of an **amorphous concept of national security** to justify invasive limitations on the enjoyment of human rights is of serious concern**.** The concept is **broadly defined** and is thus **vulnerable to manipulation** by the State as a means of justifying actions that **target vulnerable groups** such as human rights defenders, journalists or activists**.** It also acts to **warrant often unnecessary secrecy around investigations or law enforcement activities**, undermining the principles of transparency and accountability**.**"
- **Media Rights Agenda / Nigeria** (African Commission): "It is important for the conduct of public affairs that **opinions critical of the government** be judged according to whether they **represent a real danger to national security.**"
- **Principle XIII(2) of the Declaration of Principles on Freedom of Expression in Africa**: freedom of expression should not be restricted on national security grounds "unless there is a **real risk of harm to a legitimate interest** and there is a **close causal link** between the risk of harm and the expression"**.**

LIMITATIONS ANALYSIS: NATIONAL SECURITY

- **Principle 2 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information:**

  "(a) A restriction sought to be justified on the ground of national security is not legitimate unless its **genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force**, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

  (b) In particular, a restriction sought to be justified on the ground of national security is **not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security**, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest."

LIMITATIONS ANALYSIS: NATIONAL SECURITY

- **Principle 6 of the Johannesburg Principles:**

  Expression may be punished as a threat to national security only if a government can demonstrate:

  (i) the expression is intended to incite imminent violence;

  (ii) It is likely to incite such violence; **and**

  (iii) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence

- **Principle 7(3) of the Johannesburg Principles**

  No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.

FOR DISCUSSION: INTERNET SHUTDOWNS – IS THIS A JUSTIFIABLE LIMITATION?

- Federal Government and Pakistan Telecommunication Authority had been compelling telecommunications companies to **suspend services**.
- Did so relying on **section 54(3) of the Telecommunication Act**, which provides that the Federal Government may suspend mobile services in the eventuality of a **proclamation of emergency by the President**.
- The respondents accepted that there had **not been a proclamation of emergency** issued by the President before ordering the telecommunications companies to suspend services – but argued that they did so in circumstances of a **reasonable apprehension of national security threats**.

- Judgment: CM Pak Limited v Pakistan Telecommunication Authority, FAO No. 42/2016

PROHIBITED SPEECH

- Some categories of speech do not enjoy human rights protection
- **Article 20 of the ICCPR:**

  1. Any **propaganda for war** shall be prohibited by law.

  2. Any advocacy of **national, racial or religious hatred** that constitutes **incitement to discrimination, hostility or violence** shall be prohibited by law.

- **Article 4 of the ICERD:** "States Parties condemn all propaganda and all organizations which are based on ideas or theories of **superiority of one race or group of persons of one colour or ethnic origin**, or which attempt to justify or promote **racial hatred and discrimination in any form**, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention …"

RABAT PLAN OF ACTION

- **Context:** Context is of great importance when assessing whether particular statements are likely to incite to discrimination, hostility or violence against the target group and it may have a bearing directly on both intent and/or causation.
- **Speaker:** The position or status of the speaker in the society should be considered, specifically the individual's or organisation's standing in the context of the audience to whom the speech is directed.
- **Intent:** Article 20 of the ICCPR requires intent; negligence and recklessness are not sufficient.
- **Content or form:** Content analysis may include the degree to which the speech was provocative and direct, as well as a focus on the form, style, nature of the arguments deployed in the speech at issue or in the balance struck between arguments deployed, etc.
- **Extent of the speech:** This includes elements such as the reach of the speech, its public nature, magnitude and the size of its audience.
- **Likelihood, including imminence:** The action advocated through incitement speech does not have to be committed for that speech to amount to a crime. Nevertheless, some degree of risk of resulting harm must be identified.

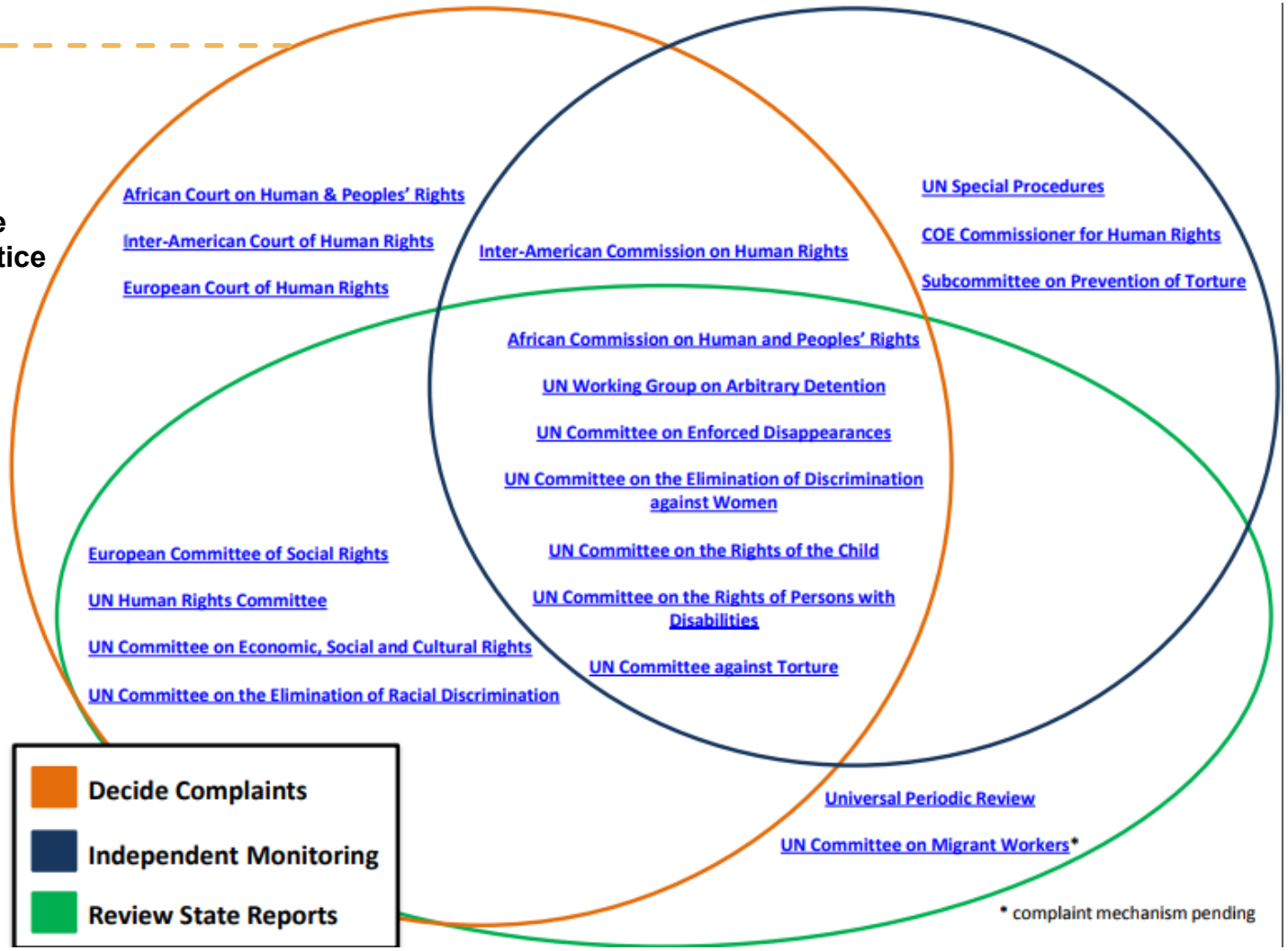
FOR DISCUSSION: DOES THIS CONSTITUTE HATE SPEECH?

- “I want to cleanse this country of all white people. **we must act as Hitler did to the Jews**. I don’t believe any more that the is a large number of not so racist white people. I’m starting to be sceptical even of those within out Movement of the ANC. I will from today unfriend all white people I have as friends from today u must be put under the same blanket as any other racist white because secretly u are all a bunch of racist fuck heads. as we have already seen.”
- “Noo seriously though u oppressed us when u were a minority and then manje [now] u call us monkeys and we suppose to let it slide. **white people in south Africa deserve to be hacked and killed like Jews**. U have the same venom moss. look at Palestine. **noo u must be bushed alive and skinned and your off springs used as garden fertiliser**.”
- **Section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act**: No person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful; be harmful or to incite harm; promote or propagate hatred.

- Judgment: South African Human Rights Commission v Velaphi Khumalo, Case No. 1/2018

REGIONAL AND INTERNATIONAL MECHANISMS TO ENFORCE RIGHTS

Sub-Regional Courts
ECOWAS Court of Justice
East African Court of Justice
SADC Tribunal



Human Rights Mechanisms, published by the International Justice Resource Center

AFRICAN COMMISSION RECOMMENDATIONS

"**The [African Commission] recommends that South Africa should:**

(i) accelerate the enactment of the Protection of State Information Bill and ensure that the Bill is in line with regional and international standards;

(ii) expedite the establishment of the Information Regulator;

(iii) amend the Cybercrimes and Cybersecurity Bill in line with international best practices on access to information; and

(iv) accelerate the enactment of the Judicial Matters Amendment Bill decriminalizing the common law crime of defamation."

"**Kenya should:**

(i) decriminalize defamation by repealing relevant provisions in the Penal Code;

(ii) expedite the finalization and enactment of the draft Freedom of Information Bill; and

(iii) take appropriate measures to effectively guarantee the right to freedom of expression, in particular for journalists and human rights defenders."

REGIONAL JURISPRUDENCE

- **Zongo v Burkina Faso:** The African Court held that the state had violated the right o freedom of expression under article 9 of the African Charter by failing to investigate and prosecute the murderers of Mr Zongo, a media professional.
- **Konaté v Burkina Faso:** The African Court held that the right to freedom of expression in terms of article 9 of the African Charter was unjustifiably infringed by aspects of the criminal defamation law, particularly the provisions that imposed a sanction of imprisonment.
- **Hydara Jr v The Gambia:** The ECOWAS Court of Justice held that a state will be in violation of its international obligations if it fails to protect media practitioners.
- **Federation of African Journalists and Others v The Gambia:** The ECOWAS Court of Justice ordered the state to immediately repeal or amend its laws on criminal defamation, sedition and false news as the impugned provisions did not comply with the state's obligation under international law.
- **Managing Editor, Mseto and Another v Attorney General of Tanzania:** The East African Court of Justice held that an order issued by the Minister for Information, Culture, Arts and Sports directing the applicants to cease publication was unlawful, disproportionate and did not serve any legitimate or lawful purpose.

A RIGHT TO [ACCESS] THE INTERNET[?]

A RIGHT TO [ACCESS] THE INTERNET[?]

- **The same rights that people have offline must also be protected online, in particular the right to freedom of expression.**
  - African Commission Resolution on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res. 362(LIX) (2016)
  - United Nations Human Rights Council Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet - A/HRC/32/L.20 (2016)
  - United Nations Human Rights Council Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet - A/HRC/38/L.10/Rev.1 (2018)

A RIGHT TO [ACCESS] THE INTERNET[?]

- Affirms that the same **rights that people have offline must also be protected online**, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice
- Affirms the importance of applying **a comprehensive human rights-based approach** in providing and in expanding access to internet
- Calls upon all states to **address security concerns on the internet** in accordance with their international human rights obligations in a way that ensures **freedom and security on the internet** so that it can continue to be a vibrant force that generates economic, social and cultural **development**
- **Condemns unequivocally** measures to intentionally **prevent or disrupt access to or dissemination of information online** in violation of international human rights law and calls on all States to refrain from and cease such measures
- Need to address **gender digital divide**

A RIGHT TO [ACCESS] THE INTERNET[?]

- Two key considerations that emerge:
  - Rights apply both **online** and **offline**
  - Need to distinguish between two types of access: (i) access to **infrastructure, devices, etc**; and (ii) access to **online information**
- Resolutions carve out special protections for **persons with disabilities** and **women / girls**
- Considerations when developing laws and policies at the domestic, regional or international level:
  - Access to the internet illustrates the **interplay of rights** between civil and political rights, and socio-economic rights
  - States are **enjoined by the resolutions** to take steps to realise access to the internet and online information
  - **Implementation** of international law at the **domestic level** – cannot rely on domestic frameworks to justify non-compliance

- **Estonia**: the Telecommunications Act added **internet access to its universal service list**, providing in article 5(1) that internet service would be "**universally available** to all subscribers regardless of their geographical location, at a **uniform price**".
- **Greece**: article 5A(2) of the Constitution provides that: "All persons have the **right to participate in the Information Society**. Facilitation of **access to electronically submitted information**, as well as the **production, exchange and diffusion** thereof, **constitutes an obligation of the State**, always in observance of the guarantees of articles 9, 9A and 19".
- **France**: Constitutional Court has held that "given the generalized development of public online communication services and the importance of the latter for the **participation in democracy and the expression of ideas and opinions**', the free communication of ideas and opinions enshrined in the Declaration of the Rights of Man and the Citizen of 1789 implied freedom to access such services.
- **Finland**: section 60C of the Communications Market Act has been amended to require **telecommunications operators** that are defined as **universal service providers** to provide every permanent residence and business office with access to a **reasonably priced and high-quality connection** with a downstream rate of at least 1 Mbit/s".
- **Costa Rica**: Constitutional Court has stated that: "In the context of a society based on information or knowledge, this **imposes upon public authorities**, for the benefit of those under their administration, to **promote and guarantee universal access to these new technologies**".

Source: Right to access the internet: The countries and the laws that proclaim it, Diplo Foundation, 2 May 2011