

Upholding Digital Rights in Africa

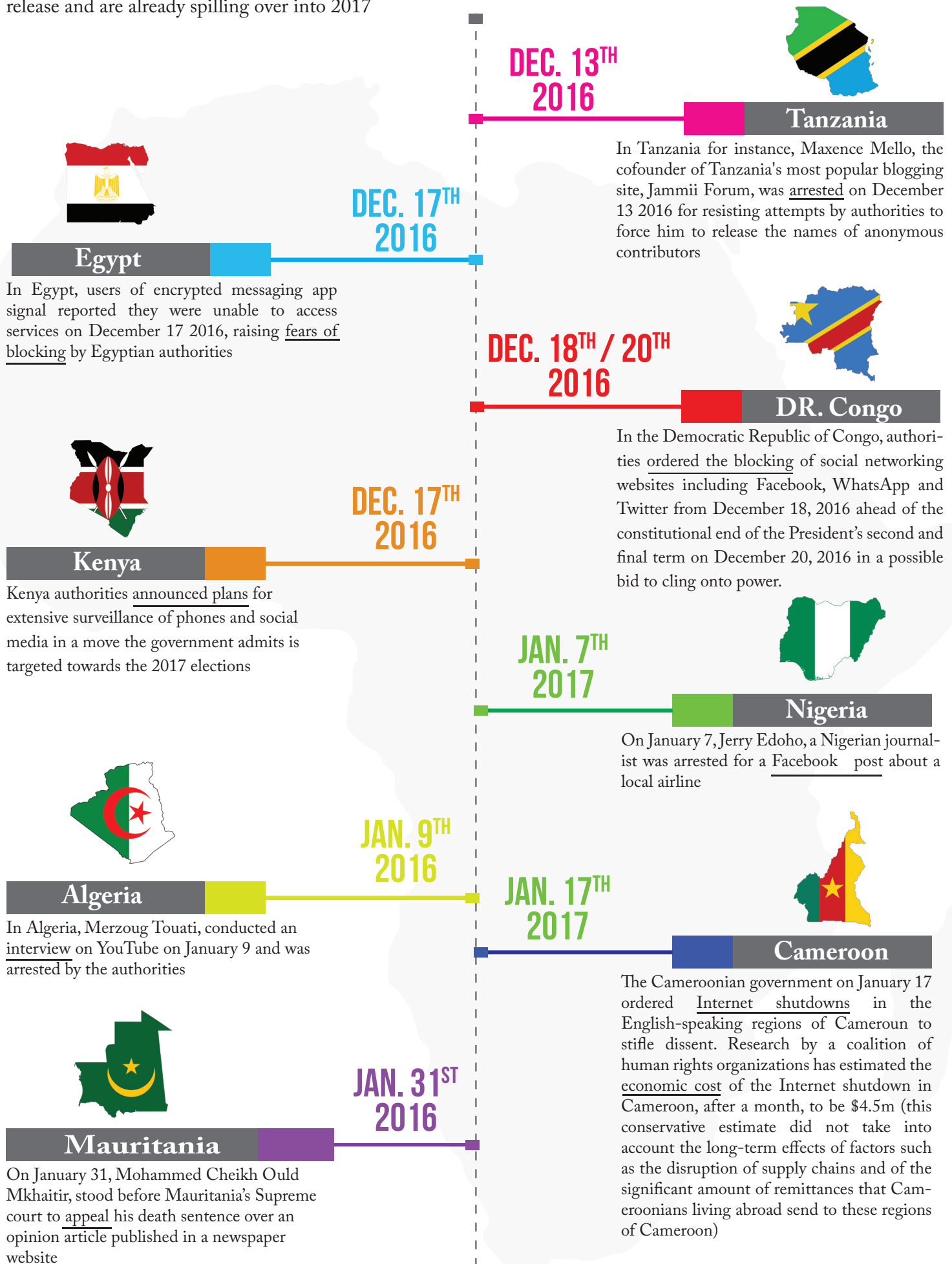


NET RIGHTS POLICY BRIEF

A lot of progress was made in 2016 towards bringing the topic of human rights to the focus of the international community. For instance, the African Union (AU) declared the year 2016 as the African year of human rights (with a focus on the rights of women). 2016 also marked the 35th Anniversary of the adoption of the African Charter on Human and Peoples' Rights (ACHPR) in 1981; the 30th Anniversary of the entry into force of the ACHPR in 1986; the 29th Anniversary of the operationalization of the ACHPR in 1987 and also the 10th Anniversary of the operationalization of the African Court on Human and Peoples' Rights. The Protocol to the ACHPR on the Rights of Women in Africa (the Maputo Protocol) was also 13 years old in 2016. The African Commission on Human and People's Rights also held its 59th Ordinary session between October 21 and November 4 2016, where a [resolution](#) on the Right to Freedom of Information and Expression on the Internet in Africa was adopted. On the global stage, the United Nations Human Rights Council in its 32nd session, in July 2016, gave a landmark resolution declaring that internet rights and Internet access are human rights.

Nevertheless, 2016 witnessed an unprecedented wave of digital rights abuses in Africa. Paradigm Initiative released its first [Digital Rights in Africa report](#) on December 8, 2016, where it documented the legal and policy environment which props up digital rights abuses, telecommunications and internet service providers; and incidents of digital rights abuse in 30 African countries. The release of the report at the Internet Governance Forum (IGF) in Mexico sparked conversations globally among stakeholders involved in the defence of digital rights.

The spate of digital rights abuses in Africa in 2016 was highlighted in the incidents which occurred after the report release and are already spilling over into 2017



The dynamic use of the internet has caused for some meaningful shifts in conversations that demand accountability and transparency from African governments by their electorates. With elections scheduled to hold in [20 African countries](#) in 2017, it is important for the future of democracy on the continent that the free flow of information and freedom of expression on the Internet is not disrupted through Internet shutdowns. African countries can draw from the example of Ghana where Presidential elections were conducted peacefully in December 2016 without Internet disruptions and human rights abuses.

All African states (except the newly created South Sudan) are parties to the International Covenant on Civil and Political Rights – the international legal framework adopted by the United Nations which in its 19th Article protects freedom of opinion and expression. With 169 state parties and wide acknowledgement of its centrality in human rights law, the International Covenant on Civil and Political Rights provides the principal [legal standard](#) for the vast majority of communications relating to freedom of expression.

Article 19 of the International Covenant on Civil and Political Rights allows restrictions on freedom of expression, but only when these meet the criteria of legality, necessity to protect a legitimate objective and proportionality. By legality, this means that restrictions are codified in legislation where the wording is clear and offenses are specified narrowly so as to be sufficiently obvious to would be offenders and as a result take away the leverage of authorities to enforce solely at their discretion. By necessity to protect a legitimate objective, this means that the restriction must be geared towards the protection of the interests of the general public or society and not the preservation of narrow interests of individuals or a government. By proportionality, what is meant is that the restriction should be in the same measure as the intended objective and should be the least intrusive. By this standard, it becomes clear that, largely, the restrictions to freedom of expression and human rights on the Internet in Africa run foul on international human rights standards.

The year 2017 presents a fresh start for African governments, citizens, civil society and all stakeholders to work towards a climate of respect for digital rights across the continent. Citizens and civil society across the continent are also urged to be alert to abuses and form coalitions to defend their rights online. Along this line we can draw from the examples from Nigeria – where a Digital Rights and Freedom Bill designed to protect citizens rights online is currently in Parliament and is at the Committee stage after a largely successful public hearing on December 5, 2016; to Ghana where government backed

down from a threat to shutdown social media during elections last December, to Kenya where section 29 (on the “improper use of a licensed Telecommunications system”) of the Information and Communication Act which was ruled unconstitutional by the Judiciary in April 2016. Also, on February 6, 2017, in a positive sign for Digital rights in Africa, section 194 of Kenya’s penal code which creates the offence of criminal defamation, thus restricting freedom of expression, was [declared unconstitutional](#) by the Kenyan judiciary. These outcomes were achieved through the concerted action of citizens, the civil society and governments brought on the side of defending digital rights.

We call on all stakeholders to work together to uphold Digital Rights, so that the full developmental impact of ICTs can truly be felt across Africa. In 2017, let’s work to uphold digital rights on the continent.



Prepared by:

Babatunde Okunoye and Tomiwa Illori.

For further information, please contact:

Adeboye Adegoke, Program Manager (Magoyi) via

✉ hello@pinigeria.org