

Human rights, ICTs and the internet

**AFRICA FREEDOM OF  
EXPRESSION EXCHANGE  
(AFEX) Workshop**

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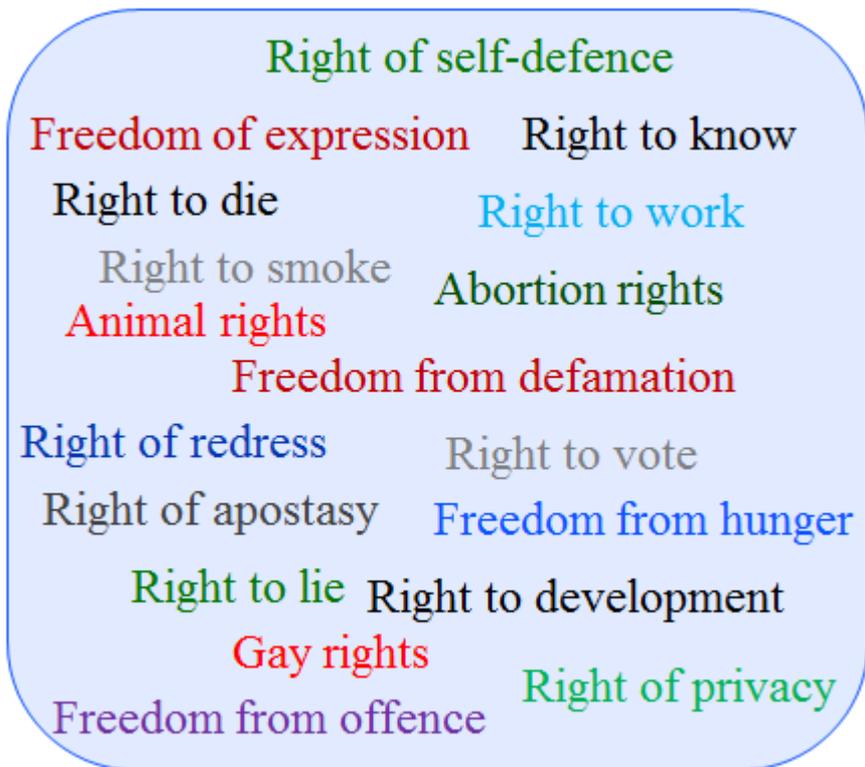
# Objectives

Understand ways in which the internet is affecting the enjoyment and protection of rights – now and in the future.

Explore how these affect your work.

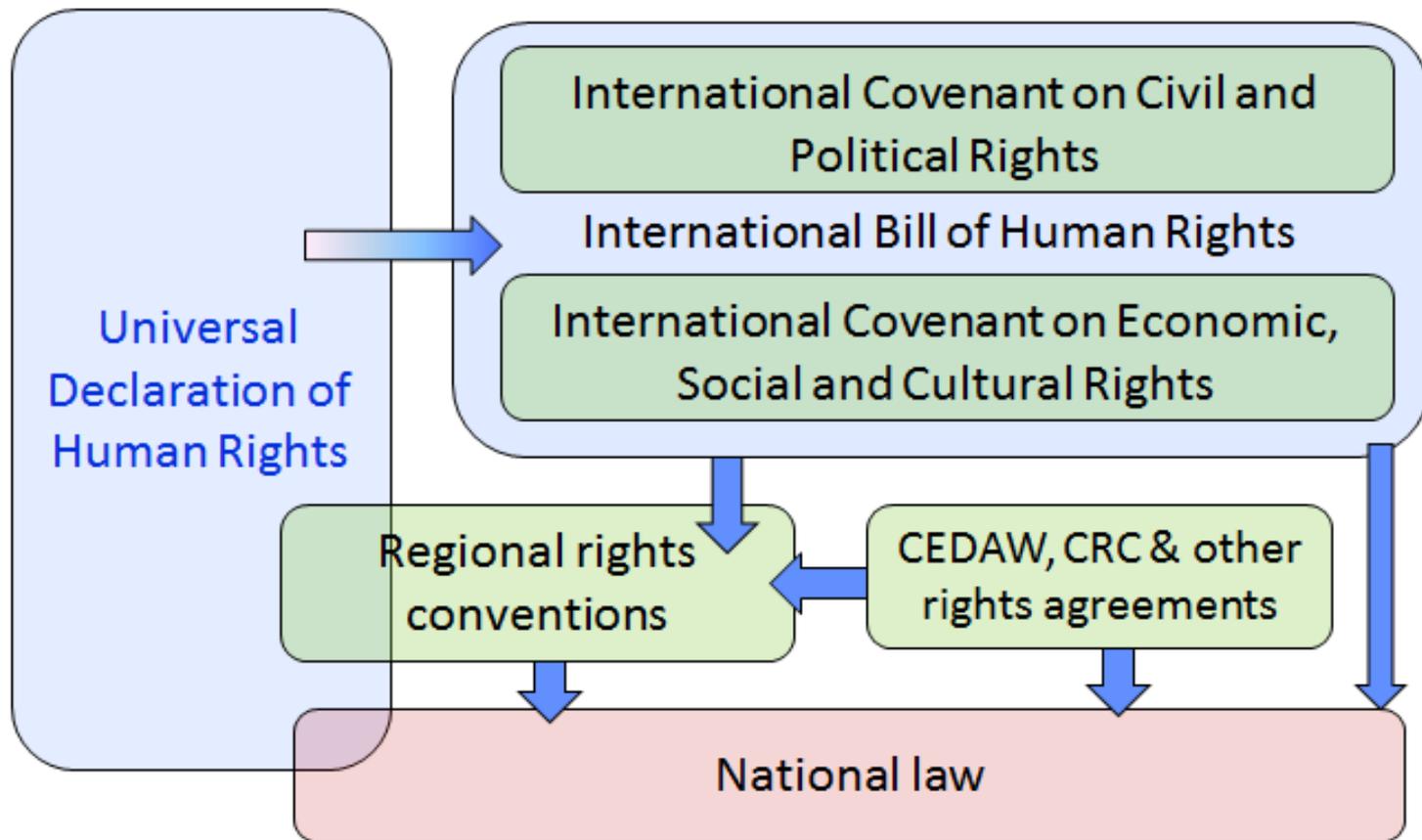
Understand how internet-related policy and regulation can impact on freedom of expression

# PART 1: Rights and human rights



- We hold rights in different capacities – e.g. our rights under national law, as consumers or as members of a library.
- Human rights are a category of fundamental rights established within international agreements and encompassed in international law.

# The international rights regime



# Rights within the international regime

- Civil and political rights include:

- life, liberty and security
- freedom from slavery
- equality before the law and fair trial
- right of privacy
- right to property
- freedom of movement
- freedom of religion
- freedom of opinion and expression
- freedom of association and assembly
- right to participate in government, including democratic elections

- Economic and social rights include:

- right to social security
- right to work
- right to leisure
- right to adequate standard of living, health and welfare
- right to education
- right to cultural life

- Other rights instruments address:

- women's rights - CEDAW
- children's rights - CRC
- racial discrimination - ICERD
- torture - CAT

# Limits to rights and government obligations

- *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.*
  - Universal Declaration of Human Rights, Article 29

Obligations on governments to:  
**Respect** the rights of citizens in their own dealings with them.

**Protect** the rights of citizens against violation by third parties (non-state actors, businesses, organisations, other individuals).

# Access to the internet

- At present about one third of people worldwide use the internet.
- Should there be a right of access to the internet?
- Cf. broadcasting and telecommunications – does it make sense to have a right to a specific technology?
- The internet is “not yet a human right” but governments have an obligation to make it “widely available, accessible and affordable to all.”
  - UN Special Rapporteur on freedom of expression, 2012

# Four key questions

- What are the implications of the internet for law enforcement and for the implementation of rights?
- Should online and offline behaviour be treated the same way - and how?
- What are the responsibilities of internet intermediaries (ISPs, OSPs)?
- What should be the role of the UN and national governments concerning rights on the internet?

# PART 2: Expression and the internet

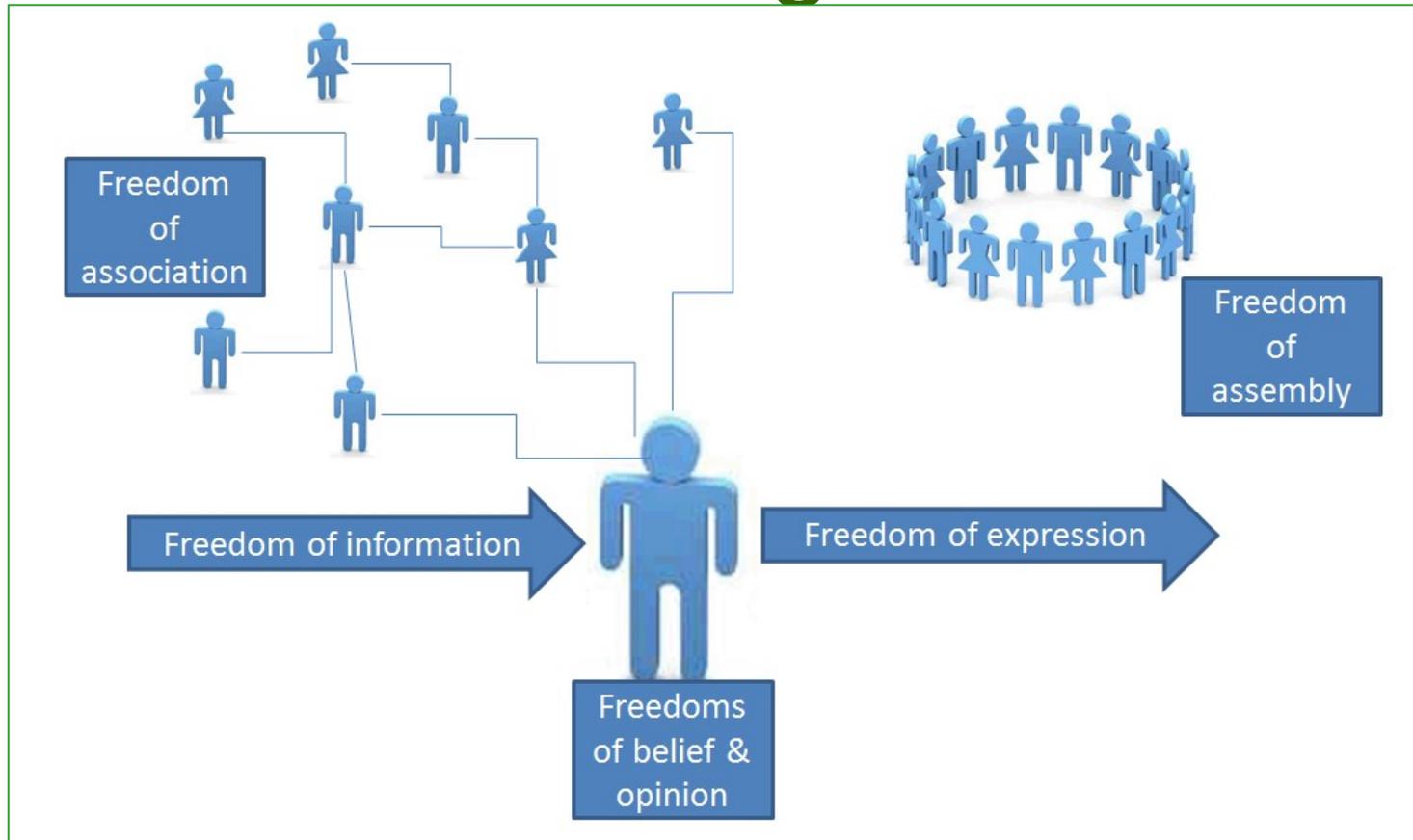
- The internet has:
  - greatly extended the range of opportunities for freedom of expression,
  - making it possible for anyone with internet access to publish information, opinion and other content to a global audience at minimal cost.
- Applications include email and IM, websites, blogs, social network services.

# Article 19 rights and the internet

- *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.*

Article 19 clause 2 of the International Covenant on Civil and Political Rights

# Article 19 rights in relation to other rights



# Limitations to freedom of expression

- The UN Special Rapporteur on freedom of expression has reaffirmed as a general principle for interpreting the application of limitations that they should be:
  - Articulated in law
  - In clear pursuit of the goals (a and/or b) set out in clause 3 of Article 19 of the ICCPR
  - “Necessary and proportionate” for that purpose
  - Transparent and subject to appeal.

# Freedom of information

- Article 19 of the ICCPR includes the right to “seek” and “receive” as well as “impart” information.
- This is subject to the same provisos and limitations as freedom of expression.
- The term freedom of information is also used to refer to:
  - Open access to public information
  - Access by citizens to information that is held about them by governments, businesses and others.

# Information and the internet

- The internet has:
  - greatly extended the range of opportunities for accessing content,
  - including content which is digitally available from any source worldwide, usually at no or virtually no cost.
- Websites and file downloads have made the internet “the world’s library”.

# Implications of increased opportunities for Article 19 rights

- Increased plurality of information and expression
- Globality of expression
- Globality of available content
- Problems of validation of content
- Ease of publication of content which potentially violates other rights (e.g. privacy, honour and reputation)
- Anonymity and pseudonymity

# Issues for discussion – political expression and information

- The internet provides opportunities for greater inclusiveness of political debate.
- Some governments wish to:
  - suppress expression
  - suppress access to content
  - monitor expression and access to content.
- What are the implications for law and rights?
- What are the implications for internet businesses (ISPs, OSPs)?

# Controls on Article 19 rights and violations of rights

- Various mechanisms have been used by governments either to enforce limitations within the rights regime or to impose political or moral censorship.
- Issues include:
  - Closure of the internet
  - Website blocking
  - Website filtering
  - Intermediary liability and self-regulation
  - Surveillance

# Issues for discussion – challenges concerning rights, laws & norms

## 1. Pornography and child pornography (child sexual abuse material)

- Article 19 limitations concerning “moral order and general welfare”
- CRC prohibition of exploitation of children for pornography
- Children’s rights of privacy

## 2. Intellectual property

- Article 15 of the ICESCR protects authorial rights

# Issues for discussion – challenges concerning rights, laws & norms

## 3. Incitement to discrimination, hostility and violence

–Prohibited by Article 20 of the ICCPR

## 4. Defamation (attacks on honour and reputation)

–“Unlawful attacks” prohibited by Article 17 of the ICCPR

# Impacts of the internet on other rights

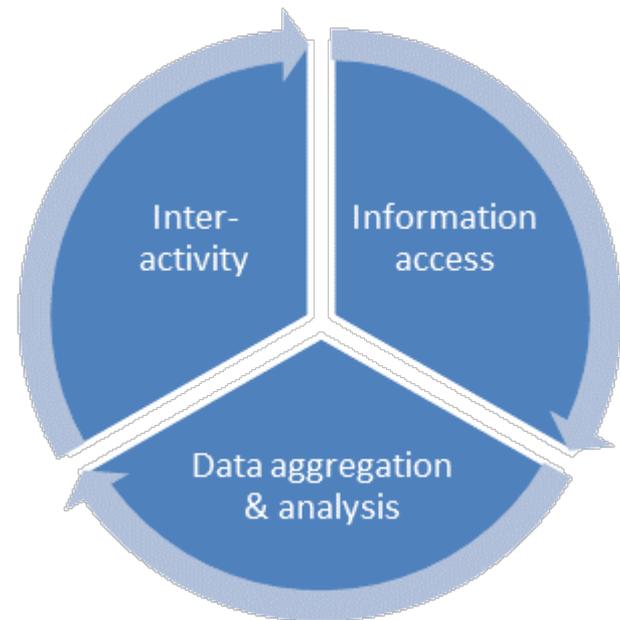
- The internet has had profound impacts on three rights in particular:

Freedom of expression and information

Freedom of association and assembly

Rights of privacy

- This impact derives from the internet's ability to enhance three activities:



# Impacts of the internet on other rights

- Rights of expression, information, association and assembly are generally seen to have been enhanced by the internet.
- Rights of privacy are generally seen to have been threatened by the internet.
- The internet is seen to have shifted the balance between different rights and the ability to exercise them.
- It has also enabled new ways in which rights can be violated – by governments, businesses and individuals.

# Freedom of association and assembly

***The right of peaceful assembly shall be recognized. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.***

*No restrictions may be placed on the exercise of [either of these rights] other than those which are prescribed by [or in conformity with] law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Articles 21 and 22 of the International Covenant on Civil and Political Rights

# Rights of privacy, honour and reputation

*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 17 of the International Covenant on Civil and Political Rights

# Other rights significantly impacted by the internet

- Life, liberty and security of person – ICCPR Article 9
- Fair trial – ICCPR Article 14
- Authorial rights – ICCPR Article 15
- Participation in government – ICCPR Article 25
- Property – UDHR Article 17
- Education – UDHR Article 26
- Participation in cultural life – UDHR Article 27

# Other rights significantly impacted by the internet

- Women's rights:
  - APC has argued that governments must ensure that “laws, policies and practices do not permit or create new forms of violence against women such as cyberstalking, digital surveillance, data monitoring and other interferences with women's rights.”
- Children's rights:
  - The CRC clarifies that children enjoy the same expression, association, information and protective rights as adults, but also confers added protection against physical and sexual abuse.

# Summary

- The internet has significantly affected:
  - How people can enjoy and exercise some rights – especially freedom of expression and association
  - the media in its role as a cornerstone of free expression
  - how governments and businesses implement or violate those rights – especially privacy.
- It has altered the balance between rights and,
- Raised new challenges of interpretation for the rights regime, which will continue to arise as ICTs and the internet continue to change

# Part 3: Regulation and policy that impacts on online FX

Access (cost, availability)

Intermediary liability

Cyber crime and security

Monitoring and interception/Surveillance

Content control

Copyright

Consumer rights

Terms of service

What else?