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**HOW THE RIGHT TO BE ONLINE HAS BEEN
ASSAULTED IN ZIMBABWE: *Consequences on the
work of Human Rights & Democracy Defenders***

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Zimbabwe Democracy Institute

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MAJOR HIGHLIGHTS

This research is an attempt to highlight key challenges encountered by civil society, political parties, journalists, social movements and the private sector in accessing internet and to promote the enjoyment of internet freedoms and proffer recommendations thereof with a view to advocate for online freedoms. Key highlights of the study are:

- ✓ For citizens to claim and enjoy their 'right to connect and be online', following (but not all encompassing) three key milestones should be considered as preconditions: (i) the presence of Internet Service Providers (ISPs) and (ii) a fair relationship between ISPs, the government and the consumers (enshrined in law, customs, culture, governance) is needed for citizens to justifiably claim their right to be online in any country whereas, (iii) the growth in number of ISPs increases the accessibility of this right to all citizens.
- ✓ Internet freedom and/or right to connect to internet is provided for in Zimbabwean constitutional law and international law to which Zimbabwe is party.
- ✓ It is undoubtedly true that full access to internet substantially extends the ability of citizens to exercise and enjoy rights as well as being an enabler for democracy to thrive.
- ✓ The internet has deep value for freedom of opinion and expression, as it amplifies the voice and multiplies the information within reach of everyone who possesses unlimited access to it.
- ✓ Stifling of internet access is uncalled for since one of the main purposes of ICT is to foster free exchange of views and information which supports human rights such as freedom of expression, freedom of assembly, and the right to privacy which are all tenets of democracy.
- ✓ It is unfortunate that the government of Zimbabwe strives to restrict online human freedoms and it has to this date done much to inhibit access to internet. This has been experienced through content blocks, censorship, shut-downs, lawmaking and court persecutions which seriously inhibit democracy and human rights promotion and protection activities by human rights defenders.
- ✓ Internet connection facts indicate that there has been an impressive struggle for internet connection despite a prohibitive political environment and its economic consequences in place.
- ✓ Most people in Zimbabwe access internet using mobile phones and social media seems to be the internet for many and WhatsApp (5.4million users) is the most popularly used across the country.
- ✓ Internet connection remains a challenge to the majority of Zimbabweans considering the fact that 28.4% of total mobile base stations in the country are allocated to rural areas that are home to an estimated 68,9% of the population of Zimbabwe.
- ✓ It is therefore indisputable that in the 51.5% of population that has no internet access; people from rural areas occupy the largest portion. Those with limited access rely on mobile telephony to access it and data costs are extremely high.

1. INTRODUCTION

In a fast globalizing world, the internet comes in handy as a prerequisite for the enjoyment of human rights and promoting effectiveness of the work of human rights and democracy defenders. As Gadzikwa puts it, the internet, therefore, has deep value for freedom of opinion and expression, as it amplifies the voice and multiplies the information within reach of everyone who possesses unlimited access to it.¹ In that regard, this paper argues that internet access must be viewed as a right on its own because it is a means to achieve internet freedoms and promotion of democracy. The extent to which human rights and democracy defenders enjoy internet access has a huge impact on the extent of promotion and enjoyment of those human rights.

Zimbabweans have the right to internet access and the freedom to connect in order to exercise and enjoy rights to freedom of expression and opinion and other fundamental human rights online and offline. It is undoubtedly true that full access to internet by human rights and democracy defenders substantially amplify the ability of citizens to exercise and enjoy rights as well as being an enabler for democracy to thrive. The main argument underpinning this paper is that, internet access is the most fundamental requisite for anyone to think and expect internet freedoms and that challenges to internet access should be addressed prior to championing internet freedoms. For Internet governance frameworks to really unlock internet freedoms, they must be guided by our understanding of internet access challenges. Factors affecting internet access are a key part of the larger environment governing internet freedoms which cannot be ignored; they must be identified and addressed.

¹ See Gadzikwa, J. (2015). Interactivity and Cyber democracy: The case of Zimbabwe's Online Newspapers. Available at <http://www.academicjournals.org/journal/JMCS/article-full-text-pdf/933970B51554>

The findings within this piece of research give evidence to the assertion that internet freedoms of Zimbabweans are inhibited by various factors affecting internet access and this has curtailed the enjoyment of human rights and advancement of democracy in Zimbabwe. The research therefore justifies that propounds that internet is paramount to the realization of internet freedoms and other human rights by the citizens of Zimbabwe. However, as shall be demonstrated further down, it is unfortunate that the government of Zimbabwe and communities therein has curtailed internet access through many acts of commission and commission which have directly and indirectly stifled internet freedoms of human rights defenders and citizen rights holders. These acts include content blocks, censorship, shut-downs, black-outs, espionage, harking, lawmaking and court cases which seriously inhibit democracy and human rights promotion and protection activities. Such barriers to internet access are expected to intensify as we draw closer the 2018 harmonized elections and the resultant impact will be gross on internet freedoms and other human liberties. As such, challenges that inhibit internet access by human rights defenders is, to a larger extent, detrimental to human rights and democracy promotion purposes and advocating for non-restriction cannot and should not be understated.

Research Objectives

This research paper is a partial fulfillment of the Zimbabwe Democracy Institute and Media Centre research objective to study the state of internet governance and freedom in Zimbabwe. It therefore sought to contribute to this objective by: (i) interrogating factors affecting the 'right to connect' to the internet; (ii) examining how such factors have affected the internet freedoms, and the work of human rights and democracy defenders in Zimbabwe and; (iii) search for recommendations for change that can be adopted for policy advocacy, lobby and civic education by key internet freedom stakeholders such as the civil society, political parties, journalists, social movements and the private

sector to amplify the push for deepened internet freedoms in Zimbabwe.

Methodology

In order to provide a profound overview of key factors affecting the right to connect to internet and how this militates against internet freedoms in Zimbabwe among civil society, journalist community, political parties, social movements, private sector in their work promoting human rights and democracy, key-informant interviews with stakeholders purposively sampled from 10 leading organizations among the above mentioned clusters were conducted in Harare.² To neutralize limitations associated with convenient sampling method, the study also reviewed some burgeoning literature in scholarly and newspaper articles relating to how restricted access to the internet breaches human rights and freedoms. Such restrictions, as discovered in the findings as presented hereafter have created serious need to support and promote online information sharing platforms even in the wake of a restrictive environment.

2. BACKGROUND FINDINGS

A Chilling Political Context for the Right to be Online

Internet freedoms and/or right to connect to internet are provided for in Zimbabwean constitutional law and international law to which Zimbabwe is party.³ For instance, the Constitution of Zimbabwe in section 61(1) provides that every person has the right to freedom of expression, which includes freedom to seek, receive and communicate ideas and other information, freedom of artistic expression. In addition, section 62 (1) adds that, “every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.”⁴ Since internet connection or ability thereof is indisputably a prerequisite for accessing information and sharing it in our modern and globalized world, it follows that putting in place factors to inhibit this connection is in itself an attempt to inhibit freedom of information and a violation of the constitution. Apart from that, Zimbabwe is party to many international protocols that provide for the enjoyment of these rights such as the Article 19 (2) of the International Covenant on Civil and Political Rights and article 9 (1&2) of the African Charter on Human and Peoples’ Rights among others.

However, the government of Zimbabwe has put in place various mechanisms to regulate information access and dissemination. These include: (i) legislation such as Interceptions of communications Act, Access to Information and Protection of Privacy Act, Broadcasting Services Act, Postal and Telecommunications Act,

³ For a detailed analysis on this legal framework governing internet in Zimbabwe, see a ZDI report accessible at: http://kubatana.net/wp-content/uploads/2017/12/zdi_media_centre_state_internet_freedom_1712.pdf.

⁴ The Constitution of Zimbabwe, 2013.

² Fink, A. 2003. *The survey toolkit*. London: Sage Publications

Criminal law (Codification and Reform) Act and the muted Omnibus Cybercrime Bill among others;⁵ (ii) police brutality and clampdown targeting human rights defenders online; (iii) internet shutdowns and seizure of working equipment for human rights activists and; (iv) government failure to install internet infrastructure in rural areas.

The Ministry of Information Communication Technology and Cyber Security and its regulatory body the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) are responsible for regulating telecommunications and the internet in Zimbabwe. POTRAZ regulates telecommunications in Zimbabwe and is responsible for licensing of Internet Service Providers. Like any other government institution, the political independence of POTRAZ has been contested. It is in this institution that the government has vested powers to free or assault citizens' right to be online.

Impressive Connection Progress despite an inhibiting 'Connecting' Landscape

For citizens to claim and enjoy their 'right to connect and be online', following (but not all encompassing) three key milestones should be considered as preconditions: (i) the presence of Internet Service Providers (ISPs) and (ii) a fair relationship between ISPs, the government and the consumers (enshrined in law, customs, culture, governance) is needed for citizens to justifiably claim their right to be online in any country whereas, (iii) the growth in number of ISPs increases the enjoyableness and accessibility of this right to all citizens. By end of 2016, the number of ISPs had already grown to 27 ISPs to serve a population estimated around 12 billion above half of whom were children in

⁵ For a detailed analysis on this legal framework governing internet in Zimbabwe, see a ZDI report accessible at: http://kubatana.net/wp-content/uploads/2017/12/zdi_media_centre_state_internet_freedom_1712.pdf.

2012 in Zimbabwe.⁶ This means that by end of 2016, condition (i) and (iii) were already satisfied while the attainment of condition (iii) remains elusive due an entrenched chilling political context described above. Access to internet remains fairly expensive and cumbersome.

Internet connection facts indicate that there has been an impressive struggle for internet connection despite a prohibitive political environment and its economic consequences in place. In 2017 for instance: (i) active internet penetration rate stood at 6,796,314 (49.5% of total population estimates); (ii) internet infrastructure had 881 LTE eNode Bs; (iii) there were 13,799,648 active mobile subscriptions; (iv) the total number of mobile base stations in the country was 8,278 whereas;⁷ (v) the total number of mobile base stations in rural areas stood at 2,352 and;⁸ (vi) there was an estimate of at least 5.2 million WhatsApp users in Zimbabwe44%.⁹

In simple terms: (a) if there are no numerous mobile subscriptions, it would suffice to say about 94 percent of the population has found access to mobile phones and can access internet when given access to smart phones; (b) of the 49.5% population accessing internet, 96.5% do so using mobile phones in Zimbabwe; (c) 850,000 internet users are Facebook subscribers and;¹⁰ (d) a majority of subscribers relying on bundles that cost as much as \$3 a month to access specific applications like Facebook and WhatsApp and;¹¹ (e) WhatsApp now accounts for 44% of all the mobile internet traffic in Zimbabwe. Effectively, almost half of all internet Traffic in Zimbabwe goes through

⁶ <https://www.internetworldstats.com> > Africa Internet Stats

⁷ http://www.potraz.gov.zw/images/documents/3rd_Quarter_2017.pdf

⁸ http://www.potraz.gov.zw/images/documents/Abridged_Sector_Performance_report_1st_Quarter_2017.pdf

⁹ <https://www.techzim.co.zw/2017/04/just-many-whatsapp-users-zimbabwe-digitalfuture/>

¹⁰ <https://www.internetworldstats.com/africa.htm>

¹¹ <https://www.techzim.co.zw/2017/01/much-internet-zimbabwe-heres-comparison-local-broadband-prices-2017/>

WhatsApp.¹² Thus, most people access internet using mobile phones and social media seems to be the internet for many and WhatsApp is the most popularly used across the country.

However, it is becomes a serious challenge and/or a clear indicator that internet connection remains a challenge to the majority of Zimbabweans considering the fact that 28.4%¹³ of total mobile base stations in the country are allocated to rural areas home to an estimated 68,9%¹⁴ of the population of Zimbabwe. It is therefore indisputable that in the 51.5% of population that has no internet access; people from rural areas occupy the largest portion. Those with limited access rely on mobile telephony to access it and data costs are extremely high.

3. STATE REPRESSION & INTERNET CONNECTION CHALLENGES FACED BY HUMAN RIGHTS DEFENDERS

Efforts to stifle internet access have been prominent towards election cycles in Zimbabwe. Thus, prospects of regulation and repression of online rights are expected to rise as we draw closer to the 2018 election.¹⁵ The State is fully aware that internet access provides room for online citizen journalism which actually functions as a watchdog thereby promoting government transparency and public scrutiny of those with power by exposing corruption, maladministration and corporate wrongdoing.¹⁶ The government of Zimbabwe has swiftly responded to the watchdog roles played by human rights defenders and promoters of 'netizens' such as civil society leaders, social movements, political activists and journalists by deploying various strategies to inhibit access to ICTs such as content blocks, censorship, shut-downs, law making and court prosecutions.

State Brutality to Deter Internet Connection

Physical attacks and brutalization has become part of state strategies to dissuade human rights defenders online. The wave of protests against deteriorating economic conditions by social media movements like #Tajamuka and #ThisFlag witnessed in 2016 were faced harsh measures from the government.¹⁷ Led by activists such as Pastor Evan Mawarire, Stan Zvorwadza and Promise Mkwanzani, these movements used social media to air their grievances, criticize and eventually mobilize to demonstrate against the government. The State, in dealing with such protests brutally assaulted, tortured and at some point abducted the perceived offenders like Itai Dzamara and Gift Ostalos Siziva.¹⁸ On the 29th of September

¹² <https://www.techzim.co.zw/2017/10/half-of-all-internet-traffic-in-zimbabwe/>

¹³ http://www.potraz.gov.zw/images/documents/Abridged_Sector_Performance_report_1st_Quarter_2017.pdf

¹⁴ <http://www.worldometers.info/world-population/zimbabwe-population/>. See also: <http://worldpopulationreview.com/countries/zimbabwe-population/>.

¹⁵ Interviews, January 2018.

¹⁶ Interviews, January 2018.

¹⁷ Zimbabwe Human Rights NGO Forum 2017 report.

¹⁸ Interviews, January 2018.

2016, a female human rights activist was abducted in Westgate by men armed with guns. They accused the activist of having been involved in organizing social movements' demonstrations using the social media. They severely tortured her and dumped her in the Westgate area in Harare. This move was meant to and did instill fear within the citizenry and induce self-censorship. Research participants also cited that access to internet is highly affected by the state when it interferes with the work of human rights defenders by arresting them for doing their work.

Prohibitive Data Costs & Regulations

Further to the above, the access to internet in Zimbabwe is regulated and/or deliberately limited by the State through expensive and high data rates that are not affordable. The government of Zimbabwe in 2000 established a regulatory authority, POTRAZ with the mandate of regulating aspects of postal and telecommunications in the country. In 2017, the regulatory body introduced new high floor data prices that left most data packages at higher tariffs. This situation has a direct negative impact on citizens and human rights defenders' right of access to information on the internet. Access is severely limited through measures such as high floor data prices especially when trying to access the internet using mobile phones.¹⁹ This move was seen as a reactionary sabotage by government in its attempt to stifle internet access and free speech through social media. This sharp increase in data prices cannot be discounted among causes of a decline in internet penetration between 2015, 2016 and 2017. It obviously had an effect of limiting the number of users of internet access as the government faces increasing widespread protests.

The study also established that the internet provider Zimbabwe Online (ZOL) offers 15GB

capped data for USD \$29 per month, with speeds of up to 5 Mbps. While this is among the cheapest available data packages in the country, it remains beyond what most Zimbabweans (living in a system with around 80% unemployment) can afford. As part of mobile internet data bundles, Zimbabwean Mobile Network Operators used to sell packages with subsidized or "zero rated" access to social media applications such as WhatsApp and Facebook. However, in August 2016, these promotional bundles were suspended through a directive from POTRAZ without any official statement or explanation. The directive was issued shortly after veiled threats, policy pronouncements and directives from regulatory authorities in the face of what they described as increasing 'abuse' of social media.²⁰ This came as a desperate move by government to stifle online mobilization by human rights defenders and social media movements by making internet inaccessible to the masses. This affects access to internet by human rights defenders and the work they do in promoting and protecting human rights.

Due to high unemployment levels in the country, the citizens cannot afford to buy internet data for them to have access to internet for the purposes of mobilizing fellow citizens to demonstrate against government's maladministration practices. Lest we forget, independent economists state that unemployment level in Zimbabwe is between 80% and 90% and this majority will not afford to access internet at exorbitant prices. Majorities are turned off by connectivity costs that have soared to beyond the reach of many who are struggling to make ends meet as well as putting food on their table for their families.²¹ Internet cafes charge anything between 50 cents and \$1 for 30 minutes, an amount which many would want to use for 'better' things. The dissemination of information, specifically human rights and democracy promotion activities to people who

¹⁹ See 11 January 2017 edition of the Zimbabwe Independent Newspaper: Available at <https://www.theindependent.co.zw/2017/01/11/zim-data-ruling-attempt-clamp-social-media/>

²⁰ Interviews, January 2018.

²¹ Interviews, January 2018.

are financially restricted becomes very difficult because these people might not access the internet because of the cost inhibition and lack of reliable internet access in their local communities. One of the participants of the study revealed that:

Data costs in Zimbabwe remain very exorbitant and some of our target areas don't have reliable access of internet. The telecommunications companies are pricing their data products beyond the reach of the ordinary Zimbabweans²².

The problem is that of reliable internet access. We do not have resources to conduct online human rights and democracy promoting activities because of financial limitations. We cannot afford to be on the internet using Econet for more than 30 minutes, it's very expensive.²³

Court & Police Persecutions

The government of Zimbabwe abuses the police services and courts of law to stifle internet freedom, and access thereof. The police and the courts of law have arrested, persecuted and charged several individuals and this has threatened human rights defenders forcing them to limit their human rights promotion and protection efforts.²⁴ For instance, on the 26th of April, 2016, the head of Media Centre Ernest Mudzengi and blogger Mlondolozzi Ndlovu were interrogated over a story published on the Zimbabwe Sentinel website and charged under Section 33 of the Constitution of Zimbabwe. In addition, on 3 November 2017, an American journalist working in Zimbabwe, Martha O'Donovan became the first victim of Cyber Security Ministry when she got arrested for activism work on social media and charged with undermining the authority of former President Robert Mugabe. In 2016, Pastor Evan Mawarire whose #ThisFlag became an instant social media campaign against deteriorating social and economic conditions in the country has been drawn to the courts on several occasions to face trumped up charges of 'subverting a

²² ZDI research participant, January 2018

²³ ZDI Research Participant, January 2018

²⁴ Interviews, January 2018.

constitutionally elected government'. While this move directly intimidated human rights defenders, it eventually affects access as the victims shy away from the internet over fear of being victimized.

Legislation Limiting Internet Use

Zimbabweans' access to the internet is highly curtailed by the legislation of the land. While Section 61 of the Zimbabwe Constitution is very progressive as it guarantees the right to freedom of expression and affords all citizens with the freedom to receive and communicate ideas and other information practically, citizens have limited access to the internet that is essential for the full realization of Section 61. Furthermore, efforts to regulate social media manifested through the Cybercrime and Cyber-security Bill,²⁵ which allows authorities to remotely install surveillance, spying and forensic tools on citizens' devices is contradictory Section 61. The Criminal Law and Codification Act (CODE) has also been very instrumental in curtailing online freedom by human rights defenders. Hitherto, the government has used CODE in order to harass and arrest human rights defenders. This has been a weapon to deter citizens from using internet and increase self-censorship.

Internet shutdowns

Access to internet is also affected by the government's deliberate measures to control the internet through shut-downs despite the resolution passed by the United Nations Human Rights Council on the first of July 2016 condemning countries that intentionally disrupt citizens' internet access.²⁶ On the 6th of July, 2016, Zimbabwe experienced an unprecedented internet shut-down after mass social movements protests against the then president Robert Mugabe were successfully organized online.

²⁵ Computer Crime and Cybercrime Bill, 2016, <http://www.techzim.co.zw/wpcontent/uploads/2016/09/Zimbabwes-draft-Computer-Crime-and-Cybercrime-Bill-16-September-2016>.

²⁶ See 13 July 2016 edition of NewsDay Newspaper: Available at: <https://www.newsday.co.zw/2016/07/illegal-ban-social-media/>

These protests were mainly spearheaded by the social media particularly facebook, twitter and WhatsApp. During that social media blackout, subscribers to Telecel, NetOne, ZOL, TelOne ADSL and Econet could not access their WhatsApp accounts. Resultantly, they were denied their constitutional right to access of online information due to this blackout. The press, on 13 July 2017, reported that the resolution on “The promotion, protection and enjoyment of human rights on the internet” emphasizes the UN’s position on digital rights and reiterates the UN’s stance that “the same rights people have offline must also be protected online,” in particular the freedom of expression covered under article 19 of the Universal Declaration of Human Rights. Within days of the passing of this UN resolution, a social media blackout that lasted approximately four hours hit Zimbabwe. This was a deliberate attempt by the government of Zimbabwe to suppress online human rights that citizens are entitled to enjoy. In Zimbabwe and elsewhere, the alleged deliberate internet shutdowns are on the rise.

The internet black-outs are a clear violation of section 62 of the Constitution, which protects every person’s right to access information. The 2016 national shutdown event in Zimbabwe organized by #ThisFlag movement stills serves as proof that the right to freedom of assembly and association provided for in section 58 of the Zimbabwe constitution is applicable in online environments such as social networks and not just confined to physical spaces. Freedom of expression encompasses the freedom to seek, receive, and impart information and ideas of all kinds through the internet and other digital technologies. The internet, along with social media, has enabled the enjoyment of all these rights. Consequently, a deliberate disruption in internet services or electronic communications by the government is, therefore, an indefensible restriction of fundamental rights and this should be condemned in strongest possible terms. The General Comment 34 of the UN Human Rights Committee, the official interpreter of the

International Covenant on Civil and Political Rights to which Zimbabwe is party, emphasizes that limitations on speech online must be as strict as necessary and proportionate to achieve a legitimate purpose. Shutdowns disproportionately affect all users, and unnecessarily restrict access to information. On July 1, 2016, the United Nations made a move to pass a resolution by consensus and condemn intentional internet shutdowns as a violation of Article 19 of the Universal Declaration of Human Rights, and argues that the rights to free expression apply online as well as offline.

Insecure Internet Access Equipment

Most human rights defenders as reflected in the domination of mobile telephony as the main source of internet access, use mobile telephony to access internet and this has seen them becoming very vulnerable to state spying, track-down and persecution. Tracking of mobile telephony internet users is a real challenge that has led to arrests and thereby affecting efforts to protect and promote rights.²⁷ It is important to note that 80% of the research interviewees reveal that a majority of Zimbabwean human rights defenders rely on their mobile phones to access the internet. As such, their level of access to the internet and work is compromised by state compulsory SIM card registration and retention of data about mobile phone users in a centralized database. This is so because retention of data threatens the right to privacy in Zimbabwe, especially in the absence of data protection legislation. Zimbabwe does not have adequate systems and legislation that protects and safeguards data, whether in transit or in the rest storage. Mandatory registration of internet access points and phone accounts is a move that results in mass surveillance and interference with the privacy of human rights defenders. The postal and Telecommunications Regulations Statutory Instrument 95 of 2014 requires all telecommunication companies to create a centralized subscriber database. This database, which is accessible to the

²⁷ Interviews, January 2018.

government, as it will be managed by POTRAZ, erodes the very idea of anonymity, privacy and confidentiality of human rights defenders as they access the internet and this has made it easy for government to monitor, target and sabotage their work.

4. CONCLUSION & RECOMMENDATIONS

Conclusion

In conclusion, it should be noted that, although internet penetration has increased in Zimbabwe, human rights defenders continue to suffer a raft of state sponsored barriers to internet connection. The government of Zimbabwe has made endless efforts to thwart the work being done by human rights defenders in promoting and protecting human rights as well as pushing for the attainment of democracy by inhibiting freedoms of expression, association and opinion online. The government has, to a greater extent succeeded in doing so as reflected by the research findings where most of the participants attested to that. This has been achieved through internet shutdown, censorship, high data tariffs and lack of privacy in online information sharing platforms. The government is also known for heavily relying on legislation that is anti-human rights and this has stifled the work of human rights defenders.

Recommendations

In line with the findings of this research, it is recommended that;

1. The government should regulate the internet to be in form of protections of rights rather than limiting access to internet,
2. Human rights defenders should pressurize the government to align oppressive laws with the constitution so that people will freely access the internet
3. Human rights defenders should continue to play their watchdog role for the purpose of promoting accountability and transparency,
4. Human rights defenders should continue to lobby and claim space to conduct online activities that protect human rights and democracy activities.

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