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Communications surveillance in the digital age

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NIGERIA

Online surveillance: Public concerns ignored in Nigeria



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Introduction

Nigeria, a country of 170 million people, recently made global headlines when social activists, through the use of social media (#BringBackOurGirls), brought media attention to the kidnapping of over 300 girls by an armed gang of religious extremists.¹ This event and the related security concerns about Africa overshadowed the 24th World Economic Forum on Africa that was hosted by Nigeria in May 2014.² The global scrutiny caused by this event has put the Nigerian government on the back foot in its efforts to bring security in the country under control.

This report looks at the government's mass surveillance attacks on its citizens before and after it purchased USD 40 million of Israeli technology³ to be used for the monitoring and control of the internet. Various top government officials have called for the regulation of social media: the minister of information argued that even the United States (US) intercepts its citizens' communication. However, he omitted the fact that in the US there are legal and judicial processes to show its use and limits so that abuses will be checked. To further the government's surveillance agenda, additional legislation is already under consideration by the Nigerian Communications Commission.⁴

Policy and political background

Nigeria is in its third round of democratic governance since the ouster of the military regime. However, vestiges of autocratic leadership still abound. The recent awarding of the USD 40-million surveillance contract, without following due process and in spite of nationwide expression of opposition, suggests a governance system that is yet to function democratically.

Nigeria is ranked 112th out of 180 countries in the 2014 Reporters Without Borders press freedom index.⁵ Recently, government agents raided some media houses and seized their newspapers during what was called "routine security action".⁶ Such arbitrary action gets the support of several top government officials, including the president and agencies who have expressed the desire to clamp down on the use of social media and access to information.

Nigeria does not yet have any existing data privacy laws or legal provision for interception of communication. The current security challenges in the country are being used as the reason to take major security decisions and make national commitments without the necessary constitutional approvals.

The history of implementation of government projects in Nigeria is riddled with inefficiency and corruption. A recent example is the USD 470-million National Public Security Communication System⁷ that resulted in the installation of CCTV cameras ostensibly to curb crime and violent attacks in the capital city. However, since its inception the level of insecurity in the capital city has increased dramatically. The people's lack of endorsement of the Israeli Elbit Systems purchase is therefore based on popular perception of the capabilities and motives of the government when initiating projects, espe-

1 Van Wagtendonk, A. (2014, May 2). Nigerians take to streets, social media to demand return of kidnapped girls. *PBS*. www.pbs.org/newshour/rundown/nigerians-take-streets-social-media-demand-safe-return-kidnapped-girls

2 Mosch, T. (2014, May 9). Africa's future overshadowed by Nigeria's present. *DW*. www.dw.de/africas-future-overshadowed-by-nigerias-present-at-wef/a-17625665

3 Emmanuel, O. (2013, April 25). Jonathan awards \$40million contract to Israeli company to monitor computer, Internet communication by Nigerians. *Premium Times*. www.premiumtimesng.com/news/131249-exclusive-jonathan-awards-40million-contract-to-israeli-company-to-monitor-computer-internet-communication-by-nigerians.html

4 Draft Lawful Interception of Communications Regulations. media.premiumtimesng.com/wp-content/files/2014/05/Legal-Regulations_Lawful_Interception_of_Communications-080113.pdf

5 rsf.org/index2014/en-index2014.php

6 Reporters Without Borders. (2014, June 11). Army seizes newspaper issues day after day on "security" grounds. *Reporters Without Borders*. en.rsf.org/nigeria-army-seizes-newspaper-issues-day-11-06-2014,46418.html

7 Isine, I. (2014, June 27). High-level corruption rocks \$470million CCTV project that could secure Abuja. *Premium Times*. www.premiumtimesng.com/news/163975-high-level-corruption-rocks-470million-cctv-project-secure-abuja.html

cially when such projects are deliberately shrouded in secrecy.

Exposing the Nigerian surveillance system

Nigeria has experienced widespread and growing incidences of kidnapping, blackmail, terrorist attacks and abduction. While these issues may be linked to governance challenges of mismanagement, corruption and unemployment, short-term measures to address these problems can be counterproductive.

In April 2013, an Abuja-based newspaper, *Premium Times*,⁸ broke the news that the Nigerian government had awarded the security tender to an Israeli firm for the procurement of the Elbit Systems technology.⁹ This would enable the Nigerian government to intercept all internet activity, and to invade users' privacy at will. The purchase is made more disturbing in that there is no enabling legislation for such an action by the government.

The paper also revealed that all Nigerian GSM service providers were intercepting all forms of communication.¹⁰ This action on its own is a violation of the International Principles on the Application of Human Rights to Communications Surveillance.¹¹ Without the benefit of judicial protection through any laws on privacy and data collection, Nigerians remain vulnerable to an infringement of their privacy from their government, and from foreign governments or organisations.

Another angle to the surveillance contract is the allegation by BDS Switzerland that the Elbit Systems technology has been developed and tested through the surveillance, repression and killing of Palestinians, including numerous civilians.¹² This issue, however, appears to have gone largely unnoticed in Nigeria.

The Nigeria Communications Commission (NCC) has released a draft policy on lawful interception that will empower security officers to intercept phone calls, text messages, chat messages, emails, etc.¹³ It is of concern that the NCC would opt for regulation rather than allow the National Assembly

to debate and decide on the issue. The NCC option would be open to abuse and violation of the fundamental right to privacy, a violation of Nigeria's 1999 constitution.

The recent arbitrary seizure of newspapers by the army and similar acts have raised concerns about security agents and law enforcement officials using the access and information at their disposal to their own advantage, or the government using regulations to crack down upon the opposition.

Conclusions

While it is difficult to fault the need for mass surveillance for the purpose of ensuring national security, and in the Nigerian situation, to track the terrorist activities of Boko Haram and online fraudsters, the peoples' concern is the normalising of surveillance in the guise of safety in a polity where legislative oversight and legal protection are missing. The history of governments all over the world, as documented by Snowden, is replete with abuse of their citizens' rights to privacy. It is significant that in spite of the outcry by citizens and attempt by the legislative arm of government to halt the Elbit contract, the government was not deterred. It is the fear of action with such impunity, not subject to the scrutiny of constitutional provision, that creates so much concern.

There is a need for more openness from the Nigerian government to allow a public debate on the spying programme to ensure better inclusion and buy-in. In its present form it does not meet the legislative requirements for procurements of that magnitude and national significance, and the government has not asked for the people's view – the views that have been expressed have been largely ignored. In its present form, the contract breaches the International Principles on the Application of Human Rights to Communications Surveillance,¹⁴ specifically on the issues of legality, legitimate aims, competent judicial authority, due process, user notification, transparency, integrity of communications and systems, and the need to safeguard against illegitimate access. Its illegality derives from its contravention of the 2007 Public Procurement Act. The Elbit contract did not meet the requirements for the awarding of such special contracts.

Action steps

In spite of loud protests by civil society organisations and individuals in Nigeria, and a feeble attempt by the House of Representatives to stop the contract, the government went ahead to purchase

8 Emmanuel, O. (2013, April 25). Op. cit.

9 Johnson, J. (2013, July 2). Scandal in Nigeria over Israeli arms firm's Internet spying contract. *Electronic Intifada*. <http://www.electronicintifada.net/blogs/jimmy-johnson/scandal-nigeria-over-israeli-arms-firms-internet-spying-contract>

10 Emmanuel, O. (2014, February 10). U.S. spy program reforms spotlight Nigeria's expanding surveillance program. *Premium Times*. <http://www.premiumtimesng.com/news/154931-u-s-spy-program-reforms-spotlight-nigerias-expanding-surveillance-program.html>

11 <https://en.necessaryandproportionate.org/text>

12 www.bds-info.ch

13 Collins, K. (2013, September 4). Nigeria embarks on mobile phone surveillance project. *Wired.co.uk*. <http://www.wired.co.uk/news/archive/2013-09/04/nigeria-phone-bugging>

14 <https://en.necessaryandproportionate.org/text>

the very expensive Elbit surveillance equipment from Israel. The ignoring of peoples' views by the government is a worrying trend.

A second disturbing trend that clearly violates the principle of integrity of communications and systems is compelling telecommunications service providers to provide their customers' records to security agencies. This is under the Bill for an Act to Provide for the Interception, Development and Protection of Communications Networks and Facilities for Public Interest and Other Related Matters, 2013.¹⁵

At the same time, the impact of social networking on the government's actions and activities has been rather limited in scope: it was useful in mobilising people for the 2012 fuel protests, and recently it was used to force the government to finally acknowledge the abducted girls (#chibokgirls), although this is beginning to lose traction and three months later, the girls have yet to be rescued.

An issue that may work in favour of the government is access. This was suggested during the recent elections in Ekiti state in which the incumbent governor, whose track record of governance was widely held as a model, lost to a rival who is under criminal investigations arising from his earlier tenure.¹⁶ Social networking sites were overwhelming in their support for the incumbent, but the results showed that the reality was far from that.

Could it be that social networking in Nigeria's most educationally advanced state is still not accessible to the bulk of the population?

If this trend continues, the government may soft pedal on its crackdown on internet freedoms. With the cost of internet access in Nigeria at about ten times what it costs in a country like the United Kingdom, affordable access remains a challenge to the people's access to relevant information. If it is the government's intention to operate clandestinely and without consideration for public opinion, a deliberate effort NOT to create an enabling environment to facilitate affordable internet access may just be all the government needs to do. Advocating for increased citizen access to the internet therefore remains a priority for civil society.

With increasing pressure on the government as the national elections draw closer, it can be expected that the views of the people will be ignored and decisions taken to curtail their freedom, and they will have no recourse to the law for redress. There will therefore be a need to campaign legislators, policy makers and other stakeholders to raise the concerns. The new programme being developed by the Fantsuam Academy on electronic surveillance as part of its Computer Diploma curriculum is a small effort towards raising more public awareness of the gravity of the issue of mass surveillance.

15 Nigeria Communications Week. (2013, October 24). FG presses forward with controversial wire-tap programme. *Nigeria Communications Week*. www.nigeriacommunicationsweek.com.ng/telecom/fg-presses-forward-with-controversial-wire-tap-programme#sthash.zLPYJ7jY.dpuf

16 Channels Television. (2014, June 22). Ekiti election: Fayemi concedes defeat, congratulates Fayose. *Channels Television*. www.channelstv.com/2014/06/22/fayemi-concedes-defeat-congratulates-fayose