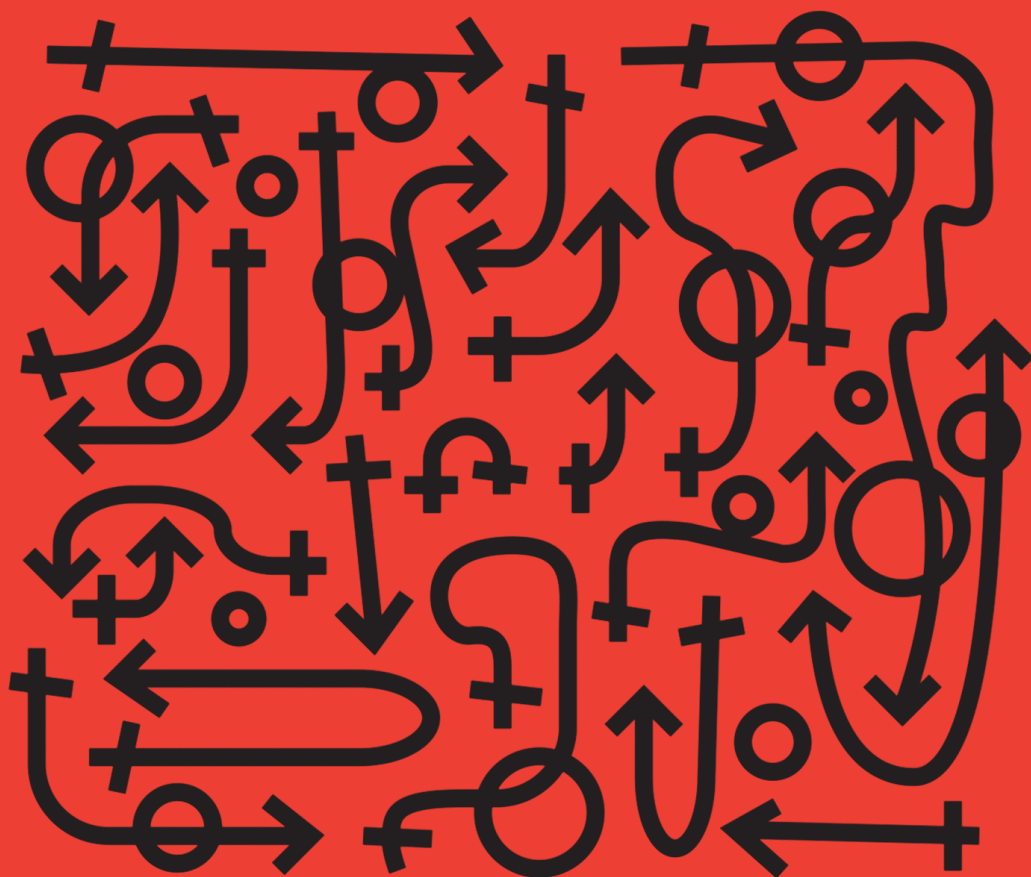


# GLOBAL INFORMATION SOCIETY WATCH 2015

*Sexual rights and the internet*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)  
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

## Global Information Society Watch 2015

Sexual rights and the internet

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### **Assistant editor, publication production**

Lori Nordstrom (APC)

### **Proofreading**

Valerie Dee

Stephanie Wildes

### **Graphic design**

Monocromo

info@monocromo.com.uy

Phone: +598 2400 1685

### **Cover illustration**

Matias Bervejillo

### **Financial support provided by**

Humanist Institute for Cooperation with Developing Countries (Hivos)

# Hivos

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## EFOSSNET

Abebe Chekol  
secretariat@efossnet.org

## Introduction

Historically unique among African nations, the ancient Ethiopian monarchy maintained its freedom from colonial rule with the exception of a short-lived Italian occupation from 1935 to 1941. Ethiopia's current constitution, which was adopted in 1995, made a decisive break with Ethiopia's tradition of centralised rule. The new institutions are based on the principle of ethnic federalism, designed to provide self-determination and autonomy to Ethiopia's different ethnic groups. The country has a two-tier system of parliament, namely, the House of Federation and the Houses of Peoples' Representatives.

Ethiopia has a population of over 99 million (July 2015 estimates) which represents diverse ethnic and religious groups and languages. In terms of religious affiliation, Ethiopian Orthodox accounts for 43.5% of the population, Muslim 33.9%, Protestant 18.5%, traditional 2.7%, Catholic 0.7%, and other 0.6% (2007 estimates).<sup>1</sup> Ethiopia's economy is based on agriculture, but the government is trying to diversify into manufacturing, textile and energy generation, sectors that have been showing tremendous growth. Its average GDP growth between 2001 and 2012 has been 10.5% annually, which is forecasted to continue well through to 2016. The per capita income reached USD 410 in 2014, which is still one of the lowest in the world.<sup>2</sup>

However, Ethiopia's growth challenge is partly attributable to undeveloped infrastructure. In the information and communications technology (ICT) sector, access to and use of ICTs are still among the lowest globally. The percentage of the population using the internet was estimated at 1.9% in 2013 and fixed-broadband subscriptions were below 1%. While mobile broadband bridges this gap to an extent the issue of rights on the internet looks

less significant in the context of the development challenges of access and use of the internet.

This report therefore highlights some of the issues and challenges in the area of sexual rights that are inherent to the Ethiopian context.

## Legal framework

The Ethiopian constitution<sup>3</sup> provides a general statement about marriage and personal and family rights in Article 34: "[M]en and women, without any distinction as to race, nation, nationality or religion, who have attained marriageable age as defined by law have the right to marry and found a family. They have equal rights while entering into, during marriage and at the time of divorce. Laws shall be enacted to ensure the protection of rights and interests of children at the time of divorce." There are important legal frameworks in this regard. The most important one is the Revised Family Code – Proclamation of 2000<sup>4</sup> which states in chapter one with regards to "conclusion of marriage" that marriage shall be deemed concluded when a man and a woman have appeared in either of the three types of marriage-concluding institutions (namely office of civil status, religious institution or custom-related entity) and that the entities have accepted their respective consent. However, in its Article 13d on "Fundamental Error" it states that "error" includes "the behaviour of the spouse who has the habit of performing sexual acts with person of the same sex."

Similarly, the 2005 Criminal Code,<sup>5</sup> in the part that deals with crimes against morality, includes a section on "sexual deviations". In Article 629 dealing with "homosexual and other indecent acts" it states that "whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment."

<sup>1</sup> Central Intelligence Agency. (2015). The World Factbook – Ethiopia. Washington, D.C.: CIA. <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html>

<sup>2</sup> Ibid.

<sup>3</sup> Federal Democratic Republic of Ethiopia. (2005). Proclamation no. 1/1995 – A proclamation to pronounce the coming into effect of the Constitution of the Federal Democratic Republic of Ethiopia. Addis Ababa: FDRE.

<sup>4</sup> Federal Democratic Republic of Ethiopia. (2000). The Revised Family Code Proclamation of 2000, Proclamation no. 213/2000. Addis Ababa: FDRE.

<sup>5</sup> The Federal Democratic Republic of Ethiopia. (2005). The Criminal Code of The Federal Democratic Republic of Ethiopia – Proclamation no. 414/2004. Addis Ababa: FDRE.

However, the punishment ranges from “simple” imprisonment (which means for no less than one year) to – in grave cases – imprisonment not exceeding 10 years. The punishment for performing “homosexual acts” with a minor is between three to 25 years of imprisonment depending on the age and gender of the victim.

### Key issues

Ethiopia hosted the 16th International Conference on AIDS and Sexually Transmitted Infections in Africa (ICASA 2011)<sup>6</sup> in Addis Ababa from 4 to 8 December 2011, attracting over 10,000 participants. Gathering some of the world’s leading experts to discuss trends in AIDS treatment and prevention, it was also the first time that Ethiopia witnessed sexual rights activists talk openly about issues such as homosexuality that are criminalised in the country’s laws. It was reported that over 200 activists attended the conference and had a plan to organise a side event on issues of homosexuality and the prevention of HIV/AIDS.

However, as the news became public that these activists at the conference planned to organise a meeting, Ethiopians began discussing the issue online, using digital platforms such as Facebook. Most of the statements on social media reflected a sense of public loathing against the proposed meeting, based on religious and cultural values. This was not surprising. An article published by the newspaper *Capital* during the event cited a 2007 Global Attitudes Survey that revealed that almost all (97%) of Ethiopians believe homosexuality should be rejected by society, which was the second highest percentage rejecting homosexuality among the 44 countries surveyed, exceeded only by Mali with 98%.<sup>7</sup> Further to the online debates, prior to the conference religious leaders called for a press briefing with the intention to ask for the conference to be banned, leading to a dispute with government authorities. The news conference was cancelled and instead a meeting took place between the health minister and religious leaders from the Ethiopian Orthodox church, the Ethiopian Islamic Affairs Supreme Council, and Catholic and Evangelical churches. This meeting, however, ended in disagreement over whether or not to cancel the conference.

As indicated above, Ethiopia’s criminal law prohibits any form of homosexuality on grounds that

the behaviour goes against the country’s cultural and religious norms and that persons who engage in the activity would be sentenced to up to 10 years of imprisonment. Three years prior to the conference, Ethiopian religious leaders gathered at the African Union (AU) to lobby local lawmakers to enact a constitutional ban on homosexuality.<sup>8</sup> The clerics stressed that the current laws were inadequate. The former Patriarch of the Ethiopian Orthodox Church had then said that Ethiopia’s special place in the biblical traditions means a firm stance is warranted. He added, “We strongly condemn this behavior; they have to be disciplined and their acts discriminated against.... They have to be given a lesson.”<sup>9</sup> Furthermore, the head of a local NGO called United for Life Ethiopia also emphasised at the same meeting the need for a tough stance on homosexuality, given a rise in sex tourism and the fact that the prostitution business in the country was gaining momentum. According to him, homosexuality was a new phenomenon brought about with increased exposure to other cultures through globalisation, adding that orphans are especially at risk as they do not have proper family protection. At the end of the meeting the religious leaders deemed homosexuality part of “cultural colonisation” and a sign that the new generation is “loosening”. They cited preaching in religious institutions, schools and other institutions, as well as the ostracisation of homosexuals, as key to ensuring that homosexuality does not become widespread.<sup>10</sup>

These accounts reflect a country with a strongly conservative society that has upheld its beliefs and cultural values for centuries. In this context, the online environment is no different from the offline experience that people encounter in Ethiopia. The national ICT policy,<sup>11</sup> in its section on “ICT legal system and security” states as a strategic action to “develop ICT and related regulatory frameworks in order to address socially undesirable activities in the use of ICTs.” Furthermore, the ICT security strategy in the national policy states as one of its objectives the need to prevent, detect and respond to cyber crime and the misuse of ICTs so as to contribute to the fight against national, regional and

6 [www.icasa2011addis.org](http://www.icasa2011addis.org)

7 *Capital*. (2011, 8 December). Cultural collision. *Capital*. [www.capitalethiopia.com/index.php?option=com\\_content&view=article&id=87:cultural-collision&catid=35:capital&Itemid=27](http://www.capitalethiopia.com/index.php?option=com_content&view=article&id=87:cultural-collision&catid=35:capital&Itemid=27)

8 PANA. (2011, 29 November). Upcoming gay conference in Ethiopia may be banned. *Panapress*. [www.panapress.com/Upcoming-gay-conference-in-Ethiopia-may-be-banned--13-8o764o-17-lang4-index.html](http://www.panapress.com/Upcoming-gay-conference-in-Ethiopia-may-be-banned--13-8o764o-17-lang4-index.html)

9 *Capital*. (2011, 8 December). Op. cit.

10 *Ibid*.

11 The Federal Democratic Republic of Ethiopia. (2009). *The National Information and Communication Technology Policy and Strategy*. Addis Ababa: FDRE.

international crimes such as prostitution, fraud, organised crime and terrorism.

However, the internet, particularly through social media and community websites, has been used as a platform to express different views from both sides – both for and against homosexuality. As indicated above, as soon as the news broke about the sexual rights activists planning to organise a side event during ICASA 2011, communities opposing homosexuality were discussing the issue and campaigning against the side event through online platforms. On the other hand, as indicated in an article<sup>12</sup> in the web-based news section of Ezega.com, despite homosexual communities in Ethiopia being forced to remain hidden, there are also an increasing number of websites where the communities express themselves publicly and make demands.

Two things can be derived from this story. Firstly, in recent years one of the thematic areas for the annual Internet Governance Forum (IGF)<sup>13</sup> is “human rights and the internet” which addresses issues ranging from data protection and privacy to freedom of expression in the online environment, to surveillance and access to information. One of the ideas behind this agenda is that the rights protected in the offline environment need to be protected in the online environment too. The question is how this applies when such rights do not exist in the offline environment, even though the internet offers certain levels of freedom for exercising those rights.

Secondly, a point can be made regarding the AIDS conference and the call by religious leaders and NGOs like United for Life Ethiopia requesting that the government enforce the rule of law and protect the culture and traditions of the Ethiopian people. Although Ethiopia is signatory to international human rights principles, it acknowledges that these can be limited by the requirements of national peace and security, public health, education and societal mores and tradition. This clear recognition of social morality as an identity means that the Ethiopian government is constitutionally obliged to protect and serve the cultural, religious and traditional values of the nation. This issue suggests the need for further research on the real challenge on the way forward.

## Conclusion

One of the commentaries in a local paper<sup>14</sup> about the recent Africa visit of the president of the United States highlights how President Barack Obama respectfully chose silence on the right of homosexuality, while urging African governments to respect equality, and to allow people to live in dignity and freedom. The commentary added that in his Ethiopia visit, the president did not seem to have the enabling environment to raise the issue of homosexuality as a human right in a country where it is criminalised, where moral failure is not an issue and where cultures and different religious institutions strongly denounce homosexuality. While Ethiopia’s Criminal Code already punishes homosexual practices with up to 10 years in prison, in March 2014 Ethiopia’s lawmakers proposed legislation that would make same-sex conduct a non-pardonable offence, so that homosexuals convicted under the law could not be granted early leave from prison. However, in April the government dropped the proposed legislation.

Given the existence of the legal framework that prohibits homosexuality, the internet offers an alternative platform for online debates among concerned people. On the other hand, it seems evident that the topic of sexual rights and the internet is not particularly significant to a country like Ethiopia. Firstly, as indicated above, the legal framework does not allow and grant this right in the first place, and secondly the internet, which is a powerful technology that provides different avenues for networking, is limited in penetration in the country. Thirdly, one of the reasons that some organisations promote access to the internet and human rights is based on the principle that the protection of the rights of the people online must be protected in the same manner offline. The challenge comes when these rights are legally prohibited in the offline environment.

Further to some of the experiences indicated above, the internet provides a gateway for people to express their views and needs, for networking and discussing issues regardless of it being illegal. As stated by academic Howard Mehlinger,<sup>15</sup> technology is not only a product of a given culture, it also shapes the culture that created it. In this regard, the challenge ahead lies with the growing access to in-

12 Tekleberhan, M. (2011). Revelation of Homosexual Life in Ethiopia – Part 2. *Ezega.com*. [www.ezega.com/News/PrintNews.aspx?newsID=2814](http://www.ezega.com/News/PrintNews.aspx?newsID=2814)

13 [www.intgovforum.org/cms](http://www.intgovforum.org/cms)

14 [162.242.195.248/index.php/other-sections/law-and-politics/law/item/10501-%E1%8A%A6%E1%89%A3%E1%88%9B-%E1%88%B5%E1%88%88%E1%8B%B4%E1%88%9E%E1%8A%AD%E1%88%AB%E1%88%B2-%E1%8A%A0%E1%88%8D%E1%89%Bo%E1%8A%93%E1%8C%88%E1%88%A8%E1%88%9D%E1%8A%95](http://162.242.195.248/index.php/other-sections/law-and-politics/law/item/10501-%E1%8A%A6%E1%89%A3%E1%88%9B-%E1%88%B5%E1%88%88%E1%8B%B4%E1%88%9E%E1%8A%AD%E1%88%AB%E1%88%B2-%E1%8A%A0%E1%88%8D%E1%89%Bo%E1%8A%93%E1%8C%88%E1%88%A8%E1%88%9D%E1%8A%95)

15 Mehlinger, H. D. (1996). School reform in the information age. *Phi Delta Kappan*, 77(6), 400-407.

ternet, and the extent to which this technology will impact on future generations.

### **Action steps**

Internet diffusion in Ethiopia is slow and costly. However, increasing mobile penetration in the country, which was 27.3% in 2013, is helping to bridge the gap. With 4.9% of the population using wireless broadband subscriptions, a large number of people can now use mobile technology to access the internet. The internet has a great potential, and provides all kinds of social forums and platforms in

different fields of interest or concerns, where people can network based on common interests, or create support groups.

In this regard, the following two action steps could be suggested:

- The need to deploy further infrastructure and services that enhance internet access and use in the country.
- The need for further empirical research to provide evidence-based suggestions and recommendations.

# Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

GLOBAL INFORMATION SOCIETY WATCH

2015 Report

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